

Item No. 03

**BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
(Through Video Conferencing)**

Original Application No. 18/2016 (EZ)  
(I.A. No. 25/2020)

Bishnu Pada Pakhira Applicant(s)

Versus

West Bengal Pollution Control Board & Ors. Respondent(s)

Date of hearing: 15.07.2020

**CORAM: HON'BLE MR. JUSTICE S. P. WANGDI, JUDICIAL MEMBER  
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

For Applicant (s): Ms. Leena Mukherjee, Advocate along  
with Mr. S.K. Bhattacharya, Advocates

For Respondent(s): Mr. Bikash Kargupta, Advocate for  
Respondents No. 2, 3, 4, 6 & 9 along with  
Mr. Vivek Kumar, Principal Secretary,  
Deptt. of Environment & Member  
Secretary, EKWMA.  
Dr. Pabitra Pal Choudhury, Senior  
Advocate along with Mr. Tapan Kumar  
Manna, Advocate and Mr. Amlesh Ray,  
Advocate for Respondent No. 5.  
Mr. Dipanjan Ghosh, Advocate for  
WBPCB.

**ORDER**

1. Case taken up by video conference on *Vidyo App*.
2. The Applicant who claims to be a public spirited citizen  
and a social activist of Arambagh-Khanakul area, District

Hooghly, West Bengal, has filed the case raising serious concern against the construction of a residential complex in the name and style of 'Urban Sabhujayan' besides the E.M. Bye-pass in Kolkata which would contain about 2000 flats. It is stated that the construction of the complex has been started without obtaining sanction of the building plan, Consents and clearance of the State Pollution Control Board (PCB). It is further stated that while undertaking the construction work of the project, wetlands have been filled up in violation of the East Kolkata Wetlands (Conservation and Management) Act, 2006. Such construction is alleged to have been allowed on the strength of false papers obtained from the office of the BL&LRO and DL&LRO. Besides these, it is also alleged that the project lies in the vicinity of the busy E.M. Bye-pass in the city of Kolkata further contributing to the pollution load and causing hazard to the health of the local people. The Applicant, thus, prays *inter alia* for restoration of the wetlands to its original condition.

3. In his reply, the Respondent No. 5, who is the Director of the builder company ("the Builder" for short), has objected to the application denying all material allegations

made in the O.A. It is contended that the project had been taken up after obtaining requisite approvals in the year 2004 and its construction started in the same year before the commencement of the East Kolkata Wetlands (Conservation and Management) Act, 2006.

4. The Respondent No. 6, East Kolkata Wetland Management Authority (EKWMA), filed an affidavit *inter alia* placing the following facts:-

- “a) that a number of applications were received for change of character or mode of use of land in the East Kolkata Wetlands (EKW) for making building constructions. In accordance with Section 10 of East Kolkata Wetlands (Conservation and Management) Act, 2006 the East Kolkata Wetlands Management Authority (EKWMA) after examining the applications forwarded the same to the District Magistrate, 24 Parganas (South) for necessary action under Rule 9(1) of EKW Rules, 2006 and under section 4(c) of W.B.L.R. Act, 1955.**
- b) In the 17<sup>th</sup> Meeting held on 28.09.2011, the EKWMA decided that no new conversion of land shall be granted by the Authority and all NOCs granted so far shall be revoked. Accordingly, the Chief Technical Officer (CTO), EKWMA issued an order vide no. CTO/EN/2131(186)/11 dated 09.12.2011 which cancelled all the NOCs issued from 31.12.2010 onwards. This order was forwarded to all the applicants including those of RS Dag no. 9 of Mouza Jagatipota, JL no. 3, P.S. Sonarpur, Dist. 24 Pargans (South). The letter of Chief Technical Officer is annexed herewith and marked as annexure R/1.**
- c) Being aggrieved with the said order Smt. Radha Sanyal and six others filed W.P. No. 704(W) of 2012 in the Hon’ble High Court at Calcutta.**
- d) The Hon’ble High Court was pleased to pass an order dated 21.03.2012 with a direction to the Collector, District South 24 Parganas to pass a reasoned order. The copy of the order of the High Court is marked as Annexure R/2.”**

