

Item No.2

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

12.07.2023
Ct-24

WPA 16160 of 2023
Mr. Trilochan Das

v.

The State of West Bengal & Ors.

Mr. Chiranjib Sinha
Mr. Dyutiman Banerjee
... for the petitioner.

Mr. Amall Kumar Sen
Ms. Sahina Sumi
... for the State.

Mr. Sandipan Banerjee
Mr. Ankit Sureka
Mr. Sobhan Majumder
... for the Howrah Municipal Corporation.

The petitioner is aggrieved by the communication made by the Assistant Engineer, Borough-VII, Howrah Municipal Corporation on June 30, 2023 directing him to vacate the unauthorized portion of the building which the petitioner made habitable for his purpose as the demolition squad and the agency officials along with the police force of Jagacha Police Station would visit the said premises after seven days for executing the demolition order.

It appears that on an earlier occasion on April 25, 2023, the demolition squad failed to execute the order of demolition as the main entrance of the building was kept under lock and key from inside.

The petitioner submits that the Assistant Engineer, Borough-VII is not the Competent Authority to

issue the order of demolition and further consequential direction. The order of demolition which was passed by the OSD & Officer-in-Charge, Borough-VII on June 14, 2022 is also without jurisdiction.

It has been submitted that an application seeking regularization of the unauthorized portion is pending consideration at the end of the Howrah Municipal Corporation since June 24, 2022. The petitioner admits that the extent of deviation in the ground and the first floor is 16.253 sq. m each and 10.742 sq.m on the roof of the first floor.

Learned advocate for the Howrah Municipal Corporation refers to the order of demolition dated June 14, 2022 wherein it has been mentioned that sanction was granted for construction of two storied building. The petitioner is guilty of constructing a stair head room over the first floor roof which is absolutely beyond the sanctioned plan. Apart from the aforesaid construction there are deviations in each of the floors which cannot be regularized.

It has been submitted that the Assistant Engineer, the OSD & Officer-in-Charge, Borough-VII is the delegatee of the Commissioner of the Howrah Municipal Corporation and is the Competent Authority to pass the order of demolition.

Upon hearing the submissions made on behalf of both the parties it appears that the Howrah Municipal Corporation intends to demolish the unauthorized portion of the construction made by the petitioner. The said order of demolition and steps consequential thereto have been taken by the delegatee. It cannot be said that the action is without jurisdiction.

As regards the submission of the petitioner that his application for regularization is pending and the Corporation ought not to take steps for demolition of the unauthorized portion the Corporation submits that there is no scope for regularization of such deviation and as such the prayer for regularization has to be taken as deemed rejection.

The petitioner shall be obliged to vacate the portions constructed unauthorizedly and permit the men and officials of the Howrah Municipal Corporation to proceed with the work of demolition.

It will be open for the Howrah Municipal Corporation to seek necessary help and assistance from the Jagacha Police Station for vacating and at the time of demolition of the unauthorized construction.

If request is made for providing police assistance, then the Jagacha Police Station shall render all necessary help and assistance to the men and agents of the Howrah Municipal Corporation for implementing the order of demolition.

The writ petition stands dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

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(Amrita Sinha, J.)