

24.03.2022
Sl. No. 23
ss

W.P.A. 21086 of 2021

Bikash Sadhukhan

Vs.

Howrah Municipal Corporation & ors.

Mr. Sabyasachi Chatterjee

Mr. Sandipan Das

Mr. A. Sharma

Ms. Meghna Roy

... for the petitioner

Mr. Sudipto Panda

Ms. Munmun Tewary

... for the State

Mr. Abhisek Banerjee

... for the respondent nos.7 & 8

Mr. Sandipan Banerjee

Mr. Ankit Sureka

... for the H. M. C.

Affidavit of service filed is taken on record.

It is submitted by the learned Advocate appearing for the respondent nos.7 and 8 that one Sarifa Begum, wife of Sk. Khursid Ali, residing at 41/2, Shambhu Halder Lane, Howrah is the original owner of the premises No.41/2, Shambhu Halder Lane, Ward No.5 under Howrah Municipal Corporation.

The said Sarifa Begum be added as the respondent no.9 in this proceeding, here and now.

The allegations are that the respondent nos.7 and 8 and/or their associates have raised certain unauthorised constructions over and above a G+2 storeyed building at premises no. 41/2, Shambhu

Halder Lane, under Ward No.5, of the Howrah Municipal Corporation.

Reliance has been placed upon an information supplied under the Right to Information Act, from which it appears that additional floors have been constructed without a plan. The Assistant Engineer-in-Charge, Building Department, Howrah Municipal Corporation has also issued a notice upon the respondent no.7 to demolish the 3rd, 4th and 5th floors within seven days from December, 29, 2021.

Learned Advocate appearing for the respondent nos.7, 8 and the added respondent submits that the construction upto the G+2 storeyed were permitted by the Corporation. Thereafter, a revised plan had been submitted for regularisation of the 3rd, 4th and 5th floors. That similar unauthorised constructions have been regularised earlier. That the Corporation did not initiate any proceeding prior to the demolition order. In view of the above submissions, this court directs a fresh enquiry and inspection into the complaints of the petitioner. The order of self demolition does not disclose whether the respondents Nos. 7 to 9 had been heard. It is a cyclostyled general order. The same is set aside.

Records reveal that the Corporation has detected huge unauthorised constructions. The police authorities have also submitted a report from which it appears that a G+2 storeyed building had been sanctioned and a copy

of the sanction plan was produced before the police authorities. The report filed by the police authorities is taken on record.

As the Corporation has already detected unauthorised construction, this writ petition is disposed of with a direction upon the competent authority of the Howrah Municipal Corporation to act and proceed in accordance with law and deal with the allegation of unauthorised construction by adopting the following procedure :

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondents no.7, 8 and added respondent, within three weeks. Advance notice of the inspection shall be served upon the petitioner and the respondents nos.7, 8 and added respondent. 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 respondents no.7, 8 and added respondent. 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. All the documents relied upon, shall be exchanged during the hearing. During the hearing, the prayer for regularization on the basis of the 'as made plan' 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 court has not gone into the merits of the claims and counter-claims of the parties and the issues involved shall be decided independently. This order shall not be construed as a declaration of the right of the respondents Nos. 7 to 9 to get their constructions regularised. The Corporation shall proceed in accordance with law by applying the regulations and parameters, which are usually applicable in such cases.

The entire exercise shall be completed within a period of four 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.)