
(2021) 07 CAL CK 0018
In the Calcutta High Court
Case No : Writ Petition No. 7641 Of 2021

Girija Shankar Shaw @ Jaiswal & Ors.	APPELLANT
Vs	
Howrah Municipal Corporation & Ors.	RESPONDENT

Date of Decision : 02-07-2021

Acts Referred:

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

Citation : (2021) 07 CAL CK 0018

Hon'ble Judges : Amrita Sinha, J

Bench : Single Bench

Advocate : Ram Anand Agarwal, Nibedita Pal, Haradhan Banerjee, Partha Pratim Mukhopadhyay, Sandipan Banerjee, Ankit Sureka

Final Decision : Disposed Of

Judgement

Amrita Sinha, J

The instant case is a glaring example of the adage, "justice delayed is justice denied". Even though the Court on successive occasions held in

favour of the petitioners, but for reasons alien to law, the petitioners are yet to reap the benefit they are entitled to in terms of the order of the Court.

In spite of the right of the petitioners being crystallized, they are forced to approach the Court repeatedly for justice. Justice seems to be eluding, so near, yet so far.

The petitioners are aggrieved by the order dated 26th February, 2020 issued by the Commissioner, Howrah Municipal Corporation whereby the

Corporation refrained from carrying out the demolition work of the unauthorized construction in view of the order passed by the Ld. Civil Court.

The matter relates to unauthorized construction in the premises nos. 62/A/2 and 62/A/3, J. N. Mukherjee Road, Ghusuri, P.S. Malipanchghara,

District- Howrah. Complaining the action of the private respondent in making unauthorized construction, the petitioners applied before the Howrah

Municipal Corporation. As no action was taken, the petitioners approached this Court by filing a writ petition being W.P No. 17010(W) of 2012. The

said writ petition was disposed of by an order dated 13.09.2012 by recording and relying upon the submission made on behalf of the private respondent

herein that she was not making any construction in the premises. It was also recorded that the Howrah Municipal Corporation has not issued any

sanctioned plan authorizing the private respondent to raise any construction in the premises. Injunction order was issued restraining the private

respondent from raising any construction without any legal authority and without obtaining any sanction plan from the municipal authority. It was also

made clear that in the event any complaint is received by the municipality alleging unauthorized construction in the said premises, the municipal

authority will take steps in accordance with law.

From the events that followed it appears that in spite of the aforesaid order of injunction the private respondent made unauthorized construction.

The petitioners were compelled to approach this Court by filing a further writ petition being W.P No. 19494(W) of 2013 praying for a direction upon

the municipal authority for demolition of the unauthorized construction raised by the private respondent.

The private respondent also filed a writ petition being W.P No. 28954(W) of 2013 challenging the demolition proceeding initiated against her, wherein

claim was made that she being a tenant in the building in question has repaired the uninhabitable portion of the tenanted premises by removing the tile

shed and casted concrete roof on the existing brick built wall of the old construction. The private respondent admitted that construction of another

floor above the ground floor was made. It was however fairly admitted that the entire construction was made without obtaining any sanction from the

municipality. The municipality initiated a demolition proceeding and order was passed on 15.06.2012 directing the person responsible for making

unauthorized construction to demolish the same.

Both the aforesaid writ petitions were taken up for consideration by the Court analogously and was disposed of by order dated 24.09.2013. The Court

allowed the writ petition of the petitioners and directed the private respondent to

remove the entire unauthorized construction positively within a fortnight and in the event of failure to do so, the municipal authority was directed to demolish such unauthorized construction immediately thereafter and to realize the cost thereof from the private respondent.

Being aggrieved by the order dated 24.09.2013 an appeal was preferred by the private respondent. Before the appeal court the private respondent

candidly admitted making unauthorized construction in the ground and the first floor to the extent of 56.56 sq. mts., i.e, 28.28 sq. mts. in each of the

floors. By an order dated 19.12.2013 the Honâ??ble Division Bench was pleased to dismiss the appeal.

By an order dated 06.08.2014 passed in Title Suit No. 165 of 2007 the learned Civil Judge had been pleased to pass a decree of eviction against the

private respondent in respect of the suit scheduled property. The private respondent was directed to quit and vacate the scheduled premises and

deliver possession of the same in favour of the petitioners herein.

As the order of demolition passed by the Howrah Municipal Corporation was not complied and further unauthorized construction was being made, the

petitioners were compelled to approach this Court yet again by filing another writ petition being W.P. 19783(W) of 2016. By an order dated

22.09.2016 a co-ordinate Bench of this Court directed the Howrah Municipal Corporation to conclude the demolition proceeding in accordance with

law. In the said order it was recorded that there is no dispute that the order of demolition became final and binding between the parties.

