

**IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE**

**RESERVED ON: 16.12.2025  
DELIVERED ON: 11.03.2026**

**PRESENT:  
THE HON'BLE MR. JUSTICE GAURANG KANTH**

**WPA 2445 OF 2025**

**AMBEE ENGINEERING PVT. LTD. & ANR.  
VERSUS  
THE COMMISSIONER OF POLICE KOLKATA & ORS.**

**Appearance: -**

**Mr. Srijib Chakraborty, Adv.  
Mr. Sumitava Chakraborty, Adv.  
Mr. Snehasish Dey, Adv.**

**.....for the Petitioner**

**Mr. Biswaroop Bhattacharya, Adv.  
Ms. Bratati Pramanick, Adv.**

**.....for the Respondent no. 11**

**Mr. Sandipan Banerjee, Adv.  
Mr. Ankit Sureka, Adv.**

**.....for the HMC**

**Mr. Santanu Kumar Mitra, Adv.  
Mr. Sirsanya Bandopadhyay, Adv.  
Mr. Rajat Dutta, Adv.  
Mr. Bishnupada Jana, Adv.**

**.....for the State**

**WITH  
WPA 25157 OF 2024  
(C.A.N. 1 OF 2025)**

**ATIN KUMAR BANDOPADHYAY  
VERSUS  
HOWRAH MUNICIPAL CORPORATION & ORS.**

**Appearance: -**

**Mr. Biswaroop Bhattacharya, Adv.  
Ms. Bratati Pramanick, Adv.**

**.....For the petitioner**

**Mr. Sandipan Banerjee, Adv.**  
**Mr. Ankit Sureka, Adv.**

**.....for the HMC**

**Mr. Santanu Kumar Mitra, Adv.**  
**Mr. Sirsanya Bandopadhyay, Adv.**  
**Mr. Arka Kumar Nag, Adv.**  
**Mr. Amartya Pal, Adv.**

**.....for the State**

### **JUDGMENT**

#### **Gaurang Kanth, J. :-**

1. The core question in both the matters is whether the Respondent Municipal Corporation was justified in imposing certain conditions based on a purported security threat to the State Secretariat, Nabanna, a declared “security zone” under the notification dated 04.09.2019, while granting sanction for the construction of proposed G+4 residential building at Premises No. 80/2, Kshetra Mohan Banerjee Lane, P.S. Shibpur, Ward No. 33, Howrah-711102.
2. WPA 25157/2024 has been filed by the owner of the said premises, whereas WPA 2445/2025 has been filed by the Developer. In view of the common issue involved, this Court considers it appropriate to dispose of both the matters by this common judgment.
3. The facts leading to the filing of the present writ Petitions are as follows.
4. Mr. Atin Kumar Bandhopadhyay (Petitioner in WPA 25157/2024 and Respondent No. 11 in WPA 2445/2025) (hereinafter referred to as *the ‘Petitioner Owner’*) is the absolute owner of the properties comprised in Howrah Municipal Corporation Holding Nos. 78, 79/28, and 80/2, Kshetra Mohan Banerjee Lane, Post Office and Police Station Shibpur, Ward No. 33, District Howrah, PIN-711102. These holdings stood duly mutated in the name of the Petitioner Owner. Subsequently, the aforesaid holdings were

amalgamated in the records of the Respondent Municipal Corporation as Holding No. 80/2, Kshetra Mohan Banerjee Lane, P.O. and P.S. Shibpur, Ward No. 33, District Howrah, PIN-711102, measuring an area of 6 Cottahs, 9 Chittacks, and 17 sq. ft., more or less, including the common passage.

