

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Kausik Chanda**

W.P.A. No.26692 of 2023

with

I.A. No. CAN 1 of 2024

CALCUTTA LANDING AND SHIPPING COMPANY LIMITED

-VERSUS-

HOWRAH MUNICIPAL CORPORATION AND OTHERS

AND

W.P.A. No.15643 of 2024

KUMAR OMPRAKASH

-VERSUS-

HOWRAH MUNICIPAL CORPORATION AND OTHERS

For the petitioner and private respondent. : Mr. Jaydeep Kar, Sr. Adv.,

(W.P.A. No.26692 of 2023)

(W.P.A. No.15643 of 2024)

Mr. Debabrata Saha, Adv.,

Mr. Subhankar Das, Adv.,

Ms. Niharika Singh, Adv.,

Mr. Somkha Biswas, Adv.

For the petitioner and private respondent. : Mr. Biswaroop Bhattacharjee, Adv.,

(W.P.A. No.15643 of 2024)

(W.P.A. No.26692 of 2023)

Mr. Debjit Mukherjee, Adv.,

Mr. Deepak Kumar Jain, Adv.,

Mr. Sreyash Kumar Singh, Adv.,

For the Howrah Municipal Corporation : Mr. Sandipan Banerjee, Adv.,
Mr. Ankit Sureka, Adv.,
Mr. Sobhan Majumder, Adv.

Hearing concluded on : 25.06.2024

Judgment on : 08.10.2024

Kausik Chanda, J.:-

Since the aforesaid two writ petitions concern sanctioned plan no. BRC NO- 68/13-14 granted by Howrah Municipal Corporation (in short, HMC) in respect of premises no. 20/2, Salkia School Road, Howrah, both the writ petitions are taken up for hearing together and disposed of by this common judgement.

2. By filing W.P.A. No.26692 of 2023, Calcutta Landing and Shipping Company Limited ('CLSC' in short), the writ petitioner, has prayed for quashing of an order dated October 7, 2023, issued by the Assistant Engineer (in-charge), Building Department, Howrah Municipal Corporation. By the said order the Assistant Engineer declined to accept the renewal proposal of plan no. BRC No.- 68/13-14 due to non-compliance of Sections 174C, 175C(3) and (4), 176 of Howrah Municipal Act, 1980 read with Rule 22 of Kolkata Municipal Corporation Building Rules, 2009, as extended to Howrah Municipal Corporation.

3. On the other hand, WPA 15643 of 2024 has been filed by one, Kumar Omprakash (in short, Omprakash) for cancellation of the building plan no. BRC No.- 68/13-14 issued by the Howrah Municipal Corporation. Omprakash claims to be the constituent attorney of one Manbasa Devi.

4. Before recording the submission of the respective parties, it is necessary to take note of the facts which are not disputed by them.

5. In the year 2013, HMC approved a sanctioned plan in favour of CLSC and it deposited Rs. 2,58,62,755/- before the Corporation as fees.

6. Challenging the said sanctioned plan, Manbasa Devi filed Title Suit no. 543 of 2015 before the Civil Judge (Junior Division) 4th Court, Howrah. On April 8, 2015, an ex-parte interim order was passed restraining CLSC from raising any construction at the premises in question. The said injunction order was stayed by the learned District judge by an order dated May 4, 2015, in a Misc. Appeal. Order of the District Judge was set aside by an order of a single judge of this Court in C.O. No. 1663 of 2015 by an order dated July 1, 2015. Thereafter the ex-parte interim order was made permanent by the Learned Civil Judge (Junior Division) 4th Court, Howrah, by an order dated December 4, 2015.

7. The appeal preferred by CLSC against the said permanent order of injunction was dismissed by the Learned District Judge Howrah on December 21, 2016. Challenging the order dated December 21, 2016, CLSC preferred a revisional application (C.O. 1285 of 2017) before this Court. A

single judge of this Court affirmed the interim order subject to payment of 5 cores by Omprakash. A Special Leave Petition was filed by Omprakash challenging the order dated April 25, 2017, and the Supreme Court set aside the Order dated April 25, 2017, allowing CLSC to proceed with the construction. On September 24, 2018, CLSC submitted an application before the Howrah Municipal Corporation for renewal for the sanctioned plan which was valid till October 31, 2018. On December 3, 2019, C.O. No. 1285 of 2017 was disposed of by modifying the order dated December 21, 2016, passed by the District Judge to the extent that in the event that any third party interest is created by CLSC under the property, there shall be disclosure in each of such deeds that such sale was subject to the result of the pending suit allowing CLSC to proceed with the construction on such condition. The said order dated December 3, 2019, was upheld up Supreme Court directing the CLSC not to create any third party interest till disposal of the suit.

