
(2004) 01 CAL CK 0045
In the Calcutta High Court
Case No : C.O. No. 16265 (W) of 1984

Samarendra Kumar Mukherjee

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 06-01-2004

Acts Referred:

Bengal Municipal Act, 1932 — Section 321(1), 325
Constitution of India, 1950 — Article 226

Citation : (2004) 1 CHN 597

Hon'ble Judges : Pranab Kumar Chattopadhyay, J

Bench : Single Bench

Advocate : K.K. Moitra, Alope Kumar Ghosh, S.K. Halder and A. Biswas, for the Appellant; L.N. Dey, for the Respondent

Final Decision : Allowed

Judgement

Pranab Kumar Chattopadhyay, J.—The petitioner herein has challenged the validity and/or legality of the notice dated 19th January, 1984 issued by the Chairman, North Dum Dum Municipality u/s 321(1)(b) of the Bengal Municipal Act, 1932 and also challenged the subsequent notice dated 13th May, 1984 issued by the Commissioner of Ward No. 13 of the said North Dum Dum Municipality whereby the said Commissioner invited the petitioner in a meeting in order to settle the dispute mutually.

2. The petitioner is the owner of the plot in question measuring about 1.5 cottahs. Initially, a building plan was sanctioned by the competent authority of the North Dum Dum Municipality on 6th August, 1981 for construction of a three-storied building on the said plot of land of the petitioner. In terms of Section 325(1) of the Bengal Municipal Act, 1932, a building plan may be renewed for a further period of two years. Accordingly, the said building plan of the petitioner, renewed on 6th August, 1983, also remained valid upto 5th August, 1985.

3. The respondent Chairman of the North Dum Dum Municipality issued a notice u/s 321(1)(b) of the Bengal Municipal Act, 1932 to the petitioner herein alleging

inter alia that the said petitioner had been carrying on construction in deviation of the sanctioned building plan and therefore, asked the petitioner to show cause why the constructions made in deviation of the sanctioned building plan will not be demolished. Surprisingly, the provision of Section 321(1)(b) does not authorise the Chairman of the Municipality to show cause. Relevant provision of the Section 321(1) of the Bengal Municipal Act, 1932 is quoted hereinbelow:

"321. Inspection of work requiring sanction.--(1) The Chairman or any other person authorised by the Commissioners in this behalf may, at any time, and without notice, inspect any work in respect of which an application is required u/s 317-

(a) while under construction, or

(b) within one month of the receipt of the notice of completion sent u/s 320, or, in default of such notice, at any time after completion."

4. By the subsequent notice dated 13th May, 1984, Commissioner, Ward No. 13 of the said Municipality asked the petitioner to attend a meeting at the residence of one, Debi Prosanna Singha for mutual settlement of the dispute as mentioned in the notice served earlier upon the petitioner u/s 321(1)(b) of the Bengal Municipal Act. In the said meeting, Secretary, Nagarik Samity, was also requested to attend. The said notice dated 13th May, 1984 is also set out hereunder:

"OFFICE OF THE NORTH DUM BUM MUNICIPALITY, BIRATI,
CALCUTTA-700 051

No.

Dated: 13.5.84.

From: Sri. S. N. Palit,

Commissioner, Ward No. 13, N.D.D.M.

To

- 1) Sri Taracharan Maity, M.B. Road, Birati, W-13,
- 2) Sri Samarendra N. Mukherjee, M.B. Road, Birati, W-13.

Sir,

As per decision of the Board of Commissioner dated 30.4.84, a meeting will be held on 20th May, 1984 at 9 a.m. in Debi Prasanna Singha's house, Sarat Kanan, Birati, Cal - 51 for mutual settlement of the dispute (Notice u/s 321(1)(b) of the B.M. Act, 1932 served upon Sri Samarendra N. Mukherjee) between Sri Tara Charan Maity and Sri Samarendra N. Mukherjee.

Kindly make it convenient to attend the meeting.