5. The Petitioner Owner entered into a Development Agreement and a Development Power of Attorney, both dated 22.07.2019, with M/s Ambe Engineering Pvt. Ltd. (hereinafter referred to as *the 'Petitioner Developer'*) for the demolition of the existing old two storied structure and development of the premises by constructing a G+4 storied residential building having a proposed height of 15.49 metres.
6. Pursuant to the Development Agreement and the Power of Attorney, the Petitioner Developer submitted the building plan on 27.02.2020 along with the requisite fees for sanction of the proposed G+4 residential building. The Petitioners also obtained a Fire Clearance Certificate dated 16.10.2020 from the West Bengal Fire and Emergency Services and had earlier conducted a soil investigation in December 2019 for the proposed structure.
7. The premises in question is situated within a 500 metre radial distance from the State Secretariat, *Nabanna*, which has been declared as a "Security Zone" by the Government of West Bengal vide notification dated 04.09.2019 issued in exercise of powers under Sections 243 and 244 of the Howrah Municipal Corporation Act, 1980. Section 244 prohibits the sanction of any building exceeding 15.5 metres in height within a 500 metre radius of such 'Security zones' from the standpoint of security.

- 8.** Although the Petitioner Developer sought permission for a structure having a height of 15.49 metres, the Respondent No. 7 (Commissioner, Howrah Municipal Corporation) vide letter dated 13.10.2020 sought the views and observations of Respondent No. 2 (Commissioner of Police) regarding sanction of the building plan. In response, Respondent No. 3, vide communication dated 29.12.2020, raised two concerns: (i) demolition of the existing structure would generate severe pollution around *Nabanna*; and (ii) a large number of labourers required for demolition and construction could pose a security risk to the State Secretariat. Consequently, by letter dated 23.08.2021, the Petitioners were called upon to explain how these concerns would be addressed.
- 9.** The Petitioner Developer, vide letter dated 23.08.2021, submitted its proposal outlining the measures intended to address and mitigate the concerns raised by Respondent No. 3.
- 10.** Despite receipt of the Petitioner Developer's response, no further communication was issued by Respondent No. 2. Consequently, the Petitioner Developer, vide letters dated 19.01.2022 and 13.04.2022, requested Respondent No. 7 to issue the sanctioned building plan. Respondent No. 7 thereafter forwarded the said representations to Respondent No. 3 seeking its final opinion on the matter. However, no response have been received.
- 11.** In view of the prolonged inaction on the part of the Municipal Authorities, the Petitioner Developer filed WPA 29098/2024, which however came to be dismissed as withdrawn vide order dated 30.04.2024 owing to technical defects.

- 12.** The Petitioner Owner filed W.P. No. 12094/2024 submitting that the existing structure was in a dilapidated condition and seeking permission to demolish the same. This Court, vide order dated 15.07.2024, allowed the said writ petition and directed that the demolition be carried out under the supervision of a Chartered Engineer. The dilapidated structure was accordingly demolished pursuant to this Court's directions.
- 13.** Meanwhile, the Petitioners filed another writ petition being WPA 477/2024 seeking a direction upon the Respondents to sanction the building plan. This Court, vide order dated 24.05.2024, directed Respondent No. 7 to consider the representation of the Developer and to pass a reasoned order after affording an opportunity of hearing to all concerned within 12 weeks. In compliance with the said directions, Respondent No. 7 heard all the parties, including the police authorities, and passed a speaking order dated 24.09.2024 granting conditional permission for construction of a G+4 storied building of height 15.49 metres. The Respondent No. 7 imposed 17 conditions at the instance of Respondent No. 2 for execution of the construction. Aggrieved thereby, the Owner and the Developer have filed the present writ petitions.

**Submission on behalf of the Petitioners**

- 14.** Mr. Srijib Chakraborty, learned counsel appearing for the Petitioner Developer, opened the submissions by contending that under the scheme of the Howrah Municipal Corporation Act, 1980, the exclusive statutory authority to sanction a building plan vests in Respondent No. 7, the Municipal Commissioner. The police authorities, including Respondent No. 3, have no role assigned under the statute in the process of grant or refusal of building sanction.

