

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction (Original Side)

A.P.O./47/2022

With

W.P.O/275/2020

I.A. NO. G.A./1/2022

The Kolkata Municipal Corporation & Ors.

Vs.

**M/ S. Adya Residency (P) Limited and M/ S. Rajveer Infrastructure Reality Pvt.
Ltd. & Ors.**

**Before: The Hon'ble Justice Arijit Banerjee & The Hon'ble Justice Rai
Chattopadhyay**

For the Appellants

:Mr. Alok Kumar Ghosh, Adv. Mr. D.K. Chatterjee, Adv.

For the Respondents/Writ petitioners

**:Mr. Bikash Ranjan Bhattacharya, Sr. Adv. Mr. Raghunath Chakraborty, Adv.
Ms. Tanusree Das, Adv.**

For the State

:Mrs. Sipra Majumder, Adv. Ms. Debarati Sen (Bose), Adv.

Heard On :14.06.2022, 27.06.2022, 30.06.2022 & 01.07.2022

CAV On :01.07.2022

Judgment On :30.09.2022

Arijit Banerjee, J .:

1. This is an appeal against the judgment and order dated April 21, 2022 whereby WPO No. 275 of 2020 was disposed of. In effect, the writ petition of the Respondent No. 1 before us, was allowed.

2. A building plan was sanctioned by the appellant Kolkata Municipal Corporation (in short ' KMC ') on February 21, 2015, in favour of the writ petitioner, thereby granting sanction for construction of a multi storied building at Premises No. 115/3, Hazra Road, Kolkata-700025. The plan was valid for a period of 5 years.

3. Before the learned Single Judge as also before us, the writ petitioner contended, that on February 4, 2022, the officer-in-charge of the Kalighat Police Station verbally directed the petitioner to stop the construction work forthwith. A letter dated February 5, 2020, issued by the said officer-in charge to the Deputy Commissioner of police, was placed before the Court from which it appeared that the officer-in-charge made a suggestion to the Deputy Commissioner of police to request KMC to issue necessary notice to the persons responsible to immediately stop the construction works in respect of certain properties in a particular zone which included the property of the writ petitioner. This was in view of the Municipal Circular No. 5 dated June 17, 2020, which imposed a restriction on the height of buildings in that particular zone.

4. On February 5, 2020, the writ petitioner made a written request to the Officer-in-Charge, Kalighat police station, for permitting resumption of the construction work.

5. The validity of the sanctioned plan expired on February 20, 2020.

6. On June 24, 2020, the writ petitioner made an application to the KMC Authorities for extending the validity period of the sanctioned plan for another term.

Such representation not having been responded to, the writ petitioner approached the learned Single Judge praying for, firstly, for a direction on KMC authorities to " revalidate and/or renew the Building Permit No. 2014090074 dated 21.02.2015 so as to enable the petitioners to carry out the remaining construction work at the said premises."; and secondly, for quashing of the Municipal Commissioner Circular No. 5 of 2020/2021 dated June 17, 2020. Before the learned Single Judge as also before us it was contended on behalf of KMC that the said Circular dated June 17, 2020, was not applied to the property of the writ

petitioner. The learned Single Judge, instead of quashing the said Circular, held that the said Circular does not apply to the property of the writ petitioner, construction work having been started by the writ petitioner and having progressed substantially in accordance with the sanctioned plan, prior to issuance of the said Circular.

7. As regards extension of time for the writ petitioner to complete the construction in question, KMC argued before the learned Single Judge that extension of time under Rule 15 (3) of the KMC Building Rules, 2009 (in short ' the Rules ') could not be granted since the application for extension was not made prior to expiry of the time that was initially fixed for completion of the concerned construction. The five years time period initially granted expired on February 20, 2020. The representation/written request for extension of time was made only on June 24, 2020. Hence the only option for the writ petitioner was to obtain a fresh sanction from the KMC authorities.

8. The argument of KMC did not find favour with the learned Judge and the following direction was passed:

" This Court, therefore, directs the Municipal Commissioner to renew the sanction plan and extend the period of completion of the construction and fix up the time limit on consideration of the application submitted by the petitioner dated June 24, 2020 within a period of four weeks from date in the light of the observations made in this judgment. While fixing the period of renewal, the authority of the KMC shall exclude the period starting from the date when the police authority stopped the construction work till the date of granting renewal. The writ petition stands allowed, without any order as to costs. "

9. The learned Judge passed the aforesaid direction relying on the judgment of a Division Bench of this Court in the case of Circular Properties (P) Ltd. and Ors. v. Calcutta Municipal Corporation & Ors., reported at AIR 1996 Cal 271 and the decision of a learned Single Judge of this Court in the case of Soumendra Nath Sen v. State of West Bengal & Ors., reported at 2014 (1) CHN (Cal)360. The learned Judge distinguished on facts, the decision of the Honourable Supreme Court in the case of Pune Cantonment Board & Anr. v.M.P.J. Builders & Anr., reported at (1996) 5 SCC 438, which had been relied upon by learned Advocate for KMC. I shall deal with the said decisions later in this judgment.

