

ORDER SHEET
GA 1143 of 2020
APO 82 of 2020
CS 276 of 2019
IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

SHANKAR LAL BAGRI AND ANR.
Versus
AVANI BALLYGUNJ OWNERS ASSOCIATION AND ORS.

BEFORE:
The Hon'ble JUSTICE I. P. MUKERJI
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date : 08TH September, 2020.

Appearance :
Mr. S. N. Mookherjee, Sr. Adv.
Mr. Meghajit Mukherjee, Adv.
Mr. Rajesh Gupta, Adv.
Mr. Reetobroto Mitra, Adv.
Mr. Satyaki Mukherjee, Adv.
Ms. Shivangi Thard, Adv.
...For the appellant

Mr. Jayanta Kumar Mitra, Sr. Adv.
Mr. Tilak Kumar Bose, Adv.
Mr. Anirban Ray, Adv.
Mr. Jishnu Chawdhury, Adv.
Ms. Sayanti Das, Adv.
Ms. Sreetama Biswas, Adv.
Mr. Arup Nath Bhattacharya, Adv.

Ms. Aishwarya Kumar Awasthi, Adv.
For Intervenor

The Court : This is an appeal by the plaintiffs from an interlocutory order dated 26th August, 2020 passed by a learned single judge.

The order does not contain any reasons. It records the submission of the respondent Nos.1 to 3/defendants that they were not making any construction de hors the sanctioned plan. On that basis, the interim order sought by the appellants/plaintiffs restraining construction was refused.

Several issues are involved which we have to discuss before taking a decision in the matter.

According to the appellants/plaintiffs, they have no privity of contract with the respondent No.1/defendant No.1 and that their contract was only with the defendant No.4/respondent No.4, over which a provisional liquidator has been appointed.

The appellants/plaintiffs are purchasers of flats on the 18th /19th floor of the building being constructed as 60, Ballygunge Circular Road, Kolkata, which is opposite to St. Lawrence School.

The suit as framed is for the proper management and administration of the property through an administrator by completion “of all balance works in the subject premises.....to enable all flat owners and / or purchasers.....to occupy the, flats that they have purchased”.

Two questions were raised before us by Mr. Jayanta Kumar Mitra, learned senior advocate appearing for the respondent No.1 to 3/defendants.

First, why should such a suit not be treated as a suit for land.

Secondly, when in the plaint claims were made for administration of the property why at this point of time an injunction is being sought to restrain construction.

The reply to the first question by Mr. S. N. Mookherjee, learned senior advocate was that the point of territorial jurisdiction was taken at the interlocutory stage by the respondent No. 1 to 3/defendants. Secondly, he said that the cause of action had changed. Since the respondent No.4 was under a provisional liquidator and there was no privity of contract between the appellants/plaintiffs and the respondent No.1/defendant No.1, further construction could not be carried out by the latter. Therefore, the reliefs now claimed by the appellants/plaintiffs in the suit would be in the nature of decree or orders in personam against the respondent No.1, for which an application for amendment of plaint was being taken out.

Today, we have, prima facie, considered the above submissions.

If after bringing on record, the above subsequent events by way of an amendment application, the appellants/plaintiffs seek a decree or order in personam against the respondents and if the said amendment is allowed, prima facie, this court has territorial jurisdiction.

Prima facie, the appellants/plaintiffs are also entitled to maintain an interim application seeking stoppage of construction by the respondents.

This issue regarding stoppage of construction is very contentious. The plan is of 9th June, 2010. On 24th January, 2020, an application was made by the respondent No.1/defendant for its revalidation. It was revalidated for five years from 9th June, 2010 to 8th June, 2020. Mr. Mookherjee, learned senior advocate submits that the revalidated plan has expired and that the respondent No.1/defendant No.1 can no longer carry on the construction.

Mr. Jayanta Kumar Mitra, learned senior advocate shows us the circular dated 17th July, 2020 issued by the Board of Administrators of the Kolkata Municipal Corporation to the following effect :

- I. “Validity of sanction plan has been extended for six months without insisting any renewal fees as construction work was suspended due to pandemic of COVID19 and lockdown whose validity has been expired or will be expire between 25/03/2020 and 31/03/2021.
- II. In case of revalidation of sanction plan whose validity has been expired before 25/03/2020, the owner may apply for such revalidation within 31/09/2020. Renewal may be granted on payment of fees and charges.
- III. No late fees will be charged for six months from 1st April, 2020 in case of renewal of license of LBS/ESE/ESR/GTE which were valid upto 31/03/2020.”

He contends that the validity of the plan has automatically been extended till 9th December, 2021 and that his clients are entitled to carry

on with the construction. He further submits that Mr. Mookherjee's clients the purchasers of two flats are trying to stop the entire construction work.

Mr. Mookherjee replied that this circular did not apply to expired revalidated plans. Furthermore, such a plan could not be revalidated by any circular, as that would be contrary to rule 15(3) of the Kolkata Municipal Corporation Building Rules, 2009.

Now, we come to the prima facie case on merits.

Apparently, the construction work is being carried on by the respondents.

It does appear to us that the circular has authorised renewal of sanctioned plans which expired between 25th March, 2020 and 31st March, 2021 as it did not make any differentiation between original sanction and revalidated sanction.

However, the plan has to be very closely scrutinised to ascertain whether it is still valid and whether the respondent No.1/defendant No.1 is entitled to carry on construction on the basis of the said plan.

In those circumstances, we appoint Mr. Joydeep Roy, Advocate and member of Bar Association, Room No.2 as a Special Officer at an initial remuneration of 1500 Gms to cause the subject building plan to be examined in the presence of the parties by a very senior official of the Kolkata Municipal Corporation who has to be nominated by the Commissioner within two working days of service of the order upon him, to ascertain whether the plan is valid or not. The Special officer is to file a report in this Court by 21st September, 2021. The report of the Special officer should enclose the report of the Kolkata Municipal Corporation official. The remuneration of the Special officer will be borne by the appellants / plaintiffs.

A copy of the report should be circulated to all the parties.

For the time being, the respondent No.1 to 3/defendant 1 to 3 shall be allowed to carry on with the construction, subject to any order to be

passed by the learned single judge on the basis of the said report. If, according to the report of the Kolkata Municipal Corporation, the sanction is not valid, the respondents shall immediately keep in abeyance the construction.

The direction of the impugned order regarding filing of affidavits is set aside.

We dispose of the appeal (APO No.82 of 2020) and the connected applications (New GA No.1 of 2020 and Old GA No.1143 of 2020) by directing that the prima facie case of the parties has to be adjudged afresh by the learned single judge on the basis of the said report which is to be placed before the learned single judge as expeditiously as possible.

The interim application will appear as a 'New Motion' before the learned single judge, immediately after filing of the Special officer's report, subject to the convenience of the bench.

At the motion stage, all points including sanction of the plan in question are kept open before the learned single judge, except those points decided by us, prima facie, which may only be decided during final hearing of an application or the suit.

(I. P. Mukerji, J.)

(Md. Nizamuddin, J.)