15. Drawing the attention of the Court to Sections 243 and 244 of the Act, learned counsel submitted that once an area is declared a “Security Zone”, the only restriction statutorily contemplated is the prohibition or regulation of buildings exceeding 15.5 metres in height within a 500 metre radius of such strategic installations, from the standpoint of security. The State Government, by notification dated 04.09.2019, has already exercised this power. Consequently, Section 244 exhausts the field of security related restrictions, and no additional limitations are envisaged by the legislature. Despite this clear statutory framework, Respondent No. 7 unnecessarily and erroneously sought observations from Respondent No. 3, who has no statutory role whatsoever in the sanctioning process.
16. Learned counsel placed reliance on the decision of this Court in ***Maniruddin Bepari v. Chairman of the Municipal Commissioners, Dacca***, reported as ***1935 ILR 295 Cal***, and the judgment of the Hon’ble Supreme Court in ***State of Odisha v. Satish Kumar Ishwardas Gajbhiye***, reported as ***(2021) 17 SCC 90***, to submit that while a natural person may undertake all lawful acts unless prohibited by law, a statutory authority can act only within the four corners of the statute that creates it. In the present case, the Act confers no power upon the police authorities to influence or dictate the terms of building sanction. The conditions imposed by Respondent No. 7 at the instance of Respondent No. 3 are therefore ultra vires, arbitrary, and devoid of legal authority.
17. Learned counsel further assailed specific conditions imposed under the impugned order, especially, Condition No. 4 mandating construction of a ten-foot-high “view cutter” around the roof, Condition No. 5 prohibiting windows or balconies facing the security zone, and Condition No. 16

requiring repeated character verification of occupants. It was submitted that these conditions are excessively restrictive, intrude into the peaceful enjoyment of property, and are wholly beyond the scope of statutory regulation. While granting building sanction, Respondent No. 7 is required to examine only compliance with statutory norms and is not empowered to impose additional constraints not contemplated by law.

- 18.** Learned counsel for the Petitioner Owner further submitted that the impugned order dated 24.09.2024, insofar as it incorporates conditions not traceable to the Howrah Municipal Corporation Act, 1980 or the applicable building rules, is manifestly arbitrary and unsustainable. Reliance was placed on ***Bishambhar Dayal Chandra Mohan v. State of U.P.***, reported as **(1982) 1 SCC 39**, to contend that executive or administrative instructions, including police inputs, cannot curtail lawful proprietary or developmental rights in the absence of express statutory sanction. Since the proposed construction of 15.49 metres admittedly conforms to Section 244 of the Act and all applicable norms, the Respondent Corporation lacked authority to impose extra statutory, precautionary conditions based solely on perceived security concerns.
- 19.** It was further contended that the obligation of Respondent No. 3 is to ensure security and provide protection where threat perception exists, but such responsibility cannot be discharged by imposing restrictions upon adjacent landowners and thereby curtailing their right to use and enjoy their property in a lawful manner.
- 20.** Learned counsel also pointed out that several neighbouring premises, including Premises Nos. 81/2, 78+79/30, and 78+79/5 at Kshetra Mohan Banerjee Lane, all situated within approximately 100 metres of the

Nabanna Security Zone, are multi-storied buildings having windows facing Nabanna. None of these premises are subject to view cutters or occupant verification requirements. The selective imposition of such conditions upon the Petitioners' premises is therefore discriminatory and arbitrary.

- 21.** Reliance was also placed on the compliance report dated 17.02.2025 issued by the Respondent Corporation, wherein it was categorically admitted that Conditions Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16 and 17 have no statutory backing under the Howrah Municipal Corporation Act, 1980 or the KMC Building Rules, 2009, as amended. The report further clarified that the proposed height of 15.49 metres is in conformity with the Government Notification and that no fire clearance is required since the height does not exceed 15.5 metres, thereby establishing that the impugned conditions were imposed solely at the instance of Respondent No. 3 and not as statutory prerequisites.
- 22.** Mr. Bishwaroop Bhattacharya, learned Senior Counsel appearing for the Petitioner Owner, adopting the submissions advanced on behalf of the Developer, further submitted that under the guise of security concerns, the Respondents cannot curtail the Owner's lawful right to enjoy and develop his property, and that no condition beyond the statutory restrictions contained in Sections 243 and 244 of the Act can be imposed.
- 23.** In view of the aforesaid submissions, learned counsel for the Petitioners prayed for interference with, and setting aside of, the non-statutory conditions imposed in the reasoned order dated 24.09.2024.

