

Shiva Glass Works Company & Anr.

-vs-

Baranagar Municipality & Ors.

Mr. Sutirtha Das ... for the petitioners.

Mr. Arijit Dey ... for the Municipality.

Md. Mansoor Ali ... for the State

The writ petition is heard in presence of the learned advocates representing the petitioner, Baranagar Municipality and State respondents. However, Khalsa Model Senior Secondary School being the respondent nos. 5 and 6 are not represented today.

Learned advocate representing the petitioner has voiced grievance on the resolution dated 31st July, 2017 taken in the meeting of Board of Councillors of Baranagar Municipality in terms of the order passed by a coordinate Bench on 12th April, 2017 on a writ petition being WPA 10411 of 2017. While deciding the issue whether respondent no. 5 and 6 have encroached the adjacent municipal road which situates in between the aforesaid school premises and the office of the petitioners it has been found by the municipality that there was no encroachment made by the respondent nos. 5 and 6 while repairing the boundary wall of the said school. It has been submitted while attacking the resolution of the municipality that such decision of the municipality as contained in the resolution dated 31st July, 2017 is erroneous upon placing reliance on the report filed in the form of an affidavit

affirmed on 9th August, 2018 by the Block Land and Land Reforms Officer, Barrackpore-II, North Parganas.

It has further been submitted on behalf of petitioners that pursuant to the order dated 12th July, 2018 passed by a coordinate Bench on this writ petition the municipal road on which encroachment has been made as alleged by the petitioners was inspected and according to the concerned Block Land and Land Reforms Officer there is an encroachment by the respondent nos. 5 and 6 which has been demonstrated by enclosing a sketch map which is at page 9 of the said report.

Baranagar Municipality is represented by learned advocate who has made an attempt to defend the decision taken by the resolution dated 31st July, 2017.

However, having considered the submissions made on behalf of the petitioners as well as Baranagar Municipality and the State respondents and taking note of the report filed by the concerned Block Land and Land Reforms Officer, it appears that the decision taken by the Baranagar Municipality as impugned in this writ petition is not corroborated by the sketch map which has been annexed at page 9 of the report filed on behalf of the Block Land and Land Reforms Officer. In the resolution of the municipality dated 31st July, 2017 when it has been found that there is no encroachment of the adjacent municipal road whereas the report of the concerned Block Land and Land Reforms Officer speaks otherwise. It has been

specifically stated that on field verification it transpires that the adjacent road is on the eastern side of Khalsa Model Senior Secondary School and on the western side office of the Shiva Glass Works Company Limited. It has also been stated in the relevant part of the field verification report that the length of the said road is about 50 ft. and 6 ft. wide, but on inspection it has been found that the major part of the said road is within the boundary wall of Khalsa Model Senior Secondary School.

In view of aforesaid findings as made by the concerned Block Land and Land Reforms Officer, as it emanates from the report it appears that unilateral decision taken by the Baranagar Municipality is erroneous and same stands set aside.

The concerned authority of Baranagar Municipality is directed to take fresh decision whether the road in question has been encroached by the respondent nos. 5 and 6 or not within a period of eight weeks from the date of communication of this order after granting opportunity of hearing to the petitioners and respondent nos. 5 and 6.

The concerned authority of Baranagar Municipality shall also send notice to the Block Land and Land Reforms Officer, Barrackpore- II, to remain present at the time of consideration of the issue or to depute any responsible officer working under the said Block Land and Land Reforms Officer to represent the Block Land and Land

Reforms Officer for making deliberation before the municipality. At least seven days notice shall be served upon the petitioners, respondent nos. 5 and 6 as well as the aforesaid Block Land and Land Reforms Officer.

It is also made clear that before taking decision the municipality shall also consider the inspection report which has been filed before this Court by the concerned Block Land and Land Reforms Officer and the sketch map annexed thereto.

The decision to be taken by the municipality shall be communicated to the parties within one week thereafter.

With the aforesaid direction the writ petition stands disposed of.

There shall be no order as to costs.

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

(Saugata Bhattacharyya, J.)