

Court No. 2
20.8.2024
(Item No. 31)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 20430 of 2024

Md. Anwar alias Anwar Ali
VS
The Howrah Municipal Corporation & Ors.

Mr. Anuvab Sinha
Mr. Ataur Rahman
.... For the petitioner
Mr. Sandipan Banerjee
Mr. Ankit Sureka
Ms. Utsa Dutta
.... For Howrah Municipal Corporation

Upon urgency being pleaded on behalf of the petitioner and in view of the determination being assigned before this Court, this writ petition has been taken up for consideration by publishing the same in today's cause list.

Mr. Anuvab Sinha, learned counsel appears for the petitioner.

Mr. Sandipan Banerjee, learned counsel appears for respondent Nos. 1 to 5.

Respondent Nos. 6 and 7 are not represented.

This is the second round of writ litigation in connection with the self-same premises. When the Municipal Corporation decided to demolish the self-same premises, previously a writ petition was filed being **W.P.A. 2920 of 2022** by another person claimed to be interested in the premises. The said writ petition was disposed of by a co-ordinate bench by its order dated **September 14, 2022** at **page 67** to the writ petition with a direction upon the respondent

No. 4 to dispose of the representation of the petitioner against such demolition process after granting an opportunity of hearing to the interested parties and then to pass a reasoned order.

Mr. Anuvab Sinha, learned counsel appearing for the petitioner submits that, the interested parties who are interested with the said premises were heard by the respondent No. 4 following the mandate of the co-ordinate bench dated **September 14, 2022** but thereafter no reasoned order was furnished to such interested persons interested on the premises including this petitioner. Mr. Sinha then places a notice issued by the Inspector in-charge, Howrah Police Station alleged to have been pasted on the premises where under the occupiers of the premises including the landlords have been requested to vacate the building immediately. A copy of such notice placed before this Court is taken on record. Mr. Sinha submits that, unless the reasoned order passed by the authority in terms of the said co-ordinate bench direction dated **September 14, 2022** is made over to the petitioner they cannot avail of their statutory remedy of appeal in terms of **Sub-section 3 of Section 177** of the **Howrah Municipal Corporation Act, 1980**.

The learned counsel appearing for the Howrah Municipal Corporation Mr. Banerjee submits that, there has been a construction of **G+5** building on the

self-same premises without any sanction plan. Several flat owners have purchased flats erected thereupon though no plan for the relevant construction has ever been sanctioned by the concerned Municipal Corporation.

After considering the rival contentions of the parties and upon perusal of the materials on records and on a meaningful reading of the averments made in the writ petition, it appears to this Court that, the petitioner has not made a single statement in its writ petition that, the construction at the said premises had been done after obtaining valid sanction plan from the jurisdictional Municipal Corporation.

When the petitioner has challenged the action taken by the Municipal Corporation for demolition of the premises, the first and foremost averment is required to be pleaded in the writ petition that, the construction has been made in terms of a valid sanction plan sanctioned by the Municipal Corporation. In absence of such pleadings, this Court is of the firm view that, this Court shall not intervene with the steps for demolition taken by the Howrah Municipal Corporation.

Learned counsel appearing for the Howrah Municipal Corporation, on instruction from his clients, submits that Howrah Municipal Corporation shall take steps to proceed with the demolition process after **August 23, 2024**.

Howrah Municipal Corporation shall serve a copy of the reasoned order upon the petitioner and its present advocate on record positively by **tomorrow i.e. August 21, 2024 by 12.00 noon**. The Howrah Municipal Corporation shall also paste the said reasoned order in a conspicuous space at the premises and shall take a photograph for its record. The Municipal Corporation shall also serve the said reasoned order to the petitioner and its advocate on record through electronic mail.

The pasting of the said reasoned order at the conspicuous space at the premises, as directed above, shall be deemed and to be treated as a service of the said reasoned order upon all the occupiers of the premises, landlords and all other persons interested on the premises.

Since affidavits are not called for, the allegations made in this writ petition are deemed not to have been admitted by the respondents.

It is made clear that, this order shall not create any right or equity in favour of the petitioner, if the petitioner does not succeed to its claim strictly in accordance with law.

With the above observations and directions, this writ petition **W.P.A. 20430 of 2024** stands disposed of, without any order as to costs.

In view of the urgency involved in the matter the respective learned advocate on records for the

respective parties shall be at liberty to communicate
gist of this order to the parties to the writ petition.

Photostat certified copy of this order, if applied
for, be furnished expeditiously.

(Aniruddha Roy, J.)