**Submission on behalf of Respondent Nos. 1-3 (Police Authorities)**

- 24.** Per contra, Mr. Santanu Kumar Mitra, learned counsel appearing for Respondent Nos. 1 to 3, opposed the writ petitions and supported the

impugned order dated 24.09.2024. It is submitted that the subject premises are situated well within 500 metres of Nabanna, the State Secretariat, which has been notified as a “Security Zone” by the Government of West Bengal vide notification dated 04.09.2019 issued under Sections 243 and 244 of the Howrah Municipal Corporation Act, 1980. Having regard to the strategic importance and heightened security sensitivity of the area, the police authorities were duty-bound to place their security assessment before the Municipal Commissioner to ensure that construction activity in the vicinity does not compromise the safety and security of the State Secretariat.

25. Learned counsel submits that assessment of threat perception lies exclusively within the domain of the police and specialised intelligence agencies, who act on confidential and classified inputs which cannot be placed in the public domain. The conditions imposed under the impugned order represent a composite set of security recommendations evolved by expert agencies responsible for safeguarding Nabanna. Placing reliance on ***Gobind v. State of Madhya Pradesh***, reported as **(1975) 2 SCC 148**, it is contended that individual rights, including property-related rights, may legitimately be subjected to reasonable restrictions in furtherance of compelling State interests such as public order and security.
26. Learned counsel further submits that the security measures such as installation of CCTV cameras, erection of view cutters, regulation of windows and balconies, and verification of occupants are not arbitrary inventions but flow from established security protocols, including the “Yellow Book” issued by the Ministry of Home Affairs, Government of India. These guidelines, based on long-standing experience in VIP and strategic

asset protection, constitute a recognised framework for mitigating surveillance and access-related risks. Reliance is placed on ***Om Prakash Soni v. State of Punjab***, reported as **2022 SCC OnLine P&H 2028**, to contend that administrative authorities are entitled to rely upon expert inputs and security advisories while discharging statutory functions impacting public safety.

27. It is submitted that unless the prescribed security measures are enforced, the Nabanna Approach Ramp Road and sensitive areas of the Secretariat would remain susceptible to surveillance from the proposed G+4 building, posing a tangible risk to protectees commuting to and from Nabanna. Learned counsel submits that courts ought not to second-guess such security assessments, particularly when they emanate from expert agencies, a principle reiterated by the Hon'ble Supreme Court in ***Ramveer Upadhyay v. R.M. Srivastava***, reported as **(2015) 13 SCC 370**.
28. While Section 244 of the Act expressly regulates construction exceeding 15.5 metres, learned counsel submits that the declaration of a Security Zone necessarily carries with it incidental and ancillary security-related controls. The police authorities, being statutorily entrusted with the protection of high-security installations, are competent to advise the Municipal Commissioner on matters incidental to building permission within such sensitive zones. In this regard, reliance is placed on ***Union of India v. Ranchi Municipal Corporation***, reported as **2024 (1) High Court Cases (Jhar) 333**, wherein it was held that municipal powers must be exercised in coordination with other statutory authorities when public safety and national security concerns are involved.

