

**IN THE HIGH COURT AT CALCUTTA
(CONSTITUTIONAL WRIT JURISDICTION)**

APPELLATE SIDE

Present:

The Hon'ble Justice Partha Sarathi Chatterjee

WPA 2311 of 2021

Gorachand Mondal

-Vs.-

Kolkata Municipal Corporation & Ors.

For the Petitioner : Mr. Indranath Mitra,
Mr. Pingal Bhattacharya.

For the Corporation : Mr. Ranajit Chatterjee,
Mr. Subhrangsu Panda,
Ms. Manisha Nath.

For the Respondent : Mr. Arindam Banerjee,
Nos. 5 to 11. Ms. Arpita Saha,
Ms. Rituparna Chatterjee

Heard on : 30.08.2023

Judgment on : 06.10.2023

Partha Sarathi Chatterjee, J:-

1. The petitioner complains of unauthorised and illegal construction of a building containing 7(seven) blocks constructed at No. 158A, Picnic Garden Road, Ward no. 66. Borough no. -VII, P.S. –Tiljala, Kolkata-700039 (hereinafter called as the building) on the basis of a building plan vide. BP no. 201, 507, 0045 dated 17th June, 2015 sanctioned by the Kolkata Municipal Corporation (in short, KMC). The petitioner prays for a direction upon KMC to stop further or other construction in the building and a further direction for demolition of all seven blocks of the building and cancellation of a resolution adopted by the Mayor-in-Council (in short, MIC) in its meeting held on 27th July, 2018 *vide*. item No. M88.12.
2. Sans unnecessary details, the facts projected in the writ petition are that the petitioner as an intended purchaser got an occasion to visit the premises of a multi-storied building project, namely, ‘SUGAM HABITAT’ located at 158A, Picnic Garden Road, Ward no. 66, Borough no.-VII, P.S.-Tiljala, Kolkata-39 and the office of the Promoter-company namely, M/s. Sugam

Griha Nirmaan Ltd. and he got access of the building plan dated 17.06.2015 and other relevant documents.

3. The petitioner came to learn that one M/s. Metflow Corpn. Pvt. Ltd. and one M/s. Wellmet (Calcutta) Pvt. Ltd., the respondent nos. 5 and 6 to the writ petition, would original own the plot of land and the respondent nos. 7 to 11 were entrusted with the job to develop the land in furtherance of the building project.
4. Initially, the land owners submitted a proposal for sanction a building plan of KMC for construction of a building of G+ IV storied of 15.5 meters height on the plot of land having an abutting road of 5.85 meters width. The plot of land abuts two dead end passages. Upon inspection, the architect concerned suggested connectivity of two passages by means of a 7 meter wide internal road. Accordingly, the Chief Valuer in collaboration with the department of Surveyors prepared a report on 3.12.2013. The landowners were asked to make a gift of a strip of land and bear the costs of development of the road. The landowners accepted the proposal and sought for sanction of Floor Area Ratio (in short, FAR) to the tune of 1.75 and

permission to increase of height of the proposed building upto 25.50 meters.

5. The proposal was placed in the meeting of the Municipal Building Committee (in short, MBC) held on 13.12.2013 and then the proposal was placed in the meeting of Mayor-in-Council (in short, MIC) of KMC held on 5.2.2014 wherein it was resolved that Chief Valuer and the department of Surveyors would accept the gift of a land comprising an area of 1700 Sq.mtr. through a registered deed of gift and the owners would deposit the cost of construction of the road.
6. The proposal was again placed in MBC meeting dated 30.5.2014 wherein it was resolved that the width of the internal road should have been of 9 meters instead of 7 meters and such revised proposal was placed and approved in the meeting of MIC held on 25.07.2014 and ultimately, such revised proposal were accepted by the landowners and the KMC.
7. By virtue of a registered deed of gift *vide*. no. 02685 of 2015, the landowners gifted a strip of land measuring about 2226.42 Sq.mtr. for widening the abutting road from 5.85 mtr. to 9 mtr. The building plan was sanctioned on 17.6.2015 according

permission to the landowners for making construction of seven blocks of buildings of B+ G+ VII (7) storied with 25.50 meters' height and to enjoy FAR to the tune of 1.75.

