
(2011) 08 MP CK 0043

In the Madhya Pradesh High Court

Case No : Writ Petition No. 18870 of 2010

Paras Lifestyles Private Limited and Another

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 03-08-2011

Acts Referred:

Constitution of India, 1950 — Article 300, 300A
Madhya Pradesh Nagar Palika (Registration of Colonizer, Terms and Conditions) Rules, 1998 — Rule 10, 10(1), 10(4), 10(6), 11
Municipal Corporation Act, 1956 — Section 292A, 292B
Municipal Corporation Rule, 1956 — Rule 10, 8, 9

Citation : (2012) 1 MPHT 304

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble Mr. Rajendra Menon, J.—Challenging the action of the State Government in amending the provisions of Sections 292A and B, of the Municipal Corporation Act, 1956 (hereinafter referred to as "the Act of 1956") with effect from 19-4-2010 and applying the amended provision for sanction of building permission in a retrospective manner to all pending applications, petitioners have filed this writ petition.

2. Even though in the writ petition challenge is made to the constitutional validity of the said amending provision which has been brought into force vide Notification dated 19-4-2010, records indicate that during hearing of the writ petition before a Division Bench of this Court on 5-1-2010, challenge to the constitutional validity of Sections 292-A & B of the Act of 1956 was given up and the challenge was limited to the extent of applying the said Notification (Annexure P-1) retrospectively to all pending applications. That being so, the only question warranting consideration now in this writ petition is as to whether the applications for permission to carry out developments of land, building and colonies can be permitted in accordance to the unamended provision of Section

292-A and B or the amended provision would be applicable even to applications submitted and which were pending prior to 19-4-2010 ?

3. Both the petitioners are registered companies and are private colonizers engaged in the activities of development of colonies, plots etc. They have registered their establishment under various statutory provisions with the Competent Authority. It is the case of the petitioners that they are engaged in diverse activities of development of colonies as colonizers, development of various plots as builders and such other activities. They have obtained requisite colonizer's certificate as required u/s 292-A, of the Act of 1956 and the documents evidencing the same are Annexure P-2. Petitioners are aggrieved by the communication dated 29-7-2010 made by the respondent Municipal Corporation by which the amended provisions of Section 292-A and B, of the Act of 1956, which came into force on 19-4-2010 is made applicable to certain pending applications of the petitioners for grant of development permission and the building permission. It is the case of the petitioners that the application of this amended provision retrospectively and withholding the processing of their applications under such circumstances is illegal.

4. The Act of 1956 has been applied to a large number of urban areas for the purpose of establishing, developing and usage of land, various provisions are contained in the said enactment. The State Government has also framed the M.P. Nagar Palika (Registration of Colonizer, Terms and Conditions) Rules, 1998 (hereinafter referred to as "the Rules of 1998"), for the purpose of regulating the procedure for grant of permission etc. for development of land, building and colonies. According to Rule 10 thereof, a provision is contained for making available by way of reservation certain plots to economically weaker sections of the society at the time of development of colonies, if the colonies were in the area of more than one acre, it is contemplated under Rule 10(1) that in such colonies provisions has to be made for grant of 15% of the total plots developed for economically weaker sections. Rule 10 (4) further contemplates that if the developer/colonizer offers developed houses then he may offer developed houses of 1/4th of the total developed area. Further Rule 10 (6) contemplates that if the colonizer does not want to develop the plot or construct house under Rule 10 (1) or 10 (4), then he may offer equivalent plottable area of developed houses within a radius of 1 km from the developed colony. The rule in question is Annexure P-4. Thereafter, in the year 2000, the Rules of 1998 underwent substantial change. Rule 10 was substantially modified by a new rule and for the first time a concept of "shelter fee" to be paid by the colonizer was introduced. An option was given to the colonizers, who were not willing to offer the benefit of Rule 10(1) and (4) or (6), for payment of "shelter fee", to be collected by the Collector, which was to be utilized for Various specific purposes under the Rule. Similarly, under the provisions of the Act of 1956 also, provisions were made for grant of benefit to weaker sections of the society and by the impugned amendment brought into force with effect from 19-4-2010, certain changes have been made with regard to the benefit to be granted to the economically weaker

