

Samir Kumar Dey and ors. Vs. Chariman, Burdwan Municipality and ors.

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SooperKanoon Citation : sooperkanoon.com/867474

Court : Kolkata

Decided On : Apr-23-1999

Reported in : (1999)2CALLT430(HC)

Judge : Prabir Kumar Samanta, J.

Acts : Consitution of India, 1950 - Articles 19 and 21;; [Bengal Municipal Act, 1993](#)
- Sections 203, 207, 208 and 210;; Urban Land (Ceiling and Regulation) Act, 1976
- Section 2 and 5(3);; West Bengal Municipal Act, 1932

Appeal No. : Constitutional Writ Jurisdiction, W.P. No. 1650(W) of 1998

Appellant : Samir Kumar Dey and ors.

Respondent : Chariman, Burdwan Municipality and ors.

Advocate for Def. : Mr. Subir Bhattacharjee, Adv.

Advocate for Pet/Ap. : Mr. Bidyut Kiran Mukherjee, ;Mr. Jayanta Dutta, ;Mr. Subhankar Sen, Adv.

Judgement :

P.K. Samanta, J.

1. This writ petition was filed challenging the letter dated 25.8.89 addressed to the writ petitioner by the Chairman, Burdwan Municipality. By the said letter the

Chairman, Burdwan Municipality rejected the building plan submitted by the writ petitioner for construction on the ground that the site for such construction was not approved by the Municipality for a construction.

2. The facts as emerged from the writ petition are as follows :--

Holding No. 59, B.C. Road, Kalitala, P.O., P.S. and District--Burdwan is the disputed premises. A Cinema Hall was constructed in the said holding by the petitioner No. 1 and is being run by the petitioner No. 2 company of which the petitioner No. 1 is the Managing Director. As appears from the building and site plan submitted by the petitioner No. 1 before the Municipality for sanction which is at annexure 'A' to this writ petition that upon construction of the said Cinema Hall there was a vacant space in front of the Cinema Hall abutting 55' wide B.C. Road. The petitioner No. 1 decided to construct a commercial Building in the said vacant space abutting B.C. Road in front of the Cinema Hall and for which submitted the said building plan for sanction before the Respondent/Municipality on 28th August, 1997. By the said building plan a single storied commercial building was proposed. The Respondent/Municipality did neither sanction the said building plan nor intimated anything in writing to the writ petitioner within the statutory period. In these state of things, the petitioners moved a writ petition in this court challenging the purported inaction on the part of the Respondent/Municipality in not according formal sanction to the said building plan. Section 208 of the West [Bengal Municipal Act, 1993](#) provided that if, within the period referred to in section 207, the Board of Councillors has neither recorded nor refused to accord sanction to a building plan, nor granted permission to execute a work, such sanction or permission shall be deemed to have been granted. This court by an order dated 10th August, 1998 directed the Respondent/Municipality to dispose of the plan case of the writ petitioner as per the provisions of law within a period of 15 days from the date of communication of the said order with further stipulation that In the event of failure of respondent/ municipality to dispose of the building plan of the writ petitioner within the said time, the petitioner will be entitled to proceed with the construction and/or execution of the work pursuant to the building plan submitted on 28.8.97. Upon receipt of the said order of this court the Respondent/Municipality by a letter dated 18.8.98 called upon the petitioner No. 1

for a hearing on 24th August, 1988. The Respondent/Municipality upon hearing rejected and/or refused to sanction the building plan of the writ petitioner by the impugned letter dated 25.8.88 of the Chairman of the Respondent/Municipality which is under challenge In this writ petition. The letter reads as under :--

'With reference to the above 1 am to inform you that the site mentioned In your site plan cannot be considered for sanction or approved for further construction for which your site and building plan is hereby rejected.'

3. Mr. Bidyut Kiran Mukherjee, learned senior Advocate appearing on behalf of the writ petitioner seriously challenged the said letter dated 25.8.89 upon reference to sections 203 and 210 of the West [Bengal Municipal Act, 1993](#) (hereinafter called as the said Act). Mr. Mukherjee, contended that section 210 enumerates the grounds on which a sanction of a building plan can be refused. The impugned letter having nor disclosed any one of such grounds for refusal it is presumed that no such ground was available to the Respondent/Municipality to refuse sanction of the building plan of the writ petitioner. Mr. Mukherjee. contended that the building plan was prepared upon compliance of all relevant municipal laws, rules and regulations relating thereto. Accordingly, it was urged that such refusal of sanction of the building plan of the writ petitioner was absolutely arbitrary and without any authority under the provisions of law. According to Mr. Mukherjee, for the purpose of approval of the site for building under section 203 of the said Act, only requirement provided therein is the no-objection certificate under sub-section (3) of section 5 of the Urban Land (Ceiling & Regulation) Act 1976 from competent authority as defined in proviso to the said section. But such approval of site plan is no longer necessary as it was held by this court that a Municipality cannot refuse to sanction a building plan on the ground of non-production of such no objection certificate from the competent authority under urban land (Ceildlng & Regulation) Act, 1976. Mr. Mukherjee lastly argued that in any event non-approval of the site for construction for the reasons as stated in the affidavit-in-opposition cannot be sustained In law as the West Bengal Municipal Act, 1932 does not provide any norms for such non-approval.

