

23-06-2023
Item No.8
Subrata
Bhattacharyya

IN THE HIGH COURT AT CALCUTTA
Constitutional writ Jurisdiction
Appellate Side

WPA No.14855 of 2023
Sachin Kumar Gupta

-vs-

Howrah Municipal Corporation & Ors.

Mr. Arindam Banerjee
Mr. Sujit Banerjee ...for the petitioner

Mr. Sandipan Banerjee
Mr. Ankit Sureka
Mr. Sobhon Majumder ...for the Corporation

The writ petitioner is aggrieved by a communication dated June 16, 2023 whereby the petitioner has been directed to vacate the subject premises at No.46/1, Tinkore Nath Bose Lane, Ward No.10, P.S. Golabari, Howrah under the jurisdiction of Howrah Municipal Corporation for allowing the Corporation to proceed with the demolition process which is to be carried out by the Corporation within seven days from the issuance of the letter.

The aforesaid communication speaks about an order of the Commissioner of Howrah Municipal Corporation dated June 2, 2023.

Learned advocate representing the petitioner submits that the order of demolition was never served upon the petitioner and, accordingly, the petitioner is not aware of any such order of demolition being passed. The petitioner states that a notice of self-demolition dated March 29, 2022 was served issued by the Assistant Engineer, Howrah Municipal Corporation whereby the petitioner has been directed to cause self-demolition of the

unauthorised construction of the 2nd, 3rd, 4th and 5th floors of the subject structure which were constructed beyond the sanctioned G+1 structure.

Learned advocate for the petitioner submits that the petitioner intends to prefer an appeal against the order of demolition. But as the order of demolition has not been served, accordingly, the petitioner could not prefer the appeal.

Learned advocate representing the Corporation submits that the petitioner was afforded an opportunity of hearing to defend his case. The construction in question was sanctioned only up to the G+1 storey. The petitioner raised four additional floors, that is 2nd, 3rd, 4th and 5th floors without obtaining any sanction.

According to the Corporation, the unauthorised portions are required to be demolished immediately as the structures are in a dangerous condition.

It appears from the communication made by the Assistant Engineer on March 29, 2022 that an order of self-demolition was passed more than one year back and the persons responsible did not take any steps pursuant to the order of self-demolition. After the police have been requisitioned by the Corporation to provide protection at the time of effecting demolition of the unauthorised floors, the present writ petition has been filed.

Learned advocate for the petitioner contends that the floors in question have been occupied by tenants. It is further submitted that the construction has been made within the permissible limits.

The court is of the view that till the authority

sanctions and grants permission for raising constructions, the plea that the construction is made within the permissible limits will not in any manner regularise or act as a sanction for the construction made. Any construction made without obtaining sanction from the competent authority is to be treated as an unauthorised construction.

The petitioner was afforded opportunity of hearing long back. The order of demolition has been passed more than a year back; the petitioner never took any steps to challenge the same. By this time, the order of demolition has attained finality and the Corporation is liable to execute the same in accordance with law.

As the Corporation has already sought assistance from the police for effecting the demolition work, it will be open for the Corporation to execute the demolition work in accordance with law. The petition does not call for any interference.

The writ petition is accordingly dismissed.

Certified copy of this order, if applied for, shall be made available to the parties.

[Amrita Sinha, J]

