

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

PRESENT:

**HON'BLE JUSTICE SUBRATA TALUKDAR
AND
HON'BLE JUSTICE HIRANMAY BHATTACHARYYA**

***G.A. No. 1 of 2020
With
A.P.O. No. 148 of 2019
With
W.P.O. No. 479 of 2017***

***Kolkata Municipal Corporation & Ors.
-Vs.-
Yusuf Khan & Ors.***

For the Appellants	: Mr. Alok Kr. Ghosh Mr. Ranjit Chatterjee Mr. Gopal Chandra Das Mr. Subhrangsu Panda
For the Respondents	: Mr. Kalyan Bandyopadhyay Mr. S. Sengupta Mr. S.Pal
For other respondents	: Mr. S. Sarkar
Heard on	: 21/01/2021
Judgment on	: 25/03/2021

Subrata Talukdar, J:

The short question which arises in this appeal relates to whether the Hon'ble Single Bench *vide* its judgement and order impugned dated 30th August 2019 in WP NO. 479 of 2017 was correct while observing on the *entire list of other heritage buildings* under the Kolkata Municipal Corporation (KMC) or, the observations of the Hon'ble Single Bench stand restricted to the building in issue in the writ petition alone.

The building in issue is 31/1A and 31/1B, Nayanchand Dutta Street, Kolkata 700006 popularly known in the area as Krishna Palace.

The paragraph in issue in the impugned judgement dated 30th August, 2019 reads as follows:-

*“After the Court by an order dated 24th September 2014 directed KMC to exercise power under Section 425B KMC Act, the convenor of the Heritage Conservation Committee issued a letter intimating the petitioner that legal action be taken against him for demolition of the heritage structure prior to obtaining permission from the Heritage Conservation Committee. In the said notice also there is mention of inclusion of the building in the heritage list prepared by the expert committee. **Acceptance and adoption of the entire list en masse does not amount to compliance of the provision of Section 425B KMC Act** (emphasis supplied).”*

Mr. Ghosh, Ld. Counsel appearing for the *KMC*/the appellant, submits that the Hon'ble Single Bench held that the inclusion of the said building of the writ petitioner in the list of heritage buildings being in violation of the provisions of Section 425B of the Kolkata Municipal Corporation Act, 1980 (*KMC* Act) the writ petitioner is entitled to a declaration that such inclusion is illegal. The Hon'ble Single Bench therefore held that in view of the declaration (*supra*), the writ petitioner is also entitled to the consequential relief of removal of the said building from the heritage list of buildings prepared by the *KMC*.

Mr. Ghosh however submits that the observations of the Hon'ble Single Bench on the *en masse* acceptance and adoption of the entire list (of heritage buildings) be read down to apply only to the facts of the said building in issue in the writ petition without applying whatsoever to any other heritage building under the *KMC*. The effect of the observations carries with it the effect of impacting other buildings under consideration in the heritage list of *KMC* thereby creating rights and obligations *qua* third parties who are not the subject matter of the writ petition.

The so-called observations of the Hon'ble Single Bench carry the potential to open a Pandora' box of misconceived heritage buildings related litigation. Mr. Ghosh therefore submits that either the observations be expunged or, be read down to mean an *obiter* only in the facts of the writ petition restricted to the said building alone.

Per Contra, Mr. Kalyan Bandopadhyay, Ld. Senior Counsel appearing for the respondent in the appeal/ the writ petitioner, submits that the purported observations brought into issue in this appeal by the *KMC*/ the appellants are self-explanatory and/or self-clarificatory. It is submitted that the purported observations should be naturally read in the context of the facts in issue before the Hon'ble Single Bench.

Mr. Bandopadhyay points out that the said purported observations are part of a paragraph of the judgement and order of the Hon'ble Single Bench (as quoted above), which refers to an earlier order of the Hon'ble Court dated 24th September 2014 by which the *KMC* was directed to exercise its powers under Section 425B of the *KMC* Act *qua* the said building only. It is submitted that reference has also been made in the said paragraph to the action of the *KMC* threatening legal action against the writ petitioner for taking steps to demolish part of the said building.

