

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

Present :-

The Hon'ble Justice PARTHA SARATHI SEN

W.P.A. 20096 of 2025

Mehetab Hossien Mali

-vs-

The State of West Bengal & Ors.

For the petitioner:	Mr. Ayan Banerjee, Adv., Ms. Debasree Dhamali, Adv., Ms. Riya Ghosh, Adv.
For the KMC:	Mr. Alak Kumar Ghosh, Adv., Mr. Nilanjan Chatterjee, Adv.
For the State:	Mr. Dwarika Nath Mukherjee, Adv., Mr. Manik Lal De, Adv.

Hearing concluded on: 17.09.2025.

Judgment on: 17 .09.2025.

PARTHA SARATHI SEN, J. : –

1. The writ petitioner, the respondent State and its instrumentalities, the respondent/Kolkata Municipal Corporation (hereinafter referred to as KMC in short) and the

private respondents are represented by their respective counsels.

2. On behalf of the State respondents, Mr. Mukherjee has submitted a report dated 09.09.2025 as prepared by O.C., Nadial Police Station, Kolkata. Let the report dated 09.09.2025 as submitted on behalf of the respondent State be taken on record.

3. By filing the instant writ petition, the writ petitioner has prayed for issuance of appropriate writ/writs against the respondent no. 6 authority commanding him to withdraw and/or recall and/or rescind the order dated 26.05.2025 as has been annexed at page nos. 59 to 69 of the instant writ petition. At the time of hearing, Mr. Banerjee, learned advocate duly assisted by Ms. Dhamali, learned advocate appearing on behalf of the writ petitioner at the very outset draws attention of this Court to page no. 54 of the instant writ petition being a copy of the memo dated 24.07.2024 as issued by the respondent no. 3 authority to the respondent no. 6 authority requesting him to take appropriate steps regarding alleged unauthorized filling of two water bodies measuring 9 kottah 7 chitak 6 sq. ft. in mouza Garden Reach Sheet 60 within the Ward No. 138 of KMC under

Nadial P.S. It is pertinent to mention herein that such memo dated 24.07.2024 was issued pursuant to the complaint made by one Insaf Ali Molla.

4. It is submitted by Mr. Banerjee that from page nos. 55 to 57 of the instant writ petition it would reveal that complaining the inaction on the part of the respondent no. 6 authority, the writ petitioner approached this Court by filing WPA 24115 of 2009 which came to be disposed of on 05.12.2024 by a Coordinate Bench of this Court directing the respondent no. 6 authority to cause inspection at the disputed plot(s) and after giving an opportunity of hearing both the writ petitioner and the private respondent shall pass a reasoned order upon the representation dated 31.08.2023 in accordance with law.

5. As rightly pointed out by Mr. Banerjee that in the later portion of such order, the said Coordinate Bench further directed the respondent no. 6 authority herein to take all necessary and consequential steps in the event the respondent no. 6 finds sufficient justification in the allegation of the writ petitioner of the said writ petition while passing the reasoned order.

6. At this juncture, Mr. Banerjee requests me to look to

page nos. 58 to 61 of the instant writ petition being a copy of the order dated 26.05.2025 as passed by the respondent no. 6 authority, which is under challenge.

7. It is submitted by Mr. Banerjee that in complete disregard to the earlier order dated 05.12.2024 as passed by a Coordinate Bench of this Court, the respondent no. 6 authority practically shifted his responsibility to the jurisdictional Block Land and Land Reforms Officer (hereinafter referred to as BL & LRO in short) though sufficient materials have been placed before him that the disputed plots of land are recorded as water body in the recently published Record of Rights.

8. In his next limb of submission, Mr. Banerjee places his reliance upon the provision of Section 17A of the Inland Fisheries Act of 1984 (hereinafter referred to as the said Act of 1984). It is submitted by Mr. Banerjee that on perusal of Section 17A (9) and (10) it would reveal that filling up of a water body with a view to convert it into a solid land is totally prohibited by any person whatsoever except with the prior approval of the State Government in the Department of Fisheries and in the event any contravention is made, the respondent no. 6 authority is the appropriate person to direct

the offender to restore such water body to its original position and even take over the management and control of the same and thereafter to restore to its original position and to recover the entire cost from the offender.

9. At this juncture, Mr. Banerjee again took me to page 60 of the instant writ petition. It is further submitted by Mr. Banerjee that from the order dated 26.05.2025 the respondent no. 6 authority has recorded the submission of the private respondent to the effect that they have filed a conversion application before the appropriate authority, however, the same is pending for finalization.

10. It is thus submitted by Mr. Banerjee that in the event it is the case of the private respondent that they have purchased land by virtue of their registered Deeds of Conveyance then there cannot be any necessity to file a conversion application.

11. At this juncture, Mr. Banerjee places his reliance upon the reported decision of **Partap Singh (Dead) through Legal Representatives & Ors. Vs. Shiv Ram (Dead) through Legal Representatives** reported in **(2020) 11 SCC 242**. It is submitted by Mr. Banerjee that in view of the judgment as passed in the case of Partap Singh (supra), there is hardly any

scope to take a contrary view with regard to the entries in the revenue record unless sufficient materials have been placed that the entries of the said Record of Rights are not genuine or forged or fraudulent.

