

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

**RVWO 17 OF 2024
WITH
MAT 617 OF 2023
CAN 01 OF 2023
I.A. NO: GA/1/2024
AND
RVWO 18 OF 2024
WITH
MAT 617 OF 2023
CAN 01 OF 2023
I.A. NO: GA/1/2024**

**ANANDALOK WELFARE ASSOCIATION AND ANOTHER
VS.
KOLKATA MUNICIPAL CORPORATION AND ORS.**

Before: **The Hon'ble Justice Arijit Banerjee**
 &
 The Hon'ble Justice Apurba Sinha Ray

For the review applicants : Mr. Nirmalya Dasgupta, Adv.
Mr. R.L. Mitra, Adv.

For the respondent no. 6 : Mr. Soumya Ray Chowdhury, Adv.
in two review petitions and Mr. Sarvapriya Mukherjee, Adv.
respondent nos. 8 and 9 in
MAT 617 of 2023

For the KMC : Mr. Biswajit Mukherjee, Adv.
Mr. Swapan Kumar Debnath, Adv.

CAV On : 04.05.2026

Judgment On : 29.07.2026

Apurba Sinha Ray, J.,

1. The review applicants filed several writ applications against the respondents on different dates but so far as regards the present review application and review application no. 17/2024, 3 writ petitions filed by the review applicants on different occasion are the subject matter of consideration in this review application and connected applications. WPO no. 992 of 2015 was filed by the petitioner challenging the illegal attempt of the Kolkata Municipal Corporation to mutate the relevant 700 sq. meters open land in the name of City Enclave Private Limited. WPO No. 990 of 2016 was filed by the review applicants after the order of mutation was passed in favour of the respondent no. 6 challenging such illegal mutation. WPO No. 492 of 2017 was filed by the present applicants challenging the final judgment and order dated 24.05.2011 passed by the Municipal Building Tribunal (“MBT” henceforth) in B.T. appeal no. 83 of 2004 upholding the purported final order passed by the Special Officer (Building) in demolition case/proceeding and also challenging the dismissal order dated 06.04.2017 in respect of the review application filed by the petitioner in respect of the judgment and order dated 24.05.2011 in the aforesaid BT appeal no. 83 of 2004. The said writ petition was filed since the learned Tribunal failed to hear and dispose of the applications and petitions filed before the learned Tribunal by the review applicants.

2. By a common judgment and order dated 24.02.2002 the learned Single Judge dismissed WPO No. 992 of 2015, WPO No. 990 of 2016 and WPO No. 492 of 2017. Against the said common judgment and order, APO No. 28 of 2022, in connection with WPO No. 492 of 2017, was filed and APO no. 29 of

2022 was preferred in respect of the judgment and order of WPO no. 990 of 2016. As the execution of 992 of 2015 had subsequently merged with the dismissal order of WPO no. 990 of 2016, no separate appeal was preferred from the dismissal of the said writ petition being WPO no. 992 of 2015. By a judgment and order dated 30.03.2023 another single bench dismissed WPO No. 21069 of 2021 wherein the present review applicants agitated the issue of non-consideration of their representation under Section 397 of Kolkata Municipal Corporation Act, 1990. However, MAT 617 of 2023 was preferred by the review applicants before the Division Bench against the said order dated 30.03.2023. The Division Bench had taken up the hearing of APO no. 28 of 2022 and APO No. 29 of 2022 alongwith MAT 617 of 2023.

3. By a common judgment and order dated 14th March, 2024, the aforesaid APO No. 28 and 29 of 2022 were dismissed by the Division Bench but, according to the review applicants, there is no whisper in the said judgment regarding disposal of MAT 617 of 2023.

4. The review application being no. 17 of 2024 was preferred in connection with APO no .29 of 2022 and review application No. 18 of 2024 was preferred in respect of APO No. 28 of 2022. It is also contended that Review No. 360 of 2024 was preferred contending that by the common judgment dated 14.03.2024, MAT 617 of 2023 was not disposed of. However, by an order dated 25.04.2025 this Court permitted the learned counsel to argue their case in respect of MAT 617 of 2023 and the said Review No. 360 of 2024 was allowed. Subsequently, MAT 617 of 2023 was heard afresh in presence of both parties.

