CALCUTTA MUNICIPAL CORPORATION & ANR. A

v.

SRI ANIL RATAN BANERJEE AND ORS.

OCTOBER 26, 1994

[B.P. JEEVAN REDDY AND SUHAS C. SEN, JJ.] B

Calcutta Municipal Corporation Act, 1951—Bengal Municipal Act, 1932—Construction—Multi-storeyed Building—No commencement within two years after sanction of plan—Construction after two years—Held, fresh permission to be obtained.

C

Bengal Municipal Act, 1932—Sections 379, 325—Deemed sanction—Held, not applicable when the sanction sought for is prohibited under law.

The Respondents entered into an Agreement with an owner of a site. The Vendor at the instance of the Respondent had sought permission for construction of eight storeyed building, which was D **sanctioned on 27.4.1985.**

The permission became inoperative since no construction took place in the site due to disputes between the Respondents and the Vendor.

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The Respondents within the said period of two years, on 2.2.1987 applied for sanction of a revised building plan with a changed layout. They also applied for renewal of sanctioned plan on 16.4.87.

On 24.8.1987 the Respondents applied for permission to construct twelve floors on the basis of a new plan. Since no orders were passed in F **any of these applications, the Respondents started to proceed with the construction in view of deemed permission - when it was obstructed, the Respondents preferred a writ petition in the High Court against the petitioners. During the pendency of the writ petition, the Single Judge had allowed the Respondents to make construction upto ground floor levels by interim orders subject to an undertaking that they would** G **demolish the construction, if it is found to have been made in violation of the Plan submitted on 24th August, 1987.**

The writ petition was allowed. The Writ Appeal filed by the petitioners was also dismissed. In the present S.L.P., the petitioners contended that (1) the Plan sanctioned on 27.4.1985 stood lapsed due to H

A **no construction activity; (2) there is no provision for renewal of sanction; (3) the sanction for 12 floors could not have been granted due to the law in force and (4) the maximum permissible height of the building is only 8 meters.**

Allowing the appeal, this Court

B **HELD : 1. The respondents are not legally entitled to make any construction on the basis of the deemed sanctioned plan (submitted on August 24, 1987) on or after September 24, 1989. (200-D)**

2. The High Court was, in error in permitting the respondents to C **proceed with the construction of the twelve storey building on the basis of the Plan submitted on 24.8.1987 and in giving other allied directions. (200-E)**

3. The construction made pursuant to the orders of the High Court should allowed to be retained and two more floors may be constructed D **by the Respondents but not so as to exceed the total height of eight metres - and not at any rate beyond nine meters. (201-A)**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7056 of 1994.

From the Judgment and Order dated 29.3.94 of the Calcutta High Court E in F.M.A.T. No. 1718 of 1992.

IN

Special Leave Petition (C) No. 10331 of 1994.

F Tapas Ray, Manoj Prasad, Deva Prasad Mukherjee, Rajesh and Mrs. B. Sunita Rao for the Appellarts/Petitioner.

K.K. Venugopal and Robin Mukherjee, Rajendra Singhvi and Ashok K. Singh for the Respondents.

The Judgment of the Court was delivered by

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B.P. JEEVAN REDDY, J. Leave granted. Heard counsel for the parties.

The appeal is preferred by the Calcutta Municipal Corporation against the judgment of a Division Bench of the Calcutta High Court dismissing H F.M.A.T. No. 1718 of 1992 which was directed against the judgment of a

learned single Judge allowing the writ petition filed by the respondents. The matter pertains to the grant of permission for construction of a multi-storey building in the South Suburban area of Calcutta. A

Until January 4, 1984, the Calcutta Municipal Corporation Act, 1951 governed the area then comprised in Calcutta municipality. The South Suburban area, with which we are concerned herein, was not a part of Calcutta Municipal Corporation area until that date. It was an independent municipality, governed by the Bengal Municipal Act, 1932. On January 4, 1984, the South Suburban municipal area alongwith certain other municipal areas was merged with the Calcutta municipal corporation area and a new Act viz., The Calcutta Municipal Corporation Act, 1980 was brought into force in place of the Calcutta Municipal Corporation Act, 1951. Even so, the new Act governed and applied only to the original Calcutta municipal corporation area but not to the newly added areas including the South Suburban area. Since, regulations governing the construction of buildings were not framed under the 1980 Act, the regulations made under the 1951 Act continued to govern the original Calcutta municipal area, while the Bengal Municipal Act, 1932 including the regulations made thereunder continued to govern the newly added areas including South Suburban area, by virtue of Section 635 (ii) (g) of the 1980 Act. B C D

