

Copy of the Letter Petition & ORDER in Original Application No. 1261/2024

न्यायिक अनुभाग Judicial Section <judicial-ngt@gov.in>

Tue, 25 Feb 2025 3:42:59 PM +0530

To "Depto Ghosh" <registrarngt-kolkata@gov.in>, "National Green Tribunal, Eastern Zone Bench, Kolkata" <ngtjudicial-kolkata@gov.in>

Respected Sir/Madam,

I am directed to forward a copy of the Order dated **14/02/2025** passed in Original Application No. 1261/2024 Samir Malo & Ors. Applicants Versus State of West Bengal & Ors. Respondents. for your kind perusal & necessary action.

It is also intimated have that, henceforth no pleadings/ report/ documents etc in pending case will be accepted except through E-filing module of NGT.

Pleadings/ report/ documents, etc. filed through E-mail will not be taken on record, unless otherwise directed.

भवदीय / Regards 🌿

परामर्शदाता (न्यायिक) / Consultant (Judicial) 🌿

राष्ट्रीय हरित अधिकरण / National Green Tribunal 🌿

प्रधान न्यायपीठ / Principal Bench 🌿

नई दिल्ली / New Delhi - 110001 🌿

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Samir Malo Ors.pdf

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OA NO 1261 of 2024 in LPpdf

1.3 MB • 🗄️

547-570

~~ENB~~

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(Through e-mail/speed post)

TO

THE HON'BLE CHAIRPERSON AND HIS COMPANION JUSTICES OF THE NATIONAL GREEN TRIBUNAL

Samir Malhotra
V.S. ✓

Faridkot House, Copernicus Marg, New Delhi-110001

Ph: 011-23043521 Email: publicgrievance-ngt@gov.in

556/LP/2024
01/04/24
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Subject: Illegal encroachment and filling of pond/wetland by anti social along with local counselor of Bidhan Nagar Municipal Corporation Ward NO:2 for the purpose of construction at Beraberi Ghoshpara, Narayanpur, Mouza Gopalpur, Rajarhat, 700136, at West Bengal, in violation of the Water (Prevention and Control of Pollution) Act, 1974 and Wetlands (Conservation and Management) Rules, 2017.

Respected Sir,

As concerned residents of Rahman Godown Lane, Beraberi Ghoshpara, Narayanpur, Mouza Gopalpur, Rajarhat, at West Bengal - 700136, the undersigned are making this complaint/public grievance/letter petition to bring to the notice of this Hon'ble Tribunal the serious issue of Illegal encroachment and filling of pond/wetland for the purpose of construction thereby severely degrading the ecology of the area.

658/m/cf
01/04/24

1. This pertains specifically to the unauthorized and illegal encroachment and filling of a pond/wetland at Daag No. 633, 634, 635, 636, 637, 638, 639 and 640 located at Rahman Godown Lane, Beraberi Ghoshpara, Narayanpur, Rajarhat, at West Bengal - 700136. It is to be noted that the effected pond/wetland admeasures an area of 0.34 ha of the total larger pond area of

by when. (12)

1.20 ha. It is crucial to note that such encroachments and filling of ponds are in complete violation of the Water (Prevention and Control of Pollution) Act, 1974. That ponds and water bodies fall the definition of stream under Section 2 of the Water (Prevention and Control Of Pollution) Act, 1974, as follows:

"2(j) 'stream" includes- (i) river; (ii) water course (whether flowing or for the time being dry); (iii) inland water (whether natural or artificial); (iv) sub-terranean waters; (v) sea or tidal water to such extent or, as the case may be, to such point as the State Government may, by notification in the Official Gazette, specify in this behalf;"

That the encroachment of ponds and water bodies is in violation of Section 24(1) of the Water (Prevention and Control of Pollution) Act, 1974 as follows:

"24. Prohibition on use of stream or well for disposal of polluting matter, etc.—

(1) Subject to the provisions of this section,—

(a) no person shall knowingly cause or permit any poisonous, noxious or polluting matter determined in accordance with such standards as may be laid down by the State Board to enter (whether directly or indirectly) into any stream or well or sewer or on land; or

(b) no person shall knowingly cause or permit to enter into any stream any other matter which may tend, either directly or in combination with similar matters, to impede the proper flow of the water of the stream in a manner leading or likely to lead to a substantial aggravation of pollution due to other causes or of its consequences.

