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(1996) 07 CAL CK 0068

In the Calcutta High Court

Case No : Appeal Tender No. 2101 of 1996

Moynul Haque alias Moynul Haque Chowdhury — APPELLANT

Vs

The State of West Bengal — RESPONDENT

Date of Decision : 26-07-1996

Acts Referred:

Calcutta Municipal Corporation Act, 1951 — Section 29, 364, 365, 390, 392
Calcutta Municipal Corporation Building Rules, 1990 — Rule 2(9), 3, 4
Constitution of India, 1950 — Article 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 397
Transfer of Property Act, 1882 — Section 53A, 54, 55, 7, 8

Citation : (1996) 2 ILR (Cal) 159

Hon'ble Judges : Satyabrata Sinha, J;Satya Narayan Chakraborty, J

Bench : Division Bench

Advocate : S.K. Dutta, for the Appellant;Smritikana Mukherjee, for C.M.C. and Samaraditya Pal and P. Roy for Private Respondents, for the Respondent

Judgement

Satyabrata Sinha, J.—This appeal is directed against a judgment and order dated July 9, 1996 passed by a learned Single judgment of this Court whereby and whereunder the said learned Judge dismissed the writ application filed by the Appellant.

2. Although the writ application involves a complicated question of fact and title, in view of the fact that a short questions of law arise for consideration, only the relevant fact may be noticed.

3. The plot in question is plot No. 278 pertaining to Khatian No. 132, Sheet No. 60 of Mouza Garden Reach. Allegedly, Bengal Bus Syndicate as far back as in the year 1937-38 took tenancy of the said land from Monsur Ali Laskar and others and after vesting of the estate, became a direct tenant under the State of West Bengal and was recorded as ''Dakhalikar''. In the remarks column of the Parcha, allegedly the place was mentioned as a place for bus stand. According to the Respondents, the said Bengal Bus Syndicate/Route Committee of route Nos. 12, 12A and 12B had allegedly surrendered their tenancy, in favour of two groups

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who claimed themselves to be the heirs of the recorded tenant being Haider Group and Laskar Group. Admittedly, two suits being Title Suit No. 230 of 1979 and Title Suit No. 274 of 1979 were instituted by the predecessors-in-interest of the Respondents against the aforementioned Bengal Bus Syndicate which were dismissed for default and two application for restoration were also dismissed for default. According to the writ-Petitioner-Appellant, he got possession over the aforementioned plot No. 278 by reason of an agreement for sale entered into by and between him and the authorised agent of the said Bengal Bus Syndicate and a sum of Rs. 35,000 out of a total consideration of Rs. 40,000 had been paid and Allegedly, he had also been put in possession of the said land in terms of Section 53A of the Transfer of Property Act. The Appellant thereafter filed a suit for specific performance of contract and injunction in the Court of the Third Court of Assistant District Judge, Alipore on January 12, 1993, wherein an order of status quo was passed. In the said suit, Laskar Group filed an application for addition of parties-Defendants. The claim of the private Respondents appeared to be that they are the owners plots Nos. 276 and 277 and the said plots having amalgamated with the plot in question namely plot No. 278 by reason of the aforementioned surrender by the Bengal Bus Syndicate. Admittedly, the private Respondents filed an application before the Calcutta Municipal Corporation for sanction of a building plan to which the Appellant sent a representation praying that in view of the fact that he is claiming title over the land. No building plan should be sanctioned. He also prayed for an opportunity of hearing. In the meanwhile, vari8ous writ applications were filed by the parties herein relating to possession of the lands in question. One of the said writ application being C.O. No. 20856 (W) of 1993 is still pending consideration. It appears that the Appellant had also filed a writ application questioning the original sanction of building plan by the Calcutta Municipal Corporation which is also pending decision in this Court. But taking the advantage of the said fact that the said plan was revised, another writ application was filed suppressing the pendency of the said writ application. In the aforementioned writ applications Special Officers were appointed from time to time for the purpose of giving report as regards the possession of the parties and extent of construction allegedly made by the Respondents and on each occasion, possession of the private Respondents were found and it was also reported that they had been raising construction on the lands in question.

4. The said writ application filed by the Appellant being C.O. No. 19278 (W) of 1995, questioning the grant of sanction of the building plan in respect of plot No. 278, Khatian No. 132 by showing plots No. 276 and 277 appertaining to Khatian No. 108 was dismissed by a learned Single Judge of this Court by a judgment and order dated December 4, 1995 on the ground that the dispute between the parties is a private dispute. An appeal was taken out from the said order dated December 4, 1995, which was registered as F.M.A.T. No. 3833 of 1995. The said appeal was allowed by this Bench. This Court upon allowing the appeal, remitted the matter back to the Trial Court, inter alia, holding that at least two issues

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arise for consideration in the writ application namely -(1) whether the building plan in respect of disputed plot No. 278 was sanctioned by Calcutta Municipal Corporation in violation of the provisions of law as alleged in the writ petition and (2) whether the writ Petitioner has the locus standi to challenge such sanction of the building plan. The matter thereafter came up before a learned Single Judge who by reason of the impugned judgment dismissed the writ application holding, inter alia, that the writ-Petitioner-Appellant has no locus standi to maintain the writ application.