sections of the society so also to certain other classified category of persons. For the present, it may not be necessary for this Court, in the present petition, to go into the details with regard to the provisions contained therein. Suffice it to say that the provisions of Section 292-A and B read with the Rules of 1998 initially contemplated a particular provision to be complied with by the colonizers and developers in the matter of providing certain benefit to economically weaker sections of the society, but the amendment brought into force a change in the entire system of reservation and now certain additional benefit is to be granted, which according to the petitioners has the effect of upsetting the financial arrangement of some of the builders and colonizers so also imposes certain additional obligations on them. That apart, the provision for "shelter fee" has also undergone substantial change. It is the case of the petitioners that when they submitted the application for grant of permission on 23-12-2009, the liability of the petitioners to grant the benefit to the specialized category of persons like the economically weaker sections of the society was different, the petitioners evaluated their project and planned it as per their liability existing then, but now their entire project gets derailed, it has to be changed substantially and the financial aspect of the project also gets escalated, the additional benefits to be granted by the petitioners as per the agreement would adversely affect the entire project, and the financial and economical consideration for the project would be drastically changed. Accordingly, it is the case of the petitioners that the applications submitted by them for grant of development and building permission should be processed in accordance to the provisions of Section 292-A and B of the Act of 1956, as was then existing so also as per the provisions of Rule 10 as was existing at the appropriate time and not in accordance to the amended provisions, which was brought into force with effect from 19-4-2010.

5. Shri Sidharth Gupta, learned Counsel for the petitioners, taking me through the provisions of Sections 292-A and B, Rules 8, 9 and 10 of the Act of 1956; and, the Rules of 1998, points out the process to be followed for grant of building permission and license. It was then argued by him that even though the amendment has been made with effect from 19-4-2010, the same cannot be granted retrospective affect adversely affecting the right of the petitioners to get their applications processed in accordance to law as was existing prior to 19-4-2010. Even though it was fairly stated by Shri Sidharth Gupta, learned Counsel, that the petitioners may not have a vested right to have their application sanctioned or processed in the manner prayed for, but have an existing right or an expectation had accrued to the petitioners on 23-12-2009 when the application was submitted and the said existing right or expectation cannot be taken away by retrospective application of the amended provisions. Learned Counsel submitted that in the present case the application submitted by the petitioners was processed after all fees and other requirements were submitted, the Competent Authority under the Urban Land Ceiling Act, 1976; the M.P. Town and Country Planning Act, 1973; and, the Nazul Officers have given

their "no objection certificates" and even the lay out plan of the petitioners has been approved. That being so, it is the case of the petitioners that the respondents cannot now insist upon the petitioners complying with the amended provisions of Sections 292-A and B of the Act of 1956 and cannot withhold permission for construction to the petitioners on such ground. Accordingly, contending that the amended provisions which came into force on 19-4-2010 cannot have retrospective application as far as the petitioners are concerned, the direction sought for is that the impugned communication dated 29-7-2010 issued by the respondent Municipal Corporation be quashed and a "mandamus" issued directing the Municipal Corporation to process and grant permission to the petitioners in the light of the statutory provisions as was prevailing on the date of the applications.

6. Shri Sidharth Gupta, learned Counsel for the petitioners, also referred to Article 300-A of the Constitution to submit that the impugned action has the effect of depriving the petitioners their constitutional right to enjoy their property and, therefore, the act is unsustainable. Placing reliance on the following judgments :-

