

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA No. 1643 of 2017 (O&M)

Date of Decision: 12.02.2020

**MUNICIPAL CORPORATION, GURUGRAM THROUGH ITS
AUTHORIZED SIGNATORY SH. SUDHIR SINGH CHAUHAN,
SENIOR TOWN PLANNER, MUNICIPAL CORPORATION,
GURUGRAM.**

..... Appellant

V/s.

SURESH KUMAR AND OTHERS

..... Respondents

**CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN.
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA.**

Present: Mr. Lokesh Sinhal, Advocate,
for the appellant.

Mr. R.S. Malik, Advocate,
for respondents No. 1 to 3.

Ms. Kirti Singh, DAG, Haryana.

Mr. Rajesh Lamba, Advocate,
for respondents No. 7 to 17.

RAKESH KUMAR JAIN, J. (Oral)

This intra court appeal is filed against the order of learned Single Judge dated 19.01.2017 by which order dated 08.04.2011 passed by the Municipal Corporation, Gurugram has been put on hold on the ground that until and unless the land in question is acquired in accordance with law it cannot be used as a public street.

In brief, contesting respondents No. 1 to 3, who are successor-in-interest of one Om Parkash, filed a suit for permanent injunction alleging therein that they are the owners in possession of land falling in *khewat* No. 12, *khatauni* No. 18, Rectangle No. 23 and khata No. 5/2, measuring 1 *kanal*

3 marla (*gair mumkin*) which abuts *firni* towards north and across thereto is Urban Estate of Sector 17, Gurugram. They had constructed 11 quarters and 6 shops on the suit land and also kept a passage for the ingress and outgress to the said 11 quarters, linked to the *firni* towards north. Their grievance in the suit was that the defendant-Gram Panchayat therein was intending to convert the private passage of the plaintiffs therein into a *panchayat rasta*, without following the due procedure of law, by laying down drain on both sides perforce. The said suit was decreed on 02.04.1994 and the defendants therein were restrained from interfering in the possession of the plaintiffs-respondent No. 1 to 3 including the private passage which was shown in the site plan (Annexure P-1) in red colour. The defendants were also restrained from laying down any sort of drain in the private passage of the plaintiffs-respondents No. 1 to 3 or to convert the said private passage as panchayat land or public passage without following the due procedure.

After the decree, the land in dispute, falling in village Sukhrali came within the municipal limits on extension of the boundaries of Municipal Corporation, Gurugram (for short “the Corporation”) and as such the provisions of the Haryana Municipal Corporation Act, 1994 (for short “the Act”) became applicable.

The Corporation received an application dated 10.02.2010 from Naresh Sehrawat and others, residents of Village Sukhrali, informing it that the villagers are facing water and sewer problems due to lack of access and connectivity with the internal road of Sector 17, Gurugram. The owners of the land comprising in *khasra* No. 22 *mustkil*, *killa* No. 10/3, 11/1 and *mustkil* No. 23 *Killa* No. 5/2 min east, 6/1, village Sukhrali gave an

undertaking that they shall have no objection if their land is used as a public street (*Aam Rasta*) as their houses are situated outside the *lal dora* of village Sukhrali. It was also brought to the notice of the Corporation that the petitioners, who are at the tail end of the internal road of Sector 17, Gurugram, till the passage, partially in front of their houses are causing obstruction. The said representation was examined by the Corporation and it was found that erstwhile Gram Panchayat of Village Sukhrali, had already laid down services in the *rasta* (passage in question) which was located outside *lal dora abadi* and without using the said parcel of land/passage, the sewer/water lines could not have been laid. Thus, in view of thereof, the Corporation decided to declare the private street into a public street in terms of Section 234(2) of the Act and issued a notice on 08.04.2010, referring to the ownership of the land of various land owners in the said notice and invited objections within a period of 30 days but no objection was received, rather except for respondents No. 1 to 3, all other land owners supported the action of the Corporation.

While, these proceedings were pending, the respondents No. 1 to 3 raised an issue of seeking compensation for the acquisition of their land and referred to the resolution dated 20.04.2007 passed by the Gram Panchayat of Village Sukhrali. There was some internal correspondence of the Corporation in this regard as well but since the Corporation had passed the impugned order dated 05.01.2011, declaring the said private passage into a public street in terms of Section 234(2) of the Act, the petitioners filed a writ petition bearing CWP No. 12219 of 2013 in this Court.

