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Ct.3.

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 29519 of 2025

Ratan Pal & Ors.
Versus
The Kolkata Municipal Corporation & Ors.

Mr. Sudip Deb, Sr. Advocate
Mr. Sumitava Chakraborty
Mr. Snehasish Dey
... For the petitioners.

Mr. Fazlul Haque
Mrs. Ina Bhattacharya
... For Kolkata Municipal Corporation.

Mr. Biplab Guha
.... For the State.

Mr. Sounak Bhattacharya
... For the respondent no.10

1. The present writ petition has been filed by six several writ petitioners who claim to be occupiers of different flats in premises no. 132/C, Raja Rajendralal Mitra Road, Ward No. 35, Kolkata – 700 085.

2. The petitioners claim to have acquired interest by virtue of a registered deed of assignment of lease and a possession letter and consequentially claim to be owners in respect of their respective portion of the property since, 2013. In support of the case, the photocopies of the deed of assignment, no objection certificate issued by the Thika Controller, electricity bills and possession letters have been disclosed.

3. It is the petitioners' case that the Thika Controller by issuing a provisional No Objection Certificate (NOC) under the provisions of West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 (hereinafter referred to as the "Thika Tenancy Act") and Rules framed thereunder had authorized construction of G+2 storied building. In support of his contention, a document dated 7th January, 2008 has been disclosed.

4. The records would reveal that the matter has a chequered history. In the year 2015, a writ petition was filed before this Court which was registered as WP 19795(W) of 2015. In connection with such proceeding an inspection was carried out by the municipal authorities on 23rd November, 2016 whereunder it was detected that on the strength of purported NOC under the provisions of the Thika Tenancy Act, four storied residential building had been constructed.

5. Records would reveal that a stop work notice under Section 401 of the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to as the "said Act") was issued as the entire four storied building was found to be illegal. The said writ petition was disposed of by directing the municipal authority to initiate a proceeding under Section 400(1) of the said Act, and to ensure that the same reaches a logical conclusion.

6. Still later, sometime in the year 2018, a further writ petition was filed complaining unauthorized construction. On this occasion, a Coordinate Bench of

this Court by order dated 21st August, 2018, noted that the Municipal Corporation upon detecting unauthorized construction had initiated a proceeding under Section 400(8) of the said Act, as such, the writ petition was disposed of without any interference.

7. Subsequently, even after seven long years since the illegally constructed building stood its ground, an application was filed before this Court seeking, in effect, implementation of the order dated 21st August, 2018, passed by a Coordinate Bench of this Court.

8. While hearing out such application, this Court by an order dated 1st December, 2025 was pleased to direct the matter to be posted for further consideration on 14th January, 2026 with a direction on the municipal authorities to file a report.

9. Today, citing extreme urgency complaining that the Municipal authorities are taking steps for demolition of the building, this matter was mentioned and upon obtaining leave for short service, the same has been filed and has accordingly been listed in the supplementary list. Upon notice to all interested parties the matter is taken up for consideration.

10. It is the petitioners' case that the municipal authorities have started enforcing the order passed under Section 400(8) of the said Act without giving an opportunity of hearing to the petitioners.

11. Mr. Deb, learned sr. advocate appears for the petitioners and has drawn the attention of this Court to

the order passed by a Co-ordinate Bench of this Court on 6th March, 2017. According to Mr. Deb, since the Court had directed initiation of proceedings under Section 400(1) of the said Act, the municipal authorities ought not to have proceeded to take steps for demolition of a building by invoking their powers under Section 400(8) of the said Act that too after nine years from the date of issuing such direction. According to him, the petitioners had never been notified. The least that was expected was service of a notice on the petitioners for the petitioners to make out a case in their defence. He also by placing before this Court the communication dated 16th December, 2025 would contend that the order for demolition of the structure had been taken on 18th September, 2018 and as such there was no reason to implement the same in the year 2025 without affording opportunity of hearing to the petitioners.

