

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble The Acting Chief Justice SUJOY PAUL

&

The Hon'ble Justice PARTHA SARATHI SEN

WPA(P)/437/2022

Bharat Kumar Jhawar

-Vs-

The State of West Bengal & Ors.

For the Petitioner:

Mr. Anindya Lahiri, Adv.,
Ms. Pranati Das, Adv.
Mr. Anish Chakraborty, Adv.

For the State:

Mr. Sirsanya Bandyopadhyay,
Sr.Standing Counsel,
Mr. Tarak Karan, Adv.

For the
Respondent Nos. 8 to 10:

Mr. H. Rahaman, Adv.

Hearing concluded on:

13.11.2025

Judgment on:

18.11.2025

PARTHA SARATHI SEN, J. : –

1. In this writ petition which is in the nature of a public interest litigation, the writ petitioner has prayed for issuance of appropriate writ/writs against the

respondent authorities more specifically, against the Respondent NO. 5 authority as well as against the Respondent Nos. 9 and 10 authorities commanding them for due implementation of the order dated 02.05.2022 as passed by a Coordinate Bench of this Court in **WPA(P)/190/2022 (Bharat Kumar Jhawar vs. The State of West Bengal and Ors.)** vis-à-vis the order dated 13.06.2022 as passed in **RVW 80 of 2022 (Saffiujjaman Sk vs. Bharat Kumar Jhawar and Ors.)** by the selfsame coordinate Bench of this Court.

2. It is pertinent to mention herein that by the said order dated 02.05.2022 the said coordinate Bench while disposing WPA(P)/190/2022 directed the Respondent No. 10 authority therein to take an appropriate expeditious action for restoration of the water body to its original position. It is equally pertinent to mention herein that the said order dated 02.05.2022 was sought to be reviewed in RVW 80 of 2022 which was however, dismissed by the said coordinate Bench.
3. At the time of hearing, Mr. Lahiri, learned Advocate appearing on behalf of the writ petitioner at the very outset draws attention of this Court to Page Nos. 23 and 24 of the instant writ petition being a print out of the details of the relevant plot No. 2154 which is classified as “Pukur” (water body) having an area of 1.2050 acre. It is submitted by Mr. Lahiri that subject matter of the aforementioned writ petition as well as the petition for review was the said water body situated in Plot No. 2154 in Mouza and P.S. Beldanga.
4. Drawing attention to Page No. 36 of the instant writ petition being a copy of the letter dated 13.05.2022 as issued by the Respondent No. 10 authority

addressed to the raiyat of the said plot being the respondent No. 12 herein Mr. Lahiri contended that pursuant to the aforementioned two orders of the Hon'ble Court the private respondent No. 12 raiyat was directed to restore the said water body to its original position in view of the provision of Section 17A(10) of the Inland Fisheries Act, 1984 (hereinafter referred to as the said Act in short) within a stipulated period.

5. Placing reliance upon Page Nos. 9 to 14 of the supplementary affidavit as filed by the writ petitioner and as affirmed on 22.07.2025, it is argued by Mr. Lahiri that since the Respondent No. 12 raiyat failed to comply with the requisition of the said notice dated 13.05.2022 the Respondent Nos. 8 to 12 authority prepared an estimate for restoration of the said water body which contains sectional elevation plan of longer side as well as of shorter side of the said pond as would be revealed from Page Nos. 12 and 13 of the supplementary affidavit.
6. It is submitted further that from Page No. 15 of the said supplementary affidavit it would reveal further that the UDMA Department, Government of West Bengal by its memo dated 13.09.2024 had granted administrative approval to such estimate.
7. At this juncture, attention of ours is also drawn to the report in the form of memo dated 07.08.2025 as submitted before this Court by the Respondent No. 5 authority. It is contended by Mr. Lahiri that from Page Nos. 19 and 20 of the said report dated 07.08.2025 it would reveal that the jurisdictional BL &

LRO under cover of this memo dated 06.08.2025 addressed to the Respondent

No. 5 authority intimated the following:-

*“.... 3. Water body, situated at the land noted under subject had been filled up with earth. The majority of area of the plot mentioned supra had been developed at the level of adjoining plots. Such plot is bounded with public road, electric line, multi storied individual residential buildings and brick wall. A building, measuring area 17.5*13.1 feet is situated at the east-south corner of the plot in question. It appears that the possession of said building, situated at the east-south corner of the plot in question hints breadths of par of original water body.*

