

26.09.2025
Sl. No. 20
Ct No. 3
tkm

WPA 23592 of 2025

**Ananta Paul
Vs
Howrah Municipal Corpn. & Ors.**

Mr. Sanjib Seth
Ms. Kalpita Paul.
...for the petitioner

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

1. The petitioner in the present writ petition has challenged (i) the self-demolition notice dated 24.04.2023 and (ii) the vacation notice dated 30.08.2025, both passed by the Assistant Engineer (In-charge), Building Department, Howrah Municipal Corporation, in respect of Holding No. 6, Dasurathi Dey Lane, P.O. and P.S. Shibpur, Ward No. 33, Howrah Municipal Corporation.

2. The case of the petitioner is that he is one of the co-owners of the land in question. Along with the other co-owners, he had entered into a development agreement dated 03.12.2010 with respondent No. 7 (developer). Pursuant to the said development agreement, and the general Power of Attorney, which was also executed by the petitioner and other co-owners in favour of the respondent no. 7, a G+3 storied sanctioned plan was accorded against the said

premises in question. However, on 24.04.2023, the Assistant Engineer issued a self-demolition notice directing the developers to demolish the 5th and 6th floors of the premises, alleging them to be unauthorized. According to the petitioner, the said notice is erroneous inasmuch as it incorrectly records the building as G+4, whereas the sanctioned plan was for G+3. The petitioner further submits that in reality, the 4th and 5th floors were constructed unauthorisedly, while the 6th floor comprises only a caretaker's room.

3. It is also urged that no notice of hearing was served upon him or upon any of the flat owners. He further submits that the extent of deviation has also not been mentioned in the notice. He had also submits regularization plan in the year 2020 before carrying out the unauthorized construction. He relies on section 177(1) of the Howrah Municipal Corporation Act, 1980, according to the aforementioned Section, it is mandatory that a person should be issued a notice of hearing before the issuance of the self demolition notice. But in the present case, the self demolition notice dated 24.04.2023 has been issued without affording any opportunity of hearing to any of the parties. Subsequently, by the vacation notice dated 30.08.2025, the flat owners were directed to vacate

the premises. The petitioner asserts that there are nine flats situated on the 4th and 5th floors, which would be affected by the demolition action.

4. Learned counsel for the respondent submits that they have acted in accordance with law.

5. This Court has heard the submissions advanced by the learned counsel for the petitioner and has perused the documents on record.

6. On a close scrutiny of the record, the admitted position is that the sanctioned plan for the premises permitted construction only up to G+3. Notwithstanding the sanctioned plan, three additional storeys (described as the 4th, 5th and 6th floors) were raised. The petitioner does not claim to be the owner of any flat situated in those unauthorised portions; rather, he asserts a co-ownership in the underlying land. The unauthorised vertical additions were executed by the developer (respondent No. 7) pursuant to a development agreement and powers granted to the developer. In these circumstances, the following legal propositions emerge with clarity: (a) the right to challenge or seek relief against unauthorised construction principally lies against the person(s) who caused or are responsible for raising the unauthorised construction, i.e., Respondent No. 7; (b) a co-owner who has not acquired proprietary or

possessory rights in the unauthorised portion and who has not shown any distinct legal interest adversely affected by demolition cannot be treated as the aggrieved party for the purpose of impugning a demolition order; and (c) where statutory notices and proceedings have been directed at the person responsible for the contravention, the mere co-ownership of the land does not automatically confer an unqualified right to obstruct or delay enforcement action taken to remove illegal construction. In the present facts of the case, the petitioner has not demonstrated any such specific proprietary right in respect of the unauthorised floors which would render him an aggrieved person entitled to maintain this challenge.

7. Even on the merits of the challenge to the self-demolition order dated 24.04.2023, the petition itself stands vitiated by inordinate delay. The order impugned was passed more than two years prior to the institution of this writ petition. No plausible or intelligible explanation has been furnished for the prolonged inaction. Delay, when unexplained and inordinate, disentitles a litigant to equitable relief in the writ jurisdiction, particularly where such delay has the effect of prejudicing public action or encouraging stale objections. The principle of laches

applies with greater force in cases of unauthorised construction, since public authorities are entitled to take prompt remedial steps to protect public safety and the public interest. A litigant cannot be permitted to sit on his rights and later seek to upset enforcement measures undertaken to remedy a continuing illegality.

8. The materials on record also discloses that relevant statutory notices and show-cause/hearing notices were issued to the developer (respondent No. 7), who undertook and continued construction despite an earlier work-stop direction. The municipal authority's action, on the face of the record, was therefore directed at the responsible party and taken in exercise of its statutory powers to secure compliance with the sanctioned plan. There is no material to suggest that the authority failed to afford the developer an opportunity of hearing, or that it acted in manifest breach of the audi alteram partem principle. The petitioner's complaint that no notice was served upon him does not, in these circumstances, furnish a ground for interference where enforcement action is taken against the offender and proper statutory notice has been issued against respondent n. 7, the developer who is responsible for carrying out the construction. The

absence of notice to the petitioner does not vitiate the proceedings.

9. It is furthermore an admitted fact that the 4th, 5th and 6th floors constitute large-scale unauthorised additions over and above the sanctioned plan of G+3 storied. The petitioner has not produced any statutory provision, scheme or material on record which would entitle such extensive unauthorised construction to be regularised retrospectively. On the contrary, the conduct of the developer in proceeding with construction despite earlier directions points to culpability on his part. In that backdrop, the impugned demolition/vacation directions are plainly within the realm of permissible regulatory action to enforce building laws and to protect structural safety and public interest.

10. Finally, to warrant invocation of the extraordinary writ jurisdiction, the petitioner was required to demonstrate some ground of illegality, mala fides, arbitrariness, gross procedural infirmity or breach of natural justice in the impugned action. The petitioner has failed to discharge that burden. The pleading and documents do not reveal any such taint: there is neither any credible material to suggest malafide on the part of the municipal authority nor any clear procedural lapse which would justify

judicial interference. What the petitioner essentially seeks is for the Court to re-open and re-adjudicate disputed factual questions concerning unauthorised construction and title matters which are more appropriately ventilated before the fora established for civil/title disputes or by the aggrieved purchasers who occupy the unauthorised portions.

11. For all the foregoing reasons, namely, the petitioner's lack of locus in respect of the unauthorised portion, the unexplained and inordinate delay, the absence of any pleaded or proved right to regularisation, the fact that the notices were directed at the developer who continued construction despite stop work orders, and the failure to establish any illegality or mala fide in the municipal proceedings, this Court is not inclined to interfere with the impugned notice.

12. The writ petition stands dismissed. However, there shall no order as to costs.

(Gaurang Kanth, J.)