

(1998) 09 CAL CK 0033
In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction C.O. No. 14149 (W) of 1989

Baidyananda Mahato and Another

APPELLANT

Vs

Howrah Municipal Corporation and Others

RESPONDENT

Date of Decision : 11-09-1998

Acts Referred:

Calcutta Municipal Act, 1923 — Section 398

Howrah Municipal (Temporary) Provision Rules — Rule 52, 57, 59, 63

Howrah Municipal Corporation Act, 1980 — Section 175

Citation : (1999) 1 CALLT 85

Hon'ble Judges : Satyabrata Sinha, J

Bench : Single Bench

Advocate : Mr. Pradip Ghosh and Mr. Haradhan Banerjee, for the Appellant; Mr. A.P. Sirkar and Mrs. Shritinana Mukherjee, for the Respondent

Judgement

S.B. Sinha, J.—Whether deposit of fee after a plan is passed within a reasonable time entitles the Howrah Municipal Corporation to cancel the said plan is the question involved in this application.

2. The admitted facts are :-

3. The petitioners are owners of 2 Cottahs 8 Chhitacks of land being Holding No. 26, Kumar Rameswar Malta 1st Bye Lane, Kalabibir Bagan Howrah. The said land was purchased by them by reason of a deed of transfer executed on 22nd December, 1964. The petitioners have been paying tax in relation to the said holding. A building plan was submitted on 25.5.1984 in relation where to a case being No. BR-326/84-85 was registered by the Building Committee.

4. On or about 8th June, 1984 the Building Committee recommended for sanction of plan on payment of sanction fee of Rs. 4,500 subject to :-

(i) colouring the holding boundary by red dotted line.

(ii) drawing up the site plan property with 40" ft. surrounding holding nos.

(iii) approval of D.E regarding design (load calculation is attached).

(iv) colouring the plan properly.

5. The petitioners removed the defects pointed out to them by the respondents-Corporation in terms of its letter dated 16.8.84 and the Engineer-11 (Building) having satisfied himself that the defects pointed out even the plan having been rectified, directed the petitioners to deposit sanction fee as per present rate of sanction plan. In paragraphs 7 and 8 of the application the petitioners have contended that despite several attempts they could not deposit the fees. According to the petitioners they gone out of the State and, thus, could not take steps in relation thereto. The petitioners, however, had contended that in July, 1989 they were Informed that because of non-deposit of fees, the said plan has been cancelled.

6. The contentions raised on behalf of the petitioners in this writ application are :-

1. Payment of fee is not a condition precedent;

2. The plan having been sanctioned, subsequent change in the enactment, namely, coming into force of section 175-A of the Howrah Municipal Corporation Act will not alter the position; and

3. The plan having been sanctioned by the Members-in-Council of the Corporation, the Chief Architecture had no Jurisdiction to pass the impugned order.

In support of the aforementioned contention reliance has been placed on two unreported decisions of this court, one passed by M.G. Mukherji, J. (as His Lordship then was) in Civil Order No. 3076(W)/90 (Miss Jamuna Samanta v. Howrah Municipal Corporation & Ors.) disposed of on 30th November, 1990 and the other passed by R. Pal, J. in Civil Order No. 710(W)/91 (Suniti Bhushan Palul & Ors. v. Howrah Municipal Corporation & Ors.), apart from the the reported decisions of this court in *Atmaram Konoria & Ors. v. L.K.R. Prasad & Ors.* reported in 1990(1) CLJ 169 and *Amarendra Nath Banerjee v. Calcutta Municipal Corporation & Ors.* reported in 1995(1) CLJ 34 which has been affirmed by the Division Bench in *Calcutta Municipal Corporation & Ors. v. Arunendra Nath Banerjee* reported in 1995(2) CHN 56.

7. Mr. A.P. Sarkar, the learned counsel appearing on behalf of the respondents, on the other hand, has drawn this court's attention to paragraph 8 of the affidavit-in-opposition that the petitioner was informed about the cancellation of the sanctioned plan of the Chief Architecture, Howrah Municipal Corporation on 11th September, 1989 which is to the following effect: -

"With reference to your application dated 25.5.84 in respect of proposal for construction at abovementioned premises, I have been directed by the authority to inform you as have not deposited sanction fee. So, your proposal is treated as cancelled. Hence, you are requested to submit fresh proposal under new rules."

8. The learned counsel contends that from a perusal of a letter dated 10.6.89 issued by the petitioner himself as contained in annexure "A" to the writ application it would appear that the petitioner had all along knowledge that he is required to deposit the said fees and failure on his part to do so, would disentitle him from obtaining any equitable relief from this court. According to the learned counsel, the statement made in paragraphs 8 and 9 of the writ application must be read in the context of the said letter of the petitioner himself. It is not disputed that at the relevant point of time the Howrah Municipal (Temporary Provisions) Act, 1933 was prevail.

9. Rule 57 of the said Rules framed under the said Act reads thus:-

"57.(1) Within fifteen days after the receipt of any application made under rule 52 for permission to execute any work, or of any information or documents or further information or documents required under this schedule, or within fifteen days after the Commissioners have been satisfied that there are no objections which may lawfully be taken to the grant of permission to execute the work.

the Commissioners shall, by written order either-

(a) grant permission conditionally or unconditionally to execute the work, or

(b) refuse, on one or more of the grounds mentioned in rule 59 or rule 63, as the case may be, to grant such permission.

