

**(2000) 03 CAL CK 0048**  
**In the Calcutta High Court**

**Case No :** Constitutional Writ Jurisdiction W.P. No. 3084 (W) of 199 C.A.N. No. 3920 of 1999

Jyoti Bhusan Bose and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

**Date of Decision :** 03-03-2000

**Acts Referred:**

Constitution of India, 1950 — Article 14, 21, 226  
West Bengal Town and Country (Planning and Development) Act, 1979 — Section 12, 134, 2(13), 2(7), 3

**Citation :** (2000) 2 CALLT 243 : (2000) 1 CHN 768

**Hon'ble Judges :** Satyabrata Sinha, J;Ronojit Kumar Mitra, J

**Bench :** Division Bench

**Advocate :** Anindya Mitra, Mr. Alak Kumar Ghosh and Mr. Achintya Kumar Banerjee, Mr. Sardar Amjad Ali and Mr. Mrityunjoy Das Majumdar, MR. Uma Prasad Mukherjee and Mr. Janardan Modal, for the Appellant; Mr. Fazlul Haque and Mr. Dipendra Nath Bose, Mr. M.C. Das and Mr. Gouta Mukherjee, for the Respondent

## **Judgement**

R.K. Mitra, J.—This applicant had been made by the petitioners in an endeavour to restrain the Calcutta Municipal Corporation from filling-up of a "pond and/or swamp" commonly known as "Rani Kuthlr Pukur" situate in South Calcutta. The Calcutta Municipal Corporation to which I shall refer in this Judgment as "the corporation", for the sake of brevity, had according to the petitioners commenced the work of filling-up the swamp and was continuing to do so, in wilful illegal and deliberate violation of the provisions contained in the West Bengal Town & Country (Planning and Development) Act 1979, the West Bengal Fisheries (Acquisition and Requisition) Act 1965, Land Reforms Act, 1955 and the Environment (Protections) Act 1986, and the rules framed under each of the above enactments. The first two Acts mentioned above, shall hereafter be referred to as The Planning Act 1979 and The Fisheries Act 1965 respectively. It had been strongly alleged by the petitioners, that the Corporation had commenced the filling-up of the swamp wrongfully, illegally and without caring to

obtain the necessary permission and approval from the appropriate authorities with intent to cause utter disruption of the ecological balance in the locality. The petitioners alleged, that in spite of their several representations against the filling up work, neither the department nor the Commissioner of the Corporation took any notice and had continued with the illegal and wrongful work.

2. The "pond and/or swamp" was situated at Mouza Shibpore, Dag No. 389, Municipal Holding No. 154 Netaji Subhas Chandra Bose Road, Calcutta--700 040 in Jadavpore, in the District of South 24 Parganas. The petitioners were two residents of Regent Place in Jadavpore, a nearby area to the concerned locality. It would appear from the petition, that some of the principal grievances against the filling-up of the pond were that, for the last fifty years it was being used for : "immersion of various deities.....Tollygunge Fire Brigade also fill up their water tank ..... is very much helpful to the locality for ecological balance ..... is very much useful and essential and moreover indispensable to the local inhabitants to take fresh breath ..... local inhabitants use the said water body for bathing purposes as the supply of tap water is not at all adequate ..... many underprivileged people use the water from the said tank for the purpose of cooking and other household activities ..... serves the purpose of maintaining necessary standard of biosphere and ecological balance." In commencing the work of filling-up of the pond, the Corporation had according to the petitioners, "proceeded in a casual, cavalier and arbitrary manner without taking recourse to an alternative scheme for the purpose in question ..... actually this is nothing but a colourable exercise of power of the executive fiat by the pressure of the ruling Political Leaders. The principal prayer in the petition was that the Corporation should be restrained from filling-up the pond, "by raising water in an illegal manner from the said pond and/or swamp and in preventing the said Respondent from creating air pollution in the said locality." The Division Bench, then taking up this determination had made an interim order restraining the Corporation from continuing with the filling-up of the pond until further orders of this Court.

