

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Original Side

APO /86/2023

WITH

WPO/2257/2022

IA NO.GA/1/2023

IA No. GA/2/2023

CHANDRA UDYOG AND ANOTHER.

-Versus

KOLKATA MUNICIPAL CORPORATION & OTHERS.

BEFORE: The Hon'ble JUSTICE ARIJIT BANERJEE

AND

The Hon'ble JUSTICE APURBA SINHA RAY

For Appellants	:	Mr. Abhrajit Mitra, Sr. Adv. Mr. Arindam Banerjee, Adv. Mr. Chayan Gupta, Adv. Mr. Dwip Raj Basu, Adv. Mr. Souradeep Banerjee, Adv. Mr. R. Saha, Adv.
For Kolkata Municipal Corporation	:	Mr. Ashoke Kr. Banerjee, Sr. Adv. Mr. Arijit Dey, Adv.
CAV on	:	22.05.2024
Judgment on	:	29.08.2024

Arijit Banerjee, J. :-

1. This appeal is directed against a judgment and order dated May 12, 2023, whereby the appellants' writ petition being WPO 2257 of 2022 was disposed of by a learned Judge of this Court.

2. The appellants are the owners of premises No. 2 Camac Street (Abanindranath Thakur Sarani), Kolkata- 700 016 (in short 'the said premises'). There are two buildings at the said premises. One is the main building which is a three storeyed structure (in short 'the said building'). The other is an annexe building which is also three-storeyed. The buildings are very old and are said to have been built more than 90 years ago.

3. The case of the appellants/writ petitioners is that sometime in May, 2006, for the first time they discovered from newspaper reports, that the said building has been included in the list of heritage properties prepared by Kolkata Municipal Corporation (in short 'KMC') under Grade - IIA. The appellants objected to recording of the said building as heritage. They say that they were given to understand by the KMC authorities that on properties categorised as Grade - IIA heritage, the owner may be permitted to make new construction on the open land within the premises, in a compatible manner with the heritage building. However, no external change of the heritage building would be permissible. The new construction must not obstruct the view of the heritage building.

4. In 2013, the appellants sought permission from KMC to repair the said building. Reminders were sent in 2014. The KMC authorities did not grant permission. Therefore, repairing work could not be carried out. The appellants say that the said building is in a dilapidated condition and requires urgent repairing work.

5. In 2019, the appellants approached the Project Management Unit of KMC with a re-development plan. The plan was not approved by KMC. The

appellants say that inaction on the part of KMC caused a portion of the said building to collapse in the year 2020.

6. Sometime towards the end of 2021, after the Covid Pandemic subsided, the appellants engaged an expert to make a health audit of the said building. The expert opined that the said building is required to be dismantled/demolished forthwith. The building is not inhabitable at present. There is no scope for restoration by making repairs.

7. On the strength of the aforesaid health assessment report, the appellants applied to KMC for passing immediate order for demolition of the said building.

8. Alleging inaction on the part of KMC authorities, the appellants approached the learned Single Judge by filing the instant writ petition being WPO No. 2257 of 2022. The prayers in the writ petition read as follows:-

“(a) Declaration that the premises No. 2, Abanindranath Thakur Sarani, P.S. – Shakespeare Sarani, Kolkata – 700 016 and structures erected thereon is not a heritage building within the meaning of the relevant provisions of the Kolkata Municipal Corporation Act, 1980;

(b) Declaration that the acceptance of the said premises no. 2, Abanindranath Thakur Sarani, P.S. – Shakespeare Sarani, Kolkata – 700 016 as a heritage building by the Kolkata Municipal Corporation on 25th February, 2009 is illegal, null and void ab-initio;

(c) A writ or in the nature of Mandamus do issue commanding the respondent Authorities to immediately de-list the premises No. 2, Abanindranath Thakur Sarani, P.S. – Shakespeare Sarani, Kolkata – 700 016 from the list of heritage buildings in the city of Kolkata;

