

(2001) 10 CAL CK 0037

Calcutta High Court

Case No: C.O. No. 20737 (W) of 1996

Howrah Ganatantrik Nagarik
Samity

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: Oct. 12, 2001

Acts Referred:

- West Bengal Town And Country (planning And Development) Act, 1979 - Section 134, 2, 2(12), 2(7), 46

Citation: 106 CWN 277

Hon'ble Judges: Ashok Kumar Mathur, C.J; Girish Gupta, J

Bench: Division Bench

Advocate: D.P. Mukherjee, for the Appellant;

Judgement

Ashok Kumar Mathur, C.J.

This is a public interest litigation filed by one public spirited body known as Howrah Ganatantrik Nagarik Samity. In this public interest litigation number of issues have been raised with regard to maintenance of greenery of Howrah town and to take proper action by the respondents, including the Howrah Municipal Corporation to keep a proper ecological balance of the town and maintain proper cleanliness and not to permit pollution of the Hooghly river and many other reliefs were also sought. The controversy travelled to the Apex Court and the Apex Court by its order dated 16th April, 1996 remitted this matter back to this court before the Green Bench to take up the issues involved in the matter. In the present case the whole controversy has now been centered around maintenance of the water bodies which is considered to be essential for the health of Howrah town. Any disturbance to these water bodies is likely to disturb the ecological balance of the whole town. Therefore, we are concerned with regard to maintenance of the water bodies. From time to time number of orders were passed by this court from 1996 till date with regard to maintenance of the township and other related matters. These orders

need not be repeated here. At present the controversy is centered round the illegal filling up of the water bodies which is creating much of the problem. The question before us is that how many water bodies are presently in existence. There was a lot of dispute about the number of the water bodies which are in existence and which are being illegally filled up by developers for construction of multi storeyed buildings.. The petitioner No. 2 (appearing in person) submitted that since the maintenance of water bodies is an essential part of the environment and if all the water bodies are filled up and multi storeyed buildings are constructed thereon then the ecological balance of the whole area is likely to be seriously affected. Therefore, a direction was given to the petitioner to furnish the statement of the water bodies, according to him, presently in existence. Mr. Dutt, the petitioner No. 2 appearing in person submitted a list of water bodies numbering 188. This was disputed by the Howrah Municipal Corporation and the Howrah Municipal Corporation filed a list of water bodies by way of an affidavit wherein it was submitted that the Inspector of Survey Department made inquiry and found that 131 water bodies still exists. Out of those 131 water bodies 5 water bodies were situated outside the territorial limit of Howrah Municipal Corporation and 21 holdings could not be ascertained. It was pointed out in the annexure to the affidavit that 128 holdings still exists small or large and all these holdings belong to private individuals. Then a direction was given to the Pollution Control Board to conduct a joint survey of all these water bodies and submit a report. The Pollution Control Board submitted a report after a joint survey comprising of the representative from the District Administration, Land and Land Reforms Department, Fisheries Department. Government of West Bengal and Howrah Municipal Corporation. In the report filed by the Pollution Control Board a statement was annexed showing the details of the water bodies. After going through the said statement given by the Pollution Control Board it becomes more than apparent that the statement given by the Howrah Municipal Corporation and the petitioner is not correct and deducted by the authorities it appears that some of the water bodies are partly in existence and some are non-existent and some are existing in their original capacity. Let this annexure be taken as a part of this judgment appended as schedule to this judgment. These holdings as per the statement of Howrah Municipal Corporation belong to private parties and the private parties who are the owners of these water bodies are not party before us. The learned counsel for the Howrah Municipal Corporation has submitted that these holdings of water bodies has been recorded with the Municipal Corporation as water bodies as per provisions of Howrah Municipal Act. 1980 and development permission can only be given by the Howrah Municipal Corporation. It was pointed out by the petitioner that according to the provisions of West Bengal Town & Country (Planning & Development) Act, 1979 the development permission can only be given by the Municipal Corporation and the Municipal Corporation should not grant permission for conversion of these water bodies as this is going to seriously affect the ecological balance. The learned counsel for the Howrah Municipal Corporation has submitted that the granting of permission for converting these

water bodies is governed by West Bengal Town & Country (Planning & Development) Act, 1979 and it was pointed out that section 2(12) of the Act defines the land which reads as under:

2(12). Land shall have the same meaning as in the Land Acquisition Act, 1994 and shall include land covered by water.

2. It is also pointed out that for development of these lands permission has to be obtained from the Prescribed Authority. The expression "development" has been defined in Section 2(7) of the Act which reads as under:

2(7). "development" with its grammatical variations means the carrying out of building, engineering, mining or other operations, in or, over, or under land or the making of any material change in any building or land or in the use of any building or land and includes division of any land.

