
(2012) 02 CAL CK 0034

In the Calcutta High Court

Case No : F.M.A. No. 1194 of 2009 with M.A.T. No. 558 of 2009

Sital Chandra Bodhak

APPELLANT

Vs

Howrah Municipal Corporation and Others

RESPONDENT

Date of Decision : 28-02-2012

Acts Referred:

Calcutta Municipal Corporation Act, 1980 — Section 414

Howrah Municipal Corporation Act, 1980 — Section 171, 177, 177(1), 178, 22

Citation : (2012) 2 CALLT 318 : (2012) 5 CHN 146

Hon'ble Judges : Kalyan Jyoti Sengupta, J; Joymalya Bagchi, J

Bench : Division Bench

Advocate : Subrata Bose, Ms. Nabanita Pal and Mr. Sandipto Bose, for the Appellant; Ashok De and Mr. H.S. Chakrabarty the Respondent Nos. 5-23, Mr. D.P. Mukherjee, Ms. Smriti Kana Mukherjee, Debjit Mukherjee and Mr. Bhagbat Chaudhuri, for the Respondent

Judgement

K.J. Sengupta, J.—Both the appeals have been directed against one and common judgment and order of the learned single Judge dated 24th February 2009 by which two writ petitions being No, 28375 (W) of 2006 and WP No. 4011 (W) of 2007 had been disposed of. The first mentioned writ petition was filed by the appellant herein while the second mentioned writ petition was filed by the respondent Nos.5 to 23 herein. The learned trial Judge by the said impugned judgment and order however did not grant desired relief to the appellant, while the above respondents have been granted relief to a great extent. It appears from records both the appeals have chequered history and without narrating the same it would be difficult to appreciate the problem posed before this Court. One M/s. Sridhar Housing and Consultant, a partnership firm, consisting of one Dibyendu Roy and one Subhendu Roy purchased a plot of land being Premises No. 20/3 Benaras Road, Salkia, Howrah - 6 (hereinafter referred to as the said premises) and thereafter got sanction to a Plan for erecting building on 27th December, 2001. The appellant is the owner of Premises No. 20/1 Benaras Road, Salkia, Howrah 6 which is on the same road. However the appellant's premises

cannot be said to be an adjacent to the said premises for which building plan had been obtained. After obtaining sanction the said firm started construction of the building. The appellant had been running a factory, and complained to the Corporation that the said Partners, Dibyendu and Subhendu had been making unauthorized construction. Having found no response to his complaint he approached this Court by filing a writ petition being. W P No. 9603 (W) of 2002 which was disposed of by an order dated 16th July 2002 directing the Chief Architect of the Corporation to look into the matter. Pursuant to the said notice, the appropriate officials of the Building Department of the Howrah Municipal Corporation (hereinafter in short HMC) took steps and initiated demolition proceedings. Accordingly a show cause notice was issued as to why the unauthorized construction should not be demolished. Ultimately demolition order was passed on 3rd October 2002. Feeling aggrieved, Dibyendu and Subhendu moved this Court by filing a Writ Petition being No. 17632(W) of 2002 which was allowed by an order dated 15th July 2003 by which the show cause notice dated July 30th 2002 and the demolition order dated 3rd October 2002 were quashed. By this order HMC however was given liberty to proceed afresh in accordance with law. HMC being aggrieved by the said order of learned single Judge dated 15th July, 2003 preferred appeal and by an order dated 30th September 2004 on an application filed in the said appeal the Division Bench of this Court was pleased to stay operation of the order dated 15th July 2003 and at the same time HMC was restrained from demolishing the structure. Dibyendu and Subhendu were permitted to approach the Corporation for two purposes to seek regularization of the deviation and prepare a complete plan of demolition of the unauthorized construction which is not permissible to retain. The relevant portion of the order dated 15th July 2003 is as follows:-

"The Corporation shall, before granting permission to the writ petitioners-respondents to retain the deviated portion, come to a specific finding that by the Act or Rules framed thereunder, it has power to do what the writ petitioners-respondents are seeking. Before any decision is taken to give permission to the writ petitioners-respondents to retain the deviated portion, a hearing should be given to the respondent No. 2 by the appropriate authority of the Corporation. To make it clear that we have not been able to locate any power of the Corporation to permit retention of a construction not permissible by the acts or the rules framed thereunder. But since we are not deciding the appeal we have not concluded the matter and, accordingly leave to the Corporation to locate such power within the act or the rules framed thereunder".