State of Bombay Vs. Supreme General Films Exchange Ltd., ; Katikara Chintamani Dora and Others Vs. Guntreddi Annamanaidu and Others, ; Joint Secretary to the Government of India and Others Vs. Khillu Ram and Another, P. Mahendran and others Vs. State of Karnataka and others, ; N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others, ; K.S. Paripoornan Vs. State of Kerala and Others, Jilubhai Nanbhai Khachar, etc. etc. Vs. State of Gujarat and another, etc. etc., Krishi Utpadan Mandi Samiti Vs. Kanhaiya Lal and Others, ; Shyam Sunder and Another Vs. Ram Kumar and Another, ; Chairman, Indore Vikas Pradhikaran Vs. Pure Industrial Cock and Chem. Ltd. and Others, Virtual Soft Systems Ltd. Vs. Commissioner of Income Tax, Delhi-I, and Nani Sha and Others Vs. State of Himachal Pradesh and Others (2007) 15 SCC 406

it was argued by Shri Sidharth Gupta that when the petitioners had an existing right, the amending provision cannot be applied retrospectively, it can only have prospective application. It was submitted by him that a law which creates new disabilities or liabilities during the pendency of an action cannot apply retrospectively unless provided specifically in the amending provisions. It was argued by him that when the amending provision is substantive in nature and when it is not procedural, then it will apply prospectively and cannot effect pending proceedings. It is the case of the petitioners that the amendment in question is to a substantial provision of law not to a procedural provision and, therefore, the right accruing to the petitioners cannot be taken away. Relying heavily on the observations made by the Supreme Court in the case of K. Paripoornam (supra) and N. T. Bevin Katti (supra), Shri Sidharth Gupta pointed out the basic difference between amendment to a procedural provision and substantive provision and emphasized that the right accruing to the petitioners on submission of the application could not be taken away in the manner done.

Finally, he had placed reliance on the judgments of the Supreme Court, in the cases of Chairman, Indore Vikas Pradhikaran (supra) and Jilubhai Nanbhai Khachar (supra), in support of his contention that right of the petitioners to enjoy the property under Article 300 of the Constitution cannot be taken away in the manner done.

7. In sum and substance, the contention of the petitioners is to the effect that a right had accrued to the petitioners for seeking consideration of their application submitted for permission under Rule 8 of the Rules of 1998 in accordance to law that was existing on the date of the application and the said right cannot be taken away by the amending provision.

8. Respondents represented by Shri Sanjay K. Agrawal and Shri S.M. Lal have refuted the aforesaid contentions and by taking me through the provisions of Rules 8, 9 and 10 of the Rules of 1998 and Section 292-A and B of the Act of 1956, argued that merely by submission of an application the petitioners do not acquire any right, the same would accrue to the petitioners only after the permission is granted to them under the statutory provisions, i.e.,.....Rule 12 or the deeming clause under Rule 9 (2) and Rule 9 (3) of the Rules of 1998. It is argued by them that if the provisions of Rules 9 and 12 are taken note of, it would be seen that even under Rule 9 (3), the permission granted has to be in accordance to the provisions of the then applicable Rules and Bye-laws. It is argued by Shri Sanjay K. Agrawal that the statutory permission granted is to carry out the construction activity in accordance to the Act, Rules, Bye-laws applicable at the time of grant of permission and as permission is not granted till date to the petitioners, the provisions of the amended act will apply in the cases also. Accordingly, contending that the petitioners' contention that a right had accrued to them by presentation of the application is not a "vested" or "accrued" right, it is only a right for processing of the application in accordance to the Rules and an expectation to have the application processed in accordance to law and if the statutory provisions are amended before a final decision on the application is taken, the law applicable on the date of the grant of permission will be applicable.

9. Placing reliance on the following judgments:-

Friends Colony Development Committee Vs. State of Orissa and Others, Howrah Municipal Corpn. and Others Vs. Ganges Rope Co. Ltd. and Others, ; Commissioner of Municipal Corporation, Shimla Vs. Prem Lata Sood and Others, ; Kuldeep Singh Vs. Govt. of NCT of Delhi, ; P.T.R. Exports (Madras) Pvt. Ltd. and others Vs. Union of India and others, ; and Chairman, Indore Vikas Pradhikaran Vs. M/s Pure Industrial Cock and Chemicals Limited and Others 2007(4) M.P.H.T. 1 (SC) : AIR 2007 SCW 4387