4. The Respondent/Municipality contested this writ petition by filing affidavit-in-opposition. In the said affidavit-in-opposition it was stated as to why the site for construction of the building in question was not approved by the Municipality. The building plan as submitted by the petitioner was therefore rejected as the site was not approved for construction. The reasons for rejecting the building plan were stated as under :--

a) One Cinema House popularly known as Rup Mahal Cinema has been running at B.C. Road, Mahalla, Burdwan by the writ petitioners and during the construction of the said Cinema Housing vacant space has been kept in front of the Cinema House and other sides also as per provisions of Schedule VI of Bengal Municipality Act, 1932.

b) At the present moment the owner of the said Cinema House has been trying to construct another commercial complex on the vacant space which is usually used as Cycle Stand and parking space for four wheelers and two wheelers. Now, if the owner occupies the said space through constructing of another commercial building on the vacant space then the said construction will certainly create a traffic jam on the main road of Burdwan Town known as B.C. Road.

c) Usually there is always a parking problem in front of the Cinema Hall as there is a queue of film loving people. Therefore, the Municipal Authority for the reasons as stated has rejected the building plan as submitted by the petitioners.

5. Chapter XIV of the West [Bengal Municipal Act, 1993](#) deals with erection of building in the municipality. The scheme as appears from the said chapter is that no person shall be entitled to erect or commence to erect any building or execute any specified building work except with previous sanction from the authority concerned of the municipality. Accordingly, every person who intends to erect or executes any specified building work is required to make an application with building plan in the prescribed form for sanction. The authority concerned is under obligation either to accord sanction to the building plan conditionally or unconditionally or to refuse to accord such sanction within 60 days after receipt of the application for sanction of a building plan. Again Clause (a) of section 210 clearly stipulates that sanction of a building plan may be refused on the ground

that the approval of the building site has not been obtained as required under the provisions of this Act and the rules and regulations made thereunder. The approval of the building site has dealt with in section 203 of the said Act which reads as under :

'No piece of land shall be used as a site for the erection of a building unless such site has been so approved within the prescribed period, and no building shall be erected unless a building plan has been sanctioned for such erection in accordance with the provisions of this chapter and of the rules and regulations made under this Act.

Provided that no piece of land shall be approved for the erection of a building and no building plan shall be sanctioned unless a certificate from the competent authority, as defined in Clause (d) of section 2 of the Urban Land (Ceiling and Regulation) Act, 1976 (33 of 1976), to the effect that there is no objection to the transfer of the land under sub section (3) of section 5 of that Act, has been submitted along with the application for sanction of building plan under the rules made under this Act :

Provided further that if the competent authority as aforesaid does not issue the certificate within three months from the date of application for such certificate, it shall be presumed that the 'no objection certificate' has been issued by it and no further reference to it shall be necessary.

6. Upon reading of the said section along with provisos as above it appears that it has an enacting part which unequivocally 'stipulates that no piece of land shall be used as a site for the erection of a building unless such site has been so approved and no building shall be erected unless a building plan has been sanctioned, the language of this enacting part does not contain anything about the non-objection certificate under the provisions of Urban Land (Ceiling and Regulation) Act, 1976. The said enacting part is capable of construing without being dependent on any other thing. The first proviso to said section 203 imports an additional requirement of obtaining no objection certificate from the authority under Urban Land (Ceiling & Regulation) Act, 1976, the absence of which will preclude the municipal authority either to approve the site for construction or to sanction

building plan. This proviso is therefore a qualifying proviso. it qualifies to the extent that one should have a no objection certificate from the authority under Urban Land (Ceiling & Regulation) Act, 1976 to get the site approved for construction. it necessarily implies that the Municipal authority will not exercise its power to approve a site for construction unless such a no-objection certificate is obtained as per said first proviso or deemed to have been obtained as per second proviso. Such provisos therefore cannot be construed to have enlarged the scope of the principal enacting part that upon obtaining no objection certificate the approval of the site for construction will be automatic or consequential. Such reading of the first proviso of section 203 of the said Act would be to import the whole body of the provisos into the enacting part of the statute. 1 may refer in this connection a passage from page 218 of Crales Statute Lair (7th Edition).

