

Item No.15

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

17.08.2023
Ct-24

WPA 19810 of 2023
Purushottam Chowrasis
v.
The State of West Bengal & Ors.

Mr. Raghunath Chakraborty
Mr. Supratick Syamal
Ms. Soma Mishra Chatterjee
Mr. Shiv Shankar Sharma
...For the petitioner.

Mr. Amal Kumar Sen
Mr. Lal Mohan Basu
...For the State.

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

This is an application under Article 226 of the Constitution of India praying for a direction upon the respondent authorities to quash the impugned order dated July 27, 2023 passed by the Assistant Engineer, Borough-II, Howrah Municipal Corporation, directing the petitioner to cause demolition of the unauthorized construction within 5 days.

Supplementary affidavit filed on behalf of the petitioner is taken on record.

Copy of the same handed over to the learned advocate appearing for the Howrah Municipal Corporation.

Learned counsel appearing on behalf of the petitioner submits as follows. In similar cases of minor deviations from the sanctioned plan, the same have been regularized by accepting fees. Yet, in the case of the petitioner the respondent authorities hurriedly passed an order to demolish the structure. It is pertinent to mention that the petitioner earlier had approached this Court and the order of the Single Bench was carried to appeal. By an order dated June 21, 2023 passed in MAT 1002 of 2023 the Division Bench was pleased to modify the order of the Single Bench to the extent that prior to the implementation of the demolition order the Assistant Engineer, Borough-II, Howrah Municipal Corporation, shall pass a reasoned order on the petitioner's representation dated March 6, 2023 in accordance with law and the applicable Building Rules by July 21, 2023, after affording an opportunity of hearing to the petitioner or his authorized representative. After a notice of hearing was issued, the petitioner made a prayer before the respondent authorities to adjourn the matter on the health ground of the petitioner. The respondent authorities did not allow such prayer and went on to pass the order impugned *ex parte*. This was a clear violation of the mandate of the order passed by the Division Bench. At present no Tribunal is in operation to hear the appeal. Even, if it is accepted that the Kolkata Municipal Corporation Building Tribunal has been given the power to take up such matters, violation of principles of natural justice can also be agitated before this Court.

Learned counsel appearing on behalf of the Howrah Municipal Corporation submits as follows. Pursuant to the notification dated August 3, 2023, the Kolkata Municipal Corporation Building Tribunal has

been given power to take up the matters belonging to the Howrah Municipal Corporation. However, since the petitioner is alleging violation of principles of natural justice and is seeking an opportunity of hearing, without prejudice and without admitting that there was violation of principles of natural justice, a short date may be fixed for the petitioner or his authorized representative to appear before the concerned respondent authority, so that he may be heard before passing the impugned order afresh.

Learned counsel on behalf of the State supports the contentions of the learned counsel for the Howrah Municipal Corporation.

At this stage, learned counsels for the petitioners and the Howrah Municipal Corporation agree that August 21, 2023 could be a date on which the hearing can be taken place.

I have heard the submissions of the learned counsels for the parties and have perused the writ petition, the supplementary affidavit and the notification filed on behalf of the Howrah Municipal Corporation.

The mandate of the order passed by the Division Bench is very clear that the petitioner should be heard before any order could be passed in this regard.

Let the respondent authorities comply with the same.

As the Howrah Municipal Corporation has offered that a short date may be fixed for hearing for such purpose, the impugned order is accordingly set aside and the petitioner or his authorized representative is directed to appear before the Assistant Engineer,

Borough-II on Monday i.e. on August 21, 2023 at 4 p.m. and be heard on the question. Thereafter, the Assistant Engineer shall pass a reasoned order in terms of the direction passed by the Division Bench of this Court passed earlier and communicate the same to the petitioner within 3 days from passing such order.

With these observations, the writ petition is disposed of.

Parties are to act on the basis of a server copy of this order obtained from the official website.

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

Sh.

(Jay Sengupta, J.)