5. Mr. P.K. Dutta, learned Senior Counsel appearing on behalf of the Appellant, has raised several contentions in support of the appeal. The learned Counsel firstly submitted that the very fact that Haldar Group and the Laskar Group had filed two title suit against the Bengal Bus Syndicate after eleven years from the date of alleged surrender, goes to show that the story of surrender is a myth. It was further submitted that the purported story of amalgamation of the plot is also untrue which would be evident from various records. According to the learned Counsel, in view of the various provisions of the Calcutta Municipal Corporation Act and the Rules framed thereunder, the Appellant having an interest over the property had a right to file objection as regards sanction of a building plan. According to the learned Counsel, keeping m view the fact that by a letter dated January 27, 1994, the Appellant in answer to the Petitioner''s representation directed him to file his documents whereafter, all such documents were filed on February 3, 1994. But despite the same the Corporation again wrote to the Appellant''s counsel to produce all documents for hearing of his objection dated January 27, 1994; but despite the same, the plan was sanctioned without giving an opportunity of hearing. According to the learned Counsel, in fact the plan has been sanctioned on September 7, 1984 ; but even then, on September 24, 1994, the Appellant was asked to filed his documents again, which depicts a bad faith on the part of the Calcutta Municipal Corporation. The learned Counsel contends that in terms of the provisions of the said Act and the Rules framed thereunder, it was obligatory on the part of the Calcutta Municipal Corporation to hearing the Appellant in consonance with the principles of natural justice. The learned Counsel contends that no construction could have been raised in view of the fact that an order of status quo had been granted in favour of the Appellant by a competent Court of Law and such construction having been made in violation thereof, they should have been directed to be demolished. It was further submitted that in any event the Appellant had a legitimate expectation that he would be heard. As regards the question of locus standi, the learned Counsel submits that as the Appellant claims right title and interest over the plot in question, the finding of the learned Trial Judge must be held to be incorrect in law. It was submitted that the question of locus standi has been expanded by reason of the decisions of this Court as also the Hon''ble Supreme Court of India in a large number of cases. It is stated that any person having a say in the matter as a citizen in relation to violation of a statutory provision by a statutory authority, will also have locus to

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maintain a writ application. It was further pointed out that the question of locus has to be considered in the light of Wednesbury''s principle as expanded In Re: Tata Cellular Vs. Union of India, as also In Re: New Horizons Limited and Another Vs. Union of India (UOI) and Others, case Mr. Dutta would contend that in the instant case as the Petitioner was expected of getting justice in the hands of the statutory authority, he must be held to have a locus standi to maintain a writ application. According to the learned Counsel, the Corporation had a public duty to perform in relation to the Petitioner as he had also laid claim over the plot in question. The learned Counsel in this connection has also relied upon paras. 114 and 116 of Volume 1/1 of Halsbury''s Laws of England, Fourth Edition. Our attention has also been drawn to a judgment of this Court dated August 23, 1995, passed in C.R. No. 9952 (W) of 1995 and it was submitted that therein it has clearly been held that the writ application filed by the Respondent was by way of camouflage and the Petitioner had a right to protect his possession both u/s 53A of the Transfer of Property Act as also his independent right to possession the same. Reference has been made to Mithilesh Garg, Vs. Union of India and others etc. etc., The learned Counsel next contended that the principle of natural justice must also be held to have encompassed within its fold all situation except where it is excluded or in a case where the same does not cause any civil or evil consequences. According to the learned Counsel, had an opportunity of hearing being given, the Petitioner could have shown that the claim of title raised on the part of the private Respondents being based on a question of surrender was not a registered document. It has been submitted that even no title deed had been shown before the concerned authority or before this Court. It was also urged that validity of surrender being a subject matter of lis which is pending consideration in the Appellant''s suit for specific performance of contract being Title Suit No. 12 of 1993, the Petitioner was entitled to raise the said question. It was further submitted that the power to sanction a plan lies under Sections 392 and 393 of the Calcutta Municipal Corporation Act which is to be read along with the provisions of the Rules framed thereunder. The learned Counsel submits that the Calcutta Municipal Corporation cannot be said to have any absolute discretion in the matter of granting of sanction of the plan inasmuch as they are bound by the provision of statute and in any event, even such a discretionary jurisdiction can be challenged by filing a writ application. Reliance in this connection has been placed on Express News Papers v. Union of India AIR 1986 S.C. 515 The learned Counsel in this connection has submitted that there is hardly any distinction between public law element and private law element and in this connection our attention has been drawn to a decision of this Court in Ramsaran Sastri v. State of West Bengal 1995(1) C.H.N. 419. It was further submitted that this Court in any event can issue a writ of certiorari and in support of his aforementioned contention reliance has been place on State of U.P. v. Md. Nooh AIR 1958 S.C. 86 and Sovachand Mulchand Vs. The Collector of Central Excise and Land Customs and Others, Our attention in this connection has also been drawn to Section 599 of the Calcutta Municipal Corporation Act. Mr. Dutta further submits that the police report, the report of the B.L. & L. R. O. and order of status quo passed by

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the civil court would clearly go to show that the Appellant had been possession of the lands in question. It has been pointed out that questioning the said reports of the police authority and B.L. & L R .0. a writ application was filed by the private Respondent being C.O. No. 20856 (W) of 1994 which is still pending and wherein no interim order has been passed. The learned Counsel has further pointed out that the action on the part of the Calcutta Municipal Corporation is mala fide inasmuch as although the application for grant of sanction for the building plan was filed on March 16, 1994, the mullion has been done in the year 1995 and thus there has been a flagrant violation in the matter of statutory compliance by the public law authorities. According to the learned Counsel, therefore as this aspect of the matter has not been considered by the learned Trial Judge, the judgment under appeal cannot be sustained.

