

(2008) 04 CAL CK 0060

Calcutta High Court

Case No: C.O. No. 1902 of 2001

Ananda Hazra

APPELLANT

Vs

The Kolkata Municipal
Corporation

RESPONDENT

Date of Decision: April 4, 2008

Acts Referred:

- Calcutta Municipal Corporation Act, 1980 - Section 2(5), 414
- Constitution of India, 1950 - Article 227

Citation: (2008) 2 ILR (Cal) 767

Hon'ble Judges: Prabuddha Sankar Banerjee, J

Bench: Single Bench

Advocate: Tapas Kumar Burman, for the Appellant; Barin Banerjee, Swapan Kumar Debnath for party Nos. 1 and 2 and Sk. Reazul Islam, for opposite party No. 3, for the Respondent

Final Decision: Dismissed

Judgement

Prabuddha Sankar Banerjee, J.

The Court: This revision is one under 227 of the Constitution and is directed against order dated June 2, 2001 passed by the Municipal Building Tribunal, Kolkata Municipal Corporation in connection with Appeal No. 54 of 2000.

2. The said appeal was preferred by the present Petitioner against the order passed by the Deputy Chief Engineer (NM) (B), Kolkata Municipal Corporation in respect of premises No. 38, Surendra Nath Banerjee Road, Kolkata-700 014.

3. The fact leading to filing of the said proceeding before the Municipal authority may be surmmed up thus:

i) One Kailash Chandra Padhi became part owner of the building in question on the basis of his purchase. The said Kailash Chandra Padhi who is the Respondent No. 3

in this revisional application filed one application under 226 of the Constitution of India before this Court against the present Petitioner Sri Ananda Hazra and others.

ii) The number of the said writ application was W.P. No. 2776 of 1999. The said writ application was disposed of by the Hon'ble Court by directing the Chief Municipal Engineer (B) and/or any other person authorized by the said Chief Engineer to go into the allegation of the writ Petitioner as made in the written representation dated July 30, 1999 and to decide the matter in accordance with provision of law by giving an opportunity of hearing to the writ Petitioner and the present Petitioner.

iii) In the said representation, the present Respondent No. 3 took the plea that said Ananda Hazra made illegal construction over the pump house and was using the same as his kitchen and dinning space. The said Ananda Hazra was in-charge of the water pump to lift CMC filtered water stored in the underground reservoir to the tank on the roof for supply of the same to the other occupants of the building. It is the specific case of the present Respondent No. 3 that the present Petitioner without consent of the owner converted the said illegal structure into a regular kitchen and dinning space and thereby violated the building Rules of he municipal authority. The said Mr. Hazra was requested to withdraw from the unauthorized occupation of the said portion of the building but he did not pay any heed to the said requests.

iv) The matter was taken up by the Deputy Chief Engineer(NM) (B), Kolkata Municipal Corporation and opportunity was given to the parties to place their respective cases.

v) The said Deputy Chief Engineer by his order dated September 29, 2000 came to the conclusion that there was illegal construction by the present Petitioner and asked the present Petitioner to demolish the unauthorized structure within a month from the date of issuance of the said order failing which necessary action for demolition of the said structure will be taken by the Kolkata Municipal Corporation as per the provision of the Act.

4. Being aggrieved by the said order of the Deputy Chief Engineer the present Petitioner preferred appeal before the Municipal Building Tribunal and by order dated June 2, 2001 the appeal was dismissed.

Against the said order, the Instant revision has been preferred by the present Petitioner.

5. Mr. Tapas Kumar Burman, learned Counsel for the Petitioner challenged the order impugned on the following grounds:

a) That the Tribunal failed to consider that the structure was in existence since 1981 and the same was constructed after obtaining proper consent from the then owner.

b) That the tribunal ignored the fact that the structure in question is not permanent in nature and as such the rule of the Kolkata Municipal Corporation will not come

into play.

c) That the appellate authority failed to consider that the discretion was with it to legalise the said structure if it is found to be illegal one.

6. At the same time, Mr. Burman challenged the order on the ground that the Tribunal did not consider the report submitted by the expert in connection with the alleged illegal structure.

