
(2001) 10 CAL CK 0017

In the Calcutta High Court

Case No : Writ Petition No. 16346 (W) of 2000

Howrah Ganatantrik Nagarik Samity and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 09-10-2001

Acts Referred:

Calcutta Municipal Corporation Act, 1980 — Section 142
Constitution of India, 1950 — Article 226

Citation : AIR 2002 Cal 105

Hon'ble Judges : Ashok Kumar Mathur, C.J; Girish Chandra Gupta, J

Bench : Division Bench

Advocate : Debaprasad Mukherjee, Smritikana Mukherjee and Bhagabat Chowdhury, Party in Person, for the Appellant; Debasish Kar Gupta and Manatosh Chakraborty for Respondent Nos. 1, 5 and 6, for the Respondent

Judgement

Ashok Kumar Mathur, C. J.

1. This is a public interest litigation whereby the petitioner has brought this public cause before this Court with a prayer that a writ of Mandamus be issued commanding the respondent Nos. 3 and 4 to stop concrete construction on the main drain canal at the western side of HIT Canal Road, Howrah and restrain them from causing great public inconveniences by interrupting the sewerage system of the public at large of the city of Howrah. It is also prayed that the respondent Nos. 3 and 4 be restrained from continuing or carrying on such illegal and unauthorised construction of building on the drain canal at the western side of HIT Canal Road, Howrah.

2. The petitioner submitted that the city of Howrah is 500 years old and it basically an industrial town with about 40000 small, medium and large scale industrial units. It is alleged that two major civic services like water distribution and drainage In Howrah city are poorest in the country. The natural slope of the city of Howrah from river Ganges side is east to west unlike the city of Calcutta where the normal slope is from west to east. It is alleged that Howrah city is still

having 250 kms. Open drains, which are connected to the main drain canal of the city that stands at the western side of the city flowing from north to south. The open drain system of the city caters about 90% of the affluent of more than 1.5 millions of population. The open drains carry considerable quantum of sand, soil, solid waste, etc. The cleaning arrangement of the drains are not up to the mark. Choked open drains full of slurry very frequently cause water logging even during the non-monsoon season and during monsoon season it becomes worst. It is alleged that recently the local residents made complaints that on the main drainage canal some constructions work has been started by the Howrah Municipal Corporation at different spots and the petitioner No. 2 has personally visited the site and found that the construction work was at the alleged site. On inquiry from the workmen engaged there it was found that the labourers were working under the contractor engaged by the Howrah Municipal Corporation. It was alleged that Howrah Municipal Corporation is constructing commercial shops. The petitioners approached the Commissioner of Howrah Municipal Corporation by filing a memorandum dated 14th September, 2000 and requested to stop construction work. It was pointed out that this construction work is illegal and this is going to cause serious problem of water logging in different parts of the city. It is alleged that the Howrah Municipal Corporation despite the protest did not refrain from proceeding with the construction. It was pointed out that in terms of Section 142(1)(b) of the Howrah Municipal Corporation Act, 1980 without prior permission of the Commissioner no wall or other construction shall be erected on the municipal drain. When this writ petition came up for hearing a report was sought from the Howrah Municipal Corporation and the Howrah Municipal Corporation submitted a report through its Commissioner wherein it was pointed out that the drainage canal on the western fringe of Howrah drainage canal road originates from a point opposite to Belillous Park near Asu Bose Lane and runs southwards cutting across Natabar Paul Road. Makardah Road, Ichapur Road, Mahendra Bhattacharjee Road, Sarat Chatterjee Road and Kona Express Way finally draining into Padmapukur Jala, through Railway Culvert No. 6. Thereafter, storm water drain flows through PWD channel and finally drains into River Hooghly at Nazirgunj. It is pointed out that the drain in the starting phase is single barrel one upto Natabar Pal Road thereafter double barrel drain with an average clear size of 11" x 12" for each barrel. The storm drain consists of re-enforced concrete foundation with 20" thick brick walls with solid re-enforced beams and the beams and 3 ring solid brick arch. This drainage is supposed to carry primarily storm water of the South West Quarter of Howrah and was completed by HIT by 1978. The sanitary sewers are a separate system which carries the affluent from the household in an underground sewerage network and finally treating the same at sewerage treatment plant at Dharsa. It is pointed out that to maintain the gradient of the invert level the top of the drain at places remain over the ground and in other places below the ground depending on the updation of the ground level depending on the undulation of the ground level. Since the drain only caters for storm water. It is not at great depth like sanitary sewers. It is pointed out that 60% of length of the covered