Yours faithfully,

SdA Samarendra N. Palit. 13.5.84

Commissioner,

North Dum Dum Municipality,

Ward No. 13, Calcutta - 51.

Copy forwarded to:

1) Sri Chittaranjan Chakravortty, Commissioner, W-8,

2) Sri Samidh Banerjee, Secretary, Nagarik Samity, W-1,

who are also requested to make it convenient to attend the meeting.

Sd/- Samarendra N. Palit. 13.5.84

Commissioner,

North Dum Dura Municipality,

Ward No. 13, Calcutta - 51."

5. On careful examination of the said notice dated 19th January, 1984, it appears that although the notice was issued u/s 321(1)(b) of the Bengal Municipal Act, 1932 but the petitioner was asked to show cause why the constructions allegedly made in deviation of the building plan will not be demolished. The provision of Section 321(1)(b) of the Bengal Municipal Act, 1932 does not authorise the respondent, Chairman to take steps for demolition of any part or portion of any building on the ground of construction of the same in deviation of the sanctioned building plan.

6. However, as the allegation was made against the petitioner for construction of the building in deviation of the sanctioned building plan, this Court appointed an independent technical expert, namely, Sri A.K. Roy Chowdhury, Director General (Building), Kolkata Municipal Corporation as Special Officer and directed him to submit a report after making an inspection in presence of the respective parties. The said Special Officer inspected the building in presence of the parties herein and submitted his report before this Court with the following observations;

1) The land of Sri Samarendra Mukherjee, the petitioner (Holding No. 299, M.B. Road, Birati) at the west side has been encroached by the land of Sri Tara Charan Maity, Respondent No. 6 (Holding No. 653, M.B. Road) at few points more or less by 0" 7".

Taking into consideration of this encroachment at two points, within a stretch of more or less 20"0" from the northern end of west boundary, the mandatory open space at the west of the building of the petitioner is found to be 3"9" and 3"4" in place of sanctioned 4"0".

2) Considering all available measurements as well as previously mentioned sanctioned Building Plan it is found that the building has encroached towards east, though limiting within same premises, by 0'66" (i.e. mandatory open space has been kept 3'6" in place of required 4'0" as per plan).

3) Width of the sanctioned cantilever at the ground floor roof level on the northern side is found to be 0'6" more than what was sanctioned in the said previously sanctioned Building Plan.

As per previously sanctioned plan, now lapsed, width of cantilever was 2'0" whereas at site it is 2'7".

7. It would also appear from the said report of the Special Officer that the respondent No. 6, Tara Charan Maity, the adjoining neighbour of the petitioner has encroached upon the petitioner's land by 7 inches within a stretch of more or less 20 feet from the northern end of the western boundary. The authorities of the North Duni Dum Municipality, particularly, the Commissioner of Ward No. 13 of the said Municipality in the guise of settling the dispute amicably in the presence of the Secretary, Nagarik Samity put an undue pressure upon the petitioner in spite of the fact that the respondent No. 6 encroached upon the land owned by the petitioner herein.

8. In my view, the authorities of the Municipality were much more interested to protect the interests of the encroacher who had encroached upon the petitioner's small land measuring about 1.5 cottahs and that is why the said respondent No. 6 was never asked to vacate the illegally encroached area by the concerned municipal authorities. Undisputedly, the authorities of the North Dum Dum Municipality till today have not taken any step against the respondent No. 6 to ensure removal of the encroachment from the petitioner's land.

9. The authorities of the North Dum Dum Municipality carefully refrained from making any comments on the aforesaid illegal action on the part of the respondent No. 6 and raised the objection that the petitioner is not entitled to seek any relief in this Court in the present proceeding as the sanctioned building plan of the petitioner has already lapsed by efflux of time.

10. It may be mentioned herein that after submission of the report by the Special Officer on 18th July, 2002, the learned Counsel of the Municipality submitted before this Court that the Chairman of the North Dum Dum Municipality wants to review the entire matter afresh in the light of the inspection report of the Special Officer i.e. the Director General (Building), Kolkata Municipal Corporation and the said prayer was allowed by this Court with the observation that the Chairman, North Dum Dum Municipality would be at liberty to reconsider the entire matter afresh after giving an opportunity of hearing to the petitioner.