During the pendency of the said writ petition this Court had passed the following order on 19.08.2016:-

“It is not disputed before this Court the petitioners are owners in possession of the land in question measuring 1 kanal 3 marla, which was never acquired by the Municipal Corporation before declaring it as public street.

Learned counsel for the petitioners has pointed out about communication dated 2.2.2012 (Annexure P-6) for allotment of MCG land in lieu of the land belonging to the petitioners, however, nothing has been done so far and the matter is pending before this Court for the last more than three years. No explanation is forthcoming on behalf of the Municipal Corporation, Gurgaon, as to why the authorities are sitting tight over the matter.

In view of the abovesaid undisputed fact situation available on record, Commissioner of Municipal Corporation, Gurgaon-respondent No.1 is directed to look into the matter and take immediate decision on the issue. He is further directed to either allot the land to the petitioners out of MCG land in lieu of land owned by the petitioners pursuant to the communication Annexure P-6 or revise the impugned order dated 5.1.2011 (Annexure P-5), whereby the land of the petitioners was illegally declared as public street without acquiring it. Let him take an appropriate decision within a period of four weeks from today and thereafter, he shall file his own affidavit alongwith action taken report, failing which, he shall come present before this Court to explain the issue.

List on 23.9.2016.”

Pursuant thereto, the Commissioner, Municipal Corporation, Gurugram had passed the detailed order dated 06.10.2016 which is reproduced as under:-

- 1. “In pursuance of the orders of the Hon’ble Punjab and Haryana High Court, Chandigarh dated 19.08.2016 in CWP No. 12219 of 2013 titled as Suresh Kumar & Others Vs. Commissioner, Municipal Corporation, Gurgaon & Others, vide which the*

directions were issued to the Commissioner, Municipal Corporation, Gurgaon to take an appropriate decision within a period of 4 weeks from today i.e. 19.08.2016 therefore, he shall file his own affidavit along with the action taken report. The relevant extract of the orders is reproduced as under:-

"In view of the above said undisputed fact situation available on record. Commissioner of Municipal Corporation Gurgaon - respondent No. 1 is directed to look into the matter and take immediate decision on the issue. He further directed to either allot the land to the petitioners out of MCG land in lieu of land owned by the petitioners pursuant to the communication Annexure-P-6 or revise the impugned order dated 05.01.2011 (Annexure P-5) whereby the land of the petitioners was illegally declared as public street without acquiring it. Let him take an appropriate decision within a period of four weeks from today and thereafter, he shall file his own affidavit along with action taken report, failing which, he shall come present before this Court to explain the issue. List on 23.09.2016".

- 2. After the receipt of above said orders, the matter was examined in length and the notice was issued vide this office memo no. MCG/TP/CTP/2016/3195 dated 15.09.2016 to the petitioners to appear before the Commissioner, Municipal Corporation, Gurgaon on 21.09.2016. Sh. Suresh Kumar, petitioner No. 1 appeared before and remaining two petitioners namely Smt. Sumita wd/o Late Sh. Naresh Kumar, petitioner no. 2 & Smt. Kanta wd/o Late Sh. Rakesh Kumar, petitioner no. 3 did not appear. Sh. Suresh Kumar could not convince the undersigned on the basis of the documents he possessed.*
- 3. Before proceeding further, it is pertinent to go through the facts of the case which are enumerated as under:*
 - i) Whereas this Corporation had received an application dated 10.02.2010 from Sh. Naresh Sehrawat & other residents of Village Sukhrali who intimated that the*

villagers were facing water & sewer problem due to lack of access and connectivity with the internal road of Sector-17, Gurgaon. The owners of land comprising khasra no. 22/7 10/3, 11/1, 23/1 6/1, Village Sukhrali submitted an undertaking that they have no objection in using their land as public street /aam rasta as their houses situated outside Lal Dora of village Sukhrali.

