

(2007) 11 CAL CK 0006
In the Calcutta High Court

Case No : M.A.T. No. 2402 of 2007 and C.A.N. No. 5818 of 2007

Minto Ranjan Poddar

APPELLANT

Vs

South Dum Dum Municipality and Others

RESPONDENT

Date of Decision : 22-11-2007

Acts Referred:

West Bengal Municipal (Building) Rules, 2007 — Rule 32, 32(2)
West Bengal Municipal Act, 1993 — Section 14, 14(1), 217, 218, 51A

Citation : (2008) 1 CHN 253

Hon'ble Judges : Pranab Kumar Chattopadhyay, J; Kalidas Mukherjee, J

Bench : Division Bench

Advocate : Pratap Chatterjee, Samrat Sen, Paritosh Sinha, Mainak Bose and Amitava Mitra, for the Appellant; Bharati Mutsuddi and Champak Ghose, for the Respondent

Final Decision : Allowed

Judgement

Pranab Kumar Chattopadhyay, J.—The instant appeal has been preferred at the instance of the writ petitioner assailing the order dated 11th May, 2007 passed by the learned Single Judge in the writ petition bearing W.P. No. 8898(W) of 2007 whereby and whereunder the said learned Single Judge dismissed the writ petition. In connection with the aforesaid appeal, an application for stay has also been filed on behalf of the appellant. We have heard the Learned Counsel of the respective parties in connection with the aforesaid appeal as well as the stay application.

2. The present appeal arises out of the writ petition which was filed challenging the decision of the South Dum Dum Municipality as communicated by the Executive Officer of the said municipality by the written communication dated 23rd April, 2007. By the aforesaid written communication dated 23rd April, 2007, the appellant herein was asked to demolish the alleged illegally constructed area mentioned in the said written communication by the Executive Officer.

3. From the records we find that on the earlier occasion the appellant herein filed

another writ petition bearing W.P. No. 26303 (W) of 2006 claiming various reliefs which was finally disposed of by Soumitra Pal, J. on 3rd January, 2007 as hereunder:

Since I find that the issue is pending before the authorities of South Dum Dum Municipality for more than a year, considering the facts and circumstances of the case and perusing the materials on record, the writ petition is disposed of by directing the Chairman and Board of Councillors, South Dum Dum Municipality, the respondent No. 2 to consider and dispose of the representation dated 9th November, 2005 filed by the petitioner after giving an opportunity of hearing to the petitioner and the respondent No. 4 and, thereafter, shall pass a reasoned order which shall be communicated to them.

4. Pursuant to the aforesaid direction of this Hon'ble Court, parties were heard on 28th February, 2007 and the Executive Officer, South Dum Dum Municipality by the written communication dated 23th April, 2007 communicated the following decision of the Municipality:

Under the above circumstances, the Board of Councillors of this Municipality, in compliance with the solemn order dated 03.01.2007 passed by the Hon'ble Justice Mr. Soumitra Pal of the Calcutta High Court in disposing of W.P. No. 26303 (W) of 2006 for the petition dated 09.11.2006:

i) In exercise of power conferred to it hereby cancels mutation of the said building granted to you on 22.09.1999 and orders the restoration of the name of the original assesses in the municipal records i.e. the name of Mr. Dilip Kumar Saha.

ii) In exercise of powers vested in Section 217 of the West Bengal Municipal Act, 1993, do hereby revoke the approval accorded to the building plan vide No. 206 date 08.06.2004 for construction of 3rd floor over the 3-storied existing building and the construction made according to the said plan be deemed to have been made without sanction.

iii) In exercise of power vested in Rule 32(i), (2) of the West Bengal Municipal (Building) Rules, 2007 read with Section 218 Sub-Section i(a) and (ii) of the West Bengal Municipal Act, 1993 hereby order that construction deemed to have been made without sanction, be demolished.

As such in pursuance of the above order you are hereby called upon to demolish the illegally constructed area mentioned above, by you within fifteen days of the receipt of this letter, failing which the said illegal construction will be demolished by this municipality and the costs will be recovered from you.

5. Challenging the aforesaid decision, appellant herein filed the writ petition which was finally disposed of by the order under appeal whereby and whereunder the learned Single Judge dismissed the writ petition on the ground of suppression of the facts regarding pendency of the Title Suit No. 90 of 2002 and the letter dated 29th December, 1997 from the said learned Single Judge. The

operative part of the said order passed by the learned Single Judge is quoted hereunder:

...Having heard the learned Advocates for the parties and considering the facts and circumstances of the case, since I find that the petitioner has suppressed the fact of pendency of the Title Suit No. 90/2002 and regarding the letter dated 29th December, 1997, no order is passed on this application.

