

(2015) 04 CAL CK 0048

In the Calcutta High Court

Case No : CC 93 of 2013, GA No. 1260 of 2014 and WP No. 243 of 2012

Standard Pharmaceuticals Ltd.

APPELLANT

Vs

Kolkata Municipal Corporation and Others

RESPONDENT

Date of Decision : 29-04-2015

Acts Referred:

Calcutta Municipal Corporation Act, 1980 — Section 11A, 2(5), 2(ha), 2hb, 342A

Citation : (2015) 04 CAL CK 0048

Hon'ble Judges : I.P. Mukerji, J

Bench : Single Bench

Advocate : Debal Banerjee, Abhrajit Mitra, Senior Advocates, S. Bose, S. Dutta, S. Majumdar, S. Chatterjee, S. Ghosh, A. Sinha and T. Lahiri, for the Appellant; Alok Kumar Ghosh and Saurav Chaudhury, Advocates for the Respondent

Final Decision : Dismissed

Judgement

I.P. Mukerji, J.

1. The petitioner was the owner of premises No. 67, Dr. Suresh Sarkar Road, Kolkata-700014. They wanted to develop this property. On 17th May, 2005 they got a building plan sanctioned by Kolkata Municipal Corporation. The sanction was for building four, four storied structures. The petitioner claims to have obtained a No Objection Certificate (NOC) from the fire department of the State on 20th July, 2004. These four storied buildings were completed on 2nd April, 2008. An occupancy certificate was also obtained from the respondent Corporation.

2. Each of the buildings consisted of flats/units. After completion of its construction all the flats were sold.

3. Thereafter, the petitioner proposed to build the fifth floor in each building. The building plan was duly sanctioned by the Corporation on 25th August, 2011. The petitioner claim to have obtained a no objection from the Fire and Emergency Services Department of the State Government.

4. On 3rd January, 2012 the Joint Secretary to the Government of West Bengal, Department of Fire and Emergency Services requested the Municipal Commissioner of the respondent Corporation to stop construction of the fifth storey. Construction could not commence till clearance was obtained from the Fire Safety Audit Committee. It appears that the Joint Secretary to the Government of West Bengal was acting on the instructions of the Fire Services Minister to whom an undated letter seems to have been addressed by the owners of "Greenshire Owners Apartment".

5. Promptly on 30th January, 2012 the Executive Engineer Building of the respondent Corporation wrote to the petitioner to forthwith stop construction of the fifth floor. He said he was acting on the orders of the Joint Secretary and the Commissioner. On 2nd March, 2012 the petitioner asked the Kolkata Municipal Corporation to withdraw the said letter. They did not do so.

6. A writ application was filed in this Court in WP No. 12283 (W) of 2012 (Sushanta Nayak and Others Vs. State of West Bengal and Others) which was disposed of on 27th June, 2012, by Mr. Justice Soumitra Pal by directing the petitioners therein to file a representation before the Municipal Commissioner who was directed to dispose of the same by giving a hearing to all interested parties. No construction was to be continued without taking the clearance of the Fire and Emergency Services Department. Meanwhile, this writ was filed for quashing of the decision in the letter dated 30th January, 2012. This Court in an application taken out in support of this writ (GA No. 1756 of 2012) on 6th August, 2013 directed strict compliance with the said order of Mr. Justice Soumitra Pal.

7. On 10th August, 2013 and 9th September, 2013 the Municipal Commissioner passed orders refusing to alter the decision taken in the letter of 30th January, 2012.

8. A contempt application was filed by the writ petitioner before me. In that application on 20th September, 2013 I noted that the order of the Municipal Commissioner dated 9th September, 2013 was only a token compliance of the order of this Court dated 6th August, 2013. The contempt application was kept pending to give the Commissioner a chance to purge himself of the contempt by passing a fresh order. Again on 31st October, 2013 the Commissioner passed an order recalling the order dated 9th September, 2013 and the order dated 10th August, 2013. The West Bengal Fire and Emergency Services Department was directed to inspect the premises and submit a report to him.