On February 20, 1989, the Bengal Municipal Act and the rules made thereunder ceased to apply to the newly added areas by virtue of an amendment to the Calcutta Municipal Corporation Act, 1980. The 1980 Act was extended to the said newly added areas with effect from the said date. (This was the effect of omission of clause (g) of Section 635 (ii) with effect from the said date.) On 12th December, 1990, new building rules were issued under the Calcutta Municipal Corporation Act, 1980. E F

The respondents-writ petitioners entered into an agreement with the owner of the site concerned herein, Sri D.R.K. Karnani, to purchase the same. They say that, at their instance, Sri Karnani applied to the Calcutta municipal corporation for permission to construct a multi-storeyed complex on the said site, which is situated within the erstwhile South Suburban municipal area. On April 27, 1985, the municipal corporation sanctioned the plan for the construction of a eight-storeyed building. This sanction, it is obvious, was given under and governed by the provisions of Bengal Municipal Act, 1932 and the regulations made thereunder, which were in force in the said area at that time. However, no construction was made - not even commenced - within two years of the permission, with the result that G H

A the said permission became ineffective and inoperative on the expiry of the said period.

On February 2, 1987, i.e., within the said two years period, the respondents applied for sanction of a revised building plan with eight stories but with a changed layout. On April 16, 1987, the respondents B applied for renewal of the sanctioned plan dated April 27, 1985, without withdrawing the application for the revised plan submitted on February 15, 1987.

On August 24, 1987 the respondents applied for permission to construct a building comprising of twelve floors on the basis of a new plan. C No orders were passed by the Corporation authorities on any of these three applications within thirty days of their respective submission. On this basis, the respondents say and assert that the permission applied for by them on August 24, 1987 must be deemed to have been sanctioned on the expiry of thirty days by virtue of the Section 319 of the Bengal Municipal Act, 1932. (The municipal corporation, however, says that the said plan was rejected D on April 29, 1988; the respondents dispute the receipt of any such order.) The respondents' case is that when they proposed to proceed with the construction of the building in accordance with the plan submitted on August 24, 1987, in view of the deemed permission, the authorities of the corporation obstructed the same and did not allow the construction to proceed. This obstruction, according to the respondents, disentitles the E municipal corporation from objecting to or interfering with their construction *even after* the expiry of two years from August 24, 1987 - or from September 24, 1987 (the deemed permission is available and effective from September 24, 1987, i.e., on the expiry of thirty days from the date of application), as the case may be. The appellant-corporation, however, says, firstly, that the respondents are not entitled to any deemed permission of the F plan applied for on August 24, 1987 inasmuch as the law then governing did not permit construction of a twelve-storey building on the plot of the respondents, having regard to the width of the road abutting the said plot/site. Secondly, they say that even if it is assumed that any such deemed permission can be invoked by the respondents, the same came to an end on the expiry of two years, i.e., on September 24, 1989 and inasmuch as the G respondents have not constructed the building within the said period of two years, the deemed permission, if any, can no longer enure to them thereafter. They deny that they ever interfered with the construction of the building by the Respondents. According to them, no construction whatsoever was undertaken on the said plot on account of the differences H and disputes between the respondents and their vendor, Sri Karnani.

Be that as it may, the respondents approached the Calcutta High Court by way of Writ Petition No. 11814 of 1989 on September 28, 1989. The prayers in the writ petition are the following : A

(a) to direct the respondent-corporation to issue a formal letter certifying the building plan submitted on August 24, 1987 in terms of Section 319 of the Bengal Municipal Act, 1932; B

(b) to direct the municipality to issue a formal letter sanctioning the revised building plan submitted on February 15, 1987 under Section 319 of the 1932 Act;

(c) to restrain the municipality from interfering with their construction C in accordance with the plan submitted by them;

(d) to restrain the municipality from giving effect to any order (not communicated to the writ petitioners) in respect of the matters in issue;

(e) for a declaration that the plans submitted on August 24, 1987 and D February 15, 1987 are sanctioned by operation of law.

