
(2012) 04 CAL CK 0021
In the Calcutta High Court
Case No : F.M.A. No. 946 of 2011

Ram Chandra Prasad

APPELLANT

Vs

The Kolkata Municipal Corporation and Others

RESPONDENT

Date of Decision : 02-04-2012

Acts Referred:

Calcutta Municipal Corporation Act, 1951 — Section 356
Calcutta Municipal Corporation Act, 1980 — Section 357(6)
Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981 — Section 13, 14, 15, 16, 17

Citation : (2012) 5 CHN 526

Hon'ble Judges : J.N. Patel, C.J.; Sambuddha Chakrabarti, J

Bench : Division Bench

Advocate : Ram Chandra Prasad, for the Appellant; Achintya Kr. Banerjee and Ms. Rituparna Sarkar, For the K.M.C., for the Respondent

Final Decision : Dismissed

Judgement

J.N. Patel, C.J.—This letter patent appeal is filed taking exception to the judgment and order dated 25/08/2010 passed by the learned Single Judge in writ petition No. 20742(W) of 2009, wherein the writ petition came to be disposed of by observing that the petitioner has made a grievance that his building plan was not sanctioned which was claimed for the purpose of construction of a G+4 storied building due to street alignment sanctioned in the year of 1960 and, therefore, sought for cancellation of the order dated 24th July, 1960 and for consideration of his objection to such alignment including the sanction of building plan. It was also observed that the petitioner has also sought for the said order in respect of the modification of the prescribed alignment to the proposed right turn affecting the premises of the petitioner. The objections of the petitioner relating to the alignment of 1960 and the proposed curvature have been considered by the Municipal State Technical Committee and a decision was taken on 12th April, 2010 which ratifies the alignment of 1960. Therefore, the petitioner cannot have any grievance in respect of refusal to sanction the

proposed building plan which can only be granted after taking into consideration the decision dated 12th April, 2010 and permitted the petitioner to take steps in accordance with law to obtain sanction for proposed construction of a building. It is the case of the petitioner that he proposed to construct a building at the premises No. 14/H/2, Rani Shankari Lane, Kolkata-700026, for which permission was taken from the Regional Thika Tenancy Office and the case of the petitioner was also referred by the District Building Surveyor and City Architect's Department of Kolkata Municipal Corporation to the Controller, Kolkata Thika Tenancy, Government of West Bengal. On getting approval to construct building the petitioner was called upon to submit a site plan and proposed plan of three storied building for sanction as required by letter dated 08/10/1993. It is the case of the petitioner that in spite of complying with all the requirements and having deposited the required fees for obtaining sanction for three storied building as long back on 01/11/1995 the respondent did not approve this plan for the reason that the site plan of the house No. 14/H/2, Rani Shankari Lane, Kolkata, relating to three storied building, is affected by alignment of 12.95 meters to 6.40 meters to 6.72 meters of the premises and the proposal as shown in the attached site plan is affected by 9.144 meters wide C.M.C. sanctioned Regular Line. It was also clarified that the width of the above road varies from 2.74 meters to 3.05 meters to 2.74 meters as per the record. But the width of the above road varies from 3.05 meters to 3.35 meters to 2.74 meters as per site measurement. However, it was informed to the petitioner that there is no record available in the Department for such widening of the road. It appears that thereafter the petitioner did not take any step to get his plan sanctioned except for addressing a letter to the Mayor Member of Council, Kolkata Municipal Corporation for correction of the observation memo for plan case No. 105/Chys/Pr VIII/95-96 dated 1st November, 1995 by which he was intimated of the deficiency.

2. It appears that the petitioner thereafter pursued the matter trying to ascertain the road alignment of his premises in question. On January 6, 2007 the Kolkata Municipal Corporation issued a notice inviting objections for modifying the mid-portion of the existing sanctioned alignment of Rani Shankari Lane affecting premises Nos. 14, 15/1/1B and 15/1/1A pursuant to Section 357(6) of the K.M.C. Act of 1980. In response to the said notification the petitioner wrote objection on 22nd January, 2007 and thereafter made various representations. As a result, it is in the year 2008 that the petitioner was informed that the subject of alignment of street plan (30 feet wide) of a portion of the Rani Shankari Lane connecting S.P. Mukherjee Road with Harish Mukherjee Road is referred to the Municipal Street Technical Committee for further review on intimation from the office of the Chief Valuer and Surveyor. The petitioner addressed a letter dated 15/01/2009 to Sri Bikash Ranjan Bhattacharya, the then Hon"ble Mayor of Kolkata Municipal Corporation, to consider the alignment of regular line and the proposed new curvature (right turn) over the middle of the house No. 14/H/2, Rani Shankari Lane and also to the Director General

