

F.J(2)

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

PRESENT :

THE HON'BLE JUSTICE PARTHA SARATHI SEN

W.P.A. NO. 20012 OF 2024

SRI SUBHAS PAL

-vs.-

THE STATE OF WEST BENGAL & ORS.

FOR THE PETITIONER : Mr. Raghunath Chowdhury.
Mr. Suman Banerjee

FOR THE STATE : Mr. Gourav Das,
Ms. Tanushree Mukherjee

FOR THE RESPONDENT
NOS.3 & 4 : Mr. Suman Basu

FOR THE RESPONDENT
NOS.7 TO 16 : Mr. Aniruddha Bhattacharya,
Mr. Arnab Roy

HEARD ON : 14.05.2025.

JUDGMENT ON : 14.05.2025.

PARTHA SARATHI SEN, J. :

1. This Court has heard the learned advocate for the writ petitioner, learned advocate for the respondent State and its functionaries, learned advocate for the respondent nos.3 and 4, that is, the Chandernagore Municipal Corporation

and its functionary and learned advocate for the private respondent nos.7 to 16 at length.

2. By filing the instant writ petition the writ petitioner has prayed for issuance of appropriate writ/writs against the respondent authorities, more specifically against the respondent no.4 for quashing of the proceeding as initiated under Section 17A of the West Bengal Inland Fisheries Act 1984 (hereinafter referred to as the 'said Act of 1984' in short) with a further prayer for setting aside the order dated 06.06.2024 as passed by the respondent no.4 being the Commissioner of the Chandernagore Municipal Corporation.
3. At the time of hearing, Mr. Chowdhury, learned advocate appearing on behalf of the writ petitioner draws attention of this Court to page nos.42 and 43 of the instant writ petition being a copy of the order dated 06.06.2024 as passed by the respondent no.4 whereby and whereunder the said respondent no.4 in a proceeding under Section 17A of the said Act of 1984 directed the writ petitioner to restore the water area including embankment to its original condition at his own expense within a stipulated period.
4. In course of hearing, Mr. Chowdhury submits before this Court that from the record(s) of right as has been annexed with the instant writ petition at page no.28, it would reveal that the plot in question is 'viti' in nature. It is further submitted that in course of the proceeding under Section 17A of the said Act of 1984 the respondent no.4 authority has measurably failed to visualize the exact nature of the land of Plot No.473 and has practically assigned no reason as to why the said respondent no.4 authority has exercised its jurisdiction under

Section 17A of the said Act of 1984 especially when the said plot is not a water body.

5. It is further submitted that from the order under challenge it would reveal that while coming to a conclusion the respondent no.4 authority for the reason best known to him placed much reliance upon the report of the Assistant Director of Fisheries, Hooghly and the report of the Satellite Data Laboratory of Department, namely, Fisheries Mapping Project Unit without looking into the fact that copies of such report have not been provided to the writ petitioner either at the time of hearing or prior thereto and as a consequence thereof, the respondent no.4 authority has not followed the principle of natural justice for which interference of this Court is very much needed in a judicial review.
6. It is further submitted on behalf of the writ petitioner that within the four corners of the said order dated 06.06.2024, the respondent no.4 authority has practically assigned no reason as to why he is treating the Plot No.473 as a water body under the provisions of the said Act of 1984. It is, thus, submitted that the order as passed by the respondent no.4 is not sustainable under the law and on account of passing of such order the constitutional right of the writ petitioner under Article 300A of the Constitution of India has been violated.
7. In course of his submission learned advocate for the writ petitioner places his reliance upon a reported decision, namely, ***Bajranglal Sarda & Ors. versus State of West Bengal & Ors.*** reported in ***(2010) 4 CHN 125 (Cal)***.

