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28.11.2023
Court No. 24
AGM

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 23872 of 2023

**Subrata Narayan Bose & Ors.
-versus
The State of West Bengal & Ors.**

**Mr. Ayan Banerjee
Mr. Tirthendu Dasgupta
...For the Petitioners.**

**Mr. Pritam Chowdhury
Mr. Satyajit Mahata
...For the State.**

**Mr. Pratyush Patwari
... For the respondent no. 5.**

**Mr. Sandipan Banerjee
Mr. Ankit Sureka
Mr. Shovon Majumdar
... For the Howrah Municipal Corporation.**

Affidavit-of-service filed in Court today is taken on record.

The petitioner no. 1 claims to be one of the owners of the premises at 18/1/1, Danesh Sk. Lane, Ward No. 39 under the jurisdiction of the Howrah Municipal Corporation.

The petitioners are aggrieved by the self-demolition notice issued by the Howrah Municipal Corporation on 19th June, 2023 directing the petitioners to demolish the unauthorised portion and all sides of

the construction of the G+2 storied construction (3 storied building) within seven days.

Specific case of the petitioners is that no notice for spot inspection was served upon the petitioners prior to spot inspection, if any, conducted by the Corporation. The impugned notice of self-demolition is a vague one as the alleged deviation has not been specified. The impugned notice also mentions that deviations have been done in all four sides of the structure.

It has been submitted that without spot inspection, it will not be possible for the Corporation to identify the deviated portions.

Learned advocate representing the private respondent being the complainant submits that apart from side deviations, the internal arrangement of the subject construction has been altered from the sanctioned plan. In place of bed room and kitchen, toilet and office spaces have been constructed.

Further submission of the complainant is that as the mandatory spaces required to be kept open have been infringed, accordingly, the easementary rights of the private respondents are being infringed.

Learned advocate representing the Corporation is yet to receive instruction in the matter. Learned advocate is not aware as to whether inspection was conducted upon prior notice or not.

It has been contended that the issue of encroachment and infringement of easementary rights

cannot be adjudicated by the Howrah Municipal Corporation.

Upon hearing the submissions made on behalf of all the parties and upon perusal of the materials placed before this Court, it is not very clear from the impugned order of self-demolition, whether any spot inspection was conducted prior to issuance of the same.

To put the issue at rest once and for all, the Howrah Municipal Corporation is directed to take a further spot inspection upon prior notice to all the necessary parties including the co-owners and the complainant to ascertain the exact nature and extent of the unauthorised construction.

In the event all the parties are not available for serving notice or refuses to accept notice, then it will be open for the Howrah Municipal Corporation to affix the notice of spot inspection at various conspicuous places in and around the subject property to make everybody aware of the spot inspection to be conducted by the Howrah Municipal Corporation.

The spot inspection report shall be circulated amongst all the parties. Thereafter, an opportunity of hearing be given to the parties. If ultimately any unauthorised construction is detected, then necessary steps in accordance with law shall be taken by the Howrah Municipal Corporation to deal with such unauthorised construction.

The issue of encroachment shall not be required to be addressed by the Howrah Municipal Corporation. As regards encroachment, it will be open for parties to

approach before the Civil Court for redressal of grievances.

As regards the infringement of easementary right, the Howrah Municipal Corporation shall ensure that the mandatory side open spaces are strictly followed at the time of raising construction.

The spot inspection shall be conducted at the earliest but positively by four weeks. Spot inspection report shall be circulated immediately thereafter.

A final order shall be passed at the earliest but positively within a period of sixty days from the date of serving the spot inspection report.

Till a decision is taken by the Howrah Municipal Corporation, the petitioners are restrained from making further construction over the subject property and further restrained from alienating/selling and/or creating third party rights over the subject property.

The impugned self-demolition notice is 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.

(Amrita Sinha, J.)