

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble Justice PARTHA SARATHI SEN

WPA 16554 of 2012

With

CAN 1 of 2012 (Old No. CAN 8808 of 2012)

With

CAN 2 of 2019 (Old No. CAN 8961 of 2019)

**Usha International Limited (Formerly known as The
Jay Engineerings Work and Limited)**

Vs.

The Kolkata Municipal Corporation & Ors.

With

WPA 29374 of 2013

Usha International Limited

Vs.

Kolkata Municipal Corporation & Ors.

For the Petitioner:

Mr. Saptansu Basu, Sr. Adv.,
Mr. Subhabrata Das, Adv.

For the respondents:

Mr. Alak Kumar Ghosh, Adv.,
Ms. Era Ghosh Adv.

Hearing concluded on:

03.03.2025.

Judgment on:

09.03.2025.

PARTHA SARATHI SEN, J. : –

1. By filing the instant writ petition the writ petitioner/company has prayed for issuance of writ of mandamus against the respondent no.1/ Kolkata Municipal Corporation (hereinafter referred to as the 'KMC' in short) and its functionaries for quashing and/or setting aside and/or rescinding the proceeding as initiated on 15.03.2012 whereby and whereunder the respondent no.2 took over the management and control

of the water body situated in Ward no.95 under Borough X of KMC by invoking Section 17 A of the West Bengal Inland Fisheries Act, 1984 (hereinafter referred to as the 'said Act') for the purpose of promotion of pisciculture and prevention of environmental degradation of the area for a period of 25 years.

2. In course of hearing Mr. Basu, learned Senior Counsel appearing on behalf of the writ petitioner at the very outset submits before this Court that from page nos. 35 and 36 as well as from page no.37 of the instant writ petition it would reveal that premises no.2, Prince Golam Hossain Shah Road (hereinafter referred to as the 'said premises') stood recorded in the assessment register of KMC in the name of Jay Engineering Works Ltd. which was subsequently merged with the writ petitioner/company.

3. Drawing attention to page nos. 49 and 50 of the instant writ petition being a copy of the letter dated June 28, 2012 it is submitted by Mr. Basu that immediately after publication of the said order under challenge dated 15.03.2012 the writ petitioner under cover of the said letter dated 28.06.2012 raised objection with the respondent no.2 stating inter alia that prior to passing of the said order dated 15.03.2012, no notice was served upon the writ petitioner though the property which is the subject matter of the said order dated 15.03.2012 belongs to the writ petitioner but the same was not adhered to by the respondent no.2 for the reason best known to him.

4. Drawing attention to Section 17A (1) and (2) of the said Act vis-à-vis the order/notice dated 15.03.2012 it is further submitted by Mr. Basu

that on conjoint perusal of the aforesaid statutory provisions and the contents of the said order/notice dated 15.03.2012 it would reveal that the respondent no.2 had miserably failed to make any observation regarding the existence of any fishery at the said premises of the writ petitioner. It is further submitted by Mr. Basu that respondent no.2 most unilaterally invoked the provisions of Section 17A of the said Act even without serving any show cause notice upon the writ petitioner though from the materials as placed before this Court it would reveal that the purported water body belongs to the writ petitioner. It is further submitted by Mr. Basu that from page nos. 43 and 44 of the instant writ petition it would reveal further that the respondent no.2 since July 12, 2010 made an attempt to grab the said property of the writ petitioner which is why the KMC Authority had displayed '*Do not Throw Garbage. Area Protected for Garden*' board on the said property of the writ petitioner.

5. It is further submitted by Mr. Basu that while discharging its functions under Section 17 A of the said Act the respondent no.2 acts as a quasi-judicial authority and therefore he is duty bound to follow the principles of natural justice. It is further submitted on behalf of the writ petitioner that the said order/notice dated 15.03.2012 does not say anything about the measurement of the area of the purported water body though Section 17A of the said Act clearly postulates that in order to attract the said provisions, the water body must be more than 5 kathas and the same is capable of being used as a fishery.

6. In course of his submission Mr. Basu further submits that from page no.30 of the instant writ petition being a copy of the deed of conveyance in the name of writ petitioner, it would reveal from the schedule of the said deed of conveyance that the subject matter of the property in the order/notice dated 15.03.2012 is not a water body and the same is/are pieces or parcels of land. It is further contended on behalf of the writ petitioner that in paragraph 12 of the writ petition the writ petitioner has specifically denied that the subject matter of the order/notice dated 15.03.2012 is not a water body as wrongly claimed by the respondent/KMC and its functionaries.

