

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH,
KOLKATA**

.....
Appeal No.16/2023/EZ

IN THE MATTER OF:

1. **Ruma Kaibartya,
D/o Madhusudan Kaibartya,
Proprietor of M/s Ruma Brick Field,
R/o Village and P.O.-Jalbui, P.S.-Memari,
District-Purba Bardhaman,
Pin – 713146,**
2. **Madhusudan Kaibartya,
S/o Late Mahadeb Kaibartya,
R/o Village and P.O.-Jalbui, P.S.-Memari,
District-Purba Bardhaman,
Pin – 713146,**

....Appellant(s)

Versus

1. **The West Bengal Pollution Control Board,
Through its Member Secretary,
Paribesh Bhawan, Plot No.10A,
Block-LA, Sector-III, Bidhannagar,
Kolkata – 700106,**
2. **Additional District Magistrate and District Land and Land
Reforms Officer, Nadia,
Collectorate Building, Krishnanagar, Nadia,
Pin – 741101,**
3. **Block Land and Land Reforms Officer, Nabadweep,
Maheshganj, P.S.-Nabadweep,
District – Nadia,
Pin – 741315,**
4. **The Inspector-in-Charge, Nabadweep Police Station,
District-Nadia,
Pin – 741302,**

....Respondent(s)

COUNSEL FOR APPELLANT(S):

Mr. Kallol Basu, Advocate a/w Mr. Nilanjan Pal, Advocate

COUNSEL FOR RESPONDENT(S) :

**Mr. Sibojyoti Chakraborty, Advocate for R-1,
Mr. Sudip Kumar Dutta, Advocate for R-2 to 4,**

JUDGMENT

PRESENT:

HON'BLE MR. JUSTICE B. AMIT STHALEKAR (JUDICIAL MEMBER)

HON'BLE DR. ARUN KUMAR VERMA (EXPERT MEMBER)

**Reserved On:- September 21st, 2023
Pronounce On:- September 27th, 2023**

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| 1. Whether the Judgment is allowed to be published on the net? | Yes |
| 2. Whether the Judgment is allowed to be published in the NGT Reporter? | Yes |
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JUSTICE B. AMIT STHALEKAR (JUDICIAL MEMBER)

Heard the learned Counsel for the Appellants as well as the learned Counsel for the Respondents and perused the documents on record.

2. The Appeal has been filed by the Appellants, seeking quashing of the closure order dated 20.02.2023 (Annexure-P-6, page no.53 of the paper book), passed by the Land & Land Reforms Officer, Nabadweep, District-Nadia.

3. Briefly stated the facts of the case are that the Appellant No.1 is the Proprietor of M/s Ruma Brick Field situated in Village-Forestdanga, P.O.-Swarupganj, P.S.-Nabadweep, District-Nadia. The land in question is stated to be Rayati land and the Appellants

had obtained Trade License from Majdia Pansila Gram Panchayat, Nabadweep, Nadia, and various other statutory clearances.

4. It is stated that the brick field of the Appellants is located in L.R. Plot Nos. 258, 259, 260 and 554 under L.R. Khatian Nos. 525, 1219, 1067 and 231 respectively, corresponding to R.S. Dag Nos. 258, 259, 260 and 554 under R.S. Khatian Nos. 352, 445, 129 and 351 respectively, in Mouza-Parmedia, J. L. No.27, Under P.S.-Nabadweep, District-Nadia, and the total area of the plot is 2.03 acres. It is stated that the brick field of the Appellants has been operating for manufacturing of bricks since 2012.

5. It is further stated that in terms of the directions of the Tribunal given in Original Application No.48/2015/EZ (*Joydeep Mukherjee Vs. Pollution Control Board, West Bengal & Ors.*), the Appellants had deposited an amount of Rs.1.5 lakhs with the West Bengal Pollution Control Board on 03.05.2016 for causing environmental pollution and soil degradation by illegally operating the brick field without obtaining Consent to Operate and Consent to Establish from the West Bengal Pollution Control Board.