An application for contempt was filed by the petitioners alleging violation of the direction passed in the order dated 22.09.2016. In terms of the order

passed by the Court, the Commissioner of the Howrah Municipal Corporation by an order dated 17.05.2017 again directed demolition of the remaining

unauthorized portion as mentioned in the said order with the help of sufficient police force from the local police station and with the help of fire brigade

authorities as there was apprehension that fire accident may take place as the unauthorized portion was being used for storing inflammable objects,

viz; light plastic and jute bags. The demolition order was directed to be completed by 25.05.2017. Copy of the said order was circulated in the office of

the Officer-in-Charge of the respective police station and also to the Divisional Commissioner of the department of Fire and Emergency Service,

Howrah Zone.

In the contempt proceeding being CPAN No. 338 of 2017 arising out of WP No. 19783(W) of 2016 an order was passed on 08.12.2017 on the

submission made on behalf of the Howrah Municipal Corporation, that the Corporation was ready and willing to comply with the order of the Court,

but they have been informed that the learned Civil Court has passed an order of injunction directing maintenance of status quo in the said premises.

The Court directed the Howrah Municipal Corporation to examine the paraphernalia and come to a decision regarding the action to be taken. The

Corporation was directed to prepare an action proposed to be taken plan to comply with the order of the Court dated 22.09.2016.

The private respondent, with an oblique intension to bypass the demolition, filed a title suit being no. 56 of 2017 before the learned Civil Judge, Senior

Division, 2nd Court, Howrah against the Howrah Municipal Corporation and others on the plea that the plaintiff was a tenant in the suit premises and

have been in possession of the property partly by running business and partly for residential purpose. The defendant No. 1 along with their men and

agents came in front of the property and told the plaintiff to vacate the same. The defendants though initially failed but thereafter again came to the

premises and started to demolish the tenanted premises under the occupation of the plaintiff, but due to the strong protest on the part of the plaintiff

and her family members, the defendants failed to complete their illegal work. Finding no other alternative, the plaintiff filed the Suit along with an

injunction application for necessary relief.

From the documents annexed to the plaint the Court was of the prima facie view that the plaintiff was a tenant in the suit premises. The Court was of

the opinion that unless an order of restrain is passed the plaintiff is likely to suffer irrepressible loss. The Court by order dated 08-02-2017 directed the

parties to maintain status quo in respect of the suit scheduled property.

The petitioners submit that they were not made parties in the said Suit. An application was filed by the petitioners for being added as party defendants

in the said Suit, but the prayer of the petitioners stood rejected by an order dated 08-01-2018.

By an order dated 08-02-2018 the order of status quo was extended and the parties were directed to maintain status quo as regard the nature,

character and possession of the suit property till the disposal of the Suit.

The Suit is sub judice till date.

In the impugned order dated 26-02-2020 the Commissioner of Howrah Municipal Corporation observes that construction has been made in the

premises No. 62/A/2 and 62/A/3, J. N. Mukherjee Road in the absence of any sanction plan from the Howrah Municipal Corporation. However, in

view of the injunction order passed by the

Learned Civil Judge (Senior Division), 2nd Court, Howrah on 08-02-2018 in the Title Suit No. 56 of 2018, the department refrained from carrying out

any further demolition work. The Commissioner directed the Office Superintendent and the in-charge of the Law Department / Legal Cell of the

Howrah Municipal Corporation to initiate necessary legal procedures so as to take subsequent necessary steps under Section 177(1) of the Howrah

Municipal Corporation Act, 1980 as amended, thereafter.

It is the specific case of the petitioner that in spite of the order of demolition passed by the Howrah Municipal Corporation duly affirmed by several

orders of this Court, the Howrah Municipal Corporation is sitting tight over the matter and not taking steps to demolish the unauthorized construction.

The learned advocate appearing for the private respondent submits that there is a valid order of injunction restraining the Howrah Municipal

Corporation from taking any step with regard to the nature, character and possession of the suit property till the disposal of the Suit. During pendency

of the order of status quo the Corporation ought not to proceed with the matter.

It has further been submitted that if the order of demolition is implemented, then the nature and character of the Suit property will change and the

same will be in violation of the order of status quo passed by the Learned Civil Judge.

The learned advocate appearing for the Howrah Municipal Corporation submits, upon instruction, that the Corporation is not in a position to take any

step in the matter in view of the order of injunction which has been passed by the learned Civil Judge.

Upon hearing the submissions made on behalf of both the parties, it appears that the private respondent way back in the year 2013 admitted before the

Court that the construction was made without obtaining any sanction from the Howrah Municipal Corporation.

