

Item No.07

24.11.2023
sh/agm

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 24799 of 2023
Gour Chandra Nandy & Ors.

v.

The Howrah Municipal Corporation & Ors.

Mr. Saptangshu Basu, Ld. Sr. Adv.
Mr. Sayan Sinha
Mr. Soham Kumar
... for the petitioners.

Mr. Tanmoy Mukherjee
Mr. Souvik Das
Mr. K.R. Ahmed
Mr. Rudranil Das
... for the respondent no. 5.

Mr. Sandidpan Banerjee
Mr. Ankit Sureka
Mr. Sobhan Majumder
... for HMC.

Mr. Rudranil De
... for the State.

Mr. Debanik Banerjee
Mr. S.S. Biswas
... for the respondent nos. 6, 7 & 8.

The petitioners are aggrieved by the order dated September 21, 2023 passed by the Assistant Engineer-in-Charge, Building Department, Howrah Municipal Corporation directing the person responsible for causing self-demolition of the unauthorized construction and deviated portions as mentioned in the inspection report and in default the Corporation will cause demolition of the unauthorized construction and the deviated portions and recover the costs of demolition from the person responsible.

The impugned order has been attacked on two fold grounds. First being that an accommodation was sought for on the day of hearing which was refused and second, the inspection report relied upon by the Assistant Engineer-in-Charge was not circulated.

In support of the aforesaid submission the petitioners rely upon the judgment delivered by the Hon'ble Supreme Court in the matter of **Union Bank of India v. Sanjoy Mittal & Ors. and Union Bank of India v. Ranjan Roy & Ors. reported in 2000 SCC Online Cal 313: (2000) 2 CHN 616** wherein the Hon'ble Supreme Court took note of the decisions reported in **1968 (3) All England Law Reports 506** in **Priddle v. Fisher & Sons.** and **R. v. Thames Magistrates' Court** reported in **1974 (2) All England Law Reports 1219**, wherein refusal to grant adjournment was held to be violative of the principles of natural justice.

The petitioners also rely upon the judgment delivered by the Hon'ble Supreme Court in the matter of **Union of India & Ors. v. Mohd. Ramzan Khan**, reported in **(1991) 1 SCC 588** wherein the Court was of the opinion that in a quasi-judicial matter, if the delinquent is being deprived of the knowledge of the material against him though the same is made available to the punishing authority in the matter of reaching his conclusion, rules of natural justice would be affected.

It is the specific submission of the petitioners that there has been violation of the principles of natural justice in not granting adjournment for a solitary day and in not supplying the inspection report relying upon which the self-demolition order has been passed.

It has been submitted that no inspection was conducted and no notice of inspection was ever served upon the petitioners prior to preparation of the inspection report and prior to conducting hearing in the matter.

It has been submitted that G+4 floors were sanctioned by the Corporation and the 5th floor has been constructed by the petitioners on the assumption that the same may be sanctioned by the Corporation as an application seeking sanction of the same was filed and pending consideration before the Corporation.

It has, however, been fairly admitted that the sanction of the 5th floor is yet to be allowed.

It has been submitted that the 5th floor is completely occupied and the observation in the impugned order that the same is unoccupied is incorrect.

Prayer has been made for setting aside the impugned order of self-demolition.

The submission and prayer of the petitioners has been opposed by the respondents.

Learned advocate representing the respondent no. 5 submits, upon instruction that, the Constituted Attorney of the petitioners who is the respondent no. 8 herein was present at the time of hearing and, accordingly, the submissions of the petitioners that opportunity of hearing was not granted, is incorrect.

It has been submitted that the entire 5th floor has been constructed without sanction. The structure in question was unoccupied at the time of inspection but

the same has been let out on rent very recently to a retired police officer of the Batra Police Station.

Learned advocate representing the respondent no. 8 submits that a days' accommodation was sought at the time of hearing which was refused and, as such, the said respondent was not able to place all documents in support of the construction made at the time of hearing.

It has been submitted that at present the relationship between the petitioners and the respondent no. 8 has turned sour.

Learned advocate representing the Corporation submits that as there is no sanction for the additional floor that has been constructed, the same is liable to be demolished. There are deviations in the construction made upto the G+4 floor level.

It has been submitted that at the time of inspection the structure in question was found to be unoccupied.

Respondents pray for dismissal of the writ petition.

Upon hearing the parties and upon perusal of the materials on record it appears that G+4 floors were sanctioned by the Corporation. Though the impugned order of self-demolition records that a joint inspection was held on August 18, 2023 but the same has been disputed by the petitioners and the respondent no. 8.

Admittedly, on the date of hearing, the respondent no. 8 who was actually responsible for making construction sought for an adjournment. The petitioners herein also sought for an adjournment.

The impugned order records that there is deviation in construction till the G+4th floor level. As regards the additional floor, admittedly, there is no sanction for raising construction.

The precedents relied upon by the petitioner are settled principles of law and, accordingly, they are not dealt with separately.

As an issue has been raised with regard to the violation of principles of natural justice and as admittedly, the inspection report has not been circulated, accordingly, to put an end to the dispute once and for all, the Corporation is directed to grant a further opportunity of hearing to all the parties for production of documents in support of the construction made.

A joint inspection shall be conducted upon prior notice to all the parties and the spot inspection report be circulated amongst the parties. After circulation of report, the hearing shall be conducted and final order shall be passed in the matter.

Spot inspection shall be conducted by 8th December, 2023 and thereafter subsequent steps shall be taken by the Corporation at the earliest. Final order shall be passed positively within a period of 60 days from the date of circulation of the spot inspection report.

The notice of spot inspection and the notice of hearing shall be served upon the person(s) responsible for making construction/the owners and the occupiers of the subject structure and the said notice shall be pasted at several conspicuous places in and around the subject property so that none can come forward in

future claiming ignorance of the notice of spot inspection and hearing.

As it appears that the Corporation has already detected unauthorized construction of the top most floor and deviation in the G+4 floors, accordingly, the person(s) responsible for making construction is restrained from making any further construction at the subject premises till the issue is finally decided by the Corporation.

The person(s) responsible and the owners of the subject property are restrained from transferring/ alienating or creating any third party right in respect of any portion of the subject structure till the issue is finally decided by the Corporation.

The impugned order dated 21st September, 2023 is, accordingly, set aside and quashed.

Affidavit-of-service filed today in Court be kept with the records.

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.)