

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA 3153 of 2023

Smt. Mira Devi Pathak
Vs.
The Howrah Municipal Corporation & Ors.

For the writ petitioner	:-	Mr. Rishav Singh, Adv. Mr. Sagar Mishra, Adv. Ms. Khushi Gupta, Adv.
For the HMC	:-	Mr. Sandipan Banerjee, Adv. Mr. Ankit Sureka, Adv.
For the respondent nos. 6 to 10	:-	Mr. Saptansu Basu, Sr. Adv. Mr. B. Modak, Adv. Ms. Madhumita Paul, Adv.
For the respondent no. 11	:-	Mr. Debasish Kundu, Adv.
Heard on	:-	17.01.2024
Judgment on	:-	17.01.2024

Amrita Sinha, J.:-

The instant writ petition was heard and order was passed on December 7, 2023 directing the Corporation to execute the demolition order in accordance with law. The said order was carried in appeal by the private respondent nos. 6 to 10. The Hon'ble Division Bench vide order dated January 3, 2024 passed in MAT 2500 of 2023 with IA No. CAN 1 of 2023 (Bhanumati Devi Rajbhar & Ors. v. Smt. Mira Devi Pathak & Ors.) was pleased to set aside the said order and was further pleased to remand the matter back to this Bench for determination after granting opportunity of hearing to the appellants and all other respondents in the writ petition.

In view of the order passed by the Hon'ble Division Bench the matter is being heard afresh. All the parties are represented in Court today.

The matter relates to certain constructions made at the behest of the private respondents at premises no. 72/1, Sri Arabinda Road, Salkia, Ward No. 11 under the jurisdiction of the Howrah Municipal Corporation.

The petitioner has averred in the writ petition that the private respondent no. 11 engaged a number of workers and masons and undertook construction work for the purpose of raising additional floors on the subject structure. The petitioner found out that the said construction is illegal in nature. The residence of the petitioner is located adjacent to a very narrow lane which does not have any substantial street just beside the premises where the construction is being made.

The petitioner has averred that such construction is being made without proper sanctioned plan and/or not following the sanctioned plan and/or by infringing the relevant statutory laws.

The petitioner has further averred that till the date of filing the writ petition, the private respondents have illegally and unauthorizedly constructed the G+4 storied building at the subject premises in blatant violation of the statutory law which is against the concept of planned development but also operates as threat to the life and livelihood of the general public and above all compromises the safety of the occupants of the premises.

With the aforesaid allegations, the petitioner filed a complaint before the Howrah Municipal Corporation with a copy to the other officers of the Corporation seeking action to be taken against such illegal and unauthorized construction.

The petitioner has alleged in the writ petition that despite complaint being lodged, the Corporation did not take any step to deal with the illegal construction. The petitioner has annexed photograph of the construction in support of the submission that the construction is going on upto the G+4 storey.

In a response to the application made by the petitioner under the Right to Information Act, 2005 the petitioner was informed that a G+1 storied residential building plan has been sanctioned for raising construction at the subject premises. One BMR case is running which is under process.

The petitioner through his learned advocate made representation before the Commissioner of the Corporation highlighting the issue of illegal and unauthorized construction with request to take steps against such unauthorized construction.

In a further reply provided to the petitioner under the Right to Information Act, the petitioner was informed that stop work notice has been issued in connection with the said construction to the offender on June 7, 2021 and the hearing was taken on June 17, 2021. Self demolition notice was served upon the offender on July 6, 2021 with intimation to the police on September 27, 2021.

Further information under the Right to Information Act discloses that the matter of unauthorized construction of the G+4 storied building at the subject premises has been sent to the Howrah Municipal Corporation Building Department for taking necessary action as per norms.

The photographs annexed to the supplementary affidavit filed by the petitioner clearly show the speed of development in construction. The bamboo scaffolding as evident in the earlier photograph was removed and the RCC structure was standing in place.

