

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ajoy Kumar Mukherjee

**C.R.R. 1724 of 2019
*Shankar Paul & Ors.***

-vs-

The State of West Bengal & Anr.

For the Petitioners : Mr. Arindam Jana,
Mr. Tanmoy Mukherjee,
Mr. Saunak Bhattacharya,
Mr. Soumajit Chatterjee,
Mr. Souvik Das,
Mr. Sounak Mandal.

For the State : Mr. Swapan Banerjee,
Ms. Purnima Ghosh.

Heard On : 24.06.2022

Judgment On : 06.07.2022

Ajoy Kumar Mukherjee, J.

1. The present revisional application has been directed for quashing of the proceeding being G.R.No. 1551/2016 arising out of Contai Police Station Case No. 296/2016 dated 01.12.2016 under Section 17A of West Bengal Inland Fisheries Act which is pending before the court of learned Additional Chief Judicial Magistrate, Contai, Purba Medinipur.

2. The genesis of the instant case dates back to 30.11.2016, the opposite party no.2 laid down a letter of complaint before Officer-in-Charge, Contai

Police Station alleging commission of offence under Section 17A of West Bengal Inland Fisheries (Amendment) Act, 1993 (hereinafter referred to as 'the Fisheries Act') by the petitioners on the basis of which aforesaid proceeding was started against the petitioners and four others.

3. The allegations levelled in the said petition of complaint in brief are, Dag Nos. 458 and 459, Mouza-Athilagori, which is a water body has been used for the purpose other than fishery and the petitioners filled up the said water body with a view to convert the same into solid land for other use and they have also divided the said water body for use other than pisciculture.

4. After completion of investigation, the investigating agency submitted its final report in the form of charge-sheet bearing No. 30/2017 dated 31.01.2017 under Section 17A of the Fisheries Act against the present petitioners and three others and learned Magistrate was pleased to take cognizance of the offence.

5. Mr. Arindam Jana, learned counsel for the petitioners submits that the petitioner nos. 4, 5 and 6 herein had filed a case long back in the year 1984 being T.S. No. 22/1984 before the learned Assistant District Judge, 2nd Court, Medinipur praying for partition of the present land being 'Pukur' (tank) and 'Pukurpar' (embankment of the tank) situated at RS plot nos. 439, 439/1654 corresponding to aforesaid LR plot nos. 458, 459 of Mouza-Athilagori, Purba Medinipur wherein it has been categorically stated that the water body concerned had been filled up by natural process due to consistent non-usage and as such, they want to convert the same for extension of house property on

the same. The said suit was initially decreed in preliminary form on 25.01.1986. After passing the preliminary decree on the basis of the prayer made by the plaintiffs, one Advocate Commissioner was appointed and he submitted a report and in the said report it has been categorically mentioned that at the time of inspection, the abovementioned suit land was in the nature of a low land, dry, without any water. On the basis of report submitted by Commissioner, the said suit was decreed in final form vide order dated 25.01.1986.

6. The petitioners moved before the appropriate authority with a series of conversion cases being 1/15/c to 8/15/c for converting about 21 decimal of land being Pukur and Pukurpar situated at aforesaid RS plot nos. 439, 439/1654 corresponding to LR plot nos. 458, 459.

7. It is further submitted on behalf of the petitioners that a correspondence under Memo No. 2089/1/15/E/E-11 dated 26.05.2015, the District Land and Land Reforms Officer, Purba Medinipur intimated the Principal Secretary, West Bengal Fisheries Corporation Limited that as per report of BL&LRO, Contai-I, a compensatory water body measuring more or less the same was excavated at LR plot No. 887 of Mouza-Karanji, Purba Medinipur by the petitioners. But, since Mouza-Karanji was not the adjacent Mouza to Mouza-Athilagori, the compensatory water body at Mouza-Karanji did not meet the requirements as per the provisions of conversion being 1/15/c to 8/15/c. Subsequently, the petitioner no.1 by way of letter dated 26.11.2015 addressed to OSD & EO Assistant Secretary, Government of West Bengal had manifested his prayer to