'it sins against the fundamental rule of construction that proviso must be considered with relation to the principal matter to which it stands as a proviso. it treats it as If it were an Independent enacting clause instead of being dependent on the main enactment.'

7. Therefore even assuming that the effect of the provisos to the section 203 of the said Act has been nullified by a Judgment of this court, the enacting part of the said section cannot be said to have become non-operatlve because being dependent upon the said provisos. A municipality will therefore be entitled to consider the case for approval of a site for construction independently under the enacting part of section 203 of the said Act irrespective of any no-objection certificate as required under the provisos of said section.

8. Again section 203 clearly provides for approval of a site for construction before a building plan is sanctioned on the site. This would be evident from Clause (a) to section 210 of the said Act which reads as under :--

The sanction of a building plan may be refused on any of the following grounds :--
(a) That the approval of the building site has not been obtained as required under the provisions of this Act and the Rules and Regulations made thereunder.

9. A building plan may have various technical requirements both for the purpose of stability and safety of the construction as well as for preservation of space and/or spaces in between the buildings and/or between the proposed construction and the public or private roads as per the standard or specification that may be provided for. But such requirements may not have any bearing on the particular features of the locality or the site on which the construction is proposed. The approval of the site in which a construction is proposed therefore involves consideration of the particular features of the locality namely its future growth pattern, population, the necessity of a construction in the site and most importantly the public interest. Therefore, the approval of a site for construction is necessarily an independent consideration by the authority concerned in its proper perspective and not dependent upon the building plan on the basis of which construction will be made, in other words, the sanction of a building plan even upon compliance of relevant provisions of law is absolutely dependent upon the approval of the site for erection of a building but not vice versa.

10. The said provision for approval of a site for construction has therefore the greater implication than the provisions for sanction of a building plan. The Respondent/Municipality is burdened with greater responsibility to decide in its wisdom whether a particular site should be approved or not for erection of a building. It has the responsibility to make a decision on the need of a construction by a private individual or others in a particular site upon consideration of the greater interest of the public in the area of the site. It has the responsibility to keep the areas within the municipality developing with constructions without causing serious inconveniences to the local public. It is therefore required to act with foresight to the future problem and inconveniences of the local public. In discharging such a grave responsibility it is required to consider in proper perspective the character of the building proposed in the site and the location of the site itself. Better living does not only mean comfortable living in one's house but it also includes all reasonable facilities for day to day living in an area. Free movement of pedestrians and vehicular traffic along the pathway and roads are part of civic amenities which the municipality should endeavour to provide to the people of the area under it. To provide such civic amenities to its people a planning with foresight is a must. With such planning and/or outlook it is required to decide

administratively as to whether a site should be approved for erection of a building or not in exercise of its power under section 203 of the said Act. Accordingly, the municipality is absolutely empowered under the provisions of section 203 to take an administrative decision as to whether a site should be approved or not for construction. Such administrative decision in exercise of the power under the Statute is not amendable to the jurisdiction of this court unless it is shown to be arbitrary, malafide and/or no reasonable man would come to such a decision on the materials on which the Municipality had taken a decision.

11. Here in this particular case though the impugned letter did not disclose the particular reasons for which the site was not approved for erection of a building but in the affidavit-in-opposition as stated hereinbefore the grounds for such non-approval were disclosed. The said grounds obviously put forward a reasonable approach of the Respondent/Municipality upon consideration of the factors on which it should give importance. In this particular case, considering the site and the proposal of a commercial building thereon by the writ petitioners it does not appear that the said decision of the municipality was either unreasonable or was not taken upon proper perspective. The municipal authority being the decision making authority in this regard and such decision being based on consideration of relevant factors as stated in paragraphs 2(a) to 2(c) of the affidavit-in-opposition, this court in exercise of its power under writ Jurisdiction should not interfere with the same nor it should substitute its decision upon scrutinisation of the reasons and the factors considered by the Municipality. It is well settled that in such circumstances Judicial review is permissible only in respect of decision making process but not of the decision itself. That again in the writ petition no averment was made as to the malafide motive of any one of the respondent/municipality in not approving the site for construction. Therefore no case for malafide action on the part of respondent/municipality was advanced. Therefore the decision of the Municipality not to approve the site for construction cannot be interfered with in this writ petition.

12. In view of the discussions as above, it is thus clear that the Respondent/Municipality only upon approval of a site for construction can proceed for sanction of a building plan as per the provisions of law. In this particular case

as discussed hereinbefore the site itself was not approved by the Municipality for erection of a building and consequently the building plan was rejected in exercise of power under Clause (a) of section 210 of the said Act. Thus, all the contentions of Mr. Mukherjee in support of this writ petition must fail.

This writ petition is therefore dismissed, however, without any order as to costs.

13. Petition dismissed

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