8. The CLSC thereafter filed an application for rejection of plaint under Order 7 Rule 11 of the Code of Civil Procedure in connection with Title Suit no. 543 of 2015 which was rejected by the Learned Civil Judge.

9. Challenging the said order C.O. No. 1065 of 2021 was filed before this Court. On May 18, 2022, a learned Single Judge of this Court allowed the revisional application holding that the suit was not maintainable. The

SLP filed against the said order dated May 18, 2022, was dismissed by Supreme Court on June 2, 2022.

10. The petitioner thereafter made repeated representations for renewal of sanctioned plan. The prayer for renewal was rejected by the Corporation on March 3, 2023, by a non-speaking order.

11. A Coordinate Bench of this Court in W.P.A. No. 6130 of 2023, filed by CLSC, set aside the said rejection order and directed the Howrah Municipal Corporation to pass a reasoned order. Accordingly, in compliance with the said order the Howrah Municipal Corporation passed an order on October 7, 2023, rejecting the prayer for renewal of sanctioned plan.

12. Omprakash argues that the sanctioned plan, numbered as BRC No-68/13-14 and issued on November 1, 2013, was procured through fraudulent means and misrepresentation by CLSC.

13. Omprakash claims that CLSC misled the HMC by presenting false information regarding the ownership of the land and premises located at 20/2, Salkia School Road, Howrah. According to Omprakash, Respondent No. 6 was merely a tenant under a lease that concluded in October 1986, and their lease was terminated by a notice dated May 15, 2017. As such, CLSC's claim of ownership is fraudulent. Omprakash asserts that CLSC used a forged deed dated September 18, 1919, to falsely claim ownership, which led to the wrongful sanction of the building plan.

14. Omprakash argues that the sanctioned plan, which has since expired due to the lack of construction within the stipulated period, was obtained based on this fraudulent deed. He further highlights that despite numerous representations to the HMC, the Corporation failed to act on these complaints or address the issues raised. In addition to seeking action against the HMC, has filed a police complaint alleging criminal activities by CLSC, resulting in a charge sheet against them and their directors.

15. Omprakash also contends that the HMC's issuance of the sanctioned plan was not valid, as it was based on misrepresentation and fraud. He argues that under the Howrah Municipal Corporation Act of 1980, there is no provision for the renewal of an expired sanctioned plan, and thus any such renewal claimed by CLSC is unlawful.

16. Omprakash disputes the validity of the judgment dated May 18, 2022, which ruled that CLSC had perfected its title through adverse possession. He argues that this judgment is legally flawed as it did not address the fundamental issue of ownership but instead focused on adverse possession.

17. Omprakash argues that there was no injunction on construction from May 04, 2017 till December 03, 2019. The petitioner could start construction during that period and applied for renewal of plan only on September 24, 2018.

18. He further argues that the plan was sanctioned in one day in collusion and conspiracy with CLSC without placing the same before the appropriate committee of the HMC.

19. Finally, Omprakash argues that the principle of res judicata does not apply to this case because the judgment dated May 18, 2022, passed in C.O. 1065 of 2021 did not fully address the merits of his grievances.

20. In support of this submission, Omprakash has relied upon the judgment in ¹**(*Krishan Lal v. State of J & K*)**, to argue that since there is no decision on merit in the judgment passed on C.O. 1065 of 2021, the principle of res judicata shall not apply in the present case.

21. It has further been argued that when both the parties claim title, there is no necessity to go into the issue of adverse position. In this regard, reliance has been placed by the judgment of the Supreme Court passed in ²**(*Seethakathi Trust Madras v. Krishnaveni*)**.

22. In light of the above, Omprakash seeks the cancellation of the sanctioned plan and the dismissal of CLSC's petition for renewal.

