

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

IA No. GA / 1/ 2021

GA/3/2023

in

APO/12/2021

WPO/388/2018

Rigmadirappa Investments Private Limited

VS

THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE: The Hon'ble JUSTICE ARIJIT BANERJEE

The Hon'ble JUSTICE RAI CHATTOPADHYAY

For the appellants

Mr. Dhruva Ghosh, Sr. Adv.
Mr. Altamas Alim, Adv.
Ms. Shalmoli Ghosh, Adv.
Mr. Pushan Kar, Adv.
Mr. Sagnik Majumder, Adv.
Ms. A. Banerjee, Adv.
Ms. S. Ghosh Dastidar, Adv.

For the Respondent no 5.

Mr. Ratnanko Banerji, Sr. Adv,
Ms. Sristi Banerjee, Adv.
Mr. Aditya Kanodia, Adv.

For the KMC

Mr. Alak Kr. Ghosh, Adv.
Mr. Arijit Dey, Adv.

For the Respondent no. 6

Mr. R. Mitra, Adv.
Ms. L. Sinha, Adv.
Ms. N. Yasmin, Adv.

For the Heritage Commission

Mr. Probal Kumar Mukherjee, Sr. Adv.
Mr. Subrata Goswami, Adv.
Mr. D. Bhattacharjee, Adv.

For Orders on

08.04.2024

Arijit Banerjee, J. :-

1. The subject matter of challenge in this appeal is a judgment and order dated January 14, 2021, whereby the appellant's writ petition being WPO 388 of 2018, was dismissed by a learned Judge of this Court.
2. The dispute between the parties involves a property situate at 59 Ballygunge Circular Road, Kolkata 700 019, commonly known as 'Tripura House'. The respondent no. 5 is the owner of the said property.
3. Pursuant to an agreement dated December 7, 1998, entered into by and between the appellant and the predecessor in interest of the respondent no. 5 i.e, Manikya Kirit Bikram Kishore Deb Burman, the appellant acting as developer, constructed a building on a portion of 'Tripurah House'. That portion measuring about 53 cottahs was segregated from the mother premises and was numbered as 59A Ballygunge Circular Road, Kolkata 700 019. The property so developed came to be known as 'Tripura Enclave'.
4. The said development agreement contained an arbitration clause for resolution of possible future disputes arising in connection with the said agreement between the parties thereto.
5. Clause 22(vi) of the said development agreement reads as follows:-

"In case in future the Landlord shall be desirous of developing the remaining part of the said premises then and in such event, the Developer shall have the first preference to act as Developer."
6. Construction of 'Tripura Enclave' was completed by 2007.

7. In the year 2009, 'Tripura House' was declared to be a Grade I Heritage Building, by the Heritage Conservation Committee of Kolkata Municipal Corporation (in short 'KMC').

8. Some time in the year 2014, the owner of 'Tripura House', viz, the respondent no. 5 herein, wrote to the West Bengal Heritage Commission (in short 'the Heritage Commission') for clearing a draft plan for construction of a building on the western portion of the property.

9. A series of correspondence was exchanged by and between the respondent no. 5, the Heritage Commission represented by its Chairman and KMC. The Heritage Commission in principle granted approval for construction of the proposed building on the western portion of the property subject to certain modifications in the building plan. The Municipal Commissioner, KMC, finally sanctioned the building plan on January 18, 2018. The sanction was for a B+G+13 storeyed building.

10. In July, 2018, the appellant filed a writ petition, essentially challenging the permission granted by the Heritage Commission and KMC for construction of the proposed building on the western portion of the property. It was contended before the learned Single Judge that the writ petitioner has a right to develop the said premises as would be evident from the agreement dated December 7, 1998. It was further argued that the permission granted by the Heritage Commission and KMC for construction of the proposed building, is contrary to and in violation of the laws governing heritage properties.

