

Sl. No. 7
13.07.2022

Court No.24
B.M.

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 11336 of 2022

Ranaraj Chatterjee & Ors.
Versus
The Kolkata Municipal Corporation & Ors.

Mr. Debabrata Saha Roy

Mr. Neil Basu

... for the petitioner

Mr. Ranajit Chatterjee

Mr. Tanushree Dasgupta

... for Kolkata Municipal Corporation

The matter relates to a water body located at 38A, Jyotish Roy Road, Ward No.117 under the jurisdiction of Kolkata Municipal Corporation commonly known as “Charubabur Jheel”.

The petitioners are aggrieved by the order passed by the competent authority and Municipal Commissioner, Kolkata Municipal Corporation dated 2nd June, 2022 whereby the competent authority under the West Bengal Inland Fisheries Act, 1993 has taken over the management and control of the water body by invoking Section 17A of the aforesaid Act for the purpose of promotion of pisciculture and prevention of environmental degradation of the area for a period of 25 years.

It appears that a similar notice was issued to the petitioners on an earlier occasion which was challenged before this Court by the petitioners by filing writ petition being WPA 4815 of 2021 which was disposed of by the Court on 26th August, 2021.

The Court was pleased to set aside and quash the impugned order issued under Section 17A of the aforesaid Act. The Court directed the Municipal Commissioner to hear the petitioners afresh by supplying the copy of the mass petition on the basis of which the proceeding had been initiated and to delegate the authority to hold an inspection of the tank in question in the presence of the petitioners. The Municipal Commissioner was directed to consider the report and pass a reasoned order and communicate the same to the petitioners. The Commissioner was also directed to consider the question of jurisdiction as to whether proceeding under Section 17A was justified or whether it could be a proceeding under Section 8 of the Act.

In terms of the order passed by the Court an opportunity of hearing was given to the petitioners. The Municipal Commissioner heard the parties and passed order on 5th October, 2021 clearly observing that there is no need for proceeding in the matter under Sections 8 and 17A of the Act as the petitioners have agreed to maintain the water body by regular cleaning and maintenance for avoiding environmental degradation. The

petitioners were directed to submit an undertaking jointly through an affidavit affirmed before the First Class Magistrate that, in future after taking up of the water body from the Kolkata Municipal Corporation, they will regularly clean and maintain the said water body and undergo pisciculture and will take all possible steps to avoid any environmental degradation in future.

The petitioners were directed to deposit a sum of Rs.2,37,305/- only which has been spent by the Environment and Heritage department of the Corporation for cleaning and maintaining the water body. After the deposition of the aforesaid amount and undertaking, the concerned department would hand over the management and control of the water body to the petitioners in accordance with law.

The petitioners deposited the aforesaid amount by way of demand draft dated 29th October, 2021 in favour of the Kolkata Municipal Corporation by a covering letter dated 30th October, 2021.

The petitioners submits that even though they paid the aforesaid amount as well as the undertaking, the concerned department of the Corporation failed to hand over the management and control of the water body to them despite repeated requests. On the contrary, notices were issued to the petitioners threatening that penal action would be taken under the provision of the Act for

their alleged inaction to clean and maintain the water body.

Finally, the competent authority and the Municipal Commissioner by a notice dated 2nd June, 2022 once again took over the management and control of the water body by invoking Section 17A of the Act for the purpose of promotion of pisciculture and prevention of environmental degradation for a period of 25 years.

The petitioners submits that as the water body was never handed over to the petitioners after its management and control was taken over in the year 2021, accordingly, the competent authority of the Corporation could not have again taken over the management and control of the water body which was already under their control.

There is nothing on record to suggest that the competent authority of the Corporation handed over the management and control of the water body to the petitioners after submission of undertaking and after payment of the specified amount in compliance of the order passed by the Municipal Commissioner.

The petitioners prays for setting aside the impugned notice under Section 17A of the West Bengal Inland Fisheries Act, 1993 and for a further direction upon the competent authority of the Corporation to hand over the management and control of the water body to the petitioners.

The prayer of the petitioners is vehemently opposed by the learned advocate representing the Kolkata Municipal Corporation. It has been submitted that there is a provision for appeal against the order that has been passed by the competent authority on 2nd June, 2022. The writ court ought not to interfere in the matter and the parties may be relegated to the appellate forum.

The Court is not convinced with the submissions made on behalf of the Kolkata Municipal Corporation.

It appears from the order passed by the Municipal Commissioner on 5th October, 2021 that the management and control of the water body was already with the Kolkata Municipal Corporation and there was no scope on the part of the petitioners to control, manage or maintain the same. Till the water body is formally handed over to the petitioners they will not be in a position to maintain and clean the same.

After the amount was deposited by the petitioners and undertaking submitted by them, it was the duty of the Municipal Commissioner being the competent authority to hand over the management and control of the water body to the petitioners formally. That not being done, it cannot be said that the petitioners had the control and management of the water body in question.

As the water body still appears to be under the control and management of the Kolkata Municipal Corporation, accordingly, the Municipal Commissioner is

directed to take immediate necessary steps for handing over the possession, control and management of the water body to the petitioners at the earliest.

In the event, after handing over the possession and control of the water body to the petitioners, they fail and neglect to maintain the same, it will be open for the authority to take appropriate steps in accordance with law. In the absence of any default on the part of the petitioners to maintain the water body, it will not be proper for the competent authority to invoke the provision under Section 17A of the Act.

In view of the above, impugned notice under Section 17A dated 2nd June, 2022 is quashed and set aside.

The Municipal Commissioner and the Competent Authority shall take steps to hand over the management and control of the water body to the petitioners positively within a fortnight from date.

The writ petition stands disposed of.

Affidavit of service filed in Court be taken on record.

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

(Amrita Sinha, J.)