29. Learned counsel submits that the Municipal Commissioner is empowered to impose reasonable conditions while granting building permission, particularly to prevent nuisance, obstruction, or danger to life and property. Such power has been recognised in **Howrah Municipal Corporation v. Ganges Rope Co. Ltd.**, reported as **(2004) 1 SCC 663**, wherein the Supreme Court upheld the authority of municipal bodies to regulate construction in the interest of public safety and orderly urban governance. The impugned conditions are regulatory and precautionary in nature and are intended solely to prevent security breaches in the vicinity of Nabanna.
30. It is further contended that conditions such as erection of a ten-foot-high view cutter, restrictions on openings facing the Security Zone, and mandatory verification of occupants are proportionate responses to legitimate security concerns relating to vantage visibility and access control. Placing reliance on **Friends Colony Development Committee v. State of Orissa**, reported as **(2004) 8 SCC 733**, learned counsel submits that planned development and regulatory oversight cannot be compromised on the ground of individual inconvenience, particularly where larger public interest is involved.
31. Learned counsel further submits that the right to property or to raise construction is not absolute and is subject to reasonable restrictions in the interest of public order and security, as recognised under Articles 19(2) and 19(5) of the Constitution. In **Dharam Chand v. Chairman, NDMC**, reported as **(2015) 10 SCC 612**, the Supreme Court held that private rights must yield to public interest where regulatory action is taken within the bounds of law to protect safety and civic order.

- 32.** The contention of discrimination based on the existence of neighbouring buildings without similar restrictions is also refuted. Learned counsel submits that each construction proposal is assessed on its own facts, considering elevation, design, line of sight, and threat perception at the relevant time. The mere existence of older constructions cannot preclude authorities from imposing appropriate conditions on new developments, particularly in evolving security environments.
- 33.** It is lastly submitted that pursuant to the order of this Court dated 24.05.2024, the Petitioners were afforded full opportunity of hearing, and the impugned order was passed after due consideration of all representations and security inputs. No arbitrariness, mala fides, or jurisdictional infirmity has been demonstrated so as to warrant interference under Articles 226 or 227 of the Constitution.
- 34.** In view of the aforesaid submissions, learned counsel for Respondent Nos. 1 to 3 prays for dismissal of the writ petitions.

**Submissions on behalf of the Respondent Nos. 4-9 (Howrah Municipal Corporation -HMC)**

- 35.** Mr. Sandipan Banerjee, learned counsel appearing for the Howrah Municipal Corporation (HMC), submits that the impugned order dated 24.09.2024 was passed in due exercise of statutory powers under the Howrah Municipal Corporation Act, 1980 and the applicable building regulations.
- 36.** It is contended that the subject premises admittedly lie within a radius of 500 metres from Nabanna, the State Secretariat, which has been notified as a “Security Zone” by Government Notification dated 04.09.2019 issued in exercise of powers under Sections 243 and 244 of the Act. Upon such

notification, the Corporation is mandatorily required to factor in security-related inputs furnished by the designated police authorities while considering applications for building permission.

- 37.** Learned counsel submits that the Municipal Commissioner is the competent statutory authority to grant building sanction and is empowered to impose reasonable and necessary conditions in the interest of public safety, security, and prevention of nuisance. The conditions incorporated in the impugned order were imposed only after receipt and consideration of the security-related observations and recommendations made by the police authorities entrusted with the security of Nabanna.
- 38.** It is further submitted that the Corporation does not independently assess threat perception and is entitled to rely upon the expert evaluation of the police and other specialised security agencies. The conditions requiring installation of CCTV cameras, erection of view cutters, regulation of windows and balconies facing the restricted zone, and verification of occupants are stated to be precautionary in nature, proportionate, and directly connected with preserving the sanctity and security of the notified Security Zone.
- 39.** Learned counsel submits that, pursuant to the order of this Court dated 24.05.2024, the Petitioners were afforded a full and effective opportunity of hearing and that their objections were duly considered prior to passing of the impugned order. It is therefore contended that the order does not suffer from arbitrariness or violation of the principles of natural justice.
- 40.** However, learned counsel for HMC, with commendable fairness, admits that Conditions Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16 and 17 imposed under the impugned order do not have express statutory backing either

under the Howrah Municipal Corporation Act, 1980 or under the Kolkata Municipal Corporation Building Rules, 2009, as amended from time to time. It is further admitted that the Respondent Corporation is also not in a position to ensure the compliance of the said conditions as same is beyond the scope of the Act and Rules framed thereunder. The proposed building height of 15.49 metres is in conformity with the Government Notification and that no fire safety clearance is statutorily required since the height does not exceed 15.5 metres. Learned counsel candidly acknowledges that the aforesaid conditions were imposed solely on the basis of the requisition made by Respondent No. 3 and do not constitute mandatory statutory prerequisites for grant of building sanction.

