

31.03.2022
Court No. 19
Item No.2
sn

WPA 16516 of 2021

Rita Singh & Anr.
Vs.
Howrah Municipal Corporation & Ors.

Mr. Haradhan Banerjee
Mr. Amitava Pain
Mr. S. Dutta
Mr. P.P. Mukhopadhyay
Ms. Sonali Mukhopadhyayfor the petitioners

Ms. Sudipa Roy
Mr. Srinath Singha Roy ..for the State

Mr. Sandipan Banerjee
Mr. Ankit Sureka ..for the HMC

Mr. Subhadip Biswas ..for the respondent no5.

This writ petition has been filed by the owners of premises no. 110/2, Kali Kundu Lane, Police Station Bantra, within Ward No.24 of the Howrah Municipal Corporation. They have challenged the order of demolition dated August 7, 2021.

The grounds of challenge are as follows:-

a) The order of demolition was passed without hearing the interested parties.

b) Prior to coming to the conclusion that there were unauthorized constructions on the premises, an inspection, in the presence of the parties, was not held.

c)The parties were not explained the nature and extent of unauthorized construction.

d)The order impugned is a cyclostyled form, in which, only figures have been incorporated by the authority.

e) The order is bereft of reasons and suffers from total non-application of mind.

Mr. Biswas, learned advocate for the developers, submits that the Corporation did not grant an opportunity of hearing to his client, although the Corporation held the developers to be the persons responsible for such construction.

Mr. Sandipan Banerjee, learned advocate appearing on behalf of the Howrah Municipal Corporation has filed an affidavit-in-opposition. From the affidavit-in-opposition, it appears that the Assistant Engineer, In-Charge of Building Department, Howrah Municipal Corporation, by a communication dated November 26, 2021 had intimated Mr. Sandipan Banerjee about the nature and extent of deviation. He submits that the said communication may be treated as the inspection report and the petitioners may proceed accordingly, to demolish the structures and the deviations in terms of the affidavit-in-opposition, and thereby comply with the order of demolition.

Heard the learned advocates for the respective parties.

Admittedly, a joint inspection of the premises in question, was not held. Neither the developer nor the owners were pointed out the nature and extent of deviation, in the construction.

It is also an admitted position that the parties were not heard. The order is a cyclostyled form, in which the figures have been incorporated, but the details which have now been provided by Mr. Sandipan Banerjee, are not reflected in the order.

It is a settled proposition of law that if the order which is under challenge, does not reflect any reasons, the said order cannot be improved by way of an affidavit-in-opposition. The impugned order, must be considered, as it is.

In the matter of ***Mohinder Singh Gill v. Chief Election Commr.***, reported in **(1978) 1 SCC 405**, the Apex Court held as follows:-

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out.”

Under such circumstances, the report filed by Mr. Sandipan Banerjee, can be at best a, prima facie,

detection of unauthorized construction. The Corporation may proceed in accordance with law, on the basis of such findings, but the said report and the contents of the affidavit-in-opposition cannot improve the order of demolition, which is non-speaking and cryptic. Further, the persons affected must always be given an opportunity to place their case.

Under such circumstances, although Mr. Haradhan Banerjee, prays for leave to file the affidavit-in-reply, this Court being satisfied that the order impugned has been passed in violation of principles of natural justice, deems it fit not to detain the writ petition further, but to dispose of the same, by setting aside the order of demolition dated August 7, 2021, with a direction upon the Corporation to hold a de novo proceeding, in accordance with law.

It is informed by Mr. Sandipan Banerjee that one, Ambooj Sharma, was the complainant before the Corporation and the proceedings were initiated on the basis of such complaint. Thus, this Court directs that the said complainant shall also be given an opportunity to be present during inspection and at the hearing.

Mr. Haradhan Banerjee, submits that an 'as made plan' had already been deposited with certain prayers for regularization. This Court is of the view,

that such 'as made plan' shall also be disposed of simultaneously.

While disposing of the entire issue, a competent authority of the Howrah Municipal Corporation shall adopt the following procedure:-

a) An inspection of the concerned premises shall be made. Such inspection shall be held in the presence of the petitioners, complainant, and all other interested parties on April 12, 2022 at 12 noon. Advance notice of the inspection shall be served upon the complainant. If the complainant is not available to accept the notice, the authorities shall affix the notice of hearing and inspection at a conspicuous place at his address.

b) In case, it is found on preliminary inspection that there may be reasons to believe that the alleged construction was without permission and was continuing, the authorities may take such interim measures, by stopping such construction.

c) The report of such inspection shall be prepared along with the sketch map, indicating the extent and nature of unauthorized construction, if any.

d) Such report shall be handed over to the parties. The parties must also be allowed to

furnish their written objection/version to the said report.

e) A hearing shall be given to the petitioners, developer, complainant and all other interested parties on May 17, 2022 at 12 noon. Parties will be free to adduce oral and documentary evidence, in support of their contentions before the competent authority. All points raised by either party, will be decided.

f) A reasoned order shall be passed and communicated to the parties. On the basis of what transpires at the hearing and during inspection, the proceedings shall be reached to its logical conclusion in terms of the statute. The court has not gone into the merits of the matter and the issues involved shall be decided independently.

This order shall not be construed as a right conferred by the Court upon the petitioners to have the unauthorised constructions/deviations regularised. Such decision shall be taken by the authorities in accordance with law.

All the interested parties in the proceeding apart from the complainant, are before this Court. The Corporation shall not be required to serve notices either upon the petitioners or the respondent

no.5. Notice of inspection and the hearing shall be given to the complainant, only.

The dates fixed by the Court shall be complied with and adhered to by the parties, except under very special circumstances.

As the Court has directed de novo hearing to be preceded by an inspection, the entire matter will be decided afresh and the contentions of the respondents in the affidavit in opposition shall be deemed to be denied.

The entire exercise shall be completed within a period of one month from the date of hearing.

This writ petition is, thus, disposed of.

In view of the disposal of the writ petition, CAN 1 of 2021 and CAN 2 of 2022 are disposed of accordingly.

There will be, however, no order as to costs.

All parties are directed to act on the basis of server copy of this order and/or the learned advocate's communication.

(Shampa Sarkar, J.)