

**HIGH COURT OF TRIPURA  
AGARTALA**

**WP(C)(PIL) No.8 of 2023**

Thakur Prabhat Chandra Roy Memorial Society

..... Petitioner(s)

**V E R S U S**

The State of Tripura and others

..... Respondent(s)

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| For Petitioner(s) : | Mr. P. Roy Barman, Sr. Advocate,<br>Mr. Samarjit Bhattacharjee, Advocate,<br>Mr. Kawsik Nath, Advocate,<br>Mr. D. Paul, Advocate. |
| For Respondent(s) : | Mr. A. Bhowmik, Advocate.                                                                                                         |

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**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH  
HON'BLE MR. JUSTICE ARINDAM LODH**

**\_O\_R\_D\_E\_R\_**

**31/08/2023**

Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. Samarjit Bhattacharjee, learned counsel for the petitioner and Mr. A. Bhowmik, learned counsel for the respondent-Corporation.

[2] Petitioner, is a society registered under the Societies Registration Act, 1860, approached this Court in a writ petition under Article 226 of the Constitution of India with a grievance that the respondent-Corporation has started construction of an office/ward office inside the premises of Thakur Prabhat Chandra Roy Memorial Park. Petitioner also prayed for a direction upon the respondents to complete the beautification work of the Thakur Prabhat

Chandra Roy Memorial Park. According to the petitioner, the society has been constituted to perpetuate the memory of Thakur Prabhat Chandra Roy, a renowned freedom fighter. The background of the creation of the park in ward No.19 under Agartala Municipal Corporation has been drawn to the Court's notice. Annexure-1 is the minutes of the meeting convened under the Chairmanship of the Chief Minister, Tripura for construction of a park in memory of Thakur Prabhat Chandra Roy on 31<sup>st</sup> August, 2013 at Conference Hall No.1 of Civil Secretariat. The Hon'ble Chief Minister gave several directions, of which the first one was upon the Horticulture Directorate to develop the said park, but with a rider that the park would be owned and maintained by the Agartala Municipal Council. The land in question was to be allotted to the Urban Development Department to be used by the AMC. A bronze bas – relief of Thakur Prabhat Chandra Roy (2.5 ft) was to be prepared for placement at suitable location within the park. Vide Annexure-2, dated 25<sup>th</sup> September, 2013, the Director of Horticulture & Soil Conservation, Directorate of Horticulture & Soil Conservation, Department of Agriculture, Government of Tripura made a request to the Chief Executive Officer (CEO), Agartala Municipal Council, Agartala West Tripura for making the piece of land available for taking up beautification works and development of the park in the memory of late freedom fighter, Thakur Prabhat Chandra Roy. Vide Annexure-3, dated 9<sup>th</sup> October, 2013, the Special Secretary, Department of Industries & Commerce, Government of Tripura issued the 'No Objection Certificate' for transfer of 0.344 acres of land at Krishnanagar, Ward No.14 of AMC in favour of UDD/AMC. The Chief Executive Officer, AMC vide letter dated 19<sup>th</sup> October, 2013 (Annexure-4) requested the District Magistrate & Collector, West Tripura, Agartala for arranging allotment of the above proposed land handed over by the Department of Industries & Commerce to the Urban

Development Department, Government of Tripura/Agartala Municipal Corporation for development of the park. The Additional District Magistrate & Collector, West Tripura, Agartala vide letter dated 24<sup>th</sup> October, 2013 (Annexure-5), requested the Deputy Secretary to the Government of Tripura, Revenue Department for allotment of land measuring 0.344 acre of mouja Agartala, Sheet No.8 in favour of Urban Development Department for setting up of a park in memory of late freedom fighter, Thakur Prabhat Chandra Roy at Krishnanagar, Agartala. The process of allotment of the said land seems to be completed thereafter, On 31<sup>st</sup> October, 2013 (Annexure-6), the CEO, Agartala Municipal Council requested the Director, Horticulture & Soil Conservation Department, Government of Tripura, Agartala to start development of park on the remaining vacant land adjacent to the building of Legal Metrology on urgent basis. It was also indicated that when Legal Metrology Department will vacate the said building, AMC will clear the said land and shall hand over it to the Horticulture Department for development of the remaining portion of the park. Agartala Municipal Corporation also constituted an advisory committee, comprising of the Chairman of the AMC, other Members of the Agartala Municipal Corporation, representatives of Art College and few independent members for the work of 'Making / Installation of the Statue of Prabhat Chandra Roy' in the park vide memorandum dated 17<sup>th</sup> October, 2016 at Annexure – 7.

