

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE**

Before:

**The Hon'ble Justice Subrata Talukdar
and**

The Hon'ble Justice Hiranmay Bhattacharyya

A.P.O. No. 51 of 2020

With

W.P.O. No. 203 of 2018

**I.A. No. GA/1/2020,
GA/2/2020**

Shelter Projects Ltd. & Anr.

Vs.

The Kolkata Municipal Corporation and Others

For the Appellants

: Mr. Raghunath Chakraborty
Ms. Tanusree Das
Mr. M. Ahmed advocates

For the KMC

: Mr. Ashok Kr. Banerjee..... Sr. Advocate
Mr. Gurudas Mitra
Mr. Gopal Chandra Das.....advocates

Heard on

: 28.01.2021

Judgment on

: 25.03.2021

Hiranmay Bhattacharyya, J.:-

The instant appeal is at the instance of the writ petitioners and is directed against an order dated January 27, 2020 passed by an Hon'ble Single Judge in W.P. No. 203 of 2018. By the impugned order the Hon'ble Single Judge upheld the order of rejection of the

application for amalgamation passed by the Municipal Commissioner, Kolkata Municipal Corporation.

The petitioner/appellant herein purchased a property popularly known as Sarkar Bazar situate at 8, Dr. Suresh Chandra Banerjee Road (formerly known as Beliaghata Main Road), Kolkata 10 as also an adjacent property situate at 1/1 K.G. Bose Sarani (formerly known as Talpukur Road), Kolkata-10, in a court sale order passed in a suit for partition being CS 2539 of 1955. The Commissioner of Partition appointed in the said suit for partition executed a deed of conveyance dated August 12, 2019. The petitioner/appellant herein claims to have paid a sum of Rs. 6.25 Crores for purchasing the said premises. The KMC mutated the said premises in the name of the petitioner/appellant herein.

The appellant planned to develop a commercial-cum-residential project at the aforesaid two premises. For such purpose the appellant applied to the KMC for amalgamation of the said two adjacent premises.

The Assistant Assessor Collector by a letter dated June 29, 2013 called upon the appellant to submit the details of devolution of the property by an affidavit of a First Class Magistrate in respect of the said two premises for processing the application of the appellant. The appellant by a letter which was received by the KMC on August 27, 2013 informed the Chief Manager (REV) KMC that the department is asking for documents/papers which are not

under the control of the appellant and asked for the intervention of the Chief Manager.

Alleging inaction on the part of the KMC the appellant approached this court by filing a writ petition being WP No. 2666 (W) of 2014 which was disposed of by an order dated January 31, 2014. By the said order a direction was passed upon the Chief Manager (Revenue), KMC to dispose of the matter regarding amalgamation by passing a reasoned order after giving an opportunity of hearing to the appellants and after scrutinising the original documents which have been annexed to the writ petition and in accordance with the rules. It was also ordered that in the event it was found that the contentions of the appellant are correct and the rules do not provide for seeking an affidavit of a First Class Magistrate regarding devolution of the property, the amalgamation shall be effected after making necessary enquiry.

Pursuant to the said order passed by this court, a hearing was held at the chamber of Chief Manager (Revenue) KMC but the appellants alleging that no order was communicated to the appellants approached this court again by filing a writ petition being WP No. 25196 (W) of 2014. The said writ petition was disposed of by an order dated September 5, 2014 by directing KMC authorities to complete the process of amalgamation of premises under reference in accordance with law within two months from the date of communication of the said order, provided the appellant was entitled to get the amalgamation in accordance with law. In the

event no relief is granted to the appellant, the authorities were directed to communicate the reasons therefor after giving an opportunity of hearing to the appellant.

A hearing was conducted before the Chief Manager (Revenue) who, by an order dated September 22, 2014, observed that the application for amalgamation cannot be processed since the boundary of the two plots to be amalgamated is not clear. Challenging the said order dated September 22, 2014, the appellant approached this court by filing a writ petition being WP No. 1218 of 2014.

