

30.08.2024
Sl. No.1
akd

**M. A. T. 56 of 2024
(CAN 1 of 2024)**

[Sukumar Santra & Ors. -Vs- Muroti Mohan Santra & Ors.]

Mr. Somnath Ray
Ms. Arpita Chowdhury
... .. for the appellants

Ms. Nibedita Chakraborty
... .. for respondent no.1/
writ petitioner

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

Mr. Saikat Chatterjee
Mr. Satyajit Mahata
... .. for the State

1. By earlier order dated 12.06.2024 this Court had directed joint inspection of the premises by Howrah Municipal Corporation and submission of a report with regard to the nature and extent of unauthorized construction, if any, in the premises. The direction was given in light of the submission that the building is an old one and had been constructed in 1968.
2. Pursuant to the direction, report enclosing the note of the Assistant Engineer, Borough No.-VIII, Howrah Municipal Corporation who undertook the inspection has been placed before us. In the note Assistant Engineer merely stated the G+1 storied building is an old one. He did not specify the age of the construction. It was also noted in the report that C.I. shed on the roof used as a worship hall was the only unauthorized structure.

3. However, in paragraph 6 of the report it is stated that the structure is 50 year old. The said paragraph has been sworn as true to the knowledge of the deponent i.e. the Assistant Engineer, Howrah Municipal Corporation.
4. We are at a loss to understand how the Assistant Engineer could aver in the aforesaid paragraph the building is 50 year old when in his inspection note there is no reference with regard to age of the building save and except noting it is an old structure.
5. Exception has been filed to the report.
6. Ms. Nibedita Chakraborty for the respondent no.1/writ petitioner draws our attention to the notings during enquiry initiated in 2020-21 pursuant to issuance of stop work notice upon the appellants.
7. Noting on 07.04.2021, inter alia, records the appellants had constructed the G+1 storied structure '*few years ago*' and presently was constructing the tin shed on the second floor. This noting in the enquiry conducted in 2021 recording G+1 storied structure is '*few years old*' runs counter to the averment in paragraph 6 of the Engineer's report that the structure is 50 years old. No man of reasonable prudence would come to a reasonable conclusion that a structure which is stated to exist for more than fifty years would be described as constructed few years ago.
8. Mr. Sandipan Banerjee for the Howrah Municipal Corporation is unable to explain the aforesaid dichotomy save and except stating that the earlier enquiry had not been conducted by the present Engineer.

9. Age of the G+1 storied structure is germane for adjudication of the case. If the said structure existed prior to 1980, appellants make out an arguable case that the same cannot be said to have been constructed *de hors* a sanctioned plan.
10. Learned Advocate for the appellants contends the construction was made prior to 1980 is evident from the representation made by his clients in December, 2020 to the Howrah Municipal Corporation authorities.
11. In light of the aforesaid dichotomous reports and rival versions of the parties it becomes incumbent on this court to appoint an independent expert to undertake inspection and scientific examination of the building to ascertain its age.
12. Accordingly, we direct the Dean of Bengal Engineering College, Shibpur, Howrah to appoint experienced professors from the faculty of civil engineering and/or any other faculty as he may deem fit and proper to undertake evaluation of the building. The committee of experts so appointed shall conduct inspection of the building in presence of the parties and the representative of Howrah Municipal Corporation, undertake such scientific examination as they deem fit and proper and submit a report on the adjourned day with regard to the age of G+1 storied structure. Howrah Municipal Corporation shall render necessary assistance to the committee.
13. Let the matter appear on **18.11.2024**.
14. Department is directed to communicate a copy of this order to the Dean, Bengal Engineering College, Shibpur, Howrah for due compliance.

15. Interim order granted earlier shall continue till 30.11.2024 or until further orders, whichever is earlier.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)