The photographs have been annexed by the petitioner in support of the submission that despite the stop work notices and the self-demolition notice being served, the private respondents merrily continued with the construction work and went on raising additional floors without any sanction in absolute disregard to the law.

Prayer has been made for demolition of the unauthorized construction.

The learned senior advocate appearing on behalf of the private respondent nos. 6 to 10 has argued in details. It has been submitted that there is no averment in the writ petition alleging unauthorized construction. No notice of self-demolition was ever issued upon the person responsible for making construction. In the absence of a proper notice of self-demolition, it cannot be expected that the private respondents will demolish the structure.

It has been submitted that there is no prayer in the writ petition seeking demolition of the alleged unauthorized construction and, accordingly, the Court ought not to pass any order directing demolition. There are provisions in law which the private respondents may avail after the self-demolition notice is issued. In the absence of a proper self-demolition notice the private respondents cannot take steps to defend their stand. Without the demolition order being placed before this Court, the Court ought not to pass any order for execution of the same. The information provided under the Right to Information Act cannot be treated as a self-demolition notice.

Prayer has been made for dismissal of the writ petition.

Learned advocate representing the Corporation submits, upon instruction that, sanction was granted for construction of a G+1 storied building. The private respondents have constructed G+5 floors. The additional floors are without sanction and the G+1 storied construction has been made in deviation of the sanctioned plan.

It has been submitted that order may be passed directing the private respondents to self-demolish the unauthorized structure as it may be difficult for the Corporation to vacate the premises and thereafter implement the order of demolition.

Learned advocate representing the respondent no. 11 being the developer of the subject structure submits, upon instruction that, the proceeding to deal with the unauthorized construction though was initiated but not concluded by passing any order of demolition.

I have heard and considered the detailed submissions made on behalf of all the parties. Stay application filed by the appellants before the Hon'ble Division Bench has been placed before this Court.

It appears therefrom that a notice to show cause was issued by the Howrah Municipal Corporation on June 14, 2021 directing the persons responsible to show cause within seven days why the unauthorized construction at the subject premises would not be demolished and action will not be taken under Section 177(1) of the Howrah Municipal Corporation Act, 1980. It was mentioned in the show cause notice that if the aforesaid work of construction is not stopped forthwith, police posting will be made at the cost of the person responsible without any further reference. The persons responsible were directed to appear for a hearing and to place all documents, plan etc. in defence of the construction made, failing which action would be taken against them under the provisions of the Act.

By a further communication dated July 6, 2021 the private respondents were informed that a decision was taken on July 6, 2021 to demolish the unauthorized construction of the building carried out entirely or part thereof without any sanctioned plan/ in deviation from the sanctioned plan. The private respondents were directed to comply with the abovementioned order within seven days and was further directed to inform the office after the order of demolition is implemented at their own costs.

By a further warning letter dated September 22, 2021 the private respondents were informed that the Corporation observed that the construction has not been stopped and is going on in violation of the notice under Section 177(1) of the Act. The private respondents were once again asked to stop the unauthorized construction with immediate effect, failing which, stringent action including lodging of FIR under Section 177A of the Act will be made as well as the demolition action will be carried out without any further information.

By another communication dated September 24, 2021 the Howrah Municipal Corporation once again issued notice under Section 177(1) of the Act upon the person responsible for carrying on the work to forthwith stop the unauthorized construction of RCC structure at the 3rd floor level over newly made G+2 storied construction as the same was being done without any sanction and in breach of the provisions of the Act.

Again by a communicating letter dated January 20, 2022 the Howrah Municipal Corporation issued notice upon the private respondents that the private respondents constructed unauthorized construction i.e. G+1 in deviation from the sanctioned plan and G+2nd to 3rd floor without sanctioned plan. The notice mentioned that to stop the unauthorized construction show cause notice under Section 177(1) of the Act with an opportunity of hearing was given. The persons responsible attended the hearing.