(2) A person shall not be guilty of an offence under sub-section (1), by reason only of having done or caused to be done any of the following acts, namely:—

- (a) constructing, improving or maintaining in or across or on the bank or bed of any stream any building, bridge, weir, dam, sluice, dock, pier, drain or sewer or other permanent works which he has a right to construct, improve or maintain;
- (b) depositing any materials on the bank or in the bed of any stream for the purpose of reclaiming land or for supporting, repairing or protecting the bank or bed of such stream provided such materials are not capable of polluting such stream;
- (c) putting into any stream any sand or gravel or other natural deposit which has flowed from or been deposited by the current of such stream;
- (d) causing or permitting, with the consent of the State Board, the deposit accumulated in a well, pond or reservoir to enter into any stream.

Copy of the Satellite Images taken by the undersigned of the pond/wetland admeasuring the area is annexed herewith as Annexure A/1.

Not Recd

2. That the persistent unauthorized and illegal encroachment and filling of a pond/wetland is done by the Anti social along with local political counselor (BIDHAN NAGAR MUNICIPAL CORPORATION WARD NO:2) (hereinafter referred as '**project proponent**') in complete disregard to the law and order as well as in contravention specific directions passed by the Hon'ble Supreme Court and this Hon'ble Tribunal. The project proponent is engaging in illicit activities by encroaching upon a significant area and filling the pond during nighttime using JCBs, which is causing considerable distress to the local residents. This unauthorized encroachment involves extensive land occupation and the deliberate filling of the pond, both of which are occurring under the

cover of darkness, exacerbating the impact on the community. This clandestine activity not only violates legal regulations but also disrupts the natural ecosystem and poses a threat to the well-being of the environment.

Copy of the images taken showing the large scale encroachment and filling of ponds/wetlands using JCBs are annexed herewith as **Annexure A/2.**

3. It is pertinent to note that the area in question falls within the extension portion of the East Kolkata Wetlands, which holds the distinction of being one of the two officially identified and notified wetlands in West Bengal. It is also pertinent to note that the East Kolkata Wetland is also recognized as a Ramsar Site and is accorded as wetlands of 'international importance' under the Ramsar Convention, 1971. That as per Rule 2(g) of the Wetlands (Conservation and Management) Rules, 2017:

"(g) "wetland" means an area of marsh, fen, peatland or water; whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six meters, but does not include river channels, paddy fields, human-made water bodies/tanks specifically constructed for drinking water purposes and structures specifically constructed for aquaculture, salt production, recreation and irrigation purposes".

4. That it is crucial to note the significant feature of the East Kolkata Wetland is that it naturally treats sewage generated from the city, through the shallow pisciculture ponds, where the sewage is fed on regular basis. Besides, the production of fish and vegetables, the wetlands act as a carbon sink, help in

flood buffering and climate regulation of the region. The EKW saves substantial capital costs involved in setting up of conventional STPs. The area under consideration, being an extension of the East Kolkata Wetlands (EKW), shares similar unique ecological features and characteristics with the main wetland area. Therefore, it is imperative that this extended portion receives equal attention and protection to preserve its ecological integrity and ensure the continued provision of ecosystem services.

