

IN THE HIGH COURT AT CALCUTTA

(CIVIL APPELLATE JURISDICTION)

APPELLATE SIDE

Present:

The Hon'ble Justice Partha Sarathi Chatterjee

WPA 11359 of 2021

Shri Biplab Das

-Vs.-

Tamralipta Municipality & Ors.

For the Petitioners : *Mr. Debabrata Saha Roy,*
Mr. Indranath Mitra,
Mr. Pingal Bhattacharyya,
Mr. Neil Basu,
Mr. Sankha Biswas.

For the Tamralipta : *Mr. Gopal Chandra Das,*
Municipality *Ms. Ananya Das.*

For the Respondent : *Mr. Saptangsu Basu,*
No.5. *Mr. Nirmalya Dasgupta,*
Mr. Rajesh Upadhyay,
Ms. Surabita Biswas.

For the Respondent : *Mr. Debargha Basu,*
No.8 *Mr. Anirudh Goyal.*

Heard on : 12.04.2024

Judgment on : 09.05.2024

Partha Sarathi Chatterjee, J.:-

Prelude:

1. In invocation of the extra-ordinary jurisdiction of this Court, the petitioner complains of brazen violation of Building Rules in erecting a multi-storey building under a project namely, 'Tamluk Downtown Enclave' at Tamluk, Purba Medinipur and prays for a writ of *mandamus* commanding the respondents to bulldoze the building sought to be condemned by the petitioner as an unauthorised construction.

Petitioner's case:

2. Before going to delve deep down the controversy, the facts, as delineated in the writ petition, which are crucial to the resolution of the controversy must be noticed.
3. One Siraj Khan, the private respondent no. 4 owned a chunk of land comprising an area of 1.4926 acre equivalent to 6040.33727 sq. meter appurtenant to seven plots of land bearing L.R. plot nos. 4424, 4425, 4426, 4427, 4433, 4434 and 4436, located at Mouza- Padumbasan, P.S.- Tamluk, District-Purba Medinipur (hereinafter, the land).
4. Mr. Khan and one promoter, namely, M/s. Bangbhumi Realbuilders LLP, private respondent no. 5 in a joint venture undertook a building project with an objective to build a commercial-cum-residential complex on the lands. Further the objective, they jointly executed a registered

development-agreement *vide*. no. 190300375 dated 28.02.2017 which was subsequently supplemented by another registered agreement *vide*. dated 26.09.2019.

5. The construction of the commercial-cum-residential building complex consisting of 7 (seven) blocks spreading over an area of 20817.49 sq. meter came to be commenced as per the building plan sanctioned by the Tamralipta Municipality under whose territorial jurisdiction the area falls.
6. The petitioner, who is having his permanent place of abode in District- Paschim Medinipur and who is presently residing at Abasbari under P.S. Tamluk, District- Purba Medinipur, with an intendment to purchase a flat under the project approached the promoter firm. The project summary and/or the overview of the project was briefed to the petitioner and it was represented to the petitioner that religiously following the provisions of building rules and upon observation of all requisite formalities, the construction was going on. The petitioner was assured that upon completion of construction of commercial blocks, the firm had already bagged the completion certificates and the construction of residential complex was on the verge of completion.
7. As a proposed purchaser of one 2-BHK flat of 4th floor of Block-C, before executing any instrument of agreement, the petitioner undertook an enquiry and in course of such enquiry, he got access to the project-related documents. On studied scrutiny of those documents, the petitioner noticed that in blatant violation of building rules, the construction was going on. According to the petitioner, such illegalities were perpetrated

with a malice to enjoy a huge additional build up area by the land-owner and promoter and the Municipality lent a hand to the promoter and land-owner in accomplishing their unholy goals.

8. According to the petitioner, on studied scrutiny of the sanctioned plan and other project-related documents, the following illegalities were detected:-

- a) *Ground coverage was allowed to the extent of 3968.23 sq. meter i.e. 65.70% of the total area in place of 2114.11804 sq. meter equivalent to 35% of total area.*
- b) *Floor Area Ratio (in short, FAR) for all 7 (seven) blocks was allowed to the extent of 20817.49 sq. meter but in respect of the building having means of access of 5.5 meters width, the maximum permissible limit of FAR was 10570.59020 sq. meters. As such, the FAR being 3.4464 had been sanctioned in place of 1.75.*
- c) *Floor to floor heights of 4 blocks (A, B, C & D) of commercial building being B+G+ 3 storey were not mentioned in the building plan but the heights of those buildings were raised up to 3.05 X 4 meters i.e. 12.20 meters and effective heights of three residential buildings were raised up to 18.30 meters in place of maximum permissible limit of 12.5 meters.*
- d) *The commercial space in 4 blocks was sanctioned to the extent of 11821.60 sq. meters instead of maximum permissible limit being 10% of the total build-up area i.e. 106 sq. meters. In other words, an extra space of 11715.60 sq. meters was sanctioned.*

- e) *Rules relating to set back areas i.e. the mandatory open space required to be kept at the front, rear and sides of the buildings have been violated.*
 - f) *Total build up area was constructed to the extent of 9564.56 sq. meters against the sanctioned 8995.89 sq. meters. As such, an additional area of 568.67 sq. meters was constructed.*
 - g) *Additional floor/storey has been constructed in deviation of the sanctioned plan.*
 - h) *Though in the sanctioned plan, provisions for basements in every block were made for every block but no basement have been constructed in any block.*
 - i) *Open space of commercial blocks having height of more than 10 but less than 20 meters was kept only 5.5 meters in place of mandatory requirement of 8 meters.*
 - j) *Occupancy and/or completion certificate was issued in respect of 'A' block in deliberated contravention of the building rules.*
9. Giving details of the measurements of extra ground coverage, floor area etc. in tabular form in paragraph-13 to the writ petition, the petitioner alleged that in sheer violation of the building rules, the building plan was sanctioned. Inserting two tables containing block-wise and area-wise measurements of FAR, ground coverage etc. in paragraphs -17 and 18 of the writ petition, the petitioner sought to demonstrate that the building was constructed in deviation of the sanctioned building plan.

