

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

MAT 2189 of 2024

Kumar Omprakash

Vs.

Calcutta Landing & Shipping Company Limited and Ors.

With

FMA 1514 of 2024

With

IA No.: CAN 1 of 2024

Kumar Omprakash

Vs.

Howrah Municipal Corporation and Ors.

With

FMA 25 of 2025

Calcutta Landing and Shipping Company Limited

Vs.

Howrah Municipal Corporation and Ors.

For the appellant in MAT 2189 of 2024, : Mr. Surajit Nath Mitra, Ld. Sr. Adv.

FMA 1514 of 2024 and for the respondent Mr. Kumar Gupta, Advocate

No.4 in FMA 25 of 2025

Mr. Debjit Mukherjee, Advocate

Mr. Deepak Jain, Advocate

For the respondent no.1 in MAT 2189 : Mr. Joydeep Kar, Ld. Sr. Adv.
of 2024, for the respondent no.6 in Mr. Debabrata Saha Roy, Ld. Sr. Adv.
FMA 1514 of 2024 and for the appellant Mr. Pingal Bhattacharyya, Advocate
in FMA 25 of 2025.

Mr. Subhankar Das, Advocate

Mr. Neil Basu, Advocate

Mr. Sankha Biswas, Advocate

For the Howrah Municipal Corporation : Mr. Sandipan Banerjee, Advocate
Mr. Ankit Sureka, Advocate

Heard & Judgment on : January 8, 2025

DEBANGSU BASAK, J.:-

1. Three appeals are taken up for analogous consideration as they emanate out of the same impugned judgment and order dated October 8, 2024 passed in W.P.A. 26692 of 2023 and W.P.A. 15643 of 2024.
2. The three appeals are MAT 2189 of 2024, FMA 1514 of 2024 and FMA 25 of 2025.
3. MAT 2189 of 2024 and FMA 1514 of 2024 are at the behest of a person who claims ownership in respect of an immovable property.
4. FMA 25 of 2025 is at the behest of a person who is in possession of such immovable property.
5. Person claiming himself to be the owner of the immovable property, namely, Kumar Omprakash, (for the sake of convenience, hereinafter referred to as 'Omprakash') filed W.P.A. 15643 of 2024 contending that

the building plan sanctioned in respect of the property concerned was not proper and sought cancellation of the same. Person in possession of the immovable property is concerned being Calcutta Landing and Shipping Company Limited (hereinafter referred to as 'Calcutta Landing' for the sake of convenience) applied for renewal of a sanctioned building plan in respect of the same immovable property and challenged the order of refusal to renew the sanctioned building plan by Howrah Municipal Corporation by way of W.P.A. 26692 of 2023.

6. Learned Senior Advocate appearing for the Omprakash submits that, notwithstanding the order dated May 18, 2022 passed by the revisional Court dismissing the Title Suit of his client in respect of the immovable property is concerned, the issue as to unauthorized construction or the sanctioned building plan not being proper subsists. He submits that his client is the owner of the immovable property. No building plan could be sanctioned in respect of such immovable property without the consent of his client. His client never gave consent to the sanction of the building plan for immovable property concerned.
7. Learned Senior Advocate appearing for the Omprakash draws the attention of the Court to the prayers of the plaint of Title Suit No.543 of 2015. He also draws the attention of the Court to the orders passed in such Title Suit from time to time. He submits that, an order of

injunction subsisted in such Title Suit right up to the Supreme Court stage.

8. Learned Senior Advocate appearing for the Omprakash draws the attention of the Court to various orders passed in such Title Suit including orders of the revisional Court and the Hon'ble Supreme Court with regard to the prayer for injunction.
9. Learned Senior Advocate appearing for the Omprakash draws the attention of the Court to the alleged infractions in the grant of sanction. Moreover, he draws the attention of the Court to the fact that, there is a review petition pending directed against the judgment and order dated May 18, 2022 passed by the revisional Court in C.O. 1065 of 2021 directed against the Order No.42 dated March 24, 2021 passed by the Civil Court in Title Suit No.543 of 2015.
10. Learned Senior Advocate appearing for the Omprakash draws the attention of the Court to the fact that the Calcutta Landing did not make any construction within the period of two years specified by the Statute to renew the sanctioned building plan for construction. Therefore, according to him, the sanctioned building plan, assuming the same was correctly granted, expired. Question of renewal thereof according to him does not arise.
11. Learned Senior Advocate appearing for the Calcutta Landing submits that, there subsisted interim orders in the Title Suit passed from time to time which prevented his client from making construction within the

period of two years, permitted to make the construction subsequent to the grant of sanction. He submits that, the sanction was granted on November 1, 2013. Thereafter, Title Suit No.543 of 2015 was filed. In such Title Suit, from time to time various orders were passed which were *interlocutory* in nature. Those orders prevented his client from making or continuing with the construction in terms of the sanctioned building plan.

12. Learned Senior Advocate appearing for the Calcutta Landing submits that, subsequent to the order of the revisional court dated May 18, 2022, a Special Leave Petition was filed by the Omprakash which was dismissed by the Hon'ble Supreme Court on June 2, 2022. He submits that, thereafter, Omprakash filed a writ petition resulting in the impugned judgment and order. He submits that, the same points as canvassed in the plaint of Title Suit No.543 of 2015 were sought to be reiterated in the writ petition of Omprakash. Omprakash cannot be permitted to recanvass the same issues with regard to the sanction subsequent to the order of the revisional court dated May 18, 2022 and the order of the Hon'ble Supreme Court dated June 2, 2022.
13. Learned Senior Advocate appearing for the Calcutta Landing submits that, the appeal of his client being FMA 25 of 2025 should be allowed. Learned Single Judge according to him erred in imposing 50 per cent of the sanctioned fees for the renewal of the sanction. He submits that,

his client was not at fault in not making the construction. Such fact should be taken into consideration.

