

W.P.A. 31135 of 2017

**Sabita Dhar
Vs.
Chandannagore Municipal Corporation & Ors.**

**Mr. Swapan Kumar Nandi
Mr. Dejoyti Ghosh
....for the Petitioner**

**Mr. Tanmoy Khan
...for the respondent nos. 8 & 9**

**Mr. Suman Basu
...for the Chandannagore Municipal
Corporation**

Writ petition centers around the order dated 27th July, 2017 passed by the Commissioner, Chandannagore Municipal Corporation on the complaint made by the petitioner relating to construction of first floor by the private respondent. Though allegation of the petitioner as has been narrated in the order sheet dated 27th July, 2017 to the extent of construction of illegal structure without leaving requisite open space at the front and rear side of the building, it has also been recorded that the petitioner alleged roof has been extended by constructing cantilever and also by construction of box windows in violation of the sanctioned plan.

Mr. Swapan Kumar Nandi, learned advocate representing the petitioner has categorically submitted that it is true that petitioner has taken the point of raising illegal construction by the private respondent while constructing the first floor of the building in

question without keeping statutory open space at the front and rear side of the building but it is not the petitioner's case that the roof of the building has been extended upon construction of cantilever and construction of box windows has been made by the private respondent in violation of sanctioned plan rather emphasis has been laid on the issue which has been narrated in the complaint dated 3rd September, 2012 addressed to the Commissioner of Chandannagore Municipal Corporation that in contravention of the sanctioned plan accorded by the municipal corporation the private respondent has constructed an open balcony which rests on brick built pillar and subsequently the said balcony has been converted into covered area which situates at the front portion of the first floor of the building.

According to the petitioner, such construction of balcony and converting the same into covered space is illegal since the plan sanctioned by the concerned authority of Chandannagore Municipal Corporation did not permit the private respondents to make such balcony.

Mr. Suman Basu, learned advocate representing Chandannagore Municipal Corporation has made endeavour to defend the impugned decision of the Commissioner dated 27th July, 2017 upon placing reliance on Rule 55 of the West Bengal Municipal(Building) Rules, 2007. It has been submitted

that respondent no. 5, namely, Srikanta Gupta purchased the plot in question along with ground floor existing on the said plot. After purchase the said plot respondent no.5 obtained sanctioned plan from Chandannagore Municipal Corporation and accordingly first floor was constructed. It is also submitted that the plan of first floor which was accorded by the Corporation is the replica of the ground floor and on inspection by the concerned engineer before taking decision by the Commissioner, it was found that there was no deviation made by the respondent no. 5 while constructing first floor. In this regard the report of the engineer dated 7th June, 2017 has been relied upon.

The learned advocate representing added respondent nos. 8 and 9 has supported the contention made on behalf of the corporation. However, on query made to the said learned advocate representing the respondent nos. 8 and 9 it has been submitted that those respondents are not willing to file any affidavit-in-opposition to this writ petition. Accordingly, this Court has decided to adjudicate the issue involved in this writ petition finally today.

Having considered the submissions made on behalf of the respective parties it appears that one Srikanta Gupta being the respondent no. 5 purchased the plot in question with existing ground floor and subsequently obtaining sanctioned plan from Chandannagore Municipal Corporation constructed first floor which,

according to the petitioner, is not in consonance with the sanctioned plan. This Court having considered the points raised on behalf of the petitioner is required to address the issue of keeping statutory open space at the front and rear side of the first floor. In order to decide such requirement of keeping front and rear open space at the first floor Rule 55 of the West Bengal Municipal (Building) Rules, 2007 is relied upon and said Rule 55 runs infra:-

“55. Provisions regarding existing buildings.- (1) *The provisions of these rules shall apply only in the case of an existing building.*

(2) *In the case of existing building –*

(a) *excepting storage buildings, where the open spaces required have not been provided, an addition in the number of stories, if otherwise permissible, may be allowed with a set back, provided such building continues with the same occupancy:*

Provided that no formal set back may be necessary up to a height of eight metres for adding only one floor over an existing single storied residential building;

(b) *the extent of the set back from the property boundary shall be such as to make the addition to the building conform to the provisions of the rules 46 and 50;*

(c) *if any car parking space is required to be provided under these rules and no such car parking space can be provided, the covered area allowable under the provisions of these rules shall be reduced by the area required for such car parking space which cannot be provided in the said building.*

Explanation.- For the purpose of calculation, the area, required for one car parking space shall be taken as 20.00 sq. metres;

(d) *the height of the building shall conform to the rules as indicated in*

rule 49 and in no case after addition the height shall exceed [15.50] metres;

- (e) the addition to an existing building with residential occupancy shall not exceed 200.00 sq. metres in covered area;*
- (f) the addition to an existing building with educational occupancy shall not exceed the total covered area of the existing building;*
- (g) the addition to an existing building with other occupancies including mixed use building but excepting storage building shall not exceed 100.00 sq. metres in covered areas;*
- (h) in case of partition of existing building common walls may be allowed as the partition line.”*

Having considered sub-rule 2 of Rule 55 and the proviso to sub-rule 2(a) it appears that excepting storage buildings, where the open spaces required have not been provided, an addition in the number of stories, if otherwise permissible, may be allowed with a setback, provided such building continues with the same occupancy; but in the proviso appended therein it has been categorically provided that no formal setback may be necessary up to the height of 8 meters for adding only one floor over the existing single storied residential building. In the present case respondent no. 5 constructed first floor which, according to the parties, is within prescribed height of 8 meters. Therefore, as per proviso to sub rule 2(a) of Rule 55 setback is not required at the time of constructing first floor in terms of the sanctioned plan accorded by the corporation.

Therefore, on the issue as raised by the petitioner with regard to failure on the part of the respondent no. 5

to keep requisite open space at the front and rear portion of the first floor this Court does not find any flaw in the decision taken by the Commissioner of Chandannagore Municipal Corporation as contained in the order dated 27th July, 2017 and the said issue of requirement of keeping front and rear open space is no longer required to be reopened.

However, on perusal of the impugned order dated 27th July, 2017 of the Commissioner it does not appear that the Commissioner has addressed the issue raised by the petitioner as contained in the objection dated 3rd September, 2012 that an open balcony in contravention of the sanctioned plan has been constructed by the respondent no. 5 which rests on brick built pillar and subsequently said balcony has been converted into covered area. Accordingly, the Commissioner is required to consider the issue in view of the sanctioned plan which was issued in favour of respondent no. 5.

Commissioner is directed to hear the petitioner and the respondent nos. 5, 8 and 9 and pass a reasoned order within a period of 12 weeks from the date of communication of this order. The Commissioner shall be at liberty to hold inspection of the construction site in question by deputing responsible engineer concerned before passing such order upon notice to the petitioner and respondent nos. 5, 8 and 9.

Since submission has been made on behalf of the petitioner that extension of roof by construction of

cantilever and construction of box windows in violation of sanctioned plan has not been agitated at any point of time before the concerned authority of Chandannagore Municipal Corporation these issues are not required to be revisited by the Commissioner while taking decision in terms of the order passed by this Court today.

With the aforesaid directions, the writ petition stands disposed of.

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)