

(2009) 05 CAL CK 0040

Calcutta High Court

Case No: Writ Petition No. 30590 (W) of 2008

Chandra Alin and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: May 19, 2009

Acts Referred:

- Constitution of India, 1950 - Article 243W
- West Bengal Inland Fisheries Act, 1984 - Section 17(9)
- West Bengal Municipal Act, 1993 - Section 240

Citation: (2009) 3 CALLT 471

Hon'ble Judges: Surinder Singh Nijjar, C.J; Indra Prasanna Mukherjee, J

Bench: Division Bench

Advocate: Pradosh Mallick, Mrs. Samapti Chatterjee, Ms. Saptabama Sengupta and Ms. Nandita Das, for the Appellant;Tulsi Das Maity for Respondent No. 1 and Mr. Sujay Mondal, for the Respondent

Judgement

1. This writ petition has been filed by residents of the Municipal Tank Lane of Natunpara area at Ward No. 11 under Baruipur Municipality, 24 Parganas (South). The writ petition has been filed in public interest with prayers for a writ in the nature of mandamus directing the respondents to forthwith restrain from filling up the existing water body/tank fishery Ward No. 11. A further direction is also sought commanding the respondents and the subordinates to restore the water body/tank fishery to its original position. Petitioners claim that just opposite to the municipality office there is a big tank fishery measuring about 7 bighas of land. The writ petitioners have attached a revenue map indicating the exact location of the tank. It is further stated that the municipality regularly used to lease the land to interested parties for catching fish. However, about 10 to 12 years ago the municipality constructed a swimming pool within half portion of the tank for betterment and upliftment of the children and people at large of the locality. The area concerning the tank was thereafter encroached upon by some ex/existing class-IV staffs of the

municipality like sweeper, road cleaner etc. They constructed about 45 to 50 big structures on the bank of the tank. This tank was sought to be filled up by these encroachers without obtaining any permission from the competent authority. These encroachers were also causing nuisance to the general population of the locality. They had started opening meat shops and other business without licence from the competent authority. They were illegally keeping animals such as pig, cows in the locality. They were also misusing the swimming pool by regularly washing their utensils in the swimming pool water. These residents have generally created an unhealthy atmosphere. These ex-employees were not being shifted by the municipality in spite of their illegal activities.

2. Being aggrieved by the inactions of the municipality in not shifting the encroachers, the section of the residents of the locality filed writ petition No. 19778 (W) of 2004. In this writ petition notice was issued to the West Bengal Pollution Control Board and newspaper report was submitted before the Court which clearly establishes that the water in the swimming pool had been polluted. It was also recorded that some quantity of rubbish was found to have been deposited within the swimming pool water. Some quantity of rubbish was also found deposited in the water body. The report also stated that temporary structures have been developed along the periphery of the watery.

3. This writ petition is still pending. In the meantime, the respondent municipality had again started to fill up the existing water body/tank fishery sometime in the year 2008. Therefore, the writ petitioner filed the present petition seeking the prayers as outlined above.

4. We have heard the learned counsel for the parties. We have also perused the entire records.

5. Voluminous pleadings have been tiled on behalf of the parties. There is a dispute as to whether the encroachers are still residing on the area surrounding the swimming pool. It is the case of the Municipality that land in dispute is required for construction of water reservoir (water storage tank for distribution of arsenic free water). The Municipality is not required to take away further permission as it is exercising its powers under the West Bengal Municipalities Act, 1993.

6. Mr. Mallick has however relied upon the revenue records to substantiate the averments made in the writ petition that the area which is sought to be used by the Municipality for the water treatment plant is in fact a water body which is protected under various provisions of the West Bengal Inland Fisheries Act, 1984. u/s 17(a) of the aforesaid Act, there is a complete bar to conversion of water area for other use. However, u/s 17(9) limited permission can be granted to the Central Government or the State Government or any public undertaking or any statutory body or local authority for conversion of a water body for developmental works, which would be beneficial to the general community.

7. Mr. Mondal relying on Article 243 W of the Constitution of India read with Schedule 12 and also read with section 240 and 241 of the West Bengal Municipal Act, 1993 submits that no permission is required u/s 17(9) of the Fisheries Act. Learned counsel also submits that the aforesaid area which is stated to be a water body by the writ petitioner was in fact converted to a swimming pool in the year 1981. In support of this submission, the learned counsel had relied on a letter dated 24th July, 1981 written by the Chairman of the Municipality to D.S. (Sports) Writers and also letter dated 21st April, 1984 written to the same authority by the Chairman of the Municipality. Learned counsel also submitted that in view of the provisions contained under the Municipalities Act, neither the provisions of the Inland Fisheries Act nor the provisions of East Kolkata Wetlands Act would be applicable. Learned counsel also submitted that the municipality is prepared to give an undertaking to make available alternative land of the same area for development of a water body so that the present development work at the present site is continued.

8. Mr. Mallick, however, relies on a Division Bench judgment of this Court in the case of People United for Better Living in Calcutta v. East Kolkata Wetlands Management Authority [Writ petition No. 106 of 2007 decided on 24.12.2008] in support of the submission that no general permission can be granted for filling up any water body. However, if it is absolutely necessary, the authorities are at liberty to seek the necessary permission.

9. We have considered the submissions made by the learned counsel for the parties. We are of the opinion that it was incumbent on the respondents to seek the permission under the Fisheries Act. We are, therefore, not able to accept the submission of the learned counsel for the Municipality that by virtue of Article 243 W of the Constitution of India read with Schedule 12 of the Constitution of India, the Municipality can go ahead in converting a water body without seeking any permission under the Fisheries Act. In our opinion, the provisions contained in sections 240 and 241 of the West Bengal Municipalities Act, 1993 would be of no assistance to the respondents.

10. In view of the above, we dispose of this writ petition with the direction that the Municipality shall be permitted to continue with the aforesaid project only upon their getting the necessary permission from the Fisheries Department u/s 17(9) of the Fisheries Act.

Xerox certified copy of this order, if applied for, be given to the learned/ counsel for the parties.