excavate a compensatory water body at the adjoining Mouza being Chandberia or Padmapukuria. In reply to the letter of the petitioner dated 26.11.2015, the Deputy Secretary, Government of West Bengal, Department of Fisheries by his letter vide No. 2860-Fish/C-III/2M-28/2015 dated 07.12.2015 requested the petitioners to submit conversion certificate in respect of compensatory water body at Mouza-Athilagori or adjoining Mouza-Chandberia or Padmapukuria for further processing of the prayer for conversion of Pukur and Pukurpar in connection with the aforesaid plot Nos. 458 and 459. Subsequent to the receipt of the said letter dated 07.12.2015, the Deputy Secretary, Government of West Bengal, Department of Fisheries, fresh conversion cases being 3/16/C/C-I to 9/16/C/C-I were instituted by the petitioners before the appropriate authority. The petitioner no.1 by way of his letter dated 26.05.2016 intimated the District Land and Land Reforms Officer, Purba Medinipur that subsequent to the receipt of aforesaid letter dated 07.12.2015, the petitioners have purchased land in Mouza-Padmapukuria and have got the said land recorded in their names for excavation of compensatory water body. The District Land and Land Reforms Officer, Purba Medinipur by his letter dated 02.07.2016 directed the BL&LRO, Contai-I to cause inspection of the status of the compensatory water body to be excavated by the petitioners at Mouza-Padmapukuria and the Ameen attached to the office submitted his report stating that Pukur and Pukurpar have been duly excavated in Mouza-Padmapukuria by the petitioners. In spite of sending a clear and unambiguous reply to the letter dated 14.07.2016, the Assistant Director of Fisheries, Purba

Medinipur again issued a Memo to the petitioners to restore the purported water body at Mouza-Athilagori to its earlier condition within 15 days and after issuance of said Memo dated 03.11.2016, the first information report in connection with the instant case was lodged on 30.11.2016 against the petitioners and four others.

8. It is submitted on behalf of the petitioners that the District Land and Land Reforms Officer, Purba Medinipur by his order dated 03.04.2017 issued conversion certificate in connection with the aforesaid Conversion Cases No. 3/16/C/C-1 to 9/16/C/C-1 for the compensatory water body at Mouza-Padmapukuria.

9. Be it mentioned that the District Land and Land Reforms Officer, Purba Medinipur vide its Memo No. 914/3-9/16/C/C-1 and memo no. 915/1 (7)/3-9/16/C/C-I both dated 07.04.2017 requested the Principal Secretary, West Bengal Fisheries Department and Chief Environment Officer, Department of Environment to issue no objection towards disposal of the conversion cases as above. The Department of Fisheries by order No. 1112-Fish/C 111/2M-46/2016 dated 11.05.2017 was pleased to grant no objection certificate to the petitioners towards conversion of Pukur and Pukurpar to Bastu land at Mouza-Athilagori and conversion of the compensatory water body at Mouza-Padmapukuria.

10. The District Land and Land Reforms Officer, Purba Medinipur by orders dated 19.07.2017 issued conversion certificate in connection with the aforesaid conversion cases No. 3/16/C/C-1 to 9/16/C/C-1 for conversion of

the water body at Mouza-Athilagori into Bastu land. Accordingly, the instant proceeding is *prima facie* bad in law and does not bear the leg to stand against the petitioners in view of the aforesaid facts and circumstances of the case.

11. Learned counsel for the petitioners submits that the instant case is pivoted on the sole allegation by the opposite party no.2 that a landed property recorded as Pukur and Pukurpar purportedly being water body had been converted to solid land in contravention with the provisions enunciated in the Fisheries Act, thus committed an offence under Section 17(A) of the Fisheries Act, but such allegations have no leg to stand in the light of the aforesaid facts and circumstances of the case.

