

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

F. M. A. 494 of 2021

Debasish Sinha & Ors.

-Vs-

The Kolkata Municipal Corporation & Ors.

For the Appellants : Mr. Debabrata Saha Roy, Adv.
Mr. Indranath Mitra, Adv.
Mr. Siddhartha Roy, Adv.

For the Corporation : Mr. Alok Kumar Ghosh, Adv.
[Kolkata Municipal Corporation] Ms. Era Ghose, Adv.

For the State : Mr. Jaharlal De, Adv.
Ms. Debarati Sen (Bose), Adv.

Heard on : 08.08.2024 & 09.09.2024

Judgment on : 09.09.2024

Joymalya Bagchi, J. :-

1. Appellants have assailed order of the Hon'ble Single Judge whereby the said Judge upheld the order dated 27.06.2013 passed by the appellate authority under the West Bengal Inland Fisheries Act, 1984 (*hereinafter referred to as 'Act of 1984'*).

2. Factual matrix giving rise to the appeal is as follows :-

3. Appellants had challenged the order of the competent authority under the Act of 1984 to take over management and control of the water body. The aforesaid order was assailed on the ground no written notice had been served upon them in terms of Section 17A sub-section (10)(a) of the Act of 1984.

4. After hearing the submissions of the parties, the Hon'ble Single Judge (as His Lordship then was) noted a notice under Section 17A of the West Bengal Inland Fisheries (Amended) Act, 1993 had been published in three newspapers – one in English and two in Bengali. Thereafter, show cause notice dated 17.12.2010 was issued. Appellants did not respond to the show cause notice and accordingly, the order to take over management and control of the water body was passed.

5. Under such circumstances, Hon'ble Single Judge refrained from granting any relief to the appellants but observed that the order shall not prevent them from taking steps in accordance with law.

6. Appellants accepted the said order and preferred an appeal before the Deputy Director of Fisheries under Section 18 of the Act of 1984. The appeal not being disposed of, they again approached this court. Another Hon'ble Single Judge (as His Lordship then was) by order dated 14.03.2013 directed the appeal to be considered by the Director of Fisheries within a time frame.

7. Pursuant thereto, appellant was heard and order dated 27.06.2013 came to be passed. The said order was upheld by the Hon'ble Single Judge. Hence, the present appeal.

8. Mr. Indranath Mitra for the appellants argues no written notice was served upon his clients under Section 17A sub-section (10)(a) of the Act of 1984. Appellants had not been given an opportunity to restore pisciculture in the water body and in an arbitrary manner the management and control of the water body was taken over. He also argues action was initiated on the basis of a complaint of the local Councillor but no independent enquiry had been undertaken.

9. Mr. Jahar Lal De and Mr. Alok Kumar Ghosh for the respondent authorities contend issue of non-service of notice is no longer *res integra*. The matter had already been answered against the appellants in the earlier writ petition being W.P. No.19866 (W) of 2011. It is also argued water body had not been used for pisciculture and was kept in a negligent manner. The matter was reported by the local Councillor and the appellants did not respond to the show cause notice issued to them. Accordingly, competent authority passed order taking over the management and control of the water body. Before the appellate authority appellants did not produce any material to dispute the aforesaid facts.

10. We have considered the materials on record in light of the aforesaid submissions made by the parties.

11. Accordingly, we are in agreement with the submission of the learned Advocates for the respondent authorities that the issue of non-

service of notice on the appellants had been considered and decided against them in W.P. No.19866 (W) of 2011. In the order dated 13.12.2011 disposing the said writ petition, Hon'ble Single Judge had recorded notices had been published in three newspapers – one in English and two in Bengali. It is vehemently argued procedure envisaged under sub-section (10)(a) of Section 17A of the Act of 1984 requires issuance of a notice personally upon the person concerned and not through publication in newspapers. Be that as it may, recourse to such publication, in our considered opinion, did not prejudice the appellants. After the paper publications, show cause notice had been issued on 17.12.2010 but the appellants did not respond to the said notice.

12. Hon'ble Single Judge in W.P. No.19866 (W) of 2011 was not impressed by the argument that the appellants did not have due notice of the proceeding or did not get an opportunity to present their case before the competent authority.

13. Under such circumstances, order of the competent authority to take over the management and control of the water body in order to preserve pisciculture and prevent environmental degradation including health hazard was upheld. The said order was not challenged by the appellants. On the other hand, they acted as per leave granted in the said order and preferred an appeal before the appellate authority. The appeal came to be disposed of by the impugned order which has been upheld by the Hon'ble Single Judge. Even before the appellate authority, appellants did not place on record any material to dispute the finding of the

competent authority that water body was not used for pisciculture and was kept in such a negligent manner that it was causing health hazard and environmental degradation.

14. When the factual foundation on which the impugned order was passed was not disputed by the appellants during hearing of the appeal, we are of the opinion no case for interference in judicial review is made out.

15. Accordingly, impugned order passed by the Hon'ble Single Judge is affirmed.

16. Appeal is dismissed.

17. There shall be no order as to costs.

18. Photostat certified copy of this judgment, if applied for, be given to the parties on compliance of all formalities.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

akd