

Item Nos.- 4-5  
**19.02.2025**  
Rohan  
Court No. 654

**In the High Court at Calcutta  
Constitutional Writ Jurisdiction  
Appellate Side**

**WPA 36126 of 2013  
I.A. No.: CAN 1 of 2024 (Not in file)**

**Kajal Sarkar  
Versus  
State of West Bengal & Ors.**

**With**

**WPA 24488 of 2013**

**Kajal Sarkar  
Versus  
State of West Bengal & Ors.**

**Mr. Gopal Chandra Ghosh,  
Mr. Sunandana Saha,**  
... for the petitioner

**Mr. Rajarshi Basu,  
Mr. K.M. Hossain**  
... for the State in  
WPA 36126 of 2013

**Mr. Wasim Ahmed,  
Mr. Sk. Md. Masud**  
... for the State in  
WPA 24488 of 2013

**Re.: CAN 1 of 2024 in WPA 36126 of 2013**

1. This application has been preferred seeking addition of party to the writ petition being WPA 36126 of 2013.
2. Mr. Ghosh, the learned senior advocate representing the applicant, submits that the present petitioner has repeatedly approached this Court by filing several writ petitions in the form of Public Interest Litigations, raising concerns about the

illegal conversion of a waterbody into solid land and the construction of a residential house on that land. It is alleged that the writ petitioner filled up a waterbody and constructed a residential building on it. Accordingly, the writ petitioner was impleaded as a party to those proceedings. Mr. Ghosh contends that the applicant is a necessary party to these proceedings, and his presence is crucial for the effective adjudication of the current writ petition.

3. Mr. Ruj, the learned advocate representing the writ petitioner, vehemently opposes the contention put forth by Mr. Ghosh. He argues that the petitioner has no interest in the land in question and, therefore, lacks the locus standi to intervene in these ongoing proceedings. Mr. Ruj strongly denies the allegation that the writ petitioner has illegally filled up the pond. He further submits that the applicant, who seeks to be added as a party to this writ petition, had filed two writ petitions in the form of Public Interest Litigations. In those petitions, reports were sought from both the police authority and the Kolkata Municipal Corporation. However, in neither of these reports was it stated that the writ petitioner had illegally filled up the pond or any part thereof.
4. Admittedly, the applicant seeking to be added as a party to this writ petition does not have any proprietary rights in respect of the land in question. As noted earlier, this applicant had filed several writ petitions alleging that the writ petitioner illegally converted a waterbody into solid land and constructed a residential building on it. A Hon'ble Division Bench had entertained those writ petitions and directed the

High-Power Committee to take a decision on the matter. The order passed by the Committee has been challenged in WPA 36126 of 2013. Therefore, it appears that the disputes involved in these two writ petitions stem from a complaint lodged by this applicant. For this reason, I believe that the applicant's presence and participation in these proceedings will assist this Court in effectively adjudicating the writ petitions.

5. Accordingly, this application is allowed. Let the applicant be added as a respondent to the writ petition.
6. Liberty is given to the writ petitioner to add him as a party and to amend the cause title of the writ petition accordingly.

**Re.: WPA 36126 of 2022**

**with**

**WPA 24488 of 2013**

7. This writ petition was instituted throwing a challenge to the justifiability of the reasoned order dated 2<sup>nd</sup> September, 2013 passed by the High-Power Committee which was communicated to the writ petitioner under the memo. vide. no. EN/2142/3C-04/2011/1(23) dated 2.9.2013.
8. Mr. Ruj, the learned advocate appearing for the writ petitioner, draws my attention to a certified copy of the R.S. Record of Right for the land bearing R.S. Plot No. 13845 of Mouza-Behala (Annexure-P/2 to the writ petition, WPA 36126 of 2013), on which the petitioner has constructed a residential building. He contends that the classification of

this land is recorded as "Bastu." Mr. Ruj further submits that, based on an application made by the petitioner, this certified copy was issued to the petitioner with an endorsement at the footnote, confirming that it is a true copy of the original R.S. Record of Rights.

