

Binaguri Tea Company Private Limited Vs Nabadignata Industrial Township Authority & Ors

Court: Calcutta High Court (Appellate Side)

Date of Decision: Jan. 16, 2025

Acts Referred: West Bengal Municipal (Building) Rules, 2007 " Rule 34, 34A, 34(2), 34(7), 151

Hon'ble Judges: Debangsu Basak, J; Md. Shabbar Rashidi, J

Bench: Division Bench

Advocate: Probal Kumar Mukherjee, S. Banerjee, Pradip Sarwagi, Debolina Dey, Dr. Madhusudan Saha Roy, Jaydip Kar, Siddhartha Banerjee, Subir Banerjee, Abhisek Baran Das, Soumajit Majumder

Final Decision: Dismissed

Judgement

Debangsu Basak, J

1. Appeal is at the behest of the writ petitioner and directed against an order dated October 1, 2024 passed in W.P.A. 16619 of 2024.

2. By the impugned order, learned Single Judge dismissed the writ petition of the appellant.

3. Learned senior advocate appearing for the appellant submits that the appellant entered into an agreement to purchase a flat in 9th floor of a building

from the private respondent. He submits that till date, appellant did not receive any valid notice to receive possession. He submits that under the terms

and conditions of the agreement, liability to pay occupancy charges in respect of the flat concerned commences after the appellant received valid

notice for possession. Since the appellant did not receive any valid notice for possession, question of commencement of the liability to pay the

occupancy charges by the appellant does not arise.

4. Learned senior advocate appearing for the appellant draws the attention of the Court to the writ petition. He submits that, the building concerned

falls within the jurisdiction of Nagadiganta Industrial Township Authority (hereinafter referred to as the concerned municipality for the sake of

convenience). He submits that, the building rules governing the concerned municipality is the West Bengal Municipal (Building) Rules, 2007.

5. Learned senior advocate appearing for the appellant draws the attention of the Court to the letter dated June 24, 2019 issued by the concerned

municipality. He submits that, by such letter, the concerned municipality claimed that, the occupancy certificate issued on May 23, 2018 may be

treated an effective from April 17, 2017. According to him, the occupancy certificate can be given a retrospective effect.

6. Drawing the attention of the Court to the various provisions of the Rules of 2007, particularly to Rule 34, 34A and 151 thereof, he submits that, the

Rules of 2007 contemplate issuance of a occupancy certificate or in a given case, a partial occupancy certificate. He submits such certificate is to be

issued in terms of Form H provided under the Rules of 2007. He points out that Form H of the Rules of 2007 was not issued on April 17, 2017 for the

concerned municipality to direct the partial occupancy certificate to be issued with effect from April 17, 2017.

7. Referring to Rule 151 of the Rules of 2007, learned senior advocate appearing for the appellant submits that such Rule contemplates issuance of

Form H for the purpose of water connection and sewerage to the concerned premises. He submits that the scheme of the Rules of 2007 is such that

an occupancy certificate or a partial occupancy certificate as the case may be must precede the issuance of Form H, if not, then at least

simultaneously.

8. Referring to the facts of the present case, learned senior advocate appearing for the appellant submits that, the concerned municipality cannot direct

treatment of an occupancy certificate from a retrospective date than the date on which it was actually issued. Therefore, he submits that the decision

of the municipality dated June 20, 2019 being contrary to the Rules of 2007 should be quashed. Learned Single Judge erred in not doing so.

9. Learned advocate appearing for the concerned municipality relies upon the minutes of the 27th meeting of the Building Committee of the concerned

municipality held on March 10, 2017 and contends that the application for partial occupancy certificate for the basement, ground floor till the 18th

floors of a basement + ground floor + 21st floor sanctioned, was considered by the Building Committee on such date. He points out that, the Building

Committee decided to issue partial occupancy certificate from the basement to the 18th floor of the building on such date.

10. Learned advocate appearing for the concerned municipality submits that, assuming that though not admitting Form H must precede Form J or at

least it must be issued simultaneously then also the concerned municipality cannot be faulted by treating issuance of Form H with effect from April 17,

2017 since Form J was issued on such date. Moreover, the decision to issue partial occupancy certificate was taken at the appropriate level of the

concerned municipality on March 10, 2017 which is prior to April 17, 2017. According to him, foundational basis of the decision of the municipality to

treat issuance of Form H with effect from April 17, 2017 exists on the basis of the materials on record. View of such municipality being plausible

should be accepted. Learned Single Judge did not err in accepting the view of the municipality.

