

21.05.2024
Ct. no.654
Sl. No. 2
ab

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)

W.P.A. 11557 of 2023
(assigned)

Smt. Indrani Panja
Vs.
Howrah Municipal Corporation & ors.

Mr. Ayan Banerjee,
Ms. Debjani Sengupta
... for the petitioner

Mr. Sandipan Banerjee
Mr. Ankit Sureka
Mr. Sobhan Majumder
... for the H.M.C.

Mr. Tanmoy Mukherjee
Mr. Souvik Das
Mr. Rudranil Das
Mr. K.E. Ahmed
... for the respondent nos.3 & 4

In the present writ petition, direction was passed on 18th October, 2023 upon the State Vigilance Commission to start investigation against the assets of respondent no. 3, Mr. Amitava Rakshit, Sub-Assistant Engineer, Howrah Municipal Corporation and the respondent no. 4, Mr. Surit Kumar Mukhopadhyay, Assistant Engineer in-charge, Howrah Municipal Corporation respectively. Separate appeals were filed by the above-mentioned respondents being MAT 2319 of 2023 and MAT 2320 of 2023 challenging the aforesaid direction. On 5th December, 2023, both the appeals were disposed of by Hon'ble Division Bench with similar direction as hereunder:

“Accordingly, the direction in the impugned order is so far as the same concerns addition of State Vigilance Commission as a party and direction on the Vigilance Commission to conduct enquiry/investigation the same shall remain stayed till the learned Single Judge considers the appellant’s affidavit and passes a fresh order in the manner His Lordship may deem appropriate.”

In view of such direction, the aforesaid aspect of holding investigation by the State Vigilance Commission against the respondent nos. 3 and 4 in respect of their assets whether it is proportionate to their known source of income or not is taken up for fresh consideration.

Pursuant to the above direction passed in appeal, respondent no.3 and respondent no.4 have filed the original affidavit of compliance on 24th April, 2024 and additional affidavit of compliance on 10th April, 2024.

Mr. Tanmoy Mukherjee, learned advocate appearing for the respondent nos. 3 and 4 submits that the original sanctioned plan in respect of premises being No. 49/1, Mahesh Paul Lane, P.S.-Chatterjee Hat (Old Shipbur) District-Howrah was issued for G+1 construction, which falls within jurisdiction of Borough-VI of the Howrah Municipal Corporation. On 20th January, 2022, a complaint was lodged by the petitioner with contention that extra four floors have been erected above G+1, which was originally sanctioned. Immediately thereto, stop work notice was issued on 1st February, 2022 against the private respondent nos. 6 and 7 and they were called to file show cause and attend hearing. Self-demolition notice

was issued on 16th March, 2022. Since such demolition was not done by the private respondents, the Howrah Municipal Corporation demolished the 5th floor of the said building on 19th January, 2023. Prior to filing of the present writ petition, the respondents have taken appropriate steps for demolition of illegal and unauthorized construction. On 13th October, 2023, order was passed directing the respondent nos. 3 and 4 to file affidavits showing cause as to how such construction has been made despite their presence and getting salary from the public exchequer. Thereafter on 18th October, 2023, State Vigilance Commission was directed to start investigation against the assets of the respondent nos. 3 and 4 whether it is proportionate to the known source of income or not. There is no specific allegation whatsoever in the present writ petition against the respondent nos. 3 and 4 of any malafide activities for making illegal gains. He also indicates that due to paucity of staff/engineers in the Howrah Municipal Corporation, it has led to delay, if any, in action taken. There was no bad intention on the part of respondent nos. 3 and 4 in such regard. In the light of his aforesaid submissions, he prays that the direction for causing investigation by the State Vigilance Commission in respect of assets of respondent nos.3 and 4 whether it is proportionate to the known source of income or not vide order dated 18th October, 2023 be recalled.

Mr. Ayan Banerjee, learned advocate for the petitioner submits that the Hon'ble Single Bench has held that the respondent nos. 3 and 4 are the responsible persons who failed to discharge their responsibility which ultimately resulted in illegal construction of the building. Since the respondent nos.3 and 4 being responsible officers of Howrah Municipal Corporation failed to take appropriate measures in stopping the illegal construction, their such inaction is questionable. On such ground, he opposes the prayer of the respondent nos. 3 and 4 for recalling of such direction passed by this Court for causing investigation as to the proportionality of their assets.

Mr. Sandipan Banerjee, learned advocate appearing for the Howrah Municipal Corporation also submits that upon complaint lodged by the petitioner, the Howrah Municipal Corporation has taken immediate steps issuing stop work notice against the private respondents and calling them to show cause and for attending hearing and has also initiated demolition proceedings prior to filing of the present writ petition. Hence there was no laches in taking action by the Howrah Municipal Corporation against such illegal construction.

Having heard the learned advocate representing the respective parties, this Court now proceeds to consider and decide the prayer made by respondent nos. 3 and 4 as aforesaid for recalling order for causing investigation by State Vigilance Commission.

Admittedly, there is no specific allegation against the respondent nos. 3 and 4 who are the Sub-Assistant Engineer and the Assistant Engineer respectively of the Howrah Municipal Corporation of making illegal gains disproportionate to their known sources of income. There is nothing on record to suggest that respondent nos. 3 and 4 have made illegal gains in allowing such construction to proceed. It is also not in dispute that upon complaint lodged by the petitioner on 20th January, 2022, stop work notice was issued by the Howrah Municipal Corporation and show cause was issued against the private respondents. Hearing was conducted and thereafter, self-demolition notice was issued. Since the private respondents failed to demolish the part of the illegal and unauthorized construction the action for demolition was undertaken. However, the entire illegal construction was not demolished which led to filing of present writ petition by the petitioner. It is informed by the learned advocate for Howrah Municipal Corporation that all the floors above G+1 have been removed in compliance to the order of this Court, which is conceded by learned advocate for the petitioner. Be that as it may, this Court cannot be oblivious to the fact that Howrah Municipal Corporation has to be more vigilant of any such illegal construction being undertaken within its jurisdiction.

Since it manifest from the materials before this Court that there are neither any allegation of

disproportionality of assets of respondent nos.3 and 4 nor any documents in support is placed, the order directing the State Vigilance Commission to start investigation against the assets of the respondent no. 3, Mr. Amitava Rakshit, Sub-Assistant Engineer, Howrah Municipal Corporation and the respondent no. 4, Mr. Surit Kujmar Mukhopadhyay, Assistant Engineer in-charge, Howrah Municipal Corporation about the proportionality of their known source of income vide order dated 18th October, 2023 stands recalled. However, the respondent no. 3, Mr. Amitava Rakshit, Sub-Assistant Engineer, Howrah Municipal Corporation and the respondent no. 4, Mr. Surit Kujmar Mukhopadhyay, Assistant Engineer in-charge, Howrah Municipal Corporation should be cautious in future regarding any such illegal construction being undertaken within the jurisdiction of Howrah Municipal Corporation during their tenure.

Mr. Sandipan Banerjee, learned advocate appearing for the Borough-VI of the Howrah Municipal Corporation files action report, which is taken on record. Copy served upon the learned advocate for the petitioner. He submits that the Officer-in-Charge, Borough-VI, Howrah Municipal Corporation has taken steps for determining the deviation from the original sanctioned plan and the deviation shall be removed within a short period.

The Officer-in-Charge, Borough-VI, Howrah Municipal Corporation is directed to file further report of

the action taken within two weeks of reopening after the ensuing summer vacation.

Let the matter appear after two weeks after the ensuing summer vacation under the same heading.

(Bivas Pattanayak, J.)