

18.01.2022
Item No.17
srm

W.P.A. No. 11545 of 2021

Sachin Seth & Ors.

Vs.

The Kolkata Municipal Corporation & Ors.

Mr. Nitai Chandra Saha,
Mr. Santanu Barik,
Mr. Abhjijit Chnadra Majumder

...for the Petitioners.

Mr. Alope Kumar Ghosh,
Mr. Arijit Dey

...for the KMC.

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

...for the State-Respondents.

The petitioners have alleged that the order dated April 21, 2021 has been passed by the Director General (Environment & Heritage), E&H Department, Kolkata Municipal Corporation without considering the basic averments contained in the representation made by the petitioners with regard to the non receipt of notice and identity of Premises No.112, Swinhoe Lane, Police Station-Kasba, Kolkata-700042, Ward No.67 Borough-VII. According to the petitioners, they are joint owners of the Premises No.112, Swinhoe Lane. It has been alleged that without issuing any notice to the petitioners, the Kolkata Municipal

Corporation had forcefully acquired a danga portion of the said land and had made constructions thereupon.

Such action of the Kolkata Municipal Corporation was challenged by filing a writ petition being WPO 80 of 2021. A learned co-ordinate Bench of this Court recorded the submissions of the petitioners and directed that the representation of the petitioners dated January 21, 2021 should be disposed of in accordance with law upon granting opportunity of hearing to the petitioners. The petitioners were also granted liberty to rely on their documents in support of their ownership and payment of property tax in respect of the premises in question. The sole allegation of the petitioners before the learned co-ordinate Bench was that the Kolkata Municipal Corporation under the garb of beautifying the low land had forcefully taken over land of the petitioners, which were low lands but not water bodies.

It is further submitted by the petitioners that the notice which was published in the newspaper was with regard to Premises No.164, Swinhoe Lane and not Premises No.112, Swinhoe Lane. Yet, on the basis of such irregular notice, Premises No.112, Swinhoe Lane was forcefully taken over.

On the basis of the order passed by this Court, the Director General (Environment & Heritage), E&H

Department, Kolkata Municipal Corporation has passed the order impugned upon hearing the petitioners. It appears from the order that the said authority directed a joint inspection must be carried on by the officials of the Environment and Heritage Department along with officials of the Assessment and Collection Department of the Kolkata Municipal Corporation. The petitioners were also represented during the inspection. Such inspection was made. The said inspection was held on April 12, 2021 at 1.00 p.m. The officials of the collection department submitted on the basis of the records before the Director General (Environment & Heritage), E&H Department, Kolkata Municipal Corporation that the Premises No.112, Swinhoe Lane bearing Assessee No.210672102054 was recorded in the name of Sri Bhabataran Mhan Gopal Addy and the area comprised of 2 bighas 10 copttahs (approx) and the nature of the user was tank and land. It was further submitted by the said officials of the Environment and Heritage Department that the petitioners do not reside in the said premises and the water body on the premises were not maintained and had become a breeding place for mosquitoes, thereby posing to be a health hazard. On the request and complaint of the local people and in order to prevent breeding of mosquitoes and degradation of the environment, steps were

taken for restoration of the water body under the provisions of the West Bengal Inland Fisheries Act, 1984 (hereinafter referred to as the said Act). It has been further stated in the said order that the petitioners have not been able to prove that the water body, which was taken over, was situated at 112, Swinhoe Lane, Ward No.67, under Borough VII. It appears that the water body measuring more than 1 bigha was taken over for management and control by the Kolkata Municipal Corporation under Section 17A of the said Act. It also appears that a notice was published in the newspaper on January 23, 2017. The water body was not maintained and was creating a unhealthy environment apart from being a breeding ground for diseases. Accordingly, the competent authority under the said Act took over the management and control of the water body. It has been specifically submitted that apart from restoration of the same no construction work has been made. Accordingly, the Director General (Environment & Heritage), E&H Department, Kolkata Municipal Corporation passed the order impugned rejecting the claim of the petitioners. It was found that the allegation of forceful acquisition of the land by the KMC for beautification work was not correct.

The authority has already decided the issue that the land in question was a water body and was taken over for

proper management and control by the Kolkata Municipal Corporation in exercise of power conferred under Section 17A of the said Act. The order passed under Section 17A of the said Act, is an appealable order. In any event, neither the petitioner nor the Kolkata Municipal Corporation can utilise the water body for any purpose other than fishing activities. The petitioner will be at liberty to approach the appellate forum, in accordance with law by challenging the order passed under Section 17A of the said Act.

Thus, the petitioners have not suffered any immediate prejudice. The water body has been restored to ensure a healthy and pollution free environment for the benefit of all. The petitioners shall be at liberty to approach the Kolkata Municipal Corporation for the order passed under Section 17A of the said Act which shall be supplied to the petitioners.

All points including the non-service of the notice as published in the newspaper and identity of the land etc. shall be decided by the appellate forum.

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.)