

W.P.A. 7251 of 2017

**Shyamal Kanti Mondal
Vs.
The State of West Bengal & Ors.**

Ms. C. Biswas
Mr. Tarun Das Sarma
Ms. Piyali Mukherjee

....for the petitioner

Mr. Biswajit Mukherjee
Mr. Gopal Chandra Das

...for the KMC

Mr. Raja Adhikary
Mr. Mrinal Das
Ms. Ruksar Parveen
Ms. Nisha Das

...for the respondent no. 6

The writ petition centers around control and management of a water body (pond) situated at 245A and 245B Chanditala Branch Road, Kolkata-700053, which according to the petitioner is taken over by the Kolkata Municipal Corporation.

It has also been submitted on behalf of the petitioner that without authority of law the management and control of the aforesaid water body has been taken over by the KMC though the petitioner is the owner of the said water body and name of the petitioner is recorded as assessee in connection with the said water body in the assessment department of KMC. According to the petitioner such action purportedly taken by the KMC is impermissible and immediately the management and control of the embankment of the said water body should

be handed over to him which would enable the petitioner to enjoy the possession over the said water body having right, title and interest.

Kolkata Municipal Corporation and respondent no. 6 are represented by learned advocates.

Mr. Biswajit Mukherjee, learned advocate representing the corporation has initially given an impression that upon taking recourse to Section 17A of the West Bengal Inland Fisheries (Amendment) Act, 1993 the management and control of the embankment of the water body has been taken over by the Municipal Commissioner being the Competent Authority under the aforesaid Act. It is also submitted that respondent no. 6 has been entrusted with the responsibility to beautify the embankment of the water body for the benefit of the locality so that the adjoining area around the water body cannot be converted into breeding ground of mosquito which is creating menace in Kolkata Municipal Corporation area and many inhabitants of the city as a result whereof are suffering from mosquito borne diseases. Attention of this Court has been drawn by Mr. Mukherjee to an undated order of the Municipal Commissioner being the Competent Authority under the aforesaid Act of 1993 which according to the corporation is passed in compliance of the relevant provisions of the statute, therefore no interference is called for.

Learned advocate representing the respondent no. 6 also supports the contention of the KMC and has submitted that the major portion of the embankment has been beautified by completing necessary work based on the order of the Municipal Commissioner which is at page 12 of the affidavit-in-opposition used on behalf of KMC.

Having considered the submissions made on behalf of the learned advocates representing the parties and on perusal of the relevant materials available on record specially undated order of the Municipal Commissioner which is at page 12 of the affidavit-in-opposition used on behalf of KMC affirmed on 4th September, 2023 it transpires that the Municipal Commissioner being the Competent Authority has made an attempt to take recourse to Section 17A of the West Bengal Inland Fisheries (Amendment) Act, 1993 and ultimately the order has been passed which has resulted in induction of respondent no. 6 to take necessary steps for beautifying the embankment of the said water body.

At first blush it appeared to this Court that on due compliance of the relevant provisions of the statute steps have been taken which have culminated into the order of the Competent Authority which is at page 12 of the affidavit-in-opposition of KMC. On closer scrutiny of the procedure adopted by the KMC reveals another picture.

For better understanding of the issue involved in this writ petition this Court finds it apposite to quote Section 17A of the West Bengal Inland Fisheries (Amendment), Act 1993:-

“17A. Bar to conversion of water area etc. for other use.- (1) No person shall –

- (a) put any water area including embankment, which is capable of being used as fishery, or any naturally or artificially depressed land holding, which retains water for a minimum period of six months in a year, to such use, other than fishery, as may result in abolition of fishery [within the jurisdiction of any Municipal Corporation or any Municipality], or*
- (b) fill up any water area [in part or in full] including embankment or naturally or artificially depressed land holding as aforesaid, with a view to converting it into solid land for the purpose of construction of any building thereon or for any other purpose, or*
- (c) [within the jurisdiction of any Municipal Corporation or any Municipality divide any water area] including embankment or naturally or artificially depressed land holding as aforesaid into parts so as to make any such part for any purpose other than pisciculture or transfer any part of any such water area including embankment or naturally or artificially depressed land holding as so divided to any other person.*
[Provided that the restrictions contained in clause (a) or clause (c) shall apply in respect of any area measuring 5 cottahs or 0.035 hectare or more falling within the jurisdiction of any Gram Panchayat.]

