IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 15804 of 2022

Kalidas Maity & Anr.
Vs.
The State of West Bengal & Ors.

For the Petitioners : Mr. R. N. Chakraborty
: Ms. Tanusree Das

For the respondent No. 10 : Mr. Saptangsu Basu, Ld. Sr. Adv.
: Mr. Debjit Mukherjee
: Ms. Susmita Chatterjee
: Mr. Kaustav Bhattacharya
: Ms. S. Chakraborty
: Ms. P. Jana

For the Howrah Municipal Corporation : Mr. Sandipan Banerjee
: Mr. Ankit Surekha

For the State : Mr. Tapas Kr. Adhikari
: Mr. Somraj Dhar

Judgment on **: 31.03.2026**

Rai Chattopadhyay, J. :-

1. The writ petitioners, who are the residents of Premises No. 12, Sree Ram Dhang Road, Salkia, P.S.-Malipanchghara, Howrah, 711106, are aggrieved of the alleged sanction of building plan by the respondent/ Howrah Municipal Corporation, initially for a G+3 building and subsequently regularizing additional three floors over there, that is, from fourth floor to sixth floor at the adjacent premises number 8 and 10, Sree Ram Dhang Road. The petitioners are also aggrieved with construction of building, initially G+3 and its subsequent horizontal extension to 6th Floor, by the private respondents. The petitioners have stated that firstly, the vendor of the private respondents did not possess a valid title to the property, so as to pass on the same in favor of the private respondents, by way of execution of a gift deed and secondly that, the said property is a thika tenanted property, which can neither be transferred nor utilized to make construction by any private person, excepting the State. Hence, the petitioners have alleged that sanction of plan as well as construction of building over the same piece of land is only unauthorized and illegal. They also say that in constructing the building, the private respondents have violated the provisions of the statute and the rules framed thereunder. On this premise, the writ petitioners have prayed for the relief that the unauthorized construction of the private respondents, made and subsequently regularized vide the order of the respondent/Howrah Municipal Corporation in case number BMR-320/2016-17, as mentioned in the report dated December 13, 2016, be directed to be demolished.

2. The petitioners have relied on the record of right (parcha) in support of their contention that the concerned property comprised within holding No. 10, is a thika tenancy property.

3. The petitioners have also relied on a report of a licensed building surveyor engaged by them, who inspected the premises at the instance of the petitioners and with prior notice to the private respondents. According to the said report of the licensed surveyor, the building has been constructed without free gift of land on the eastern side, thereby causing violation from the building Rule 59(2) of the KMC Building Rules of 2009 (as applicable). And hence, the sanction is bad.

4. The licensed building surveyor has further reported that the construction also infringes Rule 74 of the KMC Building Rules, 2009 (as applicable), by violating the prescribed height of the building, that under Rule 62 of the said rules, by violating the prescribed space to be left sidewise of the building. The report of the said surveyor has also mentioned that, there are violations as regards Rule 69, Rule 70 and Rule 127 of the Kolkata Municipal Corporation Building Rules, 2009 as applicable in case of the Howrah Municipal Corporation.

5. The writ petitioners have mentioned about an earlier writ petition filed by them before this Court being WPA No. 18475 of 2016 in which the Court directed the Commissioner, Howrah Municipal Corporation to depute a competent senior officer for inspection of the concerned premise, vide order dated September 22, 2016. The Court has also directed for furnishing a report of such inspection done. The petitioner's allegation is that no such inspection was done in terms of the Court’s order though a report dated December 13, 2016 was filed before the Court. That, the said writ petition was disposed of with the Court’s order dated December 14, 2017, as follows inter alia that: -

"In view of the above, this writ application stands disposed of without passing further order in the matter, save and except with a direction upon the respondent Municipality to communicate its decision with regard to the alleged unauthorized construction at premises Nos. 10 and 8 Sree Ram Dhang Road, Salkia, Howrah- 711106 within a period of 7 (seven) days from date.
There will, however be no order as to costs."

6. The petitioner in the writ petition has mentioned about the following specific deviation having been occurred in constructing building over the disputed premise.

"on the east of the captioned premises there is a concrete passage the width varying from 820m to 970mm. It is not mentioned in the drawing whether the passage belong to HMC or a common passage.