7. Drawing attention to the order dated 18.10.2012 as passed by a co-ordinate bench in this writ petition it is submitted by Mr. Basu that since in course of hearing of the instant writ petition before the said co-ordinate bench it was contended on behalf of the KMC Authority that the writ petitioner is not the owner of the water body in question and thus have no locus to maintain the instant writ petition, the said co-ordinate bench by its order dated 18.10.2012 appointed a survey passed advocate commissioner as special officer to ascertain as to whether the alleged water body as mentioned in the order/notice dated 15.03.2012 comes under the purview of the various plots of land as mentioned in the schedule of the deed of conveyance dated 04.05.1956. It is submitted by Mr. Basu that from the said report of the special officer as appointed by this Court it would reveal that premises no.2 and 3, Prince Golam Hossain Saha Road consists of and/or comprise of plot nos.422,422

/117,422/928,422/925,421,420,423/118,423 and 422 /923 in Mauja Arakpur.

8. In his next limb of submission Mr. Basu submits further that Section 17A of the said Act was not at all brought into effect since the respondent/authorities have miserably failed to establish that the relevant amending Act whereby and whereunder Chapter III of the said Act was inserted was at all notified in the gazette by way of publication as well as the same was made available at the government store for sale of the said gazette notification.

9. In support of such contention Mr. Basu places his reliance upon the following reported decisions namely:-

- i. **Collector of Customs and Ors. vs. Jindal Strips and Ors.** reported in **2000 (1) CHN 332**; and*
- ii. **B.K Srinivasan and Ors. vs. State of Karnataka and Ors.** reported in **(1987) 1 SCC 658.***

10. Drawing further attention of this Court to the order/notice of 15.03.2012 which is the subject matter of the instant writ petition it is further submitted by Mr. Basu that the said order/notice as has been issued under Section 17A of the said Act is short of bench mark as decided in the case of **Bajranglal Sarda and Ors. vs. State of West Bengal and Ors.** reported in **(2010) 4 CHN (Cal) 125** since in the said order/notice there is no finding of the respondent no.2 that the alleged water body is measuring about 5 kathas or more and the same is capable of being used as fishery. It is thus submitted by Mr. Basu that on this

score alone the instant writ petition may be allowed in terms of the prayer made in the instant writ petition.

11. Per contra, Mr. Ghosh, learned advocate appearing on behalf of the respondent no.2 being the competent authority under the said Act argued on the following points:-

- i. There is sufficient justification on the part of the respondent no.2/authority in passing the order under challenge since it has been noticed during inspection by the men of KMC that the water body is ill maintained.
- ii. The very purpose of filing the writ petition is for identification and demarcation of the writ petitioner's property being premises no.2 and 3 Prince Golam Hossain Shah Road.
- iii. The issues as involved in the instant writ petition are based on disputed facts which cannot be decided by a writ court.
- iv. Section 18 of the said Act is the relevant provision for filing an appeal against an order of the competent authority.
- v. Therefore the instant writ petition is not maintainable in view of the availability of alternative remedy.
- vi. This Court in exercise of its writ jurisdiction ought not to have come to a finding on the basis of the survey report since the respondent/authority got no opportunity to test such survey report by cross-examination of the said surveyor.
- vii. The principle of natural justice has been followed prior to the passing of the order under challenge since show cause notice

was served upon the recorded owners of the water body as well as the same was also published in two daily leading newspapers having wide circulation in the city of Kolkata.

- viii. After publication of said show cause notice the writ petitioner thought it fit not to approach before the competent authority.
- ix. No contrary material has been produced by the writ petitioner to substantiate that the property which is the subject matter of the order under challenge is not a water body. The KMC has numbered the said water body as 2/1/2 Prince Golam Hossain Shah Road, Kolkata in accordance with law and thus by no stretch of imagination it can be said that the said water body forms part of the premises no. 2 and 3 Prince Golam Hossain Road, Kolkata.
- x. By a judgement dated 09.01.2024 in ***MAT 932 of 2022 (Anuradha Sen vs. KMC and Ors)*** a Division Bench of this Court came to a finding that Section 17 A of the said Act came into force on June 16, 1994 and therefore the argument of the writ petitioner that Section 17A of the said Act was not at all brought into effect has got no leg to stand upon.

12. Mr. Ghosh thus submits that it is a fit case for dismissal of the instant writ petition.

13. In course of his reply Mr. Basu, learned Senior Counsel appearing on behalf of the writ petitioner in his usual fairness submits before this Court that he was not apprised of the judgement as passed in the case of

Anuradha Sen (supra). He thus contends that had he got any knowledge about the findings of the Division Bench in the case of **Anuradha Sen (supra)** he would not have argued that Section 17A of the said Act was not at all brought into effect.

14. It is further submitted by Mr. Basu that from the order dated 21/08/2012 i.e the first order which has been passed by a Co-ordinate Bench in connection with the instant writ petitioner it would reveal that for proper adjudication of the instant *lis* it is required to be ascertained as to whether the land in question is at all a water body or not and on what basis the competent authority initiated the proceeding under the said Act in respect of the said property.

