

14.03.2022
Court No. 19
Item no.02
CP

WPA 16438 of 2019

With

CAN 1 of 2021

M/s. Baan Ganga Developers

Vs.

The State of West Bengal & ors.

Mr. Debjit Mukherjee

Ms. S. Chatterjee

Mr. D. Ganguly

Mr. K. Bhattacharya

....for the petitioner.

Mr. Sandipan Banerjee

Mr. Ankit Sureka

....for the H.M.C.

CAN 1 of 2021 is an application for substitution of the heirs and legal representatives of one Uttam Kumar Singh, one of the partners of the petitioner firm, namely, M/s. Baan Ganga Developers, who died leaving behind Anita Devi, (widow) and Sobha Singh (daughter). This application has been filed to substitute Smt. Anita Devi and Smt. Sobha Singh as petitioners in place of Uttam Kumar Singh, since deceased.

As the original CAN 1 of 2021 is not with the records before this court, a copy of the same is accepted with the consent of the parties and treated to be the original.

The application is allowed.

The petitioner is directed to incorporate the names of Smt. Anita Devi and Smt. Sobha Singh in place and in stead of Mr. Uttam Kumar Singh, since deceased. Such correction be incorporated here and now.

The copy of the sanction plan filed in court today is kept on record.

The petitioner is aggrieved by an order of demolition dated August 7, 2019, passed by the Executive Engineer, Howrah Municipal Corporation (hereinafter referred to as 'the corporation'), Building Department. The petitioner submits that the order cannot survive for the following reasons:

- a) No inspection of the unauthorized construction was made in presence of the persons responsible.
- b) The extent of unauthorized construction has not been delineated correctly.
- c) Proper hearing was not given to the persons responsible.
- d) The order is devoid of reasons.
- e) Had the persons responsible been given an opportunity of placing their case before the authority, the persons responsible would have been able to substantiate that

the construction was made pursuant to a plan sanctioned by the corporation.

Mr. Banerjee, learned advocate appearing on behalf of the corporation, submits that the construction has been made beyond the sanction plan. He submits that in view of the deviations, a further inspection or a further hearing would not improve the case of the petitioner and, as such, relegating the matter back to the corporation would be an idle formality.

The petitioner has handed over a copy of the sanction plan before this court in order to substantiate that a five-storeyed building had been permitted at holding Nos. 33 + 34/1 + 33 + 34/3, Chatterjee Para Lane, Howrah. According to the petitioner, the said holding as mentioned in the building plan is the same as Premises No. 33 + 34/1 + 33 + 34/3, Chatterjee Para Lane.

Heard the learned advocates for the respective parties.

The court is of the opinion that the order impugned before this court issued vide Memo No. 675/EE/Bldg/19-20, dated August 7, 2019 suffers from the following irregularities:

- a) Inspection in the presence of the persons responsible was not held.

- b) Report of the inspection was not supplied to the petitioners.
- c) The petitioners were not able to controvert the allegations of unauthorized constructions as no hearing was held.
- d) The order suffers from non-application of mind.

The merits of the contentions of the petitioners are not gone into. Undoubtedly, the corporation which is vested with the powers under the law to initiate proceedings in case of detection of unauthorized construction, can also take steps for demolition of the same. However, the law does not permit an authority to perform its statutory functions in violation of the principles of natural justice. The order of the authority thus fails the test of reason. The order is arbitrary and, hence, set aside.

As there are serious allegations of unauthorized construction, the corporation shall be at liberty to initiate *de novo* proceeding in accordance with law. While doing so, the corporation shall adhere to the following procedures:

- a) An inspection of the site shall be conducted within two weeks from date of communication of the order. Such inspection shall be held in the presence of a representative of the petitioner and the

complainant with 48 hours advance notice to the parties including the petitioner and the complainant, Arijit Dutta. The notice shall be served and affixed in the respective premises, which shall operate as a notice to all. The address of the complainant Arijit Dutta as submitted by the petitioner is as follows:

“35, Chatterjee Para Lane, P.S. - Bantra, Howrah – 711101”.

The notices for hearing and inspection upon the parties shall be served in the address of the petitioner as appearing in the cause-title and also affixed at a conspicuous place in their respective concerned premises which shall be treated as notice to all, including the legal heirs of Uttam Kumar Singh and Arijit Dutta, the complainant.

- b) The report of the inspection shall be prepared along with the sketch map indicating the extent of deviation, if any.
- c) Such report shall be handed over to the petitioner as also the interested parties.
- d) A hearing shall be given to the petitioner and the interested parties including the complainant, Arijit Dutta. The parties must also be allowed to furnish their written

objection/version to the said report and adduce oral and documentary evidence in support of their contentions before the competent authority.

- e) 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 claims and counter-claims of the parties and the issues shall be decided independently.

The entire exercise shall be completed within a period of two months from the date of communication of this order.

The writ petition is, thus, disposed of. There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)