5. It was further stated that a stop work notice was issued on 10.08.2012 against the unauthorized construction work going on a portion of RS Dag No. 9, Mouza Jagatipota, JL No. 3, P.S. Sonarpur, District South 24 Parganas and FIR lodged with the P.S. Sonarpur against the large unauthorized construction work. In response, investigation by P.S. Sonarpur in Case No. 731 dated 11.08.2012 was commenced with culminating in a charge sheet being filed against several persons trails in respect of which are stated to be still pending adjudication before the ACJM Court, Baruipur. Later, *vide* letter dated 19.08.2014, the EKWMA also intimated the In-charge, P.S. Sonarpur of the violator being Bhola Paik, the Respondent No. 5. On the unauthorized construction work continuing unabated, the EKWMA by letter dated 05.08.2015 requested the Inspector In-charge, P.S. Sonarpur, to take immediate steps to stop the illegal construction. It has been averred categorically that the Builder had neither taken permission from the EKWMA nor obtained Environmental Clearance from the State Level Environmental Impact Assessment Authority (for short 'the SEIAA').

6. In the affidavit filed by the ADM and DL & LRO, South 34 Parganas, it is stated that as the builder had never applied for conversion of the said land, no permission under Section 4(C) of the West Bengal Land Reforms Act, 1955 could have been granted. In a show cause filed by the Respondent No. 5 to order dated 10.11.2016, Respondent No. 5 has sought to justify the construction by tracing the genesis of the transfer of the questioned land in the manner as follows:-

- “(a) Long prior to the year 1980 one Kali Charan Pramanik was the absolute owner and exclusively entitled to a piece and plot of bastu land measuring 51 bighas more or less located and identified as Dag No 9, Mouza Jagatipota, P.S. Sonarpur in the State of West Bengal in the public Record-of Rights.***
- (b) In or about 1983 the said Kali Charan Pramanik died leaving several heirs and legal representatives who collectively came to be referred to as “Bijay Krishna Pramanik and others” in the locality.***
- (c) Sometime around 1982 Bijay Krishan Pramanik and others of his family entered into a collaboration with one Durga Das Mukherjee and in joint venture between themselves they set up a project named as “Sabujanchal Cooperative Housing Society Limited” to make several independent constructions on their lands. The said consortium divided the said area of 51 bighas of bastu lands into about 170 distinct plots measuring between 3 and 5 cottahs each more or less, and between the years 1987/88 sold and delivered possession of the same to about 200 individuals for valuable consideration.***
- (d) It will appear from the ROR that each of the said plot owners after due purchase duly mutated their individual names in the ROR against the respective plots of land acquired by each of them. The plot owners then collectively set up a project named as “Sabujanchal Cooperative Housing Society Limited” which ultimately was renamed as “Urban Sabujayan” for construction of homes.***
- (e) Thereafter, each of the said plot owners duly applied to the kheyadaha II Gram Panchayat having jurisdiction in the matter, for erecting structures on***

*each of their respective plots. All such applications were duly accepted and processed and after following the prescribed conditions in the West Bengal Panchayat (GP Admn.) Rules, 2004 and following all due processes each of them obtained a sanction plan to make necessary constructions on their respective plots of land.*

