

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble Justice PARTHA SARATHI SEN

WPA 6248 of 2022

Rabin Bain and others

Vs.

The State of West Bengal and others.

With

WPA 7438 of 2023

Sandhya Sardar

Vs.

The State of West Bengal and others.

**For the petitioners in:
WPA 6248 of 2022
& for the private respondents in
WPA 7438 of 2023.**

**Mr. Kallol Basu, Sr. Adv.,
Mr. Falguni Bandyopadhyay, Adv.,
Mr. Nilanjan Paul, Adv.,
Ms. Sreetama Neogi, Adv.,
Mr. Swapnamay Sarkar, Adv.,
Ms. Riya Ballav, Adv.**

**For the petitioner in :
WPA 7438 of 2023.**

**Mr. Sabyasachi Chatterjee, Adv.,
Mr. Shubhrajit Saha, Adv.**

**For the State in :
WPA 6248 of 2022.**

Mr. Himadri Sekhar Chakraborty, Adv.

For the Corporation:

**Mr. N.C. Bihani, Adv.
Mr. Gopal Chandra Das, Adv.
Ms. Ananya Das, Adv.**

Last heard on:

24.09.2025

Judgement on:

24.09.2025

PARTHA SARATHI SEN,J:-

1. The affidavit of service filed in Court today is taken on record.
2. The subject matters involved in the instant two writ petitions are the reasoned order dated 24th March 2022 as passed by the respondent no.5-authority in WPA 6248 of 2022 whereby and whereunder the said respondent no.5-authority passed an order for demolition of the construction of the writ petitioners in WPA 6248 of 2022 with a further direction to restore the subject land to its previous status at the cost of the writ petitioners in WPA 6248 of 2022 within a stipulated period as mentioned in the order impugned.
3. In WPA 6248 of 2022, the writ petitioners have impugned the said reasoned order dated 24th March 2022 and in WPA 7348 of 2023, the writ petitioners have prayed for issuance of appropriate Writ/Writs against the respondent authorities, more specifically against the respondent no. 5-authority in WPA 6248 of 2022 to implement its order dated 24th March 2022.
4. At the time of hearing, Mr. Kallol Basu, learned Advocate appearing on behalf of the writ petitioners, at the very outset, draws attention of this Court to the order under challenge dated 24th March 2022, a copy of which is annexed at page 52-53 of the WPA 6248 of 2022. Drawing attention to page no. 20 to 22 of the instant writ petition being copies of relevant RS ROR and LR ROR, Mr. Basu argued that in respect of Dag No. 1463, it would reveal from the said record of rights that all along the said Dag No. 1463 was in the nature of 'bastu' and it was recorded originally in name of

the predecessor in interest of the writ petitioners in WPA 6248 of 2022 and even after the death of the said original recorded owner of the said Dag, the writ petitioners being the legal heirs of the said original recorded owner continued to remain in possession of the said Dag No. 1463 by way of using the said plot of land as their residential property.

5. At this juncture, Mr. Basu draws attention of this Court to paragraph 5 and 6 of the writ petition being WPA 6248 of 2022. It is submitted by Mr. Basu that it is the specific case of the writ petitioners in WPA 6248 of 2022 that during Amphan Cyclone the existing residential property of the writ petitioners in WPA 6248 of 2022 was damaged considerably and, thus, the writ petitioners approached the local authority for grant of sanction of building and rebuilding of their existing household property, which would be evident from page no. 35 of WPA 6248 of 2022 being a copy of the sanctioned plan as issued by the local authority.
6. It is, thus, submitted by Mr. Basu that by no stretch of imagination it may be presumed that the alleged construction over the plot of land is a new one.
7. At this juncture, Mr. Basu requests me to peruse the Schedule 1 vis-à-vis Table No. 31 of the East Kolkata Wetlands (Conservation and Management) Act, 2006 (hereinafter referred to as 'said Act of 2006'). It is submitted by Mr. Basu that on conjoint perusal of the said Schedule 1 and Table 31 of the said Act of 2006 it would reveal that the alleged disputed plot of land of the writ petitioners being plot no. 1463 under Mouza – Dharmatola

Panchuria is within the category of urban/rural settlement area, which is distinguishable from the other two categories of the selfsame wetland, namely, (i) substantially water body oriented area and (ii) agricultural area.