#### **Legal Analysis**

- 41.** This Court has carefully considered the rival submissions advanced by learned counsel for the parties, perused the pleadings and materials on record, and examined the judicial precedents relied upon by both sides.
- 42.** It is not in dispute that the building plan submitted by the Petitioner Developer conforms to all statutory requirements prescribed under the Howrah Municipal Corporation Act, 1980 and the applicable Building Rules, and that the proposed construction, with a height of 15.49 metres, does not violate the statutory ceiling of 15.5 metres stipulated under Section 244 of the Act. The controversy in the present writ petitions is confined to the legality and permissibility of certain conditions incorporated in the reasoned order dated 24.09.2024.
- 43.** It is also undisputed that the premises in question fall within a 500 metre radius of Nabanna, the State Secretariat, which has been notified as a “Security Zone” by the Government of West Bengal vide notification dated

04.09.2019 issued under Sections 243 and 244 of the Act. The statutory consequence of such notification is clearly delineated by the legislature, namely, a prohibition or restriction on construction exceeding 15.5 metres within the notified radius from the standpoint of security.

- 44.** Considering the sensitive location of the premises, Respondent No. 7 sought inputs from the police authorities, who, relying upon general security guidelines including the “Yellow Book” issued by the Ministry of Home Affairs, recommended a set of conditions to be incorporated in the building permission. The Respondents have placed reliance on several decisions, including ***Dharam Chand*** (*supra*), ***Friends Colony Development Committee*** (*supra*), ***Howrah Municipal Corporation v. Ganges Rope Co. Ltd.*** (*supra*), and ***Ramveer Upadhyay*** (*supra*), to contend that municipal authorities possess regulatory powers to impose reasonable conditions in public interest, and that individual rights may yield to considerations of safety, planning, and security.
- 45.** There can be no quarrel with the aforesaid propositions of law. The decisions relied upon by the Respondents unequivocally recognise that municipal authorities are entrusted with the responsibility of ensuring planned development, public safety, and orderly regulation of construction activity, and that courts ought to exercise restraint in matters involving technical or security assessments. However, these very judgments also underscore a critical limitation: such regulatory powers must be exercised strictly within the confines of the statute and cannot transgress into areas not sanctioned by law.
- 46.** Section 175 of the Howrah Municipal Corporation Act, 1980 empowers the Municipal Commissioner to sanction building plans that conform to

statutory norms and to impose conditions incidental to such sanction in matters concerning safety, planning, and regulatory compliance. However, as held in ***Howrah Municipal Corporation v. Ganges Rope Co. Ltd.*** (*supra*), municipal powers, though wide, are not untrammelled and must remain traceable to statutory authority. Executive discretion cannot be exercised in a manner that is arbitrary, disproportionate, or destructive of rights expressly protected by law.

- 47.** Significantly, none of the judgments relied upon by the Respondents authorise the imposition of conditions that are wholly alien to the statutory scheme governing building regulation. On the contrary, the law laid down in ***Bishambhar Dayal Chandra Mohan*** (*supra*), squarely governs the present issue. The Hon'ble Supreme Court therein held that executive or administrative action, howsoever well intentioned, cannot impose restrictions on lawful proprietary or developmental rights in the absence of express statutory sanction, and that perceived exigencies or administrative convenience cannot substitute legislative authority.
- 48.** In the present case, the Petitioners have confined their challenge to Condition Nos. 4, 5 and 16. The central question, therefore, is whether these conditions can be justified as reasonable, proportionate, and statutorily permissible restrictions under Sections 175, 243 and 244 of the Act, read with Articles 14, 19 and 300A of the Constitution.

