

**IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Partha Sarathi Sen**

**WPA 10354 of 2025**

**Subhajit Das**

**Vs.**

**The State of West Bengal & Ors.**

|                                     |                                                         |
|-------------------------------------|---------------------------------------------------------|
| For the petitioner                  | : Mr. Uttiya Ray<br>Mr. Ashutosh Pal<br>Ms. Anima Maiti |
| For the Municipality                | : Mr. Subhasis Bandopadhyay                             |
| For the private<br>respondent no. 8 | : Mr. Bijoy Kumar Shaw<br>Mr. Arun Shaw                 |
| For the State                       | : Mr. T. M. Siddiqui, Sr. Adv.<br>Ms. Debdooti Dutta    |
| Heard on                            | : 21.05.2025                                            |
| Judgement on                        | : 21.05.2025                                            |

**PARTHA SARATHI SEN, J.:**

1. The writ petitioner, the respondent/State and its functionaries  
i.e., the respondent nos. 1 and 3 to 7, the respondent no. 2 and

respondent no. 8 are represented by their respective learned advocates.

2. On behalf of the respondent no. 2, a report dated 20.05.2025 as submitted by the Chairman, Burdwan Municipality is filed and the same is taken on record.
3. By filing the instant writ petition, the writ petitioner has prayed for issuance of appropriate writ/writs against the respondents/authorities preventing them towards illegal filling up of the writ petitioner's pond (water body) and to carry out any other activity, particulars of which has been mentioned in paragraph no. 1 of the instant writ petition.
4. In course of his submission, Mr. Ray, learned advocate appearing on behalf of the writ petitioner at the very outset draws attention of this Court to paragraph no. 1 of the instant writ petition as well as to Page No. 14 being a copy of the relevant LR ROR. It is submitted by Mr. Roy that from the averments made in the instant writ petition as well as from the copy of the said LRROR, it would reveal that L.R. Plot No. 1835 is classified as 'Pukur' (water body) and the same stands in the name of the writ petitioner to the extent of 0.158 acre.
5. At this juncture, Mr. Ray draws attention of this Court to Page No. 15 of the instant writ petition being two photographs.

Attention of this Court is also drawn to paragraph nos. 5 and 6 of the instant writ petition. It is submitted that it is the specific case of the writ petitioner that though the writ petitioner is the recorded owner of the said water body, the respondents/authorities more specifically, the respondent no. 2 and/or its men and agents without taking any recourse to the law has started some illegal activity over the said water body of the present petitioner in the garb of renovation and beautification without taking any consent of the writ petitioner as well as without following the statutory mandate of Section 17A of the West Bengal Inland Fisheries Act, 1984 (hereinafter referred to as 'the said Act of 1984' in short).

6. In course of his submission, Mr. Ray submits before this Court that Section 17A(1) of the said Act of 1984 clearly mandates regarding the prohibition for filling up any water area and/or any depressed land, natural or artificial into a solid land for the purpose of construction of any building or for any other purpose. It is further submitted by Mr. Ray that the said subsection further prohibits a person to change the water body including its embankment which is capable of being used as fishery.

7. At this stage, attention of this Court is drawn to the provision of Section 17A(2) and (3) of the said Act of 1984. It is submitted that the said statutory provision further mandates that in the event, the competent authority either on receipt of an information or on its own motion is satisfied that anything is done by the person in contravention of the provision of Section 17A(1) of the said Act of 1984, the said competent authority shall proceed in accordance with the provision of sub-Section (3).
8. Attention of this Court is also drawn to the provision of Section 17A(10) of the said Act of 1984. It is submitted by Mr. Roy that on perusal of the said sub-section, it would reveal that in the event of non-compliance of the requisition of notice under Section 17A(3) of the said Act of 1984, the competent authority is empowered to take control of the said water body and/or naturally or artificially depressed land. It is submitted by Mr. Ray that in the instant case, the respondent no. 2/authority had not taken recourse to the said provisions of law and on the contrary it has proceeded in an illegal manner causing serious damage to the property of the writ petitioner for which appropriate relief/reliefs may be granted to the writ petitioner as prayed for.

9. Per contra, Mr. Bandopadhyay, learned advocate appearing on behalf of the respondent no. 2/Municipality places his reliance upon the report dated 20.05.2025. It is submitted by Mr. Bandopadhyay that from the said report, it would reveal that on receipt of complaint from the trustees of the respondent no. 8 and considering the inconvenience faced by the local inhabitants, a beautification project has been undertaken including the pond of the writ petitioner without changing its nature and character.
10. Mr. Show, learned advocate appearing on behalf of the respondent no. 8, however, submits that an appropriate order may be passed so that the cleanliness of the area in and around the respondent no. 8 temple be maintained for the sake of the visitors of the temple and the local people.
11. Ms. Dutta, learned advocate appearing on behalf of the respondent/State and its functionaries, in course of her submission has handed over a report dated 13.05.2025 as submitted by the I.C. of Burdwan P.S. It is submitted by her that from the said report, it would reveal that in course of inspection, it has been noticed that an ongoing construction is going on, on the said water body at the instance of the respondent no. 8 trust.

