

East Kolkata Wetland Management Authority

Record of Proceedings

Matter arising out of Hon'ble Supreme Court order dated the 11th September, 2006 in SLPs 25146-25147/2005, 25742-25745 of 2005 and W.P.s 209 of 2006, 214 of 2006 and 238 of 2006.

Petitioners. 1. Green Valley Towers (Pvt.) Ltd.
2. Sanjeevani Projects (Pvt.) Ltd.

Members present in the meeting of East Kolkata Wetland Management Authority:-

1. Shri A. K. Deb, Chief Secretary.
2. Shri P. K. Pradhan, Principal Secretary, Urban Development & Municipal Affairs Department.
3. Shri M. L. Meena, Secretary, Environment Department.
4. Shri R.P.S. Kalkon, Secretary, Fisheries Department.
5. Shri A. Bandyopadhyay, Commissioner, Kolkata Municipal Corporation.
6. Shri P. R. Baviskar, Chief Executive Officer, Kolkata Metropolitan Development Authority.
7. Dr S. Banerjee, Chairman, West Bengal Pollution Control Board.
8. Dr. P. Banerjee, Member Secretary, West Bengal Pollution Control Board.
9. Smt. R. Sen, District Magistrate, Dist. : 24-Parganas (South).
10. Shri P. K. Mishra, District Magistrate, Dist. : 24-Parganas (North).

For Petitioners following persons attended the hearing :-

1. Shri R. K. Modi, Managing Director, Sanjeevani Projects Pvt. Ltd.
2. Shri S. K. Kenodia, Advocate, for Sanjeevani Projects Pvt. Ltd.
3. Shri S. K. Himatsingka, Director, Green Valley Towers Pvt. Ltd.
4. Shri U. N. Kedia, Authorised Signatory, Green Valley Towers Pvt. Ltd.
5. Shri Sutanu Ghosh, M.D., Ghosh, Bose & Associates (P) Ltd.
6. Shri N. Jhunjhunwala, Green Valley Towers Pvt. Ltd.
7. Shri U. Majumdar, Green Valley Towers Pvt. Ltd. & Ors.

In compliance of the order of Hon'ble Supreme Court of India, dated the 11th September, 2006, in the matter of Green Valley Towers (Pvt.) Ltd. and Sanjeevani Projects (Pvt.) Ltd., the date for hearing the petitioners was fixed on the 23rd October, 2006 in the 4th meeting of East Kolkata Wetlands Management Authority at Chief Minister's Conference Room, Writers' Buildings, Kolkata. Since both the matters involved almost identical questions of law and fact, they were taken together and heard simultaneously with the concurrence of the petitioners. The petitioners were present, along with their counsels and made their submission before the East Kolkata Wetlands Management Authority verbally and subsequently forwarded their written submission.

Background information

Green Valley Towers Pvt. Ltd. has moved Hon'ble Supreme Court of India challenging the Judgment of a Division Bench of Calcutta High Court by filing Special

Leave Petition No. 25146-25147 of 2005 and they have simultaneously filed Writ Petition (Civil) No. 209 of 2006 in the Hon'ble Supreme Court on the same set of facts.

Similarly, Sanjeevani Projects Pvt. Ltd. has moved Hon'ble Supreme Court of India Challenging the Judgement of a Division Bench of Calcutta High Court by filing Special Leave Petition No. 25742-25745 of 2005 and they have simultaneously filed Writ Petition (Civil) No. 214 of 2006 in the Hon'ble Supreme Court on the same set of facts.

Hon'ble Supreme Court has clubbed the aforesaid Special Leave Petition and Writ Petition's. In its order dated the 11th September, 2006 Hon'ble Supreme Court has directed the State to file Counter Affidavit in the Writ Petition's and the Additional Affidavit in Special Leave Petition's within three weeks.

On the representations of the petitioners in the Special Leave Petition in terms of Section 10 of the East Kolkata Wetlands (Conservation & Management) Act, 2006, Hon'ble Supreme Court has directed the State Respondents to consider the representations of the parties without prejudice to the rights and contentions of the parties and to take appropriate decision as may deem fit in accordance with law expeditiously.

Accordingly, the East Kolkata Wetlands Management Authority has fixed 23rd October, 2006 the date for hearing Greenvalley Towers Pvt. Ltd. & Sanjeevani Projects Pvt. Ltd.