The writ application is dismissed

6. On examination of the written communication dated 23rd April, 2007 issued by the Executive Officer, South Dum Dum Municipality, we find that the Board of Councillors of the South Dum Dum Municipality has been pleased to cancel the mutation of the building in question granted in favour of the appellant herein on 22nd September, 1999 and revoke the approval accorded to the building plan and also directed the appellant to demolish the alleged illegal construction. By the aforesaid written communication dated 23rd April, 2007, Executive Officer also informed that the Board of Councillors upon hearing the parties and on examination of the documents found that the property was mutated in the name of the appellant and subsequently approval of 3rd floor construction was obtained by suppressing the material facts. It was also alleged that the appellant made fraudulent statement to the effect that there was no Court case or any complaint/dispute from any corner in respect of the land in question for the purpose of obtaining the building plan sanctioned. The Board of Councillors specifically found that the agreement for sale was entered into by the appellant despite the pendency of the Title Suit No. 9 of 1994 and the appellant did not also disclose the order of status quo passed by this Hon'ble Court on February 9, 1999 in C.A.N. 7011 of 1998 arising out of S.A.T. 1999 of 1998 in connection with the property in question.

7. Mr. Pratap Chatterjee, learned Senior Counsel of the appellant submits that the appellant herein was not impleaded in Title Suit No. 9 of 1994 which was filed by the respondent No. 4 herein. Mr. Chatterjee further submits that despite knowledge of the construction carried out in 1999, neither of the litigating parties sought to implead the appellant herein in the said Title Suit No. 9 of 1994 or in the appeal arising therefrom. The appellant herein was neither a party before the Trial Court nor in the First Appellate Court nor even in the Second Appeal filed by the respondent No. 4 in this Hon'ble Court. Mr. Chatterjee submits that the order, if any, passed in the aforesaid proceedings cannot and does not bind the appellant herein and cannot operate against or affect the appellant in any manner whatsoever. Mr. Chatterjee also submits that if the respondent No. 4 was of the opinion that the appellant was a proper or necessary party then the appellant herein should have been impleaded in the proceedings. Mr. Chatterjee specifically urged before this Court that the order of status quo cannot be granted against a person who is not a party to the proceeding.

8. Mr. Chatterjee referred to and relied on the following decisions in support of

his aforesaid contentions:

1. AIR 1918 Patna 582(1) Malhiuddin Ahmad v. Athar Hossain
2. AIR 1923 Lah 47 Election Officer, Gujrat v. Abdul Ghani etc.
3. L.D. Meston School Society Vs. Kashi Nath Misra,

There cannot be any dispute with regard to the principles of law laid down in the aforesaid decisions.

9. It is not in dispute that the aforesaid Title Suit No. 9 of 1994 was dismissed for default by the learned Munsif on February 28, 1997. The appeal preferred by the respondent No. 4 herein was also dismissed by the learned Additional District Judge, 3rd Court at Barasat on March 12, 1998. The learned Senior Counsel of the appellant submits that the appellant herein purchased the disputed premises by a registered deed of conveyance on June 16, 1998 when no proceeding arising out of the said suit was pending in any Court of Law in respect of the disputed premises or even in respect of any other part or portion of the building in question. It has been submitted on behalf of the appellant that immediately after purchasing the said building, appellant herein applied for mutation of the premises in question in his name and simultaneously took steps for construction on the roof of the top floor of the existing structure. Mutation was admittedly, granted on September 22, 1999 and according to the appellant; construction on the roof of the top floor had also been completed by that time.

10. It has also been submitted on behalf of the appellant that the said appellant had no notice or knowledge regarding filing of the Second Appeal by the respondent No. 4 herein and also the order of status quo passed by this Hon'ble Court on February 9, 1999 as none of the litigating parties thought it fit to bring the aforesaid fact to the notice or knowledge of the appellant herein. It has further been submitted on behalf of the appellant that the said appellant for the first time came to learn about the aforesaid order of status quo passed by this Hon'ble Court from the letter dated 17th January, 2000 received from the learned Advocate representing one Dilip Kumar Saha when the mutation in respect of the property in question had already been granted by the Municipality and the construction had also been completed. Mr. Chatterjee submits that the order of status quo was, in any event, restricted to the suit property.

