

ORDER SHEET

WPO/187/2019
IA NO. GA/1/2021

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

MOHAMMAD ISRAIL AND ANR
-VS-
THE STATE OF WEST BENGAL AND ORS.

BEFORE:
The Hon'ble JUSTICE ANIRUDDHA ROY
Date : August 22, 2022.

Appearance:
Mr. Arif Ali, Adv.
...for the petitioners

Mr. Biswajit Mukherjee, Adv.
Mr. Mihir Kundu, Adv.
Mr. Debangshu Mondal, Adv.
...for KMC

The Court: This writ petition has been filed assailing the impugned order dated May 12, 2017 passed by the Director General (Building), Kolkata Municipal Corporation (for short 'the impugned order').

Pursuant to the direction made on January 11, 2017 by a Co-ordinate Bench, the said decision was rendered by the Kolkata Municipal Authority. The relevant portion from the said order dated January 11, 2017 is set out hereinbelow:

“There is no denial that there is a deed of lease executed in favour of the petitioners. It is essentially a matter of fact what right flows from the lease deed in favour of the petitioners or the said deed was ever acted upon which this Court feels it would not be necessary to make any observation thereon. The fact remains

that the petitioners have approached the authority seeking non-sanctioning of the plan in respect of the premises which has not been attended and/or taken into consideration as yet.

Equally, it is true that the Corporation sanctioned the building plan in the meantime. Section 397 of the Act provides a remedy to a person aggrieved by such sanction of the building plan to approach the competent authority for cancellation thereof and if such approach is made the authority named therein is statutorily bound to determine the same. There is no prescribed form for filing an application under the aforesaid provision. The procedure is hand made of justice. Approach was made to the Mayor-in-Council, Building Department, at pre-sanctioned stage. Once the development took place during the pendency of the said application, there is no difficulty which this Court can percieve of to permit litigant to mould the relief. It is open to the petitioners either to continue with the existing application upon bringing the subsequent events in the form of supplementary statement of facts or to file a fresh application under Section 397 of the Act. If the first course is adopted, the Mayor-in-Council shall transmit the said application and the materials produced before it to the authority competent under Section 397 of the Act who shall thereafter proceed to determine the said application treating the same to have been filed before it after affording an opportunity of hearing to either of the parties in accordance with law.

It is expected that the fate of the said application shall be brought to its logical end within eight weeks from date of communication of this order. Nothing in this order shall be construed to have an impact on the merit of the said application and said authority shall not be swayed by any observations made herein.”

For adjudication of this writ petition, the relevant provision from the Kolkata Municipal Corporation Act, 1980 is also required to be looked into and the same is also set out hereunder:

“397. Sanction or provisional sanction accorded under misrepresentation. – If, at any time after the communication of sanction or provisional sanction to the erection of any building or the execution of any work, the Municipal Commissioner is satisfied that such sanction or provisional sanction was accorded in consequence of any material misrepresentation or any fraudulent statement in the notice given or information furnished under section 393 or section 394 or section 395, he may, by order in writing, cancel, for reasons to be recorded, such sanction or provisional sanction, and any building or any work commenced, erected or executed shall be deemed to have been commenced, erected or executed without such sanction and shall be dealt with under the provisions of this Chapter :

Provided that before making any such order, the Municipal Commissioner shall give a reasonable opportunity to the person affected as to why such order should not be made.”

From a close scrutiny of the said impugned order dated May 12, 2017, it appears that the relevant documents specifically the relevant conveyance dated April 9, 2012 was there before the sanctioning authority who had sanctioned the relevant building plan dated January 6, 2016. The said conveyance is also annexed to this writ petition as **Annexure P-1**. The relevant clause of the said conveyance is set out hereinbelow:

“8. Pursuant to negotiation between the Vendor and the Purchasers, the Vendor has agreed to sell and the Purchasers have agreed to purchase the said Premises on as is where is basis

free from all mortgages, charges, liens, trust, lispendens (save C.S. No. 337 of 1990 pending before Calcutta High Court) and attachment but subject to all municipal tax liabilities and subject to lease of Madan Lal Gupta and Om Prakash Gupta under the Deed of Lease dated 22nd December 1989, tenancies of several tenants and possession of unauthorized occupants at or for the price of Rs.70,00,000/- (Rupees Seventy Lakh only) subject to the terms, conditions, covenants and provisions hereinafter contained.”

The provision invoked by the Municipal Authority for cancellation of the said subject building plan while passing the said impugned order was section 397 of the KMC Act. Such provision has already been quoted above. From a close scrutiny of the said provision of the Act, it appears to this Court that, if, at any time, after the communication of sanction or provisional sanction to the erection of any building or execution of any work, the Municipal Commissioner is satisfied that such sanction or provisional sanction was accorded in consequence of any ***material misrepresentation or any fraudulent statement in the notice given or information furnished under Section 393 or Section 394 or Section 395***, he may, by order in writing cancel for reasons to be recorded, such sanction or provisional sanction.

In the fact of this case, it was on record that all the encumbrances attached with the immovable property being premises No. 6A, Indian Mirror Street, Kolkata-700013 was duly disclosed and described in the said conveyance dated April 9, 2012, was there before the plan sanctioning authority and in consideration whereof the plan was sanctioned.

It was contended by Mr. Biswajit Mukherjee, learned counsel appearing for the Kolkata Municipal Corporation that, on the basis of the misrepresentation by not disclosing that a lease was in existence on the property and in violation of Rule 4(3) of the Kolkata Municipal Corporation Building Rules, 2009, the said plan was obtained. Thus, the sanction was not valid and lawful and was liable to be cancelled and accordingly the plan was cancelled.

The sanctioning authority while sanctioning the building plan, as would be evident from the facts of this case, had due notice and knowledge of whatever encumbrances were there on the property including the subject lease. Despite such notice and knowledge the sanctioning authority thought it fit to sanction the building plan in exercise of their statutory power. Thus, it would be incorrect to contend that on the basis of any misrepresentation the building plan was sanctioned. Such contention of the KMC Authority was thus, baseless and misconceived.

The authority while passing the impugned order cancelling the building plan had committed serious jurisdictional error by invoking Section 397 of the Act.

In view of the above, the said impugned order dated May 12, 2017 **Annexure P-12** to the writ petition stands set aside and quashed.

However, the respondent no.5 i.e. **The Director General of Building, Kolkata Municipal Corporation** may revisit the issue strictly in accordance with law upon giving at least 7 days prior hearing notice to the petitioners and also the private respondent nos. 7 to 12 and after giving them an opportunity of hearing and then to come to its logical conclusion thereof

with a reasoned decision/order. The parties will be free to argue all points available to them.

The entire exercise as directed above shall be carried out by the respondent no.5 within a period of 6 weeks from the date of communication of this order and the respondent no.5 then shall communicate his reasoned decision/order to the parties within a further period of 2 weeks from the date of such reasoned order/decision to be passed.

On the above terms, the writ petition, **WPO/187/2019** stands allowed.

Accordingly, **IA No.GA/1/2021** also stands disposed of.

(ANIRUDDHA ROY, J.)