Ignoring the stop work notice further construction has been made. The authority directed the private respondent to demolish the unauthorized construction of the G+1 floor constructed in deviation of the sanctioned plan and the 2nd and the 3rd floor construction without a sanctioned plan within five days from the date of receipt of the letter failing which the demolition work will be carried out by the Corporation without any further notice and the cost of demolition will be realized from the person responsible in accordance with the Act.

The aforesaid show cause notices and self-demolition notices were issued to one Dasu Rajbhar & Mata Prasad Rajbhar the persons responsible for making the construction. It appears from the documents annexed to the stay application that the said Dasu Rajbhar expired on January 29, 2022 and the private respondent no. 6 to 9 are the heirs and legal representatives of the deceased Dasu Rajbhar.

The submission of the private respondents that the notice of demolition was not served does not appear to be correct. The notices of demolition, show cause have been annexed by the private respondents in the stay application filed by them before the Hon'ble Division Bench. The private respondents all along had full and complete knowledge of the demolition proceeding continuing against the unauthorized construction.

The submission of the private respondents that there is no averment made in the writ petition alleging illegal and unauthorized construction also does not appear to be proper. The averments made in the writ petition clearly point out that the petitioner is highlighting the unauthorized construction made at the instance of the private respondents and specific prayer has been made seeking

issuance of writ of Mandamus for forthwith demolition of the illegal and unauthorized construction made at the subject premises. The representation filed by the petitioner before the Corporation also speaks of unauthorized construction and the petitioner sought relief requesting the Corporation to demolish such unauthorized construction.

From the photographs annexed to the writ petition it appears that despite notices being served by the Corporation from time to time, the private respondents, in utter disregard to all such direction, continued with the unauthorized construction. The private respondents after raising construction of additional floors without any sanction are presently trying to hold on to such unauthorized construction on technical pleas.

According to the provisions of the Act every person who intends to erect a building shall apply for sanction by giving notice in writing of his intention to the Commissioner in such form, containing such information or document as may be prescribed. Construction can be made only after obtaining sanction and not prior thereto.

In the present case, the private respondents did obtain sanction, but only for raising construction of a G+1 storied structure. The private respondents under any stretch of imagination could not have raised the additional 2nd, 3rd and the 4th floors without a sanction. The mala fide act of the persons responsible became evident the very moment construction was raised beyond the first floor level. The private respondents possibly were under a misconception that once the additional floors are raised without any sanction, the same may either go unnoticed or they would be able to convince the Corporation to regularize the same upon payment of some charges or costs. Had the private respondents been genuinely interested to raise a multi-storeyed building, then sanction ought to have been sought for all the floors that have been constructed. Relying on a plan sanctioned for constructing a G+1 building, a multi-storeyed building cannot be raised.

The fact that construction was made without obtaining sanction and the fact that the private respondents still intend to hold on to such construction implies, that the private respondents intend to regularize the construction that has been made.

It appears from the documents annexed to the stay application that more than enough opportunities were given to the private respondents to stop the construction immediately when it was detected in the year 2021. Instead of stopping construction, the private respondents continued with the same and, that too, in lightning speed. The Corporation afforded opportunity to the private respondents to defend their stand and thereafter passed the order of demolition

which the private respondents failed to execute. Not one, but repeated notices to stop construction issued by the Corporation were flouted. It seems that the said persons were absolutely adamant and hell bent to continue with the construction, come what may. The desperate attitude of the private respondents to proceed with the construction in flagrant violation of the building rules with impunity is evident at every step.

Being faced with such facts the Court cannot ignore the provision of law and permit the unauthorized construction to stand by granting further opportunity to the offenders to defend the construction made. Admittedly, the construction of the additional floors has been made without any sanction and the private respondents hardly have any defence to hold on to the said construction. Persons who raise construction disregarding the statutory law should be appropriately dealt with. No leniency or misplaced sympathy should be shown to such unscrupulous and dishonest builders who raise construction without sanctioned plan and tries to defend the same even after demolition order is passed by the Corporation.