10. The respondents were continuing the construction work in heedless disregard of the consequences of the violation of the building rules and as such, the petitioner sent a legal notice dated 11.05.2021 to the Municipality imploring it to take appropriate action but to no avail.
11. Situated thus, the petitioner was forced to retreat his decision to purchase the flat. The petition, which was submitted by him asking the Municipality to take appropriate actions against such illegalities, also fell in deaf ears of the Municipality. The petitioner then shoot off a further legal notice dated 21.04.2021 to the Municipality through his learned advocate, which was duly received by the Municipality on 27.04.2021, soliciting its effective steps into such unauthorised and/or illegal activities but despite receipt of those petitions and notices, those were kept in suspended animation which prompted the petitioner to institute the present writ petition.

Defence taken by the builder/the respondent no. 5:

12. The respondent no. 5 resisted the writ petition by filing affidavit-in-opposition and supplementary affidavit-in-opposition. The stand taken in those affidavits are that in flagrant abuse of due process of law, the petitioner, who is a part of an 'illegal cartel' and who is in habit of preferring such sorts of writ petitions, approaches the promoter with a pretext to purchase a flat and somehow managed to procure the project-related documents and then preferred this writ petition only to extort money from the builder and the promoter.

13. The petitioner for not having any flat in the complex has no *locus standi* to challenge a duly sanctioned building plan and he cannot be treated as a 'person aggrieved' and there was no infraction of any legal right of the petitioner.
14. Appending a report submitted by Municipality in the Court, it was pleaded therein that the Municipality had considered the express highway, which is having 21.8 meters width, as 'abutting road' and accordingly, FAR, ground coverage etc. were calculated and sanctioned. In the event, the express highway, which is only few meters away, is taken as 'abutting road', there would be no irregularity in the building plan.
15. The petitioner misguided himself in treating the road having width of 5.5 meters leading to the express highway as 'abutting road'. The building plan was meticulously examined by the experts and then the same was sanctioned by the Municipality and there was no illegality in building plan and the building was constructed strictly in conformity of the building rules.
16. Annexing the block-wise occupancy certificates and list of purchasers with the supplementary affidavit, it was claimed that after thorough inspection, the Chairman of the Municipality has issued those occupancy certificates and many flats have already been sold out and possession thereof have been handed over to flat owners.

Stand taken by the land-owner/ respondent no. 4:

17. Reiterating the averments made in those afore-mentioned affidavits in almost same words, the respondent no. 4/ the land-owner took similar stand to that of the respondent no. 5.

Case of the respondent no. 8:

18. In its affidavit-in-opposition, the respondent no. 8 contended that by virtue of two registered deeds of lease, it was inducted as lessee to commercially exploit a carpet areas of 15364 Sq.fts. comprising of 6594, 8194 and 7170 Sq. fts. of the ground, first and upper ground floor respectively of 'A' block. Having invested a huge amount of capital and upon observation of all requisite formalities, the respondent no. 8 has been operating two stores/retail shops at the space let out to it, under the name and style of 'Reliance Fresh' and 'Reliance Trend'. It was specifically contended therein that no cause of action has been made out in the writ petition against it. The Municipality in its report has clarified the ins and outs of the sanctioned plan.

Stand taken by the Municipality:

19. In course of proceeding, in compliance with an order passed in the writ petition, the Municipality submitted a report. The relevant extract of the report, which is indicative of the stand taken by the Municipality, runs as follows:

“..The municipal authority while sanctioning said plan had considered the express highway which is abutting the said plot of land and had considered the said express highway as the main road which is giving access to the said plot while calculating the maximum permissible Floor Area Ratio (FAR).

In the petition, the petitioner had only taken into the consideration the road leading from express high-way to the said plot of land which is a road of approximately 5.5 meters but had failed to take into consideration the express highway from which the said road of 5.5 meters is getting connected to the said plot of land.

In the event the said express highway is taken into consideration being the main out way, FAR sanctioned by the municipal authority, will make it event that the said plan duly sanctioned was within the permissible limit and there has been no irregularity while sanctioning the said plan.”

20. As such, the crux of case sought to be made out by the Municipality is that the express highway is only a few meters away from the site and in the event the express highway is considered as the ‘abutting road’, there would be no deviation of the building rules. The respondent no. 5 had carried out the construction in due consonance with the sanctioned building plan and the construction cannot be branded as unauthorised construction.

Submissions:

21. Having concluded their arguments, the parties have submitted their respective written arguments appending all the documents and judgments they want to rely on in support of their respective claims.
22. Mr. Saha Roy, learned advocate appearing for the petitioner contended that the private respondents and the Municipality has defended the writ petition mainly on two grounds, namely, i) *that the petitioner has no locus standi to institute the writ petition and ii) in the event the express*

highway is taken to be the 'abutting road', there shall be no contravention of the building rules.

23. On the issue of *locus standi*, he argued that it is well-ingrained principles that even a common citizen can invoke the jurisdiction of the writ court complaining that a statutory authority has failed to discharge the duties enjoined upon it by law. In his view, law appears to be settled that in case where the builder and the promoter in connivance with Municipality have constructed multi-storey building in total disregard of the relevant building rules, a citizen despite having no personal interest in the building can institute the writ petition. In aid of this contention, he referred unreported decisions of this Court passed in W.P. 7625(W) of 2018 (Rajesh Kumar Surana vs. State of West Bengal & Ors.), C.R. No. 2472 of 1980 (Kalidas Dutta vs. Corporation of Calcutta), W.P.A. 13617 of 2021 (Shadab Jahan Begum & Ors. vs. The Kolkata Municipal Corporation & Ors.), WPA 740 of 2021 (Smt. Banasri Mondal vs. State of West Bengal & Ors.), WPA 2311 of 2021 (Gorachand Mondal –vs- Kolkata Municipal Corporation & Ors.), W.P.A. 5602 of 2022 (Amarendra Nath Chandra & Anr. vs. Midnapur Municipality & Ors.) and also a decision reported at (1974) 2 SCC 506 (Sri K. Ramdas Shenoy vs. The Chief Officers, Town Municipal Council, UDIPI & Ors.).
24. Referring to the provisions of Section 203 of the West Bengal Municipal Act, 1993 (in short, the Act of 1993) he sought to give reminder that no building can be erected without a duly sanctioned building plan. Inviting my attention to the relevant provisions of the West Bengal Municipal (Building) Rules, 2007 (in short, the Building Rules), he sought

to contend that as per Rule 45 of the Building Rules every plot on which a multi-storey building would be erected must abut a 'means of access'. He argued that the expression 'means of access' has been defined in the Building Rules which primarily means a public or private street or passage open to the sky.

