

Item No.7

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

10.05.2023
Ct-24

WPA 11038 of 2023
Sri Monoj Kumar Gore

v.

Howrah Municipal Corporation & Ors.

Mr. Ayan Banerjee
Ms. Debjani Sengupta
... for the petitioner.

Mr. Pinaki Ranjan Mitra
... for the respondent no. 6.

Mr. Sandipan Banerjee
Mr. Ankit Sureka
Mr. Sobham Majumder
... for HMC.

The order dated April 28, 2023 passed by the Assistant Engineer, Borough-VII, Howrah Municipal Corporation impugned in the present writ petition is submitted to be a photocopy of the order dated September 5, 2022 passed by the OSD & Officer-in-Charge, Borough-VII.

The previous order dated September 5, 2022 was challenged by the petitioner in writ petition being WPA 21135 of 2022. The said writ petition was disposed of by the Court on September 15, 2022 by setting aside the impugned order with a direction upon the Commissioner, Howrah Municipal Corporation to reconsider the matter afresh and particularly the prayer of the petitioner for regularization of the construction made and take a decision whether there is any requirement of passing an order of demolition. The decision was directed to be taken at the earliest but

positively within twelve weeks from the date of communication of a copy of the order.

It appears that the Assistant Engineer, not being empowered to decide the matter afresh, assumed jurisdiction and passed the same order which stood set aside by the Court. The Court specifically directed the Municipal Commissioner to decide the issue and as such the Assistant Engineer did not have any business to take up the matter for reconsideration afresh.

It appears that the Assistant Engineer acted in a mechanical manner without proper application of mind.

The impugned order dated April 28, 2023 is liable to be set aside and is, accordingly, set aside.

The Municipal Commissioner is directed to immediately take steps to act in accordance with the direction passed by this Court on September 15, 2022 in WPA 21135 of 2022.

A decision shall be taken and communicated to the petitioner positively by June 14, 2023.

The writ petition stands disposed of.

Affidavit-of-service filed in Court today is taken on record.

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

Sh

(Amrita Sinha, J.)