

(2020) 08 CAL CK 0050

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 19690 (W) Of 2017

M/s. Singhi Project Pvt. Ltd. & Anr.

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 17-08-2020

Acts Referred:

West Bengal Municipal Corporation Act, 2006 — Section 226, 227(2), 273, 282(2)
Constitution Of India, 1950 — Article 226

Citation : (2020) 08 CAL CK 0050

Hon'ble Judges : Arijit Banerjee, J

Bench : Single Bench

Advocate : M.M. Verma, Adil Badr, Sobhan Gani, Aqib Badr, Prabal Mukherjee, Abhishek Halder, Billwadal Bhattacharyya, Sima Adhikari, Abu Reja Jaglul Kabir

Final Decision : Disposed Of

Judgement

@JUDGMENT-JUDGMENT

Arijit Banerjee, J

1. In this writ application the petitioners assail a Memo dated 19 July, 2017 issued by the Joint Commissioner, Bidhannagar Municipal Corporation, being the respondent no.5 herein. The said Memo was a notice of disconnection of drainage and sewerage in respect of premises no. EC-2, Sector-I, Salt Lake City, P.S. Bidhannagar (North), Kolkata - 700064 (hereinafter referred to as 'the said premises'), for allegedly violating the provisions of Sections 226, 273 and 282(2) of the West Bengal Municipal Corporation Act, 2006 (in short 'the said Act'). The petitioners also pray for a writ in the nature of mandamus commanding the official respondents to issue the Completion Certificate in respect of the said premises. The material facts of the case leading to the present writ petition are as follows.

2. The said premises was originally a vacant plot of land measuring about 5.22 kathas. The State of West Bengal granted a lease of 999 years in respect of the

said premises in favour of one Sachin Kumar Biswas (in short, 'Sachin') by executing a registered Lease Deed dated 24 November, 1982. Sachin took possession of the said land on or about 15 July, 1983. Sachin died intestate on 5 July, 1997 leaving the respondent nos.6 & 7, wife (Elizabeth) and son (Anthony), as his only legal heirs. The names of Elizabeth and Anthony were mutated as lessees of the said premises in the land records on or about 24 April, 2003.

3. It is the case of the petitioners that a building plan was sanctioned by the Bidhannagar Municipality (the predecessor of the respondent no.5, Municipal Corporation) for constructing a three-storied building on the said plot of land on 11 January, 2011. It is further contended that such a building was constructed on the said plot of land strictly adhering to the sanctioned building plan. One Smt. Krishna Mittal as Power of Attorney holder, applied to the Municipality on behalf of Elizabeth and Anthony for issuance of Completion Certificate in respect of the said premises. However, till date such Completion Certificate has not been issued.

4. The petitioners further contend that an Agreement dated 30 May, 2011 was entered into by and between Elizabeth and Anthony acting through their constituted Attorney Smt. Krishna Mittal on the one hand and the petitioner no.1 on the other hand for assignment of Elizabeth's and Anthony's leasehold right, title and interest in respect of the said premises to and in favour of the petitioner no.1 for a consideration of Rs.60,00,000/-. This was followed by a supplementary Agreement executed by and between the said parties on the same date. It was submitted that pursuant to the said agreements and as recorded therein, the petitioners took possession of the said premises on 30 May, 2011. The petitioners contend that as per the Agreement for assignment of lease, Elizabeth and Anthony were to obtain permission from the State Government for transferring and/or assigning the lease in respect of the said premises in favour of the petitioner no.1 or its nominee. The petitioner no.1 has nominated the petitioner no.2 for assignment of the lease in his favour. However, the said private respondents made no effort to obtain the permission of the State Government. On the contrary, the said respondents turned dishonest and indicated their intention to assign/transfer the lease in respect of the said premises to some other party. To facilitate such plan, the said private respondents instigated the Bidhannagar Municipal Corporation (which term will include its predecessor Bidhannagar Municipality) to take action against the petitioners to indirectly evict them from the said premises.

5. The Bidhannagar Municipality issued a notice dated 23 June, 2014, amongst others to the petitioner no.2 alleging that unauthorized construction was being made at the said premises in deviation from the sanctioned plan. The noticees were called upon to appear before the Executive Officer, Bidhannagar Municipality on 1 July, 2014 to attend a hearing.

6. The petitioner no.2 attended such hearing. On 5 July, 2014, the Executive Engineer, Bidhannagar Municipality passed an order holding that the petitioner no.2 "had no legal standing for enjoying the plot of land in question. His

possession of Plot EC-2 might be considered to be unauthorized." According to the petitioners, this order was obtained by the private respondents by exerting undue influence on the Officers of the Municipality.

