

(2002) 03 CAL CK 0012
In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction C.O. No. 1756 (W) of 1993

Ram Krishna Das

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 21-03-2002

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Town and Country Planning Act, 1979 — Section 46(5)
Urban Land (Ceiling and Regulation) Act, 1976 — Section 10, 2
West Bengal Land Reforms Act, 1955 — Section 14Q, 25S, 4C, 4U

Citation : (2002) 3 CALLT 436

Hon'ble Judges : Arun Kumar Mitra, J

Bench : Single Bench

Advocate : Jaydeep Kar, for the Appellant;None, for the Respondent

Final Decision : Allowed

Judgement

A.K. Mitra, J.—This writ petition when moved initially, since nobody appeared on behalf of the respondents, by order dated 1.2.93 His Lordship the Hon''ble Justice N.K. Mitra directed the petitioner to serve copy of the writ petition upon Mr. Prafulla Kumar Ghosh, learned advocate for the State, who as per said direction appeared on that day.

2. On 31.3.93, Hon''ble Justice Tarun Chatterjee directed the matter to come up as contested application when also Mr. Prafulla Kumar Ghosh learned Advocate appeared for the State. On 29.6.93, Hon''ble Justice Tarun Chatterjee passed an order giving directions to file affidavits and this order was also passed in presence of learned counsel for both the parties. Now on 26.7.93, when the matter again appeared before Hon''ble Justice Tarun Chatterjee.

3. Mr. P.K. Ghosh appeared and submitted that to represent the state respondent Mr. T.H. Sengupta Advocate with Mrs. Banerjee Advocate have been engaged and he prayed for leave to retire from the matter but on that date neither Mr. T.H. Sengupta nor Mrs. Banerjee also did appear and no affidavit was filed on behalf

of the state respondents. On 14.2.95, Mr. Kar appeared for the petitioner and Hon"ble Mr. Justice G.R. Bhattacharya passed an order directing inter alia that the matter would come up for hearing four weeks hence and all affidavits have to be completed in the meantime. Again on 24.4.96, matter appeared before Hon"ble Justice N.N. Bhattacharya when His Lordship directed the petitioner to serve copy of the writ petition upon each of the respondents either by hand or by registered office.

4. Accordingly, the petitioner served copies on all the respondents and the matter has now come up for hearing before this Court. Today also no one appears on behalf of the respondents and during the course of hearing Mr. Kar submits that he had been served with a copy of the affidavit-in-opposition by Mr. T.H. Sengupta, advocate on 22.7.93 allegedly affirmed on behalf of the state respondents (though in the copy no date of affirmation has been given). However, as it appears from records no such affidavit appears to have been filed in the Court.

5. This writ petition has been moved by the writ petitioner challenging the impugned order dated June 9, 1992 being annexure-R to the writ petition which order has been passed by the appellate authority confirming the order of the District Land and Land Reforms Officer on the appeal preferred by the writ petitioner u/s 54 of the West Bengal Land Reforms Act, 1956.

6. The case as has been made out by the writ petitioner is inter alia as follows :

The petitioner is the owner of an area of 501.82 sq. mtr. being .124 Decimel of land consisting of a tank being Plot No. 717 (RS) and 941(LR); under Khatian No. 408(RS) and 183/2(LR) within J.L. No. 1 in the District of Hooghly at Chundernagar. The said property belonged to one Binoy Krishna Dutta, since deceased. Under the Urban Land (Ceiling & Regulation) Act, 1976, the said property vested with the competent authority. Under land ceiling return Case No. 143/1976 the prayer for exemption of vacant land beyond the ceiling limit was considered and was allowed by the competent authority and the heirs of the said Binoy Krishna Dutta was permitted to hold and possess the said land by the competent authority by an order dated June 23, 1989. The writ petitioner has annexed the copy of the said order dated 23.6.89 as annexure-A to the writ petition. Thereafter, the heirs of said Binoy Krishna Dutta wanted to sell the said land to the petitioner and applied to the competent authority praying for permission to sell and the competent authority granted permission duly which appears from the communication dated August 31, 1989 and the writ petitioner has made this communication annexure-B to the writ petition.