25. My attention was drawn to the relevant extract of Black's Law Dictionary by Mr. Saha Roy to contend that the word 'abut' means 'adjacent' or 'adjoining'. He argued that the road touching, adjoining, approaching and reaching to the plot in question can only be considered to be 'abutting road' or 'means of access'. He strenuously contended that the express highway which is 30 meters away from the building can never be claimed to be 'abutting road' or 'means of access'. Taking me to relevant portion of the sanctioned plan, Mr. Saha Roy asserted that a road having width of 5.5 meters was shown to be abutting road and/or means of access therein.

26. Referring to the averments made in paragraphs 12, 13, 17 and 18 of the writ petition, Mr. Saha Roy arduously contended that in terms of Rule 54(2) of the Building Rules, for a plot of land having total area of 6040 sq. meters (approx.), the maximum permissible ground coverage would be 35 % of total area but 65.70% of the total area has been sanctioned as ground coverage. He pointed out that Rule 48A (1) of the Building Rules mandates that the FAR, as defined in Section 2(30) of the Building Rules, in respect of a plot having means of access of 5.5 meters would be 1.75 i.e. 10570 sq. meters (approx..) but FAR to the extent of 3.44 has been sanctioned only to facilitate the private respondents to enjoy additional FAR of 20817 sq.

meters. As per the Building Rules, the maximum permissible height of the building is 12.5 meters but the builder was allowed to elevate the height of the building up to 15.25 meters. He next contended that as per the prevailing rules, floor to floor height would be at least 3.5 meters but the construction has been made in violation of such rule. He claimed that extra commercial space has been sanctioned. He claimed that violation of the building rules and deviation of the sanctioned plan have been detailed in the writ petition. According to him, such building plan should be scrapped immediately. To invigorate his submission, he referred the decisions rendered in the judgments, reported in (1999)6 SCC 464 (M.I. Builders Pvt. Ltd. vs. Radhey Shyam Sahu & Ors.), (1995) 5 SCC 762 (Dr. G.N. Khajurai & Anr. vs. Delhi Development Authority & Ors.), (2013) 5 SCC 336 (Dipak Kumar Mukherjee –vs- Kolkata Municipal Corporation & Ors.), (2021) 10 SCC 1 (Supertech Limited vs. Emerald Court Owner Resident Welfare Association & Ors.), (2010) 2 SCC 27 (Priyanka Estates International Pvt. Ltd.& Ors. vs. State of Assam & Ors.)

27. In response, Mr. Basu, learned senior advocate appearing for the respondent no. 5 hammered on the issue of *locus standi*. He sought to argue that the present litigation is not a public interest litigation but the petitioner has desperately attempted to espouse a cause of the people of the locality where the building is located in this writ petition. Expressing doubt on *bona fide* of the petitioner, he contended that the petitioner has instituted this writ petition for his vested interest. He suggested that such frivolous litigation should be nipped in the bud.

28. Reiterating the settled norms relating to *locus standi*, he sought to contend that before seeking any relief on a writ petition, one has to show infringement of his existing personal legal rights and then only, he can be said to be a 'person aggrieved'. He elaborated his argument saying that a man of District- Paschim Medinipur cannot have any legal right in respect of a building constructed in a town (Tamluk) of Purba Medinipur District. According to him, sanction of the building plan has not offended any of the legal or fundamental rights of the petitioner and the petitioner could not bring any material to show how he has been prejudiced. He asserted that such writ petition can be dismissed solely on this ground. To embolden his contention, he heavily relied on an unreported decision rendered by a coordinate Bench of this Court in WPA no. 2209 of 2021 (Prasun Sundar Tarafdar vs. The State of West Bengal & Ors.) and the decisions, reported at (1977) 1 SCC 486 (Mani Subrat Jain & Ors. vs. State of Haryana & Ors.), (2002) 1 SCC 33 (Ghulam Qadir vs. Special Tribunal & Ors.), (2013) 4 SCC 465 (Ayaaubkha Noorkhan Pathan vs. State of Maharashtra & Ors.), Kalidas Dutta (*supra*).

29. Mr. Basu lamented that lately, there is a perilous trend to dilute the issue of *locus standi*, particularly in case of construction of building. He submitted that the Hon'ble Supreme Court in a decision, reported in 2022 SCC OnLine SC 1218 (S. Rukmini Madegowda –vs- State Election Commission & Ors.) has stood firmly against such sorts of litigation which will ultimately result in denigration of one of the strongest column of the writ jurisdiction.

30. Mr. Bose isolated an unreported decision rendered in WPA 2311 of 2021 (Gorachand Mondal vs. Kolkata Municipal Corporation & Ors.) from the decisions relied on by Mr. Saha Roy and came down hard on it. He put his stamp of '*per incurium*' on the decision claiming that same was delivered ignoring the settled norms governing the issue of *locus standi*.
31. He argued that except the provisions of Section 217, no other provisions have been incorporated in the Act of 1993 that can be resorted to cancel or recall the sanctioned building plan. He contended that a sanctioned building plan can be cancelled or recalled and the construction made in terms of such sanctioned plan can be declared to be unauthorised only if it is proved that such sanction was given in consequence of any material misrepresentation or fraudulent statement contained in the plan. He contended that it is well settled that misrepresentation or fraud is to be pleaded and proved. He asserted that there is no such pleading in the writ petitioner and as such, in absence of pleadings, the petitioner is estopped from raising such plea.
32. Mr. Basu sought to contend that the respondent no.5 had never misrepresented and/or misled the Municipality in getting the building plan sanctioned. He claimed that the private respondents made the construction in terms of the sanctioned plan and there was no deviation of the sanctioned plan and the building rules.
33. Mr. Basu invited the Court to take pragmatic view and visualized the factual situation that a considerable number of flats have already been sold out and even possessions thereof have been handed over. In commercial

part of the buildings, many retailers or business firms have been inducted as lessees who have been operating their retail shops or running their respective business from the buildings. Detailing the background facts of the judgments referred by Mr. Saha Roy, Mr. Bose claimed that those judgments are distinguishable on facts.