11. Learned senior advocate appearing for the private respondent submits that, an agreement was entered into between his client as the builder and

the appellant as purchaser in respect of a flat on the 9th floor of a basement + ground floor + 21 floor building on Plot No. 4, Block A, EM,

Nabadiganta Industrial township, he submits that, his client built the basement + ground floor and upto the 18th floor initially. On completion of such

portion, his client applied for partial occupancy certificate and for drainage and sewerage connection by the writing dated January 19, 2017. He refers

to the minutes of the meeting of the concerned municipality dated March 10, 2017, which was relied upon on behalf of the municipality in course of

hearing of the appeal. He submits that the decision to issue a partial occupancy certificate upto the 18th floor in respect of such building was taken by

the concerned municipality.

12. Learned senior advocate appearing for the private respondent submits that the, municipality issued a letter dated April 17, 2017, which is the Form

J of the Rules of 2007. By such writing dated April 17, 2017, water connection and sewerage, drainage connection were allowed to the private

respondent in respect of the property.

13. Learned senior advocate appearing for the private respondent submits that, in terms of the Rules of 2007 if the view is taken that Form H must

precede or must be issued simultaneously with Form J, then the concerned municipality did not err in law in considering Form H being issued on and

from April 17, 2017 being the date on which Form J was issued. He contends that there is not dispute that on April 17, 2017, Form J was issued.

14. Learned senior advocate appearing for the private respondents relies upon Rules 32, 34 (2) and 34(7) of the Rules of 2007 in support of his

contentions.

15. Learned senior advocate appearing for the private respondent submits that, there are in aggregate 90 flat at the concerned premises. 89 flat

owners are paying occupancy charges. The appellant is refusing to pay the occupancy charges.

16. Appellant before us approached the Writ Court seeking cancellation of a letter dated June 20, 2019 issued by the concerned municipality.

17. By the letter dated June 20, 2019, concerned municipality noted that a clearance certificate was issued for the building at the subject plot on April

17, 2017. It also noted that occupancy certificate was issued on May 23, 2018. The letter went on to clarify that the occupancy certificate issued on

May 23, 2018 may be treated as effective from the date of the occupancy certificate, i.e. April 17, 2017.

18. As noted above, it is the contention of the appellant is that, occupancy certificate issued on May 23, 2018 cannot be treated effective from April

17, 2017.

19. Rules 34, 34A and 151 of the Rules of 2007, which the respective parties relied upon are as follows:

“34. Occupancy Certificate.” (1) Within fifteen days of receipt of the notice of completion of building or work, the Board of Councilors or the authorised

representative in this behalf shall inspect the building or work and shall satisfy itself or himself that the erection of the building or the execution of the work has been

done in accordance with the sanctioned plan.

(2) Within fifteen days from inspection, the Board of Councilors shall, if it is satisfied that the building or the work has been completed in accordance with the

sanctioned plan, issue an occupancy certificate, in Form 'H':

Provided that such certificate shall not be issued in the case of a building or any work for which provisional sanction was given unless the applicant produces before

the Chairman the license or permission required for sanctioned for construction of building:

Provided further that the occupancy certificate shall be issued only after all the extra materials like sand, boulders, stone chips, cement, steel, bamboo, timber, lying

on the public road have been removed by owner and the damages to public property, if any, has been made good by the owner with his own cost to the entire

satisfaction of the Board of Councilors.

(3) After due verification, one set of the building plan shall be returned to the applicant with the endorsement of approved completion plan under the signature of the

Chairman or an officer authorised in this behalf.

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(5) In a case where the occupancy certificate is refused, the Board of Councilors shall communicate the reasons in writing, to the applicant within thirty days from the

date of receipt of the notice of completion of the work.

(6) In case where, in the opinion of the Board of Councilors, the building or the work has not been completed in accordance with the sanctioned plan, it may take

necessary action in accordance with the provisions of the Act and these rules.

(7) The Board of Councilors shall not permit connections to be made to municipal water mains and municipal drains-- from any new building in respect of which

Occupancy Certificate has not been issued:

Provided that the Board of Councilors may permit connections to be made in respect of a building where Partial Occupancy Certificate or Block-wise Occupancy

Certificate has been issued as per provision of rules 34A and 34B.

