

03-01-2024
Item No.6
Subrata
Bhattacharyya
AR(C)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

WPA No.55 of 2024
Ms. Sikha Paul & Ors.

-vs-

Howrah Municipal Corporation & Ors.

Mr. Ayan Banerjee
Ms. Debjani Sengupta
Ms. Paulomi Ghosh ...for the petitioners

Mr. Sandipan Banerjee
Mr. A. Sureka
Mr. Sobhon Majumder ...for the Corporation

As many as twenty-two petitioners have approached this court by filing the writ petition challenging a notice dated December 6, 2023 allegedly pasted on the wall of the structure standing at holding No.44/1, Ram Charan Sett Road, Ward No.44, P.S. Chatterjeehat under the jurisdiction of Howrah Municipal Corporation.

The aforesaid impugned notice was issued for vacating the subject structure and for making the structure available for demolition.

The petitioners submit that substantial portion in the ground floor of the building standing at the aforesaid premises has already been demolished by the Corporation on December 20, 2023. The petitioners apprehend that the men and agents of the Corporation shall take steps for further demolition of the premises today, i.e. on January 3, 2024.

Specific case of the petitioners is that the order of demolition was passed without giving them any opportunity of hearing, and that they were never made

aware of any order of demolition passed in respect of the subject property. Further case of the petitioners is that they are also not aware of the portions which are required to be demolished allegedly because the same were found to be constructed in deviation of the plan sanctioned.

The petitioners submit that they are in occupation of their respective flats for nearly twenty years and that their respective flats have been assessed separately by the Corporation and they have paid taxes for their respective flats. They further contend that without the details of the deviated portions made known to them, they will not be in a position to demolish the same.

Prayer has been made for passing an interim order of stay of the impugned notice to vacate the subject premises and to restrain the Corporation from taking any further steps for demolition.

Learned advocate representing the Howrah Municipal Corporation submits, upon instructions, that substantial portion of the unauthorised construction in the ground floor has been demolished. It has fairly been admitted that the deviations in the individual respective flats have not been made known to the parties. It has been submitted that the flat owners will be made known of the deviations in their respective portions so that the flat owners can demolish the same on their own subject to order passed by this court.

A copy of the writ petition is yet to be served upon the private respondents – respondent no.4 who is the developer of the subject premises and respondent no.5 on whose complaint the order of demolition has

been passed.

On a perusal of the impugned notice to vacate the premises, it appears that the same is a general notice issued to all the residents/occupiers of the premises no.44/1, Ram Charan Sett Road, Ward No.44, Howrah-711104. There are several flats at the said address. The deviations in respect of individual flats may be different. Unless the flat owners are specifically communicated about the deviations, they may not be in a position to identify the same for the sake of demolition.

In view of the above, the competent authority of the Howrah Municipal Corporation is directed to cause a spot inspection of the subject structure standing at premises no.44/1, Ram Charan Sett Road, Ward No.44, Howrah-711104 and to intimate the individual flat owners the deviations which are required to be removed. The Corporation shall specify the details of the deviations and communicate the same to all the flat owners. An opportunity of hearing shall be allowed to all the flat owners. Thereafter, the final order shall be passed.

In the event any of the flat owners refuses to accept the notice of inspection or hearing, then it will be open to the Corporation to affix the notice of spot inspection and hearing at several conspicuous places in and around the subject structure. The affixation of notice of spot inspection and notice of hearing shall be considered to be good service of the notice upon all the flat owners.

Final order shall be passed at the earliest, but positively within sixteen weeks from the date of communication of this order.

Till a fresh order is passed by the Corporation in this matter, the impugned notice dated December 6, 2023 shall be kept in abeyance.

Learned advocate for the Corporation is directed to communicate this order to the Howrah Municipal Corporation for taking necessary action.

WPA No.55 of 2024 is thus disposed of.

All parties are to act on the server copy of this order duly downloaded from the official website of this court.

Certified copy of this order, if applied for, shall be made available to the parties.

[Amrita Sinha, J]