23. On the other hand, CLSC argues that since it has been held in the judgment dated May 18, 2022, that it has perfected its title over the relevant premises by way of adverse possession and the said judgment has

¹ **(1994) 4 SCC 422**

² **(2022) 3 SCC 150**

been affirmed by the Supreme Court. There is no scope to come to a contrary finding as argued by Omprakash.

24. It has been submitted that after obtaining the sanctioned plan in the year 2013, the petitioner had to obtain various licences/no-objections/permissions from various authorities for construction of the building.

25. Due to the subsisting interim orders of injunction, it could not commence the construction work. Before expiry of the validity of the sanctioned plan, it applied for its renewal on September 24, 2018. After rejection of plaint of the Title Suit No.543 of 2015, there is no bar to renew the sanctioned plan. In support of this submission, CLSC has relied upon the following judgments in ³**(Soumendra Nath Sen v. State of West Bengal)** and ⁴**(Circular Properties (P) Limited v. Calcutta Municipal Corporation)**.

26. At the outset, it is necessary to advert to the prayers made in the Title Suit No.5423 of 2015. Manbasa Devi prayed for declaration of her ownership in respect of the relevant premises, she challenged the mutation carried out in favour of CLSC in respect of the said premises, she also challenged the sanctioned plan granted in favour of CLSC along with the prayer for injunction.

27. Some of the prayers contained in the said plaint are quoted below:

³ (2014) 1 CHN 360

⁴ AIR 1996 Cal 271

“a. For a decree for declaration that the plaintiff is the absolute owner in respect of the ‘suit property’, morefully described in the Schedule – “A” hereunder written having her -/16/- annas right, title, interest and possession in the same and the defendant no.1 had/has got no manner of right, title, interest or possession in the same in any lawful manner whatsoever nor it has got any right to raise construction at the ‘suit property’ on the basis of “C” Schedule noted purported Sanctioned Plan or to make an unauthorized construction thereon;

...

c. For a further decree for declaration that the “B” Schedule noted purported mutation and/or apportionment granted by the defendants no.2, 3 and 4 in favour of the defendant no.1 by creating a new purported holding no.20/2, Salkia Scholl Road, P.S. Golabari, District Howrah, since been originated from the “A” Schedule noted ‘suit property’ without serving any notice to the plaintiff is absolutely illegal, void, in-operative, arbitrary and not binding upon the plaintiff in any manner whatsoever and as such, the same is liable to be quashed and/or set aside with effect on and from the date when it was granted;

d. For a further decree for declaration that the “C” Schedule noted purported Building Sanctioned Plan granted by the defendants no.2, 3 and 5 in favour of the defendant no.1 over the newly created purported holding no.20/2, Salika School Road, P.S. Golabari, District Howrah, since been originated from the “A” Schedule noted ‘suit property’ is also equally absolutely illegal, void-ab-initio, in-operative, arbitrary and not binding upon the present plaintiff in any manner whatsoever and as such, the same is liable to be quashed and/or set aside with effect on and from the date when it was granted;”

28. This plaint was ultimately rejected by the order dated May 18, 2022, passed by the Court in C.O. No. 1065 of 2021. The revisional Court in rejecting the plaint held that CLSC had perfected its title over the suit

premises by way of adverse possession. The operative part of the said order is quoted below:

“25. The proviso to Section 34 of the Specific Relief Act, 1963 mandates that plaintiff being able to seek further relief than a mere declaration of title, omits to do so, Court shall not make any such declaration. In the present case in view of the fact that the title of the defendant no. 1 over the suit property has been perfected by adverse possession, the plaintiffs are not able to seek the relief of possession as such, there is no scope to afford the plaintiffs the opportunity to amend the plaint to include the unsought relief.

In conclusion, this Court holds that the connected suit is not maintainable, the learned Trial Judge has acted with material irregularity in dismissing the application under Order VII Rule 11 of the Code, as such the order impugned is set aside, and the said application is allowed, in consequence thereof, the plaint of **Title Suit No. 543 of 2015 [SMT. MANBASA DEVI (since deceased) represented by MR. KUMAR OM PRAKASH AND OTHERS -VS- CALCUTTA LANDING AND SHIPPING CO. LTD. AND OTHERS.]** is rejected.”

29. Admittedly, Special Leave Petition against the said order dated May 18, 2022, has already been dismissed on June 2, 2022.

