
(1997) 02 CAL CK 0015
In the Calcutta High Court

Bhaggo Dhar Manna

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 25-02-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Howrah Municipal Corporation Act, 1980 — Section 177, 177(1), 177(3), 177(4)

Citation : (1997) 2 CALLT 380

Hon'ble Judges : Nripendra Kumar Bhattacharyya, J

Bench : Single Bench

Advocate : Naren Debnath and Neguive Ahmed, for the Appellant; Smrita Kana Mukherjee, for the Respondent

Judgement

Nripendra Kumar Bhattacharyya, J.—Heard the submissions of the learned Advocate for the writ petitioner Mr. Naren Debnath appearing with the learned Advocate Mr. Neguive Ahmed and the learned Advocate for the Howrah Municipal Corporation Mrs. Smrita Kana Mukherjee. Considered the materials on record.

2. The matter relates to the demolition of a building. As per Sub-section (1) of Section 177 of the Howrah Municipal Corporation Act, 1980 (hereinafter referred to as the said Act), a hearing was given to the petitioner as contained in the proviso under Sub-section (1) of Section 177 of the said Act. According to the petitioner, thereafter no order was passed or communicated to the petitioner, and according to Mr. Debnath, unless an order is passed and communicated the building cannot be demolished in exercise of power u/s 177 of the said Act.

3. Mrs. Mukherjee, in order to establish that earlier the notice was given, relied on the notice dated 28.5.94 and for that she handed up the record of the case as in custody of the Howrah Municipal Corporation.

4. From the writ petition it appears that, as in annexure "C" to the writ petition, a notice was given directing the petitioner to appear before the Assistant Engineer on 22.1.97 at 2 P.M., as contained in Memo. No. BMR/426/Ch/96-97

dated 27.12.96. Even if a notice was given earlier, that has been superseded by the notice as in annexure "C" to the writ petition. Though there is no specific provision for supply of the copy of the order passed after giving the hearing to the person aggrieved in the Act, but Sub-section (3) of Section 177 of the said Act provides that any person aggrieved by an order of the Commissioner made under Sub-section (4) may, within 30 days from the date of the order, prefer an appeal against the order to the Municipal Building Tribunal appointed under this Chapter, meaning Chapter XII.

5. I have ascertained from Mrs. Mukherjee and Mr. Debnath that there is no provision in the Howrah Municipal Corporation Act, 1980 for obtaining certified copy of any order passed including the order passed by the Commissioner under Sub-section (1) of Section 177 of the said Act. If that be so and if that be the position under the law, then the petitioner will be deprived of preferring an appeal because an appeal as in Sub-section (3) of Section 177 of the said Act shall be preferable against the order passed by the Commissioner under Sub-section (1) and that must be done within thirty days. In order to reckon thirty days and for the purpose of computation of period of limitation, unless a certified copy of the order is provided to the aggrieved person, neither period of limitation can be reckoned nor it can be computed and thereby the aggrieved person will be deprived of his right of preferring an appeal against the order passed under Sub-section (1) of Section 177 of the said Act. In that view of the matter, thought it is not patent under the Act, but there is no latent indication that the order so passed must be communicated to the aggrieved person.

6. In the instant case, according to Mrs. Mukherjee, when an order has been passed but the same has not been communicated, and I am told that the Building Tribunal under the Howrah Municipal Corporation Act. 1980 has not yet been brought into effect and it has not yet been formed, in such circumstances, the petitioner has no option but to challenge the order before this court, because under Sub-section (4) of Section 177 of the said Act the jurisdiction of the civil court has been debarred and unless the petitioner is provided with copy of the order he will not be in a position to challenge the same.

7. In that view of the matter, I dispose of this writ application by directing the Municipal Authority or for that any competent authority, particularly, the Commissioner, to pass an order in this matter under sub section (1) of Section 177 of the said Act, if not already passed and if already passed, to communicate a copy of the order to the petitioner so that he can decide his course of action to be taken by him.

8. Till one week after the communication of this order the Corporation shall stay its hand of demolition of the building, nor the petitioner shall make any construction.

9. This order of restraint shall be in force for a period of two weeks after the service of the copy of the order enabling the petitioner to decide his course of

action.

10. The writ application is thus disposed of, without any order as to costs.

11. Be it recorded that though this matter appeared in the day's list under the heading "To be mentioned", it has been heard out in extenso and finally disposed of.

As prayed for, let a plain copy of this order countersigned by the Assistant Registrar (court) be handed over to the learned Advocate for the writ petitioner on his usual undertaking to apply for a certified copy of the same on his furnishing the requisite number of stamps and folios. The learned Advocate for the petitioner is also directed to hand over a xerox copy of this plain copy of the order passed today to the learned Advocate for the Corporation for doing needful.