[3] It appears from the pleadings of the writ petition that detail estimates were prepared for the construction/beautification work of the park in memory of Thakur Prabhat Chandra Roy. The present grievance relates to the proposed construction of a ward office inside the premises of the park by the Agartala Municipal Corporation.

[4] Mr. P. Roy Barman, learned senior counsel for the petitioner, submits that the park is held in public trust by the Agartala Municipal Corporation on behalf of the Urban Development Department in order to provide clean environment and for recreation of the common man. It is submitted that the Urban Development Department has not been taken into confidence while taking a decision to construct the park as could appear from the minutes of the meeting convened by the Mayor-in-Council of AMC on 30<sup>th</sup> April, 2022 (Annexure R/7). By refereeing to the notings of certain file of Agartala Municipal Corporation (Annexure R/8) obtained by the petitioner, it is further stated that there is no authoritative decision by any competent authority as to where the ward office is to be constructed. The construction of the ward office within the area of the park is going to affect the facilities for recreation, amusement and daily physical exercises to the elderly people and the children for whom the park has been created in the midst of the locality. The park provides access to free, hygienic and healthy air/environment. Such construction is in deviation of the doctrine of public trust as the green area is intended to serve the larger public interest of the residents of the locality who also regularly perform yoga in the park and use it for morning and evening walks. It cannot be used for the office of the Agartala Municipal Corporation. Therefore, the deviation of the purpose of creating such a public park is not in public interest. The decision to construct the ward office in a public park is not backed by any authoritative direction of the competent authority of the Urban Development Department. Moreover, it is in teeth of the principles, settled by the Apex Court in the case of *Bangalore Medical Trust V/S B.S. Muddappa and others* reported in (1991) 4 SCC 54 paragraph Nos. 13, 23, 24 and 25. Learned senior counsel for the petitioner has also relied upon the decision of the Apex Court in the case of *M.C. Mehta V/S Kamal Nath and others*

reported in (1997) 1 SCC 388 paragraph Nos. 23 and 24 which propounds the doctrine of public trust and preservation of natural resources like rivers, sea-shores, forests and air which are held in by the Government in trusteeship for the free and unimpeded use of the general public. They are should not be surrendered for use to private owners to interfere with the public interest. As such, learned senior counsel for the petitioner submits that the petitioner, which is the society created for preservation of the memory of late freedom fighter, Thakur Prabhat Chandra Roy, has the locus standi to pursue this public interest litigation.

[5] Mr. A. Bhowmik, learned counsel for the Agartala Municipal Corporation submits that the decision to construct the ward office in the premises of the park has been taken at the level of the competent authority pursuant to the meeting held by the Mayor-in-Council, AMC on 30<sup>th</sup> April, 2022 and attended by the Deputy Mayor and other members of the AMC; the Municipal Commissioner, AMC; the Deputy Municipal Commissioner, AMC; the Superintendent Engineer, AMC and other officials. It is submitted that the plot of land stood allocated to the Urban Development Department and Agartala Municipal Corporation by virtue of a conscious decision of the Hon'ble Chief Minister of the State taken in the meeting held on 31<sup>st</sup> August, 2013 pursuant whereto the Department of Industries and Commerce handed over NOC for transfer of the land in favour of the Urban Development Department/ AMC vide letter dated 9<sup>th</sup> October, 2013. Therefore, the land has been legally transferred to the Agartala Municipal Corporation which maintains the park also. It is further submitted that in the decision taken by the council on 30<sup>th</sup> April, 2022, it was decided to construct new office building in several wards including ward No.19 subject to the final selection of the site. The ward office being constructed is of the same ward No.19, where the park is situated.