8. The petitioner claims that as per Rule 74(1) of the KMC Building Rules, 2009, the maximum permissible height of the building having an abutting road of 5.85 meters would be 12.5 meters and in case of free gifting of a strip of land having width of 2.5 meter, the width of the abutting road stood to $5.85 + 2.50 = 8.35$ meter throughout the frontage of the entire plot and hence, the maximum permissible height of the building would be 15.5 meters but acting in derogation of the building rules, permission was accorded to the landowners and/or promoters to raise the height of the buildings up to 25.50 meters.
9. Through a legal notice dated 11.12.2020, the petitioner made a complaint to KMC against such illegal sanction of building plan dated 17.6.2015. The petitioner urged the KMC to stop further or other construction in the building but to no avail and the petitioner also e-mailed one complaint to the Tiljala P.S. on 17.12.2020 but the both the authorities maintains deceptive

silence. In such sequence of facts, the petitioner has been constrained to institute the present writ petition.

10. The respondent nos. 1 to 4 and the respondent nos. 5 to 11 filed their separate affidavits-in-opposition to the writ petition. The petitioner also filed his affidavits-in-reply to the affidavit-in-oppositions, as directed.

11. Mr. Mitra, learned advocate for the petitioner contends that in repetitive pronouncements this Court has laid down a principle that even a stranger can raise objection against an illegal and unauthorized construction. Drawing my attention to Rule 74 of the Building Rules, he submits that in respect of a plot of land having means of access of 5.85 meters, permissible height of the building would be 12.5 meters and in case of free gifting of a strip of land of 2.5 meters, permissible limit of the height of the building would be 15.5 meters which would be explicit from the corresponding entry made in column no. 3 of Row no. (iii) of Column no. 1 of Table no. 5 incorporated in Rule 74 of the Building Rules but in the given case, in contravention of the Rule 74 of the Building Rules, the building plan placed by the landowners seeking permission to raise the height of the

buildings up to 25.50 meters and to enjoy FAR to the tune of 1.75 has been sanctioned in the meeting of the MIC on 25th July, 2014.

12. He vociferously contends that the building plan was sanctioned in sheer violation of the Kolkata Municipal Corporation Buildings Rules, 2009 (in short, the Building Rules) and the landowners and/or the developers have been allowed to enjoy more FAR and to raise the height of the buildings up to 25.50 illegally for the reasons to the authorities concerned.

13. He further contends that a wrong cannot be allowed to be perpetuated and hence, the resolution of the MIC adopted on 25th July, 2014 and sanctioned building plan are required to be set aside and direction should be given upon the KMC to issue notice upon the land owners to stop construction and demolish the illegal construction. To embolden his submission, he places reliance upon three unreported judgments passed by three separate coordinate benches of this Court passed in WP No.7625 (W) of 2018 (*Rajesh Kumar Surana vs. The State of West Bengal &Ors.*), in WP NO.13617 of 2021 (*Sadabh Jahan*

Begam & Ors. vs. The Kolkata Municipal Corporation &Ors.) and in WPA 740 of 2021 (*Shri Basori Mondal & Ors. vs. State of West Bengal &Ors.*), the judgment delivered in cases of *Dipak Kumar Mukherjee -vs- Kolkata Municipal Corporation*, reported in (2013) 5 SCC 336, *Shiromoni Flat Owner Association and Ors. vs. Kolkata Municipal Corporation &Ors.*, reported in 2021 SCC OnLine Cal 1356 , *Dr. J.N. Khajuria and Ors. vs. Delhi Development Authority &Ors.*, reported in (1995 (5) SCC 762, *Shri K. Ram Das Senoy vs. The Chief Officer, Town Municipal Council UDIPI &Ors.*, reported in 1974 (2) SCC 506.

14. Mr. Banerjee, learned advocate appearing for the private respondents contends that in the cases cited by the petitioner the constructions were made in violation of the sanctioned building plans. Hence the Court held that even a stranger can maintain action again such illegal and unauthorized constructions but in the case in hand, the petitioner has challenged the grant of sanction of the building plan by the statutory body. Hence, in his view, the judgments relied upon by the petitioner would not be applicable.

15. He submits that petitioners lives almost 10 to 12 KM away from the premises where the construction has been made. He submits that the petitioner was filed numerous writ petitions of like nature and it is not clear how he got access to the minutes of meeting of MIC and MBC of KMC and the documents relating to the construction of the buildings. He strenuously contends that with an ulterior motive, the writ petition was preferred. He arduously contends that the land owners gifted more than 33 cottahs of land of 9 meter width to KMC throughout the frontage of the plot of the land and hence, the landowners were accorded permission to raise height of the building up to 25.5 meters. According to Mr. Banerjee, the KMC has not violated the building rules in giving permission to the landowners to enjoy FAR to the tune of 1.75. He submits that the construction of the building has already been completed and many flats have been sold out to the intended purchaser and if any order is passed which may have adverse effect upon them they should be made parties to the proceedings and they should be afforded opportunity of hearing to them.