34. Mr. Das, learned advocate for the Municipality adopted the submission of Mr. Basu and asserted that in the event the express highway is taken to be the 'abutting road' or 'means of access', there shall not be any derogation of the building rules. He asserted that the sanctioned plan cannot be claimed to be illegal. Referring to the provision of 2(c) (iii) of the West Bengal Highway Act, 1964, he attempted to reason that the expression, 'highway' includes any land vested in the State Government or any other authority, used or intended to be used for purposes of the highway and as such, the road attached to highway is to be treated to be 'abutting road'. He claimed that there was no violation of building rules in according sanction to the building plan.

35. Mr. Saha Roy was quick to respond to the arguments advanced by Mr. Basu and Mr. Das. He refuted the claims advanced by them with an assertion that fraud was specifically pleaded in the documents appended to the writ petition. He claims that fraud vitiates everything.

36. Referring to the provisions of Rules 11, 15 and 16 of the Building Rules, Me. Saha Roy argued that every person intending to erect a building is required to engage technical persons like Architect or Structural Engineer who shall be responsible for the preparation of building plan in terms of

the building rules. Taking me to Form 'B' and its annexure, Mr. Saha Roy contended that the owner and aforesaid technical persons are bound to disclose all the particulars and in clause-8 of Form –B, the road having width of 5.5 meters was shown to be 'means of access'. He submitted that in terms of the Rule 11 & 15, the building plan must be signed by these technical persons and the owners As per Rule 16, those persons shall be held responsible for any work executed on site. Hence, the land-owner and the promoter cannot shirk their responsibility. He sought to reason that as the building plan was sanctioned illegally, the construction made in terms of the building plan must be illegal. He claimed that though the road having width of 5.5. meters was shown as 'abutting road' in the building plan but the deliberately erroneous measurements of ground coverage etc. were provided in the plan which is an act of misrepresentation and/or fraud and as such, according to him, the ingredients of Section 217 of the Act of 1993 have been fulfilled. Inviting my attention to the provisions of Section 218 of the Act of 2993, he asserted that the building was constructed in total derogation of the building rules and such violation shall entail demolition of the building. He warned that if such unscrupulous builder and land-owner are allowed to go scot free using the technicalities as a shield and if the building is allowed to stand, a wrong message will go to the society. He also claimed that the judgments relied on by Mr. Bose are distinguishable on facts.

Analysis:

37. To confine the disputes brewed up between the parties to a narrow compass, the issues which are required to be bracketed are i) *whether the*

petitioner has locus standi to institute the present writ petition; ii) whether the building plan was sanctioned running counter to the relevant building rules; iii) whether the building can be condemned as illegal and iv) whether in the given situation, a direction to dismantle the building would be justified.

Issue no. 1:

38. The issue of *locus standi* has assumed significance and become fundamental to the resolution of the question of maintainability of the writ petition. Needless to state that the word '*locus*' which has its origin in Latin, signifies 'place' and the expression '*locus standi*' implies the 'place to stand'. In legal field, the doctrine of *locus standi* refers to legal standing or right to maintain an action in a court of law. One of the essential ingredients of the doctrine is presence of injury which implies that the litigant shall have the entitlement to require the court to determine the issue or issue raised by him and such injury must be physical, mental, monetary etc. and not a mere imagination. Another ingredient is causation which signifies cause and effect relationship. The injury must be traced back in the action of the party against whom the relief is sought for.

39. Normally, in civil action, by introducing the concept of representative suits, tight knot of *locus standi* was eased to some extent. To bring an action under Article 226 of the Constitution of India, one has to demonstrate that he has an enforceable right and there is infraction of such right or such right is illegally invaded or threatened. Admittedly, in private action, no person has a right to waiver of the *locus standi* rule and

the court shall permit carriage of proceedings only in the competent hands of a person.

40. However, in 1970s, to advance the cause of the community, disadvantaged groups of people or weaker sections of the society who normally cannot approach the court for judicial remedy, the principle of locus stand was relaxed and the public spirited person has been allowed to espouse the cause of others. I may usefully refer the decision, reported at AIR 1981 SC 298 (Akhil Bharatiya Soshit Karamchari Sangh(Railway) vs. Union of India) in which the Hon'ble Apex Court observed that 'our current processual jurisprudence is not an individualistic Anglo-Indian mould. It is broad-based and people-oriented, and envisions access to justice through 'class action, 'public interest litigation', and 'representative proceedings'. Indeed, '**little Indians**' in large numbers seeking remedies in Courts through collective proceedings, instead of being driven to an expensive plurality of litigation, is affirmation of participative justice in our democracy. We have no hesitation in holding that the narrow concept of 'cause of action' and 'person aggrieved' and individual litigation is becoming obsolescent in some jurisdiction'.

41. In many cases, the Hon'ble Supreme Court got occasions to notice that the unscrupulous builders and/or promoters of our country joining hands with the Municipality are going on making construction of high-rise or multi-storey buildings in derogation of the building and this trend, which have been fast developing, prompted the Hon'ble Apex Court to observe that an illegal construction materially affects the right to or enjoyment of the property by persons residing in the residential area. The prefatory

words of the judgment of Dipak Kumar Mukherjee (*supra*) wherein it was noticed that *'In the last four decades, the menace of illegal and unauthorised constructions of buildings and other structures in different part of the country has acquired monstrous proposition'* lends credence to the such observation.

42. In *Shanti Sports Club vs. Union of India*, reported in (2009) 15 SCC 705 [referred in case of Dipak Kumar Mukherjee (*supra*)], the Hon'ble Court was unequivocal to observe that *'Economically affluent people and those having support of the political and executive apparatus of the State have constructed buildings, commercial complexes, multiplexes, malls etc. in blatant violation of the municipal and town planning laws, master plans, zonal development plans and even the sanctioned building plans. In most of the cases of illegal or unauthorised constructions, the officers of the municipal and other regulatory bodies turn blind eye either due to influence or higher functionaries of the State or other extraneous reasons. Those who construct buildings in violation of the relevant statutory provisions, master plan etc. and those who directly or indirectly abet such violations are totally unmindful of the grave consequences of their actions and/or omissions on the present as well as the future generations of the country who will be forced to live in unplanned cities and urban areas'*. Handing down a direction to deal with the issue with heavy hands, the Hon'ble Court ruled that no compromise should be made with the town planning scheme and no relief should be given to the violator of the town planning scheme etc. on the ground that that he has spent substantial amount on construction of the buildings, etc.

