

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

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

**WPA 13348 of 2018
Sutanu Chowdhury
versus
State of West Bengal & ors.**

For the Petitioner	: Mr. Arkadipta Sengupta Mr. Lalmohan Bose	advocates
For the State	: Ms. Neelam Singh	... advocate
For the Municipality	: Mr. R. N. Chakraborty Mr. M. Ahmed	... advocates
For respondent 6 & 7	:Mr. Robiul Islam Mr. Jayed Hossain Mr. Raju Mondal Mr. K. M. Hossain	... advocates
Reserved on	: 04.08.2023	
Judgment on	: 16.08.2023	

Hiranmay Bhattacharyya, J.:-

1. Petitioner has prayed for an order allowing him to construct as per the sanction building plan after setting aside the order of the Board of Councillors dated 30.08.2017 which was signed on 05.09.2017.
2. One Jaya Modal was the owner of bastu land being Dag No. 23, within mouja Raypur, under Police Station- Maheshtala in the district of 24 Parganas (South). She obtained sanction of the building plan from Maheshtala Municipality for construction of a two storeyed building on the said land but constructed only the ground floor. Petitioner claims to have acquired the right over the roof of the ground floor of the said building measuring about 1260 square feet along with a staircase room measuring about 189 sq. feet from the said Jaya Mondal by a registered deed of conveyance dated 03.04.2012. Petitioner obtained a sanction building plan for

construction of the second floor being plan no. 420/14-15. While the petitioner was making construction of the second floor, the private respondents lodged a complaint before the Municipality. Pursuant to such complaint, a stop work notice was served upon the petitioner. Thereafter, the Board of Councillors, by an order dated 30.08.2017, cancelled the building plan for construction of the second floor alleging material misrepresentation and also adopting fraudulent means.

3. Petitioner filed this writ petition challenging the aforesaid order of the Board of Councilors. The writ petition was initially allowed by an order dated 21.12.2022.
4. The private respondent nos. 6 & 7 preferred an appeal being MAT 38 of 2023 before the Hon'ble Division Bench *inter alia* on the ground that they did not get any opportunity of making submissions in the writ petition. The Hon'ble Division Bench by an order dated 25.01.2023 disposed of the appeal by giving liberty to the said respondents to approach this Court by filing an appropriate application. On an application being filed by the said respondents being RVW No. 26 of 2023, this Court recalled the order dated 21.12.2022 on 10.05.2023.
5. Thereafter, the writ petition was heard on several dates and the learned advocates made their submission at length.
6. The private respondent nos. 6 and 7 filed an affidavit-in-opposition to the writ petition. The private respondents stated that Jaya Mondal, who was the absolute owner of the said property, sold the roof right measuring about 1260 sq.ft of the one storeyed residential building to the petitioner. It was further stated therein that the writ petitioner constructed the first floor on the said roof without obtaining any sanction plan and in the year 2014 applied for sanction of the second floor. It was also stated therein that the ground floor of the said building being a very old construction does not have the foundation strength of three storeyed building over it.
7. Mr. Sengupta, learned advocate for the petitioner contended that before according sanction of the building plan, the municipality realised site plan fees, building plan fees, development fees and retention fees and only after the amount demanded by the municipality on such account was paid, the municipality granted sanction for construction of the second floor. He further contended that after realising retention fees from the petitioner, the Municipality could not have cancelled the plan in question.

8. Mr. Chakraborty, learned advocate representing the municipality drew the attention of the Court to the impugned order dated August 30, 2017 and contended that the writ petitioner in his application for construction of another floor did not refer to existing sanctioned plan. He further submitted that the writ petitioner showed the existing building having both the floors being commercially used whereas it appears from the previous sanctioned plan that the ground floor was for commercial use and the first floor was for residential use. Mr. Chakraborty referred to the provisions laid down under section 217 of the West Bengal Municipal Act, 1993 (for short “the 1993 Act”) and contended that if the suppression of fact amounts to material misrepresentation, the municipality can invoke its power to cancel the building plan already sanctioned. Mr. Chakraborty, submitted that a person intending to construct while applying for permission to make addition or alteration of building has to indicate about the sanctioned plan in case of any existing structure and in support of such contention he referred to the provisions laid down under the West Bengal Municipal Building Rules. Mr. Chakraborty also referred to a decision of a co-ordinate Bench of this Court in the case of Tapan Bhattacharyya versus Kolkata Municipal Corporation reported at 2011(5) CHN 66 and submitted that there is a difference between a mere mis-statement of fact and deliberate material mis-representation and/or fraudulent statement. Mr. Chakraborty concluded by submitting that the suppression of fact and/or making a mis-representation in the case on hand amounts to deliberate material mis-representation and/or fraudulent statement for which municipality was justified in cancelling the sanctioned plan.
9. The learned advocate for the 6th and 7th respondent contended that the petitioner do not have any right to construct the second floor. He further submitted that the building in question do not have the foundation strength of three storeyed building. He also contended that the petitioner cannot be allowed to make construction in view of the pendency of the civil suit.
10. Record reveals that the petitioner applied for sanction of the building plan on 14.07.2014. Thereafter, the Sub-Assistant Engineer of the Building section of the Municipality by a letter dated 15.10.2015 informed the petitioner that the said building plan has been scrutinized and was ready for sanction. By the said letter, petitioner was requested to deposit the site plan fees, building plan fees, development fee and retention fee. Petitioner

