

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

WPA 25230 of 2015

Pranab Kumar Nanda & Ors.

-Vs-

State of West Bengal & Ors.

For the Petitioners: Mr. Amit Baran Dash, Adv.,
 Ms. Ankana Sarkar, Adv.

For the respondent No.8:-
 Mr. Debasish Das, Adv.

For the Respondent Nos.10, 12, 13, 15, 16, 17, 19 & 20:-
 Mr. Jayanta Kumar Das, Adv.,
 Ms. Madhumanti Das, Adv.

Hearing concluded on: 15 June, 2023.

Judgment on: 23 June, 2023.

BIBEK CHAUDHURI, J. : –

1. The instant writ petition was previously dismissed by a Coordinate Bench on 4th January, 2019 on the ground that the writ petition is in the nature of public interest litigation and the petitioners did not implead the encroachers.

2. Against the said order dated 4th January, 2019, the petitioners filed an appeal which was registered as FMA 328 of 2020. The said appeal came up for hearing before the Division Bench of this Court presided over by the Hon'ble Chief Justice. The appeal was allowed. The order of

dismissal of the writ petition was set aside and the writ petition is sent back to this court for fresh decision in accordance with law.

3. Under such backdrop, the instant writ petition is taken up for hearing.

4. The petitioners claim to be the owners of the Plot No.1863, 1864, 1865 and 1866 of Khatian No.1784 of Mouza Kasba-Egra in the district of Purba Medinipur. The nature of the said plots is bastu and the petitioners have been possessing the said plots by constructing their residential house and a private hospital under the name and style of Prafulla Medical and Research Centre (PMRC). The residential house and the private hospital are situated on both sides of Contai-Egra-Kharagpur Highway near Egra bus stop. It is alleged by the petitioners that the respondents, specially Egra Municipality raised unauthorized and illegal construction on both sides of the said road by constructing passengers' shed, public toilets and garbage vat on both side of the said road obstructing fully ingress and egress of the petitioners to their residential house as well as the said hospital. Beside unauthorized construction, the local municipality issued licence to various fruit sellers and other vendors who regularly set up mobile shops and gumties on both sides of the road encroaching the entrance gate of the petitioner's residential house and the hospital. The said shop owners are impleaded as private respondents No.10-20.

5. On this allegation, the petitioners have prayed for issuance of Writ in the nature of Mandamus commanding the respondents, their men,

agents and servants to take steps for demolition of the unauthorized construction or obstruction caused by gunties, mobile food vendors and the fruit sellers. The petitioners have also prayed for a direction upon the respondents to demolish the illegal construction, structure of passengers' sheds, public toilets and garbage vat from the said area which obstruct the free ingress and egress of the petitioners.

6. Respondent No.8 being the chairman, Egra Municipality, Purba Medinipore has filed an affidavit-in-opposition denying all the allegations made out in the writ petition. It is specifically pleaded by the respondent NO.8 that the lands in questions are near Egra Bus Stop/Bus Stand. As such passengers' shed, public toilets and garbage vat were constructed for the interest of the passengers as well as general public and also the visitors of the PMRC. Municipal Authority have issued licence to some persons in accordance with law including the private respondents for carrying on their business of sale of food items and fruits and other articles. It is pleaded by the respondent No.8 that land in question is a free hold plot and as such the question of obstruction for ingress and egress of the petitioners does not arise at all and there is a wide thoroughfare measuring about 200 fts. in breadth in front of the house of the petitioners for ingress and egress.

7. It is further pleaded by the respondent No.8 that the Sub-Divisional Officer, Egra was appointed to the post of Administrator/chairperson, Egra Municipality on and from 18th August, 2014 to 22nd May, 2015. During the tenure he vetted eleven numbers of scheme for construction of

passengers' shed, drain & concrete road etc. within Egra Municipality under MPLAD fund for the year 2014-2015. Thereafter, the Administrator Egra Municipality has issued order for construction of passengers' shed near PMRC on 8th December, 2014. The then Chairman, Egra Municipality had issued work order for construction of passengers' shed near pay and use toilet opposite to Egra Municipal Road. The District Magistrate, Purba Medinipur released an amount of Rs.22,79,944/- in favour of the Executing Agency for execution of the aforesaid scheme by his letter dated 29th December, 2014. The then Chairperson, Board of Administrator, Egra Municipality, issued a letter to the Executive Engineer, PWD, Tamluk Division, Purba Medinipur on 30th January, 2015 for no objection certificate for construction of passengers' sheds under MPLAD fund on extreme end point of PWD land within Egra Municipality. Two passengers' sheds were thus constructed on both sides of the Contai-Belda PWD Road, Egra as per sanctioned scheme. The respondent No.8 also specifically pleaded that there is a thoroughfare measuring about 200 feet wide in front of PMRC. It is further submitted by the respondent No.8 that the passengers' shed is measuring about 15 ft long and 4 ft wide having all sides open. The passengers' shed do not cause any hindrance to ingress and egress of the petitioners. The passengers' shed, public toilet and garbage vat are required for the interest of the public. It is also stated by the respondent NO.8 that the Chairman of the Municipality has the statutory power to issue licence in favour of fruit sellers, food vendors and other shop owners. They carry on their business on both sides of the bus

stand of Egra. Therefore, the petitioners cannot raise any objection to such act done by the respondent No.8. It is further pleaded by the respondent No.8 that in LR Case No.3 of 1946-47, the authority concerned had acquired 50 ft. land from both sides of Contai-Belda Road and on the basis of a sketch-map prepared by the concerned authority. The passengers' shed, public toilet and garbage vat were constructed on the said acquired land and no part of the petitioners' land was acquired.

