

**WPA(P) 343 of 2021
With
CAN 1 of 2022**

**Imteaz Ahmed
Vs.
The State of West Bengal & Ors.**

Mr. Shamim Ahmed
Mr. Sabyasachi Chatterjee
Mr. Sandipan Das
Ms. Gulsanwara Parveen
Mr. Sayan Banerjee
Mr. Badrul Karim

... ... for the petitioner

Mr. Anirban Ray, GP
Mr. Raja Saha
Ms. Amrita Panjan Moulick

... ... for the State

Mr. Jishnu Chowdhury
Mr. Chayan Gupta
Mr. Sandip Dasgupta
Mr. Saaquib Siddiqui
Mr. Aviroop Mitra

... ... for the respondent no. 3

Mr. Kallol Basu
Mr. Sibojyoti Chakraborti

.... ... for the respondent no.10

Mr. Sandipan Banerjee
Mr. Sobhan Majumder
Mr. Ankit Sureka

... ... for the respondent no.13

In this public interest petition the petitioner has raised the objection to the construction of Sports City/Khel Nagari by West Bengal Housing Infrastructure Development Corporation on about 56 acres of land at Dumurjala, Central Park, Howrah.

The main plea of the petitioner in this public interest petition is that the construction will lead to the destruction of flora and fauna, ponds, wetlands and open fields. In paragraph 9 of the petition the petitioner has stated the object of filing the present PIL as under :

“Your petitioner state that they have filed this Public Interest Litigation (PIL) inter alia in order to address the issue of the destruction of flora and fauna, ponds, wetlands and open fields while implementing the said Project which, inter alia, includes the construction of a Banquet Hall and Guest House, Sports Goods Market, refreshment and Club Zone etc.”

In the present petition the main prayer of the petitioner is as under :

“A) A Writ in the nature of Mandamus directing the Respondent Authorities, their men, agents and subordinates to cancel/quash/rescind the ongoing construction of Sports City/Khel Nagari at Dumurjala/Central Park, Howrah on above 56 acres of land;

B) A Writ in the nature of Prohibition restraining the Respondents Authorities from carrying on any construction or development activity or attempting to change the nature of the area being Dumurjala/Central Park, Howrah;

C) A Writ in the nature of Certiorari directing the respondents to transmit the entire records of the case to this Honourable Court including Improvement Scheme V of the Howrah Improvement Trust so that conscionable justice may be done;”

The preliminary objection of the respondents is that on the same issue one petition is already pending

and under consideration before the NGT, Eastern Zone Bench at Kolkata. Therefore, parallel proceeding should not be allowed to continue.

The submission of learned counsel for the petitioner is that this Court's jurisdiction is not ousted and the PIL can be maintained and in support of his submission learned counsel for the petitioner has placed reliance upon the judgement of the Supreme Court in the matter of Madhya Pradesh High Court Advocates Bar Association and Another v. Union of India and another, AIR 2022 SC 2713. He has further submitted that some additional grounds have also been raised.

We have heard the learned counsel for the parties and a copy of the original application no.33/2022/EZ pending before the National Green Tribunal, Eastern Zone Bench, Kolkata has been placed before us and on perusal of the same we find that same issue has been raised in the pending proceedings before the NGT.

In the said original application before the NGT following prayers have been made.

“A. Admit the Application and issue notice upon the Respondents;

B. Direct the Respondent Authorities to stop all construction and filling activities at Dumurjala Park in Mouza Shibpur situated within the jurisdiction of Chatterjeehat police station and within the municipal limits of Howrah Municipal Corporation Ward No.42, PIN-711104;

C. Direct the Respondents to safeguard the water bodies and wetlands left in the area from any contamination or pollution;

D. Impose exemplary penalty upon the perpetrators in regards to the concept of “Polluters pays Principal”;

E. Direct the Respondent Authorities to take all steps to ensure that the ecology of the Dumurjala Park is restored.

F. Direct the Respondent Authorities to take all steps to ensure that the ecology of the water bodies and wetlands comprised within Dumurjala Park is restored and quality, healthy quality of water is maintained;

G. Direct the Respondent Authorities to cancel/quash/rescind all documents and instruments related to the construction of Sports City/’Khel Nagari’ at Dumurjala Park, Howrah;

H. Direct the Respondents to refrain from creating any third party interest over an inch of space at Dumurjala Park situated within the jurisdiction of Chatterjeehat police station and within the municipal limits of Howrah Municipal Corporation Ward No.42 PIN-711104 or enter in to any agreement in respect of the said park till disposal of this Application;

I. Issue an order in the nature of mandamus to constitute a high level true independent committee to monitor the restoration of

Dumurjala Park and the wetlands and water bodies comprised within the said park, and submit periodical reports to this Hon'ble Tribunal;"

A bare perusal of the prayers in the present PIL as also the prayers made in the original application before the NGT reveals that there are overlapping prayers. Hence, learned counsel for the respondent is right in submitting that if the present PIL is entertained then there will be a parallel proceedings with the possibility of conflicting orders. That apart, in terms of section 14 of the National Green Tribunal Act, 2010 the NGT has the jurisdiction to entertain such matters. The proceedings of the NGT have also been placed before us indicating that the NGT is proceeding with the matter.

So far as the judgement in the matter of Madhya Pradesh High Court Advocates Bar Association and Another v. Union of India and another (supra) relied upon by the learned counsel for the petitioner is concerned there is no dispute to the settled position of law that the power of judicial review of this Court under Article 226 is not affected by the NGT Act but it is the self-imposed restriction not to entertain the petition when the proceedings are already pending before another forum or an alternative remedy is available.

In the facts of this case, we are of the opinion that it will not be in the interest of justice to exercise the discretion to entertain the present public interest petition

when similar proceedings are pending before the NGT. If the petitioner wishes to raise any additional issue which is not covered by the provisions of the NGT Act then he is required to take the separate proceedings. Petitioner also has the liberty to approach the NGT.

Hence, we dispose of the present public interest petition with the aforesaid liberty.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)