

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 14633 of 2021

With

CAN 1 of 2023

M/s. Bajoria Holdings Pvt. Ltd. and Anr.

Vs.

Kolkata Municipal Corporation and Anr.

For the Petitioners : Mr. Abhrajit Mitra, Sr. Adv.
Mr. S. Mukherjee,
Mr. Saunak Sengupta,
Mr. S.K. Singhi,
Ms. Riti Basu,
Ms. Piyali Pan,
Mr. Ayush Jain.

For the KMC : Mr. Alak Kumar Ghosh,
Mr. Fazlu Haque.

Hearing concluded on : 28.02.2025

Judgment on : 27.03.2025

SHAMPA DUTT (PAUL), J. :

1. The present writ application has been preferred praying for direction upon the respondent authorities to renew the building permit of the petitioners herein bearing no. 2011120174 (174/XII/11-12) dated 13th June, 2011 with effect from 25th September, 2020.

2. A further prayer has been made for direction upon the respondent authorities to consider the petitioners' representation dated 11.06.2021.
3. **The petitioners' case in short as per their list of dates is as follows:-**

“On 23rd October, 2007 – The Petitioner no. 1 applied for land to set up an Outsource Management Hub ("OMH"). The Petitioner no. 1 was allotted a piece of land measuring more or less 23.54 cottahs at Plot No. IND/3B/6 Sector-J at EKADP, Zone 1 (hereinafter referred to as the "said land") at the rate of Rs 10 lakhs per cottah aggregating to a total sum of Rs.2,35,40,000/- as will be apparent from the letter issued by Kolkata Metropolitan Development Authority (hereinafter referred to as "KMDA").

***On 4th February, 2008** - The possession of the said land was handed over to the Petitioner no.1 and the Petitioner no. 1 was given the possession certificate.*

***On 12th March, 2008** - A Deed of License was executed by and between the Petitioner no.1 and the KMDA for a consideration of Rs.2,35,40,000/-.*

***2008** - The Petitioner no.1 applied for and received electricity connection from the Calcutta Electricity Supply Corporation Limited.*

***8th August, 2008** - The Respondent KMC mutated the name of the Petitioner no. 1, pursuant to their application, in its records and the Petitioner no. 1 has been paying all the applicable taxes in relation to the said land to the Respondent KMC during the period **2007-2021**.*

In 2008, The work on the OMH was affected due to the onset of a worldwide economic recession. The OMH being a project dependent on outsourcing of work from international countries suffered on reasons wholly beyond its control. The work on the OMH commenced as soon as there was an improvement in the economic situation in the world in 2009.

1st October, 2009 - *The Petitioner no. 1 gave notice to the KMDA regarding commencement of construction work.*

August/September 2010 – *The Petitioner no. 1 obtained a no-objection certificate from the West Bengal Fire and Emergency Services Department of the Government of West Bengal.*

October, 2010 –*The Petitioner no. 1 also obtained a tax clearance certificate from the Respondent KMC.*

9th December, 2010 – *The Petitioner no. 1 applied for a building permit to the Respondent KMC to commence construction on the said land.*

15th December, 2010 – ***The Municipal Building Committee of the Respondent KMC approved the building plans of the Petitioner no. 1.***

21st February, 2011 – *The Petitioner no. 1 received a letter seeking cancellation of the allotment of land by the KMDA. The Petitioner no.1 challenged the cancellation letter before the High Court at Calcutta by filing a writ petition being WP No. 5324 (W) of 2011.*

23rd March, 2011 – ***The High Court passed an order staying the operation of the cancellation letter and restraining the KMDA from creating and/or encumbering any third party right over the said land. The Petitioner no.1 was also directed to not raise any further***

construction. The interim order of stay was extended from time to time.

13th June, 2011 – The Respondent KMC sanctioned the building permit bearing no. 2011120174 (174/XII/11-12) dated 13 June 2011 to the Petitioner no.1 for 5 (five) years with effect from 13th June, 2011 against **Rs. 44,58,870/- sanction fee paid by the petitioners.**

18th November, 2016 – The Petitioner no. 1 made an application before the Respondent KMC for a formal **renewal** of the building permit.

25th September, 2020 – The Hon'ble High Court was pleased to dispose of the said petition **while directing permanent stay of the cancellation letter dated 21st February, 2011. The KMDA was directed to independently decide the matter on merits by passing a reasoned order.**

11th June, 2021 - The petitioners made a representation to the respondent KMC praying that the petitioners application dated 18th November, 2016 be considered and that the said building permit be formally renewed for another term of 5 years with effect from 25th September, 2020. The petitioners also sought an opportunity of hearing.”

4. Supplementary affidavit is also on record.
5. Written notes have been filed by the petitioners herein, relying upon the following judgments in support of their case:-

i. Circular Properties (P) Limited & Ors. vs Calcutta Municipal Corporation & Ors., 1995 SCC OnLine Cal 326.