6. Mr. Ray, the learned Counsel appearing on behalf of the Respondent No. 17, on the other hand, submitted that a person must have a legal right except in a case where public interest litigation is involved. Filing of an application simplicitor, according to the learned Counsel, does not give rise to any right and thus the Petitioner cannot be said to have any locus standi to maintain the writ application. It was submitted that the question of the Respondents should also be viewed from the fact that the private Respondent has a fundamental right of shelter in terms of Article 21 of the Constitution of India. The learned Counsel contends that by reason of agreement for sale allegedly entered into by and between the Appellant- and the Bengal Bus Syndicate no title has passed in him and in this view of the matter, he cannot be said to have a right over the land. Our attention in this connection has been drawn to Section 54 of the Transfer of Property Act. Mr. Roy has also relied upon a large number of decisions in support of his aforementioned contention. It was further submitted that even Section 55 of the Transfer of Property Act would not come into play in the instant case. Reliance in this connection, has been placed on Kartic Chandra Shaw v. Ranjit Pal 1977 (2) C.L.J. 137 . As regarding the Petitioner''s purported claim in terms of Section 53A of the Transfer of Property Act, it was submitted that such a right can be used as shield and not as a sword. Reliance in this connection, has been placed on Bai Dosabai Vs. Mathurdas Govinddas and Others, , Rambaran Prosad Vs. Ram Mohit Hazra and Others, and Narandas Karsondas Vs. S.A. Kamtam and Another, as also a recent decision Sunil Kumar Jain Vs. Kishan and others, . An attempt was made by Mr. Roy also to show that the rights of the parties were governed by provision of non-Agricultural Tenancy Act and thus questioning of passing of the estate in them of the provisions of the West Bengal Estate Acquisition Act would not arise. It was further submitted that apart from the fact that the Appellant has no locus standi to object to the sanctioning of the plan; even Bengal Bus Syndicate supported the case of the Respondent relating to passing of the plan. It was urged that the Calcutta Municipal corporation committed a mistake in saying that Khatian No. 132 was not assessed inasmuch as it was not aware of the change made in the assessment list by reason of amalgamation of the plots. As regards the question of mutation, it was submitted

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that as the name of Achiya Khatoon had been recorded, a fresh mutation was not necessary and the order of mutation was passed merely by way of clarification. It was pointed out that the private Respondents have paid all the taxes. As regards the contention that the principle of natural justice were required to be complied with, the learned Counsel submits that no dispute between the parties can be resolved by the Calcutta Municipal Corporation nor had it any jurisdiction to entertain any objection. According to the learned Counsel, the statutory authority is required to act within the four corners of the statute. Reliance in this connection, has been placed on S.K. Dutta v. P. C. Singh AIR 1949 Cal. 26 , Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others, and Sasanka Sekhar Panda Vs. State of West Bengal and Others,

7. It was submitted that Rule 3 is not applicable in this case and in any event, a third party has no jurisdiction to object to the sanctioning of a plan. According to the learned Counsel even the principles of natural justice are not attracted in such a case. In any event contends the learned Counsel as the Appellant has failed to prove his title, the writ petition has rightly been dismissed.

8. It has been pointed out that in view of the fact that the Petitioner claims his right title interest by reason of an agreement to sale, he did not derive any right whatsoever and in support of the aforementioned contention reliance has been placed in Sukhilal Sah Vs. Angrahit Jha, and the recent decision of the Supreme Court in Sunil Jain v. Krishan (Supra).

9. It was further submitted that in any event this Court will not sit in appeal over the decision of the authorities of the Calcutta Municipal Corporation. It was further submitted that a building plan sanctioned can be questioned only after the same is granted and thus, the Respondent-corporation must be held to have committed a mistake in entertaining the objection filed by the Appellant. Reference in this connection has been made.

10. Mr. Roy would urge that there is no question of dual ownership in the matter. As regards question of status quo order, it was submitted that the Respondent was not a party in the said appeal or in the suit at the relevant time and in any event the said order has to be construed in the light of the pleadings of the parties in the said suit. It was further submitted that in any view of the matter as the Appellant is guilty of suppression of fact, the writ application has rightly been dismissed.

11. Mrs. Smriti Kana Mukherjee, the learned Counsel appearing on behalf of the Calcutta Municipal Corporation, however, submitted that the corporation satisfied itself about the question of title as also the fact as to whether the name of the Applicant is mutated or not. It was submitted that the title deeds are verified and the lawyer''s opinion are also sought for.

12. Mr. Pal appearing on behalf of the Respondent No. 14 submitted that the instant writ petition is barred under the principles of res judicata and/or the principles analogous thereto and in support of the aforementioned contention

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reliance has been placed on Kartic K.M. Mukherjee v. Chief General Manager, S.B.I. 1995 (1) C.L.J. 397. The learned Counsel supported Mr. Roy as regards his submission that the Appellant has no right of making objection under the rules. In this connection our attention has been drawn to the letters dated July 10, 1993, October 17, 1993, January 27, 1994 and May 18, 1994 written by the Appellant and/or by his Advocate to the Corporation prior to the grant of sanction of the plan. Our attention was further drawn to para. 9 of the first writ petition filed by the Appellant wherein he had admitted that a hearing was given. It was further submitted that in any event the objections of the Appellant were prima facie untenable and irrelevant. Mr. Pal would urge that the substantive provisions of the Act namely, Section 396 does not contemplate determination of any question of title for grant of sanction. The learned Counsel further submits that no formal communication is required in the facts and circumstances of this case and in any event, sanction of the plan prayed for by the private Respondents would amount to communicate of rejection of objection of the Appellant, it was submitted that the sanction once granted can be cancelled only in terms of provision of Section 397 of the Code of Criminal Procedure.

13. Before proceeding to deal with the respective submissions, it will be relevant to notice the litigations filed and/or pending between the parties. Two suits-being Title Suit No. 230 of and Title Suit No. 244 of 1979 were filed for declaration and permanent injunction allegedly on the ground that one Md. A. Bobeen was trying to forcibly and illegally take possession of the said plot of land which were dismissed for default on March 7, 1989. It is also admitted that the applications for restoration were also dismissed for default. The B.L. and L. R. O. allegedly found possession of the Appellant and the police authorities also found possession of the Appellant which were the subject matter of a writ petition filed by the private Respondents which were marked as C.O. No. 20856 (W) of 1993. The said writ application is still pending. It is also admitted that the Appellant has filed a suit for specific performance of contract which has been registered as Title Suit No. 12 of 1993 wherein some of the private Respondents got themselves impleaded as party Respondents.