As per Rule 5(2), in case of a residential building, a street / passage the width of which is less than 3.50 M on the front, side or rear be increased to make the width of the said passage / street 1.75 m from the center line of the passage / road by gifting the required portion of land in front by registered document to the Corporation or by relinquishing the required portion of land on the sides or the rear by the applicant.

In the instant case no such gift has been made prior to submission of the application for obtaining sanction, and the building has hence been erected without free gifting the requisite strip of land on the eastern side, thereby causing violation from the building rule No. 59(2) and hence the sanction is bad.

The newly erected building infringes Rule 74 of the K.M.C. Building Rule 2009. Permissible height of building is 12.50 M and the height of the newly erected buildings is 21.520 M.

Rule 62 :

Rule 62	Mandatory	As Built
Front open space	5.0 M	1.2 to 2.20 M
Side 1 open space	5.0 M	1.50 M
Side 2 open space	5.0 M	1.20 M
Rear open space	6.50 M	3.0 M

From the above table it is clear as to how all provisions of mandatory open space have been violated.

Rule 69 : Permissible Floor area ratio is 1.75 and executed F.A.R. is 3.128.

Rule 127 : The rule states that there is necessity of two staircases of width 1.25 M. for residential building of height more than 15.50 M. In the instant case only one staircase, 1.350 M wide has been provided.

Rule 70 : Ground coverage : Cantilever from level have been projected on the sides and rear and considering the area covered by the cantilever the ground coverage is found to have exceeded the permissible limit."

7. Mr. R. N. Chakraborty, learned advocate for the petitioner has submitted that there has been gross illegality committed by the respondent/Howrah Municipal Corporation at the instance of the private respondents in construction of a building over a thika tenanted property that too, in violation of the statutory provisions and Rules framed thereunder. He submits that hence, the said building is liable to be demolished being an illegal construction. Mr. Chakraborty, learned advocate has submitted that, several letters of the petitioners raising grievance against such unauthorized construction and requesting for taking appropriate steps, have not been taken into consideration by the respondent/Howrah Municipal Corporation. He points out that, even the said authority has ignored the finding in its own report dated December 13, 2016, as regards unauthorized and illegal construction in deviation to the statutory provisions. Mr. Chakraborty has submitted that the petitioners have not been allowed any opportunity of hearing in BMR Case No. 320/2016-17; that the petitioners were not served with any notice of hearing or

copy of the order passed in the said case. He says that, entire 3 floors over the initially sanctioned G+3 structure was regularized by the respondent /Howrah Municipal Corporation by accepting retention fees which is absolutely unlawful and more so, has an effect of endangering the lives and properties of the people living at the nearby places.

8. Mr. Chakraborty, learned advocate for the petitioners, has referred to the judgment in ***Dipak Kumar Mukherjee versus Kolkata Municipal Corporation and others*** reported in ***(2013) 5 SCC 336*** to specifically rely upon the following two paragraphs -

> *"25. A reading of the plain language of Rule 25(1) makes it clear that a person, who erects any structure or executes any work is not entitled to deviate from the sanctioned plan. Rule 25(2) which contains a non-obstante clause and provides for sanction of revised plan to be submitted by the person engaged in erection of building or execution of work lays down that if during erection or execution of work, any internal alterations or external additions which do not violate the provisions of the Act or the Rules is made, the Municipal Commissioner can, at an application made in that behalf sanction the revise plan showing the deviation. Rule 25(3) is declaratory in nature. It lays down that any departure made during the execution of any work or at any time thereafter without sanction shall be deemed to be in contravention of the Act and the Rules shall be dealt with accordingly.*
>
> *26. In our view, respondent No.7 cannot take benefit of Rule 25 because the disputed construction was in clear violation of the sanctioned plan and the notices issued by the competent authority of the Corporation and also because the application was made after completion of the construction."*

9. He has further referred to a Division Bench judgment of this Court in ***Laxmi Residency Private Limited and others versus Rajesh Jain and others*** reported in ***2022 SCC Online Cal 2256*** in

support of his submission that, construction if found to be unauthorized being de hors the sanctioned plan, can be directed to be demolished. Similarly, the other judgment of ***Ghana Shyam Das versus Kolkata Municipal Corporation and others*** reported in ***2014 4 WBLR (Cal) 781*** has been referred to where the Court finds that, the statute provides power to the Commissioner not only to issue notice for cessation of work to prevent unauthorized construction, but also to pass order of demolition or to pass order for addition or alteration in order to bring the construction in consonance with the plan sanctioned. The other Division Bench judgment in ***Shital Chandra Bodhok versus Howrah Municipal Corporation and others*** reported in ***2012 3 WBLR (Cal) 611*** has also been referred to that the Court, upon finding unauthorized construction in violation of the sanction plan, has directed the Commissioner of the Corporation to demolish the unauthorized portion which, in the opinion of the court could not have been regularized on payment of fine.