The Corporation, though tried its best from the year 2021 to stop the construction, but for reasons best known, failed to restrict the construction till it reached the 5th floor level. The Corporation ought to have been more active and should have restricted construction at an early stage the moment it exceeded the sanctioned level as it practically becomes very difficult to implement the order of demolition and various legal complication arises. More often than not, third party rights are created and it is seen that the demolition gets stalled. The builders take this advantage and make best use of the same.

If any order is passed at this stage restraining the Corporation from implementing the order of demolition, the same will demoralize the officers of the Corporation who passed the order of demolition of the unauthorized construction. The same will act as a glaring example and a very bad precedent to other dishonest and unscrupulous builders to raise construction without sanction and thereafter approach the Corporation and also before the Court with prayer to hold on to such structure.

The issue of unauthorized construction is required to be dealt with an iron hand otherwise the same will provide an impetus and promote undeveloped and unplanned construction which ought not to be tolerated at all. The Hon'ble Supreme Court in ***Dipak Kumar Mukherjee vs. Kolkata Municipal Corporation & Ors.*** reported in **(2013) 5 SCC 336** in no uncertain terms clearly held that there should be no judicial tolerance of illegal and unauthorized construction by those who treat the law to be their subservient. Unauthorized

construction of buildings not only destroys the concept of planned development which is beneficial to the public but also places unbearable burden on the basic amenities and facilities provided by the public authorities. At times, such construction becomes hazardous for the public and creates traffic congestion. Therefore, it is imperative for the public authorities not only to demolish such construction but also impose adequate penalty on the wrongdoer.

Unauthorized constructions are nuisance to the society and to the public at large and should not be supported under any circumstance. The Hon'ble Supreme Court in the matter of ***Supertech Limited vs. Emerald Court Owner Resident Association & Ors.*** reported in ***(2021) 10 SCC 1*** held that the building regulations are intended to ensure that constructions which have severe negative environmental impact are not sanctioned. Hence, when planning and building regulations are brazenly violated by developers, more often than not with the connivance of the regulatory authorities, it strikes at the very core of urban planning, thereby directly resulting in an increased harm to the environment and dilution of the safety standards. Illegal construction has to be dealt with strictly to ensure compliance of the rule of law.

In ***Priyanka Estates International (P) Ltd vs. State of Assam*** reported in ***(2010) 2 SCC 27*** the Hon'ble Supreme Court observed that if unauthorized constructions were allowed to stand or are given a seal of approval by the Court, it is bound to affect the public at large.

As there is nothing on record that the construction of the additional floors has been made after obtaining permission or sanction, the Corporation is duty bound to implement the order of demolition that has been passed and to take prompt necessary steps to ensure that the demolition work is executed.

The Deputy Commissioner of the Howrah Police Commissionerate (North Division) is directed to render adequate police protection to the men and agents of the Howrah Municipal Corporation at the time of implementing the order of demolition. The police is directed to take steps for vacating the structure, if the same is found occupied by occupants.

The Hon'ble Division Bench has already passed order restraining the private respondents from transferring, alienating or creating third party right in the subject structure and has also restrained them from making any further construction at the premises in question. The private respondents shall be duty bound to comply the direction passed by the Hon'ble Division Bench.

The Officer-in-Charge, Golabari Police Station is directed to keep strict vigil over the property and ensure that construction in any manner whatsoever is

not carried out and no third party right is created in the subject structure as the same is liable to be demolished soon.

The writ petition stands disposed of.

Later:-

After the judgment is delivered in open Court, the private respondents pray for stay of operation of the direction passed hereinabove only for seven days. Such prayer is objected to by the learned advocate representing the petitioner.

The prayer for stay is considered and rejected outright.

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

(Amrita Sinha, J.)