

Ct. 24
Item No.12
11.07.2023
(Suvendu)

WPA 7922 OF 2019

**Subrata Bhattacharya
Vs.
The State of West Bengal & Ors.**

Mr. Bhagbat Chaudhari
Mr. M.A.Zinna
.....for the petitioner

Ms. Mekhla Sinha
Ms. Malabika Roy
... for the Howrah Zilla Parishad

A notice of the learned advocate served upon the non-appearing private respondents be retained with the records.

It appears from the report in the form of an affidavit filed by the District Engineer, Howrah Zilla Parishad that the unauthorized portion being the additional floor raised over the G + 3 storied constructed building was directed to be demolished.

The petitioner submits that as the property in question is a joint property and there are more than one owners, accordingly, the petitioner ought not to bear the entire costs of demolition.

It has been submitted that a development agreement was entered into between the developer and the petitioner and it was the developer who was responsible for demolishing the unauthorized construction at its own cost. The petitioner ought not to be burdened by the cost of demolition as the petitioner himself complained against such unauthorized construction.

The Assistant Engineer, Howrah Zilla Parishad has mentioned that the petitioner has not been directed to deposit any cost of demolition but has been directed to demolish the same at his own cost because the building plan was sanctioned in the name of the petitioner along with the other owners.

From the submissions made on behalf of the parties it is admitted that there is an additional floor constructed beyond the sanctioned building plan. The owners/ person responsible for making such construction is liable to demolish the same. The District Engineer, by the impugned order, has directed the complainant, that is the petitioner herein being one of the owners, to demolish the extra floor at his own cost.

The Court refrains from exercising jurisdiction in the matter.

It will be open for the petitioner to demolish the unauthorized construction at his own cost and recover the cost of demolition from the person responsible for making such unauthorized construction or from any other party, who according to the petitioner, would be liable to bear the cost of demolition.

In the event the unauthorized portion is not demolished by either the petitioner or the person responsible for making such unauthorized construction, then it will be open for the competent authority to take steps for demolition of such unauthorized construction and recover the cost of demolition from the appropriate party, in accordance with law.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on usual undertakings.

(Amrita Sinha, J.)