RVW 18 of 2024:-

5. By filling the instant application learned senior counsel Mr. Arindam Banerjee has submitted that several issues in connection with APO no. 28 of 2022 were either overlooked or not considered while passing the judgment dated March 14, 2024. According to him, **first of all**, it is not correct to say that Anandlok Welfare Association or its members did not challenge the deed of City Enclave Pvt. Ltd. by which it had purchased the disputed 700 sq. Meters of land and without bringing any civil suit disputing the title, the Association cannot resist the mutation in the name of the respondent no. 6 by filing a writ petition. On the contrary it is found from record that two suits were filed by the petitioner no. 1 claiming specific performance of oral agreement and on the issue of right of ingress and egress of petitioner no. 1 through the relevant land. Apart from the said two suits, Prity Properties Private Limited being one of the members of the said petitioner No. 1 Association had also filed a suit challenging the deed of conveyance of respondent no. 6 being TS No. 196 of 2022 and an appeal was also pending from such suit being Misc. Appeal No. 37 of 2022.

Secondly, the observation of the learned Single Judge that the sanction plan of the said Association is fraudulent in nature, as allegedly observed by the said building tribunal, was not decided by this Court, in spite of the observation that such issue was to be decided at the time of final hearing.

Thirdly, the exception application filed by the petitioners herein being GA no. 3 of 2022 challenging a part of the report filed by the Executive Engineer, KMC on May 10, 2022 was not decided while disposing of the appeal.

Fourthly, GA no. 2 of 2022, GA 2 of 2023, GA 4 of 2022 and GA 5 of 2022 were neither decided nor disposed of by this Court while passing the order during March 14, 2024.

Fifthly, the issue pertaining to GA no. 2 of 2023 in APO no. 29 of 2022 was not specifically heard orally by this Court while deciding the said appeal finally.

Sixthly, the learned receiver appointed by this Court has not been discharged from his duties till date and nothing has been recorded to that effect in the judgment and order dated March 14, 2024.

Seventhly, the effect of written objection filed by Sanjay Singh in TS no. 15 of 2003 was not considered in the relevant judgment.

Eighthly, the Hon'ble Court has overlooked the issue that fire licence of the building of the petitioner has been obtained by showing the vacant land of 700 sq. meters and in such event if the same is permitted to be segregated the safety and security of the occupants of the building will be terribly affected.

Ninthly, the Hon'ble Court has also failed to decide the issue pertaining to Schedule XVI of the Calcutta Municipal Act, 1951.

6. In view of the above, the judgment and order dated March 14, 2024 passed by this Bench is sought to be reviewed.

7. It appears that, the relevant complaints of the two suits filed by the Association and Prity Properties Pvt. Ltd. allegedly challenging the deed of sale in favour of City Enclave were not filed. On the other hand, in C.O. 3384 of 2019, a learned Single judge observed that the said purchase deed was not

challenged by the Association. The relevant paragraphs 60 and 61 of the judgment dated 27.11.2019 is quoted hereinbelow:

“60. Moreover, the petitioner has not challenged, in the present suit, the sale deed in favour of the opposite party in respect of 700 square metre land, even by claiming that the said deed was not binding on the petitioner. In the absence of such a claim, the petitioner could not get an injunction merely on the basis of a negative declaration that the opposite party does not have a right on the suit property by virtue of the said deed.

61. There is no clear mention in the purchase deeds of the members of the plaintiff/petitioner as regards their having any parking space specifically over the suit property. Rather, in the plaint of the first suit, it was categorically mentioned in paragraph nos. 5 to 7 of such plaint, at page 462 of the revisional application, that the 700 square metre area was excluded from the purchase of the plaintiff's members and that one-third of the total area was kept vacant. However, a contradictory claim of fifty percent vacant area has been made in the present suit, which belies the contentions of the petitioner. Even the purported sanctioned plan of the petitioner shows that construction of less than eighteen metres, invoking rule 20(i) of the 1951 Act, which provides for one-third vacant space to be left, and not fifty percent as pleaded by the petitioner in the present suit.”

