

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE**

Present:

The Hon'ble Justice Rai Chattopadhyay

WPO 400 of 2021

Satrughan Khatick

Vs.

The Kolkata Municipal Corporation and Ors.

with

WPO 708 of 2021

Pradip Khatick

Vs.

The Kolkata Municipal Corporation and Ors.

For the Petitioner

: Mr. Raghunath Chakraborty

: Mr. Supratick Syamal

: Ms. Peu R. Mallick

For the State Respondents

: Mr. Manoj Malhotra

: Mr. Manoj Kr. Mondal

For the KMC

: Mr. Alak Kumar Ghosh

: Mr. Swapan Kumar Debnath

(...in WPO 400 of 2021)

: Mr. Gopal Chandra Das

(...in WPO 708 of 2021)

Judgment on

: 03.09.2025

Rai Chattopadhyay, J. :-

1. The two writ petitions involved similar issues hence, have been heard together and are being decided by dint of the judgment as follows:-
2. In writ petition No. WPO 400 of 2021, an order of the Chairperson, Board of Administrator, Kolkata Municipal Corporation dated February 23, 2021 is under challenge which is concerned with the premises No. 74A, Christopher Road, Calcutta- 700046. In the other writ petition No. WPO 708 of 2021, an order of the Chief Valuer and Surveyor/respondent No. 4, Kolkata Municipal Corporation dated January 17, 2017 has been impugned. The said order of the respondent No. 4 in the said writ petition, is in respect of the premises No. 32, Pulin Khatik Road, Kolkata- 700015.
3. The issue which is pertinent and involved in the instant writ petitions is whether the land purchased by the respective writ petitioners, which fall within the earmarked road alignment earlier determined by the respondent/Kolkata Municipal Corporation should be considered as a freehold land of the writ petitioners in order to the Kolkata Municipal Corporation be able to sanction plan for construction of building thereon.

4. It is necessary to discuss in a nutshell the relevant facts in both the cases. In WPO 400 of 2021, the petitioner has purchased the property by dint of a deed of conveyance dated August 21, 2015. He has recorded his name as the owner thereof in municipal assessment records and since thereafter, has been paying municipal taxes. By dint of a letter dated August 30, 2018, the petitioner has sought for information regarding the premises No. 74A, Christopher Road, from the Kolkata Improvement Trust. The reply of the Kolkata Improvement Trust vide letter dated October 11, 2018 is annexed with the writ petition. The same reveals that, after examining the building plan in comparison with the trust records, the Chief Engineer of the Kolkata Improvement Trust has stated that the concerned property was not “affected at present by any published/sanctioned Scheme/alignment of the Trust”. Therefore, on the basis of the same, the petitioner sought for obtaining Survey Observation Report before the respondent/Kolkata Municipal Corporation. The Department of Chief Valuer Surveyor, Kolkata Municipal Corporation has issued a Survey Observation Report dated August 7, 2019 stating therein as follows:-

“(1) KMC Alignment on abutting Road/Passage (if any) :

There is a 60'-00" Wide KMC sanctioned alignment (Plan No. 6108) on northern side abutting road and the premises is affected by the said alignment to an extent 32'-00" at point 'B'.

(2) Character of abutting Road/Passage:

The Road abutting on northern side of the aforesaid premises is recorded according to availability of records in this Department.

(3) Width of Abutting Road/Passage:

The Width of the road abutting on northern side of the aforesaid premises is 28'-00" (8.534 M) at point A-A' and 25'-00" (7.619 m) at point B-B' as per record."

5. The writ petitioner in WPO 400 of 2021 has stated that from the said report dated August 7, 2019, he came to know that from amongst the total area of 3 katha 2 chhitaks and 41 square feet of land purchased by him, a 60 feet alignment on the northern side of the plot exists, abutting the road and the premises. Also that, leaving aside the area of alignment as stated in the report, the petitioner would be left to enjoy only 1 katha 3 chhitaks of land from amongst the total land area purchased by him. Hence, by dint of a letter dated October 6, 2018, the learned advocate for the petitioner has sought for cancellation of the sanctioned alignment (Plan No. 6108 on the northern side abutting road), but to no avail. According to petitioner, in response to his application under the Right to Information Act, 2005 dated December 21, 2018, the respondent Authority has provided no information excepting that the plan of the projected street alignment Plan No. 6108 is declared as sanctioned.

