

(2022) 04 CAL CK 0055
In the Calcutta High Court
Case No : WPO No. 275 Of 2020

M/S. Adya Residency (P) Ltd And M/S. Rajveer Infrastructure Reality Pvt. Ltd. APPELLANT

Vs

State Of West Bengal And Ors RESPONDENT

Date of Decision : 21-04-2022

Acts Referred:

Kolkata Municipal Corporation Building Rules, 2009 — Rule 15(3)
Kolkata Municipal Corporation Act, 1980 — Section 391, 398(3), 399

Citation : (2022) 04 CAL CK 0055

Hon'ble Judges : Hiranmay Bhattacharyya, J

Bench : Single Bench

Advocate : Raghunath Chakraborty, Tanusree Das, Sipra Majumdar, Prativa Ghatak, Alak Kumar Ghosh, Dilip Kumar Chatterjee

Final Decision : Allowed

Judgement

Hiranmay Bhattacharyya, J

1. The writ petition has been filed praying for a writ in the nature of mandamus commanding the respondents to renew the sanction plan and to cancel the Circular no. 5 of 2020-2021 dated 17.06.2020 issued by the Municipal Commissioner and for other reliefs.

2. The case of the petitioner is that the Kolkata Municipal Corporation (for short "KMC") sanctioned the building plan on 21.02.2015 for raising a multi storied building at premises no. 115/3, Hazra Road, Kolkata-700025. Thereafter, the petitioner commenced construction work. While the petitioner was carrying on the construction work at the aforesaid premises, the officer-in-charge of local police station being the respondent no. 6 visited the premises on 04.02.2020 and verbally directed the petitioner to stop the work forthwith. The petitioner stopped construction work on such verbal instruction of the respondent no. 6 and submitted a representation on 05.02.2020 before him with a request to allow petitioner to continue with construction work. Petitioner submitted an application

on 24.06.2020 for renewal of the sanction plan. The petitioner came to know about Circular No. 5 of 2020-2021 dated 17.06.2020 issued by Municipal Commissioner imposing a restriction on the height of the masonry building in a specific zone. Since there was no response from the KMC, petitioner through its learned advocate issued a notice demanding justice and thereafter filed this writ petition.

3. The stand of KMC in the affidavit-in-opposition is that the validity of the said sanction plan expired on 20.02.2020 and as such the petitioner cannot be allowed to carry on any construction work without obtaining fresh sanction. It is further contended that since the application for renewal was not submitted within the validity period of the sanctioned building plan, such prayer for renewal do not deserve to be considered. It is also stated that the circular no. 5 dated 17.06.2020 was issued in view of the directive of the Director of Security, Government of West Bengal restricting construction of masonry building above 15.50 meter from the ground level in high security zone of Kolkata. It is further stated that KMC being a local body is obliged to adhere to directives of the State issued from time to time on different matters. KMC also filed a supplementary affidavit-in-opposition disclosing certain documents pursuant to an order passed by this court.

4. No affidavit-in-opposition has been filed by the officer-in-charge of local police station being the respondent no. 6. However, at the time of hearing, the learned advocate representing State respondents submitted a document signed by the officer-in-charge of Kalighat Police Station on 21.03.2022 stating that the construction site in question is very nearer to Z+ protected security zone and that in spite of being requested the petitioner could not produce his valid renewed sanction plan. It was further stated that it is the duty of local police station to make all the necessary arrangements for the smooth functioning of Z+ protectees as guided by DG security.

5. Mr. Chakraborty, learned advocate appearing for the petitioner submitted that the petitioner obtained the sanction plan after compliance of all the formalities under the Kolkata Municipal Corporation Act, 1980 (for short "the Act"). He referred to the provisions laid down in Section 399 of the Act and contended that since the petitioner could not complete erection of the building within the validity period mentioned in the original sanction plan, the Municipal commissioner is obliged to renew the said plan for a further period as the petitioner has already submitted an application for renewal of the sanction plan. By placing reliance upon Rule 15(3) of the KMC Building Rules, 2009 (for short "the Rules") he contended that the validity period of 5 years as granted in the original plan can be extended for a further period of 5 years. By referring to Section 391 of the Act he submitted that the Municipal Building Committee consists of several members and one of such member was also a nominee of Commissioner of Police, Kolkata. He submitted that such Committee scrutinizes the applications for erection or re-erection of building in accordance with provisions of the Act, Rules and