15. This Court has meticulously gone through the entire materials as placed before it. This Court has given its anxious consideration over the submissions of the learned advocates for the contending parties. Since in the case of **Anuradha Sen (supra)** a Division Bench of this Court has come to a definite finding that Section 17A of the said Act came into force on June 16, 1994 and since Mr. Basu in his usual fairness accepts that had he been made aware of the existence of the said judgement as passed in the case of **Anuradha Sen (supra)** he would not contend Section 17 A of the said Act was never brought into effect, this Court considers that no discussion in this regard is at all necessary since it has been set at rest by the Division Bench of this Court in the case of **Anuradha Sen (supra)** that Section 17A of the said Act came into force on June 16, 1994.

16. This Court thus holds that while passing the order under challenge dated 15.03.2012 under Section 17A of the said Act the Municipal Commissioner being the competent body has ample jurisdiction to pass the order under challenge.

17. On close scrutiny of the pleadings made by the writ petitioner in its writ petition it appears to his Court that it is the case of the writ petitioner that by a registered deed of conveyance dated 04.05.1956 one Jay Engineering Works Limited (with whom the present writ petitioner's company merged subsequently) purchased 5 bighas of land in different plot nos. namely; 422, 418/117, 422/928, 422/925, 421/420, 423/118, 423 and 422/923 at a valuable consideration and after extension of municipal limitations of KMC the writ petitioner's said property was numbered as premises no.2, Prince Golam Hossain Shah Road, Kolkata. It reveals further from the said writ petition that the writ petitioner has reason to believe that a substantial portion of premises no.2/1/2 (alleged water body) forms part of premises no.2 Prince Golam Hossain Shah Road, Kolkata and for which the writ petitioner made correspondence with the respondent/authorities under the Right to Information Act but of no effect.

18. At this juncture I propose to look to the order/judgement dated 18.10.2012 as passed by a Co-ordinate Bench of this Court and the relevant portion of the said order is quoted hereinbelow in verbatim:-

“ Since none of the aforesaid two premises is butted and bounded by boundary wall, it is difficult to ascertain the respective

boundaries of the aforesaid two premises. Even the Municipal authority, in course of inspection of the said water body, found it difficult to identity of the Premises No. 2, Prince Golam Hossain Shah Road and expressed its inability to locate the exact boundary of the said premises. In fact, boundaries of the said premises was ascertained by guess by the Municipal officials. The notice which was issued by the competent authority under Section 17A of the said Act is very much misleading as the boundaries of the water body as mentioned in the said notice does not support the contention of Mr. Banerjee as to the situation of the said water body at Premises No. 2/1/2 Prince Golam Shah Road. The Premises No. 2/1/2. Prince Golam Hossain Shah Road, was shown as the northern boundary of the plot of land where the said water body situates. If the water body really situates at Premises no. 2/1/2, Prince Golam Hossain Shah Road then, of course the northern boundary which is mentioned in the notice is not correct. Again if the northern boundary as mentioned in the notice is correct then the plot of land where the water body situates cannot be the Premises No. 2/1/2, Prince Golam Hossain Shah Road as the said premises situates on the northern side of the land where the water body situates.

Thus, this Court feels that for ascertaining the locus of the petitioner to maintain this writ petition, the boundary of the petitioner's land should be ascertained first so that, in case it is found that the water body lies beyond the petitioner's premises being No.2, Prince Golam Hossain Shah Road then the petitioner certainly cannot have any locus to maintain this writ petition even if any illegality is committed by the Municipal authority by making an attempt to take over possession of the said water body lying in any other plot of land which does not belong to the petitioner.

On the contrary, if it is found that by issuing the notice under the said Act in respect of a water body allegedly lying at Premises

No. 2/1/2, Prince Golam Hossain Shah Road, the competent authority is, in fact, taking step to take over possession of any part of the petitioner's property at premises No. 2, Prince Golam Hossain Shah Road then this Court has no hesitation to hold that the petitioner has the locus to maintain this writ petition."

19. The aforementioned observation has been made by the said Coordinate Bench while appointing a special officer who was directed to identify and/or demarcate the boundaries of the petitioner's land by relayemnt and/or survey of the petitioner's said premises comprising of various plots of land mentioned in the petitioner's title deed dated 04.05.1956 with regard to the mauja map of the concerned mauja upon the notice to the parties with a further direction to submit a report before this Court on the specified date.

20. Undoubtedly the said surveyor has submitted his report and respondent/authorities have filed their exception to such report.

21. In the backdrop of the aforementioned factual position, a duty is cast upon this Court to ascertain as to whether from the said report of the surveyor it can be ascertained as to whether the writ petitioner's premises nos. 2 and 3 Prince Golam Hossain Shah Road, Kolkata falls within the water body i.e. 2/1/2 Prince Golam Hossain Shah Road, Kolkata. In the event the answer is affirmative this Court shall have no other alternative but to hold that the writ petitioner has every right to challenge the order dated 15.03.2012 since the said order definitely affects the writ

petitioner's valuable constitutional right i.e Right to Property as enshrined under Article 300 A of the Constitution of India.

