

Item No.9

In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

12.10.2023
Ct-24

WPA 20480 of 2023
M/s. S. Construction

v.

Howrah Municipal Corporation & Ors.

Mr. Srijib Chakraborty
Mr. Sumitava Chakraborty
Mr. Deeptangsu Kar
Mr. Abhishek Mukherjee
... for the petitioner.

Ms. Debapriya Chatterjee
Mr. Jayanta Samanta
... for the State.

The petitioner claims to be the developer of the subject property at 91+92+93+94, Matrumal Lohia Lane, Police Station- Malipanchghora, Ward No. 04, Howrah- 711106 under the Howrah Municipal Corporation.

Allegation of the petitioner is that order of demolition was passed without causing an inspection and without giving opportunity of hearing.

It appears from the documents annexed to the writ petition that by a communication dated August 17, 2023 the Corporation directed that inspection will be conducted on August 24, 2023. The communication from the Assistant Engineer to the owners of the subject premises dated June 14, 2023 mentions about the self-demolition of the unauthorized construction.

According to the petitioner, order of demolition ought not to have been passed prior to an inspection being conducted.

It appears from the cause title of the writ petition that neither the owners nor the complainant have been impleaded as parties in the instant writ petition.

The order of demolition mentions that there is unauthorized construction and deviation from the sanctioned plan upto the G+3 storey and 4th and 5th floors have been constructed without any sanctioned plan.

Learned advocate representing the Corporation submits that there is no sanction granted for construction of the 4th and 5th floors.

According to the provisions of law, construction can be made only upon obtaining a sanctioned plan and not prior thereto. Any construction made in deviation of the plan sanctioned or without a sanctioned plan is unauthorized.

It appears that without having any sanctioned plan for raising the additional floors, the person responsible went on to make construction. The Corporation intends to demolish the same.

The Corporation is directed to inspect the property in question to ascertain the exact nature and extent of unauthorized construction and forward a copy of the inspection report to the person responsible, the owners/occupiers and the complainant.

Opportunity of hearing shall be given to all the necessary parties and thereafter a decision shall be taken to deal with the unauthorized construction.

The spot inspection shall be conducted upon prior notice to all the parties at the earliest but positively

October 19, 2023. The hearing and final order shall be passed positively within a period of 45 days from the date of forwarding the inspection report.

As massive unauthorized constructions have been detected, the person responsible is restrained from making any construction at the subject premises until further order.

The Officer-in-Charge, Malipanchghora Police Station is directed to keep strict vigil over the property to ensure that construction in any manner whatsoever is not carried out at the subject premises until further order.

The person responsible, the owners/developers are restrained from transferring/alienating/handing over possession or creating any third party right over the subject premises until further order.

It will be open for the Corporation to affix the notice of spot inspection at several conspicuous places in and around the subject premises so that everybody gets aware about the date of inspection.

The order of demolition stands set aside.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

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(Amrita Sinha, J.)