
(2004) 12 CAL CK 0031
In the Calcutta High Court
Case No : Writ Petition No. 871 (W) of 2000

Basana Dutta and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 23-12-2004

Acts Referred:

West Bengal Apartment Ownership Act, 1972 — Section 10, 2, 3
West Bengal Municipal Building Rules, 1996 — Rule 13, 50
West Bengal Municipality Act, 1962 — Section 207(2)

Citation : (2005) 3 CALLT 67 : 108 CWN 1056

Hon'ble Judges : Kalyan Jyoti Sengupta, J

Bench : Single Bench

Advocate : Debal Banerjee and Uttam Majumdar, for the Appellant; Bidyut Kumar Banerjee and Shila Sarkar for Respondent Nos. 7 and 8, B.R. Bhattacharya, Nabanita Roy and Fazul Haque for Respondent Nos. 4, 5 and 6 and Pinaki Banerjee, for the Respondent

Judgement

Kalyan Jyoti Sengupta, J.—In this writ petition, the petitioners have challenged the impugned order dated 3rd December 1999 passed by the Chairman South Dum Dum Municipality being the respondent No. 2 herein purported to be in terms of the judgment and order of the Division Bench of this Court in MAT No. 2139 of 1999 dated 30th September 1999. The controversy in the writ petition relates to the sanction granted by the Municipal authority to the revised building plan being No. 544 of 2nd January 1997. The fact of the case is briefly stated hereunder.

2. The petitioners and each of them on or about 1994 entered into agreements for acquiring several flats which were then being proposed to be constructed, with the respondent Nos. 4 and 5 as the confirming party and respondent Nos. 7 and 8 as the vendors. In terms of the agreements the petitioners and each of them agreed to purchase and the vendors as well as the confirming parties agreed to sell the respective flats having specified area together with all rights and facilities, which include car-parking facilities and proportionate share in the

land. The respondent Nos 4, 5 and 6 on the strength of the power of attorney for and on behalf of the respondent Nos. 7 and 8 being owners of the land duly and lawfully obtained sanction to building plan for construction of a multi storied building having G + IV stories. The said plan was duly sanctioned on or about 18th February 1994. In accordance with sanction to the said plan the respondent Nos. 4, 5 and 6 constructed the building and the ground floor thereof was shown in the sanctioned building plan as car parking. In due course of time by and under registered deeds of conveyance the petitioners and each of them acquired their respective flats together with all rights as mentioned in the deeds of conveyance including their right to park their cars in the ground floor as mentioned and shown in the sanction building plan. The Mr. Debai Banerjee and Mr. Uttam Majumdar for the Petitioners Mr. Bidyut Kumar Banerjee and Ms. Shila Sarkar for the Respondent Nos. 7 and 8 Mr. B.R. Bhattacharya, Ms. Nabanita Roy and Mr. Fazlul Haque for the Respondent Nos. 4, 5, 6 Mr. Pinaki Banerjee for the State petitioners along with other flat owners took possession of their respective flats, thus they became joint owners in respect of the flats as well as proportionate right, title and interest in the land in question. In or about January 1997, the petitioners and each of them discovered that the respondent Nos. 4, 5 and 6 had attempted to take possession of the car parking space for further construction of the flats in the ground floor on the strength of sanction to the revised plan issued by the respondent Municipality. The petitioners being the flat owners and the respondent Nos. 7 and 8 being the erstwhile absolute owners of the land protested against such act of the respondent Nos. 4, 5 and 6 and also duly complained to the respondent No. 2 for taking action against such illegal construction and also for withdrawal of the sanction granted to the revised building plan whereby the entire ground floor including open space for car parking in the previous sanction plan; was shown to have been converted into several flats in the ground floor. It is recorded that after completion of the construction of the building in terms of the sanction to the original building plan necessary signature of occupancy and fitness and further completion thereof were issued by the respondent No. 2 in or about 16th October 1996.