(d) A writ of or in the nature of Mandamus and/or order or orders and/or direction or directions of like nature commanding the respondents to forthwith demolish and/or remove and/or permit the petitioners to demolish and/or remove the three storied dilapidated main building standing at municipal Premise No. 2, Camac Street (Abanindra Nath Tkakur Sarani), P.S. – Shakespeare Sarani, Kolkata – 700 016;

(e) A writ of or in the nature of Mandamus and/or order or orders and/or direction or directions of like nature commanding the respondents, particularly the respondent No. 2 (Municipal Commissioner) to grant and accord appropriate building permit and/or sanctioned building plan to the petitioners for construction of a new building/structure at premises No. 2, Camac Street (Abanindra Nath Thakur Sarani), P.S. – Shakespeare Sarani, Kolkata – 700 016 in place and stead of the dilapidated main building standing at municipal premises No. 2, Camac Street (Abanindranath Thakur Sarani), P.S. – Shakespeare Sarani, Kolkata – 700 016, by treating the proposed new structure as a non-heritage structure;”

9. Before the learned Judge the writ petitioners argued that the said building could not have been declared to be a heritage one. As owners of the said premises and the said building, the writ petitioners are entitled to enjoy the same according to their free will and desire. KMC cannot refuse to sanction a plan for construction of a new building at the said premises upon demolition of the existing dilapidated building. The inaction on the part of KMC amounts to putting an unreasonable restriction on the right to property of the writ petitioners as enshrined in Article 300A of the Constitution of India. The inaction of the KMC authorities is also in contravention of the provisions of Section 411 of the KMC Act, 1980, read with Section 29(k) thereof. The writ petitioners relied on several decisions of this Court whereby various orders of KMC authorities declaring various properties as heritage, have been set aside by this Court.

10. On behalf of the KMC authorities, it was argued that at its meeting held on February 25, 2009, KMC, upon perusal of the recommendation of the Heritage Conservation Committee, approved the final recommendation of the Mayor-in-Council regarding the list of Heritage Buildings in Kolkata and their classification under Grades – I, IIA and IIB. It was further submitted that a Public Interest Litigation has been filed by the Indian National Trust for Art and Cultural Heritage being WPA 12676 of 2019 concerning the heritage list prepared by the Heritage Conservation Committee. By an order dated July 26, 2019, the Division Bench of the Hon'ble the Chief Justice had passed an interim order for injunction restraining the respondents of the writ petition including KMC authorities from giving any effect to any

decision of downgrading / de-listing any heritage building and also from causing demolition of any building declared as heritage. KMC also argued that the writ petitioners did not make an application under Section 425-O of the KMC Act, 1980, for declaration that the said building has ceased to be heritage.

11. Before the learned Judge, KMC relied on a bunch of documents in support of its submission that the resolution to include the concerned building in the heritage list and the gradation thereof was in accordance with law.

12. KMC also argued that the cause of action for filing the writ petition allegedly arose way back in the year 2005 when the property in question was first included in the list of heritage properties. The writ petition has been filed 17 years after that and is liable to be dismissed on the ground of delay and laches. Several decisions were relied upon by learned Advocate for KMC. I shall revert to those decisions, if necessary.

13. Upon a consideration of the material on record including photographs of the concerned structure, the learned Judge came to a conclusion that the structural health of portions of the building in question is extremely poor. The building urgently needs repairs. Whether or not the structural health of the building can be revived by way of mere repairs or the building is required to be pulled down making way for new construction, is to be decided by the appropriate authority in KMC.

14. The learned Judge disposed of the writ petition with the following observations and directions :-

“Both the parties have relied upon several precedents in support of their case. Whether a particular property included in the list of heritage properties is in need of urgent repairs for maintaining the heritage status, is to be ascertained by the concerned department of KMC. All heritage properties in the list may not require similar treatment as regards maintenance and repairs. There may be properties in the list which are well maintained and deserves a position in the list. At the same time, there may be properties which are left unmaintained and requires urgent repairing work. The two groups of properties in the same list are liable to be treated in diverse manner.