10. For the reasons as above, Mr. Chakraborty, learned advocate for the petitioner has insisted that the unauthorized and illegal structure over holding No. 10 Ram Dhang Road, Salkiya may be directed to be demolished.

11. The private respondents Nos. 10 and 11 have been represented by Mr. Saptangsu Basu, learned senior counsel. It is submitted that, the writ petition is only mala fide and harassive. Preliminary points as to maintainability of the said writ petition has been pleaded by the private respondents as above that, the writ petition is barred by limitation as well as the petitioners has no locus standi to move the same before this Court. It has been submitted that, none of the legal or statutory or Constitutional rights of the writ petitioners have been adversely affected/violated by any act of the respondent Corporation. According to Mr. Basu, the

respondents Nos. 11 to 14 are the owners of the concerned premises. The premises Nos. 8 and 10, Sree Ram Dhang Road, Howrah, Salkia has been amalgamated and building plan for a G+3 storied residential building was duly sanctioned by the Howrah Municipal Corporation.

12. Mr. Basu has submitted that the said respondent further proposed to vertically extend the building to sixth floor making it a G+6 building and for that, plan was proposed and duly approved by the respondent Corporation pursuant to submission of statutory fees ascertained by the said Corporation. Mr. Basu has submitted that now the building has been completed and the people have started residing therein by purchasing individual units thereof and they are in actual physical possession of the units of the building. At this moment, the endeavor made by the petitioners violates not only the rights of the present respondents, but also the persons who have obtained right of the property by way of purchase in the said building. Having supported the argument advanced on behalf of the respondent/Howrah Municipal Corporation as noted above, these respondents have also sought for dismissal of the writ petition.

13. In support of his contention, Mr. Saptangsu Basu, learned senior counsel for the private respondents have relied on the following two judgments: -

(i) ***State of MP and others versus Nandalal Jaiswal and others, [1986 4 SCC 566]*** - This Full Bench judgment of the Supreme Court has been relied on to support the proposition of law argued that, a delayed writ petition deserves no consideration of the Court of equity.

(ii) ***Amit Ghosh versus Howrah Municipal Corporation and others*** reported in ***2022 SCC Online Cal 1257*** -In this case, the Court has allowed grant of sanction upon acceptance of retention fees for further three floors in a building upon consideration of the structural certificate.

14. Mr. R. N. Chakraborty, learned advocate for the petitioner, has strongly objected to the points as regards maintainability of the writ petition as raised and discussed above, in his reply argument. He submits that in case of any unauthorized construction, the law is well-settled that, a neighbor is duly authorized under the law to ventilate such grievance. For this, Mr. Chakraborty has relied on the two judgments of this Court: -

(i) ***Smt. Sushama Banerjee and another versus Calcutta Municipal Corporation and others*** reported in ***2000(2) CHN Page No. 447(DB).***

(ii) ***Shyamal Sarkar and others versus Kolkata Municipal Corporation and others*** reported in ***2015(1) CHN 733 (DB).***

15. So far as the preliminary point of objection based on alleged belated filing of the writ petition, Mr. Chakraborty, learned advocate for the petitioner has replied that, in a case of this nature, delay in filing the writ petition is only inconsequential, in view of the gravity of the allegations made. In support of this contention, he has relied on a judgment of this Court in ***Mohanlal Mitra and another versus Kolkata Municipal Corporation*** reported in ***2005(3) CHN 282.***

16. The respondent Nos. 3, 4 and 5 are the Howrah Municipal Corporation Authorities which have been represented by Mr.

Sandipan Banerjee, learned advocate. According to the said respondent, inspection, in terms of the Court's order passed in WPA No. 18475 of 2016 was done in due and proper time and manner. The said respondent has stated that, at the time of inspection though some of the private respondents were present, but the writ petitioners did not turn up. The findings in the inspection are jotted down in Paragraph 5 of the affidavit in opposition, filed by the said respondents, which is as follows: -

