

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

RESERVED ON: 02.07.2025

DELIVERED ON:15.07.2025

PRESENT:

THE HON'BLE MR. JUSTICE TAPABRATA CHAKRABORTY

AND

THE HON'BLE MR. JUSTICE REETO BROTO KUMAR MITRA

APOT No. 39 OF 2023

WITH

WPO NO. 311 OF 2018

IA NO: GA 1 OF 2023

ARUNAVA BHATTACHARJEE & ANR.

- VERSUS -

THE KOLKATA MUNICIPAL CORPORATION & ORS.

Appearance:

Mr. Soumya Majumder, Sr. Adv.

Mr. D.R. Mukherjee, Adv.

Mr. Arijit Dey, Adv.

... for the appellants

Mr. Alak Kr. Ghosh, Adv.

Ms. Piyali Sengupta, Adv.

... for KMC

Mr. Abhrajit Mitra, Sr. Adv.

Mr. Ratul Bhattacharjee, Adv.

... for the respondent no. 7



Mr. Arindam Banerjee, Sr. Adv.
Mr. Bikram Sarkar, Adv.
Mr. Ratul Bhattacharjee, Adv.
Mr. Tapajit Das, Adv.

... for the respondent no. 8

Mr. Raghunath Chakraborty, Adv.
Ms. Mohona Das, Adv.

... for the proforma respondent

Reetobroto Kumar Mitra, J.:

1. The present appeal arises from an order passed by the learned Single Judge dated 3rd February, 2023 disallowing the appellants herein from relying upon and disclosing certain additional documents by way of two supplementary affidavits in aid of the Writ Petition.
2. One of the principal issues raised by the appellants, by way of disclosing these additional documents, is that the private respondents 7 and 8 had misrepresented the facts to this Hon'ble Court and were seeking to obtain orders without disclosing these documents. In fact, the documents sought to be disclosed by way of these supplementary affidavits were:-
 - i. A demand notice by the KMC and a copy of the filled up application form by the respondent No. 8 for obtaining a certified copy of the deed. Both documents were obtained by the petitioner, pursuant to his application under Section 6 of the Right to Information Act, 2005 dated 24th October, 2017.

- ii. The agreement between R-7 and R-8.
 - iii. The power of attorney executed by R-7 in favour of R-8.
 - iv. A screenshot of the land area of the subject premises, popularly known as Avidipta-2.
3. The appellants, the added writ petitioners, sought to disclose these additional documents by way of two separate supplementary affidavits at pages 23 and 98 respectively of the stay petition. This, the learned Judge thought, was a dilatory tactic, which would necessarily delay the hearing of the Writ Petition.
4. The documents sought to be disclosed by the appellants would, if allowed to be disclosed, open up a totally new case, thus enlarging the scope of the Writ Petition.
5. The issues which weighed with the learned Single Judge to disallow the filing of such affidavits may be summarised as under:
- A. The arguments on behalf of the original writ petitioners were concluded prior to affirmation of the first affidavit. The first affidavit was also silent as to how such documents were procured by the appellants, the added writ petitioners.

- B. The added writ petitioners, the appellants herein, sought to bring on record the documents when their turn to advance arguments arose, as, consciously the person to whom such documents were addressed by the KMC had not produced the same. Thus, the practice of introduction of documents in instalments by different routes of the writ petitioners was deprecated.
- C. The disclosure of such documents by the appellants would result in enlarging the scope of the Writ Petition, which is impermissible as the court in exercising its power of judicial review could not permit such enlargement.
- D. As a consequence of the aforesaid issue of enlarging the scope of the Writ Petition, the learned Judge held that such disclosure of documents at a belated stage had been done purposefully by the appellant to cause delay in disposal of the Writ Petition.
- E. It is on these grounds that both affidavits, sought to be filed by the petitioners/appellants herein, were disallowed.
6. To understand this issue, it is imperative that a brief summary be given of the facts of the case.

