93 CWN 74

Calcutta High Court

Case No: F.M.A.T. No. 1808 of 1987

The Calcutta Municipal Corporation		APPELLANT
	Vs	
Adish Chandra Sinha and Others		RESPONDENT

Date of Decision: June 16, 1988

Acts Referred:

- Calcutta Municipal Corporation Act, 1980 - Section 391, 396

Citation: 93 CWN 74

Hon'ble Judges: Pabitra Kumar Banerjee, J; G.N. Ray, J

Bench: Division Bench

Advocate: B.C. Dutt and B. Banerjee, for the Appellant;Dipankar Gupta, Sudipto Sarkar, Amiya Narayan Mukherjee and Utpal Majumdar, for the Respondent

Judgement

G.N. Ray, J.

This appeal is directed against an order dated 18th May, 1987 passed by the learned trial Judge in Civil Order No. 11873 (W) of 1985. By the aforesaid order, the learned trial Judge allowed the writ petition moved by the respondent No. 1 Adhis Chandra Sinha, Trustee to the Trust Estate of Adhis Chandra Sinha of 58, Barrackpore Trunk Road, Calcutta-700002 and quashed the resolution of the Building Committee dated the 29th April, 1985 since communicated by Memo. No. L171 dated 31st May. 1985. The respondent no.1, writ petitioner, is the sole Trustee of Adhis Chandra Sinha Trust Estate and" premises No. 227/1A, Acharya Jagadish Chandra Bose Road is the property of the said Trust. The writ petitioner made an application for sanction of a plan for constructing a multi-storeyed building (six storied) on the said property after demolishing the existing building and the necessary formalities for obtaining such sanction from the Corporation of Calcutta were also complied with. "No objection" certificate and permission had also been obtained from various other authorities required for obtaining such sanction. It appears that the Building Cell of the Corporation of Calcutta after scrutinising the said Plan and

documents held that there was no defect and/or fraud in the said Plan and the documents filed and instructed the Accounts Department to accept 6 sets of Plan along with requisite fees for approval/sanction of the said Plan. The writ petitioner thereafter deposited six sets of Plan along with various documents including the prescribed form and fee. The plan and the documents were sent to the Sanitary Engineer and the Structural Supervisor for their observations. The Structural Supervisor informed that there was no objection from the structural point of view and the Sanitary Engineer also approved the said plan from the sanitary point of view. Thereafter, one set of plan was sent to the Calcutta Metropolitan Development Authority and another to the Deputy Commissioner of Police (Traffic) for their respective observations. The Calcutta Metropolitan Authority indicated their no objection but the Deputy Commissioner of Police (Traffic), however, observed that as the proposed building was going to be constructed near the junction of two important roads, namely, Sarat Bose Road and Acharya 3agadish Chandra Bose Road, the construction of such building may create a traffic problem and as such permission for multistoried building should not be given. It may be noted in this connection that the Commissioner of Calcutta Municipal Corporation scrutinised the proposal for the multi-storied building and was of the opinion that the proposed building was going to be constructed at a tandem plot and it was not just on the crossing of the two important roads and there would be hardly any problem for the traffic. Moreover, the proposed building also has taken care for the Car Parking space not only for the occupants but also of the visitors coming to the proposed building. It may be noted in this connection that there is a Building Sub Committee in which the Deputy Commissioner of Calcutta Police (Traffic) is one of the members and in view of the objections raised by the Deputy Commissioner of Police, the Building Committee did not recommend the sanction of the proposed plan although all other authorities expressed their no objection in respect of the proposed plan. It may be noted in this connection that the then Deputy Commissioner of Police (Traffic) raised objections about the sanction of the said plan no only in respect of the site in question but in respect of few other sites, namely, premises No. 227/1A, 227, 228/A and 229 Acharya 3agadish Chandra Bose Road and it was indicated by the Deputy Commissioner that all the four locations happened to be on the southern side of Acharya Jagadish Chandra Bose Road and very close to the crossing of the said road with Sarat Bose Road. The learned trial judge after considering the relevant facts and circumstances of the case has come to the finding that there was no justification for the municipal authorities in refusing to grant sanction of the building plan submitted by the petitioner in respect of the premises in question. The learned Judge "was also of the view that under the existing provisions of the. Calcutta Municipal Corporation Act there was no justification to object only on the ground of a high rise building. The learned trial Judge quashed the resolution of the Building Committee and restrained the respondents from giving any effect or further effect to the joint inspection report and the resolution of the Municipal Building Committee.