11. The learned Judge dismissed the writ petition by the judgment and order which is assailed in this appeal. Some relevant portions of the impugned judgment read as follows:-

“Counsel appearing on behalf of the petitioner has been unable to demonstrate any ground which warrants interference by this Court. On the contrary, it is submitted by the parties that there is a substantive public interest litigation which has been filed pertaining to the very same premises being developed by the respondent no. 6 and the permission granted by the Commission.

.....

The issue of the validity of the permission granted to the respondent no. 6 by the Heritage Commission is already pending before the Hon’ble Division Bench. I am of the view that the petitioner lacks any locus to maintain such a petition. The petitioner quite apparently is not a person aggrieved. The petitioner has no legal right to relief. The petitioner’s right is not sought to be affected in any manner whatsoever by the proposal to develop the building by the respondent no. 6.

The petitioner may very well be a person annoyed but there is nothing to demonstrate that it is a person aggrieved. In any event, there are no pleadings nor is any case made out in the submission of the petitioner which justifies that the petitioner has any legally enforceable right which is sought to be infringed. Such

proceedings more often than not are filed simply to harass, annoy and persecute. It is unfortunate that on account of such proceedings initiated before the Courts innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of genuine litigants. Such persons with vested interest indulge in the pastime of meddling in the judicial process either by force of habit or for improper motive and try to bargain for a good deal as well as to enrich themselves. I find no cause of action made out by this public spirited Corporate neighbour. I find no enforceable legal right which the petitioner asserts to maintain in this petition. This is a mischievous petition and to my mind has been filled for oblique motives.”

12. Being aggrieved, the writ petitioner is before us by way of this appeal.

13. Appearing on behalf of the appellant/writ petitioner, Mr. Dhruba Ghosh, learned Senior Counsel, urged the following points:-

(i) Referring to the Development Agreement of 1998, learned Counsel submitted that the appellant has the first right of refusal if the owner of the property decides to develop any other portion of the property. He submitted that on an application filed under Section 9 of the Arbitration and Conciliation Act, 1996, by the appellant herein against the land owner, the Court of the District Judge, Alipore passed an order dated May 17, 2018, directing the parties to maintain status quo in respect of the concerned premises. On an appeal preferred against that order by the land

owner, being FMAT 562 of 2018, a Division Bench of this Court did not interfere with the order of status quo.

(ii) The Car parking space shown in the building plan sanctioned in favour of the appellant for constructing the building called 'Tripura Enclave', is now sought to be used by the land owner and/or the developer (Nexome) for a different project.

(iii) Same floor area ratio is being sought to be used for the two projects. This is contrary to the Building Rules, 2009, and in particular Rule 61.

(iv) Clearance for the proposed project was sought to be given by the Chairman of the Heritage Commission alone and not by the Commission itself. The Chairman is not the Commission. In this connection, learned Counsel referred to a letter dated February 4, 2015, addressed by the Chairman of the Heritage Commission to the Mayor of KMC and to two letters dated April 20, 2007, and May 2, 2017, addressed by the Chairman of the Heritage Commission to Pradyut Deb Barman being the land owner, with copies marked to the Municipal Commissioner, KMC.

(v) The appellant filed an application under Section 11 of the Arbitration and Conciliation Act, 1996 which was however, dismissed by the High Court on March 12, 2019. The appellant's Special Leave Petition against such dismissal order was dismissed.

However, the Hon'ble Supreme Court granted the request of the appellant for leave to take steps in accordance with law.

(vi) Pursuant to such leave, the appellant has filed a suit for specific performance of Clause 22(vi) of the development agreement dated December 7, 1998, and alternatively for damages.

(vii) The legality of the sanctioned plan for the proposed new project is not the subject matter of the suit filed by the appellant.

(viii) As on the date of filing of the writ petition, the appellant was enjoying an order of status quo in respect of the property in question. Therefore, it had an interest in the property and it cannot be said that it has no locus standi to maintain the writ petition.

(ix) The appellant may have failed in the proceedings initiated under Section 11 of the Arbitration and Conciliation Act, 1996. However, that does not oust the locus standi of the appellant to maintain the present writ petition. The application under Section 11 of the 1996 Act was with respect to contractual disputes. The writ petition has been filed to challenge the arbitrary actions of the respondent authorities in unlocking the heritage lock in respect of 'Tripura House' and enabling the land owner and the developer to make construction on a portion of the heritage property without following due process of law.