14. On or about September 28, 1994 the Appellant filed a writ petition which was marked as C.O. No. 11587 (W) of 1994 questioning the sanction of the building plan by the Calcutta Municipal Corporation in terms of its letter dated September 7, 1994. In the said writ petition no interim order has been granted and the same is pending decision. In fact, the said application is running in the daily cause list of a learned Judge of this Court.

15. As in the aforementioned Title Suit No. 12 of 1993 the Appellant could not obtain any order of injunction, he preferred an appeal from the order of the first Assistant District Judge which was registered as Miscellaneous Appeal No. 416 of 1994 wherein an order of status quo was granted. However, in the mean while a writ petition was filed by the private Respondents inter alia, questioning the police action by making an attempt to stop the constructions of the building. The

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said petition was marked as C.O. No. 9952 (W) of 1995 which has been dismissed by this Court.

16. Another writ application was filed by the private Respondents questioning the illegal interference of the police authorities which has been marked as C.O. No. 17273 (W) of 1995. The said matter is still pending. On or about October 5, 1995 a second writ petition was filed by the Appellant, being C.O. No. 18803 (W) of 1995. The said writ petition was dismissed by this Court by an order dated November 27, 1995.

17. On November 4, 1995 the instant writ application was filed questioning the order of sanction dated September 7, 1994 as well as the revised sanction involving against AIR case only dated September 30, 1995 which was registered as C.O. No. 19278 (W) of 1995 which is the subject matter of the present appeal.

18. From the list of cases as enumerated hereinbefore, it is evident that the parties had been fighting in different forums as regards their respective title and/ or possession. As noticed hereinbefore some of the writ petitions had been disposed of but some are still pending.

19. The learned trial Judge in his judgment under appeal inter alia, found that the Appellant in his writ application did not disclose the filing of the earlier writ petition being C.O. No. 11587 (W) of 1994 and inter alia, held that the Appellant is guilty of suppression of facts.

20. This Court in exercise of its jurisdiction under Article 226 of the Constitution of India may refuse to grant relief to a party who has not approached this Court with clean hands.

21. In Chint Ram Ram Chand and Others Vs. State of Punjab and Others, the Apex Court held as follows:

Apart from the fact that these Appellants were parties to the latter writ petition and had not disclosed the filing of the earlier writ petition in the High Court these Appellants in Appeal arising out of SLP (C) No. 11139 of 1995 have also not disclosed the filing of Writ Petition No. 15883 of 1993 in the Punjab & Haryana High Court. That petition was filed by persons who had purchased sites in the new Mandi at Jagraon and had wanted a direction for the establishment of the said Mandi and the closure of the old one 149 of the Appellants in SLP (C) No. 11139 of 1995 moved an application before the High Court were impleaded as parties. The said Writ Petition No. 15831 of 1993 was allowed and the validity of the Notification issued under Sections 7 and 8 of the Act was upheld. The filing of the said Civil Writ Petition No. 15831 of 1993 and its being allowed by the Punjab and Haryana High Court by its judgment dated 8.4.1984 has not been disclosed in SLP (C) No. 11139 of 1995 even though there were some common Petitioners. There is a merit in the contention of the Advocate General that even in this Court, an attempt has been made on the part of the Appellants not to disclose full facts and to secure a favourable order. Such a practice cannot be encouraged

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and has to be deprecated.

22. The learned trial judge has also referred to a decision of Court reported in S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, saying that he who claims equity must come with clean hands.

23. We agree with the aforementioned findings of the learned trial Judge. However, in view of the fact that the learned Counsel for the parties had addressed us at great length regards various aspects of the matter, let us deal with the same.

24. The submission of Mr. Pal to the effect that the writ application filed by the writ Petitioner is barred by res judicata cannot be accepted. C.O. No. 18803 (W) of 1995 was dismissed by an order dated November 27, 1995 wherein the Appellant, inter alia, questioned the purported failure on the part of the police authorities to carry out the order dated September 25, 1995 passed by the learned Executive Magistrate, Alipore in M.P. case No. 3262 of 1995 as also the arbitrary and motivated activities on the part of the police authorities in not taking any steps against illegal construction on the land in question despite specific order passed in that regard by the learned Executive Magistrate, as also the order of the learned Additional District Judge passed in Miscellaneous Appeal No. 416 of 1995. Having regard to the facts and circumstances of this case this Court held that a writ petition is not maintainable as the said dispute between the parties is a private dispute as has been held by the Supreme Court in Mohan Pandey and Another Vs. Smt. Usha Rani Rajgaria and Others, The other writ petition which has been dismissed by this Court in C.O. No. 9952 (W) of 1995 which was filed by the private Respondents wherein inter alia, the following reliefs were claimed in relation to plot No. 278:

(a) A writ of or in the nature of mandamus should not be issued commanding the Respondents, their men, agents and servants to forebear from interfering with the constructional work in respect of the land and also to forebear from giving any effect to the decision, if taken, to prevent the Petitioners from proceeding with the construction work in the said plot of land

(b) A writ of or in the nature of Certiorari be issued commanding the Respondents to produce or caused to be produced the records of the case and to certify the same so that conscionable justice may be administered by directing the Respondents to cancel and/or rescind the impugned decision, if there be any, with regard to preventing the Petitioners from proceeding with the construction work.

(c) A writ of or in the nature of prohibition be issued restraining the Respondents from giving any effect to the decision, if there be any, and to forebear from taking any action against the Petitioners to prevent them from proceeding with the construction work.