- ii) Whereas the facts of the representation were examined and was found that the erstwhile village Panchayat, Sukhrali laid down the services in the rasta which was located outside lal dora abadi. Without the parcel that being used as passage, sewer line or water pipeline could not have been laid. There is every reason to believe that passage was concretized. This could be assessed through Google Satellite Imaginary of year 2005 & 2011 and hence I would tend to believe that this piece of land is and was a passage confirmed through site photograph as Annexure-I.*
- iii) Whereas village Sukhrali was included in erstwhile MC limit vide Local Govt. Department Notification No. 12/5/79-2Cl dated 09.01.1985 and the said village was a part of residential Sector 17, Gurgaon. Though Lal dora of villages was not extended since the time of consolidation but due to increase in number of families and size of families, habitation extended out of lal dora. Such an extension of village abadi was unauthorized and hence, the colony too was unauthorized. Nevertheless, even when the construction didn't come up in planned manner, the ownership of rastas still vested with the concerned land owners. It is responsibility of local authority to provide basic amenities in the habitation area therefore, erstwhile village Panchayat Sukhrali as well as MCG has prepared a proposal to laid down the services such as water/sewer line in the left over passages. In other words even the people of unauthorized colonies need minimal amount of infrastructure to have basic urban facilities like roads,*

right of way and water as per the provisions of HMCA-1994 reproduced as under:-

Power of Commissioner to order work to be carried out or to carry it out himself in default.

233. (1) If any private street or part thereof is not leveled, paved, medalled, flagged, channeled, severed, drained conserved or lighted to the satisfaction of the Commissioner, he may by notice require the owners of such street or part and the owners work which in his opinion may be necessary and within such time as may be specified in such notice.

(2) If such work is not carried out within the time specified in the notice, the Commissioner may, if he thinks fit, execute it and the expenses incurred shall be paid by the owners referred to in sub-section (1) in such proportion as may be determined by the Commissioner and shall be recoverable from them as an arrears of tax under this Act.

Declaration of Public Streets.

234. (1) any street has been leveled, paved, metalled, flagged, channeled, sewerer, drained, conserved and lighted under the provisions of section 233, the Commissioner may, and on the requisition of the majority of the owner referred to in Sub section 1 of that section shall declare such a street to be a public street and thereupon the street shall vest in the Corporation.

(2) The Commissioner may, at any time, by notice fixed up in any street or part thereof not maintainable by the Corporation, give intimation of his intention to declare the same a public street unless with one month next after such notice has been so put up, the owner or any one of the several owners of such street or such part of a street lodge objection thereto at the Corporation office, the Commissioner, may, by notice in writing, put up in such street of such part, declare the same to be a public street vested in the Corporation.

While Municipal Commissioner has authority to get the work done in such areas with in Municipal Limits, once any such work is executed, by virtue of such authority of having got the work

done, the Municipal Corporation may undertake the process of Declaration of Public street in terms of Section 234 of HMC Act-1994. Further, such declaration shall be decided by majority of the owners.

- iv) *Whereas the land owners namely Sh. Naresh Kumar & others who are at the tail end and T-junction of the internal road of Sector-17 covered the passage partially in front of their house and obstructed the passage of water. As an alternate measure this Corporation found it appropriate to declare the land of Sh. Naresh Kumar & others measuring 16'X110'in khasra no. 23// 5/2 min east, Sh. Daljeet, Sh. Kuldeep, Sh. Dharam Singh all Ss/o Sh. Karan Singh on land measuring 16'X75' comprising khasra no. 22// 11/1. Sh. Ranbir Singh & others on land measuring 16X75 comprising khasra no. 22// 11/1, Sh. Rakesh and others on land measuring 16'X110' comprising khasra no. 23// 6/1, Sh. Nathu Ram S/o Sh. Mange Ram on land measuring 16'X110' comprising khasra no. 23// 6/1, Sh. Hukum Singh at others on land measuring 16'X75' comprising khasra no. 22// 10/3, Village Sukhrali, Gurgaon as public street under the Section - 234 (2) Municipal Corporation Act, 1994.*
- v) *Whereas exercising the powers U/s 234 (2) of Haryana Municipal Corporation Act, 1994, Commissioner, Municipal Corporation, Gurgaon is a competent authority to declare any street or part thereof as a public street by giving 30 days public notice. After declaration of public street by following prescribed procedure under the above section, the public street so declared shall vest in the Corporation. To that extent expenditure on such development and maintenance thereof is the responsibility of Municipal Corporation.*
- vi) *Whereas Commissioner, Municipal Corporation, Gurgaon had issued a public notice bearing no. MCG/CMC/2010/1263 dated 08.04.2010 showing his intention to declare a strip of land under public passage measuring 16'X545' passing through Khasra No. 22// 10/3, 11/1, 23// 5/2 and 6/1 in the revenue estate of Village Sukhrali, Tehsil & District Gurgaon as a public street.*
- vii) *Whereas the above public notice was displayed on the notice boards available in the office of Collector Gurgaon, Joint*

