

ML 26
04.09.2023
CT No. 15
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W.P.A. 12845 of 2015

**Sri Manab Kumar Pramanik @ Pramanick
Vs.
The Howrah Municipal Corporation & Ors.**

**Mr. Mihir Kumar Das
Ms. Indrani Nandi
....for the petitioner**

**Mr. Ankit Sureka
...for the HMC**

**Mr. P.R. Chakraborty
..for the private respondent**

The writ petition is filed, *inter alia*, challenging the order dated 2nd May, 2015 passed by the Commissioner, Howrah Municipal Corporation whereby respondent nos. 6 to 9 have been permitted to retain 33.82 sq. meter of deviated portions in each floor in a building having four floors situated at 13/1, Narasingha Dutta Road, Howrah upon payment of retention fees. Notice of this court has also been drawn to order dated 27th March, 2015 passed by the Commissioner, Howrah Municipal Corporation wherefrom it appears that seven illegally constructed pillars made by the aforesaid private respondents were demolished and further order was passed for demolition of unauthorized construction at the aforesaid premises in order to make common passage free from encroachment.

The learned advocate representing the petitioner submits that after issuance of the said demolition order dated 27th March, 2015 subsequent impugned retention

order dated 2nd May, 2015 has no leg to stand and unauthorized construction made by the private respondents upon deviation of sanctioned plan needs to be demolished immediately.

The learned advocate representing the Howrah Municipal Corporation as well as private respondents submit that further demolition at the premises in question would affect the structural stability of the building and there is a possibility that removal of deviated portions by way of demolition would lead to collapse of entire building. In this regard relevant part of the demolition order dated 27th March, 2015 has been relied upon.

It has further been submitted on behalf of respondents that since unauthorized constructions have been made thereafter seven pillars which were found to be constructed without any sanctioned plan have already been demolished and since further demolition would lead to impair structural stability of the building in question the concerned authority of Howrah Municipal Corporation by passing order dated 2nd May, 2015 issued retention order therefore in aforesaid backdrop of facts the same may not be interfered with.

Having considered the submissions made by the learned advocates representing the parties and on perusal of the two consecutive orders of Howrah Municipal Corporation dated 27th March, 2015 and 2nd May, 2015 it transpires that vide order dated 27th March,

2015 when Commissioner passed demolition order directing the Engineering Advisor, Building Department to demolish the unauthorized constructions surprisingly by order dated 2nd May, 2015 said Commissioner permitted the private respondents to retain the deviated portions upon payment of retention fees.

This Court does not find any basis of formation of opinion in the impugned order dated 2nd May, 2015 thereby permitting the private respondents to retain the unauthorized constructions. The order in question was passed by the Commissioner on 2nd May, 2015, indisputably at the time of consideration of the issue by the Commissioner there was no statutory provisions under the Howrah Municipal Corporation Act, 1980 which empowers the Commissioner to pass retention order upon payment of retention fees. Third proviso to Section 177 of the Howrah Municipal Corporation Act, 1980 was incorporated by Section 5 (1) of the Howrah Municipal Corporation (Amendment) Act, 2017 which came into effect from 20th September, 2017. Therefore, on 2nd May, 2015 being the date of issuing impugned order provisions relating to retention of unauthorized constructions on payment of fees was not in vogue; therefore the said order passed by the Commissioner is not tenable in consideration of the relevant provisions which were available at the material point of time. Accordingly, the order dated 2nd May, 2015 of the

Commissioner of Howrah Municipal Corporation being annexure P13 to this writ petition stands set aside.

The Commissioner being respondent no. 2 is directed to revisit the issue and pass a reasoned order strictly in accordance with law after granting opportunity of hearing to the petitioner and the private respondents. Such reasoned order shall be passed by the respondent no. 2 within a period of 12 (twelve) weeks from the date of communication of this order.

Affidavit-in-opposition filed on behalf of Howrah Municipal Corporation is taken on record.

Accordingly, the writ petition stands disposed of.

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)