7. The petitioners are all flat owners in the project named Avidipta-1 and are co-owners of the land on which Avidipta-1 has been established, covering approximately 9 acres. Avidipta-2 is situated or is proposed to be situated on approximately 3 acres. Though the floor area ratio (FAR) of Avidipta-2 has been sought for on the basis of the entire land, covering both 1 and 2, which means, the petitioners' land is being construed as part of Avidipta-2 for obtaining the FAR in respect of the second phase. This is why the petitioners are aggrieved and have approached this Hon'ble Court.
8. The main issue hovers around the fact, that the petitioners claim exclusive rights over 9.04 acres of land out of the total 12.27 acres by virtue of registered sale deeds and therefore claim to have exclusive right to the available unutilised FAR at phase one, which under no circumstances can be transferred or utilised by or for the development of phase two.
9. Mr. Soumya Majumdar, learned Senior Advocate appearing for the appellants, the added writ petitioners, have raised the following issues, as to why the supplementary affidavits ought to have been permitted to be filed by the learned Single Judge:
 - a. The aforestated documents, which were sought to be brought on record by the supplementary affidavits, were all authored between the respondent no. 7 and respondent no. 8.

- b. Such documents were known to the respondent no. 1 (KMC) as well, since such documents had been produced at the hearing before the concerned officer of KMC.
- c. The respondent no. 8, in the affidavit in opposition filed by it before the learned Single Judge, had itself craved reference to such documents, which were to be disclosed by the appellants.
- d. Those documents, therefore, cannot under any circumstances be said to have enlarged the scope of the Writ Petition or to have taken the respondents by surprise, as they were all known to the respondents to have an existence. In fact, the veracity or authenticity of such documents has not been questioned by any of the parties and indeed could not have been questioned, since they are documents between such parties, especially the respondent nos. 7 and 8.
- e. The documents cannot under any circumstances be said to have enlarged the scope of the Writ Petition, as the question of suppression and fraud had been urged in the Writ Petition by the original writ petitioners as well as before the hearing officer of the KMC. Thus, it cannot be said that the age-old principle of introduction of any amendment to the pleading or introduction of additional documents could not have enlarged the scope or

changed the nature and character of the case pleaded in the Writ Petition.

- f. He drew our attention to page 28 B of the Stay Petition, the first supplementary affidavit, to show that supplementary affidavits were not meant to supplement any pleadings, but only for incorporation of documents, which the appellant sought to disclose before the learned Single Judge.
- g. He drew our attention also to page 21 in the Writ Petition to establish that the private respondents had engaged in illegal acts, had manipulated, misrepresented and distorted facts and figures for getting additional FAR and consequently sanctioned from the KMC.
- h. He categorically stated that the point of suppression had been taken by the writ petitioners in the Writ Petition at paragraph 34 in no uncertain terms. It was only to buttress this issue of suppression, the pleadings whereof were already made, that the appellants, added writ petitioners, had sought to disclose additional documents.
- i. In fact, interestingly, Mr. Majumder has drawn our attention to a pleading in the affidavit in opposition filed by the respondent No. 8 (page 63 at 68 of the bunch of documents) to show that the private

respondents themselves craved leave to refer to and/or produce documents, which are the very same documents, being produced by the appellants herein.

- j. Mr. Majumder has also argued that the principle of Order 6 Rule 17 of the Code of Civil Procedure, 1908 did not apply to the present case. This, primarily, since the provisions of Order 6 Rule 17 are meant to be applied in a civil proceeding where the pleadings and the evidence are separate and taken at different stages. However, in a Writ Petition, which is really a trial on affidavits, the evidence has to be disclosed to ensure that the Court has all relevant facts and documents before it prior to reaching the conclusion upon adjudication of such facts.
- k. Mr. Majumder has also in no uncertain terms stated that this order denying him the opportunity to file the supplementary affidavits squarely falls within the parameters of a judgment as specified in 2023 (1) SCC 634, as the order conclusively decides the rights of the parties, and particularly that of the appellants herein to rely on the documents, which the appellants feel are absolutely essential for a wholesome adjudication of the rights of the parties. Having decided not to allow the appellants to file or rely upon such documents, the Court has conclusively closed the rights of the

appellants to rely on such documents. Thus, this order under appeal qualifies to be treated as a Letters Patent Appeal under Clause 15.