3. Despite such representation and protest the Municipal authority did not take any action whatsoever. The petitioners and each of them thus were compelled to approach this Court with the writ petition being No. W.P. 23185 (W) of 1997. The said writ petition was disposed of by an order dated 25th November 1997 by the Hon"ble Justice Gitesh Ranjan Bhattacharjee (as His Lordship then was). By this order His Lordship was pleased to grant liberty to the petitioners to file a comprehensive representation in that matter to the respondent No. 2, the Chairman South Dum Durn Municipality for cancellation of the revised plan within two weeks from the date of the order. His Lordship was pleased to give direction upon he Municipal authority to consider the said representation and dispose of the same by passing a speaking order after giving an opportunity of hearing to the petitioners and their representatives advocate, the promoters respondent and/or their representative advocates and such other person or persons as may

be necessary within a period of 8 weeks from the date of filing of the representation. Pursuant to the liberty granted the petitioners made comprehensive representation to the Chairman to the represent No. 2 herein raising several points namely applicability of West Bengal Building, Promotion, Construction and Transfer by Promoters Act, 1993 as well as West Bengal Apartment Ownership Act, 1972. The respondent No. 2 on receipt of the said representation purported to have disposed of the same rejecting the contention of the petitioners the sanction granted to the revised building plan was not withdrawn nor cancelled. Challenging the said order of respondent No. 2 dated 15th January 1998 the petitioners once again approached this Court with another writ petition being No. 1247 (W) of 1998. The writ petition was disposed of by Justice P.K. Samanta by passing an order dated 9th April 1999. By this order His Lordship was pleased to set aside the aforesaid order of the respondent No. 2 on various grounds as has been observed by His Lordship. The promoter developer being the respondent Nos. 4, 5 and 6 herein had taken this matter to Appeal Court impugning the judgment and order of Justice Samanta. The Appeal Court by the aforesaid order dated 30th September 1999 disposed of the appeal as well as the subject matter of the writ petition. Their Lordships the Hon"ble Mr. Justice P.K. Sen and the Hon"ble Mr. Justice V.K. Gupta (as Their Lordships then were) were pleased to observe that representation made by the writ petitioners as well as the previous owners of the land were not considered and dealt with by the Chairman properly. Their Lordships were pleased to observe that no reason was recorded. In fact in their order Their Lordships recorded Their Lordships" displeasure in the act and conduct of the respondent No. 2 herein. As such Their Lordships were pleased to set aside the judgment and order of the learned single Judge dated 1993 holding West Bengal Promotion, Construction and Transfer by Promotions Act, 1993 was not applicable. The basis of the learned single Judge's order was that there was total non-observance of the provision of the aforesaid 1993 Act.

4. However, Their Lordships were pleased to direct the Chairman being the respondent No. 2 herein to hear out the matter laying down guidelines as follows:

"I. In the light of the direction contained in the Court's order dated 25.11.97 passed in W.P. 23185 (W) of 1997, the Chairman shall reconsider the representation of the respondent No. 1 to 3 herein (the writ petitioners) and pass a well-reasoned and comprehensively speaking order,

2. While considering such representation, he shall take into account the fact that even though 1993 Act is not applicable to the property in question, 1972 Act is applicable, subject of course to the observance of the requirements contained in the first proviso in Section 2 thereof read with Section 10. If such requirement has been duly met and complied with, then he will proceed with the assumption that 1972 Act is squarely applicable to the property in question.

3. He shall also consider the request, if made to him by the landowners that the landowners had not applied for grant of sanction in respect of the revised plan

and the landowners" signatures were forged by the applicants. In deciding this issue, the Chairman shall consider as to whether he himself can, by mere comparison or otherwise, find out about the forgery of signature and if he thinks that he cannot do so and prima facie some suspicion does exist in respect of such fact, he may refer it to a handwriting or other forensic expert for his expert opinion and decide the issue accordingly based on such finding with regard to the alleged forgery. Needless to say that if it is ultimately found that the signature of the land owners were forged, the sanction granted shall be deemed to be nonest in the eyes of law. On this question he shall also take into account the submission of the appellants that they had submitted the application on the basis of a power of attorney.

4. With regard to all the rival contentions and issues raised, the Chairman shall record separate findings supported by reasons, as duly recorded by him.

