

WPLRT 79 of 2022

Namita Ghosh.
Vs.
State of West Bengal & Ors.

Mr. Gopal Chandra Ghosh, Ld. Sr. Adv
Mr. Himadri Kumar Mahato
..... **For the Petitioner.**
Mr.Chandi Charan De, Ld. AGP
..... **For the State.**

The subject matter of challenge in the present writ petition is an order dated 26.04.2022 passed by the learned Tribunal in the Original Application (in short, OA) being OA 76 of 2021 (LRTT) refusing to interfere with the order dated 10.12.2020 passed by the Collector.

Shorn of unnecessary details the facts are that one Gita Rani Dey (in short, Gita) was the original owner of R.S. Dag No. 569 under Khatian No.1581, J.L. No. 21 and 318/ B/1 having an area of 09.4 decimals (5 cottahs 11 chittacks) situated at Mouza Gourhati, Chapdani, P.S. Bhadreswar, Hooghly under Chapdani Bhadreswar Municipality (hereinafter referred to as the said plot). In the record of rights the said plot stands classified as '*pukur*'. The said plot was thereafter transferred by Gita to one Iswar Chandra Mondal (in short Iswar) after obtaining necessary permission under the West Bengal Urban Land Taxation Act *vide* memo dated 18.03.1989. In the year 1992, Iswar sold

the same to the petitioner after obtaining no objection from the competent authority under the Urban Land (Ceiling and Regulation) Act, 1976 *vide* memo dated 29.01.1990. The said plot thereafter stood mutated in the petitioner's name. Subsequent thereto, the petitioner submitted an application for conversation of the said land from 'pukur' to 'bastu'. The respondent no.3 rejected the said application by an order dated 09.02.2000. Aggrieved thereby, the petitioner preferred a statutory appeal which was also dismissed by an order dated 24.05.2011. Challenging the said order, the petitioner again approached the learned Tribunal and the OA 1973 of 2011 (LRTT) was disposed of by an order dated 10.02.2012 setting aside the order of the Collector dated 24.05.2011 and remanding the matter to the Collector to rehear the matter afresh in terms of the provisions of Rule 166 of the West Bengal Land Reforms Manual, 1991 (in short, WBLRM). As the petitioner's application was still not being disposed of, she was constrained to prefer OA 2758 of 2017 (LRTT) and the same was disposed of on 19.12.2017 directing the Appellate Authority to dispose of the LR Appeal No. 84 of 2009. Pursuant thereto and placing reliance upon an enquiry report submitted by the SRO-II dated 01.08.2019, the Collector passed an order on 10.12.2020 refusing to grant relief to the petitioner. Aggrieved thereby, the petitioner again preferred OA 76 of 2021 (LRTT) and the order passed in the same on

26.04.2022 has been impugned in the present writ petition.

Records reveal that in course of hearing of the present writ petition, a Coordinate Bench of this Court by an order dated 17.07.2023 directed the Fisheries Department to submit a report. Pursuant thereto, a report has been submitted by the Senior Law Officer & EO, Assistant Secretary (Law) to the Government of West Bengal, Department of Fisheries, Aquaculture Aquatic Resources and Fishing Harbours.

Mr. Ghosh, learned senior advocate appearing for the petitioner submits that prior to disposal of the petitioner's initial application for conversation, the respondent no. 3 called for a report from the District Fisheries Officer and pursuant thereto, the said officer replied by a memo dated 29.11.1999 that '*the aforesaid plot is classified as pukur both in R.S. and L.R. records of rights. But according to physical enquiry report, the plot has been filled up*'. Such observation is also supported by the memo dated 04.11.2010, issued by the respondent no. 4. From the said reports it is evident that the plot in question was not existing as a '*pukur*' for the last 35 years. It was, in fact, a low land and as the same was creating nuisance in the locality, the Chairman of Chapdani Municipality also by a letter dated 05.09.1990 shifted the existing water tap granting no objection for filling up the low land.

He argues that it would also be evident from the order passed by the learned Tribunal on 10.02.2012 that the respondent no. 4 on enquiry submitted a report that the plot in question '*entirely filled up 15 - 16 years and 50% of the plot is lying vacant and remaining 50% being have been filled up having separate pacca by other persons*'. In spite of the repeated reports filed by the competent authorities, the learned Tribunal refused to accept the contention of the petitioner that the plot in question had been converted much earlier to 24.03.1986 and also prior to coming into effect of Section 17A of the West Bengal Inland Fisheries Act, 1984 (hereinafter referred to as the 1984 Act). Such arguments, as advanced, were glossed over by the learned Tribunal and no specific finding was returned on the same. Such infirmity warrants interference of this Court.

Mr. Dey, learned Additional Government Pleader appearing on behalf of the State respondents, however, denies and disputes the contention of Mr. Ghosh and submits that the petitioner's claim has been rightly rejected since it did not fulfil the provisions of Rule 166 of the Manual. It could not be established by the petitioner that the low land had been filled up in its natural course. The plot in question was, in fact, filled up by the deliberate action of the petitioner and her predecessors-in-interest and that too subsequent to 24.03.1986. In support of such contention, he has

placed reliance upon the report of the S.R.O.-II dated 01.08.2019, called for by the Collector while considering the petitioner's application. In view thereof, there is no infirmity in the order passed by the learned Tribunal.

We have heard the learned advocates, appearing for the respective and considered the materials on record.

The sole contentious issue which arises for consideration is as to whether the plot in question has already been converted to some other form than the form indicated in the record of rights in usual course of nature or by the deliberate action on the part of the applicant or as to whether the change took place after 24.03.1986, i.e., the date of publication in the official Gazette of the West Bengal Land Reforms (Amendment) Act, 1981.

In the first order passed by the respondent no. 3 on 09.02.2000, considering the petitioner's prayer for conversation, it was observed that '*the Suit plot has been filled up*'. Such fact stands corroborated by the contents of the memo dated 04.11.2010 issued by the respondent no. 4 as well as in the report filled up by the Fisheries Department pursuant to the order passed by a co-ordinate Bench of this Court, wherein it was observed that upon enquiry it was found that '*there is no trace of Pond and the sight is being used as a low land covered*'. In the said report it was also stated that the Fisheries Department was of the view to accord no

objection certificate without creation of compensatory water body since Section 17A in the 1984 Act came into effect on 16.06.1994. The learned Tribunal, however, erroneously proceeded on the basis of the enquiry report filed by the S.R.O-II on 01.08.2019 though the same was filed without taking into consideration the earlier report of the respondent no.4 and the memo dated 25.11.1999 issued on behalf of the Fisheries Department.

The learned Tribunal erroneously rejected the petitioner's claim on a purported plea that the petitioner could not submit appropriate documents regarding filling up of the said plot prior to 24.03.1986. Such finding is contradictory to the earlier reports filed by the respondent no.4 and on behalf of the Fisheries Department.

A composite perusal of the documents on record, thus, reveal that though the said plot has been recorded as '*pukur*', the same stood filled up with the efflux of time and not pursuant to any deliberate action on the part of the petitioner and as such the petitioner's claim comes within the four corners of the provisions of Rule 166 of the Manual.

For the reasons discussed above, the order of the Collector dated 10.12.2020 and the order of the learned Tribunal dated 26.04.2022 are set aside and the respondents are directed to allow the petitioner's prayer for conversion of the said plot and to effect

necessary correction in the record of rights, within a period of 8 weeks from the date of communication of this order.

With the above observations and directions, the writ petition being WPLRT 79 of 2022, is disposed of.

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

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible

(Reetobroto Kumar Mitra, J.) (Tapabrata Chakraborty, J.)