5. Furthermore, the unique and exclusive feature of the East Kolkata Wetlands. That East Kolkata Wetland shows a huge diversity of flora and fauna both at the macro and micro level. Microbial Diversity is an integral part of biodiversity which includes bacteria, archaea, fungi, algae, protozoa and protists. Microbial diversity of this region is still a hidden asset that needs to be explored and conserved. Soil samples collected from EKW shows the presence of various new strains of microbes which are not only ecologically important but also have commercial value. They are capable of degradation of toxic chemicals like nitro-phenol, nitro-aromatic compounds, pesticides etc., bioremediation of heavy metals, oil contaminated soil and toxic compounds, degradation and recycling of woody tissues of plants, and nitrogen fixation along with the cyano-bacters; other bacteria playing important roles in metal accumulation, oil degradation, antimicrobial compound production, enzyme production etc.

6. The undersigned hereby submits that the area under scrutiny constitutes an extended portion of the East Kolkata Wetlands, thereby sharing similar ecological characteristics and significance. Consequently, any unauthorized filling or tampering with this wetland area would severely impact its delicate ecology. It is imperative to recognize that wetlands play a pivotal role in maintaining environmental balance and supporting diverse ecosystems. The East Kolkata Wetlands, being a Ramsar Site and recognized for their international importance, serve as crucial habitats for various flora and fauna, while also providing essential ecosystem services such as water filtration, flood regulation, and carbon sequestration. Any encroachment or degradation of this wetland area through illegal filling poses a serious threat to its ecological integrity. Such actions could disrupt the natural hydrological cycle, leading to loss of biodiversity, deterioration of water quality, and heightened vulnerability to floods.

7. Additionally, it is of utmost importance to highlight that the Narayanpur area, specifically Mouza Gopalpur of Rajarhat, 700136, is devoid of any open sewerage canals or drains. This absence of proper drainage infrastructure accentuates the significance of the wetlands in mitigating flood risks. In areas lacking adequate drainage systems, wetlands act as natural sponges, absorbing excess water during periods of heavy rainfall and effectively reducing the likelihood of flooding. Therefore, it is imperative to prioritize the conservation and sustainable management of the East Kolkata Wetlands, safeguarding their invaluable ecological functions and ensuring their

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continued contribution to biodiversity conservation and human well-being as stated in Rule 2(i) of the Wetlands (Conservation and Management) Rules, 2017 which states:

"(i) "wise use of wetlands" means maintenance of their ecological character, achieved through implementation of ecosystem approach within the context of sustainable development".

8. That the Hon'ble Supreme Court in **Susetha vs. State of Tamil Nadu** decided on 08.08.2006 in **Appeal (Civil) No. 3418 of 2006 (AIR 2006 SC 2893)** has stated that:

*"Drawing our attention to a decision of the Division Bench of the Madras High Court in L. Krishnan v. State of Tamil Nadu, AIR (2005) Madras 311, it was argued that **the State Government was enjoined with a duty to preserve the tank by taking all possible steps both by way of preventive measures as well as removal of unlawful encroachments and not to use the same for commercial purpose.***

[...]

*In L. Krishnan (supra), the Division Bench of the Madras High Court had been dealing with natural resources providing for water storage facility and in that view of the matter the State was directed **to take all possible steps both preventive as also removal of unlawful encroachments so as to maintain the ecological balance.**"*

9. Further, the Hon'ble Supreme Court in **State of T.N. v. Hind Stone, (1981) 2 SCC 205, at page 212** has held:

"6. Rivers, Forests, Minerals and such other resources constitute a nation's natural wealth. These resources are not to be frittered away and exhausted by any one generation. Every generation owes a duty to

all succeeding generations to develop and conserve the natural resources of the nation in the best possible way. It is in the interest of mankind. It is in the interest of the nation."

10. Furthermore, the Hon'ble Supreme Court in the matter titled **HinchLal Tiwari v. Kamala Devi, (2001) 6 SCC 496** has categorically highlighted the importance of ponds and stated:

"13. It is important to notice that the material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution.

The State including Respondent No. 11 to 13 shall restore the pond, develop and maintain the same as a recreational spot which will undoubtedly be in the best interest of the villagers. Further it will also help in maintaining ecological balance and protecting the environment in regard to which this Court has repeatedly expressed its concern. Such measures must begin at the grass-root level if they were to become the nation's pride."