25. This Court in the aforementioned case, inter alia refused to enter into the

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controversy as to whether the Appellant''s aforementioned Suit being Title Suit No. 12 of 1993 was maintainable u/s 53A of the Act. It may be noticed that the aforementioned Suit the private Respondents contended that despite certain orders passed by the learned District Judge as well as the learned Executive Magistrate the police authorities could not take any action in restraining them from raising construction. This Court held that the writ petition field by the private Respondents impleading the police authorities was by way of camouflage inasmuch as the reliefs sought for were really against the Appellant himself. This Court reiterated that Article 226 cannot be invoked for resolving a private dispute. It was held that a person although had not acquired any title under an agreement of sale but if he is in possession thereof, he can take such action for protecting his possession both in exercise of his right to possess as also in terms of Section 53A of the Transfer of Property Act. This Court, inter alia, relied upon a decision of the Andhra Pradesh High Court Acharya v. Venkatasubba Rao AIR 1957 A.P. 854. This Court further refused to determine the question as to whether the plot in question has vested to the State in terms of the provision of the West Bengal Estate Acquisition Act or not. It was held:

The Respondent No. 5 had claimed an exclusive possession in respect of aforementioned plot on the allegation that he had been put in possession thereof by his vendor in terms of Section 53A of the Transfer of Property Act. The Respondent No. 5, therefore in my opinion, was entitled to take such legal action as is permissible in law with a view to protect his possession. Such a right, as has been noted hereinbefore was available to the Respondent No. 5 not only in terms of the agreement for sale, but also in exercise of its independent right as being in possession of the property in question. It is now well known that such a private dispute would fall outside the scope of this Court''s jurisdiction under Article 226 of the Constitution of India. The Supreme Court in a case reported in Mohan Pandey and Another Vs. Smt. Usha Rani Rajgaria and Others, clearly held that the writ Court will not exercise its jurisdiction over such a private dispute. This aspect of the matter has also been considered by this Court in the case of Bistu Pada Khara v. State of West Bengal and Ors. reported in 1995(1) C.L.J. 297.

26. However, keeping in view the fact that the parties had been litigating in Civil Court and other forums. It was observed:

It, however, goes without saying that it will be open to the appropriate court to consider this aspect of the matter and pass appropriate order, in the event it is ultimately found that the Petitioner does not have any right title and interest or possession in relation to the plot in question.

Before parting with this case, however, I must state that this judgment may not be taken to mean that I have decided the question of right, title and interest of either of the parties. Such a question would fail consideration of the appropriate Court and both parties shall be at liberty to take such steps as is permissible in law.

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27. In this view of the matter, the contention of Mr. Pal that the writ petition was barred under the principles of res judicata cannot be accepted. The questions which were raised in the said writ applications, one filed by the Appellant and the another filed by the private Respondents themselves cannot operate as res judicata. In the instant writ application the question which has been raised is as to whether the Calcutta Municipal Corporation committed any illegality in sanctioning the building plan of the private Respondents or not.

28. Such a question has not raised nor could have been raised in the aforementioned writ application. Keeping in view the submissions made by the learned Counsels let us have a brief over view of the relevant provisions of the Calcutta Municipal Corporation Act and the rules framed thereunder. Sections 392, 393, 396 and 397 read thus:

392. No person shall erect or commence to erect any building or execute any of the works specified in Section 390 except with the previous sanction of the Municipal Commissioner and in accordance with the provisions of this Chapter and of the rules and the regulations made under this Act in relation to such erection of building or execution of work.

393.(1). Every person who intends to erect a building shall apply for sanction by giving notice in writing of his intention to the Municipal Commissioner in such form and containing such information as may be prescribed.

(2). Every such notice shall be accompanied by such documents and plans as may be prescribed.

396(1) The Municipal Commissioner shall sanction the erection of a building or the execution of a work unless such building or work would contravene any of the provisions of Sub-section(2) or Sub-section(3) of this section or the provisions of Section 405 of Section 406 ;

Provided that no such sanction shall be accorded without the prior approval of the Mayor-in-Council in case of any building, except a residential building, proposed to be erected or re-erected on a plot of 500 square metres or less of land:

Provided further that the Mayor-in-Council shall consider the recommendations of the Municipal Building Committee and shall finalize its decision after such consideration.

(2) The sanction of a building or a work may be refused on the following grounds:

(a) that the building or the work or the use of the site for the building or the work or any of the particulars comprised in the site plan, ground plan, elevation, section or. specification would contravene the provisions of this Act or the rules and the regulations made thereunder or of any other law in force for the time being ;

(b) that the notice for sanction does not contain the particulars or is-not

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prepared in the manner required under the rules and the regulations made in this behalf;

(c) that any information or document required by the Municipal Commissioner under this Act or the rules or the regulations made thereunder has not been duly furnished ;

(d) that in cases requiring a layout plan u/s 364 or Section 365 such layout plan has not been sanctioned in accordance with the provisions of this Act ;

(e) that the building or the work would be an encroachment on Government land or land vested in the Corporation ;

(f) that the site of the building or the work does not abut on a street or projected street and that there is no access to such building or work from any such street by any passage or pathway appertaining to such site.

(3) If, for the use of a building, a licence or permission is required- from any department of Government or statutory body under any law in force for the time being, and if such licence or permission is not immediately available, a provisional sanction shall be given for the erection of such building and upon the production of such licence or permission and submission of duly authenticated copies thereof, sanction under sub-section (l) shall be given;

Provided that the provisional sanction shall be subject to all other provisions of this Chapter.

(4) The Municipal Commissioner shall communicate the sanction or the provisional sanction to the person who has given the notice u/s 393 or Section 394 ; and where he refuses sanction or provisional sanction either on any of the ground specified in Sub-section(2) or u/s 405 or Section 406 ; he shall record a brief statement of his reasons for such refusal and shall communicate the refusal along with the reasons therefor to the person who has given the notice.

(5) The sanction or the provisional sanction or the refusal to the erection of a building or the execution of a work shall be communicated in such manner as may be specified in the rules and the regulations made in this behalf and, in the case of sanction or provisional sanction to the erection of a building, the occupancy or use group shall be specifically stated in such sanction.