The petitioners along with their Counsel made submission before East Kolkata Wetlands Management Authority verbally, followed by written submission, broadly covering the following points :-

1. The contention of the petitioners is based on Government records and all Govt. records clearly show that the land in question is not within wetland. They have based their contention on the basis of following records -
 1. 26.05.1997 Letter from Nema Mondal to The Assistant Director of Fisheries for NOC for change of use from "Bill-MACHH-Chas" to "Paddy Cultivation."
 2. 06.09.1997 No Objection of Bamanghata Gram Panchayat for Conversion.
 3. 29.09.1997 Letter from Assistant Director of Fisheries to The Private Secretary to the Hon'ble Minister-in-Charge, Fisheries Department along with enquiry Report dated 29.09.1997 - NOC for Conversion of Dag No. 321/615.

4. 29.05.2000 Conversion Order passed by District Land & Land Reforms Officer to Vishal Water World Pvt. Ltd. for portion of Dag No. 321/615.
5. 31.05.2000 Letter from Vishal Water World Pvt. Ltd. to the D.L.L.R.O. regarding No Objection Certificate for various uses.
5. 01.06.2000 Letter from D.L.L.R.O. to Vishal Water World Pvt. Ltd. regarding No Objection for use including Restaurant, Conference Hall, Towers, Waterpool, Resort, etc. for Commercial purpose.
7. 28.07.2003 Letter from Sub-Divisional Land & Land Reforms Officer to D.L. & L.R.O., South-24-Parganas regarding submission report on conversion case no. 13/02-03-Recommendation Conversion.
8. 10.04.2004 Notices for acquisitions of 1.91 acres of land in Dag no. 321/615 of Mouza Kochpukur.
9. 29.11.2004 Compensation paid by 4 cheques to land owners of land measuring 1.91 acres of Dag no. 321/615 of Mouza Kochpukur.

They have also submitted that in the East Kolkata Wetlands (Conservation & Management) Ordinance, 2005 and the East Kolkata Wetlands (Conservation & Management) Bill, 2006 the land has been shown as 'Urban/Rural Settlement'.

2. The concerned land was never a water body nor is a water body at present and several constructions have already been made apart from their construction.
3. State Govt. has acquired land for "Rajarhat New Town project which shows that the character of the land stood changed.
4. A portion of the land has been converted by the State from agriculture to amusement park, restaurant etc. i.e., for commercial exploitation.
5. Sanction of building plan by the panchayat without sending the matter to the LA collector for conversion is justified.
6. Fisheries Department vide their letter dated the 29th September, 1997 stated that for a long time the said land was being used as paddy field and since no water was there hence it was not possible to carry out any pisciculture.
7. The petitioners do not want to go in for a clash with State Govt. and are ready and willing to pay monetary compensation to the Govt. for creating equal amount of water body even if it is assumed for the sake of argument that the petitioners have allegedly filled up water body.

East Kolkata Wetlands Management Authority has considered the arguments put forward by the petitioners and also consulted the facts on record and has come to the following conclusion.

The land in question had changed its nature through natural growth over the years and has become a high land. This land is situated in the northern side of the PWD roads running side by side of the Krishnapur Canal. A portion of this land is also acquired by the Government for the purpose of Rajarhat Newtown Project. A portion of same land was purchased by one amusement park and the conversion was granted. This was subsequently revoked and a case is pending before the Hon'ble High Court on this matter.

2. It is a fact that the said land was shown as "Urban/Rural settlement" of the East Kolkata Wetland Management Plan at the time of issuing of East Kolkata Wetlands (Conservation & Management) Ordinance, 2005 and also at the time of submitting of East Kolkata Wetlands (Conservation & management) Bill, 2005. However subsequently these areas were included in the category of "substantial water bodies" at the time of passing of the Bill.

3. Dr. N. Kundu, Chief Technical Officer, East Kolkata Wetlands Management Authority has submitted his findings on the basis of analysis of satellite imageries over a period of time and he has certified that "Dag No. 771 to 775 of erstwhile Mouza of Dhapa Manpur and Kochpurpur, inner Police Station KLC, J.L. No. 2, L.R. plot nos. 250/613, 250/614, 321/615, 321/616, 321/617 are classified as settlement area (urban/rural settlements) in LANDSAT TM of 1986, SPOT of 1989, LANDSAT TM of 1992, IRS-IC PAN of 1997 and IKONOS of 2003 classified images. This was also communicated to MoEF, Govt. of India earlier.

