



**Government of West Bengal  
Department of Environment**

**East Kolkata Wetlands Management Authority**

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No: 206/CTO/EN/420/2017-2018(Form-1)

Date: 27.05.2022

**Reasoned Order**

In compliance with the Order dated 15.03.2022 of the Hon'ble High Court at Calcutta communicated to this office on 30.03.2022 in the matter of B.K. Roy Foundation & Another Vs. The State of West Bengal & Others, Respondent No. 2 i.e. the Chief Technical Officer, East Kolkata Wetlands Management Authority (EKWMA) provided the applicant-petitioners, B.K. Roy Foundation, with an opportunity of hearing on 20.04.2022. The hearing was called with respect to the reconsideration of the application in Form 1 received by the office of the EKWMA on 28.12.2016 under Rule 8 of the East Kolkata Wetlands (Conservation and Management) Rules, 2006 from Sri Pradosh Kumar Janaray, Secretary, B.K. Roy Foundation with address at 91/1, Southern Avenue, Kolkata-700029. The said application was for the purpose of education, healthcare and rural development on the land in question at part of RS Dag Nos. 2 and 3, Mouza Kharki, J.L. No. 9, P.S. Sonarpur (presently under PS Narendrapur), Dist. South 24 Parganas.

As per the East Kolkata Wetlands (Conservation and Management) Act, 2006 (hereinafter referred to as the "EKW Act of 2006") R.S. Dag No. 2 is classified as "Substantially water body oriented area (full)" and R.S. Dag No. 3 is classified as "Substantially water body oriented area (part)" and "Urban/ Rural settlement area (part)". As per the Record of Rights (Parcha) the land classification of both RS Dag nos. 2 and 3 is "Bastu".

**CASE HISTORY:**

Sri Pradosh Kumar Janaray, Secretary, B.K. Roy Foundation submitted an application in Form 1 which was received by the office of the EKWMA on 28.12.2016 under Rule 8 of the East Kolkata Wetlands (Conservation and Management) Rules, 2006. The applicant mentioned that the purpose of application is for promotion of education, healthcare, etc. by constructing a building. As per the East Kolkata Wetlands (Conservation and Management) Act, 2006 RS Dag no. 2 is classified as "Substantially water body oriented area(full)" and RS Dag no. 3 is classified as "Substantially water body oriented area (part)" and "Urban / Rural settlement area (part)". As per the Record of Rights (Parcha) the land classification of both RS Dag nos. 2 and 3 is "Bastu".

Due to the difference of land classification between the Land Reforms record (Record of Rights) and the Schedule of the EKW Act of 2006, a joint field inspection was conducted on 22.11.2017 at the subject land with representatives of the Office of the BL&LRO and the EKWMA. The subject land being a part of RS Dag nos. 2 and 3 was identified by the joint field inspection team. According to the joint field inspection report, water bodies existed on the portion of the subject land of the applicant-petitioners, while a portion of land was found lying vacant. In the said water bodies, pisciculture was going on at that time.

On 20.02.2018, the EKWMA informed Shri P.K. Janaray, Secretary, B.K. Roy Foundation, about the rejection of the application dated 28.12.2016 since the above subject land is within East Kolkata Wetlands governed by the Wetlands (Conservation and Management) Rules, 2017 (hereinafter referred to as the "Wetlands Rules of 2017") notified by the Government of India. According to the said Rules any construction of permanent nature is prohibited in wetlands.

On 04.07.2018, B.K. Roy Foundation filed a Writ Petition vide WP No. 11498 (W) of 2018 which was later on renumbered as WPA 11498 of 2018 in the Hon'ble High Court at Calcutta. On 15.03.2022 the Hon'ble High Court at Calcutta disposed of the matter with the following direction: "*The Chief Technical Officer being the respondent No. 2 is directed to reconsider the application filed by the petitioners in Form 1, which was received by the authority on December 28, 2016 afresh and dispose of the same by passing a reasoned order after giving an opportunity of hearing to the petitioners.*"

As per the Order dated 15.03.2022 of the Hon'ble High Court at Calcutta, on 20.04.2022 the Chief Technical Officer, EKWMA provided an opportunity of hearing to the applicant-petitioners B.K. Roy Foundation for reconsideration of the application dated 28.12.2016 in Form 1 on the subject land at part of R.S. Dag Nos. 2 and 3, Mouza-Kharki, J.L. No. 9, P.S. Sonarpur (presently under PS Narensrapur), Dist. South 24 Parganas.