(2) If the competent authority, on receipt of an information or on his own motion or otherwise, is satisfied that –

- (a) any water area including embankment or naturally or artificially depressed land holding, referred to in clause (a) of sub-section (1), is being, or is about to be, put to any use, other than fishery, or*

- (b) any such water area including embankment or naturally or artificially depressed land holding is being, or is about to be, filled up, or
- (c) any such water area including embankment or naturally or artificially depressed land holding is being, or is about to be, divided into parts, or any part of any such water area including embankment or naturally or artificially depressed land holding as so divided is being, or is about to be, transferred to any other person,

in contravention of the provisions of sub-section (1), and that it is necessary for the purpose of promotion of pisciculture, checking of destruction of fisheries and prevention of environmental degradation so to do, he may, by order in writing, take over the management and control of such water area including embankment or naturally or artificially depressed land holding, as the case may be.

(3) An order under sub-section (2) shall be served in the prescribed manner on the owner of the water area including embankment or naturally or artificially depressed land holding, as the case may be, or, where the water area including embankment or naturally or artificially depressed land holding is in occupation of any person, not being the owner of such water area including embankment or naturally or artificially depressed land holding, on such person.

(4) The management and control of such water area including embankment or naturally or artificially depressed land holding may be transferred by the competent authority to any person for proper utilization for pisciculture of such water area including embankment or naturally or artificially depressed land holding, as the case may be, in such manner as may be prescribed.

(5) Every co-sharer or co-owner of a water area including embankment or naturally or artificially depressed land holding, referred to in clause (a) of Sub-

section (1), shall be entitled to receive rent for taking over the management and control of such water area including embankment or naturally or artificially depressed land holding, as the case may be, by the competent authority at such rate as may be determined by that authority in the manner prescribed.

(6) The management and control of any water area including embankment or naturally or artificially depressed land holding may be taken over under sub-section (2) for a period not exceeding 25 years or transferred to any person under sub-section (4) for a period not exceeding 10 years at a time.

(7) If the person referred to in sub-section (4) fails to utilize the water area including embankment or naturally or artificially depressed land holding, as the case may be, in accordance with the prevailing norms of pisciculture, the competent authority may, after giving notice to such person, resume the management and control of such water area including embankment or naturally or artificially depressed land holding, as the case may be, without payment of any rent or compensation to such person; and such water area including embankment or naturally or artificially depressed land holding, as the case may be, may thereafter be managed by the competent authority or transferred to some other person for pisciculture.

(8) The provisions of this section shall apply, *mutatis mutandis*, to any water area including embankment or naturally or artificially depressed land holding, referred to in clause (a) of sub-section (1), which is owned or possessed by any person or persons either jointly or severally or owned by the State Government [or Central Government] jointly with other person or persons.

(9) No water area including embankment or naturally or artificially depressed land holding, referred to in clause (a) of sub-section (1), shall be -

(a) put to any use other than fishery, or
 (b) filled up with a view to converting it into solid land,

for the purpose of implementation of any development scheme by any department of the

Central Government or the State Government or any public undertaking under the administrative control of the Central Government or the State Government or any statutory body or local authority or any organization in the public sector or any organization or individual in the private sector, except with the prior approval of the State Government in the Department of Fisheries.

[Provided that any individual or a body of individuals or any organization in the private sector may, for the purposes of this sub-section, apply to the State Government in the Department of fisheries for permission to fill up any water area after re-allocating or excavating a new water area of not less than equal dimension of the water area proposed to be filled up in the same locality along with a certificate of conversion of the water area so re-allocated or excavated issued by the appropriate authority.

