05 Ct No24 AGM 20.04 2023

In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 9468 of 2023

Sujoy Dutta
Vs
Howrah Municipal Corporation & Ors.

Mr. Sumitava Chakraborty
... For the Petitioner.

Mr. Sandipan Banerjee
Mr. Ankit Sureka
Mr. Sobhon Majumdar
... For the Howrah Municipal Corporation.

The petitioner is aggrieved by the notice dated 30.03.2023 directing demolition of the unauthorized construction, i.e. deviation upto the G+3 storied structure and construction of the fourth and fifth floor without any sanction.

The petitioner admits that there is no sanction for raising construction of the fourth and fifth floor of the structure at 69/2, Nabin Senapati Lane, Ward No. 26, Howrah – 711 101.

The petitioner has constructed upto the G+3 storey in deviation of the plan sanctioned and further constructed two additional floors without obtaining any sanction plan.

The petitioner relies upon a communication made by the Assistant Engineer of the Howrah Municipal Corporation dated 19th August, 2021 directing the petitioner to submit 'as made plan'. The petitioner submits that immediately thereafter the 'as made plan' was submitted in August 2021. The Corporation thereafter mutated and assessed the separate flats and also collected taxes in respect of the said flats. The completion certificate is, however, yet to be issued.

The petitioner submits that as the Corporation has directed the petitioner to file the 'as made plan' and has collected taxes in respect of the structure in question, accordingly, the authority ought to consider the 'as made plan' and thereafter take a decision whether the construction is authorized or not. Prior to disposal of the application seeking regularization of the unauthorized construction in accordance with the 'as made plan', the authority ought not to proceed with the order of demolition.

Learned advocate representing the Howrah Municipal Corporation admits that assessment of the separate flats had been made and taxes collected from the respective assessees.

According to the provisions of law, construction is to be made only after obtaining a sanction plan and not prior thereto. Till a plan is sanctioned, no construction ought to be made.

In the present case, the builder has raised structure of two additional floors without obtaining any sanction. Permitting the builder to hold on to any construction made without a valid sanction plan will be highly illegal and improper. The same is going to send out a very wrong message to the public in general that construction can be raised at the will of the builder and thereafter application may be made for regularization of the same. The very purpose of obtaining prior sanction will be frustrated if sanction/regularization is sought for after the construction is over. It will be a premium for the unscrupulous and dishonest builders who take up the work of construction without following the due process of law.

The action of the petitioner in raising construction without any sanction plan cannot be supported by the Court. Though the Corporation has accepted taxes in respect of the said construction, the same does not mean that the construction is regularized or legalized in any manner whatsoever.

The construction remains illegal despite payment of taxes and assessment of the same. Notice has been issued for demolition of the unauthorized construction. The Corporation will act strictly in accordance with law and proceed with the demolition work as scheduled.

The writ petition stands dismissed.

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

(Amrita Sinha, J.)