
(1994) 07 CAL CK 0026

In the Calcutta High Court

Case No : Appeal from Original Order No. 319 of 1994, Matter No. 1036 of 1994

Calcutta Municipal Corporation and others

APPELLANT

Vs

Ganesh Chandra Naskar

RESPONDENT

Date of Decision : 07-07-1994

Acts Referred:

Calcutta Municipal Corporation Act, 1980 — Section 364, 365, 490, 496, 496(1)

Constitution of India, 1950 — Article 133

West Bengal Land Reforms Act, 1955 — Section 1(2)

West Bengal Town and Country (Planning and Development) Act, 1979 — Section 2(7)

Citation : AIR 1995 Cal 1 : 99 CWN 336

Hon'ble Judges : P.K. Majumdar, J; N.K. Bhattacharyya, J

Bench : Division Bench

Advocate : M/s. P.S. Bose, S.K. Mal and A.K. Mazumdar, for the Appellant; Mr. P.K. Mullick, Mr. P. Chatterjee, Mr. D. Kundu and Mr. Prabir Banerjee, for the Respondent

Judgement

N.K. Bhattacharyya, J.—By this appeal the respondents in the writ petition challenged the order/judgment dated 30th March, 1994 passed

by the Hon'ble Mr. Justice Shyamal Kumar Sen in Matter No. 1036 of 1994 allowing the writ petition filed by the petitioner directing the

respondents to issue permission forthwith to the petitioner to fill up the low land in the premises being No. 171/C/1 Picnic Garden Road Calcutta-

7000 39 preferably within six weeks from the date of the communication of the order. The writ petitioner in his writ petition prayed for a writ of

mandamus commanding the respondents and each one of them to forthwith issue permission to the petitioner to fill up the ditches in the premises

being premises No. 171/C/1, Picnic Garden Road, Calcutta-700 039. A writ of certiorari was also prayed along with the prayer for injunction

directing the respondents to forthwith grant permission to the petitioner to fill up the ditches pertaining to the premises referred to above.

2. In the said writ petition the petitioner, inter alia, alleged that the petitioner purchased more or less 1.54 acres of sali land (paddy land) by a deed

of purchase dated 31st May, 1969 which was recorded in the record of rights as sali land. The petitioner further stated that a portion of the said

land measuring more or less 3.5 bighas is low-lying land as such the petitioner could not take any steps for making construction therein without the

permission of the respondents/Corporation Authorities.

3. According to the petitioner the land aforementioned is neither a tank nor a pond but a low-lying land where rain water deposits during monsoon

for a brief period.

4. The Chief Valuer and Surveyor's department in a guideline for sanction and development cases stipulated the guideline. The said guideline is

Annexure D to the writ petition. Paragraphs 6 and 7 of the guideline are set out as under :--

(a) For being used as public water body.

(b) For maintaining the drainage facility of the locality.

(c) Fire fighting purpose

(d) For retaining the existing use for environmental ecological point of view.

(e) For piscicultural purpose.

(f) Any other material consideration.

(6) ""For all development cases covering land area above 500 sq. mts, after all processing has been completed, before placing the case to the MIC,

opinion of the C.M.A. & T.P./Mpl. Plants) should be taken. This is as per prevailing procedure of the Building Department for sanction of the

building cases under the T & C (P & D) Act, 1979.

(7) Filling up of tanks/ponds/ water bodies and 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 tanks/ponds/ water bodies/marshy land if it is considered necessary.

(A) For the use as a public water body.

(B) For maintaining the drainage facility of the locality.

(C) Fire fighting purpose.

(D) For retaining the existing use for environmental /ecological point of views.

(E) For piscicultural purpose.

(F) Any other material consideration of public interest as may be deemed fit by the sanctioning authority.

In this regard for examining these requirements the processing should be done as given below:

Local enquiry and the recommendation of the Borough Committee.

Opinion of Drainage Deptt. of C.M.C.

Opinion of the Director West Bengal Fire Services.

Opinion of the Ch. Mpl. Health Officer and the Member, M.I.C. (Bustee & Environment)

Local enquiry and the opinion of the

Opinion of the Borough Committee/sanctioning authority.

5. The petitioner alleged that in compliance with the said guidelines the petitioner obtained 'No Objection Certificate' from the Health Officer

Calcutta Municipal Corporation and also from the Director of West Bengal Fire Service. The District Health Officer-III by his letter dated 30th

June, 1992 registered his 'No objection' to permit the petitioner to fill up the ponds/ditches in question with consultation of other concerned

departments of C.M.C. observing all sanitary rules. The Director, West Bengal Fire Service by his letter dated 27th January, 1992 informed the

petitioner about their 'No Objection' for back filling of the three low ditches for development purpose only to use as residential area and in that

letter the Director further informed the petitioner that a senior inspector of the department inspected the premises in question and found that all

three of them are low ditches, none of them are natural tank. Only rain water accumulates into them during monsoon and that in other seasons

water is not available in those ditches and that land is a low land of 'sali' type. These two letters are annexed as Annexure E to the writ petition.