10. Being aggrieved by the aforesaid direction of the learned Single Judge, KMC is before us by way of this appeal.

11. Mr. Ghosh, learned Advocate representing KMC argued that the question of extension of time to complete any construction work can arise only when application for extension is made before the time runs out. There cannot be extension of something which does not exist anymore. If a builder allows the stipulated time period to expire without applying for extension of time prior thereto, the only way he can continue with the construction work is after obtaining a fresh sanction. In support of his contention, Mr. Ghosh relied on the decision in of Pune Cantonment Board (Supra) and the decision of the Hon'ble Supreme Court in the case of Provash Chandra Dalui & Anr. v. Biswanath Banerjee & Anr., reported at 1989 Supp (1) SCC487.

12. Mr. Chakraborty, learned Advocate appearing for the respondent/writ petitioner naturally supported the direction of the learned Single Judge and the reasons in support thereof. He submitted that the writ petitioner was making the construction in question strictly adhering to the plan sanctioned by KMC on February 21, 2015. Suddenly on February 4, 2020 the officer-in charge, Kalighat Police Station, verbally instructed the writ petitioner to stop construction work which was stopped immediately. On February 5, 2020, a letter was written by a sister concern of the writ petitioner to the said police officer with a request to permit resumption of the construction work. There was no response to such letter. The construction work remained suspended. On February 20, 2020, the initial 5 years time period granted by KMC for completing the construction expired.

The writ petitioner was running from pillar to post to have the embargo on the work lifted. It was in that background that the written representation dated June 24, 2020, was made by the writ petitioner to the Executive Engineer (Building), Borough-IX for KMC for extending the validity period of the building plan. The decision in the case of Circular Properties Limited (supra) fully supports the contention of the writ petitioner that in a case like the present one, the KMC authorities are obliged to extend the time period for completing the construction in question. The authorities cannot insist that the builder must obtain a fresh sanction.

13. I have carefully considered the rival contentions of the parties.

14. The question that falls for determination is a short one, i.e., if the initial validity period of a sanctioned building plan expires without the builder having applied for extension of the validity period prior thereto and if construction of the building is not yet complete, can the builder, in order to continue and complete the construction, apply for and obtain extension of the initial validity period of the sanctioned plan or must he obtain renewal of the sanctioned plan which really means obtaining a fresh sanction?

15. In the case of *Provash Chandra Dalui v. Biswanath Banerjee* (supra), the Hon'ble Supreme Court at paragraph 14 of the reported judgment, while discussing the distinction between extension of a lease and renewal of a lease, observed as follows:

" It is pertinent to note that the word used is ' extension ' and not ' renewal '. To extend means to enlarge, expand, lengthen, prolong, to carry out further than its original limit. Extension, according to Black's Law Dictionary, means enlargement of the main body; addition of something smaller than that to which it is attached; to lengthen or prolong. Thus extension ordinarily implies the continued existence of something to be extended. The distinction between ' extension ' and ' renewal ' is chiefly that in the case of renewal, a new lease is required, while in the case of extension the same lease continues in force during additional period by the performance of the stipulated act. In other words, the word ' extension ' when used in its proper and usual sense in connection with a lease means a prolongation of the lease. Construction of this stipulation in the lease in the above manner will also be consistent when the lease is taken as a whole. The purpose of the lease were not expected to last for only 10 years and as Mr. A.K. Sen rightly pointed out the schedule specifically mentioned the lease as " for a stipulated period of 20 years ". As these words are very clear, there is very little for the court to do about it. "

16. It would thus appear that something that has not come to an end and still exists, can be extended. Once it comes to an end, nothing remains which can be extended. In such a case, a fresh ' thing ' can be sanctioned or the ' thing ' can be renewed which will be a new or fresh ' thing '.

Applying the above principle to the facts of this case, it appears to me that learned Advocate for the appellants is right in arguing that once the initial validity period of the building plan in question came to an end on February 20, 2020, the plan

became invalid and dead – validity thereof became incapable of being extended. The only option that remained for the writ petitioner was to apply for a fresh sanction i.e., renewal of the sanctioned plan.