30. There cannot be any dispute with regard to the proposition that if there is no decision on merit, a judgement cannot operate as a *res judicata* in a subsequent proceeding. In the present case however, Omprakash essentially invites this Court to adjudicate a disputed question of title. Manvasa Devi, in fact, filed Title Suit No.5423 of 2015 for adjudication of titles of the parties and for cancelation of the sanctioned plan. After the rejection of the plaint filed by Manbasa Devi, I am not inclined to decide

such issues in exercise of writ jurisdiction. I am also not inclined to re-examine the issue as to whether CLSC has perfected its title by way of adverse possession over the premises in question. Fact remains that the judgement dated May 18, 2022, has attained finality after dismissal of the Special Leave Petition preferred against the said order.

31. In this writ petition this Court is essentially concerned with the propriety of the order October 7, 2023, passed by the HMC, whereby, it declined to renew the sanctioned plan.

32. The said order dated October 7, 2023, indicates that the sanctioned plan was not renewed due to non-compliance of Section 174C, 175C (3) and (4), 176 of Howrah Municipal Act, 1980 read with Rule 22 of Kolkata Municipal corporation Building Rules, 2009 as extended to Howrah Municipal Corporation.

33. In the facts of this case, in my view, those provisions are inapplicable.

34. CLSC was restrained by the injunction from Civil Court to raise any construction in the subject plot of land from April 8, 2015, to April 25, 2017. It was allowed to proceed with the construction by the order of the Supreme Court dated May 4, 2017, and before the expiry date of the sanctioned plan (October 31, 2018), it applied for its renewal on September 24, 2018. The same prayer was repeated on November 1, 2019 and again on July 9, 2020. After dismissal of the Special Leave Petition filed against

the order dated May 18, 2022, in C.O.1065 of 2021, CLSC again made representation before the Corporation on July 14, 2022, for the renewal.

35. It is evident that CLSC was prevented from executing the construction work primarily due to injunction orders passed by different Courts from time to time.

36. In my view, CLSC has rightly relied upon the judgment reported at **(2014) 1 CHN 360** in this regard. The relevant part of the judgment is quoted below:

“When a man is without any remedy because of a court's order the rules must have to come to his aid. Thus the petitioner was prevented by reasons not within his control from executing the construction work. For him unnecessary buying time would have been a luxury and it was expected that he would make the construction the moment he got the green signal for the same. It may be mentioned that in the year 1987 whenever the interim order was vacated or he was allowed to execute the work he intimated the appropriate respondent and started constructing the work. Thus even if there was some delay for that the petitioner cannot be blamed.

It is not a settled principle of law that rules are handmaid of justice. They exist for men and the rule cited by the respondents must not be read as too rigid so that the real beneficiaries of the same cannot take any advantage out of it.”

37. A Division Bench of this Court in the case reported at **(1996) 2 CHN 34** also allowed the prayer for renewal of sanctioned plan where the petitioner was prevented from carrying out the construction work on the basis of the sanctioned plan within the validity period due to the interim order of injunction passed by the High Court.

38. Learned advocate appearing for the HMC acknowledges the fact that as on date, the building rules under which the plan was sanctioned have not been amended.

39. In the facts of this case, I direct the HMC to renew the sanctioned plan in accordance with law subject to payment 50% of the current fees for grant of sanctioned plan by CLSC. CLSC will be at liberty to deposit such fees before HMC within a period of one month from the date of this order. Upon such payment, HMC shall renew the sanctioned plan BRC No-68/13-14 in accordance with law within one month thereafter.

40. Accordingly, **W.P.A. No.26692 of 2023** is allowed, I.A. No. C.A.N. 1 of 2024 is disposed of and **W.P.A. No.15643 of 2024** is dismissed.

41. Urgent certified website copy of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)

Later

42. After the judgement is delivered in the open Court, Mr. Biswaroop Bhattacharya, learned advocate, prays for a stay of operation of the order passed in W.P.A. No. 26692 of 2023.

43. Having regard to the fact that the judgment has been delivered on the last day before the Puja Vacation of this Court, there shall be a stay of operation of the order passed in W.P.A. No.26692 of 2023 for a period of two months from date.

(Kausik Chanda, J.)