

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 17743 of 2021

Manik Chandra Mondal & Ors.

Vs

The State of West Bengal & Ors.

For the Petitioners : Mr. Kumar Jyoti Tewari,
Mr. Prantick Ghosh,
Mr. Sourav Guha,
Mr. Aniruddha Tewari,
Mr. Prasad Bhattacharyya.

For the State : Mr. Manas Kundu,
Mr. Debabrata Mondal.

For the North Dum Dum Municipality : Mr. Sandip Ghosh,
Mr. Sudarsan Roy,
Mr. Romit Bose,
Mr. D. Majumder.

For the Private Respondent Nos. 9 to 15 : Ms. Gopa Biswas,
Ms. Sampri Saha.

Hearing concluded on : 13.11.2024

Judgment on : 19.11.2024

Shampa Dutt (Paul), J.:

1. The present writ petition has been preferred praying for declaring the notice dated 08.10.2021 under office memo no. NDDM/ESTT/4888 as illegal, void and without jurisdiction, declaring that order dated 13.11.2020 passed by the Chairperson, Board of Administrators in respect of land comprising in Dag no. 3834 appertaining to L.R. Khatian No. 6715, 6753, 6762 and 6809, in Mouza: South Nimta, P.S. Nimta, District-North 24 Parganas being holding nos. 342 and 343, ward no. 28 of the North Dum Dum Municipality as illegal and void as the same has lost its force and has prayed for quashing of the said order.
2. The writ petitioner has further prayed for an order prohibiting the respondents from disturbing the possession of the writ petitioner over the holding nos. 342 and 343, ward no. 28 of the North Dum Dum Municipality.
3. **The case of the writ petitioner in short is that:-**

*“.....piece and parcel of land measuring about 12 cottahs comprising in dag no. 3834 appertaining to L.R. Khatian No. 6715, 6753, 6762 and 6809, in Mouza: South Nimta, P.S. Nimta, District: North 24 Parganas being holding nos. 342 and 343, ward no. 28 of the North Dum Dum Municipality is the subject matter of the present lis. **The subject property is classified as ‘Bastu’ land converted from classification ‘Sali’.** The subject property was/is not capable of being used as fishery, or any naturally or artificially depressed land which retains water for minimum period of 6 months in a year. The subject land was/is not used for improvement or development of fishery, supply of fish to consumer from fisheries and other object ancillary or incidental to the object of relevant statute. The petitioners emphatically states that **the classification of the said property was recorded as Sali land and subsequently it***

***was converted into a Bastu land in accordance with law.** The subject land was or is not an artificially and or naturally depressed land which is capable of retaining water for more than six months in a year. There was or is nothing on record to show that subject property was or is a wet land/water body/pond and low land capable of retaining water for six months in a year. The private respondents have raised a claim over the subject property as the private land of the petitioner is being used as a dumping place and storage of foul water over the subject property by them.....”*

4. Learned counsel for the petitioner has stressed upon the point that the documents filed by him **being the record of rights, clearly shows that the said property has been marked as ‘Sali’ and, as such, the claim of the private respondents and the municipality is not in accordance with law.**
5. It appears from the document at page 109 of the writ petition, that it is a certificate of conversion by which the property has been **converted from ‘Sali’ to ‘Bastu’**. It is this conversion which has been challenged by the municipality by way of a criminal case on the ground that the document relied upon by the writ petitioners which is at page 130 of the writ petition is a forged document.
6. It is further submitted that no such document was issued by the Chairperson of the North Dum Dum Municipality and, as such, the conversion from ‘Sali’ to ‘Bastu’ on the basis of the said document has been done on the basis of a forged document. The matter is also sub judice before an appropriate forum.
7. The private respondents in the present case on the other hand has stressed upon the point that the said property was a water body and that has been illegally covered by the writ petitioners but there is no

document before the Court to show that the said property **was ever a water body.**

8. The parties have used affidavits and the learned counsel for the municipality has placed a copy of a letter submitted before the Additional District Magistrate and the District Land and Land Reforms Officer, Barasat, North 24 Parganas for revocation of the said conversion of the land from 'Sali' to 'Bastu' on the ground that the certificate on the basis of which it was converted is fraudulent and forged and a criminal case has also been initiated, which is sub judice.
9. From paragraph 1 at page 2 of the said letter, it appears that the Executive Officer of the North Dum Dum Municipality has stated that during physical inspection of the land conducted by the municipality, it was found that there was **existing water body on the land** and it appears that the writ petitioners are illegally filling up the said body for construction of buildings by flouting various provisions of the West Bengal Inland Fisheries Act, 1984 and the West Bengal Town and Country (Planning and Development) Act, 1979.
10. The petitioner has challenged the notices dated 13.11.2020 and 08.10.21 issued by the municipality.
11. It appears from the said letter that the same have been issued on the basis of 'A Mass Petition'. It is also seen that an inspection was held and the petitioners were asked to stop filling the water body (?) and restore the already filled up portion.
12. **It appears from the said notices that the Municipality did not consider any documents that the petitioners had in their**

possession, being the records of rights showing that the land was all along a 'Sali'.

13. From both the notices challenged it appears that the records of right in favour of the petitioner was not considered by the Municipality and without considering the same and without any application of mind on the basis of a mass petition and an inspection the said orders have been passed.
14. 'Sali' land is a type of agricultural land and noted in the land records (record of rights). **In the present case the same stand in favour of the petitioners.**
15. The letter of the Chairman dated 3rd September, (?) permitting the petitioner to convert the land in question from 'Sali' to 'Bastu' is sub judice before a criminal Court on the ground that it is forged.
16. **At page 110, certificate of conversion dated 28.08.2020 of the BL & LRO, Barrackpore shows that the land has already been converted from 'Sali' to 'Bastu'.**
17. Thus all along from the valid land records, it appears that the land was a 'Sali'. There are no documents to show that the said property was ever a water body.
18. The orders challenged in the writ petition have been passed without considering the said land records being the record of rights and thus the same have been passed without any application of mind and the said orders suffer from inherent effect and thus are liable to be set aside.

19. From the materials on record and the discussions as above, it appears that the petitioners are armed with the records of rights which **shows that the property was a 'Sali' land.**
20. The conversion from 'Sali' to 'Bastu' has been challenged by the municipality on the allegation that the same has been done on the basis of the forged documents. But even the letter to the Additional District Magistrate and District Land and Land Reforms Officer dated 2nd May, 2022 shows that on inspection it was found that there was an existing water body. No papers were verified. The said findings are also not supported by any other documents.
21. On the other hand, the writ petitioners have substantiated their case by supporting documents. As such, prima facie it appears that all along the **land was 'Sali'** and there is no document to show that it was ever a water body. Whether such conversion from 'Sali' to 'Bastu' is in accordance with law or not is subject matter before the appropriate forum.
22. **The present writ petition is thus allowed.** The Respondents are hereby prohibited/restrained from disturbing the peaceful possession of the petitioner in the schedule property.
23. The notice dated 08.10.2021 under office memo no. NDDM/ESTT/4888 and order dated 13.11.2020 are hereby declared illegal and void and thus set aside.
24. There will be no order as to costs.
25. All connected applications, if any, stand disposed of.
26. Interim order, if any, stands vacated.

- 27.** Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously after due compliance.

(Shampa Dutt (Paul), J.)

Later

The Respondent/Municipality prays for stay of the judgment/order considering the nature of dispute, this court is not inclined to pass an order of stay and as such the prayer for stay stands rejected.

(Shampa Dutt (Paul), J.)