> ***"05. That, from such inspection and after perusal of the documents and/or copies relating to the same, it was found that a plan of G+3, i.e. four storied residential building was initially sanctioned in favour of the developers/defaulters, namely Tapan Pal and Goutam Pal, vide BRC No. 119/2015-16 being valid upto 31.01. 2021 from the Howrah Municipal Corporation following the Kolkata Municipal Building Rules as extended to the Howrah Municipal Corporation areas as well."***

17. It has been submitted further that, plan for construction of additional three floors over G + 3 storied building was submitted by the private respondents after such inspection. The Corporation Authorities, after being satisfied about the structural stability have sanctioned the same, in lieu of applicable fees, in connection with BRC Case No. 202/2015-16. In paragraph 7 of its affidavit in opposition, the State respondent has categorically narrated that, on the date of inspection, that is, December 13th, 2016, the building was found to have been already completed up to G+6 structure. According to the said respondent, it noted a horizontal deviation, therefore, the Sub-assistant Engineer issued stop work notice upon the private respondents, under section 177(1) of the Howrah Municipal Corporation Act, 1980 (as amended). Hence, BMR Case No. 320/2016-17 was started and after ascertaining the structural stability of the construction, the Howrah Municipal

Corporation Authorities ultimately sanctioned the building plan up to G+6 structure, in lieu of applicable fees.

18. Therefore, according to the respondents, there is no illegality in complying with the statutory provisions as alleged, as regards the mode and manner for sanction of the building plan as regards the concerned premises. For this, the respondents have addressed the writ petition as meritless and unsustainable and insisted that the same should be dismissed.

19. Upon careful consideration of the respective pleadings and arguments, it reveals that petitioners are the adjacent land owners and residents of the subject land, which they say to be a thika tenanted property. In this regard, the petitioners have relied on the record of right (parcha), of the said piece of land. The same has not been specifically disputed to be an unworthy document for the reason of being forged or manufactured. As per provision of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001, the thika land is effectively the State-controlled land and the tenant has only limited right over there. The interest of a thika tenant is heritable but not freely transferable. As per Section 5(4) of the said Act of 2001, transfer of a thika land is permitted only inter se amongst the heirs, existing co-sharers, spouses and prospective heirs, only when prior permission of the Controller is obtained. In case of transfer within the specified class of persons as mentioned above, prior permission of the Thika Controller, is a mandatory provision, under the law. Any sale of the thika property to the outsiders or third party purchasers or developers are absolutely prohibited under the law. Even for permitted transfers, the same without prior permission of the Controller, would render such transfer as illegal. The law specifically enforces that thika tenants cannot act like full owners of landlords. Commercial sale of thika land or real estate development through private transfers

have been made as illegal and void transfers, under the said law. Any illegal transfer is liable to be declared invalid by the Controller and may also lead to forfeiture of structure to the State.

20. No material is available on record in this case, to show that at the time of sanction of plan or subsequent regularization thereof this aspect has ever been in the mind of the respondent authorities or has ever been considered. As, whether the said land was a freehold or not touches the root of power and authority of the respondent/Corporation, to respond to the prayer for sanction of the building plan, the said respondent should have considered or dealt with this aspect, before sanction or regularization of any building plan.

21. The other issue which falls for determination is whether the action of the Howrah Municipal Corporation in regularising the additional three floors (G+3 to G+6) upon acceptance of retention fees, on the basis of a building plan submitted subsequent to completion of such construction, is legally sustainable or not.

22. It is not in dispute that the original sanctioned plan was for a G+3 structure. The materials placed, including the affidavit of the Corporation itself, clearly establish that on the date of inspection, i.e., December 13, 2016, the construction had already been completed up to G+6 level. Thus, the additional three floors were admittedly raised without prior sanction and in deviation from the originally sanctioned plan. The report of the Executive Engineer dated December 13, 2016 is worth mentioning in this regard which speaks as follows:-

> ***"This is for your kind information, that in reference to the order of the Hon'ble High Court & your subsequent order as referred above, the site at (8+10), Sri Ram Dhang Road PS- Malipanchghora, Howrah-711106 has been inspected on 13.12.2016. after intimating***