7. Thereafter, through a registered deed of conveyance dated September 3, 1989 the said property was duly conveyed and sold in favour of the petitioner. The petitioner applied for mutation and his name was duly mutated with the settlement records on the basis of the application for mutation. The petitioner in this writ petition has made that corrected record of rights annexure-C. The

petitioner subsequently also prayed for mutation of his name before the Chundernagar Municipal Corporation and there also his name was mutated and the petitioner started paying rent on mutation to the respective authorities including the Municipal Authorities.

8. According to the petitioner on mutation of his name both in the settlement records as well as in the records of Chundernagar Municipal Corporation the petitioner applied for conversion of the said land and the petitioner has also annexed those documents showing mutation and payment of rent has also been made annexures-D, E & F to the writ petition.

9. It is also the claim of the petitioner that immediately after the expiry of the statutory period, the Commissioner, Multi-Storied Building Tax and Urban Land Taxes granted permission to convert the land. The application for such permission has been made annexure-G and the permission granted on 11.4.90 by the Respondent No. 4 has also been included in the said annexures to the writ petition.

10. Mr. Joydeep Kar appearing for the petitioner at this stage submits that it would appear from his application for permission of conversion dated 29.1.90, that the application was given to the District Land & Land Reforms Officer through the Block Land & Land Reforms Officer and in the said application, Mr. Kar submits, that it has been clearly mentioned that conversion is required for the purpose of construction of a residential building and a provision is there in Section 4C of the West Bengal Land Reforms Act, 1955. According to Mr. Kar, the next annexure dated 11.4.90 will show that the Additional Commissioner, Multi-Storied Building Tax and Urban Land Taxes, West Bengal has written to the petitioner that as per the provision of Rule 14(3) of the Rules framed under the West Bengal Urban Land Taxes Act, 1976 the necessary permission as detailed shall be deemed to have been granted. Mr. Kar submits that on expiry of the statutory period there is a deeming permission clause and by virtue of that letter the Additional Commissioner has invoked that deeming clause which clearly shows that permission was granted in specific.

11. In fact, Mr. Kar submitted that the Respondent No. 4 invoked the deeming clause and it is not the petitioner of clarification provision of the statute.

12. Through a letter dated February 12, 1990 the Block Land & Land Reforms Officer wanted certain documents and made certain queries from the petitioner and again by another letter dated February 28, 1990 the District Land and Land Reforms Officer informed the petitioner that they are unable to issue no objection certificate for conversion of land in question to any other category.

13. However, on March 2, 1990 the petitioner gave a reply to the Block Land & Land Reforms Officer and in his reply the petitioner answered the queries of the Block Land & Land Reforms Officer specifically and also annexed the original affidavit as asked for by the petitioner.

14. The petitioner, thereafter, prayed for no objection certificate from the Calcutta Metropolitan Development Authority under the Town & Country Planning Act inasmuch as the Chundernagar Municipal Corporation when refusing to grant no objection through their letter dated 28.2.90 raised objection that as per the recording of CMDA under Town & Country Planning Act, 1979 the concerned plot has been recorded as pond and not land.

15. According to Mr. Kar that is the reason why the petitioner prayed for no objection from the CMDA again. Thereafter the petitioner got a copy of the letter written by the Joint Secretary (II) CMDA to the Mayor Chundernagar Municipal Corporation dated 7th May 1990 in which it was written that the case may be disposed of in terms of the provisions of para (vii) of the guidelines issued under office notification No. iii/CMDA/Sectt./ i-98/85(PT) dated 6.11.86.

16. Mr. Kar in course of his submission produced original notification of the CMDA dated 6th April 1985 in this regard and also the amendment made through notification dated 6.11.86 as has been referred to in the said letter of the CMDA. The notification dated 6.11.86 in Clause 7 as has been produced by Mr. Kar before this Court provision is as follows :

"For condition 11, substitute the following :

11. Development permission for sub-division of land may be allowed subject to the following conditions :-

1) No development permission shall be given for sub-division of land which is considered necessary for (a) being used as public open space/ park/play ground and/or water body, (b) drainage facility of the locality, (c) retaining the existing use from environmental and ecological points of view and (d) existing agricultural/piscicultural use as well as such use to be made in future.

2) All cases where the land is not required for the purposes mentioned in item (i) above and where the application for development permission for sub-division is made for any use other than residential, shall be referred to the Chief Executive Officer, CMDA before issue of development permission.

