
(2018) 05 CAL CK 0228
In the Calcutta High Court
Case No : W.P.No.10305(W) of 2015

Sanat Banerjee (Bandopadhyay)	Vs	APPELLANT
Taki Municipality & Ors.		RESPONDENT

Date of Decision : 17-05-2018

Acts Referred:

Constitution Of India, 1950 — Article 243Q, 243B(E)

Citation : (2018) 05 CAL CK 0228

Hon'ble Judges : PROTIK PRAKASH BANERJEE, J

Bench : Single Bench

Advocate : Abhijit Pal

Final Decision : Disposed Of

Judgement

The affidavit of service, showing service on the respondents, is taken on record. Despite service none appears for any of the respondents. Therefore,

I treat the writ petition as ready as regards service. The grievance of the writ petitioner is that the Taki municipal authorities are carrying on

constructions on the land belongs to the petitioner by way of intestate succession. Such constructions have been made, he says, without any consent

being taken from him and without any lawful proceedings for acquisition of the land or its user whether by way of expropriation or otherwise.

In support of his contention he has disclosed a registered kobala as also record of rights showing that the land in question was recorded in the name of

his father, since deceased, as a raiyat. He submits that when the writ petition was instituted at that time such unauthorised constructions were

apprehended, but that during the last three years of pendency of the writ petition the municipality has constructed fencing around the land of the

petitioner. He also submits that the matter could not be taken up due to the

business of the court.

The law is well settled that Actus Curiae Neminens Gravabit (the act of court showing prejudice in party litigant). A strong prima facie case has been

made out for attempt to deprivation of a citizen's right to shelter and his property without following procedure established by law and/or due

process by a municipality within the meaning of Article 243B(E) and Article 243Q of the Constitution of India. The preponderance of balance of

convenience and inconvenience is in favour of the petitioner and the orders prayed for being passed.

Since the respondents have not appeared I cannot finally dispose of the writ petition today, I, in the above premises, make an interim order to the

following effect - "the fencing as constructed by the municipality shall be broken down and removed from the land of the petitioner with the help of

adequate police assistance to be provided for by the Superintendent of Police, North 24 Parganas and the inspector in-charge of Hasnabad police

station who is the respondent no.4 in the writ petition.

If necessary, adequate amount of police help shall be given along with all necessary force to ensure that such depredation on the lands of a citizen

ceases. It is needless to mention that if the writ petitioner requires then in addition thereto a police picket shall be placed around the land in question so

that the municipality cannot come back into it.

There shall be further direction restraining the municipality and each of the respondents or the men, agents, servants, staff, employees, subordinates,

authorities and/or each and/or any of them and/or any one claimed thereunder from entering upon and/or disturbing and/or obstructing the peaceful

possession of the petitioner in respect of the said land. The interim order granted as above shall remain enforced till disposal of the writ petition, or

until further orders, whichever is earlier.

A copy of this order shall be communicated to all the respondents by learned advocate for the petitioner within a week and affidavit of service

showing compliance shall be filed on the next date of hearing. The respondents shall file affidavit-in-opposition within four weeks after the ensuing

summer vacation; reply thereto, if any, shall be filed by two weeks thereafter. Liberty to mention after completion of exchange of affidavits.