43. In the judgment of K. Ramdas Shenoy (*supra*) where a lecture hall was converted to cinema to exhibit cinema, the residents of the locality brought an action which was entertained by the Hon'ble Court and in a reasoned ruling, the Hon'ble Court laid down a proposition that the rights of a locality are invaded by an illegal construction in the locality and such residents of a locality can enforce the statutory body to perform its statutory duty towards such illegal construction.
44. Therefore, in K. Ramdas Shenoy's case (*supra*) in respect of illegal construction, rigidity of doctrine of *locus standi* in private litigation was eased at least for the residents of the locality where the construction was made offending the building rules. In case of Dipak Kumar Mukherjee (*supra*), a private action brought by one enlightened resident of Kolkata who had no nexus with the buildings, was entertained. In case of Shanti Sports Club (*supra*), the Hon'ble Court observed that not only the present generation but the future generation also would be worst sufferers of the illegal construction. Therefore, in respect of a litigation arising out of illegal construction, the outer boundary of 'persons aggrieved' was opened even to include even the society, common man, resident of other locality etc. In all those occasions, the Court did not refer the parties thereto in the jurisdiction of the Courts taking public interest litigations.
45. In case of Shadab Jhan Begum & Ors. (*supra*), a coordinate Bench of this Court held that even if, the petitioners are not substantially interested in the construction, they can, as citizens, bring such illegalities to the notice of the Corporation. Banking upon the observations made in case of Supertech Ltd. (*supra*) and Banasri Mondal (*supra*), the Bench proceeded

further to make an observation that any responsible citizen is always free to draw the attention of the concerned statutory authority seeking prevention of commission of any illegal activity including, unauthorised construction being carried on in a given premises. In case of Banasri Mondal (*supra*), it was ruled that an objection raised by a stranger, alleging unauthorised construction will be maintainable to a limited extent only to check whether there has been any unauthorised construction, provided the same is not mala fide and not tainted with malice. In Rajesh Kumar Surana's case (*supra*) [referred in case of Gorachand Mondal (*supra*)], a coordinate Bench of this Court held that even a stranger to the newly constructed property does have the right to challenge the construction work. Therefore, the private litigations complaining of unauthorised construction have found a rift in the outer-wall of *locus standi* to make its way to the writ jurisdiction.

46. Suffice it to observe that the literal meaning of the expression '*per incurium*' is 'through lack of care' or 'carelessness'. In practice, the expression appears to mean '*per ignoratium*'. The principles originated in British jurisprudence in relaxation of the rule of '*stare decisis*'. Therefore, the judgment delivered *in ignoratium* (in ignorance) of a statute or other binding authority or its own previous decision, can be called to be a judgment given '*per incurium*'. Mr. Basu based his arguments on the proposition laid down by a coordinate Bench of this Court in a subsequent decision rendered in case of Prasun Sundar Tarafdar (*supra*). In case of Prasun Sundar Tarafdar (*supra*), one teacher challenged the order of transfer of another teacher. Therefore, the factual matrixes of both the

cases are totally different. A bird eye's view of the judgment of Gorachand Mondal (*supra*) would reveal that the same was passed in conformity with the decisions dealing with the issue of '*locus standi*', as referred in the foregoing paragraphs. Placing reliance on the decisions of Rajesh Kumar Surana (*supra*), the same coordinate Bench in WPA 5602 of 2022 (Amarendra Nath Chandra & Anr. vs. Midnapur Municipality & Ors.) ruled that any member of the public who, even if not a resident of the neighbourhood, can maintain an action against illegal construction. No materials have been placed leading me to conclude that writ petition was preferred being motivated by any mala fide intention of the petitioner. Needless to state that a Court of law shall always base its decision on the pleadings and evidence placed before it. No judgment from any larger Bench of this Court or from any superior Court which took contrary view on the issue of *locus standi* in respect of like litigation, has been referred to convince me to think differently.

47. The exercise of distinguishing a judgment is an art. It requires an intense level of effort and preparation. Such an exercise should not be undertaken without scanning the facts and circumstances in which the judgment was delivered. The legal exuberance must be tempered with deliberate and incisive analysis of the true intent and purport of a judgment before arguing that the same is *per incurium*.

48. In a private action, the litigation is bipolar. In such action two opposite parties are locked in confrontational controversy which pertains to the determination of the legal consequences unlike in public action. The character of such litigation, which are brought by the person in whom the

right personally inheres, is essentially that of vindication of private rights. Therefore, the strict rule of *locus standi* is applicable to private litigation but not in cases involving illegalities perpetrated by statutory authorities leading to violation of constitutional and legal rights of a citizen. Every right must involve a *vinculum juris* or bond of legal obligation. Amongst the petitioner and the respondents herein there exists such co-relation. It is not a case that the injury and prejudice as alleged to have been suffered by the petitioner has its roots on psychological anguish.

49. The judgments of Mani Subrat Jain & Ors. (*supra*) and Ayaaubkhan Noorkhan Pathan (*supra*) gave reminder of the settled norms that none can ask for *mandamus* unless he can demonstrate infraction of his judicially enforceable legal right. The person whose legal right has been denied or violated or invaded can only be said to be a 'person aggrieved'. In the judgment of Ghulam Qadir (*supra*), it was reiterated that the jurisdiction of writ Court can be invoked at the instance of aggrieved person only except in cases of writs of *habeas corpus*, *quo warranto* and the writ filed in public interest. The Hon'ble Court went one step further to observe that the orthodox rule of interpretation regarding the *locus standi* has undergone a sea change and a person can satisfy that the impugned action is likely to adversely affect his right, he can approach the Court. There cannot be any quarrel in accepting the binding precedent of those judgments but those judgments shall not come in rescue of the respondent nos. 4 and 5 in view of the judgments referred in the foregoing paragraphs.