17. In the case of Pune Cantonment Board (Supra) the Pune Cantonment Board (in short ' PCB ') granted a building sanction under Section 181 of the Cantonments Act, 1924, on 2.7.1981 effective from 6.7.1981. The construction work was to be commenced within one year of the sanction i.e. before 6.7.1982 and was to be completed within 12 months from the date of commencement of the work.

In a letter dated 3.7.1982 addressed to PCB, the builder stated that work had commenced on 3.7.1982. Going by that date, the work had to be completed by 3.7.1983. Admittedly, the construction of the building was neither completed nor was any extension of time sought within that period. On 24.09.1983 the builder made an application to PCB for extension of time by 24 months to complete the construction. On 24.05.1984 an Engineer of PCB inspected the site and submitted a report that no erection work of the building had been started till then; the builder had not made any application for extension of time; and the sanction had lapsed. On 9.9.1985 a second application was made by the builder for extension of time by 18 months to complete the building.

On such application, an officer of PCB submitted a report dated 3.10.1985 to the effect that the builder had not started the construction and had not obtained any extension of time for completion of work.

The Cantonment Executive Officer exercising the power of PCB, granted extension of time for a period of one year from the date of his order i.e. 2.5.1986.

Prior to the builder making the application dated 9.9.1985 for extension of time, certain changes had been made in the building bye laws imposing additional restrictions. All subsequent building sanctions had to be granted thereafter subject to those additional restrictions also. Certain restrictions were imposed on 24.12.1982 under which the maximum number of floors which could be constructed was reduced to G + 2. The maximum permissible FAR/FSI was 2 and the maximum permissible built-up area was restricted to one third. These restrictions were imposed under Section 181 (2) of the Cantonments Act which later was renumbered as Section 181- A. More restrictions were imposed on 26.03.1984 under which the permissible FSI was reduced from 2 to 1. The

erection of the building had not commenced till both sets of aforesaid additional restrictions came into existence. According to the additional restrictions, the kind of building construction that had been sanctioned on 2.7.1981 could not be permitted, if the question of sanction was to be considered afresh.

The GOC-in-Chief in exercise of his power under the Cantonments Act suspended the CEO's order dated 2.5.1986 and issued a notice to PCB as well as the builder to show cause why the suspension order should not be made absolute.

After hearing the parties, the GOC in-Chief, by order dated 14.02.1987 made the suspension order absolute. Since a portion of the building had been constructed by then, on 14.03.1987 the GOC-in-Chief passed an order for its demolition.

The builder filed a writ petition in the Bombay High Court which was allowed by setting aside the orders dated 14.02.1987 and 14.03.1987 passed by the GOC-in-Chief. The High Court granted some more time to the builder to complete construction of the building according to the originally sanctioned plan. Being aggrieved, PCB and GOC-in-Chief carried the matter to the Supreme Court.

The Supreme Court noted, inter alia, the following Sections of the Cantonments Act, 1924:

"183. Lapse of sanction.-Every sanction for the erection or re-erection of a building given or deemed to have been given by the Board as hereinabove provided shall be available for one year from the date on which it is given, and, if the building so sanctioned is not begun by the person who has obtained the sanction or someone lawfully claiming under him within that period, it shall not thereafter be begun unless the Board on application made therefor has allowed an extension of that period.

183- A. Period for completion of building.- A Board, when sanctioning the erection or re-erection of a building as hereinbefore provided, shall specify a reasonable period after the work has commenced within which the erection or re erection is to be completed, and, if the erection or re-erection is not completed within the period so fixed, it shall not be continued thereafter without fresh sanction obtained in the manner hereinbefore provided unless the Board on application made therefor has allowed an extension of that period:

Provided that not more than two such extensions shall be allowed by the Board in any case. "

The Supreme Court then held as follows:

" 13. Section 183- A requires the period for completion of the building to be specified when the sanction is granted. It is to be a reasonable period after the work has commenced. In the present case the period so specified was one year. The fixation of the period of one year as the reasonable period for completion of the building after commencement of the work was not challenged. Thus, the work having commenced on 3-7 1982 as claimed by Respondent 1, the period for its completion according to Section 183- A, expired on 3-7-1983.

Section 183 A further provides that if the erection of the building is not completed within the period so fixed, it shall not be continued thereafter without fresh sanction obtained in the manner hereinbefore provided i.e. Section 181, unless the Board on an application made therefor has allowed an extension of that period. The proviso then limits the power of the Board to allow not more than two such extensions.