The learned Single Judge allowed the writ petition on the following reasoning:

1. That there was no bar or impediment to renew the sanctioned plan E (for eight-storeyed building) granted on April 27, 1985, inasmuch as the said sanction was given on a consideration of all the relevant factors and also because there has been no change in the circumstances warranting refusal of renewal.

2. The building plan submitted on August 24, 1987 (for a twelve- F storeyed building) fulfils the requisites of law and inasmuch as it was not rejected within a period of thirty days, it must be deemed to have been sanctioned on the expiry of thirty days. The writ petitioners have a right to start the construction in terms of such deemed sanctioned plan.

The respondents were, accordingly, directed to permit the writ G petitioners to proceed with the construction in terms of the revised building plan filed on August 24, 1987 on condition that the petitioners will not commit breach of any relevant Rules or bye-laws prevailing on the date of filing of the said plan. The corporation was further directed to issue a formal permission within sixty days. It was also directed that the said plan H

must be deemed to have been sanctioned from the date of the said judgment and its validity period shall be two years from that date.

On Appeal, the Division Bench referred to the frequent legislative changes (referred to at the inception of this judgment) and opined that since it is difficult for the ordinary people to keep track of the legislative changes, "the Court has to take a practical and pragmatic view of the matter." It held that "the plan submitted on August 24, 1987 should be treated as deemed to have been sanctioned as within the period of thirty days no objection was taken. Subsequent objection beyond that statutory period of thirty days cannot change the legal fiction inasmuch as in every case of deemed sanction, construction has to be made strictly in accordance with the rules and regulations or in other words no construction could be made on the basis of a deemed sanction of plan in contravention of the building rules and regulations prevailing at the time when such plan was deemed to have been sanctioned." The Division Bench thus affirmed the finding of the learned single Judge that the writ petitioners have a right to make construction in accordance with the plan submitted on August 24, 1987 and that it must be deemed to have been sanctioned on the expiry of thirty days therefrom. The correctness of the said view is questioned by the Calcutta municipal corporation in this Appeal.

Shri Tapas Ray, learned counsel for the municipal corporation, urged the following contentions:

1. That the plan sanctioned on April 27, 1985 for a eight-storeyed building lapsed on 26th of April, 1987 since no construction was made and completed within two years. Indeed, no construction was commenced by that date. It is true that on April 16, 1987 the respondents applied for renewal of the said plan but there was no provision in the Bengal Municipal Act for granting such renewal. Even assuming that such renewal could be granted and must be deemed to have been granted, such deemed renewal too expired on April 16, 1989 or, at any rate, on April 26, 1989. Admittedly, no construction was made, much less completed, by the said date. In other words, the sanction of the said plan, both actual and deemed, lapsed by 26th of April, 1987 and 26th April 1989 respectively. No construction can be permitted on the basis of such plan after the said dates.

2. So far as the deemed sanction of the twelve-storeyed building applied for on August 24, 1987 is concerned, it cannot be deemed to have been sanctioned on the expiry of thirty days by virtue of Section 319 of the Bengal Municipal Act for the reason that no such permission could have

been actually granted under the law then in force in the said area, having regard to the width of the road abutting the respondents' plot and other relevant circumstances. The Division Bench has itself recognised that the deemed permission cannot be inconsistent with the relevant rules and regulations. No deemed permission can be conceived of which is inconsistent with the relevant rules and regulations. A

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3. The position today is that the building rules framed in the year, 1990 (with effect from December 1, 1990) are more stringent than the pre-existing rules and regulations. According to these rules the maximum height of a building in the respondents' plot cannot exceed eight metres.