8. The prayers of such suits must contain not only the relief of declaration but also the prayer for cancellation of such deed. From Annexure E i.e. order no. 1 dated 17.02.2022 passed in Misc. Appeal No. 37/2022, it is not clear as to whether the relief of cancellation of the deed of sale in favour of City Enclave or whether a relief for declaring such deed void ab initio is made or not in T.S. No. 196 of 2022 or in any other relevant suit. Effective Challenge to such deed implies that the above relief/reliefs has/have to be prayed for in the said two suits. There is nothing on record to show that such reliefs have been prayed for in either of the suits. Moreover, it appears that, the appellants had made several conflicting, mutually destructive claims. At times, the

Appellant Association was claiming that the relevant 700 square meters of land is a part and parcel of 227, AJC Bose Road, Kolkata, and sometimes the appellant's association claimed that it had advanced money to the concerned person for purchasing the said plot of land and being denied, the suits for specific performance of contract were filed. If the first plea, that is, the relevant plot is a part and parcel of the appellant's building situate at 227, AJC Bose Road, Kolkata is taken into consideration then how does the question of purchasing the plot in 227A, AJC Bose Road, Kolkata arise. On the other hand, the claim of specific performance of oral contract in relation to plot no. 227A, AJC Bose Road, Kolkata, if accepted, destroys the claim of the appellant's association that the plot no. 227A, AJC Bose Road, Kolkata is part and parcel of the land in 227, AJC Bose Road, Kolkata. Moreover, the petitioner Association's claim also includes easementary rights over the disputed land as they alleged that they have water pipelines beneath such land and they have shown the subject land at the time of obtaining fire licence. These claims are to be reconciled by producing evidence during trial but not in writ proceedings.

9. So far as the second ground is concerned, it is found that the learned Single Judge has quoted the observations of the Building Tribunal in order dated 24.05.2011 and order dated 06.04.2017. During hearing of the Appeal it is found three copies of sanctioned plan of the 'Anandalok' Building were produced from the side of the appellants, respondent no. 6 and KMC. Although the plan submitted by the Association shows that 700 sq. meter of land has been shown as 'car parking space', the plan submitted by the

respondent no. 6 and certified copy of plan submitted by the KMC show otherwise. In spite of specific direction by this Court, the Association had failed to produce any copy of the deeds from the owners/occupiers of the flats in Anandalok Building showing that the owners of the said flats have been given any right to use the said 700 sq. meters or any part of it as their car parking space. This best piece of evidence was withheld from the side of the Association in spite of notice given to the Association. The sanctioned plan, as produced from the side of the Appellants/Review applicants, cannot give or add any right, title or interest in favour of the owners unless given by the original deed of purchase. Astonishingly, not a single deed from any of the said 72 flat owners was produced even after notice, and consequent direction from this Court. The judgment under review shows that an elaborate discussion was made on this point and consequent remedy of striking out of appellants' case for non-compliance of the Court's order. The production of any such deed could have proved whether the Municipal Building Tribunal was wrong or not in castigating the plan submitted by the Appellants/Review Applicants, but the same was withheld by the Association without any acceptable reasons and as a result we did not find any reason to interfere with the observations of the MBT or the learned Single Judge.

10. So far as the third, fourth and fifth grounds are concerned, I would like to narrate the contentions in GA 2 of 2022, GA 3 of 2022, GA 4 of 2022, GA 5 of 2022 and GA 2 of 2023 in a summarised version in the following manner:-

A. GA 2 of 2022 arising out of APO 28 of 2022 :

A.1. *By filing the above petition the petitioner Association contended that after filing of APO 28 of 2022 before the Division Bench, in the month of May, 2022 the petitioner Association and its representative noticed that massive construction work was initiated at the instance of the private respondent no. 6 by causing excavation in respect of 700 sq. meters of open land which is the subject matter of the said appeal. By filing the instant application the petitioner Association has further contended that the core dispute of the present litigation is with regard to the 700 sq. meters of open land since according to the appellants the said open land has been duly sanctioned way back in 1986 alongwith such open land and the same has been held to be appurtenant to the building of the appellant no. 1 and an integral part thereof. On the other hand, the contention of the respondent no. 6 is that a plan in respect of such land has been sanctioned in favour of the respondent no. 6 and the name of respondent no. 6 has been mutated in respect of the said 700 sq. meters of land.*

A.2. *It is also contended in the said application that one of the members of the petitioner Association has filed a title suit from which an appeal is pending before the learned Court of District Judge at South 24 Pgs., Alipore being Misc. Appeal No. 37 of 2022 and in that Misc. Appeal an order of status quo over the said property has been passed. It is further contended that as the sanctioned plan in favour of the respondent no. 6 is subjudice and is also the subject matter of the present appeal, no construction and excavation work should have been initiated at the behest of the said respondent on the basis of any sanctioned plan.*