397. If, at any time after the communication of sanction or provisional sanction to the erection of any building or the execution of any work, the Municipal Commissioner is satisfied that such sanction or provisional sanction was accorded in consequence of any material mis-representation or any fraudulent statement in the notice given or information furnished u/s 393 or Section 394, or Section 395, he may be order in writing, cancel, for reasons to be recorded, such sanction or provisional sanction, and any building or any work commenced, erected or executed shall be deemed to have been commenced, erected or executed without such sanction and shall be dealt with under the provisions of

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this Chapter;

Provided that before making any such order, the Municipal Commissioner shall give a reasonable opportunity to the person affected as to why such order should not be made.

29. The State framed rules u/s 600 read with rule u/s 404 of the Calcutta Municipal Corporation Act known as the Calcutta Municipal Corporation Building Rules, 1990.

30. Rule 2(9) defines building plan which means a plan accompanying a notice for sanction or provisional sanction for erection, re-erection addition to or alteration of a building.

31. Rule 3 prohibits any person to erect a new building or re-erect, or make addition to or alteration of any building, or cause the same to be done as specified in Section 392, without obtaining a sanction in the form of a Building Permit from the Municipal Commissioner under the Act, and without obtaining such permission for development from the concerned authority as may be required under the West Bengal Town and Country (Planning and Development) Act, 1979 (West Ben. Act XIII of 1979).

32. Rule 4 of the said rules provides for procedure for sanction. Sub-rule (1) of Rule 4 reads thus:

Every person who intends to erect a new building on any site, whether previously built upon or not or re-erect or make addition to or alteration of, any building shall apply for sanction by giving notice in writing to the Municipal Commissioner.

33. It is difficult to accept the submission of Mr. Pal and Mr. Roy to the effect that the Calcutta Municipal Corporation has no jurisdiction at all to consider the question of title.

34. Section 392 as noticed hereinbefore clearly prohibits construction of a building without sanction which was to be given in accordance with the provision of Chapter-XXII and the rules and regulations made thereunder.

35. It is, therefore, not a case where the provisions of the rules can be ignored altogether only on the ground that Section 396(2) provides for the grounds upon which such application can be rejected. Section 396, in my opinion would come into play provided the notice filed in the prescribed from is in order and the competent authority of the Calcutta Municipal Corporation is satisfied as records the veracity of the statements made therein. In this connection reference may also be made to Clause (b) and (c) of Sub-section (2) of Section 396. There cannot thus be any doubt whatsoever that all the in formations have to be duly furnished which necessarily implies the power in the concerned authority to verify the statements made therein either by calling upon the Applicant to satisfy it on such points or by making an independent enquiry. However, before any adverse order is passed the Applicant may be given a notice therefore. It is true

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that the Calcutta Municipal Corporation Act does not provide for any objection before sanctioning a plan by a third party. However, if such an objection is filed, keeping in view the provisions of the rules that the Applicant must have an exclusive right to erect the said building, the claim of the Applicant may have to be considered in the light of the objections filed by a third party. For the purpose of determination of such hearing a detailed hearing may not be necessary inasmuch as while such an objection is considered, the Calcutta Municipal Corporation would do so only for the purpose of satisfying itself about the exclusive right of the Applicant to erect a building. No body has any right to file an application for erection of a building although he has no right, title and interest or possession in or over the land in question is otherwise authorised in that regard.

36. However, there cannot be any doubt that the Calcutta Municipal Corporation being not empowered to decide the question of title, its jurisdiction is limited only to the question of sanctioning of the plan and not beyond that. Its decision shall undoubtedly be subject to the decision of a competent Court of "law, namely, the Civil Court or any other Court which by reason of a statutory provision is entitled to decide such question of title.

37. The tenant, however, has no such right although a person claiming a complete title may have such a right.

38. The views of mine find support from a decision of the Andhra Pradesh High Court. The Apex Court was considering the provision of Section 42 of the Delhi Municipal Corporation Act which is in pari materia with Section 29(k) of the Calcutta Municipal Corporation Act the Supreme Court emphasised the need of the authorities to educate the people of the duty of the Corporation. Although the said decision has not direct bearing in the fact of the present case, it is useful to note that therein it has been held that the Courts are justified in directing M.C.D. and N.D.M.C. to perform their duties under law.

39. The question which arises for consideration is as to whether the Calcutta Municipal Corporation acted fairly in the matter. Having regard to the events we are satisfied that it had not acted very fairly. Although the ''plan'' was sanctioned on September 7, 1994, there was absolutely no reason as to why further document should be asked for from the Appellant thereafter. It appears that the objection of the Petitioner had been dealt with in a perfunctory manner but, however, it appears that the Appellants on their own showing had been given an opportunity to produce their documents and was also given a hearing. What sort of hearing was given is not known to us but even such a statement has been made by the writ Petitioner in para.9 of the first writ application, a copy whereof has been placed before us.

40. Mr. Dutta submitted that such a statement has been made by way of a mistake but we cannot agree thereof. The statements made in a writ application must be taken as a whole.

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41. However, the conduct of the Appellant in this regard will also be evident from the representations and the Advocate''s letters issued by or on his behalf, being dated July 10, 1993. October 7, 1993, and May 18, 1994. In his aforementioned letter dated July 10, 1993, the Appellant apprehended that a plan may be sanctioned. The letter dated October 7, 1993 is a notice to the Chief City Architect and other authorities of Calcutta Municipal Corporation given by the learned Advocate of the Appellant. In the said notice, it was stated that the Appellant had already purchased the property in question by reason of a deed of sale executed by the Bengal Bus Syndicate, which was the owner of the said land used by it as a bus stand. It was further stated that the Appellant had filed Title Suit No. 12 of 1993 in the Court of the Third Assistant District Judge at Alipore against the Bengal Bus Syndicate for specific performance for registration of conveyance in respect of the said land in favour of his client and the said suit is still pending. The said statements made in the notice are evidently wrong, in as much as, it now stands admitted that in the year 1979, the Appellant had merely entered into an agreement for sale and the aforesaid Title Suit No. 12 of 1993 was a suit for specific performance of the contract. Yet again, in the letter dated May 18, 1994, which is again a notice addressed to the Chief City Architect and other officers, the learned Advocate of the Appellant clearly stated that all the necessary documents and papers in connection with the allegations submitted by Achhia Bibi (recorded tenant) had been placed and a receipt therefor had been granted.

