

30.08.2024
Item No. 09
Crt.No.02
b.r.

WPA 16123 of 2024
IA No. CAN 1 of 2024

Baleswar Sahani @ Rameswar Sahani & Ors.
-vs-
***Department of Urban Development and
Municipal Affairs & Ors.***

Mr. Asoke Kumar Banerjee, Sr. Adv.
Mr. Tapajit Dey
..... for the petitioners.

Mr. Supratim Dhar
Ms. Megha Sarkar
... for the Resp. nos. 3 and 4.

In view of the urgency pleaded by Mr. Asoke Kumar Banerjee, learned Senior Counsel appearing for the petitioners, this writ petition has been taken up today after publishing the same in the daily cause list.

Mr. Supratim Dhar, learned counsel appears for respondent nos. 3 and 4.

None appears for the rest of the respondents being the State-respondents and the petitioners have not produced any evidence that notice has been served upon the State-respondents or at the office of the learned Government Pleader.

The writ petition was initially moved on July 15, 2024 before a Co-ordinate Bench taking the determination relating to Municipality, when the Co-ordinate Bench due to want of determination directed the matter to go out of his list. Learned Senior Counsel

appearing for the petitioners submits that this writ petition pertains to the determination relating to land and accordingly this writ petition may be taken up for consideration by this Court.

The petitioners claim to be owners of a piece of land at **Barasat**. The petitioners have received two impugned notices dated **June 14, 2024, annexure p-2 at page-26** to the writ petition issued by the **respondent no.3** and the other one being impugned notice dated **June 15, 2024, annexure p-3 at page-27** to the writ petition issued by the **respondent no.2** in exercise of power **under Section 17A of the West Bengal Inland Fisheries Act, 1984 (for short, the said Fisheries Act)**. The said two impugned notices are under challenge in the instant writ petition.

Mr. Asoke Kumar Banerjee, learned Senior Counsel appearing for the petitioners at the threshold refers to the provisions laid down under **Section 17A of the Fisheries Act** and submits that the essential ingredients for invocation of the said provision of the statute, on the face of the said impugned notices are absent.

Section 17A, as submitted by the learned Senior Counsel appearing for the petitioners, provides that, no person shall 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 or no person shall 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 thereupon or for any other purpose, or no person shall fill it up 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. He submits that, the provisions laid down under **Section 17A** clearly indicates that while invoking the said provision, application of mind of the competent authority who shall issue the notice must be apparent for the said notice. He submits that, no finding has been recorded in the said impugned notices in terms of the provisions laid down under **Section 17A of the Fisheries Act**. He submits that on a plain reading of the said two impugned notices, it appears that, the plot of land belongs to the L.R. Plot numbers as mentioned therein had been filled up by the petitioners, hence the notices were issued.

Learned Senior Counsel, in the light of the above submissions submits that when a particular statutory

provision has to be invoked in the manner and mode as it is prescribed under the statute and if such statutory prescription is not complied with the invocation of such provision of the statute is bad in law. Accordingly, he prays for mandamus to set aside and quash the said two impugned notices.

Mr. Banerjee, further submits that there was no water body on the subject land at the plot numbers as mentioned in the said two impugned notices and structures are there. The record of right annexed to this writ petition also supports such contention of the petitioners.

In support, Mr. Banerjee has also relied upon a decision of the Hon'ble Division Bench, ***In the Matter of: Anuradha Sen -vs- The Kolkata Municipal Corporation & Ors. dated January 9, 2024 rendered in M.A.T. 932 of 2022.***

Mr. Supratim Dhar, learned counsel appearing for respondent nos. 3 and 4, the concerned Municipality and its Chairman, submits that arising out of the same plot of land the State authority has already initiated proceedings under **Sections 4(C) (5) and 4 (D) of the West Bengal Land Reforms Act, 1955**. The challenges are pending in another writ petition and in a connected contempt application. He submits that this writ petition has been filed in total suppression of those facts. The

records in that writ petition will show that the petitioner No.1 has specifically in writing given an undertaking before the State authority that they shall not proceed to fill up the water body situated on the subject land. Such undertaking was executed by the petitioner no.1 sometime in 2021-2022. Thus, the petitioners cannot contend now that any structure is situated on the land and there was no water body, as contended by the petitioners.

He further submits that to protect the water-body in terms of the law laid down in that respect, these two notices were issued which are valid in law. He further submits that identical notices were issued previously which were not challenged by the petitioners.

After considering the rival contentions of the parties and upon perusal of the materials on record, at the outset, this Court is of the view that, the scrutiny of the said two impugned notices at **pages-26 and 27** are the primary tasks for this Court.

Admittedly, the said two impugned notices were issued under the provisions of **Section 17A of the Fisheries Act**. On a plain and meaningful reading of the provisions laid down under **Section 17A of the Fisheries Act**, it appears to this Court that, while invoking power under such provision, the competent authority must arrive at a finding that the water-body

including embankment is capable to be 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. Such findings are not there in the impugned two notices.

It is trite that, when a particular provision of a particular statute, is sought to be invoked, the relevant provisions under the statute must be strictly complied with while invoking such provision. In absence of such strict compliance of the provisions of the statute, the power exercised under such provision is not tenable in law. The law is well settled that, when a provision of a statute is laid down either the same has to be exercised specifically in the manner as it is laid down or not at all. All other modes are expressly forbidden.

On a close scrutiny of the two impugned notices, it appears to this Court that, in absence of any finding inconformity with the provisions laid down under **Section 17A of the Fisheries Act**, the said two notices are not tenable in law.

When the said two notices are scrutinized by this Court in exercise of its power under judicial review, primarily the Court must scrutinize the said two notices on the face of it and then the other factual matrix may come. Since this Court is satisfied that, on the face of

the said two impugned notices, it appears that, the same have been issued without strict compliance of the statutory provisions laid down under **Section 17A of the Fisheries Act**, the said two impugned notices are liable to be set aside and quashed.

Considering the allegations against the petitioners, this Court thinks it fit that further pendency of this writ petition shall merely delay the process, if the authorities think it fit to take further steps in accordance with law against the petitioners. Accordingly, this Court proceeds for final disposal of this writ petition without calling for affidavits.

In view of the above, the said two impugned notices dated **June 14, 2024 annexure p-2 at page-26** to the writ petition and **June 15, 2024 annexure p-3 at page-27** to the writ petition stand **set aside and quashed**.

It is made clear that, this Court has not gone into the merits of the writ petition at all. This Court has also not gone into the merits of the rival contentions of the parties as recorded above.

The appropriate authority under the law shall be at liberty to issue further notices against the petitioners forthwith in accordance with law and shall be at liberty to proceed against the petitioners in accordance with law.

It is made clear that this order shall not create any right or equity in favour of the petitioners in any manner.

Since affidavits are not called for, the allegations made in this writ petition are deemed not to have been admitted by the respondents.

Once again it is clarified that the factual statements made by the petitioners in this writ petition have not been gone into by this Court.

With the above observations, this writ petition, **WPA 16123 of 2024** stands **disposed of**, without any order as to costs.

Connected application, if any, stands also **disposed of** accordingly.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)