12. Learned counsel for the petitioners further submits that inception of the instant proceeding in spite of the petitioners' letter dated 26.11.2015 to the OSD & EO, Assistant Secretary, Government of West Bengal, Aquatic resources and Fishing Harbours categorically manifesting their desire to create compensatory water body in the adjacent Mouza, in spite of the concerned property having been converted into low land and the subsequent grant of conditional permission by the Deputy Secretary, Government of West Bengal, Department of Fisheries dated 07.12.2015, is a glaring example of lack of inter departmental communication and is *per se* bad in law. Accordingly, the allegation levelled against the petitioners to the effect of converting Pukur and Pukurpar to solid land without providing for a compensatory water body is baseless and accordingly, if the instant proceeding is allowed to be continued, it will cause miscarriage of justice. This is also because the petitioners have

been legally granted conversion certificate in connection with conversion of the concerned property at Mouza-Athilagori into Bastu land and the compensatory water body in Mouza-Padmapukuria and as such, the very essence of the allegation, pivotal for the instant case, to the effect of illegal conversion of water body by the petitioners evaporates with the legal sanction granted by the competent authority for the conversion of the concerned water body. Thus, according to the learned counsel for the petitioner, the instant proceeding is liable to be quashed for want of cause of action.

13. Ms. Purnima Ghosh, learned counsel appearing for the State submits that on the basis of FIR, the investigation started and the witnesses during investigation, have stated that the petitioners have illegally converted water body into a Bastu land. She further submits that the record of rights still shows that the nature of the disputed plots is Pukur and Pukurpar.

14. Before going to further details, let me reproduce Section 17(A) of the West Bengal Inland Fisheries (Amendment) Act, 1993 which relates to bar to conversion of water area etc. for other use.

“17A. (1) No person shall— (a) put any water area including embankment measuring 5 cottahs or 0.035 hectare or more, which is capable of being used as fishery, or any naturally or artificially depressed land holding measuring 5 cottahs or 0.035 hectare or more, which retains water for a minimum period of six months in a year, to such use, other than fishery, as may result in abolition of fishery, or (b) fill up any water area including embankment or naturally or artificially depressed land holding as aforesaid, with a view to converting it into solid land for the purpose of construction of any building thereon or for any other purpose, or
(c) divide any water area including embankment or naturally or artificially depressed land holding as aforesaid into parts so as to make any such part measure less than 5 cottahs or 0.035 hectare for any purpose other than pisciculture or transfer any part of any such water

area including embankment or naturally or artificially depressed land holding as so divided to any other person. (2) If the competent authority, on receipt of an information or on his own motion or otherwise, is satisfied that— (a) any water area including embankment or naturally or artificially depressed land holding, referred to in clause (a) of sub-section (1), is being, or is about to be, put to any use, other than fishery, or (b) any such water area including embankment or naturally or artificially depressed land holding is being, or is about to be, filled up, or (c) any such water area including embankment or naturally or artificially depressed land holding is being, or is about to be, divided into parts, or any part of any such water area including embankment or naturally or artificially depressed land holding as so divided is being, or is about to be, transferred to any other person, in contravention of the provisions of sub-section (1), and that it is necessary for the purpose of promotion of pisciculture, checking of destruction of fisheries and prevention of environmental degradation so to do, he may, by order in writing, take over the management and control of such water area including embankment or naturally or artificially depressed land holding, as the case may be. (3) An order under sub-section (2) shall be served in the prescribed manner on the owner of the water area including embankment or naturally or artificially depressed land holding, as the case may be, or, where the water area including embankment or naturally or artificially depressed land holding is in occupation of any person, not being the owner of such water area including embankment or naturally or artificially depressed land holding, on such person. (4) The management and control of such water area including embankment or naturally or artificially depressed land holding may be transferred by the competent authority to any person for proper utilization for pisciculture of such water area including embankment or naturally or artificially depressed land holding, as the case may be, in such manner as may be prescribed.

(5) Every co-sharer or co-owner of a water area including embankment or naturally or artificially depressed land holding, referred to in clause (a) of sub-section (1), shall be entitled to receive rent for taking over the management and control of such water area including embankment or naturally or artificially depressed land holding, as the case may be, by the competent authority at such rate as may be determined by that authority in the manner prescribed. (6) The management and control of any water area including embankment or naturally or artificially depressed land holding may be taken over under sub-section (2) for a period not exceeding 25 years or transferred to any person under sub-section (4) for a period not exceeding 10 years at a time. (7) If the person referred to in sub-section (4) fails to utilize the water area including embankment or naturally or artificially depressed land holding, as the case may be, in accordance with the prevailing norms of pisciculture, the competent authority may, after giving notice to such person, resume the management and control of such water area including embankment or naturally or artificially depressed land holding, as the case may be, without payment of any rent or compensation to such person; and such

water area including embankment or naturally or artificially depressed land holding, as the case may be, may thereafter be managed by the competent authority or transferred to some other person for pisciculture.