In notification bearing memo no 3538-LP/5M-05/22 dated 10.08.2022, it has been noted that "minimum 15 feet should be left unaltered from the edge of the water body for allowing any conversion". In the extraction of ordinary earth from raiyat's land bearing memo no. 205/MM/DL & LRO/MSD/25 dated 14.01.2025 it has been noted that "minimum 15 feet distance from adjoining plot/s of other raiyat/s shall be maintained". Enclosed copies of order memo no 3538 & 205 Marked as 'B'.”

8. It is argued by Mr. Lahiri that the jurisdictional BL & LRO as well as the respondent authorities in utter disobedience of the previous orders as passed by this Court made an attempt to carry out partial restoration of the aforementioned water body by wrongly taking the shield of a notification dated 10.08.2022.

9. It is further argued by Mr. Lahiri that the proposal of the jurisdictional BL & LRO to restore the said water body in compliance of the orders of this Court by keeping minimum 15 feet distance from adjoining plot(s) is contrary to the notification dated 10.08.2022 inasmuch as the said notification dated

10.08.2022 is with regard to disposal of an application for conversion of land with classification “Pukur paar” (embankment of pond).

10. Drawing attention to the exception dated 14.08.2025 as filed by the writ petitioner it is further argued by Mr. Lahiri that in the event the aforementioned proposal of the jurisdictional BL & LRO is carried out, it will diminish the area of the water body which was directed to be restored to its original position by the two earlier orders of this Court.
11. It is thus submitted by Mr. Lahiri that by the aforementioned two earlier orders this Court has taken care of the provision of Section 17A (10)(a) and (b) of the said Act and thus, the respondent authorities may be directed to comply with the said two orders dated 02.05.2022 and 13.06.2022 in letter and spirit.
12. Per contra Mr. Karan, learned Advocate appearing on behalf of the respondent State, also placed reliance upon the aforementioned two earlier orders dated 02.05.2022 and 13.06.2022 as passed by a coordinate Bench of this Court.
13. It is submitted by Mr. Karan that by no stretch of imagination it may be presumed that the respondent authorities, more specifically the jurisdictional BL & LRO by issuing his memo dated 06.08.2025 made an attempt to violate the aforementioned two orders of this High Court.
14. It is further submitted by Mr. Karan that the memo dated 06.08.2025 as has been annexed at Page No. 20 of the report dated 07.08.2025, as submitted by the Respondent NO. 5 authority it would reveal that under cover of the said memo dated 06.08.2025 the jurisdictional BL & LRO has assigned sufficient

reason for keeping minimum 15 feet embankment at the edge of the water body in order to save the adjoining plots of other raiyats since from the said memo it would reveal that the jurisdictional BL & LRO on field enquiry noticed that in the meantime development took place on the adjoining plots of land of the said water body namely; construction of public road, fixation of electric line, raising of multi-storeyed individual residential buildings and brick walls. It is further submitted by Mr. Karan that the aforementioned notification dated 10.08.2022 may be construed in its proper perspective without giving any narrow interpretation thereof.

15. It is thus submitted by Mr. Karan that in absence of any materials to show that the respondent authorities have an intention to disobey the said two orders dated 02.05.2022 and 13.06.2022 as passed by this Court, no relief may be granted to the writ petitioners in terms of the prayers made in the instant writ petition.

16. Mr. Rahaman learned Advocate appearing on behalf of the respondent Municipality and its instrumentalities i.e. Respondent Nos. 8 to 10 however contended that his clients are agreeable to carry out the work of restoration in terms of the estimate dated 30.07.2024 for which administrative approval dated 13.09.2024 is received from UDMA Department, Government of West Bengal

17. We have considered the entire materials as placed before us. We have given our due consideration over the submissions of the learned Advocates for the contending parties.

18. For effective adjudication of the instant lis we at the very outset proposes to look to the provision of Section 17A of the said Act which reads as under:

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

(1)...

(2)...

(3)....

(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 (Ben. Act III of 1913)].

(c)...

(11)...

(12)..."

