

18.08.2025.
Item Nos. 54.
Court No. 13
pk

**F. M. A. 727 of 2025
With
CAN 2 of 2024**

**Sanjay Kumar Panja
Versus
State of West Bengal and others**

Mr. Sourab Guhathakurta,
Mr. Anup Kumar Manna,
Mr. Sanjoy Ghosh
... For the appellant.

Mr. Sandipan Banerjee,
Mr. Ankit Sarkar
... For the Howrah Municipal Corporation.

Mr. Subhrangsu Panda,
Ms. Mithu Singha Mahapartra
... For the respondent no. 9.

1. The appeal is directed against an order dated 3rd August, 2023 passed by a Single Bench of this Court in WPA 9944 of 2018. The subject matter of challenge in the writ petition was an order of the Howrah Municipal Corporation dated 03.11.2017.

2. By the said order, the Commissioner appears to have ignored the fact that the sanction plan for the building may have expired in the year 2003 or immediately thereafter. The Commissioner, initially passed an order holding that the sanction plan for the building had expired and there was further deviation in the construction effected on the basis of an expired sanction plan. He then passed the impugned order

reversing his earlier order, after the latter was considered by the Mayor-in-Council and remanded back to the Commissioner for consideration afresh.

3. The order of the Commissioner is ex facie contradictory. At paragraph 2 of the order, the Commissioner held that the original sanction plan for construction of five-storied building was valid on 11th September, 2003. The second to fourth floor was admittedly constructed on 20.11.2012. Therefore by the earlier order dated 22nd March, 2016, demolition of the construction made beyond the expiry of the sanctioned plan was ordered.

4. However, the Commissioner, while passing the impugned order on the matter being remanded back for consideration afresh, has held that there is no way of ascertaining as to which portion of the property was being used for commercial purpose. The Commissioner also went on to hold that deviation of 16 square meters is minor and can be remedied under the provisions of the Act.

5. This Court notes that if any construction has been made on the said premises, after expiry of the original sanction plan, the same must be deemed as unauthorized.

6. This Court further notes that the development agreement between the private respondent and stepmother of the appellant, entered into on 14th August, 2012. What follows therefrom is that the

construction must have been made the property after execution of the development agreement and could not have been effected prior thereto.

7. In view of the aforesaid infirmities in the order, this Court is inclined to interfere with the impugned judgment. The order dated 3rd November, 2017 passed by the Commissioner, Howrah Municipal Corporation shall stand set aside.

8. The matter is remanded back to the Commissioner for consideration afresh. Any report or document relied upon by the Mayor-in-Council while taking the decision for reversing the earlier order of the Commissioner, Howrah Municipal Corporation dated 22nd March, 2016 shall be made available to all parties.

9. Needless to mention the Commissioner shall give a personal hearing to all the parties including the appellant, private respondent and pass appropriate orders inter alia on the following issues:

(a) As to whether there was a valid sanction plan at the time when construction was effected in the premises post 2012.

(b) As to whether if there was a valid extended sanctioned plan in respect of the said premises.

(c) As to whether the portions to be used commercially and residentially have been effectively and appropriately demarcated.

(d) Assuming that a valid sanction plan exists as to whether the admitted deviation of 16 square meters can at all be regularized by the HMC.

10. The Commissioner may hear the parties on any other issues and pass appropriate orders, within a period of 2 months from the date of receipt of a copy of this order.

11. With the aforesaid observations, FMA 727 of 2025 is allowed and disposed of. Consequently, all connected applications, if any, shall also stand disposed of.

12. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)