3) All cases where the land is not required for the purpose mentioned in item (i) above and where application for development permission for sub-division is made for residential use, development permission should be given subject to the following :

a) for vacant land of upto 750 sq.m. area existing rules of the concerned local authority should be complied with.

b) For sub-division of all buildings/structures the existing rules of the concerned local authority should be complied with.

c) For vacant land above 750 sq.m.

i) No sub-division shall be allowed for land located on any public road with

existing right of way less than 10 m. unless the applicant makes a free gift to the local authority that strip of land which falls within 5 m. from the central line of the existing road.

ii) Development permission shall not be given in each individual plot after sub-divisions does not on a public road. Permission however may be given if new access routes are built by the applicant at his own cost and are over to the concerned local authority to be used as public roads. The width (right of way) of all such access roads shall not be less than 10 m. The standard specifications are other such roads shall be approved by the local authority and those should be constructed to its satisfaction.

iii) Development permission for sub-division shall not be given unless the concerned local authority is satisfied about the drainages arrangement of the premises including the drainage of the new access roads. All costs of drainage arrangement of the land and the new access road upto the existing drains shall be borne by the authority.

iv) Development permission for sub-division shall not be given unless the concerned local authority is satisfied about the arrangement of the street lighting, water supply and garbage disposal all costs for which shall have to be borne by the applicant.

v) Development permission of sub-division shall not be given unless at least 8 percent of the local area of the plot is handed over to the concerned local authority for being used as public open space. The width of such open shall not be less than 7 m.

vi) In case of plots with areas between 5000 sq.m. and 25000 sq.m. at least 5 percent of the total plot area shall be handed over to the concerned local authority in addition to area mentioned in (v) above for accommodating public facilities like power substation public transport terminal, garbage vat etc. and also for providing space for market, schools, health centre etc. as may be necessary. For plots with are more than 25000 sq.m. the land to be handed over to the concerned local authority for the above purposes shall be 10 percent of the total plot area in addition to the area mentioned in (v) above.

4. all notices u/s 46(5) of the West Bengal Town and Country (Planning and Development) Act, 1979 made by departments of the Government of the local authority and all applications made by statutory/ public sector organizations for sub-division of land in relaxation of the conditioned mentioned above for providing accommodation to economically weaker Section and low income group people shall be referred to the Chief Executive Officer, CMDA."

17. On receipt of the letter dated May 7, 1990 from the CMDA the petitioner wrote a letter dated 4.8.90 addressed to the Chief Executive Officer, Chundernagar Municipal Corporation asking for necessary permission for development work and for erection of a dwelling unit on the said holding, at an

early date. In the meantime, on August 24, 1990 the petitioner received a letter from Chundernagar Municipal Corporation by which the Corporation informed the petitioner that the said holding is a pond measuring .124 satak and it cannot be converted into a dwelling holding.

18. In paragraph 19 of the writ petition, it has been stated by the petitioner that the petitioner's family consists of six members which includes the widow mother and unemployed brother and they reside in a rented house which is a two roomed unit and it is very difficult for them to accommodate so many members there. It has also been stated in paragraph 20 of the writ petition that the officers from the office of the BL&LRO and ADM made an enquiry about the purpose for which the petitioner wants to erect the said dwelling unit. The petitioners have given a declaration by way of an undertaking before the BL&LRO stating the intention of the petitioner regarding the purpose of erection of his dwelling unit.

19. The petitioner thereafter, waiting for sometime when found that no steps were taken by the BL&LRO office to grant permission to the petitioner to convert the said land, the petitioner on July 20, 1990 wrote a letter asking the BL&LRO to expedite the matter. The petitioner received a letter dated May 18, 1991 issued by the respondent No. 2 the BL&LRO (received on June 4, 1991) in which it was inter alia stated that the prayer of the petitioner could not be considered as according to the Mayor, Chundernagar Municipal Corporation it is recorded as a tank in the land user map published by the CMDA under the T&CP Act, 1979 and he has not issued the no objection certificate for conversion. The said order dated May 18, 1991 has been made annexure-P to the writ petition.

20. At this juncture, Mr. Kar submits that the decision was taken which was conveyed through letter dated May 18, 1991 is without any application of mind and without giving any hearing to the petitioner.

21. The petitioner, thereafter, preferred appeal on July 24, 1991 before the respondent No. 3 the Commissioner Burdwan Range who is the appellate authority in this regard. On June 9, 1992 after hearing the petitioner represented through his counsel the appellate authority being the respondent No. 2 passed the order confirming the order of the BL&LRO rejecting the prayer of the petitioner and said order dated June 9, 1992 is annexure-R to the writ petition.

