

08
23.11.2022
d.p.

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 12093 of 2022

**Madan Mohan Banerjee & Ors.
-versus
The Howrah Municipal Corporation & Ors.**

**Mr. Arindam Banerjee,
Mr. Debdut Mukherjee,
Mr. Gaurab Kumar Das,
Ms. Piyali Datta.
...For the Petitioners.**

**Mr. Sandipan Banerjee,
Mr. Sobhan Majumder,
Mr. Ankit Sureka.
...For HMC.**

**Mr. Somnath De.
...For the Respondent No.5.**

The matter relates to premises no.14, Baptist Burial Ground Road, P.S.-Golabari, Howrah-711106.

The Howrah Municipal Corporation granted sanction for construction of a G+1 storied building. The petitioners have constructed the 2nd, 3rd, 4th and the 5th floors without obtaining any sanction.

The Corporation issued notice under Section 177(1) of the Howrah Municipal Corporation Act, 1980 to stop the construction work forthwith.

The Corporation thereafter issued notice on 10th May, 2022 directing the person responsible to show cause as to why the said structure will not be

demolished as the same was constructed without any sanction plan. Hearing was conducted on 8th March, 2022.

The order dated 10th May, 2022 records that the noticee did not attend the hearing and continued with the construction work ignoring the stop work notice.

The Corporation thereafter issued notice to demolish the unauthorized construction of the 2nd to 5th floors within a stipulated time period.

The petitioners are aggrieved by the same.

It has been submitted that the notice of hearing was not received by them and, accordingly, they were not able to attend the hearing on the stipulated date.

It has further been submitted that all along the construction was conceived as a G+5 storied building. The sanction was given initially upto the G+1 floor level with the understanding that upto the 5th floor sanction will be granted later on.

According to the petitioners, there is a provision for post facto approval of sanction of the construction made.

Mr. Somnath De, learned advocate appearing on behalf of the respondent No.5 seeks leave to file vakalatnama in the course of the day. Leave sought for is allowed. Let the vakalatnama of the respondent No.5 be filed in the course of the day.

Learned advocate appearing for the Howrah Municipal Corporation submits that despite notice none attended the hearing scheduled on 8th March, 2022.

Sanction was given upto the 1st floor level but the petitioners went on constructing till the 5th floor without obtaining any sanction.

It appears from the submissions made on behalf of all the parties and upon perusal of the materials on record that though there is a sanction plan for making construction only upto the G+1 floor, the petitioners constructed upto the 5th floor level.

The same is absolutely impermissible in law.

According to the provision of the Howrah Municipal Corporation Act, 1980, no person is entitled to make construction without a proper sanction plan.

Submission of the petitioner that the building was conceived as a G+5 storied construction and construction has been made without obtaining any sanction with the understanding that post facto sanction will be granted, cannot be accepted by the Court.

If the aforesaid contention is accepted, then the builder will start making construction without any sanction plan and thereafter seek permission to regularize the construction that has been made. The same will lead to absolute lawlessness which ought not to be permitted by the Court. According to law, sanction is required to be taken prior to making construction and not the other way round.

In view of the above, no relief can be granted to the petitioners in the instant writ petition.

The writ petition fails and is hereby dismissed.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)