

05.08.2025
ml. No.22
Ct.3/ tkm

W.P.A. 78 of 2023
(Ashoke Kumar Paul Vs. State of West Bengal & Ors.)

Mr. Sourav Roy

... .. for the petitioner

Mr. Sandipan Banerjee
Mr. Santanu Chatterjee

... .. for HMC

1. The petitioner has preferred the present writ petition assailing the demolition order dated 22.12.2022 passed by the Assistant Engineer of the respondent municipality, whereby the petitioner was directed to demolish the unauthorized construction raised at premises no. 26, Nandy Bagan Bye Lane, Ward no. 10, Howrah.

2. The petitioner claims to be the co-owner of the subject premise and states that the construction was undertaken pursuant to the sanctioned plan duly approved by the competent authority, which permitted construction up to ground plus two (G+2) floors. However, it is an admitted position on record that the petitioner subsequently constructed two additional floors beyond the sanctioned G+2 structure, thereby resulting in a total construction of G+4 storied building. Upon noticing such unauthorized construction, the respondent municipality issued a show cause notice to the petitioner calling upon

him to explain the deviation from the sanctioned plan and to appear for a hearing.

3. However, the record reflects that the petitioner failed to respond to the said show cause notice or to participate in the hearing as scheduled. Consequently, the respondent authority proceeded to pass an ex parte order of demolition dated 22.01.2022 directing the removal of unauthorized construction.

4. The petitioner has challenged the said order of demolition primarily on the ground that the same has been passed in gross violation of principles of natural justice, alleging that no reasonable opportunity of hearing was afforded to the petitioner to present his case.

5. This court has carefully considered the augments advanced by the parties and examined the documents placed on record.

6. It is not in dispute that the construction undertaken by the petitioner exceeds the scope of the G+2 structure sanctioned under the approved building plan. It is an admitted position that the petitioner has constructed two additional floors in clear deviation from the sanctioned plan, thereby rendering the construction unauthorized and illegal.

7. The record unequivocally establishes that a show cause notice was issued to the petitioner prior to the issuance of the demolition order. Despite due receipt of

the notice, the petitioner failed to appear or participate in the hearing. A reasonable opportunity was afforded to the petitioner to present his case. In the absence of any cogent explanation or documentary evidence demonstrating sufficient cause for such non-appearance, the municipal authority was justified in proceeding ex parte. As stated above, the sanctioned plan permitted construction only up to a G+2 structure, whereas the petitioner proceeded to construct two additional floors in clear contravention thereof.

8. The petitioner's contention regarding an alleged violation of the principles of natural justice is wholly without merit. The petitioner was granted an opportunity of hearing but chose not to avail the same. It is a settled position of law that a party who fails to utilize the opportunity afforded to him cannot later be permitted to allege breach of natural justice.

9. Furthermore, it has been categorically submitted by learned counsel for the respondent municipality that, under the applicable municipal laws and building regulations, there exists no provision for regularization of the additional floors constructed in deviation of the sanctioned building plan.

10. In view of the above, the construction raised by the petitioner beyond the sanctioned G+2 structure is wholly unauthorized, impermissible in law, and cannot be allowed to subsist.

10. In light of the above facts and circumstances of the case and keeping in mind the limited scope of judicial review under Article 226 of the Constitution of India, this court is of the considered opinion that no interference is warranted with the impugned demotion order.

11. Accordingly, the present writ petition is devoid of any merit and the same is dismissed.

(Gaurang Kanth, J.)