

Item No. 32

21.09.2022
Ct-24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 14959 of 2022

Rajendra Kumar Agarwal
v.
The Howrah Municipal Corporation & Ors.

Mr. Mrinal Kanti Ghosh
... for the petitioner.

Mr. Tanmoy Mukherjee
Mr. Souvik Das
Mr. K. Raihan Ahmed
Mr. Rudranil Das
... for the respondent.

Mr. Sandipan Banerjee
Mr. Santanu Chatterjee
... for HMC.

The petitioner is aggrieved by the demolition notice dated June 21, 2022 passed by the Assistant Engineer, Howrah Municipal Corporation directing the petitioner to self-demolish the 3rd and the 4th floors of the building which have been constructed without the sanctioned plan.

Learned advocate for the petitioner submits that there is no specification of the unauthorized construction in the impugned notice to demolish and accordingly, the said notice is liable to be set aside.

It has further been submitted that the petitioner has made application before the Howrah Municipal Corporation and seeks for a direction to consider the same.

Learned advocate representing the respondents opposes the prayer of the petitioner.

On a perusal of the impugned notice it appears that it has been specifically mentioned that the deviation has been made in construction of the G+2 storey and the 3rd to the 5th floors have been constructed without the sanctioned plan.

The nature and extent of the unauthorized construction is specifically mentioned in the impugned notice. There is no provision in the Howrah Municipal Corporation Act to regularize the constructions which have been made beyond the sanctioned plan.

The petitioner took the risk of constructing three additional floors without obtaining any sanction from the Howrah Municipal Corporation.

The Howrah Municipal Corporation permitted sanction only upto the G+2 storey. The petitioner could not have constructed the plinth to make construction of G+5 storied building. The petitioner could not have anticipated as to whether the additional floors would be sanctioned by the Howrah Municipal Corporation and accordingly, the submission of the petitioner that the structure will be able to bear the load of G+5 storey is not acceptable by the Court.

The conduct of the petitioner implies that he had all along intended to raise unauthorized construction without obtaining any sanction. If the petitioner had bona fide intention to raise a G+5 storied structure, he ought to have applied for obtaining sanction for G+5 storied building at the very first instance. The petitioner ought not to have obtained sanction only for

constructing G+2 storied building and thereafter raise three floors unauthorizedly and later seek for regularization of the unauthorized floors.

The petitioner obtained sanction only for G+2 storied building but he raised three additional floors. The same is not permissible in law. As per the Act construction can be made only after obtaining sanction from the Corporation.

The petitioner is bound to demolish the unauthorized construction.

The Howrah Municipal Corporation is directed to take steps to implement the order of demolition.

No interference called for.

The Officer-in-Charge, Bantra Police Station is directed to render all necessary assistance to the men and agents of the Howrah Municipal Corporation at the time of executing the demolition work, as sought for.

The writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties after completion of all legal formalities.

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(Amrita Sinha, J.)