

17-01-2024
Item No.7
Subrata
Bhattacharyya
AR(C)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

WPA No.1062 of 2024
Sri Saikat Dutta

-vs-

The Howrah Municipal Corporation & Ors.

Mr. Tanmoy Mukherjee
Mr. Souvik Das
Mr. K. R. Ahmed
Mr. Rudranil Das
Mr. Soumava Santra ...for the petitioner

Mr. Sandipan Banerjee
Mr. Ankit Surekha ...for the Corporation

The grievance of the petitioner is that the direction passed in an order dated May 17, 2023 passed by this court in WPA No.12018 of 2023 filed by the petitioner has not been complied with. On the contrary, the Howrah Municipal Corporation has effected demolition of a portion of the subject structure relying on the order of demolition which was directed to be kept in abeyance by the court.

Learned advocate for the Corporation submits, upon instructions, that plan was sanctioned for construction of G+1 storied structure, and that the person responsible constructed an extra floor and are also erecting beams for construction of additional floors.

It is also the contention of the Corporation that the engineers of the Corporation may inspect the subject premises by tomorrow, and that the date of hearing will be fixed immediately thereafter. It has also been submitted that steps are required to be taken on urgent basis, as the persons responsible are desperate to carry

on construction work without valid sanction.

From the order dated May 17, 2023, it appears that the court directed a fresh spot inspection to be conducted upon prior notice to the petitioner and all other necessary parties, especially the complainant. There was also a direction for circulation of the spot inspection report amongst the parties specifying the extent of unauthorised construction which was required to be demolished/removed.

The petitioner categorically submits that the spot inspection was not conducted by the Corporation. In such a situation it was improper for the Corporation to give effect to the order of demolition which was directed to be kept in abeyance.

Upon hearing the parties and upon perusal of the documents before this court, it appears that there is nothing on record to suggest that the spot inspection was conducted as per direction of the court.

As the Corporation has detected unauthorised construction, accordingly, the concerned engineer of the Corporation is directed to conduct spot inspection of the subject structure by January 31, 2024. The spot inspection report shall be circulated immediately thereafter and an opportunity of hearing shall be granted to all the necessary parties positively by February 29, 2024. A reasoned decision shall be given and communicated to all the parties.

It goes without saying that if the unauthorised construction made by the person responsible cannot be supported by any documentary evidence, then steps for demolition of the same shall be taken by the Corporation

in accordance with law.

The Corporation is restrained from demolishing the unauthorised structure till a reasoned decision, upon consideration of spot inspection report and hearing, is circulated to the parties.

The persons responsible and the owner of the subject premises are restrained from carrying out any construction work at the subject premises and creating any third party right or transferring/alienating the subject structure to any third party till the issue is conclusively decided by the Corporation.

The officer in-charge of Shibpur police station is directed to maintain strict vigil in the locale and ensure that construction in any manner whatsoever is not carried out at the subject premises till the issue is finally decided by the Corporation.

WPA No.1062 of 2024 stands 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]

