

04.07.2024
Sl.No.122
Ct. No.15
S.A.

WPA 18032 of 2018

**Amal Mondal
-vs-
Howrah Municipal Corporation & Ors.**

Mr. Mihir Kumar Das
Ms. Indrani Nandi

...for the petitioner

Ms. Sima Adhikari
Ms. Kakali Naskar

...for the State

Mr. Sandipan Banerjee
Mr. Ankit Sureka

....for Howrah Municipal Corporation

Mr. P. R. Chakrabarti

...for private respondent

The writ petitioner challenges a retention order passed by the Commissioner of the Howrah Municipal Corporation, which regularised an unauthorised construction undertaken by respondent No. 7.

It has come to light that respondent No. 7 constructed a single-storied residential building without obtaining the necessary permission from the Corporation. Upon detection of this unauthorised construction, the Corporation issued a 'stop work' notice in accordance with the Howrah Municipal Corporation Act, 1980. Following this, a hearing notice was issued to respondent No. 7, who, during the hearing, acknowledged the construction of the single-storied building and admitted to his fault in raising the construction without the requisite permissions. Consequently, on August 13, 2014, the

Corporation issued a self-demolition notice to respondent No. 7.

In response to the self-demolition notice, respondent No. 7 submitted an as-made plan on September 6, 2014. His prayer was placed before the Borough Committee of the Corporation, which convened on September 25, 2014, and resolved to withdraw the case concerning the unauthorised construction upon the payment of appropriate retention fees.

In accordance with this resolution, respondent No. 7 deposited Rs. 46,080 (forty-six thousand and eighty rupees), leading to the regularisation of the unauthorised construction.

Subsequently, after the regularisation was granted by the Corporation, the writ petitioner filed WP No. 3323 (W) of 2015 (Amal Mondal vs. Howrah Municipal Corporation & Ors.) before this Court, seeking an order for the demolition of the aforementioned construction.

A learned Single Judge of this Court passed a demolition order on January 29, 2018. Respondent No. 7 then appealed the order in MAT 248 of 2018 (Prasenjit Karar vs. Amal Mondal & Ors.), and a Division Bench of this Court overturned the Single Judge's order on June 11, 2018. The Division Bench

clarified that its decision did not preclude the writ petitioner from pursuing any statutory remedies available under the law.

In light of the Division Bench's order, the present writ petition challenges the retention order dated September 29, 2014, as well as its implementation order dated August 13, 2014. The learned advocate representing the petitioner contends that the Howrah Municipal Corporation Act, 1980, does not provide for the retention of unauthorised constructions.

The petitioner cites the judgment reported at 2014(4) CHN (Cal) 296 (Ghanashyam Das vs. Kolkata Municipal Corporation), issued by a learned Single Judge, to assert that unauthorised constructions cannot be regularised under any circumstances. It is argued that since respondent No. 7 constructed the building without a sanctioned plan, it should not have been retained merely upon the payment of fees as directed by the Howrah Municipal Corporation.

On behalf of respondent no. 7, it is contended that the decision to retain unauthorised constructions is at the discretion of the Corporation. Attention is drawn to the term “may” as used in Section 177(1) of the Howrah Municipal Corporation Act, 1980. Additionally, the petitioner relies on a judgment by a Division Bench of this Court reported at AIR 1972 Cal 459 (Purusottam Lalji vs. Ratan Lal Agarwalla),

arguing that if a violation of the rules is found, the Commissioner has discretion not to order demolition, provided that the infraction is minor and does not affect the sanitation or ventilation of the building in question or adjoining premises.

In my opinion, considering the facts of the present case, the discretion exercised by the Howrah Municipal Corporation in regularising the construction should not be interfered with.

Section 177 of the Howrah Municipal Corporation Act, 1980 has been amended by Howrah Municipal Corporation (Amendment) Act, 2017, with effect from September 18, 2017, in the following manner:

“5. In sub-section (1) of section 177 of the principal Act,—

- 1) after the second proviso, the following proviso shall be added:—

“Provided also that the Commissioner may by order, on such terms and conditions and on payment of such fees as may be prescribed by regulations, regularize the minor unauthorized erection, or execution of any minor work without sanction under this Act, or minor deviation from the 13 sanctioned plan or execution of any minor erection or work in contravention of any sanctioned plan under this Act or the rules or the regulations made thereunder, as the case may be: Provided also that the Commissioner may, by order, delegate his powers and functions under the first and the second proviso of this sub-section to

the Special Officers, appointed by the Commissioner with the approval of the State Government on such terms and conditions as may be determined by the Corporation, and the expenses for payment of such officers shall be borne on from the Municipal Fund.”;

(2) the ‘Explanation’ shall be renumbered as ‘Explanation-II’ and before the ‘Explanation’ so renumbered, the following ‘Explanation’ shall be inserted:— “Explanation I—For the purpose of this section ‘minor unauthorised erection, minor work, or minor deviation’ shall be such as may be determined by regulations.”.

In view of the above judgment reported at 2014(4) CHN (Cal) 296 (Ghanashyam Das vs. Kolkata Municipal Corporation) should not stand in the way of regularization of unauthorized construction in a deserving case.

The determination of whether a particular unauthorised construction should be retained lies within the purview of the Commissioner, pursuant to Section 177(1) of the Howrah Municipal Corporation Act, 1980, especially when the nature of the infraction or deviation from the sanctioned plan is minor. The Commissioner is afforded discretion in this matter.

It is noteworthy that while the Kolkata Municipal Corporation has prescribed regulations allowing for the regularisation of unauthorised constructions, no such regulations currently exist under the Howrah Municipal Corporation Act, 1980.

A minor construction beyond the scope of the sanctioned plan but in compliance with the Corporation's regulations building may be considered for retention. Conversely, when construction significantly deviates from municipal regulations or lacks a sanctioned plan altogether, the Corporation should refrain from exercising its discretionary power to regularise such construction. In cases involving minor residential constructions, without any commercial purpose, the Corporation retains the authority to decide in favour of regularisation. No rigid formula can be prescribed for such regularisation matters; each case must be evaluated based on its specific circumstances. I have outlined some factors that the Commissioner should consider when addressing a prayer for regularisation.

The learned advocate for the Howrah Municipal Corporation indicates that, as a matter of practice, the Corporation permits retention in certain instances. The construction in question is identified as a residential property, built between 2013 and 2014 and regularised in 2014.

Though in the present case the regularisation order was passed on September 29, 2014, before the Howrah Municipal Corporation (Amendment) Act, 2017, came into force, it must be noticed that the writ petitioner has challenged the regularisation order

after more than three years from the date of regularisation. Although the Division Bench directed the petitioner to pursue statutory remedies, the appropriate course of action was to appeal to the Building Tribunal within a 30-day limitation period. The writ petition fails to demonstrate how the petitioner has been prejudiced or has suffered due to the regularisation order.

I am not inclined to interfere with the order of regularisation considering that the building in question is the residential house of the petitioner and the elapsed time since the regularisation order was issued.

Accordingly, **WPA 18032 of 2018** is dismissed.

(Kausik Chanda, J.)