

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA 25945 of 2023

Brig. Arindam Majumder & Anr.

Vs.

**The Chairman, Board of Councillors, Bidhannagar
Municipal Corporation & Ors.**

For the writ petitioners	:-	Mr. Supriyo Bose, Sr. Adv. Mr. Debajyoti Deb, Adv. Ms. Somdyuti Parekh, Adv.
For the BMC	:-	Mr. Sirsanya Bandopadhyay, Adv. Mr. Tirthankar Dey, Adv.
For the respondent no. 4	:-	Mr. Suddhasatya Banerjee, Adv. Mr. Ratul Das, Adv. Mr. Joyjeev Medhi, Adv.
Heard on	:-	29.11.2023
Judgment on	:-	14.12.2023

Amrita Sinha, J.:-

The reasoned order dated 30th October, 2023 passed by the Commissioner, Bidhannagar Municipal Corporation ('BMC' for short) in compliance of the direction passed by the Court in MAT No. 687 of 2023 (Brig. Arindam Majumder & Anr. vs. Col. (Dr.) Sunanda Majumder & Ors.) is impugned in the instant writ petition.

By the said order the Commissioner directed the petitioners to demolish the four projections at the windows from the floor level and the balcony included within the room.

According to the petitioners, they conducted minor repairing and renovation work in their apartment for which no damage was caused either to the building or to the apartment owner. The repairing and renovation work conducted by the petitioners, being minor in nature, did not require any sanction from the BMC. The renovation/ repair did not result in extension/

generation of any additional floor space. Only the internal partition wall between the room and the balcony has been removed and to prevent rain water from seeping through the window the same has been partially covered.

Upon consideration of a harassing complaint filed by the private respondent before BMC, the impugned order of demolition has been passed. The inspection which was conducted was perfunctory and whimsical and the report has been prepared upon total non application of mind being influenced by the private respondent.

The petitioners submit that they covered their open balcony which is just above the private respondent's bedroom and repaired and renovated the windows at about eight inches above the floor level. The renovation had to be done as the petitioners were inconvenienced by the rain water which fell in the open balcony. The renovation and repairing work is such that the same is not impermissible in law. There are several apartments in the same complex with similar construction work and BMC did not care to take action against the same. Photographs of similar type of constructions have been annexed to the writ petition.

Learned senior counsel for the petitioners relies upon various provisions of the West Bengal Municipal (Building) Rules, 2007 which are applicable to the BMC. It has been contended that the constructions in question cannot be considered as projections as the said constructions were all along there. It is only that the same has been covered to prevent rain water from seeping in.

It has been submitted that there has been violation in principles of natural justice in not forwarding a copy of the building sanctioned plan despite written requests. The constructions, under any stretch of imagination, can't be treated as unauthorized.

The valuable time of the Court ought not to be wasted in deciding trivial issues. In support of the aforesaid submission reliance has been placed on the

legal maxim *de minimis non curat lex* meaning thereby that the law does not care for, or take notice of, very small or trifling matters. The law does not concern itself about trifles.

Prayer has been made for quashing and setting aside the impugned order.

In support of the aforesaid submissions the petitioners rely upon the decision delivered by the Hon'ble Supreme Court in the matter of **V.M. Kurian vs. State of Kerala & Ors.** reported in **(2001) 4 SCC 215** wherein the Court held that there cannot be relaxation of mandatory Rules especially in case of high-rise building. The position may be different in the case of one or two storied building where there are minor deviations from the Rules, which do not affect the public safety and convenience.

Reliance has also been placed on the judgment delivered by the Hon'ble Supreme Court in the matter of **National Insurance Company Ltd., New Delhi vs. Jugal Kishore & Ors.** reported in **AIR 1988 SC 719** wherein the Court held that it is the duty of the party which is in possession of a document which would be helpful in doing justice in the cause, to produce the said document and such party should not be permitted to take shelter behind the abstract doctrine of burden of proof. The ratio in the aforesaid decision has been relied upon to augment the submission that it was the duty of BMC to provide the building sanctioned plan to the petitioners when written request was made for supplying the same. In not providing the sanctioned plan, BMC flouted the principles of natural justice.

The petitioners further rely upon the decision delivered by the Hon'ble Supreme Court in the matter of **Municipal Corporation, Ludhiana vs. Indrajit Singh & Anr.** reported in **(2008) 13 SCC 506** wherein the Court held that the authority was statutorily obligated to apply its mind with regard to the

nature and extent of unauthorized construction, if any. Negligible violation does not warrant an order of demolition.

