
(2016) 01 CAL CK 0062
In the Calcutta High Court
Case No : A.S.T. No. 96 of 2013.

Kalachand Mahanta and Others

APPELLANT

Vs

Tarun Kanti Adhikary and Others

RESPONDENT

Date of Decision : 28-01-2016

Acts Referred:

West Bengal Municipal Act, 1993 — Section 16, 19, 217

Citation : (2016) 4 CalHCN 322 : (2016) 3 CalLJ 207 : (2016) 2 WBLR 452

Hon'ble Judges : Debasish Kar Gupta;Md. Mumtaz Khan, JJ.

Bench : Division Bench

Advocate : Usha Maity and Malyasree Maity, Advocates, for the Appellant;
Raghunath Chakraborty, Advocate and Achinta Kumar Banerjee and S.K.
Faridullah, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

1. This is an appeal preferred by the appellants against a judgment dated April 18, 2013 passed in the matter of Tarun Kanti Adhikary v. State of West Bengal and Ors. (In Re W.P. No.1096 (W) of 2013).

2. The appellants were the respondent Nos. 8, 9 and 10 in the above writ application. The operative portion of the above order is quoted below:

"The admitted position is that the order revoking the sanction dated March 26, 2013 issued by the Vice-Chairman of the Municipality is vitiated by an incurable jurisdiction error. He had no authority to issue the order.

For these reasons, I dispose of the WP ordering as follows.

The of the Vice-Chairman of the Municipality dated March 26, 2013 revoking the sanction is hereby set aside. No cost. Certified Xerox.

Sd/-

Jayanta Kumar Biswas, J."

3. While delivering the impugned judgment, the learned Single Judge took into consideration the facts and circumstances as follows:

A building plan was sanctioned by the respondent-Municipality in favour of the respondent No.1/writ petitioner bearing No.7(7)/RB dated 02/11/12 for construction of a building on the plot of land lying and situated at Sakshi Gopal Para in Plot No.13028, Mouza-Bishnupur, Municipality-Bishnupur, J.L. No. 100, Khatian No.4523, District-Bankura. The appellants submitted letter of objection to the respondent-Municipality alleging encroachment of the portion of adjacent "Rasta" lying and situated in LR Plot No.13040, L.R. Khatian No.13481, Mouza-Bishnupur.

4. Consequent thereupon the Vice-Chairman of the respondent-Municipality revoked the aforesaid building sanctioned plan by a letter dated March 26, 2013, The above order is set out below:

"To

Tarun Adhikary,

Sub : Sakhigopalpara,

Ward No.7, Bishnupur.

Ref. : In continuations of this offices Memo No.2852/XI-8 dated 12.03.2013, the undersigned is hereby direct not to proceed with the construction over plot no.13040 (hal), (encroached by you as reported by the block land and land reforms officer vide case no.15/MP/13 u/s 144 Cr.P.C.) forthwith.

Therefore the approved plan vide no.7(7)/RB dated 02.11.2012 I revoked from this date until further order as the construction commenced by you is not in conformity with the approved plan.

Vice-Chairman,

Bishnupur Municipality"

5. The respondent No.1 herein filed the writ application under reference challenging the above order on the ground that the Vice-Chairman of the Municipality had passed the order without jurisdiction. The above writ application was taken up by the learned Single Judge on April 18, 2013. After considering the submissions made on behalf of the writ petitioner/respondent No.1 and the respondent-Municipality the above writ application was disposed of by virtue of the order impugned in this appeal.

6. It is submitted by Mrs. Usha Maity, learned Advocate appearing on behalf of the appellants, that the order impugned to this appeal was passed ex parte without serving any notice upon them.

7. It is also submitted by Mrs. Maity that the order was passed by the Vice Chairman of the Municipality in exercise of his power conferred by Section 19 of

the West Bengal Municipal Act, 1993 (hereinafter referred to as the said Act, 1993). It is further added by Mrs. Maity that the Chairman of the respondent Municipality was absent at the material point of time. Therefore, the power of the Chairman of the above respondent-Municipality, as prescribed in Section 16 of the said Act, 1993, could be exercised by the Vice-Chairman of the Municipality for passing the order impugned to the writ application.

8. It is also submitted by Mrs. Maity, that the writ application was liable to be dismissed in view of suppression of the material fact by the writ petitioner/respondent No.1 in the above writ application. According to Mrs. Maity, two reports dated December 20, 2012 and February 22, 2013 were submitted by the Block Land and Land Reforms Officer, Bishnupur, Bankura and the Municipal Authority respectively to the Sub-Divisional Executive Magistrate, Bishnupur, Bankura in connection with two proceedings initiated under Section 144 of the Cr.P.C. It appeared from the above reports that the allegation of the appellants of encroaching upon the adjacent "Rasta" in question was true. Since those were not brought on record the writ application suffered from suppression of material fact and it should have been dismissed in limine.