8. It is further submitted by Mr. Basu that the respondent no. 5-authority in WPA 6248 of 2022 while passing the reasoned order under challenge dated 24th March 2022 has failed to visualize the true purport and purpose of the said classifications under Table-31 of the Schedule 1 of the said Act of 2006 and, thus, wrongly came to a finding that the construction of the dwelling house of the writ petitioners is violative of Rule 4(2)(vi) of the Wetlands (Conversion and Management) Rules of 2017 (hereinafter referred to as the 'said Rules of 2017' in short).
9. It is further submitted by Mr. Basu that the respondent no. 5-authority in WPA 6248 of 2022 is equally failed to visualize that for a considerable length of time, the writ petitioners and/or the predecessor in interests are/were residing in the said Dag No, 1463 in Mouza – Dharmatola Panchuria. It is, thus, submitted by Mr. Basu that, the decision making process of the respondent no. 5-authority in WPA 6248 of 2022 was vitiated on account of non-consideration of relevant materials, which are available on record and, thus, the same is required to be interfered with in a judicial review.
10. Mr. Basu, thus, submits that it is a fit case for quashing of the said reasoned order dated 24th March 2022.

11. It is further argued by Mr. Basu that for the reason best known to the respondent no. 5-authority in WPA 6248 of 2022, the selfsame authority has failed to consider that the private respondents of WPA 6248 of 2022, who are the writ petitioners in WPA 7438 of 2023, have made some illegal permanent construction over the selfsame Mouza even in self-same RS plot.
12. Such contention is, however, opposed by Mr. Sabyasachi Chatterjee, learned Advocate appearing on behalf of the writ petitioners in WPA 7438 of 2023 as well as for the private respondents in WPA 6248 of 2022. It is submitted by Mr. Chatterjee that in absence of any glaring illegality and/or perversity, there is hardly any scope to interfere with the factual findings as arrived at by the respondent no. 5-authority in WPA 6248 of 2022.
13. It is further submitted by Mr. Chatterjee that the allegation as made on behalf of the writ petitioners against the writ petitioners in WPA 7438 of 2023 are unfounded and for the sake of argument even if it is accepted that the same is true, no favourable order may be passed in favour of the writ petitioners in WPA 6248 of 2022 since the allegations, as made by the writ petitioners of WPA 6248 of 2022 against the writ petitioners in WPA 7438 of 2023 constitute a separate cause of action, which is not the subject matter of instant writ petitions.
14. Mr. Chatterjee, however, contended that there is hardly any scope to interfere with the order impugned.

15. On careful perusal of the entire materials as placed before this Court and after hearing of the learned Advocates for the contending parties, this Court at the very outset proposes to look to the Rule 4 of the said Rules of 2017, which reads as under:

“4. Restriction of activities in wetlands.-(1) The wetlands shall conserved and managed in accordance with the principle of ‘wise use’ as determined by the Wetlands Authority.

(2) The following activities shall be prohibited within the wetlands, namely.-

(i) conversion for non-wetland uses including encroachment of any kind;

(ii) setting up of any industry and expansion of existing industries;

(iii) manufacture or handling or storage or disposal of construction and demolition waste covered under the Construction and Demolition Waste Management Rules, 2016; hazardous substances covered under the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 or the Rules for Manufacture, Use, Import, Export and Storage of Hazardous Micro-organisms Genetically engineered organisms or cells, 1989 or the Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008; electronic waste covered under the E-Waste (Management) Rules, 2016;

(iv) solid waste dumping;

(v) discharge of untreated wastes and effluents from industries, cities, towns, villages and other human settlements;

(vi) any construction of a permanent nature except for boat jetties within fifty metres from the mean high flood level observed in the past ten years calculated from the date of commencement of these rules;

(vii) poaching,

Provided that the Central Government may consider proposals from the State Government or Union Territory Administration for omitting any of the activities on the recommendation of the Authority.”

