Howrah Municipal Corporation and Others Vs Baidyananda Mahato and Others

Court: Calcutta High Court

Date of Decision: Aug. 19, 2004

Acts Referred: Calcutta Municipal (Amendment) Act, 1951 â€" Section 614
Calcutta Municipal Corporation Act, 1980 â€" Section 633
Constitution of India, 1950 â€" Article 226
Howrah Municipality Building Rules, 1984 â€" Rule 57, 58, 58(1), 64

Citation: (2005) 1 CHN 382

Hon'ble Judges: Rajendra Nath Sinha, J; Dilip Kumar Seth, J

Bench: Division Bench

Advocate: D.P. Mukherjee, Smritikana Mukherjee and Debjit Mukherjee, for the Appellant; Haradhan Banerjee and Amitava Pine, for the Respondent

Final Decision: Allowed

Judgement

Dilip Kumar Seth, J.
The petitioner had submitted a plan for sanction for the purpose of construction of six storeyed building to the

Howrah Municipal Corporation on 25th May, 1984. On 8th June, 1984, a resolution was taken by the Building Committee that the sanction be

recommended on payment of sanction fee of Rs. 4,500/- subject to removal of certain objections. This was communicated to the petitioner by a

letter dated 16th August, 1984 addressed by the Howrah Municipal Corporation. It is alleged by Mr. Banerjee that the defects were removed on

22nd August, 1987. On perusal of the notesheet, it appears that after this recommendation was made for removal of the defects on 8th June, 1984

the next note is for calculation of the sanction fee at the present rate endorsed on 29th July, 1987. Accordingly the enhanced sanction fee

calculated and forwarded for further order to the Commissioner on 3rd August, 1987. The Commissioner enquired whether the condition for

sanction has been fulfilled by the party. After this note, it appears from the record that the defects were removed. Mr. Mukherjee submits that this

is the whole record, which is produced before the Court. He has also submitted that attempt was made to trace out the corrected plan but that was

not available on record. We had also browsed through the record and the file produced before us, but we are unable to find out any corrected

plan on record. Whereas there is another note dated 22nd August, 1987, where it has been noted that the party had fulfilled the conditions of

sanction laid down in the meeting and the party may now be asked to deposit the sanction fee at the present rate within 30 days for sanction of the

plan. It appears that there was a note to discuss the matter on 5th October, 1987. There is another note that the matter was discussed. This

particular record was torn, we are unable to read the note dated 28th August, 1987. The only part that we could read is ''be approved'', which

appears to have been signed by the same person who had signed the note on 8th August, 1987 which seems to be that of the Commissioner.

1.1. It appears that after this episode the writ petitioner respondent wrote a letter on 10th June, 1989 seeking permission to deposit the sanction

fee on the ground that the writ petition had left for his native place and therefore, he could not deposit the sanction fee. This letter is on record. It

appears from the said letter that the writ petitioners were the owners of the property for which they had submitted a plan for six storeyed building

upon which this plan was sanctioned with direction to deposit sanction fee. That the petitioners had left for their native village outside Bengal for a

long period of time due to some bona fide reasons as such they could not deposit the sanction fees towards plan and could not obtain the plan

sanctioned from the Municipality. They want to execute the construction work according to the sanctioned plan on payment of usual charges

towards plan as assessed at the present rate. Therefore, he prayed that he may be allowed to deposit the sanction fee. This letter was placed

before the Commissioner on 12th June, 1989. On 19th June, 1989 there was a note by the Commissioner as to whether the plan was sanctioned

as per Building Rules. By a note dated 17th July, 1989, it was pointed out that the case was placed before the Building Committee so that the

proposal may be sanctioned according to C. M. Act, which was continued when the original meeting was held. On 18th July, 1989, it was decided

by the authority that it was a proposal for six storeyed building and since the sanction fee was not deposited pursuant to the sanction order dated

8th June, 1984, the same cannot be acted upon after expiry of more than 5 (five) years and the party may submit a fresh plan in accordance with

the Building Rules. This appears to have been signed by the Mayor. Accordingly, the petitioner was informed on 7th September, 1989 that since

the sanction fee was not deposited, therefore, the plan was cancelled.