22. Mr. Kar attacking this order submits that the order has been passed by the appellate authority mechanically and without any application of mind. No reason has been given as to why the application of the petitioner was rejected and the provisions in this regard contained in the letter of the CMDA was not at all considered. Mr. Kar further submits that it is very interesting that Urban Land Tax Commissioner granted permission to the petitioner for conversion of the land and the settlement revenue was enhanced on this basis and the petitioner has been paying the enhanced rate regularly. Mr. Kar further submits that the relevant provisions of the West Bengal Land Reforms Act were not at all taken into

consideration neither the provisions of Town and Country (Planning & Development) Act, 1979 were also considered.

23. Mr. Kar submits that the statutory provisions are there for conversion and statutory authorities are there for granting permission or rejecting permission and the statutory authorities are to act in accordance with the statutory provisions which would apparent from the letter dated 23.6.89 which is annexure-A to the writ petition also. When there turn (sic) was filed Urban Land Ceiling Authority granted permission and observed that this does not come under the purview of Urban Land Ceiling Act, 1976 and through another letter dated 3.8.89 which is annexure-B to the writ petition the same authority intimated the petitioner that the Urban Land Ceiling Authority has no intention to purchase such land on behalf of the State Government. The petitioner on filling up proper form prayed for permission to construct a residential building in and over the said plot of land, Mr. Kar appearing for the petitioner draws attention of this Court to annexure-G to the writ petition which is a Memo dated 11.4.90 from which it would clearly appear that as per Rule 14(3) of the Rules framed under the West Bengal Urban Land Taxation Act, 1976 after the application the period prescribed being over necessary permission as desired shall be deemed to have been granted and the authority himself after the statutory period invoked the deeming provision and granted permission. It has also been pointed out by the learned counsel for the petitioner that through a letter dated 12.11.90 which is annexure-I to the writ petition the BL&LRO prayed for certain documents or made some certain enquiries which were answered by the petitioner through letter dated 2nd March, 1990 which is annexure-K to the writ petition.

24. Since the BL&LRO required no objection from the Municipal Corporation, Chundernagar and since the Municipal Corporation Authority through a letter dated 28.2.90 (annexure-J to the writ petition) intimated the petitioner that they are unable to issue no objection certificate since in the land user map published by CMDA under Town & Country Planning Act, 1979 shows the land to be recorded as a pond and as the certificate of "no objection" could not be issued in favour of the petitioner, the petitioner prayed for clearance or no objection from the CMDA authority and he wrote two letters 12.4.90 and 19.4.90 to the Joint Secretary(II) the CMDA praying for issuance of no objection certificate.

25. Now Mr. Kar draws the attention of this Court that in response to his applications the Joint Secretary (II) CMDA issued Memo dated 7th May 1990 to the Mayor, Chundernagar Municipal Corporation a copy of which was served on the petitioner and asked the Mayor to dispose of the case in terms of the provisions of para 7 of the guidelines issued under CMDA notification dated 6.11.86. It has been submitted by the learned counsel that in this memo it has been clearly stated that the above-mentioned land/ tank is not affected by any scheme of CMDA as yet.

26. As stated earlier, the District Land & Land Reforms Officer intimated the petitioner that his prayer could not be considered as it has been recorded as a

pond in the land use map published by CMDA and the Mayor also says like this. Now the petitioner preferred appeal before the Commissioner Burdwan that is the appellate authority and the appellate authority rejects the appeal without any reason whatsoever.

27. On the above contentions of the petitioner and on the above averments made in the writ petition which goes uncontroverted in absence of any affidavit-in-opposition filed on behalf of any of the respondents and in view of the statutory provisions it is to be considered as to whether the order passed by the appellate authority being annexure-R to the writ petition is sustainable or not.

28. At the outset, it is observed that it is to be remembered that the different authorities who are dealing with these matters are all statutory authorities and duty has been caste on them by the statute and they are to perform their duties as enjoined under the statute.

29. Section 4C of the West Bengal Land Reforms Act, 1956 provides for permission for change of user of land and Section 4C runs as follows :

"1) A raiyat holding any land may apply to the Collector for change of area or character of such land or for conversion of the same for may purpose other than the purpose for which it was settled or was being previously used or for alteration in the mode of use of such land.