In the affidavit in opposition KMC has mentioned that the petitioners are yet to file an application under Section 425 O of the Act seeking removal of the property from the heritage list. It appears that though a formal application under the aforesaid Section has not been made, but the petitioners have made representations annexing copy of the structural health report of the engineer seeking permission to demolish the structure and thereafter to raise new construction thereon. KMC, instead of sitting over the prayer made by the petitioners, ought to have treated the representation as one in consonance with the provision of Section 425 O of the Act and taken a decision thereon.

By not exercising jurisdiction to either allow or refuse the prayer of the petitioners, KMC has maintained a stony silence and has left the petitioners in the lurch. The petitioners are neither in a position to effect repairs nor can demolish the structure. The petitioners are certainly being deprived of their right to enjoy their personal property according to their own wish and desire. The same cannot be permitted by the Court.

The Court, not being an expert to assess the structural health of the subject structure, has no other alternative but to remand the petitioners to KMC for taking a decision on the prayer made by them.

In view of the above, the instant writ petition is disposed of by directing the Municipal Commissioner and the concerned officer of the Heritage Conservation Committee to take a decision on the representation filed by the petitioners in May, 2022, in accordance with law, after giving reasonable opportunity of hearing to all the necessary parties and to pass a reasoned order and communicate the same to the parties.

Prior to taking a decision in the matter the Municipal Commissioner through his delegate and a competent officer of the Heritage Conservation Committee shall conduct spot inspection of the property upon prior notice to the necessary parties to ascertain the structural health of the subject structure. The report of spot inspection shall be circulated amongst all the parties. After

circulation of the spot inspection report, hearing shall be conducted to allow the parties to produce necessary documents and make submission in support of their stand. Final order shall be passed thereafter.

The entire exercise shall be conducted and concluded at the earliest, but positively within a period of twelve weeks from the date of communication of this order.”

15. Being aggrieved, the writ petitioners have come up by way of this appeal.

16. Learned Advocate for the appellants submitted that the list of heritage properties was not published by KMC following due process of law. More specifically, according to the appellants, the provisions of Sections 425B, 425C and 425D of the KMC Act, 1980, have not been complied with by KMC prior to publishing the list of heritage properties. We will note the said provisions later in this judgment. It was submitted that the entire list of heritage properties is arbitrary. There was no application of mind by the competent authority to individual properties to decide whether a particular property should be declared to be heritage. The Mayor-in-Council mechanically adopted the recommendation of an Expert Committee set up by the Government of West Bengal. Even such approval was in principle and subject to proper survey and documentation to be made by the Heritage Conservation Committee through conservationists, architects and experts. No survey or documentation was ever undertaken. There is no formation of opinion by KMC, which is a pre-requisite under Section 425B, that a

particular building should be preserved or conserved for “historical, architectural, environmental or ecological purpose”.

17. It was further argued on behalf of the appellants that on January 12, 2009, when the concerned resolution was passed at a meeting of the Heritage Conservation Committee in respect of gradation of buildings, there was no Coram for the meeting. The artist member of HCC, Chintamani Kar had passed away prior to such meeting. Two other members of HCC, namely, the environmentalist and the chief valuer and surveyor of KMC were also not present. Further, in Section 425 B of the KMC Act, only four parameters are mentioned for declaring a property to be heritage, i.e., historical, architectural and environmental and ecological. HCC, by travelling beyond the statute has added a fifth parameter, i.e., ‘social significance’. HCC did not have the power to do so.

18. The following judgments were relied upon by learned Advocate for the appellants:-

(i) Kamal Kumar Dey v. Director General, Archaeological Survey of India, New Delhi & Ors. Reported at (2016) 1 CHN 329, Paras 16, 17, 18, 63 and 65.

(ii) Yusuf Khan v. State of West Bengal & Ors. reported at 2019 SCC OnLine Cal 2689, paras 24 - 31.

(iii) Kolkata municipal Corporation & Ors. v. Yusuf Khan & Ors. judgment dated March 25, 2021, passed by Division Bench in APO No. 148 of 2019.

(iv) Sri Bimal Chandra Saha v. The Kolkata Municipal Corporation & Ors., reported in 2017 SCC OnLine Cal 14783.

