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17.05.2023
d.p.

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

W.P.A 12018 of 2023

**Sri Saikat Dutta
-versus
The Howrah Municipal Corporation & Ors.**

**Mr. Tanmoy Mukherjee,
Mr. Souvik Das,
Mr. K. Raihan Ahmed,
Mr. Rudrnil Das.
...For the Petitioner.**

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

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

The notice of self-demolition issued under Section 177(5) of the Howrah Municipal Corporation Act, 1980 by the Assistant Engineer, Howrah Municipal Corporation dated 17th April, 2023 is impugned in the instant writ petition.

The matter relates to certain construction at 11/2, Baje Shibpur Road, Ward No. 31, Howrah-711102 under the jurisdiction of Howrah Municipal Corporation.

A complaint was lodged before the Howrah Municipal Corporation alleging unauthorized construction being made by the petitioner herein.

The Court, in a writ petition filed by one Samir Kumar Talukdar & Ors., passed order on 28th November, 2022 in WPA 23625 of 2022 directing consideration of the objection filed against such unauthorized construction.

The order impugned has been passed allegedly in compliance of the order passed by the Court.

It is the specific contention of the petitioner that the construction in question has not been raised upto the third floor level.

The impugned order mentions about construction of 3rd floor without a sanction plan.

According to the petitioner, sanction has been obtained for construction of G+2 storied building. The petitioner contends that construction has indeed been made upto the 2nd floor.

The next argument by the petitioner is that the deviation made in the G+2 storied structure is not specified in the impugned order.

The petitioner is not in a position to identify the portions which have been allegedly held to be unauthorized.

Upon hearing the submissions made on behalf of the parties and upon perusal of the materials on record there is nothing to show that the impugned order of

demolition was passed upon inspection of the property. The petitioner asserts that inspection was not conducted prior to passing the impugned order.

Without a proper inspection being conducted at the instance of the Corporation, it will not be possible for the Corporation to ascertain the extent of unauthorized construction.

In view of the above, the instant writ petition is disposed of by directing the concerned officer of the Howrah Municipal Corporation to cause a fresh spot inspection upon giving prior notice to the petitioner and all other necessary parties and especially the complainant(s).

A fresh spot inspection report shall be circulated amongst the parties clearly specifying the extent of the unauthorized construction, which are required to be demolished/removed by the person(s) responsible for making construction.

Such spot inspection shall be conducted at the earliest, but positively within a period of four weeks from the date of communication of this order.

The spot inspection report along with follow up steps that is to be taken by the petitioner shall be mentioned and communicated within a fortnight thereafter.

The impugned order dated 17th April, 2023 shall be kept in abeyance till a fresh order is passed by the Howrah Municipal Corporation in this regard.

The writ petition stands disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)