

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble Justice PARTHA SARATHI SEN

W.P.A. 28972 of 2024

Rakib Uddin Khan

Vs.

The State of West Bengal & Ors.

For the Petitioner :	Mr. Anindya Sundar Das, Adv., Mr. Tanmay Mukherjee, Adv., Mr. Syed Ali Afzal, Adv., Mr. Shaunak Ghosh, Adv., Ms. Paramita Mondal, Adv., Ms. Sova Gayen, Adv.
For the State:	Mr. Soumitra Bandyopadhyay, Adv., Mr. Srinath Singha Roy, Adv.
For the Respondent Nos.7 & 8:	Mr. Sauradeep Dutta, Adv., Mr. Riju Bhowmik, Adv., Ms. Mina Biswas, Adv.
Hearing concluded on:	16.05.2025.
Judgment on:	16.05.2025.

PARTHA SARATHI SEN, J. : -

1. The affidavit-of-service as filed today is taken on record.
2. By filing the instant writ petition, the writ petitioner has prayed for issuance of appropriate writ/writs against the respondent authorities for restoration of the pond to its original form situated at R.S. Dag No.843, Khatian No.1178, L.R. Dag No.1007, Mouza – Mrigala, J.L. No.102, District – Hooghly, P.S. Dankuni, Block – Chanditala II, Dankuni Municipality, Ward No.20.

3. At the time of hearing, Mr. Ghosh learned advocate appearing on behalf of the writ petitioner at the very outset draws attention of this Court to page no.17 being a copy of C.S. ROR in respect of Plot No.843 which is classified as a 'Pukur' (water body).
4. It is submitted that it is the case of the writ petitioner that it has been noticed by him that an illegal effort has been made by some undesirable persons of the locality to fill up the said water body and finding no other alternative, the writ petitioner lodged a complaint with the West Bengal Pollution Control Board which has been forwarded to the respondent no.8 by the West Bengal Pollution Control Board which is respondent no.11 herein as would be evident from page no.23 of the instant writ petition.
5. Drawing attention to page no. 24 of the instant writ petition being a copy of the report dated 12.12.2023 as submitted by the Sanitary Inspector(-in-Charge) of Dankuni Municipality, it is submitted that from the said report it would reveal that the land in the aforementioned plot is a depressed land within the meaning of Section 17A of the West Bengal Inland Fisheries Act, 1984 (hereinafter referred to as the 'said Act of 1984' in short).
6. It is submitted that from the said report it reveals further that on account of natural depth, water remains stagnant throughout the season.
7. At this juncture, learned advocate for the writ petitioner draws attention of this Court to the pleadings of the instant writ petition,

more specifically paragraph no.11 of the instant writ petition. It is submitted that it is the case of the writ petitioner that the said depressed land is situated in the area where the writ petitioner and his family members reside and during rainy season the excess water flows towards the said depressed land naturally which saves the writ petitioner, his family members and his neighbours from water logging.

8. It is further submitted that since the writ petitioner and his family members are depending on their agricultural income for their livelihood, in case of water logging and flood on account of unlawful filling up of the said water body, the livelihood of the writ petitioner and his family members will be at stake. It is, thus, submitted that the grievance of the writ petitioner was brought to the notice of the respondent authorities by submitting several representations, but those were not taken care of and such inaction on the part of the respondent authorities violates right of life as enshrined under Article 21 of the Constitution of India.
9. Mr. Ghosh further draws attention of this Court of Section 17A of the said Act of 1984. It is submitted that under the said provision filling up any water area or naturally or artificially depressed land is prohibited and in the event it is found that any person has committed anything which is contrary to the provisions of Section 17A(1) of the said Act of 1984, the competent authority is within his power under Section 17A(10) to restore the said water area and/or

naturally or artificially depressed land to its original condition. It is, thus, submitted that the instant writ petition may be allowed in terms of the prayers made in the instant writ petition

10. Per contra, Mr. Bandyopadhyay, learned advocate appearing on behalf of the respondent State and its functionaries at the very outset raises the question of maintainability of the instant writ petition. In course of his submission, Mr. Bandyopadhyay, learned senior government advocate appearing for the respondent State took me to page no.22 of the instant writ petition being a copy of the relevant LR ROR.
11. It is submitted that from the copy of the said relevant LR ROR it would reveal that previous CS/RS plot nos. 843 and present LR plot no. 1007 is not a water body and on the contrary it has been recorded as 'danga' (dry land). Drawing attention to page nos. 43 and 44 of the instant writ petition it is submitted by Mr. Bandyopadhyay that from the copy of the said representation dated 11.11.2024 as has been annexed at page nos. 43 and 44 of the writ petition it would reveal that it is the clear admission of the writ petitioner that he has approached the respondents/authorities being a public spirited person. It is thus submitted that the writ petitioner has chosen a wrong forum in view of the fact that basically the instant writ petition is in the nature of public interest litigation.
12. Mr. Dutta, learned advocate appearing on behalf of the respondent nos. 7 and 8 i.e., the functionaries of the Dankuni Municipality

while adopting the argument of Mr. Bandyopadhyay submits that the relevant plot has been recorded ‘danga’ (dry land).

