

29.04.2024
Item No.12.
Court No.6.
AB

**M.A.T. 770 of 2024
With
CAN 1 of 2024**

**Nand Kishor Seth
Vs
The State of West Bengal & Others**

Mr. Subhasish Pachhalfor the Appellant.

Mr. Sandipan Banerjee,
Mr. Ankit Surekha,
Mr. Sobhan Majumdarfor the HMC.

Mr. Anirban Bose,
Md. Yusuf Alifor the State in
WPA 6149 of 24.

Affidavit of service filed in Court today, be kept
with the records.

A judgment and order dated April 9, 2024,
passed on three writ petitions, being WPA 6146 of
2024 (Nand Kishor Seth Vs the State of West Bengal &
Ors.), WPA 6149 of 2024 (Chandan Singh & Anr. Vs
State of West Bengal & Ors.) and WPA 6447 of 2024
(Chetan Agarwal & Anr. Vs State of West Bengal &
Ors.), is under challenge in this appeal filed by one of
the writ petitioners i.e. Nand Kishor Seth. The writ
petitions are pending before the learned Single Judge
and were directed to be listed on April 23, 2024. We
are told that the writ petitions have been adjourned till
May 14, 2024.

The present appellant is the owner of premises
no.95, G. T. Road, P. O. Salkia, P.S. Golabari, Howrah-

711106, under Ward No.15 of Howrah Municipal Corporation (in short “HMC”). It appears that on an earlier occasion, an order of demolition of unauthorized construction made by the appellant at the said premises, was passed by HMC. The appellant challenged such order of demolition by filing WPA 5491 of 2023.

The learned Single Judge, after considering the documents disclosed by the writ petitioner therein (appellant herein), came to the conclusion that there may be a sanctioned building plan in support of the impugned construction i.e. 6th to 9th floors of the building in question. The learned Judge disposed of the writ petition with the following observations and directions:

“As there are sufficient materials on record to suggest that the structure in question may have been constructed upon obtaining sanction from the Corporation, accordingly, the Corporation is restrained from giving any effect or further effect to the impugned order of demolition. The Commissioner of the Howrah Municipal Corporation or his delegate is directed to give an opportunity of hearing to the petitioner for production of all necessary documents in connection with the subject structure and verify the documents produced by the petitioner.

After ascertaining the genuinity of the documents of the petitioner, the concerned officer will take a decision as to whether the construction is an unauthorized one or not. A decision shall be taken in the matter at the earliest but positively within a period of four months from the date of communication of a copy of this order.

An opportunity of hearing shall be granted to the petitioner and all other necessary parties prior to taking a final decision in the matter.

It will be open for the petitioner to apply before the Commissioner or his delegate seeking permission for reconstruction of the portions that have been demolished and a decision shall be taken with regard to permitting reconstruction after verification of the documents produced by the petitioner and after ascertaining whether the construction in question is an authorized one or not.”

It appears that on February 23, 2024, HMC issued a notice to the appellant herein and all residents and occupiers of premises no.95, G. T. Road, Howrah, for vacating the unauthorized portion of the said premises to enable demolition thereof.

Challenging the said notice, the appellant herein approached the learned Single Judge by filing WPA 6146 of 2024. Other persons claiming to be tenants of the unauthorized portion also challenged the same notice by filing WPA 6149 of 2024 and WPA 6447 of 2024. All the three writ petitions were taken up for hearing together by the learned Single Judge. At the hearing before the learned Judge on April 9, 2024, an order of the Assistant Engineer-in-charge, Building Department, HMC passed on April 8, 2024, was produced. The said order reads as follows:

“Pre:95, G.T. Road, P.S. Golabari, W/No-15, Howrah-711106.

In compliance to the order of Hon’ble Justice Amrita Sinha, dated 21.06.2023 the hearing was taken wherein the petitioners and respondents were all present.

That the Respondent Nand Kishor Seth attended the hearing and he was shown one letter issued by father of the petitioner Late Ram Shirimani Seth where he stated that one permission was granted by the Municipality for construction of vide BR No.602 of 1981/82 388 of 1983/84 and 1064/1983-84 for construction of G+9 building. He has

produced sanction plan for construction G+5 building vide BR No.388 of 1983-84.