12. On careful consideration of the entire materials as placed before this Court and after hearing the learned advocates for the contending parties, it appears to this Court that the report as submitted on behalf of the respondent no. 2/authority more specifically, by the Chairman, Burdwan Municipality and the report dated 13.05.2025 as submitted by the I.C. Burdwan P.S. are contradictory. In the report of the Chairman, Burdwan Municipality dated 20.05.2025, there is no whisper with regard to any construction over the said water body. On the contrary, it is the plea of the Municipality that as per request received from the respondent no. 8 trust they have undertaken some development work in and around the respondent no. 8 temple for its beautification including the pond which is the subject matter of the instant writ petition.
13. On perusal of the photographs as has been annexed in Page No. 15, this Court has failed to notice any construction either permanent or temporary in nature over the said plot of land as indicated by the I.C., Burdwan P.S. in his report dated 13.05.2025.
14. At this juncture, this Court proposes to look to the provisions of Section 17A of the said Act of 1984 and the same is quoted hereinbelow.

**“17A. Bar to conversion of water area etc. for other**

**use.** *-(1) No person shall - —(a)put any water area including embankment, which is capable of being used as fishery, or any naturally or artificially depressed land holding, which retains water for a minimum period of six months in a year, to such use, other than fishery, as may result in abolition of fishery [within the jurisdiction of any Municipal Corporation or any Municipality], or*

*(b) fill up any water area [in part or in full] including embankment or naturally or artificially depressed land holding as aforesaid, with a view to converting it into solid land for the purpose of construction of any building thereon or for any other purpose, or*

*(c)[within the jurisdiction of any Municipal Corporation or any Municipality divide any water area] including embankment or naturally or artificially depressed land holding as aforesaid into parts so as to make any such part for any purpose other than pisciculture or transfer any part of any such water area including embankment or naturally or artificially depressed land holding as so divided to any other person.*

*[Provided that the restrictions contained in clause (a) or clause (c) shall apply in respect of any area measuring 5 cattahs or 0.036 hectare or more falling within the jurisdiction of any Gram Panchayat.]*

*(2) If the competent authority, on receipt of an information or on his own motion or otherwise, is satisfied that-*

*(a) any water area including embankment or naturally or artificially depressed land holding, referred to in clause (a) of sub-section (1), is being, or is about to be, put to any use, other than fishery, or*

*(b) any such water area including embankment or naturally or artificially depressed land holding is being, or is about to be, filled up, or*

*(c) any such water area including embankment or naturally or artificially depressed land holding is being, or is about to be, divided into parts, or any part of any such water area including embankment or naturally or artificially depressed land holding as so divided is being, or is about to be, transferred to any other person, in contravention of the provisions of sub-section (1), and that it is necessary for the purpose of promotion of pisciculture, checking of destruction of fisheries and prevention of environmental degradation so to do, he may, by order in writing, take over the management and control of such water area including embankment or naturally or artificially depressed land holding, as the case may be.*

*(3) An order under sub-section (2) shall be served in the prescribed manner on the owner of the water area including embankment or naturally or artificially*

*depressed land holding, as the case may be, or, where the water area including embankment or naturally or artificially depressed land holding is in occupation of any person, not being the owner of such water area including embankment or naturally or artificially depressed land holding, on such person.*

*(4).....*

*(5).....*

*(6).....*

*(7).....*

*(8).....*

*(9).....*

*(10) (a) The competent authority may, by a written notice, require any person who, by contravening the provisions of sub-section (1)-*

*(i) puts any water area including embankment or naturally or artificially depressed land holding to any use other than fishery, or*

*(ii) fills up any water area including embankment or naturally or artificially depressed land holding with a view to converting it into solid land, or*

*(iii) divides any water area including embankment or naturally or artificially depressed land holding into parts for any purpose other than pisciculture or transfer any*

*part of any such water area including embankment or naturally or artificially depressed land holding as so divided to any other person, to restore, within such period as may be specified in the notice, such water area including embankment or naturally or artificially depressed land holding, as the case may be, to its original condition at his own expense.*

*(b) If such person fails to restore such water area including embankment or naturally or artificially depressed land holding to its original condition within the period specified in the notice under clause (a), the competent authority may, by order in writing, take over the management and control of such water area including embankment or naturally or artificially depressed land holding, as the case may be, restore it to its original condition, and recover the entire cost in this behalf or any part thereof from such person [by invoking the provisions of the Bengal Public Demands Recovery Act, 1913]*

*(c) The management and control of such water area including embankment or naturally or artificially depressed land holding as may be taken over by the competent authority under clause (b) may be transferred by the competent authority to any person for proper utilisation of such water area including embankment or naturally or artificially depressed land holding, as the case may be, in such manner as may be prescribed. And, thereupon, the provisions of sub-sections (5), (6), (7)*

