

S/L 4
24.03.2022
Court. No. 19
GB

W.P.A. 19678 of 2021

Kamal Howladar
Vs.
The Howrah Municipal Corporation & Ors.

Mr. Noni Gopal Chakraborty.
...for the Petitioner.

Mr. Sandipan Banerjee,
Mr. Ankit Sureka.
...for the H.M.C.

Mr. Tilak Mitra.
...for the Respondent Nos.6 & 7.

The writ petition has been filed alleging inaction on the part of the Howrah Municipal Corporation in disposing of a pending matter since 2018. The petitioner is the owner of a land situated at L.R. Dag No.320 pertaining to L.R. Khatian No.939 of Mouza-Sultanpur, Police Station – Santragachi, District – Howrah.

The petitioner constructed a house on the said plot. While the plastering was going on the respondent nos.6 and 7 lodged a complaint with the Corporation. The Corporation initiated a proceeding sometime in 2018, but did not reach the same to its logical conclusion. When the petitioner tried to complete the plastering, again objections were raised by the respondent nos.6 and 7. The petitioner submits that the Corporation did not disclose the fate of the hearing that was given sometime in 2018. Thus, it was presumed that the proceedings had died a natural death. Hence, this writ petition has been filed for a direction upon the Corporation

to allow the petitioner to continue with the plastering work and complete the same.

Mr. Mitra, learned advocate appearing on behalf of the respondent nos.6 and 7 submits that on the basis of the complaint of the said respondents, the proceedings had been initiated. He also agrees that a hearing was given, but no final order was passed. He objects to the prayer of the petitioner.

Mr. Banerjee, learned advocate appearing on behalf of the Howrah Municipal Corporation submits that the Corporation has held a hearing on the basis of the proceedings initiated after the respondent nos.6 and 7 made a complaint. He submits that the said hearing was not concluded within reasonable time, and no order was passed.

Thus, this Court is of the view that for the interest of justice, a fresh inspection of the premises and a fresh hearing would be required. Actions which were taken by the Corporation almost four years ago and not concluded within reasonable time, cannot be proceeded with. Those proceedings are set aside.

Under such circumstances, the writ petition is disposed of with a direction upon the Corporation to proceed afresh in accordance with law on the basis of the complaint of the respondent nos.6 and 7 and reach the matter to its logical conclusion. While disposing of the complaint, the Corporation shall adhere to the following procedure:-

- a) An inspection of the premises shall be conducted. Such inspection shall be held in the presence

of the petitioner and the respondent nos.6 and 7, within three weeks. Advance notice of the inspection shall be served upon the petitioner and the respondent nos.6 and 7. If the parties are not available to accept notice, the authorities shall affix the notices of hearing and inspection at conspicuous places in their respective premises.

b) In case, it is found on preliminary inspection that there may be reasons to believe that the 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.

e) A hearing shall be given to the petitioner and the respondent nos.6 and 7. 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. All points raised by either party, shall 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 question of title, encroachment

and disputes with regard to boundary, shall not be gone into by the Corporation.

The court has not gone into the merits of the claims and counter-claims of the parties and the issues involved shall be decided independently.

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

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the learned advocate's communication.

(Shampa Sarkar, J.)