
(2001) 08 CAL CK 0027
In the Calcutta High Court
Case No : F.M.A. No. 181 of 1997

Howrah Municipal Corpn. and Others	Vs	APPELLANT
Suniti Bhusan Palui and Others		RESPONDENT

Date of Decision : 30-08-2001

Acts Referred:

Howrah Municipal Corporation Act, 1980 — Section 1

Citation : AIR 2002 Cal 57 : 106 CWN 919

Hon'ble Judges : Ashok Kumar Mathur, C.J.; Girish Chandra Gupta, J

Bench : Division Bench

Advocate : Smritikana Mukherjee, for the Appellant; Haradhan Banerjee and Amitabha Pain, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Kumar Mathur, C.J.—This is an appeal against the order passed by the learned single Judge allowing its petition and directing the appellant, Howrah Municipal Corporation to sanction the plan of the writ petitioner. Being aggrieved by the order dated 26th September, 1992 this appeal has been filed.

2. Petitioners claimed to be the owners of 7-10-11 Mahendra Nath Roy Lane in Howrah. Petitioners applied for sanction of plan for raising construction on this building for 3rd floor to 5th floor. The plan was initially rejected, then petitioners filed an application for reconsideration. The plan was reconsidered by the Commissioner and same was placed before the Mayor-in-Council at the meeting on 10th March, 1989. The Mayor-in-Council approved the 3rd and 4th floor on the payment of sanction fee and the proposal for the construction of 5th floor was rejected. However, the 3rd and 4th floor was sanctioned upon payment of fee but the recommendation of the Commissioner that the proposed floor area should be reduced was also approved. The revised floor area was reduced to the extent of 540.44 s.q, metres. this was done in August, 1989. Thereafter petitioners approached before appellant to know the sanctioned fee. Petitioners were informed by the Commissioner that by virtue of the Howrah Municipal

Corporation (Amendment) Ordinance, 1989, no construction could be higher than 13.5 metres and as such the fees could not be accepted. Petitioners thereafter filed present writ petition contending that since the sanction has already been granted by the Mayor-in-Council before the Howrah Municipal Corporation (Amendment) Ordinance came into force w.e.f. 16-12-1989 whereby the maximum ceiling on the height beyond 13.5 metres was forbidden, whereas the petitioners' plan had already been sanctioned on 10th March, 1989. therefore, this ceiling of height is not applicable to them. It was contended that the ordinance of 1989 which became the Howrah Municipal Corporation Act, 1990 had come much after the sanction of the petitioner and as such it cannot be made applicable retrospectively. In this connection reference was also made to the decision of this Court given by Hon''ble M. G. Mukherjee (J. as he then was). This was in the case of C.O. No. 2076 (w) of 1990 wherein on an identical situation held that the sanction which has been granted prior to the coming into force of the Howrah Municipal Corporation (Amendment) Ordinance, 1989 and Howrah Municipal Corporation in 1990, the ceiling of 13.50 metres will not be applied retrospectively. Relying on the aforesaid decision & judgment of this Court given in the of *Atmaram Kanoria v. L.K.R. Prasad* (1990) 2 Cal LJ 169, the learned single Judge allowed the writ petition. The Municipal Corporation also contended that the petitioners did not submit the revised plan against the floor area which has been reduced. In that connection, it was stated by the petitioners that the revised plan was sent to Mr. T. Mitra in the month of August, 1989. Again on 18th March, 1991 with the covering letter the petitioners submitted revised building plan to avoid controversy. The learned Judge directed the respondent-Corporation to permit the petitioners to make the construction up to the 3rd and 4th floor of the premises. It was also observed that petitioners did submit revised plan to the respondent in respect of the 3rd and 4th floors, if it is found that the corrected plan is in keeping with the recommendation of the Commissioner, the respondent will allow the petitioners to construct on that basis. Learned Counsel for the appellant has repeated the same arguments which was raised by the appellant before the learned single Judge. Since the Ordinance has come into effect when it was promulgated i.e. on 16th December, 1989, it has a prospective in operation. It is not retrospective in operation and it cannot undo the action taken under the un-amended provision of law. Learned Counsel for the appellant could not Invite our attention to any provision by which it could be construed that under Ordinance or the Amended Act any action under the un-amended provision has been nullified. Nor can there be any such provision, because normally the action taken under the un-amended provisions are protected. Therefore, in these circumstances the view taken by learned single Judge is correct and there is no ground to interfere in this appeal. This appeal is accordingly dismissed and no order as to costs.

3. I agree.