(2) When the Commissioners grant permission conditionally under clause, (a) of sub-ruled), they may in regard thereto impose such conditions, consistent with the Calcutta Municipal Act. 1923, as in force in the Municipality of Howrah, as they may think fit.

(3) Notwithstanding anything contained in sub-rules (1) and (2), in any case in which it appears to the Commissioners that any public improvements which may render necessary the acquisition of the site of a proposed building or any part thereof are desirable and expedient, they may withhold sanction to the building plans submitted in respect of such building for a period not exceeding three months from the date of such submission."

10. In terms of rule 58 in the event of non-communication of any order passed by the Commissioner within the period prescribed by rule 57 the said plan would be deemed to have been sanctioned. Rule 59 provides for the ground upon which sanction of a building plan may be refused which is to the following effect:-

"59. The only grounds on which permission to erect a new building (other than a hut) may be refused are the following, namely:-

(1) that the work or any of the particulars comprised in the site-plan, building plans, elevations, sections or specifications would contravene some specific provision of the Calcutta Municipal Act, 1923 as in force in the Municipality of Howrah, or some specific order, rule or by-law made there under"

11. It is admitted that the building plans were sanctioned on 8.6.94 and the defects were removed on 22.8.97. At the relevant point of time when the building plan was sanctioned, the rate of fees had gone up. From the records produced before this court it appears that a note was submitted before the Commissioner on 22.8.87 which was partly torn to the effect that the party may be asked to deposit sanction fee at the present rate within 30 days from the date of sanction of the plan. It appears that thereupon an endorsement was made by the Commissioner to the effect-"please discuss", and the matter appears to have been finally discussed on 10.10.87. There is nothing to show from the record nor any allegation has been made that thereafter the petitioners had been informed to deposit the aforementioned fee for sanction of building plan.

12. It has rightly been submitted by the learned counsel for the petitioner that despite the aforementioned letter dt. 10.6.89 as contained in annexure "A" to the affidavit-in-opposition the petitioners was under no obligation to deposit such fees. The question, however, which arises for consideration is whether in view of the aforementioned order sheet it was obligatory on the part of the respondents to inform the petitioner about the exact amount payable by him. The answer to the said question must be rendered in affirmative. The statements made in paragraphs 8 and 9 of the writ application may or may not be wholly correct but it is equally true that the respondents were also guilty of inaction on their part. In the aforementioned unreported decision in Ms. Jamina Samata (supra) which has been followed in Sunil Bhusan Palui (supra) it has clearly been held that payment of fee is not a condition precedent for handing over the sanctioned plan.

13. Furthermore in the instant case, admittedly the amount of fee required to be deposited had increased and in that situation. It was obligatory on the part of the respondents to intimate to the petitioner as regard the amount of actual fees required to be deposited.

14. It is true that in the mean time the New Howrah Municipal Corporation Act came into force wherein by reason of an Ordinance, section 175-A which is in pari materia with section 398-A of the Calcutta Municipal Corporation Act was inserted with effect from 18.12.89 in terms whereof an embargo on sanction of building plan exceeding 13.50 metres had been placed.

15. A Division Bench of this court in Atmaram Kanoria & Crs. v. L.K.R. Prasad & Ors. reported in 1990(1) CLJ 169 has categorically held that the said provision is prospective in nature.

16. In Arunendra Nath Banerjee v. Calcutta Municipal Corporation & Ors. reported in 1995(1) CLJ 34, 1 had followed the said view and also referred to another decision in Trimplex Industries Put, Ltd. v. State of West Bengal reported in (2) 1992 CLT 475. Arunendra Nath Banerjee (supra) has been upheld by a Division Bench in a decision in Calcutta Municipal Corporation & Ors. v. Arunendra Nath Banerjee reported in 1995(2) CHN 56 wherein it has again been held that the provision of section 398-A is prospective in nature and not

retrospective. There, thus, cannot be any doubt whatsoever that once the building plan is passed, the same is final and only in the event on the part of the petitioners' failure to deposit the fees within the period mentioned therein, in might have been open to the respondents to cancel the said plan but before taking such a step, the applicant on its own had no statutory obligation to deposit the same. Furthermore, it appears that M.G. Mukherji, J, by an order dated 7.9.90 gave liberty to deposit the sanction fee of Rs. 25,056/- within a fortnight from the said date and the Howrah Municipal Corporation on acceptance of the said amount was directed to proceed in accordance with law. From the records it also appears that the petitioners had deposited the said amount by a pay order for Rs. 25,056/-, thus, it would appear that during pendency of this application also such fee has been deposited.

17. In this view of the matter there cannot be any doubt that as the learned Act was applicable in this case whence the building plan was sanctioned and keeping in view the fact that even the Members in Council has accepted the decisions of this court that section 175-A will be prospective in nature, the writ petition must succeed.

18. Before parting with this case, however, I may add that this court is not oblivious of the legal position that the provisions of the New Building Rules are to apply at the time of sanction of the building plan but as in the instant case the plan was already sanctioned and the provision of old Act shall apply in the instant case.

19. For the reasons aforementioned this application is allowed let a writ issue directing the respondents to hand over the sanctioned building plan to the petitioner as he has now deposited the requisite fees at an early date and preferably within a period of 3 weeks from the date of communication of this order.

20. Application allowed