11. The Hon'ble Supreme Court in **T.N. GodavarmanThirumulpad v. Union of India, (2002) 10 SCC606**, at page 628:

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*"33. ... As was observed by this Court in M.C. Mehta v. Kamal Nathour legal system based on English common law includes the public trust doctrine as part of its jurisprudence. **The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. The public at large is the beneficiary of the seashore, running waters, air, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership"***

12. Further, this Hon'ble Tribunal in the matter titled **Vinod Kumar vs. State of Uttar Pradesh 2023 SCC OnLine NGT 265** dealt with the issue raised of encroachment and unauthorized construction over the ponds in district Meerut where approximately 91 ponds are being subjected to encroachment illegally and no action has been taken by the authorities concerned for restoration of those ponds. In this regard, the Hon'ble Tribunal stated that:

"2. According to the provisions of Article 21 read with article 48(A) of the directive principles of State Policy, Right to Life includes right to have fresh air and healthy environment. Nobody has the right to create pollution endangering the life of others on the grounds of commercial activities. This universe and living beings are creation of almighty called Bhagwan which means and includes "Chiti, Jal, Pawak, Gagan, Sameera, PanchRachit Yah AdhamSareera". These five words

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**signify five elements of life: — Bha = BhumiGa = GaganWa =
VauAa = Agni Na = Neer.**

3. When natural cycle of all five is disturbed due to mixing of poisonous or harmful material, it is nature of pollution. We are living in the age of technology where people use latest machines and other technological products to get our work done. We move from one place to another using modern transport system based on bikes, cars, buses, jeeps and trucks. We use air conditioners in our homes, offices and vehicles to maintain their temperature to desired level. Pollution is a situation when something is added to the natural environment which is not naturally there; natural environment is comprised of air, land and water. So any contamination in any of the element of environment will be regarded as pollution; however, nature of contamination is quite different in each component and may take many forms, land pollution, air pollution and water pollution."

13. It is submitted that the recent news article titled "**The 'kidneys of Kolkata': Indian wetlands under threat**" published on 18.07.2023 has highlighted the issue of wetlands bordering Kolkata confront a critical menace due to the swift urbanization gripping the region, posing a grave risk to the entire ecosystem:

"We are destroying the environment," said Tapan Kumar Mondal, who has spent his life farming fish in the ingenious system of canals and ponds stretching across about 125 square kilometres. "The

population...has increased, there is a pressure on nature, they are ruining it," 71-year-old Mondal added. Listed as a wetland of global importance under the United Nations Ramsar Convention, the waters offer natural climate control by cooling sweltering temperatures—and act as valuable flood defenses for low-lying Kolkata. But Dhruba Das Gupta, from the environmental group SCOPE, said that short-sighted building development was encroaching on the wetlands. "The wetlands are shrinking," said the researcher, who is trying to finance a study of what is left of the waters."

Copy of the news Article titled "**The 'kidneys of Kolkata': Indian wetlands under threat**" published on 18.07.2023 is annexed herewith as **Annexure A/3.**

13. Despite possessing full knowledge of the law and specific directives issued by both the Hon'ble Supreme Court and this Tribunal, the project proponent continues to engage in widespread violations, displaying a blatant disregard for legal obligations. It is imperative to highlight that despite being empowered with specific authority, the relevant State Authorities have neglected to take any action to halt such encroachments or implement any remedial measures. Consequently, the undersigned respectfully requests the intervention of this Hon'ble Tribunal.