19. Coming to the factual aspects of this case, we have no hesitation to hold that the coordinate Bench of this Court while passing the aforementioned two orders dated 02.05.2022 and 13.06.2022 duly considered the aforementioned provision of law and thus directed the restoration of the water body to its original position as situated in Plot No. 2154 in Mouza and PS. Beldanga, District Murshidabad.

20. Materials have been placed before us that pursuant to the said directions of this Court vis-à-vis in terms of the provisions of Section 17A(10)(a) of the said Act the Respondent No. 10 authority issued noticed dated 13.05.2022 to the private Respondent No. 12 raiyat to restore the said water body to its original position. No material could be placed before this Court that the private Respondent No. 12 raiyat has complied with the requisition of such notice dated 13.05.2022 regarding restoration of the water body.

21. As rightly pointed out by Mr. Lahiri that in terms of the aforementioned two orders of this High Court vis-à-vis in view of the provision of Section 17A (10)(a)(b) of the said Act, the Respondent No. 10 authority proceeded to restore such water body to its original condition by submitting an estimate together

with sectional elevation plan of longer side as well as of shorter side of pond which has been duly vetted by the responsible officers of the said municipality and such estimate was duly approved by the UDMA Department, Government of West Bengal.

22. From the report dated 07.08.2025 as submitted by the Respondent No. 5 authority it reveals however, that the jurisdictional BL & LRO placing reliance upon a notification dated 10.08.2022 made an endeavour to restore the said water body by keeping the embankment of such water body to the extent of 15 feet in minimum.
23. We have meticulously gone through the notification dated 10.08.2022 as has been placed before us by the writ petitioner as well as by the respondent State. It appears to us that the said notification dated 10.08.2022 deals with a case when an application is made for conversion of land with classification “Pukur Paar” (embankment of pond).
24. It thus appears to us that by no stretch of imagination, the said notification dated 10.08.2022 has any manner of application inasmuch as it is nobody’s case that the subject matter of the instant lis as well as the subject matter involved in the earlier rounds of litigation was/ were regarding conversion of land with classification “Pukur paar” (embankment of pond).
25. On being repeatedly asked by us Mr. Karan however, failed to place any provision of law as per the provisions of the said Act and/or any other Act that in order to comply with the provisions of Section 17A(10)(a) and (b) of the said

Act, 15 feet embankment from the edge of the water body shall have to be maintained.

26. It thus appears to us that the respondent State and its instrumentalities have come out with a new case in order to get rid of the rigour of previous orders dated 02.05.2022 and 13.06.2022 as passed by this Court.

27. In view of the discussion made hereinabove, the instant writ petition succeeds and is hereby allowed.

28. Consequently the Respondent Nos. 5 and 10 authorities as well as the BL & LRO, Beldanga, District Murshidabad are hereby directed to comply with the order dated 02.05.2022 as passed by this Court in WPA(P)/190/2022 and the order dated 13.06.2022 as passed in RVW 80 of 2022 in letter and spirit purely as per estimate and as per sectional elevation plan of longer side and shorter side of the water body as has been annexed at Page Nos. 9 to 14 of the supplementary affidavit dated 22.07.2025 filed by the writ petitioner over which administrative approval has been given by the Additional Secretary, UDMA Department, Government of West Bengal Positively within 45 working days from the date of communication of the server copy of this judgment.

29. The Principal Secretary, Finance Department, Government of West Bengal is hereby directed to ensure the availability of fund by the Respondent Nos. 8 to 10 for due compliance of this order.

30. Liberty is given to the learned Advocate-on-record for the writ petitioner to communicate the server copy of this judgment to the Respondent No. 5, Respondent No. 10, the Principal Secretary, Finance Department, Government

of West Bengal and BL & LRO, Beldanga, District Murshidabad for that information and compliance.

31. The Respondent Nos. 5 to 10, the Principal Secretary, Finance Department, Government of West Bengal and BL & LRO, Beldanga, District Murshidabad are directed to act on the server copy of this judgment.

32. Urgent Xerox certified copy, if applied for, be given to the parties on completion of usual formalities.

I agree.

(SUJOY PAUL, A.C.J.)

(PARTHA SARATHI SEN, J.)

(P.A- Pramita)