14. In short, Section 183- A provides for the specification of the period for completion of the building when the sanction is granted; and on expiry of that period construction of the building cannot be continued without a fresh sanction, unless an extension of that period has been allowed on an application made therefor. It means that unless the Board has allowed an extension of the period specified for completion of the building on an application made therefor, the sanction lapses and the construction of the building shall not be continued thereafter without a fresh sanction. Section 183- A speaks of a fresh sanction on expiry of the period fixed for completion of the building as well as extension of that period on an application made therefor. Meaning must, therefore, be given to both the provisions, namely, fresh sanction and extension of that period; and the two powers must be construed to be available in two different situations. This is necessary to exclude any conflict and arbitrariness in exercise of the choice between the two powers in similar cases.

It appears that the two powers are meant to be exercised in two different situations and the provision does not leave it to the option of the authority to decide which of the two powers is to be exercised in the case. This means that unless time is extended on an application made before its expiry, the sanction lapses and the erection of the building cannot be continued thereafter without a fresh sanction.[Emphasis is mine]

15. Effect of the proviso in Section 183- A must also be kept in mind. Extension of time allowed has to be in continuity and it cannot exceed the period fixed initially for completion of the building. The limit is of two extensions. In the present case, the period fixed was one year and, therefore, the permissible two extensions could not exceed two years because of the proviso. Thus, the total extensions of time could not be beyond two years from 3-7-1983 (up to which date time was allowed for completion). In other words, time extended under Section 183 A because of the proviso in the present case could not be beyond 3-7-1985 since the extension had to be in continuity. In the present case that application made much later on 9-9 1985 had to be rejected by the CEO for this reason alone and the only power available on that date was of a fresh sanction. This obviously could not be granted in view of the additional restrictions imposed meanwhile.

Thus, extension of time by the order dated 2-5-1986 was clearly without jurisdiction for this reason alone. "

18. Section 399 of the KMC Act which is in pari materia with Section 183A of the Cantonments Act, reads as follows:

"399. Period for completion of building or work. The Municipal Commissioner shall, when sanctioning the erection of a building or the execution of a work, specify a reasonable period within which the building or the work is to be completed, and if the building or the work is not completed within the period so specified, it shall not be continued thereafter without fresh sanction obtained in the manner hereinbefore provided, unless the Municipal Commissioner, on an application made in this behalf, allows an extension of such period. "

19. Rules 15 (3) of the KMC Building Rules, 2009 reads as follows:

" The Building permit shall, subject to the provisions of sub-section (3) of Section 398 be valid for a minimum period of five years from the date of issue of such permit and may be renewed by the Municipal Commissioner for such further period, such that the original period of validity and period (s) of renewal and renewals, if any, do not exceed ten years from the date of issue of permit, on payment of such fees and charges as may be fixed by the Mayor in-Council from time to time and on such other terms and conditions as may be considered appropriate. " 20. Section 183A of the Cantonments Act, 1924 and Section 399 of the KMC Act, 1980, are almost identically worded.

Hence, the observations of the Hon'ble Supreme Court in the case of Pune Cantonment Board (Supra) in relation to Section 181A of the Cantonments Act, shall squarely apply to Section 399 of the KMC Act. The object of the two Sections of the said two statutes is the same-to regulate construction activities in the interest of public safety and planned development of the area to which the statute applies.

21. In the aforesaid case, the Supreme Court categorically stated that unless time is extended on an application made before its expiry, the sanction lapses and the construction activities cannot be continued thereafter without a fresh sanction. Thus, the application for extension of validity of the sanctioned plan must be made before the time permitted for completing the construction expires. In the present case nothing stopped the writ petitioner from making such application for extension of time prior to February 20, 2020, when the validity period of the sanctioned plan expired. Not having done so, the writ petitioner will have to face the consequences. In order to be able to carry on with the construction activities, the writ petitioner will have to obtain fresh sanction.

22. As per Mitra's Legal & Commercial Dictionary, 6th Edition, to " extend " means to enlarge, expand, lengthen, prolong, to carry out further than its original limit. In the same dictionary, as regards the word " extension ", the following is stated:

" An increase in length of time.

The word " extension " ordinarily implies the existence of something to be extended. (State v. Graves 182 SW 2d 46, 51].

Extension is a term properly used for the purpose of enlarging or giving further duration to any existing right, but does not import the revesting of an expired right; that would not be an extension but a recreation. [Brooke v Clarke 1B & Ald 396].