10. Mr. Arindam Banerjee, learned senior advocate for the respondent no. 8 has raised the following issues.-

- a. The petitioners had knowledge of the documents. The documents as will appear from the very nature, were available in the public domain and the appellants herein ought to have been more diligent as they had constructive notice of such documents and therefore obliged to disclose the same, if they so chose, at an earlier stage.
- b. The attempt to file such supplementary affidavits bringing on record certain documents, or the pleadings contained in such affidavits, raises questions of res judicata. This, since the appellants herein had in their application for addition of party, made an additional prayer to file pleadings, which had not been considered or allowed at the time that the appellants were added as parties to the Writ Petition. Therefore, the attempt to file the two affidavits was really barred under Section 11, 5th proviso of the Code of Criminal Procedure 1908.
- c. The present appeal itself is not maintainable as it is not a judgment under Clause 15 of the Letters Patent of this Hon'ble Court and hence could not have been carried in appeal.

- d. The documents sought to be disclosed by the supplementary affidavit have been rightly rejected by the learned Single Judge as there is no corresponding pleading in so far as these documents are concerned and the question of disclosing evidence without there being any corresponding pleadings is not permissible in law. (2011 12 SCC 695 at 704), (2023 (1) SCC 634 Para 115).
- e. There has been an immense delay in attempting to bring such documents on record, as the Writ Petitioners had already concluded their arguments and thus having approached the learned Court at such a belated stage, the petitioners/ appellants herein were rightly refused an opportunity to file such affidavits.
- f. By filing such affidavits and the corresponding documents therewith, the appellants were attempting to enlarge the scope of the Writ Petition. In fact, the case made out in the Writ Petition does not call for such documents and the very purpose of disclosing the documents by way of the two supplementary affidavits was to enlarge the scope of the Writ Petition. Hence this was not rightly permitted.

11. Mr. Abhrajit Mitra learned senior advocate, for respondent no. 7 made the following submissions:-

- a. First, he submits that the events narrated in both the supplementary affidavits were not subsequent events, which can be said to have arisen after institution of the writ petition. He has drawn our attention to paragraphs 3 and 4 of the first supplementary affidavit, further alleging that the documents sought to be relied upon in the first supplementary affidavit were obtained on the basis of an application under Section 6 of the Right to Information Act by the petitioner no. 1 and not the appellant herein. The petitioner no. 1 had access to these documents and chose not to disclose the same. Paragraphs 5 and 6 of the second supplementary affidavit refer to material available to the petitioners, as far back as in 2019 and could not be brought on record by way of these affidavits in 2023.
- b. Second, he submits that a new case has been made out or at least sought to be made out, as would appear from paragraphs 5, 6, and 7 of the second supplementary affidavit, since none of these allegations were levelled in the Writ Petition. The learned Judge had rightly held that by way of the supplementary affidavits, these appellants were seeking to enlarge the scope of the Writ Petition.
- c. Third, regarding paragraph 6 of the second affidavit, Mr. Mitra submits that it is clearly beyond the scope of the Writ Petition, as also are those allegations made in paragraph 7 of the first supplementary affidavit.

d. Mr. Mitra relied upon three decisions first, of a learned Single Judge of this Hon'ble Court reported in 2014 SCC On-Line Calcutta 12483. He relied also on AIR 1981 SC 588 and 2018(3) CHN 105. The issue decided in these decisions is not in dispute that by way of supplementary affidavits, a new case cannot be permitted to be made out by enlarging the case made out in the petition.

12. Mr. Alak Kr. Ghosh, learned advocate appearing for the Calcutta Municipal Corporation has adopted the submissions made by Mr. Arindam Banerjee, on behalf of the respondent no. 8 and Mr. Mitra appearing for the respondent no. 7. In addition thereto, Mr. Ghosh adds that the appellants who are the added petitioners (added petitioners no. 23 and 24) are those who had not participated in the hearing or proceedings before the authority concerned. Thus, they should not be allowed in any manner, especially by way of filing supplementary affidavits to bring documents on record, which may have been used by the original petitioners herein, before the concerned authority. Mr. Ghosh has also reiterated that the case sought to be made out in the supplementary affidavits should be read in conjunction with the context of the main issue and not in deviation thereof.

