

**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

***M.A.T. 2040 of 2022
(CAN 3 of 2024)***

***Sree Sree Kripamoyee Kalika
Thakurani & Ors.***

-Vs-

***Municipal Commissioner, Kolkata
Municipal Corporation & Ors.***

For the Appellants : Mr. Suchit Kumar Banerjee, Sr. Adv.,
Mr. Indunil Banerjee, Adv.,
Mr. Lutful Haque, Adv.,
Ms. Taharina Khatun, Adv.

For the Respondents : Mr. Fazlul Haque, Adv.,
Mr. Dopal Ch. Das, Adv.

Heard on : 02.08.2024

Judgment on : 02.08.2024

Joymalya Bagchi, J. :-

1. By order dated 25.07.2022, appellants/writ petitioners have been given liberty to make representation with supporting documents before the Commissioner, Kolkata Municipal Corporation to agitate his grievance that provisions of the West Bengal Inland Fisheries

Act (amended), 1993 (for short Act of 1993) does not apply to the water body in question.

2. Mr. Banerjee for the appellants contends the water body is a debuttar estate and pisciculture is prohibited under the terms of the endowment. This being a jurisdictional issue Hon'ble Single Judge ought to have considered the same and not relegated the matter to the statutory authority who has already taken a decision in the matter.
3. We have considered the materials on record. In 2003 a notice was issued under the provisions of the Act of 1993, by the competent authority upon the owners/claimants that the water body is not properly maintained and the same ought to be restored and pisciculture be conducted therein.
4. In response to the said notice, owners/claimants did not agitate the issue that the water body does not fall within the jurisdiction of the Act of 1993 and no pisciculture can be carried on therein. In absence of any such objection being raised, competent authority passed order taking over the management and control of the water body. After a lapse of almost 17 years, appellants/writ petitioners approached the Hon'ble Single Judge, inter alia, claiming water body is a debuttar estate and the Act of 1993 does not apply. Though the appellants had approached the Court after more than a decade, Hon'ble Single Judge noted that a jurisdictional issue

having been raised the matter needs be decided by the appropriate authority in the first instance. Stance taken by the Hon'ble Judge is unexceptionable.

5. We are not in agreement with the learned Senior Advocate that the authority had already addressed the issue agitated and the remand was a futile exercise. It may be reiterated at the risk of repetition that the appellants had never agitated the issue of inapplicability of the Act of 1993 to the water body before the authority concerned.
6. Mr. Banerjee has relied on ***Ram and Shyam Company Vs. State of Haryana & Ors.***¹ in support of his plea that the issue ought to have been decided by the Hon'ble Single Judge. In the cited case, Hon'ble Apex Court, inter alia, held that existence of alternative remedy in appropriate cases would not stand as a bar to entertain the writ petition. More particularly the decision making authority was acting on the instructions of the Chief Minister. No such case of dictation is made out in the facts of the case. On the other hand, the issue agitated before the writ court had not been canvassed before the statutory authority in the first place. Under such circumstances, Hon'ble Judge did not err in law in remitting the matter before the concerned authority to take an independent decision thereon. Such exercise by no stretch of imagination would

¹ (1985) 3 SCC 267

countenance remanding a matter to an authority who has already expressed opinion thereon.

7. For these reasons, we find no merit in the appeal and the appeal is accordingly dismissed.
8. Consequently, connected application is also dismissed.
9. Appellants/writ petitioners shall make a representation within a fortnight from date along with supporting documents and in the event the representation is made within the aforesaid time frame the Commissioner shall after giving an opportunity of hearing and other affected parties pass a reasoned order in the matter within five weeks thereof. Reasoned order shall be communicated to the appellants/writ petitioners and other affected parties within one week thereof.
10. There shall be no order as to costs.
11. 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.)

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