

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

FMA 143 of 2024

with

CAN 1 of 2024

Sri Sudipta Gupta & Ors.

-Vs-

Kamarhati Municipality & Ors.

For the Appellants

: Mr. Pijush Chaturvedi
Mr. Tapan Kumar Rakshit
Mr. Surajit Roy

For the State

: Ms. Jayeeta Sinha
Mr. Sandip Mandal

For the respondent Nos. 1-4

: Mr. Sankha Subhra Ray

For the respondent No. 7

: Mr. Gopal Chandra Das
Mr. Abhishek Sikdar
Ms. Ananya Das
Ms. Sahili Dey

Heard on

: 20.09.2024

Judgment on

: 20.09.2024

Joymalya Bagchi, J.:-

1. Learned Counsel for the appellants submit a note-sheet dated 19.01.2021 shows the construction was upto plinth level but note-sheet

dated 29.11.2020 records construction has been made upto third floor. This dichotomy demonstrates the Notings are false and the sanction is fabricated and an ante-dated document.

2. Learned Counsel for the Municipality submits this anomaly was clarified before the Hon'ble Single Judge on the earlier order dated 01.03.2001 relying on the erroneous note-sheet dated 19.01.2001 was recalled. Thereafter, by order dated 01.04.2022 Hon'ble Single Judge directed the Municipality to hold fresh inspection of the premises and upon hearing pass a reasoned order to the unauthorised construction. Chairman of the Municipality came to a finding that the deviations were minor and may be condoned. This has been challenged in the present writ petition. During hearing inspection report was placed before the Hon'ble Single Judge. In view of the report which showed minor deviation, the writ petition was dismissed.

3. Learned Counsel for the appellants contends the Hon'ble Single Judge failed to consider that the construction was made earlier and thereafter an ante-dated sanction plan was procured. In support of his contention he relies on Government Notification dated 19.05.2020 whereby the Board of Councillors of the Municipality was superseded on and from that date and Board of Administrators was appointed in its place and stead. It is also submitted the provisional sanction was granted in favour of a dead person.

4. We have considered the sanction plan. Sanction had been prayed for a four storied building and the provisional sanction upto plinth level was granted on 19.05.2020 and thereafter on inspections by the engineer concerned provisional sanction was extended upto ground level on 12.08.2020, first floor on 25.09.2020, second floor on 15.10.2020 and the top floor on 29.12.2020 respectively.

5. From the endorsements on the sanction plan it is evident that the provisional sanction had been granted by the Board of Councillors on 19.05.2020 prior to its supersession and thereafter the said sanction was extended for the remaining building from time to time on the strength of the reports of the engineer concerned. After the supersession of the Board, extension of provisional sanction for the remaining building on various dates were approved by the Board of Administrators who were in charge of the affairs of the Municipality.

6. In such view of the matter it cannot be said that the building in question was erected without a sanction plan and as per the inspection report placed before the Hon'ble Single Judge it appears that is a minor deviation of .38% from the sanction plan due to extension of cantilever of the balconies.

7. Under such circumstances, the Hon'ble Single Judge rightly did not direct demolition of the building.

8. With regard to the issue that the sanction was granted in favour of a dead person i.e. Kamala Mondal who expired on 19.07.2020, we note

provisional sanction had been granted on 19.05.2020 upto plinth level at a time when the applicant was alive and construction had commenced as per sanction plan. Thereafter the provisional sanction had been extended in respect of the remaining building from time to time as per the said sanction plan on the basis of report of the engineer concerned.

9. Accordingly, we are of the opinion there is no scope to interfere with the order impugned.

10. Appeal is dismissed.

11. In view of dismissal of the appeal connected application being CAN 1 of 2024 is also dismissed.

12. There will be no order as to costs.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)