2. In terms of the order the Commissioner of the HMC heard Subhendu who represented the firm and the appellants on whose complaint the demolition proceeding had been initiated, and others, and then passed an order dated 22nd November 2004. The appellant being aggrieved by the said order filed a writ petition being the first one. During pendency of the first writ petition the appeal preferred by the HMC as above came up for final hearing on August 7, 2006 and the same was dismissed observing that in view of the decision of the

Commissioner dated 22nd November, 2004 it had lost its utility.

3. Thereafter the appellant filed a writ being No. 28375 (W) of 2006 seeking mandamus commanding the HMC and its official to demolish unauthorized construction and to expunge the adverse observations made in the order of Commissioner dated 22nd November, 2004 wherein it was said that the appellant cannot be said to be an aggrieved person. Thereafter 19 petitioners who are said to be owners and/or occupants of number of flats in the said building filed second mentioned writ petition being W.P. No. 4011(W) of 2007. By the said writ petition they also challenged the order dated 22nd November, 2004 passed by the Commissioner. After hearing both the writ petitions the learned trial Judge set aside the decision of the Commissioner dated 22nd November 2004 and directed the Commissioner to give a fresh hearing in the demolition proceeding to the writ petitioners in the second mentioned writ petition. The learned trial Judge kept all points open for decision of the Commissioner. Before the Writ Court the point of regularization did arise and this point was also kept open. It appears that after admission of the appeal the Commissioner in terms of the order of the learned trial Judge decided the matter afresh and observed construction made in, deviation to the plan as sanctioned was decided to be regularized on payment of fine. At this stage the appeal came up for hearing before us.

4. Mr. Subroto Bose learned senior Advocate appearing for the appellant in first mentioned appeal contends admittedly the construction has been made in deviation of sanctioned plan at the said premises. All parties including the HMC admit this position. His contention is that section 177 of the Howrah Municipal Corporation Act (hereinafter referred to as the said Act) deals with illegal construction and the same does not envisage any differentiation between major and minor deviations. Though the word "may" is inserted in the section, a complete reading of the provision makes it mandatory. The section does not provide any provision for regularization of illegal construction being done. The Commissioner has no power. According to him violation of sanction plan in this case is totally absolute, serious and not minor in nature. Hence the same is liable to be demolished. He referring to the Supreme Court decisions reported in (2010) 2 SCC 27 [Priyanka Estate International Private Limited and Ors. v. State of Assam and Ors.], Rajib Kumar Paul and Another Vs. Gurudas Mitra and Others, and V.M. Kurian Vs. State of Kerala and Others, and also of this Court reported in (1982) 1 CLJ 409 (Ram Awatar Agarwala Ors. v. Corporation of Calcutta & Ors.) submits that where construction made illegally and in violation of Rules are liable to be demolished without any second thought. He contends that legal effect is the same in case of violation of Building Rule or sanctioned plan whether the same takes place within or outside the building. There has been further violation in this case as no completion certificate was obtained u/s 178 of the said Act.

5. He further contends that the liability of illegal construction is only with the promoter who did it, u/s 177 of the said Act, not with the alleged purchasers who have no locus standi to complain. They have purchased the flats with all risks

and they cannot be said to be bona fide purchasers for value without notice as no case is made out that they carried out any search or inspection nor they made any enquiry as to legality and validity of the construction of the building. Thus apart from the civil liability, the criminal liability also comes to the fore u/s 22 of the said Act read with Schedule "U" of the HMC Act and this criminal liability cannot be shifted to purchasers, However. these purchasers came much later when the demolition order was passed and the matter was pending, as such they have no right of hearing.