The said writ petition was disposed of by an order dated August 30, 2017. The order dated September 22, 2014 was set aside on the ground that the officer while passing the said order relied upon the inspection report without making available a copy of such report to the appellants. By the said order the Municipal Commissioner was directed to consider the appellants' application for amalgamation and take a reasoned decision in the matter in the light of the observations made in that judgment upon giving an opportunity of hearing to the petitioners.

Hearing took place before the Municipal Commissioner pursuant to the order passed in WP 1218 of 2018 and the Municipal Commissioner by an order dated December 21, 2017 rejected the prayer for amalgamation on the ground that the appellant has not furnished necessary clearance from the

competent authority under the Urban Land (Ceiling and Regulation) Act, 1976 (for short “the ULCR Act, 1976”).

The appellant thereafter approached this Court by filing a writ petition being WP No. 203 of 2018. The said writ petition was dismissed by the Hon’ble Single Bench by an order dated January 27, 2020.

Being aggrieved against the said order, the writ petitioners have preferred the instant appeal.

Mr. Chakraborty , the learned advocate for the appellant contended that the learned Single Judge failed to appreciate that neither the Kolkata Municipal Corporation Act, 1980 (for short “KMC Act, 1980”) nor the ULCR Act, 1976 provides for obtaining a clearance certificate from the authorities under the ULCR Act, 1976, for the purpose of amalgamation of two properties. He further contended that the Municipal Authority cannot decide the title of the property and an order allowing amalgamation do not also affect the right of the authorities under the ULCR Act, 1976 to take steps in terms of the said statute if the said authorities are of the view that the petitioner holds land in excess of the ceiling limit which is liable to be vested to the State. He further contended that the KMC being a statutory authority has to perform its duties vested under the law. It cannot compel a person to do a particular thing which the statute is silent in that regard. Mr. Chakraborty relied upon the following judgments in support of his aforesaid contentions.

1. 2000 (2) CHN 578 (*Manoranjan Belthoria vs. Calcutta Municipal Corporation & Ors.*)
2. 1995 (1) CHN 324 (*Bijay Raj Jain & Ors.*)
3. 1986 (1) CHN 380 (*Samaresh Das vs. Calcutta Municipal Corporation & Ors.*)
4. 2007 (3) CHN 476 (*Asian Leather Ltd vs. Kolkata Municipal Corporation*)

Mr. Chakraborty, contended that the KMC is raising frivolous objection against the prayer for amalgamation as a result of which the petitioner/appellant herein had to approach this Court by filing four writ petitions. He submitted that this Court should decide the matter finally and direct the KMC to amalgamate the two premises. He contended that referring the matter back to the KMC for reconsideration would simply be a case of an “appeal from Caesar to Caesar’s wife”. In support of such contention Mr. Chakraborty relied upon a judgment of the Hon’ble Supreme Court of India in the case of *Kalabharati Advertising Vs. Hemant Vimalnath Narichania* reported at (2010) 9 SCC 437.

Mr. Chakraborty further contended that the appellant has specifically pleaded in the writ petition that the Commissioner of Partition in a letter dated July 29, 2009 dealt with the question of land ceiling restrictions and clarified that the property is not really vacant having some permanent structures and temporary sheds of shop owners. It was further stated that in any event the undivided property was owned by 31 members of the Sarkar family who were all parties to the suit and therefore the land ceiling restrictions

cannot be made applicable. Mr.Chakraborty contended that since such pleading was not controverted by the KMC by filing any affidavit-in- opposition to the writ petition, the Hon'ble Single Judge ought to have proceeded on the basis that the said averments had been admitted by the KMC. In support of such contention Mr. Chakraborty placed reliance upon a judgment of the Hon'ble Supreme Court of India in the case of *Naseem Bano (smt.) vs. State of Uttar Pradesh & Ors.* reported at 1993 SUPP (4) SCC 46.