14. That the Hon'ble Tribunal may be pleased to direct the project proponent, local counselor to immediately stop and remove all the illegal encroachment

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filling of pond thereby restoring the pond/wetland in its original shape and pass any other orders as the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

Yours Sincerely,

1. SAMIR MALO (Samir Malo)
2. Binwajit Ghosh (Binwajit Ghosh)
3. Abhijeet Kumar Shaw (Abhijeet Ks. Shaw)
4. Mantu Shaw (MANTU SHAW)

Address: Narayana Pur Azad Hind Pathy.
P.O:- R- Gopampur. P.S- Narayanpur. (N) 24 PGS. Kolkata-70036.
Ph: 7890110644 / 7890892490 / 7278910940 / 6291995866
Email: Samirmal08@gmail.com / realindianbinwajit@gmail.com
abhijeetshaw197@gmail.com / m7278438745@gmail.com.

DATE: 20.03.2024

PLACE: KOLKATA/NEW DELHI

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ANNEXURE A/1.

**COPY OF THE SATELLITE IMAGES TAKEN OF THE POND/WETLAND
ADMEASURING THE AREA IN QUESTION AS 0.34 HA OF THE TOTAL WETLAND
AREA AS 1.20 HA:**



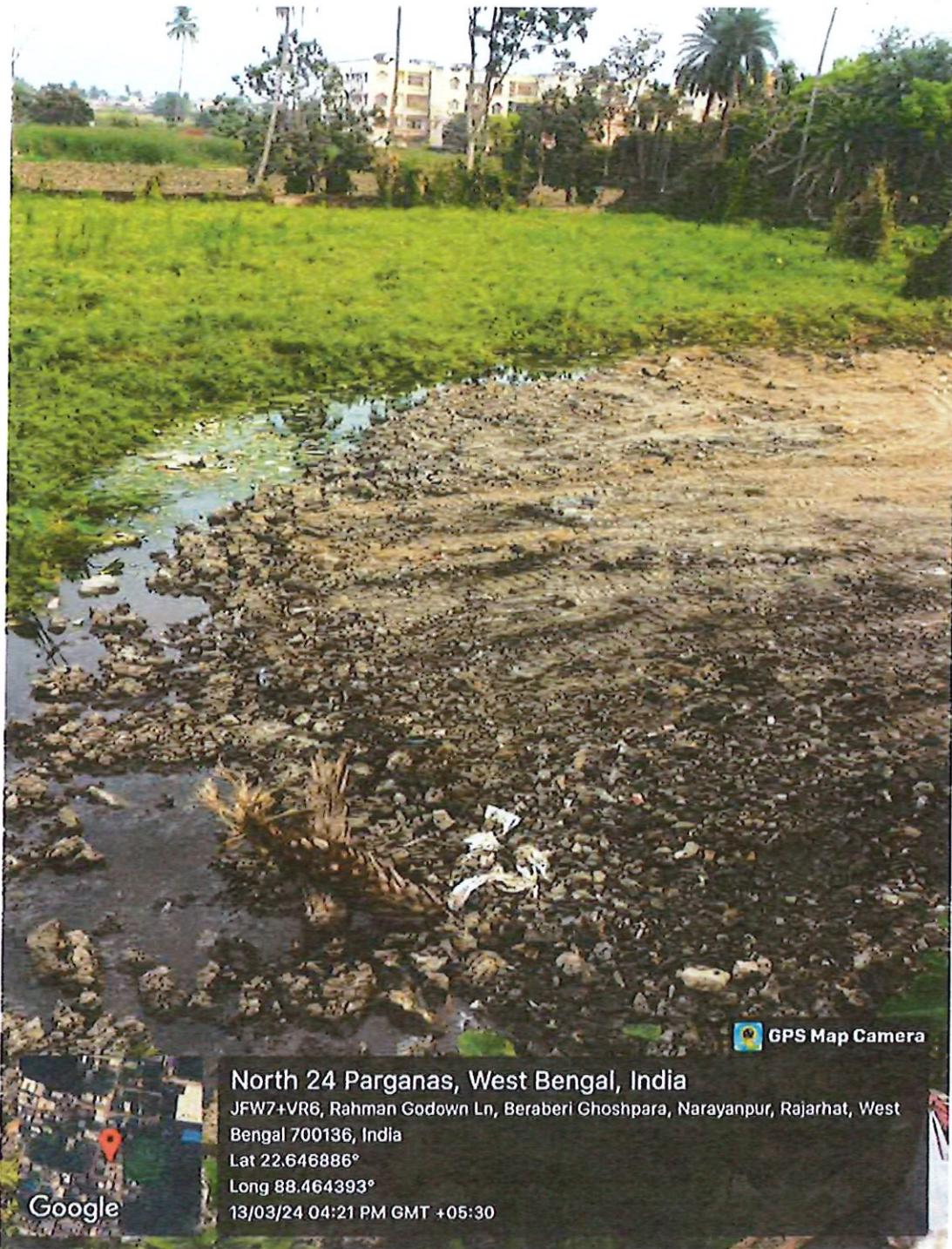
60

ANNEXURE A/2

**COPY OF THE IMAGES TAKEN SHOWING THE LARGE SCALE ENCROACHMENT
AND FILLING OF PONDS/WETLANDS USING JCBS:**



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GPS Map Camera



North 24 Parganas, West Bengal, India
JFW7+VR6, Rahman Godown Ln, Beraberi Ghoshpara, Narayanpur, Rajarhat, West Bengal 700136, India
Lat 22.646886°
Long 88.464393°
13/03/24 04:21 PM GMT +05:30

Google

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Foot.

ANNEXURE A/3

HOME / NEWS CLIMATE CHANGE

The 'kidneys of Kolkata': Indian wetlands under threat

Conservationists warn that pollution and strong-arm land grabs are putting a lifeline for the megacity's 14 million residents at risk.

Published : Jul 18, 2023 14:38 IST - 3 MINS READ

AFP

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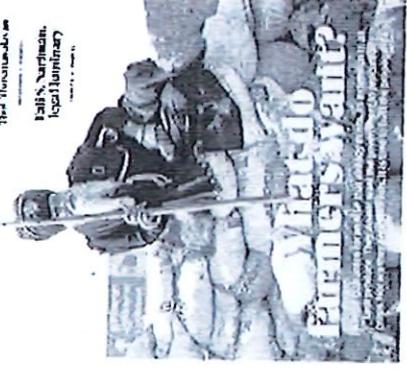
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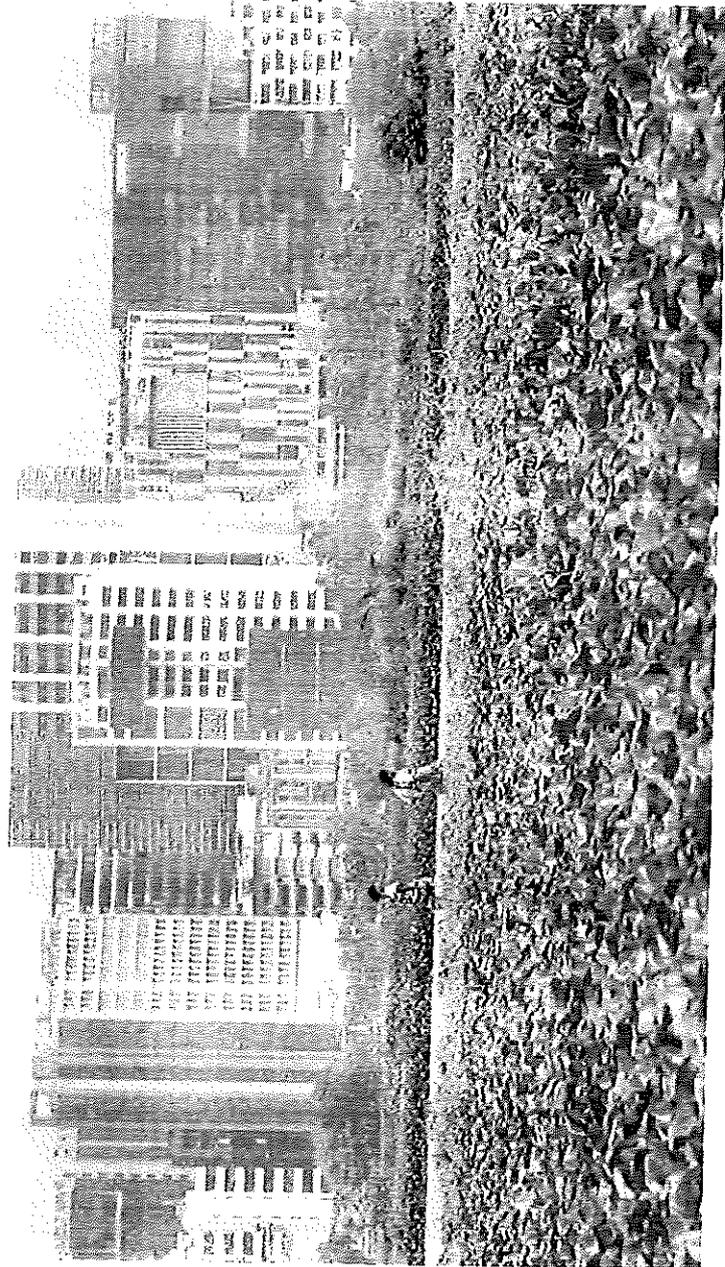
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C.P. Chandrasekhar