Learned counsel for the respondent-corporation has drawn the attention of the Court to the averments made in the counter affidavit and also the additional counter affidavit filed pursuant to the directions passed by this Court on 3<sup>rd</sup> August, 2023. The additional counter affidavit contains the details of the land being used for construction of the ward office and the total area of the park. It is pointed out that out of 11262.5 sqft of the total area of the park, the ward office is being constructed on an area of 605.25 sqft only and that too on the south eastern corner of the triangular area of the park. It does not affect the ingress and egress into the park. The three entrance gates are not disturbed by the construction of ward office. The respondent-corporation have also annexed 3(three) photographs, which indicates that the remaining area of the park will be available for park activities like jogging, running, yoga, open gym etc. The 2(two) other photographs indicate the entrance for ingress and egress into the park. It is also stated that a field enquiry report dated 16<sup>th</sup> August, 2023 indicates the construction of the ward office being undertaken in the eastern boundary of the Thakur Prabhat Chandra Roy Memorial Park adjacent to the road namely Weight and Measure Office Road, Agartala. The respondent-Corporation has also referred to the documents under which the allotment of the land was made to the Urban Development Department and Agaratala Municipal Corporation for setting up of the park in memory of Thakur Prabhat Chandra Roy. It is stated that the Urban Development Department /Agartala Municipal Corporation are the owners of the said land. The park was constructed by the AMC in the year 2019. Learned counsel for the respondent-Corporation submits that it is not a case where the lot of land within the park has been allocated to any private body for any private purposes. Learned counsel for the respondent-Corporation also submits that the decisions relied upon by the learned senior counsel for the petitioner, are in respect of construction made on

public land by private bodies, such as in the case of *Bangalore Medical Trust* (*supra*) which was a private trust. It is further submitted that in the case of *M.C. Mehta* (*supra*) the concerned respondent had changed the natural flow of river by blocking natural relief/spill channel of the river in order to construct a motel. In those circumstances Hon'ble the Supreme Court had laid down the doctrine of public trust and directed the respondents to restore the property to its original shape by relying upon the polluter pays principles. It is submitted that the present case does not fall in the categories defined in the above two judgments rendered by the Apex Court. Moreover, the decision of Agartala Municipal Corporation to construct the ward office in the ward No.19 in a public park cannot be questioned since the ward office is to be constructed in the respective ward for which it is meant. As such, no cause of public interest is being suffered by construction of the ward office in the Thakur Prabhat Chandra Roy Memorial Park in ward No.19. Therefore, the writ petition may be dismissed.

[6] We have taken note of the averments made in the writ petition, and the affidavit filed by the AMC as detailed hereinabove. We have also given anxious consideration to the submissions of learned senior counsel for the petitioner, who has vehemently sought to espouse the element of public cause in preservation of the Thakur Prabhat Chandra Roy Memorial Park and protect it from the interference by the Corporation by construction of a ward office therein. As the chronology of facts and the documents referred to in the forgoing paragraphs reveal, the land stood transferred in favour of the Agartala Municipal Corporation which is functioning under the Urban Development Department by virtue of a conscious decision of the Hon'ble Chief Minister of the State taken on 31<sup>st</sup> August, 2013. The park was initially under the Department of Industries and Commerce. Pursuant to the said decision the Directorate of Horticultural and Soil Conservation was asked to develop the

