

Subhas Datta S/O Late Baneswar Datta vs State Of West Bengal Through Chief ... on 30 September, 2021

Item No. 03

Court No.1

BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
(Through Video Conferencing)
Original Application No. 06/2016/EZ

Subhas Datta

Applicant(s)

Versus

State of West Bengal & Ors.

Respondent(s)

Date of hearing: 30.09.2021

CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER

For Applicant(s) : Mr. Subhas Datta, in person

For Respondent(s) : Mr. Sibojyoti Chakraborty, Advocate for R-1,2&4,
Mr. Sandipan Banerjee, Advocate a/w
Ms. Amrita Pandey, Advocate for R-3
Mr. Somir Kumar Daskar, Adv. for R-5,8,9,10 &11,
Mr. Dipanjan Ghosh, Advocate for R-6,
Mr. Arnab Chakraborty, Advocate for R-7,
Ms. Paushali Banerjee, Advocate for R-12,
Mr. Nilotpal Chatterjee, Advocate for R-13,

ORDER

1. Mr. Subhas Datta, the Applicant in person is present.

2. Mr. Sibojyoti Chakraborty, learned Counsel is present for Respondent Nos. 1, 2 & 4, State Respondents, Govt. of West Bengal, Mr. Sandipan Banerjee, learned Counsel assisted by Ms. Amrita Pandey, learned Counsel is present for Respondent No.3, Howrah Municipal Corporation, Mr. Soumir Kumar Daskar, learned Counsel is present for Respondent Nos. 5, 8, 9, 10 & 11, Railway Respondents, Mr. Dipanjan Ghosh, learned Counsel is present for Respondent No.6, West Bengal Pollution Control Board, Mr. Arnab Chakraborty, learned Counsel is present for Respondent No.7, M/s Mackintosh Burn Ltd., Ms. Paushali Banerjee, learned Counsel is present for Respondent No.12, Kolkata Metropolitan Development Authority, and Mr. Nilotpal Chatterjee, learned Counsel is present for Respondent No.13, District Magistrate, Howrah.

3. Mr. Sibojyoti Chakraborty, learned Counsel states that the affidavit of the Chief Secretary, Govt. of West Bengal, could not be filed since the server of the National Green Tribunal was not functional.

4. Let the affidavit be filed within one week and one hard copy of the same shall also be filed in the Registry of the Tribunal. The e-copy/soft copy of the affidavit shall also be served upon the Applicant in person as well as the learned Counsel for the other Respondents before filing the same

in the Tribunal, failing which the Tribunal will impose cost on the Counsel for not filing the same within time.

5. Mr. Nilotpal Chatterjee, learned Counsel states that he has also filed an affidavit on behalf of the District Magistrate, Howrah but the same is not on record.

6. Let the same be brought on record within one week and one hard copy of the same shall be filed in the Registry of the Tribunal. The e-copy/soft copy of the affidavit shall also be served upon the Applicant in person as well as the learned Counsel for the other Respondents before filing the same in the Tribunal.

7. One supplementary affidavit dated 23.08.2021 has been filed on behalf of the Respondent No.5, South Eastern Railway. The same is taken on record.

8. This supplementary affidavit has been filed in the Tribunal through e-filing, however, Mr. Subhas Datta, the Applicant in person states that the copy which has been served upon him is not paginated.

9. Mr. Somir Kumar Daskar, learned Counsel shall provide e-copy/soft copy of the supplementary affidavit duly paginated on Mr. Subhas Datta as well as the other learned Counsel for the Respondents within 24 hours.

10. One affidavit dated 23.08.2021 has been filed on behalf of the Respondent No.12, Kolkata Metropolitan Development Authority (KMDA) by Ms. Paushali Banerjee, learned Counsel. The same is taken on record.

11. However, we find that this affidavit is also not paginated. Let the same be done in the course of the day and the e-copy/soft copy of the same shall be served upon the Applicant in person as well as the learned Counsel for the other Respondents within 24 hours.

12. In the affidavit which has been filed by the Respondent No.5, South Eastern Railway, it is stated that the Railways had never objected to the construction of Sewage Treatment Plant (STP) (now garland drain) and Waste Stabilization Pond. The Howrah Municipal Corporation has cited three reasons for not constructing the STP and the garland drain which are as under:-

(i) Removal of encroachments in the surroundings of Santragachi Jheel.

(ii) Non-reduction of land cost by Railway.

(iii) Railways not agreeing to change the cost sharing of STP.

13. The above cited reasons given by the Howrah Municipal Corporation has been contested by the Railways on the following grounds:-

(i) As directed by Hon'ble NGT vide order dated 02.11.2017, South Eastern Railway has already conducted individual hearing of each case and passed eviction orders and thereafter District Magistrate has been requested by the Divisional Railway Manager (Engg.), Kharagpur vide letter No. W/L-CELL/SRC-Jheel dated 23.03.2021 to take suitable action on behalf of State Govt. so that Railways can implement the eviction order against the unauthorized occupants beside Santraganchi Jheel which is still awaited.

