

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

W.P.A 28357 of 2023

**Mrs. Ann K. Augustine
-versus
Howrah Municipal Corporation & Ors.**

**Mr. Riju Ghosal
Mr. Anirban Ghosh
...For the Petitioner.**

**Mr. Sandipan Banerjee
...For HMC.**

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

The petitioner is aggrieved by the order of the Deputy Commissioner (Hearing Officer), Howrah Municipal Corporation dated 23rd November, 2023.

It appears that the said order of demolition was passed upon hearing the parties and upon inspection being made. The percentage of deviation as mentioned in the order of demolition clearly signifies that there is deviation in each and every floor of the subject structure staring from the ground floor to the fourth floor level.

Specific contention of the petitioner is that the developer was responsible for the unauthorised construction being made for which the petitioners are to suffer at such a distant point of time. The construction in question is in existence from the year 2004 and the Corporation did not take any steps against the deviation till the petitioner applied before the Corporation for obtaining sanction plan and the completion certificate.

Prayer has been made for setting aside the impugned order of demolition particularly because the Hearing Officer failed to ascertain whether the deviation is of minor nature or not. Minor deviation is not defined in the Act and the Deputy Commissioner could not have taken a decision without ascertaining whether the deviation is minor or a major one.

Learned advocate representing the Howrah Municipal Corporation submits that the demolition process is being conducted pursuant to the order passed in the contempt matter. At this stage the demolition process ought not to be stalled.

I have heard the submission made on behalf of the parties and have perused the materials on record.

It appears that there are deviations in each and every floor. The petitioner was afforded reasonable opportunity of hearing. The unauthorised portion cannot be said to be regularized due to passage of time.

The petitioner herself may not be responsible for the unauthorised construction but as long as the unauthorised construction remains it is not important to identify who is responsible for constructing the same. Any unauthorised construction that is detected ought to be dealt with appropriately in accordance with law.

The Howrah Municipal Corporation has invoked the provision of Section 177 (1) of the Howrah Municipal Corporation Act, 1980 and has passed the order of demolition. The Court does not find any infirmity in the process and hence, finds no reason to interfere with the same.

The writ petition fails and is hereby dismissed.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)