6. It is also stated that a WPA (P) No.32 of 2021 (*Uttam Kumar Paul Vs. The State of West Bengal & Ors.*) was decided by the Hon'ble Calcutta High Court vide order dated 14.06.2022 directing the Respondent No.1 therein to restore the remaining alluvial lands to their original position within two months. The Respondents were also directed to recover the demolition and restoration charges from the persons responsible for causing it, in accordance with law. The

injunction order passed by the Hon'ble Calcutta High Court dated 16.04.2021 was also made absolute. The order dated 14.06.2022 reads as under:-

“By this public interest petition a prayer has been made to identify the extent of areas of land in the river banks i.e. alluvial lands which are illegally occupied by unauthorised brick kiln owners and to direct the respondent authorities to recover the land so illegally occupied.

The plea raised in the petition is that alluvial lands have been illegally dug up and captured for starting construction of brick kilns and those brick kiln owners have encroached upon the government land and the respondent authorities are not taking any effective action but permitting the private respondents to construct the brick kilns

Considering the nature of the allegations made in the petition, this Court on 16th April, 2021 had passed the following order:

“1. This writ petition projects the devastating impact of ruthless intrusion into alluvial lands which are spread over of river banks. It is submitted by learned counsel appearing for the Government, that the complaint relates to land which are lying adjacent to lands vested in Government. Obviously, therefore, there cannot be any private individual right being permitted to operate on the lands which abut the flowing river or stagnant river or a stagnant water body as well as the banks thereof including the alluvial landscape. Such activities, will also be tremendously prejudicial to the interest of the State if the lands which are vested in it are not protected. It is the submission of learned counsel for the State Government that the local authorities, namely, the BL

& LRO and other Revenue Authorities as well as the police authorities are taking stringent measures to stop the operation of the illegal brick kilns and other illegal activities. Obviously, therefore, the parcels of land in that area have to be protected not only from the private respondents who are added as parties with allegations against them, but also from being scouted upon by any person except where requisite sanction is given in strict conformity with the laws governing activities on rivers including river banks or on alluvial landscapes.

2. *In the aforesaid situation, we hereby pass an order of injunction restraining any activity on the lands which are river banks or alluvial landscapes or alluviated lands whether in the form of brick kilns or brick-making process or other activities. This injunction will be treated as one against any person indulging in activities in any such area in the State of West Bengal and shall be strictly enforced by the jurisdictional BL&LRO, the District Magistrate, the Superintendent of Police and police officers under the command of the Superintendent of Police in every district concerned.*

3. *Report of action taken on the basis of this order shall be placed before us on behalf of the State Government in the form of an affidavit before the next date of hearing.*

4. *Post the matter on 11-06-2021.”*

Thereafter the respondent no.1 had filed the report in the form of affidavit disclosing the number of brick kilns which were operating in North 24-Parganas, South 24-Parganas and Nadia as also Murshidabad, Purba Medinipur and other parts of the State. The report indicates that there were reported offenders of theft of river bed materials Further affidavit was filed in the

matter in respect of the steps taken for removal of unauthorised brick kilns and for restoration of alluvial lands. The report in the form of affidavit has been filed today stating the outcome of the efforts to restore the land.

Learned counsel for the State has informed that all the unauthorised brick kilns operating on the alluvial lands have been removed. On the issue of restoration of land to their original position he has submitted that the current affidavit was sworn on 21st April, 2022 and thereafter substantial time has lapsed, and now almost all the lands have been restored to their original position and if any part remains, the same will also be restored within two months. He has also submitted that the demolition and restoration charges are required to be recovered from the unauthorised encroachers and unauthorised brick kiln owners in terms of Sections 5 and 6 of the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962, which will be recovered.

Learned counsel for the petitioner has also submitted that in view of the subsequent steps taken by the State authorities, the grievance of the petitioner does not survive.

