

Sanjeeb Chakraborty Vs State of West Bengal

Court: Calcutta High Court

Date of Decision: June 17, 2013

Acts Referred: Calcutta Municipal Corporation Act, 1980 & Section 400(1)

Citation: (2013) 4 CHN 600

Hon'ble Judges: Indra Prasanna Mukerji, J

Bench: Single Bench

Advocate: Shambhu Nath Roy, Sharmistha Roychowdhury, Rupsa Chakraborty and Sukanya Das, for the Appellant; Raghunath Chakraborty, Pratyush Palwari for the Private Respondent Nos. 10 to 15, P. Sinha and S. Chakraborty for the State, for the Respondent

Judgement

Indra Prasanna Mukerji, J.

Four writ petitioners are before the Court. They all describe themselves to be flat owners in the building

complex at 1/1 Raja Rajendra Lal Mitra Road, Kolkata 700 085. Copies of the deeds of conveyance in their favour are annexed to the writ

petition. Being flat owners, they also claim to be joint owners of the common areas of the building complex.

2. The tenth to fifteenth respondents are described as developers. The grievance of the writ petitioners is that the above private respondents, by

making illegal construction, are converting a part of the common area into business places, bar and restaurant, party hall and so on. Being a

residential complex, according to the writ petitioners, business activities cannot be carried on. Use as bar cum restaurant and a party hall is

absolutely intolerable.

3. This sanction was obtained by the above private respondents behind the back of the writ petitioners and without their consent, it is submitted.

4. This state of affairs is borne out by sub-paragraphs 4(c), (d) & (e) of the affidavit-in-opposition of Kolkata Municipal Corporation which are set

out hereunder:--

(c) In or about 2008 on routine visit the officers of concerned department of the Corporation noticed some unauthorised constructions which are

as follows: (i) Store room, Servant's room, W.C. and caretaker's room in the ground floor and at the unutilised space at Block-A (ii) Two

tenements at the ground floor in place of the service facilities at Block-B, (iii) store room in the basement floor in the excess area of car parking

space at Block-C (iv) partition walls at a shifted position in the ground floor along with erection of stair case at the Block-C, and (v) Shops in the

ground floor in place of car parking and service area at the D-Block. Since such was undertaken without obtaining any prior sanction and/or

permission from the authority concerned for which a demolition proceeding was initiated for the alleged deviations against the person responsible.

Ultimately, the said demolition case being D/Case No 04-D/2008-09 was heard by the Special Officer (Building), K.M.C. and on 25 08 2008 the

Special Officer (Building), Kolkata Municipal Corporation allowed the same subject, to complying certain conditions and for which an amount of

Rs 12,51,729/- was deposited with the Corporation. A true copy of the order dated 20.07.2008 passed by the Special Officer (Building),

Kolkata Municipal Corporation is annexed hereto and marked with letter ""R-1"".

(d) It is stated that since no appeal was filed by the complainants before the Municipal Building Tribunal, Kolkata Municipal Corporation, the

order so passed has reached its finality.

(e) In or at out 2011 one Sri Satya Narayan Pal filed application for conversion of the portion of shops at the first floor in block "C" in the said

premises into residential units and after receipt of the said letter an inspection was made by the concerned officials of the Corporation and found

that the conversion has already taken place from mercantile to residential one. Since such conversion was done without prior approval and

sanction from the Kolkata Municipal Corporation demolition proceeding was initiated by the Corporations against the persons responsible by

serving notice u/s 400(1) of the K.M.C. Act, 1980 for violation of section 416 of the K.M.C. Act, 1980 and Rules 133 and 134 of the K.M.C.

Buildings Rules 2009. The said demolition case being D/Case No. 2-D/2011-12 was heard by the Special Officer (Building), K.M.C. and on

06.05.2011 upon consideration of the facts and circumstances no order of demolition was passed in respect of the said change of user but subject

to compliance of conditions imposed and recorded, in the order passed by the Special Officer (Building) an amount of Rs. 1,44,105/- was

deposited by the person responsible.

5. If a construction is otherwise legal but there is some irregularity, Kolkata Municipal Corporation may have the power to regularise it but if a

building plan has been sanctioned without the consent of a co-owner, it is absolutely illegal and there can be no regularisation of it, unless the co-

owner signifies his consent later or ratifies the sanction of the plan.

6. Before discussing the matter on merits, the objection regarding jurisdiction has to be resolved. It was contended on behalf of the promoters by

learned counsel that there was a provision of appeal in the Kolkata Municipal Corporation Act and that it was the proper remedy and not; the Writ

Court.

7. I am unable to appreciate this submission. The sanction of the revised plan, dipping of the demolition case and so on were made without notice

to the writ petitioners who I think had an interest in the matter. Hence there was breach of the principles of natural justice. In such case, a party

aggrieved need not avail of the alternative remedy and straightway file a writ application.

8. It was also contended on behalf on the promoters that there was a long delay of three years on the part of the writ petitioners in approaching this

Court. Hence the writ petitioners were entitled to no remedy.

9. As far as this point is concerned, I am of the view that once the writ has been entertained by this Court about two years ago, at this point of time

it would be unfair to turn out the writ petitioners on the ground of delay. If the writ petitioners had to be turned out, that ought to have been done at

the time of admission of the writ application, if at all.

10. It appears that the Special Officer (Building) allowed ""this regularisation"" upon payment of some penal amount as mentioned in the above

affidavit.

11. This was not according to law.

12. Sanction of a modified plan dated 28th May, 2008, dropping of demolition case as stated in the said affidavit, acceptance of penalty in lieu

thereof and regularisation of building plans and constructions from 2008 onwards were thus prima facie illegal as they were done without notice to

the writ petitioners.

13. I direct the Special officer (Building) or any other competent official designated by the Commissioner of Kolkata Municipal Corporation to

revise the above decisions after giving a hearing to all interested parties and pass a reasoned order.

14. The following, decisions, amongst others are absolutely imperative:--

a) Whether the writ petitioners have an undivided interest in the portion of the complex regarding which a revised building plan has been sanctioned

or regularisation of a building plan or construction made?

b) Did the writ petitioners accord their consent to this action?

c) Under what circumstances, were these plans sanctioned?

d) Are the petitioners guilty of acquiescence as alleged by the learned counsel for the promoters?

15. The above determination is to be made within three months from date. Till making of the above determination and a period of four weeks

thereafter to enable any party to challenge the same, the interim order granted by Indira Banerjee, J., on 25th July, 2011, will continue.

16. This writ is accordingly disposed of.

17. I clarify that the maintenance of status quo regarding the common areas will not preclude any party entitled, to maintain repair and to take any

emergency measures with regard to the property. All parties concerned to act on a signed photocopy of this order upon the usual undertakings.