

OD-1

ORDER SHEET

WPO/689/2024

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

GATEWAY HIRISE LIMITED
Vs
THE STATE OF WEST BENGAL AND ORS.

BEFORE:

The Hon'ble JUSTICE KAUSIK CHANDA

Date : 8th January, 2025

Appearance:

Mr. Raghunath Chakraborty, Adv.

Ms. Mohona Das, Adv.

...for the petitioner

Mr. Alak Kr. Ghosh, Adv.

Mr. Dilip Kumar Chatterjee, Adv.

...for KMC

The Court: The petitioner obtained a sanctioned plan for the construction of a 12-story building at premises no. 115/3, Hazra Road, Kolkata-700025, on 21st February 2015. The sanctioned plan was valid for a period of five years. The petitioner commenced construction in accordance with the sanctioned plan granted by the Kolkata Municipal Corporation. However, for reasons unknown, the petitioner was unable to complete the construction within the validity period of the sanctioned plan.

The learned advocate for the petitioner submits that the construction was delayed due to a circular dated 17th June 2020 issued by the Municipal Commissioner, appearing at page 39 of the present writ petition. The petitioner claims that based on the circular the progress of the construction work was hindered by the Corporation.

To challenge this action of the Kolkata Municipal Corporation, the petitioner filed a writ petition before this Court, which was disposed of on April 21, 2022. The Court directed the Kolkata Municipal Corporation to renew the sanctioned plan and extend the construction completion period, with a time limit to be fixed after considering the application submitted by the petitioner on 24th June 2020. The Corporation was directed to take action within four weeks of the date of the order, in light of the observations made in that judgment.

The Kolkata Municipal Corporation filed an appeal (APO/47/2022) against the judgment of the learned Single Judge, which was disposed of with the following observations:

“24. However, KMC has categorically stated before us that Municipal Circular NO.5 of 2020/2021 dated June 17, 2020 has not been made applicable to the writ petitioner’s construction. In the Memorandum of Appeal, Ground Nos. xxi and xxii read as follows:-

“XXI For that the Hon’ble Judge should not have gone into any issue pertaining to the Municipal Commissioner’s Circular No.5 of 2020-2021 dated 17.06.2020 at this stage since the said circular has not applied in the instant case;

XXII. For that the Hon'ble Judge should have considered that the application of the said Circular and/or instruction of the State authority in the facts and circumstances of the case was not required to be considered in the present facts and circumstances of the case;"

25. Hence, in the peculiar facts of the case, if the writ petitioner applies for renewal of the building plan/fresh sanction of building plan, the same will be considered in accordance with law and the applicable rules by the competent authority without taking into account the aforesaid Municipal Circular NO.5 of 2020/2021 dated June 17, 2020.

26. The learned Judge directed the Municipal commissioner, "to renew the sanction plan and extend the period of completion of the construction." In view of the discussion above this must be understood as granting a fresh sanction and allowing consequential extension of time for completion of the construction."

The learned advocate for the petitioner argues that the Kolkata Municipal Corporation has failed to comply with the order of the Division Bench. As a result, the petitioner has filed the present writ petition seeking the implementation of the said order of the Division Bench.

On the other hand, Mr. Alak Ghosh, learned advocate representing the Kolkata Municipal Corporation, contends that the petitioner's case has not been considered simply because the petitioner has not applied for renewal or fresh sanction before the Corporation. Mr. Ghosh further clarified before this

Court that the circular dated 17th June 2020 has not been applied in the petitioner's case.

However, Mr. Raghunath Chakraborty, learned advocate for the petitioner, has drawn the Court's attention to a series of letters—dated 18th October 2020, 4th November 2022, 20th February 2023, and 15th March 2023—addressed to the Corporation, suggesting that such applications had indeed been made.

In response, Mr. Ghosh argues that these representations were made before the filing of the writ petition and the delivery of the judgment. Consequently, these cannot be considered as formal applications for renewal or fresh sanction.

This Court does not find it necessary to address the controversies raised by the parties. The order of the Division Bench clearly states that the petitioner is required to apply afresh for the sanctioned plan. This Court is bound by the observations made in the Division Bench's judgment, leaving little scope for further adjudication.

Therefore, the petitioner is granted liberty to submit a fresh application for sanction, in accordance with Section 394 of the Kolkata Municipal Corporation Act, 1980. The application must be made in the prescribed form under Rule 4 of the Kolkata Municipal Corporation (Building) Rules, 2009. If such an application is submitted within 30 days from the date of this order, the

Kolkata Municipal Corporation shall process the application in accordance with the law.

Accordingly, WPO/689/2024 is disposed of.

(KAUSIK CHANDA, J.)

kc