- (f) It may be reiterated that at all material time the said area being Dag No 9 in Mouza-Jagatipota where the plots were located was recorded in the Record of Rights as being "Bastu Land", and moreover, save and except for a small part in the central portion where a small pond was situated, there were no other water bodies or wetlands of any kind in the rest of the whole of Dag No. 9. In this connection, I shall also crave leave to refer to and rely upon the Table-IX of East Kolkata Wetlands (Conservation and Management) Act, 2006 at the hearing of this Application.*
- (g) Out of the several sanction plans obtained by the plot owners, a specimen, in respect of one of the plots is hereto annexed and marked Exhibit-R1, and I shall crave leave to refer to and rely on all similar sanction plans in respect of each of the concerned plots at the hearing of this application, if necessary. It is further pertinent to note that each of the sanction plans was approved and granted by the said Gram Panchayat by and before the year 2004.*
- (h) Subsequently, however, since the owners of several plots lacked the capital and infrastructure to complete their respective structures, they approached and entered into collaboration with me thereby obtained professional assistance for completion of their respective plants from me.*
- (i) Thereafter the answering respondent built a wall all around the concerned lands and commenced construction of the buildings on each of the plots after entering into appropriate agreements in that behalf with the plot owners and the said Society constituted by them, as aforesaid.*
- (j) It is pertinent to state categorically here that no part of the 'pukur' or pond centrally located in the said Dag has been encroached upon or interfered with in any manner whatsoever by the answering respondent or any of the plot owners at all; and in fact the same is still intact and intended to be so maintained for the benefit of the entire surrounding environment. Save as aforesaid, the allegations contained in the said paragraph are denied."*

7. From the above it can be seen that the Respondent No. 5 claims to have acquired the project land as a

conglomeration of land measuring three and five cottahs which is standing in the name of about 200 individuals forming a cooperative society initially named “Sabujanchal Cooperative Housing Society Limited” since renamed as “Urban Sabujayan”. Applications were submitted by the plot owners to the Kheyadaha II Gram Panchayat for construction of structures which were said to have been accepted in terms of the West Bengal Panchayat (GP Admn.), Rules 2004. Dag No. 9 in Mouza-Jagatipota where these plots are located were recorded as “Bastu Land” in the Record of Rights and, except for a small pond, there were no other water bodies or wetlands in rest of the area of Dag No. 9. Later for want of financial capability, the owners entered into collaboration with Respondent No. 5 for completion of the project. No part of the pond located in the Dag has been encroached upon and is said to be still intact.

8. Later, in the show cause filed by the Respondent No. 5 against the prayer for interim order, apart from reiterating what had been stated in the show cause affirmed on 06.12.2016, it has been stated as follows:

**“6. Subsequently, as the several plot owners were not in a financial position to undertake the construction**

**activities, and as a result thereof, the said plot owners all got together to engage this answering respondent No. 5 as their common buildings through a Joint Venture Agreement signed in this regard with this answering respondent and the respective plot owners individual.**

- 7. The said plots of land involved in the instant case, are all recorded as “Bastu” or “Homestead Lands” or “Urban/Rural Settlement Area” under the statute i.e. W.B.L.R. Act, 1955, as well as, the EKWMA, 2006 respectively. Section 9 of the EKWMA clearly states that any person holding any land in the EKWMA area shall not convert such land 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 of the said Act.**
- 8. EKWMA, 2006 has recorded the said plots of land in question, as all falling under the prescribed category “Urban/Rural Settlement Area”. Therefore, under no stretch of imagination and regard being had for the expressed provisions of the self-same statute, it can be safely concluded that no permission for conversion of the said plots of land in question, for the purpose of building residential houses thereon could ever be required at any material point of time. This proposition holds good both before and even after coming into existence of the EKWMA, 2006. Prior to 2006 Act, the R.S. records also show that the said plots of land were “Bastu” and therefore, the requirement under Section 9 of EKWMA, inasmuch as, it reads “-----for which it was settled or previously held -----” is concerned. In other words, the requirement to convert as contemplated under the said Section 9 of EKWMA, 2006 did not and cannot arise.**
- 9. It is respectfully submitted that unless and until the statutory requirement as contemplated under Section 9, as aforesaid, arises and/or deemed to have arisen, there is no question of applicability of Section 10 of the EKWMA, 2006. In other words, there is no occasion for granting any permission under Section 10, in the facts and circumstances of the instant case. As such if there is no need for conversion and there is no applicability of Section 10 in the event of building residential houses within the said plot of land in question, the whole issue involving the revocation of the licenses and/or NOCs earlier granted by the EKWMA does not and cannot arise. On the contrary, Section 9 of the Act of 2006 clearly mandates that a land within the East Kolkata Wetlands should be maintained as such in its pristine condition which means, that “Bastu” land or “Urban/Rural Settlement Area” will continue to retain his character as such. Moreover, it is an accepted fact that “Bastu” land is most often used for the construction of residential houses only and not otherwise.”**