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Women walk across the East Calcutta Wetlands area in Kolkata. Wetlands outside India's megacity Kolkata have for generations provided free-of-charge sanitation, tonnes of food daily and thousands of jobs by recycling sewage through fish ponds—but the system is under threat | Photo Credit: DIBYANGSHU SARKAR/AFP

Wetlands just outside Kolkata have for generations provided tonnes of food daily and thousands of jobs as they filter sewage through fish ponds—but rapid urbanisation is threatening the ecosystem.



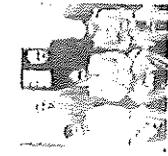
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Vaishna Roy

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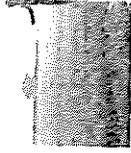
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Minimum Support Price: A question of how, not why

Conservationists warn that pollution and strong-arm land grabs are putting a lifeline for the megacity's 14 million residents at risk.

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"We are destroying the environment," said Tapan Kumar Mondal, who has spent his life farming fish in the ingenious system of canals and ponds stretching across about 125 square kilometres. "The population... has increased, there is a pressure on nature, they are ruining it," 71-year-old Mondal added.

Listed as a wetland of global importance under the United Nations Ramsar Convention, the waters offer natural climate control by cooling sweltering temperatures—and act as valuable flood defences for low-lying Kolkata. But Dhruba Das Gupta, from the environmental group SCOPE, said that short-sighted building development was encroaching on the wetlands. "The wetlands are shrinking," said the researcher, who is trying to finance a study of what is left of the waters.

'Ecologically-subsidised city'

Every day, 910 million litres of nutrient-rich sewage flow into the wetland, feeding a network of about 250 hyacinth-covered ponds.

“Sunlight and the sewage create a massive plankton boom,” said K. Balamurugan, chief environment officer for West Bengal, explaining that the microorganisms in the shallow fish ponds feed rapidly growing carp and tilapia. Once the fish have had their fill, the water runoff irrigates surrounding rice paddies and the remaining organic waste fertilises vegetable fields. “The sewage of the city is being naturally treated by the wetlands,” Balamurugan said, giving them the nickname the “kidneys of Kolkata”.

The community-developed system was created by “the world’s foremost connoisseurs of wastewater wise use and conservation”, according to its UN Ramsar listing, which also warns it is under “intense encroachment stress of urban expansion”.

The late ecologist Dhrubajyoti Ghosh, who played a key role in the 2002 Ramsar submission, called Kolkata an “ecologically-subsidised city”. The wetlands system processes about 60 per cent of Kolkata’s sewage free of charge, saving the city over \$64 million a year, according to a 2017 University of Calcutta study.

