

## TOWN PLANNING

### HIGH RISE/MULTI-STOREYED BUILDINGS

— **Ban on construction of high rise building** — *Calcutta Municipal Corporation (Amendment) Ordinance, 1989 introducing S. 398-A in Calcutta Municipal Corporation Act, 1980 under which ban imposed on applications for sanction of plans of buildings exceeding 13.5 metres in height for a period of one year from 18-12-1989 (i.e. the date of promulgation of the Ordinance) — Ordinance issued as new building rules could not be published under the principal Act because of interim orders issued by High Court — Ordinance later replaced by Calcutta Municipal Corporation (Amendment) Act, 1990 — Sub-sections (2) and (3) of S. 398-A providing that such applications pending on the date when Ordinance came into force would stand rejected and that fresh application should be made after expiry of the period of one year — During the period of one year, the interim orders vacated and new building rules published — Respondent private builder, who submitted plan for construction of building having height exceeding 13.5 metres before coming into force of the Ordinance, on being affected by S. 398-A challenging validity thereof — Held, S. 398-A valid and not violative of Art. 14 — Respondent acquired no vested right to get his plan passed merely because of submission of the application prior to commencement of the Ordinance — New building rules, operation of which was stayed by High Court, was made by Expert Committee after due deliberation — Supreme Court's interference with the building rules not called for*

The authorities who have been entrusted with framing of the building laws and bye-laws, are expected to apply their mind not only to the existing situation prevailing in any metropolitan city or in an urban area, but they have also to keep an eye and foresee the situations which may arise in the next century or even later. The development of a city or an urban area is to last for centuries. Because of that such authorities are expected to anticipate and foresee the problems which may arise with further growth of population. However, normally, it is not for the courts to examine the building regulations framed by Development Authorities, Improvement Trusts and other statutory authorities entrusted with such power under different statutes unless any of such rule or bye-law can be held to be beyond the power vested in them by the statutes concerned, or is held to be hit by any of the provisions of the Constitution. (Para 10)

The provisions of the Amending Ordinance/Act cannot be held to be violative of Article 14 of the Constitution merely on the ground that it imposes a ban on passing plans of buildings exceeding 13.5 metres in height for a period of one year. Admittedly, that period of one year was over when the writ petition was heard by the Single Judge of the High Court. Thereafter the respondent and others were entitled to submit fresh plans for construction of multi-storeyed buildings according to the new Building Rules. The new Building Rules had been framed by an Expert Committee after consideration of different objections from different sections. Such provision cannot be held to be unreasonable, arbitrary and irrational so as to be held to be violative of Article 14 of the Constitution. The respondent cannot claim an absolute or vested right to get his plan passed by writ of a court, merely on the ground that such plan had been submitted by him prior to 18-12-1989. By mere submission of a plan for construction of a building which has not been passed by the competent authority, no right accrues. (Para 14)

No malice can be imputed to the legislature. Any legislative provision can be held to be invalid only on grounds like legislative incompetence or being violative of

any of the constitutional provisions. While judging the validity of the Amending Ordinance/Act, the proceedings of the meeting of the Expert Committee have also no bearing or relevancy. (Para 15)

Therefore, the provisions of the Amending Ordinance/Act cannot be declared as unconstitutional and invalid. (Para 16) *State of W.B. v. Terra Firma*

*Investment & Trading (P) Ltd.*, (1995) 1 SCC 125.

Bench Strength 2. Coram : A.M. Ahmadi, C.J. and N.P. Singh, J. [Date of decision : 15-11-1994]

**Distinguished in** *Commr. of Municipal Corpn. v. Prem Lata Sood*, (2007) 11 SCC 40

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