9. It is further stated that the BL&LRO in his communication dated 26.09.2014 had opined that the land being a “Bastu Land” there was no necessity of passing any order of conversion of the nature and category of the plots in question and, therefore, there was no need to file the application under Rule 9(1) of the East Kolkata Wetlands Conservation and Management Rule, 2006 read with Sections 9 and 10 of the EKWMA. It is further stated that the plots in question being within the range of three to five cottahs, there was also no necessity of obtaining clearances from the West Bengal PCB and the State Environment Impact Assessment Authority.
10. The Principal Secretary, Land & Land Reforms Department, the Respondent No. 3, in his affidavit states that the entire land within which the construction work is being undertaken falls within the ambit of East Kolkata Wetlands (Conservation & Management) Act, 2006. The matters relating to legality of the change in the use of such land falls within the scope of appraisal under the East Kolkata Wetlands (Conservation & Management) Act, 2006 which prescribes for appropriate authority to decide such matters. According to the Respondent No. 3, the

matter has already been brought to the knowledge of the said authority by the BL&LRO, Sonarpur. It is further stated that since the East Kolkata Wetlands (Conservation & Management) Act, 2006 was not in existence in year 2004, it was within the authority of the Panchayat to sanction the building plans in respect of the land falling within its jurisdiction as in the present case. An affidavit filed by the Block Development Officer, Sonarpur Block states that all 170 old building plans sanctioned before 23.11.2004 were as per the rules and regulation prevailing at that time. In an affidavit filed by the Respondent No. 5 on 21.04.2017, it has been stated that prior to the enforcement of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 on 23.11.2004, it was the West Bengal Panchayat (Gram Panchayat Administration) Rules, 1981, which prevailed before it was repealed by the 2004 Rules. It is contended that the Building Plans in question were sanctioned under the 1981 Rules and not under the 2004 Rules. It may be relevant to note that according to the Respondent No. 5 as per affidavit filed on 29.11.2017, although *vide* order dated 21.03.2012, the Calcutta High Court had directed the Collector, 24 Parganas (South) to dispose off

the applications filed by the petitioners in terms of the provisions of the East Kolkata Wetlands (Conservation & Management) Act, 2006, no action was taken by the said Collector. By filing a supplementary affidavit on 23.04.2018, the Respondent No. 5 has raised yet another question on the *vires* of the East Kolkata Wetlands (Conservation & Management) Act, 2006. It is contended that:-

- i. The State is not empowered/competent to legislate on matters relating to implementation of the International Treaties or Agreements under Article 253 of the Constitution of India except for those matters included under in List II and List III and, therefore, *ultra vires* Article 246 and 253 of the Constitution of India;
- ii. The Wetlands (Conservation & Management) Rules, 2010 framed by the Central Government under Section 25 of the Environment (Protection) Act, 1986 divests the State Government from enacting and would supersede and render *otiose* the provision of the East Kolkata Wetlands (Conservation & Management) Act, 2006 and later by the Wetlands

(Conservation & Management) Rules, 2017 framed under Section 23 of the Environment (Protection) Act, 1986.

iii. The Wetlands (Conservation & Management) Rules, 2017 supersedes the Wetlands (Conservation & Management) Act, 2010 except as respect things done or permitted to have been done before such supersession.

