

IN THE HIGH COURT AT CALCUTTA

Constitution Writ Jurisdiction

ORIGINAL SIDE

Present :-

THE HON'BLE JUSTICE SHAMPA DUTT (PAUL)

WPO/240/2020

RENU JAIN & ORS.

VS

THE KOLKATA MUNICIPAL CORPORATION & ORS.

For the Petitioners : Mr. Ashoke Banerjee, Sr. Adv.
Mr. Saurav Chaudhuri, Adv.

For the KMC : Mr. Alak Kumar Ghosh, Adv.
Mr. Subhrangsu Panda, Adv.

Hearing concluded on : 16.01.2025

Judgment on : 20.02.2025

Shampa Dutt (Paul), J. :

1. The present writ application has been preferred praying for direction upon the respondent authorities to rescind and/or cancel and/or

withdraw the order dated 18th November, 2019 and a declaration to the effect that the sanction of the 100 years' alignment on 14, Armenian Street, Kolkata-700007 has become infructuous and non-existent.

2. **The petitioners' case** herein is that he is the sole and absolute owner of premises No. 14, Armenian Street, Kolkata-700007 (hereinafter referred to as the "said property, The said property being premises No. 14, Armenian Street, Kolkata- 700007, is a partly two storied *dilapidated* and partly three storied building on an area of more or less 6 cottahs and 3 chittaks.
3. The petitioners proposed to construct a new building on the said property. The petitioners state that prior to obtaining a plan for sanction of a new building, no objection certificate is required in terms of the Kolkata Municipal Corporation Building Rules, 2009 from the Chief Valuer and Surveyor Department of the Kolkata Municipal Corporation, the respondent no. 5 herein.
4. The petitioners accordingly applied before the respondent no. 5 for issuance of a "No Objection" to enable the petitioners to apply for sanction of a building plan.
5. There is a 40' wide **revised alignment line sanctioned on 10th September, 1919**, pending for last 100 years.
6. Challenging such unexplained 100 years pending alignment, the petitioners submitted a written representation to the Municipal Commissioner on 7th March, 2017 with copies to the Mayor-in-Council (Roads) and the Chief Valuer and Surveyors Department of the Kolkata

Municipal Corporation (hereinafter referred to as “KMC”) for cancellation of the alignment plan of 1919.

7. It is further submitted that the Kolkata Municipal Corporation did not act upon the written representation dated 7th March, 2017 filed by the petitioners. Another representation dated 29th March, 2017 also addressed to the Municipal Commissioner requesting that the petitioners may be permitted to make construction in the petitioners’ premises as for the sanction building plan.
8. On being aggrieved by the acts and/or actions of the respondents in failing to consider the petitioners’ repeated requests for cancellation of the pending alignment plan of 99 years, the petitioners moved a writ petition being W.P. No. 279 of 2017 (Suresh Chand Jain –versus- Kolkata Municipal Corporation & Ors.) on 12th May, 2017 before this Hon’ble Court and on hearing the Petition his Lordship the Hon’ble Justice Harish Tandon was pleased to dispose of the same with direction to consider in the light of the provisions contained under Section 357(6) of the said Act within eight weeks from the date of communication of the order.
9. On or about 17th August, 2017, the respondent no. 5 gave a reply to the petitioners to the effect as follows:-

“That as per the order of the Hon’ble Justice Harish Tandon, in the High Court at Calcutta the representation made by the petitioner to the Municipal Commissioner in the light of the

provision contained under Section 357(6) 1980 is taken up for consideration and is rejected.”

- 10.** The petitioners then filed another representation dated 29th June, 2018 again requesting them to permit him to construct the premises in view of the strict compliance of the Kolkata Municipal Corporation Building Rules, 2009 by cancelling the said alleged unjustified and unexplained 100 years pending alignment line since 19th September, 1919 being No. 1368 but to no effect.
- 11.** As the petitioners were not heard. The petitioners moved a writ petition being W.P. No. 373 of 2018 (Suresh Chand Jain –versus- Kolkata Municipal Corporation & Ors.) and the said writ petition came up for final hearing on 18th September, 2019 when this Hon’ble Court was pleased to set aside and quash the order dated 22nd June, 2017 and remanded back the matter to the respondent no. 2 for being decided after giving the petitioners and other concerned person an adequate opportunity of being heard.
- 12.** Accordingly, after hearing, the respondent no. 2 was pleased to pass an order to the effect that the declaration of a street alignment plan as drawn up 100 years ago shall remain as it is, without cancellation and/or modification of the same.
- 13.** The specific case of the petitioners is that there is an alignment touching the said premises which is nearly 100 years’ old but object for which the said alignment was sanctioned on 10th September, 1919 has lost its force because of the unexplained delay on the part of the respondent

authorities to make use of the **said alignment for the public purpose.**

The petitioners have the knowledge from the reliable sources that such alignment touching other premises in the said vicinity was cancelled and/or given go bye and thereby allowing construction on the said premises on alignment.

