

14.08.2024
Sl. No.14(DL)
srm/CP

W.P.A. No. 18851 of 2024

Dipankar Sinha

Versus

The State of West Bengal & Ors.

Mr. Shamim Ahmed,
Ms. Gulsanwara Pervin

...for the Petitioner.

Mr. Sirsanya Bandhopadhyay,
Mr. Satyajit Talukder,
Ms. Rutika Verma

...for the KMDA.

Mr. Biswabrata Basu Mallick,
Ms. Munmun Ganguly

...for the State-respondents.

Mr. Alok Kumar Ghosh,
Mr. Arijit Dey

...for the KMC.

1. Affidavit-of-service is taken on record.
2. The petitioner, in his personal capacity, has moved the High Court under Article 226 of the Constitution of India as an appellate court challenging the notification issued by the Kolkata Metropolitan Development Authority (KMDA). The notification was issued upon receipt of approval from the state government dated June 25, 2024 under Section 38 of the West Bengal Town and Country (Planning and Development) Act, 1979. The petitioner contends that the

KMDA had not conducted the survey after every ten years as required by Section 40 of the West Bengal Town and Country Planning Act, 1979, before amending the Land Use and Development Control Plan (in short LUDCP). The slaughter houses should be shut down as allowing them would be contrary to a decision of the National Green Tribunal, according to the petitioner. Further allegation is that the executive officer of the KMDA did not take into consideration the objection raised by the petitioner by the letter dated December 6, 2023. The amendments were made contrary to the provisions of law.

3. Mr. Talukder, learned Advocate appearing for the KMDA submits that a competent committee had heard the petitioner along with nine other objectors. A person from the environment department was also present in the committee. The objections of the petitioner were taken into consideration and amendments to the LUDCP were made. Such amendments do not have any impact on the environment. It is further submitted that a PIL had been filed by a society, of which the petitioner is the president with almost similar prayers. The draft amendment was before the Hon'ble Division Bench. However, the final notification was not under challenge in the said PIL as the notification was a

subsequent development. In the said writ petition, writ petitioners had prayed for implementation of a fresh LUDCP.

4. Mr. Ghosh, learned Advocate for the Kolkata Municipal Corporation submits that the LUDCP is followed by the Corporation while sanctioning site plans and building sanction plans.
5. The State Government submits that the said government does not have any contribution apart from approving the plan.
6. Having perused the objections raised by the petitioner, it appears that the petitioner's objections can be categorised in the following manner:
 - (a) Change in the land use by the public had caused disaster to the city's fabric thereby jeopardising the environment and quality of life. This aspect should be looked into.
 - (b) Population density, transportation system, need for green spaces, etc. were not taken into consideration when the amendment was made.
 - (c) Adequate survey was not done.

(d) Kolkata was under serious threat from the environmental point of view and the density of the population should be reduced by leaving more open space. As water level was reducing, and water bodies were vanishing, the notification should have considered such aspect.

(e) In spite of serious constraints and limitations, the port area was being planned to be used for other services and real estate business.

(f) The notice inviting objections to the draft LUDCP was not circulated widely.

7. Mr. Ahmed, learned Advocate appearing on behalf of the petitioner seeks to justify his objections on the development policy which is at page 31 of the writ petition and is quoted below:

“6.0 DEVELOPMENT POLICY

The policy for development and general use of land in the area will include the following

- (i) Efforts will be made for dispersal of activities from the presently congested core to the outer areas of Calcutta Metropolitan Area. Calcutta Municipal Corporation area, however, will continue to perform important metropolitan functions in economic, administrative and specialised services in higher education, cultural and recreational activity as well as in high technology, research and development;

- (ii) The present pattern of mixed land use will be allowed to continue in general but certain non-conforming uses will be prohibited to improve the environment and living condition;
 - (iii) Buildings and areas that are important from historical, architectural, environmental or ecological point of view will be indicated for preservation and conservation;
 - (iv) The existing bustees may be allowed to continue and measures to improve the conditions of the bustees will be encouraged,
 - (v) The existing parks and public open spaces will be preserved and efforts will be made for creation of new parks and public open space;
 - (vi) Efforts will be made to preserve the wetlands, tanks, ponds and waterbodies as far as possible;
 - (vii) Efforts will be made for development of the river-front in Calcutta with pedestrian plaza and other conforming facilities along the river-bank;
 - (viii) In areas with intense commercial activities and where intense commercial activities are expected in future, efforts will be made to promote a development form with reduced ground coverage resulting in reduction of traffic congestion and overcrowding at street level but at the same time ensuring proper utilization of the high value land in such areas;
 - (ix) In the Calcutta Municipal Corporation area wholesale trading functions will be discouraged. There will be efforts to relocate such activities in areas outside the Calcutta Municipal Corporation area;
 - (x) The development of building and land for different purposes in different zones will be guided and controlled through appropriate regulations considering the available circulation and infrastructure facilities with a view to making the area functionally efficient and environmentally acceptable."
8. Thus, this Court finds that the entire gamut of the objection of the petitioner before the KMDA was that the LUDCP

should have been amended by taking into consideration the environmental aspect. Beautification of river front, development of the pavements for pedestrians, preservation of the historical and architectural structures, etc. were some of the issues raised.

9. Coming to the notification, this Court finds that the amendments in the plan do not adversely affect the environment. On the other hand, the petitioner seeks further implementation of the development policy. Petitioner tries to substantiate a need for green Kolkata. However, the objection of the petitioner does not talk of particular instances. A generalized submission is made with stress on the environment angle.

10. Clause 8.3-i(a) of the plan was already in existence and a further schedule IV-A was incorporated therein. Schedule IV-A was inserted being two slaughter houses with their addresses in Ward No.139, Slaughter House Road. A note was also inserted that the slaughter houses will abide by the direction of the National Green Tribunal and any other competent court. The address of the Hartley's High School was changed by incorporating the new location in Schedule IX.

11. Thus, this Court does not find that there has been any major amendment to the earlier plan and the authority has not amended the plan in a manner that the same would degrade the quality of life. There is no specific pleading in the writ petition in this regard. However, this order does not preclude the petitioner and his association from approaching the KMDA with a prayer to take additional measures for creating parks, open spaces, river fronts and/or beautification of the river front etc. to make Kolkata a more beautiful city. Specific, logical and legitimate suggestions can also be made with inputs from experts.
12. The petitioner and his organization is also at liberty to approach the Pollution Control Board, if the petitioner is of the view that the Slaughter Houses are violating the environment norms.
13. With these observations, the writ petition is disposed of.
14. Some of the issues raised in this writ petition are already before the Hon'ble Division Bench and this Court refrains from commenting on those issues.
15. If the petitioner or his organization approaches the KMDA, the matter shall be referred to the Department of Environment for constitution of a committee to explore possibilities to implement the development policy as quoted

above, so that the inhabitants have a greener Kolkata with an improved air quality index. The committee shall comprise of environmental experts, representatives of KMDA and other eligible persons.

16. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)