Original plan was sanctioned vide BR-388 of 1983-84. The said file is not available in the Department now. Hence unauthorized area of G+5 building is not calculated due to non availability of sanctioned plan. Only unauthorized area from 6th floor to 9th floor is equal to 922 sqm. more or less.

Hence

ORDER

That the Respondents have violated the HMC Act 1980 and KMC Building Rules 2009 as extended to Howrah and the respondents are hereby directed to cause Self Demolition of the unauthorized constructions and deviated portions as mention in the Inspection Report within 15 days from the date of receipt of this order and in default HMC will cause demolition of the unauthorized construction and deviated portions and the costs of such demolition will be borne by the respondents.”

Before the learned Single Judge, the appellant argued that it is true that the original building plan was for construction of a G+5 storeyed building. However, application was made for construction of four additional floors. The application fees were deposited. The plan was in fact sanctioned and only thereafter, the additional four floors were raised. HMC received property taxes in respect of the said four floors. All the documents disclosed by the appellant including correspondences exchanged with HMC would indicate that there is a sanctioned plan. Unfortunately, the appellant has not been able to trace out a copy thereof from his records. A further detailed hearing should be granted to the appellant by HMC prior to implementing the order of demolition of the alleged unauthorized floors.

Learned Single Judge rejected the argument made by the appellant herein. The learned Judge noted that no document is forthcoming either with regard to the sanction or with regard to the fees deposited for sanction of the building plan for construction of the four additional floors. There is nothing to suggest that the proposal for construction of four additional floors was accepted or sanctioned by HMC. Acceptance of tax or mutation does not amount to regularization or legalization of illegal construction. The learned Judge noted that the building in question is standing in a very congested area and the spaces around the subject structure are minimal. The learned Judge passed the following order:

“The parties are directed to act in accordance with the direction passed in the order dated 8th April, 2024 by the Assistant Engineer in-Charge, Building Department, Howrah Municipal Corporation, within the time limit as stipulated therein. If the order is not acted upon, it will be open for the Corporation to take necessary steps to act in accordance with law.

Be it recorded that copy of the order dated 8th April, 2024 has been handed over to the learned advocates representing all the parties in Court today.

The Additional Deputy Commissioner of Police, Howrah Police Commissionerate is directed to render adequate police protection the men and agents of the Howrah Municipal Corporation as and when requested at the time of implementing the order of demolition.

Howrah Municipal Corporation is directed to affix the order dated 8th April, 2024 at various conspicuous places of the subject structure to make the occupiers of the structure aware that the 6th, 7th, 8th and the 9th floor of the structure are unauthorized and are liable to be demolished soon. The occupiers of the aforesaid structure will be at liberty to approach the Corporation within 22nd April, 2024 with

prayer for extension of time for implementation of the order of demolition.

The writ petitioners in WPA 6149 of 2024 and WPA 6447 of 2024 who are the tenants of the subject structure seek extension of time for vacating. It has been submitted that they do not have any other alternate accommodation and time may be granted to them for moving out of the portion which is liable to be demolished.

The tenant petitioners are directed to file an undertaking before this Court by way of affidavit disclosing the time period within which they would vacate the subject structure.

Let a copy of the undertaking be served upon the learned advocate representing the Corporation in advance.”

Being aggrieved, one of the writ petitioners, being the owner of the premises, has come up by way of this appeal.

We have heard learned Advocate for the appellant at some length. Learned Advocate brought to our notice the correspondence exchanged between HMC and the appellant. A document showing payment of a fine of Rs.25,000/- by one Sri Ram Sreewani Seth, who the appellant claims was his father, has been placed before us. Learned Advocate argued that this fine was paid for regularization of the unauthorized construction.

We are unable to grant any relief to the appellant. There is no document on record which will show that a building plan was sanctioned for the additional four floors. We do not know for what purpose, the fine of Rs.25,000/- was paid. There is no provision in the Howrah Municipal Corporation Act for

regularizing entire floors constructed without obtaining requisite permission from the competent authority. The entire controversy could have been resolved by the appellant producing the sanctioned plan in respect of the additional four floors. He is unable to do so. HMC specifically says that never ever any building plan was sanctioned in respect of the additional four floors.

In view of the aforesaid, we find no infirmity in the order under appeal. The unauthorized portion of the building must be demolished. This appeal and the connected application, therefore, fail and the same are dismissed.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Prasenjit Biswas, J.)