(x) The permission granted by the Heritage Commission to go ahead with the proposed project is contrary to the provisions of the West Bengal Heritage Commission Act, 2001.

14. Learned Counsel relied on the following decisions:-

a. M.S. Jayaraj v. Commissioner of Excise, Kerala & Ors., (2000) 7 SCC 552-paras 2,6,9,12,14,19,20.

b. Ghulam Qadir v. Special Tribunal &Ors., (2002) 1 SCC 33 – Paras 38, 49.

C. Jasbhai Motibhai Desai v. Roshan Kumar, Haji Bashir Ahmed & Ors., (1976) 1 SCC 671- Paras 12, 13,34,35,36,37,38,39,50.

d. Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan & Ors., AIR 1997 SC 152- Paras 128.

e. M/s. Radha Krishan Industries v. State of Himachal Pradesh & Ors., Civil Appeal No. 1155 of 2021- Paras 24-28.

f. Supertech Limited v. Emerald Court Owner Resident Welfare Association & Ors., Civil Appeal No. 5041 of 2021- Paras 143-155.

15. Appearing for the land owner being the respondent no. 5 herein, Mr. Ratnanko Banerji, learned Senior Advocate, made the following submission:-

(i) Originally ‘Tripura House’ comprised in 146 kotthas of land. By an agreement dated December 7, 1998, entered into by and

between the appellant and the respondent no. 5, the appellant was engaged to develop 53 cottahs of land by constructing a residential building thereat (Tripura Enclave). The said 53 cottahs was renumbered as 59A Ballygunge Circular road, Kolkata – 700 019.

(ii) The respondent no 5 granted development rights to the respondent no. 6 herein (Nexome) with respect to 28 cottahs of vacant land on the western portion of 'Tripura House'. A building has been constructed thereat by the respondent no. 6, which is almost complete, for which sanctioned plan was granted on January 18, 2018.

(iii) The appellant has no locus standi to maintain the writ petition. The appellant completed the building called 'Tripura Enclave' in 2007 and sold the flats therein. It does not own any flat in the said building or any portion of premises no. 59A Ballygunge Circular Road. The appellant is not even a neighbour of the subject premises. Its rights under the agreement dated December 7, 1998, came to an end after completion of construction of 'Tripura Enclave'.

(iv) The appellant's application under Section 11 of the Arbitration and Conciliation Act, 1996, for appointment of arbitrator, in terms of the arbitration clause contained in the development agreement dated December 7, 1998, was dismissed by a learned Judge of this Court by a judgment and order dated March 12, 2019. The Special Leave Petition preferred against such order being Civil Appeal No.

7023 of 2019 (arising out of SLP (Civil) no. 8519 of 2019) was dismissed by the Hon'ble Supreme Court by a judgment and order dated September 5, 2019. A review application filed against the said order was dismissed by the Hon'ble Supreme Court on November 5, 2019. Thereafter, the appellant has filed a suit being TS no. 299 of 2020 before the learned Civil Judge at Alipore.

(v) The appellant's alleged cause of action in the writ petition, can only be an alleged contractual right under the agreement dated December 7, 1998. Such right has been negated right up to the Hon'ble Supreme Court. Therefore, the appellant has no locus standi to challenge the construction undertaken by the respondent no. 6 after obtaining all necessary permissions and approvals from the relevant statutory authorities on a portion of the property of the respondent no. 5. Any personal right which according to the appellant has been infringed, is already the subject matter of a civil suit. There cannot be multiple legal proceedings at the instance of the appellant on the basis of the same alleged right.

(vi) The appellant has filed the civil suit for specific performance of the agreement dated December 7, 1998, claiming the right to develop the portion of 'Tripura House' on which the present construction has been made. The stand of the appellant in the present writ petition is that no construction could be made on the said portion of 'Tripura House' since it is a heritage building. These

two stands of the appellant are contradictory and mutually inconsistent.