6. He submits that the order was passed by this Court in the writ petition of the appellant hence question of locus of his client at this stage did not and could not arise. In support of this contention he has referred to Supreme Court decisions reported in (2010)2 SCC 27 and (2001)4 SCC 415. On the question of maintainability of the appeal he contends that in view of the order dated 11th August 2009 passed by the Hon'ble Division Bench admitting impliedly, held present appeals are maintainable and are not infructuous.

7. The learned trial Judge should have examined that the subsequent order dated 17th June 2009 is illegal and mala fide passed knowing well the appeal is pending and further modifying the order dated 11th June 2009. He submits that the subsequent order of the Commissioner dated 17th June 2009 will loose its force.

8. Srimati Smriti Kana Mukherjee learned Advocate appearing for the HMC contends that this appeal has become infructuous as pursuant to the order of the leaned single Judge HMC after giving opportunity of hearing to both the parties disposed of the matters on 17th June 2009. The appellant has not challenged the said decision of the Commissioner. The said decision has given effect to as the penalty has been imposed and that has been paid. If the appellant is aggrieved otherwise they should bring fresh action as the decision of the Commissioner gives rise to fresh cause of action. Moreover, the decision of the learned single Judge does not affect the appellants as the learned trial Judge has not decided any issue but sent the matter back to the Commissioner of HMC for taking decision.

9. She further submits that Commissioner took the decision considering the records and the documents submitted before him, that unauthorized construction that has been made by the respondent is not of a great magnitude. Moreover the constructions have been made between the boundaries of the said premises and it has not been extended to the land of the respondent or it has infringed the municipal road nor does it affect the drainage or sewer system of the Corporation. According to him the violation of the sanction plan does not affect the sanitation and the ventilation of the neighbouring building. The appellant who is running a factory more or less 70 feet away from the said premises cannot be said to be an affected person if the unauthorized part of the premises is retained. While regularizing the matter the Commissioner has taken into consideration the fact that if unauthorized part of the building is demolished it will affect the

structural stability of the entire building and will adversely affect the seismic lay out of the building. The same will not only endanger life and property of the flat owners but also cause insecurity for the neighbouring building. The Commissioner further states that Municipal Corporation while deciding the issue exercising power u/s 177(1) of the said Act has permitted the flat owners to retain unauthorized construction upon payment of penalty. Such course of action according to her is permissible under the law as it will appear from judgment of this Court reported in Purusottam Lalji and Others Vs. Ratan Lal Agarwalla and Others, and also that of the Supreme Court reported in Municipal Corporation, Ludhiana Vs. Inderjit Singh and Another, . When the provision of the statute provides for discretionary power it can be done with specific reasons and objectively and the same has been done in this case.

10. Mr. Ashok Kumar De learned senior Advocate appearing for the respondent Nos.5 to 23 submits that the present appeal has become infructuous as fresh decision of the Commissioner dated 17th June 2009 pursuant to the order of the learned trial Judge has not been challenged.

11. He submits that the Commissioner in exercise of power has regularized the offending part of the structure u/s 177 of the said Act which empowers him to do so. Even if section 177 of the said Act does not envisage any power then such power is incidental power of the Corporation. This proposition of law can be found in a decision of the Supreme Court reported in Khargram Panchayat Samiti and Another Vs. State of West Bengal and Others,