7. The petitioners have instituted a suit for injunction being T.S. No.190 of 2014 in the Court of Learned Third Civil Judge, Junior Division at Sealdah to restrain the defendants therein (private respondents herein) from illegally dispossessing the petitioners from the said premises. An interim order of injunction was passed in that suit on 10 July, 2014, which was extended from time to time and is still in force. The petitioners have also instituted a suit being T.S. No.270 of 2014 in the Court of Learned Second Civil Judge, Senior Division at Barasat against the private respondents herein as also State of West Bengal for specific performance of the Agreement for assignment of lease dated 30 May, 2011.

8. In July, 2017 the Joint Commissioner, Bidhannagar Municipal Corporation (in short 'BMC') issued a notice for disconnection of drainage and sewerage of the said premises which is under challenge in the present writ application. The notice was pasted on the main entrance door of the building on the said premises. According to the petitioners, this is a device designed by the private respondents to coerce the petitioners to vacate the said premises. It was submitted that the Commissioner or the Joint Commissioner had no power or authority under the relevant statutory provisions to issue such notice. It was submitted that as occupiers of the said premises, the petitioners have the right to empty their house drain into the Municipal Drain.

9. The petitioners have filed a supplementary affidavit affirmed on 3 August, 2017 stating therein that on 28 July, 2017 two engineers of BMC along with Police Officers and labours visited the said premises and blocked the drainage and sewerage line of the premises preventing the outlet of any sewerage and drain water from the said premises to the Municipal Drain. The petitioners submitted that they are facing severe difficulty due to the aforesaid disconnection of drainage and sewerage system and accordingly, seek intervention of this Court.

10. Appearing for BMC, Learned Counsel submitted that as recorded in the order dated 5 July, 2014 passed by the Executive Officer, Bidhannagar Municipality, the petitioners have no legal right to occupy the plot of land in question and their possession in respect thereof might be considered to be unauthorized. It was submitted that upon physical verification it was observed that with one car parking and a three-storied building has been constructed on the plot in question. The entire building is used commercially by renting out various portions thereof to different parties for commercial purposes illegally without any valid permission from the competent authority. The car parking space has been converted unauthorizedly to a hall for being used for commercial purpose, in violation of the sanctioned building plan. Land use pattern as directed by the Urban Development Department has also been changed illegally. The building is being used without obtaining Completion Certificate from BMC. It was further

submitted that the Power of Attorney on the basis whereof Smt. Krishna Mittal executed the Agreement for assignment of lease did not empower her to do so. There is no valid Agreement for assignment in favour of the petitioners. They have no right, title or interest in respect of the said premises. In the order dated 5 July, 2014 passed by the Executive Officer, it is clearly mentioned that the complain from the Department of Urban Development was that construction was being undertaken by unauthorized persons on the plot in question and at the hearing before the Executive Officer, the representative of the petitioners failed to prove that they have any right, title or interest in respect of the said premises.

11. Referring to Section 227(2) of the West Bengal Municipal Corporation Act, 2006, Learned Counsel submitted that the said Section clearly empowers the Commissioner/Joint Commissioner to close, demolish, alter or remake the drainage and sewerage line in the event the same has been connected to a Municipal Drain without prior permission of the Municipal Commissioner. Hence, there is nothing wrong with the notice dated 19 July, 2017 since admittedly the drainage/sewerage system of the said premises is connected to a Municipal Drain without obtaining prior permission of the Municipal Commissioner.

12. As regards issuance of Completion Certificate, Learned Senior Counsel for BMC referred to Section 282 of the said Act and submitted that the procedure laid down therein has not been followed by the petitioners. If the petitioners are aggrieved by non-issuance of such Certificate by the Commissioner, they have to approach the Mayor by making a written representation. Only if the Mayor fails to dispose of such representation within thirty (30) days from the date of receipt thereof after granting an opportunity of hearing to the petitioners, would the question of deemed permission to occupy the premises arise. No such representation was made by the petitioners to the Mayor of the BMC. Further, the records of the Corporation show that the petitioners never made any request for issuance of Completion Certificate. Learned Counsel prayed for dismissal of the writ petition.