Provided that the Board of Councilors may order disconnection of such connections if it is of the opinion that the conditions of the Partial Occupancy Certificate are

being violated or if further erection of the building or execution of the work is proceeding contrary to the sanctioned plans.

(8) The Board of Councilors shall not permit connections to be made to municipal water mains, if any, from any new building in respect of which water connection fee,

as may be specified by the Board of Councilors under the relevant rules, has not been paid in advance.

(9) Tolerance Limit for architectural measurement before or after finishing works on the outer face of the wall at the ground floor level shall be 50 mm.

34A. Partial Occupancy Certificate.---(1) Upon a written request made to the Board of Councilors for issuance of Partial Occupancy Certificate consequent upon

Occupancy of a part of a building which is under construction, the Board of Councilors, on being satisfied that the construction of the specified portion is complete

in all respects; that the remaining construction cannot be completed as per sanction plan within a reasonable period of time and that circumstances exist for allowing

partial occupation of the building, may issue Partial Occupancy Certificate valid for a specified period, in the form as specified in Form ~~Åçâ,~ËœHÅçâ,-â,,ç~~.

(2) A written request under sub-rule (1) shall be accompanied by---

(a) a notice of Occupancy in the form as specified in Form ~~Åçâ,-â,,çGÅçâ,-â,,ç~~ for the portion of the building which is stated to be complete, along with all enclosures as per

rule 33 as applicable,

(b) structural stability certificate for the portion of the building which is stated to be complete.

(c) an indemnity bond/undertaking to indemnify the Municipality against any risk, danger or damage to any person, whether an occupier or not, and an undertaking

to ensure, in such manner as the Board of councilors may specify, public safety,

(d) an undertaking that no person shall occupy or shall be allowed to occupy any portion of the building for which Occupancy Certificate has not been issued,

(e) an undertaking that in the event of violation of the terms of the Partial Occupancy Certificate, the Board of Councilors shall be entitled to disconnect municipal

water mains and municipal drains for the entire building without any notice,

(f) any other documents or undertakings that the Board of Councilors may deem necessary

(3) When the erection of the building or the execution of the work is completed within the period or extended period provided for in section 211, the applicant shall

apply for conversion of the Partial Occupancy Certificate for issue of Occupancy Certificate and such certificate may be issued in accordance with the provisions of

these rules.

151. Sewerage and water supply connections.Åçâ,-" (1) The plot owners shall have the right of connecting their private sewerage and water supply lines with sewerage

and water supply system of the Municipality and shall derive the benefit of those services only after obtaining specific written permission from the Authority and on

payment of connecting fees and other charges under the Act and for complying with the following requirement:Åçâ,-

The private line of sanitary sewers and water distributions shall be laid by, and under the supervision of, a plumber or plumbing firm registered with the Authority

and the plot holder shall apply for water or sewer connections in form 'K' (in duplicate) as a pre-requisite"".

(2) Five copies of the sewerage and water supply plans shall have to be submitted for sanction to the Authority in the manner as mentioned in clause (b) of rule 96.

(3) (a) For obtaining sewerage and water supply connection to the building from the supply mains, the owner of the building shall have to obtain a clearance

certificate for each floor of the building from the Authority to the effect that no deviation or departure has been made in the building from the sanctioned plan and

that sewerage and water distribution system of the building have been done as per sanctioned plan. The clearance certificate in form T will be along with the

occupancy certificate in form 'H' issued after final inspection of the building which will be carried out on receipt of requisite intimation from the owner of the building

in form 'G' under rule 33.

(b) (i) The Sewer connection to the Authority's Manhole and/or water line connection to the Authority's water line is to be done strictly under supervision of the

officers and/or staff and/or agents authorised for the purpose by the Authority and, for this purpose, the charge as may be estimated by the Authority having regard

to the rest of materials, labour and overhead at the prevailing market rate are to be deposited earlier.

(ii) Any unauthorized sewer connection or water line connection will be disconnected forthwith without giving any prior notice to the owner or occupier of the

building.

(4) (a) The Authority may, in its discretion, give temporary supply of water for construction purpose on payment of charges at the rate of Rs. 25/- per month, subject

to the condition that water charge for six months shall be paid in advance initially. For continuation of water supply for construction purpose beyond six months, the

plot holder shall pay monthly charges in advance. In case of default, water supply will be disconnected forthwith without giving any notice to the plot owner.