5. The consequential order accordingly shall be passed within six weeks from today."

5. The impugned order is said to have been passed purporting to comply with the aforesaid direction. By this impugned order the Chairman rejected the contentions of the writ petitioners as well as respondent Nos. 7 and 8. The respondent No. 2 has held that provisions of the West Bengal Apartments Ownership Act, 1972 is not applicable as there was no compliance under the provision of Section 2 and proviso thereof read with Section 10. The writ petitioners raised several questions as regard violation of Rule 50 of the West Bengal Municipal Building Rules 1996 which came into force on 30th December 1996. The petitioners and each of them being co-owners of the land in question have not signified their consent to this application for granting revised building plan. According to the petitioners, as contended before the Chairman that they have their right and interest in the ground floor which has been sanctioned as car parking space in the original sanctioned building plan. The owner of the building also raised several issues contending that they never applied for sanction to the revised building plan nor they have given consent. Signatures appearing in the application for granting sanction to the revised building plan are forged.

6. The Chairman while disposing of this matter held that provision of Building Rules 50 of Rule 1996 has no application since it came into force on 30th December 1996 while the application was made long before commencement of the said Building Rules and further it is said that it was revised plan to the original building plan so it cannot have any application at all. He treated that the application for granting sanction to the revised building plan is for renewal and necessary renewal to the sanction of the building plan is possible under the provision of Sub-section 2 of Section 207 of the West Bengal Municipality Act, 1962. In the previous building rules under the Bengal Municipal Act 1932 there was no compulsion for keeping car space.

7. Mr. D. Banerjee learned senior advocate appearing with Uttam Mazumder

learned advocate has assailed the aforesaid impugned order contending that the respondent No. 2 in order to decide the matter in terms of the direction and guidelines given by the Division Bench the dispute raised by him ought to have been dealt with, as his clients are co-owners of the land and building of the said premises. This specific point was raised and it was not dealt with. The question of fraud and forgery as raised by the erstwhile full owner of the land being respondent Nos. 7 and 8 was not touched at all.

8. His further contention is that in the original building plan the ground floor was shown to be the car parking spaces and sanction was accorded accordingly. Car parking space in the ground floor is part of the common facilities which is the part and parcel of common area as mentioned in the schedule of the deed of conveyance. The Chairman has misdirected himself by not applying the 1996 Building Rules on the plea that the same came into force in the month of December 1996 and application for revision of the building plan was made in relation to the original building plan sanctioned under the old building rules, prior thereto, as such the same is not applicable. He submits that when the application for granting sanction to the revision of the sanctioned building plan was taken up for consideration the new Building Rule came into force and it is this rule which should have been applied and which provides for compulsory keeping of car-parking spaces. The date of making application is irrelevant the relevancy is the date of taking up the matter for consideration and decision, for application of law. In support of his contention he has relied on decisions of the Supreme Court reported in *State of W.B. Vs. Terra Firma Investment and Trading Pvt. Ltd.*,

9. He further contends that by virtue of the covenant mentioned in the registered conveyance the provisions of the West Bengal Ownership Apartment Act, 1972 as regard common areas and facilities is applicable. Therefore, the definition of common facilities as mentioned in the aforesaid 1972 Act has been incorporated in this conveyance. The common area and facilities is defined in Section 3(d) of the said Act, which includes parking spaces.

10. Therefore the Chairman ignoring the aforesaid serious legal infirmity has decided the matter in the similar fashion as it was done previously which was disapproved by the Division Bench in no uncertain terms. He therefore, concludes that the impugned order is liable to be set aside, and sanction granted to the revised building plan is liable to be cancelled. He further submits that the promoters/respondent Nos. 4, 5 and 6 have no locus standi to make such application. It is the owners of the property who can apply.

11. Mr. Bidyut Banerjee learned senior advocate appearing on behalf of the respondent Nos. 7 and 8 has adopted the legal argument of Mr. Banerjee to support the writ petition. He contends that his clients never made any application for granting sanction to the revised plan nor consented to any sanction being granted. Signatures if any recording consent are forged and fabricated. This issue notwithstanding being raised specifically before the Chairman, was not decided and dealt With in complete violation of the order of the Division Bench.

The represent Nos. 4, 5 and 6 have no right apart from making application for sanction to the original building plan, to apply again for any purpose. The scope of the power of attorney is not extended to that extent. The purpose for which the power was given is achieved when the impugned construction of the building in terms of the original building plan was completed with the issuance of the completion certificate by the municipal authority. He further submits that as on today the aforesaid promoter developer has no proprietary interest in the building and land in question as no conveyance has been executed in their favour. In fact in terms of the agreement they have no authority nor any right to execute any conveyance, they can only collect and realise the consideration money from the respective flat owners.