8. The private respondent Nos.10, 12-17, 19 and 20 have filed separate affidavit-in-opposition in the instant writ petition. It is specifically stated by them that the added private respondents are fruit vendors and some of the private respondents had constructed small shops on the road side of the land belonging to the PWD. The contesting respondents were granted licence by the municipality and on the strength of such trade licence they are running their business. They have not encroached any land of the petitioners.

9. The state respondents have filed a report on the basis of a spot enquiry conducted by the Revenue Inspector of Egra-1 Block. From the said report it is ascertained that plot No.1668 of the said mouza is owned by PWD and the said plot is situated in front of plot No.1743/4336. The said plot No.1668 has been encroached constructing passengers' shed of Egra Municipality, few shops, a public toilet and a tube-well. It is also stated that the said encroachment obstructs the smooth ingress and egress of the petitioners. On the opposite side of the road another passenger shed was constructed by Egra Municipality. There are some

gumties installed by shop owners over plot No.1679 belonging to the PWD. The said constructions are causing obstruction to plot No.1743 belonging to the petitioners. Other plots bearing No.1863, 1864 and 1865 belonging to the petitioners are not obstructed by any unauthorized construction.

10. The respondent No.8 has filed a written objection against the above mentioned report filed by the state respondents. In the said objection it is stated by the respondent No.8 that BL and LRO Egra-1 issued a notice to the respondent No.8 on 12th December, 2022 informing, inter alia, that a spot measurement will be made on 20th December, 2022. The respondent No.8 issued a letter to respondent No.5 on 19th December, 2022 raising objection regarding spot enquiry. It is contended that if any enquiry is required to be made it is to be made not on the basis of mouza map but on the basis of the map prepared in LA Case No.3 of 1946-47 on 20th August, 1953.

11. The petitioners have filed an affidavit-in-reply wherein they relied on site map prepared by the Revenue Officer which was filed on behalf of the state respondents.

12. I have heard the learned Advocates for the petitioners and the respondents on length. I have also considered the writ petition, affidavit-in-opposition filed by the respondent No.8 and private respondents and report submitted by the state respondents.

13. There is no dispute that the petitioners are owners in respect of LR Plot No.1743/4336, 1864, 1863 and 1865 of mouza Kasba-Egra.

14. It appears from the report submitted by the state respondents that there are lands of PWD on both sides of Contai-Belda Highway. After PWD land, the bastu lands with residential house and private hospital of the petitioners are situated. It appears from the sketch map prepared by the *Amin* attached to the office of the BL and LRO that plot No.1743/4336 are fully obstructed by the public toilet, shops and passengers shed constructed by Egra Municipality, respondent No.8 herein. On the adjacent east of the said shops and passengers shed and public toilet, municipal drain is running from north to south. LR Plot No.1743/4336 is situated just after the municipal drain. It appears from the sketch map that entire front portion of plot No.1743/4336 are covered by passengers' shed, public toilet and shops of the private respondents. The petitioners have no thoroughfare for ingress and egress to plot No.1743/4336. Therefore, the petitioners are able to prove their case that free ingress and egress to plot NO.1743/4336 is blocked by the construction made by the municipality and the shop owners and vendors to whom the municipality granted licence.

15. It appears from the said sketch map that the passengers shed and public toilet are constructed on two extreme sides in front of plot No.1743/4336. The petitioners are entitled to enjoy free ingress and egress to their plot No.1743/4336 upon which their residential house is situated. Therefore, the respondent No.8 is under obligation to vacate the shops of Bapi Ghorai, Bijay Manna, Bappadittaya Das, Mintu Nandi and Tapan Das from the place where shops are presently situated.

16. From the said sketch map prepared by the *Amin* of the officer of the BL and LRO, Egra it is ascertained that entrance gate of PMRC which is situated on the western side of Belda-Contai Highway has not been encroached and there is some vacant space in front of the gate of PMRC. Therefore, the existing structure in the PWD land in front of PMRC shall remain.

17. In view of the above discussion the instant writ petition is allowed in part. The respondent No.8 with the help of the respondent No.3 and respondent No.4 shall evict the shop owners namely Bapi Ghorai, Bijay Manna, Bappadittaya Das, Mintu Nandi and Tapan Das whose shops are situated in front of LR Plot No.1743/4336 in order to provide free ingress and egress to the petitioners over the said plot where residential house is situated within sixty days from the date of communication of this order.

18. With the above order the instant writ petition is disposed of on contest. There shall, however be no order as to cost.

(Bibek Chaudhuri, J.)