6. The first writ petition No. WP 2266 (W) of 2019 was filed by the instant petitioner in which the Board of Administration, Kolkata Municipal Corporation was directed to consider petitioner's writ petition and pass a reasoned order. The order of the Court as above was followed by a fresh representation of the petitioner dated October 14, 2020 to

be filed before the Chairman, Board of Administration, Kolkata Municipal Corporation and a hearing has taken place on December 14, 2020. Finally, after much persuasion, the petitioner has stated that the Chairperson, Board of Administrator, Kolkata Municipal Corporation has passed the order dated February 23, 2021, which is impugned in the instant writ petition.

7. Likewise, the father of the writ petitioner in WPO 708 of 2021 had purchased the concerned property on December 30, 1969. The petitioner became the owner after death of his father by way of inherence, along with the other legal heirs of the said deceased person. Their names were mutated in the records and municipal taxes are being duly paid by the petitioner.
8. For the purpose of sanction of a building plan, the petitioner sought for obtaining Survey Observation Report but was declined as a reason, the Authorities have stated in their letter dated August 4, 2010 that Kolkata Municipal Corporation alignment on abutting road affects the premises by 15.24 meter wide in forced regular line; the affected portion varies from 4.115 meter to 6.401 meter from West to East as per alignment Plan No. 6953. Therefore, according to the said report, the petitioner's premises was affected by a 50 feet wide KMC

alignment in forced regular line from West to East as per the alignment Plan No. 6953.

9. Such refusal of his prayer prompted the said petitioner to file writ petition before this Court being WP No. 2582 (W) of 2016. The Court in the said case had directed the Chief Valuer and Surveyor to consider and dispose of the petitioner's writ petition by dint of a reasoned order. Hence, the Chief Valuer and Surveyor, Kolkata Municipal Corporation after considering the petitioner's prayers passed the order dated January 17, 2017, which is under challenge in the instant writ petition.

10. Mr. Chakraborty while representing the writ petitioners in the case has mentioned that in accordance with the statutory provisions, though the respondent/Kolkata Municipal Corporation would be entitled and eligible for defining the regular line of alignment of public roads, however a defined regular land of alignment of public road is not to be sustained for time immemorial without being implemented. He has argued that the petitioners are such unfortunate purchasers of land through which possibly the defined regular lines of alignment go though excepting being defined, no steps have however been taken to execute the same by changing the alignment of the public road according to the said definition, by the respondent Authority. He says

that even being asked to provide information as per the statutory provisions, the respondent Authority has not cared to facilitate the land owners with the petitioners with any particular information regarding as to when the respective plans for defining the regular line of alignment of the public road over their respective freehold premises, were determined. Mr. Chakraborty has specifically mentioned as regards provision under Section 357 (6) of the Kolkata Municipal Corporation Act, 1980 to submit that it is within jurisdiction of the respondent Authority in case it considers expedient to do so, to cancel even wholly the regular line of public street, after a period of 10 years from the date of defining the said regular line, if not, the object for which the said regular line was defined has been completed within the said period. According to Mr. Chakraborty, the instant cases are best suited for the respondent Authority to exercise their power in terms of Section 357 (6) of the Kolkata Municipal Corporation Act, 1980.

- 11.** Mr. Chakraborty has submitted that the reasons assigned by the respective Authorities in the respective impugned orders are only baseless, and in that way are arbitrary. He submits that though the respective Authorities in the said impugned orders have held that the proposed plan of regular line of alignment has never been implemented but concludes finally that those are required to be maintained. According to Mr. Chakraborty, such decision of the Authorities respectively is not only unreasoned but also is in glare

violation of the statutory provision which mandates revisitation of the proposed plan in an interval of the specified period. According to him, otherwise the power granted to the Authorities by the legislators for cancellation of the proposed plan in case of any expedience would turn to be futile. He says that nothing is on record in the instant cases to show that any revisit as to the requirement of sustaining the plan for road alignment has ever been made by the respondent Authority, not to speak at a regular interval as per the statutory provision. Hence, when admittedly the object for determining the road alignment has not yet been accomplished, it is most apt, reasonable and also lawful exercises that the road alignment plan should be cancelled in terms of the statutory provision as above in order to bestow the petitioners their right to the property they own which is as a matter of fact, a right guaranteed by the Constitution of India, he says.

- 12.** Mr. Chakraborty has also referred to the Calcutta Municipal Act, 1951 to submit that in accordance with the provision under Section 357 (2) thereof the respondent Corporation would have been obliged to revisit the requirement of keeping the building or street line alignment within 5 years as per the commencement of the said Act. He says that unless the object for which the line of alignment would have been determined, was completed, the Act of 1951 had made a deeming provision that in that case the street alignment shall be deemed to be cancelled on the expiry of the specified period, he says.

