

17. 20.06.2023
Court No.6
Tanmoy Ghosh

MAT 715 of 2023

**Sujoy Dutta
-Versus-
Howrah Municipal Corporation & Ors.**

**With
IA No: CAN/1/2023**

Mr. Srijib Chakraborty, Adv.,
Mr. Sumitava Chakraborty, Adv.
...for the appellant.

Mr. Sandipan Banerjee, Adv.,
Mr. Ankit Sureka, Adv.,
Mr. Sobhan Majumder, Adv.
...for the Howrah Municipal
Corporation.

By consent of the appearing parties, the appeal and the connected application are taken up together for hearing.

A judgment and order dated April 20, 2023, whereby WPA 9468 of 2023 was dismissed by a learned Single Judge, is under challenge in this appeal at the instance of the writ petitioner.

The appellant approached the learned Single Judge challenging a demolition notice dated March 30, 2023. It seems that there was unauthorized construction to the extent of deviation up to the G+3-storeyed structure and the fourth and fifth floors were without any sanction at all.

On behalf of the writ petitioner, it was submitted before the learned Single Judge that the Assistant Engineer of Howrah Municipal Corporation (HMC), by a letter dated August 19, 2021, called upon the writ petitioner to submit 'as made plan'. It appears that such 'as made plan' was submitted within ten days of the said letter. It was further submitted that HMC thereafter mutated the respective flats in the building in the names of the owners and assessed the same. Taxes were also collected in respect of the flats.

After noting the submissions of the parties, the learned Judge dismissed the writ petition with the following observations:-

"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."

Being aggrieved, the writ petitioner is before us by way of this appeal.

We are completely in agreement with the learned Single Judge that unauthorized constructions should not be allowed to stand.

A person proposing to raise a construction is duty-bound to obtain prior sanction from the permission granting Authority.

However, admittedly in the present case, the Assistant Engineer called upon the appellant to submit 'as made plan'. It is not in dispute that such plan was submitted within the time period indicated by the Assistant Engineer. It, however, appears that thereafter no steps were taken by HMC to either regularize the impugned construction or reject the appellant's request for regularization. Without taking any decision on such issue, it may not have been proper for HMC to issue the demolition order.

Accordingly, we set aside the order under appeal as also the demolition order which was impugned before the learned Single Judge.

We remand the matter to the Commissioner of HMC to consider the matter afresh and pass an order, in accordance with law and the applicable Rules and Regulations, after giving an opportunity of hearing to the appellant or his authorized representative. The entire

exercise should be completed as expeditiously as possible.

This order is not to be construed as putting any stamp of approval on the impugned construction. If the Commissioner finds that the impugned construction or portion thereof is incapable of being regularized, the consequences must follow, in accordance with law.

We make it clear that we have not gone into the merits of the case at all. The Commissioner shall take an informed decision, in accordance with law.

Since we have not called for affidavits, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

The appeal being MAT 715 of 2023 and the connected application being IA No: CAN/1/2023 are disposed of.

Let urgent photostat certified copy of this order, if applied for, be made available to the parties, upon compliance with all requisite formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)