

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

PRESENT:

HON'BLE JUSTICE SUBRATA TALUKDAR

WP No. 1656 (W) of 2020

***Sandip Saha
-Vs.-
The State of West Bengal & Ors.***

For the Petitioners	: Mr. Dilip Kumar Samanta Mr. Biswapriya Samanta
For the Respondent Nos. 2 & 3.	: Mr. Satyajit Talukdar
Learned Special Officer	: Mr. Rabindra Narayan Dutta
Heard on	: 03/02/2020
Judgment on	: 25/09/2020

Subrata Talukdar, J:

Through this writ petition, the petitioner complains of the solitary fact that the Respondents/State Urban Development and Municipal Affairs Department (for short, the *UDMA*) as well as the Respondents/the Kolkata Metropolitan Development Authority (for short the *KMDA*) had unilaterally started excavation on the northern front side of the land of the petitioner to raise construction of a

cemented pillar for exhibiting a Display Board showing the way to Jadavpur Stadium.

The land of the petitioner (hereinafter referred to for short as the said land) comprises around 2 Cottahs in R.S. Khatian No.37, Dag No.68, Revenue Survey No.40, Touzi No.159, 206 and 210 within Ward No.109 of Kolkata Municipal Corporation (for short the *KMC*), P.S. Survey Park.

The petitioner submits that he is a *bona fide* purchaser of the said land along with the frontage portions, both on the Northern and Southern sides. It is submitted that a plan has been sanctioned by the *KMC* for constructing a residential building over the said land and the sanction is valid till the end of 2024. It is further submitted that the land has been mutated in favour of the petitioner and the classification as per the Record of Rights (*ROR*) is *Bastu*. It is submitted that on the basis of the sanctioned plan the petitioner has applied for a loan to construct his house.

It is alleged that on 14th January, 2020, the Northern front portion of the said land bordering the common road was suddenly excavated by the men and agents of the *UDMA* and *KMDA*. Upon enquiry the petitioner was informed that the excavation on the Northern front portion of the said land adjoining the road was being done for the purpose of raising construction of a cemented pillar to set up the Display Board for showing the route to Jadavpur Stadium.

It is further alleged that on the Southern front portion of the said land there are electricity poles of the Calcutta Electric Supply

Corporation (CESC). It is submitted that the excavation of the Northern side has the effect of completely cutting off the uninterrupted egress and ingress of the petitioner to and from his land as well as impeding the free circulation of air and light. The cemented pillar with its Display Board shall stare ominously down over the land of the petitioner like the *hump of Moby Dick* suddenly rearing itself out of a vast grey sheet of water. It is alleged that in spite of the petitioner submitting representations to the concerned authorities of the *UDMA* and *KMDA*, the excavation work still stands.

Hence, this writ petition.

Mr. Samanta, Ld. Counsel for the petitioner, submits that the cement pillar would be one wing of a solid arch which is designed to span both ends of the main road from the Northern front side of the petitioner's land to the other side of the road. Ld. Counsel depicts that the pillar, the arch and Display Board shall overwhelm and/or overshadow the petitioner's land as well as his house proposed to be constructed thereon.

Mr. Talukdar, Ld. Counsel appearing for the Respondents/ *KMDA*, submits that the entire construction in issue is in public interest. The construction is intended to beautify the surrounding areas of Jadavpur stadium as well as guide the general public to it during a major event. The petitioner's so-called personal inconvenience must yield to the convenience of the people at large.

The Learned Special Officer, Mr. Dutta, appointed by this Court to visit the situation on the ground has, through his Report, acknowledged the factual position as already discussed above.

Having heard the parties and considering the materials placed, this Court finds the *suddenness* of the occupation and excavation of the said land which is the Northern frontage of the petitioner's land to be disconcerting *apropo* any lawful action. On the face of it, the Right of the petitioner to enjoy his property in accordance with constitutional guarantees stood abruptly terminated. To state the least the action of *UDMA* and *KMDA* was precipitate in its selection and execution.

No evidence has been brought before this Court to show that there was minimum compliance of prior notice, a survey of the area which includes other land holders, a hearing, a consideration with other plot or land parcels in the vicinity, all of which essentially add up to the principles of natural justice that ought to permeate every public action. *Cherry-picking* the flank of the road opposite to the Northern front portion of the petitioner's land, which is free from personal constraints does not justify a so-called equivalent action in front of the petitioner's land.

Undoubtedly, even as a solitary citizen, the petitioner's cry against blockage of his home, *his castle*, strikes at the root of arbitrary State action. Undoubtedly again, the impugned State action is more in the nature of a beautification and a guide which, could be performed on the basis of informed consent, perhaps at leisure. The impugned State

action is not in the nature of an imminent public utility such as a waterway or, a sewage connection.

In the backdrop of the above discussion, this Writ Petition succeeds.

Accordingly, this Court directs the Respondents/*UDMA* and *KMDA* to take steps forthwith to restore the *status quo ante* in respect of the Northern front portion of the said land as it stood prior to the excavation. It is expected that the *status quo ante* shall be restored within a period of 8 weeks from the date of communication of this order.

W.P. No. 1656 (W) of 2020 stand accordingly **allowed**.

Parties are permitted to act on a server copy of this order downloaded from the official website of the Hon'ble Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Subrata Talukdar, J.)

Later:-

Stay of operation of the order is prayed for by Mr. Satyajit Talukdar, Learned Counsel, appearing for the Respondents/*Kolkata Metropolitan Development Authority (KMDA)*.

Prayer for stay is considered and refused.

(Subrata Talukdar, J.)

