

(2014) 11 CAL CK 0025
In the Calcutta High Court
Case No : W.P. No. 27715(W) of 2014

Kumar Dipti Das

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 11-11-2014

Acts Referred:

Citation : (2015) 2 CHN 521

Hon'ble Judges : Manjula Chellur, C.J.;Arijit Banerjee, J

Bench : Division Bench

Advocate : Biswaranjan Bhagat and Subhendu Banerjee, Advocate for the Appellant; Ashoke Kr. Banerjee, Id. Addl. Ag. Suman Sengupta and Sanatan Panja, Advocate for the Respondent;

Final Decision : Dismissed

Judgement

1. This public interest litigation is preferred alleging that Joynagar Mozilpur Municipality is proposing to construct a water tank and fire brigade station on a playground and park known as "Indira Uddyan". According to them, the land in question was purchased by the municipality way back in 1979 by a registered deed for the purpose of playground and park and gradually it has developed as the best playground within the municipal area. Petitioners further contend that the municipality is arbitrarily trying to disturb and destroy its purpose by undertaking construction of water tank and fire brigade station while other suitable places are available. The petitioners' contention seems to be that once the property was purchased by the municipality for the purpose of playground and park, the said purpose cannot be deviated from by the municipality and construction of a water tank and fire brigade station would destroy the playground in question as alternative suitable places for such construction are in existence.

2. Learned counsel representing the municipality in question places on record the site plan of "Indira Uddyan" and also the proposed utilisation of the land which clearly depicts the intention of the municipality how best they could make use

the land in question.

3. On perusal of site plan, we notice that at the North-West corner they intend to put up fire station which measures about 60 feet/110 feet and on the South-West corner they intend to put up water tank referred to as S.U.G. which measures about. They also have a proposal to put up in future stadium on either side of the playground including a dressing room for the athletes and others. There is a proposal to put up gymnastic cum indoor games unit as well.

4. The question is whether the existing playground is completely going to vanish so that the general public are deprived of making use of the said playground. The answer is "No". The land earmarked for playground is 330 feet (110 yards)/240 feet (80 yards). The proposed fire brigade station and water tank are the need of the entire area and they do not come in the way of the playground in any manner. The proposed fire station and water tank one also for the use of the public in general and if such amenities are provided near playground, it would be a great help for the users of the playground whenever inter-State or international games including indoor games are held, therefore the proposed construction is only enhancing the utility of the land in question and it is not diminishing the purpose for which the land was purchased by the municipality. Even otherwise the local self-Government has to emulate various projects for the benefit of the citizens who live within their jurisdiction. The projects like playground, indoor stadium, Fire station and water tank are necessities. Therefore, looking at the priorities between the two, we are of the opinion first priority would be the proposed construction of fire station and water tank. However these two constructions are not replacing the playground and they are only additional amenities.

5. Therefore, we are of the opinion the action proposed by the municipality is neither arbitrary nor done with a mala fide intention to destroy the purpose for which it was purchased. It is needless to say, the municipality can even change the purpose of public utility of a place owned by it depending upon the priority and the necessity. With these observations, the writ petition is dismissed without any order as to costs.

Urgent certified copy of this order, if applied for, be given to the parties, on priority basis.