**Condition Nos. 4 and 5**

- 49.** Condition No. 4 mandates the construction of a ten-foot-high view cutter along the roof of the proposed building, while Condition No. 5 prohibits windows, balconies or open access facing the “prime scrutiny zone.” The

avowed object of these conditions is to prevent visual access towards the notified security zone.

50. A careful examination of the statutory framework reveals that neither Section 175 nor Sections 243 and 244 of the Act authorise the Municipal Commissioner to mandate permanent visual barriers or to prohibit basic architectural features such as windows and balconies in a building that otherwise conforms to statutory norms. Sections 243 and 244 are confined to height based restrictions in notified security zones; they do not contemplate interference with light, ventilation, or the fundamental design of residential structures.
51. It is the specific stand of the respondent municipal Corporation that Conditions Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16 and 17 imposed under the impugned order do not have express statutory backing either under the Howrah Municipal Corporation Act, 1980 or under the Kolkata Municipal Corporation Building Rules, 2009, as amended from time to time. Further the Respondent Corporation is also not in a position to ensure the compliance of the said conditions as same is beyond the scope of the Act and Rules framed thereunder.
52. On the contrary, the applicable Building Rules framed under the Act mandate that all habitable rooms must have adequate openings, windows, and ventilation. A blanket prohibition on windows or balconies and the imposition of a permanent ten-foot-high obstruction directly contradict these mandatory norms. Such conditions, therefore, are not merely regulatory but destructive of the statutory scheme itself.
53. While the Respondents have rightly relied upon ***Friends Colony Development Committee*** (*supra*) to emphasise the importance of planned

development, that judgment does not sanction measures that render a residential building incompatible with basic habitability standards prescribed by law. Planned development cannot be achieved by negating the very building regulations enacted for public health and welfare.

- 54.** The right to property under Article 300A and the right to carry on lawful activity under Article 19(1)(g) permit regulation, but not annihilation, of rights. The doctrine of proportionality requires that restrictions must adopt the least intrusive means available. In the present case, less restrictive alternatives, such as enhanced surveillance, policing, or technical security measures, were available and are routinely employed in urban security contexts. The impugned conditions, by contrast, impose a permanent and excessive burden on lawful enjoyment of property.
- 55.** The Petitioners have also demonstrated that similarly situated buildings within the same 500 metre radius have not been subjected to comparable restrictions. The Respondents have failed to furnish any objective or rational basis for singling out the Petitioners' premises. Such selective imposition falls foul of Article 14, which proscribes not only discrimination but also arbitrary and capricious exercise of power.
- 56.** Accepting the Respondents' contention that mere line of sight constitutes a sufficient security threat would lead to untenable consequences, requiring wholesale obstruction of windows and balconies across vast urban areas surrounding strategic buildings, an outcome neither contemplated by the legislature nor supported by precedent.
- 57.** Accordingly, this Court holds that Condition Nos. 4 and 5 are ultra vires the Howrah Municipal Corporation Act, inconsistent with mandatory building norms, disproportionate to the stated objective, and violative of

Articles 14, 19(1)(g) and 300A of the Constitution. These conditions cannot be sustained.