11. The Chairman thereafter reviewed the matter afresh after giving an opportunity of hearing to the petitioner and passed the order. Relevant extract from the said order is quoted hereunder:

" I agree with the Special Officer that measurements on all sides since could not be checked for non-availability of proper demarcation of land deviations made cannot be determined The municipality is not very much concerned so much with minor deviations in construction. The major deviation found cannot be rejected instantaneously with determining property line on all sides.

In the above context the writ petitioner is permitted to cause construction after due determination of his property line on all sides and getting his plan newly prepared and sanctioned. Alternatively he may cause construction with the undertaking to be given before the Court that he would strictly observe the building rules, failing which he shall demolish construction if made or to be made in future in violation of building rules at his own instance on finding of the Municipality failing which the Municipality shall demolish his unauthorised construction."

12. The Chairman of the Municipality therefore, made it clear that the petitioner herein may proceed with the construction work after observing the provisions of the building rules. The Commissioner of the North Dum Dum Municipality also passed a resolution as far back as on 30th April, 1984 wherein it has been specifically recorded that the petitioner and the respondent No. 6 should amicably settle their dispute and the Commissioner of the Ward No. 13 took upon himself the responsibility of the settlement by negotiation. The extract of the minutes of the said meeting is set out hereunder:

"As extract from the minutes of the ordinary monthly meeting of the Board of Commissioner of the North Dum Dum Municipality held at their office on 30.4.84 at 6-00 P.M.

*** ** 2. To consider Notice u/s 321(1)(b) of the B.M. Act" 32 served upon Shri Samarcndra Nath Mukherjee, M.B. Road, Ward No. 13, Birati, Calcutta - 51.

The Chairman placed the copy of a notice u/s 321(1)(b) of the B.M. Act" 32 dated 19.1.84 served upon Sri Samarendra Nath Mukherjee, Ward - 13, resultant to a complaint lodged with the Municipality by one Sri Tara Charan Maity. The complaint was enquired into by the overseer who made a physical inspection and submitted a report wherein it was stated that the building is being constructed by Sri Mukherjee in deviation of the approved plan and as such the said notice be served. On receipt of the notice Sri Mukherjee submitted a four-paged representation and on the basis of that Sri Mukherjee and the complainant Sri Maity was called for a hearing before the Board of Commissioners on 30.4.84.

During the hearing both parties stuck to their own contention and no decision could be arrived at by the Board but on the contrary the Chairman offered the parties another chance to come to an amicable settlement. The Chairman agreed to offer the services of the Commissioners of Ward No. 13 and Ward No. 8 to

settle the dispute. The Commissioner of Ward No. 13, therefore, took upon himself the responsibility of a settlement by negotiation."

13. From the aforesaid resolution it is very much clear that the authorities of the Municipality were very much keen to protect the interests of the respondent No. 6 and the Commissioner of the Ward No. 13 of the said Municipality took upon himself the responsibility to settle the private dispute between the petitioner and the respondent No. 6 which was accepted by the other Commissioners of the said Municipality.

14. The authorities of the said Municipality while considering the complaint relating to the construction made by the petitioner in alleged deviation of the sanctioned building plan asked the parties namely, the writ petitioner and the respondent No. 6 to amicably settle the dispute. Accordingly, it is clear that the authorities of the North Dum Dum Municipality put an undue pressure on the petitioner on the plea that the petitioner was carrying on construction in deviation of the sanctioned building plan to amicably settle the alleged dispute with respondent No. 6 although the petitioner never agreed to any such settlement as the said respondent No. 6 encroached upon the land of the petitioner.

15. Considering the materials on record I find that even though the petitioner tried to construct his shelter over a small plot of land on the basis of the sanctioned building plan but in order to show undue favour to the respondent No. 6, authorities of the North Dum Dum Municipality prevented the petitioner from carrying on construction from the very inception and even after sanctioning the building plan.