(Township and Planning), K.M.C, requesting him to arrange for an urgent meeting for Municipal Street Technical Committee for review of the said 30 feet wide road alignment of said Rani Shankari Lane, Kolkata-26 in front of Basti premises No. 14/H/2, Rani Shankari Lane and made various representations to the authorities. On 11-07-2009 the petitioner again approached the respondent Chief Valuer and Surveyor with his fresh building plan with a request to take immediate step for sanction of the building. This was turned down by the Chief Valuer and Surveyor of K.M.C. by the letter dated 02/09/2009, informing the petitioner that the appropriate authority of K.M.C., on considering his application dated 11/07/2009, has decided that the said proposal for remission of the width of the lane is not permissible, in view of the fact that the alignment for the proposal of widening of the Rani Shankari Lane between the Harish Mukherjee Road and S.P. Mukherjee Road is approved. The petitioner, thereafter, sought full particulars relating to the report of the plan from the Chief Valuer and Surveyor of K.M.C. as regards, the K.M.C. Regulation which enables them to file the proper and fresh building plan for sanction by his letter dated 23/09/2009. Thereafter on 07/11/2009 he made a request to modify the right turn curvature over the middle of 14/H/2 Rani Shankari Lane. But the request of the petitioner was not considered and his plan was not sanctioned as it was not in consonance with the prescribed alignment of Rani Shankari Lane between S.P. Mukherjee Road and Harish Mukherjee Road.

3. The petitioner filed the petition impugning the alignment of 30 feet sanctioned by the Corporation on 25/07/1960 published in Kolkata Gazette on 01/09/1960 which was modified on recommendation of the MSTC dated 27/07/2005 and sought for an order in the nature of writ of mandamus to the respondent to forthwith revoke and/or rescind and/or withdraw and/or cancel of the said impugned order rejecting the application of the petitioner for modification for the prescribed alignment over Rani Shankari Lane for remission of 30 feet wide over the alignment by cancelling the new right turn as contained in letter dated 12/03/2009 and to rescind and/or withdraw and/or cancel the said original alignment dated 27/07/1960 published in Kolkata Gazette on 01/09/1960 and to forthwith finalise a recommended modification of MSTC (dated 27-06-2006) by MSTC High Power Committee, MSTC of the Kolkata Municipal Corporation by reducing the width of the lane to 15 feet from 30 feet and cancellation of proposed new right turn over the middle of premises No. 14/H/2, Rani Shankari Lane by changing the present right turn after the end of No. 14/H/3 and also prayed for an order in the nature of direction to the respondent authorities to take immediate step for the purpose of sectioning of the building plan of three storied or four storied building irrespective of street alignment i.e. widening of the said lane by 30 feet. The petitioner further prayed for that the long pending three storied plan of the petitioner should be sanctioned by giving permission to raise maximum stories in order to compensate them for the delay in sanctioning of the plan and loss of valuable land due to widening of the width of the lane to 30 feet under the new Amended Rule of K.M.C. and for other ancillary relief.

4. The respondent Kolkata Municipal Corporation contested the case of the petitioner on the ground that the petitioner's application for permission to construct the building and his proposed sanction plan could not be considered for the reason that the premises in question is a thika tenanted property and stand in the joint name of the petitioner and his brother Prameshwar Prasad, and, therefore, in respect of joint owners of the property the application for sanctioning a building plan was made by the petitioner alone without any authority from the joint owner. Therefore, such an application cannot be considered as the thika tenanted property is governed by the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001, and the Rules 2004 and proposed construction in respect of such property is governed by the Building Regulations in respect of lands covered by the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981, i.e. building regulations provided under the said Act and in absence of grant of permission of the Thika Controller the case of the petitioner cannot be considered.

5. It is the contention of the respondent that the petitioner's claim for compensation cannot be considered as the petitioner did not take any step during the period of 1995-2007 to comply with the requirements necessary for sanctioning of the plan. It is contended that by letter dated 11-09-2008 the petitioner was informed of the question of alignment which was referred to Municipal Street Technical Committee. The petitioner was further informed that the representation of the petitioner for remission in width to 15 feet from the sanctioned alignment of 30 feet is not admissible and, therefore, he should take step in accordance with law in order to get his plan sanctioned. It is the contention of the respondent that the petitioner having not complied with the requirement of law his plan was not sanctioned and, therefore, in view of the fact that the petitioner has failed to make an appropriate application along with all particulars and requirements in view of the provision of law, rules, regulations and procedures, no relief can be granted to the petitioner and the petition deserves to be dismissed.

6. We have heard the petitioner in person and the learned Counsel for the respondent Municipal Corporation. The petitioner except for reiterating his contention that he is entitled to construct a building on premises No. 14/H/2, Rani Shankari Lane, irrespective of the alignment of 1960 for widening 30 feet of Rani Shankari Lane which has been ratified by a resolution dated 20th April, 2010, he has not been able to make out any case in his favour to enable him to obtain the sanction of his proposed plan. In the midst of the hearing and in order to facilitate the sanctioning of the plan of the petitioner's proposed building, the Court granted leave to the appellant/writ petitioner to submit a proposed building plan and to comply with all the necessary requirements. The petitioner submitted a building plan signed by him although his brother is a co-tenant in the premises. The same was examined by the office of the Chief Valuer and Surveyor as well as the Special Department of K.M.C. and it was found that unless the petitioner obtained such no-objection certificate from the Thika Controller and submits a