> ***both the private parties involved through speed post in presence of some of the private respondents, petitioners, however, did not turn up.***
>
> ***From such inspection, & other documents or copies thereof, as became available to me, I would like to state, that a plan of a (G+3), i.e. four storied residential building was sanctioned in favour of Tapan Pal & Gautam Pal vide BRC No 119 of 15-16 (validity up to 31.01.2021) from Howrah Municipal Corporation, following KMC Building Rule as extended to HMC area as well.***
>
> ***Later a prayer of additional 3(three) floors (i.e. 4th, 5th & 6th) was allowed by the HMC Authorities. Vide BRC No 202 of 15-16.***
>
> ***Presently, i.e. on the date of inspection, the construction has been found stopped, i.e. framed structure completed up to G+6, no ongoing construction has been noticed.***
>
> ***Going through the papers/documents, it has also become evident, that during the construction of the building in question, horizontal deviations had been noticed by the concerned SAE & a stop work notice was served upon the builders U/S 177(1) of HMC Act 1980 (as amended). Subsequently a case was opened vide BMR 320/16-17. Later on, the case was withdrawn in lieu of fees.***
>
> ***At present, an encroachment over the land gifted to HMC for corner splaying, has been noticed (S-E corner)."***

23. The Corporation seeks to justify its action on the ground that a subsequent plan was submitted and, upon satisfaction regarding structural stability, the same was sanctioned in lieu of fees. However, such justification cannot be sustained in law.

24. The statutory scheme governing building regulations does not contemplate post facto regularisation of substantial and deliberate deviations which go to the root of the sanctioned plan. A distinction must be maintained between (i) minor or permissible deviations during construction, and (ii) substantial, conscious and completed unauthorized constructions. The present case falls squarely within the latter category. In this regard, provision under

the Kolkata Municipal Corporation Building Rules, 2009 as applicable in case of the Howrah Municipal Corporation may be mentioned. According to Rule 26 of the Rules of 2009, no deviation from the sanction plan is allowed at the time of construction of building. Rule 26(1) has provided that, no deviation from the sanction plan shall be made during erection or execution of any work.

25. To the provision as above, exceptions have been carved out as mentioned in Rule 26 (2) (a) and (b). Let the said provisions be quoted as hereinbelow: -

> ***"26. Deviation during execution of works…..***
>
> ** ** ** **
>
> *(2) Notwithstanding anything contained in sub-rule (1)—*
>
> *(a) if during erection or execution of work any internal alteration within the sanctioned covered space which does not violate the provisions of the Act or these rules is intended to be made, the person referred to in sub-rule (1) of rule 4 shall inform the Municipal Commissioner by notice in writing along with a certificate from the Architect or the Licensed Building Surveyor and Structural Engineer, as the case may be, together with drawings incorporating the deviations, and structural calculation in case of structural deviations, stating the nature and purpose of such deviations, at least fifteen days prior to carrying out such erection or execution of work and may thereafter proceed with the execution of such work, subject to the condition that such deviations shall be incorporated in the "Completion Plans" under sub-rule (2) of rule 27;*
>
> *(b) if during the erection or execution of the work, any external deviation beyond the sanctioned covered space is intended to be made and which does not violate the provisions of the Act or these rules, the person referred to in sub-rule (1) of rule 4, shall prior to carrying out such erection or execution of works, submit in accordance with the provisions of these rules, a revised plan incorporating the deviation intended to be carried out, for obtaining necessary sanction.*"

26. The provision in Rule 26(3) of the Rules of 2009 is that, erection or execution work undertaken without the sanction should be deemed to be in contravention of the provisions of the statute and be dealt with as per the Rules accordingly.

27. The facts on record further reveal that the deviations are not merely technical or marginal. The report relied upon by the petitioners indicates violations relating to height restrictions, floor area ratio (FAR), mandatory open spaces, and other provisions of the applicable Building Rules. These are fundamental parameters governing planned development and urban safety. Such violations, by no stretch of interpretation, can be treated as curable irregularities.

28. Moreover, the sequence of events is of crucial significance. The additional floors were constructed first, in clear departure from the sanctioned plan, and only thereafter an application for approval was made. Such a course of conduct amounts to a conscious attempt to overreach the statutory framework. Acceptance of such conduct by the municipal authority, would defeat the very purpose of regulatory control over building activities.