9. Mrs. Maity relies upon the decisions of the Supreme Court in the matter of *M/s. Hekett Engineering Co. v. Their Workmen* reported in AIR 1977 SC 2257 and *Prestige Lights Ltd. v. State Bank of India* reported in (2007) 8 SCC 449.

10. It is submitted by Mr. Achintya Kumar Banerjee, learned Advocate appearing on behalf of the respondent-Municipality, that, in compliance of the direction of the learned Single Judge Mr. Banerjee made his submission on the point of law as to whether the Vice-Chairman of the Municipality was empowered to revoke the building sanctioned plan under reference. According to him, the order under reference was passed by the Vice-Chairman of the respondent-Municipality without jurisdiction in view of the relevant provisions of the said Act, 1993.

11. It is submitted by him that even in the event the order impugned is set aside, it would not change the fate of the writ application so far as the ground for challenge agitated in the writ application was concerned.

12. With regard to the propriety of the impugned order, it is submitted by him that neither the provision of Section 19 of the said Act, 1993 empowers the Vice Chairman of a municipality to revoke a building sanctioned plan nor the above provision of Section 16 of the said Act, 1993 empowers the Chairman of a municipality to revoke the same.

13. Drawing our attention towards the provisions of Section 217 of the said Act, 1993, it is submitted by him, that the Board of Councillors of a municipality is empowered either to sanction a building plan within its territorial jurisdiction or to revoke the same.

14. We have heard the learned Counsel appearing for the respective parties at length and we have considered the facts and circumstances of this case.

15. So far as the question of passing the impugned order behind the back of the appellants is concerned, it is the settled principles of law that in the event such an order is passed affecting the right or interest of a party to such proceeding then the same is liable to be rejected.

16. But in the matter of *The Chairman, Board of Mining Examination and Chief Inspector of Mines and Anr. v. Ramjee* reported in (1977) 2 SCC 256, the Hon'ble Justice Krishna Iyer speaking for a Bench of the Hon'ble Supreme Court held that the natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. The relevant portion of the above judgment is quoted below:

"13. ??????????..Natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt - that is the conscience of the matter."

17. Therefore, if we find that due to non-adherence to the principles of natural justice, that is to pass the impugned order without giving opportunity of hearing to the appellants, their interest or right suffered in anyway, the impugned order is liable to be set aside. In absence of prejudice suffered by the appellants, consequent will be otherwise. Therefore, other grounds for challenging the impugned order are taken up as under:-

18. So far as the question of jurisdiction of the Vice-Chairman of the respondent-Municipality is concerned, the provisions of Sections 16, 19 and 217 of the said Act, 1993 are set out below:

"16. Powers and functions of the Chairman. - (1) The Chairman shall be the executive head of the Municipality and the municipal administration shall be under his control and he shall exercise such powers and functions as conferred on him by or under this Act.

(2) The Chairman shall preside over the meeting of the Chairman-in-Council as well as Board of Councillors.

(3) The Chairman shall allocate the business among the members of the Chairman-in-Council in case of Group A, Group B and Group C Municipalities.

(4) The matter to be discussed at a meeting of the Chairman-in-Council as well as the Board of Councillors shall be prepared under the direction of the Chairman

and shall be circulated to the members of the Chairman-in-Council as well as the board of Councillors, as the case may be, in such manner as the Chairman may determine.

(5) The Chairman shall, if he is of opinion that immediate execution of any work is necessary and the same ordinarily required the approval of the Board of Councillors or the Chairman-in-Council, as the case may be, direct the execution of such work:

Provided that the Chairman shall report forthwith to the Board of Councillors or the Chairman-in-Council, as the case may be, the actions taken under this section and the reasons thereof.

19. Vice-Chairman. - (1) The Vice-Chairman shall, in the absence of the Chairman, preside over the meetings of the Chairman-in-Council as well as the Board of Councillors.

(2) When -

(a) the office of the Chairman falls vacant by reason of death, resignation, removal or otherwise, or

(b) the Chairman is, by reason of leave, illness or other cause, temporarily unable to exercise the powers, perform the functions and discharge the duties of his office.

the Vice-Chairman shall exercise the powers, perform the functions and discharge the duties of the Chairman until a Chairman is elected under sub-section (3) of section 17 and assumes office or until the Chairman resumes his duties, as the case may be.

(3) The Vice-Chairman shall, at any time, perform such other duty or exercise such other powers as may be delegated to him under the provisions of this Act.

