

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE**

Present:-

Hon'ble Mr. Justice Aniruddha Roy

WPO 649 of 2017

Rajvar Properties Private Limited & Anr.

Vs.

Kolkata Municipal Corporation & Ors.

For the writ petitioners:

**Mr. Joydip Kar, Sr. Advocate,
Mr. Tanoy Chakraborty, Advocate,
Mr. Siddharth Shroff, Advocate.**

For the KMC:

**Mr. Alok Kumar Ghosh, Advocate,
Mr. Gopal Chandra Das, Advocate,
Mr. Debangshu Mondal, Advocate.**

Reserved on:

24.08.2022

Judgment on:

01.09.2022

ANIRUDDHA ROY, J.:

Facts:-

1. This writ petition assails the impugned decision and resolution dated April 18, 2017 (for short, the impugned Resolution) for sanction of a building plan in respect **Premises No. 55/1, Ballygunge Circular Road, Kolkata- 700019.** passed by the Kolkata Municipal Building Committee.
2. By a registered deed of conveyance dated December 03, 2014 the first petitioner purchased the **5/1 Ballygunge Circular Road, Kolkata- 700019** measuring about 10 cottahs more or less. The first petitioner, thus, became the sole and absolute owner of the said property.

3. The first petitioner then by virtue of another registered deed of conveyance dated August 25, 2015 purchased the adjacent property being **Premises No. 55/3B/1 Ballygunge Circular Road, Kolkata-700019.**
4. Being owner of the two adjacent properties stated above, the first petitioner applied for amalgamation of the same before the Kolkata Municipal Corporation (for short, KMC) and the same was duly amalgamated with the new and present **Premises No. 55/1 Ballygunge Circular Road, Kolkata-700019** (for short, the subject property). Necessary mutation was also caused.
5. The first petitioner then applied for a sanction building plan for a **(Basement+Ground Floor+Three storied building)** residential building with the height of 15.50 mtr on the subject property in terms of Section 393A of the Kolkata Municipal Corporation Act, 1980 (for short, the said act). The first petitioner was communicated with the said impugned resolution dated April 18, 2007, **Annexure P-5** to the writ petition. The resolution adopted therein is quoted herein below:-

“Resolution:

The plan proposal has been examined in the Building Committee in detail. Members of the Committee suggested some correction in the plan and Architect corrected the proposal accordingly. Department has to update the area statement on the basis of the corrected plan. A copy of the corrected plan may be send to WBF&ES for their record. Sanctioned alignment affected portion has to be free gifted.

Representative of Fire Department opined the requirement of fire tank will be 15,000 liters as per plan approved by WBF&ES instead of 50,000 liters as written in the fire recommendation. Applicant has to apply before WBF&ES for necessary correction in this regard.

The proposal, as corrected, is recommended for sanction subject to compliance of other departmental requisitions and compliance of departmental circulars, if any.

There is no violation of building rules, as such.

.....

Hon'ble Mayor & MMIC (Bldg)

Above recommendation of MBC requires approval of the Mayor-in-Council in order to enable this department to process the Plan Case for sanction”.

6. The first petitioner immediately on receipt of such resolution objected thereto with regard to a portion of the same by its letter dated July 18, 2017 and September 01, 2017, inter alia, as against the impugned imposition of precondition for sanction of building plan to the effect **“Sanctioned Alignment affected portion has to be free gifted”**. Such objections was not considered and the said impugned precondition according to the petitioners was not withdrawn and removed from the resolution.
7. Hence, the instant writ petition.

Submissions:-

8. Mr. Joydip Kar, Learned Senior Counsel submitted that, such precondition of execution of a gift in favour of the Kolkata Municipal Corporation in respect of the alleged alignment effected was contrary to the provisions of the said act and also to the Transfer of Property Act. He submitted that, the first petitioner immediately raised its objection against such wrongful and illegal imposition of precondition through its representations dated July 18, 2017 and September 01, 2017, **Annexure P-6** to the writ petition. He submitted that, although the proposed plan for sanction of building plan had deliberately kept the alleged sanction alignment area open, but the same could not be construed that the

first petitioner had parted with its rights in respect of the said portion of the subject property. The alleged alignment said to be existed for the last about 60 years without giving any effect to such alignment and thus, it was apparent that the said alignment had lost its force in law and only for such reason the respondents are pressurising and coercing the first petitioner to execute the impugned gift in favour of the Corporation. It was submitted that, notwithstanding the fact that the alleged alignment, as claimed by the respondent authority lost its force due to lapse of 60 years without giving any effect thereto, the respondents are trying to grab the petitioner's property dehorse the provisions of law.