2) On receipt of such application, the Collector may, after making such inquiry as may be prescribed and after giving the applicant or the persons interested in such land or affected in any way an opportunity of being heard, by order in writing either reject the application or direct such change, conversion or alteration, as the case may be, on such terms and conditions as may be prescribed.

3) Every order under Sub-section (2) directing change, conversion or alteration shall specify the date from which such change, conversion or alteration shall take effect.

4) A copy of the order passed by the Collector directing change, conversion or alteration, if any, under Sub-section (2) or in an appeal therefrom shall be forwarded to the Revenue Officer referred to in Section 50 or Section 51, as the case may be, and such Revenue Officer shall incorporate in the record-of-rights changes effected by such order and revise the record-of-rights in accordance with such order.

5) If the Collector is satisfied that any land is being converted for any purpose other than the purpose for which it was settled or was being previously held, or attempts are being made to effect alteration in the mode of use of such land or change of the area or character of such land, he may, by order, restrain the raiyat from such act."

30. The petitioner prayed for permission for change of user of the land that is to

be dealt with as per the provisions of the aforesaid Section 4C. Said Section 4C provides that the Collector will make an enquiry give the applicant an opportunity of being heard and pass an order in writing on such terms and conditions as may be prescribed. In this case, it will clearly appear that neither the Collector gave any opportunity of hearing to the petitioner nor the Collector passed any order giving reasons therefore and here the burden is shifted to the Mayor, Chundernagar Municipal Corporation once or the CMDA authority on the other hand and the procedure has been laid down in Rule 5A of West Bengal Land Reforms Rules is quoted hereinbelow :

"An inquiry shall be held under Sub-section (2) of Section 4C to ascertain any or all of the following : -

- i) If the change of area, if any, prima facie attracts the provisions of Section 14U;
- ii) If the proposed change of character or conversion of a land conforms to the general pattern of use of land in the locality;
- iii) If the change or conversion is likely to cause inconvenience to the residents of the locality where the land is situated;
- iv) If the application is for conversion of any agricultural land for any purpose other than agriculture and if such conversion will interfere with the normal agricultural activities in the surrounding area;
- v) If the object of change or conversion is to use the land for a purpose for which permission or license from an appropriate authority is necessary;
- vi) If such permission will in any way prejudice the application of the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (33 of 1976) or the provisions of the West Bengal Town and Country (Planning and Development) Act, 1979 (West Ben. Act XIII of 1979).
- vii) If the land is cultivated by a bargadar;
- viii) Such other inquiry as the Collector may think necessary."

31. While directing the change, conversion or alteration under Sub-section (2) of Section 4C, the Collector may impose any or all of the following terms and conditions and such other terms and conditions as he may think necessary:

- i) that the permission is without prejudice to any of the provisions of Chapter IIB of the Act.
- ii) That where the land is situated within any urban agglomeration within the meaning of the Urban Land (Ceiling and Regulation) Act, 1976 (33 of 1976), the permission is without prejudice to any of the provisions of the said Act, and
- iii) That where the land is situated within the jurisdiction of a Development Authority constituted under the West Bengal Town and Country (Planning and Development Act, 1979 (West Bengal Act XIII of 1979), the permission is without

prejudice to the provisions of the said Act.

32. Now let us see as to whether laid down procedure has been followed or not in this case :

i) the first condition is whether the change of area prima facie attracts the provision of Section 14U of the Act is quoted hereinbelow :

ii) Except where he is permitted, in writing, by the Revenue Officer so to do, a raiyat owning land in excess of the ceiling area applicable to him u/s 14U, shall not, after the publication, in the official gazette, of the West Bengal Land Reforms (Amendment) Act, 1971 transfer, by sale, gift or otherwise or make any partition of any land owned by him or any thereof until the excess land, which is to vest in the state u/s 14S, has been determined and taken possession of by or on behalf of the State.

Provided that nothing in this sub-section shall apply to any land to which the provisions of Section 3A apply : provided that if a raiyat has transferred any land which he retained in pursuance of any order of the Revenue Officer under Sub-section (3) or Sub-section (3A) of Section 14T such land shall be taken into account in determining, on any subsequent occasion, the ceiling area of the said raiyat in pursuance of the provisions of this Act, as if such land had not been transferred.

