

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

FMA 775 of 2024

**Sk. Nizamuddin
Vs.
Principal Secretary, & Ors.**

For the Appellant	:	Mr. Bhagbat Chaudhuri
For the State	:	Mr. Indranil Roy Mr. Tapas Ballav Mandal
For respondent no. 9	:	Mr. Debabrata Saha Roy Mr. Debasrati Chakraborti
For Howrah Zilla Parishad	:	Ms. Mekhla sinha Ms. Malabika Roy Dey
Heard on	:	17.09.2024 & 23.09.2024
Judgment on	:	23.09.2024

Joymalya Bagchi, J.:-

1. Appellant had approached the Hon'ble Single Judge, inter alia, praying for setting aside order dated 5.6.2023 whereby the district engineer had rejected his prayer for demolition of a G+4 building which had been constructed in violation of the sanction plan and relevant building rules. Appellant has also assailed the order of

regularisation of Howrah Zilla Parishad with regard to the said deviation. Relying on the report of the engineer, Hon'ble Single Judge held the deviations are minor and had been regularised. Accordingly, the writ petition was dismissed.

2. Learned counsel for the appellant contends Hon'ble Single Judge failed to consider the regularisation order had been assailed in the writ petition.
3. Learned counsel for the private respondent submits regularisation was done as per Rule 15 of the Howrah Zilla Parishad Bye laws, 2005.
4. We have considered the submissions of the parties in light of the materials on record. Appellant/writ petitioner had approached this court in WPA 21934 of 2022 challenging inaction of the respondent authorities to take steps against the illegal construction of a G+4 structure without valid permission. Hon'ble Single Judge directed the matter to be considered by the district engineer, Howrah Zilla Parishad. Pursuant thereto, inspection was held at the premises and report of the assistant engineer, Howrah Zilla Parishad was placed on record. After considering the report and giving opportunity of hearing to the parties, the district engineer held the deviations beyond the sanction plan are minor and the said deviations had been regularised under Rule 15 of the Howrah Zilla Parishad Bye laws, 2005. Hon'ble Single Judge refused to interfere with the decision of the district engineer, *inter alia*, on the ground the regularisation order dated 23.9.2022 had not been assailed by

the appellant. However, in prayer (b) of the writ petition, the appellant had assailed the regularisation order. It is also pertinent to note the report of the assistant engineer does not mention the nature and extent of deviation of the construction vis-a-vis the sanctioned plan with regard to Floor Area Ratio (FAR) etc. which is said to have been regularised.

5. In such view of the matter we consider it prudent to remand the matter before the Hon'ble judge having jurisdiction to consider the writ petition afresh particularly in respect of prayer (b) in the writ petition. In order to adjudicate the regularisation order, Hon'ble Single Judge shall be at liberty to direct fresh inspection of the premises, if necessary, to determine the nature and extent of eviations which had been regularised. Respondents are at liberty to file affidavit-in- opposition to the writ petition within one week after vacation. Reply if any, be filed one week thereafter.
6. With these directions, appeal is disposed of.
7. There shall be no order as to costs.
8. Urgent Photostat certified copy of judgment, order if applied for be given to the parties on compliance of all formalities.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)