(vii) The appellant's claim that after construction of 'Tripura Enclave', no FAR is left, is also baseless. In the civil suit filed by the appellant, it has claimed a right to develop the premises now being developed by the respondent no. 6. In any event, approximately 21500Sq. ft of FAR is still available.

(viii) The allegation that the parking space for 'Tripura Enclave' has been utilised for constructing the new building is also completely incorrect. In the application under Order 41 Rule 27 filed by the Respondent no. 5 on May 18, 2023, a conveyance deed dated March 30, 2011, has been disclosed, from which it will be evident that the designated parking spaces for 'Tripura Enclave' are within the premises of 'Tripura Enclave'.

(ix) No heritage structure at Tripura House has been damaged or removed in the course of construction of the new building. No building Rule of KMC has been violated.

(x) As regards the contention that the Chairperson of the Heritage Commission alone purported to grant permission for construction of the new building on the heritage property, the learned Advocate submitted that at a meeting of the Heritage Commission held on January 16, 2015, two out of the three members were present and they approved the plan for development of the concerned premises.

Thereafter, on January 19, 2015, the Heritage Commission wrote to the Heritage Conservation Committee of KMC stating that it had gone through the revised design of the proposed construction and had approved it for further clearance by KMC's building department. The Heritage Commission also wrote a letter to KMC on February 4, 2015, stating that the proposed construction had been cleared from the heritage point of view. The building plan was considered by the Heritage Architect. The sanctioned plan was scrutinised by several departments of KMC i.e., Building Department, Survey Department, Municipal Building Committee, and Mayor-in-Counsel. It was also examined thrice by the Fire Department which issued no objection certificate. Finally, sanction of the building plan was granted on January 18, 2018. Thus, all necessary statutory formalities were complied with, keeping in mind the heritage structure of 'Tripura House'.

(xi) As regards, the allegation that the letters dated April 20, 2017, and May 2, 2017, were issued by the Chairman of the Heritage Commission alone, without holding any meeting of the Commission, the fact is that approval for the construction had already been issued on February 4, 2015, after the Commission's meeting on January 16, 2015. The letters dated April 20, 2017, and May 2, 2017, were issued only for the purpose of reduction of the height of the building from 17 floors to 13 floors. No further

meeting of the Commission was necessary for reduction of such height.

(xii) The acts of the Chairman of the Heritage Commission, if any, have repeatedly been ratified by the Heritage Commission itself. It has filed an affidavit affirmed on March 8, 2021, in connection with the present appeal. Minutes of the meeting dated May 5, 2022, held by the Heritage Commission have been disclosed affirming all acts of the Chairperson done on behalf of the Heritage Commission.

(xiii) In any event, in view of Section 7 of the West Bengal Heritage Commission Act, 2001, “no act or proceedings of the Commission shall be deemed to be invalid by reason merely of any vacancy in, or any defect in the constitution of the Commission”.

16. Learned Counsel for the respondent no. 5 referred to certain judgments. We have not recorded the same since it may not be necessary for the purpose of deciding this appeal.

17. Learned Advocates for the developer i.e., Nexome, KMC and the Heritage Commission have made submission supporting the contention of the respondent no. 5.

Court's View

18. The respondents, and in particular the owner and developer of the concerned property, have raised the question of maintainability of the writ petition. It was submitted that the appellant, after developing Tripura

Enclave', sold off all the flats in that building to third parties. The appellant has no stake any more in 'Tripura Enclave'. Therefore, the appellant cannot be aggrieved by the construction of the new building on the western portion of 'Tripura House' which is in any event at sufficient distance from 'Tripura Enclave'. It has been argued by the said respondents that no legal right of the writ petitioner has been infringed by raising of the new construction at the Tripura House premises. Therefore, the writ petitioner did not and does not have the locus standi to maintain the writ application. It is a mere interloper and the writ petition should be dismissed in limine. Let us address this issue first.

