

ORDER

No.CTO/EN/242/349/13

dated 12.9.2013

Reasoned Order in terms of Order dated 2.8.2013 passed by Hon'ble High Court, Calcutta in M.A.T.1122 of 2013 and C.A.N.7606 of 2013 Splendour Commercial Pvt. Ltd. & Anr.– Vs- East Kolkata Wetlands Management Authority & Ors.

WHEREAS Splendour Commercial Pvt. Ltd. through Sri Hari Narayan Bihani, Director applied in Form-I (Application No.440) for change of character or mode of use of land in the East Kolkata Wetlands area (under Rule 8 of the East Kolkata Wetlands (Conservation and Management) Rules, 2006) on 24.1.2011;

AND WHEREAS the plot of land under consideration was in Mouza Jagatipota, JL No.3, RS Dag No.9/61, 9/62 and 9/65, area 188 cottah under Gram Panchayat Kheadaha No.2, Police Station Sonarpur, District 24 Parganas South and as per Record of Rights (ROR) said land was classified as *Shali* (agricultural land) and purpose of application was conversion of land classification from “*Shali*” to “*Bastu*” for construction of school building and East Kolkata Wetlands Management Authority (EKWMA) did not issue No Objection Certificate (NOC) for the requested conversion and the entire mouza Jagatipota falls under the jurisdiction of the EKWMA;

AND WHEREAS subsequently Splendour Commercial Pvt. Ltd. approached the Hon'ble High Court of Calcutta in WP No.23860(W) of 2012 against EKWMA and vide Order dated 15.7.2013 the said Writ Petition was rejected;

AND WHEREAS Splendour Commercial Pvt. Ltd. challenged the Order dated 15.7.2013 (against WP No.23860(W) of 2012) vide M.A.T 1122 of 2013 and C.A.N 7606 of 2013 Splendour Commercial Pvt. Ltd. & Anr. Vs East Kolkata Wetlands Management Authority & Ors.;

AND WHEREAS the Hon'ble High Court, Calcutta passed an Order on 2.8.2013 in M.A.T.1122 of 2013 and C.A.N.7606 of 2013 Splendour Commercial Pvt. Ltd. & Anr. Vs East Kolkata Wetlands Management Authority & Ors. with the direction to the competent authority “to consider the aforesaid prayer of the appellants strictly in accordance with law upon giving an opportunity of hearing to the authorised representative of the said appellants without any further delay but positively within a period of six weeks from the date of communication of this order”;

AND WHEREAS the Member Secretary, EKWMA instructed the Chief Technical Officer (CTO) of EKWMA to take a hearing and place the matter for decision / orders of the Chairman, EKWMA through him and accordingly a notice for hearing was issued vide No.CTO/EN/219/349/13 dated 16.8.2013;

AND WHEREAS the hearing was held as scheduled on 23.8.2013 (Friday) at 11.30am in the Conference Room at Poura Bhavan, 4th Floor and was attended by the following:

For Appellants:

1. Hari Narayan Bihani, Director, Splendour Commercial Pvt. Ltd.
2. Tarun Bihani
3. Avik Datta, Barrister-at-law

4. Israfil Middy, Consultant
5. Sankar Bhagat, Advocate.

For EKWMA:

1. Dr Kana Talukder, IFS, CTO
2. Anirudha Paul
3. Supreet Kaur;

AND WHEREAS the CTO requested the Appellants to submit any documents they wished relating to the case and further requested them to check the available records in the file and the Appellants went through the records in file and stated them to be alright and photocopies of three additional *khajna* receipts were submitted and the original copy of ROR was shown by the Appellants during the hearing and Appellants were requested by the CTO to submit copy of the *Wakalatnama* and details of the school, which were duly submitted after the hearing and placed on record in the file;

AND WHEREAS the CTO asked the Appellants as to how their proposed project involving construction of the school building would improve the local environment in the East Kolkata Wetlands and the Appellants explained about the advantages of modern and advanced teaching methods involving computers, interactive learning systems without blackboards and that for CBSE affiliation a minimum acreage of school campus was required, which was reportedly not possible in the current school compound housing classes I to IV and children had to leave after class IV and that in the new premises classes were proposed to be extended till class XII and according to the Appellants children would get the advantages of advanced learning in the new campus and would not have to leave Kolkata for better education and this would improve the environment;

AND WHEREAS the CTO asked the Appellants as to why the new premises at Jagatipota were chosen and that the Appellants explained that all the development was happening in the area and alternative sites were too far and that the company Zee Learn Ltd. had allotted franchise of that zone to the school;

AND WHEREAS the CTO asked the Appellants the mode in which the school was proposed to be run and that the Appellants explained that the Trust would run the school;

AND WHEREAS the CTO asked the Appellants about the infrastructure and civic amenities available in the new premises and the Appellants explained that the area was under the Panchayats and not under the Kolkata Municipal Corporation (KMC), but the KMC was shortly expected to extend services to the zone and that they were going to draw ground water to meet the campus needs and that CESC was expected to provide electricity in future;

AND WHEREAS the CTO explained to the Appellants the procedure being adopted in this case, that she had been instructed to take a hearing and submit the file to the Member Secretary, EKWMA (who is also the Additional Chief Secretary, Environment) and that the matter would be thereafter placed for orders/ decision of the Chairman, EKWMA (who is also the Chief Secretary, West Bengal) and the Appellants agreed.