drain portion remains above the ground and the rest have a cushion of earth depth from 3 ft. to 5 ft. approximately. It is pointed out that this long stretch of land over the drainage has been a lucrative area for the encroachers for setting up temporary stalls, motor repairing shops, tempo parking, thatched house and such other use. The Corporation on number of occasions have tried to remove these encroachment but without any result. There is frequent recurrence of the encroachment. As such it was proposed to construct light weight shopping complex in that area for the local small businessmen and unemployed youths. The scheme was prepared through a Professor of B.E. College who planned the structure, the loads of which would pass through the foundation" placed outside the drainage structure. The drainage structure would take the load of the earth and the flooring and light partition structure. The scheme was duly approved by the Mayor-in-Council of the Howrah Municipal Corporation in which the Commissioner of Howrah Municipal Corporation and the Head Engineering Division and Special Officer Conservancy were also present. It is pointed out that at present three units of small shops have been constructed between Makardah Road and Kamardanga Road and one unit near Kona express Way. Each unit measures 30 mts. x 10 mts. and contains 24 small stalls. The rest of the area is proposed to be utilised by constructing a few more units at appropriate locations and parks and gardens all along the area to avoid further encroachment. It is alleged that an order has been passed by the Divisional Forest Officer, Howrah for a sum of Rs. 7 lakhs for beautifying the entire stretch. It is alleged that the entire scheme has been proposed to be on cost recovery basis and would not have any commercial exploitation. It is also pointed out that to avoid any obstruction of the underground Storm drains, necessary precautionary measures has already been incorporated in the terms of the licence. Restriction has also been imposed on the nature of business like no business with heavy materials like iron, etc. or machineries would be transacted. No further construction could be made in the completed shops and no waste material should be thrown outside the stipulated garbage bin and above all the manhole have been made for clearance of the drain. It is submitted that all possible measures have been taken to avoid obstruction to the drainage. Subsequently the Howrah Municipal Corporation was directed to file an affidavit bringing these facts mentioned in this report which was done by the Muncipal Commissiner, Howrah.

3. The main contention of the petitioner was that this construction which has been raised is not on the storm water drain but it is on the sewerage system.

4. An affidavit has also been filed subsequently by one Chandra Nath Sinha, Executive Engineer, in Charge of the Drainage System of Howrah Municipal Corporation wherein he has pointed out that the sewerage system is separate and this drainage system for storm water is separate and the construction is being made on the storm drain and not on the sewerage system. It was also pointed out by Sri Sinha that in this drainage system proper manholes have been constructed at reasonable distance for clearing the drainage storm water. It was pointed out that Howrah Drainage Canal is one of the main outlets for carrying

Storm water from catchment areas to the Pacha Khal and ultimately to the river Hooghly the is from Kona Express way upto Howrah Amta Road. This drainage tunnels were construed by Howrah Improvement Trust and subsequently the maintenance of which have been entrusted with the Howrah Municipal Corporation . It is pointed out that it covers an area of 2944 meters i.e. 2.94 kilometers. A map was also filed along with this affidavit and it was further pointed out that the length of the tunnel from Kona Express Way to Mahendra Bhattacharjee Road is 1344.16 meters. The length of the tunnel between Mahendra Bhattacharjee Road to Itchapore Raod is 940.31 meters. The length of the tunnel from Itchapore Road to Howrah Amta Road is 659.53 meters. Out of which 741 meters approximately are situated underneath the ground level. It also pointed out dirt, silt, etc. can be cleared manually or through mechanical devises. It was pointed out that there are three types of openings of the said drainage tunnel, through which these silts, dirt, etc. can be cleared. There are manholes for mazdoors to go inside and clean the silt, dirt, etc. Cleaning can also be done, with the help of suction machine or pump machine through side entries or through the manhole. There are inlet points through which or by manholes suction machine can operate and silts and dirt can be cleaned. All these manholes and the side entries were shown in the map field along with the affidavit. In the map it was shown that the manholes have been constructed at the distance of 30 feet likewise there are side entries also which gives a larger burger to get into the drain.

5. In this background, it appears that so far as the sewerage system is concerned it is not being disturbed and only the Storm drainage canal which was covered way back in 1978 and subsequent construction is being made by the Howrah Municipal Corporation on this so as to avoid encroachment dwellers or small vendors by constructing light weighted shopping complex over this area. It is also pointed out that at number of terms this encroachers were thrown out but this could not be effectively dealt with. Therefore, in order to check this trespass or encroachment the Howrah Municipal Corporation conceived a plan for construction of small light weighed shops so that the place can be beautified as well as the problem of illegal trespass or encroachment can be avoided. On the basis of the affidavit filed by the Commissioner, Howrah Municipal Corporation and the Executive Engineer, in Charge of the Drainage System of Howrah Municipal Corporation we have no hesitation to hold that there is a separate sewerage system which is not being disturbed and it is only on the Storm drainage canal the construction, is being made. However, it was submitted by the petitioner that this cannot be done without prior permission of the Municipal Commissioner u/s 142(1)(b) of the Howrah Municipal Corporation Act, 1980. It is true that u/s 142 of the Act nobody can trespass over the sewerage system or the canal or the municipal drain by making any construction without prior permission of the Commissioner. Howrah Municipal Corporation but in the present case not only the Municipal Commissioner was a party to the decision but the entire Corporation was party to the whole issue in which the Municipal

Commissioner has participated and gave its consent. Thereafter, the whole commercial complex is sought to be constructed over the Storm drainage canal. Since the decision has been taken with the active participation of the Municipal Commissioner that shows that there is no breach of Section 142 of the Howrah Municipal Corporation Act, 1980 as alleged by the petitioner. In this view of the matter this objection of the petitioner No. 2 (in person] that there is no prior permission sought from the Municipal Commissioner cannot be sustained.

6. Before parting with the case we may observe that so far as smooth flow of the storm water is concerned, proper care should be taken by the Corporation so that silt and dirt may not deposit and choke this canal resulting public nuisance. If proper maintenance is not taken then the obstruction of the free flow of the storm water during the monsoon can create havoc. The Howrah Municipal Corporation is directed to see that a proper maintenance of such Storm drainage canal should be taken and they should periodically cleaning the silt and dirt from this canal so that during rainy season or in any ordinary days there is no obstruction so as to create any further nuisance or inconvenience to the public. It shall be the obligation of the Howrah Municipal Corporation to see it that this drainage canal should be properly maintained. This public interest litigation is accordingly disposed of with the above observation.

Girish Chandra Gupta, J.

7. I agree.