22. On careful perusal of the annexures to the affidavit-in-opposition as filed on behalf of the respondent nos. 1, 2 and 3 and as affirmed on 06.11.2013 it reveals to this Court that admittedly while putting premises no.2/1/2 Prince Golam Hossain Shah Road, Kolkata bearing assessee no.29-095-07-0271-0 over the alleged water body, the officials of KMC had practically made a guess work however, the said men of KMC calculated the area of the said alleged water body to the extent of 4 bighas 8 kathas and also found the names and addresses of the owners of the said alleged water body wherein the names and addresses of the present writ petitioner and/or his predecessor company do not find any place. No material is forthcoming before this Court that the writ petitioner/company made any venture for making necessary correction either in the assessment register of the KMC or in the inspection book in respect of premises no.2/1/2 Prince Golam Hossain Shah Road, Kolkata which according to the respondent/authority is a water body.

23. At this juncture I propose to look to the relevant portion of the surveyor report dated 11.04.2013 as submitted by Gour Mohan Saha, learned advocate cum survey passed special officer and the same is reproduced hereinbelow in verbatim:-

"18. That after superimposition, I have relayed the suit Dags and depicted them in my CASE MAP. From the photo stat copy of the Assessment certificate, it is found that M/s Jay Engineering Works

Ltd. is the Owners of Premises No. 2, Prince Golam Hossain Shah Road. From the Photostat copy of Tax collection Department, it is also found that the Kolkata Municipal Corporation do collect rent from the said Owner for the above mentioned Premises of which Assessee Number is 210950700026. Again from the Xerox copy of the purchased Deed of the Petitioner, dated 04.05.1956 it has been found that the pre Nos. 2 & 3, Prince Golam Hossain Shah Road consists or, comprises of Dag Nos. 422, 422/117, 422/928, 422/925, 421, 420, 423/118, 423 and 422/923 of Mouza-Arakpur, District 24 Parganas. After superimposition, I find that most part of the identified land are situated within the abovementioned Dags though at present there are some encroachment portions. Hence it is palpably clear that the Identified land is the Premises No. 2, Prince Golam Hossain Shah Road as other Number as per statement of the officer of the Petitioner has been merged with the said premises number.

19. That the Respondents did not supply any papers/maps or documents to me. As such I am unable to hold that the Premises No. 2/1/2, Prince Golam Hossain Shah Road, consists of or, comprises of what Dags, or, alternatively, what Dags at present is known as Premises No. 2/1/2, Prince Golam Hossain Shah Road."

24. It thus reveals to this Court that even from the survey report it cannot be ascertained even prima facie that a portion of premises no. 2 and 3 Prince Golam Hossain Shah Road, Kolkata is included within premises no.2/1/2 Prince Golam Hossain Shah Road, Kolkata i.e the alleged water body.

25. It thus appears to this Court that the survey report as filed in connection with the instant writ petition is thus of no help to the writ petitioner.

26. Admittedly the writ petitioner has failed to substantiate either by filing any cogent document or otherwise that the property over which the competent authority is going to take steps under section 17A of the said Act is included in his property.

27. This Court is thus of considered view that the writ petitioner has failed to discharge his burden to substantiate that he has locus to maintain the instant writ petition.

28. It is settled position of law that like a plaintiff in a civil suit the writ petitioner is duty bound to make out his own in order to obtain a relief as prayed for and he cannot succeed based on the lacuna of the respondents.

29. In the reported decision of ***Bajranglal Sarda (supra)*** a Co-ordinate Bench of this Court while dealing with Section 17A of the said Act expressly held that while exercising its power under Section 17A a competent authority is duty bound to record a finding that the property in question indeed comprises of a water body measuring more than 5 kathas and the same is capable of being used as fishery.

30. In considered view of this Court the reported decision of ***Bajranglal Sarda (supra)*** is of no help to the writ petitioner in view of the fact that the writ petitioner has miserably failed to establish its right over the

property over which the competent authority has passed an order under Section 17A of the said Act.

31. This Court thus finds no merit in the instant writ petition.

32. Accordingly the instant writ petition is dismissed.

33. There shall be no order as to costs.

34. With the disposal of WPA 16554 of 2012 all connected applications are also disposed.

35. Urgent photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities

WPA 29374 of 2013

1. In view of the aforementioned decision nothing remains to be decided and thus WPA 29374 of 2013 is also dismissed.

2. All connected pending interlocutory applications, if any, stands hereby disposed of.

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

4. Urgent photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

(PARTHA SARATHI SEN, J.)