6. The petitioner applied to the Chairman of the Borough Committee for permission to fill up the ditches and the application was forwarded by the

Borough Committee to the proper authorities. The petitioner also wrote several

letters to the Executive Engineer (South) Drainage Department, Calcutta Municipal Corporation and also to the Chief Valuer, Calcutta Municipal Corporation. The said letters are annexed as Annexure F to the writ petition. In those letters the petitioner sought permission from the said authorities to fill up tanks/water bodies etc. at premises No. 171/C/1 Picnic Garden Road. The local residents also made a representation (Annexure D to the writ petition) to respondents Nos. 3 and 4 for permission to fill up the said low land on the ground of health hazard. As the petitioner had not been favoured with any reply of his letters (Annexure F) either from the Executive Engineer (South) Drainage Department, Calcutta Municipal Corporation or from the Chief Valuer, Calcutta Municipal Corporation the petitioner took out the writ petition on 21st of January, 1994.

7. On 3rd of February, 1994, the respondent produced the record before the trial Court and Mr. Bose, the learned advocate, pointed out from letter dated 19th March, 1992 addressed to Brindaban Mondal, constituted attorney of the petitioner, that the Chief Valuer and Surveyor of the Calcutta Municipal Corporation by his letter No. CH V/S 915 dated 3rd October, 1991 requested the petitioner to submit 'No Objection Certificate' from the Collector of Land and Land Revenue Department, Government of West Bengal, Writers' Buildings, Calcutta for conversion of wet land into solid land.

8. Mr. Kundu, the learned advocate for the petitioner, brought it to the notice of the trial Court that the area in question is within the Calcutta Municipal area and as such the Collector of Land and Land Revenue Department is not competent person to issue such 'No Objection Certificate'. He also pointed out that there is no conversion of land or change of user to be made by the petitioner or is contemplated by him and as such the question of 'No Objection Certificate' from the Collector of Land and Land Revenue, Government of West Bengal does not arise. Mr. Bose complained that the petitioner did not give any reply to such letter of respondent No. 4. On such submission by the learned advocates for the parties the trial Court by its order dated 3-2-94 directed the petitioner to give a reply to such letter within three weeks from the date of the order and the respondent the Competent Authority of the Calcutta Municipal Corporation, was directed to hear the writ petitioner. Liberty was given to

the petitioner to urge and submit all the points that may be deemed fit and proper or may be advised in accordance with the law including the point of "No Objection Certificate." The respondent No. 4 was also directed to consider the application made by the local residents (Annexure G to the writ petition) and to take steps according to law. The competent authority was directed to dispose of both the applications within four weeks from the date of filing the reply by the petitioner. The competent authority was also directed to submit their finding in sealed cover before the trial Court after six weeks.

9. By order dated 18-3-94 of the trial Court, which was passed in presence of the learned advocate, for the parties, the Chief Valuer, Calcutta

Municipal Corporation was directed to hear the petition on the basis of the reply of the petitioner dated 11-2-94 at 12 noon. The Municipal

Architect and Town Planner was directed to fix the hearing u/s 496 of the Calcutta Municipal Act, 1980 at 3 P.M. in respect of the representation

received by him from the local residents (Annexure G to the writ petition). The finding was directed to be produced before the trial Court in scaled

cover by 25-3-94. The Chief Valuer, Calcutta Municipal Corporation was directed to be present in person in Court on 25-3-94. The Chief

Valuer and Surveyor of the Calcutta Municipal Corporation submitted his report dated 23-4-94 before the trial Court (Annexure 'C' to the stay

application) wherein he pointed out that petitioner should get necessary clearance for filling up the tank and low land from the Fisheries

Department, Government of West Bengal and to submit the same to him and after getting such observation he would submit his report to the

Mayor-in-Council in an item form for consideration. The Municipal Architect and Town Planner, C.M.C. after hearing the parties concerned on

22nd March of 1994 submitted his report dated 25-3-94 before the trial Court (Annexure C to the stay application). In his report the Municipal

Architect and Town Planner C.M.C., inter alia observed that the

premises No. 171/C/I Picnic Garden Road has already been sub-divided into 37 plots without any sanction under Sections 364 and 365 of the

C.M.C. Act 1980.

He further observed in his report as under:--

That u/s 496 of the C.M.C. Act, 1980 the owner is liable for the pollution of the

waterbody.

That the owners should not be allowed to fill up a waterbody which had an area of more than 1500 sq. mt. as stipulated in the Outline

Development Plan prepared under the West Bengal Town and Country (P&D) Act, 1979 and the area and depth of that waterbody are reduced

by the owner himself in an unauthorised manner and the same reduction of depth and area of the waterbody is sited for the permission for the filling

up of that water-body.

