

21 & 22.
08-02-2023
debajyoti
(Ct. no.24)

WPA 26649 of 2022

**Sri Sanjay Samanta
Vs.
The Howrah Municipal Corporation & Ors.**

W I T H

WPA 21034 of 2022

**Smt. Soma Karar
Vs.
Howrah Municipal Corporation & Ors.**

Mr. Tanmoy Mukherjee,
Mr. Sauvik Das,
Mr. K. R. Ahmed,
Mr. Rudranil Das
... For the Petitioner in WPA/26649/22 &
Respondent No.5 in WPA/21034/22.

Mr. Animesh Paul
... For the Petitioner in WPA/21034/22 &
Respondent No.5 in WPA/26649/22.

Mr. Sandipan Banerjee,
Mr. Ankit Sureka,
Mr. Sobhan Majumder
... For H.M.C.

The matter relates to the iron structure constructed at the roof top of premises no. 6/4/1, Tara Chand Polley Lane, Ward No.25, Borough-IV, under jurisdiction of Howrah Municipal Corporation. Sanjay Samanta, alleges that the iron shed structure was constructed at the behest of Smt. Soma Karar without any sanction from the Corporation.

Sanjay Samanta filed an objection before the Howrah Municipal Corporation seeking demolition of the unauthorized construction.

As the Corporation did not take steps to consider the said objection, a writ petition was filed by Sanjay

Samanta being WPA 12727 of 2021, which stood disposed by this Court on 23rd September, 2021 directing the competent authority of the Howrah Municipal Corporation to make an inspection in presence of both the parties in order to ascertain the nature of construction. Copy of the report was directed to be circulated to the parties and a reasoned order was directed to be passed on the basis of such inspection upon hearing of the parties.

In compliance of the direction passed by the Court, a spot inspection was conducted in presence of both the parties. Thereafter, a joint hearing was also conducted. The submissions made by the parties were recorded and an order was passed by the Assistant Engineer, Borough-IV, Howrah Municipal Corporation, on 10th June, 2022 directing Smt. Soma Karar to remove the iron shed by herself within fifteen days from the date of receipt of the order. In default, the Corporation will cause demolition of the unauthorized construction and recover the cost of demolition from the person responsible.

The Assistant Engineer was of the opinion that the construction made by Smt. Soma Karar was in violation of the Howrah Municipal Corporation Act, 1980 and the Kolkata Municipal Corporation Building Rules, 2009, as extended to the district of Howrah.

Inspection revealed that construction of iron shed made with steel square bars were made at the roof of the first floor having a height of 9ft. X 12ft., measuring about 430 sq. ft.

Sanjay Samanta prays for implementation of the order of demolition by filing the writ petition being WPA 26649 of 2022.

Smt. Soma Karar challenges the said order of demolition in the writ petition being WPA 21034 of 2022.

Learned advocate, representing Soma Karar, submits that the order of the Assistant Engineer does not clearly mention as to whether the structure is a permanent one or temporary in nature. It has been contended that there is no mention in the said order with regard to the requirement of obtaining sanction prior to raising such construction.

Reliance has been placed on Rule 3(2)(l) of the Kolkata Municipal Corporation Building Rules, 2009, which is applicable in the present case in support of the submission that no building permit shall be required for carrying out any work as is necessary in the opinion of the Municipal Commissioner, for reasons to be recorded in writing, to maintain the building in a condition of good repair or to secure it to prevent danger to human life.

It has been submitted that the iron shed has been constructed for maintaining the roof of the building in proper condition.

Learned advocate for Soma Karar submits that on the selfsame cause of action, a suit filed by Sanjay Samanta is pending consideration before the learned Court below being Title Suit No.331 of 2022.

It has been submitted that the submissions made by Soma Karar at the time of hearing has neither been recorded nor adjudicated by the Assistant Engineer.

Prayer has been made by Soma Karar for setting aside the order of demolition.

It is the specific case of Sanjay Samanta that the construction made is permanent in nature. No permission was sought for raising such construction. Reliance has been placed on the Building Rules applicable in the present case and on the judgment delivered by this Court in the matter of Lipika Das Vs. Kolkata Municipal Corporation & Ors., reported in (2012) 4 WBLR (Cal) 483, paragraph 8.

Learned advocate, representing the Howrah Municipal Corporation submits, upon instructions that, the submissions of all the parties who attended the hearing has duly been recorded and considered at the time of passing the order of demolition. It has been reiterated that the structure in question is a permanent one and the same has been constructed without obtaining sanction. Prayer has been made for executing the order of demolition.

I have heard the rival submissions made on behalf of both the parties.

The term 'Building' is defined in the Act as a structure constructed for whatsoever purpose and whatsoever materials and includes the foundation, plinth, walls, floors, roofs, chimneys, fixed platforms, varandahs, balcony, cornice or projection or part of a building or anything affixed thereto or any wall other than a wall less than three meter in height or intended to encroach any land, signs and outer displays structure, but it is not a tent, samiana or tarpaulin shelter.

In the present case, an iron shed structure made with steel square bars have been constructed on the roof of the first floor having height of 9ft X 12ft, measuring about 430 sq. ft. The structure in question is affixed to the main structure.

According to the definition of 'building', any structure which is affixed thereto, has to be treated as building.

Rule 3(2)(l) of the Kolkata Municipal Corporation Building Rules, 2009 permit construction of a building without permit if the said work is necessary in the opinion of the Municipal Commissioner, for reasons to be recorded in writing. In the instant case, there is neither any application before the Municipal Commissioner nor any opinion of the Municipal Commissioner mentioning that the construction is necessary for maintaining the building in good condition.

In the absence of a written opinion of the Municipal Commissioner, it was not permissible to raise construction of the iron shed atop the roof of the building. Construction of the fixed iron shed ought to have been made only after obtaining permission from the authority.

The Assistant Engineer has clearly opined that the construction is in violation of the Howrah Municipal Corporation Act and the Building Rules.

The person responsible for making such construction is bound to demolish the same.

The submission of Soma Karar that the Title Suit is pending in respect of the selfsame structure, will

make no difference in the facts and circumstances of the present case, as the Suit will only be maintainable in respect of any structure which has been constructed in accordance with the provisions of law and not in respect of a structure which has been held to be unauthorized and facing an order of demolition.

In view of the above, the Assistant Engineer, Borough-IV, Howrah Municipal Corporation, is directed to proceed with the demolition of the unauthorized construction as the person responsible has failed to demolish the same within the time specified. It will be open for the Corporation to recover the cost of demolition from the person responsible.

Necessary steps shall be taken in the matter by the Corporation at the earliest, but positively, within a period of ten weeks from the date of communication of this order.

The Officer-in-Charge of the jurisdictional police station is directed to render all necessary assistance to the men and agents of the Howrah Municipal Corporation at the time of effecting the demolition, if sought for.

WPA 26649 of 2022 stands disposed of and WPA 21034 of 2022 stands dismissed.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Amrita Sinha, J.)