**Condition No. 16**

58. Condition No. 16 requires verification of the “character antecedents of all existing and future dwellers.” This condition, on its face, travels entirely beyond the domain of building regulation.
59. The Act does not confer any power upon the Municipal Commissioner to insist upon police verification of residents as a precondition for building plan sanction. Building control laws regulate structures, not the identity or antecedents of occupants. Even the judgments relied upon by the Respondents, including *Dharam Chand (supra)* and *Ramveer Upadhyay (supra)*, do not authorise such surveillance oriented conditions to be grafted onto building permissions.
60. Even assuming that the premises falls within a 500 metre radius of a notified security zone, the duty to maintain vigilance rests with the security and law enforcement agencies in the ordinary course of their functions. The authorities are empowered to monitor or verify individuals in public interest whenever required under law, however, such routine policing activity cannot be converted into a precondition for an owner to obtain a lawful building plan approval. Nor can it be interpreted to suggest that the owner is required to disclose or furnish details of every dweller to any authority. Introducing such a condition would create an indirect system of compulsory police clearance for residence, something wholly alien to the governing statute.
61. Moreover, mandatory and recurring verification of all occupants constitutes a serious and unjustified intrusion into personal liberty and privacy

protected under Article 21, bears no rational nexus with the statutory purpose of building regulation, and is unguided by any legislative standards. It is arbitrary, disproportionate, and selectively imposed, thereby offending Article 14.

**62.** In light of the above, Condition No. 16 is held to be ultra vires the Act, constitutionally impermissible, and unsustainable in law.

**63.** Consequently, while this Court recognises the legitimacy of security concerns and the authority of municipal and police bodies to act in coordination within the bounds of law, it reiterates the settled principle laid down in ***Bishambhar Dayal Chandra Mohan*** (*supra*) that executive discretion cannot transgress statutory limits. The impugned order dated 24.09.2024 is therefore liable to be interfered with to the extent indicated above.

### **Conclusion**

**64.** Accordingly, this Court holds that permitting the Municipal Corporation to impose conditions which have no foundation in the governing statute, or which effectively impede lawful construction on the basis of speculative security apprehensions, would be manifestly inequitable and contrary to settled principles of constitutional and administrative law. The Howrah Municipal Corporation Act, 1980 does not contemplate such pre-emptive restrictions, and the fact that several similarly situated properties within the same notified radius have already been developed without comparable conditions reinforces the arbitrariness of the impugned action. Security concerns, though undoubtedly legitimate, are neither static nor incapable of being addressed through continuous vigilance, policing, and post construction regulatory oversight. To allow such concerns to operate as a

threshold bar on otherwise permissible development would amount to an unjustified and disproportionate deprivation of the Petitioners' property rights, offending Articles 14 and 300A of the Constitution. The impugned conditions, therefore, cannot be sustained and are liable to be set aside to the extent indicated.

- 65.** For the reasons discussed hereinabove, this Court is satisfied that Condition Nos. 4 and 5, which require the erection of a ten feet high view cutter and prohibit the provision of windows, balconies or openings facing the security zone, are unsupported by any statutory authority under the Howrah Municipal Corporation Act, 1980. These conditions are intrusive, disproportionate, contrary to mandatory building norms relating to light and ventilation, and amount to an arbitrary exercise of power, offending Articles 14 and 19(1)(g) of the Constitution.
- 66.** Similarly, Condition No. 16, which contemplates continuous character verification of every present and future dweller of the premises, is wholly foreign to the scheme of the Act. No provision of the statute empowers the Municipal Commissioner to impose pre-occupancy or ongoing police verification as a condition for sanctioning a building plan. The requirement is disproportionate, interferes with the privacy and liberty of residents, and lacks any rational nexus with the grant of a building permit. It is therefore unconstitutional and ultra vires.
- 67.** In the result, both the writ petitions are partly allowed. Condition Nos. 4, 5 and 16 annexed to the building plan sanction are quashed and set aside as arbitrary, disproportionate, and without statutory foundation. The remaining conditions shall continue to operate.

- 68.** The Respondents are directed to process and finalise the Petitioners' building-plan sanction strictly in accordance with law and without insisting upon compliance with the quashed conditions. The application seeking sanction of the building plan shall be considered and disposed of within a period of twelve weeks from the date of service of a copy of this judgment.
- 69.** Pending applications, if any, stand disposed of.

**(Gaurang Kanth, J.)**

SAKIL AMED (P.A)