11. Referring to the schedule to the plaint filed in Title Suit No. 9 of 1994 Mr. Chatterjee, learned Senior Counsel of the appellant submits that the suit property consists of a 3-storied building which was not changed by the appellant herein. According to Mr. Chatterjee, the construction was made over the existing 3-storied building which under no circumstances, can be described as the suit property. The learned Senior Counsel of the appellant further submits that the Municipality had admittedly, sanctioned the post facto building plan submitted by the appellant herein in respect of the aforesaid construction made over the 3rd floor of the existing building which cannot be affected by the order of status quo

passed by this Hon''ble Court as the said construction was not made within the suit property.

12. Mrs. Bharati Mutsuddi, Learned Counsel representing the respondent-South Dum Dum Municipality submits that the appellant herein obtained post facto approval of the building plan on 8th June, 2004 upon suppressing material facts and making fraudulent statement and, therefore, the Board of Councillors of the said South Dum Dum Municipality has rightly passed the order revoking the approval accorded to the Building Plan No. 86 of 2006 for construction over the 3-storied existing building. Mrs. Mutsuddi further submits that the appellant herein had specific knowledge in respect of Title Suit No. 9 of 1994 filed in connection with the property in question and the said appellant also suppressed the pendency of the Second Appeal before this Hon''ble Court bearing S.A.T. No. 1999 of 1998 wherein this Hon''ble Court passed the order of status quo in respect of the property in question. Mrs. Mutsuddi specifically urged before this Court that the appellant is guilty for suppressing material facts by not disclosing the relevant informations in connection with the Title Suit No. 9 of 1994 when the said appellant obtained the mutation on 22nd September, 1999 and furthermore, the order of status quo dated 8th June, 2004 passed by this Hon''ble Court was also not disclosed by the appellant before the municipal authority when the post facto approval of the building plan was obtained. According to Mrs. Mutsuddi, the aforesaid guilt cannot be condoned at the appeal stage on the basis of new pleadings.

13. In any event, before deciding the legality and/or validity of the decision of the Municipality as communicated by the notice dated April 23, 2007 issued by the Executive Officer, South Dum Dum Municipality, let us examine the order under appeal dated 11th May, 2007 passed by the learned Single Judge.

14. Going through the aforesaid order under appeal we find that the learned Single Judge dismissed the writ petition on the ground that the appellant herein had suppressed the fact of pendency of the Title Suit No. 90 of 2002 and also the letter dated 29th December, 1997.

15. The plaint filed in connection with the aforesaid Title Suit No. 90 of 2002 has been annexed with the application filed by the appellant in connection with the appeal wherefrom we find that the appellant herein filed the aforesaid suit against one Dilip Kumar Saha before the learned Civil Judge (Senior Division), 2nd Court at Barasat for specific performance of contract. From the reliefs claimed in the said suit we find that the said suit had no connection or nexus whatsoever with the subject premises or the construction made on the basis of post facto sanction of the building plan. Furthermore, the said Title Suit No. 90 of 2002 was thereafter settled out of Court by and between the parties and the terms of settlement were also filed in the Court of the said learned Civil Judge at Barasat and ultimately, by the order dated December 7, 2006, the said suit was dismissed.

16. Scrutinising the plaint filed in connection with the Title Suit No. 90 of 2002 we also find that the subject-matter of the said suit was restricted only in respect of two flats situated in the ground floor of Premises No. 106, Block-B, Lake Town, Kolkata - 700089. The schedule of the suit property mentioned in the plaint filed in connection with the Title Suit No. 90 of 2002 is quoted hereunder:

Schedule of The Suit Property as Referred to Above:

All That self-contained two flats having a total area of 2000 (two thousand) sq. ft. more or less in the groundfloor including the office space and mazennine space at Premises No. 106, Holding No. 103, Block - B, Lake Town, Ward No. 22, under South Dum Dum Municipality, Police Station: Lake Town, District: North 24-Parganas butted and bounded by:....

17. In the aforesaid circumstances, we fail to understand why reference to the aforesaid suit being Title Suit No. 90 of 2002 was required to be given while challenging the notice dated 23rd April, 2007 issued by the Executive Officer, South Dum Dum Municipality communicating the decision of the said Municipality regarding cancellation of the mutation, revocation of the approval accorded to the building plan and direction for demolition of the construction made by the appellant herein.

18. The letter dated 29th December, 1997 was addressed by the appellant herein to Dilip Kumar Saha which according to the learned Single Judge was suppressed by the appellant herein and the same was, therefore, a valid ground for dismissing the writ petition. The aforesaid letter was issued by the appellant herein when the appeal in relation to Title Suit No. 9 of 1994 was pending before the First Appellate Court and the appellant herein never denied the knowledge of the pendency of the First Appeal arising out of Title Suit No. 9 of 1994 in the First Appellate Court. The said Title Appeal No. 50 of 1997 was, however, dismissed by the First Appellate Court on March 12, 1998.