13. We have heard the parties at length and considered the documents on record. The writ petition was filed some time in 2018.

14. It is indisputable that the matter was being finally heard in 2023, well after a period of five years had lapsed after institution of the Writ Petition. This cuts both ways. First, there was no glaring urgency to proceed with the matter and secondly, that the appellants had ample time to disclose such documents at the time when they were impleaded as parties in the proceeding.
15. The documents are not disputed by any of the parties. In fact, the documents, are such that the respondents themselves had access to such documents and could have disclosed the same during the course of the hearing of the Writ Petition. Having chosen not to do so, these documents cannot be regarded as irrelevant or inconsequential documents.
16. It is indisputable also that some of these documents were in the public domain which can be construed as constructive notice to all the parties. However, to what extent the appellants would have access to such documents is a questionable issue.
17. We are not impressed with the issue of res judicata as such documents are admitted documents, authored between the respondents no. 7 and 8 and for a wholesome adjudication ought to have been disclosed by the concerned respondents, themselves. The appellants' rights qua disclosure of the documents were never decided in any prior stage of the proceeding.

18. The issue regarding evidence not being acceptable without corresponding pleadings is something relating to a matter thoroughly abiding by the process enumerated under the Code of Civil Procedure in a civil proceeding such as a Suit. A Writ Petition is not completely covered by the Code of Civil Procedure. Thus, in a proceeding such as that of a Writ Petition, the effort is to adjudicate all issues, if that may be called a trial, by affidavits.
19. Thus, disallowing filing of affidavits, even though termed as supplementary affidavits, almost tantamounts to a party not being given an opportunity of presenting his case either by way of pleadings or by way of documents, that are the only evidence in a Writ Petition. A trial by way of affidavits necessarily calls for documents to be disclosed by the concerned party. The learned Judge, having disallowed them and come to the finding that the scope of the Writ Petition would have been enlarged by permitting the supplementary affidavits to be filed by the appellants, has not taken into consideration whether the documents were relevant or not for a wholesome adjudication of the dispute raised in the Writ Petition.
20. The learned Judge has proceeded to hold that “the facts pleaded in the Supplementary Affidavits, if allowed to be brought on record, would ultimately result in enlarging the scope of the Writ Petition which is impermissible as this Court has to exercise its power of judicial review of a decision taken by the authority of the KMC”. This finding is contrary to the finding of the learned

Single Judge in the very same paragraph recording “this Court further holds that the prayer of the added writ petitioners no. 23 and 24 for leave to bring on record the documents by way of supplementary affidavits after commencement of hearing of the Writ Petition was only for the purpose of delaying the disposal of the Writ Petition”. Thus, it is unclear from the order impugned whether the refusal to allow the filing of the supplementary affidavits was on account of the facts pleaded therein which would result in enlarging the scope of the Writ Petition or whether the same was refused to avert the delay that would be caused in disposing of the Writ Petition. The Writ Petition had already been pending for 5 years.

21. The supplementary affidavits are bereft of any pleading of relevance. The supplementary affidavits merely set forth the documents and a feeble reasoning as to why such documents could not be disclosed earlier. Beyond such pleadings, there is nothing in the affidavits which could be construed as enlarging the scope of the Writ Petition. The documents themselves were not considered while rejecting the appellants' prayer for filing the supplementary affidavits.
22. The issue regarding maintainability of the appeal has failed to impress us, primarily, since, the order conclusively seals the fate of the appellants to rely upon additional documents, which the appellants contend are germane for adjudication of the disputes in the Writ Petition. The principles of a judgment under Clause 15 are that it must conclusively decide an issue to be

construed as a judgment from which an appeal may be preferred. In the present case, the denial of the rights of the appellants to rely upon additional documents can safely be construed as a final decision on their rights to rely upon additional evidence. Thus, the issue of maintainability of the appeal does not find favour with us.