14. Learned Advocate appearing for the Howrah Municipal Corporation submits that, Howrah Municipal Corporation adopted the Kolkata Municipal Corporation Building Rules, 2005. He draws the attention of the Court to Rule 15(3) thereof and submits that, although Howrah Municipal Corporation is entitled to charge fees for the renewal of a sanctioned building plan, nonetheless the fees to be charged are yet to be prescribed by Howrah Municipal Corporation. He submits that, the imposition of 50 per cent of the sanctioned fees is just and reasonable and that Calcutta Landing should be directed to pay the same.
15. Disputed property is lying and situate within the jurisdiction of Howrah Municipal Corporation. On an application for grant of sanction of a building plan made by the Calcutta Landing, Howrah Municipal Corporation on November 1, 2013 granted sanction thereof.
16. Omprakash filed Title Suit No.543 of 2015 in which, Omprakash claimed ownership of the immovable property and assailed the grant of sanction by Howrah Municipal Corporation for construction to Calcutta Landing.
17. Various *interlocutory* orders were passed from time to time in Title Suit No.543 of 2015 by the learned Trial Judge, appeal Court and the revisional court which are in nature of injunctions. Orders of injunctions also received consideration of the Hon'ble Supreme Court.

On and of Calcutta Landing was prevented by orders of injunction from making construction in terms of the sanctioned building plan.

18. A plan once sanctioned by Howrah Municipal Corporation remains valid for a period of two years from the date of sanction unless it is renewed. Sanction was granted on November 1, 2013. Order of injunction was passed on April 8, 2015. Injunction order was once vacated but reimposed. Materials placed on record suggest that, Calcutta Landing suffered order of injunction within the validity period of two years from the sanctioned building plan.
19. Title Suit No.543 of 2015 was dismissed by the revisional Court by the judgment and order dated May 18, 2022 passed in C.O.1065 of 2021. One of the prayers in such Title Suit related to the sanctioned building plan in respect of the property concerned. Special Leave Petition directed against the judgment and order dated May 18, 2022 passed in C.O. 1065 of 2021 was dismissed by the Hon'ble Supreme Court on June 2, 2022. Court is informed that there is a review petition pending in respect of the judgment and order dated May 18, 2022 passed in C.O. 1065 of 2021.
20. Learned Single Judge noted the entire gamut of the civil proceedings between the private parties. Learned Single Judge held that the Writ Court is not concerned with the *inter se* civil disputes between the private parties. Learned Single Judge did not enter into such arena.

21. Learned Single Judge found that there was a sanctioned building plan which expired by the efflux of time. Learned Single Judge directed Howrah Municipal Corporation to grant renewal of such sanctioned building plan upon payment of 50 per cent of the fees required for grant of sanction.
22. The review petition directed against the judgment and order dated May 18, 2022 passed in C.O. 1065 of 2021 is yet to be disposed of. In particular, as on date of the impugned judgment and order passed by the learned Single Judge, the challenge thrown by Omprakash to the validity of the sanctioned building plan failed in view of the dismissal of his suit.
23. In view of the judgment and order dated May 18, 2022 passed in C.O. 1065 of 2021, the learned Single Judge rightly did not enter into the arena of the grant of sanction of the building plan.
24. The only remaining issue is whether Calcutta Landing is entitled to renewal of the sanctioned building plan and if so, the rate of fees to be paid with regard thereto.
25. Learned Single Judge allowed renewal on payment of 50 per cent of the building plan fees required for grant of sanction. Calcutta Landing cannot be said to be disentitled from seeking renewal of the building plan. Materials placed on record suggest that Calcutta Landing was prevented by orders of injunction passed by Court from commencing or

concluding construction within the validity period of the sanctioned building plan.

26. In such circumstances, we find no ground to interfere with the direction of the learned Single Judge in allowing renewal of the sanctioned building plan.
27. So far as the quantum of fees required to be paid is concerned, we find that, Howrah Municipal Corporation adopted the Kolkata Municipal Corporation Building Rules, 2009. Although Rule 15 of the Kolkata Municipal Corporation Building Rules, 2009 permits corporation authorities to renew a sanctioned building plan on payment of renewal fees, the rates of fees to be paid are yet to be prescribed both by Kolkata Municipal Corporation as also by Howrah Municipal Corporation. In absence of fees being prescribed, learned Single Judge exercised discretion in directing payment of 50 per cent of the fees for grant of sanction. We find again no ground to interfere with the exercise of such discretion.
28. Since the review petition directed against the judgment and order dated May 18, 2022 passed in C.O. 1065 of 2021 is pending, we clarify that constructions and steps undertaken by Calcutta Landing will no doubt abide by the result of such review petition.
29. **MAT 2189 of 2014, FMA 1514 of 2024 and FMA 25 of 2025** along with all connected applications are disposed of without any order as to costs.

30. At this stage, Learned Advocate appearing for the Omprakash prays for stay of the judgment and order.
31. Such prayer was opposed on behalf of the Calcutta Landing.
32. We did not find any valid ground of appeal in respect of the three appeals for the reasons noted above.
33. The order of dismissal of the writ petition of Omprakash is upheld by us. In such circumstances, there is nothing to stay in an order of dismissal. Question of grant of stay as prayed for by Omprakash does not arise. Such prayer is considered and disallowed.

(Debangsu Basak, J.)

34. I agree.

(Md. Shabbar Rashidi, J.)

(AD)