Shri Sanjay K. Agrawal and Shri S.M. Lal, learned Counsel for the respondents, supported their contention. Shri Agrawal further pointed out that the petitioners submitted the application for permission on 23-12-2009 and Rule 8 of the Rules of 1998, Thereafter, "no objection certificates" by various Statutory Authorities

as per the conditions in Rule 9 were obtained by the petitioners, the final "no objection certificate" was obtained from the Bhopal Development Authority vide Annexure P-12 on 10-3-2010 and the final lay out plan was approved only on 19-5-2010. Accordingly, it was only on 19-5-2010 that the application, complete in all respects, came into existence and on the said date as the amended provision had come into force, the petitioners' application has to be processed in accordance to the amended provision and in doing so, it is argued that the respondents have not committed any error.

10. Shri Sanjay K. Agrawal, learned Counsel, inviting my attention to Rule 12 of the Rules of 1998, submitted that after fulfilling of the conditions stipulated in the rules, the permission for development of the colony is granted in Form No. 5 by the Competent Authority and this Form, under Rule 12, clearly contemplates that the permission is granted subject to the terms and conditions specified under the Act of 1956 and the Rules of 1998. Accordingly, Shri Agrawal submits that in the facts and circumstances of the case, the action of the respondents is in accordance to law and, therefore, the same does not warrant any consideration.

11. I have heard learned Counsel for the parties at length and perused the records.

12. From the records, it is clear that when the application was submitted by the petitioners on 23-12-2009 and when the requisite deposits were made by the petitioners with regard to the fees payable, the conditions stipulated in the amended provision were not applicable. The amended provision came into force on 19-4-2010 and, therefore, the moot question warranting consideration is as to whether the application is now required to be processed subject to fulfillment of the amended conditions or the application has to be processed in accordance to the unamended provisions, as was existing on the date the application was filed ?

13. During the course of hearing of the writ petition Shri Sidharth Gupta had fairly admitted that petitioners may not have any "vested" right to seek permission, they have only an existing right to have their application processed in accordance to the existing law and this right could not be taken away. Before dwelling into the legal aspects, it may be appropriate to take note of the Act of 1956 and Rules of 1998 which govern grant of permission.

14. As far as Section 292-A and B are concerned, they basically deal with the conditions to be fulfilled with regard to grant of benefit to certain class of persons, known as the economically weaker sections of the society, or certain other categories of persons and the benefits to be given to them by the colonizers or the builders with regard to the colony or plots being developed by them. A colonizer or builder interested in developing the land, colony or plot is required to submit an application under Rule 8 of the Rules of 1998, for development of the colony and for permission for building. The requisite fees and other conditions stipulated in the Rules are to be followed and thereafter the "no

objection certificates" from the Competent Authority under the Urban Land Ceiling Act, 1976; the M.P. Town and Country Planning Act, 1973; and, the Nazul Officers have to be obtained. Under sub-rule (2) of Rule 9, it is contemplated that if the "no objection certificate" is not granted by the authorities specified in sub-rule (1) within 45 days of the receipt of the letter from the Competent Authority then it shall be deemed that their sanction and application can be disposed of under Rule 9, within 90 days from the date of receipt of the application. Thereafter, under sub-rule (3), a provision for deemed permission is contemplated within the period stipulated therein and finally the last part of sub-rule (3) reads as under :-

(3).....This deemed permission shall be valid to the extent that it does not violate the provisions of the then applicable Act/Rules/Bye-laws, in other words deemed permission shall be valid under the then applicable Act/Rules/Bye-laws.