9. Mr. Ruj draws my attention to various provisions of the Evidence Act, 1872 (hereinafter referred to as "the Act") concerning documentary evidence. He argues that the R.S. Record of Rights should be regarded as a public document under Section 74 of the Act, and a certified copy of such a record should be considered a certified copy of a public document under Section 76 of the Act. He further submits that a presumption of authenticity attaches to such a certified copy. Mr. Ruj claims that this Court should presume that the certified copy is a true copy of the original and that its contents are accurate. He submits that this Court should also treat the land as "Bastu" land. In support of his such contention, he cited a decision of a coordinate Bench of Bombay High Court, reported at AIR 1973 Bom 14 (C.H. Shah vs. S.S. Malpathak).
10. He submits that the report, which has been submitted in compliance with the order passed by this Court, does not contain the copy of the R.S. record of rights of Rs. Plot no. 13845.
11. He submits that the petitioner, by filing an application, approached the concerned authority to obtain information regarding the classification of the said land. In response, the petitioner was issued a document confirming that the classification of the land was "Bastu." Based on this

information and the certified copy of the R.S. Record of Rights, the petitioner proceeded to purchase the land.

12. He submits that immediately after purchasing the land, the petitioner applied for the mutation of his name in the L.R. Record of Rights, and based on this application, his name was duly recorded in the L.R. Record of Rights. Furthermore, the petitioner applied for sanctioning of his building plan before the Kolkata Municipal Corporation. After scrutinizing all relevant papers and documents, the Corporation sanctioned the building plan, authorizing the petitioner to proceed with the construction. Accordingly, the petitioner constructed his residential building on the land, investing his hard-earned money. A coordinate Bench of this Court by an order dated 29.08.2013 permitted the petitioner to make construction and accordingly, based on that order, the petitioner made the construction.
13. He submits that, unexpectedly, the added respondent began filing writ petitions in the form of Public Interest Litigations before this Hon'ble Court, alleging that the petitioner had converted a waterbody into solid land and constructed a residential building on that land. He further submits that the matter was referred to the High-Power Committee by this Court, but the Committee adopted a misguided approach, arrived at an erroneous conclusion, and recommended that necessary action be taken against the petitioner's building.
14. Mr. Ghosh, the learned senior advocate representing the added respondents, submits that the land in question is essentially the 'bank of the pond' by nature, and the writ petitioner has illegally constructed a residential house on that

plot. He further submits that even in the mutation certificate of the petitioner, the land was recorded as the 'bank of the pond.' He argues that a residential building constructed on the 'bank of the pond' cannot be considered a legal construction. Therefore, he asserts that the High-Power Committee has correctly recommended necessary action against the building.

15. Mr. Rajarshi Basu, the learned Advocate representing the State in WPA 36126 of 2013, submits that the matter ultimately reached the Hon'ble Division Bench of this Court in MAT 1464 of 2013, which was disposed of by directing the Single Bench to decide both writ petitions, taking into account the report of the High-Power Committee and various other documents placed on record. He asserts that, from the report, it would be evident that the classification of the land is the 'bank of the pond.' Mr. Ahmed, the learned advocate representing the State in WPA 24488 of 2013, concurs with the submissions of Mr. Basu.
16. Heard the learned Advocates. Perused the materials on record placed before me.
17. Before addressing the issues involved in these two writ petitions, it would be appropriate to outline certain key facts that are crucial for the effective adjudication of the petitions.
18. The petitioner and his wife purchased a plot of land measuring 2 cottah, 2 chittak, and 17 square feet from R.S. Plot No. 13845. During the L.R. operation, the same plot number was retained. After purchasing the land, their names were duly recorded in the L.R. Record of Rights, but the classification of the land was shown as 'pukur par' (bank of

the pond). The petitioner then submitted a building plan to the Corporation for the construction of a residential building on that plot, and the building plan was sanctioned. However, when the petitioner began construction work, one Anuj Har Chowdhury filed several writ petitions in the form of Public Interest Litigations before this Court, alleging that the petitioner had converted a portion of the pond situated at Plot No. 13844, incorporated it into Plot No. 13845, and subsequently started construction on it.

19. The record reveals that by an order in W.P. No. 4973 (W) of 2011, the issue was referred to the High-Power Committee, which was constituted pursuant to the directions issued in W.P. No. 606(W) of 2011 (Forum for Human Legal and Ecological Rights, Bansdroni & Ors. vs. Union of India & Ors.). By an order dated 18.02.2013, passed in W.P. No. 1335(W) of 2013, the High-Power Committee was directed to take a decision on the issue within three months from the date of the order.
20. Meanwhile, the police authority of the jurisdictional police station intervened into the matter and instructed the petitioner to stop construction work. The petitioner filed the writ petition, W.P. no. 24488(W) of 2013 seeking a direction upon the concerned police authority and the High-Power Committee not to interfere with the construction work at Premises no. 139/1, D.H. Road, Kolkata-34.
21. By an order dated 29.08.2013, W.P. no. 24488(W) of 2013 was disposed of by permitting the petitioner to resume and complete construction, strictly in accordance with law and the plan sanctioned by the Corporation, unless there is any

other legal embargo in the way of construction being completed.

