

21.05.2025
Sl. No.6
tkm

W. P. A. 15185 of 2024
(CAN 1 of 2025)

[Mehboob Khan & Ors. -Vs- The Howrah Municipal Corporation & Ors.]

Mr. Tanmoy Mukherjee
Mr. S Das
Mr. Steven S. Biswas
... .. for the petitioners

Mr. Debanik Banerjee
Mr. Aniruddha Ganguly
... for respondent no. 5

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

1. Affidavit of service is taken on record.
2. The petitioners have assailed the impugned order dated 25.04.2024, issued by the respondent authority, directing the demolition of unauthorized constructions at the 2nd, 3rd, 4th, and 5th floors of the property bearing nos. 239 and 239/2, Bellilious Road, Ward No. 19, Howrah.
3. It is the case of the petitioner he is owner of the above mentioned premises in question. A public interest litigation, being WPA(P) 15 of 2024 (No. 2378 of 2023), was earlier instituted alleging encroachment on public land at the said

premises. Pursuant thereto, the Hon'ble Division Bench, by order dated 18.01.2024, was pleased to direct respondent no. 3, the Assistant Engineer (Building), Howrah Municipal Corporation, to carry out an inspection of the subject premises after giving prior notice to all concerned parties, and to take necessary steps in accordance with law.

4. In purported compliance, respondent no. 3 issued a notice bearing no. 2502/A.E./Bldg/23-24 dated 23.02.2024, but served the same only upon the parties to the said PIL, excluding the present petitioners who were necessary stakeholders. Consequently, an inspection was conducted in the absence of the petitioners, and a report bearing no. 348/A.E./Bldg/24-25 dated 24.04.2024 was prepared. Based on said inspection, respondent no. 3 issued the impugned demolition order dated 25.04.2024.
5. It is an admitted position that the petitioners obtained a sanctioned building plan for a G+2 structure at the said premises. However, they proceeded to construct the 3rd, 4th, and 5th floors without any lawful sanction, thereby rendering such additions unauthorized.

6. Learned counsel for the petitioners contends that the respondent Corporation accepted retention fees amounting to Rs. 99,304/- and Rs. 4,76,671/- on 27.10.2014 and 25.03.2015 respectively, purportedly towards regularization of the unauthorized constructions.
7. Based on the said acceptance of retention charges, counsel for the petitioners argues that the unauthorized structures stand regularized.
8. Per contra, learned counsel for the respondent Corporation places reliance on the inspection report dated 24.04.2024, wherein it is categorically stated that unauthorized constructions exist not only on the 3rd, 4th, and 5th floors, but also on the first and second floors, in deviation from the sanctioned G+2 plan. The respondent Corporation submits that the aforementioned retention fees were accepted solely in respect of unauthorized deviations within the sanctioned G+2 structure, and not for the wholly unauthorized additions comprising the 3rd, 4th, and 5th floors. It is further submitted by the respondent that no retention charges have been paid or accepted for the 3rd, 4th, and 5th floors, which remain wholly illegal and unsanctioned.

9. Learned counsel for the petitioners argues that the minutes of meetings dated 27.10.2014 and 25.03.2015, wherein the retention charges were accepted, do not specify the floors to which such charges pertain.
10. This assertion is disputed by the respondent, who relies upon the inspection report dated 24.04.2024 to show that the payments relates only to deviations from the G+2 sanctioned plan.
11. Upon perusal of the records, this Court finds that the retention amounts paid pertain exclusively to deviations within the G+2 structure, namely: a sum of Rs. 99,504/- corresponding to a deviation of 144.06 square meters at Premises No. 239, and a sum of Rs. 4,76,671/- corresponding to a deviation of 431.85 square meters at Premises No. 239/2. It is further noted that these amounts do not relate to any construction carried out on the 3rd, 4th, or 5th floors.
12. In view of the above, this Court finds no infirmity in the impugned order dated 25.04.2024, which has been passed in due compliance with the order dated 18.01.2024 passed by the Hon'ble Division bench in WPA(P) 15 of 2024 (No. 2378 of 2023). Further, it is

evident that the petitioners were afforded an opportunity of hearing on 15.04.2024.

13. The petitioners have placed reliance on *Patel Narshi Thakershi & Ors. v. Shri Pradyumansinghi Arjunsinghi* [(1971) 3 SCC 844], *Dr. (Smt.) Kuntesh Gupta v. Management of Hindu Kanya Maha Vidyalaya, Sitapur (UP) & Ors.* [(1987) 4 SCC 525], and *Naresh Kumar & Ors. v. Government (NCT of Delhi)* [(2019) 9 SCC 416].

14. However, the factual matrix of the present case is distinguishable, and the principles laid down in the aforesaid decisions are inapplicable to the present controversy. The issue of the Corporation's power to review its own decision is not germane to the present proceedings.

15. In light of the foregoing discussion, the present writ petition is hereby dismissed

16. In view of the dismissal of the writ petition, connected application is also disposed of.

(Gaurang Kanth, J.)