

Sl. No.38
29.09.2022

Court No.24
B.M.

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 15807 of 2022

Ram Babu Show
v.
The Howrah Municipal Corporation & Ors.

Mr. Haradhan Banerjee
Mr. Amitava Pain
Mr. Subhrangshu Datta
Mr. Nilmoni Das

... for the petitioner.

Mr. M. P. Gupta
Mr. Ayan Mitra
Mr. Chandan Mondal
Ms. Antara Panja

... for the private respondent.

Mr. Sandipan Banerjee
Mr. Sobhan Majumder
Mr. Ankit Sureka

... for Howrah Municipal Corporation

The petitioner prays for implementation of the order dated 7th June, 2022 passed by the Assistant Engineer-in-Charge, Building Department, Howrah Municipal Corporation allegedly in compliance of the direction passed by this Court in MAT 970 of 2021.

The respondent Corporation after hearing the submission made on behalf of both the parties was of the opinion that the private respondent failed to prove his case that the said property is not a thika tenanted property and has obtained a sanctioned plan by suppression of material fact.

The Assistant Engineer-in-Charge cancelled the sanctioned order. A further direction was given to cause self-demolition of the unauthorised construction.

The order dated 7th June, 2022 records that a Suit being Title Suit No. 288 of 1984 and a further Title Suit No. 894 of 2020 by and between the parties are pending consideration before the Ld. Court below.

Whether the property in question is a thika property or not is to be decided by the competent Court and not by the Assistant Engineer-in-Charge of the Howrah Municipal Corporation.

Learned advocate representing the private respondent submits that the construction is already over in accordance with the plan that was sanctioned by the Howrah Municipal Corporation.

At this stage, if the construction is demolished and later on the Court comes to a finding that the building in question is not a thika property, then the private respondent will be highly prejudiced. If the order of demolition is implemented then it will be impossible to revert to status quo ante.

In view of the above, Howrah Municipal Corporation is restrained from giving any effect or further effect to the order dated 7th June, 2022 till a decision is passed by the competent Court declaring the status of the property as to whether the same is thika or not.

It will however, be open for the Howrah Municipal Corporation to take steps in accordance with law to deal with any deviation from the sanctioned building plan that has been made at the time of construction of the building in question.

In the event, the competent Court decides that the property in question is thika, then it will be open for the Howrah Municipal Corporation to act in accordance with law and in line with the order passed by the competent Court and take steps to deal with the issue of suppression of material fact at the time of obtaining the sanction for making construction.

The learned Court below shall decide the pending suits on merit without being influenced by any observation passed hereinabove.

The writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Amrita Sinha, J.)