Commissioner - I, II, III, IV, Municipal Corporation, Gurgaon, Tehsildar & BDPO, Gurgaon, SDM, Gurgaon for the information of all concerned and the objections / suggestions were invited from the land owners within a period of 30 days. The above public notice was issued by the Commissioner, Municipal Corporation, Gurgaon on the basis of affidavits furnished by the land owners of area under the street in a length of 435 Rft, out of total length of proposed public street measuring 545 Rft, namely S/sh. Daljit, Kuldeep, Dharm Singh all S/o Sh. Karan Singh, S/Sh. Ranbir Singh, Rakesh, Satbir, Kuldeep all S/o Sh. Bhagwan & Smt. Gyano W/o Late Sh. Bhagwan Others, Sh. Nathu Ram S/o Sh. Mange Ram, Sh. Hukam Singh S/o Sh. Nihal Singh & Others, so that the long pending problems of residents of area could be solved by providing civic amenities and public road.

viii) Whereas within a prescribed period of 30 days none of the land owners or any other persons submitted any objections to the intent of Municipal Corporation, Gurgaon as declared by the order of Commissioner regarding the public street mentioned in public notice dated 08.04.2010. Therefore, following the prescribed procedure U/s 234 (2) of the Act ibid, the above strip of land 16'X545' was declared a public street vide order no. MCG/CMC/2010/1305 dated 05.01.2011.

4. In the above said order, the mention about communication dated 02.02.2012 (Annexure-P-6) has been made in this context and the same is an internal communication of Municipal Corporation of Gurgaon. The municipal Commissioner while raising a query to the Chief Engineer whether any promise of alternate land was made by the engineering department or any other concerned staff. Such a query was made after laying of water/sewer connection utilizing the right of way through the said public street declared after following the due procedure. He was only enquiring as to any alternate land of MCG is to be allotted in lieu of land measuring 1 kanal - 3 marla bearing khasra no. 23// 5/2 in the revenue estate of Village Sukhrali or any such commitment on the behalf of civic body was made. No such mention of any such commitment could not be found on office records. No shelter can be taken by the petitioners under this internal

correspondence. Such a commitment was beyond the jurisdiction and mandate of Chief Engineer but was a prerogative of Government.

5. *In the context of Urban Development it is to be appreciated that even an inhabitant of unauthorized colony deserves a basic necessity like Right of way, access to safe and convenient passage. But, all such passages cannot be created at the cost of public exchequer. Interestingly, the public street per se is being provided at the behest of people living in that area. Even the petitioner is the user-beneficiary of this public street. Further, he has a parcel of land whose value has improved progressively since the laying of sewer line, water line and other benefits. Declaration of public street is also expected to enhance the value of the parcels of land along such a street. Being the acceptor- beneficiary of such public amenities solely aimed to facilitate the resident-land owners of the public street the petitioner can't, at later stage, object to very declaration of public street. The enhancement of value of the land is purely incidental and there is no such provision for civic body to allocate any compensation subsequent to declaration of public street.*

6. *After going through the above facts and records of the case, I am of the considered view that the petitioners are not entitled to any compensation or the alternate plot / piece of land from the MCG on the following grounds:*

i. *That once a street is declared as public street under the provisions of Section - 234 (2) of Haryana Municipal Corporation Act, 1994 following the due process the same will vest with Municipal Corporation, Gurgaon and hence, there is no provision in the Act ibid to declare public street as defunct.*

ii. *The petitioners have not filed any objections and suggestions within stipulated time period of 30 days from the display of draft public notice. Thus, I am of the opinion that the public street declared by Corporation vide memo no. MCG/CMC/2010/1305 dated 05.01.2011 shall remain in force.*

iii. *There is no provision to award compensation for declaring public street under Section - 234 of Haryana Municipal Corporation Act,*

1994 and public streets are declared by MCG to provide higher order infrastructure on the rasta otherwise falls in the category of non-revenue rastas or unauthorized rastas.