9. The fire department made an inspection of the premises on 17th January, 2014. A report was made on 6th February, 2014.

10. Observations in the inspection report are as follow:-

(a) The premises had four blocks of four floors each (G+4). Each was a residential building with a single stair case. Out of four blocks three were

adjoining one another the fourth was an independent block. There were 4 to 5 tenements in each floor of every block.

(b) The height of the existing building was 14.5 metres.

(c) The stair cases are non-communicable except at the terrace level of blocks B, C and D. There is a single escape route available to occupy each block.

(d) The height of the building after construction of G+ 5 storeys would be 17.45 metres.

(e) The building had no facility for "fire tender surrounding the building".

11. On the basis of the fire department's report on 20th February, 2014 the Municipal Commissioner passed an order, based on the said report that he had no option but to keep the sanctioned plan for the fifth floor dated 25th August, 2011 in abeyance unless the building or site could be made to the satisfaction of the West Bengal Fire and Emergency Department.

12. The final opinion was that the building could not be extended beyond G+4 floors.

13. In those circumstances the present application (GA 1260 of 2014) has been taken out in aid of the writ application to set aside the report dated 6th February, 2014 of the Fire Department and the final order dated 20th February, 2014 of the Municipal Commissioner. The petitioner be permitted to make construction strictly according to the sanctioned plan dated 25th August, 2011, according to its prayers.

14. It is quite plain that the only ground on which the sanctioned plan dated 25th August, 2011 has been kept in abeyance is that the same is not in conformity with the safety requirements that have to be met to protect occupants of the building on the outbreak of fire. To be more specific once the construction is made of G+5 stories and the height of the building increased by 3 metres to 17.45 metres, a second stair case within the building and connecting each and every floor is mandatory. Secondly, there is not enough space for a fire tender to surround the building.

15. Mr. Debal Kumar Banerjee, learned Senior Advocate for the petitioner submitted that the buildings were joined or could be joined with one another at the top. If each building had one stair case and their roofs joined, there would be effectively at least two stair cases. This could meet the fire safety requirements. Gardens and another space in front of the building could be cleared, so that enough space would be created for a fire tender to surround the building.

16. Now, let us have a look at the Kolkata Municipal Corporation Act, 1980 and the Kolkata Municipal Corporation Building Rules, 2009.

17. Mr. Arunava Ghosh and Mr. Pranab Kr. Dutta learned Senior Advocates showed me the definition of building. In Section 2(5) of the Act it is defined in

the following terms.

"2(5) "building" means a structure constructed for whatsoever purpose and of whatsoever materials and includes the foundation, plinth, walls, floors, roofs, chimneys, fixed platforms, verandas, balcony, cornice or projection or part of a building or anything affixed thereto or any wall (other than a boundary wall less than three metres in height) enclosing or intended to enclose any land, signs and outdoor display structures but does not include a tent, samiana or tarpaulin shelter;"

18. A single building is defined in rule 2(49) of the Kolkata Municipal Corporation Building Rules, 2009 as follows:-

"Single building" means a building having single block or multiple blocks connected at any level including basement level where mandatory open spaces are considered in respect of the tallest block."

19. Mr. Ghosh and Mr. P.K. Dutta, learned Sr. Advocates contended that to constitute a building there could not be any detachment of two blocks or parts of the building. A building had to be one structure. The definition of single building in rule 2(49) had to be understood accordingly.

20. The four building blocks were proposed to be connected by overhead gangways. Since the structure was not one it could not be taken as a single building, according to him. Hence the contention of Mr. Banerjee that these four blocks after being joined by gangways would be considered as a single building was not correct. Furthermore, each building could be said to have at least two stair cases was not correct as according to Mr. Ghosh each and every floor was to be connected by the second stair case.

21. Now, the most important rule for the purpose of this writ is rule 127 of the said rules. It is in the following terms.