(Emphasis supplied)

The provision for making available plots/houses to the weaker sections of the society is contemplated under Rules 10 (1) and 10 (2) and the permission is granted in accordance to the conditions stipulated in Rule 12 and is in Form No. 5 appended thereto. If the statutory rule is taken note of, it would be seen that even if a deemed permission is granted under Rule 9, the same is valid to the extent that it does not violate the provisions of the then applicable rules and bye-laws, the words "then applicable rule and bye-laws" clearly indicate that as and when permission is granted, the permission is subject to the provisions of the act, rules and bye-laws as applicable then, i.e.,.... the date of the permission. Similarly, under Rule 12 after the application is received under Rule 8, and subject to the provisions of Rules 9, 10 and 11 and after fulfillment of the conditions stipulated in Rule 12 the permission for development of the colony is given in Form No. 5. If the statutory form prescribed under which permission is granted, i.e.,....Form No. 5 under Rule 12 is taken note of, the same is titled "Permission for Development of Colony", the date and permission number is given and it starts with the following phrase "Subject to the terms and conditions specified below under the Madhya Pradesh Corporation Act, 1956/Madhya Pradesh Municipalities Act, 1961.....and under the Rules of 1998.....is granted permission". It is clear from this Form also that the permission is subject to terms and conditions specified in the letter of permission so also under the Act of 1956 and the Rules of 1998, meaning thereby that the permission granted has to be in accordance with the statutory requirement. In that view of the matter, it is clear that the statute itself contemplates for grant of permission subject to complying with the rules as are existing on the date of the permission, in that view of the matter the contention of Shri Sidharth Gupta to the effect that the permission has to be subject to conditions that were existing prior to 19-4-2010 cannot be accepted. Because, permission is granted with effect from a particular date and in the order granting permission the condition is that the then existing provision of the Act and Rules have to be followed. That being so, there cannot

be grant of a permission with a condition that it shall be as per certain statutory provisions which had existed at one point of time, i.e..... before the date permission is granted as this will run contrary to the statutory provision and a "mandamus" in contravention to the statutory provision cannot be issued.

15. That apart, if the legal question with regard to retrospective applicability of the provision or otherwise and the right accruing to the petitioners, which is allegedly taken away by the amending Act, is taken note of or even if the legal question pertaining to the right, if any, available to the petitioner on submission of the application is taken note of, I am of the considered view that the arguments of Shri Sidharth Gupta cannot be accepted.

16. The judgments relied upon by Shri Sidharth Gupta, in the case of N.T. Bevin Katti (supra), pertains to a right accruing to a candidate who has submitted an application seeking appointment to a particular post with the Government in terms of an advertisement issued. On the day when the advertisement was issued and when the application was submitted certain criteria were laid down for appointment to the post. The Rules were amended and the criteria changed subsequent to submission of the application. It was held in such a case that even though no "vested" right accrues to the candidate to seek appointment to the post, but a right accrues to the petitioner for consideration of his claim for appointment in terms of the advertisement and the amendment to the rules will not affect the selection. Similarly, in the case of General Films (supra), it was held that the amending provisions will have prospective affect until and unless it is not indicated to have retrospective affect. In the case of Kalikara Chintamani Devi (supra), the law laid down is that a law which creates new disabilities and liabilities during the pendency of action cannot apply retrospectively unless so provided. Similarly, in the case of K. Paripoornam (supra), the question was considered in the light of the entitlement of a person to receive compensation under the Land Acquisition Act.

17. All the judgments relied upon by Shri Sidharth Gupta are basically with regard to a right accruing to a person who is seeking appointment to a post by submitting an application or the right available to a person for seeking compensation etc. The question in this writ petition is as to whether the right accruing to the petitioner for sanction of his application and permission for carrying out the construction and development activities in accordance to the rules that were existing on the date of the application or the permission can be granted only if the requirement of the law applicable on the date of permission is complied with.

18. In the case of an employee seeking appointment to a post, the moment an application complete in all respects is submitted by him, seeking permission to participate in the process of selection, a right does accrue to him for participating in the process of selection and it is this right which could not be taken away. Similarly, when a proceeding is initiated for claiming compensation on the date the application is submitted for compensation, a right accrues to a person to

receive the compensation in accordance to the stipulations contained on the date the proceedings were initiated, but in the case in hand when an application is submitted by the petitioner seeking permission to develop a colony, land or construct a building, no right accrues to him to get the permission automatically. The only right accruing is to have the application processed and finally after all formalities are completed, the permission has to be granted in accordance to the statutory provisions applicable when the permission is given. In this regard, certain judgments of the Supreme Court and a judgment of this Court so also the judgment relied upon by Shri Sanjay K. Agrawal may be looked into.

