

Item No.11

In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

01.04.2024
Ct-24

WPA 4319 of 2024
Arunava Ghosh & Ors.

v.

Howrah Municipal Corporation & Ors.

Mr. Tanmoy Mukherjee
Mr. Souvik Das
Mr. Rudranil Das
... for the petitioners.

Mr. Sandipan Banerjee
Mr. Ankit Sureka
... for the Howrah Municipal Corporation.

Perused the report dated March 20, 2024 filed by the Assistant Engineer in Charge, Building Department, Howrah Municipal Corporation. It appears therefrom that an order of self-demolition of the unauthorized construction was passed on September 19, 2022.

The demolition order clearly mentions that sanction was granted for construction of G+3 storied building. At the time of construction there has been deviation in the G+3 storied level of approximately 220.24 sq.mts.

Apart from the aforesaid deviation the persons responsible constructed three additional floors that is 4th, 5th & 6th floors of approximately 408 sq. mts. in total without any sanction at all. The total deviated area and the area of the unauthorized construction is 709.24 sq.mts. approximately. The sketch plan according to which the demolition ought to be carried out has been annexed with the order of demolition.

The petitioners claim to be the owners of the subject property standing at 13, Sadar Boxi Lane (Danu Bose Land), under Ward No. 18, Howrah Municipal Corporation. The petitioners executed a power-of-attorney in favour of one Sri Kajal Kundu for development of the subject property.

The petitioners are unable to show before the Court that sanction was granted for construction of the 4th, 5th & 6th floors. As the three additional floors were constructed absolutely without any sanction, the order of demolition ought to be executed in respect of the said unauthorized floors.

The petitioners submit that the Court vide order dated May 10, 2022 passed in WPA No. 8062 of 2022 in the writ petition filed by the developer directed an inspection to be conducted in the presence of the petitioners and the others owners who are parties in the suit and other occupants and interested parties, if any.

It has been submitted that as the order of demolition was passed without conducting any inspection upon notice to the petitioners who are the owners of the subject property, accordingly, the same ought not to be implemented at this stage.

It has been submitted that the order of demolition cannot be implemented in a phase-wise manner. It has to be executed in one go. The order of demolition cannot be segregated with regard to total unauthorized construction without any sanction and construction made in deviation of the sanctioned plan.

It appears from the submission made on behalf of the petitioners that they are somehow trying to stall the demolition. On the earlier occasion writ petition was

filed by the developer and now writ petition has been filed by the owners to stall the process of demolition.

It appears that the Court in the order dated May 10, 2022 clearly recorded that the Court does not find any reason to hold that the Corporation had been enjoined for taking steps in accordance with law in order to detect if there are any unlawful constructions. The Corporation has, indeed, detected some unauthorized construction.

The Court clarified that the order for demolition shall clearly show and differentiate the constructions which are considered to be lawful by the Corporation and which are considered to be unlawful or unauthorized in order to avoid any conflict with the order of injunction.

The order of demolition dated September 19, 2022 was passed upon hearing the attorney holder of the petitioners and copy of the order was also forwarded to the said attorney holder. There is clear mention that the top three floors are unauthorized. The deviated portions are also mentioned in the sketch plan.

It is settled law that order of injunction can only be passed in respect of construction made in an authorized manner and the order of injunction cannot be made applicable in respect of unauthorized constructions.

The report of the Corporation filed in Court has been served upon the learned advocate representing the petitioners. The sketch map indicating the constructions made in deviation of the sanctioned plan and which have been held to be unauthorized and liable to be

demolished shall be forwarded by the Corporation to the petitioners in respect of the G+3 storied structure where sanction was granted.

The Corporation is liable to take immediate steps for demolition of the 4th, 5th & 6th floors constructed without any sanction.

In view of the above, the instant writ petition stands disposed of directing the Corporation to take immediate steps for demolition of the unauthorized construction without any further delay.

The Additional Deputy Commissioner of Police (Special Branch), Howrah Police Commissionerate is directed to render all necessary help and assistance to the men and agents of the Howrah Municipal Corporation at the time of demolition of the unauthorized construction.

In the event the top three floors are found to be occupied, then the police shall take steps for removing the occupants from the portions constructed unauthorizedly.

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.

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(Amrita Sinha, J.)