

SUPREME COURT OF INDIA

Rajib Kumar Paul & Anr.

Vs.

Gurudas Mitra & Ors.

C.A.No.6831-6833 of 2001

(H.K. Sema and EMA & L.S.PantaJJ.)

30.01.2008

JUDGMENT

H.K.Sema, J.

1. These appeals are directed against the judgment and order dated 18th April, 2001 passed by the High Court of Calcutta in M.A.T. Nos. 1746, 1626 and 1627 of 1999. We have heard the parties.

2. The undisputed facts are:

“Premises No.4H, Panchanantala Road, Calcutta, was originally sanctioned as residential. It is also not disputed that the said building was subsequently converted from residential to commercial (change of land use) unauthorized without obtaining sanction from the appropriate authority. In the said building, the major portion of the garage space was being used as commercial and the appellants have started business like M/s. Atithi (Restaurant), M/s. Avinandan (Sweet meats), M/s. Avisar (Furniture) and M/s. Apsara (Ladies Beauty Parlour). It is also not disputed that the appellants have also started another business namely M/s. Aithi Guest House during June, 1990. It is alleged that the said guest house has also been misused for immoral activities. We are not concerned. The aforesaid admitted facts are born out from the application dated 29.6.1993 addressed to the Municipal Commissioner, the Calcutta Municipal Corporation. In the said application, the appellants prayed for regularization of the entire irregularity and requested to allow the change of use of the places from residential to commercial. The application dated 29.6.1993 speaks for itself. It is extracted:

Rajib Kr. Paul &

Rajdeep Kr. Paul
4.H, Panchanathala Road,

Calcutta 700 029.

Dated Calcutta 29th June 1993

The Municipal Commissioner,

The Calcutta Municipal Corporation,

5, B.N. Banerjee Road,

Calcutta 13

Dear Sir,

Re: Premises No.4H, Panchanantala Road, Calcutta 700 020.

Sub: Regularize The Change Of Use From Residential To Commercial.

With Reference To Our Discussion Had With Your Kind Self Along With The City Architect At Your Office On 26-06-93 At About 11 A.M. You Were Pleased To Advise Us To Apply Before Your Kind Self For Change Of Use And Occupation By Us At The Above Cited Premises Including Photocopy And Measurement To Regularize The Existing Position. Original The Building Was Sanctioned As Residential, But With Effect From 5th October, 1989 In The Major Portion Of The Garage Space Of The Said Building Were Being Used As Commercial As We Have Started Some Business Viz. M/S. Atithi (Restaurant), M/S. Avinandan (Sweet Meats), M/S. Avisar (Furniture) And M/S. Apsara (Ladies Beauty Parlor) For Which We Have Already Obtained Certificate Of Enlistment (Trade License) For The Year 1989-90 On 16-10-89, Xerox Copies Of Certificate Of Enlistment (Trade License) As Above Are Enclosed Hereto For Your Record And Ready Reference. We Have Started Another Business Viz. M/S.Aithi Guest House During June, 1990 And Certificate Of Enlistment (Trade License) For The Same Was Obtained For The First Time On 19-06-90 For The Year 1990-91, A Xerox Copy Of The Same Is Also Enclosed Hereto For Your Record & Ready Reference. For regularization of the entire irregularity on our part as stated above we also furnish herewith the actual measurement of each business place along with colored photocopy as advised by your kind self, which also you will find enclosed hereto. In view of the fact as stated above and under the circumstances your honor is earnestly requested to allow the change of use of the places as cited above from Residential to Commercial, so that we may continue the business legally in view of C.M.C. Act is concerned and thus make us free from hazards and encumbrances.

Thanking you in anticipation & a favorable consideration. We remain,

Yours faithfully,

(Rajib Kr. Paul) (Rajdeep Kr. Paul)

Encl: 1. Plan showing the Ground floor garage space and 3rd & 4th floor 2 flats converted into 4 shop rooms and guest house respectively including measurement.

2. No. colored photo showing all above converted commercial places.”

3. Xerox copies of Trade License as above. The Special Officer, Building, the Calcutta Municipal Corporation, after taking into account the application for regularization and the complaint, directed to demolish the unauthorized construction by its order dated 10.6.1994. Aggrieved thereby, the appellants preferred an appeal before the Building Tribunal, which upholds the order of demolition passed by the Special Officer, Building. Aggrieved thereby, Writ Petition No.21521(w) of 1999 was preferred. The learned single Judge by its judgment and order dated 23.4.1999 although upheld the order of the Tribunal, remanded the case to the Tribunal for fresh consideration. The Division Bench of the High Court set aside the order of the learned Single Judge and allowed the appeal. The Division Bench of the High Court further directed the corporation authority to take immediate steps in terms of the order of the Special Officer and confirmed by the Tribunal. The authority was further directed to stop unauthorized use of the building either by guest house or by the bank or any other organization and/or firm and/or association under Section 416 of the Calcutta Municipal Corporation Act, 1980. The main thrust of arguments by the learned counsel for the appellants in C.A.Nos.6831-6833 of 2001 is that the appellants' application dated 29.6.1993 for regularization of the change of use from residential to commercial, was not disposed of by the authority. However, +by an order dated 10.6.1994 the Special Officer, Building, without considering and disposing of the application dated 29.6.1993 ordered the demolition of the unauthorized construction and, therefore, the order of demolition is not tenable in law.

We are unable to countenance with this contention of the appellants. We have been taken through the entire order of the Special Officer, Building, passed on 10.6.1994. On perusal of the aforesaid order, it emerges that the Special Officer, Building, did take note of the application filed by the appellants on 29.6.1993 and after having considered the various provisions and after hearing the parties passed the order of demolition. The consideration of the request of the appellants in C.A.Nos.6831-33 for regularization of the unauthorized construction and unauthorized land is implicit in the order itself. Therefore, it cannot be said that the demolition order dated 10.6.1994 has been passed without considering the application dated 29.6.1993.

4. The next contention of the learned counsel for the appellants is that now a new scheme has been formulated by the Corporation on 24.12.1998 in which it has been decided that the use of the building in trades in deviation from the sanctioned use for residential purpose may be

regularized in case of existing trades being carried out with C.E. from CMC Act, 1980. We may point out at this stage that the same circular dated 24.12.1998 placed before the High Court was considered by the High Court and the claim of regularization was rejected. Apart from that, they said circular has expressly excluded the cases of unauthorized construction of any building or part thereof and the same will be guided by the relevant provisions of CMC Act, 1980. The present is the case of unauthorized construction of building and, therefore, the aforesaid circular dated 24.12.1998 is not applicable in the facts of the present case at hand.

5. Civil Appeal Nos. 6834-6836 of 2001 these appeals have been preferred by the Allahabad Bank. Learned counsel for the appellant strenuously urged that the appellant was not a party before the Single Judge and the Division Bench, and, therefore, there was a clear violation of principles of natural justice. This contention is belied by the fact. In the order dated 10.6.1994 passed by the Special Officer, Building, it is clearly recorded that one Ashok Roy, Advocate, appeared on behalf of the Allahabad Bank, a tenant in respect of the 1st and 2nd Floor of the premises in question. It is also admitted by the counsel for the appellant that the Allahabad Bank is functioning on the 1st and 2nd floor of the premises. Undisputedly, the appellant-bank is a tenant of the owner of the house. The bank has to sail or drown with the owner of the house. When the entire building of four floors is ordered to be demolished, the 1st and 2nd floors alone cannot survive. Therefore, there is no substance in the contention of the appellant-bank.

6. For the reasons foretasted, all these appeals are devoid of merits, and are, accordingly dismissed. No costs.