4. The petitioner in para 5 of their representation has sought permission to grant sanction for change of character or mode of use of the land. Their contention is that such sanction will improve the environment and its surroundings and also submitted further that superstructure on the land have already been made and third party interest have already accrued. Petitioners further proposes to pay voluntarily reasonable cost for making equal area of water body assuming the contention of State Govt. that the petitioners have constructed by filling up water body.

5. In para 41 and para 53 of W.P. (C) No. 209 of 2006 also the petitioners have contended that when the entire superstructure was constructed on the

plot of land and third party rights were created thereafter, the State Govt. is now unfairly trying to include the plot within the ambit of East Kolkata Wetland.

5. It is a fact that the EKW (Conservation & Management) Ordinance, 2005 came into force on 16th day of November, 2005. As such the plots in question came within the purview of East Kolkata Wetland area with effect from 16th November, 2005 and not prior to that.

7. From the 16th November, 2005 it became compulsory for any person holding a land in East Kolkata Wetland to follow the procedure for grant of sanction as stated in section 10 of the Act.

11. In view of their representation we may grant them post-facto sanction subject to the condition that the sponsors of the projects will be bound to maintain and improve local environment and its surroundings and either pay an amount for making equal area of water body or specify land within EKW area within a specific time for creation of compensatory water body by the petitioners, the area of which shall not be less than the area of land which they have filled up for construction.

This has approval of Ld. Advocate General, Government of West Bengal

Sd/- A. K. Deb

Chairman, East Kolkata Wetlands Management Authority &
Chief Secretary, Government of West Bengal

IN THE SUPREME

COURT OF INDIA

CIVIL APPELLATE

JURISDICTION

014520

CIVIL APPEAL

NO. 27 OF 2006

(Arising out of S.L.P. (C) No. 25742-25745 of 2005)

146-25147 of 2005)

Greenvally Towers Pvt. Ltd. & Anr.

..Appellant(s)

Versus

State of West Bengal & Ors.

...Respondent(s)

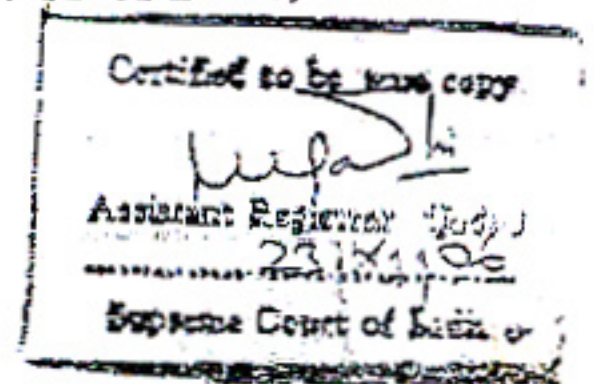
WITH

Civil Appeal No. 5027 of 2006

(Arising out of S.L.P. (C) Nos. 25742-25745 of 2005)

ORDER

Leave granted.



The record of proceedings of the East Kolkata Wet Land Management Authority dated 23rd October, 2006, which is marked as Annexure 'A', has been placed before us. All the parties submit that these matters be disposed of in terms thereof. All the parties shall abide by the decisions recorded in the said proceedings dated 23rd October, 2006. While carrying on further construction, the appellants shall comply with all the conditions stipulated in the record of proceedings dated 23rd October, 2006. On violation of the conditions stipulated therein, it would be open to the

...3/-

authorities to take appropriate actions/proceedings. All law, including the pollution laws, shall have to be complied with. In case of non-compliance, necessary consequences will follow. In this view, the impugned judgements and orders of the High Court are set aside. Interim restraints placed by this Court on the appellants are vacated.

The civil appeals are disposed of in the above terms.

No orders are required to be passed on the applications for impleadment.

No costs.

Sd/-
..... CJI.
[Y.K. SABHARWAL]

Sd/-
.....
[C.K. THAKKER]

Sd/-
..... J.
[B. RAVEENDRANI]

New Delhi,
November 17, 2006.