A.3. *In view of the above contention it has been prayed that the respondents be restrained from carrying out any work and also from changing the status of the said 700 sq. meters of open land etc. till disposal of the instant appeal.*

A.4. *By filing an affidavit in opposition the respondent no. 6 has denied such allegations made in the said application.*

B. GA 3 of 2022 arising out of APO no. 28 of 2022:

B.1. *By filing the instant application the petitioner Association has contended that after filing of the appeal being APO No. 28 of 2022 a massive construction work was being carried out at the behest of the respondent no. 6 and for which the present applicants filed GA no. 2 of 2022 praying for restraint order upon the respondents. On May 6, 2022 the said application was moved on an urgent basis and after hearing the submissions made on behalf of the parties, the Division Bench was pleased to pass an order, inter alia by recording the undertaking of the respondent no. 6 through its learned Senior Advocate that the construction activity over the said land shall not affect the water supply, sewerage lines and electricity connection of the applicants. The Court further directed the Kolkata Municipal Corporation to depute a competent officer in respect of the premises and in respect of the essential supplies to the premises of the applicants and to file a report before the Court. In terms of such direction two reports were filed by the water supply department and another report regarding drainage and sewerage was also filed by the executive engineer, Borough-VIII of Kolkata Municipal Corporation. The report of the water supply department shows that the relevant subject land had been dug up and such*

digging was still in existence and the same was filled up with water. It is also observed in the said report that the water lines were damaged due to such digging activity of the respondent no. 6.

B.2. *It is also contended in the said application being GA 3 of 2022 that the sewerage line of the applicants runs underneath the said 700 sq. meters of area and connects to the building of the applicant no. 1 and the said applicant had been paying taxes/charges for such sewerage connection to the respondent no. 1. It is also contended by the applicants that the said report pertaining to the sewerage line, especially the last portion being “.....and at that time no documents could be produced by the occupiers of premises no. 227, A.J.C. Bose Road over the legality of the existing sewer line” is devoid of any merit and is wholly contrary to the order passed by this Court. By filing this application being No. GA 3 of 2022 it has been prayed that the last two lines in the said report filed by the executive engineer Borough VIII, KMC on May 10, 2022 with regard to the sewerage connection be deleted/expunged and a further prayer was made for directing the KMC Authority to carry out a fresh inspection in respect of the sewerage connection and file a fresh report before the Court.*

B.3. *By filing an affidavit in opposition the respondent no. 6 has denied the allegations made in the said application.*

C. GA 4 of 2022 arising out of APO no. 28 of 2022:

C.1. *This application was filed by the respondent no. 6 represented by Sanjay Singh contending that the learned special officer Ms. Kasturi Tarafdar*

appointed by this court on 11.05.2022 had transgressed the order of her appointment on 11.05.2022, and as such her report date 18.05.2022 be set aside and exception to Special Officer's report be allowed. In the said petition it is contended that the scope of appointment of the learned special officer was:- **Firstly**, to supervise the repair work to be undertaken by the appellants to the damaged water service pipes caused due to excavation at the north east corner of the premises no. 227A, A.J.C Bose road and **Secondly**, to ascertain whether or not there is a deep tubewell in the backyard of the building known as "Anandalok" at premises no. 227, A.J.C Bose road for supply of water to the occupants of Anandalok.

C.2. The said petition contends that the learned Special Officer did not supervise the repair work as directed in the said order dated 11.05.2022 but she merely relied upon the representation made by the contractor of the appellants. It is further contended that although the learned Special Officer was directed to ascertain whether or not there is a deep tubewell in the backyard of the building "Anandalok" which is within the premises no. 227, A.J.C Bose road, the Special Officer has attempted to ascertain whether there is a deep tubewell in the front of building "Anandalok" in premises no. 227A, A.J.C Bose road.

C.3. The appellant Association has denied all the allegations made in GA no. 4 of 2022. The appellants specifically claimed that the report of learned Special officer should not be set aside and that exception to such report should not be allowed etc.