- iv. *Petitioners land was a Gair Mumkin Gatwar as per jamabandi of 2011. This land was used as rasta since more than 20 years. The villagers-residents have given in writing about the same and Google image of 2005, 2011 & 2016 supports the same. The entries in Jamabandi indicates that it was a common space i.e. Gatwar and hence there are sufficient reasons to believe that it was not in habitable use. Neither it could have been used for the dwelling purpose.*
- v. *Generally, during the development of villages and process of consolidation the villagers contribute the land and space for creation of roads and common spaces. Unlike consolidation of villages the spaces contributed by individuals continue to be in the ownership of individuals. The declaration of public street belongs to latter set of cases.*
- vi. *Declaration of public street has its own merit and in an unauthorized colony too people need quality access as well as basic amenities and the petitioner's building plan was never cleared. They are beneficiary of drawing water supply, electricity and sewer through this public street only.*
- vii. *Having got the work done i.e. sewerage/ water line/ concretizing or any such other works and solely by virtue of execution of work in that area, Municipal Corporation could have undertaken the task of declaration of Public Street. Further, a majority of people in that street have accepted to provide land. The procedure has been followed in toto. After issue of public notice, no such objections were received. To that extent there are no records on file to accept the arguments of the petitioners. Rather, declaration of public street seems valid on the grounds of having executed some works.*
- 6. *The public rasta has been declared as public street and no cause has arisen to declare the public street as defunct. In the light of the reasons mentioned above and as such Sh. Suresh Kumar is also hereby ordered to remove the partial blockade and open the rasta /*

public street as it is causing public inconvenience and tantamount to wrongful restraint.

This issue is decided accordingly.

Announced to be communicated.”

Thereafter, the writ petition was disposed of by the learned single judge vide impugned order dated 19.01.2017 which reads as under:-

“The petitioners are aggrieved of the impugned order dated 05.01.2011 (Annexure P-5), whereby, their land has been declared to be used for the purpose of common passage and lying of drainage/sewer lines etc.

“The contention of the petitioners is that without following the procedure under the Right of Fair and Compensation Act, 2013 or the Municipal Corporation Act 1994, the order cannot be implemented.

Mr. Mohnish Sharma, learned counsel appearing on behalf of respondent No.1 submits that no acquisition proceeding before passing of the order has been taken place and the possession is still with the petitioners being owners.

No person can be deprived of the land without paying any compensation which is violation of the provisions of Article 300-A of the Constitution of India. The authority should have indulged into passing of such order, in case, the authority is actually in need of the area for the purpose of common passage and lying of drainage/sewer lines etc. The notice dated 08.04.2010, Annexure P-4 shall not be implemented but shall be kept in abeyance till the procedure for acquisition of the land, if necessity arises, is followed.

With the aforementioned observations, grievance of the petitioners and respondents No.5 to 15 is redressed.

Writ petition stands disposed of.”

Aggrieved against the said order, the present appeal has been filed in which it is averred that not only the learned single judge has not looked into the reasoned order passed by the Commissioner, Municipal Corporation, Gurugram dated 06.10.2016, referred to hereinabove, but also

the question of acquisition of land for the purpose of declaring it to be a public street does not arise in view of Section 234 (2) and other provisions of the Act.

Counsel for the appellant has submitted that the land in question is undoubtedly owned by the private respondents but it was being used by the private respondents (writ petitioners) themselves as a private passage/private street, carved out by them at the time when they had constructed 11 quarters and 6 shops which were connected with the *firni* road now leading upto Sector 17, Gurugram. It is further submitted that since the work had already been carried out in the street by the Gram panchayat Sukhrali, therefore, Commissioner had the jurisdiction, in terms of Section 234 (1) read with Section 233 (1) of the Act, to take up the proceedings for declaration of a private street into a public street where there is a requisition of the majority of the owners for that purpose. It is further submitted that except for the respondents No. 1 to 3, all other owners, who have the access on the said private street for the purpose of ingress and egress, have requested the Corporation to declare the private street into a public street by exercising its jurisdiction under Section 234 (2) of the Act. It is also submitted that while declaring the existing private street into a public street by invoking Section 234 (2) of the Act, the land owners are not required to be compensated as held by the learned single judge.

On the other hand, counsel appearing on behalf of the respondents No. 1 to 3 has submitted that once the land in dispute concededly belongs to them, it cannot be appropriate by the Corporation to be used by the public at large without assessing the compensation and paying the same

in terms of Section 162 of the Act. It is also submitted that the Gram Panchayat, Sukhrali had passed the resolution way back in the year 2007 that for the purpose of using the land of the petitioners as *rasta sareeam* the writ petitioners should be duly compensated. There was internal communication also of the Corporation in this regard but no compensation has been paid, therefore, there is no error in the order of the learned single judge which has been challenged in the appeal.