(8) The provisions of this section shall apply, mutatis mutandis, to any water area including embankment or naturally or artificially depressed land holding, referred to in clause (a) of sub-section (1), which is owned or possessed by any person or persons either jointly or severally or owned by the State Government jointly with other person or persons. (9) No water area including embankment or naturally or artificially depressed land holding, referred to in clause (a) of sub-section (1), shall be— (a) put to any use other than fishery, or (b) filled up with a view to converting it into solid land, for the purpose of implementation of any development scheme by any department of the Central Government or the State Government or any public undertaking under the administrative control of the Central Government or the State Government or any statutory body or local authority or any organisation in the public sector or any organisation or individual in the private sector, except with the prior approval of the State Government in the Department of Fisheries.

(10) (a) The competent authority may, by a written notice, require any person who, by contravening the provisions of sub-section (1),— (i) puts any water area including embankment or naturally or artificially depressed land holding to any use other than fishery, or (ii) fills up any water area including embankment or naturally or artificially depressed land holding with a view to converting it into solid land, or (iii) divides any water area including embankment or naturally or artificially depressed land holding into parts for any purpose other than pisciculture or transfer any part of any such water area including embankment or naturally or artificially depressed land holding as so divided to any other person, to restore, within such period as may be specified in the notice, such water area including embankment or naturally or artificially depressed land holding, as the case may be, to its original condition at his own expense. (b) If such person fails to restore such water area including embankment or naturally or artificially depressed land holding to its original condition within the period specified in the notice under clause (a), the competent authority may, by order in writing, take over the management and control of such water area including embankment or naturally or artificially depressed land holding, as the case may be, restore it to its original condition, and recover the entire cost in this behalf or any part thereof from such person. (c) The management and control of such water area including embankment or naturally or artificially depressed land holding as may be taken over by the competent authority under clause (b) may be transferred by the competent authority to any person for proper utilisation of such water area including embankment or naturally or artificially depressed land holding, as the case may be, in such manner as may be prescribed. And, thereupon, the provisions of sub-sections (5), (6), (7) and (8) shall apply to such water area including embankment or, naturally or artificially depressed land holding, as the case may be.

(11) Any person who commits any offence by contravening the provisions of sub-section (1) shall, without prejudice to the provisions of sub-section (10), be punished with imprisonment for a term which may extend to two years or with fine which may extend to two lath rupees or with both, and the provisions of section 20 shall not apply to such person."

15. In this context, it is also worthy to be mentioned that the conversion of land is being dealt with under Section 4C of the West Bengal Land Reforms Act and for non-compliance of the same, the measures stated in Section 4D of the said Act. Let me reproduce both Sections 4C and 4D of the Land Reforms Act.

"4C. (1) *A raiyat holding any land may apply to the Collector for change of area of character of such land or for conversion of the same for any purpose other than the purpose for which it was settled or was being previously used or for alteration in the mode of use of such land. (Explanation- For the purposes of this sub-section, mode of use of land may be residential, commercial, industrial, agriculture excluding plantation of tea, pisciculture, forestry, sericulture, horticulture, public utilities or other use of land)*

(2) On receipt of such application, the Collector may, after making such inquiry as may be prescribed and after giving the applicant or the persons interested in such land or affected in any way an opportunity of being heard, by order in writing either reject the application or direct such change, conversion or alteration, as the case may be, on such terms and conditions as may be prescribed.

(provided that where the application as stated in sub-section (1) relates to permission for change, conversion or alteration of any plot of land having water body of any description or size, the Collector shall not make any order, unless he has made a prior consultation in writing with such appropriate Department of the State Government as may be prescribed and such order of the Collector may, depending on the circumstances of case, include an order for creation of compensatory water body of equal or larger size of such water body which is required to be changed, converted or altered.)

(3) Every order under sub-section (2) directing change, conversion or alteration shall specify the date from which such change, conversion or alteration shall take effect.

