

Ml- 04.03.2024
117 Ct.15
rkd

W.P.A. 17183 of 2019

M/s. Sultania Realtors Pvt. Ltd. & Ors.

-vs-

Howrah Municipal Corporation & Ors.

Mr. Debjit Mukherjee,
Ms. Susmita Chatterjee,
Mr. Kaustav Bhattacharya,
Ms. Sinjini Chakroborty,
Ms. Priyanka Jana

....for the petitioners.

Mr. Sandipan Banerjee,
Mr. Ankit Surekha

....for the Howrah Municipal Corporation.

In the writ petition order of demolition of deviated portion of the premises in question dated 3rd August, 2019 passed by the Executive Engineer (Building Department), Howrah Municipal Corporation has been questioned.

It has been submitted on behalf of the learned advocate representing the petitioners that for making construction an application was made to the Howrah Municipal Corporation for according sanctioned plan and in response thereto first sanctioned plan was accorded on 19th May, 2015 which remained valid up to 24th June, 2020.

It is also submitted on behalf of the petitioners that due to certain deviations made while making construction petitioners had to apply

for grant of another sanctioned plan and, subsequently, same was accorded on 20th February, 2019. It is contended that meanwhile a proceeding was initiated by the Howrah Municipal Corporation on the allegation of making unauthorised construction de hors the sanctioned plan issued in favour of the petitioners and the impugned order was passed on 3rd August, 2019 whereby direction was given upon the petitioners to demolish the deviated portion at the ground floor to 4th floor at the cost of the petitioners.

While questioning the decision of demolition dated 3rd August, 2019 it has been submitted that it transpires from the said demolition order that stop work notice was issued on 1st October, 2018 and pursuant thereto date of hearing was fixed on 9th October, 2018 and on 31st July, 2018 which is prior to issuance of second sanctioned plan on 20th February, 2019. According to the petitioners the said second sanctioned plan which was accorded in favour of the petitioners was not taken into consideration while passing the order of demolition.

Howrah Municipal Corporation is represented by learned advocate who has made an attempt to defend the decision of the Corporation

directing the petitioners to demolish the deviated portion.

Having considered the submissions made on behalf of the parties and on perusal of the materials available on record, it appears that the demolition order which is impugned in this writ petition was issued on 3rd August, 2019 by the Executive Engineer (Building Department), Howrah Municipal Corporation which is after the second plan which was sanctioned in favour of the petitioners on 20th February, 2019 but the basis of formation of opinion as it appears on perusal of the demolition order dated 3rd August, 2019 is the hearing which was fixed on two dates i.e. on 9th October, 2018 and on 31st July, 2018.

At the time of considering the issue by the concerned authority of Howrah Municipal Corporation on 9th October, 2018 and 31st July, 2018 the plan which was sanctioned in favour of the petitioners in view of deviation made during course of construction dated 20th February, 2019 was not accorded; therefore there was no scope so far the concerned authority of the Corporation to take into consideration the sanctioned plan dated 20th February, 2019 while hearing the issue on the aforesaid two dates since the plan was sanctioned

subsequently, on 20th February, 2019. The same needs to be taken into consideration while taking decision whether the deviated portion at the building in question are required to be demolished or not.

In view of aforesaid situation the demolition order dated 3rd August, 2019 stands set aside.

The concerned authority of Howrah Municipal Corporation is directed to revisit the issue upon holding inspection at the site in question within a period of twelve weeks from date.

The inspection to be made on behalf of the Howrah Municipal Corporation within four weeks from date upon putting the petitioners on notice and thereafter on granting opportunity of hearing to the petitioners and other interested parties the decision to be taken within the aforesaid time taking into consideration the plan which was sanctioned dated 20th February, 2019.

The decision to be taken by the concerned authority of Howrah Municipal Corporation shall be communicated to the petitioners within one week thereafter.

With the aforesaid direction, the writ petition stands disposed of.

However, there shall be no order as to

costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Saugata Bhattacharyya, J.)