217. Power to Board of Councillors to cancel permission on the ground of material misrepresentation by applicant.

- If, at any time, sanction or provisional sanction to erect any building has been given and the Board of Councillors is satisfied that such sanction was given in consequence of any material misrepresentation or fraudulent statement contained in the plans, elevation sections or specifications or land or any material particulars submitted in respect of such building, it may cancel such sanction, and any work done thereunder shall be deemed to have been done without sanction."

19. It appears from the provisions of the Section 19 of the said Act, 1993 that the Vice-Chairman of a municipality has the power to discharge the function of a Chairman in his absence, as prescribed in the above provision. After considering the provisions of Section 16 of the said Act, 1993, we do not find that the jurisdiction of sanctioning or revoking a building plan is entrusted to the

Chairman of a municipality. Section 217 of the said Act, 1993 empowers the Board of Councillors to sanction a building plan within the territorial jurisdiction of the concerned municipality.

20. Needless to mention that the power to sanction includes power to revoke such building sanctioned plan. Therefore, we do not find any substance on the submission made by Mrs. Maity that in absence of the Chairman of the respondent-Municipality Vice-Chairman of that Municipality had the jurisdiction to revoke the building sanctioned plan in question. It was a pure question of law and that it was decided by virtue of the impugned order taking into consideration the relevant provisions of the said Act, 1993 as also the submissions made on behalf of the parties present before the Court.

21. So far as the question of suppression of material fact is concerned, it is the settled principles of law that a litigant is under obligation to produce all relevant documents relating to the issue involved in a proceeding before the Court. A litigant is not under obligation to disclose those facts or circumstances which is not relevant to the issue under consideration by Court in that proceeding.

22. We find substance in the submissions made on behalf of the respondent No. 1 in this regard that the decision of S.P. Chengalvaraya Naidu v. Jagannath and Ors. reported in (1994) 1 SCC 1, is applicable in this case and the relevant portion of the above decision is quoted below:

"6. ??????????..A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party."

(emphasis supplied).

23. The decision of M/s. Heckett Engineering Co. (supra), relied upon by Mrs. Maity, has no manner of application in this case due to the distinguishable facts and circumstances involved therein. By virtue of the impugned judgment, the Hon?ble Supreme Court held that the authority who had passed the order impugned possessed such power in accordance with law. As we observed herein above, the Vice-Chairman of the respondent-Municipality did not possess any power to revoke the impugned building sanctioned plan in question.

24. So far as the decision of Prestige Lights Ltd. (supra) is concerned, the same has no manner of application in this case. Because there is no doubt or dispute in the event of suppression of relevant fact or circumstances in an application filed under Article 226 of the Constitution of India is liable to be dismissed. The catchword is relevant. We have observed herein above that no relevant fact or circumstances was suppressed in the writ application and the facts and circumstances mentioned by Mrs. Maity before us are not at all relevant with regard to deciding the issue of the power vested upon the Vice-Chairman of the Municipality to revoke the building sanctioned plan.

25. It is the time-honoured proposition of law that a natural person has the capacity to do all lawful things unless his capacity has been curtailed by some rule of law. It is equally a fundamental principle that in case of a statutory corporation it is just otherwise. It has no power to do anything unless empowered by law. Reference may be made to the decision of Manimuddin Bepari v. Chairman of the Municipal Commissioner, Dacca, reported in 40 CWN 17. The above settled principles of law has been repeated and reiterated by a Division Bench of this Court in the matter of Asian Leather Limited v. Kolkata Municipal Corporation and Ors., reported in 2007(3) CHN 476 and the relevant portion of the above decision is quoted below :

"12. At this juncture, it will be profitable to refer to the well-known proposition of law that a natural person has the capacity to do all lawful things unless his capacity has been curtailed by some rule of law. It is equally a fundamental principle that in case of a statutory corporation, it is just the other way. The Corporation has no power to do anything unless those powers are conferred on it by the statutes, which creates it. (See Manimuddin Bepari v. Chairman of the Municipal Commissioner, Dacca, reported in 40 CWN 17)"

26. In view of the above settled principles of law, we are of the opinion that on the basis of the relevant provisions of the said Act, 1993, as discussed herein above, the Vice-Chairman of the respondent-Municipality had no power to pass the impugned order. Therefore, this appeal is misconceived.

27. It will not be out of context to observe that in the event the impugned order is set aside on the ground of violation of principles of natural justice in passing the order impugned behind the back of the appellants then it will not help the appellants in anyway and the same will be idle formality.

28. This appeal is, therefore, dismissed.

29. There will be, however, no order as to costs.

30. Urgent photostat certified copy of this order be supplied to the parties, if applied for, subject to compliance with all necessary formalities.