16. Accordingly, the petitioner although started the construction but due to wrongful interference by the authorities of the Municipality, could not complete even the ground floor.

17. From the records also I find that the overseer of the Municipality visited the site with the respondent No. 6 on various occasions with an intention to obstruct the petitioner from carrying on construction work at the site in question and most unfortunately the authorities of the said Municipality also denied justice to the petitioner in order to show undue favour to the said respondent No. 6.

18. Furthermore, Bhagabati Prasad Banerjee, J. (as His Lordship then was) by the order dated 19th November, 1984 permitted the petitioner to proceed with the construction on the basis of the sanctioned building plan No. 284 of 1981 but the petitioner could not carry on construction work due to the unwarranted objections raised on various occasions by the respondent authorities herein.

19. Now, the learned Counsel of the North Dum Dum Municipality raised an objection before this Court that the petitioner herein should not be permitted to carry on construction work on the basis of the building plan which has now lapsed due to efflux of time.

20. Admittedly, respondent No. 6 did not appear before this Court at any stage and also did not choose to file any affidavit. The authorities of the North Dum Dum Municipality in a desperate attempt to prevent the petitioner from carrying on construction work at the premises in question raised the aforesaid objection regarding validity of the plan which was admittedly, sanctioned by the authorities of the Municipality in the year 1981.

21. Now, it is to be decided by this Court whether the petitioner could be remedyless even though the petitioner challenged the illegal actions of the respondent authorities during the validity period of the sanctioned building plan and the life of the sanctioned building plan allegedly expired during the pendency of this proceeding before this Court.

22. Initially, the plan was sanctioned in the year 1981 and the same was renewed on 6th August, 1983. In terms of Section 325 of the Bengal Municipal Act, 1932, a building plan can be renewed for a further period of two years and therefore, the sanctioned building plan of the petitioner remained valid till 5th August, 1985 as the same was renewed on 6th of August, 1983.

23. Learned Counsel of the respondent Municipality submitted that allowing the petitioner to carry on construction without demarcation of land and fresh sanctioned building plan will allow the petitioner to indulge in fresh deviation. The learned Counsel of the Municipality further submits that as the building plan lapsed during pendency of the proceedings, the same should not be allowed to be revalidated after a lapse of nearly 19 years.

24. Unfortunately, the authorities of the North Dum Dum Municipality all along showed hostile attitude towards the petitioner in order to protect the interests of the respondent No. 6 ignoring the fact that the said respondent No. 6 encroached upon the land of the petitioner.

25. The petitioner herein undisputedly wanted to build his shelter over a small plot of land measuring about 1.5 cottahs after obtaining sanctioned building plan and rightly raised objection against the encroachment of the respondent No. 6. The authorities of the North Dum Dum Municipality did not prevent the said respondent No. 6 from encroaching the land of the petitioner and on the contrary put undue pressure on the petitioner in every possible manner shamelessly.

26. The petitioner herein with his small savings was trying to build up a shelter over a small plot of land at the fag-end of his life and unfortunately the concerned authorities of the Municipality in order to distribute undue favour to the respondent No. 6 illegally obstructed the petitioner from building his own shelter and thus, deprived the petitioner of his legitimate right to build his own house. The authorities of the respondent Municipality thus, cannot avoid its responsibility for illegally preventing the petitioner from building his own shelter on the ground that the construction of the petitioner was in alleged violation of building plan although the Ward Commissioner asked the petitioner to attend a meeting in order to amicably settle the dispute.

27. The aforesaid conduct clearly established that the dispute relating to construction of building by the petitioner over his small plot of land could be amicably settled and even assuming that there had been any deviation from the sanctioned building plan at the initial stage of construction. The authorities of the Municipality never pointed out specifically any deviations made by the petitioner at the initial stage of construction which the said municipal authorities cannot allow to stand.