12. The municipal authorities are represented including the State and the respondent No. 10.

13. Heard the learned advocates appearing for the respective parties, I find that the petitioners claim to have acquired interest in the property on the strength of a deed of assignment executed in the year 2013 of a constructed flat, though only one document dated 28th October, 2013 executed in favour of the petitioner no.2 has been disclosed. It is not the case of the petitioners that the petitioners had carried out any construction. On the own showing of the petitioners, they do not qualify as the

person at whose instance the illegal construction has been made. The petitioners thus do not qualify to be persons who have carried out illegal construction for being served with notice under Section 400(1) of the said Act. At least the explanation to Section 400(1) of the said Act do not provide for the same. To morefully appreciate the above, the provisions of Section 400(1) and the explanation thereto are extracted hereinbelow:

“400. Order of demolition and stoppage of buildings and works in certain cases and appeal.-(1) Where the erection of any building or the execution of any work has been commenced, or is being carried on, or has been completed without or contrary to the sanction referred to in section 396 or in contravention of any of the provisions of this Act or the rules and the regulations made thereunder, the Municipal Commissioner may, in addition to any other action that may be taken under this Act, make an order directing that such erection or work shall be demolished by the person at whose instance the erection or the work has been commenced or is being carried on or has been completed within such period, not being less than five days and more than fifteen days from the date on which a copy of the order of demolition with a brief statement of the reasons therefor has been delivered to such person, as may be specified in the order:

Provided that no order of demolition shall be made unless such person has been given, by means of a notice served in such manner as the Municipal Commissioner may think fit, a reasonable opportunity of showing cause why such order shall not be made:

Provided further that where the erection or the execution has not been completed, the Municipal Commissioner may by the same order or by a at the time of the issue of the first proviso or at any other time, direct such person to stop the erection of the execution until the expiry of the period within which an appeal against the order of demolition, it made, may be preferred under sub-section (3).

[Provided also that the Municipal Commissioner may by order, on such terms and conditions and on payment of such fees as may be prescribed by regulation, regularize the minor unauthorised erection or execution of any minor work without sanction under this Act, or minor deviation from the sanctioned plan or execution of any minor erection or work in contravention of any sanctioned plan under this Act or the rules or the regulations made hereunder, as the case may be.

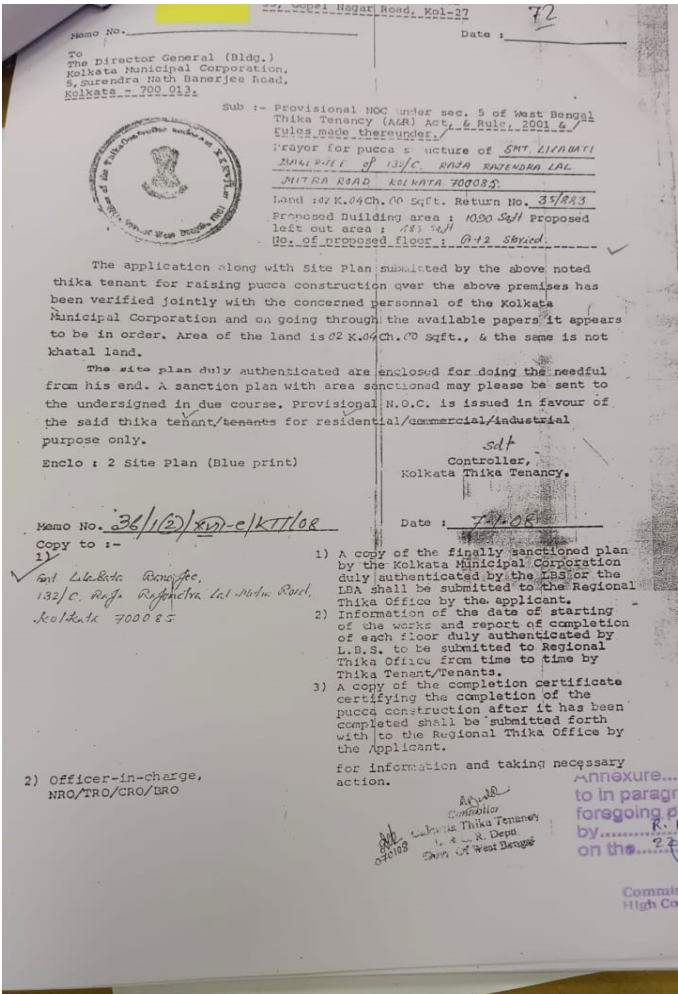
[Provided also that the Municipal Commissioner may, by order, delegate his powers and functions under the first proviso and the third proviso of this sub-section to the Special Officers, appointed by the Municipal Commis-sioner with the approval of the State Government on such terms and conditions as may be determined by the Corporation, and expenses for payment of such officers shall be borne on the Municipal Fund.]