The prayer of the petitioners has been strenuously opposed by the learned advocates representing the BMC and the private respondent. The respondents rely upon the relevant provisions of the Building Rules, 2007 in support of their submission that the construction in question is not a minor one. The same is contrary to the building Rules. In view of the construction, the entire facade of the building has changed. There has been massive alteration in the balcony and the window which is impermissible and the same could not be done without obtaining expressed sanction from the BMC.

In support of their stand, the respondents rely upon the judgment delivered by this Court in ***Ghanashyam Das vs. The Kolkata Municipal Corporation & Ors.*** reported in ***(2014) SCC Online Cal 15980: (2014) 4 Cal LT 1*** wherein the Court took note of the various provisions of the Kolkata Municipal Corporation Act, 1980 and the Kolkata Municipal Corporation Building Rules, 2009 and held that the Municipal Commissioner does not have any authority to regularize an unauthorized construction. It has been submitted that the said provision of the Act of 1980 and the Rules, 2009 are *pari materia* to the Rules relying upon which the order of demolition has been passed.

Reliance has also been placed on the decision passed by the Hon'ble Supreme Court in the matter of ***Dipak Kumar Mukherjee vs. Kolkata Municipal Corporation & Ors.*** reported in ***(2013) 5 SCC 336*** wherein the Court emphasized that illegal and unauthorized constructions not only violate the municipal laws and the concept of planned development but also affect various fundamental and constitutional rights of other persons.

The respondents pray for dismissal of the writ petition.

I have heard and considered the rival submissions made on behalf of all the parties.

To arrive at a proper conclusion in the present case the following definitions laid down in the building Rules, 2007 relied upon by the parties are required to be noticed.

Rule 2 (6) “alteration” means change from one occupancy to another, or a structural change, such as an addition to the area or height, or the removal of part of a building, or any change to the structure, such as, the construction of, cutting into or removal of any wall, partition, column, beam, joist, floor or other support, or a change to the fixture or equipment;

Rule 2 (10) “balcony” means a semi open space including horizontal projection with a handrail or balustrade to serve as passage or sitting out place;

Rule 2 (15) “chajja or cornice” means a sloping, horizontal, or structural, over-hung usually provided over openings on external walls to provide protection from the sun and rain;

Rule 2 (40) “ledge” or “tand” means a shelf-like projection, supported in any manner except by means of vertical supports, within a room itself but not having projection wider than 0.60 metre, for being used only as storage space;

Rule 2 (43) “loft” means an intermediary floor between two floors or a residual space in a pitched roof above normal floor level which is constructed or adopted for storage purposes;

Rule 110 Projection- (1) Window chajja or cornice may project up to 0.5 m. (1’-8”) on all sides of the building.

(2) One cantilever verandah from first floor upward projecting up to property line may be allowed only on the frontage and side facing the roads (for corner plots only). This projection may be extended up to 0.5 m. (1’-8”) on the

wider and narrower side spaces also, provided that the permissible limit of FAR is not exceeded and that the width of such verandah shall not exceed 2.5 m. (8'-2"). Weather boards made either of concrete or pierced concrete or grill or glass or louvers or wood may be allowed to come down from second floor upwards up to the top level of windows in case of weather board from first floor, the clear gap between the bottom of weather board and plinth level shall be at least 8'-0". Only grills will be permitted to connect the above weather boards to the verandah railings on each of the floors and no window or solid wall shall be allowed. Verandah railings may be taken up to a maximum height of 1.25 m (4'-1"), provided that the solid part of it, if so constructed is limited to a height of 1 m. (3'-4"):

Provided that in any co-operative building on any plot of 5 K or above, a cantilever verandah from ground floor and upwards projecting up to the property line may be allowed on frontage and side facing roads (for corner plot only) but under no circumstances shall any verandah projection be less than 2.4 m. in clear height from ground level and that permissible limit of F.A.R. is not exceeded.

(3) The cantilever verandah on the first floor and above may be constructed within the open space after keeping open the space compulsorily required to be kept open as per Rule 107, provided the permissible limit of F.A.R. is not exceeded.

(5) Projections for shelves not exceeding 0.25 m. (10") beyond the outer surface of external walls may be allowed within the minimum wider, narrow and back open spaces for the purpose of making wall cupboards or alcove, provided the thickness of the wall for such projections is minimum 10" brick work or 3" thick reinforced concrete.

As per Rule 95 (59) especially applicable in respect of Salt Lake Township, 'to make material alterations' means to make any modification in an

existing building by way of addition or alteration, or any other change in the roof, window, door, compound, sanitary drainage system in any respect whatsoever.