4. Both the learned single Judge and the Division Bench erred in not examining the question whether the plan for twelve-storeyed building applied for by the respondents on August 24, 1987 could at all have been granted in accordance with the law then in force in the said area. This should have been done before granting the declaration that the said plan must be deemed to have been granted and that the respondents are entitled to make construction in accordance therewith. C D

5. The learned Judges of the High Court were not justified in holding that the municipal authorities were negligent in responding to the respondents' applications for permission. It is equally not correct to suggest that the respondents are entitled to an extended period for constructing a building on account of the alleged obstruction by the municipal authorities. Since no construction was ever made, there was no obstruction by the authorities, and even if there was such obstruction, it was perfectly valid and justified since the respondents had no authority in law to proceed with the construction. E

Sri K.K. Venugopal, learned counsel appearing for the respondents-writ petitioners, supported the reasoning and conclusion of the High Court and submitted that the writ issued by the High Court is nothing more than a formalisation of the legal position obtaining by virtue of Section 319 of the 1932 Act. Learned counsel also brought to our notice, by way of written submissions, certain subsequent developments which according to the learned counsel establish the mala fides on the part of the Corporation. F G

Now it is true that on April 27, 1985 permission was granted for construction of a eight-storey building on the premises in question. But it is admitted, at the same time, that no construction could be made within the period of two years therefrom because of the disputes between the H

A respondents and Sri Karnani. (The learned single Judge has referred to these disputes in his Judgment and observed that because of these disputes, no construction could be undertaken by the writ petitioners. The learned Judge has also recorded that the writ petitioners had to file a Suit for specific performance which came to an end only when conveyance deeds were executed through Court in favour of the writ petitioners. To the same B effect is the statement of the Respondents-writ petitioners in Para 4 (g) of their counter filed in this appeal). These disputes were settled only some time later. (A mutation certificate was granted on July 4, 1989 by Calcutta municipal corporation in favour of the respondents.) By virtue of Section 325 of the 1932 Act, no construction can be carried on after the expiry of two years from the date of grant of permission. The petitioners say that they C had applied for renewal of the said sanctioned plan on April 16, 1987. Assuming that an application for renewal was indeed made and even if by virtue of the fiction contained in Section 319 the said renewal permission is deemed to have been granted, even then this renewed deemed permission expired on April 16, 1989 - and, admittedly, even by this date no D construction has been made on the premises. On 24th August, 1987 the respondents had applied for permission to construct a twelve-storey building and even if we assume that such a permission must be deemed to have been granted by virtue of the Section 319, this deemed permission too came to an end on August 24, 1989 or say, on September 24, 1989. It has been found by the learned single Judge that "Admittedly, no construction E has been raised within the premises either in terms of the first building plan sanctioned in 1985 or in terms of the revised plan filed subsequently. There is neither any specified permission of renewal nor there is any thing on record to show that the writ petitioners have been permitted to go with the construction either in terms of the first building plan or in terms of the revised building plan." The Division Bench has not recorded any finding to F the contrary. Indeed, the Division Bench has also recorded that "In the instant case, because of pendency of litigation and disputes the owner did not think it is to be fit to make any investment until and unless the matter is set at rest." Thus, it is clear that even by September 24, 1989, no construction was made by the respondents on the said premises.

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The respondents, no doubt, assert that they had commenced construction before 24th August, 1989 and that it could not be proceeded with an account of the obstruction by the municipal authorities. Sri Venugopal brought to our notice a notice issued by the municipal corporation dated 21st November, 1990 and a commencement report dated H October 14, 1991. But these are all proceedings subsequent to September

24, 1989 and also subsequent to the filing of the writ petition and cannot, therefore, help the respondents' assertion. The respondents rely upon an observation in the judgment of the Division Bench to the following effect :

> "That apart, construction has actually taken place on the basis of a plan that could have been sanctioned as the law prevailing at that time in that event nothing could have been done."

But the above sentence - assuming that it is a correct rendering - is followed immediately by the following observation :

> "In the instant case, because of pendency of litigation and disputes, the owner did not think it to be fit to make any investment until and unless the matter is set at rest."

In the circumstances, it must be held that no construction was made by the respondents on the said site upto 24th September 1989.