19. The appellant herein specifically urged before this Court that the litigating parties never informed the appellant about the institution of the Second Appeal before this Hon'ble Court and the said appellant came to learn about the institution of the said Second Appeal for the first time from the letter dated January 17, 2000 issued by the learned Advocate representing Dilip Kumar Saha. Therefore, the learned Senior Counsel of the appellant had rightly submitted before this Court that the aforesaid letter dated December 29, 1997 had no material bearing on the subject-matter of the writ petition filed before this Court challenging the notice dated 23rd April, 2007 issued by the Executive Officer, South Dum Dum Municipality.

20. However, it is not in dispute that the authorities of the South Dum Dum Municipality initiated proceedings against the appellant herein on the basis of the complaints made by the respondent No. 4 herein and ultimately, passed the orders which were communicated by the Executive Officer by the written communication dated 23rd April, 2007. During the pendency of the appeal before

this Court, the said respondent No. 4 by the written communication dated 8th August, 2007 unconditionally withdrew all the complaints made before the South Dum Dum Municipal authorities and thereafter, the Second Appeal filed before this Court had also been withdrawn at the instance of the said respondent No. 4.

21. For the aforementioned reasons, we hold that the appellant herein did not suppress any material fact in the writ petition as alleged or at all and the learned Single Judge committed serious error in dismissing the writ petition without deciding the issues raised therein on merits upon granting opportunity to the respective parties to file affidavits in the matter. We are of the view that the said learned Single Judge should have decided the validity and/or legality of the decision of the South Dum Dum Municipality as communicated by the Executive Officer by the notice dated 23rd April, 2007 on merits.

22. In any event, detailed submissions have already been made before us by the Learned Counsel of the respective parties in connection with the aforesaid issue relating to validity and/or legality of the decisions of the South Dum Dum Municipality as communicated by the notice dated 23rd April, 2007 issued by the Executive Officer of the said Municipality. Therefore, let us now decide the aforesaid issue instead of sending the matter back to the learned Single Judge.

23. While deciding the earlier writ petition bearing W.P. No. 26303 (W) of 2006, learned Single Judge by the order dated 3rd January, 2007 specifically directed the Chairman and Board of Councillors of the South Dum Dum Municipality to consider and dispose of the representation dated 9th November, 2005 filed by the appellant herein after giving an opportunity of hearing to the said appellant. The said Chairman and Board of Councillors of the South Dum Dum Municipality were also directed to pass a reasoned order and communicate the same to the appellant herein. Undisputedly, the Chairman and the Board of Councillors of the South Dum Dum Municipality did not communicate any decision to the appellant herein and the Executive Officer of the said Municipality communicated the gist of the order passed by the Board of Councillors by the written communication dated April 23, 2007, which we have already referred to hereinbefore.

24. In the aforesaid circumstances, we had to direct the learned Advocate representing the South Dum Dum Municipality to produce relevant records relating to the proceedings of the hearing for disposal of the representation dated 9th November, 2005 filed by the appellant herein in compliance with the order dated 3rd January, 2007 passed by the learned Single Judge. The minutes of the proceedings in respect of the aforesaid hearing held on 28th February, 2007 was produced before us and xerox copy of the same was also supplied to the learned Advocate of the appellant herein.

25. Scrutinising the said minutes of the proceedings we find that none of the Councillors had signed on the order sheet and only two persons were present on behalf of the municipality which was specifically recorded in the said minutes. The relevant portion from the said minutes is quoted hereunder:

Proceedings of Hearing held on 28-02-2007

against Memo No....SDM/3102/PWD-A/XVI dated: 13/02/2007 in compliance with the solemn order dated 03.01.2007 by the Hon''ble Justice Mr. Soumitra Pal of the Kolkata High Court in W.P. No. 26303 (W) of 2006.

Present: 1. KallolDasgupta 28/2/07 2. A.K. Saha 28/2/07

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....

....

Now in compliance with the solemn order dated 03.01.2007 passed by the Hon''ble Justice Mr. Soumitra Pal of the Calcutta High Court in disposing of W.P. No. 26303 (W) of 2006 the petition dated 09.11.2006 is taken up for consideration by this Board of Councillors....