13. Appearing for the respondent nos.6, 7 & 8, Learned Senior Counsel submitted that the petitioners are in illegal occupation of the said premises. The respondent no.8 along with one Joydeep Chowdhury entered into an Agreement with the respondent nos.6 & 7 (Elizabeth and Anthony) for assignment of the lease in respect of the said premises and pursuant to such Agreement, the respondent nos.6 & 7 applied to the Urban Development Department, Government of West Bengal for permission to transfer the lease in respect of the said premises to and in favour of respondent no.8 and Joydeep Chowdhury. The Land Manager, Bidhannagar U.D. Department, Government of West Bengal, by a letter dated 21 March, 2014 informed the Chairperson, Bidhannagar Municipality that some unauthorised persons were making construction on the plot of land in question. A request was made to take necessary measures to stop such construction. Accordingly, the Executive Officer, Bidhannagar Municipality issued a notice dated 23 June, 2014 to various persons including the petitioner no.2

asking them to attend a hearing on 1 July, 2014. Pursuant to such hearing, the Executive Officer passed the order dated 5 July, 2014 which has been referred to above, holding that the petitioners have no right, title or interest in respect of the said premises. Learned Counsel submitted that the respondent no.8 and Joydeep Chowdhury have paid an advance of £40,000/- as part payment to the respondent nos. 6 & 7 on account of agreed consideration amount for transfer/assignment of the lease in respect of the said premises in their favour. It was further submitted that the petitioners are not only unauthorised occupiers of the said premises, they are also exploiting the same in violation of the terms and conditions embodied in the Lease Deed dated 24 November, 1982, executed by the State of West Bengal in favour of Sachin, the lessee.

14. It was submitted that the purported Power of Attorney on the basis of which Smt. Krishna Mittal executed the Agreement for Assignment of the lease in question in favour of the petitioners, is a forged document. It is unregistered and appears to have been notarized. However, the respondent nos.6 & 7 could not have appeared before the Learned Notary, Bankshall Court on 14 May, 2003 since on that date they were not present in India. In this connection, Learned Counsel drew my attention to Xerox copies of the passports of the respondent nos.6 & 7 which are collectively Annexure - P8 to the Affidavit-in-Opposition filed on behalf of the private respondents.

15. It was finally submitted that Smt. Krishna Mittal is an interloper and stooge of the petitioners. Though the petitioners have heavily relied on the purported Power of Attorney allegedly executed on 14 May, 2003, by Elizabeth and Anthony in favour of Smt. Krishna Mittal, the latter has not appeared before any of the authorities or legal forum at different stages. Evidently, the said Power of Attorney is not a genuine document.

Court's View

16. I have considered the rival contentions of the parties.

17. The petitioners have two grievances. Firstly, the petitioners are aggrieved by the disconnection Memo dated 19 July, 2017 issued by the respondent no.5. Secondly, the grievance of the petitioners is that the respondents are not issuing the Completion Certificate in respect of the said premises.

18. Let us first take the second grievance of the petitioners. The relevant provision in the said Act is Section 282 which reads as follows:

"282. Completion Certificate.- (1) Every person submitting an application with building plan for construction of a building or execution of a work to which such application relates shall, within thirty days after the completion of construction of such building or execution of such work, deliver, or send, or cause to be delivered or sent, to the Commissioner a notice, in writing, of such completion accompanied by a certificate in such Form as may be specified in the rules to be made in this behalf, and shall give to the Commissioner all necessary facilities for

inspection of such building or work.

(2) No person shall occupy, or permit to be occupied, any such building, or use, or permit to be used, any building or a part thereof, affected by any such work, until permission has been granted by the Commissioner in this behalf in accordance with the rules and the regulations made under this Act:

Provided that if the Commissioner fails within a period of thirty days of receipt of the notice of completion under sub- section (1) to communicate his refusal to grant such permission, such person may make a representation, in writing to the Mayor, and the Mayor shall, after such inquiry as he may think fit and after giving such person an opportunity of being heard, grant such permission, or communicate his refusal to grant such permission, stating the reasons therefor, within a period of thirty days from the date of receipt of the application as aforesaid failing which, such permission shall be deemed to have been granted; so, however, that nothing in this section shall be deemed to have permitted the application of the provisions of this Act or the rules or the regulations made thereunder to such permission."

19. The aforesaid section clearly lays down as follows:-

(i) Within thirty days after completion of construction of a building in accordance with a sanctioned building plan, a notice in writing of such completion of construction accompanied by requisite certificate shall be delivered or sent to the Commissioner.

(ii) The Commissioner shall be given all necessary facilities for inspection of the building in question.

