

08. 02.05.2023
bd. Ct.15

W.P.A. 4621 of 2017

Bijay Kumar Singh

-vs-

The Howrah Municipal Corporation & Ors.

Mr. Soujanya Bandyopadhyay

... for the petitioner No.2.

Mr. Sandipan Banerjee

Mr. Sobhan Majumder

Mr. Ankit Surekha

... for the HMC.

Mr. Dilip Kumar Saila ... for the respondent no.7

The writ petition is presented, inter alia, challenging the order of the Commissioner, Howrah Municipal Corporation dated 14th September, 2016 whereby the Commissioner directed the Executive Engineer (Building), Howrah Municipal Corporation to undertake demolition work of the building situated at 21, Rajani Sen Lane, District- Howrah, on the premise that the construction has been made by the petitioner on a thika land. It has also been recorded in the impugned order dated 14th September, 2016 by the Commissioner that construction has been made beyond G+3 structure by adding more floors unauthorisedly to the existing structure raising the question of structural stability.

Mr. Bandopadhyay, learned advocate, representing the petitioner no. 2 submits that the petitioner no. 1 has died but the writ petition is maintainable at the instance of the petitioner no.2. It has also been submitted that leave may be granted to the learned advocate for the petitioner to

expunge the name of the petitioner no. 1 from the array of the petitioners in the cause title of the writ petition.

It has further been submitted that impugned order of demolition dated 14th September, 2016 was passed prior to the order dated 18th October, 2016 passed by the Deputy Controller, Thika Tenancy Department, Howrah, wherein it has been decided by the Deputy Controller, Thika Tenancy Department, Howrah, that the land on which alleged construction has been made is 'Bastu' land and is not a thika land under section 5(3) of West Bengal Thika Tenancy (Acquisition & Regulation) Act, 2001. Placing reliance on this order of the Deputy Controller, Thika Tenancy Department, Howrah, dated 18th October, 2016 it has been contended on behalf of the petitioner that since impugned order was passed by the Commissioner of Howrah Municipal Corporation dated 14th September, 2016 without taking note of the order of the Deputy Controller, Thika Tenancy Department, Howrah, the said order of the Commissioner, Howrah Municipal Corporation, dated 14th September, 2016 cannot survive.

In spite of service of notice upon the respondent no. 7 accommodation has been prayed for, same is refused since the matter is fixed for hearing today.

Having considered the respective submissions made on behalf of petitioner, HMC and taking into consideration the order passed by the Deputy

Controller, Thika Tenancy Department, Howrah, dated 18th October, 2016 it appears that the Commissioner, Howrah Municipal Corporation, while passing order on 14th September, 2016 did not have the opportunity to take into consideration the order of the Deputy Controller, Thika Tenancy Department, Howrah. Therefore it appears the issue needs to be revisited by the Commissioner, Howrah Municipal Corporation, in consideration of the order passed by the Deputy Controller, Thika Tenancy Department, Howrah.

Accordingly, order passed by the Commissioner, Howrah Municipal Corporation dated 14th September, 2016 stands set aside and the Commissioner, Howrah Municipal Corporation shall take decision afresh after considering the order of the Deputy Controller, Thika Tenancy Department, Howrah, dated 18th October, 2016 after granting opportunity of hearing to the petitioner no. 2 and respondent no. 7 or their representatives. Such order is to be passed by the Commissioner, Howrah Municipal Corporation within a period of 12 weeks from the date of communication of this order.

However, it is made clear that the Court has not expressed any view with regard to the nature of construction made by the petitioners and it will be open to the Howrah Municipal Corporation to take decision without being influenced by the order passed by this Court today. However, it will be incumbent upon the Commissioner, Howrah Municipal Corporation to place reliance upon the

order of the Deputy Controller, Thika Tenancy Department, Howrah, if the said order dated 18th October, 2016 subsists as on date.

The learned advocate for the petitioner no. 2 is granted leave to amend the cause title of the writ petition and expunge the name of petitioner no. 1 from the array of the petitioners in course of this day.

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.)