

25.04.2023
Item Nos.3-4
gd/ssd

WPA/6411/2019
IA NO: CAN/1/2019(Old No:PCAN/9826/2019)
PANCHUGOPAL MONDAL
VS
STATE OF WEST BENGAL & ORS.
with
WPA/5763/2019
MOUSUMI POREL
VS
STATE OF WEST BENGAL & ORS

Ms. Sutapa Sanyal,
Mr. Nilanjan Adhikari
..for the Petitioner in
WPA 6411 of 2019 and for
the Respondent in WPA 5763 of 2019.

Mr. R.N. Chakraborty,
Mr. Mahaboob Ahmed
..for the Petitioner in
WPA 5763 of 2019.

Mr. Samrat Sen,
Mr. Amitava Mitra
..for the State.

Mr. Arjun Ray Mukherjee,
Mr. J. Medhi
..for the Respondent No.3 in
WPA 5763 of 2019.

The petitioner in WPA 5763 of 2019 has prayed for a Mandamus to direct the respondent authorities to restore the water body measuring 20 decimals out of 42 decimals at Plot No.1/1723, Khatian No.1202/1, J.L. No.56 within Mouza-Krishnanagar in the District of Hooghly alleging that the private respondent no.13 has illegally filled up the said water body and for implementation of the

order dated 22.06.2019 passed by the concerned Block Development Officer.

Mr. Sen, learned Assistant Additional Advocate General who is representing the State in WPA 6411 of 2019 assisted by Mr. Mitra is requested to represent the State in this writ petition also. Let the appointment of Mr. Sen and Mr. Mitra be regularised.

Mr. Chakraborty is requested to supply a copy of the writ petition to the junior of Mr. Sen in course of this day.

The petitioner in WPA 6411 of 2019 has challenged the order dated 22.06.2016 passed by the Block Development Officer on the issue regarding filling up of the said water body.

The petitioner in WPA 6411 of 2019 has challenged the authority of the Block Development Officer to act as the competent authority under Section 17A of the West Bengal Inland Fisheries Act, 1984.

Ms. Sanyal, learned Advocate appearing for the petitioner in WPA 6411 of 2019 places various notifications before this Court including the notification dated 26.06.2012 and submits that the Block Level Water Bodies and Biodiversity Monitoring and Preservation Committee is authorised to function as the competent authority under the West Bengal

Inland Fisheries Act, 1984. She submits that the Block Development Officer might be the Chairman of such Committee but the Committee as a whole has to take a decision on the issue of filling up of a water body and for issuing consequential directions to restore the same to its original condition.

Mr. Chakraborty, learned Advocate representing the petitioner in WPA 5763 of 2019 submits by referring to the notification dated 5th August, 1994, that the Block Development Officer in charge of a Block is the competent authority under Section 17A of the West Bengal Inland Fisheries Act, 1984. He refers to the order passed by the Block Development Officer and submits that the Block Development Officer upon considering the revenue records have found that on a portion of Plot No.1/1723 there exists a water body and Panchu Gopal Mondal was directed to restore the position of the plot as it was on the date of complaint lodged by Smt. Mousumi Porel.

Since the petitioner in WPA 6411 of 2019 has questioned the jurisdiction of the BDO, this Court deems it fit and proper to decide such issue at the threshold.

Today when these matters are taken up for hearing, Mr. Sen, learned Senior Counsel places before the Court several notifications issued from

time to time under the provisions of the 1984 Act. The first of such notification is dated 5th August, 1994 wherefrom it appears that the Block Development Officer in charge of a Block was authorised to perform the functions of the competent authority under Section 17A of the 1984 Act. Subsequently the notification dated November 12, 1998 was issued wherefrom it appears that the Governor was pleased to authorise the Assistant Director of Fisheries in Charge of a Fishery District and the District Fishery Officer in Charge of a Fishery District, in the absence of the Assistant Director of Fisheries, to perform within his jurisdiction the functions of the competent authority under the 1984 Act with effect from 16th day of November, 1998.

Thereafter another notification dated 6th February, 2002 was published in the Kolkata Gazette on February 25, 2002 thereby superseding the earlier notifications dated 5th August, 1994 and November 12, 1998. From the said notification it appears that the Block Development Officer was not authorised to perform the functions as a competent authority under the 1984 Act with effect from February 25, 2002.

From the subsequent notifications dated 15th July, 2005 and 20th July, 2017 published on July

18, 2005 and December 26, 2017 respectively it appears that the Block Development Officer was not authorised to perform the duties as competent authority under the 1984 Act.

The order passed by the Block Development Officer which is the bone of contention between the writ petitioners was passed on 22nd June, 2016.

Since the Block Development Officer ceased to be a competent authority under the 1984 Act with effect from 16th November, 1998, this Court is of the considered view that the Block Development Officer was not authorised to pass an order on 22nd June, 2016 as competent authority under the 1984 Act directing restoration of the water body to its original condition. Therefore, the prayer for restoration of the alleged water body by way of implementation of the order of the BDO dated 22.6.2016 cannot be allowed.

The notification dated 26.06.2012 relied upon by Ms. Sanyal was issued by the Environment Department of the Government of West Bengal constituting a committee to examine the status of Biodiversity related to wet land/water bodies. The said notification has nothing to do with regard to vesting of the powers of competent authority under the 1984 Act. Therefore, the committee constituted vide Notification dated 26.06.2012 cannot be said to

be authorised to perform the functions of competent authority under 1984 Act.

Since it is not in dispute that the concerned District Magistrate is now authorised to perform the functions of the competent authority under Section 17A of the 1984 Act and the issue as to whether a water body has been filled up is to be decided by the competent authority under the 1984 Act, this Court is of the considered view that the issue as to whether a water body has been filled up and whether the same is to be restored to its original condition is to be decided by the District Magistrate. Accordingly this Court directs the District Magistrate, Hooghly to consider the representation of the petitioner in WPA 5763 of 2019 dated 18.12.2012 which was addressed to the Block Development Officer and to dispose of the same after giving an opportunity of hearing to the petitioners in WPA 5763 of 2019 and WPA 6411 of 2019 and/or their authorised representatives and by passing a reasoned order which shall be communicated to the respective parties.

The entire exercise shall be completed within a period of four weeks from the date of communication of this order.

It will be open to the respective parties to rely upon the order passed by the Block Development

Officer on 22nd June, 2016, the inspection report as well as the sketch map prepared by the Block Level Water Bodies and Biodiversity Monitoring and Preservation Committee pursuant to a direction passed by this Hon'ble Court dated 08.04.2019 as evidences as to the status and extent of the disputed plot and/or any other materials in support of their respective contentions at the time of hearing.

For the purpose of deciding the said issue, it will be open to the District Magistrate to take all steps in that regard as the District Magistrate may deem fit and proper.

The District Magistrate as well as the Inspector/Officer in charge of the Jangipara Police Station shall ensure that no construction is made on the said plot till the issue is decided by the District Magistrate in terms of this order.

The petitioner in WPA 5763 of 2019 is directed to file a copy of the representation dated 18.12.2012 which was submitted before the Block Development Officer along with the copy of this order to the District Magistrate.

The concerned Block Development Officer is directed to forward all the records in connection with this matter to the District Magistrate within a week from date.

It will be open to the District Magistrate to hear any other interested parties that he may deem fit and proper for the purpose of deciding the said issue.

With the aforesaid directions, the writ petitions and the applications stand disposed of.

(HIRANMAY BHATTACHARYYA, J.)