"127. Minimum width provisions--The following provisions for minimum width shall be made:--

However, for residential building not having more than three tenements or 500 sq.m. per floor (whichever is less) one staircase of 1.50m. of width may be permitted upto a building height of 20 m. if in any case, the floor area or the number of tenements exceed the above value, the number of staircases should be increased as per the prescribed Table No. 8A."

22. Mr. Ghosh placed some clauses of the National Building Code. He relied upon 3.4.6.1 (F). It is set out herein below:

"Adequate passage way and clearances required for fire fighting vehicles to enter the premises shall be provided at the main entrance; the width of such entrance shall be not less than 4.5 m. If an arch or covered gate is constructed, it shall have a clear head-room of not less than 5 m."

23. He also relied upon 4.6.2 of the code relating to two stair cases. He also submitted that 4.11.10 prohibited use of spiral stair cases except in low occupant load or in a building not existing 9 metres in height. The said clauses are set out hereunder:

"4.6.2 All buildings, which are 15 m in height or above, and all building used as education, assembly, institutional, industrial, storage and hazardous occupancies and mixed occupancies with any of the aforesaid occupancies, having area more than 500 m on each floor shall have a minimum of two stair cases. They shall be of enclosed type; at least one of them shall be on external walls of building and shall open directly to the exterior, interior open space or to an open place of safety. Further, the provision or otherwise of alternative stair cases shall be subject to the requirements of travel distance being complied with."

"4.11.10 The use of spiral stair case shall be limited to low occupant load and to a building not exceeding 9 m. in height."

24. Mr. Ghosh placed the following provisions of the Fire Services Act, 1950, namely Section 2(ha)/2hb, 11A, 11C(2), 11D. He also showed me Section 342A of the Kolkata Municipal Corporation Act, 1980 and Rule 142(3) of the Kolkata Municipal Corporation Building Rules. All these provisions are set out hereunder.

"2(ha) "high-rise building" means a building the height of which is fourteen and a half metres or more.

Explanation:- For the purposes of this Act, the height in relation to a building shall mean the vertical distance measured from the average level of the centre line of the street or passage to which the plot of land on which the building is situated abuts to the highest point of the building, whether with flat roof or with sloped roof;

(hb) "high-risk building" means a high-rise building or a building with such occupancy within the meaning of the relevant municipal law in force in a local area, or such other occupancy, or such building, or such class or classes of buildings, as the State Government may, by notification, specify;"

11A. General public to take preventive measures for safety from fire etc.--subject to the provisions of the relevant municipal law, a local authority may require the general public residing in an area within its jurisdiction to take such preventive measures as may be required for safety from fire and other similar hazards.

11C(2) The owner or occupier of a high-risk building, as the case may be, [shall obtain from the Director-General] furnish to the Director of the nominated authority a "Fire Safety Certificate" in the prescribed form issued by a licensed agency in the manner prescribed.

11D. "No objection" required under any other law.--A fire safety certificate duly endorsed under sub-section (3) of section 11C shall be the "no objection" regarding fire prevention and fire safety measures for a building or installation

under the Indian Explosives Act, 1884 (4 of 1884), or the Explosive Substances Act, 1908 (6 of 1908), or the Petroleum Act, 1934 (30 of 1934), or the Inflammable Substances Act, 1952 (20 of 1952), or the Cinematograph Act, 1952 (37 of 1952), or the rules made thereunder, or under any other law for the time being in force, as require from the Director.

342A. Arrangement for fire prevention and fire safety.--On the coming into force of the West Bengal Fire Services Act, 1950, in any area within the jurisdiction of the Corporation, the Corporation shall,, in consultation with the Director of Fire Services or any officer authorised by him this behalf by general or special order, require the owner or the occupier of all or any of the premises in such area to make, or to carry, such arrangements as may be necessary for fire prevention and fire safety in such area.