(iii) No person shall occupy or permit to be occupied, or use or permit to be used any such building or part thereof until permission has been granted by the Commissioner in that behalf.

(iv) If the Commissioner fails to communicate his refusal to grant such permission within thirty days of receipt of notice of completion of the building in question, a written representation may be made to the Mayor.

(v) The Mayor, after making necessary inquiry, and giving an opportunity of being heard to the person concerned, grant such permission, i.e., Completion Certificate or communicate his refusal to grant such permission, stating the reasons therefor, within thirty days from the date of receipt of the written representation.

(vi) If the Mayor does not give his decision within thirty days from the date of receipt of the written representation, permission to occupy the building shall be deemed to have been granted.

20. Hence, if the petitioners are aggrieved by failure on the part of the Commissioner to issue Completion Certificate, their remedy is to make a written representation to the Mayor provided they have the locus standi to do so in the

form of having some right, title or interest in respect of the said premises. This is an efficacious alternative remedy provided in the statute itself and I am not inclined to entertain the petitioners' prayer for directing the respondents to issue the Completion Certificate in respect of the said premises. The said prayer is rejected. However, if the petitioners make written representation to the Mayor as envisaged in Section 282 of the said Act, within a period of fifteen days from date, the Mayor shall dispose of the same by a reasoned order, in accordance with law, after giving an opportunity of hearing to the petitioners and after making such inquiry as he may deem fit, within a period of one month from the date of receipt of the written representation.

21. Coming to the first and what was projected as the major grievance of the petitioners, the impugned Memo dated 19 July, 2017 records that the sewerage and drainage connection of the said premises was being blocked for violation of the provisions of Sections 273, 226 and 282 of the said Act. Section 282 has been extracted above. Sections 226 and 273 of the said Act read as follows:

"226. Right of owner or occupier of premises to empty his house-drain into municipal drain.- The owner or the occupier of any premises shall be entitled to cause his house- drains to empty into a municipal drain, provided that before so doing, he obtains the written permission of the Commissioner and complies with such condition as the Commissioner may determine as to the mode in which, and the superintendence under which, communications between house-drains and municipal drains are to be made.

273. Licence to be obtained for use of premises for non- residential purpose.- (1) No person shall use, or shall permit to be used, any premises for any of the purposes mentioned in Schedule IV without, or otherwise than in conformity with, a licence issued by the Commissioner in this behalf on such terms and conditions, including payment of fee, as may be determined by regulations.

(2) The Corporation shall determine by regulations the scale of fee to be paid for the issue of a licence under sub- section (1) in respect of the premises used for any of the purposes as aforesaid:

Provided that no such fee shall exceed five hundred rupees per month in respect of any premises. "

22. The sewerage and drainage system of the said premises has been disconnected on three grounds - (i) the owner or occupier of the said premises has not obtained written permission of the Commissioner for causing his house drains to be emptied into a municipal drain; (ii) the said premises is being used for a purpose which has been mentioned in Schedule IV to the said Act without obtaining a licence in that behalf from the Commissioner. In other words, the said building is being used illegally for commercial activities; and (iii) the said building is being used and/or occupied without there being Completion Certificate in respect thereof in terms of Section 282 of the said Act.

23. As regards the first ground, it is not in dispute that the petitioners do not have written permission from the Commissioner to empty the house drains of the said premises into a municipal drain. Learned Counsel for the petitioners submitted that by sanctioning the building plan, the Bidhannagar Municipality had impliedly granted permission for emptying the house drains of the building to be constructed on the said premises into municipal drains. Learned Counsel placed great reliance on the building plan in arguing that such plan clearly shows that the petitioners proposed to empty the house drains into municipal drains and sanction of such plan would automatically amount to granting permission to the petitioners to empty the house drains into municipal drains. I am unable to accept such contention. Firstly, it is not clear to me from the copy of the building plan placed before me that the same clearly shows that the house drains of the proposed building would be emptied into municipal drains. Even assuming that the building plan depicted that the house drains would be emptied into municipal drains, in my opinion, still written permission of the Commissioner would be necessary in terms of Section 226 of the said Act. The failure of the petitioners to obtain such written permission from the Commissioner would be a good ground for the Commissioner to exercise his power under Section 227 of the said Act for closing the house drain connection with the municipal drain. I am of the view that the powers of the Commissioner under the said Act can be exercised by the Joint Commissioner, which post has been created obviously to share the workload of the Commissioner. Further, the impugned Memo has not been challenged on the ground that the Joint Commissioner did not have the power or authority to issue the same.