12. Moreover he contends with reference to a decision of this Court reported in AIR 1972 Cal. 459 that the power of demolition is not a matter of course, rather it is always matter of discretion, as the discretion has to be exercised on the facts and circumstances of each case and this legal principle could be found in various other decisions of the Apex Court and also of this Court. According to him in the decisions of the Supreme Court reported i Muni Suvrat-Swami Jain S.M.P. Sangh Vs. Arun Nathuram Gaikwad and Others, AIR 1989 SC 860 Municipal Corporation, Ludhiana Vs. Inderjit Singh and Another, , the Municipal Body before passing order of demolition must consider what is the nature of the Construction and whether deviation from the plan is minor in nature and further the same does offend air, road, light power and does not create any public inconvenience. When it has been found that the construction is not dangerous in nature in such a situation construction can be regularized. The appellant is not directly affected at all as he is having a small factory at 70 ft. away from the building since no legal right of the appellant has been affected. The instant case has no merit and it deserves dismissal.

13. After hearing the learned counsel for the parties and after going through the pleadings placed in the paper books in this appeal following questions have arisen for rendering decision:

(i) Whether the appeal has become infructuous as the impugned judgment and

order of the learned trial Judge has been implemented by the H.M.C.?

(ii) Whether at this stage the H.M.C. authority and the private respondents can question locus of the appellant?

(iii) Whether the learned trial Judge can set aside the order of demolition passed by the Commissioner dated 22nd November 2004 pursuant to the direction given by the Division Bench of this Court dated 30th September 2004 at the instance of the purchasers/writ petitioners?

14. While deciding the first point we need to consider the order dated 11th August 2009 by which the present appeal was admitted. The relevant portion of the order reads as follows:

"Considering the questions involved the appeal is admitted. All questions raised by Mr.Dey including the question of maintainability of the appeal are kept open.

The appellant is permitted to prepare and file requisite number of informal paper books, out of Court, within a week after reopening of the Court after the Puja Vacation.

Since respondent Nos. 1 to 15 and 20 to 23 have already entered appearance, service of notice of appeal and all other formalities be dispensed with."

On reading of the said order it is plain that the respondent herein cannot resist the appellant to press the appeal. This question would have been appropriate had the appellant accepted the impugned judgment and order either by acquiescence or otherwise.

15. It appears that since beginning the appellant has been contesting the matter and indeed the appellant was not aware of the order passed by H.M.C. pursuant to order of the learned Single Judge. That apart when the Court has condoned the delay and decided to hear out the appeal obviously the order of the learned Single Judge becomes subject of the scrutiny of the appeal Court. For the forgoing reasons we hold that the appeal is maintainable and requires to be decided on merit on the basis of the argument advanced by the parties. Moreover if it is found that the judgment and order of the learned trial Judge is not sustainable, obviously subsequent action taken pursuant to the learned Trial Judge's order will obviously be set at naught as an incidental measure to be taken by the appeal Court. Now we proceed to examine the legality and validity of the order of the learned trial Judge. We feel that the learned Trial Judge has passed the order of its own and remanded, not at the instance of any of the parties.

16. This will appear from the recording of the learned trial Judge which we set out as follows:

The next question that requires decision is whether the petitioners in W. P. No.4011 (W) of 2007 are entitled to show that the decision of the Commissioner dated November 22, 2004 is liable to be set aside on the ground that no

opportunity of hearing was given to them.

17. I have no doubt that on this ground they are not entitled to question the decision. Dibyendu and Subhendu both were represented before the Commissioner by Subhendu who was duly heard. At that time interests of the persons who purchased the flats were looked after by Dibyendu and Subhendu, the erstwhile owners of the properties. The persons purchasing the flats could be substituted in the proceedings before the Commissioner. But the question did not assume significance since perhaps only some of the today's flat owners purchased the flats by the time the Commissioner gave the final decision dated November 22, 2004. The persons who purchased the flats after this date could not be substituted for Dibyendu and Subhendu, and hence the argument that they were entitled to get an opportunity of hearing before the Commissioner is fallacious. I am therefore of the view that the persons taking out W.P. No.4011 (W) of 2007 are entitled to say that since the Commissioner did not give them an opportunity of hearing the impugned decision is bad in law."