Regulations and thereafter forwards its recommendations to the Mayor in Council. He submitted that the plan was sanctioned by the Municipal Commissioner after fulfillment of the requisite formalities and as such the KMC is obliged under the statute to renew the said sanction plan on the basis of the application submitted by the petitioner. He further contended that the Municipal Circular no. 5 dated 17.06.2020 cannot prevail over the statute and the Rules framed thereunder. In support of his contentions that the KMC is obliged to renew the sanction plan he relied upon the judgment in the case of *Sujoy Biswas & Ors. vs. Kolkata Municipal Corporation & Ors.* reported at 2006(2) CHN 404, *Circular Properties (P) Limited and ors. vs. Calcutta Municipal Corporation and ors.* reported at AIR 96 CAL 271 and *Soumendra Nath Sen vs. State of West Bengal* reported at (2014) 1 CHN (Cal) 360.

6. Mr. Ghosh, learned advocate appearing for the KMC seriously disputed the contentions made by Mr. Chakraborty. He submitted that the application for renewal of the plan ought to have been made within the validity period of the original sanction plan. According to him, the plan cannot be renewed since the petitioner has submitted the application for renewal after expiry of the validity period of the original plan and petitioner has to apply for fresh sanction. In support of such contention he relied upon a judgment of the Hon'ble Supreme Court of India in the case of *Pune Cantonment Board and Another vs. M.P.J. Builders and Anr.* reported at (1996) 5 SCC 438. He, thus, submitted that the application for renewal is not maintainable and thus do not deserve to be considered at all. He further, submitted that the KMC has not yet applied the Municipal Circular no. 5 dated 17.06.2020 in respect of the construction in question till date and as such this court should refrain from considering the effect of such circular in the instant writ petition as this is not the appropriate stage to consider such issue. He thus, submitted that the allegation of the petitioner that there was inaction on the part of the KMC for not renewing the sanction plan is without any basis. He, thus, prays for dismissal of the instant writ petition.

7. Heard the learned advocates for the parties and considered the materials placed.

8. KMC issued the Building Permit dated 21.02.2015 thereby according sanction for raising a multi storied building at premises no. 115/3, Hazra Road, Kolkata-25. The petitioner claimed that on February 4, 2020 the respondent no. 6 verbally directed the petitioners to stop the work forthwith. From the letter dated February 5, 2020 issued by the respondent no. 6 addressed to the Deputy Commissioner of Police it appears that the respondent no. 6 made a suggestion to the Deputy Commissioner of Police that the Municipal Commissioner, Kolkata Municipal Corporation be requested to issue necessary notice to the concerned person to stop further construction at the construction site mentioned in the said letter which also includes the premises of the writ petitioner. Such allegation also remains uncontroverted.

9. It is evident from the record that the writ petitioner thereafter made

representation to the respondent no. 6 on 5th February, 2020 requesting him to allow the petitioner to continue the work with immediate effect. Nothing has been placed on record to show the fate of such prayer of the petitioner or that the petitioner was allowed to construct thereafter.

10. The petitioner thereafter submitted a letter dated June 24, 2020 which was received by the office of the KMC on June 26, 2020 requesting the said authority to extend the validity period of the plan for another term so that the petitioner can complete the project. In the meantime the life of the building permit issued on 21.02.2015 expired on February 20, 2020.

11. Since the application for renewal of the plan was filed after expiry of the original period of the said plan, it was contended by Mr. Ghosh that the petitioner ought to have applied for fresh sanction as the lapsed plan cannot be renewed. Thus, this court is to consider first as to whether such objection can be sustained in the eye of law.

12. Section 399 of the Act vests the Municipal Commissioner with the power of renewal and/ or extension of time for completion of the building or work. Section 399 is extracted herein below:-

"399. Period for completion of building or work.- The Municipal Commissioner shall, when sanctioning the erection of a building or the execution of a work specify a reasonable period within which the building or the work is to be completed, and if the building or the work is not completed within the period so specified, it shall not be continued thereafter without fresh sanction obtained in the manner hereinbefore provided, unless the Municipal Commissioner, on an application made in this behalf, allows an extension of such period."

13. The period of validity of the building permit and the period for which the same may be renewed has been laid down in Rule 15(3) of the Rules. The said Rule is extracted herein below_

"The Building Permit shall, subject to the provisions of sub-section (3) of Section 398 be valid for a minimum period of five years from the date of issue of such permit and may be renewed by the Municipal Commissioner for such further period, such that the original period of validity and period(s) of renewal and renewals , if any , do not exceed ten years from the date of issue of permit, on payment of such fees and charges as may be fixed by the Mayor-in-Council from time to time and on such other terms and conditions as may be considered appropriate."