8. Per contra, Mr. Bhattacharya, learned advocate appearing on behalf of the private respondent nos.7 to 16 at the very outset submits before this Court that the instant writ petition is not maintainable in view of the fact that the writ petitioner has assigned no reason for not availing alternative adequate efficacious statutory remedy as provided under Section 18 of the said Act of 1984. It is submitted on behalf of the private respondents that as against the order passed by a competent authority under Section 17A of the said Act of 1984 an appeal lies.
9. It is, thus, submitted that since the writ petitioner has not availed the said alternative efficacious statutory remedy, this Court must be very slow in entertaining the instant writ petition.
10. In his next fold of submission, Mr. Bhattacharya took me to paragraph 5 and paragraph 7 of the instant writ petition. It is submitted that from the averments of the instant writ petition it would reveal that the writ petitioner made an endeavour to develop the aforementioned plot no.473 and to that effect he has made the work of labeling in the said plot of land which is naturally depressed.
11. At this juncture, Mr. Bhattacharya again took me to the provisions of Section 17A of the said Act of 1984. It is submitted that on careful perusal of Section 17A (10) of the said Act of 1984 it would reveal that in the event any person fills up, even a naturally or artificially depressed land, without approval of the competent authority, the competent authority under the said Act of 1984 can very well pass an order for restoration to its original condition at the expense of the party who committed such illegal act.

12. It is, thus, submitted that from the own admission of the writ petitioner it would reveal that the Plot No.473 is a naturally depressed land and the writ petitioner had done such an act which contravenes the provisions of Section 17A (10) of the said Act of 1984.
13. Drawing attention to page no.40 of the instant writ petition being a copy of the memo dated 22.01.2024 as issued by the Assistant Director of Fisheries, Hooghly it is argued that from the said memo dated 22.01.2024 it would reveal that the writ petitioner was served with the copy of the said memo dated 22.01.2024 wherein the Assistant Director of Fisheries, Hooghly clearly opined regarding existence of infested aquatic weeds like Colocasia Sp. which according to the said authority indicates the possibility of the existence of water body.
14. It is, further, submitted that there cannot be any reason to interfere with order under challenge which is passed on such scientific finding.
15. It is, thus, submitted on behalf of the private respondents that the instant writ petition is liable to be dismissed.
16. In course of their submissions, learned advocate for the respondent State and learned advocate appearing on behalf of the respondent nos.3 and 4 adopts the arguments of the learned advocate for the private respondents.
17. Mr. Basu, learned advocate for the respondent nos.3 and 4 further submits that from the report as submitted by him it would reveal that the said plot in question was a water body.

18. On careful consideration of the entire materials as placed before this Court and after hearing the learned advocates for the contending parties, this Court considers that for effective adjudication of the instant lis some provisions of the said Act of 1984 are required to be looked into.

“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, 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 hold 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 0.035 hectare or more falling within the jurisdiction of any Gram Panchayat.]

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9."No water area including embankment or naturally or artificially depressed land holding, referred to in clause (a) of sub-section (1), shall be

(a) put to any use other than fishery, or

(b) filled up with a view to converting it into solid land.

for the purpose of implementation of any development scheme by any department of the Central Government or the State Government or any public undertaking under the administrative control of the Central Government or the State Government or any statutory body or local authority or any organisation in the public sector or any organization or individual in the private sector, except with the prior approval of the State Government in the Department of Fisheries.

[Provided that any individual or a body of individuals or any organization in the private sector may, for the purposes of this sub-section, apply to the State Government in the Department of Fisheries for permission to fill up any water area after re-allocating or excavating a new water area of not less than equal dimension of the water area proposed to be filled up in the same locality alongwith a certificate of

conversion of the water area so re-allocated or excavated issued by the appropriate authority :

Provided further that the State Government may accord approval under this sub-section in such manner as may be specified by notification.]

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 (Ben. Act III of 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 and holding, as the case may be.”

19. Section 18 of the said Act of 1984 is reproduced hereinbelow in verbatim:-

“18. Appeal. – (1) *An appeal against any order of the competent authority made under this Act or the rules made thereunder may be preferred within a period of thirty days from the date of communication of the order to the persons aggrieved by such order:*

Provided that the appellate authority may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) An appeal under sub-section (1) shall lie with such officer, not below the rank of Deputy Director of Fisheries, as the State Government may by notification appoint.

(3) On receipt of an appeal under sub-section (1), the appellate authority shall, after giving the appellant a reasonable opportunity of being heard, pass such orders thereon as it deems fit within a period not exceeding ninety days from the date of admission of the appeal.

(4) Every order passed by the appellate authority under this section shall be final.”

