

06.03.2024
Item No.11
Court No.6.
S. De

M.A.T. 2117 of 2023
With
I.A. No. CAN/2/2024

Sandip Mondal & Anr.
Vs
Santanu Chowdhury & Ors.

Mr. Robiul Islam,
Sk. Jayed Hossain,
Mr. Samim Ul Bari,
Mr. Raju Mondal,
Mr. Masooq Rahman,
...for the appellants.

Mr. Malay Singh,
Ms. Neelam Singh,
...for the State respondents.

Mr. Debasish Kundu, Sr. Adv.
Mr. Jayanta Narayan Mohanty,
Ms. Pratiti Das,
...for the Maheshtala Municipality.

Mr. Tanmoy Mukherjee,
Mr. Arkadipta Sengupta,
Mr. Lalmohan Bose,
... for the respondent no.1.

By consent of the parties, the appeal and the
connected applications are taken up together for
hearing.

This appeal is directed against a judgment and
order dated August 16, 2023, whereby the writ petition
of the respondent no.1 herein being WPA 13348 of
2018, was allowed by a learned Judge of this Court.
Being aggrieved, the respondent nos. 6 and 7 in the
writ petition have cope up by way of this appeal.

It appears that one Jaya Mondal (in short “Jaya”) was the owner of a Bastu land situate at Dag No. 23, within Mouza Raypur, under Police Station Maheshtala in the district of 24-Parganas (South). She obtained sanction of a building plan from the Municipality for construction of a two-storeyed building on the land. She however, constructed only the ground floor.

The respondent no.1/writ petitioner herein (in short “Santanu” erroneously referred to as “Sutanu” in the cause title of the impugned order) claims to have acquired the right over the roof of the ground floor of the said building along with the right to construct as per the building plan that had been sanctioned in favour of Jaya. Santanu constructed the first floor.

The ground floor was purchased by the appellants herein being Sandip Mondal and Mahadeb Mondal (in short referred to as the “Mondal brothers”)

Santanu appears to have obtained sanction for construction of the second floor and started such construction work. The Mondal brothers objected. Pursuant to their complaint, the Municipality issued stop work notice to Santanu. Subsequently, the Board of Councillors of the Municipality, in exercise of power under Section 217 of the West Bengal Municipal Act, 1993, cancelled the building plan that had been sanctioned in favour of Santanu. The plan was

cancelled on the ground of Santanu having suppressed material facts from the Municipality at the time of applying for sanction.

Such order of the Municipality dated September 5, 2017, was challenged by Santanu before the learned Single Judge by way of the present writ petition.

The learned Judge by a detailed judgment, which is impugned in this appeal, allowed the writ petition, setting aside the order of cancellation of the sanctioned plan. The learned Judge further directed the Municipality to renew the sanctioned plan, which had lapsed by efflux of time, in accordance with the provisions of 1993 Act and the Rules framed thereunder upon an approach being made by Santanu in that regard and subject to fulfilment of all requisite formalities including payment of prescribed fees.

Being aggrieved, the Mondal brothers have come up by way of this appeal.

It may be noted here, before recording the submission made on behalf of the parties, that Maheshtala Municipality had also filed an appeal against the judgment and order of the learned Single Judge which is the subject matter of the present appeal, being MAT 2438 of 2023. However, in view of certain developments before the Civil Court in connection with the suits pending between the parties, the Municipality did not press its appeal and the same

was dismissed as not pressed by an order passed earlier today.

Appearing for the present appellants, Mr. Islam, learned advocate, submits that the building plan that was sanctioned in favour of Jaya contemplated that the ground floor would be used for commercial purpose and the first floor for residential purpose. However, Santanu is using the first floor for commercial purpose without obtaining requisite sanction from the Municipality for change of user. Mr. Islam further says that the building plan that was sanctioned in favour of Jaya, lapsed by efflux of time some time in the year 2015. Only thereafter Santanu constructed the first floor. Therefore, even the first floor is not backed by any valid sanctioned plan. Mr. Islam then refers to the order of the Municipality cancelling the building plan and says that the discrepancies that were detected by the Municipality subsequent to sanction of the building plan, justified the Municipality in cancelling the plan. Such discrepancies were suppressed by Santanu at the time of applying for sanction. Mr. Islam further submits that the relevant building Rules, viz, Rules 111 and 112 of the 2007 Building Rules, pertaining to the floor area ratio and the maximum height of a building that can be constructed on a land measuring about 1.6

cuttaha, were not considered by the Municipality at the time of sanctioning the building plan.

He also says that Rule 50 of the 2007 Building Rules also requires to be considered, which relates to the open space that has to be maintained.

Mr. Mukherjee, learned advocate representing Santanu disputes the submission made on behalf of the appellants. He says that it would appear from the impugned order of the Municipality that Santanu had applied for change of user of the first floor of the building 2014 itself. The requisite fees were deposited. In 2014 itself, application was made for sanction of the second floor. No relevant fact was concealed by Santanu while applying for sanction. The learned Single Judge has dealt with each and every point that the appellants are presently agitating. The order under appeal does not warrant any interference.

Having given our anxious consideration to the rival contentions of the parties, we are of the considered view that there is no such infirmity in the order under appeal as would warrant our interference. The learned Judge has, in detail, dealt with the contention of the Municipality and the Mondal brothers that Santanu obtained sanction of the building plan for the second floor by suppressing material facts. The learned Judge has come to the finding that there was no such suppression. The

Municipality was well aware of all relevant facts. Therefore, there was no occasion to invoke Section 217 of the 1993 Act. The learned Judge observed that the sale deed contains reference to the building plan that was sanctioned in favour of Jaya. As regards the contention that two civil suits are pending between Santanu on the one hand and the Mondal brothers on the other, the learned Judge opined, and in our view rightly, that the proceedings in those two suits would have no bearing on the present writ petition. The only question in the writ petition is whether or not the Municipality was justified in canceling the sanctioned plan in exercise of power under Section 217 of the 1993 Act.

We agree with that view. However, we hasten to add that if the Civil Court as passed any interim order restraining Santanu from putting up further construction, Santanu will have to deal with such order in accordance with law before it can make construction.

Mr. Islam makes a further grievance that the learned Single Judge has declared Santanu's title in respect of the first floor of the building and above.

We clarify that no observation in the order under appeal shall be construed as declaration of title of Santanu in respect of the concerned property. A writ

Court cannot decide title. The question of title will be decided in the civil suits pending between the parties.

In so far as the appellants' grievance of the first floor of the building also being illegal is concerned, we are not inclined to go into that issue. That is not within the scope of the writ petition or the appeal.

The learned Judge has directed renewal of the building plan that was sanctioned in favour of Santanu for constructing the second floor. We only add that such renewal will be strictly followed in accordance with the applicable Building Rules. Further, before granting such renewal, an opportunity of hearing should be granted to both the Mondal brothers and Santanu by the Municipality. Let such exercise be completed as expeditiously as possible and preferably within a period of three months from date.

Since we have not called for affidavits, the allegations contained in the stay application are deemed not to be admitted by the respondents.

MAT 2117 of 2023 is disposed of along with the application being I.A. No. CAN 2 of 2024.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as

expeditiously as possible on compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(M.V. Muralidaran, J.)