14. It is further submitted that it has not been considered at all that the building in existence on the said premises is in dilapidated condition and the petitioners were ready that if as and when the alignment will be in force, the petitioners will undertake to demolish the building covered by the alignment portion and the petitioners pray that the sanction of the said alignment should be cancelled due to long unexplained delay on the part of the respondent authorities to make use of **the said alignment for public purpose.** The entire purpose of the sanction has become void.
15. It is submitted that in case of premises at 3, Jamadar Khan Lane and other premises the corporation has abandoned the prescribed alignment but the petitioners are being victimized and discriminated.
16. It is further submitted that a statutory body when keeping a road alignment for more than 100 years has to satisfy with regard to the necessity of keeping that alignment. In case of Jamadar Khan Lane, The Kolkata Municipal Corporation sanctioned the plan in respect of premises Nos. 3, Jamadar Khan Lane and 5, Jamadar Khan Lane overreaching the alignment.

- 17.** It is further stated that the respondent authorities have failed to understand the scope, ambit and purport of Section 357(6) of the Kolkata Municipal Corporation Act, 1980. It has not been mentioned in the said order that when the alignment was made 100 years ago what is the time limit for completion of widening of the road. If the time limit of widening of the road expires, then Section 357(6) should be invoked judiciously and for the benefit of the residents of the area. The Kolkata Municipal Corporation in the name of regular line/alignment cannot prevent a citizen from construction of his own house for century and over, which is in violation of Article 300A of the Constitution of India.
- 18.** Affidavits are on record along with a supplementary affidavit filed.
- 19.** Written notes of arguments have been filed by the parties.
- 20. Section 357(6) of the KMC Act lays down:-**

“357. Defining regular line of a street.-

(1)

(2)

(3)

(4)

(5)

(6) Notwithstanding anything contained in the foregoing provisions of this section, the Corporation may, if it considers expedient so to do, cancel partly or wholly, or modify, the regular line of a public street after a period of ten years from the date of defining the said regular line, provided- the object for which the said regular line was defined has not been completed within the said period :

Provided that the Corporation shall, before such cancellation or modification of such regular line, afford, by public notice, a reasonable opportunity to the residents of the premises abutting on such public street to make suggestions or objections

with respect to the proposed cancellation or modification of the regular line as aforesaid and shall consider all suggestions or objections which may be made within one month from the date of publication of such notice.]”

21. The petitioners have relied upon the judgments in:-

(a) *The Comptroller and Auditor General of India, Gian Prakash, New Delhi & Anr. v. K.S. Jagannathan & Anr., AIR1987 SC 537, decided on 01.04.1986*, the Supreme Court held:-

“19. Even had the Division Bench issued a writ of mandamus giving the directions which it did, if circumstances of the case justified such directions, the High Court would have been entitled in law to do so for even the courts in England could have issued a writ of mandamus giving such directions. Almost a hundred and thirty years ago, Martin, B., in Mayor of Rochester v. Regina [1858 EB & E 1024, 1032, 1034] said:

“But, were there no authority upon the subject, we should be prepared upon principle to affirm the judgment of the Court of Queen's Bench. That court has power, by the prerogative writ of mandamus, to amend all errors which tend to the oppression of the subject or other misgovernment, and ought to be used when the law has provided no specific remedy, and justice and good government require that there ought to be one for the execution of the common law or the provisions of a statute: Comyn's Digest, Mandamus (A)... Instead of being astute to discover reasons for not applying this great constitutional remedy for error and misgovernment, we think it our duty to be vigilant to apply it in every case to which, by any reasonable construction, it can be made applicable.”