survey report along with the site plan and comply with all the required formalities taking into account the existing regular line on street (alignment), the case of the petitioner cannot be considered for sanctioning of the building plan. It was further submitted that unless the petitioner modifies his site plan adhering to the regular line of street (alignment) and then submits the necessary documents and building plan along with the required fees his case cannot be considered for approval. It has been placed on record that approximately 190.6 sq. meter of land has been affected by the alignment and 247.6 sp. meter of land was left after deduction of the land affected by the alignment and, therefore, a maximum up to straight three floors would be permitted subject to compliance of all formalities and that the cost for sanctioning of the building plan would be Rs. 83,000/-(approximately) considering total covered area per floor 150 sq. meter X 3 + stair covered area = 480 sq. meter approximately. Therefore, in case the petitioner complies with all the formalities and submits a proper site plan for approval and thereafter the Corporation will be in a position to sanction the proposed building plan submitted by the appellant/petitioner.

7. It appears from the record and the documents annexed along with the annexure P/6 collectively and in compliance with the order dated 25/08/2010 passed in the writ petition No. 20742(W) of 2009 the petitioner was forwarded the copy of the resolution of the meeting of Municipal Street Technical Committee dated 12/04/2010 duly ratified in the MIC meeting vide No. MOA-179.19 dated 20/04/2010. It is clearly recorded that in the meeting of the Municipal Street Technical Committee held on 12-04-2010 the subject of prescribed alignment at Rani Shankari Lane between Harish Mukherjee Road and S.P. Mukherjee Road is taken up for consideration and it was resolved that the modification of original alignment, resolved earlier by MSTC dated 17/06/2005, is cancelled and particularly the prescribed alignment 30 feet wide sanction u/s 356 of the K.M.C. Act, 1951 passed by the Corporation on 25/07/1960 is retained unaltered and on 20th April, 2010 the Mayor approved the resolution by Municipal Street Technical Committee in the meeting held on 12-04-2010.

8. We do not find that the said resolution is illegal or contrary to the statute i.e. Kolkata Municipal Corporation Act which governs the subject and so also the Kolkata Municipal Corporation Building Rules, 1990, therefore, merely because it affects the property of the petitioner that by itself cannot be a reason to question and set aside the said decision of the Municipal Corporation. The petitioner has no choice but to submit his proposal along with the required site plan and building plan to the Municipal Corporation for the purpose of obtaining sanction in accordance with law, after seeking approval from Thika Controller, Calcutta.

9. We find that the respondent Corporation cannot be held accountable for the delay, if any, in approving the building plan of the petitioner as the plans could not be sanctioned for failure on the part of the petitioner to comply with the necessary requirements of Building Rules and Regulations governing the sanction.

10. The contention of the petitioner that the respondent Municipal Corporation

has intentionally and with malafides delayed his proposal for sanctioning the building plan which entitles him to compensation is misplaced and, therefore, the claim of the petitioner for compensating him by paying compensatory cost is unfounded.

11. It is the contention of the respondent that after the learned Single Judge disposed of the petition on 25/08/2010 by making some observation and granting liberty to the petitioner to take step in accordance with law upon the receipt of the decision of the K.M.C., the appellant was served with the decision of K.M.C. through the learned Advocate as well as by the Department and it is in the process that the appellant/petitioner, for the first time, disclosed some documents and correspondence by K.M.C. regarding application for modification of alignment, however this was not taken as a issue in writ petition. It is a matter of record that these representations were processed and sent to the Municipal State Technical Committee for consideration and as the appellant did not comply with the requirements sought for and furnish all the necessary particulars, his case could not be considered.

12. It is submitted that after the learned Single Judge disposed of the application the petitioner, by his letter dated 24/09/2010, called upon the respondent the Chief Valuer and Surveyor of K.M.C. for compliance of the order so far as the respondents are concerned, they are ready to comply with the order passed by the Hon"ble Trial Judge and if the petitioner submits his proposed building plan in strict adherence to the provisions of K.M.C. Act and its Building Rules as also the provisions relating to the Thika Tenancy (Acquisition & Regulation) Act, 2001. The Building Regulation in respect of land covered by the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981 is applicable to the premises in question as appellant/petitioner is a thika tenant along with his brother. Sections 13 to 21 of the said Act govern erection/re-erection of building on such premises and it is clearly provided that no person shall be allowed to submit a plan for erection of a new building/pucca structure or re-erect or make addition to and alteration of any hut or building/pucca structure in thika tenanted land without any permission from Thika Controller, Calcutta (Section 3). The petitioner although claims to have inherited the premises No. 14/H/2, Rani Shankari Lane, Kolkata-700026 after the death of their father and got approval from Controller, Alipore Regional Thika Tenancy Office has not placed on record any such approval from the Thika Controller, Calcutta. This deficiency in his proposal made to respondent is sufficient to disqualify him from getting any relief in the matter. Therefore, in the facts and circumstances we find that there is no merit in the appeal. The appeal is, therefore, dismissed.