3. The executor of the will, of the erstwhile owner of the property, consisting the "pond and/or swamp" had also made an application before this Court for being added as a party in the writ-petition. The application had been made almost after one month of the filing of the writ-petition. It had been alleged in the application, that the Corporation had violated the terms and conditions of an agreement between the applicant and the Corporation, in that a Sports and Swimming Complex was to have been constructed on the water-body and that at the entrance of the complex there was to have been a marble epitaph containing the inscription, "In memory of Rani H.R. Laxmi of Nayagarh. a small participation for the betterment of Calcutta, by Grandsons Gajendra C. Singh and Hemendra C. Singh." Both the writ-petition and the application for addition of party, at the instance of the parties, were heard analogously. The applicant alleged in its petition, that he was an interested party in the writ proceedings, and unless an order was made as prayed for he would suffer serious prejudice. The contents of the agreement, in short, were that the property which included the pond stood

acquired and as had been agreed between the parties earlier, a cheque for Rs. 6 lac was to be made over by the Corporation to the two beneficiaries. The agreement further recorded that the Corporation had acquired the premises "on consideration of the situation, availability of land, tank and property as also the need of the people of the locality where the premises No. 154/1 (portion) of the Netaji Subhas Chandra Bose Road, Calcutta, is situated and which would also cater to the need of the people of the city of Calcutta in general for whom as well the project has been undertaken, are satisfied that setting up of a Sports and Swimming Complex in furtherance of cultural and physical education in the City would subserve public good". Admittedly, the Corporation had paid and the beneficiaries had received the agreed sum of Rs. 6 lac in the year 1996, being the consideration in respect to the acquisition.

4. According to the Corporation several localities around "Rani Kuthir Pukur" to which I shall refer as the "concerned localities" had been identified, upon thorough enquiry and investigation, as "scarcity zones/areas of safe potable water". The Chief Municipal Engineer of the Corporation reported to the Court in writing, that the water in the concerned localities was being supplied, at present, from overhead reservoirs located at diverse points and that the total capacity of the reservoirs was approximately 5 lac gallons, while the requirement of safe potable water for the concerned localities was approximately 35 lac gallons. It would further appear from the report, that there frequent breakage in the "big diameter tube wells" as because the pressure of water from surface treated water source was found to be inadequate as the concerned localities were situated at the tail end of the primary grid from where water was transported to the concerned localities. A supplementary affidavit, had been affirmed by the Chief Municipal Engineer [Project and Development], on behalf of the Corporation and it had been stated that with a view to provide adequate drinking water in the concerned localities, and taking note of a mass representation by the local residents, the Corporation had taken up the project. The estimated cost of the project was in the region of Rs. 15.5 crore. The project was to construct an underground reservoir which would cover only a third of the entire water body. The underground reservoir when completed according to the Corporation would store 35 lac gallons of drinking water which would enable the Corporation to supply adequate potable water to the local residents twenty four hours of the day and night. In the representation, a xerox of which had been annexed to the affidavit, it had been clearly indicated by the residents of the concerned locality that the water body should be utilised by the Corporation, in constructing an underground reservoir for the supply of adequate drinking water to the locality, and also a swimming pool in accordance with international standards so that the local talents would have the opportunity to receive proper training. It was contended by the Corporation that as the principal overhead reservoir was situated in the north of the City, there has always been potable water scarcity in the southern areas. In order to make available adequate drinking water in the identified acute scarcity areas in the South of the City, which included the

concerned localities, according to the Corporation, deep tube-wells with or without overhead reservoirs, had been installed using the sub-soil water.

5. In those circumstances the Corporation, in furtherance of the proposed project, mentioned above, acquired the water-body of Rani Kuthir Pukur together with other properties, and paid an agreed sum of Rs. 6 lac being the agreed consideration for the acquisition to the private owners. Due enquiries and deliberations having been made in the matter, it was submitted by advocate on behalf of the Corporation, It had completed pumping out water from a demarcated portion of the water-body, which approximately was a third of the entire Rani Kuthir Pukur Into the remaining water-body. The project included the construction of the underground reservoir and a Booster-Station, for the purpose of pumping up the water into the diverse overhead tanks, from where the potable water would be distributed, among others, to approximately 5 lac residents of the concerned locality. It had been submitted on behalf of the Corporation, that this water body had been acquired for the purpose of constructing the under-ground reservoir, not because it was lying unutilised, but that it was close to the primary grid at Garden Reach, which was one of the major water treatment plants in the City and that from this plant drinking water was proposed to be brought to the underground reservoir. It was contended on behalf of the Corporation, that the costs of transporting water from the primary grid at Garden-Reach to the proposed underground reservoir would be minimal, as the distance between the two was indeed very short, and that costs would be further minimised as the concerned localities had several already constructed over-head tanks. It was submitted on behalf of the Corporation that the construction work had been commenced since long and more than a sum of Rs. 1.20 crore had been spent and that there was absolutely no scope for the petitioners not to have been aware in that respect. As regards the allegation of there being an ecological imbalance, it had been contended on behalf of the Corporation by advocate that upon completion of the underground reservoir, a children"s park would be constructed on the surface, which would almost certainly ensure to the benefit of the local people and add to the flora in the locality.