park which was to be owned and maintained by the Agartala Municipal Corporation. The land stood ultimately transferred by virtue of the NOC issued by the Department of Industries & Commerce and allocation through the Revenue Department, Government of Tripura in favour of Agartala Municipal Corporation. The Agartala Municipal Corporation maintains the park. The park is said to have been constructed finally in the year 2019. It is also to be taken note of that the ownership and possession of the park lies within the control of Agartala Municipal Corporation by virtue of the allotment of land from the Department of Industries and Commerce. Pursuant to the conscious decision of Agartala Municipal Corporation in its meeting held on 30<sup>th</sup> April, 2022, a decision was taken to construct new office buildings of several wards including ward No.19 in which the park is situated. The decision of the Mayor-in-Council of the Agartala Municipal Corporation cannot be said to be unauthorized or not by the competent authority since the park stands allotted to the Agartala Municipal Corporation. It is not a case that the park or any part of it has been transferred to a private body for private purposes/construction. From the sketch of the map and the annexed photographs to the additional affidavit filed by the Agartala Municipal Corporation, it is apparent that the ward office is being constructed only on an area of 605.25 sqft out of the total area of 11262.5 sqft of the park. It is at one of the corners of the park towards the south and east and does not affect the entrance for ingress and egress into the park. The three entrance gates to the park are not disturbed, nor are the activities like running, jogging, yoga, open gym or path way being disturbed by construction of the work.

[7]           The petitioner has approached this Court with an apprehension that the park meant for recreational purposes and for providing free access to air and hygienic environment could be misused by construction of a ward office by the

Agartala Municipal Corporation in an authorized manner. The matter was taken up as a public interest litigation pursuant to the order of the learned writ Court dated 4<sup>th</sup> July, 2023. As such, the issue of locus standi of the petitioner is to pursue this litigation has not been questioned. The question before us is whether the construction of the ward office in ward No.19 in the Thakur Prabhat Chandra Roy Memorial Park is actually detrimental to public interest and in any way creates an environmental hazard or destruction of the hygienic conditions and access to open air to the residents of the locality. On careful examination of the pleadings on record, the sketch map of the area and the location of the ward office inside the park in south eastern corner and also the fact that the construction of the ward office in an small area of 605.25 sqft out of the total area of 11262.5 sqft of the park it does not give any impression that the construction of ward office of Agartala Municipal Corporation is likely to affect the environment, hygiene, access to free air and recreational activities of the residents of the ward No.19. The decision in the case of *Bangalore Medical Trust* (*supra*) relied upon by learned senior counsel for the petitioner is in the context where a hospital building was being constructed by a private Trust on a park which was transferred to the private trust. The present case is not one in which a structure of such huge proportion as a hospital and that too at the hands of a private body is being constructed. Its a ward office being constructed by the AMC in a corner of the public park in question. The Apex Court had in the case of Bangalore Medical Trust, where the park was being transferred to a private Medical Trust, observed that reservation of open spaces for parks and play grounds should be used for legitimate exercise of statutory power for protection of the residents of the locality. The park in question here is being maintained by the Agartala Municipal Corporation, a civic body of the Capital, and none of the activities of the residents and visitors of the parks are being affected. The

decision in the case of *M.C. Mehta (supra)*, also relied upon by the learned senior counsel for the petitioner, is again on a different factual background. In the instant case, the concerned respondents had changed the natural flow of a river by blocking its natural relief/spill channel in order to construct a motel. In those circumstances, The Apex Court in such circumstances relied upon the doctrine of public trust and the polluter pays principles and directed restoration of the original course of the river and to remedy the damage done to the course of the river. These decisions therefore do not apply to the case at hand. The construction of the ward office by the Agartala Municipal Corporation, therefore cannot be said to be in teeth of public interest or likely to cause harm to the public cause by endangering the environment and free access/recreation to the residents and visitors of the park. In such circumstances, this Court is of the opinion that no interference is required in the instant matter.

The writ petition is accordingly dismissed.

Pending application(s), if any, also stands disposed of.

**(ARINDAM LODH), J**

**(APARESH KUMAR SINGH), CJ**