50. Therefore, in view of the foregoing analysis, this Court is unable to endorse the view of Mr. Basu, as expressed on the issue of *locus standi* in

this litigation where the petitioner has complained of illegal construction. I do not feel urge to attest the view that entertainment of such sorts of litigation would result in wane of any powerful prong of writ jurisdiction, as alleged by Mr. Basu. The unscrupulous builders who for having unholy nexus with power corridors indulged in illegal and unauthorised construction should not be allowed to use the technical issue of *locus standi* as a protective shield against their misdeeds. This Court is of the view that such litigation must receive liberal reception at judicial doorsteps. As such, I do not find any reasonable force in the demurer of the builder and land-owner and consequently, I am inclined to hold that the petitioner has *locus standi* to move this writ petition.

Issue no. 2 & 3:

51. In Dipak Kumar Mukherjee's case (*supra*), quoting the observations made in the decision, reported at (2004) 8 SCC 733 (Friends Colony Development Committee vs. State of Orissa) with approval, it was reiterated that in all developed and developing countries there is an emphasis on planned development of cities which is sought to be achieved by zoning, planning and regulating the building construction activity and such planning is based on scientific research, study and experience leading to rationalisation of laws by way of legislative enactments and rules or regulations. Indisputably, the right to build on his own land is a right incidental to the ownership of that land but such right is regulated by the relevant municipal building rules. Such rules provide for regulations for floor area, the extent of height of any building, ground coverage etc.

52. The provisions of Section 203 of the Act of 1993 mandates that no building shall be erected unless a building plan has been sanctioned for such erection in accordance with the provisions of the Act and the rules or regulations framed thereunder. Rule 54(2) mandates that for the plots measuring 5000 sq. metres or more in area, the maximum permissible ground coverage shall be 45% for residential buildings or educational buildings, and 35% for buildings of other use groups or for buildings with mixed occupancies.

Provided that the provisions of rule 46 shall be applicable to plots measuring less than 5,000 sq. metres.

53. The petitioner inserting a table has demonstrated that the private respondent nos. 4 and 5 have constructed commercial-cum-residential building covering almost 20817.49 sq. meters i.e. 65% of total area being 6040.33727 sq. meters whereas the maximum permissible ground coverage is 2114.11804 sq. meters (35% of total area). As such, 1854.11196 sq. meters in excess has been sanctioned.

54. The expression 'Floor Area Ratio' (FAR) has been defined in Rule 2(30) of the Building Rules which means the quotient obtained by dividing the total floor area of all the floors of a building by the area of the plot. In terms of the relevant Buildings, the FAR in respect of a plot of land having abutting road of 5.5. width would be 1.75 i.e. 1.75×6040.33727 i.e. 10570.5902 sq. meters but in the building plan, FAR has been sanctioned to the extent of 20817.49 sq. meters i.e. additional FAR of 10246.8998 sq. meters has been sanctioned.

55. Rule 45(1) (b) lays down that the relationship between the width of the means of access and the maximum permissible height of building shall be as indicated in Rule 49. Rule 49 prescribes that the maximum permissible height of buildings on a plot having width of 5.5 meters would be 12.5 meters and as per the specification given in Rule 58(1), floor to floor height would 3.05 meters whereas the effective height of residential buildings has been sanctioned up to 15.25 meters.
56. In respect of commercial space in 4 blocks, 11715.60 sq. meters has been sanctioned in excess of the permissible limit and extra open space beyond the permissible limit has been sanctioned.
57. Rule 45(1)(a) of the Building Rules, 2007 speaks that every plot shall abut a means of access which may be a public street or private street or passage. Rule 45 (2)(a) prescribes the measurement of 'abutting road'. Admittedly, FAR, maximum permissible height of the building etc. have been calculated by the petitioner treating the road having width of 5.5 meters (cemented concrete road) touching the express highway across the plot of land as 'abutting road'. The private nos. 4 and 5 and the Municipality have conjointly voiced that the petitioner has misguided itself in treating that road as 'abutting road' and in the event, the express highway is treated as 'abutting road', there shall be no deviation of the building rules. The petitioner riposted such claim asserting that the road having width 5.5 meters had been rightly based on making those calculations.

58. Therefore, the epicentre of the conflicts between the parties is pointed on a question i.e. whether the road having width 5.5 meters or the express highway, would be the 'abutting road'.
59. Admittedly, the word 'abut' has not been defined in the Act but the expression 'means of access' has been defined in Rule 2(45) of the Building Rules which means a public or private street or passage open to the sky, as shown in the survey map or other records of the Municipality and includes a passage which may not be open to the sky in the case-of partition of an existing building.
60. It is well settled that if any word is not defined in the Act, the definition of such word can be borrowed from the dictionary. Mr. Saha Roy borrowed the definition of the word from Black's Law Dictionary in which the word 'abut' as verb, has been defined as 'to reach, to touch' and in old law, the ends were said to abut. The term 'abutting' implies a closer proximity than the term 'adjacent'. The oxford advanced learner's dictionary defines the word as transitive verb using the words that '*abut (on/onto) something (of land or of a building) to be next to something or to have one side touching the side of something.*' The website *words-wiki.com* informs that the word 'abut' has its origin in old French word 'abouter' or Anglo-Latin word 'abutare' which means 'to touch at the ends'. Subsequently, the word finds its place in English language, particularly in legal and real estate industries. The synonyms of the word are 'adjoining', 'bordering', 'touching', and 'neighbouring'. If two plots of land touch each other, then it can be called one plot abuts the other.

According to the Cambridge dictionary, if a building or area of a land abuts something or on something, it is next to it or touches it on one side.

61. Therefore, the road touching the plot of land or one side of the plot of land on which the building is proposed to be constructed would be 'abutting road'. As such, in the case at hand, the road having width of 5.5 meters which has been shown in the building plan to pass across the plots of land would be 'abutting road'. By any stretch of imagination, it cannot be held that the express highway which is almost 30 meters away from the plots of land can be taken to be the 'abutting road'.
62. The rules of pleadings as incorporated in Or. VI Rule 2 of CPC mandates that every pleading shall contain a statement of material facts on which the party pleading relies for his claim and Or. VI Rule 4 CPC directs that in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary, the particulars shall be stated whereas Rule 5 of Or. VIII demands specific denial of the allegations of fact from the party who defend the claim of the party who has brought the action.
63. Though the petitioner has detailed all particulars including the measurements even in tabular forms in paragraph nos. 12, 13, 14, 17 and 18 of the writ petition but the respondent nos. 4 and 5 have just made simple denial and consciously omitted to deal with those averments. They along with the Municipality voiced in the same tune that the petitioner has

misguided himself in making all calculations treating the road having width of 5.5 meters as 'abutting road'.