*and (8) shall apply to such water area including embankment or naturally or artificially depressed land holding, as the case may be.*

*(11) Any person who commits any offence by contravening the provisions of sub-section (1) shall, without prejudice to the provisions of sub-section (10), be punished with imprisonment for a term which may extend to [three years] or with fine which may extend to [five lakh] rupees or with both, and the provisions of section 20 shall not apply to such person.*

*(12) An offence under sub-section (11) shall be cognizable and non-bailable.”*

15. Keeping in mind the aforementioned legislative provisions, if I look to the factual aspects of this case, it appears to this Court that it is obligatory on the part of the competent authority under the said Act of 1984 to take recourse to the provisions of Section 17A(2) and (3) of the said Act of 1984 in case, the said competent authority finds violation of the statutory provisions of Section 17A(2) of the said Act of 1984.
16. On perusal of Section 17A (10) of the said Act of 1984, it further appears to this Court that in the event, the said competent authority finds any contravention of the provisions of Section 17A(1), he is duty bound to proceed in accordance with that sub-section (10) for restoring the water body including its

embankment and/or naturally or artificially depressed land to its original condition by the person who has contravened the provisions of Section 17A(1) of the said Act of 1984 and in case of his failure, the competent authority has the power to restore to its original position and to recover the entire cost from the responsible person through a public recovery proceeding.

17. Section 17A(11) of the said Act of 1984 further mandates that in the event, any person commits any act which is contrary to the provisions of Section 17A(1) of the said Act of 1984, such offence is punishable for a term of three years or with fine or which may extend to five lakh rupees or with both and sub-Section (12) also indicates that such offence is cognizable and non-bailable.
18. On perusal of the report of the I.C., Purba Bardhaman P.S., it reveals that though he has submitted a report to the effect that an Act contrary to the provisions of Section 17A(1) of the said act of 1984 has been done over the writ petitioner's pond/water body by the respondent no. 8 trust but no materials is forth coming before this Court as to whether any P.S. case has been initiated though the aforementioned legislative provision clearly mandates that contravention of the provisions of Section 17A(1) is a cognizable and non-bailable offence.

19. The report of the Chairman dated 20.05.2025, in considered view of this Court is contrary to the provisions of Section 17A of the said Act of 1984 inasmuch as in the said report, there is no indication as to whether the Burdwan Municipality has acted as per the order of the competent authority or in terms of the Section 17A of the said Act of 1984.
20. In view of the discussion made hereinabove, this Court has every reason to believe that respondent no. 2/authority and the police authority are practically working in a concerted way in order to deprive the writ petitioner from his valuable right as enshrined under Article 300A of the Constitution of India.
21. This Court thus considers that the instant writ petition has got sufficient merit and accordingly, the same is allowed.
22. This Court thus directs the respondent no. 2/authority not to do any work over the writ petitioner's pond particulars of which has been mentioned in paragraph no. 1 of the instant writ petition in the garb of unauthorized construction and/or in the garb of beautification with immediate effect.
23. The respondent no. 4 is hereby directed to ensure that the order as passed by this Court is duly complied with either by the Chairman of the respondent no. 2/Municipality and/or by its men or agents and/or any person whom so ever.

24. It is, however, made clear that the instant order will not prevent the competent authority under the said Act of 1984 to take appropriate action in terms of the provisions of Section 17A of the said Act of 1984 in the event, the said competent authority thinks it fit and proper to take appropriate steps in accordance with the said provision in respect of the writ petitioner's pond for a just cause.
25. Before parting with, considering the fact that the respondent no. 2/authority has practically trespassed into the pond of the writ petitioner and initiated some unauthorized work without taking any consent from the writ petitioner, this Court imposes a cost of Rs. 5 lakhs upon the respondent no. 2/Municipality which is to be paid to the writ petitioner positively within a period of fortnight from today.
26. The time limit as fixed by this Court is mandatory and preemptory.
27. Liberty is given to the learned advocate for the writ petitioner to communicate the server copy of this judgment to the respondent nos. 2 and 4 forthwith.
28. The respondent nos. 2 and 4 are hereby directed to act on the server copy of this order.

29. Department is directed to forward a copy of this order to the respondent no. 5 i.e. the Superintendent of Police, Purba Bardhaman who on receipt of the same is hereby directed to keep a close vigil over the activity of the respondent no. 6 i.e., Inspector-in-Charge, Burdwan P.S. and in the event, it is found that the respondent no. 6 has acted beyond its authority and/or has failed to discharge his duty in accordance with law, the respondent no. 5 is hereby directed to initiate appropriate departmental proceeding against the respondent no. 6.
30. Learned advocate for the writ petitioner is further directed to forward a server copy of this judgment to the respondent no. 6 for his information and further caution.
31. With the aforementioned observation, the instant writ petition being **10354 of 2025** is disposed of.
32. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

**(Partha Sarathi Sen, J.)**