19. The doctrine of locus standi has undergone a sea change over the years. It is a much more relaxed principle now. However, although the principle has been watered down, it has not suffered obliteration. Any and everybody cannot maintain a lis in respect of any and every matter. A person approaching the Court must demonstrate that in some way or the other he has been prejudiced. Of course this principle does not apply to a public interest litigation where a person not having any personal interest in a matter can file a writ application for the benefit of others who for one reason or the other, are not in a position to approach the Court for redressal of their grievance. However, we are dealing with a private interest litigation. Unless the writ petitioner can even prima facie, show some prejudice that has been caused to it by the construction of the new building, it will not have the standing to maintain the writ petition.

20. Let us consider the law on this subject. The Hon'ble Supreme Court has laid down in a number of decisions that in order to have the locus standi to

invoke the High Court's extra ordinary jurisdiction under Article 226 of the Constitution of India, an applicant should ordinarily have a personal or individual right in the subject matter of the application. This of course may not apply in the case of writs like habeas corpus or quo-warranto. However, as a general rule, infringement of some legal right or prejudice to some legal interest inhering in the petitioner is necessary to give him locus standi in the matter.

21. In ***Jasbhai Motibhai Desai v. Roshan Kumar, Haji Basir Ahmed & Ors., supra***, a four Judge Bench of the Hon'ble Supreme Court speaking through Sarkaria J. at paragraphs 37 to 39 of the reported judgment held as follows:-

“37.It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories:(i) 'person aggrieved'; (ii) 'stranger'; (iii) busybody or meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spoking the

wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold.

38. The distinction between the first and second categories of applicants, though real, is not always well-demarcated. The first category has, as it were, two concentric zones; a solid central zone of certainty, and a grey outer circle of lessening certainty in a sliding centrifugal scale, with an outermost nebulous fringe of uncertainty. Applicants falling within the central zone are those whose legal rights have been infringed. Such applicants undoubtedly stand in the category of 'persons aggrieved'. In the grey outer-circle the bounds which separate the first category from the second, intermix, interfuse and overlap increasingly in a centrifugal direction. All persons in this outer zone may not be "persons aggrieved".

39. To distinguish such applicants from 'strangers', among them, some broad tests may be deduced from the conspectus made above. These tests are not absolute and ultimate. Their efficacy varies according to the circumstances of the case, including the statutory context in which the matter falls to be considered. These are: Whether the applicant is a person whose legal right has been infringed? Has he suffered a legal wrong or injury, in the sense, that his interest, recognised by law, has been prejudicially and directly affected by the act or omission of the authority, complained of? Is he a person who has suffered a legal grievance, a person "against whom a decision has been pronounced which has

wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something? "

Has he a special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public? Was he entitled to object and be heard by the authority before it took the impugned action? If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority? Is the statute, in the context of which the scope of the words "person aggrieved" is being considered. A social welfare measure designed to lay down ethical or professional standards of conduct for the community? Or is it a statute dealing with private rights of particular individuals?"

22. It is often said that only a person aggrieved can approach the writ Court. The Hon'ble Supreme Court in the case of ***Ayaaubkhan Noorkhan Pathan v. State of Maharashtra & Ors., reported at (2013) 4 SCC 465, at paragraphs 9 and 10 of the reported judgment observed as follows:-***

"9. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the Authority/Court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from *legal injury* can challenge the act/action/order, etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a

breach of statutory duty on the part of the Authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can, of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the Courts. It is implicit in the exercise of such extraordinary jurisdiction that the relief prayed for must be one to *enforce a legal right*. In fact, the *existence of such right, is the foundation of the exercise of the said jurisdiction by the Court*. The *legal right that can be enforced* must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. (Vide : State of Orissa v. Madan Gopal Rungta, AIR 1952 SC 12; Saghir Ahmad & Anr. v. State of U.P., AIR 1954 SC 728; Calcutta Gas Company (Proprietary) Ltd. v. State of West Bengal & Ors., AIR 1962 SC 1044; Rajendra Singh v. State of Madhya Pradesh, AIR 1996 SC 2736; and Tamilnad Mercantile Bank Shareholders Welfare Association (2) v. S.C. Seka & Ors., (2009) 2 SCC 784).