12. It is thus submitted by Mr. Banerjee that it is a fit case for setting aside the order under challenge dated 26.05.2025 with a further prayer commanding the respondent no.6 to take appropriate steps in terms of provision of Section 17A of the said Act of 1984.

13. Such contention is vehemently opposed by Mr. Chattopadhyay, learned advocate appearing on behalf of the private respondents. It is argued by Mr. Chattopadhyay that from the order under challenge it would reveal that at the time of inspection by the officials of KMC, it could not be assessed that the disputed plot is at all a water body and on the contrary on physical inspection it was found that the disputed plot of land is covered with jungles over which no water body is found.

14. It is thus submitted by Mr. Chattopadhyay that in view of such physical inspection, the respondent no. 6 authority has passed the order under challenge in a justified manner for getting due assistance from jurisdictional BL & LRO. It is

further submitted by Mr. Chattopadhyay that the writ petitioner is in no way connected with the disputed plot and therefore any question of suffering by the writ petitioner does not arise.

15. Mr. Ghosh, learned counsel appearing for KMC authority submits before this Court that since the respondent no. 6 authority found some discrepancy with regard to the inspection report of the KMC personnel and the entries in the Record of Right, the order under challenge has been passed for getting comprehensive report from the jurisdictional BL & LRO.

16. Mr. Mukherjee, learned counsel appearing on behalf of State, on his usual fairness, however, submits that the annexure to the report as filed by him today indicates that the disputed plot is still classified as water body (pukur).

17. On careful consideration of the materials placed as before this Court and after hearing the learned advocates for the contending parties, this Court at the very outset proposes to look to the provisions of Section 17A of the said Act of 1984, which is quoted below in verbatim and the same is as under:

“17.A. Bar to conversion of water area etc. for other use.-
1..
2...
3....

4.....

5.....

6....

7...

8...

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 organisation or individual in the private sector, except with the prior approval of the State Government in the Department of Fisheries.

(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.

(e) 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...

12..."

18. On perusal of the provisions of Section 17A of the said Act of 1984, it thus appears to this Court that it is the clear legislative mandate that except with the prior approval of the State Government in the Department of Fisheries no water area can be filled up with a view to converting it to solid land by anybody including an individual.

19. The said section further mandates that in the event the competent authority notices any contravention, it is empowered

to issue notice in writing to restore such water area by the person who has filled it and/or in case of his failure on his own, however, the cost of such restoration shall have to be restored from the person responsible.

20. Keeping in mind the aforementioned legislative provision, if I look at the factual aspects of the case it reveals from the report as submitted by Mr. Mukherjee that the disputed plot being LR Plot No. 255 in mouza Garden Reach Sheet 06 is still classified as water body (pukur).

21. As rightly pointed out by Mr. Banerjee, it reveals from the impugned order that the respondent no. 6 authority also noticed such entry in the relevant Record of Rights in respect of the aforementioned disputed plot in question. Despite such finding, the respondent no. 6 being the competent authority instead of passing order under Section 17A of the said Act of 1984, had chosen to refer the matter to the jurisdictional BL & LRO for submission of a comprehensive report which in considered view of this Court is unnecessary.

22. In the reported decision of **Partap Singh (supra)**, it has been held by the Hon'ble Apex Court that the entries in the Record of Rights ought to have been accepted at their face value

and the presumption regarding the entry in the Record of Right is considered to be correct and genuine unless sufficient materials have been placed that a fraud was committed while making such entry.

23. In view of such proposition of law, this Court thus finds no reason on the part of the respondent no. 6 to ignore the entry of the Record of Rights as placed before him indicating that the plot in question is a water body.

24. In course of hearing, this Court asked Mr. Chattopadhyay as to what prompted his client to apply for conversion especially when it is the case of the private respondent that they have purchased solid land. To the utter surprise of this Court, no plausible explanation could be given on behalf of the private respondent.

25. Considering the every pros and cons of the matter and in view of the discussion as made in the forgoing paragraph, this Court thus holds that the instant writ petition deserves to be allowed.

26. Consequently, WPA 20096 of 2025 is hereby allowed.

27. Consequently, the order dated 26.05.2025 as passed by the respondent no. 6 authority is hereby set aside.

28. Consequently, the respondent no. 6 authority is directed to issue notices against the private respondent nos. 9 to 14 to restore the plot nos. 255 and 37 in mouza Garden Reach, Sheet 60 under Nadial Police Station in the district of South 24-Parganas to its original position (water body) particulars of which has been given in LR Khatian Nos. 120, 140, 207, 246, 313, 367, 374, 398 and 403 under JL no.660 within 60 working days from the date of communication of the server copy of the order failing which the respondent no. 6 authority himself shall take appropriate steps for restoration of the water body in the aforementioned two plots and the cost of such restoration shall have to be recovered from the respondent nos. 9 to 14 failing which the respondent no. 6 will again take appropriate steps for attachment and sale of the properties of the respondent nos. 9 to 14 by putting their property in auction.

29. Liberty is given to the learned advocate on record of the writ petitioner to communicate the server copy of this order to the respondent no. 6 authority forthwith.

30. Respondent no. 6 authority is directed to act on the basis of the server copy of this order.

31. By parting with the respondent no. 8 is directed to ensure

deployment of sufficient police personnel while carrying out the order of this Court either by the private respondent or by the respondent no. 6 authority.

(Partha Sarathi Sen, J.)