

August 29, 2023
Sl. No.24
Court No.19
s.biswas

CO 2153 of 2023

Smt. Jharna Rani Modak

vs.

The Chairman, Panihati Municipality and another

Mr. Debasis Kar

Mr. Husen Mustafi

Mr. Subhajit Chowdhury

... for the petitioner

Mr. Soumyajit Bhatta

Mr. Sanjib Seth

Mr. Sunayan Bose

... for the Panihati Municipality

This court does not find any reason to interfere with the order impugned. In view of the submissions of the learned advocate for the Panihati Municipality, it appears that upon extensive enquiry by the Block Land and Land Reforms Officer, Barrackpore-II, it was found that the alleged construction of the petitioner encroached on L.R. Plot No.1934 of Mouza Natagarh. The said plot is a municipal road. Mr. Bhatta, learned advocate for the municipality, relies on Section 176, Sub-sections 1 and 2 of the West Bengal Municipal Act, 1993, in support of the contention that the municipality had the power to remove such encroachment, under the relevant statute.

It also appears that the municipal land, was being widened. Documents have been shown which would indicate that the Joint Secretary, Urban Development and Municipal Affairs, Government of West Bengal, informed the Chairman of the

municipality that a scheme had been approved by the government. The widening of the road was under a particular scheme prepared and approved for the development of areas within Panihati Municipality. The scheme involved a project of Rs.2,39,77,000/- and was time bound. The names of the projects are set out as under:

1. Development of C.C. Road from North Subhas Nagar More to Pallysree in ward no.27 & 11
2. Construction of Md. KC. Road Pir Pukur to NDDM Border in ward no.28 & 29
3. Construction of Rabindra Nagar Main Road in ward no.30
4. Construction of Gopal Baba Asrom Road Barasat Road to H/O Lt. Dinesh Roy in ward no.32
5. Construction of PC. Das Road from Sulekha More to Purbasa Unnayan Samity in ward no.33
6. Construction of C.C. Road at Ananda Nagar Main Road near Puja Mandap in ward no.34.

The construction of PC. Das Road from Sulekha More to Purbasa Unnayan Samity in ward no.33, is the relevant scheme, which is being stalled due to encroachment by the petitioner.

It is submitted that the work order has been issued to one Sanjoy Enterprise on August 2, 2022. Notices were issued to the petitioner on December 2,

2022, February 6, 2023 and March 10, 2023, which have been annexed with the documents produced before the court. The Board of Councillors decided to remove the encroachment.

Moreover, the Chairman of the Panihati Municipality requested the Block Land and Land Reforms Officer, Barrackpore-II to survey the land as there was an obstruction in the construction of a drain in respect of the Dag No.1934 of Mouza, Natagarh. The Revenue Inspector, Block Land and Land Reforms Office, Barrackpore-II, made an enquiry and informed the Block Land and Land Reforms Officer, Barrackpore-II, that the existing road was on L.R. Plot No.1934 and the road was drawn and marked in the mouza-sheet no.03 of Mouza Natagarh, J.L. No.15. During enquiry, it was found that the width of the road in the mouza-sheet was 20 feet. There was an encroachment.

Under such circumstances, after the decision of the Board of Councillors, the Chairman issued a notice asking the petitioner to take steps for demolition of the construction which had encroached the road. Intimation was also sent to the police authorities. Several reminders were sent to the petitioner to appear before the authorities with relevant documents, prior to such decision. The decision was taken by the Board of Councillors and

communicated by the Chairman, when the petitioner did not appear.

Challenging such notice, the Municipal Appeal no.4 of 2023 was filed. The same is pending before the learned Civil Judge (Junior Division), Barrackpore. The Civil Judge (Junior Division), Barrackpore, prima facie, did not find any illegality with the direction of the Chairman and refused to pass any order of stay. Such order has been challenged.

Considering the above mentioned facts and the documents which have been brought to the notice of the court, this court finds that a time bound public project is being hauled up. The petitioner was given several opportunities to appear before the municipality. The approval of the project has been obtained. The work order has been issued. Hence, any order of stay of the construction of the road would amount to violation of the amended provisions of the Specific Relief Act. Unless the petitioner is willing to secure the amount involved in project No.5 stated hereinbefore, stay cannot be granted. Petitioner has not shown any such inclination. The prima facie case, balance of convenience and inconvenience and irreparable loss and injury is against passing any order of stay of the impugned notice as the alleged construction of the road is for

public purpose. If the petitioner is successful in the appeal, he can be compensated.

Under such circumstances, the revisional application is dismissed. The appeal will be heard on merits.

All the parties are directed to act on the basis of the server copy of the order.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)