

25.02.2022
Court No. 19
Item no.14
CP

WPA 20772 of 2021

Trilochan Das
Vs.
The Howrah Municipal Corporation & Ors.

Mr. Souri Ghosal
Mr. Prabhat Kumar Singh
..for the petitioner.

Mr. Animesh Paul
....for the respondent no. 4.

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

The writ petition has been filed challenging an order passed by the Assistant Engineer, Borough – VII, Howrah Municipal Corporation, dated November 9, 2021. The order is quoted below:

“In connection with the above I have been directed to inform you/you are hereby directed to demolish the unauthorisedly constructed portion within 15 (fifteen) days from the date of receipt of this letter U/S 177 (1) H.M.C. Act, 1980. If you fail to comply with this order the Howrah Municipal Corporation Authorities will cause the order to be carried out and expenses thereof, will be recovered from you as U/S 177(1) H.M.C. Act, 1980 without any further intimation.”

15 days time was given to the petitioner to demolish the unauthorized portions, failing which the Howrah Municipal Corporation reserved the right to demolish the same.

The petitioner submits that the fact that the petitioner has a valid sanction plan was not taken into consideration. A hearing was given, but evidence in support of the contentions of the petitioner has not been recorded in the order and the nature and extent of the unauthorized portion has not been stated in the order, either.

Mr. Pal, learned advocate appearing on behalf of the respondent no. 4, submits that the petitioner constructed unauthorizedly even during the subsistence of a 'stop work' notice and, as such, the writ petition must be dismissed on this ground alone.

Contrary to the aforementioned submission, the petitioner submits that the respondent no. 4 himself has made unauthorized constructions.

This court is not required to go into the disputed questions raised hereinabove. Parties can raise these issues before the Howrah Municipal Corporation.

However, this court is of the view that the order impugned cannot be sustained in law. The order suffers from arbitrariness. The order is cryptic and non-speaking. A non-speaking order amounts to violation of the principles of natural justice. The person who is about to lose his valuable right to his property must be informed of the reasons behind the demolition order. The said order violates the very

foundation of the principles incorporated under Article 14 of the Constitution of India. The order impugned is set aside only on the above grounds. The correctness of the findings of unauthorized construction is not decided in this proceeding. The writ petition is disposed of directing the competent authority of the Howrah Municipal Corporation to dispose of the issue *de novo* by adhering to the procedure laid down hereinbelow:

- a) An inspection of the site shall be conducted. Such inspection shall be held in the presence of the parties, with 48 hours advance notice to the petitioner and the respondent no.4.
- 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 respondent no.4.
- d) A hearing shall be given to the petitioner and the respondent no.4. 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 merit 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 three months from the date of communication of this order.

As a 'stop work' notice has been issued by the Howrah Municipal Corporation and unauthorized construction has been detected, no further construction shall be carried on till the disposal of the issue.

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.)