42. All these letters together with the statements made in para. 9 of the first writ application of the petition clearly go to show that the grievance of the Appellant had been looked into by the authorities of the Calcutta Municipal Corporation. It is true that no personal hearing was granted, but the question which arises for consideration is as to whether grant of any personal hearing to the Appellant would have served any purpose. There cannot be any doubt whatsoever that principles of natural justice are required to be complied with by an authority adjudicating into a dispute and such decision would be final. The principles of natural justice even if not embedded in the statute may have to be read in the statute, but it is also well known that such a principle is neither inflexible nor a rigid one. The amount of hearing required to be given depends upon case to case. This aspect of the matter has been considered by me in Matter No. 129 of 1993 (Sree Hanuman Rolling Mills Ltd. v. C.E.S.C. Limited) disposed of on April 12, 1996, and thus, it is not necessary to reiterate the decisions cited at the bar over again. However, it is profitable to notice a passage from Judicial Remedies in Public Law by Clive Lewis, 1992 Edition, which has been cited by Mr. Dutt himself, wherein it has been stated by the learned authors:

The fact that the Applicant has suffered no prejudice as a result of the error complained of may be a reason for refusing him relief. It is necessary to keep in mind the purpose of the public law principle that has technically been violated, and ask whether that underlying purpose has in any event been achieved in the circumstances of the case. If so, the Courts may decide that the breach has

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caused no injustice or prejudice and there is no need to grant relief.

The Courts may, for example, refuse relief if there has been a breach of natural justice but where the breach has in fact not prevented the individual from having a AIR hearing. Failure by an investigatory body, for example, to disclose material may not entitle an Applicant to relief, where the material is in fact known to him and he has had the opportunity to deal with it. Where an Applicant was not told of all relevant material initially but had been told and made representations before the final decision was taken, the Court may refuse relief as he has not suffered injustice.

43. This aspect of the matter has also recently been considered by the Supreme Court of India in the case of State Bank of Patiala and others Vs. S.K. Sharma, wherein the Supreme Court has held that procedural aspects of the principles of natural justice may be held to be directly and may not in all circumstances vitiate the order. In the case it has been held that a personal hearing is not necessary. However, if no notice, no hearing or no opportunity is given, the matter would stand on a different footing. In the instant case, as has been held hereinbefore, the Corporation is required to go into the question in order to satisfy itself that the Applicant before it is a person who has complied with all the requirements of law so as to entitle it to get sanction of the plan, or not. Such a question, undoubtedly, is merely for the purpose of performing the duties of the concerned authorities within the four-corners of the Calcutta Municipal Corporation Act, and thereby no adjudicating role is or can be usurped by the concerned authorities. It will be proper to refer to a recent decision of this Bench in the case of Panchanan Mondal and others Vs. West Bengal Board of Secondary Education and others, wherein it was held:

The West Bengal Board of Secondary Education as also the Director of School Education are creatures of statute. It is well known that such creates of statute must act within the four corner of the statute. They cannot take an action which is forbidden by the statute.

44. In view of the aforementioned latest decision, it is not necessary to cite other decisions cited at the Bar.

45. It is now also well, settled principles of law that an order remains valid till it is set aside by a Court of law. An order may be valid for one person, and may be invalid for the other, and in this view of the matter, there cannot be any doubt whatsoever that a writ of Certiorari may be issued depending on the facts and circumstances of each case. Mr. Dutta referred to para. 114 of Halsbury''s Laws of England Vol. 1(1). Reissue, 4th Edition. The question as to under what circumstances a writ of Certiorari may be issued is neither in doubt nor in dispute.

46. However, we cannot appreciate the stand on the part of the Calcutta Municipal Corporation in so far as despite entertaining objections, the Appellant was not even informed of the result. In our opinion, in the facts and circumstances of this case, it was proper for the said authority to communicate

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the order to the effect that the plan had already been sanctioned. However, as has been rightly submitted by Mr. Roy that by reason of sanctioning of a plan itself, a person''s title is not decided. Such a question has to be gone into and considered by the civil Court in the aforementioned suit.

47. So far as the question of locus standi of the Appellant to maintain the writ application is concerned, we are of the view that the Appellant, in view of the case made out by him, had a locus standi to maintain the writ application, but the question as to whether any relief can be granted in his favour or not, is another thing. The question which may now fall for consideration is as to whether despite the aforementioned finding the Appellant is entitled to any relief. Evidently, he has derived no title to the land in question as yet. It is true that there are conflicting reports as regards possession of the parties. However, in a recent report the Special Officer appointed by this Court, namely, Sri Debayan Bera has found that the building is in a state of construction, stair case was situated in the western portion of the structure. Plasterings of the walls have not been completed. The casting of the roof above ground floor is complete and no construction has been raised over the said roof. The measurement of the roof has also been stated and the height of the building is 12''2" from the plinth level. The learned Special Officer had also made personal enquiries in the matter and came to learn that Joynal Abedin, Mohiuddin Mullik, Md. Aslam, Jalaluddin Tarafdar have been inducted as tenants by the private Respondents.

48. The Appellant, thus, admittedly although was entitled to protect his possession, if any. It appears, that somehow or otherwise the private Respondents have constructed a substantial structure. The Appellant has to prove the contents of agreement for sale that he would derive right in respect of the land in question thereunder. It is true that an objection, has been filed to the said inspection report but this Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot embark into such question.