26. On examination of the order sheet we find that the local Ward Councillor as well as the Councillor-in-charge of the Illegal Construction Cell neither attended the said meeting nor even signed on each page of the order sheet. The constitution of the Board of Councillors has been provided in Section 14 of the West Bengal Municipal Act, 1993. In terms of Section 14(1) of the said Act, all the Councillors elected in a general election of the Municipality shall constitute the Board of Councillors. In terms of Section 51A of the said Act, the quorum necessary for the transaction of business of any meeting shall be one-third of the total number of Councillors.

27. On examination of the relevant records relating to the proceedings of the hearing held on 28th February, 2007 we also find that only two members were present and the Chairman of the Municipality was also not present at the said hearing although the minutes of the said proceeding was signed afterwards by the Chairman of the Municipality. Admittedly, most of the Councillors did not attend the hearing held on 28th February, 2007 and, therefore, for want of quorum all the decisions taken in the name of the Board of Councillors at the time of hearing of the representation filed on behalf of the appellant herein on 28th February, 2007 cannot be held to be valid, legal and proper as no decision was taken by the Chairman and the Board of Councillors in respect of the representation dated 9th November, 2005 filed by the appellant herein in accordance with law and in compliance with the earlier order dated 3rd January, 2007 passed by the learned Single Judge. Accordingly, entire proceedings in connection with the hearing held on 28th February, 2007 were vitiated due to non-observance of the required provisions of the West Bengal Municipal Act, 1993 and non-complying with the specific direction passed earlier by the learned Single Judge on 3rd January, 2007.

28. Mrs. Mutsuddi specifically alleged before this Court that the appellant herein

did not approach this Hon''ble Court in clean hands and, therefore, the learned Single Judge rightly dismissed the writ petition without deciding the same on merits. We do not agree with the aforesaid contentions made on behalf of the Learned Counsel of the respondent-South Dum Dum Municipality herein as we are unable to accept that the appellant herein wilfully and deliberately suppressed any material fact either from the authorities of the South Dum Dum Municipality or even from this Hon''ble Court for the reasons already discussed elaborately hereinbefore and, therefore, the appellant cannot be held guilty for suppression of materials facts either by the Municipal authorities or by the learned Single Judge. Furthermore, we find that the Chairman and the Board of Councillors did not decide the representation filed on behalf of the appellant herein dated 9th November, 2005 in accordance with law and passed the orders against the appellant herein on extraneous and irrelevant considerations, which cannot be allowed to be sustained.

29. Mrs. Mutsuddi referred to and relied on the following decisions in support of her arguments:

- 1) 1959 SCR 821 Shewpujanrai Indrasanrai Ltd v. Collector of Customs and Ors.
- 2) Karpagathachi and Others Vs. Nagarathinathachi,
- 3) Chavalier I.I. Iyyappan and Another Vs. The Dharmodayam Company,
- 4) Abdul Kader Laskar and Others Vs. State of West Bengal and Others,
- 5) Katta Subbarao (died) and Others Vs. Pokuri Sri Ramalu and Others,
- 6) Gowardhandas Rathi Vs. Corporation of Calcutta and Another,
- 7) D.S. Nakara and Others Vs. Union of India (UOI),
- 8) S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, .
- 9) The Chancellor and Another Vs. Dr Bijayananda Kar and Others, .

30. There is no dispute with regard to the principles of law laid down in the aforesaid decisions, but we fail to understand how the aforesaid decisions can be of any help to the respondent authorities herein while admittedly, the Chairman and the Board of Councillors of the South Dum Dum Municipality failed and neglected to take appropriate decision in accordance with law and in strict compliance with the earlier order passed by this Hon''ble Court on 3rd January, 2007 while deciding the representation dated 9th November, 2005 filed on behalf of the appellant herein.

31. In the aforesaid circumstances, the decisions of the South Dum Dum Municipality as recorded in the minutes of the proceedings held on 28th February, 2007 and subsequently communicated to the appellant herein by the written communication dated 23rd April, 2007 issued by the Executive Officer of the said Municipality cannot be sustained in the eye of law and the same are,

therefore, quashed.

32. For the aforementioned reasons, this appeal stands allowed and the order under appeal passed by the learned Single Judge is set aside. No further order is, therefore, required to be passed in the connected stay application and the same is disposed of accordingly.

33. In view of the aforesaid order, sum of Rs. 30,000/- deposited by the appellant herein in compliance with the earlier order dated 18th May, 2007 passed by this Court on account of probable costs of demolition should be returned to the appellant without any further delay.

34. Accordingly, the learned Advocate on record of Mrs. Bharati Mutsuddi is directed to refund the aforesaid sum of Rs. 30,000/- to the appellant/writ petitioner immediately. There will be, however, no order as to costs.

Let urgent Xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

Kalidas Mukherjee, J.

35. I agree.