

26.08.2021
Sl. No.13
srm

W.P.A. No. 4815 of 2021

Ranaraj Chatterjee & Ors.

Vs.

The Kolkata Municipal Corporation & Ors.

Mr. Debabrata Saha Roy,
Mr. Indranath Mitra,
Mr. Subhankar Das,
Mr. Neil Basu

...for the Petitioners.

Mr. Ranajit Chatterjee,
Mrs. Tanushree Dasgupta

...for the KMC.

Affidavit of service is taken on record.

The petitioners are the owners of a tank situated at
Premises No.38A, Jyotish Roy Road, Kolkata-700053.

It is the contention of the petitioners that although the
Kolkata Municipal Corporation was aware of the mailing
address of the petitioners, no notice under Section 17A of the
West Bengal Inland Fisheries Act, 1984 (hereinafter referred to
as the said Act) was served at the mailing address of the
petitioners. Instead, the notice was published in two unknown
newspapers, namely, "Echo of India" and "Chapte Chapte".
The next contention of the petitioners is that the said
newspapers are not popularly read and circulated in the
Kolkata. As a result of which, the petitioners did not see the
notice. The authority passed an order resuming the control

and management of the tank and the embankment without giving an opportunity to the petitioners to restore the said water body.

It is further contented that the petitioners raised the question of jurisdiction of the competent authority to proceed under Section 17A of the said Act, as according to the petitioners, the allegation was not one of filling up of the pond/tank but in the show cause notice, itself, it has been indicated that the notice was issued for not maintaining the tank. It is alleged that the local councillor at the behest of the local people has been using coercive measures to take possession of the pond for illegal gains.

It is further submitted that this Court on two earlier occasions had directed the authorities to hear the petitioners and pass a reasoned order, as at the first instance the petitioners were denied an opportunity of hearing.

The order impugned has been passed by the Special Municipal Commissioner (G&D), Kolkata Municipal Corporation. From the order impugned, it appears that the Special Municipal Commissioner on the basis of a mass petition filed by persons in the locality and a purported inspection had come to the conclusion that the petitioners had illegally filled up a portion of the tank.

Mr. Chatterjee, learned Advocate appearing on behalf of the Kolkata Municipal Corporation, submits that the order is an appealable order and the writ petition is not maintainable.

It is settled law that if an order is a non-speaking one and issued without jurisdiction a writ petition is maintainable. In this case, the petitioners have raised the question of jurisdiction of the authorities to proceed under Section 17A of the said Act. Non-service of notice and failure to grant an opportunity to restore the tank, have been alleged. Thus the writ petition is taken up for hearing.

It is the contention of the petitioners that the show cause notice itself supports the contention of the petitioners that originally, this was not a case of filling up of the pond.

I find from the order impugned that the authority has not addressed the questions raised by the petitioners in the written submission. Whether the proceedings under Section 17A is without jurisdiction and ought to be treated as a proceeding under Section 8 of the said Act, whether an opportunity to restore the tank should be given to the petitioners are issues which have not been decided. Copy of the mass petition on the basis of which the proceedings had been initiated and the inspection report from which it appeared that a part of the tank has been filled up, have not been supplied to the petitioners although reliance has been

placed on these documents by the authority who has passed the order impugned.

In view of the irregularities as pointed out hereinabove, the order impugned is set aside and quashed.

The Municipal Commissioner, Kolkata Municipal Corporation is directed to hear the petitioners afresh by supplying the copy of the mass petition on the basis of which the proceedings had been initiated and to delegate an authority to hold an inspection of the tank in question in the presence of the petitioners. A report shall be prepared and supplied to the petitioners. Thereafter the authority shall proceed with the hearing in accordance with law. A reasoned order shall be passed and communicated to the petitioners. The Municipal Commissioner shall also consider the question of jurisdiction raised by the petitioners as to whether the proceedings under Section 17A is justified or whether at best it will be a proceeding under Section 8 of the said Act.

The entire exercise shall be completed within a period of three months from the date of communication of this order.

Till the disposal of the matter by the Commissioner, no construction or change of nature and character of the pond and the embankment shall be permitted.

Whether the petitioners should be once again given an opportunity to restore the tank must be considered as the

publications made in the “Echo of India” and “Chapte Chapte” were justifiably missed by the petitioners.

With the above observations, this writ petition is, thus, disposed of.

There will be no order as to costs.

All parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)