13. This Court has heard the learned advocates for the contending parties. This Court has meticulously gone through the entire materials as placed before this Court.

14. For effective adjudication of the instant *lis* the provisions of Section 17A of the said Act of 1984 is 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 use, 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 holding as aforesaid into parts 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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10. (a) *The competent authority may, by a written notice, require any person who, by contravening the provisions of sub-section (1),*

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(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 subsections (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.

11. Any person who commits any offence by contravening the provisions of sub-section (1) shall, without prejudice to the provisions of sub-section (10), be punished with imprisonment for a term which may extend to three years or with fine which may extend to five lakh rupees or with both, and the provisions of section 20 shall not apply to such person.

12. An offence under sub-section (11) shall be cognizable and non-bailable”

15. Keeping in mind the aforementioned legislative provision if I look to the factual aspects of this case it appears to this Court that on behalf of the writ petitioner sufficient materials have been placed

before this Court that the aforesaid land is basically a depressed land either artificial or naturally. Materials have been placed before this Court to substantiate that water remains stagnant throughout the season in such depressed land.

16. Since on behalf of the respondents/State the maintainability of the instant writ petition has been agitated, this Court at the first instance intends to deal with the same.
17. As rightly pointed out by Mr. Bandyopadhyay that from representations of the writ petitioner it reveals that he had approached the various authorities for restoration of the said depressed land to its original position for the purpose of protecting environmental pollution as well as for public interest.
18. At this juncture, if I look to the paragraph no. 11 of the instant writ petition, it appears to this Court that it is the specific case of the writ petitioner that the aforementioned depressed land is situated in the area wherein the writ petitioner resides with his family members and it is the further case of the writ petitioner that in the event the said depressed land is filled up either for the purpose of converting into solid land for construction of building thereon and/or for any other purpose, the writ petitioner and his family members including his neighbors may suffer on account of water logging and such water logging may affect their agriculture which according to the writ petitioner is only source of his earning.

19. It thus appears to this Court that the alleged action and/or inaction on the part of the respondents/authorities for not taking appropriate steps under Section 17A of the said Act of 1984 tantamounts to violation of Article 21 of the Constitution of India and in view of such this Court holds that the instant writ petition is very much maintainable.
20. In order to ascertain as to whether the writ petitioner is at all entitled to the reliefs as prayed for, this Court again intends to look to the factual aspects as involved in the instant writ petition.
21. As rightly pointed out by Mr. Ghosh that it is the specific finding of the sanitary Inspector-in-Charge of Dankuni Municipality that the land in question is a depressed land since it is low in respect of the road level and water remain stagnant throughout the season thereon.
22. Such being the position and in absence of any contrary material, this Court finds sufficient reason to hold that the aforementioned plot of land is a depressed land within the meaning of Section 17A of the said Act of 1984.
23. It further appears from the said report dated 12.12.2023 that the local people are dumping their waste of the said water body which cannot be permitted to continue in view of the provisions of Section 17A of the said Act of 1984, since it is the legislative mandate that no person shall fill up any water area or any depressed land naturally or artificially with a view to convert it to a solid land.

24. It thus appears this Court that the respondent no. 8 being the Executive Officer of the Dankuni Municipality is duty bound to ensure that the provision of Section 17A of the said Act of 1984 is complied with in its letter and spirit.
25. In view of such, this Court while disposing the instant writ petition directs the respondent no. 8 to initiate a proceeding against the offending person or persons, if there be any under Section 17A (10) of the said Act of 1984 forthwith and to ensure that the aforementioned land is restored to its original condition even by taking over the said depressed land in accordance with the provisions of Section 17A (10)(c) of the said Act of 1984.
26. The respondent no. 10 being the Officer-in-Charge of the Dankuni P.S. is directed to act in terms of the provision of Section 17A (11) of the said Act of 1984 in case of contravention of provision of Section 17A (1) of the said Act of 1984 in respect of the aforementioned depressed land.
27. The argument of the learned Advocate for the respondent nos. 7 and 8 that from the record of right, it would reveal that the plot in question is 'danga' (dry land) in character is no way helpful for him in view of the fact that the said Act of 1984 covers a dry land also if it is found to be depressed.
28. The entire exercise as indicated hereinabove is to be completed by the respondent no. 8 positively within 90 working days from the date of communication of the server copy of this order.

29. The time limit as fixed by this Court is mandatory and peremptory.
30. Liberty is given to the learned advocate-on-record for the writ petitioner to communicate the server copies of this order to the respondent nos. 7, 8 and 10 for their information and immediate compliance.
31. The respondent nos. 7, 8 and 10 are directed to act on the basis of the server copies of this order.
32. With the aforementioned observation, the instant writ petition being WPA 28972 of 2024 is disposed of.
33. Urgent photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

(PARTHA SARATHI SEN, J.)