2. Except where he is permitted, in writing, by the Revenue Officer so to do, a raiyat owning land to which the provisions of Section 3A apply, whether or not such land together with other land, if any, is in excess of the ceiling area u/s 14M shall not on and from the date of coming into force of Section 3A of the Act, transfer by sale, gift or otherwise, or make any partition of, any such land or any part thereof until the excess land, if any, which is to vest in the State u/s 14S has been determined or re-determined and taken possession of by or on behalf of the State.

3. If a raiyat makes any transfer, whether by sale, gift or otherwise, of any land in contravention of the provisions of Sub-section (1) or subsection (2), the State Government may, in the first instance, take possession of land, equal in area to the land which is to vest in the State, from out of the land owned by such raiyat and where such recovery from the raiyat is not possible, from the transferee.

Provided that where the transferee is a person who is eligible for allotment of surplus land in accordance with the provisions of this Act, the State Government may, instead of enforcing its right to recover the land or equal amount of land, recover from the transferor the amount which he had received as consideration for the transfer of such land.

(4) Any raiyat who transfers any land in contravention of the provisions of Sub-section (1) or Sub-section (2) shall be punishable with fine which may extend to two thousand rupees or with imprisonment for a term which may extend to six months or with both :

Provided that nothing in this sub-section shall apply to any transfer made in accordance with the provisions of any law for the time being in force."

33. Nowhere, it has been alleged that the land is beyond the ceiling limit as prescribed in West Bengal Land Reforms Act. On the contrary, the Urban Land Ceiling Authority intimated on filing of return that this is within the permissible limit.

(1) Clause (ii) and Clause (iii) provides that the authority is to ascertain as to whether the proposed conversion conforms to the general pattern of use of land in the locality or the conversion is likely to cause inconvenience to the residence of the locality and in this regard the answer is no such enquiry was made and on the contrary, it would appear from the averments made in the writ petition which are uncontroverted that surrounding the land of the petitioner residential constructions have been made and this is not going to make inconvenience to the residence and on the contrary if it is not controverted or developed this is going to pollute the area. Now Clause 6 of the said rule provides for looking into the fact as to whether this permission will in any way prejudice the provision of Urban Land (Ceiling & Regulation) Act, 1976 or the provisions of the West Bengal Town & Country (Planning and Development) Act, 1979. As would appear from the annexures of the petitioner Urban Land Ceiling Authority in writing informed that this is not going to affect any scheme of the CMDA and or it is, within the ceiling limit. Next remains only the question of West Bengal Town & Country Planning Act. Section 46 of the said Act which deals with permission for the development is quoted herein below :-

"Any person or body (excluding a department of the Central or the State Government or any local authority) intending to carry out any development on any land shall make an application in writing to the Planning Authority or Development Authority for permission in such form and containing such particulars and accompanied by such documents and plans as may be prescribed.

On such application having been duly made, and on payment of the development charge as may be assessed under Chapter IX. -

The planning authority or the development authority may pass an order-

Granting permission unconditionally; or

Granting permission subject to such conditions as it may think fit;

or

Refusing permission.

Without being prejudice to the generality of Clause (a) of this subsection the concerned authority may impose conditions -

To the effect that the permission granted is only for a limited period and that after the expiry of that period, the land shall be restored to its previous condition

or the use of the land permitted shall be discontinued;

For regulating the development or use of any other land under the control of the applicant or for the carrying out of works on any such land as may appear to the authority expedient for the purpose of the permitted development.

The concerned authority in dealing with the applications for permission shall have regard to-

The provisions of the development plan, if it has come into operation; and

Any other material consideration.

The provision of Sub-section (1) shall not apply to applications under Sub-section (5).

When permission is granted on conditions or is refused, the grounds of imposing such conditions or such refusal shall be recorded in the order and the order shall be communicated to the applicant.

In case a department of the Central or the State Government or any local authority (where the local authority is not also the Development Authority) intending to carry out any development other than operational constructions (which shall always be outside the purview of the Planning or Development Authority), on any land, the concerned department or authority as the case may be, shall notify in writing to the development authority of its intention to do so, giving full particulars thereof accompanied by such documents and plans as may be directed by the State Government from time to time at least, one month prior to the undertaking of such development.