7. The said pleas were strongly opposed by Mr. Sk. Reazul Islam, learned Counsel for the opposite party No. 3 who contended that only intention of the present Petitioner is to delay the proceeding for demolition of the structure in question. Mr. Islam denied the allegation that the previous landlord ever gave any consent regarding construction of the illegal structure. It was the contention of Mr. Islam that if it is found that there exists any illegal structure, the municipal authority is duty bound to demolish the same.

8. The said pleas were supported by Mr. Barin Banerjee, learned Counsel for the opposite party Nos. 1 & 2.

9. It is to be mentioned that at the time of hearing learned Counsel for the present Petitioner took the specific plea that the previous landlord namely Rajendra Nath Mullick gave consent to the present Petitioner to reside in the alleged illegal structure over the building in question. For this he relied upon Annexure "P-1".

10. It is to be mentioned that it is admitted fact that there was no sanctioned plan for the alleged structure over the building in question. It is the case of the present Petitioner that the said structure was in existence for a long period and the previous landlord allowed him to stay there. It was the further case of the present Petitioner that a civil suit is pending before the City Court at Calcutta where the property in question is the subject matter. Accordingly, it was his contention that this Court at this stage should not pass any order.

11. I have gone through the order passed by the Hon"ble Court in connection with C.O. No. 2863 of 2004 arising out of order No. 48 dated May 6, 2004 passed by the Learned 9th Bench, City Civil Court in connection with Title Suit No. 216 of 1999.

12. It is clear from the order dated February 10, 2005 that the said suit was filed by he present Petitioner claiming title over the property in question by adverse possession. The said revision was preferred by the present Petitioner which was dismissed.

13. In he instant case we are concerned with the order passed by the Building Tribunal.

14. Mr. Burman very frankly conceded that he has no document to show that the structure was constructed after getting permission from the then owner.

15. I have gone through the order passed by the Deputy Chief Engineer and the Tribunal.

16. It is crystal clear that the unauthorized structure is being used by the present Petitioner as his kitchen and dinning space.

17. The document, which is marked as Annexure "P-1", does not help the present Petitioner as the same empowered the present Petitioner to shift the machine and water pump accessories to a covered area adjacent to the room.

18. It is to be mentioned that Mr. Burman took the specific plea that as the nature of the structure was not permanent, the Kolkata Municipal Corporation Act, 1980 will not come into play.

19. The said pleas were opposed by Mr. Banerjee, learned Counsel for the opposite party Nos. 1 & 2. He drew attention of the Court to the definition of the Act. Section 2(5) of the said Act runs as follows:

"building" means a structure constructed for whatsoever purpose and of whatsoever materials and includes the foundation, plinth, walls, floors, roofs, chimneys, fixed platforms, verandas, balcony, cornice or projection or part of a building or anything affixed thereto or any well (other than a boundary wall less than three metres in height) enclosing or intended to enclose any land, signs and outdoor display structures but does not include a tent, samiana or tarpaulin shelter:

20. Being armed with the said definition Mr. Banerjee contended that structure includes any construction for whatever purpose and includes the foundation plinth, walls etc.

21. On the basis of the said definition I cannot accept the plea taken by Mr. Burman that as the structure is not permanent in nature there is no necessity for obtaining any sanction for the said construction.

22. Mr. Burman in course of his argument contended that discretion was with the Tribunal to legalise the structure and for this he relied upon the case of Commissioner, Corporation of Calcutta v. Sailendra Nath Banrjee and Ors. 1977(2) CLJ 505

23. The Hon"ble Court in that case came to the conclusion that the Commissioner, Corporation of Calcutta has discretion u/s 414 to demolish any unauthorized construction or not to demolish it but such discretion should be exercised quasi judicial. The Hon"ble Court further came to the conclusion that the appellate authority has also the same power. The option was with the appellate authority and by not considering the same it is to be presumed that the appellate authority refused to use its discretion to do the same. As such, I do not find any reason to direct the appellate authority to use its discretion.

24. In view of the said position and also considering the materials on record, I am of clear opinion that the instant revision has no merit and as such the same is dismissed on contest but without any cost.
25. The interim order of stay is hereby vacated.
26. Urgent Xerox certified copy of this order be given to the parties within 7 days from the date of this order on proper application.