6. As regards the allegations that the Corporation did not obtain the necessary permission and approval from the appropriate authorities, it was submitted on behalf of the Corporation, by advocate, that in law it was not necessary for the Corporation to obtain any permission or approval from any authority, Governmental or otherwise. According to him by reason of the authority delegated to it by the Calcutta Metropolitan Development Authority, hereafter referred to as CMDA. the Corporation was the appropriate authority to grant permission for the purpose of filling-up of any tank or water-body situate within the Metropolitan City. There was no pisciculture in Rani Kuthir Pukur he submitted, and therefore no permission was necessary under the West Bengal Fisheries Act. 1965. In compliance of an order of the Court dated April 16, 1999 made by a Division Bench comprising of G.R. Bhattacharjee, J. and Amit

Talukdar, J. it was submitted by advocate for the Corporation that it had requested and the Government of West Bengal had approved the scheme for the construction of the underground reservoir, including the filling-up of the demarcated one third portion of the water body. Such approval, he argued even though obtained after having commenced the work, which had been alleged to have been started without any previous approval, was deemed to have been commenced lawfully in the circumstances and with all necessary permissions and approvals. In support of his argument, he cited and relied on the decision reported in U.P. Avas Evam Vikas Parishad and another Vs. Friends Co-op. Housing Society Ltd. and another, .

7. Admittedly, the Corporation had not only acquired the premises as early as 1996, it had as on date commenced and completed major portion of the work of filling-up. The application for addition of party was made by Brojendra Kishore Singh was, as it appeared from the agreement dated December 16, 1996 was the Executor to the will of the erstwhile owner of the waterbody. The two sole beneficiaries, to the Will, Gajendra Chandra Singh and Hamendra Chandra Singh, were the confirming parties to the agreement. There was no dispute that they did not receive the sum of Rs. 6 lac from the Corporation, as the agreed consideration for their consent in the acquisition. In those circumstances the applicant would be required in the first instance to establish his locus standi to make this application. Especially so, in view of the fact that the only two beneficiaries who had received the consideration money and had consented to the acquisition were significantly not supporting the applicant. Why the applicant did not seek to air his alleged grievances earlier, or why he had allowed the Corporation to spend approximately a sum of Rs. 1.20 crore and complete portion of the work at the water-body site, or why he had come with this application after more than a month had elapsed since the making of the "public interest" writ application, there was no explanation whatsoever. Even if it could be assumed, for the sake of argument, that the applicant may have a cause of action for breach of agreement, this Court surely was not the appropriate forum to resolve such private dispute. Other than an intention to throw a spanner in the wheel of progress and betterment of the basic needs of the people of the City and delay the completion of the construction work of the underground reservoir, I am afraid I am quite unable to find any reason for the applicant to have made this application. Such frivolous and prejudicial conduct of litigants in taking out applications which merely wasted the Court's time and delayed the disposal of public interest litigations, ought to be penalised with exemplary costs.

8. The two petitioners, in the writ-petition, were not residents of the concerned locality. It was a matter of record that the residents of the concerned localities had not long ago made a representation to the Corporation. The petitioners were unable to produce a scrap of evidence, as on date, that any of those people residing in the concerned localities many of whom had been parties to the representation, were supporting the petitioners. In their plight to restrain the Corporation in proceeding with and completing the project for the supply of

potable water to the locality 24 hours of the day and night. The purpose for which the water body was being used for the last fifty years, according to the petitioners, which I have set out at the very outset of this judgment, was cogent reason that both, In interest of the local residents and the Interest of the ecological balance, the Corporation perhaps ought to develop the entire water-body forthwith. The water of the "pond and/or Swamp" was Inter alia used by the local residents "for bathing purposes as the supply of tap-water is not at all adequate", and that "many under privileged people use the water from the said tank for the purpose of cooking and other household activities." It would be pertinent then, surely to ask that why should a citizen be deprived from receiving potable water at all times, and not have to bathe and consume water from the pond which most likely was utterly contaminated. The allegation that water from the pond was utilised by the local fire brigade in times of necessity, and that the project undertaken by the Corporation would prejudice such usage was quite unsupported by any evidence. The petitioners did not choose to serve notice to the concerned fire-brigade and if they had, the fire brigade authorities as there was no affidavit on its behalf, obviously did not support the petitioners. In any event, the project would only cover one third of the pond. The fire-brigade, and those interested in the "immersion of various deities", after completion of the pujas, were at liberty for the time being to continue to do as they had been for the last fifty years with the remaining 2/3 rds of the water-body.