142(3) Every application for availing relaxation under sub-rule (1) has to be accompanied with documentary evidence of the tenants of the existing building signifying their consent to the demolition thereof.

25. Now, let me deal with the merits of the matter.

26. Now, the building constructed upon upto the fifth floor would be above 15.5 metres, to be more specific it would be 17.45 metres. Therefore, this building is to have two stair cases according to the rules. However, an explanation is provided as inserted above. The first line has to be given a proper meaning. Three tenements or five hundred square feet per floor (whichever is less), does not make any sense because three is always less than 500. Therefore, the words whichever is less appear to be redundant. But we are all taught that the statute does not use any words superfluously and that each and every word is to be given meaning and purpose. The only meaning I can give to this apparently incongruous sentence is that the words three tenements are to be understood as the area of three tenements for the purpose of interpreting the first part of the explanation. Therefore, if a residential building has not more than three tenements and the total area of these three tenements is not more than 500 Sq. metres the building might have one stair case. In other words, it may have one tenement of 500 Sq. metres or three tenements of not more than 500 sq. metres. Now, let me come to the second part of the explanation. Suppose the area of the tenement is not more than 500 sq. metres but the number of tenements is five, then it is more than three. In that case irrespective of the fact that the area is not more than 500 sq. metres the number of stair cases required would be two considering the number of tenements. Take the converse. The number of tenements per floor is two but the total floor area is more than 500 sq. metres. Then also two stair cases have to be installed.

27. Mr. Ghosh and Mr. P.K. Dutta, learned Sr. Advocates very rightly contended that this rule was enacted keeping in view the area of occupancy as well as the number of persons occupying a particular area.

28. Admittedly, there are more than three tenements per floor but the area of

each floor is less than 500 square metres. Mr. Banerjee seemed to suggest that since the floor area was less than 500 square metres only one stair case was necessary.

29. Therefore if rule 127 was applied simpliciter the subject building with five floors with each floor having more than three tenements would require two stair cases. But there is only one stair case in the building. Therefore, the contention of Mr. Banerjee that since the floor area was less than 500 sq. metres only one stair case was required after construction of the fifth floor, is not correct.

30. Now, the second point raised by Mr. Banerjee. The Kolkata Municipal Corporation Act, 1980 defines building in Section 2(5), as seen above.

31. Mr. Banerjee submitted that the top of the building blocks would be joined by a passage or gangway at the time of constructing the fifth floor. In that case the building blocks could be termed as a single building under the definition of the same in rule 2(49) of the Kolkata Municipal Corporation Building Rules, 2009. Mr. Ghosh's contention that in order to constitute a building it had always to be one structure is not correct. In the said building rules multiple towers could become a single building if they are joined at any level. So, if this is the definition and the buildings are joined at the top, upon construction of the fifth floor they will become a single building.

32. In that event, according to Mr. Banerjee occupants of any building could enjoy the facilities of the stair cases of the other blocks.

33. Mr. Ghosh and Mr. P.K. Dutta, learned Sr. Advocates argued that this kind of an arrangement did not meet the requirements of the rule because to avail of the stair case of the adjoining building, a resident had to climb to the roof of his building and then avail of.

34. I think this submission is quite correct.

35. Theoretically, the four blocks can be called a single building, when joined together, under rule 2(49) of the building rules.

36. On a proper construction of and a purposive interpretation of Rule 127, each of the blocks in question has to have two staircases, so that each floor is connected by both the staircases. Otherwise, look at the tremendous risk caused. Two tall towers of say 30 floors each and each having a single staircase would be joined at the roof by a gangway. Theoretically, it would become a single building and it might be claimed that it can have only one staircase. A resident of the third floor of the tower would have to climb 27 floors to avail of the second staircase.

37. For all those reasons, this writ application and the connected application are dismissed.

38. For the above reasons, I am of the view that the alleged contemnors in the contempt application (CC 93 of 2013) acted bonafide. Hence the contempt

application is also dismissed.

39. Certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.