deposited the amount demanded on 28.10.2015. Sanction was accorded to the building plan on 06.11.2015.

11. The 6th and 7th respondents claim to have purchased the ground floor of building in question measuring about 924 sq. feet comprising 8 shoprooms from the said Jaya Mondal by a registered deed of conveyance dated 25.01.2016. Alleging that the petitioner was trying to dispossess the private respondents from their property, a Title Suit being no. 274 of 2017 was instituted by the 6th and 7th respondent before the learned Civil Judge (Senior Division), 7th Court at Alipore against the petitioner.
12. Petitioner also filed a Title Suit being no. 314 of 2017 before the learned Civil Judge (Junior Division), 6th Court at Alipore against the private respondents praying for declaration of title and for permanent injunction restraining the defendants in the suit from illegally obstructing the free ingress and egress of the petitioner in the suit property.
13. The learned advocate for the 6th and 7th respondent would contend that the building plan was rightly cancelled as the civil suits between the parties are pending.
14. The building plan of the petitioner was cancelled by the authorities of the municipality by invoking its powers under Section 217 of the 1993 Act. The Board of Councilors cancelled the building plan in question on the ground that the writ petitioner has suppressed material fact of existence of the previous sanctioned building plan; the writ petitioner constructed the first floor without formal change of name in respect of the previous sanction building plan and also that the writ petitioner without ulterior motive showed the building as existing building without any reference to the sanctioned building plan.
15. It is not in dispute that the civil suits have been instituted long after the building plan was sanctioned. Power under section 217 can be invoked if sanction was obtained in consequence of any material misrepresentation or fraudulent statement. Institution of civil suits being subsequent events, its pendency cannot be a ground for invoking the powers under Section 217 of the 1993 Act. That apart neither the grant of sanction plan in favour of the petitioner nor the right of the petitioner to construct the second floor is the subject matter of the civil suit. This Court, therefore, holds that pendency of the aforesaid civil suits or any orders passed

in connection thereto are not relevant facts for the purpose of exercising the power under Section 217 of the 1993 Act.

16. Mr. Chakraborty would vehemently contend that the petitioner did not submit the relevant documents more particularly the sanctioned plan of the existing structure while obtaining the sanction of the building plan and for such reason the municipality was justified in cancelling the building plan.
17. Rule 11(3) of the West Bengal Municipal (Building) Rules 2007 (for short “the Rules”) states that every person intending to erect a new building or to make addition and/or alteration to any building shall apply for sanction giving notice in writing in Form B. Form B contains a list of various documents to be submitted along with the application for sanction and clause (p) thereof speaks of sanctioned plan in case of existing structure.
18. The Board of Councillors have the power to refuse to accord sanction to the building plan on one or more grounds specified in Section 210 of the 1993 Act. Upon reading Sections 207, 210, Rule 11(3) and the particulars specified in Form B, this Court finds that it was open to the Board of Councillors to require the petitioner to produce/ furnish the sanctioned plan of the existing structure in case the same was found absent along with the application for sanction. However, it would be evident from the letter of the Municipality dated 15.10.2015 that the building plan was scrutinised and the same was ready for sanction. This Court shall presume that official acts have been performed in a regular manner and the Municipality has performed the duty casted upon it by the statute and followed the prescribed procedure while according sanction to the building plan. It, therefore, follows that the Municipality had accorded such sanction upon being satisfied that all the documents and particulars necessary for according such sanction was before such authority for the purpose of scrutiny and for taking the final decision.
19. That apart the sale deed contains a reference of the building plan of the existing structure. The Municipal authority also realised retention fees from the petitioner before according sanction to the building plan. Therefore, this Court is not inclined to accept the contention of Mr. Chakraborty that the sanction plan of the existing structure was not within the knowledge of the municipal authority while according sanction in favour of the petitioner.

