

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

M.A.T. 1971 of 2024

With

CAN 1 of 2024

CAN 2 of 2024

Kolkata Municipal Corporation & Ors.

vs.

Shyamal Kanti Mandal & Ors.

For the Appellants

**: Mr. Alok Kumar Ghosh
Mr. Gopal Chandra Das**

For the Respondent No. 1

**: Mr. Tarun Das Sharma
Ms. Piyali Mukherjee**

Heard and Judgment on

: January 14, 2025

DEBANGSU BASAK, J.:-

1. Appeal is directed against an order dated December 14, 2023 passed in W.P.A. 7251 of 2017.
2. Appeal is at the behest of the Kolkata Municipal Corporation (in short 'KMC').

3. By the impugned order, learned Single Judge disposed of the writ petition of the private respondent by directing the KMC to hand over the management and control of the water body and its embankment to the writ petitioner.

4. Learned advocate appearing for the appellants submits that, the appellants took over management and control of the water body in view of the provision of Section 17A of the West Bengal Inland Fisheries Act, 1984 as amended in 1993. He submits that, the concerned water body was not being managed by the private respondent/writ petitioner. Consequently, in view of Section 17A of the Act of 1984 as amended in 1993 KMC became obligated to maintain the water body. Attempt to serve the private respondent/writ petitioner was not fruitful since the private respondent/writ petitioner was not residing in the vicinity of the water body. Consequently, the appellants published the notice under Section 17A, in the two newspapers, one in the vernacular and one in English for the purpose of taking over the management and control of the water body. Since the private respondent/writ petitioner did not respond, KMC proceeded to take over the management and control of the water body.

5. Learned advocate appearing for the appellants submits that, the appellants are not interest in continuing with the management and control of the water body unless the KMC authorities are forced to do so. He submits that, KMC

authorities are under a statutory obligation under Section 17A of the Act of 1993 to maintain the water body. In the event, the private respondent/writ petitioner is ready and willing to maintain the water body, appellants will return and make over the management of such water body to the private respondent/writ petitioner.

6. Learned advocate appearing for the writ petitioner submits that, the writ petitioner is of an advance age of 80 years. Writ petitioner is suffering from a number of medical conditions. She submits that, the writ petitioner is a resident of Chetla. A notice could be given to the writ petitioner.

7. Records made available to Court establish that KMC was faced with the issue of maintenance of the concerned water body. A file in respect thereof was generated. Prayer for issuance of the show-cause notice was sought for and granted at the appropriate level of KMC.

8. KMC authorities issued a notice under Section 17A of the Act of 1984 as amended in 1993.

9. Section 17A of the Act of 1984 as amended in 1993 enjoins upon the KMC the obligation to maintain a water body when the same is not being maintained by the owner thereof.

10. Section 17A (10)(a) requires the KMC authorities to issue a notice upon the owner in respect of such water body and the decision to take over a management thereof.

11. In the facts of the present case, learned Judge held that the address of the writ petitioner was known to the KMC authorities since the writ petitioner was an assessee of the KMC.

12. With respect, the writ petitioner does not reside at the plot on which the water body is located. He resides at a different place. KMC authorities initially attempted to serve the writ petitioner at the plot where the water body is situated. The writ petitioner was not found thereat. Subsequently, KMC authorities proceeded to issue two advertisements, one in the vernacular and one in English disclosing its intention to take over the management and control of the concerned water body in terms of the Section 17A of the Act of 1984 as amended in 1993.

13. KMC did not receive any response to the advertisements published in the two newspapers. Consequently, the KMC authorities proceeded to take over the management and control of the concerned water body by a decision dated June 18, 2024.

14. Writ petition was filed in the year of 2017. We perused the prayers in the writ petition. The writ petitioner is concerned with the ownership of the concerned pond.

15. Section 17A of the Act of 1984 as amended in 1993 does not permit to take over of the ownership of the water body concerned. In the present

case, KMC authorities limited themselves to take over the management and control over of the water body.

16. The order of taking over of the management and control of the water body by the KMC authorities is not under challenge in the present writ petition.

17. In response to a query of the Court on the previous date of hearing, as to the capacity of the writ petitioner to maintain and manage the water body, learned advocate appearing for writ petitioner makes over a bunch of documents which is taken on record. The bunch of documents relied on behalf of the writ petitioner establishes that the writ petitioner is of advanced age and suffering from diverse medical conditions. There is nothing on record to suggest that the writ petitioner is capable of managing and controlling of the concerned water body. Details of the finance available to the writ petitioner for the purpose of maintenance of the water body is not made available to the Court to take a decision as to whether the writ petitioner is financially competent to maintain, manage and control of the water body. Moreover, it is claimed on behalf of the writ petitioner that a divorced daughter of the writ petitioner is dependent upon the writ petitioner.

18. Needless to say that taking over of management and control of a water body by the KMC is not tantamount to taking over the ownership of

the water body concerned. Moreover, the writ petitioner does not reside near about the concerned water body for him to be able to maintain, manage and control of the water body.

19. KMC authorities are at liberty to initiate such proceeding as against the writ petitioner as are permissible under provisions of the Act of 1984 as amended in 1993.

20. In such circumstances, we set aside the impugned order of the learned Single Judge.

21. **M.A.T. 1971 of 2024** and the connected applications are **disposed of** without any order as to costs.

(Debangsu Basak, J.)

22. I agree.

(Md. Shabbar Rashidi, J.)

S.D.