What is to be seen is whether the constructions made by the petitioners flouts the building laws applicable in the present case. The petitioners have annexed photographs of the disputed constructions. A glance at the same is enough to construe that the disputed constructions are different from the rest of the construction. The window apparently appears to have been altered by constructing a projected base and covering the same from the top. The balcony has been renovated and added up to the room by removing the internal partition wall.

Though the petitioners stress that removal of the internal partition wall and extending the room by including the balcony do not increase the floor area but the same has resulted in a change in the character of the balcony as defined in Rule 95 (7) of the building Rules, 2007. The moment the internal partition wall is removed, the room becomes an extended one and there is no existence of the balcony.

‘Alteration’ according to the building Rules, 2007 means a structural change such as an addition to the area or removal of part of a building or change in the structure including removal of any partition wall. In the instant case, the petitioners admit addition to the area of the room on removal of the partition wall which amounts to alteration.

The building Rules require that every person who intends to demolish any part of the building shall give notice in writing to the municipal authority. The nature of alteration made in the window and the balcony falls under the definition ‘material alterations’ requiring a notice to be served upon the municipal authority prior to undertaking such work. Admittedly, no notice of such alteration was served upon the BMC.

According to Rule 110 'window chajja or cornice' may project upto 0.5 meter on all sides of the building. In the instant case, the window chajja has been projected more than the permissible limit. The windows of the other floors are all in one line but the window of the petitioners, projects outside like a box. The character of the window has changed and the same is visibly apparent from the photographs annexed to the writ petition. The outer facade of the building has certainly changed in view of the alteration made by the petitioners.

The petitioners contend that the alteration, if any, is minor and trivial in nature which is not required to be demolished. Indrajit Singh (supra) has been relied upon to impress the Court that the alleged violations being negligible in character do not warrant demolition. It appears that the aforesaid decision was passed in connection with the Punjab Municipal Corporation Act, 1976 where the Corporation had the power to regularize unauthorized construction on receipt of a compounding fee, but the instant case is governed by a law which does not permit regularization of unauthorized construction. In the absence of a supporting law, the municipal authority will not be in a position to regularize the offending constructions.

In Jugal Kishor (supra) the Court emphasized production of documents which may have been used against a party. Here, the petitioners contend that even though application was made for supplying the sanctioned building plan, the same was deliberately withheld by BMC. It cannot be appreciated as to how the petitioners proceeded with the construction work without verifying the sanctioned plan. Non supply of the sanctioned plan do not authorize the petitioners to make the alterations without notice to BMC and without obtaining proper permission/ sanction from BMC.

In V.M. Kurian (supra) the Court was of the view that minor deviations in one or two storied building which do not affect public safety and convenience may be relaxed. The building in which the alteration has been made by the

petitioners is not a two storied building. The petitioners have made the disputed constructions in the third floor. Accordingly, the ratio laid down for relaxation of building Rules in respect of a two storied building will not be applicable in the case of a high-rise.

According to the petitioners, the issue in question is of trivial nature and order of demolition ought not to have been passed. It appears that as the same is contrary to the Building Rules applicable in the present case, accordingly, the BMC has taken steps to address the same.

Ghanashyam Das (*supra*) specifically lay down that it is the statutory duty of the Municipal Authorities to ensure that a building is raised in accordance with law. In the absence of statutory provision, the unauthorized construction cannot be regularized.

The Court does not find any illegality in the impugned order which merits interference. However, as the petitioners have submitted that there are several similar constructions in the same housing complex in respect of which the BMC did not take any step for demolition, accordingly, the Commissioner, BMC is directed to cause inspection in the complex to find out whether there are similar such constructions made by other apartment holders in the said complex and whether or not the petitioners have been singled out by the complainant.

It appears that private dispute in between the parties might have led to the filing of the complaint which culminated in the order of demolition. The BMC ought to apply the Building Rules uniformly in respect of all inhabitants in the said complex and ought not to encourage discrimination by picking out the petitioners only because a complaint has been lodged. If such incidents are encouraged, then private disputes of the parties would be brought to the fore and government authorities would be misused for settling private scores.

In the absence of any supporting law the BMC will not be in a position to regularise the unauthorized constructions, but at the same time BMC will not enforce the order of demolition till complete survey of the complex is made to ascertain whether there are similar such constructions. If BMC does not take steps against the other offending structures, if any, then no coercive steps will be taken against the petitioners. In the event other similar structures are demolished, then the unauthorized structures of the petitioners will suffer the same fate.

The writ petition stands disposed of.

No costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)