20. The Municipality initially sanctioned the building plan for construction of G+1 storeyed building in the name of Jaya Mondal in 2011. The said plan was valid till 2014. Pursuant to the transfer made by Jaya Mondal in favour of the petitioner, the name of the petitioner was mutated in the Assessment Register on 06.07.2012. Jaya Mondal only constructed the ground floor of the building. Jaya Mondal transferred her right to construct over the roof of the ground floor in terms of the aforesaid sanction plan in favour of the petitioner by executing the deed of conveyance. Therefore, the right to construct upon the roof of the ground floor in terms of the sanction building plan of G+1 storeyed building vested upon the petitioner. Admittedly the sale deed was produced by the petitioner at the time of same of the building plan. Therefore, it goes without saying that the municipality upon being satisfied with the right of the petitioner to construct the 1st floor on the basis of the plan sanctioned in favour of Jaya Mondal accorded sanction to the building plan in favour of the petitioner. That apart, it is evident from the records that before granting sanction of the plan for construction of the second floor, the Municipality demanded retention fees from the petitioner. Such raising of demand presupposes an inspection made of the existing building with reference to the sanction plan of the existing G+1 storeyed building. The fact that the petitioner made construction of the 1st floor over the roof of the ground floor was well within the knowledge of the Municipality prior to according sanction of the plan for construction of the second floor and therefore, it cannot be said that sanction to construct the second floor was given in consequence of any material misrepresentation or fraudulent statement. Such sanction could be said to have been vitiated by material misrepresentation or fraudulent statement only if such fact was not within the knowledge of the municipality, whereas the fact of this case is otherwise.
21. In the sale deed, by virtue of which the petitioner acquired right to make construction, there is a reference of the sanctioned building plan of the existing structure. Therefore, the municipality in spite of being aware of the nature of occupancy in respect of the 1st floor as specified in the sanction plan for the existing structure sanctioned the building plan for construction of the second floor upon realising retention fees. Thus, the municipality was aware of the mode of user of first floor while according sanction of the building plan in favour of the petitioner. The municipality cannot now turn around and invoke its powers under Section 217 of the 1993 Act on the

ground of alleged change of user of the nature of occupancy of the first floor.

22. For the reasons as aforesaid, this Court is of the considered view that the grounds on which the sanction plan was cancelled do not fall within the expressions “material misrepresentation” and “fraudulent statement”. The impugned order, therefore, calls for interference.
23. The learned advocate for the 6th and 7th respondents would contend that the petitioner do not have any exclusive right over the roof of the first floor and, therefore, cannot construct the second floor. Such contention of the private respondents cannot be accepted in view of the fact that in the deed of conveyance executed by Jaya Mondal in favour of the petitioner it has been specifically stated that the petitioner shall have exclusive right over the ultimate roof of the building. That apart such contention does not appear to have been raised before the municipal authority.
24. The other contention of the private respondent nos. 6 and 7 that the building does not have the foundation strength of a three storeyed building also cannot be a ground for cancellation of the sanction plan as it is evident from the recording in the impugned order that the petitioner applied for sanction of second floor after furnishing the soil investigation report and structural stability certificate. Therefore, the Municipality had the materials before it for according sanction in favour of the petitioner for construction of second floor. The Municipality, in the order impugned, has also not returned any adverse finding on such issue.
25. There is, however, no quarrel to the proposition of law laid down in the case of Tapan Bhattacharyya (supra) that there is a difference between misstatement of facts and deliberate material misrepresentation or fraudulent statement. However, the said decision is of no assistance to the Municipality in view of the observations made hereinbefore.
26. The plan for construction of the second floor was valid till November 5, 2018. However, the petitioner could not complete the construction in view of stop work notice being served upon him on January 19, 2017. Thereafter, the plan stood cancelled by an order of the Municipality dated September 5, 2017. Such decision is under challenge in this writ petition and the same was filed sometimes in the year, 2018.

27. Section 207(2) of the 1993 Act read with the Rules provides for renewal of the sanction plan upon payment of prescribed fees. Since the petitioner could not complete the construction for the reasons as stated hereinbefore, this Court is of the view that the Municipality should be directed to renew the sanction plan provided the petitioner complies with the requisite formalities.
28. Accordingly, the writ petition stands allowed. The impugned order dated August 30, 2017 and signed on September 5, 2017 is set aside and quashed. The authorities of Mahestala Municipality is directed to renew the said plan in accordance with the provisions of the 1993 Act and the Rules framed thereunder upon an approach being made by the petitioner to such effect and subject to fulfillment of all requisite formalities including payment of prescribed fees, if any. Such exercise shall be completed as expeditiously as possible but positively within a period of four weeks from the date such an approach is made. There shall be, however, no order as to costs.
29. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)