19. In the case of State of Tamil Nadu Vs. Hind Stone and Others, an application was submitted seeking a mining lease under the Tamil Nadu Minor Mineral Concessions Rules. When the application was submitted a particular statutory provision governed the grant of permission. However, during the pendency of the application the statutory rule was amended, i.e..... Rule 8-C and the question before the Supreme Court was as to whether an application for grant/renewal of lease, which was submitted prior to amendment to the rule, has to be processed as per the unamended provision or as per the amended provision. The question was considered by the Supreme Court and it was held that no one has a vested right for grant of renewal of a lease and none can claim a vested right to have an application for grant of lease dealt with in a particular way, by applying a particular provision. It was held that an application for lease is necessarily dealt with according to the Rules in force on the date of disposal of the application and only on the ground that there has been delay in processing the application the amended provision cannot be ignored.

20. Similarly, a Division Bench of this Court, in the case of Brijendra Kumar Agarwal Vs. Union of India (UOI) and Others, , considered the judgment of the Supreme Court in the case of M/s Hind Stone (supra), and after taking note of various judgments of the Supreme Court has held that a particular act and rule enables a person to apply for a license. The Act and" Rule prescribed particular procedure for application and its disposal. It was held that the person concerned has a right to file the application, but he cannot have a right to have the application disposed of on the basis of the rule in force at the time of making an application because he has no vested right for grant of lease. It was held that an application pending on the date when the amendment came into force has to be and should be disposed of under the amended provisions of law. The principle laid down in the case of M/s Hind Stone (supra) and Brijendra Kumar Agrawal (supra) is followed recently by a Bench of this Court in Writ Petition No. 619/2004, B.L. Nanda Vs. State of M.P. and Others, decided on 28-6-2011. In this case also, it has been held that an application for renewal/grant of mining lease shall be processed and granted in accordance to law applicable on the date when the licence/lease is granted and not in accordance to the law applicable when the application was filed. If these principles are applied in the case in hand, I am of the considered view that the objections of Shri Sidharth Gupta cannot be accepted.

21. In the case of Prem Lata Sood (*supra*), relied upon by Shri Sanjay K. Agrawal, certain persons who were respondents in the said case were granted permission by the Government of Himachal Pradesh for construction of a Hotel on Mall Road, Shimla. Permission was granted to them under the statutory provision subject to various under conditions. One of the conditions was to get the sanction accorded from the Municipal Corporation under the Himachal Pradesh Municipal Corporation Act, 1994. When the permission was sought from the Municipal Corporation, the application was returned seeking certain clarifications. The respondents, therefore, submitted the documents again after complying with the objections raised and during the pendency of this process the policy of the State Government changed and a freeze was ordered on all the construction activities in the area. Before the Municipal Corporation could consider the respondents application for sanction of development plan, the statutory provision itself was amended and in view of the amendment, the permission could not be granted. The matter travelled to the High Court and a Division Bench of the High Court held that the subsequent declaration and change would not affect the respondents as they had submitted their application for building plan before the change brought into force by amending the statutory provisions and their application was directed to be processed under the unamended provisions. When the matter travelled to the Supreme Court at the instance of the Municipal Corporation, Shimla it was so held by the Supreme Court in Paragraph 36 :-

36. It is now well settled that where a statute provides for a right, but enforcement thereof is in several stages, unless and until the conditions precedent laid down therein are satisfied, no right can be said to have been vested in the person concerned. The law operating in this behalf, in our opinion is no longer *res Integra*.