18. There has been no cross objection nor cross appeal, even there has been no argument advanced challenging the aforesaid findings of the learned Trial Judge. In our considered view the learned Trial Judge himself has decided the locus of the writ petitioner/respondent to challenge the decision of the Commissioner dated November 22, 2004 as the said firm was made party/ respondent in the purchasers' writ petitions, notwithstanding that they did not come forward to challenge the said order of the Commissioner dated 22nd November, 2004. After holding, as aforesaid, we are surprised to note as to why the learned trial Judge proceeded to decide the question of legality and validity of the order of demolition passed by the Commissioner. The appellant before us certainly did not raise the question of legality and validity of the order of demolition, but questioned observation of the Commissioner regarding locus standi and/or affectation of right of the appellants in the matter of demolition of the said building.

19. We are, therefore; of the view that the learned trial Judge should not have set aside the order of the Commissioner which was passed pursuant to the direction of the Division Bench judgment and order of this Court. As a matter of fact before the learned single Judge the said partners did not speak anything about order of demolition.

20. According to us the learned Trial Judge has really upset findings of the Division Bench reached earlier and also the reasoning contained therein. We appropriately quote the relevant portion of the Division Bench judgment and order dated 30th September 2004.

"In the instant case, prima facie we are of the view that construction has been made in excess of human error and, accordingly, such portion of the excess construction is liable to be demolished."

After observing as above the Division Bench in the same order passed the

following orders:

21.

"In such view of the matter, we stay operation of the judgment and order appealed against. But at the same time we request the Corporation not to demolish the structure, in question, until expiry of the month of November 2004. We permit the writ petitioners /respondents to approach the Corporation for two purposes, namely (i) to seek regularization of the deviations and (ii) to prepare a complete plan of demolition of the unauthorized construction which is not permissible to retain."

22. It seems to us the mind of the earlier Division Bench was that the portion which is within the human error area may be considered for regularization and the portion which is beyond the human error area cannot be regularized. Their Lordships in the earlier portion of the judgment and order held that construction which has been made in excess of human error the same is liable to be demolished.

23. Then again Their Lordships were conscious of the power and position of HMC Authority. Accordingly it was directed that before granting permission to the writ petitioners to retain the deviated portion, to come to a specific finding that under the Act or Rules framed thereunder it had power to do what the writ petitioners/respondents were seeking.

24. Therefore, we fail to comprehend on reading the Division Bench judgment as above whether there is any scope for regularization at all of any construction which was beyond the scope of regularization, even assuming HMC was having such power.

25. Thence the Commissioner heard the matter and after considering everything decided to demolish and we feel that the Commissioner had no option but to pass such order in view of express observation of the Division Bench at the interlocutory stage. The Division Bench Judgment and order thereafter has been accepted finally by the Hon''ble appeal Court having recorded that appeal has become infructuous because of the earlier interim order of the Division Bench having been accepted and order having been acted upon, the learned trial Judge in our view could not have passed the impugned order having effect of circumventing observation and the findings of the Division Bench. In other words the learned Trial Judge negated the effect of the Division Bench Order by setting aside the order of the Commissioner dated 22nd November 2004.

26. The learned Counsels have cited various decisions on this subject. We feel those decisions are wholly inappropriate in this case as the final decision had already been arrived at by the Division Bench judgment and order as recorded earlier at the interim stage and having been confirmed impliedly at the final hearing of this case.