(b) The Authority reserves the right to forthwith disconnect temporary water supply connection if, on inspection, it is observed that water is being wasted by

negligence of the plot owner or the labour working in his plot.

20. Rule 34 deals with occupancy certificate. Sub-rule (1) of Rule 34 requires a notice of completion of the building or work to be issued by the builder

to the municipality. Upon receipt of the same, the Board of Councilors are enjoined upon the duty to inspect the building and satisfy itself that the

sanctioned building plan was adhered to.

21. In the facts of the present case, builder which is the private respondent herein applied for issuance of partial occupancy certificate by a writing

dated January 19, 2017. In terms of Rule 34 (1) of the Rules of 2007, concerned municipality inspected the building, took expert opinion, satisfied itself

that the erection of the building was done in accordance with the sanctioned plan and decided to issue part-occupancy certificate for the basement to

18th floor.

22. Sub-rule (2) of Rule 34 requires the Board of Councilors of the municipality to issue occupancy certificate in Form H if it is satisfied that the

building was completed in accordance with the sanctioned plan. In the facts of the present case, such occupancy certificate was issued on May 23,

2018.

23. Rule 34 (3) is not relevant in the context of the present matter. It requires retention of one set of the building plan by the concerned municipality.

24. Rule 34 (5) and (6) of the Rules of 2007 are also not relevant in the facts of the present case.

25. Rule 34 (7) of the Rules of 2007 requires the Board not to permit connections to be made to the municipal water mains and municipal drains for

any new building in respect of which occupancy certificate was not issued. The first proviso, however, permits the Board of Councilors to allow

connection to be made in respect of building where partial occupancy certificate or block-wise occupancy certificate was issued as per provisions of

Rule 34A and 34 B of the Rules of 2007.

26. Sub-rules (8) and (9) of Rule 34 are also not attracted in the facts of the present case.

27. Rule 34A of the Rules of 2007 permits the Board of Councilors to issue a partial occupancy certificate upon a written request being made to such

effect. In the facts of the present case, written request was made on January 19, 2017. Again as noted above, such written request was processed

and a decision of the relevant authority to issue part occupancy certificate was taken.

28. Rule 151 of the Rules of the 2007 deals with sewerage and water supply connections. In our standing, the scheme provided therein vest a right to

a plot owner to connect its drainage, sewerage and water supply lines with the sewerage and water supply system of the municipality and derive

benefits of those services. However, Rule 151 requires such plot owner to obtain specific written permission and to pay connecting fees and other

charges, to enjoy such benefits.

29. The scheme also contemplates that there must exist either an occupancy certificate or a partial occupancy certificate prior to water connection

and sewerage connection being granted. Permission to connect water and sewerage lines of the plot owners with the respective lines with the

municipality is granted by Form J.

30. In the facts of the present case, Form J was issued to the builder on April 17, 2017. As noted above, decision to issue Form H, i.e. the partial

occupancy certificate was taken by the concerned municipality on March 10, 2017 although Form H was actually issued on May 23, 2018.

31. Scheme of the Rules of 2007 requires issuance of Form H prior to the issuance of Form J and at least issuance of Forms H and J simultaneously.

In the facts of the present case, Form J was issued on April 17, 2017 while Form H was issued on May 23, 2018, notwithstanding the fact that the

municipality at the appropriate level took the decision to issue Form H on March 10, 2017, that is, prior to the date of issuance of Form J.

32. In order to tide over the anomaly, concerned municipality treated issuance of Form H to be effective from April 17, 2017, that is, the date on which

the Form J was issued. Foundational basis for such a treatment exists. Request for issuance of Form H was made on January 19, 2017 and decision of

the municipality to issue Form H was taken on March 10, 2017. Both events are prior to the date of issuance of Form J, i.e. on April 17, 2017.

33. View taken by the municipality as recorded in its letter dated June 20, 2019, which is the subject matter of the writ petition is plausible. Such view

being plausible, Writ Court need not interfere with such decision. Learned Single Judge, therefore, rightly dismissed the writ petition.

34. There are other issues between the private parties with regard to the inter se liability between them. There subsists an arbitration agreement

between the private parties which may cover such disputes.

35. Subject matter of the writ petition does not require the Writ court to enter into the disputes inter se between the private parties.

36. In such circumstances, we find no merit in the appeal.

37. F.M.A. 1381 of 2024 is dismissed without any order as to costs.

38. In view of the dismissal of the appeal, connected applications, if any, are disposed of.