(v) Purti West Enclave Private Limited & Anr. v. Kolkata Municipal Corporation & Ors., reported at (2016) SCC OnLine Cal 522 = (2016) 3 Cal LJ 56.

19. Learned Advocate for KMC, submitted that this appeal is not maintainable. The appellants have not approached the Division Bench with clean hands. In compliance with the judgment and order impugned in this appeal, HCC served an inspection notice on the appellants. An inspection of the concerned property was held by the HCC members on July 4, 2023, in the presence of the appellants. The appellants participated in such inspection without any protest or without informing the HCC members that they were about to prefer the present appeal. The appeal was preferred on July 10, 2023. By participating in the joint inspection on July 4, 2023, the appellants have accepted the judgment and order dated May 12, 2023, and are estopped from challenging the same.

20. The appellants have also filed an application in this appeal being GA/2/2023 challenging the inspection report of HCC dated July 4, 2023. The averments in that application would also show that the appellants have accepted the judgment and order sought to be assailed in this appeal. The appellants have challenged the said Inspection Report by relying on directions issued by the learned Single Judge in the judgment and order under appeal.

21. As regards declaration of the concerned premises as heritage, the submission of learned Advocate for KMC may be summarised as follows:-

“(a) On or about October 6, 1997, the Government of West Bengal constituted an Expert Committee to identify and recommend buildings in Kolkata as heritage. That Committee prepared a list of buildings with the recommendation to declare the buildings as heritage.

(b) That report was forwarded to the Municipal Commissioner for taking action in accordance with the provisions of the KMC Act, 1980.

(c) In August, 1999, notices were published in “Ananda Bazar Patrika” and “The Telegraph” newspapers informing the public at large that the list of heritage buildings will be kept at different KMC offices for public inspection and objection, if any.

(d) In April, 2000, the HCC recommended 828 numbers of buildings for being listed as heritage. One of such buildings is the subject premises.

(e) In May, 2000, the Mayor-in-Council primarily accepted the recommendation of HCC. In September, 2000, the recommendation of the Mayor-in-Council was approved at a meeting of KMC.

(f) In October, 2000, HCC reviewed the earlier list and recommended 520 more buildings to be listed as heritage. The

same was accepted by the Mayor-in-Council in January, 2001. Subsequently, KMC approved the same at its meeting.

(g) It appears from the minutes of the meeting of HCC held on January 12, 2009, that by a resolution of HCC dated June 23, 2006 and approved by the Mayor-in-Council on June 30, 2006, a sub-committee was constituted. That sub-committee determined the Grades of the heritage buildings based on historic importance, social significance and architectural significance of the buildings. The sub-committee placed its final list of heritage buildings for Grade – I, Grade –IIA and Grade- IIB before the HCC. At its meeting held on January 12, 2009, HCC accepted that final list of heritage buildings. That list was subsequently placed before the Mayor-in-Council on January 22, 2009, which recommended acceptance of the aforesaid final list of heritage buildings. At its meetings dated February 25, 2001, the Corporation accepted the final list.”

22. Learned Advocate submitted that KMC declared the concerned premises including the said building as heritage strictly following the provisions of Section 425B of the KMC Act 1980.

23. Learned Advocate then referred to 12 documents starting from a document whereby the Expert Committee was set up by the Government of West Bengal and ending with the resolution of KMC dated February 25, 2009, approving the recommendation of the Mayor-in-Council dated January 22, 2009, whereby the Mayor-in-Council accepted the

recommendation of the HCC dated January 12, 2009, as regards declaration of the listed properties as heritage. It was submitted that the aforesaid documents would clearly demonstrate that there was no procedural lacunae in so far as declaration of the concerned properties as heritage is concerned.