2. Being aggrieved by the aforesaid order, the Calcutta Municipal Corporation and its officers have preferred the instant appeal and Mr. Dutt, the learned counsel has

submitted that the Municipal Building Committee is constituted u/s 391 of the Calcutta Municipal Corporation Act and such Municipal Building Committee scrutinises the applications for erection or re-erection of a building and forwards its recommendation to the Mayor-in-Council. Mr. Dutt has further submitted that u/s 396 no sanction can be accorded without prior approval of the Mayor-in-Council in case of any building except a residential building proposed to be erected or re-erected on a plot of 500 square meter or less of land. The proviso to the said section envisages that the Mayor-in-Council should consider the recommendation of the Municipal Building Committee and finalise its decision after such consideration. It appears to us that the Municipal Building Committee had without any justification, entertained the objection against the proposed building which will be evident from the fact that in respect of plot No. 228/A, Acharya Jagadish Chandra Bose Road, which is right on the comer of the junction of Acharya Jagadish Chandra Bose Road and Sarat Bose Road, the Corporation of Calcutta has already sanctioned a 12 storied building for commercial purpose by Sanction Plan No. 128 dated 31st December, 1986. On 2/5,- Sarat Bose Road, which is only two buildings away from the crossing of the said Acharya Jagadish Chandra Bose Road and Sarat Bose Road another 12 storied residential building has been sanctioned by the Corporation by Sanction Plan No. 59 dated 13th August, 1986. In respect of 229, Acharya Jagadish Chandra Bose Road, two buildings have been sanctioned under Sanction Plan No. 146, one for ten storied and another for six storied and the said fact has been noted by the learned trial Judge in the judgment. Similarly on 227, Acharya Jagadish Chandra Bose Road under Sanction Plan No. 148 a plan for six storied building has been sanctioned. The site in question is a tandem plot and about 200 yards away from the crossing and the Commissioner of the Corporation of Calcutta has noted that the proposed building would hardly cause any problem for traffic. In the aforesaid facts and circumstances it appears to us that there was hardly any reason to refuse the sanction of the plan for a residential cum commercial building upto six storey on the site in question and the Building Committee arbitrarily and capriciously rejected the same. In the aforesaid circumstances, it must be deemed that there was no basis for such objection and the recommendation against sanction by the Building Committee should be ignored.

3. In view of the recommendation of the Municipal Commissioner, we do not find any reason that the proposed plan should not be sanctioned by the Mayor-in-Council and/or any other appropriate authority. It does not appear to us that the erection of the proposed building would contravene any of the provisions of the Building Rules. It has been contended by the learned counsel for the appellant that the proposed plan is for a residential cum commercial building and as such the Municipal Commissioner can sanction he same. There is force in such contention. That apart it also appears to us that if any approval by the Mayor-in-Council is required to be taken on the footing that the proposed building is not exclusively a residential building but a residential-cum-commercial building, in the facts of this case, we do not find any reason that the Mayor-in-Council can reasonably refuse sanction of such plan. We have indicated that the plan has keen found otherwise valid and no other authority has raised

any objection against the proposed plan. The only objection was on the score of proximity of the proposed six stoned building near the crossing of two roads. Such objection, however, is absolutely baseless and we have indicated that the Corporation has already sanctioned plans for high rise buildings (up to twelve storey) on a number of contiguous plots including plots much closer to the crossing of the said two roads. In the aforesaid circumstances, refusal to grant sanction of the proposed plan will be an act of gross discrimination and as such illegal. It is, therefore, directed that the authorities of the Corporation of Calcutta including the Mayor-in-Council should accord approval of. the proposed plan within a period of four weeks from today so that the construction of the proposed building may be taken up at an early date. It is only unfortunate that such sanction had not been given on a flimsy ground when the Corporation of Calcutta has not accepted such ground for other nearby plots and the petitioner has suffered immense prejudice for arbitrary and capricious action taken by the Building Committee refusing to make recommendation for the sanction of the building plan.

This appeal is thus disposed of but there will be no order as to costs.

Pabitra Kumar Banerjee, J.

I agree.