(4) A copy of the order passed by the Collector directing change, conversion or alteration, if any, under sub-section (2), or in an appeal there from shall be forwarded to the Revenue Officer referred to in section 50 or section 51, as the case may be, and such Revenue Officer shall incorporate in the record-of-rights changes effect by such order and revise the record-of-rights in accordance with such order.

(4A) Notwithstanding anything to the contrary contained in any other law for the time being in force, where the approval of the appropriate Department of the State Government or the local authority in respect of any scheme or project, or the permission of the appropriate Department of the State Government or the local authority in respect of construction of buildings or any other permission to conduct any business or carrying on any activity---

(a) Involves change of area of any plot of land or character of such plot of land or conversion of the same as mentioned in sub-section(1);or

(b) Amounts to using of any plot of land having any water body of any description or size in a manner that degrades or destroys, directly or indirectly, such water body,

no such approval or permission of the appropriate Department of the State Government or the local authority shall be made unless the order of the Collector directing change, conversion or alteration of such plot of land or plot of land having any water body of any description or size, as the case may be, under sub-section (2), is obtained.)

(5) (a) without prejudice to the forgoing provisions of this section, where any plot of land has been changed or converted or altered in violation of this section, if the Collector, on his own motion or on receiving information, is of the opinion that it is necessary so to do in public interest, he may make an order directing a raiyat or a lessee for restoration of the original character of the concerned land within a specified time.

(b) On receipt of the order, the raiyat or the lessee shall restore the original character of the plot of land at his own cost within such time, as may be ordered by the Collector.

(c) if the raiyat or lessee fails to comply with the order, the Collector may take action for restoring the original character of such plot of land and realize the cost for restoration from the raiyat or the lessee.

(d) If the raiyat or lessee fails to pay the cost of restoration, the Collector may realise the cost as a public demand in accordance with the provision of the Bengal public Demands Recovery Act, 1913(Ben. Act III of 1913).

(6) notwithstanding anything contained in the foregoing provisions of this section, where any plot of land not exceeding 0.03 acres situated in the areas falling within the local limits of any Municipal Corporation or Municipality, or any plot of land not exceeding 0.08 acre situated in the area not falling within the local limits of any Municipal Corporation or Municipality, other than any plot of land having water body of any description or size, has been changed, converted or altered in the area, character or mode of use of such plot of land in violation of the provision of sub-section(2) of section 4C and if the State Government, on the basis of any report of the Collector, is of the opinion that it is necessary to do so in the public interest the State Government may, by order, authorise the Collector to regularize such change, conversion or alteration in the area, character or mode of use of the said plot of land, other than any plot of land having water body of any description or size, on payment of

such fee depending on the different character or mode of use of the plot of land, and in such manner, as may be prescribed.)

“4D. (1) *Any change, conversion or alteration in the area, character or mode of use of any land, except in accordance with the provisions of section 4C, or any violation of the order of the Collector under sub-Section (5) of section 4C, (shall be a cognizable and non-bailable offence and shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to fifty thousand rupees or with both):*

Provided that no prosecution shall lie for an offence under this sub-section in a case where an action has already been taken by the prescribed authority under sub-section (4) of section 4.”

16. In connection with plot Nos. 458 and 459, on perusal of the FIR it appears that the allegations levelled against the accused person are three fold – (i) put the aforesaid water body for use other than fishery as may result in abolition of fisher or/and (ii) filled up the aforesaid water body including embankment with a view to converting it into solid land for the purpose of construction or any other purpose or/and (iii) divide the aforesaid water body including embankment with into parts measuring less than 5 katha for any purpose other than pisciculture.

17. In the charge-sheet, it is only submitted that on scrutinizing the evidence so far collected, a *prima facie* case has been established under Section 17A of the Fisheries Act and accordingly, charge-sheet has been submitted against them.

18. The petitioners have annexed copy of the aforesaid plaint viz., Title Suit No. 22/1984 wherefrom it appears that in the year 1984, they have stated that suit plot No. 439 was a tank, but in course of time, the tank was filled up by sands coming out from the neighbouring lands and thus, the plot has lost its “original nature”.

19. Petitioners have also annexed Commissioner's report dated 07.12.1998 in support of their contention. Annexure 'P-8' shows that the petitioners had categorically stated in their letter dated 26.11.2016 that the said plot No. 439 has already been allotted by way of partition suit being No. 31/1998 and in spite of transformation they are ready to dig a compensatory water body measuring an area of 21 decimals of land either in the adjacent Mouza Chandberia or Padmapukuria.