64. Mr. Bose stressed upon the provision of Section 217 of the Act of 1993 to contend that unless the Board of Councillors is satisfied that the sanction of building plan was obtained in consequence of misrepresentation or fraudulent statement in the plan, the sanctioned plan cannot be recalled and the building cannot be claimed to be without sanction.

65. In the plan itself, the road having width of 5.5 meters was shown to be adjacent to the plots of land yet the ground coverage, FAR, height etc. were shown in excess of maximum permissible limit and as such, the only analogy which can be drawn is that the sanction was obtained incorporating wrong calculation only to enjoy extra ground coverage, FAR or height etc. The words 'fraud' and 'misrepresentation' have been defined in Sections 17 and 18 of Indian Contract Act, 1872. In terms of those two provisions, act of causing, however, innocently, a party to a transaction, to make a mistake as to the substance of the thing by making any positive assertion or suggestion of fact or any other act fitted to deceive another are sufficient enough to constitute misrepresentation or fraud. Mr. Basu heavily banked upon the absence of the word 'fraud' in the writ petition. Though in different context but the word 'fraud' has found its reference in paragraph- 19 in the writ petition but in the legal notices (page-74 and 89 of the writ petition), the word 'fraud' was used. That apart, it was specifically contended in the writ petition that building plan was sanctioned illegally and the construction made in terms of an illegal

sanctioned plan is also *ex facie* illegal. The term ‘illegal’ is broad enough to include the ‘misrepresentation’ or ‘fraud’.

66. Relying on a judgment delivered in case of M/s. Rajatha Enterprises (*supra*), Mr. Basu argued that in absence of proof or evidence that for the reason of the building, public safety may be endangered, the building cannot be said to be illegal but on facts, the judgement is distinguishable in the sense that in that case, the Court noticed absence of any dishonesty or fraud or negligence on the part of the builder. In the judgments of Dipak Kumar Mukherjee (*supra*), Supertech Limited (*supra*) in unambiguous words it was observed the unauthorised construction is threat to a society, environment and public safety. Mr. Basu refers two decisions, reported at (2007) 12 SCC 768 (Oriental Insurance Co. Ltd. vs. Raj Kumari (Smt.) & Ors. and 2022 SCC OnLine SC 1218 (S. Rukmini Madegowda vs. State Election Commission & Ors.) for the proposition that a judgment is a precedent for the issue of law that is raised and decided and the judgment has to be construed in the backdrop of the facts and circumstances in which the same was rendered. There is no scintilla of doubt towards binding effect of these judgments but these judgments shall not come in aid of any builder to wrap up the illegalities perpetrated in obtaining the illegal building plan sanctioned.

67. Mr. Bose wanted to convince the Court that the respondent no. 5 had no play in sanctioning the building plan. A conjoint reading of the provisions of Section 203, 204 of Act and Rule 11(3) of the Building Rules would reveal that the application for sanction of a building plan is to be presented in prescribed form-B along with a certificate containing the

signature of the applicant and Rule 15 and 16 require that such applicant has to engage certain technical persons who will prepare the plan and they shall be held responsible for any work executed in contravention of building rules. As such, the respondent no. 4 and 5 cannot shirk their responsibilities. A section of the officials and/or office-bearers of the Municipality joined their hands to offend the building rules. Plotting a well-planned move and taking a concerted effort, building plan had been prepared in such a way and the same was sanctioned to secure so that the land-owner and the promoter can enjoy extra FAR, height, ground coverage, open space etc. in a circuitous way.

68. Mr. Basu argued that there was no deviation of the sanctioned plan but in paragraph 17 of the writ petition, it was specified that though an area of 8995.89 sq. meters was sanctioned as total floor area but an area of 9564.56 sq. meters has been constructed. Number of storey was sanctioned as B+G+4 but G+5 was constructed. Though basements were sanctioned in every block but basements have not been constructed. In commercial block-A, 4087.75 sq. meter was sanctioned as total covered area but 4236. 16 sq. meter was constructed similarly, in G Block 1099.70 sq. meters was constructed in place of 1047.33 sq. meters and additional floor/storey has also been constructed.

69. As noticed earlier, no respondents either in their pleadings or in their oral arguments or in written notes of arguments, have specifically dealt with the averments made in paragraph 12, 13, 14, 17 and 18 of the writ petition. Such omission can lead any prudent man to draw adverse inference also. Basically, except raising two pleas i.e. the *locus standi* and

‘in the event the express highway is treated as abutting road, there shall not any violation of the building rules’ , no case made out by the answering respondents to counter the allegation of petitioner and to withstand and/to thwart the petitioner’s claim.

70. Therefore, in such conspectus, there is no way out from the irresistible conclusion that the building plan having no legal foundation is ex facie illegal and the building was constructed in egregious violation of the building rules and since the buildings was constructed in terms of such illegal building plan, the buildings are also illegal.

Issue no. 4:

71. The question which positively next comes is whether it would be justified to direct demolition of the building. A power is enjoined upon the Municipality to compound the minor deviation of building rules but Municipality which is duty bound to act within the four corners of law cannot claim to have unfettered power to condone the violations of building rules of such magnitude. In the judgment of Shanti Sports Club (*supra*), it was ruled that no compromise should be made with the town planning scheme and no relief should be given to the violator of town planning scheme etc. on the ground that the builder/promoter has spent substantial amount on construction of the buildings, etc. In Priyanka Estates International (P) Ltd. (*supra*), the Hon’ble Apex Court unauthorised constructions have to be dealt with firm hands and if unauthorised constructions are allowed to stand or give a seal of approval by court then it is bound to affect the public at large.

72. In case of Dipak Kumar Mukherjee (*supra*) warned that the common man feels cheated when he finds that the unscrupulous builders who are making illegal and unauthorised constructions are supported by the people entrusted with the duty to prevent such activities. The Hon'ble Court lamented that the failure of the State apparatus to take prompt action to demolish the illegal constructions has convinced the citizens that planning laws are enforced only against poor and all the compromises are made by the State machinery when it is required to deal with those who have money power or unholy nexus with the power corridors.