Court's view

24. Before discussing the arguments advanced on behalf of the parties, it may be helpful to note the relevant provisions of the KMC Act 1980:-

“S.2(42A). “heritage building” means any building of one or more premises, or any part thereof, which requires preservation and conservation for historical, architectural, environmental or ecological purpose, and includes such portion of the land adjoining such building or any part thereof as may be required for fencing or covering or otherwise preserving such building, and also includes the areas and buildings requiring preservation and conservation for the purpose as aforesaid under sub-clause (ii) of Clause (a) of sub-section (4) of Section 31 of the West Bengal Town and Country (planning and Development) Act, 1979 (West Ben. Act XIII of 1979);

S.425B. Power of Corporation to declare a building as a heritage building.— Where the Corporation, on the recommendation of the Heritage Conservation Committee and also of the Mayor-in-Council, is of the opinion that any building in Kolkata should be preserved and conserved for historical, architectural,

environmental or ecological purpose, it may declare such building as a heritage building :

Provided that during the period when any proposal for declaring building as a heritage building is under consideration of the Heritage Conservation Committee or the Mayor-in-Council, no owner of such building, or no lessee or sub-lessee to whom such building has been leased out, shall transfer such building by way of sale, lease or mortgage without the prior approval of the Municipal Commissioner.

S.425C. Gradation of heritage building.__ The gradation of a heritage building according to its historical, architectural, environmental or ecological purpose shall be such as may be prescribed.

S.425D. Heritage Conversion Committee – (1) The Mayor-in-Council shall constitute a Committee to be called the Heritage Conversion Committee with the Municipal Commissioner as its Chairman and an officer of the Corporation as the Convenor.

(2) The Committee shall, have, in addition to the Chairman and the Convenor, seven other members of whom-

(a) one shall be nominee of the Kolkata Metropolitan Development Authority,

(b) one shall be the Director of the Development of Archeology, Government of West Bengal, or his nominee,

(c) one shall be an eminent architect,

(d) one shall be an artist,

- (e) one shall be an environmentalist,
 - (f) one shall be a historian, and
 - (g) one shall be the Chief Valuer and Surveyor of the Corporation.
- (3) The Committee may co-opt one person to be nominated by the concerned department of the State government while dealing with any land or building under the management of the said department.
- (4) The Committee shall, in accordance with the provisions of this Act and the rules and the regulations made thereunder, scrutinize every application or proposal for declaration of a building as a heritage building and recommend to, and also advice, the Mayor-in-Council in respect of the preservation and conservation of such building as a heritage building.
- (5) The Committee shall meet at such periodical interval as may be determined by the Mayor-in-Council.
- (6) The Municipal Commissioner shall, in the case of emergency, take such measures as may be necessary for the preservation and conservation of a heritage building, provided that such measures shall be required to be approved by the Heritage Conversion Committee at its meeting.

S.425-O. When heritage building ceases to be heritage building. — If the Corporation decides that any heritage building has ceased to be of public interest or has lost its importance for any reason whatsoever, it may, with the approval of the State

Government, declare that such heritage building has ceased to be a heritage building for the purposes of this Act.”

25. The basic thrust of the appellants’ argument before the learned Single Judge was that the building in question is in a dilapidated condition. In fact, the building is in a ruinous and dangerous state. It is the statutory duty of KMC to demolish or permit demolition of such building as contemplated in Section 411 of the KMC Act, 1980, read with Section 29(k) thereof. The appellants/writ petitioners relied on a report of a faculty member of Jadavpur University, department of Architecture, in support of the contention that the concerned building is incapable of being restored by repair works.

26. It does not appear from the judgment of the learned Single Judge that the point of due statutory procedure not being followed for declaring the subject premises as heritage, was urged before the learned Single Judge. However, before us, the main emphasis of the appellants’ argument was on non-compliance of statutory provisions before declaring the concerned property and other properties as heritage.

27. It was argued on behalf of the appellants that there was no independent application of mind by the HCC prior to accepting the list of heritage properties in Kolkata, prepared by the Expert Committee constituted by the Government. It was further contended that the HCC was not constituted in terms of Section 425D of the KMC Act. It was submitted that Section 425D (4) of the KMC Act required the HCC to apply its mind to each individual property before including the same in the heritage list. This was not done.

