

15 01.03.2022
rkd Ct.15

W.P.A. 8933 of 2009
(Through Video Conference)

Smt. Mitali Ghorai & Ors.

-vs-

The State of West Bengal & Ors.

Mr. Malay Dhar,
Mr. Biswajit Sarkar,
Mr. Amit Bikram Mahato

....for the petitioners.

Mr. Debasish Das

....for the Egra Municipality.

Mr. Tapan Kumar Mukherjee,
Ms. Sahili Mukherjee

....for the State respondents.

Affidavit-in-opposition filed on behalf of the
Egra Municipality is taken on record.

The writ petition is heard in presence of the
learned advocates representing the petitioners, the
Chairperson of the Board of Administrators of Egra
Municipality and the State respondents.

The writ petition is taken out questioning
utilization of the land measuring 40 decimals for
construction of drain in between the land of the
petitioners and the pucca municipal road.

According to the petitioners, upon
acquisition of the portion of the land in question
such drain cannot be constructed by the Egra
Municipality. Upon placing reliance on one consent
letter dated 27th February, 2004 given by the
petitioner no.1 it has been contended on behalf of

the petitioners that the terms of this consent letter cannot be given effect to since that is contrary to Sections 74 & 76 of the West Bengal Municipal Act 1993 (hereinafter referred to as "Act of 1993"). According to the petitioners the procedure which has been contemplated under Section 76 of the Act of 1993 has not been complied with, therefore, it was not within the domain of the concerned authority of the said municipality to utilize the land of the petitioners for construction of drain in between the municipal road and the land of the petitioners. Accordingly, petitioners have prayed for restoration of possession of the land utilized for construction of drain by the municipal authority under Dag No.2928 in Mouza Kasba, Egra.

Mr. Das, learned advocate appears on behalf of the municipal authority and has first submitted that the municipal road was already there prior to obtaining consent letter from the petitioner no.1 for construction of drain on 27th February, 2004 and it has further been submitted that out of 40 decimal of land of the petitioners 1.25 decimal of land has been utilized by the municipal authority for construction of drain. It is also contended on behalf of the respondent authorities being the municipality as well as the

State respondents that Sections 74 & 76 of the Act of 1993 do not come into play considering the facts of the case since it is not the case of acquisition of land by the municipality rather a mere consent has been given by the petitioner no.1 on 27th February, 2004 permitting municipal authority to construct drain upon utilization of the land in question. It has further been submitted that the petitioners have approached this Court not contemporaneously rather after five years of issuing letter of consent in favour of the municipality by the petitioner no.1 on 27th February, 2004 in the year 2009 and this writ petition has been instituted questioning such consent. Therefore, the writ petition ought not to be entertained.

This Court has heard the learned advocates representing the petitioners as well as the respondent authorities. It appears that there is a consent letter issued by the petitioner no.1 in favour of the municipality on 27th February, 2004 permitting the municipal authority to construct a drain for public purpose upon utilization of the land of the petitioners in question. The municipal authority in its turn had acted on the basis of such consent of the petitioner no.1 and duly constructed a drain for public use.

On reading of Sections 74 & 76 of the Act of 1993, it does appear to this Court that the provisions framed therein relates to acquisition of property by the municipal authorities but in the present case which is being considered by the Court is not the case relating to the acquisition of the land by the municipal authority rather it is found that municipal authority has acted on the basis of the letter of consent issued by the petitioner no.1 and eventually a drain has been constructed.

If after giving such consent by the petitioner no.1 it appeared to the petitioners that consent is contrary to the relevant provisions of law, it was open to the petitioner no.1 to question such letter of consent dated 27th February, 2004 but the petitioners chose not to raise any demur at the material point of time and subsequently filed the writ petition five years after giving consent in the year 2009. Considering the facts of the case, prayer made by the petitioners for restoration of land utilized by the municipality in favour of the petitioners cannot be entertained at this stage.

Accordingly, the writ petition stands dismissed.

However, this order shall not preclude the

petitioners to approach the appropriate forum questioning the letter of consent given by the petitioner no.1 in favour of the municipality, in accordance with law, if so advised.

It will further be open to the petitioners to raise objection and take steps accordingly if they are prevented from enjoying the rest of the land out of said 40 decimal of land, deducting portion of land which was utilized for construction of municipal drain.

(Saugata Bhattacharyya, J.)