16. Keeping in mind the aforementioned provisions of Rule, if I look to the

factual aspects of this case, it reveals to this Court that sufficient materials have been placed before this Court on behalf of the writ petitioners in WPA 6248 of 2022 that Dag No. 1463 in Mouza – Dharmatola Panchuria is the bastu property of the writ petitioners. Sufficient materials have been also placed before this Court that the writ petitioners are in settled possession of the said Dag, which would be evident from the records of right as has been shown by Mr. Basu in course of his argument.

17. Materials have been placed before this Court that the said plot of land in the said Mouza comes under the category of urban/rural settlement area.

18. At this juncture, if I look to the paragraph 5 and 6 of the writ petition being WPA 6248 of 2022, it reveals that it is the specific case of the writ petitioners in WPA 6248 of 2022 that on account of Amphan Cyclone, the writ petitioners approached the local authority to rebuild their residential house since their existing household property got substantially damaged.

19. At this juncture, if I look to page 35 of the writ petition being WPA 6248 of 2022 being a copy of the plan as has been submitted with the local authority being the Beonta-II Gram Panchayat, it reveals that the said plan bears a date i.e. 4th January 2021 for the proposed construction of two storied residential building. It thus does not transpire to this Court that the said plan was submitted for the purpose of building or rebuilding as argued by Mr. Basu.

20. It rather transpires to this Court that the said plan was submitted for the construction of a new two storied building.

21. It further appears to this Court that the said Rules of 2017 was brought into effect on and from 26th September 2017 and the Rule-6 of the said Rules clearly mandates that any construction of a permanent nature in the wetland area is prohibited except for boat jetties.
22. It, thus, appears to this Court that the respondent no. 5-authority in WPA 6248 of 2022 has correctly come to a conclusion that the construction at the instance of the writ petitioners at RS Dag No. 1463 in Mouza-Dharmatola Panchuria is unauthorized in nature in terms of Rule 4 of the said Rules of 2017.
23. It, thus, appears to this Court that in absence of any perversity and/or arbitrariness, there is hardly any scope to interfere with the order dated 24th March 2022 as passed by the respondent no. 5-authority in WPA 6248 of 2022.
24. Consequently, WPA 6248 of 2022 is hereby dismissed.
25. Consequently, order dated 24th March 2022 as passed by the respondent no. 5-authority in WPA 6248 of 2022 vide memo no.105/CTO/EN/472/2022 is hereby upheld.
26. The respondent no. 5-authority i.e. the Chief Technical Officer, Department of Environment, East Kolkata Wetlands Management Authority, Government of West Bengal is hereby directed to take immediate steps for implementation of its order dated 24th March 2022 in accordance with law within the stipulated period as mentioned in the said order dated 24th March, 2022.

27. Before parting with, it is further directed that since the grievance of the writ petitioners of WPA 6248 of 2022 is that a similar mischief has been committed by the writ petitioners in WPA 7438 of 2023 in the selfsame Mouza as well as in the selfsame RS Dag No, the respondent no. 5-authority of WPA 6248 of 2022 is also directed to make an enquiry as to whether any such illegal construction is at all raised in the said wetland area in RS Dag NO. 1463 in Mouza- Dharmatola Panchuria under Police Station – Kolkata Leather Complex, Dist.- North 24-Parganas and in the event such illegal construction on the part of the writ petitioners in WPA 7438 of 2023 is noticed by him, he is further directed to take appropriate steps in terms of Rule 4 of the said Rules of 2017 forthwith.

28. With the aforementioned observations WPA 7438 of 2023 is disposed of.

(Partha Sarathi Sen, J.)

Later:-

1. After passing of this judgement, Mr. Basu, learned Advocate for the writ petitioners in WPA 6248 of 2022 prays for grant of limited stay of the operation of the instant judgement.
2. Such prayer is considered and refused.

(Partha Sarathi Sen, J.)

