

**(2007) 09 CAL CK 0004**

**Calcutta High Court**

**Case No:** Writ Petition No. 19952 (W) of 2006

Achintya Ghosh

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

**Date of Decision:** Sept. 11, 2007

**Acts Referred:**

- Calcutta Municipal Corporation Act, 1980 - Section 392, 393, 395, 396, 397
- Land Acquisition Act, 1894 - Section 4(1)

**Citation:** (2007) 4 CHN 705

**Hon'ble Judges:** Dipankar Datta, J

**Bench:** Single Bench

**Advocate:** Sardar Amjad Ali and Asit Bhattacharya, for the Appellant; Alok Kumar Ghosh and Achintya Banerjee, for the Respondent

### **Judgement**

Dipankar Datta, J.

The Kolkata Municipal Corporation (hereafter the Corporation) sanctioned a building permit in favour of the petitioner for the purpose of raising construction on premises No. 23A/660, Diamond Harbour Road, Kolkata (hereafter the said premises) vide No. BS- 124 on 28.10.1999. The plan was valid till 27.10.04. It is the case of the petitioner that on 20.3.03 he intended to start construction said premises but was prevented from doing so by the concerned police authorities. Being aggrieved thereby, he had preferred a writ petition before this Hon'ble Court being W.P. 5188 (W) of 2003. On 22.4.03, a learned Judge of this Court for reasons recorded in the order granted liberty to the petitioner to carry on construction work at the premises in question strictly in accordance with the sanctioned building plan until further orders. The petitioner was also given liberty to seek assistance from the police for protection of his life and property as well as the safety and security of the labours who would be engaged in construction work. The police authorities were directed to render adequate police assistance, if sought for. However, it was recorded that pendency of the writ petition would not prevent the Corporation from

proceeding with the proposal for acquisition of the said premises and/or to take any further step in respect of the construction work thereat in accordance with law.

2. Immediately after the aforesaid order was passed, the Executive Engineer (Building), Borough No. X of the Corporation vide his letter dated 25.4.03 informed the petitioner that the Corporation had already taken steps for acquisition of the said premises for a park and hence it was felt "prudent to withhold the building sanction plan vide No. 124 (B-X)/99-2000 dated 28.10.99 for the time being and no construction work will be allowed on the abovenoted premises". According to the petitioner, this letter was served on him on 25.4.03 when he had been to the said premises for the purpose of raising construction in terms of the sanctioned building plan. As a consequence, the petitioner could not raise construction.

3. This was followed by a notice u/s 4(1) of the Land Acquisition Act, 1894 dated 23-10-2003 issued to the petitioner by the 1st Land Acquisition Collector, Calcutta pursuant whereto the petitioner filed an objection. However, by letter dated 8.12.04 written by the Assistant Secretary to the Government of West Bengal, Land and Land Reforms Department, the 1st Land Acquisition Collector, Calcutta was requested to drop the land acquisition proceeding initiated for acquisition of the said premises and an action taken report was directed to be submitted. This was followed up by a letter of the Land Acquisition Collector dated 21.7.05 whereby he confirmed to the petitioner's lawyer that no proposal to initiate further land acquisition proceeding for acquiring the said premises had been received by his office.

4. These facts in the background, the petitioner vide his representations dated 7.7.05 and 11.8.06 had requested the Mayor of the Corporation to permit him to resume construction excluding the time for which operation of the building plan was withheld by the order dated 25.4.03 issued by the Executive Engineer and also to revive the building plan by granting extension thereof. No action having been taken by the Corporation, the petitioner has approached this Court with the prayer to direct the Corporation authorities not to give effect to the impugned notice dated 25.4.03 issued by the Executive Engineer and also for rescission, cancellation and/or setting aside of the same and to revive the sanctioned building plan dated 28.10.99.

5. Mr. Ali, learned Senior Counsel appearing for the petitioner submitted that undisputedly the building plan which was to remain valid till 27.10.04 was not allowed to be operative with effect from 25.4.03 and, therefore, this Court ought to direct the Corporation to permit the petitioner to raise construction on the basis thereof after excluding the period during which operation of the same was withheld upon setting aside of the order dated 25.4.03 and/or in the alternative to direct the Corporation to revive the building plan by granting suitable extension. According to him, the petitioner was resisted from raising construction on the ground that the Corporation intended to use the said premises for constructing a park but such proposal not having materialized, the petitioner ought not to be penalized for no

fault of his. He, accordingly, urged this Court to grant relief(s) as prayed for.