3. Section 46 of the Act which deals with permission for development of such land. Section 46 reads as under :

46(1). Any person or body (excluding a department of the Central or the State Government or any local authority) intending to carry out any development on any land shall make an application in writing to the Planning Authority or Development Authority for permission in such form and containing such particulars and accompanied by such documents and plans as may be prescribed.

(2) on such application having been duly made, and on payment of the development charge as may be assessed under Chapter IX,-

(a) the Planning Authority or the Development Authority may pass an order, -

(i) granting permission unconditionally; or

(ii) granting permission subject to such conditions as it may think fit; or

(iii) refusing permission.

(b) without prejudice to the generality of clause (a) of this subsection the concerned authority may impose conditions-

(i) to the effect that the permission granted is only for a limited period and that after the expiry of that period, the land shall be restored to its previous condition or the use of the land permitted shall be discontinued;

(ii) for regulating the development or use of any other land under the control of the applicant or for the carrying out of works on any such land as may appear to the authority expedient for the purpose of the permitted development.

3. (i) The concerned authority in dealing with the applications for permission shall have regard to-

(a) the provisions of the development plan, if it has come into operation; and

(b) any other material consideration.

(ii) the provision of sub-section (1) shall not apply to applications under sub-section (5).

(4) When permission is granted subject to conditions or is refused, the grounds of imposing such conditions or such refusal shall be recorded in the order and the order shall be communicated to the applicant.

(5) In the case of department of the Central or the State Government or any local authority (where the local authority is not also the Development Authority) intending to carry out any development other than operational constructions (which shall always be outside the purview of the Planning or Development Authority), on any land, the concerned department or authority, as the case may be, shall notify in writing to the Development Authority of its intention to do so, giving full particulars thereof and accompanied by such documents and plans as may be directed by the State Government from time to time, at least, one month prior to the undertaking of such development.

(6) Where the concerned authority raises any objection in respect of the conformity of the proposed development either to any development plan under preparation, or to any of the building bye-laws in force at the time, or due to any other material consideration under sub-section (7), the department or the authority, as the case may be, shall-

(a) either make necessary modifications in the proposals for development to meet the objections, or

(b) submit the proposals for development together with objections raised by the concerned authority to the State Government for decision. When proposals and objections have been submitted, no development shall be undertaken until the State Government has finally decided on the matter.

(7) The State Government on receipt of the proposals for development together with the objections of the concerned authority, shall either approve the proposals with or without modifications or direct the concerned authority to make such modifications in the proposals as it considers necessary in the circumstances.

4. As per Section 46 an application has to be made to the Planning Authority or the Development Authority for permission for development and on such application being made on payment of certain charges the Planning Authority or the Development Authority may grant a permission unconditionally or conditionally or it can refuse the permission. This power of the Planning Authority or the Development Authority has been delegated to the local bodies. A notification was issued on 6th April, 1985 in exercise of power u/s 134 of the Act. The Calcutta Metropolitan

Development Authority has delegated its power u/s 46 to the local bodies of the respective jurisdiction mentioned in the schedule. This notification was further amended on 6th November, 1986. Since we are specifically concerned with the filling of water bodies, therefore, the amendment which has been inserted after clause No. 12 in the notification dated 6th April, 1985 that is clause Nos. 13 and 14 are relevant for our purpose which read as under :

13. Filling of tanks/ponds/water body/marshy land etc. is development within the meaning of sub-section (7) of Section 2 of the West Bengal Town and Country (Planning & Development) Act, 1979. For such development no permission shall be given for the tanks/ponds/water body/marshy land etc. if it is considered necessary (a) for being used as public water body, (b) for maintaining the drainage facility of the locality, (c) fire fighting purpose, (d) for restraining the existing use for environmental and ecological points of view, (e) for pisciculture purpose, (f) for any other material consideration of public interest as may be deemed fit by the concerned local authority.

14. Where the application for development permission includes, contains or implies conversion of agricultural land to other use like residential, industrial or commercial, no development permission shall be given unless the applicant obtains previous permission under the West Bengal Land Reforms Act, 1956 from the Collector having jurisdiction over the matter.