24. The second ground for disconnecting the drainage and sewerage system of the said premises from the municipal drains is that the building constructed on the said premises is being used for commercial activities without the requisite permission from the Commissioner. That the building is being used for commercial purpose is not in dispute. No permission of the Commissioner under Section 273 could be produced by the petitioners. This would make user of the said building illegal and this could well be an additional ground for disconnecting the drainage and sewerage system of the said building from the municipal drain.

25. It is also not in dispute that no Completion Certificate has been issued by the Commissioner in respect of the building in question. Whether or not the Commissioner has wrongfully withheld the Completion Certificate is not an issue which I am inclined to go into in this proceeding. If the petitioners have any grievance on that account, as noted above, the petitioners shall be at liberty to approach the Mayor with a written representation within the time period granted to them above. However, the fact remains that there is no Completion Certificate in respect of the concerned building. Without such certificate, using or occupying any portion of the building would be illegal being in violation of Section 282 of the said Act. This would be yet another valid reason for the Corporation to issue the impugned Memo and implement the same.

26. The documents on record have created a real doubt in my mind as regards the right, title or interest of the petitioners in respect of the said premises and/or the building which has been constructed thereon. However, I have not gone into that question since this is not an appropriate proceeding nor is this an appropriate forum for considering such question. However, in whatever capacity the petitioners are occupying the said premises or claiming right, title or interest in respect thereof, they are bound by the provisions of the said Act. Evidently the petitioners have violated the provisions of Sections 226, 273 and 282 of the said Act, as discussed above. I see nothing wrongful or unlawful about the impugned notice.

27. The other grievance of the petitioners is that the impugned Memo was issued without affording an opportunity of hearing to the petitioners. It is true that ordinarily a statutory authority must observe the principles of natural justice before issuing an order which is likely to have adverse civil consequences for a citizen. However, the principles of natural justice cannot be put into a straitjacket formula and cannot be carried to the extent of holding that even if granting an opportunity of hearing to the concerned person would have made no difference at all, still the order or action of the statutory authority will have to be held to be bad for not granting an opportunity of hearing prior to the action being taken or the order being passed. From the records of the case filed before me, it is clear that there is no written permission of the Commissioner allowing the petitioners/occupiers of the building in question to empty the house drains into municipal drains as is required by Section 226 of the said Act. There is no permission from the Commissioner for using the building in question for commercial purpose as is required under Section 273 of the said Act. There is no Completion Certificate issued by the Commissioner which is a pre-requisite for occupying or using a new building or any portion thereof in terms of Section 282 of the said Act. Hence, in my opinion, it would have made no difference even if the Joint Commissioner had granted hearing to the petitioners prior to issuing the impugned Memo. In my opinion, holding such hearing would have been an exercise in futility.

28. In *Canara Bank v. Awasthy*: (2005) 6 SCC 321 the Hon'ble Supreme Court has discussed what is called the 'useless formality theory'. In short, what it means is that if on admitted/undisputed facts, it appears to the Court that giving a personal hearing, i.e., observing the rule of *audi alteram partem*, would have made no difference to the order or action impugned, the order or action shall not be interfered with by issuance of a writ just because a pre-decisional hearing was not given to the aggrieved person. In other words, unless the petitioner can demonstrate that he suffered prejudice or failure of justice by reason of not being granted a personal hearing before the impugned decision was taken, the Writ Court may not interfere despite the principles of natural justice not being observed. The petitioner should be able to show that there is a real likelihood that the impugned decision would have been different and not adverse or less adverse to him had a pre-decisional hearing been given, before the petitioner can assail the decision on the ground of breach of the principles of natural

justice. Legal formulations cannot be divorced from the fact situation of a particular case.

29. In *Aligarh Muslim University & Ors. v. Mansoor Ali Khan*: AIR 2000 SC 2783 the Hon'ble Supreme Court, at Paragraphs 20 to 24 of the Judgment, observed as follows:

"20. As pointed recently in *M.C. Mehta v. Union of India*: (1999) 6 SCC 237: 1999 AIR SCW 2754: (AIR 1999 SC 2583), there can be certain situations in which an order passed in violation of natural justice need not be set aside under Article 226 of the Constitution of India. For example where no prejudice is caused to the person concerned, interference under Article 226 is not necessary. Similarly, if the quashing of the order which is in breach of natural justice is likely to result in revival of another order which is in itself illegal as in *Gadde Venkateswara Rao v. Government of Andhra Pradesh*: (1965) 2 SCR 172: (AIR 1966 SC 828), it is not necessary to quash the order merely because of violation of principles of natural justice.

