

**05.09.2022**  
**Court No.25**  
**Item No.01**  
Aloke Dutta

**W.P.A 1308 of 2018**  
**With**  
**C.A.N 2 of 2021**

**Dr. Alok Kumar Raychaudhuri**  
**vs.**  
**Kolkata Metropolitan Development**  
**Authority & Ors.**

Mr. Ayan Banerjee,  
Ms. Debashri Dhamali,  
Mr. Arijit Bhowmik .... For the petitioner

Mr. Satyajit Talukdar,  
Mr. Abhishek Sarkar .... For the KMDA

Mr. Gopal Chandra Das,  
Mr. Rudranil De .... For the KMC

As prayed for, leave is granted to the learned advocate-on-record for the petitioner to amend the cause title of the instant writ petition. Let such amendment be carried out here and now.

The petitioner has prayed for setting aside the letter dated May 19, 2015 and the demand raised vide notice dated December 26, 2017 by the Kolkata Metropolitan Development Authority (in short, 'KMDA') as a condition for extension of time to complete the construction on the plot allotted to the petitioner.

The petitioner was initially allotted a plot in Block-DD of the East Calcutta Area Development Project, Phase-I. Since the said plot was an encumbered one, KMDA allotted a fresh plot being

no.1 in Block-ED in the said Project in lieu of the earlier plot. The possession of the said plot was also handed over to the petitioner and a lease deed was executed between the KMDA and the petitioner on December 18, 2006. Since the petitioner did not start construction within the time limit stipulated in the said lease deed, the KMDA issued a show-cause notice asking the petitioner to show-cause as to why the allotment of the said plot should not be cancelled. In reply to the said show-cause notice, the petitioner gave detailed reasons for which he could not start with the construction work on the said plot and prayed for extension of time to start and complete the construction. Petitioner applied before the Kolkata Municipal Corporation (in short, 'KMC') for sanction of the building plan for making such construction but the KMC authorities expressed their inability to grant sanction of the plan as the period stipulated in the lease deed for completion of the construction has long expired. On the prayer of the petitioner to extend the time for making construction, the KMDA issued a letter dated May 19, 2015 allowing the petitioner's prayer for permission to construct the house upon extension of time subject to the condition that the petitioner shall pay the penalty as per the existing rate of the KMDA and such construction shall be completed within the

time limit mentioned in the said letter. Thereafter the petitioner submitted an undertaking that at the hearing conducted by the authorities of KMDA, the petitioner agreed to pay the penalty amount. Though the petitioner challenged the decision of the KMDA to impose penalty but subsequently paid the said amount pursuant to an order passed by a Co-ordinate Bench of this Court on January 19, 2018.

It is also not in dispute that the amount of penalty was paid within the time limit mentioned in the said order.

Mr. Banerjee, learned advocate appearing for the petitioner submits that the petitioner is suffering from a deadly disease and since the petitioner has complied with the directions of the KMDA by submitting an undertaking and also making payment of the penalty amount, the concerned respondent authorities may be directed to extend the time for making construction and also to sanction the plan for making such construction.

Mr. Talukdar, learned advocate appearing for the KMDA, on instruction, submits that the next Board meeting is scheduled to be held on September 20, 2022 and a decision on this issue is expected to be taken at such meeting. He further submits that the hearing of the writ petition may be adjourned to enable him to assist the Court on the next occasion.

The learned advocate appearing for the KMC submits that the petitioner has to resubmit the building plan after the period of lease deed is extended by the KMDA to enable the KMC to process such plan for the purpose of granting sanction.

Heard the learned advocates for the parties.  
Perused the materials placed.

The hearing of the writ petition was adjourned from time to time to allow the KMDA to take a decision on such issue. Since this is a writ petition of the year 2018 and the petitioner having deposited the penalty amount in the month of February, 2018 and is eagerly waiting for a decision in the matter, this Court is not inclined to adjourn the hearing on the prayer of Mr. Talukdar.

KMDA allowed the prayer of the petitioner to construct house upon extension of time for making construction subject to payment of penalty and an undertaking that he will complete the construction within the stipulated period. The petitioner has already complied with the directions of the KMDA by submitting an undertaking and also by paying the penalty amount. The interest of the KMDA is well protected as the Co-ordinate Bench by the order dated January 20, 2018 directed the KMDA authorities to keep the amount paid by the petitioner

on account of penalty in interest bearing Fixed Deposit Account.

In order to avoid further delay and complications in this matter Mr. Banerjee, learned advocate for the petitioner, on instruction, submits that at present his client is not interested in challenging the authority of the KMDA to impose penalty as a condition for extension of time for making such construction and also as to whether they would be also entitled to the interest accrued on the said amount.

In view thereof this Court is of the considered view that since the petitioner has already paid the penalty amount and is still ready and willing to construct, a direction is to be passed upon the concerned authority of the KMDA to extend the time for completing the construction for a reasonable period which shall not be less than 3 years from the date of grant of such permission. The aforesaid time limit is fixed keeping in mind the fact that only after such permission is granted, the petitioner shall have to submit the plan and the KMC has to process the plan for sanction and some time will be spent in the process.

Since record reveals that the petitioner has deposited a substantial amount on account of sanction fees and there is nothing on record to

indicate that the authorities have sanctioned such plan in favour of the petitioner, the said amount is to be taken into consideration and adjusted against the sanction fees that the petitioner is required to deposit as a condition for sanction of the building plan.

For the reasons as aforesaid, the writ petition is disposed of with the following directions-

- (i) The Deputy Secretary, Estate (M & M) Unit, KMDA, being the respondent no.6 herein is directed to grant permission to the petitioner to make construction on the plot being no.1 in Block-ED and to extend the period for completing such construction for a period which shall not be less than 3 years from the date of granting such permission.
- (ii) Upon receipt of such permission, the petitioner shall be at liberty to submit the building plan and the same shall be submitted not later than 2 weeks from the date of receipt of the letter granting such permission.
- (iii) The appropriate authority of the Kolkata Municipal Corporation is directed to process the building plan, if any, submitted by the petitioner in

terms of this order and to grant sanction as expeditiously as possible but positively within a period of 4 weeks from the date of submission of the building plan by the petitioner.

- (iv) The amount already paid by the petitioner as indicated hereinbefore shall be adjusted with the amount of sanction fees that the petitioner may have to pay as a condition for sanction of the building plan.

It is, however, made clear that the parties shall be bound by the terms and conditions as mentioned in the lease deed excepting the period for completion of construction which has been modified by this order.

In view of disposal of the writ petition itself, the application being CAN 2 of 2021 is also disposed of.

There shall, however, be no order as to costs.

**(Hiranmay Bhattacharyya, J.)**