- ii. ***Kumar Omprakash vs Calcutta Landing & Shipping Company Limited & Ors., in MAT 2189 of 2024, decided on January 8, 2025, Calcutta High Court.***
 - iii. ***Soumendra Nath Sen vs The State of West Bengal & Ors., 2013 SCC OnLine Cal 11690.***
 - iv. ***The Kolkata Municipal Corporation & Ors. vs M/s. Adya Residency (P) Limited and M/s. Rajveer Infrastructure Reality Pvt. Ltd. & Ors., 2022 SCC OnLine Cal 3037.***
 - v. ***Calcutta Landing and Shipping Company Ltd. vs Howrah Municipal Corporation & Ors, in WPA No. 26692 of 2023, decided on 08.10.2024, Calcutta High Court.***
6. The Kolkata Municipal Corporation has also filed their written notes and relied upon the judgment in ***The Kolkata Municipal Corporation & Ors. vs M/s. Adya Residency (P) Limited and M/s. Rajveer Infrastructure Reality Pvt. Ltd. & Ors., in A.P.O. 47 of 2022 with W.P.O. 275 of 2020 of Calcutta High Court, decided on 30.09.2022.***
7. **Mr. Alok Ghosh, learned Senior counsel for the KMC has stressed on two points in his written notes:-**

“a) The petitioners could not commence the construction of the building in accordance with the sanction plan within the two years being stipulated statutory period under the

KMC Act-1980 and Rules framed there under. The petitioners applied for renewal of the building permit in respect of the premises No. 755, Anandapur, Assessee No. 311080132807, Borough-XI, dated June 11, 2021 that is on the date of the expiry of ten years from the date of sanction of the building plan. By this time the sanctioned building plan stood lapsed by operation of law.

The extension of time to complete the construction under Rule 15(3) of the KMC Building Rules 2009 couldn't be granted since long before the date of application it stood lapsed by operation of law. In fact there was sanctioned building plan for construction of extension.

- b) Considering that a period of more than 10 years have passed, there has been several change in rules, laws and social requirements while considering an application for sanction of a building permit. The facts considered ten (10) years back are not the same now and it is on this consideration the Rule 15(3) has been enacted.”*

8. On the other hand **learned Senior counsel Mr. Abhrajit Mitra appearing for the petitioners** submits that the petitioners had all intentions to carry out the construction within the period as per rules but could not do so due to the restraining order passed by the High Court.
9. In ***The Kolkata Municipal Corporation & Ors. vs M/s. Adya Residency (P) Limited and M/s. Rajveer Infrastructure Reality Pvt. Ltd. & Ors. (Supra)***, the construction work had

started and progressed substantially in accordance with the sanctioned plan.

10. **In the present case**, the sanctioned plan was issued after the stay/restraining order was passed by the High Court.
11. The stay order was granted by the High Court on **23rd March, 2011** in respect of the cancellation order of allotment of plot by KMDA and also **restraining the petitioners from making any construction**. In such circumstances, the petitioners should have informed the KMC about the restraining order, so that **on 13th June, 2011** the sanctioned plan/building permit would not have been issued, **considering that the petitioners had been restrained from making construction**.
12. Such a timely step would have not given rise to such complications.
13. The original sanctioned plan was issued on 13th June, 2011 for a period of 5 years.
14. Prayer for renewal of building permit was made on 18th November, 2016, but KMC did not act upon it.
15. So, though the prayer/application for renewal was made after the validity had expired, it had been made prior to ten years from the date of issue of permit (Rule 15(3) of KMC Building Rules, 2009).

16. WP 5324(W) of 2011 was disposed of, permanently staying KMDA's cancellation letter.
17. On 11th June, 2021, another representation was made by the petitioners praying for extension for a period of five year of the sanctioned building plan.
18. Once again there being no response by the KMC, the present writ petition has been filed.
19. KMDA's decision of cancellation (second time) of allotment was set aside in WPA 18294 of 2022. KMDA then allowed extension of time period by three years on **9th September, 2024** on issuing a demand notice for a sum of Rs. 1,90,18,297/- which has been paid by the petitioners on 3rd October, 2024.
20. Another application praying for extension of the validity of the sanctioned plan was made by the petitioners on 18th November, 2024.
21. **The period/tenure under Rule 15(3) of the KMC Building Rules, of 10 years expired on 12th June, 2021, even though two applications dated 18th November, 2016 and 11th June, 2021 for renewal of building permit were pending. No action was taken by the KMC, even though the writ application being WP No. 5324(W) of 2011 was disposed of on 25th September, 2020, before the expiry of the maximum period of 10 years.**

22. **In the present case**, rules/principles of equity demands that the petitioners cannot be made to suffer for such inaction on the part of the KMC.
23. Accordingly it is directed that the Municipal Commissioner, KMC shall **renew** the validity of the sanctioned building permit issued in favour of the petitioners herein **subject to additional restrictions/rules if any**, for an initial period of five years, which may be further renewed/extended if deemed necessary for such period which shall not exceed 10 (ten) years in all, from the date of the renewal, which is to be granted as per this order.
24. It is further directed that the KMDA shall also grant extensions as required/permitted under the rules to enable the said construction.
25. **WPA 14633 of 2021 is accordingly disposed of.**
26. All connected application, if any, stands disposed of.
27. Interim order, if any, stands vacated.
28. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

[Shampa Dutt (Paul), J.]