

08&09 28.03.2024
NB Ct. 24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
(Appellate Side)

WPA 25904 of 2023

Amal Kumar Mallick
Vs.
The Howrah Municipal Corporation & Ors.

With

WPA 14702 of 2023

Sanoj Sonkar
Vs.
The Howrah Municipal Corporation & Ors.

Mr. Ayan Banerjee,
Mr. Suman Banerjee.
...for the petitioner in WPA 25904/2023.

Mr. Souvik Das,
Mr. Tapas Chatterjee,
Mr. K. Raihan Ahmed.
...for the petitioner in WPA 14702/2023.

Mr. Lalit Mohan Mahata, AGP
Mr. Rudranil De.
...for the State in WPA 25904/2023.

Mr. Souvik Das,
Mr. Tapas Chatterjee,
Mr. K. Raihan Ahmed.
...for the respondent no.8 in WPA 25904/2023.

Mr. Sandipan Banerjee,
Mr. Ankit Sureka.
...for the HMC.

Mr. Ayan Banerjee,
Mr. Suman Banerjee.
...for the private respondent in WPA 14702/2023.

Mr. Tapas Kr. Adhikari
...for the State in WPA 14702/2023.

The matter relates to the unauthorised construction at
premises no.2/3, Amritalal Pyne Lane, Ward-27 Borough-IV,

Howrah Municipal Corporation. An order of demolition was passed by the Howrah Municipal Corporation on 4th November, 2023.

Amal Kumar Mallick is aggrieved by the order of demolition and challenges the same whereas Sanoj Sonkar prays for implementation of the same.

It appears that prior to the order of demolition being passed, a joint spot inspection was conducted in the presence of the petitioner, the private respondents and the engineers of the Howrah Municipal Corporation where it was found that the approximate roof area is 112 sq. meter per floor, almost no open spaces are left at any side though there is a partition attachment with premises no. 2/3/1, Amritalal Pyne Lane on the north side. There is an old two storied building along with staircase headroom in the 2nd floor.

Despite repeated opportunities granted to the petitioner Amal Kumar Mallick, no building plan for raising construction has been produced. The Howrah Municipal Corporation directed demolition of the unauthorised construction in terms of Section 177(1) of the Howrah Municipal Corporation Act, 1980.

According to Amal Kumar Mallick, the structure in question is a very old one. Complaint was lodged by the private respondent Sanoj Sonkar out of vengeance and subsequently, the Howrah Municipal Corporation has passed the order of demolition. It has been submitted that the structure was duly assessed and taxes paid in respect of the same.

From the report filed by the Howrah Municipal Corporation it appears that the structure is comprised of one

partly two-storied house of upper two rooms, part of two rooms, lower three rooms, part of a room over about 01 cottah, 11 chittacks and 8 sq.ft. of land with passage.

Law permits the Corporation to take steps against any unauthorised construction despite the same being assessed and despite taxes being paid for the same.

In the instant case, it appears that the ground and the 1st floor of the subject structure may be in existence from the year 1993, but the structure in the 2nd floor of the subject premises came into existence later on. No plan has been obtained for making such construction.

The Howrah Municipal Corporation has already passed the order of demolition on 4th November, 2023.

As the G+1 storied construction is in existence for more than 30 years, the Corporation is directed to reconsider as to whether the structure is required to be pulled down at this stage. Any construction over and above the G+1 storey, however, is required to be demolished at once, especially because of the submission made by the learned advocate representing the Corporation that the said portion is dangerous and may collapse at any point of time causing irreparable harm and loss to human lives and property.

The Corporation shall take a decision with regard to the ground and the 1st floor of the subject structure within a period of four months from the date of communication of this order. A reasoned order shall be passed and communicated to the parties immediately thereafter.

As regards the construction on the 2nd floor, the same is required to be demolished forthwith by the Corporation as the petitioner has failed to self-demolish the same in terms of the demolition order dated 4th November, 2023.

It is made abundantly clear that the Court is not entering into the argument and counter argument made by the parties with regard to the construction of the ground and the 1st floor and it will be open for the Corporation to decide the legality and validity of the construction in accordance with law. The Corporation shall not be swayed by the fact that taxes were paid by the person responsible in respect of the subject structure.

Both the writ petitions stand disposed of.

Urgent certified copy of this order, if applied for, be supplied to the parties expeditiously, on compliance of usual legal formalities.

(Amrita Sinha, J.)