

16.07.2025
Sl. No.8
tkm

W. P. A. 12422 of 2025

CAN 1 of 2025

CAN 2 of 2025

[Ankit Kumar -Vs- The State of West Bengal & Ors.]

Mr. Sabyasachi Chatterjee

Mr. Ratikanta Pal

... .. for the petitioner

Mr. Sandipan Banerjee

Mr. Ankit Sureka

... .. for the HMC

Re : CAN 1 of 2025

1. The present application being CAN 1 of 2025 is filed seeking restoration of the writ petition which was dismissed for default on 30.6.2025.
2. Learned counsel for the respondent HMC submits that he has no objection if the writ petition is restored.
3. For the reasons stated in the application and the consent given by the respondent corporation, vide order dated 30.6.2025 is recalled and the present writ petition is restored to its original file and number.
4. CAN 1 of 2025 is allowed.

Re : WPA 12422 of 2025

5. Report filed by the respondent Howrah Municipal Corporation is kept on record.
6. The petitioner has filed the present writ petition, challenging the impugned notice dated 29.5.2025 issued by the respondent corporation, whereby the petitioner was directed to vacate the unauthorised portion for carrying out demolition action of the alleged

unauthorised construction at premises no. 116 Sadar Boxi Lane, Ward no. 17, Howrah.

7. It is the case of the petitioner that he is the lawful owner of the flat no. 202, measuring more or less 395 sft. Carpet area. He submits that he had purchased the said property by way of a registered sale deed dated 8.7.2024. The petitioner further asserts that he has been residing in the said flat along with his family since the purchase of the said property. There are other residents, tenants and occupiers in the said building.
8. The petitioner submits that the respondent corporation had affixed a notice dated 29.5.2025 on the outer wall of the above stated property. Said notice stated that certain unauthorised or deviated constructions exist at the premises and that, pursuant to the order of the Commissioner dated 29.05.2025, demolition of such construction would be carried out. All residents were thereby instructed to vacate the premises within 7 days.
9. The petitioner specifically submits that no specific notice of demolition was ever served upon him. Moreover, he was neither afforded an opportunity of hearing nor informed about the nature and extent of alleged unauthorised construction, particularly in relation to his flat no. 202.
10. The petitioner further submits that he came to know about the said unauthorised construction upon making enquiries with other neighbours that writ

petition being WPA 27127 of 2023 titled as *Sanjib Show @ Sandip Kumar Shaw & Anr. vs. The State of West Bengal & Ors.* had been disposed of by a co-ordinate Bench of this court vide order dated 18.12.2023. In that proceeding, the subject matter pertained to the alleged unauthorised construction on the said premises. The Court had directed the respondent corporation to take appropriate steps after affording an opportunity of hearing to all the concerned parties.

11. He further submits that despite clear direction of this Court, the respondent corporation had issued a notice of vacation on 29.5.2025 without granting any opportunity to the petitioner to be heard.
12. Learned counsel for the respondent submits that the present matter has a chequered history. It is submitted that the premises in question was granted a valid sanctioned plan only for G+1 floor. Though in contravention of the said sanctioned plan, the private respondents had constructed the 2nd, 3rd, 4th and 5th floor illegally and in an unauthorised manner.
13. Mr. Banerjee further submits that a stop work notice was issued on 24.2.2023. A hearing was conducted on 16.3.2023. After conclusion of the hearing, a self-demolition notice was issued on 24.4.2023. He asserts that the demolition action was subsequently carried out on 17.7.2023, 1.12.2023, 2.12.2023, 4.12.2023 and 5.12.2023.

14. He further submits that the writ petition being WPA 27127 of 2023 was filed alleging unauthorised construction in the above-mentioned premises. In terms of the direction passed by this court in WPA 27127 of 2023 vide order dated 18.12.2023, a spot inspection was conducted, and the parties were heard. Thereafter, a reasoned order dated 22.3.2024 was passed in furtherance of the said earlier demolition order. Pursuant thereto, the respondent corporation had carried out the demolition on 8.8.2024.
15. He further submits that one of the occupants of the said alleged building had filed another writ petition being WPA 27564 of 2024. In that writ petition a co-ordinate Bench of this court granted six months' time to the petitioner therein to vacate the premises and had stayed the demolition action.
16. Learned counsel for the respondent submits that despite the demolition carried out by the respondent, the private respondent/ builder again reconstructed the demolished portions of 3rd, 4th and 5th floor.
17. He submits that the petitioner has preferred the present writ petition with intent of stalling the ongoing demolition action which has been under process since the year 2023.
18. This court has heard the rival submissions made by the parties and has perused the materials on record.
19. It is evident from the record that the private respondent carried out construction beyond the scope

of the sanctioned building plan, which permitted only a G+1 structure. However, unauthorised construction was undertaken on the 2nd, 3rd, 4th, and 5th floors, in clear violation of the sanctioned plan.

20. Despite the demolition of the 3rd, 4th, and 5th floors, the private respondent proceeded to reconstruct these floors in blatant disregard of the applicable legal provisions and in total violation of law.

21. The petitioner contends that he ought to have been afforded an opportunity of hearing, primarily on the ground that the demolition order was passed without granting him such an opportunity. He asserts that he had purchased the premises in question in the year 2024, subsequent to the original construction and demolition actions.

22. However, this Court finds it difficult to accept the petitioner's claim of ignorance regarding the unauthorised nature of the construction. Notably, actions against the illegal construction had already been initiated by the respondent authority as early as 2023. It is implausible that the petitioner purchased the said flat without any knowledge of the ongoing legal proceedings and the unauthorised status of the construction. It is a settled principle that any prospective purchaser has a duty to exercise due diligence prior to entering into a transaction involving immovable property. Such diligence necessarily includes verification of the sanctioned building plan and the legal status of the construction from the

competent authority. The premises in question had been in existence since 2023, and in light of the demolition measures undertaken by the respondent corporation, the petitioner is reasonably expected to have been aware of the same. Furthermore, the petitioner has failed to produce any document to establish that the flat he purchased was constructed in accordance with a valid and approved plan. In the absence of such material, this Court is unable to accept the plea of ignorance regarding the illegality of the construction or the demolition proceedings related thereto.

23. Learned Counsel for the petitioner submits that this Court, on multiple occasions and in various writ petitions, has granted opportunities of hearing to the owners and occupiers of the upper floors. Since the petitioner contends that he has been denied a similar opportunity of hearing, as extended to other similarly situated individuals, this Court deems it appropriate to direct the respondent authorities to provide the petitioner an opportunity of personal hearing. Accordingly, the petitioner shall appear before the Respondent No. 6, the Assistant Engineer (In-Charge, Building Department), Howrah Municipal Corporation, at his office situated at 4, Mahatma Gandhi Road, Howrah – 711101, on 22.07.2025 at 2:00 p.m., for the said purpose.

24. This order will be deemed to be a notice upon the petitioner, as the learned counsel appearing on behalf

of the petitioner assures this court that the petitioner shall appear before the respondent no. 6 on 22nd July 2025 at 2 p.m. at the above-mentioned location.

25. Thereafter, the Assistant Engineer shall pass a reasoned order within one week thereafter without being influenced by any of the observations made by this court in the present proceedings.

26. Interim order granted earlier, is vacated and CAN 2 of 2025 is rejected.

27. With the above directions, the present writ petition is disposed of.

(Gaurang Kanth, J.)