49. Mr. Roy, learned Counsel for the Respondent has relied upon a passage from Administrative Law by H.W.R. Wade & C.F. Forsyth, Seventh Edition at page 700 which reads thus:

The requirement of a legal right has restricted the utility of the declaration of planning cases owning to the fact that the planning legislation gives no rights to neighbours and other third parties. If, for instance, a planning authority grants permission for the building of a school but falls to follow the statutory procedure, a neighbour who objects to the school has been held unable to obtain a declaration that the permission is invalid. What a man may do on his own land is a matter between him and the planning authority, and is not legally the business of anyone else. A mere neighbour has no right or status in the matter which the Court unless some nuisance or other wrong is committed or threatened against him. Yet it is possible that he may be granted certiorari, or allowed to bring a realtor action.

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50. The said passage, in our opinion, has no relevance in the facts and circumstances of this case, inasmuch as, in that case the author was discussing the matter relating to the planning case. We are concerned with a case where both parties are claiming the independent title.

51. A learned single Judge of this Court in the case of Latika Co-operative Housing Society Ltd. and Others Vs. Commissioner, Corporation of Calcutta and Others, was considering the provision of the Calcutta Municipal Corporation Act, 1951. In that case it was merely held that it is not necessary that only the owner of land is to make an application for sanction of a building plan under the said Act. The learned Judge further held that if any person makes an application for sanction of a building plan, the Corporation of Calcutta must consider the application and the site plan and ascertain as to whether the plan of the proposed building conforms to the provisions of the Act and rules framed thereunder and if the plan conforms to the Act and the rules and the application is also made by the Applicant in accordance with the provision of the Schedule XVI of the Act the Corporation must accord permission despite the fact that such application is not by the owner of the land. However, there cannot be any doubt whatsoever that he must have exclusive right to effect such construction on other''s land. The said decision, therefore in our opinion, is of no assistance to the facts of the present case. In the case of Kumuda Sundari Properties (Private) Ltd. and Others Vs. Namdang Tea Co. Ltd., a Division Bench of this Court was considering the question as to whether a tenant had a right to make any objection. It was held that the tenant has no such right. The ratio enunciated therein has not been questioned by Mr. Dutt, learned Counsel.

52. The said decision did not lay down that before granting sanction of a building plan a person who does not claim that he is entitled to erect upon the holding itself ought to be given opportunity of hearing. However, in this case the Appellant rightly or wrongly raised a contention that he is so entitled in view of the fact that he is the owner of the building in question.

53. In view of our findings aforementioned it is not necessary to refer the other decisions cited at the Bar. However, before we part with the case we must notice one submission made by Mr. Dutt, learned Counsel. The learned Counsel submitted that the Appellant had a legitimate expectation. The question of legitimate expectation in this case does not arise. The question as regards the applicability of the doctrine of legitimate expectation has recently been considered by this Court in two un-reported decision, one in D. Wrrn International Ltd. and Anr. v. Engineers India Ltd. and Ors. (Writ petition No. 1876 of 1995) disposed of on 28.3.96 and the other in the Indian Hotels Company Ltd. and Anr. v. Calcutta Municipal Corporation and Ors. (Matter No. 3743 of 1994) disposed of on February 27, 1995 wherein this Court had taken into consideration all the decisions cited at the Bar as well as other decisions and held that expectation cannot be same as an anticipation. However, in view of the order proposed to be passed by us it is not necessary to consider the matter any

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further. Having regard to the facts and circumstances of this case we are of the view that as the Petitioner has yet to acquire any right in respect of the property in question and as the building plan has already been sanctioned in respect of plot in question in favour of the private Respondent and the private Respondent having constructed the building thereon, it will not be in the interest of the justice at this stage to interfere with the matter as all the relevant questions raised in this appeal including the question of title can be decided in the aforementioned suit No. 12 of 1993. It goes without saying that the Court while passing a decree shall be entitled to consider the subsequent events and mould the relief, if it is found desirable.

54. While passing this said order we are not oblivious of the fact that a decree for specific performance of contract is not to be granted as a matter of course. The Court while passing such a decree may consider the relevant factors including the conduct of the parties, if it comes to the conclusion that the Bengal Bus Syndicate had the title in respect of the property in question and it had entered into the said agreement for sale with the Appellant. We may, however, direct that keeping in view the peculiar facts and circumstances of this case, the hearing of the suit should be expedited. Mr. Dutta, learned Counsel, has assured us that his client shall not ask for any adjournment. We direct the learned Civil Court to expedite the hearing of the suit and dispose of the same at an early date an preferably within a period of two months from the date of communication of this order. The learned Civil Court is also directed to hearing the suit on day to day basis and not to grant any adjournment. Any construction made by the private Respondent shall be at their own risk and costs.

55. Before parting with the case, however, we may further observe that in the event the Appellant feels that the order of status quo passed by the appellate Court has been violated, it will be open to him to take such action as against the concerned persons as is permissible in law. The learned Judge shall hear all the issues together including the question of maintainability. It also goes without saying that in the event any third party''s interest is created, the same shall abide by the result of the suit and no special equity shall be claimed by anybody on that basis. Furthermore it goes without saying that such transaction, if any, shall be hit by the doctrine of lis pendency.

56. The interim order passed by this Court stands vacated.

57. Both the appeal and the application are disposed of with the aforementioned observations and directions.

58. There will be no order as to costs.

59. Let a plain copy of the operative part of this judgment countersigned by the Assistant Registrar (Court) be handed over to the learned Counsel for the parties so as to enable them to communicate the sane to the learned Civil Court where the aforementioned Title Suit No. 12 of 1993 is pending.

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Satya Narayan Chakrabarty, J.: I agree.

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