13. The following two judgments have been referred to by Mr. Chakraborty, in support of his submissions as summarized above:-

i) ***Kolkata Municipal Corporation Vs. Shri Keshov Prasad Shaw*** reported in **2014 (2) CHN (Cal) 294**

ii) ***Rajvar Properties Private Limited and Another Vs. Kolkata Municipal Corporation and Others*** reported in **2022 SCC OnLine (Cal) 2523**

14. Hence, the petitioner's prayer in both the writ petitions is same that is, for setting aside of the two impugned orders dated February 23, 2021 and January 17, 2017 in writ petition Nos. WPO 400 of 2021 and writ petition No. WPO 708 of 2021 respectively and directing the respondent Authority to sanction the building plan has submitted by the petitioners.

15. Per-contra Mr. Alak Kumar Ghosh representing the respondent/KMC has argued the instant writ petitions would not be maintainable at all. So far as WPO No. 400 of 2021 is concerned, according to the respondent/KMC the sanctioned alignment plan No. 6108 of the Corporation was notified on February 27, 1930 and since then it has been in vogue. That the same has never been cancelled. Hence, according to the said respondent, the property is not free from

encumbrances. It has been submitted that at the time of purchase of the property on August 21, 2015, the property was encumbered in the way as stated above. That the principle of 'caveat emptor' that is 'buyer beware', put the responsibility upon the purchaser, in this case, the writ petitioner to perform due diligence before making the purchase. In case of any encumbrance, the buyer that is the present petitioner in this case assumes the risk. Since admittedly, the petitioner has purchased the property, therefore, by following the principle of the contract law as above, the petitioner has purchased the property with adequate knowledge of the same being encumbered by dint of the road alignment plan, Mr. Ghosh has submitted.

16. He has submitted that it is not only for the reason of a prayer made by the purchaser for cancellation of the existing road alignment plan, but a specific case being made out justifying such cancellation of the existing alignment plan, would prompt the respondent to invoke its powers for cancellation of the existing alignment plan in terms of the statutory provision. Mr. Ghosh has submitted that in this case, the petitioner has not been able to make out a plausible reason which can justify any such step to be taken by the respondent authority for cancellation of the said existing alignment plan, in exercise of its power as envisaged under the statute.

17. He has thus submitted that the Survey Observation Report has clearly indicated as to how the property is butted and bounded by the

road alignment plan, earlier sanctioned by the competent Authority. That, on the basis of the same and with proper reasons, the respondent Authority has declined the prayer made by the petitioner regarding cancellation of the sanctioned road alignment plan or for sanction of his plan for construction of building. According to the said respondent, there would not be any reason for this Court to interfere into the order, which is under challenge in the instant writ petition. It is submitted that until and unless the proposed sanctioned road alignment/regular line is cancelled or modified, the same remains to be valid in accordance with law. That the Survey Observation Report also discloses about the validity of the said sanctioned alignment plan. Mr. Alak Kumar Ghosh has submitted that there would not have been any question of automatic invalidation of such sanctioned road alignment/regular line, due to efflux of time or for any other reason whatsoever. Hence, submission of the petitioner to that extent has been strongly resisted.

- 18.** On the other hand, it is submitted, that any modification or cancellation of the sanctioned road alignment plan shall adversely affect the public interest in so far as the object for which the road alignment plan has been made is to develop the structure of the streets and the roads commensurate to the requirements, which may evolve with the passage of time. Hence, that without any proper and justifiable reason, there would not be a scope or occasion for the respondent Authority, to cancel or modify the plan which is in place.

It is submitted that the public interest would prevail over the private interest of the writ petitioner. The allegations of arbitrariness or impropriety of the impugned order are denied.

19. So far as the writ petition WPO No. 708 of 2021 is concerned, the respondent has also submitted that the Chief Valuer & Surveyor has no authority and/or power to define or declare the regular line of any street. Also, that the said office does not possess any power to cancel or modify the declared regular line of alignment of the public street. The respondent has contended that in that way, the petitioner has not made any representation before the competent authority but to such an office which is not authorized to entertain such prayer as per law.

20. The questions fall for determination, are if the plan of regular line of street alignment, if once sanctioned shall remain valid in perpetuity, even if such plan having not been executed for years together and till the present time; even in that case, a person who might not have been aware at the time of purchase of property, regarding existence of such encumbrance, should be deprived of his right of enjoyment of the property under his exclusive ownership, for the reason of existence of such an unimplemented, sanctioned plan for street alignment/ regular line.