21. In *M.C. Mehta* it was pointed out that at one time, it was held in *Ridge v. Baldwin*: (1964) AC 40, that breach of principles of natural justice was in itself treated as prejudice and that no other 'de facto' prejudice needed to be proved. But, since then the rigour of the rule has been relaxed not only in England but also in our country. In *S.L. Kapoor v. Jagmohan*: (1980) 4 SCC 379: (AIR 1981 SC 136), Chinnappa Reddy, J. followed *Ridge v. Baldwin* and set aside the order of supersession of the New Delhi Metropolitan Committee rejecting the argument that there was no prejudice though notice was not given. The proceedings were quashed on the ground of violation of principles of natural justice. But even in that case certain exceptions were laid down to which we shall presently refer.

Chinnappa Reddy, J. in *S.L. Kapoor's* case (AIR 1981 SC 136), laid two exceptions (at p.395 of SCC): (at pp. 147 and 148 of AIR) namely, "if upon admitted or indisputable facts only one conclusion was possible", then in such a case, the principle that breach of natural justice was in itself prejudice, would not apply. In other words if no other conclusion was possible on admitted or indisputable facts, it is not necessary to quash the order which was passed in violation of natural justice. Of course, this being an exception, great care must be taken in applying this exception.

23. The principle that in addition to breach of natural justice, prejudice must also be proved has been developed in several cases. In *K.L. Tripathi v. State Bank of India*: (1984) 1 SCC 43: (AIR 1984 SC 273): 1983 Lab IC 1680, Sabyasachi Mukharji, J. (as he then was) also laid down principle that not mere violation of natural justice but de facto prejudice (other than non-issue of notice) had to be proved. It was observed: quoting *Wade Administrative Law* (5th Ed. Pp. 472-475) as follows (Para 31):

"..... it is not possible to lay down rigid rules as to when principles of natural justice are to apply, nor as their scope and extent..... There must have been

some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice.

The requirements of natural justice must depend on the facts and circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with and so forth."

Since then, this Court has consistently applied the principle of prejudice in several cases. The above ruling and various other rulings taking the same view have been exhaustively referred to in *State Bank of Patiala v. S.K. Sharma*: (1996) 3 SCC 364: (1996 AIR SCW 1740: AIR 1996 SC 1669). In that case, the principle of 'prejudice' has been further elaborated. The same principle has been reiterated again in *Rajendra Singh v. State of M.P.*: (1996) 5 SCC 450: (1996 AIR SCW 3424: ASIR 1996 SC 2736)

24. The 'useless formality' theory, it must be noted, is an exception. Apart from the class of cases of "admitted or indisputable facts leading only to one conclusion" referred to above, - there has been considerable debate of the application of that theory in other cases. The divergent views expressed in regard to this theory have been elaborately considered by this Court in *M.C. Mehta*: 1999 AIR SCW 2754: (AIR 1999 SC 2583), referred to above. This Court surveyed the views expressed in various judgments in England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord Singham, Megarry, J. and Staughton, L.J. etc. in various cases and also views expressed by leading writers like Profs. Garner, Craig, De Smith, Wade, D.H. Clark etc. Some of them have said that orders passed in violation must always be quashed for otherwise the Court will be prejudging the issue. Some others have said, that there is no such absolute rule and prejudice must be shown. Yet, some others have applied *via-media* rules. We do not think it necessary, in this case to go deeper into these issues. In the ultimate analysis, it may depend on the facts of a particular case."

30. I have recorded my opinion above that in the undisputed facts of the present case, granting an opportunity of hearing to the petitioners before the Joint Commissioner issued the impugned Memo would have been an empty formality. Hence, I am not inclined to quash the impugned Memo on the ground of violation of the principles of natural justice.

31. For the reasons aforesaid, I am not inclined to pass any order on this writ application except granting liberty to the petitioners to approach the Mayor with a written representation in respect of the issuance of Completion Certificate for the building in question within fifteen (15) days from date provided the petitioners have the *locus standi* to do so otherwise. I further make it clear that none of the observations made in this Judgment shall have any bearing on the proceedings in T.S. No.190 of 2014 instituted by the petitioners in the Learned Sealdah Court or on the proceedings in T.S. No.270 of 2014 instituted by the petitioners in the Learned Barasat Court.

32. WP No.19690 (W) of 2017 is accordingly disposed of. There will be no order

as to costs.