

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

***M. A. T. 1113 of 2024
(CAN 1 of 2024)
(CAN 2 of 2024)***

***Sanskari House & Anr.
-Vs-
The State of West Bengal & Ors.***

For the Appellants : Mr. Ramkrishna Bhattacharya, Adv.
Mr. Biswajit Roy, Adv.
Mr. Koushik Chowdhury, Adv.
Ms. Shreya Hazra, Adv.

Heard on : 18.09.2024

Judgment on : 18.09.2024

Joymalya Bagchi, J. :-

Re : C. A. N. 1 of 2024

1. The application has been filed under Section 5 of the Limitation Act for condonation of delay.

2. Having considered the averments made in the application for condonation of delay and being satisfied with the explanation given, we are inclined to condone the delay in preferring the appeal.

3. The application being CAN 1 of 2024 is allowed.

Re : M. A. T. 1113 of 2024

4. The question which crops up in the appeal is :-

Can a person erect a new building without a sanctioned plan when the building already standing on the plot collapses while making repairs?

5. Appellants state a dilapidated building was standing on the plot. Municipal Commissioner issued notice under Section 410 of the Kolkata Municipal Corporation Act, 1980 calling the owner of the building to make alterations so as to ensure its structural stability. A plan for making repairs was sanctioned under Rule 3(ii)(e) of the Kolkata Municipal Corporation Building Rules, 2009 (*hereinafter referred to as 'Building Rules of 2009'*). When repair work was in progress, it is contended entire building collapsed. Thereupon without obtaining sanction plan, a two storied RCC structure was built on the plot. At that stage, stop work notice was issued.

6. Complaining about erection of the illegal structure, private respondent no.8 approached this court in WPA 1536 of 2023 and the matter was remanded to the Director General (Building), Kolkata Municipal Corporation to pass appropriate order.

7. Director General (Building) by the impugned order dated 25.01.2024, inter alia, observed as follows :-

“From the status report submitted by the concerned Executive Engineer (Bldg.) Br-IV & V dated 19/01/2024, it is understood that the existing four storied building has been totally demolished and construction work has been started from foundation, which is

totally in deviation from sanctioned reconstruction plan vide no. 024/Br-V/2023-24 dated 19/06/2023 under Rule 3(2)(e) of the Kolkata Municipal Corporation Building Rules, 2009 & under Section 410 of the Kolkata Municipal Corporation Act, 1980. At present there is a two storied unauthorised RCC framed structure. In this regard, stop work notice under Section 401 of the Kolkata Municipal Corporation Act, 1980 was served on 26/06/2023 and police intimation notice sent to Amherst Street Police Station on the same day. An FIR under Section 401A of the KMC Act, 1980 was also lodged to Amherst Street Police Station on 11/07/2023 to stop continuation of further illegal construction.

Order

After hearing the representation of both the parties and officials of Borough – V and after going through the copy of the representation of the petitioner dated 03/08/2023 and report submitted by Executive Engineer (Bldg.), Br-IV & V dated 19/01/2024, I am inclined to pass the following order

- 1) The owner of the premises is directed to demolish the construction made at Premises No. 80/3 Mahatma Gandhi Road, Ward 040, Borough - V as the construction has been made in gross violation of sanctioned plan.*
- 2) After demolition of the construction made at Premises No. 80/3 Mahatma Gandhi Road, Ward 040, Borough – V, the owner of the premises may apply afresh to Kolkata Municipal Corporation through a Licensed Building Surveyor (LBS)/Architect empanelled with Kolkata Municipal Corporation to obtain sanction plan complying the Kolkata Municipal Corporation Act, 1980 & Kolkata Municipal Corporation Building Rules, 2009.”*

8. This order came to be challenged by the appellants-promoters in WPA 7373 of 2024. Private respondent no.8 viz. Dr. Asoke Kumar Datta also filed a writ petition being WPO 257 of 2024 praying for implementation of the orders.

9. Both the matters came to be disposed of by the impugned judgment wherein the Hon’ble Single Judge dismissed the writ petition of the appellants and directed implementation of the order passed by the Director General (Building).

10. Learned Advocate for the appellants contends repairs had been undertaken in terms of the plan sanctioned under Rule 3(ii)(e) of the Building Rules of 2009. During repair work the dilapidated structure collapsed. A new structure was being rebuilt in terms of the extant building rules and a prayer for regularisation of the said structure is pending consideration. However, the Director General's order notes the existing structure was demolished in deviation of the plan sanctioned for repairs.

11. Even if the appellant's version is accepted, it is clear no sanction was obtained for erecting the new structure after the old structure had collapsed.

12. Under such circumstances, Director General (Building) rightly observed the new construction is in deviation of the plan sanctioned for repairs under Rule 3(ii)(e) of the Building Rules of 2009 and passed demolition order. We do not find any illegality in the said order.

13. As a last bid effort it is argued a prayer for regularisation of the unauthorised structure is pending.

14. Hon'ble Single Judge rightly observed there is no scope to regularise a wholly unauthorised structure which had been built without a sanction plan. The argument of the appellants that the building was rebuilt in terms of the extant building rules is wholly fallacious.

15. Section 392 of the Kolkata Municipal Corporation Act, 1980 prohibits a person from commencing erection of any building except

without previous sanction of the Municipal Commissioner and in accordance with the provisions of the Act, Rules and Regulations framed thereunder. Section 393 of the said Act provides every person who intends to erect a building shall apply for sanction by giving notice in writing to the Municipal Commissioner in such form along with fees as may be prescribed.

16. In absence of a valid sanctioned plan the construction undertaken is wholly unauthorised and there is no scope of regularisation which may be availed in cases of minor deviations from a valid sanctioned plan.

17. In such light of the matter, we find no reason to interfere with the impugned order.

18. Appeal is accordingly, dismissed.

19. In view of dismissal of the appeal, connected application being CAN 2 of 2024 is also disposed of.

20. There shall be no order as to costs.

21. Photostat certified copy of this judgment, if applied for, be given to the parties on compliance of all formalities.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