Mr. Banerjee, learned Senior Counsel for the KMC seriously disputed the contentions of Mr. Chakraborty. Mr. Banerjee contended that the appellant herein prayed for amalgamation of two premises. According to Mr. Banerjee, from the documents submitted by the appellants along with the application for amalgamation, it is evident that the extent of land area involved in the properties sought to be amalgamated exceeds the ceiling limit prescribed by the ULCR Act. According to him the vacant land in excess of the ceiling limit prescribed under the ULCR Act, 1976 vests upon the State and upon such vesting the person whose land is vested cease to be the owner in respect thereof. Mr. Banerjee thus, contended that the applicant/ appellant herein is to obtain clearance certificate from the competent authority under the ULCR Act, 1976 to enable the KMC to process the application for amalgamation. He contended that the KMC has to be satisfied with the prima facie title of the appellant in respect of the properties sought to be amalgamated for which such clearance certificate is necessary. Mr. Banerjee relied upon Section 599 of KMC Act, 1980

and contended that while processing an application for amalgamation the KMC cannot disregard the provisions of the ULCR Act, 1976. Section 599 of KMC Act, 1980 empowers the KMC to direct the appellant to produce the clearance certificate from the competent authority under the ULCR Act, 1976 in order to be satisfied that the applicant/ appellant herein is the owner of the premises sought to be amalgamated. Mr. Banerjee, however, in his usual fairness, submits that the provisions of the West Bengal Estate Acquisition Act, 1953 has no manner of application to the facts of the instant case. Mr. Banerjee contended that the judgments relied upon by Mr. Chakraborty has no manner of application to the facts of the instant case as none of the judgments deal with the power of the KMC to direct the appellant to call for a clearance certificate from the land ceiling authorities while processing an application for amalgamation. Mr. Banerjee relied upon a judgment of the Hon'ble Supreme Court of India in the case of *State of Rajasthan vs. Ganeshi Lal* reported at AIR 2008 SCC 690 and submitted that one additional or different fact may make a world of difference between conclusion in two cases and disposal of cases by blindly placing reliance on a decision is not proper. Mr. Banerjee also referred to the decisions of the Hon'ble High Court at Calcutta in the case of *Panchu Molla vs. State of West Bengal and ors.* reported at (1980)2 CLJ 1 as well as a judgment in the case of *Manoranjan Belthoria & anr. vs. Deputy Commissioner of Purulia & Ors.* reported at (1979) 1 CLJ 537 and *Sukumar Adhikary & ors. vs. State of West Bengal and anr.* reported at AIR 1986 (cal) 261.

We have heard the learned advocates of the respective parties and have perused the materials placed before us. After going through the records of this case, it is evident that the KMC is trying to find out ways and means to reject the appellants' prayer for amalgamation. On the previous occasions, the KMC took objections on factual aspects and this Hon'ble Court on repeated occasions rejected such objections and directed the Municipal Authorities to consider the application for amalgamation afresh. This time, however, the KMC rejected the prayer for amalgamation on a point of law. The present stand of the KMC is that the appellant sought for amalgamation of two premises, the area of which might exceed the ceiling limit prescribed under the Urban Land Ceiling and Regulation Act, 1976. Such stand of the KMC, however, persuaded the Hon'ble Singe Judge, to uphold the reasons for such rejection and the writ petition was accordingly dismissed.

Thus, the question which arose in the instant appeal is whether a clearance certificate from the Urban Land Ceiling Authorities is a *sine qua non* for making an application for amalgamation of two or more premises.

In order to answer the said question let us recapitulate some of the provisions of KMC Act, 1980 which are extracted below-

“ 183. Notice of transfer-

(1) Whenever the title of any person to any land or building is transferred, such person, if primarily liable for the payment of [property tax] on such land or building, and the person to whom the title is so transferred shall, within three months after the execution of the

instrument of transfer or after its registration, if it is registered, or after the transfer is effected, if no instrument is executed, give notice of such transfer in writing to the Municipal Commissioner.

(2).....

(3) The notice under this section shall be in such form as may be prescribed, and the transferee or the person on whom the title devolves shall, if so required, be bound to produce before the Municipal Commissioner any documents evidencing the transfer of devolution.

(4).....

*(5) The Municipal Commissioner shall, on receipt of a notice of transfer or devolution of title under this section [and upon payment of such fee as may be determined by regulations], record such transfer or devolution in a book [***] and also in the Municipal Assessment Book:*

[Provided that nothing in this sub-section shall derogate from the power of the Corporation to refuse mutation in a case where there is arrear of any dues to the Corporation on account of the transfer or the predecessor-in-interest of the applicant.]

(6).....