#### HEARING:

The following persons attended the hearing on behalf of the applicant-petitioners:

- Shri P.K. Janaray, Secretary, B.K. Roy Foundation.
- Shri Samir Kumar Chakrabarti, Advocate.

During the hearing the Secretary, B.K. Roy Foundation said that they want to make building construction for education and healthcare purposes. And, the culvert has been made in front of their land as part of their rural development for the local people.

On 22.04.2022, Secretary, B.K. Roy Foundation made the following submission before the Chief Technical Officer, EKWMA:

- A letter dated 22.04.2022 along with copies of the following two plans approved by Pradhan, Kheadaha-II Gram Panchayat in 2014:
  1. Motorable bridge on canal (culvert),
  2. Boundary wall of the subject land.

#### CONCLUSION:

While considering the application dated 28.12.2016 submitted by B.K. Roy Foundation as well as examining the available records the following points were considered:



1. According to Section 9 of the EKW Act of 2006, notwithstanding anything contained in any law for the time being in force, every person holding any land in the East Kolkata Wetlands shall maintain and preserve such land in a manner that its area is not diminished, or character is not changed except with the previous sanction of the Authority (EKWMA). So, the aforesaid two plans approved by Pradhan, Kheadaha II Gram Panchayat are not tenable and those are *void ab initio*.
2. As per the published judgment of the Hon'ble Calcutta High Court in the matter of PUBLIC Vs. State of West Bengal & Others in 1992 the State Respondents were directed to maintain the nature and character of the wetlands in their present form.
3. On 09.12.2011, an order was passed by the then Chief Technical Officer, East Kolkata Wetlands Management Authority (EKWMA) stating that in accordance with the 17<sup>th</sup> meeting of the EKWMA held on 28.09.2011, the following resolution had been taken:
  - a. No new No Objection Certificate (NOC) for conversion of land shall be granted by the Authority.
  - b. All NOCs granted so far shall be revoked.The applicant-petitioners applied before the EKWMA for change of character or change of mode of use of the subject land in the year 2016.
4. From the photographs annexed with the report of the joint field inspection conducted on 22.11.2017 it was found that water bodies existed at the land of the applicant-petitioners. This corroborates the land classifications mentioned in the Schedule I of the EKW Act of 2006.
5. East Kolkata Wetlands (EKW) being a Ramsar site came under the purview of the Wetlands (Conservation and Management) Rules, 2010 under the Environment (Protection) Act, 1986 notified by the Government of India from 04.12.2010. As per Rule 4(1)(vi) of the said Rules of 2010 any construction of a permanent nature was prohibited within the East Kolkata Wetlands.
6. In the year 2017, the Wetlands (Conservation and Management) Rules, 2010 were superseded by the Wetlands (Conservation and Management) Rules, 2017. Rule 4(2)(vi) of the Wetlands Rules of 2017 retained the same prohibition as mentioned in Rule 4(1)(vi) of the Wetlands Rules of 2010.
7. B.K. Roy Foundation has mentioned in their application in Form 1 that they want to make building construction at the subject land. But, as per Rule 4(2)(vi) of the Wetlands Rules of 2017 any construction of a permanent nature is prohibited within the East Kolkata Wetlands.

The Chief Technical Officer, East Kolkata Wetlands Management Authority has examined the matter and upon reconsidering all the above mentioned points including the imperative of environment protection, has decided not to grant NOC or sanction order under Section 10 of the EKW Act of 2006 to the applicant-petitioners, B.K. Roy

oundation. The applicant-petitioners are also directed to abide by the provisions of the East Kolkata Wetlands (Conservation and Management) Act, 2006 and the Wetlands (Conservation and Management) Rules, 2017.

All concerned may be informed accordingly.



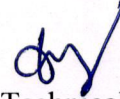
Chief Technical Officer

East Kolkata Wetlands Management Authority



Copy for information to:

1. PS to the Hon'ble Minister-in-Charge, Environment Department
2. Additional Chief Secretary, Environment Department and Member Secretary, East Kolkata Wetlands Management Authority
3. District Magistrate, Dist South 24 Parganas
4. The Superintendent of Police, Baruipur Police District
5. Block Land and Land Reforms Officer, Sonarpur
6. The Officer-in-Charge, PS Narendrapur
7. Pradhan, Kheadaha II Gram Panchayat
8. The Secretary, BK Roy Foundation
9. Guard File



Chief Technical Officer

East Kolkata Wetlands Management Authority