Thereafter, taking note of various judgments of the Supreme Court, it has been held by the Supreme Court that a person may have a legitimate right or settled expectation, but the same does not create any vested right to obtain sanction. If the State Government in exercise of its rule making power amended the relevant provision and imposes a restriction, such vested right or settled expectations become nullified. It was held in relation to building plan and public policy that such settled expectation or the so called rights cannot be countenanced against public interest which are sought to be served by the amendment. If the case in hand is evaluated in the backdrop of the aforesaid judgment, it is clear that the so called existing right as claimed by Shri Sidharth Gupta is nothing but a settled expectation of the petitioner and the said settled expectation cannot be permitted to be realized contrary to the in the statutory provision.

22. Similarly, in the case of Ganges Rope Company Limited and others (*supra*), the Ganges Rope Company Limited Applied for sanction for construction of a complex on the GT Road upto seven floors. Sanction was not granted within the statutory prescribed period of 60 days in accordance to the building rules and,

therefore, the matter travelled to the High Court. The High Court disposed of the petition with a direction to the Municipal Corporation to consider the company's application within four weeks, which was extended by further three weeks. Despite the extension when the application was not considered by the Corporation the matter again travelled to the High Court. The High Court disposed of the application directing the Corporation to grant sanction to the Plan upto fourth floor and liberty was granted to the Company to apply for sanction of further floors. Pursuance to this order of the High Court, the Company was granted permission to construct four floors, petitioners completed the construction and on the basis of the liberty granted by the High Court applied for sanction for construction up to the seventh floor. The Corporation did not consider and, therefore, the matter again went to the High Court. The High Court relying upon the earlier order held that the right of the company to apply for sanction for further floors was reserved and the Corporation was expected to pass appropriate orders within four weeks. When the company again approached the Corporation, the Corporation called for certain fresh plans and documents. The company complied with the demand and when this application for further extension was pending the Government of West Bengal amended the building rules restricting the height of building and applied the amended provision. The company again approached the High Court. A learned Judge of the High Court held that in view of the amendment to the rules and the resolution of the Corporation, no relief can be granted to the company. However, the Division Bench allowed the writ petition and held that as liberty was reserved in favour of the company by virtue of the earlier orders passed, their application should be processed under the unamended provisions. When the matter travelled to the Supreme Court, the Supreme Court reversed the judgment of the Division Bench of the High Court, and the observations of the Supreme Court in the said case reads as under:-

The subject of sanction of construction is governed by the provisions of the Act, Rules and Regulations as also the resolution of the Corporation which was taken with the approval of the Mayor-in-Council. The statutory provisions regulating sanction for construction within the municipal area and intended to ensure proper administration of the area and provide proper civil amenities to it.....

The word "vest" is normally used where an immediate fixed right in present or future enjoyment in respect of a property is created. With the long usage the said word "vest" has also acquired a meaning as "an absolute or indefeasible right". The context in which the respondent Company claims a vested right for sanction, is not a right in relation to "ownership or possession of any property" for which the expression "vest" is generally used. What the Company has was only "legitimate" or "settled expectation" to obtain the sanction. Such "settled expectation", if any, did not create any vested right to obtain sanction. Though the respondent-Company which can have no control over the manner of processing of application for sanction by the Corporation cannot be blamed for delay but during pendency of its application for sanction, if the State

Government, in exercise of its rule-making power, amended the Building Rules and imposed restrictions on the heights of buildings on GT Road and other wards, such "settled expectation" has been rendered impossible of fulfillment due to change in law. The claim based on the alleged "vested right" or "settled expectation" cannot be set up against statutory provisions which were brought into force by the State Government by amending the Building Rules and not by the Corporation against whom such "vested right" or "settled expectation" is being sought to be enforced. The "vested right" or "settled expectation" has been nullified not only by the Corporation but also by the State by amending the Building Rules. Besides this, such a "settled expectation" or the so-called "vested right" cannot be countenanced against public interest and convenience which are sought to be served by amendment of the Building Rules and the resolution of the Corporation issued thereupon.