6. Mr. Ghosh, learned Counsel for the Corporation vehemently opposed the petition. He referred to Section 398(3) of the Kolkata Municipal Corporation Act, 1980 (hereafter the Act) and submitted that the petitioner not having commenced construction at the said premises in terms of the building permit within two years of such sanction, it stood lapsed. Alternatively it is his further submission that since the petitioner did not apply for revalidation and/or extension of the permit prior to its expiry on 27.10.04, question of grant of revalidation/extension of the same does not and cannot arise and the petitioner has to apply for fresh sanction if he intends to raise construction. According to him, the petitioner is not entitled to any relief whatsoever.

7. In reply, Mr. Ali submitted that even if one does not commence construction within two years from date of sanction, the plan does not lapse automatically as contended by Mr. Ghosh. According to him, the plan subsists till the period of its validity and requirement of the statute is that if anyone intends to raise construction after two years of sanction he must inform the Corporation intending to commence construction and the provisions of Section 398 would have application in such a case. It is his further submission that question of the plan lapsing on expiry of five years from the date of its sanction as contended by Mr. Ghosh, is absolutely misconceived inasmuch as the letter dated 25.4.03 withholding the operation of the plan is yet to be recalled and, therefore, it cannot be said that the plan has lapsed by operation of law.

8. This Court has considered the rival submissions at the bar. Before this Court proceeds to decide the issues raised herein, a close look at the statutory provisions, to the extent relevant herein, would be profitable.

9. Chapter XXII of the Act embodies provisions relating to "Buildings". Section 392, *inter alia*, prohibits erection of a building without sanction of the Municipal Commissioner. In terms of Section 393, a person who intends to erect a building is obliged to apply for sanction to the Municipal Commissioner by giving a notice in writing of his intention and containing relevant information in a prescribed form. The notice is to be accompanied by such documents and plans as may be prescribed. Section 395 requires the person intending to build to specify the purpose for which the building is to be used. Section 396 of the Act provides for sanction or provisional sanction to be granted by the Municipal Commissioner or his refusal to sanction erection of a building. Cancellation of sanction is permitted under certain conditions in terms of Section 397. Section 398, *inter alia*, permits erection of a building after sanction has been given by the Municipal Commissioner as well as steps to be taken by the person intending to build in the event sanction is not refused by the Municipal Commissioner within the specified time. It also obliges a person, who has not commenced erection of the building within two years of the sanction, to give a notice u/s 393 for fresh sanction and provides for applicability of

the provisions of this section in relation to such notice as they applied in relation to the original notice. Lastly, the provision requires the person intending to build to give a notice of proposed date of commencement of erection and that if commencement does not take place within 15 days of the notified date, to give a fresh notice in this behalf. Section 399 empowers the Municipal Commissioner (when sanctioning the erection of a building) to specify a reasonable period within which erection thereof is to be completed, and that if erection is not completed within the period specified, erection shall not be continued except without a fresh sanction or within such extended period as may be allowed by him.

10. Chapter III of the Building Rules, 1990 (hereafter the rules) framed under the Act lays down procedure for sanction for erection of a building. It obliges a person intending to build to issue notice in writing to the Municipal Commissioner in the form as specified in Schedule I thereto. This notice is to be accompanied by other documents required under the rules, viz. key plan, site plan, building plan etc. Power of the Municipal Commissioner to issue sanction or provisional sanction or to refuse sanction is contained in Rule 13. In the event the Municipal Commissioner sanctions or decides to provisionally sanction the erection of a building, he shall issue a building permit in the form as specified in Schedule VI and in case of refusal, communication has to be issued in the form as specified in Schedule VII. Rule 15 provides that a building permit, subject to provisions of Section 398(3), shall be valid for a minimum period of 5 years from date of issue thereof. Rule 21 lays down that proposed date of commencement of erection has to be notified in the form as specified in Schedule IX within two years from date of issue of the building permit but not less than seven days before commencement. However, in terms of the proviso thereto, if during the validity of the building permit erection does not commence within fifteen days of the notified date, the notice shall be deemed not to have been given and a fresh notice shall be necessary if the validity of the building permit has not expired.

11. It would therefore appear that the aforesaid statutory provisions are regulatory in nature for the purpose of controlled erection of buildings in the city of Kolkata and, therefore, a construction of the relevant statutory provisions has to be made in such manner so as to give effect to the legislative intent.

It is not in dispute that building permit was sanctioned in favour of the petitioner by the Municipal Commissioner on 28.11.1999 and was valid till 27.10.2004. However, there is nothing on record to establish that within two weeks from date of issuance of the building permit, the petitioner had notified his intention of commencing erection in terms thereof as is required by Section 398(4) of the Act. From the petitioner's own showing, he intended to commence construction on 20.3.2003, i.e. well beyond two years from date of sanction of the building permit.

