

C.O. 625 of 2025

Sri Deo Kumar Shah & Anr.
-versus-
Sri Ankur Sharma & Ors.

Mr. Sambuddha Dutta
Mr. Arkaprava Sen
Mr. Satyantana Kar
... for the petitioners

Mr. Kalyan Bandyopadhyay, Ld. Sr. Adv.
Ms. Sonal Sinha
Mr. Sirsanya Bandyopadhyay
Mr. Arka Kumar Nag
Mr. Rahul Kumar Singh
..for the State and
East Kolkata Wetlands
Management Authority, the
Respondent no.6

Mr. Arjun Roy Mukherjee
Mr. Jaydeev Medhi
..for the West Bengal
Pollution Control Board
Mr. Sandipan Das
..for the respondent no.1

Mr. Indradip Das
..for the respondent nos. 16, 24

The order dated 9th December, 2024 passed by the National Green Tribunal, Eastern Zone Bench, Kolkata in Original application No.01/2024/EZ is under challenge in this application under Article 227 of the Constitution of India. By the said order the Tribunal directed the District Magistrate, South 24 Parganas to file their affidavit showing compliance of

the request of the East Kolkata Wetlands Management Authority.

The petitioners claim to be the owner of a portion of L.R. Dag No. 234 corresponding to R.S. Dag No. 156 within Mouza Atghara under Police Station Sonarpur measuring about 6 cottahs 3 chittaks and 22 sq. ft. by virtue of a registered deed of conveyance being no.14218 of 2022. The petitioners claim to have constructed a tin shade godown on the said property and is carrying on business there from. The petitioners allege that the respondent authorities are taking steps to demolish the said construction without following the principles of natural justice.

Mr. Dutta, learned advocate appearing for the petitioners submits that the petitioners were not impleaded as party in the Original Application before the National Green Tribunal. The orders were passed by the National Green Tribunal behind the back of the petitioners. By placing reliance upon Section 19 of the National Green Tribunal Act, 2010 Mr. Dutta contended that the Tribunal shall be guided by the principles of natural justice. He places reliance upon decision of the Hon'ble Supreme Court in the case of West Bengal Electricity Regulatory Commission vs. CESC Ltd. reported in (2002) 8 SCC 715 in support of his contention that where the statute itself confers

right upon the person in conformity with the principles of natural justice the court cannot deny such right.

He, therefore, submits that this Court under Article 227 of the Constitution of India should entertain the challenge thrown by the petitioners against the order passed by the National Green Tribunal in spite of the fact that there is an appellate remedy provided under the said statute.

Mr. Bandyopadhyay, learned senior counsel representing the State respondent and the respondent no.6 submits that a committee was formed pursuant to an order passed by the Hon'ble Division Bench in a public interest writ petition being WPA (P) 358 of 2023 in the case of Priyanjana Majumder & Anr. vs. The State of West Bengal & Ors. wherein the Hon'ble Division Bench opined that a vigilance team can be formed by the 2nd respondent authority by drawing the officers from the Environment Department as well as from other departments including the officers from the office of the District Magistrate as well as the officials of the Department of Fisheries. He submits that pursuant to a direction passed in the said public interest litigation a vigilance team was constituted and inspections were carried out and order has been passed by the Chief Technical Officer, East Kolkata

Wetlands Management Authority (for short 'EKWMA') on 22nd December, 2023 after hearing the petitioners. He submits that after following the principles of natural justice the order dated 22nd December, 2023 was passed directing the petitioners to restore the land to its original character or mode of use within the time limit mentioned in the said order. He further submits that since the directions contained in the order dated 22nd December, 2023 was not carried out the District Magistrate, South 24 Parganas passed an order dated 13th November, 2024 directing the Sub-Divisional Officer to dismantle the illegal building at R.S. Dag Nos. 156 and 157 within Mouza Atghara. He submits that thereafter the notice of demolition dated 10th February, 2025 was also served upon the petitioners informing the petitioners that the godown situated in R.S. plot no. 157 of Mouza Atghara shall be demolished on 19th February, 2025.

Mr. Roy Munkherjee, learned advocate appears for the Pollution Control Board. He submits that the State respondents are the answering respondents in the case on hand.