12. Mr. Kashi Kanta Moitra learned advocate appearing on behalf of the respondents Nos. 4, 5 and 6 submits that pursuant to the order dated 25th November 1997 passed by the Hon"ble Appeal Court, the Chairman has correctly and lawfully decided all the issues. According to him the issues in the present writ petition are barred by the principal of res judicata and/or constructive res judicata. As regard applicability of the provision of West Bengal Apartment Ownership Act, 1972, the basic fact needs to be looked into whether any application on behalf of the flat owners were made before the appropriate authority u/s 10 of the Apartment Ownership Act, 1972 and Rules framed there under. He submits further that admittedly there was no such application, which would be apparent from the pleadings and also from the order of the Municipal Chairman. Statutory form prescribed under the Act needs to be filled scrupulously and application in any other form other than prescribed one is nonest in the eye of law. As such the petitioner cannot claim the benefit of Apartment Ownership Act, 1972.

13. He submits further that the claim of the writ petitioners of co-ownership is self-defeating argument. The term "co-owner" means equal ownership to the entire property having equal liability and obligation. The common area under the apartment Ownership Act means the areas, which are necessary for exercise of easement right. Those areas, which are impliedly necessary for easement right, are the common area for the flat owners. He has relied on a judgment of the Division Bench of this Court reported in (2003)2 CLR 5888. Therefore, he submits that the petitioners cannot claim co-ownership of the portions of the property, which are allowed to the promoter or developer, namely the respondent Nos. 4, 5 and 6 of their share in terms of Clause 3(e) of an agreement made between the first owners one, Mr. Ratan Bhattacharyya, one Ajay Bhattacharyya with one Mr. Ajit Banerjee and Sm. Snighdha Banerjee respondents Nos. 4, 5 and 6 namely dated 15th April 1994. The tenants have no locus standi or right to ask for hearing before sanction of the plan accorded by Municipal authority. He has referred to a decision of this Court in this connection, reported in Kumuda Sundari Properties (Private) Ltd. and Others Vs. Namdang Tea Co. Ltd., . He submits that since the area in question has been allotted to his clients they have every right to charge the same. The writ petitioners cannot claim any benefit in

respect of this portion. Moreover, the common rights and facilities as envisaged in the deed of conveyance dated 30th September 1996 and the Schedule (e) as well as Section 2(d)(i) of the said Act, the parking area was never treated as common area and facilities as the said Act, 1972 is not applicable to the petitioners because of non-filing of application u/s 10 of the said Act, till the order passed by the Hon''ble Appeal Court. Moreover, 1000 sq.ft. area was left open to sky for the common use for writ petitioners and the respondent Nos, 4, 5 and 6. On the basis of the sanction plan for the covered ground floor area measuring about 500 sq.ft. is earmarked.

14. He argues in the writ petition No. 1297 (W) of 1998 no order was passed declaring the revised plan No. 511 dated 2nd January 1997 is illegal. On the contrary by the order dated 9th April 1999 passed in the writ application the respondent Nos. 4, 5 and 6 are only restrained from making any construction whatsoever pursuant to the revised sanction plan unless and until they are registered as promoters. Therefore, it follows by necessary implication that revised sanction plan was held not to be invalid. The said order was not assailed by the present writ applicant in the Appeal Court, therefore, the same stands valid and cannot be reported again. The writ petitioners during pendency of the first writ application filed by the applicants before the Hon''ble State Consumer Dispute Redressal Commission (West Bengal) against the respondent Nos. 4, 5 and 7 praying for same relief as that of writ application. This forum directed inter alia to maintain status quo in respect of construction in ground floor area beyond sanction plan No. 863 dated 18th February 1994. On that application an order was passed on 30th September 1997 inter alia directing it to appear before the appropriate forum regarding violation of the agreement. Even the suit was also filed by the land owners namely respondent No. 728 being Title Suit No. 276 of 1998 praying for order of injunction against the construction and the said suit was ultimately dismissed for default on 4th February 2003. Even the Hon''ble National Commission also did not appreciate the application of the writ petitioners, which proves harassing attitude of the writ petitioners.