28. There are several reasons why we are not inclined to interfere with the judgment and order under appeal.

29. Firstly, the premises in question was declared as a Grade II-A heritage property by KMC in the year 2009. The appellants approached the learned Single Judge after a delay of about 13 years, in the year 2022. Writs of certiorari, mandamus and prohibition are equitable reliefs. A writ Court is a Court of equity. It is well established that delay defeats equity. A Court of equity will not come to the aid of an indolent petitioner who approaches the Court after inordinate and unexplained delay. This is not a question of limitation or the relief claimed being time-barred. The provisions of the Limitation Act, 1963, do not apply in terms of writ proceedings. However, the principles of that Act apply. The time period prescribed in the schedule to the Limitation Act for approaching a Court of law in respect of a particular cause of action, provides the general guideline as to the time period after which the writ court should refuse to entertain an application. It is really a question of laches and/or acquiescence on the part of the so-called aggrieved party.

30. In the present case, the declaration of the concerned property as heritage, was, at all material times, in public domain. The appellants/writ petitioners did not raise any protest contemporaneously or within a reasonable time period thereafter. They could have and should have, if they were truly aggrieved, promptly and with diligence, made an application under Section 425 O of the KMC Act, which has been extracted above. If the appellants contend that this was not a case for applying under Section 425 O of the KMC Act but this was a case where the concerned premises should

not have been included in the heritage list in the first place, then they should have approached a competent court with such grievance within a reasonable time period after declaration of the concerned property as heritage. The appellants did not do so. Although they entered into some correspondence with KMC for grant of permission to demolish the existing structure and construct a new building, the first real step that the appellants took was 13 years after their alleged cause of action arose in 2009. In our opinion, the learned Single Judge would have been justified in dismissing the writ petition on the ground of delay and laches alone. The learned Judge did not do so in Her Ladyship's discretion and in my view, provided sufficient relief to the writ petitioners. The order under appeal warrants no interference.

31. Secondly, in terms of the learned Single Judge's judgment and order, a notice of inspection was issued by the KMC authorities intimating all concerned including the owners of the property in question that the property would be inspected on July 4, 2023. Such inspection took place. The writ petitioners being the owners of the property, participated in such inspection without any protest or reservation. They also filed an application in the writ petition challenging the report of such inspection. Such conduct of the appellants read with the averments made in the application filed taking exception to the inspection report, being IA No. GA 1 of 2023, would indubitably show that the writ petitioners accepted the learned Single Judge's order and acted in terms thereof. Having done so, they ought not to be permitted to assail that order by way of appeal.

32. It may be noted that while the local inspection took place on July 4, 2023, the appeal was presented in the department on July 12, 2023. It is fairly obvious that having had an inkling that the inspection report may not be in their favour, the writ petitioners filed the appeal challenging the order in terms whereof the local inspection was held. This is clever practice but not necessarily appreciated.

33. Thirdly, the contention of the appellants that KMC breached statutory mandates in the matter of declaring the concerned property as heritage, does not appear to have any merit. An affidavit was filed before us on behalf of KMC affirmed by one Sudipto Kumar Chottodpadhyay, the Deputy Engineer (Civil) attached to the Environment and Heritage Department of KMC, on September 6, 2023. Copies of various internal documents including minutes of meetings of HCC and Mayor-in-Council have been annexed to such affidavit. It would appear from such documents that the Expert Committee's report was accepted by HCC after considering and discussing the same. Particular properties were discussed. There were deliberations concerning various properties. A sub-Committee was constituted by the HCC for "scrutinising and revisiting" each of the listed heritage buildings. The same was done. It does not appear that the HCC mechanically and without any independent application of mind merely adopted the recommendation of the Expert Committee constituted by the Government for identification of heritage properties in Kolkata. The recommendation of the HCC was approved by the Mayor-in-Council by its resolution dated January 22, 2009. Finally, KMC at its meeting dated February 25, 2009, approved the recommendation of the Mayor-in-Council.

Hence, it appears that the list of heritage properties was prepared in accordance with the provisions of Chapter XXIIIA of the KMC Act, 1980.