Hence, we dispose of the present petition directing the respondent no.1 to restore the remaining alluvial lands to its original position within two months. The respondents are also permitted to recover the demolition and restoration charges from the persons responsible for causing it, in accordance with law.

The order of injunction passed by this Court on 16th April, 2021 is hereby made absolute.

The petition is, accordingly, disposed of.”

7. Mr. Kallol Basu, learned Counsel for the Appellants submitted that the brick field in question is situated approximately 300 meters

away from the river, namely, Ganga Nadi, and the said brick field is not operating on the river bank, alluvial landscapes or alleviated lands. The submission of the learned Counsel further is that the nature and character of the land in question of the said brick field was 'Ayush/Aush' i.e., agricultural land.

8. During the course of the arguments, Mr. Kallol Basu, learned Counsel for the Appellants submitted that the dispute actually relates to L.R. Plot No.260 which would be evident from the letter dated 13.07.2023 (page no. 156 of the paper book), of the Revenue Inspector, Mahisura, Nabadweep, Nadia, addressed to the Block Land & Land Reforms Officer, Nabadweep, District-Nadia, which would show that the land is 'Sikistibhumi' recorded in the name of Rabindra Natha Kaibartya as 'Raiyat'. This letter also mentions that at the time of joint field verification it was found that the Chimney of the Ruma Brick Field is situated on Plot No.260 over an area of 0.01 acres and the said brick kiln is situated on two plots, namely, Plot No.260 and Plot No.554 and an area of 0.29 acres of L.R. Plot No.260 and 0.08 acres of L.R. Plot No.554 are being used as Kiln area.

9. Learned Counsel further submitted that the judgment of the Hon'ble Calcutta High Court was with regard to the 'Sikistibhumi' lands and related to the impact of intrusion into alluvial lands spread over the river bank. The case of the Respondents before the Hon'ble High Court was that the complaint related to lands which lay adjacent to lands vested in the Government and, therefore, there cannot be any private individual right being permitted to operate on

the lands which abutting the flowing river or stagnant river or stagnant water body as well as the banks thereof including the alluvial landscape. Parcels of land in that area have to be protected not only from private respondents but also from being scouted upon by any person except where requisite sanction is given in strict conformity with the lands governing activities on rivers including river banks or on alluvial landscapes. The plea in the Hon'ble High Court was that alluvial lands have been illegally dug-up for starting construction of brick kilns and those brick kiln owners have encroached upon the Government land.

10. Learned Counsel for the Appellants has further drawn attention of the Court to the two letters of the Revenue Inspector, Mahisura, Nabadweep, District-Nadia, dated 03.02.2023 (page no.130 of the paper book) and 13.07.2023 (page no.156 of the paper book), and submitted that both these letters describe the plot of land in dispute herein as 'Sikistibhumi' and that during investigation it was found that the brick kiln was situated on the plots classified as 'Sikistibhumi' and that letter further mentions that the distance of the brick kiln from the Bhagirathi River is approximately 200-300 meters.

11. The submission of the learned Counsel for the Appellants is that the lands in dispute were Raiyat lands recorded in the name of the predecessor in interest of the Appellants herein and the nature and character of the land was 'Ayush/Aush' and not 'Sikistibhumi'. It is however, stated that at the time of preparation of the L.R. Record of Rights, the land of the said brick field comprising of L.R.

Dag Nos. 258, 259, 260 and 554 under L.R. Khatian Nos. 525, 1219, 1067 have been converted and recorded as 'Sikistibhumi'. This change of the character and classification of the land has been done by the Land & Land Reforms Officer without giving any opportunity of hearing to the recorded owners of the land and is in violation of the Land and Land Reforms Act, 1955. It is also stated that during investigation Plot Nos.258, 259 and 554 were not found to be 'Sikistibhumi' and only Plot No.260 was classified as 'Sikistibhumi'.

12. Learned Counsel then submitted that under the Bengal Alluvion and Diluvion Regulation, 1825, (hereinafter referred to as 'the Bengal Regulation, 1825') alluvial land has been mentioned and it is stated therein that the claims and disputes to the same are to be decided by usage when clearly recognized and established. Learned Counsel further submitted that the Bengal Regulation, 1825, has been replaced by the West Bengal Land Reforms Act, 1955.