The principle enunciated in the above case was approved and followed in King v. Revising Barrister for the Borough of Hanley [(1912) 3 KB 518, 528-9, 531] . In Hochtief Gammon case [(1975) 2 SCC 649 : 1975 SCC (L&S) 362 : AIR 1975 SC 2226 : (1976) 1 SCR 667, 676] this Court pointed out (at p. 675 of Reports: SCC p. 656) that the powers of the courts in relation to the orders of the government or an officer of the government who has been conferred any power under any statute, which apparently confer on them absolute discretionary powers, are not confined to cases where such power is exercised or refused to be exercised on irrelevant considerations or on erroneous ground or mala fide, and in such a case a party would be entitled to move the High Court

for a writ of mandamus. In Padfield v. Minister of Agriculture, Fisheries and Food [1968 AC 997] the House of Lords held that where Parliament had conferred a discretion on the Minister of Agriculture, Fisheries and Food, to appoint a committee of investigation so that it could be used to promote the policy and objects of the Agricultural Marketing Act, 1958, which were to be determined by the construction of the Act which was a matter of law for the court and though there might be reasons which would justify the Minister in refusing to refer a complaint to a committee of investigation, the Minister's discretion was not unlimited and if it appeared that the effect of his refusal to appoint a committee of investigation was to frustrate the policy of the Act, the court was entitled to interfere by an order of mandamus. In Halsbury's Laws of England, 4th Edn., vol. I, para 89, it is stated that the purpose of an order of mandamus "is to remedy defects of justice; and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual."

20. *There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion."*

(b) *The State of Rajasthan vs Ganeshi Lal, in Civil Appeal No. 3021*

of 2006, decided on 10.12.2007, the Supreme Court held:-

"13. *In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said, "Lord Atkin's speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J in (1971) 1 WLR 1062 observed:*

"One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said:

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

14. *Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.*

15. *The following words of Lord Denning in the matter of applying precedents have become locus classicus:*

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches.

My plea is to keep the path to justice clear of obstructions which could impede it."

22. A "violation of a regular line of a street" refers to the act of constructing or placing a building, structure, or boundary wall within the designated legal boundary of a street, without proper permission from the relevant authorities, essentially encroaching on the designated road space as defined by the city's regulations; this is typically considered a violation of municipal laws and can lead to legal consequences.

23. Purpose of a "regular line of a street" is public interest.

24. Relaxation of these lines is against the principle of natural justice.

25. The Kolkata Municipal Corporation has relied upon the following judgments:-

(a) *Md. Hassan Ali vs The Kolkata Municipal Corporation & Ors., in WP 2220(w) of 2010, decided on 07.08.2015, Calcutta High Court.*

(b) *Kolkata Municipal Corporation & Ors. vs Sri Keshov Prasad Shaw, in APO No. 52 of 2013 with WP No. 1718 of 2008, decided on 23rd December, 2013, the Calcutta High Court held:-*

".....As section 357(3) creates an absolute bar to construct or reconstruct any building within the regular line of a street, keeping the land unutilised cannot be an act of fraud upon the statute or misuse of power under the statute and the road alignment cannot be said to be abandoned or cancelled as held in W.P. 11734 (W) of 2006 (AGW Relators Pvt. Ltd v. Kolkata Municipal Corporation). In view of such statutory prohibition, a regular line/alignment cannot be said to be practically abandoned as others have constructed buildings. Since statute permits maintenance of a line/alignment of a street and bars construction within it and as section 357(6) and its proviso lay down a detailed procedure for cancellation or

modification of the said line/alignment, the question of abandonment of the project, does not arise. In our view any other interpretation of section 357 shall defeat the intention of the legislature. In fact the language in section 357 is so simple and unambiguous that it hardly requires any interpretation.....”

26. **A "regular line of a street"** refers to a designated boundary line on a street, usually established by a local planning authority, which marks the legal limit where buildings can be constructed, ensuring uniformity in the street's appearance, facilitating proper development, and preventing encroachment onto the public right-of-way; essentially, it acts as a guideline for building placement to maintain order and consistency along the street.
27. **The primary purpose** is to define where buildings can be built on a street, ensuring a consistent setback from the street edge and preventing haphazard construction.
28. This line is a crucial element in urban planning, helping to create well-organized streetscapes with appropriate setbacks for sidewalks, trees, and other public amenities.
29. In ***Ravindra Ramchandra Waghmare vs Indore Municipal Corporation & Ors., 2017 (1) SCC 667, decided on 29 November, 2016***, the Supreme Court has **directed removal of such buildings which have encroached the regular line of a street** and held:-

“30. We are not at all impressed by the submission that section 305 contemplates only voluntary removal by the owner of the building. Section 305 is a wholesome provision with respect to maintaining the regular line of a public street, existing or as determined for the future, it clearly empowers the Corporation to intimate its intention to remove that part of

the structure projecting beyond the regular line of public street under section 305. The primary statutory mandate is on Corporation to act for removal. Obviously, it has power to remove is apparent from plain language otherwise the provision will be of no utility. The point when the notice can be issued is clearly culled out in section 305. In the case of clause (a) when the projecting part is external to the main building such as verandah, step etc. then notice can be issued at any time and two points of happening of exigencies are provided separately in clause (b) : first, whenever projecting part is not an external structure but is a greater portion of such building and it projects beyond the regular line of public street and second exigency provided in clause (b) has to be read as “whenever any material portion of such projecting part has been taken down or burned down or has fallen down”.

