

15.03.2022
Ct. 25
D/L 5
ab

WPA 11498 of 2018

B. K. Roy Foundation & Anr.
-Vs-
The State of West Bengal & Ors.

Mr. V. Mishra,
Mr. S. Chakraborty,

... for the petitioners

Mr. Debasish Ghosh,

... for the State

Affidavit-in-opposition filed in Court today is taken on record.

The writ petitioners claim to have purchased 0.73 acres of bastu land together with temporary tiled shed structure situated at Mouza-Kharki, R. S. Dag Nos. 2 and 3 under Police Station-Sonarapur in the District-South 24 Parganas.

The petitioners applied in Form I for change of character or mode of use of the land in the East Kolkata Wetlands area. Such application was rejected by the Chief Technical Officer, East Kolkata Wetlands Management Authority (EKWMA, in short) by an order dated February 20, 2018. The petitioners have challenged the said order in the instant writ petition.

Learned advocate for the petitioners submits that the application of the petitioners for the change of mode of use was rejected without assigning any reason therefor.

Mr. Ghosh, learned advocate appearing for the State submits that since the property, in respect of which permission for change of mode of use was sought for, falls within Table 15 of the East Kolkata Wetlands (Conservation and Management) Act, 2006, the authorities were justified in rejecting the prayer for change of mode of use.

Heard the learned advocates for the parties. Perused the materials on record. Table 15 of the 2006 Act gives the particulars of the plots of Mouza-Kharki, which form part of the water-body-oriented area. It appears therefrom that the plot No. 2 in full and the plot No. 3 in part are substantially water-body oriented areas. However, it is not clear from the order dated February 20, 2018 as to whether, the portion of the area of plot No. 3 owned by the petitioners falls within the water-body area. Though it has been stated in the affidavit-in-opposition that a joint inspection took place and the report of such inspection has been disclosed in the said affidavit, however, the inspection report is silent as to whether portion of the plots owned by the petitioner falls within the water-body oriented area. Section 10(2) of the 2006 Act cast an obligation upon

the concerned authority to examine the merit of the case. Thus, while deciding an application for change of mode of use, the authority has to apply its mind and pass a reasoned order on such application.

Upon perusal of the order dated February 20, 2018, this Court is of the view that the authority did not consider the grounds on which such permission was sought. The said order is an unreasoned order and the same is liable to be set aside and quashed and the same is accordingly set aside and quashed.

The Chief Technical Officer being the respondent No. 2 is directed to reconsider the application filed by the petitioners in Form I, which was received by the authority on December 28, 2014 afresh and dispose of the same by passing a reasoned order after giving an opportunity of hearing to the petitioners. However, it will be open to the authority to make a fresh inspection, if necessary. The reasoned order shall be passed within a period of eight weeks from the date of communication of this order and the same shall be communicated to the petitioners within a week thereafter.

With the above direction, the writ petition being W.P.A. 11498 of 2018 stands disposed of.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of all formalities.

(**Hiranmay Bhattacharyya, J.**)