D. GA 5 of 2022 arising out of APO no. 28 of 2022:

D.1. *This application was filed by the respondent no. 6 stating that the appellants filed GA no. 2 of 2022 praying for restrain order upon the respondents including the respondent no. 6 from carrying out construction work in respect of 700 sq. meter of open land, etc. According to the respondent no.6 the said application being GA no. 2 of 2022 is not maintainable either on facts or in law and it does not depict the true and correct picture. By order dated 11.05.2022 the Court permitted the appellants to take steps to repair the damaged water service pipes caused by the digging at premises no. 227A, A.J.C Bose road and appointed a special officer namely Ms. Kasturi Tarafdar for the purpose of supervising the repairing work to be undertaken by the appellants. The said learned special officer submitted a report dated 18.05.2022 and the said report was challenged by the respondent no.6 by filing an application being GA no. 4 of 2022 on the grounds inter alia that the said report does not depict the true and correct picture and, in fact, the learned special officer had exceeded her scope of appointment and acted contrary to the order dated 11.05.2022. Thereafter three orders dated 18.05.2022, 20.05.2022, and 10.06.2022 were passed by the Division Bench and in terms of the aforesaid orders the Kolkata Municipal Corporation was to carry out repair of the damage to the water service line and such repair work was to be carried out under the supervision of the learned special officer. It is further contended that although the Court by an order dated 10th June 2022 has directed the Learned Special Officer to appoint a videographer and supervise the work from her residence, the same was on account of the works being*

carried out post 10 p.m. in the night on 10th June 2022. The report of the Learned Special Officer reveals that major part of the repair work has, in fact, been carried out after 6.30 a.m. on 11th June 2022 and upto 2 p.m. of 11th June 2022. Thus, there was no impediment to the Learned Special Officer to be personally present during this period between from 6.30 a.m. to 2 p.m. to actually supervise and to see as to what has transpired and how much work has been completed. It appears that the Learned Special Officer on the basis of "talk with the licensed plumber of Kolkata Municipal Corporation" from her residence, has come to conclusion which are evidently vague and incorrect and unintelligible. Subsequently, the learned Special Officer filed a report dated 24.09.2022 and the said report was sought to be assailed by filing this petition on the grounds inter alia that the learned Special Officer relied upon "talk with licenced plumber of KMC" and further the learned Special Officer did not visit the premises to physically verify the condition of the water pipe line which was admittedly repaired. The said report was made on the basis of heresay conversation with the licenced plumber of KMC and as such the said report of the special officer should not be accepted.

D.2. By filing affidavit in opposition the appellants denied all the allegations and affidavit in reply was filed on behalf of the respondent no. 6 against the said affidavit in opposition.

E. GA 2 of 2023 arising out of APO no. 29 of 2022:

E.1. The respondent no. 6 by filing the instant application has contended that the respondents by way of various letters including the letters dated

04.05.2022, 05.05.2022, 15.11.2022, 07.12.2022, 06.12.2022, 24.01.2023, 04.02.2023, 29.04.2023, 03.05.2023, 08.05.2023 and 07.05.2023 called upon the appellants to produce the various documents mentioned in the table given in the said petition. It is further contended that by an order dated 17th November, 2022 this Court has also directed the appellant to produce the documents appearing at page no. 83 of the paper book prepared in APO no. 29 of 2022. Thereafter, another order dated 01.05.2023 directing the appellants to produce the plan referred to in the purchased deed was also passed. Despite the order dated 17th November, 2022 and also after receipt of the relevant notice the appellants have failed to either produce or give inspection of any of the documents referred to in the table mentioned in the instant application. In spite of such direction as the appellants did not produce the requisite documents it is prayed on behalf of the respondent no. 6 that APO no. 28 of 2022, APO 29 of 2022 and MAT 617 of 2023 and connected applications be dismissed. No affidavit in opposition was filed from the side of the appellant Association.

11. It is better to start with GA 2 of 2023 arising out of APO 29 of 2022. By the said petition the respondent no. 6 has prayed for dismissal of the APO No. 28 of 2022, APO No. 29 of 2022 and MAT 617 of 2023 and connected applications for non-compliance of the Court's direction. According to the review applicants, GA 2 of 2023 was not disposed of by the Division Bench. But if we peruse paragraph nos. 49 to 56 of the judgment under review, we shall find that elaborate discussion was made and it goes to show that the Division Bench considered the said application being GA 2 of 2023 in favour

of the respondent no. 6. The relevant paragraphs being Nos. 49 to 56 are reproduced hereinbelow:

49. *"I again say at the cost of repetition that it is not on the deficiencies of adversaries but the appellants are bound to prove their case on the strength of their own materials. Unfortunately the appellants have failed to produce any original deed along with a plan showing that the relevant space was allotted as car parking space of the flat owners.*