The *KMC* issued notice stating that the alleged work of demolition was being carried out by the writ petitioner inspite of the fact that the said building is part of the heritage list prepared by the Expert Committee. Therefore, Mr. Bandopadhyay argues, that the purported observations on ***acceptance and adoption of the entire list en masse*** is axiomatically restrictive in its application to the so-called heritage status surrounding the said building alone.

Having heard the parties and considering the materials placed, this Court finds as follows.

That it must be noticed at the threshold that the present appeal has been directed against the merits of the entire judgement and order dated 30th August 2019. The prayer in the application, being GA No.1 of 2020 as filed by the appellants/the *KMC*, is for staying the operation of the order dated 30th August 2019.

However, at the Bar arguments have been advanced restricting the scope of intervention in this appeal only to the legal effect of the purported observations of the Hon'ble Single Bench as recorded hereinabove. While there is adequate force in the argument advanced by Mr. Bandopadhyay, Ld. Senior Counsel, that the purported observations, when read in the context of the entire judgement and order as also in the limited context of the paragraph in which such purported observations appear (*supra*) it would be clear that the said purported observations were addressed in the context of the said building alone, on the other hand, there is also a basis to the apprehension expressed by Learned Counsel for the appellants/ the *KMC* that the said observations carry the potential of being read *in rem* in future by speculators and misguided litigators.

Although, by their very character the observations appear to be in the nature of an *obiter*, no attempt should therefore be made in future by third parties to clothe them with a different legal character other than *obiter* to the case in hand itself.

This Court cannot lose sight of the fact that the use of the words *entire list* and *en masse* carry an implication of being applied *in rem* thereby

provoking third parties to raise omnibus claims in relation to their buildings against the *KMC*. Such multiple and frivolous legal action shall obstruct the *KMC* from executing the law as it stands *qua* heritage buildings.

This Court, at this juncture, relies on the authority of the Hon'ble Apex Court as reported in *AIR 1962 SC 680 Paragraph 19, In Re: K.T.M.T.M. Abdul Kayoom and another v. Commissioner of Income Tax, Madras* and, underscores the binding view that a case rests on its own facts. The relevant paragraph reads as follows:-

“..... each case depends on its own facts, and a close similarity between one case and another is not enough, because even a single significant detail may alter the entire aspect. In deciding such cases one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, its broad resemblance to another case is not at all decisive.”

The following authorities are *ad idem* on the above proposition of law as reported in *AIR 2002 SC 3633 Paragraph 28*:-

“Above being the position, we find no substance in the plea that evidence of eye witnesses is not sufficient to fasten guilt by application of Section 149. So far as the observations made in *Kamaksha Rai's* case(supra). It is to be noted that the decision in the said case was rendered in a different factual scenario altogether. There is always peril in treating the words of a judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases (See *Padamasundara Rao(dead) v. State of Tamil Nadu*, (2002(3)JT(SC)1). It is more so in a case where conclusions relate to appreciation of evidence in a criminal trial, as was observed in *Krishna Mochi's* case.”

And in AIR 2003 SC 511 Paragraph 59:-

“A decision, as is well known, is an authority for which it is decided and not what can logically be deduced therefrom. It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. See Smt. Ram Rakhi V. Union of India and others (AIR 2002 Delhi 458); Delhi Administration (NCT of Delhi) v. Manoharlal (AIR 2002 SC 3088); Haryana Financial Corporation and another v. M/s. Jagadamba Oil Mills and another (2002 (1) JT (SC) 482) and Dr. Nalini Mahajan etc. v. Director of Income-tax (Investigation) and others ((2002) 257 ITR 123).”

Accordingly, the observations of the Hon’ble Single Bench under discussion in this appeal to the effect that: **“Acceptance and adoption of the entire list en masse does not amount to compliance of the provision of Section 425B KMC Act”** in the judgement and order impugned dated 30th August, 2019 shall be read as applicable to the facts of the said building alone in issue in the writ petition and this appeal.

It is accordingly clarified so.

No other or further order is necessary in this appeal.

Since other allegations apart from the point of law decided in this appeal are deemed to be not admitted, affidavits are not invited.

G.A. No.1 of 2020 with A.P.O. No. 148 of 2019 with W.P.O. No. 479 of 2017 stand thus **disposed of**.

There will be no order as to costs.

Parties shall be entitled to act on the basis of a server copy of the Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I agree.

(Hiranmay Bhattacharyya, J.)

(Subrata Talukdar, J.)