28. Due to the pendency of this writ petition for almost two decades before this Hon"ble Court, respondent Municipality practically made it impossible for the petitioner to build his own house as the said petitioner did not succumb to the illegal pressure of the municipal authorities.

29. Scrutinising the report submitted by the Special Officer appointed by this Court and further considering the nature of construction at the site in question measuring about only 1.5 cottahs, I am convinced that the municipal authorities harassed the petitioner with mala fide intention and ill-motive.

30. The impugned notice dated 19th January, 1984 issued by the Chairman, North Dum Dum Municipality cannot be sustained in the eye of law as Section 321(1)(b) of the Bengal Municipal Act, 1932 did not authorise the Chairman to ask the petitioner to appear before him and/or to show cause in respect of any construction work made at the site in question, far from asking the petitioner to demolish any part or portion of the construction in question. The subsequent notice dated 13th May, 1984 issued by the Commissioner of Ward No. 13 of the said Municipality is highly objectionable as the said Commissioner had no authority to ask the petitioner to attend a meeting for mutual settlement of the dispute in relation to a notice served upon the said petitioner previously by the said Municipality u/s 321(1)(b) of the Bengal Municipal Act, 1932.

31. Furthermore, the said Commissioner of Ward No. 13 not only asked the petitioner to attend the meeting at someone else's house hut also invited the Secretary, Nagarik Samity to attend the said meeting obviously for creating undue pressure upon the petitioner, The Ward Commissioner was never authorised under any provision of Bengal Municipal Act, 1932 to decide any dispute relating to construction of a building.

32. Accordingly, the impugned notice issued by the Chairman, North Dum Dum Municipality on 19th January, 1984 and the subsequent notice dated 13th May, 1984 issued by the Commissioner of Ward No. 13 of the North Dum Dum Municipality are, in my opinion, wrongful, illegal and liable to be quashed and the same are therefore, quashed.

33. As discussed earlier, the petitioner herein was prevented by the respondents from carrying on construction work at the site in question in a most illegal and high-handed manner and this Court also could not decide this writ petition for a considerable period as a result whereof the petitioner could not complete the construction during the validity period of the sanctioned building plan in question.

34. For the aforementioned reasons, it cannot be said that the petitioner was in any way responsible for not constructing the building in question during the validity period of the building plan.

35. Since this Court could not decide the writ petition earlier, petitioner herein cannot suffer for the same and this Court being the Court of Equity is entitled to issue appropriate directions upon the concerned respondents including the Municipal authorities to provide adequate justice to the petitioner and in doing so, appropriate directions should also be issued upon the authorities of the Municipality to ignore minor defects and/or deficiencies in the construction, if there be any.

36. This writ petition was filed by the petitioner on 14th of November, 1984 and the validity of the sanctioned building plan expired on 5th of August, 1985 i.e. during the pendency of this writ petition. Accordingly, the remaining validity period of 10 months, which expired during the pendency of this proceeding, should now be granted to the petitioner so that the petitioner can complete his building on the basis of the building plan sanctioned earlier by the Municipality.

37. The respondent authorities, particularly the authorities of the North Dum Dum Municipality, are therefore, directed to allow the petitioner to construct his building as per the sanctioned building plan being Plan No. 284 of 1981 and subsequently renewed on 6th of August, 1983 without raising any objection and if necessary, by regularising minor defects and/or deviations in accordance with law. The municipal authorities are also directed to allow further 10 months time to the petitioner to complete the aforesaid construction in terms of the aforesaid sanctioned building plan No. 284 and the petitioner shall complete the construction of his building according to the aforesaid building plan No. 284 within 15th of November, 2004 positively.

38. In view of the aforesaid directions, this Writ Petition stands allowed.

39. Considering the conduct of the authorities of the respondent Municipality, I direct the respondent No. 2 to pay costs of this proceedings assessed at 1000 G.Ms, to the petitioner within four weeks from date.

40. Urgent xerox certified copy of this judgment may be handed over to the learned Advocates for the parties, if applied for.

S.K.P.