10. A “legal right”, means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, “person aggrieved” does not include a person who suffers from a

psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one, whose right or interest has been adversely affected or jeopardised. (Vide: Shanti Kumar R. Chanji v. Home Insurance Co. of New York, AIR 1974 SC 1719; and State of Rajasthan & Ors. v. Union of India & Ors., AIR 1977 SC 1361)”

23. In the case of ***Ghulam Qadir v. Special Tribunal & Ors., supra, the Hon’ble Supreme Court, at paragraph 38 of the reported judgment observed as follows:-***

“38. There is no dispute regarding the legal proposition that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid Article. The orthodox rule of interpretation regarding the locus standi of a person to reach the Court has undergone a sea-change with the development of constitutional law in our country and the constitutional Courts have been adopting a liberal approach in dealing with the cases or dis-lodging the claim of a litigant merely on hyper-technical grounds. If a person approaching the Court can satisfy that the impugned action is likely to adversely affect his right which is shown to be having source in some statutory provision, the petition filed by such a person cannot be rejected on

the ground of his having not the locus standi. In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having the locus standi.”

24. In the case of the ***State of Orissa v. Madan Gopal Rungta, reported at AIR 1952 SC 12***, a six Judge Bench of the Hon’ble Supreme Court, while discussing Article 226 of the Constitution, observed that existence of a legal right in favour of the writ petitioner is the foundation for the exercise of jurisdiction of the Court under Article 226, for protection of such right.

25. From the above discussion we find that a person to be entitled to maintain a lis must have a real interest in or connection with the subject matter of the lis. In other words, he should be able to demonstrate to the Court that some act or order of the respondents in the legal action has caused or is likely to cause some degree of prejudice to that person by infringing or threatening to infringe some legal right that exists in favour of that person. Unless he can demonstrate that, the Courts would hold that he has no locus standi to maintain the action. The concept of locus standi was developed in common law to keep away busy-bodies from the Court. A person not suffering any loss, damage or prejudice by what has been sought to be challenged in the legal proceedings, cannot be said to be a person aggrieved clothing him with the right or standing to challenge an act or order of any authority or any other person. It has happened that a person has initiated a legal action in respect of a subject matter in which he has no real interest only to create nuisance for the defendant/respondent in the legal proceedings. This would often be with the oblique motive of forcing the

defendant/respondent to come to a financial settlement with the plaintiff/petitioner, rather than fighting a long drawn legal battle. That way, the person instituting the proceedings would make some quick money. We hasten to clarify that we are not for a moment suggesting that the writ petitioner instituted the present proceedings with any such dishonest motive. However, it needs to be seen if the writ petitioner has been able to show that it is in any manner prejudiced by the new building having been constructed at the Tripura House premises. After all, although the strict approach to the concept of locus standi has given way to a liberal approach, the doctrine of locus standi is not dead or obsolete.

26. In the present case, the appellant/writ petitioner has based its case on the development agreement dated December 7, 1998, claiming that under that agreement it has a right to develop the premises that Nexome is now developing. On the basis of the arbitration clause contained in that agreement, the appellant had filed an application under Section 11 of the Arbitration and Conciliation Act, 1996, for appointment of an arbitrator to resolve the disputes between the appellant and the owner of 'Tripura House'. That application was dismissed by a learned Judge of this Court who found that the arbitration agreement does not survive after the development agreement has been fully performed. The special leave petition filed by the appellant against such dismissal order was dismissed by the Hon'ble Supreme Court permitting the appellant to pursue other proceedings. Pursuant to such leave, the appellant has filed a suit for specific performance of Clause 22(vi) of the 1998 agreement (which has been

extracted above) and alternatively for damages in the sum of approximately Rs. 104 Crore.

