

D/L
Item No. 6
20.03.2023
KOLE

**MAT 257 of 2023
With
IA No. CAN 1 of 2023**

**Subhasis Rakshit
-Vs.-
The Howrah Municipal Corporation & Ors.**

*Mr. Sumitava Chakraborty,
Mr. Aranyak Saha*

...for the appellant.

*Mr. Sandipan Banerjee,
Mr. Ankit Sureka,
Mr. Sobhan Majumder,*

...for the HMC.

*Mr. Satyam Mukherjee,
Mr. Sayani Ahmed,
Ms. Debomita Mukherjee,*

...for the respondent no. 7.

By consent of the parties the appeal and the application are taken up for hearing together.

Read order dated February 20, 2023. Pursuant to such order, the Officer-in-Charge, Borough-VI, Howrah Municipal Corporation has filed a report today to the effect that there is no sanctioned plan in the records of the Corporation in respect of the construction made by the private respondent, impugned in the writ petition.

Learned Advocate for the private respondent says that sanction was accorded by what was then Howrah Municipality way back in 1980s being no. 86 of 1982-83. A copy of this document which the private respondent claims to be the sanctioned plan had been made over to learned Advocate for the Corporation on the last occasion. The Corporation submits that it is a fake plan.

We are not inclined to go into the dispute between the parties. We see that a representation made by the appellant/writ petitioner is pending before the Howrah Municipal Corporation. We are of the view that the same should be disposed of by a competent officer in accordance with law.

The representation that has been made by the appellant is addressed to five officers of the Corporation but not to the Assistant Engineer, Borough-VI, Howrah Municipal Corporation, who, we are told, will be the competent authority to consider the writ petitioner's grievance.

Accordingly, we grant liberty to the appellant/writ petitioner to make a fresh representation to the Assistant Engineer, Borough-VI, Howrah Municipal Corporation, within a week from date, with a copy to the private respondent. If such a representation is made, the Assistant Engineer, Borough-VI, Howrah Municipal Corporation, shall dispose of the same in accordance with law and the applicable rules and regulations, within eight weeks from the date of receipt of the representation, after giving an opportunity of hearing to all concerned parties including the appellant/writ petitioner and the private respondent herein or their authorized representatives. The parties shall be at liberty to produce all relevant documents before the Assistant Engineer, Borough-VI, Howrah Municipal Corporation. The decision arrived at by the Assistant Engineer, Borough-VI, Howrah Municipal Corporation, shall be communicated to the parties within a week from the date

of the decision. In case the Assistant Engineer, Borough-VI, Howrah Municipal Corporation, comes to a conclusion that the impugned construction is unauthorized, no effect shall be given thereto for a week from the date of communication of such order to the parties. If within such period, the private respondent is unable to obtain any protective order from a competent forum, the Corporation will be at liberty to take steps in accordance with law.

We clarify once again that we have not gone into the merits of the case. The Assistant Engineer, Borough-VI, Howrah Municipal Corporation, shall decide the representation to be made by the appellant in accordance with law.

The order under appeal is set aside accordingly.

Since we have not called for affidavits, the allegations made in the stay application, are deemed not to be admitted by the respondents.

The appeal and the connected application are, accordingly, disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Apurba Sinha Ray, J.) (Arijit Banerjee, J.)