Apart from the above, there is yet another problem in the way of the respondents. Section 319 expressly states that even in case of a deemed permission, the applicant cannot execute the work "so as to contravene any of the provisions of this Act or of Schedule VI or any Rule or Bye-law applying thereto." Neither the learned single Judge nor the Division Bench have gone into and/or recorded any finding that having regard to the position of law obtaining on 24th August, 1987 and the width of the road on which the said premises abuts, a permission for twelve-storey building could have been granted. Neither the learned single Judge nor the Division Bench have gone into this aspect. They have assumed that such a permission could have been granted. The said assumption is challenged by the corporation before us.

Assuming that permission for a twelve-floors building could have been granted under the law obtaining in August 1987, the question still remains - not having made any construction on the basis of the said plan before September 24, 1989, can any construction be made thereafter? The answer can only be in the negative. Indeed, even if any construction was commenced before that date, it cannot be continued thereafter according to Section 325 of the Bengal Municipal Act. It must be remembered that the writ petition itself was filed on 28th September, 1989, i.e., after the expiry of the two years period from August 24, 1987 or from September 24, 1987, as the case may be. The new Building Rules issued under the Calcutta Municipal Act, 1980 came into force on and from 12th December, 1990.

A Inasmuch as the respondents had not made the construction within the two years' period of any of the three applications aforesaid and also because there was not even an application for renewal of the alleged deemed sanction on the basis of the plan submitted on August 24, 1987, no construction could have been carried on by the respondents after September 24, 1989, unless they obtained a fresh permission according to law.

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It is brought to our notice by the learned counsel for the Respondents that by an order dated November 29, 1990, a learned single Judge of the High Court had allowed the respondents "to make construction upto the ground floor level in suppression of the notice dated 21st November, 1990 as issued by the District Building Survaeyor under Section 401 of the C Calcutta Municipal Corporation Act, 1980" subject to an undertaking that they would demolish the construction, if it is found to have been made in violation of the plan submitted on 24th August, 1987. All this shows again that the only construction that has been made is of the ground floor and that too under the interim orders of the High Court in the present proceedings. In the above circumstances, it must be held that the respondents are not D legally entitled to make any construction on the basis of the deemed sanctioned plan (submitted on August 24, 1987) on or after September 24, 1989 - or for that matter, after the filing of the writ petition. The High Court was, therefore, in error in permitting the respondents (writ petitioners) to proceed with the construction of the twelve-storey building on the basis of the plan submitted on August 24, 1987 and in giving other allied directions.

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In view of the fact that the respondents' vendor was granted permission for a eight-storey building on 27.4.1985 and because of other relevant facts and circumstances of this case, we called upon the learned counsel for the corporation to tell us whether it is possible for the corporation to grant F permission today for construction of a building on the said premises as per the plan sanctioned on April 27, 1985 or as per the plan applied for on August 24, 1987. The learned counsel has, however, stated after obtaining instructions from the corporation that no permission beyond the height of eight meters can be granted in the said premises having regard all the relevant facts and circumstances. It is also stated by the learned counsel that G the site in question is abutting on a road with a width of less than 3.5 meters and in view of that fact also, construction of a building of a height exceeding eight meters cannot be permitted.

The question then arises as to what should be done with the construction of ground floor which has already taken place on the basis of H the interim orders of the High Court in accordance with the plan submitted

on 24th August, 1987. Having regard to all the facts and circumstances of the case, we direct that the said construction should be allowed to be retained and two more floors may be constructed by the respondents thereon but not so as to exceed the total height of eight meters - and not at any rate beyond nine meters. Having regard to the construction of ground floor already made pursuant to the orders of the High Court, we do not think it appropriate to direct the respondents to apply for fresh permission in accordance with the 1990 Building Rules. This direction does not, however, preclude the respondents from applying for permission in accordance with the Rules in force, if they are so advised, and proceed to make construction in accordance with the permission that may be granted thereon.

Sri Venugopal disputed the corporation's contention that the road abutting the said premises is only of a width not exceeding 3.5 meters. It is not possible for us to pronounce upon this disputed question of fact. It is enough to observe that it shall be open to the respondents to approach the concerned authorities of the corporation and if such authorities are satisfied that the width of the road is more than 3.5 meters, they may permit the respondents to raise such construction or such further construction, as the case may be, as may be permissible under the Rules now in force.

The appeal is, accordingly, allowed with the above directions. There shall be no order as to costs.

V.M. Appeal allowed.