27. In any view of the matter the learned Advocate for the respondent/

corporation failed to show that there has been any provision under the Acts or the Rules that HMC has power to regularize. It is contended, that provision of section 171 of the said Act that the word "may" make it discretionary hinting that the order of demolition may or may not be passed. We are unable to accept this contention in view of the consistent pronouncement of the Supreme Court as correctly and appropriately cited by Mr. Basu, which is recorded in seriatim as follows:-

28. In the case of Priyanka Estate International Pvt. Ltd. & Ors. v. State of Assam & Ors. reported in (2010)2 SCC 27 while considering almost similar and identical provision of power of demolition of the concerned Development Act the Supreme Court held that the construction made in deviation of the sanction plan cannot be allowed to be retained and therein order of demolition was approved by the Supreme Court. In that case even the purchasers were not allowed to put up any defence or case against the illegal construction in deviation to the sanctioned building plan and violation of building rules. In the case of Rajib Kumar Paul and Another Vs. Gurudas Mitra and Others, , the Supreme Court did not accept the suggestion of regularizing any construction contrary to and in deviation of building plan or in violation of the Building Rules. Again in case of V.M. Kurian Vs. State of Kerala and Others, the Supreme Court disapproved the recommendation of the State Government for regularization contrary to Building Rules in absence of the recommendation of the Chief town Planner. In paragraph 11 of the said report the Supreme Court has observed that:

".....This shows that the Rules which are mandatory in nature and are required to be complied with for construction of a high-rise building, were allowed to be dispensed with. This shows that the Rules which are mandatory in nature and cannot be dispensed with especially in the case of a high-rise building. The position may be different in the case of one or two-storied building where there are minor deviations from the Rules, which do not affect the public safety and convenience. In the present case, we find that the deviations are of high magnitude, which are contrary to public safety and convenience. We are, therefore, of the view that the order passed by the State Government exempting the provisions of the Rules for constructing an eight-storied building was contrary to the mandatory provisions of the Rules and therefore, is not sustainable in law."

29. We find that a Division Bench of our Court in case of Ram Awatar Agarwala and Ors. v. Corporation of Calcutta [(1982)1 CLJ 409] had made observation in this regard while considering the relevant provision of section 414 of the Kolkata Municipal Corporation Act that the occupants and flat owners are not the persons responsible for construction as mentioned therein and they are not entitled to participate in the demolition proceedings. In the case on hand the respondents Nos.5-23 Sukumar Dey and Ors are not the persons responsible for which they are entitled to participate in the demolition proceeding. Moreover, we noticed that these persons have come forward much later asserting their ownership today without mentioning appropriate and legal document, not to speak of

furnishing the same in relation to their purchase. We, therefore, fail to understand on what basis the learned trial Judge interfered with the order of the Commissioner by the impugned judgment and order. The authority cited by Mr. Dey in support of his clients' cause of action namely *Rajatha Enterprises Vs. S.K. Sharma and Others*, *Muni Suvrat-Swami Jain S.M.P. Sangh Vs. Arun Nathuram Gaikwad and Others*, *Municipal Corporation, Ludhiana Vs. Inderjit Singh and Another*, and also *Khargram Panchayat Samiti and Another Vs. State of West Bengal and Others*, are of no assistance, firstly, in view of the Division Bench's finding and order that aforesaid portion are unauthorized and required to be demolished. The decision reported in *Khargram Panchayat Samiti and Another Vs. State of West Bengal and Others*, was rendered in relation to the power of Panchayat Body. It was held clearly therein that when the Panchayat Body has power to run a hat it has power to pass incidental in relation to running of the same. Therefore, in that case it was clearly found by Supreme Court the Panchayat shall have no power to do or not to do something unless authorized by the law. Mr. Dey has not been able to show that HMC has any power of regularization of unauthorized construction under the Act or Rule. In the decision was rendered in the case of *Bombay Municipal Corporation* reported in *Muni Suvrat-Swami Jain S.M.P. Sangh Vs. Arun Nathuram Gaikwad and Others*, while considering power u/s 351 of the *Bombay Municipal Corporation Act, 1988*, it was found by the Supreme Court under the said section the Commissioner has ample power unlike relevant provision of the *Howrah Municipal Corporation Act*. Similar was the case came before Supreme Court in respect of the *Punjab Municipal Corporation Act* reported in *Municipal Corporation, Ludhiana Vs. Inderjit Singh and Another*, where it was found that the said Act provides for power to regularize illegal construction. As far as the decision of this Court reported in *Purusottam Lalji and Others Vs. Ratan Lal Agarwalla and Others*, is concerned it is an authority to conclude that in absence of any express power the Municipality had got inherent power to regularize. The decision of Division Bench of this Court reported in (2011)3 CHN Cal. 320 in our view is not a precedent at all as nothing decided on the issue involved herein.