Provided further than the State Government may accord approval under the sub-section in such manner as may be specified by notification.]

(10) (a) The competent authority may, by a written notice, require any person who, by contravening the provisions of sub-section (1),—

(i) puts any water area including embankment or naturally or artificially depressed land holding to any use other than fishery, or

(ii) fills up any water area including embankment or naturally or artificially depressed land holding with a view to converting it into solid land, or

(iii) divides any water area including embankment or naturally or artificially depressed land holding into parts for any purpose other than pisciculture or transfer any part of any such water area including embankment or naturally or artificially depressed land holding as so divided to any other person,

to restore, within such period as may be specified in the notice, such water area including embankment or naturally or artificially depressed land holding, as the case may be, to its original condition at his own expense.

(b) If such person fails to restore such water area including embankment or naturally or artificially depressed land holding to its original condition within the period specified in the notice under clause (a), the competent

authority may, by order in writing, take over the management and control of such water area including embankment or naturally or artificially depressed land holding, as the case may be, restore it to its original condition, and recover the entire cost in this behalf or any part thereof from such person[by invoking the provisions of the Bengal Demands Recovery Act, 1913 (Ben. Act III of 1913)].

(c) The management and control of such water area including embankment or naturally or artificially depressed land holding as may be Taken over by the competent-authority under clause (b) may be transferred by the competent authority to any person for proper utilization of such water area including embankment or naturally or artificially depressed land holding, as the case may be, in such manner as may be prescribed. And, thereupon, the provisions of sub-sections (5), (6), (7) and (8) shall apply to such water area including embankment or naturally or artificially depressed land holding, as the case may be.

(11) Any person who commits any offence by contravening the provisions of sub-section (1) shall, without prejudice to the provisions of sub-section (10), be punished with imprisonment for a term which may extend to [three years] or with fine which may extend to [five lakh] rupees or with both, and the provisions of section 20 shall not apply to such person.]”

[(12)] An offence under sub-section (11) shall be cognizable and non-bailable].”

(emphasis supplied)

On perusal of sub-section 1 and sub-section 2 of Section 17A goes to show that three pre conditions are envisaged which confers right upon the Competent Authority under the said Act of 1993 to initiate proceeding in connection with a water body. However, before passing final order notice contemplated under Sub-Section 10(a) is required to be served upon the owner of the water body.

In the present case a newspaper publication was made which is at page 10 of the affidavit-in- opposition of KMC which by no stretch of imagination can be treated to be a notice in compliance of Sub-Section 10(a) of the said Act. On perusal of the newspaper publication it appears that even the name of the owner of the water body is not mentioned whereas in terms of sub-section 10(a) a specific notice is required to be served upon the petitioner being the owner of the water body. Since petitioner is paying municipal taxes being the assessee whereabouts of the petitioner are there on the assessment record of the KMC; therefore, there was no difficulty so far KMC is concerned to send a notice directly to the petitioner but for the reasons best known to the KMC such notice was avoided.

In addition thereto nothing is demonstrated upon reliance of relevant records available before the Court that one of the preconditions as contemplated under Section 17A(1) and Section 17A(2) was prevalent which triggered initiation of proceeding under Section 17A.

In view of aforesaid lacunae in the proceeding which has been initiated by the concerned authority of KMC the order of the Competent Authority bearing no date which is at page 12 of the affidavit-in-opposition of KMC cannot be retained on record and accordingly the same stands set aside.

The concerned authority of KMC is directed to hand over the management and control of the water body (pond) and its embankment to the petitioner as early as possibly but not later than 15 days from the date of communication of the order passed by this Court today. Since major part of the embankment of the water body has already been beautified by induction of respondent no. 6 at the instance of KMC as it has been submitted, it is expected that the work done by the respondent no. 6 for the benefit of the inhabitants of the adjoining area should not be undone for maintenance of ecology in an around the said water body.

With the aforesaid directions and observations the writ petition stands allowed.

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)