(7).....”

“178. Municipal Assessment Code.-

(1) The State Government may by rules provide for the detailed procedure for determination of the annual value of lands or buildings in Kolkata and for other matters connected therewith, and such rules together with any regulations made under this Act shall constitute the Municipal Assessment Code.

(2).....

- (3) *Notwithstanding the assessments made before the commencement of this Act, the Municipal Commissioner on his own may amalgamate or separate or continue to assess as such, as the case may be, lands or buildings or portions thereof so as to ensure conformity with the provisions of this section.*
- (4) *If the ownership of any land or building or a portion thereof is sub-divided into separate shares or if more than one land or building or portions thereof by amalgamation come under one ownership, the Municipal Commissioner may on an application from the owners or co-owners, separate or amalgamate, as the case may be, such lands or buildings or portions thereof so as to ensure conformity with the provisions of this section.*
- (5).....
- (6).....”

“599. Other laws not to be disregarded. – *Save as otherwise provided in this Act, nothing contained in this Act shall be construed to authorise the Corporation or any municipal authority or any officer or other employee of the Corporation to disregard any law for the time being in force.”*

Mutation is the process of change of the name of the owner in the books of the Municipal authorities. Section 183 (5) envisages inter alia that the Municipal Commissioner shall, on receipt of a notice of transfer or devolution of title record such transfer or devolution of interest in the Municipal Assessment Book.

In the instant case the properties sought to be amalgamated has been duly mutated in the name of the appellant in the record of the KMC upon being satisfied with the *prima facie* title of the appellant.

Subsection 3 of Section 178 empowers the Municipal Commissioner to amalgamate or separate lands or buildings or portions thereof *suo motu* so as to ensure conformity with the provisions of Section 178.

Subsection 4 of Section 178 envisages that if the ownership of any land or building or a portion thereof is subdivided into separate shares or if more than one land or building or portion thereof by amalgamation comes under one ownership, the Municipal Commissioner may, on an application from the owners or co-owners, separate or amalgamate such lands or buildings or portions thereof.

The term “amalgamation” has not been defined in KMC Act, 1980. Black’s Law Dictionary defines the term “amalgamation” as the act of combining or uniting. Thus, amalgamation under KMC Act, 1980 is the act of combining or uniting more than one lands or buildings or portions thereof which come under one ownership.

Section 174 to 178 of KMC Act, 1980 deals with determination of Annual valuation of properties. Section 178 (4) lays down the provisions for amalgamation of properties or the separation thereof for the purpose of determination of annual value. Assessment of consolidated rate of the properties is to be made on the annual valuation determined in terms of the provisions laid down under Sections 174 to 178. Thus, if more than one lands or buildings or portions thereof, which come under one ownership, is combined or united then a composite annual valuation in respect of such lands or buildings or portions thereof can be determined and a

consolidated rate thereon may be assessed. Such act, in our considered opinion, does not in any manner change the right, title and interest of the applicant qua the properties.

The KMC after having mutated the properties sought to be amalgamated in the name of the appellant cannot be permitted to turn around and allege that the petitioner/ appellant herein cease to the owners of the property.

A Division Bench of this Hon'ble Court in the case of West Bengal Properties Limited and anr. vs. State of West Bengal and Ors. reported at (1993) 2 CLT 342 while dealing with an issue as to whether the Municipal Authority can refrain from according sanction to a building plan for not appending a "no objection certificate" from the Land Ceiling Authorities to the application for sanction of plan held that whether a land is within the ceiling limit under the ULCR Act, 1976 or not are matters for the Urban Land Ceiling Authorities and not for the Municipal Authorities. It was further held therein that the Municipal Corporation has no authority under the law to enforce or administer the law relating to ULCR Act, 1976.

In *Bijay Raj Jain (supra)* it has been held that no permission is required under the ULCR Act, 1976 as a precondition for sanction of plan under the Bengal Municipal Act.

In *Samaresh Das (supra)* it has been held that absence of a no objection certificate from the Calcutta Metropolitan Development

Authority cannot be a ground for refusal to sanction plan by the KMC according to the provisions of the KMC Act, 1980.

