

W.P.A. 10418 of 2017

**Virendra Pandey
Vs.
Howrah Municipal Corporation & Ors.**

Mr. Pinaki Ranjan Mitra

....for the petitioner

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

...for the HMC

Mr. Soujanya Bandyopadhyay

...for the respondent nos. 5 & 6

In the writ petition, *inter alia*, decision of the concerned authority of Howrah Municipal Corporation dated 29th January, 2016 to retain additional construction made by respondent no. 6 at 12/1, Iswar Dutta Lane under Ward No. 27 is questioned and prayer has also been made for demolition of the construction made by the respondent no. 6 dehors the sanctioned plan accorded by the concerned authority of Howrah Municipal Corporation.

The writ petition is heard in presence of the learned advocates representing the petitioner, Howrah Municipal Corporation and respondent nos. 5 and 6. Affidavits have been exchanged by the parties which are on record.

The learned advocate representing the petitioner submits that a supplementary affidavit was filed by the

petitioner affirmed on 20th June, 2017 enclosing the decision of the committee relating to regularization of unauthorized construction made by respondent no. 6 at the aforesaid premises. Such decision of the committee of Howrah Municipal Corporation is signed by the Assistant Registrar, Borough IV, Howrah Municipal Corporation on 30th January, 2016 which is at page 5 of the supplementary affidavit. It has also been submitted that respondent no. 6 was sanctioned to erect G+2 building (three storied) but in effect the said respondent has constructed G+5 building (six storied) thereby adding unauthorized three floors which, according to the petitioner, is not permissible in view of the plan sanctioned by the Howrah Municipal Corporation and the regularization order passed by the concerned authority of Howrah Municipal Corporation is untenable. Petitioner has prayed for demolition of unauthorized construction which has been made without due permission of Howrah Municipal Corporation.

Learned advocate representing Howrah Municipal Corporation has drawn attention of this Court to Section 177 (1), specially third proviso to sub-Section (1) which empowers Commissioner to pass order on certain terms and conditions and on payment of fees to regularize minor unauthorized erection. It has been submitted that in terms of third proviso to Section 177 (1) the concerned authority of Howrah Municipal Corporation has taken

steps for regularization of the construction made by the petitioner.

The learned advocate representing respondent nos. 5 and 6 has opposed the prayer of the petitioner strenuously and has relied upon an order dated 23rd March, 2017 passed by a coordinate Bench on a writ petition being WPA 1291 of 2016. According to the private respondents on the strength of proviso to Section 177 (1) the authority of Howrah Municipal Corporation has taken decision to regularize construction made by the private respondents. Therefore, the private respondents may be permitted to retain such additional construction.

Affidavit-in-opposition affirmed on behalf of respondent nos. 5 and 6 on 26th June, 2023 is taken on record.

Having considered the submissions made on behalf of the parties this Court has made an endeavour to find out whether any provision was existing at the material point of time when the construction was made by the respondent nos. 5 and 6 to regularize construction. Though attention of this Court has been drawn to third proviso to Section 177 (1) of the Howrah Municipal Corporation Act, 1980 but on perusal of the same it appears that the Commissioner of the Corporation has been empowered to regularize minor erection on certain terms and conditions upon payment of fees.

In the present case this Court is unable to find any decision taken by the Commissioner of Howrah Municipal Corporation and the only decision of the committee which is on record is at page 5 of the supplementary affidavit filed on behalf of the petitioner which is signed by the Assistant Engineer, Borough-IV on 30th January, 2016. On perusal of such decision it does not appear that same has been taken by the Commissioner of Howrah Municipal Corporation.

In addition thereto, it is indisputable that the alleged construction was made by the respondent nos. 5 and 6 prior to 2017 and decision has been taken by the committee to regularize the same which has been signed by the Assistant Engineer on 30th January, 2016. Third proviso to Section 177 (1) has been brought in by way of an amendment vide Howrah Municipal Corporation (Amendment) Act, 2017 with effect from 20th September, 2017. Therefore, prior to 20th September, 2017 Howrah Municipal Corporation and its Commissioner was not empowered to take any decision relating to regularization of construction whereas decision has been taken by a committee which has been signed by the Assistant Engineer on 30th January, 2016 to regularize the construction erected by the respondent nos. 5 and 6.

It goes to show that the concerned authority of Howrah Municipal Corporation on 30th January, 2016 or prior thereto was not authorized to take decision to

regularize construction which has been made dehors sanctioned plan. In the present case it has been submitted on behalf of the corporation as well as petitioner that in spite of permitting the respondent nos. 5 and 6 to construct G+2 building in violation of the same respondent nos. 5 and 6 constructed additional three floors. Such construction made by the respondent nos. 5 and 6 cannot be countenanced. The decision of the coordinate Bench relied upon by the petitioner dated 23rd March, 2017 passed on WPA 1291 of 2016 is of no assistance in view of the fact that the relevant provisions of Howrah Municipal Corporation and third proviso to Section 177 (1) were not considered by the coordinate Bench at the time of taking such decision.

Accordingly, the writ petition is allowed and the decision of the concerned authority of Howrah Municipal Corporation to regularize construction beyond the sanctioned plan upon payment of fees is set aside.

The concerned authority of Howrah Municipal Corporation is directed to demolish the construction which is made beyond the sanctioned plan within a period of 4 (four) weeks from the date of communication of this order.

The concerned authority of Howrah Municipal Corporation is further directed to refund the fees which has been deposited by the respondent no. 6 for regularizing unauthorized construction along with

interest @ 6% p.a. within 4 (four) weeks from date upon taking necessary receipt from the respondent no. 6.

Accordingly, the writ petition stands disposed of.

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.)