30. Lastly it has been contended that the resolution has been taken by the HMC to impose fine for illegal construction. In our view the power to impose fine is an additional power over and above the power to pass order for demolition under the aforesaid section. Therefore, realization of the amount of penalty for illegal construction cannot have any weightage for legal sanction to retain the offending structure of any building. Under those circumstances we are unable to sustain the judgment of the learned trial Judge, we therefore, set aside the same. Order passed pursuant to the said impugned judgment and order is also set aside. We are not oblivious of the fact that carrying out of demolition in this case would be a difficult one. In this case may be large number of owners and occupants would be affected. We think that affectation of individual or group of individuals must yield to the provision of law which has been made for collective interest of the society. As far locus standi of the appellant is concerned we think this point

should not be agitated as it is presently hit by the principle of constructive res judicata, since the writ petition was entertained by this Court and at the threshold this point could have been raised. Even in the second round of writ petition before the learned Trial Judge it ought to have been raised. In any view of the matter we think that any person whether he is a neighbouring owner or occupier or not is having locus to question the legality and validity of construction of building for which necessary sanction is required, if within his area such building is constructed. In this case the appellant is also user of the common pathway. Therefore, any owner of any holding having interest in the pathway or any other interest namely air, light, etc. can question even though he is not directly affected.

31. We, therefore, allow this appeal and uphold the order of demolition passed by the commissioner.

32. We direct the Corporation authority to complete demolition proceedings in accordance with the law within a period of three months from the date of communication of this order. After this demolition proceedings if any of the respondents Nos. 5-23 feels affected he (they) would be entitled to recover the compensation for damages from the said partnership firm who appears to have allowed to occupy illegal and offending portion of the building without even obtaining completion certificate which is a mandatory one. After demolition is completed fresh construction may be made in accordance with the Building Rules and sanction plan, in that case Corporation authority may renew the sanctioned building plan to enable the present owners of the flat to complete construction. It has become common occurrence that promoters are constructing the building in deviation to the sanctioned building plan and then selling flats to gullible middle class people who are the worst sufferers, as they do not have any knowledge or little knowledge of Municipal Law, and are under compelling circumstances purchasing the flats. Ultimately when it is found that these constructions are illegal they become the worst victim. We think that Corporation authority will take preventive measures so that, in future, the promoter cannot resort to this kind of mischievous design. For this purpose following measures may be considered by the Municipal Corporation as check and preventive measure:-

(i) No laying out of construction of building should be allowed to be undertaken without informing the Engineer of the Building Department and under whose presence the foundation must be started and who must certify that such foundation of the building has been made in accordance with the building Rules.

(ii) At each and every stage of the construction right from the stage of ground floor level till completion, the building department whether any complaint is received or not must examine, satisfy itself whether there is any deviation from the sanction which has been granted.

(iii) If for any reason the Municipal Engineers are not readily available, for above purpose, the promoters or builders or the persons who are responsible for

construction must get a certificate of any engineer whose name has been enrolled in the Municipal Body as approved planer. Such engineer who after having examined the same verify the construction from foundation level and certify the same. Without the same no construction should be allowed by the Corporation henceforth.

(iv) Mandate shall be given by the HMC to all the promoters/ builders to disclose the building plan to the intending buyer if it is proposed to be sold.

Thus the appeal is disposed of with the aforesaid direction and orders without any order as to costs.