In *Giridharilal Soni (supra)* it was held that the KMC is not entitled to compel the petitioner to obtain a no objection certificate nor it can refuse a grant of sanction to the building plan in the absence of such no objection certificate from the Industrial Reconstruction Department.

It is well settled that a decision is a precedent on its own facts and each case presents its own features. One additional or different fact may make a world of difference between conclusions in two cases as held by the Hon'ble Supreme Court in the case of *Ganeshi Lal (supra)*. It is equally well settled that the only thing in a judge's decision binding a party is the principle upon which the case is decided and for that reason it is important to analyse a decision and isolate from it the ratio decidendi. In other words what is of essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment as has been held in *Ganeshi Lal (supra)*.

It is true that the question which cropped up before this Hon'ble Court in the case of *West Bengal Properties (supra)*, *Bijay Raj Jain (supra)*, *Samaresh Das (supra)* and *Giridharilal Soni (supra)* was whether a no objection certificate from the authorities under the ULCR Act, 1976 and other authorities is a precondition for grant of sanction to the building plan by the Municipal Authority and the matter in issue in the instant case is whether a no

objection certificate is a *sine qua non* for the purpose of effecting amalgamation of two premises. But the ratio decidendi of the aforesaid judgments, as culled out there from, is that the corporation created under a statute has to perform its duties and functions within the four corners of the statute creating it and cannot enforce the provisions of a different statute unless such power is given by the said statute.

It is equally well settled as has been held by a Division Bench of this Court in *Asian Leather Ltd. (supra)* that a corporation has no power to do anything unless those powers are conferred on it by the statutes which creates it.

KMC is a creature of a statute. The authorities of the KMC has to perform the functions and duties as conferred upon them by the KMC Act, 1980. Such authorities have no power to do anything unless such powers are conferred by the KMC Act. There is no provision in the KMC Act, 1980 whereby a clearance certificate is to be obtained from the competent authority under the ULCR Act, 1976 for the purpose of amalgamation of premises.

The KMC Act 1980 and the ULCR Act, 1976 are entirely independent of each other and they operate in their respective fields without any conflict. There is no corresponding provision in the ULCR Act, 1976 making it obligatory for the competent authority appointed under the said Act to issue a no objection certificate/ clearance certificate whenever sought for by any person for the purpose of amalgamation of properties by KMC. The KMC Act, 1980

also does not empower the authorities of the KMC to enforce or administer the law relating to the ULCR Act, 1976. The authorities under the KMC Act, 1980 and the ULCR Act, 1976 perform their duties in accordance with the provisions of the respective statute without in any way being hindered by the action taken by the authority under the other statute.

The Urban Land Ceiling Authorities have to consider independently whether the land in question comes within the mischief of the ULCR Act, 1976. If any restriction is imposed by any Act, it is for the authority under such Act to ensure that such restriction is not violated.

It has been vociferously argued by Mr. Banerjee, Learned Senior Advocate that Section 599 of the KMC Act 1980 empowers the KMC to direct the appellant to produce the clearance certificate from the competent authority under the 1976 Act.

Section 599 of the KMC Act, 1980 provides that other laws are not to be disregarded by the corporation. The phrase “ other laws are not to be disregarded by the Corporation” does not empower the KMC to enforce the provisions of the ULCR Act, 1976 and decide, even prima facie, that the immovable property in question is covered under the ULCR Act, 1976 and that the area of such property exceeds the ceiling limit. The power to decide the matters falling within the ambit of the ULCR Act, 1976 as well as enforcement thereof is exclusively conferred upon the authorities of the said statute. Thus, this Court is of the view that the said

provision do not empower the KMC to direct a person to obtain a clearance certificate from the Urban Land Ceiling Authority for the purpose of amalgamation in the absence of any provision therefor either in the KMC Act, 1980 or the ULCR Act, 1976.

The Municipal Authorities are concerned with the prima facie title of the applicant in the land. The Municipal Authority has no jurisdiction to adjudicate on the question of ownership of the land in question. Mere amalgamation of premises cannot and do not create any right, title and interest in the premises in question. Even if amalgamation is effected the said act of the KMC does not in any way affect the jurisdiction of the authorities under the ULCR Act to perform its duties and functions under the said statute.