14. Section 399 vests the Municipal Commissioner with the power to extend the time for completion of the building Rule 15(3) provides that a building permit may be issued initially for a minimum period of 5 years and the same may be renewed for such further period such that the original period of validity and the period(s) of renewal and renewals, if any, do not exceed 10 years from the date of issue of permit. Thus, the Municipal Commissioner has the power to grant

renewal and only embargo is that the period of such renewal(s) together with the original period of validity shall not exceed 10 years from the date of permit.

15. The judgment of the Hon'ble Supreme Court in the case of Pune Cantonment Board (supra) was pressed into service by Mr. Ghosh to support his contention that the plan cannot be renewed if the application is submitted after the validity period of the original plan. In the said reported decision construction work of the building did not commence within the original period of validity of the plan and the statute permitted two extensions of one year each and the application for extension was filed beyond such permissible period of extension. On such facts the Hon'ble Supreme Court held that the validity period of the plan cannot be extended on such application.

16. However, in the case on hand it is evident from the materials on record that construction work of the petitioner proceeded to a considerable extent and the application for extension was filed within the permissible period of extension as observed hereinbefore. Thus, the reported decision in Pune Cantonment Board (supra) is distinguishable on facts and as such has no manner of application to the case on hand.

17. In the instant case the building permit was issued on February 21, 2015 and the same was valid till 20.02.2020 i.e., for a period of 5 years. The application, though made after the expiry of the original period of validity, was undoubtedly well within the maximum period fixed under the Rules for a plan to remain valid, which is 10 years from the date of issue of the permit. The Rules do not stipulate that an application for renewal of the sanction plan is to be made prior to the expiry of the original period of validity.

18. In the case of Circular Properties (supra), the application for extension of time was made more than 5 years after the validity period of the sanction plan. The Hon'ble Division Bench held that when a construction on the basis of a sanction plan could not be completed, no provision has been made in the Act for obtaining a sanction plan in respect of a building which is half finished or the work is not completed. The Hon'ble Division Bench held thus-

"Section 399 enables the Municipal Commissioner to grant extension and accordingly, we do not see any bona fide reasons and ground for taking their stand that the appellant is not entitled to grant any extension and on the contrary he is to make a fresh application for a fresh plan which would be disastrous in the facts and in the circumstances of this case. The Municipality has taken the sanction plea (sic fee) before formally sanctioning the plan and without preliminary steps for making construction work, but because of the fact stated above, the appellant was prevented from making any construction and as soon as the restriction imposed by the Court was lifted, an application for extension of time was made and in the facts and in the circumstances of this case, the Municipal Commissioner is bound to grant extension, but what would be the period of extension, has to be decided by the Municipal Commissioner on

consideration of the factors, namely, the size of the construction and/or the nature of the construction.”

19. In *Circular Properties* (supra), the Hon’ble Division Bench after considering the provisions of the Kolkata Municipal Corporation Act, 1980 directed the KMC to extend the period of completing construction even though the application was made long after the validity period of the plan. The said decision is binding upon this Court. This Court, therefore, holds that fresh sanction need not be obtained by the petitioner in the instant case and the petitioner has the right to get renewal of the sanction plan.

20. Rules fixed a maximum period of 10 years from the date of issue of permit for a building permit to be valid and such period of 10 years shall be inclusive of the original period of validity and the period(s) of renewal (s). It is well settled that a party cannot take advantage of his own wrong. Thus, if a party applying for renewal after the original validity period stood expired may not be allowed to claim that the period of renewal shall start to run from the date of renewal of sanction plan as the maximum period fixed for validity of a building permit under Rule 15(3) is 10 years from the date of issue of permit. However, the case will be entirely different if a person for no fault of himself was not allowed to make construction for a substantial period and was prevented by prevailing circumstances from applying for renewal within the validity period of the original building plan. In such a case neither the Act nor the rules framed thereunder creates any embargo upon the power of the Municipal Commissioner to make good the time lost in completing the construction for reasons beyond the control of the petitioner.

21. Petitioner was asked to stop construction work at the site by the officer-in-charge of the local police station citing security reasons. Petitioner complied with such direction and immediately thereafter submitted a representation to such authority as well as to the highest executive of the State which, however, yielded no response. Petitioner was also made to understand that he cannot raise construction on account of the circular issued by the Municipal Commissioner, KMC. Petitioner had to run from pillar to post for redressal of his grievances and thereafter applied for renewal of the sanction plan. However, none of the authorities replied to the representations of the petitioner. In the meantime the plan expired.