29. The power to sanction a revised plan cannot be exercised in a manner that legitimizes an illegality already committed. Any interpretation permitting such post-construction approval would encourage unscrupulous developers to raise unauthorized structures first and seek regularisation later by payment of fees, thereby rendering the regulatory provisions otiose.

30. The legal position under the Kolkata Municipal Corporation Building Rules has been authoritatively settled by the Supreme Court in ***Dipak Kumar Mukherjee (supra)*** wherein the scope of

Rule 25 was exhaustively interpreted. The Court held that Rule 25(1) expressly prohibits any deviation from the sanctioned plan and Rule 25(2) permits submission of a revised plan only in respect of minor internal alterations or external additions which do not violate the Act or Rules and are sought during the course of construction. Importantly, Rule 25(3) declares that any departure made without sanction, particularly after completion of construction, is to be treated as a contravention of the statute and dealt with accordingly. Applying these provisions, the Supreme Court categorically held that substantial and structural deviations, especially those made after completion of construction, cannot be regularised by invoking Rule 25 and that an application for regularisation filed post-construction is not maintainable in law. The Court further emphasized that permitting such regularisation would defeat the purpose of planned development and encourage deliberate violations. Thus, the consistent judicial principle that emerges is that only minor, non-violative deviations during construction may be considered for approval, whereas unauthorized constructions beyond the sanctioned plan—particularly completed structures—cannot be legalized merely on payment of retention fees and are liable for appropriate action, including demolition.

31. In the order passed in BMR Case No. 320/2016-17, none of these statutory provisions or settled principles of law has been discussed, to show non-applicability of those, in case of the private respondents, in this writ petition.

32. Further, the records do not disclose any proper adjudicatory exercise by the Corporation addressing the nature and extent of deviations vis-à-vis the statutory rules. The so-called satisfaction regarding “structural stability” cannot override compliance with mandatory planning norms. Structural safety is only one aspect;

legality of construction is another and equally essential requirement.

33. It is also evident that the regularisation was affected without affording any meaningful opportunity of hearing to the affected neighbouring residents, despite prior complaints and earlier directions of this Court requiring consideration of the issue of unauthorized construction. Such omission vitiates the decision-making process on the ground of violation of principles of natural justice. There were several representations made by the instant writ petitioners, challenging validity of sanction of building plan of the private respondents. None of those have been considered by the respondent municipal authority. In such circumstances, post-facto regularization of the building plan of substantial portion of building, as good as the new construction, without granting any opportunity of hearing to the objectors amounts to gross arbitrariness also.

34. In the considered view of this Court, the action of the Corporation in granting sanction to the additional three floors, after completion of construction and upon payment of retention fees, amounts to an impermissible exercise of power and is contrary to the statutory framework governing building regulations.

35. The contention of the petitioners that the subject property is a thika tenanted land also raises a substantial issue which cannot be brushed aside. As per the records relied upon, the land in question is recorded as thika tenancy, and under the governing statutory framework, such land vests in the State, with the thika tenant enjoying only limited rights of occupation and use. The law does not permit transfer of such land by private parties nor its unfettered use for development in the manner of freehold property without prior sanction of the competent authority. Consequently,

any transfer by way of gift or otherwise, forming the basis of the private respondents' title, prima facie appears to be legally untenable. If the very foundation of title is questionable, any construction raised thereon and any sanction granted by the municipal authority without due verification of such legal status would also stand vitiated. This aspect, therefore, assumes significance in examining the legality of the impugned sanction and subsequent regularisation.

36. The preliminary objection as to lack of locus standi of the petitioners is devoid of merit and is accordingly rejected. The petitioners are admittedly residents of the adjoining premises and have specifically alleged that the impugned construction, raised in deviation of the sanctioned plan and in violation of statutory building rules, has adversely affected their right to safe enjoyment of their property and the surrounding environment. In matters relating to unauthorized construction, it is well-settled that a neighbouring owner or occupier has sufficient locus to approach the writ court, as such construction has direct bearing on issues of light, air, safety, access and planned development of the locality. The grievance raised is not in the nature of a private dispute simpliciter, but concerns enforcement of statutory obligations cast upon the municipal authorities. Therefore, the petitioners cannot be non-suited on the ground of absence of locus standi, and the writ petition is maintainable at their instance.

