

04. 12.10.2023
bd. Ct.15

WPA 24484 of 2016

Nirmala Devi & Anr.

-vs-

Howrah Municipal Corporation & Ors.

Mr. Ujjal Ray

Sk. Abdur Rahim ... for the petitioners.

Mr. Sandipan Banerjee

Mr. Ankit Sureka

Mr. Sobhan Majumder ... for the HMC

Mr. Sanatan Panja

Ms. Munmun Tewari ... for the State

The writ petition pertains to allegation of erection of unauthorised construction at the instance of respondent no. 6. The premises in question where unauthorised construction alleged to have been made comes under the jurisdiction of Howrah Municipal Corporation.

In spite of service of notice upon respondent no. 6 today the said respondent no.6 is not represented and affidavit of service filed on behalf of petitioner is taken on record.

Pursuant to the previous order dated 9th October, 2023 certain documents have been produced before this Court on behalf of Corporation which are taken on record. On perusal of these documents it appears that Assistant Engineer, Office of the Borough-V, Howrah Municipal Corporation, has issued a memo dated 13th January, 2023. It further appears that vide said memo dated 13th January, 2023 the concerned

authority of the Howrah Municipal Corporation directed the respondent no. 6 to demolish the unauthorised portion of the premises which has been constructed in deviation of the sanctioned plan.

Mr. Ray, learned advocate, representing the petitioners submits that no sanctioned plan has been accorded in favour of the respondent no. 6 therefore the entire construction which has been erected by the respondent no. 6 is unauthorised.

In consideration of the memo dated 13th January, 2023 issued by the concerned authority of Howrah Municipal Corporation it transpires though there is direction upon the respondent no. 6 to demolish unauthorised construction but the extent of unauthorised construction/deviation has not been properly described in the said memo dated 13th January, 2023 which requires demolition of the said construction by the respondent no. 6.

On perusal of section 177 sub-section (1) of the Howrah Municipal Corporation Act, 1980 it appears that while taking decision by the concerned authority of the corporation said authority is required to assign brief reasons in support of the decision relating to demolition. Since the demolition notice dated 13th January, 2023 is devoid of cogent reason the same is set aside.

The concerned authority of Howrah Municipal Corporation is directed to revisit the issue by granting opportunity of hearing to the

petitioners and respondent no. 6 and pass a reasoned order within 12 weeks from date. Before fixing date of hearing at least seven day's notice shall be served upon the parties. The order to be passed in terms of the aforesaid direction shall be communicated to the parties within one week thereafter.

With the aforesaid direction 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.)