15. According to him the West Bengal Municipal (Building) Rules 1996 has no application in the instant case as the earlier plan being No. 863 was sanctioned on 18th February 1994 and the application of grant of sanction of revised plan being No. 544 dated 30th September, 1996 is the continuation of the earlier plan dated 18th February 1994; by reason of the fact that West Bengal Municipal Act, 1993 came into force with effect from 13th July 1994 and the Rule 1996 came into force with effect from 30th December 1996, it was originally sanctioned prior to the enactment of the aforesaid statute. He contends further that the construction was undertaken pursuant to an agreement made between the land owners namely respondent No. 728 dated 15th February 1994 specifying the owners and promoters and developers as contained in Clause 3(e) of the said agreement. The writ petitioners and the other flat owners never showed any interest to cover the car parking space, therefore, the respondent Nos. 4, 5 and 6 have no option but to apply for alteration and/or addition of the earlier plan No.

863 dated 18th February 1994. The said altered building plan was sanctioned on 2nd January 1997 and such sanction is having effect of alteration and/or addition to the building constructed earlier vide plan No. 863 dated 18th February 1984. It is neither any alteration of the original sanction plan nor a rectified one. He refers to the Black's Law Dictionary to make the Court understand the meaning of the word "renew". The respondent Nos. 4, 5 and 6 applied for alteration and/or addition of the building for the said application on 5th November 1996 only to cover the ground floor area. Therefore, the same cannot be treated as renewal. The Municipal authority has rightly sanctioned it upon consideration of the relevant fact. He submits that the various clauses of the agreement between the writ petitioners on the one hand and the respondent Nos. 4, 5 and 6 on the other cannot be interpreted nor any decision can be rendered as the same relates in the disputed question of fact. Moreover, dispute relating to the contractual agreement cannot be within the realm of the writ jurisdiction. In this context he has relied on the following decisions. (1992)2 SPJ 296, AIR 1974 SC 1628, Radhakrishna Agarwal and Others Vs. State of Bihar and Others,

16. He submits therefore, that this writ petition should be dismissed as having no merit by reason of the fact that the Chairman has rightly decided the matter by upholding the sanction to the revised plan.

17. I have heard the respective contention of the learned Counsels and examined the materials. In this case the fundamental point is whether the Chairman South Dum Dum Municipality has decided the issue involved amongst the parties in terms of the judgment and order of the Division Bench presided in over by Their Lordships the Hon'ble Mr. Justice V.K. Gupta, and the Hon'ble Mr. Justice P.K. Sen (As Their Lordships then were) dated 30th September 1999 or not. It appears Their Lordships were pleased to specify the issues which were required to be decided by the Chairman.

(i) In the light of the direction contained in the Court's order dated 25th November 1997 passed in WP No. 23185 (W) of 1997 to take into account all the fact that even though 1993 Act is not applicable to the property in question, 1972 Act is applicable subject to course to the observance of the requirement contained in the first proviso.

(ii) Section 2 thereof read with Section 10 of the said Act. If such requirement has been duly made and they will proceed with the reminder that 1972 Act is squarely applicable to the property in question.

(iii) to consider the request it made to him by the land owners that they had not applied for sanction in respect of the revised plan and the land owners signatures were forged by the appellants. While doing so the Chairman shall consider as to whether he himself can by mere comparison or otherwise, found out about the forgery of the signatures and if he thinks he cannot do so and prima facie some suspicion does exist in respect of such fact he may refer to a hand writing or other forensic expert for his expert opinion and decided the issue accordingly

based on such findings with regard to the alleged forgery. In this issue he shall take into account the application of the appellant if he had submitted the application on the basis of power of attorney.

(iv) Every rival contention and issue were required to be decided and the Chairman shall record the findings supported by reason.

18. From plain reading of the impugned order of Chairman I find that he had treated the plan submitted on 5th November, 1996 for sanction as being sanction for renewal of the plan. He has not proceeded on the basis that the plan being a revised one. In my view this approach is wholly wrong, as there is a difference between renewal of the plan and revision of the plan. In case of former the Municipal authority did not look into the legal position as regard renewal which in my view, is necessary when construction of building is not completed in the stipulated time and further time is required to complete it. Whereas in later case some change in construction is involved and as such the observance of the Building Rules is essentially required. From the facts and circumstances of this case it appears that it is a case of sanction to a revised building plan. This has also been noted by the Division Bench in the order.