The word ' extension ' imports continuance of an existing thing and effect must be given to the word where it occurs. "

In the same Dictionary the word " Renew " has been defined as: "To begin again; to repeat; to make again; to substitute new for; to restore, re-establish, set up again; to bring back into use or existence; to take up again or afresh; to bring again; to recommence; to replace by some new or fresh theme of the same kind; to restore by means of substitution or a fresh supply; to grant a new one,

especially to grant or give for a fresh period. "In Black's Law Dictionary, 11th Edition, the word " Extension " has been defined as follows:

" 1. The continuation of the same contract for a specified period. Cf. RENEWAL (3).2. Patents. A continuation of the life of a patent for an additional statutorily allowed period.3. Tax. A period of additional time to file an income-tax return beyond its due date.4.

A period of additional time to take an action, make a decision, accept an offer, or complete a task." [Emphasis is mine]

In that dictionary the word " renewal " has been defined as:- " The Act of restoring or re-establishing; Parliamentary law. The introduction or consideration of a question that was already disposed of without being adopted. -Also termed renewal of a motion; The re-creation of a legal relationship or the replacement of an old contract with a new contract, as opposed to the mere extension of a previous relationship or contract. "[Emphasis is mine]

The definition of the word " extension " in Chambers 21st Century Dictionary, Revised Edition is;- " The process of extending something, or the state of being extended; an added part, that makes the original larger or longer; an extra period beyond an original time limit. "In the same dictionary the word ' renew ' has been defined as;-66 to make something fresh or like new again; to restore something to its original condition; to begin something or begin to do it again; to repeat; to begin (some activity) again after a break. "23. Section 399 of the KMC Act requires the Municipal Commissioner, at the time of sanctioning a building plan, to specify a reasonable period within which the building is to be completed. It further says that if the building is not completed within the specified time period; construction shall not be continued without application fresh sanction, unless the Municipal Commissioner on an application made by the builder allows an extension of such period. Rule 15 (3) of the KMC Building Rules, 2009 specifies that the initial sanction will be valid for a minimum period of 5 years which has been taken to be the reasonable time contemplated in Section 399 of the Act.

However, the Municipal Commissioner may renew the permit for a further period which will not exceed 5 years. In other words the original and the extended period taken together must not exceed 10 years. These stipulations are made in larger public interest. A building permit cannot be allowed to remain valid for an indefinite period of time. With passage of time various factors in the society

undergo change which may require change in the building rules. The legislature in its wisdom has thought it fit to permit the Municipal Commissioner to extend the validity of a sanctioned plan up to a period of 10 years provided the builder makes an application prior to expiry of the original validity period. However, once the original validity period expires, the builder has to obtain a fresh sanction, generally, in accordance with the Building Rules prevailing on the date of application for fresh sanction.

24. However, KMC has categorically stated before us that Municipal Circular No. 5 of 2020/2021 dated June 17, 2020 has not been made applicable to the writ petitioner's construction. In the Memorandum of Appeal, Ground Nos. xxi and xxii read as follows:

" XXI For that the Hon'ble Judge should not have gone into any issue pertaining to the Municipal Commissioner's Circular No. 5 of 2020-2021 dated 17.06.2020 at this stage since the said circular has not applied in the instant case;

XXII. For that the Hon'ble Judge should have considered that the application of the said Circular and/or instruction of the State authority in the facts and circumstances of the case was not required to be considered in the present facts and circumstances of the case; "

25. Hence, in the peculiar facts of the case, if the writ petitioner applies for renewal of the building plan/fresh sanction of building plan, the same will be considered in accordance with law and the applicable rules by the competent authority without taking into account the aforesaid Municipal Circular No. 5 of 2020/2021 dated June 17, 2020.

26. The learned Judge directed the Municipal commissioner, " to renew the sanction plan and extend the period of completion of the construction. "In view of the discussion above this must be understood as granting a fresh sanction and allowing consequential extension of time for completion of the construction.

27. The learned Single Judge distinguished the decision in Pune Cantonment Board (Supra) on the ground that in that case the request for extension of time to complete construction was made not only after the initial period granted expired but after expiry of the period for which the extension could be granted under the applicable law. In my view, those facts do not make any difference and

the ratio of the Supreme Court judgment as discussed above would apply with full force to the facts of this case.

28. We are also unable to follow the decision in the case of Circular Properties Limited (Supra) in view of the decision of the Hon'ble Supreme Court in Pune Cantonment Board (Supra).

29. Accordingly this appeal succeeds. The order under appeal is set aside to the extent it directs extension of the period for completing the concerned construction without the writ petitioner applying for fresh sanction. The appeal and the connected application are accordingly disposed of without any order to costs.

30. Urgent certified website copy of this judgment, if applied for, be supplied to the parties upon compliance of necessary formalities.

I agree.

(Rai Chattopadhyay, J.)

(Arijit Banerjee, J.)