

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

WPA 14643 of 2023

**Prosenjit Dey
Vs.
The State of West Bengal & Ors.**

Mr. Rajdeep Mazumder
Mr. Moyukh Mukherjee
Mr. Pritam Roy
Ms. Sayanti Pradhan
..for the petitioner

Mr. Supratim Dhar
Ms. Reshma Chatterjee
..for the State

Mr. Debabrata Chatterjee
Mr. Simanta Kabir
..for the respondent Nos. 2 and 3

Item No.03

Heard & Judgment on: 02.08.2023

Bibek Chaudhuri, J.

Affidavit of service be kept with the record.

It is the case of the petitioner that a partnership firm under the name and style of "Om Properties" is the owner of a portion of L.R. plot No. 1804, Khatian No. 20686, J.L. No. 043 within P.S. Basirhat. It is stated by the petitioner that the said land being plot No. 1804 was classified as 'Bastu' in the record of rights. The petitioner purchased 0.0907 acres of land in the said dag.

The grievance of the petitioner is that the petitioner was served with a notice under Sub-Section (10) of Section 17A under West Bengal Inland Fisheries Act, 1984 wherein it is stated that as per the report received from the B.L.& L.R.O. Basirhat-I out of 0.36 acres of land recorded as 'Bastu', 0.09 acres of land appears to be a depressed land which retains water for a period of more than six months in a year. It is alleged that the petitioner has been filling up such land for converting into a solid land in contravention of the provision of Sub-Section (10) of Section 17A of the said Act. Thus, the petitioner was directed to restore the said water body including embankment to its original condition at his own expenses within 15 days from the date of issuance of the notice. Be it mentioned here that the said notice was issued by the Executive Officer, Basirhat Municipality on 4th May, 2023.

Learned advocate for the petitioner next takes me to the report submitted by the jurisdictional B.L.& L.R.O. It appears from

his report that out of 0.35 acres of land recorded as 'Bastu' 0.09 acres of land is physically like a 'Dova' and being a depressed land. There is no observation in the report that in the said depressed land water retains for a period of at least six months in a year.

It is further contended on behalf of the petitioner that on the basis of the said notice the Executive Officer, Basirhat Municipality passed a final order on 24th May, 2023 taking over the management and control of the said water area including the embankment of naturally or artificially depressed land holding to restore it to its original condition and to direct the entire cost for restoration of the said water area shall be recovered from the petitioner as per the provisions of the Bengal Public Demands Recovery Act, 1913. Being aggrieved, the petitioner has challenged the said order dated 24th May, 2023.

The learned advocate for the State Respondents, on the other hand, submits that against the order passed under Clause B of Sub-Section (10) of Section 17A of West Bengal Inland Fisheries Act, 1984 there is a provision of appeal under Section 18 of the said Act. The petitioner did not take recourse of such provision of appeal. Moreover, the petitioner did not take any step as against the notice dated 4th May, 2023 issued by the Executive Officer, Basirhat Municipality by filing his representation stating his case in this

behalf. In reply, it is pointed out by the learned advocate for the petitioner that the notice dated 4th May, 2023 issued by the Executive Officer, Basirhat Municipality is not a notice for hearing but it is a notice directing the petitioner to restore the said water body including embankment to its original condition at his own expenses within 15 days from the date of issuance of the notice. Thus, the Executive Officer, Basirhat Municipality, respondent No.3 herein already took the decision that the said plot of land, though recorded as 'Bastu' is really a water body wherein water retains for at least six months in a year.

Having heard the learned advocates for the petitioner and the State Respondents I find that the petitioner was obviously not given an opportunity to explain his case before the Chairman, Basirhat Municipality who is the competent authority to decide as to whether the disputed land is really a 'Bastu' land as per the record of rights or it appears physically as a 'Dova' or a water body where water is retained for about six months in a year (Emphasis supplied by me).

In view of what has been stated above, the notice dated 4th May, 2023 appears to be invalid and on the basis of such notice the order dated 24th May, 2023 could not be passed.

In view of such circumstances, the notice dated 4th May, 2023 and the order dated 24th May, 2023 passed by the respondent No.3,

the Executive Officer, Basirhat Municipality are quashed. The Executive Officer is at liberty to issue a fresh notice in accordance with law to the petitioner giving an opportunity of hearing and on the basis of the said hearing the Chairman, Basirhat Municipality being the statutory authority shall decide the issue as to whether the purchased land of the petitioner is a 'Bastu' land or a water body within the meaning of West Bengal Inland Fisheries Act, 1984. The entire exercise shall be completed within 90 days from the date of communication of this order.

The instant writ petition is **disposed of**.

There shall be, however, no order as to costs.

(Bibek Chaudhuri, J.)