Where the concerned authority raises any objection in respect of the conformity of the proposed development either to any development plan under preparation, or to any of the building by-laws in force at the time, or due to any other material consideration under Sub-section (7), the department or the authority, as the case may be, shall -

Either make necessary modifications in the proposals for development to meet the objections or

Submit the proposals for development together with the objections raised by the concerned authority to the State Government for decision. When proposals and objections have been submitted, no development shall be undertaken until the State Government has finally decided on the matter.

The State Government on receipt of the proposals for development together with the concerned authority, shall either approve the proposals with or without modifications or direct the concerned authority to make such modifications in the proposals as it considers necessary in the circumstances."

34. In this regard as would appear the Calcutta Metropolitan Development Authority in writing asked the Mayor of the Corporation to deal with the case in

terms of Clause 7 of their notification dated 17.11.86 said Clause 7 has already been quoted above.

35. But nowhere it would appear from the impugned order of rejection that either the prescribed procedure has been followed or the case has been disposed of by the Mayor in terms of Clause 7 of the said notification and the only uttering of the authorities since it has been recorded in the land use map as pond no permission for development can be granted. The question naturally comes if that is so why this provision of Section 4C, why this procedure of Rule 5A, why this provision of Section 46 of the West Bengal Town and Country Planning Act or why this notification dated 17.11.86 has been issued and the authority or the other concerned statutory officers uttered the words like a "Mantra" that since it is shown as pond in the land user map naturally no permission can be granted.

36. Is it the duty of the statutory authority ? Is it the duty of the quasi judicial authority ? The answer is in the negative. The impugned order and other rejection orders clearly shows non-application of mind and mechanical user of the power entrusted on them.

37. In a decision reported in Smt. Shalini Soni and Others Vs. Union of India (UOI) and Others, the Hon"ble Supreme Court observed :-

"It is an unwritten rule of the law, constitutional and administrative, that whenever a decision making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote. Where there is further an express statutory obligation to communicate not merely the decision but also the grounds on which the decision is founded, it is a necessary corollary that the grounds communicated, that is the grounds so made known, should be seen to pertain to pertinent and proximate matters and should comprise all the constituent facts and materials that went in to make up the mind of the statutory functionary and not merely the inferential conclusions."

38. In another decision reported in State of West Bengal Vs. Atul Krishna Shaw and Another, the Hon"ble Supreme Court observed :-

"Giving of reasons is an essential elements of administration of justice. A right to reason is, therefore, an indispensable part of sound system of judicial review. Reasoned decision is not only for the purpose of showing that the citizen is receiving justice, but also a valid discipline for the tribunal itself. Therefore, statement of reasons is one of the essentials of justice."

39. In view of the above discussions, it would clearly follow that a quasi judicial authority or even if an administrative authority is to give reasons or to record reasons in writing when passing any administrative or quasi judicial order the statutory authorities are not to act upon their whims, they are to follow the prescribed procedures and in such a case, if the authority feels that conditions laid down in the statute have been fulfilled and the claimant is entitled to

permission the authority will obviously give such permission and if the authority feels that conditions prescribed in the statute have not been fulfilled the authorities are to record their reasons and communicate the reasons to the claimant in writing for rejection and these are the basic principles of administrative action or quasi judicial action in such type of cases.

40. In my view, therefore, neither the procedures have been followed nor the reasons have been recorded or communicated to the petitioner in writing and the rejection order is palpably wrong and bad in law because of non-compliance of the statutory procedures and principles of natural justice and fair play.

41. In certain cases, the Hon"ble Supreme Court has given a caution that there must be judicial restraint and the writ Court should not encroach upon the power or jurisdiction of the statutory authority. But, at the same time, in so many decisions the Hon"ble Supreme Court has observed that when there is non-compliance of the statutory procedure when there is arbitrary exercise of power, when there is non-application of mind and whenever equity is called for the writ Court should not sit as silent spectator and it should render justice and give necessary direction to administer justice and this Court feel that this judgment need not be encumbered by quoting those decisions of the Hon"ble Supreme Court which are numerous in number.

42. The writ petition is, therefore, allowed. The impugned order dated 9.6.92 passed by the Commissioner/The Appellate Authority in an Appeal No. 5 of 1991 being annexure-R to the writ petition is quashed.

In the above view as the writ petition is allowed. The statutory authority is directed to grant permission to the petitioner to change the user of his land as mentioned in the writ petition and this decision granting permission should be communicated by the statutory authority within three weeks from the date of communication of this order. The writ petition is, thus, disposed of and there will be no order as to costs.

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