9. It had been alleged on behalf of the Corporation that the Division Bench of this Court comprising of G.R. Bhattacharjee, J. and Amit Talukdar, J. after hearing the advocates for the parties, at the very outset, had observed that the Corporation ought to seek permission to fill-up the proposed demarcated portion of the water-body. The Corporation it was submitted by advocate, in compliance with the observation of the Court, had applied and the Government of West Bengal by its letter dated May, 14, 1999 granted its approval, to fill-up the portion of the tank as proposed in the project.

10. The Land use and development control plan for the Calcutta Municipal Area, which had been approved by the (Planning and Development) Act. 1979 vide its letter dated January 24, 1996. and which had come into operation on May 27, 1996, provided in Rule 21.02. as follows :

"(2) No canal, pond, waterbody or wet land shall be filled up : Provided that after taking in view the drainage, ecology and environment, pisciculture, fire fighting or any other material consideration the Calcutta Metropolitan Development Authority may, for reasons to be recorded in writing and with the previous approval of the State Government allow any canal, pond, waterbody or wet land to be filled."

Admittedly no "previous approval" from the State Government had been obtained by the Corporation when it had launched the project to fill up the demarcated portion of the water body. The CMDA which was the approving authority by issuing several Notifications in that respect had delegated its authority to the

Corporation to grant approval for filling-up of any waterbody. As the authority for granting of such approvals, the Corporation could hardly be expected to make an application to itself, or to grant approval to itself on that application. The fact that It had commenced the work of pumping out water from the demarcated portion of the pond, was, I would have thought in the circumstances, sufficient to assume that the Corporation had duly applied its mind and upon due consideration of all the facts, and with a view to supply adequate potable water to the large number of residents of the concerned localities, the project had been commenced and till date a sum of Rs. 1.20 crore had been spent. Ofcourse, such action of the Corporation would be liable to scrutiny and explanation possible interference by Court had there been my evidence of non application of mind, recklessness or malafide and contrary to public interest, which however was not the case in the present facts and circumstances.

11. It would however, appear from the records before this Court that the CMDA had issued a Notification dated April 6, 1985 in exercise of its powers u/s 134 of the West Bengal Town and Country (Planning and Development) Act 1979 wherein its power u/s 46 of the Act were delegated to the local Authority within the respective Jurisdiction pending preparation of the development plan. Further, the local authority. In exercise of the delegated power, was entitled to receive and dispose of applications for permission under sub-section (1) and in the manner indicated in sub sections (2), (3) and (4) of section 46 of the Planning Act. By another Notification dated November 6, 1986, the earlier Notification of 1985 was amended by the CMDA and the amendment was incorporated in the 1985 notification. The amendment was to the effect that filling up of a tank was "development (within the meaning of section 2(7) of the Planning Act, 1979, and the guidelines regarding permission for such development work were specifically indicated in the Notification. The CMDA had "issued a further Notification, dated November 19, 1990 where it had been directed, that the Corporation in exercise of its powers delegated to it under the earlier Notification of 1985, shall not be subject to the conditions Imposed therein or to the guidelines of the Memorandum Issued by the CMDA dated January 3, 1987. In yet another Notification dated June 19, 1996, the CMDA recorded that The Land use And Development Control Plan for The Calcutta Municipal Corporation Area had come into operation with effect from May 27, 1996, and that the Corporation would have regard to the provisions contained therein in compliance with section 46(3) (a)(1) of the Planning Act, 1997. It would also appear, that in section 2(12) of the Planning Act 1979, the term "land" was to include land covered by water and in section 2(13) the nomenclature "local authority" had been defined, and the Corporation would appear to be the "local authority" in respect to the Calcutta Municipal Area. Further, on a plain reading of section 46(1) of the Act indeed it would seem that the Corporation was not required to make any application for carrying out any development work within the Calcutta Municipal area, and as such the Corporation as the "local authority" was the approving authority which entertained and disposed of applications for granting approval in respect to filling-

up of the demarcated portion of Rani Kuthir Pukur.