20. Keeping in mind the aforementioned legislative provisions if I look to the order under challenge dated 06.06.2024, it reveals to this Court that the respondent no.4 in a proceeding under Section 17A of the said Act of 1984 practically proceeded with the provision of Section 17A (10) of the said Act of 1984 thereby directing the writ petitioner to restore the alleged water body in Plot No.473 to its original condition at his own expense.
21. On perusal of Section 18 of the said Act of 1984 it reveals that the order passed by a competent authority is appealable in nature and under Section 18 an appeal lies before an officer not below the rank of Deputy Director of Fisheries, as the State Government may by notification appoint.
22. It, thus, appears to this Court that instead of filing an appeal the writ petitioner has straightway approached this Court by filing a writ petition under Article 226 of the Constitution of India.
23. At this juncture, the moot question arises for consideration as to whether the instant writ petition is at all maintainable or not since admittedly the writ petitioner has not availed and/or exhausted the alternate efficacious statutory remedy.

24. Such question was considered by the Hon'ble Supreme Court in the reported decision of ***U. P. State Spinning Co. Ltd. Vs. R. S. Pandey and Anr.*** reported in **(2005) 8 SCC 264** wherein the Hon'ble Apex Court while dealing with similar such question express the following view:

“11. *Despite the existence of an alternative remedy it is within the jurisdiction or discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided, the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction.*

16. *There are two well-recognised exceptions to the doctrine of exhaustion of statutory remedies. First is when the proceedings are taken before the forum under a provision of law which is ultra vires, it is open to a party aggrieved thereby to move the High Court for quashing the proceedings on the ground that they are incompetent without a party being obliged to wait until those proceedings run their full course. Secondly, the doctrine has no application when the impugned order has been made in violation of the principles of natural justice. We may add that where the proceedings themselves are an abuse of process of law the High Court in an appropriate case can entertain a writ petition.”*

25. Keeping in mind the aforementioned proposition of law if I look to the factual aspects of this case it appears to this Court that within the four corners of the instant writ petition the writ petitioner has not made out any case as to why he has straightway approached this Court for seeking relief under the extraordinary jurisdiction of this High Court under 226 of the Constitution of India instead of availing adequate efficacious alternative statutory remedy. No material has been placed before this Court on behalf of the writ petitioner to substantiate that any of the provisions of the said Act of 1984 has been declared ultra vires by any Court of law.
26. Admittedly, in course of his argument learned Advocate for the writ petitioner was very vocal on the ground of violation of principle of natural justice at the instance of the respondent no.4. However, in considered view of this Court such argument does not appear to be convincing inasmuch as from page no. 40 of the instant writ petition it would reveal that the writ petitioner was provided with a copy of the memo dated 22.01.2024 as issued by the Assistant Director of Fisheries, Hooghly which is based on scientific investigation.
27. In view of such, this Court holds that the instant writ petition is not maintainable.
28. For the sake of argument, even if it is accepted that the instant writ petition is maintainable, this Court finds no merit in the instant writ petition in view of the fact that from the averments made in the writ petition more specifically in paragraph nos. 5 and 6 of the instant writ petition, it would reveal that it is the own admission of the writ petitioner that the plot no. 473 is a naturally

depressed land and for the purpose of developing the said land he has done something which is contrary to the provisions of Section 17A (1) of the said Act of 1984.

29. It further appears to this Court that while passing the order under challenge dated 06.06.2024 the respondent no. 4 being the competent authority under the provisions of the said Act of 1984 has duly considered the submissions of the rival parties and has also considered the scientific reports as submitted before him by the Assistant Director of Fisheries, Hooghly.
30. On careful consideration of the order under challenge it does not appear to this Court that while passing the order under challenge the respondent no. 4 being the competent authority has considered any extraneous materials which vitiates his decision making process. Rather it appears to this Court that the respondent no. 4/authority has passed such order in accordance with the provisions of the Section 17A of the said Act of 1984 after giving due opportunity of hearing both to the writ petitioner as well as to the private respondents.
31. It is pertinent to mention herein that the reported decision of ***Bajranglal Sarda (supra)*** as cited from the side of the writ petitioner has got no manner of application since in the said reported decision the provisions of Section 17A(1) of the said Act of 1984 has been dealt with on a different aspect and thus the said reported decision is distinguishable from the facts and circumstances of the instant case.

32. In view of discussion made hereinabove and in absence of any perversity in the order under challenge, this Court finds no scope to interfere with the finding of the respondent no. 4.
33. Accordingly, the instant writ petition being WPA 20012 of 2024 is dismissed.
34. There shall be, however, no order as to costs.
35. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Partha Sarathi Sen, J.)

Gourab Banerjee/
Suvayan Ghosh
A.R. (Court)