
(2019) 09 CAL CK 0127
In the Calcutta High Court
Case No : Writ Petitions (WP) No. 373 Of 2018

Suresh Chand Jain

APPELLANT

Vs

Kolkata Municipal Corporation & Ors

RESPONDENT

Date of Decision : 18-09-2019

Acts Referred:

Kolkata Municipal Corporation Act, 1980 — Section 3, 357(6)
Constitution Of India, 1950 — Article 14, 226

Citation : (2019) 09 CAL CK 0127

Hon'ble Judges : Protik Prakash Banerjee, J

Bench : Single Bench

Advocate : Utpal Mazumder, A. Banerjee, Barin Banerjee, Sima Chakraborty

Final Decision : Allowed

Judgement

Protik Prakash Banerjee, J

The Court : This petition under Article 226 of the Constitution of India is directed against the communication dated August 17, 2017 containing therein a resolution of the Mayor-in-Council dated June 23, 2007.

This resolution was taken because of a prior order of a coordinate Bench passed in WP No.279 of 2017, dated May 12, 2017, which was the first round of litigation between the parties. A building plan had been submitted by the petitioner and it was alleged that this was in violation of an alignment of the regular line of the street. Therefore, the building plan could not be processed for sanction. The coordinate Bench was pleased to direct the Mayor-in-Council, who is the respondent no.2 herein, to do the following :

"This Court directs the Mayor in Council to treat the representation made to the Municipal Commissioner by the petitioner and consider the same in the light of the provisions contained under Section 357(6) of the said Act within eight weeks from the date of the communication of this order and such decision shall be communicated by the Corporation to the petitioner within a week thereafter."

It is trite that the decision of the coordinate Bench was not that the respondent no.2 acts as a Special Referee but, in effect, the respondent no.2 was directed to exercise jurisdiction vested in the respondent no.1 under Section 357(6) of the Kolkata Municipal Corporation Act, 1980 as an authority under Section 3 of the Act of 1980. Naturally, the decision envisaged by the coordinate Bench required the representation of the petitioner to be considered and disposed of; since the decision to cancel or modify the regular line of a public street not merely after 10 years but now after 100 years related to a satisfaction of expediency. The minimum that the respondent no.2 was to record was its findings on the representation of the point raised therein and where it found to be expedient, to alter or modify the alignment or leave it as it was.

Unfortunately, the resolution of the respondent no.2 as communicated by the Chief Valuer/Surveyor by his Memo dated August 17, 2017 reads only as follows :

"Pursuant to the Solemn Order dtd. 12th May,2017 of the Hon'ble High Court at Calcutta, the matter i.e., the representation for cancellation of Alignment addressed to the Municipal Commissioner dtd. 7.3.2017, has been placed before the Mayor in Council & the Mayor in Council in its meeting dtd. 23.06.2017, vide item No-M-46.21 resolved as follows:-

"That as per the order Hon'ble Justice Harish Tandon, in the High Court at Calcutta the representation made by the petitioner to the Municipal Commissioner in the light of the provision contained under Sec.357(6) 1980 is taken up for consideration and is rejected."

On the face of it such a decision is unreasoned and does not begin to disclose any cause of it having been taken and is, therefore, grossly in violation of the principles of natural justice and therefore a nullity. The mere fact that the coordinate Bench did not direct that a reasoned order to be passed, did not mean that unreasoned order could be passed under Section 357(6) of the statute.

Therefore, I find that the decision making process by an authority whose decision is the subject judicial review is vitiated by gross violation of the basic principles of natural justice which itself is a violation of Article 14 of the Constitution of India.

Accordingly, the said order is set aside and quashed and the matter remanded back to the respondent no.2 for being decided after giving the petitioner an adequate opportunity of being heard and after hearing the Corporation or any other concerned person including the residents of the locality and passed a reasoned order, preferably within a period of one month from the date of communication of this order. A notice of hearing shall be given to the petitioner giving sufficient time to appear. Whatever decision is taken shall be communicated to the petitioner within 7 days of passing such order subject to the office of the Corporation being open at that time.

The affidavit-in-opposition and the affidavit-in-reply which have been filed in

Court today be taken on record.

This writ application is allowed to the extent above.

No order as to costs.