

59. 24.08.2023
bd. Ct.15

W.P.A. 23554 of 2018

Sri Santu Das

-vs-

The Howrah Municipal Corporation & Ors.

Mr. Pinaki Ranjan Mitra ... for the petitioner.

Mr. Ayan Banerjee

Ms. Debjani Sengupta ... for the respondent
nos. 5 to 8.

Mr. Sandipan Banerjee ... for the HMC.

The writ petition has been instituted, inter alia, questioning the constructions made by the respondent nos. 5,6,7 and 8 at the premises which is contiguous to the premises of the petitioner. Petitioner further submits that he is one of the co-sharers of the premises in question. Petitioner prays for demolition of unauthorised constructions which has been carried out at the instance of the aforesaid private respondents upon cancellation of the order dated 12th December, 2018 passed by the concerned authority of Howrah Municipal Corporation.

The said decision dated 12th December, 2018 of the concerned authority of Howrah Municipal Corporation is annexed at page 7 of the supplementary affidavit affirmed on behalf of the petitioner.

Mr. Sandipan Banerjee, learned advocate representing Howrah Municipal Corporation submits that the concerned authority of the Corporation is required to take decision strictly in

terms of Section 177 of the Howrah Municipal Corporation Act, 1980.

Respondent nos. 5,6,7 and 8 are represented by Mr. Ayan Banerjee, learned advocate who has submitted that an application has been made by the private respondents for retention of the deviated portions on the strength of 3rd Proviso to section 177 of the Howrah Municipal Corporation Act, 1980. It has been contended on behalf of the private respondents that at the time of considering the complaint of the petitioner which has been lodged against the private respondents relating to carrying out unauthorised constructions application of the private respondents seeking regularisation of minor constructions should be taken into consideration.

Having considered the submissions made on behalf of the learned advocates representing the respective parties this Court finds that the decision of the concerned authority of Howrah Municipal Corporation dated 12th December, 2018 has not been passed in consonance with section 177(1) of the said Act of 1980 which contemplates that along with order of the concerned authority of the Howrah Municipal Corporation it is required to be indicated and communicated brief statement of reasons. However, on perusal of the said order dated 12th December, 2018 it does not appear that the reasons have been assigned in support of the decision taken by the corporation.

Accordingly, the said order dated 12th December, 2018 passed by the concerned authority

of Howrah Municipal Corporation is set aside.

The concerned authority of the corporation is directed to take decision on the complaint of the petitioner which is at page 21 of the writ petition within eight weeks from the date of communication of this order.

However, it is made clear that before taking such decision the concerned authority of the Corporation shall grant opportunity of hearing to the petitioner and the private respondent nos. 5,6,7 and 8.

It is also directed that while taking decision on the complaint of the petitioner it shall be open to the concerned authority of the corporation to take into consideration the application of the private respondents seeking regularisation of deviated portion which has been constructed at the premises in question.

The concerned authority of the corporation shall also be at liberty to hold an inspection at the premises in question with prior notice to the petitioner and the private respondents if it is found necessary.

The decision to be taken by the concerned authority of the corporation shall be communicated to the parties within two weeks thereafter.

With the aforesaid directions and observations the writ petition stands disposed of.

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)