20. Annexure 'P-9' shows that the petitioners have informed the District Land and Land Reforms Officer, Purba Medinipur that they have purchased land at Mouza-Padmapukuria and also recorded their names for the purpose of excavating compensatory water body.

21. Annexure 'P-11' shows that the District Land and Land Reforms Officer, Purba Medinipur informed the Block Land and Land Reforms Officer, Contai-I vide its Memo dated 02.07.2016 that the petitioners created compensatory water body measuring the same area and after obtaining report from his end in respect of creation of the said water body along with documentary evidence of the alternate water body duly countersigned by them, next course of action will be taken from their end.

22. Annexure 'P-13' relates to Conversion Certificate which clearly goes to show that the Collector under Section 4C of the West Bengal Land Reforms Act, 1955, by exercising his power given to him under the said provision of Land Reforms Act has allowed the petitioners to convert their purchased land from 'Jal' to 'Pukur'.

23. It further appears from the order dated 19.06.2017 marked as annexure P-15 that the petitioners are given permission to convert plot Nos. 458 and 459 from 'Pukur & Pukur Parh' to 'Bastu'.

24. In view of the aforesaid documents available in the record which appears to have not been seized or collected by the investigating agency during investigation clearly go to show that the petitioners have converted the aforesaid plots from 'Pukur & Pukur Parh' to 'Bastu' after taking necessary permission as granted by the competent authority under Section 4C of the West Bengal Land Reforms Act and the present proceeding appears to have been continued only due to lack of inter departmental communication in between the Land and Land Reforms Office and the Department of Fisheries. This is also evident from the fact that as petitioners were in the process of excavating compensatory water body in an adjacent mouja in accordance with proviso to sub-section (2) of section 4C of West Bengal Land Reforms Act, appropriate authority/collector has not taken any action against the petitioners under section 4 D of the West Bengal land Reforms Act 1955. Second Proviso to Section 4 D(1) of the said Act clearly stipulates that no prosecution shall lie for any change of character of any land or any conversion in the use of any land, if such conversion of land is made in accordance with the provisions of any law for the time being in force. Submission made on behalf of learned Advocate appearing on behalf of the state that the said plot numbers 458, 459 still recorded as "pukur" and "pukurpar" does not strengthen prosecution case any way as this might be a mere omission on the

part of the petitioners to make correction in the record of rights. During investigation , except aforesaid recording in record of rights, prosecution could not collect any evidence to show that there physically exists any water body in said plots or said plots used for pisciculture .Mere recording of land in the nature of Pukur (tank) or pukurpar (embankment of tank) does not automatically implies that pisciculture was involved with the said land. During investigation , investigation officer only recorded statement of 4/5 witnesses, who have stated that petitioner have filled up said plots without taking permission, which is not true as appearing from the documents mentioned above and the said statements and the entry in record of rights which appears to be not updated by the petitioners, are not sufficient materials to form an opinion that there is ground for presuming that the petitioners have committed the offence under the sections mentioned in the charge-sheet. Most importantly *mens rea* for constituting the offence is completely absent in the present case, in view of the fact that the process of excavating compensatory waterbody in adjacent mouja was initiated in accordance with law by the petitioners long before the initiation of present criminal proceeding by the opposite party No.2.

25. In view of the above, if the proceeding is allowed to be continued, then it will be clearly an abuse of process of court as materials clearly go to show that the petitioners have taken steps in accordance with the provisions of section 4C of the West Bengal Land Reforms Act and as such *mens rea* of the petitioners is completely absent in the allegations leveled against them which

is also evident from the documents mentioned above, there is not even remote chance of conviction of the petitioners at the end of trial. As such, the proceeding being G.R.No. 1551/2016 arising out of Contai Police Station Case No. 296/2016 dated 01.12.2016 is quashed.

26. The revisional application being CRR 1724 of 2019 is, thus, allowed.

However, there will be no order as to costs.

Urgent photostat certified copy of this judgement, if applied for, be given to the parties upon compliance of all formalities.

(AJAY KUMAR MUKHERJEE, J.)