16. Mr. Chatterjee, Learned Advocate for the Corporation adopts the submission made by Mr. Banerjee and submits that the building plan was sanctioned on the basis of the resolution adopted by the MIC and MBC after holding a meeting as the rules. He asserts that the building rules were strictly adhered to while granting sanction of the building plan. He submits that there is no irregularity and illegality in the process of grant of sanction of the building plan.
17. The Hon'ble Apex Court in case of Priyanka Estates Intl. Pvt. Ltd. &Ors.(supra) and in numerous other cases observed that unauthorized construction is against the interest of the society at large and the Rules, Regulations and Bye-laws are made by the Corporation or by the Development Authorities taking in view of the larger interest of the society and if unauthorized constructions are allowed to stand or given a seal of approval by court then it is bound to affect the public at large. In case of Dipak Kumar Mukherjee (*supra*), an enlightened resident of Kolkata invoked high prerogative writ jurisdiction of this court alleging illegal and unauthorized

construction. Such writ petition was entertained and even the Hon'ble Apex Court passed necessary orders therein.

18. A Coordinate Bench of this court in case of Shiromoni Flat Owners' Association &Ors. (*supra*) held that even a stranger to the newly constructed property does have the right to challenge the construction work if the same is made de hors the provisions of law. In case of Banasri Mondal(*supra*), it was ruled by the same Coordinate Bench of the court held that an objection raised by a stranger alleging unauthorized construction will be maintainable to a limited extent only to check whether there has been any unauthorized construction , provided the same is not mala fide and not tainted with malice. In case of Rajesh Kumar Surana (*supra*) the petitioner being a resident of Salt Lake, Kolkata preferred a writ petition complaining of an unauthorized construction in an area which falls under the jurisdiction of Howrah Municipal Corporation. The writ petitioner further complains of violation of the statutory rules by a statutory body. A Coordinate bench held that a citizen of India has a right to approach in a writ court with a complaint that a statutory body has failed to discharge

duties enjoined upon it by law and the writ petitioner was held to have locus to maintain the writ petition.

19. Hence, it is luminescent that the courts have taken consistent view that even a stranger can maintain a writ petition alleging illegal and unauthorized construction and he can invoke the writ jurisdiction with a complaint of violation of statutory duties by a statutory body. In view thereof, it is held that the writ petitioner has locus to present the instant writ petition and the writ petition is maintainable.

20. Now, the contour of controversy involved in the writ petition is that as to whether the building plan was sanctioned in violation of the building rules. The annexure P-1 to the writ petition speaks that the land owners having a plot of land comprising an area of 22746.12 square meters with abutting road of 5.85 width submitted a building plan for sanction of a building plan to construct a multi-storied building of G+IV storied of 15.5 meters height.

21. On inspection, it revealed that abutting road had two dead end passages at northern and southern boundary of the premises and hence, a proposal was given for gifting a strip of

land so that one can access directly from Picnic Garden Road and C.N. Road. The KMC insisted the landowners to make free gift of a strip of land so that the width of internal road and/or means of access could have been raised up to 9 meters. The land owners accepted to proposal and agreed to make free gift of a strip of land and in lieu thereof they sought for permission to enjoy the FAR to the tune of 1.75 and to raise the height of the building up to 25.50 meters. Such proposal of the land owners were accepted by the KMC and such proposal were approved by the MIC of the KMC in a meeting held on 25th July, 2014.

- 22.** Accordingly by virtue of a Registered deed of conveyance *vide* no.20685 of 2015, a piece and parcel of land comprising an area of more or less 33 cottahs 4 chittacks 22.96 sq.ft equivalent to 2226.42 square meters having 9 meters width connecting Picnic Garden Road on one side and Chowbhaga Road on the other side were gifted in favour of the Corporation. The land owners submitted a revised building plan for construction of a B+G+7 storied building with height of 25.50 meters and FAR to the tune of 1.75 and such building plan was sanctioned.