50. *For production of original documents from the side of the appellants, the respondent no. 6 issued notices under Order 11 Rule 15 of Code of Civil Procedure. In spite of such notices of production the appellants failed to produce the original deeds of the respective flat owners before this court. Now let us recapitulate the provisions of Order 11 Rule 15 of the Code which is hereunder:-*

R. 15. Inspection of documents referred to in pleadings or affidavits. - *Every party to a suit shall be entitled [at or before the settlement of issues] to give notice to any other party, in whose pleadings or affidavits reference is made to any document, ²[or who has entered any document in any list annexed to his pleadings.] or produce such document for the inspection of the party giving such notice, or of his pleader, and to permit him or them to take copies thereof, and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such suit unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the suit, or that he had some other cause or excuse which the Court shall deem sufficient for*

not complying with such notice, in which case the Court may allow the same to be put in evidence on such terms as to costs and otherwise as the Court shall think fit.”

51. Order 11 Rule 21 of the Code has also laid down the provisions for non-compliance of order directing discovery of documents as laid down in Rule 15 of the said order. The provision of order 11 Rule 21 is as hereunder:-

“R. 21.Non-compliance with order for discovery. –
(1)Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for [an order to that effect and an order may be made on such application accordingly, after notice to the parties and after giving them a reasonable opportunity of being heard].

[(2) Where an order is made under sub-rule (1) dismissing any suit, the plaintiff shall be precluded from bringing a fresh suit on the same cause of action.]”

52. The order dated 01.05.2023 shows that as per notice under Order 11 Rule 15 of the Code filed by the appellants we directed the appellants to produce the original of the sanctioned plan as well as original deeds of conveyance of the respective flat owners. The appellants did not comply with such direction of this court.

52.1. *The order dated May 1, 2023, recorded by this court is as follows:-*

“Mr. Surajit Nath Mitra, learned Senior Advocate, assisted by Mr. Nirmalya Dasgupta, learned advocate, concludes argument on behalf of the appellants.

Mr. Anindya Kumar Mitra, learned Senior Advocate appearing for the respondent no.6 in APO/28/2022 & APO/29/2022, begins his argument but does not conclude.

List these matters once again on May 2, 2023, for further hearing.

By May 3, 2023 the appellants shall produce the plan referred to in the Second Schedule to the standard format of Conveyance which was executed in favour of the members of the appellant Association.”

52.2. *We further recorded an order dated May 3, 2023 as herein below:-*

“ By our order dated May 1, 2023, we directed the appellants to produce the plan referred to in Second Schedule to the standard format of Conveyance, which was executed in favour of the members of the appellant Association.

Today, Mr. Dasgupta, learned Advocate for the appellants says that original conveyance is not available with his client. Certified copy has been applied for. It is likely to take approximately 12 working days to obtain such copy.

We record such submission.

Mr. Anindya Kumar Mitra, learned Senior Advocate representing the respondent no.6 in APO/28/2022 &

APO/29/2022, resumes his argument but does not conclude.

List these matters once again on May 4, 2023, for further hearing.”

53. Without giving importance to such direction, the appellants insisted that original of the sanction plan should be produced from the central records of KMC. The appellants did not give any credence to the certified copy of the plan produced from the side of the KMC after being certified by the Executive Engineer (Civil) on the ground that it is not the Executive Engineer but the municipal commissioner of KMC who is the custodian of all documents and therefore production of copy of the sanction plan certified by the Executive Engineer is bad in law.

54. As the direction of this court was not complied with by the appellants, the respondent no. 6 took out an application under Order 11 rule 21 of the Code of Civil Procedure, 1908. The relevant order dated June 19, 2023 of this court is as hereunder:-

“An application has been taken out on behalf of respondent no.6 for dismissal of the appeal in terms of the provision of Order XI Rule 21 of the Code of Civil Procedure for non-production of certain documents by the appellants.

The appellants wish to file affidavit-in-opposition.

Let affidavit-in-opposition be filed by Monday (26/06/2023) with advance copy to learned advocate on record for the respondent no.6.

Learned advocate for the respondent no.6 says that no reply need be filed to such affidavit-in-opposition.

List these matters once again on June 26, 2023.”

55. The appellants filed affidavit-in-opposition against the petition under Order 11 rule 21 of the Code filed by the respondent no. 6 and thereafter this court passed an order on 1st August, 2023 as hereunder:-

“ We have heard learned counsel for the parties on the application for dismissal of the appeals being GA/2/2023.