Explanation.-- For the purpose of this section, 'minor deviation' shall be such as may be determined by regulations.]

Explanation.-- In this Chapter, "the person at whose instance" shall mean the owner, occupier or any other person who causes the erection of any building or execution of any work to be done, including alterations or additions if any, or does it by himself."

14. Be that as it may, to test out the case made out by the petitioners and since the petitioners had approached this Hon'ble Court by invoking the extraordinary writ jurisdiction, this Court had enquired as to whether the petitioners had any requisite sanctioned building plan to resist the demolition. The petitioners, however, could not produce any sanctioned building plan except for the assertion made that a provisional no objection certificate has been issued by the Thika Controller for constructing that too of a G+2 storied building.

15. To morefully appreciate the aforesaid case made out, it is necessary to note down the exact terms provided for in the provisional NOC for sanction. The same is extracted hereinbelow:



16. Ordinarily, if a land is declared to be thika tenanted land within the meaning of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 and the Rules framed thereunder, the controller possesses certain responsibilities, inter alia, including the rights to accord permission for development of such Thika land and in the process as aforesaid, in terms of Rule 5 and 6 of the West Bengal Thika Tenancy (Acquisition and Regulation) Rules, 2004 (hereinafter referred to as the “said Rules”) is authorized to issue no objection certificate, both provisional and final, under sub-Section 6(3) of the said Act. A perusal of Rule 6 of the said Rules would identify that an application for issue of provisional certificate

under sub-Section (3) of Section 6 shall be in accordance with the procedure prescribed by sub-Rule (2) of Rule 5 and shall be accompanied by an application fee as morefully provided therein. After a construction has been duly sanctioned by the local authority, the same shall be produced within 3 months from the date of issue of such provisional certificate, failing which, no final certificate shall be issued by the controller. Admittedly, in this case, there is no sanctioned building plan, sanctioned by the Municipality. Consequentially, the Thika controller issuing any final certificate under the provisions of the said Act and the Rules framed thereunder would not have arisen. In any event the provisional certificate would not have authorized the person responsible to carry out illegal construction without sanction from the Municipal authority. The provisional NOC also do not authorise any construction by itself. It is true that a Co-ordinate Bench of this Court by an order dated 6th March, 2017 had directed the municipal authority to take steps in terms of Section 400(1) of the said Act, however, the petitioners cannot claim any benefit thereunder. The petitioners are neither the person responsible for construction, nor have constructed on the said property/land. On the own showing of the petitioners, the petitioners are assigns of interest in the said property. Ordinarily, when the petitioners have acquired interest in the flats in question in respect whereof there are in occupation, the petitioners as caveat emptors ought to have made necessary enquiry,

having not done so it is the petitioners who are to blame for their own conduct. The petitioners cannot claim to be bona fide purchasers in a building which do not have the sanction of the Municipal authorities. Further there is no declaration that the above is also a Thika tenanted property. The petitioners had not been inducted prior to 1981 as tenant in respect of any land nor are owners of any structure. The petitioners cannot stand on a better footing than their predecessor-in-title. Admittedly, in this case, there is an illegally constructed building. The person responsible for construction not come forward. The Municipal authorities have already taken steps to remove the same. Permitting the petitioners at this stage to intervene would be giving a premium to the illegality already committed.

17. In the facts as noted hereinabove, I do not find any scope to interfere with the steps taken by the municipal authorities.

18. Since no interference is called for, the writ petition is accordingly dismissed without any order as to costs.

19. There shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)