Heard the learned advocates for the parties and perused the materials placed.

From the deed of conveyance annexed to this application under Article 227 of the Constitution of

India it appears that the petitioners have purchased a “Beel Land” measuring 6 cottahs 3 chittaks 22 sq. ft. together with a passage situated at Mouza Atghara comprising R.S. Dag No. 156 and L.R. Dag No. 234 under Police Station Sonarpura at present Narendrapur. From the record of rights annexed to the civil revisional application it also appears that the said plot of land is recorded in the record of rights as “Beel Land”.

The petitioner no.1 attended the hearing before the Chief Technical Officer, EKWMA and in course of hearing he admitted that he constructed the godown with boundary wall for commercial purpose at part of R.S. Dag No. 157 Mouza Atghara under J.L. no.5 P.S. Narendrapur, District South 24 Parganas without any permission from EKWMA as well as local panchayat body. He further submitted before the authority that he purchased the land being a part of R.S. Dag No. 156 and 157 with his wife in the year 2022 from the erstwhile owner. At this stage it would be beneficial to take note of the order dated 25th July, 2023 passed by the Hon’ble Division Bench in WPA (P) 358 of 2023 (Priyanjana Majumder & Anr. vs. The State of West Bengal & Ors) as well as the directions contained in paragraph 8 of the said order. Paragraph 8 of the order dated

25th July, 2023 in WPA (P) 358 of 2023 is quoted hereinafter.

“8. Thereafter, the illegal construction should be directed to be removed by the persons, who have put up the same within a time frame. Upon his/their failure to do so, the construction shall be removed by the department themselves and the costs be recovered from the persons, who have put up such illegal construction. That apart, criminal cases shall also be registered against such of those persons, who have illegally put up construction in such wetlands as well as blocking the water channels.”

After noting the observations made by the Hon'ble Division Bench in the aforesaid Public Interest Litigation and also taking into consideration all aspects, the Chief Technical Officer, EKWMA expressed its opinion that the petitioners illegally constructed the godown with boundary wall at part of R.S. Dag No. 157, Mouza Atghara, J.L. No.5, P.S. Narendrapur which falls within the EKW area without permission from EKWMA. It was further recorded that the said work is illegal and violative with provisions of Section 9 of the East Kolkata (Conservation and Management) Act, 2006 and Rule 4 of the Wetland (Conservation and Management) Rules, 2017. By the said order the petitioners were directed to restore the land to its original character or mode of use within thirty days from the reasoned order and to submit the compliance report within next seven days to the office or action shall be taken in accordance with law.

On a query of the Court Mr. Dutta, learned advocate appearing for the petitioners, in his usual fairness, submits that the petitioners have not challenged the said order dated 22nd December, 2023. It is also not in dispute that the petitioners did not comply with the directions contained in the order dated 22nd December, 2023.

Upon receipt of the letter from the Chief Technical Officer, EKWMA which stated that the persons who have raised illegal building at part of R.S. Dag Nos. 156 and 157 of Mouza Atghara including the petitioners have not complied with the direction given in the said order, the District Magistrate passed an order dated 13th November, 2024 directing the Sub-Divisional Officer, Baruipur sub- division to dismantle the illegal building at R.S. Dag Nos. 156 and 157 Mouza Atghara and to restore the area to its original status and submit the compliance report within the time limit indicated thereafter.

Record reveals that by an order dated 18th January, 2024 the National Green Tribunal took note of the allegation made in the Original Application that the respondents therein are illegally filling up several wetlands being part of East Kolkata Wetland measuring about 88.52 acres under Atghara mouza. It was alleged that all the wetlands

have been partially filled up which have been classified as “beel” except L.R. Dag No. 232 which is classified as a “shali” land.

The learned Tribunal after considering the allegations made constituted a committee to elicit the veracity of the allegation comprising of the members as indicated in the said order.

It appears from the order dated 18th January, 2024 that the committee was directed to inspect the site in question and submit its report within four weeks with regard to the allegations made in the original application and the District Magistrate, South 24 Parganas was directed to act as the nodal office for all logistic purpose and for filing the report of the committee on affidavit.