1.2. Against this order on 11th March, 1990, the writ petition being C. 0. No. 14149(W) of 1989 was moved. However, no interim order was

granted, on 7th September, 1990 when the matter came up again, an order was passed permitting the petitioner to deposit the sanction fee at the

enhanced rate within a fortnight and upon acceptance of such amount the Municipality was to proceed in accordance with law. It is contended by

Mr. Banerjee appearing for the respondents that this amount was deposited through a demand draft. But Mr. Mukherjee appearing on behalf of

the Howrah Municipal Corporation/appellant submits that no deposit was ever made. From the record, it appears that the issuing bank was

enquired about whether the cheque was encashed, by a letter dated 7th February, 1996 addressed by the writ petitioners. This was replied to in

the negative by the bank. A xerox copy of this letter dated 19th February, 1996 addressed to the writ petitioner/respondent by the bank pursuant

to its letter dated 7th February, 1996, is already on record of the Howrah Municipal Corporation. Much has been said about the deposit and non-

deposit of this demand draft. But we are not on this question since this was an actionpendente lite which would depend on the final outcome of the

matter.

The question:

2. Now the question, in the facts and circumstances as disclosed above, is whether the Howrah Municipal Corporation is obliged to sanction the

plan and permit the writ petitioners to construct six storeyed building in accordance with the provisions of the Howrah Municipal Act as was

applicable to the case of sanction prior to the coming into force of the new Act. Mr. Banerjee contends that there was no communication to his

client that the writ petitioner was required to deposit the sanction fee within 30 days. According to him, until this is communicated, the writ

petitioner is entitled to deposit the amount and carry on construction on the basis of the plan already sanctioned on 8th June, 1984 as corrected on

22nd August, 1987 in compliance of the sanction order. However, this is being opposite by Mr. Mukherjee.

The Building Rules : Its application :

3. In order to appreciate the situation, we may refer to the Building Rules applicable in 1984 or prior to the new Act, which came into force with

effect from 18th December, 1989. Admittedly, this was governed by the Howrah Municipal (Temporary Provisions) Act, 1933 by which the

provisions of the Calcutta Municipal Act, 1923 was adopted and extended to the Municipality of Howrah. This adoption continued even with the

enactment of Calcutta Municipal Act, 1951 by reason of Section 614 thereof and also with the Calcutta Municipal Corporation Act, 1980 by

reason of Section 633 thereof. The Howrah Municipal Act, 1965 also did not affect these provisions. Therefore, it is the same Building Rules,

which became applicable by reason of Section 633 of the Calcutta Municipal Corporation Act, 1980 would be applicable in this case as on 8th

June, 1984.

3.1. The Building Rules provides in Part 7, the procedure for sanction of a new building. Various procedures have been mentioned therein, we

need not go into those. Rule 57 requires sanction of a plan or refusal thereof, which runs as follows:

57. (1) Within fifteen days after the receipt of any application made under Rule 52 for permission to execute any work, or of any information or

documents required under this schedule, or within fifteen days after the Commissioners have been satisfied that there are no objections which may

lawfully be taken to the grant of permission to execute the work, the Commissioners shall, by written order, either-

(a) grant permission conditionally or unconditionally to execute the work, or

(b) refuse, on one or more of the grounds mentioned in Rule 59 or Rule 63, as the case may be, to grant such permission.

(2) When the Commissioners grant permission conditionally under clause

(a) of sub-rule (1), they may in regard thereto impose such conditions, consistent with the Calcutta Municipal Act, 1923, as enforced in the

Municipality of Howrah, as they may think fit.

(3) Notwithstanding anything contained in sub-rules (1) and (2), in any case in which it appears to the Commissioners that any public

improvements which may render necessary the acquisition of the site of a proposed building or any part thereof are desirable and expedient, they

may withhold sanction to the building plans submitted in respect of such building for a period not exceeding three months from the date of such

submission"".

3.2. In view of Rule 57, it is well within the power of the Municipality to impose condition while granting sanction. If conditions are fulfilled, the

sanction is granted. Until the conditions are fulfilled, the sanction cannot be effective. But as soon as the conditions are complied with, the sanction

would become valid from the date when the conditions were stipulated for sanction. This condition may also include rectifications, if required, as

pre-condition for sanction.

3.3. In case the Municipality neither sanctions nor refuses the sanction, then under Rule 58(1) the applicant is entitled to proceed to execute the

work without contravening any provisions of the Calcutta Municipal Act, 1923 as enforced in the Municipality of Howrah or any rules or bye-laws

made thereunder. Rule 64 prescribes that when plan is sanctioned for construction of a building, the construction is required to be completed within

three years after the date on which the permission is given to execute the work and the work shall not be commenced or continued thereafter until

a fresh application has been made and a fresh permission is granted. Such fresh sanction order can be obtained if such application is made before

the expiry of three years with a certificate that the construction of the building has been commenced and a substantial portion of it is already

completed; and then the Commissioner shall thereupon cause the building to be inspected and if they consider that the substantial portion of it has

been completed they shall grant such a certificate to that effect. Only then fresh permission can be granted on the fresh application.