9. Referring to the provisions laid down under Section 396, 391, 357 and 361 of the said Act, Mr. Kar, learned senior counsel submitted that, it could always be open for the Corporation to take steps for acquisition of any property, if any, such necessity arose according to the established procedure of law and not otherwise as the Corporation was insisting for execution of a gift in its favour in the said impugned resolution as a precondition for sanction of the building plan. He submitted that, the Corporation as a statutory authority must exercise its power in accordance with law and not beyond that. The manner in which the Corporation sought the first petitioner to execute a gift through the impugned resolution as a precondition for sanction of the building plan was not in due process of law.
10. As such the learned senior counsel prayed for setting aside of the said impugned precondition imposed by the Corporation for execution of an alleged

gift of a part of the property by the first petitioner as a precondition for sanction of the building plan.

11. On behalf of the respondent Kolkata Municipal Corporation Authority it was submitted that, imposition of the said precondition for execution of gift by the first petitioner was very much lawful and in terms of the statutory provisions. It is the statutory duty and bounden obligation of the Corporation to maintain the alignment of public road existing in front of the subject premises and also to oversee that such an alignment of public road would not be affected in the event of future widening of such existing public road in front of the subject premises.
12. Referring to the document, **Annexure P-5** to the writ petition, containing the necessary resolution for sanction of plan, Mr. Ghosh submitted that, it was merely a proposal for sanction and not the final sanction of the building plan. The said document further suggested that ***“above recommendation of Members Building Committee”*** required approval of the Mayor-in-council in order to enable the concern department to process the plan case for sanction. He submitted that, subject to fulfilment of the said lawful precondition for execution of gift by the first petitioner, as mentioned in the resolution, the Mayor-in-Council should process and proceed further for sanction of the building plan. It was submitted that, it was the domain of the Mayor-in-Council after considering every relevant factor and upon due consideration thereof, the necessary building plan would be sanctioned finally.

13. Referring to paragraphs 5 and 6 from the affidavit-in-opposition affirmed on October 01, 2018 on behalf of the respondents, he submitted that, the first petitioner submitted a proposal for sanction for the building plan of **Basement+Ground Floor+Three Storied Residential Building** with the height of 15.50 mtr and while submitting the said proposal the **Floor Area Ratio (FAR)** ground coverage appeared to have been calculated on the basis of the entire areas of the subject property including the areas affected by sanctioned street alignment. He submitted that, as a result of the FAR and ground coverage sought to be enjoyed was more than its entitlement under the law and the Building Rules. Since the affected areas should be kept vacant and apart until the date of cancellation of the regular line of public street, the portion of the subject property as precondition for execution of a gift was imposed. The same should be used ultimately as the regular line of the public street according to the prescribed procedures and could not be taken into consideration for calculation of FAR ground coverage. He further submitted that, while submitting the said building plan for the subject property the first petitioner calculated the FAR and ground coverage upon taking into consideration the entire areas of amalgamated premises irrespective of the regular line of public street and affecting the same.
14. He then submitted that, if the first petitioner would not agree to make gift of the said affected portions of the subject premises as suggested in the resolution as precondition for sanction of plan, the sanction would be thoroughly defective and the same cannot be recommended for ultimate sanction.

15. In the light of the above Mr. Ghosh submitted, that the said resolution dated April 18, 2017, **Annexure P-5** to the writ petition stands lawful and was adopted strictly in statutory compliance. The same should not be interfered with by this Court.

Decision:-

16. After considering the rival contentions argued by the counsel for the parties and upon perusal of the materials on record, at the outset this Court needs to examine the relevant provisions of law, in the light of which whether imposition of such precondition for execution of gift of a portion of the subject property would succeed or not.
17. **Section 357** of the said Act provides for defining regular line of street. **Sub-section 3 to Section 357 of the Act** states that no person shall construct or reconstruct any building or portion thereof or any boundary wall within the regular line of street. **Sub-section 6 to Section 357 of the said Act**, inter alia, provides that notwithstanding anything contained in the fore going provisions of that Section, the Corporation may, if it considers expedient so to do , cancel partly or wholly, or modify, the regular line of a public street **after a period of 10 years from the date of defining the said regular line**, provided the object for which the said regular line was defined has not been completed within the said period.
18. **Section 361 of the Act** provides for acquisition of land occupied by platforms, etc., within the regular line of street. If any, land whether open or enclosed, not vested in the Corporation and not occupied by any building, is within the

regular line of public street or, if any, platform, varendah, compound wall, hedge, fence or other structure is within the regular line of such street, the Municipal Commissioner may take possession on behalf of the Corporation, of such land with its enclosing wall hedge or fence, if any, or of any structure or of any portion thereof with the regular line of the public street and, if necessary clear the same, and the land so acquired shall be thereupon be deemed to be a part of the public street and shall vests in the Corporation in the manner and mode as specified thereunder.