The Municipal Commissioner in his order dated 21.12.2017 observed that the applicant should submit necessary clearance from the competent authority under the ULCR Act, 1976 so as to ascertain whether the applicant has ownership of the properties sought to be amalgamated.

This Court is of the view that no jurisdiction is vested upon the KMC either to direct the appellant to obtain clearance certificate from the competent authority under the ULCR Act, 1976 or to adjudicate the ownership of the lands in question.

This Court is, thus, of the considered opinion that a no objection certificate/ clearance certificate from the competent authority under the 1976 Act cannot be a sine qua non for the

purpose of amalgamation of premises under the provisions of the KMC Act, 1980.

Let us now deal with the other decisions cited at the Bar.

In *Naseem Banu (supra)* the respondents therein in their reply did not dispute the averments made in the writ petition that certain percentage of the total number of posts had not been filled up by promotion. The Hon'ble Supreme Court, on such facts, held that since the said averments had not been controverted, the High Court ought to have proceeded on the basis that the said averments had been admitted by the respondents.

The Commissioner of Partition is not empowered to perform the functions under the ULCR Act, 1976. Any statement and/or observation made by him insofar as it relates to the matters falling within the jurisdiction of the competent authority under the said Act do not have any binding effect upon such authorities. Only the competent authority under the ULCR Act, 1976 is empowered to decide as to whether a land held by a person exceeds the ceiling limit or not. Thus, a person having no authority to decide a particular issue cannot be said to have been conferred with the power to decide such issue merely because a statement and/or observation made by him is alleged to have been not controverted by the respondent authority. Thus, the judgment of the Hon'ble Supreme Court in the case of *Naseem Banu (supra)* do not have any manner of application to the facts of the instant case.

The judgments in the case of *Panchu Molla (supra)*, *Sukumar Adhikary (supra)*, *Manoranjan Belthoria (supra)* deals with the power of State Government to treat the lands as vested even after acceptance of rent from the tenant under the provisions of the West Bengal Estate Acquisition Act. The said judgments do not have any manner of application to the facts of the instant case.

The impugned order dated January 27, 2020 passed in WP no. 203 of 2018 and the order dated 21.12.2017 passed by the Municipal Commissioner, KMC, thus, suffers from infirmity and are liable to be set aside for the reasons as stated hereinbefore.

Now the question arises as to whether the matter is to be remanded to the Municipal Commissioner, KMC for a fresh consideration or a direction is to be passed upon the said authority to amalgamate the premises in question. The only ground for rejection of the prayer for amalgamation is non-furnishing the clearance certificate from the competent authority under the ULCR Act, 1976. Since this Court has already held that such certificate is not a *sine qua non* for the purpose of amalgamation of the premises under the KMC Act 1980, no useful purpose will be served by remanding the matter to the Municipal Commissioner in view of the chequered history of this case. In this regard reference may be made to the observation of the Hon'ble Supreme Court in *Kalabharati (supra)* which is as follows –

“31..... “The cliché of appeal from Caesar to Caesar’s wife can only be bettered by appeal from one’s own order to oneself””

For the reasons as stated hereinabove, the appeal being **APO 51 of 2020** is **allowed**. The impugned order dated January 27, 2020 passed in WP No. 203 of 2018 and the order dated 21.12.2017 passed by the Municipal Commissioner, KMC are set aside. Consequently, the application for amalgamation submitted by the petitioner is allowed. The Municipal Commissioner, KMC being the respondent No. 2 is directed to amalgamate the premises, which is the subject matter of the application for amalgamation, within a period of 4 weeks from the date of communication of this order. Accordingly, **G.A. no. 1 of 2020** and **G.A. no. 2 of 2020** are also **disposed of**. There shall, however, be no order as to costs.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

I agree.

(Subrata Talukdar, J.)

(Hiranmay Bhattacharyya, J.)

25.03.2021**Later:**

Mr. Mitra, learned Counsel appearing for the respondents/KMC, prays for stay of operation of the judgment and order, as declared in Court today.

Prayer for stay of operation is considered and rejected.

I agree.

(Subrata Talukdar, J.)

(Hiranmay Bhattacharyya, J.)