

(2013) 06 CAL CK 0031

In the Calcutta High Court

Case No : Writ Petition No. 12080 (W) of 2009

Soumendra Nath Sen

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 28-06-2013

Acts Referred:

Citation : (2014) 1 CHN 360

Hon'ble Judges : Sambuddha Chakrabarti, J

Bench : Single Bench

Advocate : Samir Kumar Dutta, for the Appellant; Alope Kumar Ghosh, Advocate and Mr. Swapan Kumar Debnath, Advocate for Respondents Nos. 3 to 5, for the Respondent

Judgement

Sambuddha Chakrabarti, J.—By the present writ petition the petitioner prays for a writ in the nature of Mandamus commanding the respondents nos. 2 to 5 to renew the sanctioned plan in question, and for other reliefs. The case of the petitioner in short is that he is the absolute owner of the premises at 30A, Kalighat Road, Kolkata-700 025 after purchasing the same through a registered deed of sale on October 6, 1978. He applied to the concerned department of the Kolkata Municipal Corporation ("the Corporation", for short) for sanction of the building plan on the said premises and the building plan was sanctioned on December 5, 1981.

2. According to the petitioner he could not start the work of construction as there was a litigation over the property and the court had passed an order of injunction restraining the petitioner from demolishing the structure over the land in question. Subsequently, in June 1986 the court allowed the petitioner to carry on the work of demolition on the northern side of the premises and he started the construction work and informed the City Architect of the Corporation by a letter dated April 28, 1987.

3. The sanctioned plan was renewed by the Corporation for a period of five years with effect from December 5, 1986 for which no fee was required to be paid. The

Constituted Attorney of the petitioner wrote a letter dated December 4, 1991 to the City Architect of the Corporation wherein he had mentioned that in view of the ejectment suit filed by the petitioner against the tenants it was not possible for him to proceed with the work of construction and that the original sanctioned plan was in the custody of the court.

4. The litigation ultimately ended on November 15, 2006 and the petitioner obtained a certified copy of the said order in January 2007 and it had taken months to get back the original sanctioned plan from the court where it was deposited.

5. By a letter dated June 5, 2007 the petitioner's Constituted Attorney requested the Director General (Building) of the Corporation to take necessary steps for further renewal of the plan so that the remaining construction of the building could be completed. On July 2, 2008 the petitioner received a communication from the Executive Engineer, Borough VIII of the Corporation whereby the petitioner was asked to deposit Rs. 8,13,477/- as the Revalidation Fees within 15 days from the date of the receipt of the notice. The Constituted Attorney made a communication dated July 16, 2008 to the Mayor-in-Council (Building) of the Corporation reiterating the court's order and the pendency of the litigation which prevented him from carrying on the construction work and that the matter now only involved formal renewal of the building plan and as such the question of payment of Revalidation Fees was not applicable to the petitioners.

6. This was followed by another letter from the Corporation whereby the petitioner was informed that his appeal for waiving the Revalidation Fees had not been considered. The petitioner had thereafter through his learned Advocate sent a notice demanding justice on April 4, 2009 addressed to different authorities of the Corporation. Since no action was taken by the concerned Municipal authorities for the extension of time of the building plan the petitioner filed the present writ petition with the prayers as mentioned earlier.

7. The respondents nos. 3, 4 and 5 have filed an affidavit-in-opposition denying the allegations of the petitioner. Referring to the various orders of the civil court the respondents contended that the petitioner had obtained the sanction of the building plan at his own risk and peril inasmuch as a portion of the existing structure at the premises in question was in occupation of the tenant. He cannot attribute any fault on the respondents authorities for his failure to commence the work of construction and the Corporation and its authorities were not concerned about any litigation between the petitioner and the tenant. The building plan originally sanctioned on December 5, 1981 stood lapsed on December 4, 1986 and this plan was renewed for a period of five years with effect from December 5, 1986. Thus the sanctioned building plan remained valid till December 4, 1991. According to the answering respondents that the total validity period of the building plan under the law is for a period of 10 years from the initial date of sanction and there is no scope under the law to extend the validity of any sanctioned plan beyond 10 years from the date of initial sanction. The

respondents have taken a stand that if the petitioner after obtaining the sanctioned plan fails to carry on the construction work within the said period for any reason whatsoever he cannot claim any benefit for extending the life of the said building plan beyond the statutory period. They have denied that the petitioner faced a situation beyond his control to continue with the construction. According to them the petitioner knew it well that there was a tenant in a portion of the existing structure and the tenancy was not affected with the sanction of the building plan as per the proposal. They have referred to the two title suits filed by the petitioner as well as his tenants and have said that the petitioner knew it well that litigation might arise in course of execution of the sanctioned plan by way of making construction in terms thereof. In spite of such situation the petitioner proceeded to obtain the sanctioned plan with a view to obtaining the benefits then prevailing.