11. Thus, the stand of the Respondent No. 5 is that the East Kolkata Wetlands (Conservation & Management) Act, 2006 is *ultra vires* Article 253 of the Constitution of India and any action taken pursuant thereto would be rendered a nullity and *void ab initio*. Wetlands had not been identified and notified in terms of Rule 7 of the said 2017 Rules that requires preparation of a brief document for each of the wetland identified for Notification after demarcation of wetland boundary.

12. As directed by the Tribunal *vide* order dated 17.04.2028, a report was filed by the Secretary, EKWMA placing on record Google Earth Map of the East Kolkata Wetland for the period prior to the enforcement of the East Kolkata

Wetlands (Conservation & Management) Act, 2006 and immediately thereafter. The affidavit clearly states that the map taken prior to 2006, shows the area in question to be a vacant land. The Google Earth Map of the area taken on 10.12.2012, i.e., immediately after the FIR was lodged with the P.S. Sonarpur by the EKWMA against the unauthorised constructions, however, shows that buildings have been raised over the said land.

13. After having dealt with the various affidavits filed by the parties, it would be necessary for us to survey the events that transpired during the course of the proceedings. Most of the affidavits referred to above have been filed in compliance of the directions passed by Tribunal. It would be evident that *vide* order dated 15.02.2016, directions were issued upon the Government of West Bengal to take all steps and measures in accordance with law and statutory provisions against the construction of Respondent No. 5 and his associates, assignees or representatives.
14. The Member Secretary, EKWMA was impleaded as Respondent No. 6, *vide* order dated 02.05.2016. Order dated 10.11.2016 would reveal that EKWMA had taken a

decision in a meeting held on 28.09.2011 not to grant any new permission for conversion of land and to revoke all NOCs granted till then. In terms of the order dated 09.12.2011, Chief Technical Officer of the EKWMA cancelled all NOCs issued from 31.12.2012 onwards. The stand of the Respondent No. 5, the Builder, that the construction of the residential complex started prior to the enforcement of the East Kolkata Wetlands (Conservation & Management) Act, 2006 and, therefore, not governed by it and that, under the extant law, it was the concerned Panchayat who was competent to grant such permission, was taken due note of. It was also noted that a criminal case lodged by the EKWMA was pending against the Builder in the Court of the ACJM, Baruipur, District South 24 Parganas, as a consequence of the investigation carried out by the P.S. Sonarpur. Based on the facts that had emerged in the case which have been taken note of in the order dated 10.11.2016, the Respondent No. 5 was directed to stop further construction of the residential complex forthwith as an interim measure directing him to show cause as to why the order should not be made absolute.

15. Order dated 14.03.2017, records the production of the original sanction plan of the questioned housing complex by the Respondent No. 5 which was returned back to Respondent no. 5 with a direction to produce it as and when directed to do so. However, it was noted that as per the documents on record, the housing complex was commenced with based on a sanction plan approved on 21.05.2004 which was found to be questionable as the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 came into force in November, 2004. Further question that had arisen was as to whether the actual construction work of the complex commenced before the East Kolkata Wetlands (Conservation and Management) Act, 2006 came into force. The question was significant considering that a criminal case was pending against the Builder before the competent criminal Court under Section 18 of the East Kolkata Wetlands (Conservation and Management) Act, 2006.
16. Considering the averments contained in the affidavits and the documents filed in the case, the following questions emerge for determination:-

- i. Was the sanction plan of the project obtained in the year 2004?
- ii. If the answer to question no. (i) above is in the affirmative, did the construction begin in the year 2004 or any date prior to the enforcement of the East Kolkata Wetlands (Conservation and Management) Act, 2006.
- iii. Whether the Builder had obtained Environmental Clearance from the State Environment Impact Assessment Authority or the MoEF&CC under the extant EIA Notification and, as to whether consent to establish and consent to operate had been obtained from the State Pollution Control Board under the Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974.
- iv. Can it be said that after the framing of the Wetlands (Conservation & Management) Rules, 2010 and later the Wetlands (Conservation & Management) Rules, 2017, the East Kolkata

Wetlands (Conservation & Management) Act, 2006 stands superseded.