23. The question of delay is not unfounded. It is true that the affidavits were prepared to be filed at a rather belated stage, when the original writ petitioners had already advanced their arguments and indeed concluded the same. However, the appellants were added as parties to the Writ Petition and the respondents, would get an even opportunity to deal with such documents, upon commencement of their submissions, and there would be no violation of principles of natural justice. It is not the case of the respondents that the documents were forged or fabricated, manufactured or procured, or that they would have to deal with them by way of affidavits. Only that the documents were disclosed at a belated stage. The original Writ Petitioners having completed their arguments, the added writ petitioners, appellants herein, were also entitled to make their submissions, upon conclusion whereof, the respondents would get an opportunity to address the Court. Thus, respondents would be at liberty to deal with such documents at the time of making their submissions. Thus, the decisions relied upon by Mr. Banerjee do not apply to the facts of the instant case.

24. The vociferous denial of the rights of the appellants to file such affidavits by the respondents raises a suspicion in our minds. The matter could have been finished off and dealt with in 2023 itself, the appeal having been filed in 2023 has been pending since and has been taken up only now in 2025 for hearing.
25. That delay has occurred, is undeniable. However, the question of delay cannot be foisted unequivocally on the appellants alone.
26. The last and certainly one of the more important issues raised and decided by the learned Single Judge in favour of the respondents is that the disclosure in the supplementary affidavits would enlarge the scope of the Writ Petition.
27. The specific findings of the learned Judge relate to the enlargement of the scope of the Writ Petition on account of facts pleaded in the supplementary affidavits, without adverting to the relevance of the documents disclosed therewith to adjudicate the disputes and denial of rights in the Writ Petition. We find from records that the issue of fraud had been raised and argued before the adjudicating authority and a specific plea had been taken in respect thereof. In fact, the issue has also been raised in the Writ Petition. The documents sought to be disclosed by the two supplementary affidavits by the appellants herein were only to further the case made out in the Writ Petition of fraud or misrepresentation. Fraud unravels all. Thus, it cannot be said or

argued that a new case has been made out or was being made out by disclosure of the documents appended to the supplementary affidavit. The decisions relied upon by Mr. Mitra are on accepted principles of law. However, in the present case, it is clear that the documents sought to be disclosed, were in aid of the issues already pleaded. Clearly, no new case was being made out on the basis of the supplementary affidavits or the documents annexed thereto.

28. Even otherwise, if the Writ Petitioners/appellants are not permitted to disclose such affidavits before the learned Single Judge, the possibility of an application under Order 41 Rule 27 of the Code of Civil Procedure for production of additional evidence cannot be ruled out at the stage of appeal, if any, of any of the parties to the proceeding (Writ Petition), were aggrieved by the order and were to carry it in appeal.
29. The learned Single Judge would be at liberty to consider the documents and either reject or accept the same as part of the evidence. However, as a Court of equity and Court of conscience with plenary power and exercising a constitutional writ jurisdiction, it cannot shut its eyes to documents which a party submits to be of great relevance for adjudication of the dispute brought before such Court.
30. Having stated all of the above, we cannot shut our eyes to the fact that even after the pendency of six years, the added writ petitioners/appellants herein chose to file supplementary affidavits bringing additional documents on record



at such a belated stage. The appellants should be put on terms and shall pay costs assessed at Rs. 30,000/- (Rs. 10,000/- each to R 1, R 7, and R 8) within 10 days to enable them to file such affidavits, by the next date of hearing before the learned Single Judge

31. In the circumstances aforesaid, we set aside the order of 3rd February 2023, thereby permitting the writ petitioners/ appellants to file their supplementary affidavits and to proceed with the hearing of the matter.
32. The appeal and the connected applications are disposed of without any order as to costs.
33. An urgent photostat-certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Reetobroto Kumar Mitra, J.)

(Tapabrata Chakraborty, J.)