31. Even in clause (b) of section 305, ‘removal’ is contemplated and is not confined to a case under clause (a). The Legislature has used two expressions : “whenever greater portion of such building” and secondly “whenever any material portion of projecting part has been taken down or burned down or has fallen down”, which means that clause **(b) clearly fixes the time for action that ‘whenever’ projecting part of greater portion of such building is projecting beyond the regular line of public street, removal can be made or ‘whenever’ material portion of such projecting part has been taken down, burned down or fallen down, it has to be set back and part which has not fallen down, has to be removed.** The removal is contemplated even in the latter exigency of clause (b) when material portion of such part has been taken down, burned down or fallen down, **still some portion other than ‘material portion’ projecting in line may require removal which has not been taken down, fallen down or burned down.** It is not that the expression that entire building projecting in regular line of public street has been taken down, burned down or fallen down. The expression in the latter part of clause (b) is taken down, fallen down or burned down is not related to the entire projecting part. **Thus the earlier part “whenever greater portion of such building” is projecting beyond the regular line of public street,** has to be read with respect to a building which has not fallen down, taken down or burned down. The word ‘or’ in section 305(1)(b) used between greater portion of such building or whenever any material portion of such building has to be read disjunctively. Nonetheless ‘removal’ is contemplated in all the exigencies. In case it has been taken down, burned down or fallen down, **it may require the material portion to be set**

back and remaining portion can be removed in the latter exigency of clause (b) itself.

52. The submission raised by the appellants that for acquisition of land, sections 78 and 79 should be resorted to for the purposes mentioned in section 305 cannot be accepted for yet another reason, if the provision as to public street is made dependent upon the acquisition of land, the very purpose behind the provisions of section 305 would be frustrated as well as the public interest, **there is already a regular line of public street fixed under development plan and is binding under section 19(5) and section 25 of the Act of 1973. Various rights of ownership which ordinarily vest in an owner, are restricted by the regional plan, development plan or the town development scheme, as the case may be. User of the owner's land, property cannot be in derogation to any of them. Development plan is binding upon the Corporation and local authorities and all concerned including the owners. Though they can transfer the property but subject to such restrictions which the property will carry with it. If the land falls in a regular line of public street, no construction can be raised, no projection can be made by owner whereas it can be removed or set back, as the case may be. In case acquisition is resorted to under sections 78 and 79, public street can never be widened and the entire purpose of preparation of Development Plan shall stand defeated."**

30. Thus, if a street alignment plan has been in force (whatever may be the duration) it is in the interest of the public.

31. Ravindra Ramchandra Waghmare vs Indore Municipal Corporation

& Ors., (Supra), the Supreme Court further held:-

"52.Various rights of ownership which ordinarily vest in an owner, are restricted by the regional plan, development plan or the town development scheme, as the case may be. User of the owner's land, property cannot be in derogation to any of them. Development plan is binding upon the Corporation and local authorities and all concerned including the owners. Though they can transfer the property but subject to such restrictions which the property will carry with it. If the land falls in a regular line of public street, no construction can be raised, no projection can be made by

owner whereas it can be removed or set back, as the case may be.....”

32. In ***Ravindra Ramchandra Waghmare vs Indore Municipal Corporation & Ors., (Supra)***, the Supreme Court further held:-

“52. public street can never be widened and the entire purpose of preparation of Development Plan shall stand defeated.....”

33. If such persons are indulged, the same shall be against the principles of natural justice and thus an abuse of the process of law.

34. Whether and if 3 and 5 Jamadar Khan Lane have crossed the alignment, it is for the corporation to take immediate steps for removal as per law. ***(Ravindra Ramchandra Waghmare vs Indore Municipal Corporation & Ors., (Supra))***

35. Thus the relief as prayed for stands rejected.

36. The Writ Petition being WPO 240 of 2020 is dismissed.

37. All connected applications, if any, stand disposed of.

38. Interim order, if any, stands vacated.

39. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

[Shampa Dutt (Paul), J.]