

13. 18.12.2023
bd. Ct.15

W.P.A. 489 of 2016

Sri Motilal Das

-vs-

The Howrah Municipal Corporation & Ors.

Mr. Animesh Das ... for the Petitioner

Mr. Sandipan Banerjee

Mr. Ankit Sureka

Mr. Sobhan Majumder ... for the HMC.

The writ petition is presented, inter alia, challenging the order dated 9th December, 2015 passed by the Executive Engineer (Building Department, HMC) Howrah Municipal Corporation whereby the corporation directed demolition of entire building situated at 31/2, Kamini School Lane, Salkia, Howrah, from ground floor up to third floor without taking into consideration the permission accorded by the Assistant Engineer, HMC, on 12th August, 1995.

Learned advocate representing the petitioner upon placing reliance on the permission dated 12th August, 1995 whereby the corporation permitted the petitioner to make simple repairs at the first floor roof and wall of the tenant's room questioned the impugned order dated 9th December, 2015 passed by the Executive Engineer. It has been submitted on behalf of the petitioner that direction to demolish entire building from ground floor up to third floor cannot be countenanced in view of the fact that there was existence of an old structure and in connection with which Assistant Engineer vide permission dated 12th August, 1995 allowed

the petitioner to make simple repair at the first floor and wall of tenant's room. Therefore, according to the petitioner, old structure which was existing previously should be permitted to be retained and that should not come within the ambit of the demolition order dated 9th December, 2015.

Mr. Banerjee, learned advocate representing Howrah Municipal Corporation submits that in terms of the order dated 4th July, 2014 passed on a writ petition being WPA 18090 of 2014 the order has been passed directing demolition on 9th December, 2015. In addition thereto attention of this Court has been drawn to pages 26 and 27 of the writ petition wherefrom it appears that the petitioner by application dated 11th April, 2011 made the proposal for reconstruction of the entire building by enclosing a proposed plan. Therefore it has been contended on behalf of the Corporation that in spite of not sanctioning plan as asked for by the petitioner, petitioner went on making construction as per the said proposed plan.

Having considered the rival submissions made on behalf of the parties to this writ petition and on perusal of the relevant materials available on record it appears that the demolition order dated 9th December, 2015 is cryptic one and is devoid of any discussion whether any part of the building in question was existing prior to making new construction by the petitioner or not. In this regard reliance is placed on the permission accorded by the Assistant Engineer, HMC, dated 12th August, 1995 which is at page 23 of the writ

petition wherefrom it appears that the Assistant Engineer permitted the petitioner to repair first floor roof and wall of the tenant's room which goes to show that at the material point of time when such permission was accorded an old construction was there at the premises in question. But on perusal of the order dated 9th December, 2015 it does not appear that any segregation has been made by the concerned authority of the Corporation indicating which part of the building was existing as old structure and which part has been newly built. It may so happen that after demolishing the old structure new structure has been made by the petitioner as it has been submitted on behalf of the Corporation upon placing reliance on the application of the petitioner dated 11th April, 2011 enclosing proposed building plan for making new construction.

It does not appear from the demolition order dated 9th December, 2015 that any inspection was carried out by the concerned authority of the corporation which is required in terms of the order dated 4th July, 2014 passed by the coordinate Bench while disposing of the writ petition being WPA 18090 of 2014.

In view of aforesaid conspectus the demolition order dated 9th December, 2015 is set aside thereby directing the concerned authority of Howrah Municipal Corporation to inspect the building in question upon notice to the petitioner and thereafter on giving opportunity of hearing to the petitioner or his representative pass a detailed

reasoned order disclosing whether the building in question is comprising of existing old structure and new structure or the entire building is newly constructed without any sanctioned plan and accordingly the concerned authority of the corporation shall give necessary direction within a period of 12 weeks from the date of communication of this order. The decision to be taken by the concerned authority of the Corporation shall be communicated to the petitioner within one week thereafter.

With the aforesaid direction the writ petition stands disposed of.

However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)