5. As per Clause 13 of the amended notification dated 6th November. 1986 which has been negatively coached that no permission shall be given for development of the tanks/ponds/water body/marshy land etc. if it is considered necessary for use as a public water body or for maintaining the drainage facility of the locality or for fire fighting purpose or for restraining the existing use for environmental and ecological points of or for pisciculture purpose or for any other material consideration of interest as may be deemed fit by the concerned local authority. The it becomes very clear that the Howrah Municipal Corporation while granting permission for development has to see the mandate of this Rule. If the water bodies are required for the aforesaid purposes then in that case no permission for development can be given. Looking to this stringent condition the mandate is that no development of water bodies shall be undertaken if the continuation of the water body is required for the aforesaid purpose. As we have already mentioned that the water bodies are necessary for maintaining ecology of the area and that stands fully affirmed by Clause 13 of the amended notification as quoted above. As such it is the responsibility of the Howrah Municipal Corporation to see to it that these water bodies are maintained. A judicial notice can be taken that large number of water bodies have been filled up as per the report which has been filed by the Pollution Control Board on a joint inspection in terms of the orders of this court and these encroachment on the ecology is in progress by filling up these water bodies and developing them to multi storied. Therefore this encroachment and violation of the

environment has to be stopped. The Corporation has already been armed with necessary powers but it seems that the Corporation is not vigilant and they are not taking effective steps for maintaining these water bodies. After introduction of clause 13 by the amended notification dated 6th November, 1986 there is hardly any discretion left with the Corporation for development of these water bodies except as aforesaid. The petitioner No. 2 (appearing in person) has also invited our attention to the importance of these water bodies by emphasizing that the Central Ground Water Authority, Ministry of Water Resources, Government of India, has issued directions to the residential societies/institutions/ schools/hotels/industrial units situated at various places of Delhi, Haryana, U.P. that they must go for rooftop rainwater harvesting system. This is because that the ground water level is day by day receding. It is also submitted by him that apart from this rooftop rainwater harvesting, system, these water bodies play a very significant role in augmenting the recharge of the wells in and around that area. If these water bodies are developed then the recharge of the wells and tube wells in and around that area will be affected. It is further submitted that if this madness of development is not stopped and these water bodies are not maintained then the underground water level will go to further low and it may cause serious inconvenience to the public at large who are dependent on this ground water. The anxiety shown by the petitioner (in person) is not d. it is true that day in and day out we find that these water bodies are being indiscriminately covered by developers and as a result of which collection of rain water through these water bodies is reduced and recharging of the wells is also minimized. The ground water level in the wells is going down day by day. There cannot be two opinions in the matter that maintenance of these water bodies is essential for ecology of this township and if it is not checked then it may cause serious crisis. Apart from recharging the wells the purpose of the maintenance of these water bodies are also essential for the flower and fauna also because these water bodies maintains the humidity in the area that supplies sustenance to flower and fauna. It also reduces the soil erosion. Therefore, in these circumstances it is directed that the Howrah Municipal Corporation should be vigilant and they should not readily permit development of these water bodies and they must strictly adhere to Clause 13 of the notification dated 6th November, 1986 as quoted above. As we have seen that there is a great dispute with regard to number of the water bodies in existence therefore we have directed a joint inspection and the report of the joint inspection team is annexed as a schedule to this judgment. All the water bodies which are in existence may be 40% filled up or wherever de-silting is required or not or whether in possession of private persons or not shall be maintained. A list of all these water bodies which has been given as a schedule to this judgement be sent to all the police stations and they are directed to keep vigilance over these water bodies which are in existence of the concerned police station. It will be the responsibility of the concerned police station to see that these water bodies are not filled. The Municipal Corporation of Howrah will also keep a proper vigil over the maintenance of these water bodies and their Inspector will also keep vigilance over

the area and as and when any attempt is made by any body or persons to fill the water bodies without permission of the Municipal Corporation then proper action should be initiated against those person or body or persons and report should be made to the concerned police station and the concerned police station will see to it that no illegal filling of these water bodies is undertaken by taking effective measures. The Howrah Municipal Corporation is directed to forward a copy of the list of water bodies to all the concerned police station and the officer in charge of the concerned police stations are directed to ensure that these water bodies are not filled up and proper vigilance is kept. Our attention was also invited to all application made by Smt. Renuka Sen that an inquiry has been made by Howrah Municipal Corporation as to the extent of water body in holding No. 3, Kuchil Sarkar Lane and as per measurement water body has a total area of 800 sq. ft. approximately. But still Howrah Municipal Corporation issued a notice to stop work. It is also submitted that the petitioner is not covering the water body, they are making construction beyond the water body. Be that as it may, the Howrah Municipal Corporation may measure the area of the water body again and if the petitioner is; making construction beyond the water body then it will be open for Howrah Municipal Corporation to pass appropriate order. This disposes of the application of Smt. Renuka Sen. The petition of Howrah Ganatantrik Nagarik Samity & Ors. is accordingly disposed of with the above directions. No order as to costs.

Girish Chandra Gupta, J.

I agree.