

38
18-03-2025
AKG
Ct. 15

**WPA 5291 of 2024
With
CAN 1 of 2024
&
CAN 2 of 2025
Nupur Dutta
Vs.
The State of West Bengal & Ors.**

Mr. Raj Mohan Chattoraj, Mr. Mehboob Rahman, Mr. Tanmoy Sett	...for the Petitioner
Mr. Srijan Nayak, Mr. Atis Kumar Biswas	...for KMC
Mr. Lalit Mohan Mahata, Mr. Ziaul Haque	...for the State
Mr. Probal Kr. Mukherjee, Ms. Shebatee Datta	...for Respondent No. 7

The petitioner alleges that the Kolkata Municipal Corporation has undertaken construction work for a Women’s Toilet Complex and Baby Care Rooms in front of his residence at 45A, 45B, and 45C Sadananda Road, Ward No. 83, P.S. Kalighat, Kolkata – 700 026, under the ‘Kolkatar 10 Diganta’ scheme.

On multiple occasions, this Court has directed the Corporation to produce the ‘Kolkatar 10 Diganta’ scheme. Notably, no such scheme has been submitted to this Court. However, a ‘Detailed Project Report’ for the construction of the Women’s Toilet Complex and Baby Care Rooms under the ‘Kolkatar 10 Diganta’ scheme has been produced.

It is important to note that a Detailed Project Report is prepared for the implementation of a scheme, and the scheme itself was never produced before this Court.

Mr. Nayak, the learned advocate representing the Kolkata Municipal Corporation, however, argued that the project in question is being implemented in accordance with the directives issued by the Hon'ble Supreme Court in Writ Petition (Civil) No. 950/2022, reported in 2025 INSC 302.

Without delving into this controversy, this Court has chosen to dispose of the writ petition based on the following admitted facts.

The Kolkata Municipal Corporation initiated this project by invoking Section 353 of the Kolkata Municipal Corporation Act, 1980. A public notice was issued by the Corporation on March 2, 2024. Notably, the public notice did not reference the premises at 45A, 45B, and 45C Sadananda Road, Ward No. 83, P.S. Kalighat, Kolkata – 700 026. Instead, it mentioned premises at 47B Sadananda Road, Kolkata – 700 026.

The Mayor-in-Council's approval was sought and granted for the space in front of 47B Sadananda Road, Kolkata – 700 026, on June 14, 2023. The approval of the State Government was granted through notification no. 559/UDMA-15011 (99)/57/2023-LS-MA SEC, dated July 28,

2023, and another notification, no. 559/UDMA-15011 (99)/57/2023-LS-MA SEC, dated July 21, 2023.

None of the aforementioned documents published or issued in accordance with Section 353 of the Kolkata Municipal Corporation Act, 1980, referred to the premises in front of 45A, 45B, and 45C Sadananda Road, Ward No. 83, P.S. Kalighat, Kolkata – 700 026.

During pendency of this writ petition, the State Government issued a notification on March 7, 2025 (notification no. 211/UDMA-15011 (99)/57/2023-LS-MA SEC), seeking to amend the approval dated August 21, 2023, with the following provisions:

“In the said order, against Sl. No. 11 of the said Schedule, the words “In front of 47B, Sadananda Road” mentioned in column (IV), shall be substituted by the words “In front of 45A and 45B, Sadananda Road”.

By order of the Governor”

I am, however, of the firm view that, by virtue of the amendment sought to be incorporated by the Special Secretary, Government of West Bengal, the Kolkata Municipal Corporation cannot be authorised to implement the project in relation to the space in front of premises no. 45A, 45B, and 45C Sadananda Road, Ward No. 83, P.S. – Kalighat, Kolkata – 700 026.

Section 353 of the Kolkata Municipal Corporation Act, 1980 is reproduced below:

“353. Permanent closure of public street, park, square or garden and disposal of land. (1) The Municipal Commissioner may, with the previous sanction of the Mayor-in-Council, and subject to the approval of the State Government, permanently or temporarily close the whole or any part of a public street, park, square or garden in the public interest or for the purpose of carrying out the provisions of this Act:

Provided that the Municipal Commissioner shall give a public notice of such closure by insertion in at least three local newspapers and the notice shall specify the date on and from which the closure shall be effected.

(2) For the purpose of carrying out any development work in any public street, park, square or garden or any part thereof, such public street, park, square or garden or the part thereof or the sub-soil thereunder may be dealt with or settled or transferred, as the case may be, either temporarily or permanently by way of grant of lease or licence, as the case may be, and on such terms and conditions and for such period as the Municipal Commissioner may, with the prior approval of the Mayor-in-Council and subject to the approval of the State Government, determine and for such development work the public street, park, square or garden or any part thereof may be closed temporarily or permanently, as the case may be and in such a case a public notice shall be given in the same manner as in sub-section (1) specifying the date from which the closure shall be effected :

Provided that the site of so much of the roadway or footpath as would not be required for using as a public road or public thoroughfare by reason of providing better and alternative public road or public thoroughfare including footpath shall be dealt with or settled or transferred on lease or licence.

Explanation.—For the purpose of this section, "development work" shall include all works for development and improvement by way of proper and adequate or better utilisation, either underground or on the surface, or a public street, park, square or garden."

Any permanent closure of a public street, park, square, or garden, and the disposal of land under the aforementioned section, must be preceded by the following: (a) a public notice, (b) approval by the Mayor-in-Council, and (c) approval by the State Government.

These requirements ensure that the public at large has an opportunity to object to the proposed project, that the Mayor-in-Council applies due consideration to the proposal, and that the State Government provides its approval after evaluating the Mayor-in-Council's decision. Under Section 353 of the Kolkata Municipal Corporation Act, 1980, the State Government is the final authority responsible for granting approval.

In the present case, it is undisputed that the public notice was issued for the premises at 47B, Sadananda Road,

Kolkata – 700 026, and the approval of the Mayor-in-Council was granted for the same premises, which was subsequently followed by the approval of the State Government.

It cannot be asserted that a subsequent amendment to the approval letter would allow the Kolkata Municipal Corporation to implement the project at premises 45A, 45B, and 45C Sadananda Road, Ward No. 83, P.S. – Kalighat, Kolkata – 700 026. The public at large was not given an opportunity to object to the construction proposed by the Kolkata Municipal Corporation. Furthermore, the Mayor-in-Council did not have the opportunity to consider this specific location or apply due consideration before granting approval, and the same is true for the State Government.

Therefore, it is my view that the Corporation cannot implement the project in front of premises 45A, 45B, and 45C Sadananda Road, Ward No. 83, P.S. – Kalighat, Kolkata – 700 026, or at any other location not mentioned in the public notice or in the approvals granted by the Mayor-in-Council or the State Government.

Accordingly, the Corporation is restrained from undertaking any construction work or any related activities at the space in front of 45A, 45B, and 45C Sadananda Road, Ward No. 83, P.S. – Kalighat, Kolkata – 700 026. However, this order does not preclude the Corporation or the State Government from taking legal steps should they wish to

proceed with the implementation of the project.

Accordingly, **WPA 5291 of 2024**, along with CAN 1/2024 and CAN 2/2025, is disposed of.

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

(Kausik Chanda, J.)