73. In case of M.I. Builders Pvt. Ltd. (*supra*), it was ruled as follows:

“...no consideration should be shown to the builder or any other person where construction is unauthorised. This dicta is not almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shop to exercise judicial discretion in moulding the relief. Such a discretion should not be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. The judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilection and peculiar disposition. Judicial discretion whenever it is required to be exercised has to be in accordance with law and set legal principles.”

74. In the judgment of Friends Colony Development Case (*supra*), the Hon'ble Court found it fit to observe as follows:

“....the cases of professional builders stand on a different footing from an individual constructing his own building. A professional builder is supposed to understand the laws better and deviations by such builders can safely be assumed to be deliberate and done with the intention of earning profits and hence deserve to be dealt with sternly so as to act as deterrent for future. It is common knowledge that the builders enter into underhand dealings. Be that as it may, the State Governments should think of levying heavy penalties on such builders and therefrom develop a welfare fund which can be utilised for compensating and rehabilitating such innocent or unwary buyers who are displaced on account of demolition of illegal constructions.”

75. Taking judicial notice of wanton violation of the building rules and the sanctioned building plan in almost all cities in our country for almost last five decades, the Hon’ble Apex Court in *Esha Ekta Apartments Case* reported in (2013) 5 SCC 357 warned that no authority administering municipal laws and other similar laws can encourage violation of the sanctioned plan. The courts are also expected to refrain from exercising equitable jurisdiction for regularisation of illegal and unauthorised constructions else it would encourage violators of the planning laws and destroy the very idea and concept of planned development of urban as well as rural areas.

76. If history and realities of life provide any guide it would be axiomatic to say that human ingenuity has no limits in finding out the ways of avoiding and circumventing the provisions of law much more in cases where confidence of the people at large rests upon the statutory authorities. The society at large has a stake in proper investigation into the

alleged offences and prevention thereof. The allegations in the instant case are neither skirmishes nor bald, but speak of overt acts indicating complicity among the economically affluent people, unscrupulous builder, land-owner, municipal authority and the State.

77. In a calculative way, third party interest has been created in the buildings by the builder and landowner. Some flats have been sold out and possessions thereof have been handed over. Big business man and bank or banks have been involved. Any adverse action against the building can lead to multiple litigations in different forum. Ultimately, through the legal complicacies to be kept unsolved over the years, the main issue would lose its significance. Efforts are on to invite the judicial consideration to step in this blind alley citing the plight of flat-owners, mortgagee, bank and retail stores but settled norms is that the Court shall determine the issue without being carried away by any impertinent consideration. Misplaced sympathy is detrimental to good health of justice delivery system. There is a legal maxim, '*dura lex, sed lex*' which means the law is hard but it is law. Going a step further, it can be said, it is harder to prevent apprehended breach and hardest to remedy the breach.

78. Therefore, it is apparent that after struggling to withstand the judicial scrutiny, the foundations of the building, which were concreted and cemented not only with the building materials but with illegality, became too fragile to carry the edifice any more. As such, the building will inevitably collapse.

Conclusion:

79. Therefore, in this seemingly David and Goliath standoff, it is David who has conquered. As such, it is concluded that the building plan was sanctioned in egregious violation of the Building Rules, 2007 and the building which was constructed under the project 'Tamluk Down Town Enclave' on the basis of the sanctioned building plan is condemned to be unauthorised and/or illegal. There is no scope to regularise the illegal and/or unauthorised construction. Therefore, in the greater interest of justice, it would be justified to record an order directing demolition of the building. I also think that such unscrupulous builder should not be allowed to walk away unpunished and hence, I am inclined to impose costs upon the builder and the land-owner. Inevitably, the flat-owners or retail stores/shops have invested huge amount of money to decorate their respective flats or retail etc. and as such, taking stock of all such events, I am inclined to pass the following order.

Order:

80. As a result, the writ petition being WPA 11359 of 2021 is disposed of with the following directions:

- i) Within 15 (fifteen) days from date, the Municipality shall issue notices to all occupiers of the building to vacate the building;
- ii) Within one month from the date of receipt of notice from the Municipality, the occupiers of the building shall vacate the building;
- iii) Within three months from date, the respondent no. 4 and 5 shall pay the price of the flats or advance money etc. to all the

purchases, proposed buyers and mortgagees etc. along with interest @ 18% accrued thereon from the date it was received either by the respondent no. 4 or by the respondent no. 5;

- iv) The Municipality shall demolish the building within three months from date.
- v) The respondent no.4 and 5 jointly shall deposit cost of Rupees of 5 (five) lacks with the State Legal Service authority within three months from date which would be utilized for providing legal aid to the weaker sections of the society. The receipt showing such deposition shall be deposited with the learned Registrar General of this Court.

81. I hope that the Municipal authority shall find its spine more steel than glass to dismantle the building in terms of the order as given herein above and in doing so, if found necessary, it can seek assistance from the jurisdictional Police or District Police Administration to enable it carry out this order in its letter and spirit and if such assistance is sought, the Police authority shall extend the same. The Executive Officer of the Municipality shall supervise the entire demolition work. If the demolition work is obstructed by any person or persons, the Municipal authority or its Executive officer shall take appropriate legal action against such person or persons, irrespective of his/their status and position in the society.

82. The urbanisation as well as the influx and/or migration of people from village people to the urban areas are inevitable. As such, to prevent the menace of illegal and unauthorised construction of the buildings and other

structures in different parts of the State and to save its fellow citizens from being forced to live in the jungle of illegally concreted buildings and also keeping in mind the recent building collapse tragedy in the city, the Urban Development Department of the State may relook the aspect whether or not the case of sanction of plan of high-rise buildings of multiple blocks can be retained with the State Administration or at least any befitting protective measure can be introduced.

83. With these observations and order, the writ petitioner is, thus, disposed of.

84. Parties shall be entitled to act on the basis of a server copy of this Judgement and Order placed on the official website of the Court.

85. Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Partha Sarathi Chatterjee, J.)

Later:

After pronouncement of the judgment, the learned advocate appearing for the respondent no.5 prays for stay of operation of the judgment and order.

Such prayer is considered and rejected.

(Partha Sarathi Chatterjee, J.)