- 23.** For better appreciation of dispute it would be apposite to quote/refer the relevant rules of the Building Rules:
- 24.** Rule 2(27) of the Building Rules defines the expression 'Floor Area Ratio' (FAR) by using the words that it means *'the quotient by dividing the total floor area on all floors of a building by the area of the plot including the area of the water bodies, if any with the plot but not including the areas stipulated in Rule 70(3)....'*
- 25.** Rule 2(32) says that *'height of building' means, subject to the provisions of rule 77, the vertical distance measured from average level of the centerline of the street or passage, to which the plot, abuts, to the highest point of the building whether with flat roof or sloped roof.*
- 26.** Rule 2(38) defines the expression 'means of access' by saying that it means *'a public street or passage, open to the sky provided that in the case of partition of an existing building, the passage need not be open to the sky.*
- 27.** Relevant parts of the Rule 74 of the building Rules read as follows:-

(1) *The permissible height of the buildings on means of different widths shall be as given in Table 5:-*

<i>Width of Means of Access (in m.)</i>	<i>Permissible Height of Building (in m.)</i>	<i>Permissible Height of Building (in m.)</i>
		<i>In case of free gifting of strip of land having a width of 2.5 m. throughout the frontage of the entire plot.</i>
<i>(i) Above 2.4 upto 3.0</i>	<i>7.0</i>	<i>Nil</i>
<i>(ii) Above 3.0 upto 5.0</i>	<i>10.0</i>	<i>12.5</i>
<i>(iii) Above 5.0 upto 7.0</i>	<i>12.5</i>	<i>15.5</i>
<i>(iv) Above 7.0 upto 9.0</i>	<i>20.0</i>	<i>25.5</i>
<i>(v) Above 9.0 upto 12.0</i>	<i>40.0</i>	<i>-</i>
<i>(vi) Above 12.0 upto 15.0</i>	<i>60.0</i>	<i>-</i>
<i>(vii) Above 15.0</i>	<i>No restriction</i>	<i>-</i>

Note :

(1) There will be no restriction in heights of buildings on plots abutting means of access above 10m. in width subject to free gifting of strip of land having a width of

5 m. throughout the front of the entire plot along the means of access. However, this increase in height as mentioned above shall be permissible provided the area of the plot is at least 2,500 sq.m. and frontage of the plot abutting the main road is at least 15.0 m.

(2) In case of such additional height obtained by free gifting the strip of land as mentioned hereinabove, the applicant will get FAR of original road width only however, the applicant will be given benefit of FAR and ground coverage taking into consideration the portion gifted to the Corporation.

(3) Average width of the means of access shall be calculated as per area of the means of access in sq.m. abutting the premises divided by the length of the frontage of the property. ...

28. From the table inserted in Rule 69 it is explicit that the residential buildings having means of access with width of 'above 3.5m to 7m.' is entitled to enjoy the FAR to the tune of 1.75 and the before making a gift, the plot of land was having an abutting road of 5.85 meters and hence, the KMC did not

commit any wrong in according permission to the landowners and/or builders to enjoy FAR to the extent of 1.75.

29. The Corporation admitted that the landowners gifted a strip of land of 2226.42 sq.m. and deposited the cost to construct a public road having 9 m. width connecting Picnic Garden Road on one side and Chowbhaga Road on the other side. Hence, the total length and width of frontage of the buildings were 247.38m and 9m. width respectively. As per Row no. IV of Table 5 inserted in Rule 74, the landowners having a plot of land with means of access of '*above 7m. up to 9m*' without free gifting of any strip of land is entitled to raise height of the buildings up to 20m and in case of free gifting of a strip of land having a width of 2.5m throughout the frontage of the entire plot, such landowner is entitled to get raise the height of the buildings up to 25.50m.

30. In the given case, the landowners gifted more than 33 cottahs of land having 9m width to construct a public road and such gift covered the condition referred in Row. No. IV of column no. 3 i.e. the condition of free gifting of a strip of land having a width of 2.5m throughout frontage of the entire plot

and hence, the MIC by adopting resolution sanctioned the building plan. I do not find any material to infer that KMC had illegally sanctioned the building plan and the developers have constructed the buildings illegally.

31. Hence, no interference is called for in the writ petition.

Consequently, the writ petition is dismissed, however, without any order as to the costs.

32. Parties shall be entitled to act on the basis of a server copy of this Judgement and Order placed on the official website of the Court.

33. Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Partha Sarathi Chatterjee, J.)