It will be in the fitness of things to dispose of this application along with the appeals.

List these matters once again on August 8, 2023, for Mr. S. N. Mitra, learned senior advocate to make his concluding submission in these appeals.”

55. As we proposed that the said application under order 11 rule 21 of the Code shall be taken up at the time of disposal of the appeals, we are inclined to dispose of the same right now.

56. It appears from the said petition filed by the respondent no. 6 that the appellants have failed to comply with the orders dated 17th November, 2022, 16th January, 2023, 1st May, 2023 and 3rd May, 2023 by producing the relevant documents or allowing the respondent no. 6 to inspect the documents mentioned therein and therefore, the appeals are liable to be dismissed.”

- 12.** From the above it appears that the review applicants did not comply the direction and accordingly, GA 2 of 2023 was allowed in favour of respondent no. 6. It is true that it has not been specifically mentioned in the judgment under review that GA 2 of 2023 was allowed but such non-specification is not an error apparent on the face of the record.

13. As the appeals were dismissed for non-compliance of the direction of the Division Bench in view of Order 11 Rule 21 of the Code of Civil Procedure, 1908, there is no need for going into the details of the other applications being GA 2 of 2022 arising out of APO 28 of 2022, GA 3 of 2022 arising out of APO 28 of 2022, GA 4 of 2022 arising out of APO 28 of 2022, GA 5 of 2022 arising out of APO 28 of 2022, particularly when the subject matters of the said petition are not related to the core issue of the relevant appeals. Admittedly, the core issue of the appeals was whether or not the relevant plot of land which was mutated as 227 A, AJC Bose Road, Kolkata in favour of the respondent no.6 was an appurtenant or part and parcel of the land comprised at 227 AJC Bose Road, Kolkata. It is also settled law that when a petitioner asks for multiple reliefs in a proceeding, and the court grants some of them but remains completely silent on the others, the legal presumption is that the omitted reliefs have been deemed to be refused. This is not just a matter of interpretation, but it is an express statutory mandate found in Section 11 of Civil Procedure Code.

14. The point that the learned receiver appointed by the Court was not discharged is taken into consideration and it appears that as the appeals were dismissed it is natural that the appointment of the receiver has come to the end. This is not an error apparent on the face of the record. The contention that the effect of written objection filed by Sanjay Singh in TS No. 15 of 2003 was not considered, is also not correct in view of the fact that time and again this point was taken up in several litigations. It is found that all the factors as alleged by the appellants in the appeal were

taken into consideration in CO 3384 of 2019 by the Hon'ble Single Judge, which still holds the field, but time and again the appellants are taking the some points in subsequent proceedings. In deciding the appeals being nos. APO 28 of 2022 and APO 29 of 2022 the judgment passed in CO 3384 of 2019 was considered by the Division Bench and therefore it cannot be said that the said objection of Sanjay Singh was not considered at the time of the disposal of the above appeals. In the said CO 3384 of 2019, Hon'ble Single Bench has been pleased to observe that mere taking of water pipe line cannot prove the title of the appellant Association or its members in the subject land of the proceedings and the same can be proved by producing evidence before the concerned Trial Court where the dispute between the parties are being tried. The same reasoning is applicable as regards the allegation that the fire licence of the building of the petitioner Association has been obtained by showing the vacant land of 700 sq. Meters. The said allegation is also to be adjudicated in the Trial Court not in the writ proceedings, since the Writ Court cannot act as a fact finding Court.

- 15.** The judgment in CO 3384 of 2019 has clearly dealt with the issue pertaining to Schedule XVI of the Kolkata Municipal Corporation Act, 1951 and the said observations of the learned Single Judge therein were not interfered with by the Hon'ble Apex Court. The Division Bench has also taken into consideration such findings of the learned Single Judge in connection with CO 3384 of 2019 in judgment dated 14.03.2024.

17. Therefore, we do not find any error apparent on the face of the record in the relevant common judgment passed on 14.03.2024 disposing of APO 28 of 2022 and APO 29 of 2022 including the connected applications thereto. Accordingly, the present review application being **RVWO 17 of 2024** and **RVWO 18 of 2024** are **dismissed** and all connected applications, if any, in both the review applications are disposed of. No order as to costs.

18. Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties on compliance of all necessary formalities.

I Agree.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)