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10.10.2023
d.p.

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A. 9727 of 2023

**Davindar Singh
-versus
The Howrah Municipal Corporation & Ors.**

**Mr. Saptansu Basu, Sr. Adv.
Mr. Indrajit Bhattacharjee.
...For the Petitioner.**

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

The petitioner is aggrieved by the order of demolition dated 20th March, 2023 directing the petitioner to self-demolish the construction made in deviation of the sanctioned plan upto G+3 storey and to demolish the additional floors (4th, 5th and 6th) constructed without obtaining any sanction at all.

Learned advocate appearing for the petitioner submits, upon instructions that, the said order was passed relying on the hearing conducted on 20th January, 2023 when the petitioner was not in a position to attend.

By a further communication made by the petitioner to the Municipal Commissioner in April 2023, the petitioner admits that three additional floors were constructed in excess of the plan sanctioned by the Corporation.

According to the provisions of law, construction can be made only after obtaining a sanctioned plan and not prior thereto.

Admittedly, in the instant case, as many as three additional floors were constructed without obtaining any sanction.

The petitioner prays for consideration of the application pending before the Corporation along with the as-made plan.

The Court is not inclined to accept such contention of the petitioner for consideration of the as-made plan. As the petitioner did not have any sanction to raise construction beyond G+3 storey, accordingly, the as-made plan is not liable to be taken up for consideration.

However, as the petitioner has submitted that as he could not avail the opportunity of hearing on 21st January, 2023, accordingly, the Corporation is directed to grant a further opportunity of hearing to the petitioner prior to taking any step for demolition of the unauthorized construction.

The Howrah Municipal Corporation is directed to cause a spot inspection to ascertain the exact nature and extent of unauthorized construction upon prior notice to all the necessary parties. The report of spot inspection shall be circulated and an opportunity of hearing granted to the necessary parties.

Thereafter steps shall be taken in the matter in accordance with law to deal with such unauthorized

construction. Steps shall be taken in the matter at the earliest, but positively within a period of twelve weeks from the date of communication of a copy of this order.

The Corporation ought to keep in mind that no leniency is to be shown to any builder who raises construction without valid sanctioned plan.

As the Corporation has already detected unauthorized construction, the petitioner is restrained from making any construction at the subject premises.

The Officer-in-Charge of the Golabari Police Station is directed to ensure that construction in any manner whatsoever is not carried out at the subject premises.

The petitioner is also restrained from transferring, alienating or creating any third party right in the subject premises.

The impugned order of demolition dated 20th March, 2023 shall be kept in abeyance till a fresh order is passed by the Corporation.

The writ petition stands disposed of.

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

(Amrita Sinha, J.)