

Sl. No.164
(Monthly List)
25.07.2022

Court No.24
B.M.

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

W.P.A 9696 of 2021

Sree Sree Kripamoyee Kalika Thakurani & Ors.
Versus
Municipal Commissioner,
Kolkata Municipal Corporation & Ors.

Mr. Suchit Kumar Banerjee
Mr. Sourav Sen
Ms. Adrisnata Chakraborty
... for the Petitioners.
Mr. Fazlul Haque
Mr. Gopal Chandra Das
... for the Kolkata Municipal Corporation

The matter relates to the property standing at the premises No.87E, Cossipore Road, Kolkata-700002.

From the documents annexed to the writ petition, it appears that the Municipal Commissioner as Competent Authority by a notice under Section 17A of the Inland Fisheries Act, 1993, as amended took over management and control of the water body for the purpose of promotion of pisciculture and prevention of environmental degradation of the area for a period of 25 years.

It appears that prior to invocation of the aforesaid provision, the competent authority issued notice to the owners/claimants of the water body in the year 2003.

A show cause notice was issued to the owners/claimants as to why the management and control of the ill-maintained water body shall not be taken over by the Competent Authority. A further notice was issued on 22nd November, 2003 to restore the water body and its embankment to its original condition and permit pisciculture. None of the notices being complied, the Municipal Commissioner issued the said notice under Section 17A.

The petitioners were intimated by the Project Management Unit of the Kolkata Municipal Corporation under the Right to Information Act, 2005 that as per resolution of MIC meeting dated 23rd August, 2007, Cossipore Matsya Sayambhar Gosti is engaged for pisciculture in the water body.

The petitioners have impleaded the said licensee as respondent in the instant writ petition and have served notice upon the said respondent but the postal envelope returned unserved with the postal endorsement addressee cannot be located.

According to the petitioners the aforesaid notice is bad in law. The said authority does not have jurisdiction to issue notice under Section 17A of the Inland Fisheries Act, 1993. It has been submitted that Inland Fisheries Act, 1993 as amended does not apply in the present case. The said water body is the property of the deity and same

is a debottar property and no pisciculture is permitted in the said place.

The petitioners claim to have made representation before the Kolkata Municipal Corporation in September, 2020 followed by reminder in November, 2020 and allege that none of the representations have been considered till date.

Learned advocate representing the Kolkata Municipal Corporation submits that the petitioners challenge the act of the Municipal Commissioner to invoke provisions of Inland Fisheries Act, 1993 at a very delayed point of time. The notice was issued in the year 2003 and the petitioners did not take any steps in the matter for nearly 18 years.

It has further been pointed out that the representations allegedly submitted by the petitioners do not appear to have been served. There is no proof of service of the representations upon the respondent authorities.

The contention of the Kolkata Municipal Corporation, *prima facie*, appears to be correct. The impugned act of the Competent Authority which has been challenged in the present writ petition was of the year 2003. The first representation allegedly submitted by the petitioners is in October 2020.

Delay in filing the instant writ petition is not clearly explained in the averments made.

Nevertheless, since an issue has been raised with regard to the jurisdiction of the Competent Authority and the applicability of the Act in question, accordingly, leave is granted to the petitioners to file fresh representation highlighting their grievances.

In the event such a representation is made along with supporting documents, the same shall be considered by the Commissioner, Kolkata Municipal Corporation strictly in accordance with law, after giving reasonable opportunity of hearing to the petitioners and all other necessary parties.

A reasoned order shall be passed by the Commissioner at the earliest and the same shall be communicated to the parties immediately thereafter.

It is made clear that this Court has not entered into the merits of the claim of the petitioners and all points are left open to be decided by the aforesaid respondent at the time of consideration of the representation to be filed by the petitioners.

Affidavit of service filed in Court is taken on record.

Supplementary affidavit filed in Court is also taken on record. Let a copy of the supplementary affidavit be served upon the learned advocate representing the Corporation.

The writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon completion of usual legal formalities.

(Amrita Sinha, J.)