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14.03.2023  
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**In The High Court At Calcutta  
Constitutional Writ Jurisdiction  
Appellate Side**

**W.P.A. 28777 of 2022**

**Sri Rabi Bhattacharya  
-versus  
The State of West Bengal & Ors.**

**Mr. Monojit Pal,  
Mr. Tapas Kumar Saha.  
...For the Petitioner.**

**Mr. R.N. Dutta,  
Mr. Suprabhat Bhattacharyya.  
...For the State.**

**Mr. Prosenjit Mukherjee,  
Mr. Tirthankar Mukherjee,  
Ms. Madhurima Sarkar,  
Ms. Sucheta Pal.  
...For the Respondent no.5.**

Affidavit-of-service filed in Court today is taken on record.

The petitioner alleges that the private respondent constructed building by filling up the water body in Plot No. 2538 which is recorded as 'Pukur' in the records of the Land and Land Reforms Department.

The objection filed by the petitioner before the Municipality and the land authority is pending consideration.

Learned advocate appearing for the private respondent submits, upon instructions that, the

construction was made after obtaining grant under the Pradhan Mantri Awas Yojana.

The Municipality permitted the petitioner to make construction over the said plot of land by recording that the water body has been filled up naturally and automatically about 40 to 45 years ago.

The Municipality was of the opinion that though the property is recorded as 'Pond' but the actual nature and character of the property has changed. The status of the property at present cannot be treated as a 'Pond'.

Learned advocate appearing for the State respondents submits that the Municipality does not have the authority to declare a water body as land fit for construction despite the same changing its character over a period of time.

It appears from the submissions made on behalf of the petitioner as well as the private respondent that the plot in question where the construction is alleged to be made is recorded as a 'Pond'.

No construction can be made thereon without conversion of the classification of the land.

The law does not permit the Municipality to grant permission for making construction over any plot of land which is recorded as a water body.

In view of the above, the Secretary, Land and Land Reforms Department, Government of West Bengal is directed to decide the issue as to whether the construction may be permitted over the subject plot of land.

If required, a spot inspection may be conducted to ascertain the nature of the plot in question upon giving prior notice to all the parties.

The Secretary shall take a decision in the matter in accordance with law, at the earliest, but positively within a period of twelve weeks from the date of communication of this order.

The Inquiry Report dated 21<sup>st</sup> January, 2023 signed by the Councillor and the Chairman, Kharar Municipality be taken on record.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

**( Amrita Sinha, J.)**