From the order of EKWMA dated 22.12.2023 it appears that the notice was circulated through police authorities and notices were also pasted on the illegal structure with a direction to stop illegal construction and to appear for hearing on 02.11.2023 and also to show cause why legal action should not be initiated.

To the mind of this Court adequate opportunity was given to the petitioner to defend their action and for such reason, this Court is not inclined to accept the submission of the learned

advocate for the petitioner that principles of natural justice has been violated.

The complainant raised an environment issue before the EKWMA. In the Public Interest Litigation and the proceeding before the National Green Tribunal the applicant highlighted serious environmental issues. Committees were formed by the Hon'ble Division Bench of this Court as well as the learned Tribunal to take into the veracity of the allegations. The committee constituted pursuant to the orders passed by the Hon'ble Division Bench and the Tribunal passed orders by following the principles of natural justice. Therefore, non-joinder of the petitioner as party in PIL as well as before the learned Tribunal cannot vitiate the order passed.

The notice of demolition dated 10th February, 2025 was issued in connection with the demolition order dated 13th November, 2024 issued by the District Magistrate and the order passed in the original application before the National Green Tribunal.

The question that arises is whether the petitioners herein had a right to raise the construction on the said plot which is classified in the record of rights as "Beel Land".

The learned advocate appearing for the petitioners, in his usual fairness, submits that

conversion certificate has not yet been obtained but only an application for issuance of conversion certificate has only been filed. He also submits that no permission was obtained from the local body for raising such construction.

Mr. Dutta, learned advocate appearing for the petitioners would submit that the provisions of Section 11 of the East Kolkata Wetlands (Conservation and Management) Act, 2006 has not been followed in the case on hand.

By referring to Table 11 under Schedule I he submits that part of Dag No. 156 is a water body and part of it is Urban Rural Settlement Area and the authorities while passing the order directing restoration of the property to its original condition did not take into consideration such aspect.

In this regard it would be relevant to take note of the provisions laid down in Section 9 of the 2006 Act which starts with a non-obstante clause. It states that notwithstanding anything contained in any law for the time being in force every person holding any land in the East Kolkata Wetland shall maintain and preserve such land in a manner that its area is not diminished or its character is not changed or it is not converted for any purpose other than the purpose for which it was settled or previously held, except with the previous sanction of the authority under Section 10. Section 10 of the

2006 Act prescribes the procedure for granting such sanction.

The record of rights specifically states that the character of the land is “Beel Land”. Therefore, the petitioners could not have used the said land for any other purpose other than for which it was settled without the previous sanction of the authority. The fact that the petitioners have applied for conversion goes to show that the petitioners are well aware of the provision that without conversion they could not have converted the “Beel Land” for using the same for the purpose of raising construction.

In view of the fact that the character of land was recorded in the record of rights as “Beel Land” and no conversion certificate has been issued by the competent authority and also that the construction is without any sanction or permission from the competent authority, this Court is of the considered view that no construction of any nature could have been raised on a land which is classified in the record of rights as “Beel Land”.

There is, however, no quarrel to the proposition of law laid down by the Hon’ble Supreme Court in West Bengal Electricity Regulatory Commission (supra) that if the statute provides that the natural justice is to be followed the courts have to see that such principles have been followed.

However in the case on hand though the petitioners may not have been a party in the original application before the learned Tribunal or in the public interest litigation before the Hon'ble Division Bench but the fact remains that the Committee constituted by the Hon'ble Division Bench of this Court as well as the National Green Tribunal inspected the property, heard the petitioners and passed the order of demolition which is still staring at the face of the petitioners.

The order dated 9.12.2024 passed by the National Green Tribunal only directed the District Magistrate, to file their affidavit showing compliance of the request of the EKWMA. In the absence of any challenge thrown to the order of EKWMA as observed hereinbefore, the petitioner cannot be said to be a person aggrieved against the aforesaid order of the Tribunal.

For such reason, this Court is not inclined to grant any relief to the petitioners.

Accordingly, C.O. 625 of 2025 stands dismissed.

The authority will be at liberty to proceed in terms of the demolition notice dated 10th February, 2025. In case of any resistance, the authorities will be at liberty to take the help of the police authorities.

No order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)