21. In Part — VI for "Town Planning, Land and Land Use Controls," under Chapter — XXI of the Kolkata Municipal Corporation Act, 1980, which deals with "Streets and Public Places," the provisions have been made regarding "Regular line of street." Section 357 thereof is for defining regular line of a street. The said section, comprised of six sub sections, has provided authority and power to the Municipal Commissioner to define or redefine the regular line on one or both sides of any public street or portions thereof, in accordance with the rules and regulations made in this behalf.

22. The procedure for redefining the regular line of street alignment has been prescribed in the statute, that, it should be done by issuance of public notice and thereafter affording reasonable opportunity to the residents of the premises abutting on such public street to make suggestions or objections with respect to the proposed redefinition. The statute says that the street alignment operative under the law, since the time immediately before commencement of the Act of 1980, shall be deemed to be a regular line of alignment of the street. Also that the line defined or redefined shall be called regular line of street. According to Section 357 (3) of the Act of 1980, no construction or reconstruction of any building or portion thereof or any boundary wall should be made within the regular line of a street.

23. Therefore, the law has provided that line of a street, which is defined would be the regular line of alignment thereof, within which there should not be any construction of any building or boundary wall of any building.

24. The two other very vital legal provisions have been made under sections 357(4) and 357(5) of the said Act, that the Municipal Commissioner shall maintain a register containing prescribed particulars of the defined regular street lines with plans attached thereto and that all such registers shall be open for inspection and taking extract therefrom.

25. It has further been provided under section 357(b) of the said Act that the Corporation is empowered to cancel or modify the regular line of public street, if it finds it expedient to do so. The Corporation is empowered to cancel or modify the regular line of public street after a period of ten years from the date of defining the said regular line, if not the object for which the regular line was defined, has not been completed. The statute has provided the mode to follow, in case the Corporation finds it expedient to cancel or modify the regular line of public street.

26. The fundamental doctrines on which the said action should be based are of reasonableness, fairness and non-arbitrariness. The respondent's action should always meet with the requirements of the doctrines of reasonableness, fairness and non-arbitrariness vis-à-vis the law. The doctrines as above, serve as a critical check on governmental power, ensuring that all administrative actions are based on discernible principles, are founded on logic and are made at achieving a just and fair outcome for all citizens.

27. So far as facts of these cases are concerned, admittedly, the petitioners are the owners of the concerned property by way of purchase/inherence. Their names are recorded in the books and they are the regular tax-payers with respect to the said property, since from the date of ownership of the property by self or by the predecessor-in-interest. Therefore, they are in absolute possession over the said properties. Now, as the owners of the properties, the petitioner's desire to sanction building plan from the concerned office of the respondent/Kolkata Municipal Corporation and built houses. As we have already seen that as per provision under Section 357 (3), no person shall construct any building or even a boundary wall within the regular line of a street.

28. According to the respondent Authority portion of the petitioner's property fall within the defined regular line of a street according to the sanctioned Plans Nos. 6108 and 6953. Hence, for the said reason, no building plan can be sanctioned over there.

29. Admittedly, here the street alignment has been declared back in the year 1930, to be precise on February 27, 1930. However, admittedly also, the same has remained unimplemented and unaffected till date. Therefore, it has been decades since the sanction of such plans that the Authority has not considered for actually implementing the same. The prolonged inaction of the Authority in implementing the plan has given rise to the strong presumption of abandonment of the said plan, leading to the presumption of cancellation of the said plan. In the instant case, the authority, having not given effect to the defined regular line of the street, has implicitly abandoned alignment through inaction over a significant period of time, evidenced by long delay and non-implementation of the plan. A plan must be converted into action within a reasonable period of time. It would not be fair, reasonable, and proper for the respondent authority to keep the plan of regular line of the street alive perpetually. That is why the legislature, according to its own wisdom, has provided for cancellation or modification of the said plan. This can be done after a period of 10 years from the date of defining the said regular line and the respondent Authority being satisfied about the expedient reason for the same.

30. Evidently, in these cases, such a statutory period of ten years from the date of the plan has expired long ago. No record is available as to whether any assessment has been done regarding the existence or not of any expedient reason to sustain the regular line of the street as it is. Abandonment or cancellation can be inferred if the authority has not taken any steps within a reasonable period; the long-standing non-implementation indicates a clear intent to abandon. This Court in the case of Keshav Prasad Shaw (*supra*) has found that long inaction can lead to a presumption of abandonment or cancellation. The Court has found there in that when a declared alignment has not been acted upon or implemented for over 50 years, it can be regarded as abandoned or cancelled. That, to make this presumption an absolute rule, the statutory procedure must be followed.