That the Health Department and/or any department yet found out any reason for which it becomes extremely necessary to pass an order to fill up

the waterbody.

That the plans and documents etc. submitted by the owner is varying widely and cannot be fully relied upon".

10. On such finding the Municipal Architect and Town Planner of the Calcutta Municipal Corporation recorded the following order:--

I am of the opinion that the waterbodies in the Dag Nos. 52,53,54 and 55 and 82 are to be restored by the owner as waterbody by cleaning u/S.

496 of the C.M.C. Act 1980. The cleaning shall include removal of unauthorised filled up materials, demolition of illegal subdivision walls and

removal of unauthorised structures constructed upon the illegally filled up land. These works are to be done within a period of one month from the

date of receiving such order.

11. The learned trial Judge after hearing the learned advocates for the parties and on consideration of the materials on record disposed of the writ

application by his order dated 30th March, 1994. In that order he recorded that there is no post of Collector, Land and Land Revenue

Department, Government of West Bengal Writers' Buildings Calcutta and that the West Bengal Land Reforms Act, 1955 being Section 1(2)

thereof specifically excluded the area where the land in question is situated. He also observed that ""The West Bengal Inland Fisheries

(Amendment) Bill, 1992 (Bill No. 38 of 1992)"" which was published in the extraordinary Calcutta Gazette on 1st December, 1992 has not yet

been matured into an Act and as such no reliance can be placed upon the said bill and it is not necessary for the petitioner to apply for permission

only on the basis of draft bill which has been placed before the Assembly. On the

basis of the above observation the trial Court while disposing of

the writ application directed the respondents to issue permission to the petitioner to fill up the low land in the premises being No. 171/C/1 Picnic

Garden Road, Calcutta 700 039 forthwith preferably within six weeks from the date of the communication of the order.

12. The respondents being aggrieved by the said order preferred the present appeal and also moved an application for stay of the order of the trial

Court dated 30th March, 1993 and obtained an order of stay.

13. The writ petitioner figured as respondent No. 1 in the appeal and he filed an affidavit-in-opposition against the stay application. The appellants

also filed a reply thereto.

14. Mr. Bose, the learned advocate appearing for the appellants contended that the trial Court has passed the impugned order' without taking into

consideration the facts and circumstances of the case. He further contended that the Court has also failed to take into consideration that before

passing the order of the Court the Municipal Architect and Town Planner has already passed an order upon an application made before him by the

residents of the locality in exercise of his power u/s 4% of the Calcutta Municipal Corporation Act, 1980. He also contended that the report of the

Municipal Architect and Town Planner has not been considered by the learned trial Court in its proper perspective.

15. In the next place Mr. Bose contended that the original letters of 'No Objection' from the Director of Fire Service and also the District Health

Officer-III have not been filed before the Chief Valuer and Surveyor of the , Calcutta Municipal Corporation by the petitioner and that fact has not

been taken into consideration by the learned trial Judge. Mr. Bose argued that the learned trial Judge overlooked the fact that the portion ""1"" --

measuring about 1353 sq. mt. was found dry and the portion marked '2' and '3' measuring about 900 sq. mt. and 480 sq. mt respectively

contained very little water and individually none of these portions is more than 2089 mts. and as such it is the discretion of the Mayor-in-Council of

the Calcutta Municipal Corporation to consider the appeal. Mr. Bose contended that for the aforesaid reasons the impugned order warrants

interference by the Appellate Court.

16. Mr. Mullick, the learned senior advocate for respondent No. 1, on the other

hand contended, by referring to paragraph 26 of the stay application, that portion '1' of the land measuring about 1353 sq. mt. was a dry and the portion marked '2' and '3' measuring 900 sq. mt. and 480 sq. mt. respectively contained very little water and individually none of these portions is more than 2089 mts. He further contended, by referring to paragraph 27 of the said application, that the guideline drawn in the proceeding of the Mayor-in-Council of the Calcutta Municipal Corporation dated 26-7-91 is not very clear in context of definition of 'wet land' or 'the private land' that can be utilised for the purpose of holding reservoir for the surrounding drainage. He further contended that as the land is dry and as there is no well, pool, ditch, tank, pond, pit or marshy or undrained ground or and cistern reservoir or water butt or any other receptacle of place where water is still or accumulates or any waste or stagnant water, whether within any private enclosure or not, as contemplated in-Section 496 of the Calcutta Municipal Act, 1980, invocation of Section 496 of the Calcutta Municipal Act, 1980 by the Municipal Architect and Town Planner, C.M.C. was unwarranted directing the petitioner to restore the water bodies in dag Nos. 52, 53,54, 55 and 82 as water bodies by cleaning the said plots. He further directed that the clearing shall include removal of unauthorised filled up materials, demolition of illegal sub division wells and removal of unauthorised structures constructed upon the illegally filled up land. He further contended that Section 496 of the Calcutta Municipal Corporation Act, 1980 envisages power to direct to fill unwholesome well, pool etc. He further contended that provision can be taken recourse to in reference to any well, pool, ditch, tank, pond pit or marshy or undrained ground or any cistern, reservoir or water but or any other receptacle or place where water is stored or accumulates or any waste or stagnant water, whether within any private enclosure or not by the Municipal Commissioner. As the land in question does not come within the purview of any of the description and mentioned in S. 496(1), invoking of the power u/s 496 of the Calcutta Municipal Corporation Act, 1980 by the Municipal Architect and Town Planner, Calcutta Municipal Corporation is uncalled for and without jurisdiction. He further contended that the learned trial Judge has taken into consideration all the aspects of the matter and passed an appropriate order in accordance with law.

