

D/L
Item No. 18
16.06.2022
KOLE

**FMA 619 of 2022
With
IA No. CAN 1 of 2022**

**Sachin Seth & Ors.
-Vs.-
The Kolkata Municipal Corporation & Ors.**

*Mr. Gopal Ch. Ghosh,
Mr. R. Mondal,*

...for the appellant.

*Mr. Alope Kr. Ghosh,
Mr. A. Dey,*

...for the KMC.

*Mr. Rajarshi Basu,
Mr. K.M. Hossain,*

...for the State.

By consent of the parties the appeal and the applications are taken up for hearing together.

The writ petitioners approached the learned Single Judge challenging an order dated April 21, 2021 passed by the Director General (Environment & Heritage), E & H Department, KMC, which was passed pursuant to an order of a learned Single Judge dated February 24, 2021 passed in WPO 80 of 2021.

The writ petitioners claimed to be joint owners of premises no. 112, Swinhoe Lane, Kolkata. They say that KMC forcibly took possession of a danga portion of the land comprised in the said premises and made constructions thereon. They challenged such action of KMC by filing WPO 80 of 2021. By an order dated February 24, 2021, such writ

petition was disposed of by directing the respondent authorities to dispose of the representation dated January 21, 2021 made by the writ petitioners.

Pursuant to such order, the order dated April 21, 2021 was passed by the Director General, (Environment & Heritage) E & H Department, KMC which was impugned before the learned Single Judge in the present proceedings.

It was submitted before the learned Single Judge that the KMC published notice in the newspaper with regard to the premises no. 164 Swinhoe Lane and not premises no. 112 Swinhoe Lane. However, on the basis of such notice, possession of premises no. 112 Swinhoe Lane was taken over by the Corporation.

It was further submitted before the learned Single Judge and also before us by learned Advocate for the writ petitioners/appellants that they have no objection if the KMC takes over management of the waterbody. However, the land portion cannot be forcibly taken over as KMC has done.

Learned Advocate for the KMC disputes the submission made on behalf of the appellants. Learned Advocate for the KMC says that a water body measuring about one bigha ten cottahs has been taken over for management and maintenance. Such water body had become a breeding ground of mosquitoes and had become a health hazard. After receiving complaints from residents of the locality, KMC has taken action in the matter. No construction work has been done on the water body. The

allegation of the writ petitioners that land belonging to the writ petitioners has been taken over by KMC forcibly is baseless and incorrect.

We have heard learned Counsel for the parties at length. Several disputed questions of fact are involved. The writ court is not well-equipped to decide such factual disputes. The order that was challenged by the writ petitioner before the learned Single Judge has been passed in exercise of power under Section 17A of the Inland Fisheries Act, 1984. Such an order is appealable under Section 18 of the said Act. The learned Single Judge has rightly granted liberty to the writ petitioners to prefer a statutory appeal. Learned Advocate for the appellants, however, says that Inland Fisheries Act would have no application since “land” belonging to the writ petitioners/appellants has been taken over forcibly. We do not agree with him on that score. If something has been done by the competent authority in exercise of power under Section 17A of the 1984 Act, the appellate authority, under Section 18 of the Act can go into all related questions and decide the issues involved. In any event, it is open to the appellants to approach the competent civil court challenging the orders and actions of the competent authority.

We completely agree with the conclusion of the learned Single Judge. The competent authority has arrived at factual findings which the writ court will not interfere with lightly. We see no reason to interfere with the order under appeal. In the event the appellants herein prefer statutory

appeal against the order of the competent authority which was challenged before the learned Single Judge, the competent authority shall consider that the issue was pending before the High Court and will accordingly decide the question of limitation.

The appeal and the connected application are dismissed.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(Rai Chattopadhyay, J.)