3.4. In the present case, the sanction was granted on 8th June, 1984. Now the question arises as to whether this particular date shall be taken to

be the date of sanction for the purpose of Rule 64. Both the learned Counsel had relied upon the decision of a learned Single Judge in C. 0. No.

710(W) of 1991 disposed of on 25th September, 1992 by Hon''ble Ruma Pal, J. as Her Lordship then was, in the case of Suniti Bhusan Palui v.

Howrah Municipal Corporation and in C. O. No. 3076 (W) of 1990, Jamuna Samanta v. Howrah Municipal Corporation, disposed of on 30th

November, 1990 by Hon''ble Mukul Gopal Mukherjee, J. as His Lordship then was. In both these decisions, it was held that when a plan has

been sanctioned before the date when the new Act has come into force then the same is to be governed by the old Act and the mischief of the new

Act would not be applicable. In Suniti Bhusan Palui (supra) it was held further that if there was no time limit even for the performance of the

subsequent conditions, in that event, whenever this subsequent conditions were fulfilled the date of sanction would remain the date when the

sanction was accorded in that case it was 10th March, 1989 that the defects were removed after the new Act had come into force. Similar view

was taken in Jamuna Samanta (supra); there also the defects were removed on 7th February, 1990 pursuant to the order passed on 11th March,

1989 which was held to be the date of grant of sanction, a date prior to 18th December, 1989 when the Howrah Municipal Corporation

(Amendment) Ordinance, 1989 came into effect. Thus if the date of original sanction subject to compliance of certain formalities is taken to be the

date of sanction and upon compliance of all formalities the date of sanction would be the date when the sanction is accorded subject to compliance

of all formalities in that event in the present case, it would be 8th June, 1984 which would be the date of granting the sanction.

The date of sanction : Validity : Whether the old Act will apply or the new:

4. From the facts, it appears that by a letter dated 16th August, 1984 the writ petitioner was informed about the order of sanction but there is

nothing on record to show at least prior to 22nd August, 1987 that the writ petitioner had taken any steps to remove the defects and complete the

formalities by depositing the amount of sanction fee. The letter dated 10th June, 1989 is as vague as possible; it has not disclosed as and when the

writ petitioner had left for his native place and how long did he remain there. It is also not pointed out that before he left for his native place he had

intimated the Howrah Municipal Corporation his address at his native place for communication. In fact, there is nothing on record to show that

there was any communication in between. At least prior to 10th June, 1989, there is nothing to show that writ petitioner had taken any steps.

4.1. However, it appears that in 1987 the matter was sought to be revived; and it was pointed out that the formalities were complied with. But on

record there appears nothing on which it can be ascertained that the formalities were complied with. It is also not stated that the writ petitioner had

ever attempted to ascertain the sanction fee payable after 8th June, 1984. Whereas in both the decisions in Suniti Bhusan Palul (supra) and Jamuna

Samanta (supra), it appears that there the respective writ petitioner had attempted to ascertain the amount of sanction fee and had enquired from

the Municipal Authority. But no such averment is made in the present case.

4.2. Mr. Banerjee had relied on the ground that the order dated 22nd August, 1987 was never communicated to his client and that he had

complied with the formalities on 22nd August, 1987. It is preposterous that the note was put up on 22nd August, 1987 and that it could be

complied with on the same date and that a note could be so put up without examining as to whether the corrected plan was submitted and whether

it had really removed the defects. The plan is also not on record. In the writ petition also there is no specific statement that on which date the

petitioner had submitted a corrected plan except making vague statement that it was done on 22nd August, 1987. The plan was sanctioned on 8th

June, 1984 by reason of Rule 64, the validity would have expired on 8th June, 1987. It could be extended only if an application is made before the

expiry of 8th June, 1987. It is the writ petitioner''s own admission that the corrected plan was submitted on 22""d August, 1987. Therefore, if we

take the date of sanction upon subsequent compliance of all formalities as on date of sanction, in that event, 8th June, 1984 being the date of

sanction by reason of Rule 64, the sanction was invalid. By reason of compliance of all formalities or by reason of notes given in the order sheet

would not have effect of reviving a dead horse, which had its natural death on the expiry of 7th June, 1987. The communication or non-

communication of the order dated 8th June, 1987 would have no impact. The reading of the letter dated 10th June, 1989 indicates that there was

communication and that there were laches and absence of diligence on the part of the writ petitioner. Therefore, by reason of such laches and

absence of diligence on his part, the writ petitioner cannot claim any relief under the equity jurisdiction.

