

31. 29.11.2021
Ct. No.06
Tanmoy

**F.M.A. 970 of 2021
With
IA No: C.A.N. 1 of 2021**

**Ram Babu Show
-Versus-
The Howrah Municipal Corporation & Ors.**

(Through Video Conference)

Mr. Haradhan Banerjee, Adv.,
Mr. Amitava Pain, Adv.,
Mr. Subhrangshu Datta, Adv.

...for the appellant.

Mr. Sandipan Banerjee, Adv.

...for the Howrah Municipal Corporation.

Mr. Mahendra Prasad Gupta, Adv.,
Ms. Antara Panja, Adv.

...for the private respondents.

The writ petitioner says that he has made a representation under Section 175B of the Howrah Municipal Corporation Act, 1980 (hereinafter to be referred to as “the said Act”) for cancellation of a building plan sanctioned by the Corporation in favour of the private respondents in respect of a particular plot of land. He says that the sanction was obtained by misrepresentation of facts. The private respondents concealed from the Corporation authorities the fact that the property in question, is *thika* property. In respect of such a property a plan can be sanctioned only for construction of a ground plus two-storeyed structure.

However, by suppression of facts the private respondents have obtained sanction for construction of a ground plus three-storeyed structure. Because of such misrepresentation, the sanctioned plan should be cancelled.

Since the Corporation was sitting over the matter and not disposing of the petitioner's representation, the petitioner approached the Writ Court by filing W.P.A. 5595 of 2021, seeking *inter alia*, a direction on the Corporation to dispose of his representation expeditiously. By a judgment and order dated June 29, 2021, the learned Single Judge dismissed the writ petition on two-fold grounds : firstly, the learned Judge held that the petitioner has no legal right to challenge the sanction of the building plan in question; secondly, it was held that the petitioner has suppressed material facts from the Writ Court in not having disclosed in the writ petition that the petitioner's predecessors-in-interest had filed more than one civil suit against the predecessors-in-interest of the private respondents wherein the issue was as to who was the *thika* owner in respect of the property in question.

Being aggrieved by the order of dismissal, the writ petitioner is before us by way of this appeal.

We have heard learned Counsel for the parties at length. We are unable to agree with the learned Judge

that the petitioner has no *locus standi* to challenge the sanction of the building plan in question. Section 175B of the said Act does not specify as to who can challenge the sanction of a building plan. All it says is that if the Corporation finds out that the sanction was obtained by misrepresenting or suppressing facts, the Commissioner would be entitled to cancel the plan. In our view, anybody who is likely to be affected by a sanctioned plan obtained by misrepresentation, would have the standing to approach the Corporation and seek cancellation of the plan. In the present case, the writ petitioner and the private respondents are neighbours. They occupy adjoining properties. It is possible that the writ petitioner will be adversely affected if the private respondents make construction on the basis of a building plan, the sanction whereof, according to the writ petitioner, has been obtained by misrepresentation of facts. Hence, we are of considered view that the writ petitioner would have *locus standi* to challenge the plan in question before the appropriate authority.

Insofar as the question of suppression is concerned, no one can dispute the proposition that a person who approaches the Writ Court claiming relief, must do so with clean hands. He must make full disclosure of relevant facts and must not suppress any material fact. The Writ Court is a Court of equity and if

it finds that the petitioner has suppressed relevant facts, on that ground alone, relief will be denied.

However, non-mentioning of any and every fact would not amount to suppression of material fact. The fact must be such as would have a bearing on the decision. In the present case, suits may have been filed by the petitioner's predecessors-in-interest against the predecessors-in-interest of the private respondents. However, the question in such civil proceedings was who had a better title to the premises in question and also the premises which are the subject-matter of the pending civil suit proceedings. We find that in 2020 also, a suit has been filed by the petitioner against the private respondents. The suit is pending. The petitioner's prayer for *interim* injunction has been declined by the civil Court. However, according to us, these facts are not relevant for the purpose of the present writ proceedings. The issue before the Corporation is not as to who, between the petitioner and the private respondents, has better title in respect of the property in question. The sole issue in the representation of the petitioner before the Corporation is whether or not the private respondents obtained sanction of the relevant building plan by misrepresentation. Accordingly, we are also unable to agree with the learned Judge insofar as the finding of suppression of material facts is concerned.

Accordingly, the order under appeal is set aside. The Corporation authorities are directed to dispose of the representation of the writ petitioner by a reasoned order, in accordance with law and the applicable rules and regulations within a period of eight weeks from the date of communication of this order after giving an opportunity of hearing to all the concerned parties including the writ petitioner and the private respondents. The decision so taken shall be communicated to the parties concerned within a week from the date of the decision. We make it clear that we have not gone into the merits of the case at all. The Corporation shall decide the writ petitioner's representation uninfluenced by anything stated in this order. Since no affidavit has been invited, the allegations in the stay application are deemed not to be admitted by the respondents.

We also make it clear that nothing in this order shall have any effect on the pending civil suits between the parties.

The appeal being F.M.A. 970 of 2021 along with the connected application being IA No: C.A.N. 1 of 2021 are, accordingly, disposed of.

All parties shall act on the basis of a server copy of this order downloaded from the official website of this Court.

Let urgent photostat certified copy of this order, if applied for, be supplied to learned Advocates for the parties upon compliance with all usual formalities.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)