19. **Section 391** of the said Act provides for constitution of a Municipal Building Committee. **Sub-section 5 to Section 391 of the Act** provides that, the committee shall, in accordance with the provisions of the said Act or the Rules and the regulations made thereunder or any other law in force for the time being, scrutinise every application for erection or re-erection of a building for which notice has been received under Section 391 or Section 394 except for a residential building to be erected or re-erected on a plot of 500 sq. mtr or less of land and shall forward its recommendations to the Mayor-in-Council in the manner and mode specified thereunder.
20. **Section 396 of the said Act** provides sanction or provisional sanction or refusal of building or work. Such provision of the act provides that the Municipal Commissioner shall sanction the erection of a building or the execution of a work unless building or work to be contravened any of the provision under Sub-section 2 or Sub-section 3 to Section 396 or the provisions of Section 405 or Section 406 of the Act. Such provision empowers

and authorises the Mayor-in-council either to sanction or to reject a building plan.

21. From a close scrutiny of the said resolution dated April 18, 2017 **Annexure P-5** to the writ petition it, inter alia, appeared to this Court that, the plan proposal was examined in the building committee in detail. On the basis of the suggestions made by the members of the committee necessary correction/alteration was caused in the plan and the proposal was made that a copy of the corrected plan to be sent to WBF & ES (The Fire Services Department) for its record. The proposal, as corrected, was recommended for sanction subject to compliance of other departmental requisitions and compliance of departmental circulars, if any, and there was no violation of the Building Rules as fraud. Still the precondition was imposed for sanction of plan that **sanctioned alignment affected portion was to be free gifted**. The last portion (bottom) of the said document also specified that all such recommendations of NBC required approval of the Mayor-in-council in order to enable the department to process the plan case for sanction.
22. On a close scrutiny of the statutory provisions referred to above, this Court is of the considered opinion that, none of the statutory provisions which are relevant for sanction of a building plan under the said Act empowers or authorises the Corporation to demand a free gift of a portion of the subject property as a precondition for sanction of the plan in respect of the subject property. The Corporation was empowered even to acquire any property or a portion thereof if the same offends the sanctioned alignment line of a public street

following the due process of law but not by demanding a free gift of the portion from the the owner of the property. It is an admitted position also that for more than 10 years had already elapsed from the date of defining the regular line of the relevant public street in front of the subject property and in any event the necessary allowance for alignment of such public street had already been provided for by the owner of the subject property at the time of construction of the original building and on the basis thereof the original building plan was sanctioned long time ago and the original building was constructed. Such portion was kept and remained vacant at all material time in strict compliance of the provisions of the statute for the purpose of defining the said regular line of the relevant existing public street. The first petitioner even with the same provisions by providing the necessary allowance in its land as was originally there while sanctioning the original building plan long time ago applied for the new building plan.

23. **Section 122 of the Transfer of Property Act, 1882** (for short, the T.P. Act) defines that gift is the transfer, inter alia, of an existing immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee. Such provision is nowhere recognized within the four corners of the KMC Act or under any Rules framed thereunder for sanction of a building plan. Transfer by way of a gift must be voluntary and cannot be demanded. The precondition imposed for execution of gift under the said impugned resolution for sanction of the building plan is nothing but a demand from the corporation which is in

contravention of the fundamental requirement of gift as defined under the T.P. Act. It is well settled that any law framed by the legislature cannot travel beyond the provisions laid down under the Constitution of India or in contravention thereof **Article 300A** of the Constitution of India under Chapter IV thereof specifically provides that, no person shall be deprived of his property save by authority of law. The portion of the resolution containing the precondition for execution of a gift for a portion of the subject property for sanction of the building plan in respect of the subject property is also in contravention of the said constitutional provision guaranteed to the petitioners.

24. In view of the above discussions and reasons, the precondition imposed for sanction of plan in the resolution dated April 18, 2017 in **Annexure P-5** to the extent **“sanctioned alignment affected portions has to be free gifted”** stands set aside, quashed and deleted. The said resolution dated April 18, 2017 being **Annexure P-5** to the writ petition must be read, understood and construed without the said expression **“sanctioned alignment affected portion has to be free gifted”** and the rest of the resolution and content of the document **Annexure P-5** to the writ petition shall remain unaltered and without any modification whatsoever.
25. It is further made clear that the respondents authorities shall proceed to take all further and necessary steps in the matter strictly in accordance with law and strictly in compliance with the relevant provisions of the statute in the manner and mode as they would be entitled to in law without any fetter but shall complete the entire process/formalities as required under the law within

a period of two months from the date of communication of this judgment and order.

26. On the above terms the instant writ petition, **W.P. No. 649 of 2017** stands allowed.
27. There shall, however, be no order as to costs.

(Aniruddha Roy, J.)