Relying on such submission, the Court by order dated 24-09-2013 directed the private respondent to remove/demolish the entire unauthorized

constriction from the said premises, failing which, the municipal authority was directed to demolish the unauthorized construction and realize the cost

of such work from the private respondent.

Since thereafter, time and again, the order of demolition passed by the Howrah Municipal Corporation, duly affirmed by this Court in several

proceedings was directed to be implemented, but unfortunately, till date, the order of demolition has not been given effect to for no plausible reason.

The Court in the order dated 22-09-2016 specifically observes that the order of demolition dated 03-07-2013 has become final and binding between the

parties. In spite of categorical orders passed by the Court, the Howrah Municipal Corporation as well as the private respondent have left no stone

unturned to ensure that the order of demolition is not acted upon.

The private respondent approached the Court of the Learned Civil Judge by impleading Howrah Municipal Corporation and its official as party

respondents in the Title Suit No. 56 of 2017 and obtained an order of status quo.

The leading fact seeking an order of injunction was not placed before the Learned Civil Court. The plaintiff, being the private respondent herein, did

not disclose before the learned Civil Judge, that the schedule portion was an unauthorized one suffering an order of demolition passed by the Howrah

Municipal Corporation duly affirmed by the Learned Single as well as the Honâ??ble Division Bench of this Court.

In the absence of proper facts being placed before the Learned Civil Judge, the Court was misled and the order of injunction was obtained in the said

Suit. The Learned Civil Judge was not made aware of any of the orders passed in the demolition proceeding.

An order of status quo cannot be passed in respect of a structure/premises which has been constructed illegally and suffers an order of demolition

passed by the competent authority, duly affirmed by the Honâ??ble Division Bench of a High Court. The same amounts to validation of the illegal

structure. It also runs contrary to the order of demolition passed by the Honâ??ble High Court. Judicial propriety demands that the order passed by

the superior forum shall always get precedence.

The order of demolition, challenged unsuccessfully before this Court, has

attained finality and it is high time that the Howrah Municipal Corporation acts to give effect to the same. Dishonest and unscrupulous builders will always be in the look-out for ideas for stalling and/or circumventing the order

of demolition passed in respect of structures constructed unauthorizedly, and let out or sell the same to unsuspecting buyers creating third party

right/interest. The same will give rise to multiplicity of proceeding and in the process the order of demolition will remain unattended for years together.

Prayer for regularizing such unauthorized construction will follow citing passage of time, hardship, investment of money, financial loss and a host of

other reasons. The same ought not to be permitted by the Court, otherwise the order of the Court will be rendered otiose.

An order passed by a competent authority is meant to be executed and acted upon with promptitude. The same is not meant to remain in the file and

gather dust for years together, only to be brushed under the carpet in an opportune moment. It is the pious duty of the Court to ensure that a litigant

gets relief at the earliest and is not made to suffer unnecessarily. The rule of law has to be upheld at any cost and anyone trampling the same should

not be spared.

In the case at hand the private respondent, despite several orders of Court, has simply managed to hold on to the unauthorized construction with

impunity. The same certainly would not have been possible without the tacit aid and assistance of the Corporation. The petitioner is knocking the doors

of the Court since 2012 to get an unauthorized construction removed. Even though order was passed by the Corporation for removal of the

unauthorized construction way back on 15-06-2012, the same is still standing tall for strange, mysterious reasons. The Court affirmed the order of

demolition but even thereafter the same is yet to be removed. The Court will be failing in its duty if the unauthorized construction is permitted to

remain any further.

In view of the above, the instant writ petition is disposed of by directing the respondent No. 2 being the Commissioner of the Howrah Municipal

Corporation to take prompt necessary steps for implementation of the order of demolition, strictly in accordance with law, at the earliest, but positively

within a period of three months from the date of communication of a copy of this order. Keeping in mind the prevailing pandemic situation sufficient

time is being granted to the Corporation to take necessary steps.

The Commissioner of Police, Howrah Police Commissionerate through the Inspector in Charge, Malipanchghora Police Station and the Divisional

Commissioner, Department of Fire and Emergency Services, Howrah Zone are directed to render all necessary assistance to the men and agents of

the Howrah Municipal Corporation at the time of demolition of the unauthorized construction.

It is made abundantly clear that the order of status quo passed by the Ld. Civil Judge will not stand in the way of the Corporation to demolish the

unauthorized construction of the premises Nos. 62/A/2 & 62/A/3, J.N Mukherjee Road, Ghusuri, Howrah, 711 107.

The Howrah Municipal Corporation shall recover the charges of demolition from the private respondent in accordance with law.

The Howrah Municipal Corporation shall file an action taken report before this Court on or before November 10, 2021.

WPA 7641 of 2021 stands disposed of.

No order as to costs.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.