

WPA 19271 of 2017

**Swadesh Prasad Rao
Vs.
The State of West Bengal & Ors.**

Mr. Shahan Shah

...for the petitioner

Mr. Raghunath Chakraborty

Mr. M. Ahmed

...for the Municipality

The matter is taken up for consideration pursuant to the previous order dated 12th July, 2022.

Today, Mr. M. Ahmed, learned advocate representing the Mahestala Municipality has placed before this Court one communication dated 20th July, 2022 issued by the Chairman, Mahestala Municipality addressed to the learned advocate of the said Municipality wherein it has been intimated that based on the discussion took place on 12th July, 2022 in the meeting of the Chairman in Council, it was found that the land measuring approximately 130 sq. ft. of the petitioner may not be required and in future, if expansion is required, the land of the petitioner in question would be acquired through due process of law.

Based on such communication dated 20th July, 2022 pursuant to the decision taken in the meeting of the Chairman in Council dated 12th July, 2022, it has been submitted on behalf of the Municipality that at present,

for completing the project land of the petitioner is not required and therefore, there should not be any impediment in enjoying the land by the petitioner.

Mr. Shahan Shah, learned advocate representing the petitioner has also submitted that presently petitioner is in possession of the said land in question and there is an interim order passed by the coordinate Bench on 2nd August, 2017 on this writ petition restraining the authorities not to take coercive steps against the petitioner for his eviction. Such interim protection granted by the coordinate Bench on 2nd August, 2017 was extended vide order dated 13th June, 2022 passed by this Court.

In the aforesaid backdrop, this Court has also considered the report of the District Magistrate which was filed before this Court pursuant to the order of the coordinate Bench dated 2nd August, 2017.

The relevant part of the said report of the District Magistrate is quoted below:-

“3. It reveals from the physical enquiry that at present no fresh construction is noticed near the suit plots. However, it appears from the letter from the Municipality and central line shown by the Executing Authorities, that for completion of the project of elevated B.B.T. Road along with composite programme (16 foot on both side of central line) for construction of gas line, drainage system etc. a portion of R.S. Plot No. 02 and L.R. Plot No. 03 mentioned in the writ petition will be required. In this connection it may be stated that the Executing Agencies and Municipality have shown 17/2 meters = 8.5 meters + 4.87/2 meters = 28 ft. + 16 ft. on either side of the central line. So the report is prepared on basis of requirement of 28 foot plus 16 foot from the Central Line.

Mouza-Mahadevpur R.S. Plot No.	J.L. No. 14 L.R. Plot No.	Total area of the Plot	Area of the petitioner may be needed for the project
02	03	0.01 acres	130 sq.ft.

4. However, if the total requirement of land as stated above for the purpose of construction of B.B.T. Road is to be acquired then a joint survey is necessary with the help of Maheshtala Municipality and the executing agencies.

A photostat Copy of the said Memo No. 2361/BL&LRO/T.M.Block/2017 dated 29.08.2017 is annexed hereto.

5. The land of the petitioner which is falling within the project will be procured by the State as per the extant Government Rules.”

Notwithstanding the view expressed by the District Magistrate today it has been submitted on behalf of the Municipality that at present the said land of the petitioner in question (130 sq.ft.) is not required and it has further been submitted that in future if such land is required for expansion of elevated road between Jinzira Bazar & Batanagar on Budge Budge Trunk Road, the steps to be taken in accordance with law for acquiring such land.

No one is representing the State-respondents today.

Considering the stand taken on behalf of the Municipality as aforesaid, the writ petition stands disposed of with an observation that in future for expansion of the elevated road between Jinzira Bazar & Batanagar on Budge Budge Trunk Road if the land of the petitioner in question is required, the authority shall take steps in accordance with due process of law for acquiring the said land.

Until such acquisition is made on requirement, the peaceful enjoyment of the said land by the petitioner, shall not be disturbed.

However, there shall be no order as to costs.

Copy of communication issued by the Chairman, Mahestala Municipality dated 20th July, 2022 is taken on record.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)