Considering the representation submitted by the party Splendour Commercial Pvt. Ltd. and examining the available records the CTO was of the opinion that the EKWMA may not grant NOC or issue an order granting sanction under section 10 of the East Kolkata Wetlands (Conservation and Management) Act, 2006 to the Application No.440 dated 24.1.2011 from Splendour Commercial Pvt. Ltd. due to the following reasons:

- i. Perusal of the project document revealed it to be a commercially profitable venture. The following table presents selected relevant portion of the projection of performance and profitability as given in the submitted project details (Rs in lakhs):

Particulars	F/Y 12-13	F/Y 13-14	F/Y 14-15	F/Y 15-16	F/Y 16-17	F/Y 17-18	F/Y 18-19
Profit after tax for the Company	8.78	59.48	115.40	170.47	224.82	278.67	331.84
Excess of income over expenditure for the Trust – Litera Valley	5.04	74.86	21.08	42.50	43.66	38.97	40.27

- ii. The Deed of Conveyance has a “Schedule of the said land hereby sold”. The first sentence of said schedule starts “Piece or parcel of contiguous will be used agricultural purpose agricultural land as purchased by the Vendor as per its registered deeds, documents and conveyances....”. This indicates that the Vendor purchased and subsequently sold the land classified as agricultural (*shali*) for agricultural purpose. The original sellers of the plots perhaps did not sell to a commercially profitable venture.
- iii. The NOC from Kheadaha No.2 Gram Panchayat for conversion from *shali* to *bastu* land has no particular relevance in the current case since as per section 22 the East Kolkata Wetlands (Conservation and Management) Act, 2006, overrides other laws.
- iv. The school proposes to run five buses, so distance does not have much relevance. Alternative sites beyond the protected Ramsar area (East Kolkata Wetlands area) can well be chosen.
- v. The East Kolkata Wetlands (Conservation and Management) Act, 2006 came into force on 16.11.2005, replacing the earlier Ordinance. The current school at Tollygunj has been functioning since 1.4.2007 on the project proponents own property. Land procurement activities for the project within the East Kolkata Wetlands area apparently were initiated from 2007-2008 after the East Kolkata Wetlands (Conservation and Management) Act, 2006 came into force. Deed of Conveyance is dated 21.8.2009.
- vi. The Miscellaneous Fixed Assets in the project document lists water treatment plant, generators, transformer, electric substation, cooling tower, air conditioning, teaching aids, laboratory equipment, gymnasium equipment, five buses, etc. These are energy intensive devices. Further, the school proposes to draw ground water through tubewells to meet what seems to be its considerable water needs. The new premises housing 500 to 1000 persons are likely to generate large quantities of municipal solid waste. These cannot be said to improve the environment.
- vii. The preamble of the East Kolkata Wetlands (Conservation and Management) Act, 2006 (West Bengal Act VII of 2006) mentions that it is “an Act to provide for conservation and management of the East Kolkata wetlands and for matters connected therewith and incidental thereto. Whereas the wetlands act as regulator of water regime, source for underground water recharging...”. The project proposal does not facilitate this and therefore cannot be said to improve the environment.
- viii. As per section 10(5) of the East Kolkata Wetlands (Conservation and Management) Act, 2006 nothing in the section empowers the EKWMA to grant sanction for change of character or mode of use of a land unless the change is for improvement of the environment.
- ix. In the 1993(1)CLJ People United for Better Living in Calcutta (PUBLIC) vs. State of W.B. decision dated 24.9.1992 (which ultimately led to the enactment of the East Kolkata Wetlands (Conservation and Management) Act, 2006) it is recorded that “There shall also be an order of injunction prohibiting the respondents from granting any permission to any person whatsoever for the purpose of changing the use of the land from agricultural to residential or commercial.....”. The project proposal under consideration is not in compliance with said decision.

AND WHEREAS in terms of Order dated 2.8.2013 of the Hon'ble High Court, Calcutta, the Member Secretary, EKWMA has examined the matter elaborately and taken a decision to recommend that NOC or a sanction order under section 10 of the East Kolkata Wetlands (Conservation and Management) Act, 2006 may not be granted to the petitioner Splendour Commercial Pvt. Ltd.;

AND WHEREAS the Chairman, EKWMA also has examined the matter and approved the decision not to grant NOC or a sanction order under section 10 of the East Kolkata Wetlands (Conservation and Management) Act, 2006 to the petitioner Splendour Commercial Pvt. Ltd. and to pass this order disposing of the matter and authorizing the Chief Technical Officer vide Rule 10(3) of East Kolkata Wetlands (Conservation & Management) Rules 2006 to communicate the decision to the petitioner with reasons as recorded.

(Kana Talukder)
Chief Technical Officer,
East Kolkata Wetlands Management Authority
& Senior Environment Officer,
Department of Environment,
Government of West Bengal.

No.CTO/EN/242/(6)/349/13

dated 12.9.2013

Copy forwarded for kind information and necessary action to:

1. Chief Secretary, West Bengal and Chairman, East Kolkata Wetlands Management Authority.
2. Additional Chief Secretary, Department of Environment, Government of West Bengal and Member Secretary, East Kolkata Wetlands Management Authority.
3. The District Magistrate, 24 Parganas South.
4. The Director, Splendour Commercial Pvt. Ltd., 2 N.C. Dutta Sarani, Sagar Estate, 4th floor, Kolkata 700001.
5. The Assistant Registrar (Court), Appellate Side, High Court, Calcutta with reference to order dated 2.8.2013 in the matter of M.A.T 1122 of 2013 and C.A.N 7606 of 2013 Splendour Commercial Pvt. Ltd. & Anr. Vs East Kolkata Wetlands Management Authority & Ors.
6. Guard file.

Chief Technical Officer,
East Kolkata Wetlands Management Authority