4.3. Admittedly, this case would be governed by the old Act and under the old Act the petitioner is entitled to commence work if no

communication is made. However, here in this case initially the sanction was refused. An appeal was preferred by the writ petitioner. On appeal

plan was sanctioned on 8th June, 1984 on certain conditions, which were alleged to have been complied with after the expiry of period mentioned

in Rule 64. Such compliance, after expiry of validity period will not revive the validity simply because the writ petitioner was not diligent and took

more than three years to remove the defects and then after 22nd August, 1987 the writ petitioner had left for his native place without disclosing the

dates and only came back to take up the cause on 10th June, 1989 for claiming the benefit of sanction of six storeyed building.

4.4. We may also observe that the records of the Municipal Authority do not indicate in any way as to how the defects were removed. In order to

contend that the defects were removed, Mr. Banerjee relied on the records of the Municipal Authority. But the said record does not contain

anything except a note without any supporting materials. This note about compliance of all formalities does not seem to be reliable. The petitioner

claims to have complied with it but the petitioner is unable to produce any proof with regard to such compliance,

4.5. The deposit of the demand draft was made pursuant to an order of this Court. Such deposit is always subject to the result of the final outcome

of the matter. It would not confer any right on the parties simply because it was deposited pursuant to an order of this Court. However, admittedly,

it was not encashed. Mr. Banerjee points out that this demand draft was deposited through a letter, which was received by the Municipal

Corporation. A xerox copy whereof has been produced. At the same time, on enquiry, it appears that the demand draft was not encashed. Mr.

Mukherjee submits that every deposit has to be made by challans and there are certain formalities, only when the cheques or bank drafts or cash

are said to be deposited. In any event, it is neither here nor there. By such deposit, an already lapsed sanction plan cannot be revived.

4.6. Thus, the present case is distinct and different from the facts of the decisions as cited by Mr. Banerjee in Suniti Bhusan Palui (supra) and

Jamuna Samanta (supra).

4.7. As discussed above, we hold that a lapsed plan cannot be revived by late compliance of formalities. The compliance will definitely relate back

to the date of sanction. But if from such sanction the validity period is expired then such compliance will not have the effect of reviving a plan

lapsed due to efflux of time. There can not be any renewal other than prescribed by Rule 64. The High Court cannot direct otherwise and thereby

re-enact the rules without being authorized to legislate. Once the validity period is expired and the plan has not been renewed in terms of Rule 64,

then there is no valid plan existing. In such a case the old law can be attracted so far as it relates to the question of revival is concerned. The

renewal is permissible of valid plan if applied before expiry. An attempt to revive or renew a plan after it is lapsed is invalid and void. Thus, in this

case applying the old rule, we do not find that the learned Single Judge had decided the case correctly.

The judgment of the learned Single Judge :

5. The learned Single Judge in the order dated 11th September, 1989 was pleased to deal only with the question of intimation of the resolution

dated 22nd August, 1987 but its attention was not drawn to the question of validity of the sanction in the light of Rule 64 and that of its revival

attempted de hors the said rule. It is a material omission to which the Court''s attention was not drawn due to which there was a material omission.

Conclusion :

6. In the circumstances, we are unable to agree with the decision of the learned Single Judge. In our view, the plan sanctioned on 8th June, 1984

stood expired on 7th June, 1987 in view of Rule 64 and subsequent compliance and removal of defects with not in any way enure to the benefit of

the writ petitioner to revive a lapsed plan on the expiry of the validity period. The decision dated 22""d August, 1987 having been taken after 7th

June, 1987 is void and a nullity and cannot be acted upon. Therefore, no relief can be had on that basis in this case.

Order:

7. The appeal, therefore, succeeds and is allowed. The order of the learned Single Judge is hereby set aside. The order dated 22nd August, 1987

passed by the Municipal Authority is hereby declared void and a nullity. The writ petition is dismissed.

7.1. There will, however, be no order as to costs.

8. Urgent xerox certified copy of this order, if applied for, be given to the parties on priority basis preferably within a period of 7 (seven) days.

Rajendra Nath Sinha, J.

9. I agree.