12. True it is that by the letter dated 25.4.2003 the building plan was withheld for the time being and construction work was prohibited thereby. But the question which

arises for a decision on facts and in the circumstances of this case is whether on the failure of the petitioners to commence construction within 27.10.2001, i.e. two years from date of issuance of the building permit, the building permit lapsed by operation of law as contended by Mr. Ghosh though the building permit was initially valid for a period of five years from date of issue thereof, i.e. till 27.10.2004. This question has to be answered keeping in mind the provisions of Section 393/398/399 of the Act read with Rule 15 of the rules.

13. The building permit has not been annexed to the present petition. However, the Corporation in its counter-affidavit has not disputed the assertion of the petitioner that it was valid till 27.10.2004. Issuance of building permit and its validity is regulated by Section 399 of the Act read with Rule 15 of the rules. As has been noted above, Section 399 empowers the Municipal Commissioner to specify period within which erection has to be completed. In terms thereof and in exercise of power conferred by Rule 15(3), the building permit had been issued which was to remain valid for five years from date thereof, but such validity of the building permit is subject to the provision of Section 398(3) according to the same provision [Rule 15(3)]. When the language of the statute is clear and admits of no ambiguity, it has to be read literally and the words used by the legislature have to be given their ordinary, natural and grammatical meaning irrespective of its consequences is the cardinal rule of construction of statutes. To the mind of this Court, once a building permit is issued for a period of five years and the person favoured with the building permit does neither commence construction within two years from the date of its issuance nor even notifies his intention to commence erection within two years, he cannot after lapse of the said period of two years raise any construction on the basis of the building permit because it exhausts itself by passage of time and in terms of Sub-section (3) of Section 398 of the Act, a fresh sanction has to be applied for from the Municipal Commissioner and provisions of Section 398 is made applicable in relation to a notice for fresh sanction as it applied in relation to the original notice. What Section 398 further envisages is that only upon a fresh sanction granted by the Municipal Commissioner a person intending to build can commence erection of the building in accordance therewith and in the process he would be bound not to contravene any of the provisions of the Act or the rules framed thereunder or any other law in force for the time being. If only the petitioner had notified his intention to commence erection on a particular date within 27.10.2001, i.e. two years from issuance of the building permit and even if he had not commenced erection on the date notified, proviso to Rule 21 could have been availed of by him, for, in such case the permit would not have lapsed and would have remained valid till its expiry as specified under Rule 15(3). Non-issuance of any notice notifying intention to commence erection within two years of issuance of the building permit proves fatal for the petitioner and the position cannot be retrieved for no law permits him to pray for extension/ revalidation of a lapsed permit. It is understandably true that having obtained a building permit from the Municipal Commissioner, it would

amount to some hardship for the petitioner to repeat the process of obtaining sanction once again. However, law is well-settled to the effect that result flowing from a statutory provision is never an evil and Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation; whether the Court likes the result or not, the statute has to be given effect to (See [Martin Burn Ltd. Vs. The Corporation of Calcutta.](#) ).

14. In view thereof, the conclusion is inevitable that unless and until a fresh sanction is obtained by the petitioner from the Municipal Commissioner by repeating the procedure as laid down in the statutory provisions referred to above for the purpose of obtention of sanction and commencement of erection, he is not legally entitled to reap the fruits of the building permit sanctioned on 28.10.1999. The language of Section 398(3) of the Act is clear and admits of no ambiguity and on literal construction thereof, the contention of Mr. Ghosh is upheld.

15. The submission of Mr. Ali that the very fact that the Executive Engineer of the Corporation by the notice dated 25.4.2003 had withheld the building plan establishes that the building permit was valid and did not lapse cannot be of any assistance to the petitioner. Since the petitioner had not commenced construction within two years, the building permit by operation of law had lapsed and the same could not have been given a fresh lease of life by an order passed by the Executive Engineer. Any action of a public authority which is palpably contrary to the provisions of law cannot vest a citizen with an enforceable right. The said order for all intents and purposes is non est and is declared so.

16. However, having regard to the correspondences exchanged between the petitioner and the Government, it appears to be clear that the said premises is no longer required to be acquired for the purpose of a park and, therefore, this Court holds that it would now be open to the petitioner to apply for fresh sanction of the Municipal Commissioner by giving notice u/s 393 of the Act for erecting a building on it and if such notice is given, appropriate action in accordance with law shall follow.

17. The writ petition stands disposed of with the aforesaid observations. However, there shall be no order as to costs.

18. Urgent photostat certified copy of this judgment, if applied for, be furnished to the applicant within 3 days from the date of putting in requisites therefor.