12. The Supreme Court had considered as to what would be the effect of approval, both "prior" and "previous", the decision reported in U.P. Avas Evam Vikas Parishad and another Vs. Friends Co-op. Housing Society Ltd. and another, which had been cited and relied on by advocate for the Corporation. The clear and unequivocal view was that, "If prior approval would have been a precondition for further steps, the Act would have said so. This not having done, it seems to us what is material is to obtain approval of the State Government. ....Nevertheless, once the approval is given, all the previous acts done or actions taken in anticipation of the approval get validated and the publications made under the Act thereby become valid." In the present case, assuming the Corporation was required to obtain "previous approval", it at all with utmost respect to the above decision of the Supreme Court, I would heavily rely on the reasoning on which the observations were based and hold that if it had been intended that acts done without "previous approval" would be rendered illegal and unauthorised then the stipulation would have contained specific provisions to that effect. Consequently therefore, there did not appear to be any scope to understand that the work done by the Corporation in furtherance of the project, allegedly without obtaining the "previous approval", entitled the petitioners to an order of status ante and stay of any further work. These deliberations in this Judgment, of course would be somewhat academic, in view of my earlier observations that the Corporation had been validly delegated with the powers to "approve" the work of filling-up of ponds, and that when the Corporation look up the work itself. It must be deemed to have approved after having considered and deliberated in the matter in all respects in accordance with law.

13. The project when completed, would make available potable water, to the people of several localities in the South of the City of Calcutta. The residents of those localities have been and were continuing to be deprived of potable water though as citizens of this country they were entitled to receive safe drinking water as right to life, under Article 21 of the Constitution. The provisions under Article 21 of Constitution of India, would surely be rendered futile if the residents of those localities deprived of safe potable water at all times both during the day and night. The only way it would seem the corporation could ensure the protection of such right of the people of the several localities, identified as "scarcity zones" of safe potable water, was by constructing the underground reservoir and storing the water to be brought from the primary grid at Garden Reach. At present, water was being brought from Garden Reach and pumped up into the overhead reservoirs. That water was miserably inadequate. Especially in the summer months supply of water became alarmingly low, and the people of the localities had no alternative but to resort to water from the Rani Kuthir Pukur, which by any standard was undoubtedly thoroughly contaminated. The wide diameter pipes through which water was brought from Garden Reach, often become dry, during lean periods in the summer months and as a result air locks



developed and more than often the water supply was disrupted the already inadequate water supply totally. In fact, it appeared from the submissions made In Court on behalf of the Corporation that the pipes were liable to burst. The water-supply in general, in those scarcity areas, it would appear was being supplemented at present by utilising subsoil water. It was the confirmed view of the experts, if used for any length of time sub-soil water was liable to be contaminated with minerals and chemicals which were positively harmful to and quite unfit for human consumption.

14. In those circumstances, I am inclined to be of the view that the allegations of the petitioners that the Corporation had, "proceeded in a casual, cavalier and arbitrary manner without taking recourse to an alternative scheme for the purpose In question", being one of their principal grievances in the petition was frivolous, reckless and remained wholly unsubstantiated. The petitioners had failed to produce any evidence to support the allegation, that "actually this is nothing but a colourable exercise of power of the executive flat by the pressure of "the ruling Political Leaders". In fact the assertion had not at all been pursued in Court. In the facts and circumstances of the case, since the project was in the benefit of the residents of the several localities, which had been demarcated as "safe potable-water scarcity zones; and work had been long commenced and great-expenditure had been Incurred by the Corporation, and since neither the people of the concerned localities nor the alleged fire-brigade authorities were supporting the petitioners, In all fairness, the petitioners ought to have applied their minds and obtained complete Information relating to the project and satisfied themselves thoroughly before making this application. This application was not only against the public interest, but In deliberate interference and malicious disruption of public interest schemes and projects undertaken by Government bodies.

For those reasons, the application made by the Executor of the Will of the erstwhile owner of the property, and the writ petition are dismissed. However, in the facts and circumstances of this case there will be no order as to costs.

S.B. Sinha. J.

15. I agree.

16. Petition dismissed