

Item Nos. 04 & 05

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

Execution Application No. 03/2018 (EZ)
(M.A. No. 66/2018) IN O.A. No. 80/2016 (EZ)
WITH
Review Application No. 01/2019 (EZ)
IN
O.A. No. 80/2016 (EZ)

Public (People United for Better Living in Calcutta) Applicant

Versus

East Kolkata Wetlands Management Authority & Anr. Respondent(s)

WITH

Vaidic Dharma Sansthan Applicant

Versus

Public (People United for Better Living in Calcutta) & Ors. Respondent(s)

Date of hearing: 01.07.2019

**CORAM: HON'BLE MR. JUSTICE S. P. WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. SATYAWAN SINGH GARBYAL, EXPERT MEMBER**

For Applicant(s) : Mr. Siddhartha Mitra, Sr. Advocate and
Mr. Santanu Chakraborty, Advocate for
Applicant (In Item No. 4)
Mr. Nikhil Sakhardande, Ms. Manjula
Gupta and Ms. Shubhra Swami, Advocates
(In Item no. 5)

For Respondent (s) : Mr. Bikas Kargupta, Advocate for Respondent
No. 1, 4-6, 9 & 10 (In Item No. 4).
Mr. Nikhil Sakhardande, Ms. Manjula Gupta
and Ms. Shubhra Swami and Mr. Gora
Chand Roy Choudhury, Advocates for
Respondent No. 8 (In Item Nos. 4).
Mr. Siddhartha Mitra, Sr. Advocate and Mr.
Santanu Chajkraborty, Advocate for
Respondent No. 1 (In Item No. 5)
Mr. Bikas Kargupta, Advocate for Respondent
No. 2, 5-7, 9 & 10 (In Item No. 5)

ORDER

1. The Execution Application No. 03/20108 (EZ) has been filed seeking execution of our order dated 25.10.2017 passed in Original

Application No. 80/2016 (EZ) whereby the decision of the East Kolkata Wetlands Management Authority rejecting the application of the Respondent No. 8 in Original Application had been directed to be executed by exercising the powers conferred upon the authorities under clauses (b) & (c) of Section 4 of the East Kolkata Wetlands (Conservation and Management) Act, 2006.

2. Without going into further details of the case, it would be sufficient to note that during the proceedings of the said Execution Application, Review Application No. 01/2019 (EZ) was filed by the Respondent No. 8, *Vaidic Dharma Sansthan, inter alia* seeking for a direction to set aside the impugned order dated 25.10.2017. The primary contention raised in the Review Application is that the impugned order having been passed based on the powers exercised by the East Kolkata Wetlands Management Authority under the East Kolkata Wetlands (Conservation and Management) Act, 2006, the impugned order would rendered a nullity as the said Act had since ceased to exist after the framing of the Central Wetland (Conservation and Management) Rules 2017.
3. It is contended that the Central Wetland (Conservation and Management) Rules 2017 being a Central law issued by the Ministry of Environment Forest & Climate Change in exercise of its powers conferred under Section 5 of the Environment (Protection) Act, 1986, it would override all legislations on the subject passed by the state legislature. It is further the case of the Applicant in the Review Application that the East Kolkata Wetlands (Conservation and Management) Act, 2006 being an Act to give effect to the Ramsar convention of 2006, it is repugnant to and in violation of provisions of Article 253 of the Constitution of India which vests such power only

upon the Central Government. Apart from these, grounds of discrimination have also been agitated in the application.

4. Mr. Nikhil Sakhardande, learned counsel appearing for the Respondent No. 8 who is the Applicant in the Review Application, namely *Vaidic Dharma Sansthan*, submits that although a Writ Petition was filed by the *Sansthan* before the Calcutta High Court challenging the order passed by the East Kolkata Wetlands Management Authority rejecting their application was dismissed, an appeal has been filed against the order of dismissal before the Division Bench of the Calcutta High Court being MAT 134 of 2018 (CAN 4921 of 2019) (CAN 5863 of 2019) which is presently pending consideration. He further submits that a substantive Writ Petition No. 23341/2018 has also been filed before the Calcutta High Court raising the very questions contained in the review application
5. Having considered the various facts and circumstances set out above, we are of the view that the questions raised by the Applicant would require some consideration. We, however, are not inclined to go into those questions in the present proceedings as they do not fall within the domain of the Tribunal but leave it upon the Applicant to raise those in the forum of choice having competent jurisdiction. We also do not intend to pass any orders in furtherance to the proceedings in the Execution Application as the questions raised in the Review Application are germane for consideration of the very jurisdiction of the East Kolkata Wetlands Management Authority to pass the order forming basis of the impugned order of the Tribunal which would go to the root of case.
6. We accordingly dispose off both the Execution Application and Review Application granting liberty of the Respondent No. 8 in the Execution

Application who is the Applicant in the Review Application to take appropriate steps before the Calcutta High Court in Writ Petition No. 23341/2018 within a period of three months from today. Until then the order impugned in the Execution Application shall remain stayed.

7. The parties are at liberty to mention before the Tribunal on the progress made in respect of the proceedings referred to above.
8. No order as to costs.

S. P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Satyawan Singh Garbyal, EM

1st July, 2019
EA No. 03/2018 (EZ) & RA 01/2019 (EZ)
avt

