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09.11.2023
Ct. No. 5
(Vacation Bench)
SB

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 25894 of 2023

Akash Shaw
-versus
Howrah Municipal Corporation & Ors.

Mr. Srijib Chakraborty
Mr. Aditya Mondal
Mr. Deeptangshu Kar
...For the Petitioner

Mr. Tapan Kumar Mukherjee, A.G.P.
Ms. Sangeeta Roy
Ms. Rupsha Chakraborty ... For the State

Mr. Sunny Nandy
Mr. Subha Pathak For respondent Nos. 7 & 8

Mr. Sandipan Banerjee
Mr. Ankit Sureka ... For the H.M.C.

The petitioner is aggrieved by the order of demolition passed by the Assistant Engineer, Howrah Municipal Corporation on 03.11.2023.

The petitioner raises issue of jurisdiction of the officer who passed the order of demolition. It is submitted that the Assistant Engineer is not the competent authority to pass the order of demolition.

On perusal of the order of demolition, it appears that the petitioner is guilty of constructing

unauthorized construction in the G+2 level by deviating from the sanctioned plan and has constructed third and fourth floors without any sanctioned plan at all.

The petitioners submit that inspection was not conducted to ascertain as to whether there has been any deviation from the sanctioned plan. It is submitted that no opportunity of hearing was given prior to the order of demolition being passed.

Learned advocate representing the petitioner has failed to produce before this Court any document showing sanction for raising construction of the third and fourth floors. Admittedly, it appears that the third and fourth floors have been constructed without any sanction at all.

As regards the construction made upto the G+2 storied level, the Corporation contends that there is deviation.

As a person is entitled to raise construction only upon obtaining a prior sanctioned plan, accordingly, the prayer made by the petitioner seeking stay of the order of demolition with respect to the third and fourth floors cannot be accepted.

As regards the deviation in the G+2 storied level, the concerned officer is directed to conduct a spot

inspection upon prior notice to the necessary parties to ascertain the nature and extent of deviation and intimate the person responsible for raising construction the details of deviation.

Steps shall be taken to conduct the spot inspection at the earliest but positively within a period of four weeks. The report of spot inspection including the details of the deviated portion shall be intimated to the petitioner within a fortnight thereafter. An opportunity of hearing shall be given and a decision may be taken in the matter within a period of eight weeks after supplying the spot inspection report.

The Howrah Municipal Corporation shall restrict the ongoing demolition only to the third and fourth floors and shall not demolish the deviated portion of the structure upto the G+2 storied level.

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.)