8. The respondents have repeated their stand that the petitioner had obtained the sanctioned plan on December 5, 1981 in spite of the knowledge that he would not be able to proceed with the construction work on the basis thereof. There was no reason to obtain this plan in December 1981 when it had taken 15 years to get the premises free from encumbrances to go ahead with the work of construction and in the meantime the statutory period of validity provided for sanctioned building plan had already expired. The respondents have maintained their stand that law does not provide for a further renewal of the sanctioned plan beyond 10 years. The Corporation had, therefore, took a sympathetic view and decided to revalidate the old plan subject to payment of the charges at the present rate.

9. The respondents have denied the contention of the petitioner that the renewal of the sanction of the building plan is a formal one. The appropriate authority of the Corporation did not agree to waive the Revalidation Fees. The petitioner had already enjoyed the benefit of the maximum period of the life of a sanctioned building plan and the revalidation of the existing building plan is as good as issuing a fresh sanctioned plan from the current date onwards with the benefit of the law and the rules as existing on the initial date of sanction subject to the payment of the requisite charges.

10. Another stand as taken by the respondents is that obtaining the sanctioned plan for new construction does not mean eviction of the existing tenant. It ought to have been within the knowledge of the petitioner that the tenants might approached a civil court for the protection of their rights. The petitioner is not entitled to any relief as asked for and the application might be dismissed.

11. The petitioner has used an affidavit-in-reply to the said affidavit-in-opposition largely reiterating his stand in the writ petition. The petitioner has repeated that it was for the order of injunction passed by the civil court he was unable to carry on with the work of construction and/or demolition over the concerned premises. Therefore, the question of limitation for the extension of validity of the sanctioned plan after 10 years is not applicable to the facts of the case. He was

prevented by the order of the civil court and he is now under a legal obligation to pray for extension of the period of validity of the sanctioned plan in question which is merely a formal one. The petitioner states that since he was enjoined from carrying on any nature of work it is settled law that anybody carrying out any work in spite of the order of injunction would commit a violation of the order. The petitioner has stated that the litigation started immediately after the building plan was sanctioned on December 5, 1981. He has alleged the existence of a legal right for the extension of the validity period of the sanctioned plan as he has never on fault for the non-completion of such construction work within the stipulated period. The calculation of the Revalidation Fees had no basis. The petitioner has prayed for allowing the writ petition.

12. Thus the main question that falls for consideration is whether the petitioner is entitled to ask for a further renewal of the sanctioned plan or that the action of the respondents in asking him to pay the fees for revalidation of the building plan is a correct one. That the petitioner was enjoined by a court of law from carrying on the work of construction has not been disputed by the respondents. The petitioner states that the interim order was vacated only in the year 2006 when the appellant decided to withdraw the appeal.

13. The respondents have taken a rather unusual stand. According to them the petitioner ought not to have obtained the sanctioned plan when he knew that he was facing a litigation in a court of law. According to them the petitioner cannot blame the municipal authorities who were not concerned with the litigation and as such if the building plan in the midst of the litigation had expired it is for the petitioner to blame himself and the Corporation cannot extend the time beyond the statutory limits.

14. This stand taken by the respondents ignores the fact that a court's order had enjoined the petitioner from carrying on with any work of construction. If the petitioner had violated the order of the civil court he might have been hauled up for violating the order of injunction.

15. That apart it cannot also be said that the petitioner should not have obtained a sanctioned plan apprehending a litigation against him. But the petitioner wanted to demolish the old structure on the premises and erected a new one. He had also filed a suit for eviction of the tenant on the ground of reasonable requirement. A certified copy of the sanctioned plan might well have been the requirement in a court of law where it was lying in custody. Thus it cannot be said that the petitioner had obtained a certified copy and then did nothing and at last came up with a prayer for further extension of the sanctioned plan. The petitioner being the plaintiff in a suit for eviction on the ground of reasonable requirement is not expected to cause unnecessary delay in the carriage of proceedings. Thus the delay, if any, cannot be at the instance of the petitioner.

16. When a man is without any remedy because of a court's order the rules must have to come to his aid. Thus the petitioner was prevented by reasons not

within his control from executing the construction work. For him unnecessary buying time would have been a luxury and it was expected that he would make the construction the moment he got the green signal for the same. It may be mentioned that in the year 1987 whenever the interim order was vacated or he was allowed to execute the work he intimated the appropriate respondent and started constructing the work. Thus even if there was some delay for that the petitioner cannot be blamed.

17. It is not a settled principle of law that rules are handmaid of justice. They exist for men and the rule cited by the respondents must not be read as too rigid so that the real beneficiaries of the same cannot take any advantage out of it.

18. I find sufficient force in the submission of the learned advocate for the petitioner. The petitioner has been able to make out a case for the extension of time for the renewal of their sanctioned plan. The respondents are directed to extend the time for the renewal of the sanctioned plan in respect of the concerned premises upon compliance of all formalities.

19. The writ petition is allowed.

20. There shall be no order as to costs. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all requisite formalities.