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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 20828 of 2025

Mahabbat Ali Mullick & Anr.
Versus
The Howrah Municipal Corporation & Ors.

Mr. Animesh Paul
Ms. K. Keshri
Ms. M. Upadhyay
... For the petitioners.

Mr. Sandipan Banerjee
Mr. Ankit Sureka
... For the Howrah Municipal Corporation

Mr. Debarshi Brahma
Mr. Subarna Banik
... For the respondent no.5.

1. Affidavits of service filed in Court are taken on record.
2. Challenging the order dated 20th August, 2025 passed by the Assistant Engineer, Building Department, Howrah Municipal Corporation, the instant writ petition has been filed.
3. The matter has a chequered history. The records reveal that being aggrieved with inaction on the part of the municipal authorities to pass an order after conducting hearing on 4th November, 2022 in connection with illegal construction at LR No. 249-251 (R.S.), 127, 128 LR, Khatian No. 191 (R.S), 720 (L.R.) Mouza Jagacha under Ward 47 a writ petition had been filed by the private respondent which was registered as WPA 3751 of 2023.

4. By an order dated 14th June, 2023 such writ petition was disposed of by directing the municipal authorities to take steps and pass an order in furtherance to hearing held on 4th November, 2022.

5. Subsequently an inspection was held on 14th July, 2023. It was found that no new construction was going on at the site and there existed a two-storied building for which no sanction plan could be produced by the person responsible. Accordingly, it was declared that the same to be unauthorized and the petitioner was directed to demolish the unauthorized construction.

6. Being aggrieved a writ petition was filed by the petitioner which was registered as WPA 20511 of 2024. By an order dated 12th June, 2025 a Coordinate Bench of this Court noting that it was incumbent upon the authority to afford a fresh opportunity of hearing before taking a decision was pleased to dispose of the said writ petition by inter alia observing as follows:

“a) The Assistant Engineer-in-Charge, Building Department, Howrah Municipal Corporation, Bourough-VI, shall schedule a hearing on June 25, 2025 at 2.00 p.m. No further notice of hearing is required to be issued to the petitioners.

b) The relevant inspection report shall be provided to learned counsel appearing for the petitioners by learned counsel representing the Howrah Municipal Corporation within seven days from the date of this order.

c) After hearing the petitioner, the Assistant Engineer-in-Charge, Building Department, shall pass a reasoned order in accordance with law and communicate the same to the petitioners.

d) This order is passed with the express consent of the petitioners, who have agreed to be heard by the Assistant Engineer-in-Charge, Building Department, Howrah Municipal Corporation. Consequently, the petitioners shall not be entitled to challenge the jurisdiction of the said officer to adjudicate the matter”.

7. Later, on 16th June, 2025, an additional clause ‘e’ after clause ‘d’ was added to the said order in the following terms:-

“e. Accordingly, the order dated July 24, 2024 passed by the Assistant Engineer, Borough-VII is set aside”.

8. The petitioners thereafter participated in the hearing and had filed written submissions. Following the aforesaid a fresh inspection was conducted at the locale on 9th July, 2025. Though the petitioners claimed to be present at the time of hearing, according to the petitioners the inspection report was not supplied to them. Following the aforesaid, the order dated 20th August, 2025 has been passed

9. Mr. Paul, learned advocate representing the petitioners would contend that according to the petitioners the construction standing on the property in

question is a very old building and the construction has come up at least prior to the period when the provisions of Howrah Municipal Corporation was extended to the area where the petitioners' building stands. According to him, since at the relevant point of time the provisions of Howrah Municipal Corporation was not applicable, there was no question of the petitioners obtaining any sanction plan. According to him, both the petitioners as also the private respondents who happens to be the brother of the petitioners had jointly filed self-assessment in respect of the property in the year 2005 and a document in that regard has also been disclosed. According to the petitioners, the municipal authorities did not decide on the objection raised and had mechanically passed the demolition order.

10. Mr. Banerjee, learned advocate appears on behalf of Howrah Municipal Corporation. He would submit that the petitioners were present at the time of inspection. The inspection report dated 15th July, 2025 as has been placed before this Court is also taken on record. He would submit that the petitioners were afforded opportunity of hearing and only after the petitioners could not produce any document to establish that the petitioners had the authority to construct the building that the above order has been passed.

11. Mr. Brahma, learned advocate appears for the private respondent. He submits that on the plot in question there were two adjacent buildings, one

belonging to the petitioners and the other to the private respondent. Under similar set of circumstances the building belonging to the private respondent was demolished at the instance of the petitioners. Since, the building of the private respondent did not survive justice would be sub-served if the petitioners' building is also demolished.

12. Having heard the learned advocates appearing for the respective parties I find that admittedly at the time of inspection held on 14th July, 2023 no new construction was detected. The inspection report further records that a two-storied building appears for which no sanction plan could be produced. Subsequently, the order passed by the municipal authorities on 25th June, 2025, pursuant to the direction passed by a Coordinate Bench of this Court on 14th June, 2023, was set aside since the petitioners were not afforded with an opportunity of hearing by an order dated 12th June, 2025. The order further records that the Assistant Engineer In-Charge, Building Department shall pass a reasoned order in accordance with law. Pursuant thereto though an inspection was conducted and though, the petitioners were present in course of such inspection, admittedly, such inspection report was not disclosed to the petitioners though the same was relied upon by the municipal authorities. This apart, I also notice that the situation as to whether the property in question was in existence prior to the provisions of the Act being made applicable has also not

considered though a specific objection in that regard has been raised. It is true, that the petitioners could not demonstrate any sanctioned building plan issued by the Howrah Municipal Corporation. On this score I find if the area was not covered by the provisions of the said Act, the question of petitioners producing any sanctioned building plan would not have arisen. Simply because the building of the private respondent had been demolished the same cannot be the ground for the municipal authorities to take steps for demolition of the petitioners property at the instance of the private respondent. In my view the order passed by the Assistant Engineer-in-Charge, Building Department, Howrah Municipal Corporation does not record or deal with the relevant considerations and appears to be perverse. The objections noted by the petitioners have not been considered at all. The said order appears to be prepared in a mechanical manner. The order is accordingly set aside. The matter is remanded to the office of the municipal authorities. The matter shall be decided by office of the Assistant Engineer-in-Charge Building Department by any other incumbent excepting the person who has considered this cause.

13. Needless to note that the hearing officer shall give an opportunity of hearing to the petitioners and all documents disclosed shall be relied on by the hearing officer for arriving at the decision. The hearing officer must positively ascertain the period when the construction had taken place before taking any further

steps for demolition of construction which happens to be the residential building of the petitioners. Such find appear to a relevant consideration as the area where the building is situated appears to be an added area under the extended jurisdiction of the Howrah Municipal Corporation in the year 1984.

14. With the above observations and directions, the writ petition is disposed of.

Urgent photostat certified copy of this order, if applied for be given to the parties upon compliance with the requisite formalities.

(Raja Basu Chowdhury, J.)