27. In view of the aforesaid, it cannot be said that the appellant has absolutely no standing to maintain the writ petition. Rightly or wrongly it is claiming a right to develop the property which is now being developed by Nexome. Such claim is pending adjudication before a Civil Court. The appellant cannot be said to be a total busy body or a meddlesome interloper. It may have a very weak case on merits and its civil suit may well fail miserably on which we make no comment. However, it claims a contractual right to develop the premises in question. Whether or not such a right can be enforced by way of a writ petition is a different question altogether. However, it cannot be said that the appellant has no interest at all in the subject matter of the writ petition. Hence, we disagree with the learned Single Judge on the point of locus standi of the appellant to maintain the writ petition.

28. As regards the complaints that:- “(i) The car parking space shown in the building plan sanctioned in the appellant’s favour for construction of ‘Tripura Enclave’, is now sought to be used by the land owner and/or the developer for the new project; and (ii) same floor area ratio is sought to be used for the two projects, which is contrary to Rule 61 of the Building Rules, 2009;” both are essentially factual issues. KMC sanctioned the building plan after due scrutiny of the draft plan and inspection of the property in question. From the documents on record and in particular the conveyance deeds executed in favour of the flat owners in ‘Tripura Enclave’, it would

appear that the parking spaces for the owners of flats in ‘Tripura Enclave’ are within the premises of ‘Tripura Enclave’. However, we need not go into such factual matters. KMC is the competent authority in that regard. Being satisfied that the draft plan submitted by the land owner/developer is in consonance with the building rules and after receiving clearance from the fire department and also the Heritage Commission, KMC sanctioned the plan. We are inclined to give credence to the official acts of KMC. In this connection one may refer to Section 114, illustration (e) of the Evidence Act which says that the Court may presume that judicial and official acts have been regularly performed. Keeping in mind that KMC discharges governmental or quasi-governmental functions, one may refer to the dicta of the Hon’ble Supreme Court in a three-Judge decision in the case of ***Villianur Iyarkkai Padukappu Maiyam v. Union of India & Ors., reported at (2009) 7 SCC 561***. In paragraph 170 of the reported judgement, the Hon’ble Court observed as follows:

“170. Normally, there is always a presumption that the governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy one and it has to be discharged to the satisfaction of the Court by proper and adequate material. The Court cannot lightly assume that the action taken by the Government is unreasonable or against public interest because there are large number of considerations, which necessarily weigh with the Government in taking an action.”

29. One may also refer to the observation of the Hon'ble Supreme Court in the case of ***Municipal Corporation of Delhi v. Qimat Rai Gupta & Ors. Reported at (2007) 7 SCC 309***. The Hon'ble Court observed at Paragraph 17 of the judgment that when an order is passed by a high-ranking authority appointed by the central government, the law presumes that it would act bona fide. Misuse of power should not be readily inferred. This principle, in our view, would apply to the concerned decision of KMC in granting relaxation of the required open spaces and sanctioning the building plan. The appellant has not been able to demonstrate that such official acts of KMC were in abuse or misuse of the statutory power vested in it by the West Bengal State Legislature.

30. We also refer to the observation of the Hon'ble Supreme Court in paragraph 208 of the reported judgment in the case of ***Mohd. Shahabuddin v. State of Bihar & Ors., reported at (2010) 4 SCC 653***. Paragraph 208 reads as follows:

“208. It is a well-established law that when an authority passes an order which is within its competence, it cannot fail merely because it purports to be made under a wrong provision if it can be shown to be within its power under any other provision or rule, and the validity of such impugned order must be judged on a consideration of its substance and not its form. The principle is that we must ascribe the act of a public servant to an actual existing authority under which it would have validity rather than to one under which it would be void. In such cases, this Court will always rely upon Section 114 Illustration (e) of the Evidence Act to draw a statutory

presumption that the official acts are regularly performed and if satisfied that the action in question is traceable to a statutory power, the Courts will uphold such State action. (Reference in this regard may be made to the decisions of this Court in *P. Balakotaiah v. Union of India* [AIR 1958 SC 232]; *Lekhraj Sathramdas Lalvani v. Custodian-cum-Managing Officer* [AIR 1966 SC 334: (1966) 1 SCR 120]; *Peerless General Finance and Investment Co. Ltd. v. RBI* [(1992) 2 SCC 343] and *BSE Brokers' Forum v. SEBI* [(2001) 3 SCC 482] .)”