34. In so far as the constitution of the HCC is concerned, from the documents annexed to the aforesaid affidavit of KMC, it appears that the HCC was constituted in accordance with the provisions contained in Section 425D of the KMC Act. From Item no: M1183 dated January 24, 1998, extracted from the relevant Official Book/ Register of KMC, it appears that the Heritage Conservation Committee was constituted with the following members:-

CHAIRMAN : Municipal Commissioner (as prescribed by the KMC Act)

CONVENOR : Municipal Architect & Town Planner (as a C.M.C Officer)

MEMBERS:

- 1) Representative of the CMDA (in terms of the Act)
- 2) Director, Department of Archaeology, Govt. of West Bengal or his nominee.
- 3) Eminent Architect: Prof. Samir Rakshit.
- 4) Eminent Artist: Sri Chintamani Kar.
- 5) Environmentalist: A representative from the Environment Department, Govt. of West Bengal, Dr. Deb Kumar Bose.
- 6) Historian: Prof. Barun Dey.
- 7) Chief Valuer & Surveyor of the Corporation

The aforesaid Item was placed before the Mayor-in-Council which approved the same.

35. Therefore, we do not find any procedural lacunae or violation of any statutory provision on the part of KMC in declaring the concerned property as heritage.

36. The argument of the appellants that the resolution adopted by HCC at its meeting dated January 12, 2009, is bad in law because 2 members were absent, does not impress us. There is no provision in Chapter XXIIIA or elsewhere in the KMC Act, requiring all the members of HCC to be present at its meetings or that absence of one or two members would render invalid a decision taken at a meeting.

In this connection one may note that Section 97 sub section (1) of the KMC Act, 1980 provides that “the quorum necessary for the transaction of the business at a meeting of the Corporation shall be one-fifth of the total number of members of the Corporation.” In our view, this provision will also apply to a meeting of any Committee of the Corporation, including the HCC. At the meeting dated January 12, 2009, 7 out of 9 members of the Committee were present. Hence there was a quorum. There was nothing irregular with the meeting.

Section 111 of the KMC Act provides that, “The State Government may, by rules, provide for such matters, not provided in this Act, relating to the conduct of business of the Corporation or of its Committees as it may deem necessary.” However, the parties did not place before us rules framed by the State Government relating to conduct of business of HCC. There do

not appear to be such rules. Hence the provisions of Section 97 would squarely apply to a meeting of the HCC.

Still further, one may also note the provisions of Section 108 and 112 of the KMC Act which provide as follows:-

“108. Keeping of minutes and proceedings.- Minutes of each meeting of the Corporation and a committee of the Corporation recording therein the names of the members present at such meeting and the proceedings of each such meeting shall be drawn up and entered in a book to be kept for that purpose and shall be laid before the next meeting of the Corporation or such committee, as the case may be, and signed at such meeting by the Presiding Officer thereof.

112. Validation of acts and proceedings.- (1) No act or proceeding of the Corporation or any Committee of the Corporation under this Act shall be called in question merely on the ground of-

(a) the existence of any vacancy in, or any defect in the constitution of, the Corporation or any Committee of the Corporation, or

(b) any member of the Corporation having voted or taken part in any proceedings in contravention of the provisions of section 101. or

(c) any defect or irregularity not affecting the merit of any case to which such defects or irregularity relates.

(2) Every meeting of the Corporation or any Committee of the Corporation, the minutes of the proceedings of which have been

duly signed under section 108, shall be deemed to have been duly convened and to be free from any defect or irregularity.”

There was no defect in the initial Constitution of HCC as we have opined above. The requisite quorum was there for the meeting held on January 12, 2009. The proceedings at the meeting dated January 12, 2009, appear to have been minuted and signed as required by Section 108 of the KMC Act. The meeting shall, therefore, be deemed to have been duly convened and to be free from any defect or irregularity.

