

23.12.2024
Ct. No. 2
ADSL. No. 1
Moumita

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

WPA 25286 of 2024

MD. Rafi

Vs

The State of West Bengal and Ors.

Mr. Tanmoy Mukherjee

Mr. Shiv Shankar Sharma

Mr. K. Reihan Ahmed

.....for the petitioner

Mr. Sandipan Banerjee

Mr. Ankit Sureka

....For Howrah Municipal Corporation.

Mr. Tanmoy Mukherjee, learned advocate appears for petitioner.

Mr. Sandipan Banerjee, learned counsel appears for the respondent nos. 2 to 6.

The respondent no. 1 is not represented.

The private respondent no. 7 is not represented.

Subject to filing of affidavit-of-service in course of the day this order shall be effected.

Upon urgency being pleaded this writ petition has been taken up for consideration before this bench, as the determination has been assigned to this bench for today, by publishing the matter in the daily supplementary cause list.

Petitioner is the nephew and the private respondent no. 7 is the paternal aunt of the petitioner. The paternal aunt alleged that there has been an

unauthorized construction at the paternal house, which is the subject premises in question.

On the basis of the complaint lodged by the respondent no. 7 the **Howrah Municipal Corporation (for short HMC)** issued a show cause notice dated **May 24, 2024 annexure P-2 at page 27** to the writ petition and then passed order of demolition of the unauthorized construction at the premises dated **June 25, 2024 annexure P-4 at page 30** to the writ petition. The petitioner alleges that **Md. Safi** the noticee is the father of the petitioner **who died on April 25, 2018**, as pleaded by the petitioner in paragraph 2 to the writ petition but the show cause notice and the impugned order for demolition were issued way after in **2024**. The notice and impugned order issued in the name of a deceased person is void in the eye of law.

After hearing the parties and upon perusing the materials on record, this court is also of the firm view that, the show cause notice and the followed up impugned order for demolition both were issued in the name of the deceased person much after the death took place. The said show cause notice and the impugned order of demolition cannot sustain in law.

Accordingly, the impugned show cause notice dated **May 24, 2024 annexure P-2 at page 27** and the impugned order for demolition of unauthorized

construction dated **June 25, 2024 annexure P-4 at page 30** to the writ petition stand **set aside** and **quashed**.

However, the jurisdictional authority of HMC shall forthwith issue the necessary show cause notice in accordance with law in the name of the petitioner with a copy marked to the private respondent no. 7 positively on or before **January 10, 2025**.

The petitioner and the private respondent no. 7 shall be at liberty to reply thereto positively by **January 17, 2025**.

The jurisdictional authority of HMC, then after granting the petitioner and the private respondent no. 7 an opportunity of hearing shall dispose of the issue by passing a reasoned order in accordance with law.

It is needless to mention, that if a joint inspection is required to be carried out, the appropriate authority of the HMC upon notice to the petitioner and the private respondent no. 7 shall carry out the said joint inspection at the subject premises and shall prepare a report.

Copy of the report shall be made over to the petitioner and the private respondent no. 7 positively within a period of **one week** of the said joint inspection but before the hearing.

The entire exercise shall be carried out and completed by the jurisdictional authority of HMC

positively on or before **February 15, 2025** in accordance with law.

It is made clear that this order shall not create any right or equity in favour of the petitioner if he does not succeed to his contention before the jurisdictional authority of HMC during the hearing strictly in accordance with law.

The petitioner shall serve a copy of today's order upon the respondent nos. 3, 5 and 7 and a copy of the same shall be marked to the learned counsel appears for the HMC today in court.

Such communication shall be made positively within **two days** from date.

Considering the issue involves demolition of construction of the premises, Mr. Banerjee, learned counsel appearing for HMC today shall also inform his client as to the gist of this order, even without waiting for the server copy of the same.

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

With the above observations and directions this writ petition, **WPA 25286 of 2024** stands **allowed**, without any order as to costs.

(Aniruddha Roy, J.)

