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W.P.A. 4014 of 2015

Rabi Shankar Pandey, Councilor of Kharagpur
Municipality & Ors.

-vs-

Union of India & Ors.

Mr. Anant Kumar Shaw,
Mr. Ravi Kumar Dubey

....for the petitioners.

Mr. S. S. Koley

....for the respondent no.5.

Mr. Animesh Mukherjee,
Mr. Anish Kumar Mukherjee

....for the Railways.

Kharagpur Municipality and one of its councillors have approached this Court with the present writ petition apparently with innocuous prayer of issuing mandamus upon concerned authority of South Eastern Railways to permit West Bengal State Electricity Distribution Company Limited being the respondent no.5 to install electric poles for providing electricity to the streets comes under the jurisdiction of Kharagpur Municipality which situate at the areas which were added vide notification date 10th June 2008 issued by the Governor. What are the plots which have been added to the municipal areas under the jurisdiction of Kharagpur Municipality have been delineated in the said notification date 10th June 2008. Though prayer has been made in the writ petition that

prime consideration of the municipality so far present writ petition is concerned to provide electricity to the streets of the municipality which fall on the added area as delineated in notification date 10th June 2008 but prayer has also been made in this writ petition to provide electricity to the residents of those added areas. According to the petitioners due to non-cooperation of the concerned authorities of South Eastern Railways necessary infrastructure including installation of electric poles is not made possible as a result whereof electrification of streets falling on those added areas as well as houses of the residents situate at those added areas cannot be made.

However, Mr. Shaw, learned advocate representing the Kharagpur Municipality submits that prayer can be molded to give direction upon the concerned authority of South Eastern Railways as well as respondent no.5 to electrify streets only not the houses situate on land of Railways. In support of such contention made on behalf of the Municipality being the petitioners reliance has been placed on Section 167 of the West Bengal Municipal Act, 1993 (hereinafter referred to as the “said Act of 1993”) in order to contend that all public streets coming under the jurisdiction of

Kharagpur Municipality vest in the Municipality. Therefore, according to the Municipality since notification has been issued under Section 9(c) of the said Act of 1993 adding some adjoining areas to the jurisdiction of the Municipality, the Municipality has got right to take necessary steps with the assistance of other authorities for electrification of streets falling on added areas.

It is stated in the affidavit affirmed on behalf of the South Eastern Railways the prayer of the petitioners for electrification of the streets and the houses of the residents fall on the land of the South Eastern Railways. Therefore, according to Railways it is within the domain of South Eastern Railways to take decision accordingly and South Eastern Railway Authorities have got power even to initiate eviction proceedings in terms of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and in support of such contention a document has been annexed at page 15 as annexure R-3 to the affidavit affirmed on 15th January, 2024.

It is also emphatically submitted on behalf of the South Eastern Railways that if land in question belongs to Railway Authorities, Kharagpur Municipality has got no right to pray for issuance of

mandamus for electrification of areas falling on the land of the Railways.

Having considered the submissions made on behalf of the parties and on perusal of the relevant materials available on record, it appears that against an interim order passed by a coordinate Bench on this writ petition on 25th June, 2018 an intra Court appeal was preferred by the Union of India and the same was disposed of by the Hon'ble Division Bench vide order dated 27th August, 2018 wherein it has been recorded as follows:

“By virtue of the Government of West Bengal Notification date 10th June 2008, seven Wards were included within the Kharagpur Municipality. A substantial part of these Wards comprised railways’ land. These Wards are also inhabited by a large number of people.”

It is true that in terms of Section 9(c) of the said Act of 1993 notification can be issued by the concerned authority thereby adding some more areas to the jurisdiction of Municipality but if the land in question belongs to Railways Authorities it does not appear from the said Act of 1993 that the notification can also be issued in order to bring into

the jurisdiction of the Municipality the land of Railways Authorities. It would be improper to issue mandamus directing electrification of streets fall on Railways' land and houses of the persons who are illegally occupying the land of Railways on the writ petition of Kharagpur Municipality.

Without proper demarcation whether the land in question belongs to the Railway Authorities or it comes under the jurisdiction of Kharagpur Municipality the relief as prayed for in this writ petition cannot be granted since this Court is of the opinion that if the land in question belongs to Railway Authorities, Kharagpur Municipality cannot pray for electrification of the said land. Moreover, this is not a writ petition by the residents of the Municipality praying for direction to provide new electric connection.

Therefore, considering the nature of the prayer made in this writ petition, the said writ petition cannot be entertained and accordingly the same is dismissed.

Before parting with it needs to be observed that providing electricity, if some parts of the land of Railway Authorities including streets and roads are without electricity, is the duty of the concerned authorities of South Eastern Railways but at the

same time the Railway Authorities should not create any hindrance in electrification of streets and roads of Kharagpur Municipality over which South Eastern Railway Authorities have no right.

If it is found that due to the position of the land which comes under the jurisdiction of Kharagpur Municipality electrification of roads and streets on those lands is not possible without installation of electric poles on the land of the Railway Authorities it is desirable that Railway Authorities should permit the Kharagpur Municipality as well as respondent no.5 to install electric poles for providing electricity to those parts of the land which comes under the jurisdiction of Municipality where electrification could not be made due to non-cooperation of the Railway Authorities since electricity is one of the basic amenities.

However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Saugata Bhattacharyya, J.)