31. As regards the other points urged by the appellants that the portion of ‘Tripura House’ presently under development could not have been touched because ‘Tripura House’ is a heritage building, and the point that the clearance from the heritage point of view was granted not by the Heritage Commission but by its Chairperson acting individually, have been dealt with in detail in our judgment and order dated February 13, 2024, passed in ***APO/55/2022 (Nexome Real Estate Private Limited v. Shiromoni Flat Owners’ Association &Ors.)***. That appeal and other connected appeals at the instance of KMC, Heritage Commission and Nexome (present developer) arose out of a judgment and order of a learned Single Judge rendered on May 19, 2022, in W.P.O. No 45 of 2018 filed at the instance of one Shiromoni Flat Owners’ Association & Ors. Shiromoni is a multi-storeyed building adjacent to ‘Tripura House’. The Association of flat owners in that building and an office bearer of the Association had filed the writ petition challenging the decision of the Heritage Commission to clear the proposed

development on the western portion of 'Tripura House', from the heritage point of view and the decision of the KMC to sanction the building plan. Some of the points urged by Shiromoni were that the Heritage Commission could not have permitted construction on a portion of the heritage property, the Heritage Commission was not properly constituted and in any event, it was the Chairperson of the Heritage Commission which granted the permission and not the Commission as a body. It was argued by Shiromoni, as was argued by the Present appellant, that the 3 letters dated February 4, 2015, April 20, 2017 and May 2, 2017, written by the Chairman of the Heritage Commission to KMC and the owner of Tripura House, should be quashed as the Chairman had no authority to write such letters. The learned Single Judge allowed the writ petition giving rise to the aforesaid appeals. The appeals were disposed of by this Bench by the judgment and order dated February 13, 2024, referred to above. The aforesaid points urged by the writ petitioner Shiromoni were dealt with in detail and rejected by us. That judgment and order shall govern the issue of competence or propriety on the part of the Heritage Commission in clearing the concerned project, as also the issue of propriety on the part of KMC in sanctioning the concerned building plan. Be it noted that the arguments advanced by the parties in Shiromoni's writ petition and in the appeals arising therefrom, were much more exhaustive than and cover all the arguments made in the present case. Those contentions thus stand rejected.

32. It may also be noted that the present appellant's stand that the concerned development of the western portion of Tripura House could not be

permitted by the Heritage Commission or by KMC since the concerned land is part of a heritage building, is completely inconsistent with the claim of the appellant that it has the right to develop the said land and it should be permitted to do so.

33. The appellant also argued that the development of the concerned land should be stopped by passing a restraint order pending disposal of the appellant's Civil Suit in the Alipore Court. Otherwise, if the suit for specific performance is decreed in favour of the appellant, such decree would be rendered infructuous if in the meantime the development work is completed. We are not impressed with such argument. The appellant, which is the plaintiff in the civil suit, has not been able to obtain an interim order of prohibitory injunction restraining construction of the concerned building. In any event, there is an alternative prayer in the plaint of that suit, for damages in the region of Rs. 104 crore. Specific performance of an agreement is a relief which is not available as a matter of right and damages may be awarded in lieu of that relief if it would be inequitable to grant the relief of specific performance.

34. In conclusion, we do not find any merit in this appeal. Although, we disagree with the learned Judge's decision on the point of locus standi of the appellant to maintain the writ petition, we agree with His Lordship's conclusion that the writ petition should be dismissed. Hence, we do not interfere with the order under appeal. The appeal accordingly stands dismissed. There will be no orders as to costs. We, however, clarify that none of the observations made in this judgment and order or in the

judgment and order of the learned Single Judge impugned in this appeal, will have any bearing on the civil suit of the appellant pending before the learned Alipore Court.

35. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(ARIJIT BANERJEE, J.)

I agree.

(RAI CHATTOPADHYAY, J.)