

IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

WPA 20323 of 2016

Amit Ghosh

Versus

The Howrah Municipal Corporation & Ors.

Mr. Supriyo Chattopadhyay

.....For the Petitioner

Mr. Sandipan Banerjee

Mr. Ankit Surekha

Ms. Utsa Dutta

.....For the HMC

Mr. Uday Narayan Betal

Mr. Bhaskar Hutait

.....For the Respondent Nos. 5,6,7,8 & 9

Heard on : 07.04.2022

Judgment on : 17.05.2022

Krishna Rao, J.: A Deed of Sale of a residential flat with car parking space was entered between the Respondents no. 5 to 9 and the petitioner herein on 21st April, 2014 with respect of one flat covering an area of 1279 sq.ft inclusive of super built up area in the third floor of the building consisting of three bed rooms being flat no. 304 in the District of Howrah. The private

respondents have supplied with the relevant documents including sanction plan of the said building. The building plan was sanctioned for G+III floor.

The petitioner came to know that the respondents no. 5 to 9 have started further construction over G+III without any sanction plan and accordingly, the petitioner had made several enquiry but the petitioner was not provided with any documents.

The Counsel for the petitioner submits that if the Howrah Municipal Corporation granted additional sanction building plan beyond G+III, the question of legality of such sanctioned of additional building plan is required to be looked into as the same was granted by suppressing the material fact that at present the petitioner has become the owner of the proportionate share of the land.

The Counsel for the petitioner further submits that the respondent authorities are duty bound to verify as to whether there was material misrepresentation or any fraudulent act committed by the respondent nos. 5 to 9. It is further submitted that the Commissioner of the Howrah Municipal Corporation is empowered to cancel any building permit.

The Counsel for the petitioner referring Section 177 of the Howrah Municipal Corporation Act, 1980 submits that if any building is constructed in contrary to the sanction building plan or in contravention of any provisions of the act, the Commissioner may make an order to stop the work or to demolish such illegal construction.

The Counsel for the petitioner prays for an enquiry whether any sanction plan was lawfully granted beyond G+III in respect of 33/4/3, Kashi Nath Chatterjee Lane, Howrah and for demolition of the unauthorized portion of construction of the said building.

The Ld. Counsel for the respondent nos. 5 to 9 submits that initially building plan was granted only for G+III. The petitioner is one of the flat owner as per the Sale Deed dt. 21.04.2014. The Counsel for the respondent nos. 5 to 9 had referred Clauses 12 and 13 of the Sale Deed and submitted that as per the said clause the respondents have the right to raise further construction after getting sanction from the Municipal Authorities.

The counsel for the respondent nos. 5 to 9 further relied upon clause 18 of the agreement entered between the petitioner and the respondents on 30.11.2013, prior to the execution of sale deed and as per clause 18, the petitioner had agreed that the petitioner will not raise any objection for construction of further storied upon the building . The Counsel for the respondents no. 5 to 9 further submits that there are several private dispute between the parties and the petitioner had also filed civil suit and the same is pending before the Ld. Court of Civil Judge, Junior Division at Howrah.

The Counsel for the respondent nos. 5 to 9 further submits that the respondent have got the sanctioned plan beyond G+III level from the Municipal authorities on 22.06.2015 and also started booking of the flats beyond G+III and thus third party right have been accrued and the petitioner has not made them as party in the instant case.

The Counsel for the Howrah Municipal Corporation submits that initially building plan was sanctioned to the extent of G+III in the year 2010. The private respondents then raised construction above the said premises and submitted an “As Made Plan” before the respondent authorities for sanction of structure thereon beyond G+III level upto G+VI level. After inspection with regard to structural stability of the said building above G+III, plan was accorded.

Considered the rival submissions of the parties, pleadings and documents available on record.

Admittedly initially there was a sanction plan only with respect of G+III level. Before execution of sale deed between the petitioner and the respondent nos. 5 to 9 with respect of one flat at third floor, the petitioner entered into an agreement on 30th November, 2013 and clause 18 of the said agreement reads as follows :

“Clause 18:- The 3rd party (the petitioner herein) shall have no objection if the first and second party would raise further stories upon the building of which the flat in Schedule “B” is a part nor would the third party shall stand in opposition, if the first and second party would extend the building to adjacent land of the land in Schedule A and further the third party shall have no objection if the roof top of the building or any extended building would be commercially exploited by the first and second party by leasing the same to mobile phone company or any cable supply company.”

A sale deed was executed on 21st April, 2014 in between the petitioner and the respondent nos. 5 to 9 with respect of one flat at third floor and in the sale deed Clause 12 and Clause 13 reads as follows :

“Clause 12:- That, the roof of the building shall remain in occupation of the vendor and the confirming party and the same shall be used by the flat owners only for the purpose of fixing their TV antennas.

Clause 13- That, the vendor and the confirming party shall have the right to raise further construction upon the roof of the building in question upon getting sanction from the Municipal authorities and ultimately the vendor and confirming party can set up mobile tower without causing any injury to the structures of the building and the flat owners or any other person in possession of the building shall have no right to oppose the vendor and confirming party to do as such.”

The respondent nos. 5 to 9 have raised further construction upon G+III structure and “as made” plan was submitted before the authorities and the authorities have granted plan for further three floors.

Vide order dated 28.01.2022, this Court had directed the Municipal Authority to file supplementary affidavit by enclosing all documents including stability certificate and sanction plan of the building and accordingly the Municipal Authorities have filed the stability certificate and the sanctioned plan.

The structural certificate issued by the Structural Engineer on 12.08.2014 reads as follows :

“Ref. Holding No. 33/4/3 Kashinath Chatterjee Lane, Ward No.-33 under Howrah Municipal Corporation, Dist-Howrah.

This is to certify that the construction of 3 No of floor above the existing G+3 building at Holding No. 33/4/3 Kashinath Chatterjee Lane, Ward No- 33 under Howrah Municipal Corporation, Dist- Howrah. Will execute the construction work under my supervision and structure of said building will be strong and all the relevant code will be followed for designing the structure of the building. This is to certify that the construction of 3 No of floor above the existing G+3 storied structure of the building of above project is designed so as to have Earthquake Resistance and the foundation is designed according to safe bearing capacity of soil.”

On perusal of the structural certificate, the Howrah Municipal Corporation had directed the private respondent to deposit the retention fees of further three floors as per the order passed by the Mayor and on receipt of the retention fee the Municipal Authorities have granted plan upto G+VI i.e. partly 3rd floor and three floors above the G+III structure for retain the structure.

As per the Clauses of the Agreement and Sale Deed the petitioner had agreed that the respondent nos. 5 to 9 have the right to raise further construction upon the roof of the building upon getting sanction from the Municipal Authority and as per record the Municipal authority has granted plan to the respondent nos. 5 to 9 for construction of further three floor i.e. G+VI after considering the structural stability certificate and thus this Court is of the view that no order can be passed in the instant writ application.

WPA No. 20323 of 2016 is dismissed.

Parties shall be entitled to act on the basis of a server copy of the Judgment and 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.

(Krishna Rao, J.)