

April 18, 2023
Sl. No.A 107
Court No.19
s.biswas

WPA 14360 of 2022

Jisana Lashkar
vs.
Howrah Zilla Parishad and others

Md. Adil Badr,
Mr. Sobhan Gani,
Md. Aqib Badr,
Mr. Abdul Kalam Choudhury,
Ms. Nafisa Anwar,
Mr. Shakti Shivam, Advocates

... for the petitioner

Ms. Mekhla Sinha, Advocate

... for the Howrah Zilla Parishad

Affidavit of service filed by the petitioners is
taken on record.

Despite service, none appears on behalf of the
respondent No.6.

As the Court is not inclined to pass any
mandatory direction for demolition, but deems it fit
to relegate the matter to the permission granting
authority for determination of the allegation of
unauthorized construction, the writ petition is taken
up in the absence of the respondent No.6.

The petitioner alleges that the respondent no.6
had constructed a G+6 building on Dag No.509 of
Mouza-Dharsa.

The petitioner claims to be a resident in one of
the flats in the building. The petitioner is aggrieved
as the Howrah Zilla Parishad had not taken any
steps to demolish the additional floors. A sanction
for construction of a G+4 storeyed building had been

granted, but allegedly the respondent no.6 had constructed two additional floors, without any sanction.

Attention of the Court has been drawn to the letter dated October 28, 2021 written by the Assistant Engineer, Howra Zilla Parishad, asking the respondent no.6 to show cause as to why the alleged unauthorized construction of two additional floors, should not be demolished.

The petitioner is in the dark as to whether any steps had been taken pursuant to the notice or not. The petitioner was informed by the Howrah Zilla Parishad subsequently, that a reminder had been sent to the respondent no.6 in this regard.

The writ petition is disposed of with the direction upon the competent authority of the Howrah Zilla Parishad to act and proceed in accordance with law, on the basis of show cause notice which was issued to the respondent no.6.

While doing so, the following procedure shall be adopted:-

- a) An inspection shall be conducted. Such inspection shall be held in the presence of the petitioner and the respondent No.6. An advance notice of the inspection shall be served upon the petitioner and the respondent No.6 and on all other interested

parties. If the parties are not available to accept notice, the same shall be affixed at a conspicuous place in the respective premises.

- b) In case, it is found on preliminary inspection that there may be reasons to believe that the construction was without any sanction and was continuing, the authorities may take such interim measures by stopping such construction.
- c) A report of such inspection shall be prepared along with the sketch map, indicating the extent and nature of unauthorized construction, if any.
- d) Such report shall be handed over to the parties. The question of right, title, interest, possession and boundary dispute etc. shall not be decided by the panchayat authorities. The issues to be decided would be whether the construction is in accordance with a sanctioned plan or in absence thereof.
- e) A hearing shall be given to the petitioner and the respondent No.6. The parties must also be allowed to furnish their written objection/version to the report and adduce oral and documentary evidence in support of their contentions before the competent

authority. All points raised by either party, will be decided.

- f) A reasoned order shall be passed and communicated to the parties. On the basis of what transpires at the hearing and during inspection, the proceedings shall be reached to its logical conclusion in accordance with law.

With regard to allegation of construction of the additional floor and/or alleged deviation from the sanction, the court has not gone into the merits of the claims of the petitioner and the issues involved shall be decided by the competent authority in accordance with law.

The entire exercise shall be completed within a period of four months from the date of communication of this order.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of server copy of this order.

(Shampa Sarkar, J.)