31. Consequently, the principles of law are now firmly established. In that view, the submissions advanced on behalf of the respondent/Kolkata Municipal Corporation that once sanctioned a plan defining the regular line of street should remain static and in vogue for all time to come, unless and until the Corporation itself cancels or modifies the same, do not inspire much confidence in the mind of the Court. The law is that it should be implemented within a reasonable period of time or else there would be a presumption to be converted into absolute that the respondent has abandoned or cancelled any such plan defining the regular line of street. Of course,

there are statutory procedures prescribed, which are to be followed to formally declare the plan as abandoned or cancelled. Be that as it may, that would be a matter of procedure only.

32. The respondent, in the impugned orders has held inter alia that the road alignment plans, which are challenged by the petitioners, is still in force and necessary to be maintained for smooth vehicular movement, better infrastructure and overall development of the area for greater public interest. Admittedly it is a plan prepared about 100 years ago, which has remained unimplemented till date. The drastic changes in the socio-economic conditions during this long period of time are vital and relevant for the purpose as to whether the plan for alignment of road, which has remained unimplemented, would be any further feasible or practical. Admittedly, for all these years, no assessment has been made by the respondent authorities regarding the requirement of keeping the plan for regular line of the street alive. This militates with the provisions under section 357(6) of the Kolkata Municipal Corporation Act 1980, which has provided for cancellation, wholly or partly or modification of the regular line of a public street after a period of 10 years from the date of its being defined, in case the object for which the said regular line was defined, has not been completed. In this respect, the Court concurs with the submissions made on behalf of the petitioner that, even in the Old Act of 1951, provisions have been made for revisiting the reason and justification

to keep the prescribed street alignment after a certain specified period, that is 25 years.

33. The Court is also constrained to find that during all these years for about a century, there has not been a single finding of the respondent authority regarding its reason to keep the regular line plan of the street as existing without cancelling or modifying the same. It is as if the same goes into oblivion. Time is of immense importance here which strongly presupposes the lack of intent on part of the respondent Authority to actually execute the plan, which was prepared and undertaken about a century back. The prolonged period of inaction over the plan, defeats its purpose. It is undeniable that statutory provisions do not become inoperative simply due to efflux of time and there is no estoppel against a statute. This concept known as obsolescence or desuetude is generally not recognized in law. Instead, the statute remains in force unless repealed by the legislator or unless their applicability is limited by other provisions within the statute itself, such as those related to a specific time frame or condition precedent.

34. For all the reasons as mentioned above the Court is of considered opinion that the plans of regular line of the street alignment, which are based by the respondent Authority to reject the petitioners' prayer for sanction of the building plan on the piece of property, has lost its force being not implemented or even verified

whether it's existence is justified or not. In such circumstances the findings of the respondent Authority in the impugned orders dated February 23, 2021 and January 17, 2017 are unsustainable being unreasonable and arbitrary. These are the result of sheer non-application of mind of the said concerned respondents. On the contrary, having lost their force and purpose, the said plans are liable to be cancelled.

35. It is pertinent to note that in accordance with the provisions under section 357 of the Act of 1980, cancellation of the plan for regular line of street alignment would not be an automatic exercise but require specific statutory procedure to be followed for the same. Section 357(6) of the Kolkata Municipal Corporation Act 1980 has explicitly stated that the regular line of a street may be cancelled or modified only following prescribe procedures including issuing notices to residence, considering objections and obtaining sanctions.

36. For all the reasons as discussed above, the instant writ petitions should succeed. Hence, writ petition No. WPO 400 of 2021 and WPO 708 of 2021 are allowed with the following directions:-

i) The impugned order dated February 23, 2021 in writ petition No. WPO 400 of 2021 and that dated January 17, 2017 in writ petition No. WPO 708 of 2021 are set aside.

ii) The plans No. 6108 and 6953 respectively of regular line of street alignment are held liable to be cancelled.

iii) The respondent No. 1 shall take immediate necessary steps in accordance with law for cancellation of the plans No. 6108 and 6953, in accordance with the procedure as prescribed under law.

iv) The exercise as above, should be concluded within a period of eight (08) weeks from the date of communication of copy of this judgment.

v) Let the concerned respondent take necessary and adequate steps for sanction of building plan of the writ petitioners after cancellation of the plans for regular line of street alignment as above in accordance with law.

37. Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)