19. Therefore, I failed to understand how the Chairman could change the entire issue from what was raised earlier or even before him. He did not consider the question of forgery presumably because application was made on the strength of power of attorney and further it being a case of renewal. While accepting the contention of Mr. Debal Banerjee, I hold that this cannot be done here. When an application is made for revision of a building plan all the formalities for revision and/or change of the original plan are required to be followed. Application initially submitted for obtaining the original plan cannot be used as a basis of application for revision. It is an admitted position the building have been completed, the petitioners/flat owners have been given possession and the necessary conveyances have been executed and registered in their favour and they have become the joint owners of the entire property in question. At present I do not find any right, title and interest have been lawfully created in favour of the promoter to declare and/or to hold themselves out to be the owners of any portion of the building.

20. Therefore I hold that the petitioners as well as the original landowners being joint owners are the competent persons to apply for permission to construct or reconstruct/addition or alteration of building with a plan in accordance with Rule 13 of the said Rule in Form B which came into force on 30th December, 1996 (Rule) and on 4th March, 1999 (Form). Thus the promoters respondents do not have such right. Precisely for this reason the Chairman of the Municipality perhaps could ignore the issue carefully and to render in favour of the respondent Nos. 4 to 6 that it is a case of renewal for which signature of any other persons was not required and the power of attorney could be a helpful document. Accordingly I hold the Chairman or for that matter Municipality ought not to have entertained this application for revision of the plan without the

signatures of the owner of the land.

21. Mr. Moitra learned senior counsel appearing for the Promoters contends that these are the issues, which are hit by the principle of *res judicata* and further disputed question of fact. I am unable to accept this contention, as nowhere I find that these questions were even raised in Consumer Forum in the proceedings before the Civil Court. The decision is required to be rendered by the Chairman pursuant to the Division Bench order of this Court. Plea of *res Judicata* is absolutely out of context here. No disputed question of title is involved as none has disputed the title of the petitioners. There is no scope of any dispute either. The promoter developers have not established their right, title and interest in the property even in respect of the ground floor which claims to be their allocation of building by producing any legal document. Accordingly the decisions cited by him are of no help. So I do not feel to consider the same at all.

22. The agreement between the writ petitioners and, the land owners and the developer followed by conveyance unmistakably show adoption of the provisions of the West Bengal Apartment Ownership Act, 1972, so the spaces for car parking as mentioned in the said Act must be retained as it was done in the original plan, no change could be made without concurrence and consent in writing by the flat owners and there was no such consent by the flat owners or the original owners of the land. Even with consent no building plan can be sanctioned in violation of Building Rule or of Act. In this case upon comparison of both the plans I find in the impugned plan there is complete violation of Rule 50(d) of the West Bengal Municipal Building Rules, 1996.

23. Even assuming but not admitting the application for revision is otherwise entertainable the building rule prevailing at the time of taking decision has not been followed. The reasons given by the Chairman that at the time of submission of the application the aforesaid rule did not come into force, are wholly misplaced logic for the simple reason that prevailing law has to be applied when the decision is rendered, irrespective of date of making such application. This has been settled by the Supreme Court as rightly pointed out Mr. Banerjee to this Court, *Usman Gani J. Khatri of Bombay and Others Vs. Cantonment Board and others*, followed by *State of W.B. Vs. Terra Firma Investment and Trading Pvt. Ltd.*, . So sanction is also invalid as being contrary to the Building Rules of 1996. As such sanction could not be approved of by any statutory authority or by the Court as in this case 2nd January, 1997. Revised plan was sanctioned on the application dated 30th September, 1996. It is submitted by Mr. Bidyut Banerjee learned senior advocate appearing for the erstwhile owners of the land that his client has no concurrence nor they applied for sanction to the revision of building plan sanctioned previously. According to him this issue of forgery was not considered at all by the Chairman. Truly it is so but the Chairman did not consider any application other than earlier one and proceeded to treat cleverly as renewal of the plan not revision. Therefore, previous application made by his client through the developer promoter has been improperly used to uphold this

contention. Under such circumstances I am unable to uphold the order of the Chairman. The same is therefore, set aside as I have already observed the plan has not been revised in accordance with the provision of the law. Consequently, the sanction granted to revision of the building plan is set aside. The interim order stands confirmed.

Sanction given to the revised building plan was set aside and the interim order stands confirmed