

D/L
Item No. 5
04.01.2023
KOLE

**MAT 1640 of 2022
With
IA No. CAN 1 of 2022**

**Rajendra Kumar Agarwal & Ors.
-Vs.-
The Howrah Municipal Corporation & Ors.**

Mr. Mrinal Kanti Ghosh,

...for the appellants.

*Mr. Sandipan Banerjee,
Mr. Ankit Sureka,
Mr. Sobham Majumdar,*

...for the HMC.

*Mr. Sayan Sinha,
Mr. Adil Nasar,*

...for the private respondent no. 7.

By consent of the parties the appeal and the application are taken up for hearing together.

This appeal is directed against a judgment and order dated September 21, 2022, whereby WPA 9168 of 2022 was disposed of.

The respondent no. 7/writ petitioner approached the learned Single Judge with the grievance that the appellants/private respondents had made unauthorized construction at Premises Nos. 171, 36/2, 36/4 and 33+34/1, Madhusudan Pal Chowdhury Lane, Ward No. 22, Borough-III within the territorial limits of Howrah Municipal Corporation.

A report was filed before the learned Single Judge by the Assistant Engineer-in-Charge, Building Department, HMC, to the effect that massive unauthorized constructions

had been made at the said premises. Self-demolition notices have been issued but the same have not been implemented.

The learned Judge noted that permission had been granted by HMC for construction of G+2 storied building at each of the premises but three additional floors had been constructed at each of the said premises without obtaining sanction from HMC. It was submitted before the learned Single Judge on behalf of the appellants herein that during the time of making construction, applications had been made to the Corporation for regularizing the construction. The learned Judge observed that HMC Act clearly lays down that construction can be made only upon obtaining prior permission/sanction from the Corporation. The Learned Judge disposed of the writ petition with the following observations:-

“The private respondent took the risk of making construction of three additional floors without obtaining any prior sanction. There are four buildings and in each of the buildings, three additional floors have been constructed without obtaining any sanction.

The said action of the person responsible cannot be supported in law. Such type of action on the part of the person responsible ought not to be taken leniently, otherwise, the same will provide dishonest and unscrupulous builders opportunity to raise construction without obtaining prior sanction plan and thereafter approach the Municipal Authority praying for regularization of the construction that has been made.

Permitting such action will amount to granting premium to such type of corrupt builders. It is high time that the Corporation take steps to get rid of the unauthorized construction in accordance with law.

As the time period for effecting self-demolition is already over, the Howrah Municipal Corporation is directed to proceed with the demolition work of the authorized construction of the 3rd, 4th and 5th floors of all the four buildings and to recover the cost of demolition as arrears of property tax.

The Officer-in-Charge, Bantra Police Station is directed to render all necessary assistance to the men and agents of the Howrah Municipal Corporation at the time of implementing the demolition work, as sought for.”

Being aggrieved, the private respondents in the writ petition are before us by way of this appeal.

Our attention has been drawn by learned Advocate for the appellants to an order dated September 23, 2022, passed by a learned Judge in WPA 14987 of 2022. That writ petition was filed challenging the demolition order in respect of premises No. 33+34/1, Madhusudan Pal Chowdhury Lane. By the order dated September 23, 2022, the learned Judge set aside the demolition notice dated May 30, 2022 that had been issued by the Corporation in respect of Premises No. 33+34/1, Madhusudan Pal Chowdhury Lane and passed certain directions.

We are told that three other writ petitions were also filed challenging the other three demolition notices in respect of the other three premises. Those three writ petitions have been dismissed.

As a result, the demolition notice in respect of only Premises No. 33+34/1, Madhusudan Pal Chowdhury Lane, stands set aside. The demolition notices regarding the other three Premises Nos. 171, 36/2 and 36/4 remain in force.

We completely agree with the learned Single Judge. Persons who make constructions without obtaining sanction from the appropriate Authority, deserve no leniency or sympathy. Such persons must face the consequences of their reckless action.

Accordingly, without interfering with the order under appeal we clarify that the said order will operate only in respect of Premises No. 171, 36/1 and 36/4, Madhusudan Pal Chowdhury Lane. The Premises No. 33+34/1, Madhusudan Pal Chowdhury Lane, will be governed by the order dated September 23, 2022. The Howrah Municipal Corporation shall act in terms of the order of the learned Single Judge in respect of the Premises No. 171, 36/2 and 36/4, Madhusudan Pal Chowdhury Lane.

The appeal and the connected application are, accordingly, disposed of.

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

(Apurba Sinha Ray, J.) (Arijit Banerjee, J.)