17. After hearing the rival contention of the learned advocates for the parties the following point emerges for determination :-- whether by invoking

the power u/s 496 of the Calcutta Municipal Corporation Act, 1980, in the instant case the Municipal Architect and Town Planner of the Calcutta

Municipal Corporation has acted illegally and without jurisdiction.

18. Section 496 of the Calcutta Municipal Corporation Act, 1980 envisages invoking of the power to direct the filling up etc. in respect of the

matters as contained in sub-section (1) of Section 496 of the Act. According to the petitioner the land in question is a low sali land. It appears from

the 'No Objection Certificate' dated 27-1-92 of the Director of West Bengal Fire Service that the land in question are low ditches and none of

them are natural tank only rain water accumulates during the monsoon season and in all other seasons that land remains dry and the land is sali land.

The Municipal Architect and Town Planner, Calcutta Municipal Corporation has also found in his report that the construction has been made upon

the illegally filled up land. The appellants in the stay application at paragraph 26 stated that the land measuring about 1353 sq. mt. is dry and the

portion marked '2' and '3' measuring about 900 sq. mt. and 480 sq. mt. respectively contained very little water. The Municipal Architect and Town

Planner of Calcutta Municipal Corporation observed in his report ""that the owner should not be allowed to fill up a water body which had an area

of more than 1500 sq. mt. as stipulated in the outline development plan prepared under the West Bengal Town and Country (P&D) Act 1979 and

the area and depth of the water body are as reduced by the owner himself in an unauthorised manner and the same reduction of depth and area of

the water body is sited for the permission for the filling up of that water body."" (sic)

19. Admittedly the area of the ditch is less than 1500 sq. mt. Not only that the land is a low sali land and as it does not come within the purview of

the description in sub-section (1) of Section 496 of the Calcutta Municipal Corporation Act, 1980, invoking of the said section by the Municipal

Architect and Town Planner is uncalled for and without jurisdiction. At the hearing of the trial the respondent took two objections for granting

permission, (1) Submission of 'No Objection Certificate' from the Collector, Land and Land Revenue Department, Government of West Bengal,

Writers' Buildings, Calcutta and (2) 'No Objection Certificate' from the Fisheries Department, Government of West Bengal. The learned trial

Judge found that the area in question is within Calcutta Municipal Corporation and the provision contained in West Bengal Land Reforms Act,

1955 being Section 1(2) specifically exclude the area where the land in question is situated and that there is no such post of Collector Land and

Land Revenue Department, Government of West Bengal, Writers' Buildings, Calcutta. He also found that the question of 'No Objection

Certificate' from the Fisheries Department, Government of West Bengal does not arise inasmuch as the West Bengal Inland Fisheries

(Amendment) Bill, 1992 (Bill No. 38 of 1992) though being placed before the Assembly but has not been enacted as yet. On these observations

the learned Judge passed the impugned order taking into consideration the two reports as submitted by Chief Valuer and Surveyor C.M.C. dated

24-3-94 and the Architect and Town Planner, C.M.C. dated 25-3-94. We do not find any illegality or infirmity with the impugned order/judgment

warranting interference by the appeal Court.

20. In view of our discussions and observations above we hold that the appeal must fail. The appeal is accordingly dismissed. All interim orders of stay stand vacated.

21. Learned counsel for the appellants prays for grant of a certificate under Article 133 of the Constitution. We do not find any necessity for granting such certificate. Prayer for grant of the certificate is refused.

22. Learned counsel for the appellants prays for stay of operation of this Order. Learned counsel for the respondent opposes such prayer. The operation of this Order will, however, remain stayed for the period of a fortnight from date.

23. All parties shall act on a signed copy of the minutes of the operative part of this judgment upon usual undertaking.

Prabir Kumar Majumdar, J.

24. I agree.

25. Appeal dismissed.