37. Fourthly, a public interest litigation has been filed by a body called India National Trust for Art and Cultural Heritage (in short ‘INTACH’), being W.P. No. 12676 (W) of 2019. The main contention of the petitioners in that writ petition is that KMC is down-grading heritage properties classified under a particular grade arbitrarily and without following due process of law. In that writ application an interim order was passed on July 26, 2019, by a Coordinate Bench, in terms of Prayers (j) and (k) of the writ petition. Those prayers are set out below:-

“(j) An order of injunction restraining the respondents above named and/or each one of them from giving any effect to any decision of downgrading/delisting any other buildings during the pendency of this instant writ petition,

(k) An order of injunction restraining the respondents above named and/or each one of them from causing any demolition of any building that have been downgraded/delisted or any demolition whatsoever of any building that were once declared as heritage building and has now presently been

downgraded/delisted during the pendency of this instant writ petition.”

38. We are told that the aforesaid writ petition is still pending and the said interim order is still in operation. In other words, KMC continues to suffer an interim order restraining it from giving effect to any decision it might have taken to downgrade or de-list any building which was declared to be a heritage property. If we allow the prayers made in the instant writ petition which have been set out hereinabove, such order would be in direct conflict with the interim order that is in force in W.P.A. NO. 12676 of 2019. Such a situation cannot be countenanced as the same would be contrary to judicial decorum and would amount to judicial anarchy.

39. Having said all of the above, we are not oblivious of the importance of a citizens' right to property. Such a right may not be a fundamental right any more. However, it is still a valuable Constitutional right enshrined in Article 300A of the Constitution of India and has come to be recognised as a human right. Once the heritage tag is put on a property, the right of the owner of the property to deal with it becomes severely restricted. For example, a Grade – I Heritage property cannot be touched at all. The owner cannot reconstruct the property or do anything which will alter the external appearance of the property. We are of the view that before a property is declared as heritage, the owner thereof should be afforded an opportunity of showing cause as to why such course of action should not be adopted. Preferably, an opportunity of hearing should be granted to the owner. Since, marking a property as heritage has adverse civil consequences for its owner by curtailment of his right and / or freedom to deal with the property in the

manner he wishes, the salutary principles of natural justice require that the owner be granted an opportunity to raise his objection to KMC's proposal to declare his property as heritage.

40. This is exactly what the learned Single Judge has directed, in effect and substance. The competent authority in KMC has been directed to consider the appellants' representation made on May 12, 2023 and decide the issue of whether or not demolition and reconstruction of the concerned building may be permitted upon removing the same from the heritage list or appropriately down-grading the same. As recorded above, local inspection has already been held by the KMC Authorities with the participation of the appellants. The inspection report has been circulated amongst the concerned parties. The competent authority may take a final decision after affording an opportunity of hearing to the appellants in terms of the learned Single Judge's order. This exercise must be concluded within 8 weeks from the date of the instant judgment and order. We clarify that at the hearing, the appellants will be entitled to urge all point as may be open to them in law and in the facts of the case, including the point that the property in question should not have been declared as heritage, in the first place.

41. A question may arise as to whether even the course of action indicated above will not be contrary to or in conflict with the interim order dated July 26, 2019, passed in INTACH's writ petition being W.P. No. 12676 (W) of 2019. In our opinion, there will be no such problem. By an order dated March 30, 2022, passed in INTACH's writ petition and two interlocutory applications filed therein by two property owners challenging the heritage tag, a Coordinate Bench in effect clarified that there would be "no

impediment to individual writ applications or any other proceeding by the said parties proceeding in their own way”. The effect of such order appears to be that a property owner may approach the competent authority in KMC requesting for removal of the heritage tag from the property or appropriate down-gradation. The interim order which is in operation in INTACH’s writ petition would not stand in the way of the KMC authorities considering such a request / representation and taking a decision thereon. However, such decision cannot be given effect to without the leave of the Coordinate Bench which is in seisin of W.P.A 12676 of 2019 in which the interim order of restraint, as indicated above, continues to operate.

42. With the aforesaid clarifications, the appeal and the connected applications stand disposed of. There will be no orders as to costs.

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

(ARIJIT BANERJEE, J.)

I agree.

(APURBA SINHA RAY, J.)