(Emphasis supplied)

23. In the case of *Chairman, Indore Vikas Pradhikaran Vs. M/s Pure Industrial Cock and Chemicals Limited and others* (supra), relied upon by Shri Sidharth Gupta also certain principles in this regard are laid down. A case of *T. Vijayalakshmi and Others Vs. Town Planning Member and Another*, is taken note of and certain observations made in the said judgment in Paragraph 15 has been considered and after taking note of the principles laid down in the case of *Kuldeep Singh* (supra), it is held that a right of a person to construct a residential house is a valuable right. It has been held that it is settled law that the building plans are required to be dealt with in terms of the existing law, but it is well settled that application for grant of permission for construction of a building is required to be decided in accordance with the law applicable on the date on which such permission is granted. Finally, the Supreme Court after taking note of various provisions in Paragraphs 112 and 113, has dealt with the matter in the following manner :-

112. The learned Counsel would submit that the said direction is not correct as the High Court should have directed the Director to consider the respondent's application in accordance with the law as it existed at the relevant point of time. We do not subscribe to the said view as it is now well settled that where a statute provides for a right, but enforcement thereof is in several stages, unless and until the condition precedent laid down therein are satisfied, no right can be said to have been vested in the persons concerned.

113. In *Director of Public Works Vs. Ho Po Sang* 1961 AC 901 : (1961) 2 All ER 721, the Privy Council considered the said question having regard to the repealing provisions of the Landlord and Tenant Ordinance, 1947 as amended on 9-4-1957. It was held that having regard to the repeal of Sections 3-A to 3-E, when applications remained pending, no accrued or vested right was derived stating :-

in summary, the application of the second appellant for a rebuilding certificate

conferred no right on him which was preserved after the repeal of Sections 3-A to 3-E, but merely conferred hope or expectation that the Governor-in-Council would exercise his executive or ministerial discretion in his favour and the first appellant would thereafter issue a certificate. Similarly, the issue by the first appellant of notice of intention to grant a rebuilding certificate conferred no right on the second appellant which was preserved after the repeal, but merely instituted a procedure whereby the matter could be referred to the Governor-in-Council. The repeal disentitled the first appellant from thereafter issuing any rebuilding certificate where the matter had been referred by petition to the Governor-in-Council but had not been determined by the Governor.

(Emphasis supplied)

Thereafter, in Paragraph 114, the Principle laid down in the case of Ganges Rope Company Limited and others (*supra*), is also referred. It may be taken note of that in the case of Union of India and Others Vs. Indian Charge Chrome and Another, it has been held by the Court that an application has to be decided in accordance to the law applicable on the date on which the authority granting the registration is called upon to apply mind to the prayer for registration. Similarly, for grant of licenses-export license etc., also it has been held by the Supreme Court in the case of RTR Exports (Madras) Private Limited and others (*supra*), relied upon by Shri Sanjay K. Agrawal, that an applicant has no vested right to have an export or import license in terms of the policy in force on the date of making the application, but the application has to be proceeded in accordance to the policy existing on the date when the license is granted.

24. Keeping in view the aforesaid judgments of the Supreme Court, it is clear that the right accruing to the petitioners by virtue of submission of the application is only an expectation to have their application considered in accordance to the statutory provisions. No right accrues to the petitioners for having the application processed and decided in accordance to the law or rules prevailing on the date of submission of the application. The application is processed in accordance to a detailed procedure contemplated under the Rules of 1998 and finally when the application, complete in all respects, comes before the Competent Authority for granting the ultimate sanction or permission, the Competent Authority is required to apply its mind on the totality of the circumstances and grant permission and when permission is granted, the permission has to be in accordance to the statutory provisions applicable on the said date. This is in sum and substance the principle of law in this regard laid down by the Hon'ble Supreme Court, in the cases referred to hereinabove, and once they are applied to the facts and circumstances of the present case, I am unable to accept the contentions put forth by Shri Sidharth Gupta.

25. Accordingly, holding that the applications for building permission or development of colony submitted has to be processed and decided in accordance to the statutory provisions applicable on the date permission or sanction is accorded and in insisting on doing so the respondents have not committed any

error, this petition is dismissed without any order so as to costs.