

3.01.2022
Court No. 19
Item no.2
sn

WPA 18562 of 2021

Subhas Chandra Banerjee &Anr.
Vs.
The Howrah Municipal Corporation & Ors.

Mr. Debjit Mukherjee
Ms. Susmita Chatterjee
Mr. D. Ganguly
Mr. Kaustav Bhattacharyya
....for the petitioners

Ms. Sutapa Sanyal
....for the State.

Mr. Tanmoy Mukherjee
Mr. Souvik Das
Mr. Rudranil Das ..for the respdts.9-11

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

Let the affidavit of service be taken on record.

The allegation is that the respondent nos. 9 to 11 have constructed a building on Premises No. 53, Gopal Banerjee Lane, Ward No.26, Borough-IV P.S. Shibpur, District Howrah.

Mr. Debjit Mukherjee, learned advocate for the petitioners relies on a communication from the SPIO, Howrah Municipal Corporation and submits that it was the specific contention of the Corporation that the building was sanctioned as a G+1 residential building. Mr. Mukherjee submits that when the Howrah Municipal Corporation had itself communicated that the building was sanctioned as

G+1, the respondent nos. 9 to 11 could not have raised any further floors beyond G+1, in the absence of any plan or permission from the Corporation. He prays that the complaint made by the petitioners before the appropriate authorities of the Corporation must be disposed of in accordance with law, upon taking serious note of the alleged illegal construction.

Mr. Tanmoy Mukherjee, learned advocate for the respondent nos. 9-11 submits a copy of the revised sanction plan and receipt issued by the Howrah Municipal Corporation. From the said documents, it is evident that the Corporation had granted permission to the said respondents to construct beyond the G+1 building as per the revised sanction plan sometime in 2004.

An order of injunction in a title suit between the parties is handed over to the Court, from which it appears that the learned Civil Court has already granted an order of status quo with regard to the entire property allegedly involved in this proceeding.

Mr. Debjit Mukherjee, learned advocate for the petitioners opposes such contention of Mr. Tanmoy Mukherjee and submits that when the SPIO, Howrah Municipal Corporation had intimated that the building was sanctioned as a G+1 residential building as per the records of the Corporation as revealed in the reply under the Right to Information

Act, the question of grant of revised sanction plan in 2004 did not arise. He further submits that the suit was with regard to the allegation of unauthorized construction by the respondent nos.9-11 and the status quo order was in respect of the suit property but not the building.

Records have been produced by Mr. Tanmoy Mukherjee, learned advocate for the respondent nos. 9-11 which are contrary to the information given to the petitioners by the SPIO, Howrah Municipal Corporation dated December 19, 2020.

Mr. Sandipan Banerjee, learned advocate for the Howrah Municipal Corporation submits that the communication of the Corporation under the Right to Information Act, 2005 may not have been issued upon comparison of the records but the question has to be decided by the Corporation only after consulting the records available and upon perusal of the documents to be supplied by the respective parties.

Ms. Sanyal, learned Advocate for the State respondents submits that pursuant to the service of the writ petition, the police authorities visited the locale, but did not find any ongoing construction.

Thus, the Court is of the opinion that this factual dispute cannot be adjudicated by the Court. Whether the information given under the Right to

Information Act, 2005 was correct or not has to be gone into by the Corporation itself, specially as the records submitted by the respondent nos.9-11, speak otherwise.

Under such circumstances, this writ petition is disposed of with a direction upon the Assistant Engineer, in-charge of the Building Department, Howrah Municipal Corporation to dispose of the representation of the petitioners dated November 9, 2021 in accordance with law. The only question to be decided by the Corporation is whether the answer to the query of the petitioners under the Right to Information Act, 2005 which appears as Annexure P/4 to the writ petition dated December 19, 2020, was issued upon consulting the records, whether the revised plan was sanctioned by the authority in 2004 but subsequently cancelled, and whether at all the contentions of the respondents Nos9 to 11 were correct. This order shall not have any influence in the pending suit. The suit shall proceed in accordance with law independently and as per schedule fixed by the learned Court below.

The parties shall be at liberty to submit documents in support of their respective contentions. The parties shall supply to each other copies of the documents to be relied upon by them within January 10, 2022 through their learned advocates.

All the documents sought to be relied upon by the parties shall also be handed over to Mr. Sandipan Banerjee, learned advocate, who shall accept the same on behalf of the Howrah Municipal Corporation along with the writ petition. Under the present pandemic situation, the Court does not think it wise to allow physical verification and hearing before the Corporation. Mr. Banerjee will send the documents to the competent authority, who shall dispose of the representation of the petitioners as directed, upon examining the said documents and available records of the Corporation. A reasoned order shall be passed and communicated to the parties within two months from the date of communication of this order.

The writ petition is, thus, disposed of.

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

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

(Shampa Sarkar, J.)