22. Thus, this court is of the considered view that the reasons for non-submission of the application for renewal within the validity period of the Building Permit was not on account of any fault or laches on the part of the petitioner but the same is wholly attributable to the arbitrary action of the KMC and the State respondents.

23. A co-ordinate bench of this court in *Soumendra Nath Sen* (supra), directed the Municipal authority to extend the time for renewal of the sanctioned plan even after expiry of 10 years from the date of issue of Building Permit as the

petitioner was not responsible for the delay. It was observed in the said reported decision that it is a settled principle of law that rules are handmaid of justice. They exist for men and the rules must not be read as too rigid so that the real beneficiaries of the same cannot take any advantage out of it.

24. Thus, by applying the ratio laid down in Soumendra Nath Sen (supra), this court is of the considered view that the petitioner is entitled to the benefit of exclusion of such unutilized period from this court of equity.

25. The decision in the case of Sujoy Biswas (supra) is of no assistance to the petitioner in the instant case as in the said reported decision the application for renewal was made within the validity period of the sanctioned plan.

26. Now, this court has to consider the applicability of the Municipal Circular dated 17.06.2020 to the case on hand. The petitioner has challenged the validity of the said circular and has prayed for quashing of the same. However, it was contended on behalf of the KMC that this court should not enter into the issue as to the validity of the said circular at this stage. However, on a query of this court as to whether the said circular has any manner of application to the impugned construction, the learned advocate for the KMC did not make any further submission save and except that the said circular has not yet been applied to the case of the petitioner. However, on perusal of the said Circular this court finds that the said Circular imposed certain restrictions in the matter of erection of any new masonry building within the area specifically described in paragraph 1 of the said circular. It is not in dispute that the premises of the petitioner falls within the said area. It is also not in dispute that the respondent no. 6 made a request to the Municipal Commissioner through the Deputy Commissioner of Police to stop the construction work at the site in question highlighting the safety and security of important Z+ category VIPs. After having held that the petitioner has the right to get renewal of the plan, this court has to decide as to whether the said Circular has any manner of application to the instant case.

27. The Municipal Commissioner's circular dated 17.06.2020 provides for obtaining special approval of the Security Advisor for erection of new masonry building above certain height. It also provides for demolition or alteration of a building, the erection of which commenced, carried on or completed without such approval. The word "commenced" preceedes the words "carried on or completed". The words "commenced, carried on or completed" cannot be read in isolation and are to be read conjointly. Thus, on a harmonious construction of the said words, this court is of the considered view that such circular do not have any application in case the erection is commenced prior to the issuance of the said circular. Any contrary interpretation thereto would result in demolition or alteration of on going constructions as well as completed one raised pursuant to sanction plan in case it violates the height restriction imposed by such circular. It is well settled that court should avoid a construction that causes inconvenience to persons or creates an anomalous situation.

28. This matter can also be looked into from a different angle. The court shall presume that before the plan was sanctioned the Municipal Building Committee which also consists a nominee of the Commissioner of Police scrutinised the application in accordance with the Act, rules and regulations including the aspect of safety and security. After being satisfied with all aspects, KMC accorded sanction to the building plan after realisation of substantial amount on account of sanction fees. Petitioner, acting on such sanction, raised construction to a considerable extent prior to the issuance of the said Circular. At this stage, KMC is estopped from raising any objection against construction upto the height already sanctioned by it on any ground whatsoever.

29. Thus, for the reasons as aforesaid, this court holds that the Circular dated June 17, 2020 do not have any manner of application to the construction at premises no. 115/3 Hazra Road.

30. Since no other objection has been raised by the KMC against renewal of the sanction plan other than issues already decided by this court hereinbefore, this court is of the considered view that direction should be passed upon the Municipal Commissioner to renew the sanction plan thereby extending the period of completion of the construction.

31. This court, therefore, directs the Municipal Commissioner to renew the sanction plan and extend the period of completion of the construction and fix up the time limit on consideration of the application submitted by the petitioner dated June 24, 2020 within a period of four weeks from date in the light of the observations made in this judgment. While fixing the period of renewal, the authority of the KMC shall exclude the period starting from the date when the police authority stopped the construction work till the date of granting renewal. The writ petition stands allowed, without any order as to costs.

32. Before parting, this court makes it clear that the issue regarding validity of the Municipal Commissioner Circular dated June 17, 2020 is left open.

33. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.