13. However, we find that Section 12 of the West Bengal land Reforms Act, 1955, clearly laid down that '*any land gained by gradual accession to a plot of land whether from the recess of a river of the sea, shall vest in the State Government and the Raiyat who owns the plot of land shall not be entitled to retain such land as an accretion thereto*'. Section 12 of the Act, 1955, reads as under:-

"12. Land gained by recess of river or sea.- Any land gained by gradual accession of (a plot of land,) whether

from the recess of a river or of the sea, shall vest in the State Government and the raiyat who owns (the plot of land) shall not be entitled to retain such land as an accretion thereto.”

14. Learned Counsel for the Appellants further submitted that the impugned order of closure has been passed on the premise that the Appellants’ brick field is not in possession of a Consent to Operate and Consent to Establish, though it also mentions that the Appellants were directed to stop all operations of the brick field on lands which are river banks or alluvial landscapes or alluviated lands in view of the order of the Hon’ble Calcutta High Court.

15. The learned Counsel for the Appellants has placed reliance on the judgment of the Hon’ble Calcutta High Court in AIR 1979 Cal 102 (*Tarapada Hazari & Ors. Vs. Revenue Officer & Ors.*) which states that Regulation 2 of 1825 was repealed on November 1, 1965, when the amended Section 12 came into force but it was held that the rights already accrued under Section 4 of the Regulation were expressly or by implication taken away.

16. Be that as it may, as a Court of limited jurisdiction empowered only to examine questions relating to violation of the environmental norms, rules and regulations, this Court cannot enter into questions relating to classification of the land which matters are purely within the domain of the revenue authorities. The Appellants may approach the appropriate revenue authorities, if so advised.

17. However, there is another aspect of the matter. The Appellants’ brick field, as per the impugned order, is operating without

obtaining necessary approvals such as – Consent to Establish and Consent to Operate under Section 25 and 26 of the Water (Prevention and Control of Pollution) Act, 1974, and Section 21 of the Air (Prevention and Control of Pollution) Act, 1981, and, therefore, on this count alone the Appellants' are not entitled to operate their brick field.

18. The pleadings in the Memo of Appeal show that certificate of Consent to Operate was issued by the West Bengal Pollution Control Board in favour the Appellants' brick field on 23.03.2017 and the same was valid upto 20.03.2018 i.e., for one year. According to the Appellants, they had applied for renewal through application dated 12.06.2018, copy of the application has been filed as annexure with the Memo of Appeal with translated copy. Even assuming that the Appellants' had submitted an application for renewal on 12.06.2018 and the Consent would be deemed under Section 25 sub-section (7) of the Water (Prevention and Control of Pollution) Act, 1974, such 'deemed' Consent cannot be assumed to be for a period of more than one year i.e., the period for which the Consent was initially granted, and there is nothing on record to show that after 12.06.2018 any application for renewal has been filed by the Appellants.

19. In this view of the matter, what emerges is that Appellants' brick field in any case has been operating without a valid Consent to Operate and, therefore, is in violation of the provisions of Air (Prevention and Control of Pollution) Act, 1981, and the Water (Prevention and Control of Pollution) Act, 1974, and it cannot be

allowed to operate without valid Consent from the State Board. The Appellants are also liable for payment of Environmental Compensation during the entire period of illegal operation. The West Bengal Pollution Control Board is, therefore, directed to compute Environmental Compensation against the Appellants and proceed to recover the same in accordance with law.

20. We, therefore, dismiss the present Appeal as without merit.

21. I.A.s, if any, stand disposed of accordingly.

22. There shall be no order as to costs.

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B. AMIT STHALEKAR, JM

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DR. ARUN KUMAR VERMA, EM

Kolkata,
September 27th, 2023,
Appeal No.16/2023/EZ
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