22. The order dated 29.08.2013 was challenged in an appeal, MAT 1464 of 2013, which was disposed of by an order dated 7.4.2014. In this order, noting that the High-Power Committee had submitted its report and that the report was challenged by the petitioner in another writ petition vide. W.P. No. 36126 of 2013, the Hon'ble Division Bench opined that the issue of whether Dag No. 13845 corresponds to premises No. 139/1, Diamond Harbour Road, Kolkata, as mentioned by the petitioner in the application dated 22.09.2013 filed with the Officer-in-Charge, Behala P.S., or whether the respondent No. 6 (the petitioner herein) is obligated to demolish the construction needed to be looked into by the Single Bench. The Hon'ble Division Bench directed that the issues raised in both writ petitions be decided by the Single Bench, considering the report of the High-Power Committee and all other documents placed on record.

23. The order issued by the High-Power Committee on 2nd September 2013 reveals that, upon inquiry, the ADM & D.L. & L.R.O provided information stating that the lands bearing R.S. Plot numbers 13844 and 13845 were classified as 'Pukur' (pond) and 'Pukur Par' (bank of the pond), covering areas of 0.255 acres and 0.009 acres respectively. During the hearing, the petitioner asserted that the construction was taking place on R.S. Plot no. 13845. The Committee noted that, as per Section 7A (9) of the West Bengal Inland Fisheries Act, 1984, no water body, including embankments, can be filled to

convert it into solid land without obtaining prior approval from the State Government, specifically from the Department of Fisheries.

24. The Committee, however, requested a status report from the D.L. & L.R.O. to confirm whether any encroachment or land filling had occurred in the 'Pukur' (pond) at R.S. Plot no. 13844, following a physical inspection. Despite this request, no report was submitted by the D.L. & L.R.O. Consequently, in the absence of such a report, the Committee proceeded to issue the following order:

*"1. The District Magistrate and Collector, South 24 Pgs. is to cause a spot enquiry and to take appropriate action as per law, if any violation of provisions under West Bengal Land Reforms Act, 1955 comes to notice.*

*2. The Deputy Director of Fisheries, Kolkata Zone, Department of Fisheries, will cause an enquiry as the construction is being made on pukur par in R.S. Dag no. 13845 which cannot be done without approval of the Govt. of West Bengal in Fisheries Department as per West Bengal Inland Fisheries Act, 1984 and as amended from time to time, and to act as per provisions of the said Act. Also, necessary action is to taken if any violation of the said Act comes to notice in respect of R.S. plot no. 13844 which is recorded as pukur".*

25. During the hearing, a report dated 22nd April 2024, submitted by the B.L. & L.R.O. to the ADM & D.L. & L.R.O., was presented and placed on record. The report stated the following:

*“The subject area of suit is included in 3(three) plots. 13843,13844,13845 (RS & LR) of Mouza- Behala, JL-102. The premises 139/1 Diamond Harbour Road is lying of these three plots, as noted (plot index enclosed)”*

26. Therefore, based on the report of the B.L. & L.R.O., it can be concluded that the Dag No. 13845 corresponds to premises No. 139/1, Diamond Harbour Road, Kolkata.
27. During the hearing of this writ petition, a dispute arose regarding whether the land had ever been converted from the bank of the pond to "Bastu" at any stage in the preparation of the R.S. Record of Rights. The report mentioned in the previous paragraph failed to provide clarity on this issue. As a result, by an order dated 20th August 2024, this Court directed the Additional District Magistrate and District Land & Land Reforms Officer, South 24 Parganas, to submit a report on the matter.
28. In compliance with the order dated 20th August 2024, a report was submitted stating that the copy of R.S. Khatian No. 4492, as attached in the writ petition and found in SARTHAC, does not match the record preserved by the Block Land & Land Reforms Officer, Kolkata. The report further indicated that R.S. Plot no. 13845, corresponding to CS Plot No. 4534, was recorded in favor of one Sibdas and classified as 'Pukur Par' (bank of pond). It was also noted that R.S. Khatian no. 4492, a "Khanda Khatian" carved out from Khatian no. 2291 and the copy of the said Khatian as annexed in this instant writ petition is different from the Khatian as available in the office record of the B.L. & L.R.O, Kolkata. Additionally, the report mentioned that L.R. Plot no. 13845

