

12.6.2013
Sl.16
as/mb

W.P.24410 (W) of 2007

Subal Chandra Mondal
-vs-
State of West Bengal & Ors.

Shri Bhabes Chandra Biswas,
Ms. Mitali Das.

...For the Petitioner.

Shri Bikash Mukherjee.

...For the State.

Shri N. C. Bihani.

...For the Board.

Re: CAN 7368 of 2009.

The learned Counsel for the petitioner submits that an application for substitution has been filed but the same has not been placed on record till date. Department is directed to place the application on record.

Having heard the learned counsel appearing for the parties and considering the gravity of the matter, we allow the application for substitution treating the same as on day's list.

Department is directed to cause necessary amendment in the cause title of the writ petition.

Re: W.P.24410 (W) of 2007.

The writ petition has been preferred by the petitioner by way of public interest litigation to preserve the wetland and to stop the illegal construction in the wetland. Prayer has been made that the respondent be restrained from constructing the road and any structure in beel fishery and wetlands of East Kolkata Wetlands (Conservation and Management) Act, 2006 in Ward No.108 within the Kolkata Municipal Corporation of Borough Committee. The petitioner has filed representation, which has not been taken into consideration in the matter of illegal filling up of wetland by the respondent Nos.13 to 18.

This Court passed the following order on 6.3.2009.

“It is not disputed by any of the parties before us by the East Kolkata Wetlands have to be preserved in their natural state. In fact, the East Kolkata Wetlands Conservation and Management Act, 2006 has been enacted to ensure that there is no harm caused to the entire area, which has been declared as wetlands under the Act. It is, therefore, the bounden duty of all the authorities constituted under the aforesaid Act to ensure that no illegal activity is permitted in the wetlands which would in any manner changing the character and nature of the wetlands. It is also the bounden duty of the competent authorities under the Act to ensure that any illegal construction either made or being continued is not permitted to remain in the wetland. The authorities are expected to strict action against the violators of the norms which have been prescribed under the wetlands Act and other applicable provision to ensure that the wetlands are preserved in accordance with the mandate of the Act.

On the earlier occasion in the order dated 7th December, 2007, this Court had noticed that in spite of the orders passed by this Court on number of occasions, clandestine and illegal construction has been continuing in the wetlands. All the respondent authorities were directed to ensure that no further illegal construction is permitted in the area covered by the Wetlands Act.

Learned Advocate General, however, brought to our notice today that in spite of the specific order having been issued by this Court the illegal construction is still being continued by the respondents and number of other parties. If that be so, we direct the local police authorities to render all necessary assistance to the competent authority to take strict legal action against any individual or any group of persons engaged in illegal construction within the area of wetlands.

With those observations, we could dispose of the writ petition. However, in order to ensure that the character and nature of the wetland is maintained, we would adjourn this matter for three months to enable the State Government and other competent authorities to place on the record the ground realities as they exist within the wetland area, so that further effective orders can be passed.

It goes without saying that the aforesaid direction issued by this Court would not in any manner affect the powers of the Civil Court to take independent decision in civil suit and other proceedings that may be pending before it.

Xerox plain copy of this order duly countersigned by the Assistant Registrar (Court) be given to the learned counsel for the parties on usual undertaking.”

Thereafter no response has been filed by the State Government. This Court has ordered that no further illegal construction to be permitted in the area covered under the Wetland Act. It was also directed to the local police authorities to render all necessary assistance to the competent authority to take legal action against the persons engaged in illegal construction within the area of the wetlands.

This Court has observed that the direction issued by this Court would not affect the powers of the Civil Court to take independent decision in the civil suits pending before it.

In the circumstances, we are compelled to issue necessary directions. Let the wetlands be preserved and, in case, any illegal construction has been made, the same be removed forthwith as already ordered by this Court on the previous occasion on 6.3.2009. In case, petitioner has any other grievance, he can raise it before the competent authority under the East Kolkata Wetlands (Conservation and Management) Act, 2006.

Let the competent authority look into the matter and do the needful for preservation of the wetlands.

With the aforesaid direction, the writ petition is disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the appearing parties upon compliance of necessary formalities.

(Joymalya Bagchi,J)

(Arun Mishra, Chief Justice)