37. In **Sushama Banerjee's case (supra)** as referred to on behalf of the writ petitioners, the Division Bench of this Court has held as follows:

> *"11. There cannot be any doubt whatsoever that a neighbour has a right to object to the sanction of a building plan if such sanction has not been granted in terms of the provisions of the CMC Act*

and the Building Rules framed thereunder. The said Act is regulatory in nature. The authorities who have been authorised to consider the matter relating to grant of sanction of a building plan are required to apply their minds as regards compliance of the relevant provisions of the Building Rules. A plan can be sanctioned only in terms of the said Rules unless there exists a provision for relaxation. Such order of relaxation can also be passed by an appropriate authority on a reasonable ground."

38. Similarly, in ***Shyamal Sarkar's case (supra)***, the other Division Bench of this Court has held that *"The Municipal Corporation can act on the complaint of public, including neighbour of the proposed construction as well as suo moto if they notice any unauthorised construction in violation of the Building Rules or in violation of the plan sanctioned. It may be a fact that the complaint of the neighbour of the appellants, the writ petitioner, was looked into by the Special Officer. This cannot be an embargo for taking action forever on behalf of either the Municipal Corporation or the third parties, if they come across any violation as stated above."*

39. The preliminary objection regarding delay in filing the writ petition is also unsustainable in the facts of the present case. The issue involved pertains to alleged unauthorized construction in violation of statutory building rules, which constitutes a continuing wrong having recurring adverse impact on public safety, planned development and the rights of adjoining occupiers. It is well-settled that in such matters, the doctrine of delay and laches is applied with circumspection, particularly where the illegality complained of is ongoing or has the effect of perpetuating a breach of statutory provisions. Moreover, the records reveal that the petitioners had

been raising objections before the municipal authorities and had even approached this Court earlier, which indicates that they were diligently pursuing their grievance. In such circumstances, mere passage of time cannot be a ground to legitimize an otherwise unauthorized construction. Therefore, the writ petition cannot be dismissed on the ground of delay, and the preliminary objection in this regard stands rejected.

40. In this regard this Court in ***Mohanlal Mitra (supra)***, has held that,

> *"17. The delay in initiation of the proceeding under section 400(1) in my opinion is of no consequence. In a city like Kolkata where there are millions of houses spread over a large area, it is not possible for KMC with its existing infrastructure to detect unauthorized constructions as soon as the same is constructed. But however, if its attention is drawn at any stage, then in my opinion the KMC can take appropriate steps in accordance with law. Under the KMC Act, 1980, there is no prescribed period of limitation with regard to taking action against the unauthorized constructions by the KMC."*

41. Accordingly, the order of regularisation passed in BMR Case No. 320/2016-17 cannot be sustained and is liable to be set aside.

42. Hence, this writ petition is allowed and the order of regularization passed in BMR Case No. 320/2016-17 is hereby set aside. However, the initial sanction of plan of a G+3 building, is sustained as of now.

43. The matter is remanded to the competent authority of the Howrah Municipal Corporation for fresh consideration. Upon remand, the authority shall:

- assess whether nature of the concerned property is that of thika tenancy, with limited right of occupation and not transferable without previous sanction of the competent authority;
- assess the nature and extent of deviations from the originally sanctioned plan;
- determine whether such deviations are capable of being regularised in accordance with law;
- consider the applicable statutory provisions and building rules in their true spirit, and
- afford a reasonable opportunity of hearing to all affected parties, including the petitioners and the private respondents.

44. Such exercise shall be completed within a period of 8 weeks maximum, by passing a reasoned and speaking order strictly in accordance with law. It is directed that the authority shall pass a demolition order in case of its finding as regards unauthorized and illegal construction having been made.

45. It is made clear that this this Court has not expressed any final opinion on whether the unauthorized construction is liable to be demolished or otherwise; the same shall be determined by the competent authority upon reassessment as directed above.

46. In the meantime, the private respondents are restrained from creating any third-party interest in respect of the subject property

by way of sale, transfer, lease or otherwise to creat third-party rights, until final decision by the respondent municipal authority.

47. Unoccupied flats on 4th, 5th and 6th floors of the said building shall not be occupied in any manner what so ever, until final decision by the respondent municipal authority.

48. The respondents shall maintain status quo as on the date of judgment as regards the nature, possession and use of the building, affecting no expansion, modification, or commercialization thereof, until final decision by the respondent municipal authority.

49. The writ petition No. WPA 15804 of 2022 is disposed of along with application/s pending if any.

50. Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)