- v. To what extent the East Kolkata Wetlands (Conservation and Management) Act, 2006, relevant even if it is to be construed that its subsistence stands diminished after the Wetlands (Conservation & Management) Rules, 2010 and later 2017 Rules were framed by the MoEF&CC under the Environment (Protection) Act, 1986.
- vi. Can it be said that in view of the complaint lodged under Section 18 of the East Kolkata Wetlands (Conservation & Management) Act, 2006 and the consequential filing of the charge-sheet by the P.S. Sonarpur, before the ACJM the present proceedings would be redundant?
- vii. To what extent can this proceeding continue in the light of the fact that the question of *vires* of the East Kolkata Wetlands (Conservation & Management) Act, 2006 is under consideration before the Calcutta High Court?

17. Upon consideration of the materials and documents in the record and the pleadings of the parties, the answer to question no. i cannot be categorically answered in the affirmative but it stands established that the construction of the project began much after enforcement of the East Kolkata Wetlands (Conservation and Management) Act, 2006. This, therefore, also answers question no. ii.
18. Question no. iii is answered in the negative.
19. So far as questions no. iv, v and vii are concerned, we are of the considered opinion that those are matters to be considered by the Hon'ble High Court being presently *sub judice* before it. It would be expedient for the Tribunal not to enter those to avoid conflict of decisions.
20. Question no. vi is answered in the negative.
21. Today, the Principal Secretary, Department of Environment, Government of West Bengal, who is also the Member Secretary, EKWMA, is present before us in terms of order dated 03.07.2020. On our query, it was submitted by him that there are altogether 32 Writ Petitions pending before the Hon'ble Calcutta High Court

out of which 12 Writ Petitions are those filed by the Respondent No. 5 in the present case. Further, in W.P. No. 23341(W) of 2018 order dated 23.12.2019 has been passed which reads as follows:

***“The grievance of the petitioners is directed against an order dated 13<sup>th</sup> December, 2019 passed by the office of the Sub Divisional Magistrate, Baruipur, South 24 Parganas (impugned communication). By the impugned communication it has been directed that certain demolition work is to be carried out by 27th December, 2019.***

***In view of the pendency of the writ petition challenging the applicability of the State Act over the Central Rules I am of the view that this question is very much sub-judice in the instant writ petition. Accordingly, I am of the view that the impugned communication dated 13<sup>th</sup> December, 2019 ought to be stayed.***

***In this background, I direct that there be a complete stay of the communication dated 13<sup>th</sup> December, 2019 passed by the Sub Divisional Magistrate, Baruipur, South 24 Parganas till the disposal of the writ petition.”***

22. It is stated that in view of paragraph 2 of the order, the EKWA has not proceeded further in all cases similar to the one in W.P. No. 23341(W) of 2018.
23. Upon consideration of the facts and circumstances, we are of the view that this case need not remain pending before us and can be disposed off leaving upon the EKWA to decide as to whether it should proceed against the Respondent NO. 5 under Section 4(1)(b) of the East Kolkata Wetlands (Conservation and Management) Act, 2006, in light of the interim order of the order of the

Hon'ble High Court dated 23.12.2019 in W.P. No. 23341(W) of 2018.

24. In the meanwhile, the EKWA shall ensure that there are no encroachments in the East Kolkata wetlands and shall maintain strict vigil to prevent such incidents.
25. With the above directions this O.A. stands disposed off along with connected I.A.
26. No order as to costs.

S.P. Wangdi, JM

Dr. Nagin Nanda, EM

15<sup>th</sup> July, 2020  
O.A. No. 18/2016/EZ  
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