Learned counsel for the proforma respondents i.e other co-owners have supported the stand of the Corporation and submitted that because of the adamant attitude of respondents No. 1 to 3, necessary declaration has been put on hold by virtue of the order of the learned single judge.

Counsel for the appellant has submitted that the total length of the proposed public street is 545 running feet out of which 435 running feet belongs to the other co-owners who have not raised any objection.

We have heard counsel for the parties and perused the record with their able assistance.

The issue involved in this case is as to whether for the purpose of declaring an existing private street into a public street in terms of Section 234 (2) of the Act, the owners of the private passage are required to be compensated in terms of the provisions of the Land Acquisition Act, 1894 or in terms of provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013?

Since, the terms “public street” and “private street” are occurring in this case time and again, therefore, it would be relevant to refer

to the definitions of Public Street and Private Street provided in Section 2 Sub Sections 39 and 44 of the Act. As per Section 2 (39) “private street” means any street, which is not a public street and includes any passage securing access to two or more places belonging to the same or different owners and as per Section 2 (44) “public street” means any street which vests in the Corporation or which under the provisions of this Act becomes, or is declared to be a public street. Thus, the law has recognized both the types of streets and defined the same. Insofar as the private street is concerned, it would be a street which is not declared to be a public street and shall include any passage securing access of two or more places belonging to the same or different owners and public street means the street which shall be vested in the Corporation or under the provisions of the Act becomes or declared to be a public street.

In the present case, it is not disputed that the property in dispute was already a private street and the Gram Panchayat, Sukhrali had provided services in the said rasta. It is not a case also that the Corporation is trying to create a new street rather it is a case where the Corporation is declaring an existing street (private) into a public street. Had it been a case of creation of new street then provisions of Section 222 of the Act would have come into operation wherein the explanation provides that *“when any land is required for a new street or for the improvement of an existing, street, the Government may on the request of the Corporation proceed to acquire, in addition to the land to be occupied by the street, the land necessary for the sites of the buildings to be erected on both sides of the street, and such land shall be deemed to be required for the purposes of this Act”* or had it been a case where the regular line of the street is to be created then Section 226 would have come into operation in which it provided

that “*If any land, whether open or enclosed, not vesting in the Corporation and not occupied by any building is within the regular line of a public street or if a platform, verandah , step compound wall, hedge or fence or some other structure external to a building abutting on a public street or a portion of such platform, verandah, step, compound wall, hedge and fence or other structure is within the regular line of such street, the Commissioner shall request the Government to acquire the same under the provisions of Land Acquisition Act, 1894.*”

Section 229 further provides that *the compensation determined for the land acquired for a public street under the provisions of sections 224, 225, 226 and 227 shall be made by the Corporation in accordance with the provisions contained in the Land Acquisition Act, 1894.*

Insofar as Section 234 of the Act is concerned, nothing is provided under the Act for the purpose of making payment of the compensation for declaring the private street into a public street. Therefore, agitation of the petitioners that they have not been given any compensation before the land has been acquired by the Corporation has no merit.

Section 162 of the Act which has been pressed into by the contesting respondents says that *when any land whether within or without the limits of the Corporation is required for the purposes of this Act the Commissioner shall request the Government to acquire it under the provisions of the Land Acquisition Act, 1894.* This provision is contained in Chapter X which deals with Properties and Contracts and it is not contained in Chapter XIII which deals with the Streets. Moreover, Section 162 deals with the acquisition of land not for the purpose of construction of the street whereas for the purpose of constructions of streets if the land is required, Section 222 (Explanation) and Section 266 are provided but whenever private

passage is to be declared as a public street then Section 234 (2) is only required to be invoked which has rightly been invoked by the Corporation in this case who had given 30 days notice in advance to which no objection was filed by respondents No. 1 to 3 at that time.

Thus, in view of the aforesaid facts and circumstances, we are of the considered opinion that the impugned order passed by the learned single judge is patently illegal and erroneous, therefore, the same is hereby set aside.

The appeal stands allowed.

[RAKESH KUMAR JAIN]
JUDGE

February 12, 2020
Ess Kay

[ASHOK KUMAR VERMA]
JUDGE

Whether speaking / reasoned :	Yes	/	No
Whether Reportable :	Yes	/	No