Farms in the wetlands provide about 150 tonnes of vegetables daily, 10,500 tonnes of fish annually, and employ tens of thousands of people, the Ramsar listing estimates.

For Kolkata, on the vast delta where the Ganga meets the Indian Ocean, the wetlands also provide flood defences for a city facing rising sea levels due to climate change

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“This city never faced any flooding issue,” Balamurugan added. “These wetlands are acting as a natural sponge, taking the excess rainwater.”

Das Gupta said the biodiversity hotspot also “plays a very important role in stabilising the climate”, calling the wetlands “the lifeline of Kolkata”. “The wetlands have to stay, because of the cooling that they achieve by their very presence,” she said.

‘Land is being snatched’

But the Ramsar listing notes that industrial effluent is tainting natural systems, threatening food production. Fish farmer Sujit Mondal, 41, said that compared to 2022 “production has reduced” because of “murky water”.

About 95 per cent of the wetlands are in private hands. As land prices surge, environment officials say they have pleaded with people not to fill in the fish ponds to create new building space.

Also Read | Vizhinjam port in deep water as protests against Adani project intensify

“We asked them not to convert the wetlands, not to trade these wetlands to buildings, not to get them filled,” Balamurugan said. But residents say village councils are being bribed by land-hungry developers. “They are often accused by residents of giving informal permission in return for money to real estate developers to build, while they

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look the other way," said Das Gupta. "This leads to huge loss of productive space, and destroys the ecosystem services offered by these wetlands," she added.

"The land is being snatched from people," said Sujit Mondal. Gangs even net the ponds at night to steal the fish, leaving farmers with little option but to close and sell. "They pressurise fishermen to give up their livelihoods," said Das Gupta. "Then they take control of the land."

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In Case You Missed It

*Parties not impleaded,
no notice*

Item No.04

Court No. 2

**BEFORE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Original Application No.1261/2024

Samir Malo & Ors.

Applicants

Versus

State of West Bengal & Ors.

Respondents

Date of hearing: 14.02.2025

**CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Applicants: None for the applicants.

Respondents: Ms. Srijita Choudhary Proxy Counsel for Ms. Madhumita.
Bhattacharjee, Advocate for State of West Bengal (through
VC).
Mr. Vidhan Vyas, Advocate for West Bengal Pollution
Control Board (through VC).

ORDER

1. Mr. Samir Malo and others sent to this Tribunal letter petition dated 20.03.2024, treated and registered as O.A. No.1261/2024, raising grievance of encroachment and filling of pond/wetland at Beraberighoshpara, Narayanpur, Mouza Gopalpur, Rajarhat.
2. Vide order dated 20.11.2024 this Tribunal constituted a Joint Committee with direction to submit its report. However, report has not been submitted so far.

3. Learned Counsels for State of West Bengal and West Bengal State Wetland Authority seek time for filing report of the Joint Committee.

4. Even though in the present case, cognizance has been taken by this Bench on the basis of letter petition received which has been treated and registered as original application and assigned to this Bench with approval and under order of Hon'ble Chairperson, but in view of the fact that the place of accrual of cause of action lies within jurisdiction of the Eastern Zone Bench of this Tribunal at Kolkata, we are of the considered view that it will be appropriate if the case is further heard by the Eastern Zone Bench of this Tribunal at Kolkata.

5. Accordingly, the Registry is directed to list the matter before the Eastern Zone Bench of this Tribunal at Kolkata on 21.03.2025 after obtaining orders from Hon'ble the Chairperson for transfer of the case.

6. Report of the Joint Committee be filed before the Eastern Zone Bench of this Tribunal at Kolkata at least three days before the next date of hearing fixed.

Arun Kumar Tyagi, JM

Dr. Afroz Ahmad, EM

February 14th, 2025
O.A. No.1261/2024
M