Therefore, citing the non-removal of encroachments as a reason by HMC for not constructing STP and for adopting alternative scheme in their affidavit is not correct and proper. Photocopy of the said letter has been annexed herewith and marked with the letter R/1.

(ii) Land cost is furnished by Land Revenue Department of State Govt.

based on which the Land Lease charges are calculated. So if at all the land cost was to be reduced considering the purpose of the project in hand it was to be reduced by Land Revenue Department of State Govt. Railway had got no role to play in this." In this regard, it is submitted that State Government has already reduced the land cost by around 1/3rd considering the project to be for public purpose. This is evident by the letter of Assistant Secretary to Govt. of W.B. LLR and RR department communicated vide letter No. 2410-LP/242/16-1S dated 05.07.2018. As per this letter the commercial market value is Rs. 3.63 Lakh per decimal whereas the commercial market value of land was Rs. 11.0 Lakh per decimal (as per WB Govt. Website). This fact was also recorded in the order dated 02.11.2017 of Hon'ble NGT and it was duly submitted by South Eastern Railway during the hearing that due to the reduced cost of land, the project cost would be substantially reduced from initially Rs. 30.00 Cr. to about Rs. 20.00 Cr. Photocopy of the letter dated 02.11.2017 is annexed herewith and marked with the letter R/2.

(iii) The share of cost of STP to be borne by Railway had already been decided as 18% (Eighteen Percent) by Hon'ble NGT in its order dated 15.09.2017. Therefore, the question of changing the cost sharing does not arise and citing this as a reason by HMC for adopting alternative scheme is also not correct and proper. Photocopy of the letter dated 15.09.2017 is annexed herewith and marked with the letter R/3."

14. The Railway Respondents have prayed for some more time and it is also stated that they have no objection to the new proposed scheme of garland drain and waste stabilization pond which is to be executed on Railway land and within the Railway premises and cost of the project is also to be shared by the Railways, therefore, before accepting the Detailed Project Report (DPR), the Railway would like to scrutinize the proposal/DPR to examine the following issues:-

- (i) Environmental impact of the project,
- (ii) Cost sharing of the project by the Railways.

15. Ms. Paushali Banerjee, learned Counsel, on the other hand, has referred to paragraph 2 of the affidavit of KMDA dated 23.08.2021 which reads as under:-

"2. I say that in compliance of the orders of this Hon'ble Tribunal I say the followings:-

(i) Garland drain to be constructed around all sides of the Jheel including interception and diversion of all outfalls to convey the untreated effluents into the STP.

(ii) Provisions will be made for a low cost sanitation treatment process by providing a WSP (Waste Stabilization Pond) STP and two pumping stations one is for incoming and another is for discharging the treated effluent at the outfall point at Nazirgaunge Khal.

(iii) There is a small pond belongs to the S.R. Rly. On the opposite side of the road adjacent to the Jheel and it has been discussed that the pond will be converted into WSP by dividing the pond into three parts as required in the process design for treating the waste water by Waste Stabilization Pond (WSP).

(iv) Accordingly KMDA has already engaged Consultant by floating e-

N.I.T as per GoWB. norms and Work Order has been issued vide memo no. SE(GAP)/W & S/2W-1/2021-22/56 dated 05.07.2021 (Flat-A) for preparation of DPR. The DPR is now final and submitted for approval."

16. Ms. Banerjee also submits that the Detailed Project Report (DPR) has been prepared by the Kolkata Metropolitan Development Authority on the recommendations which have been duly vetted by Professor Amit Dutta, Department of Civil Engineering, Jadavpur University. She further informs that on this Detailed Project Report, the Railways have given lengthy comments and, therefore, she prays that a Committee may be constituted by the Tribunal to examine this matter so that the matter can be resolved expeditiously.

17. We, therefore, constitute a Committee comprising of the following Members:-

(i) Chief Engineer, Kolkata Metropolitan Development Authority;

(ii) Chief Engineer, South Eastern Railways;

(iii) Municipal Commissioner, Howrah Municipal Corporation;

(iv) Professor Amit Datta, Civil Engineer, Jadavpur University;

and

(v) District Magistrate, Howrah.

18. This Committee shall examine the Detailed Project Report prepared by the KMDA as well as the comments raised by the Railways and thrash out all the issues and file its report before this Tribunal within two months.'

19. The KMDA shall be the Nodal Office for all logistic purposes and for submitting the report of the Committee.

20. List on 01.12.2021.

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B. Amit Sthalekar, JM

Saibal Dasgupta, EM September 30, 2021 Original Application No. 06/2016/EZ AK