was recorded in the names of Anita Sarkar, Kajal Sarkar, and Sibdas Mukhopadhyay against Khatian Nos. 151, 936, and 5077, respectively. It was also noted that the plot no. 13845 was under-recorded in area but matched with 10000. From the time of the CS record to till the date, the classification of R.S. and L.R. Plot no. 13845 as 'Pukur Par' (bank of pond) has remained unchanged. Be it noted here that with the aforesaid two reports, C.S, R.S. and L.R. records of rights of plot no. 13845 and 13844 were annexed.

29. It is well established that the presumption under Section 79 of the Evidence Act, 1872 is a rebuttable presumption, meaning it is not conclusive. This presumption can be challenged by producing the original document or demonstrating that the copy was issued by an incompetent authority or without following the prescribed procedure. It is also undeniable that a presumption attaches to official acts. In this case, both the B.L. & L.R.O. and D.L. & L.R.O. clearly stated in their reports that the copy of the R.S. record of rights attached to the writ petition differed from the original record preserved in the office of the B.L. & L.R.O. As a result, the presumption attached to the copy produced by the petitioner is rebutted. The custodians of the record have consistently mentioned that R.S. and L.R. Plot no. 13845 was classified as 'Pukur Par' in the C.S., R.S., and L.R. records of rights. Be it noted here that in L.R. record of rights, classification of land has been recorded as 'pukur par'. It is well settled that in case of conflict between old record and current record, the latter will prevail. Thus, it can safely be concluded that the classification of the plot is 'pukur par'

(bank of pond) and not the 'bastu'. I have carefully gone through the decision cited by Mr. Ruj but the same is distinguishable on facts.

30. As previously mentioned, while disposing of the appeal MAT 1464 of 2013, the Hon'ble Division Bench directed that these writ petitions be decided with due regard to the order of the High-Power Committee. The High-Power Committee had instructed the District Magistrate and Collector to conduct a spot enquiry to determine whether any violation of the West Bengal Land Reforms Act, 1955 had occurred; additionally, the Deputy Director of Fisheries was directed to cause an enquiry and take action if any violation of the West Bengal Inland Fisheries Act comes to notice. During hearing, it is submitted on behalf of the State that due to the pendency of these writ petitions, the necessary enquiries have not yet been conducted. The issue of demolition can only be considered after it is ascertained whether or not the relevant provisions of the aforementioned enactments have been violated. Once this is determined, it will be open for the parties to approach this Court, if necessary.

31. In light of the above, I find it appropriate to dispose of both writ petitions, which have been pending since 2013, by directing the District Magistrate and Collector, as well as the Deputy Director of Fisheries, to conduct enquiries in compliance with the order of the High-Power Committee. They are also instructed to resolve the issue while taking into consideration the order of the Hon'ble Division Bench passed in MAT 1464 of 2013 and after affording an opportunity of hearing to the writ petitioner and the added respondent.

32. However, while deciding the issue, the District Magistrate and Collector shall consider the matters raised by the petitioner in these writ petitions and assess whether any benefits under the clause 166 of the L.R. Manual, or any other relevant provisions of the West Bengal Land Reforms Act, 1955, or any other applicable enactment, can be extended in favor of the petitioner. It goes without saying that, before making a final decision, the District Magistrate and Collector shall also consult the appropriate department on the matter.
33. It is clarified that if any decision is made by the concerned District Magistrate that is prejudicial to the interest of the petitioner, a reasoned order shall be passed, and the same shall be communicated to the petitioner. Until a decision is reached by the concerned District Magistrate, the status quo shall be maintained regarding the nature and character of the petitioner's building and property.
34. Accordingly, the writ petitions being **WPA 36126 of 2013** and **WPA 24488 of 2013** are **disposed of**. Connected application (s), if any, are also disposed of.
35. Urgent Photostat Certified copy of this order, if applied for, be given to the parties upon complying with all necessary formalities.

**(PARTHA SARATHI CHATTERJEE, J)**