

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
(ORIGINAL SIDE)**

Present:
The Hon'ble Justice Smita Das De

W.P.O. No. 1501 of 2023

**M/S Jagruti Componics (P) ltd
Vs.
The Kolkata Municipal Corporation.**

For the petitioner	: Mr. Supratick Shayamal, : Ms. Sonali Sengupta, : Ms. Nisha Das
For the State	: Mr. Pantu Deb Roy, : Mr. Subrata Guha Biswas
For the KMC	: Mr. Alok Kumar Ghosh, : Mr. Gopal Chandra Das, : Ms. Ananya Das
Reserved on	: 25.07.2025
Judgment on	: 01.08.2025

Smita Das De, J.:-

1. In the instant writ petition the petitioner company has challenged an Order dated 12th July, 2023 issued by the Executive Engineer (Civil), E&H Department, Kolkata Municipal Corporation (hereinafter referred to as “KMC”).

2. Apropos, the facts of the case is that the petitioner being a Private Limited Company is seized and possessed of a piece and parcel of vacant bastu land (homestead) measuring about 6 cottahs 3 chittack and 25 Sq.Ft. more or less lying and situated at premises No. 328, Diamond Harbour Road, Kolkata.

Before its amalgamation, it was two separate plots of land being No. 323, Vidyasagar Sarani, (James Long Sarani), Kolkata – 700063 as A/1 and 470, Vidyasagar Sarani (James Long Sarani), Kolkata – 700063 as B/1. The petitioner purchased the aforesaid two plots of land and mutated its name in the Records of the BL&LRO (Block Land & Land Reforms Office), Thakurpukur, District South 24 Parganas, being the respondent No. 5, earmarking the nature and character of the land and clarified as 'Bastu' land in the records of the BL&LRO. Thereafter, the petitioner company filed an application for mutation cum amalgamation before the concerned department of KMC and subsequently the aforesaid two plots were amalgamated into one plot and was renumbered as premises No. 328, Diamond Harbour Road, and the same was accordingly recorded in the Records of the Mutation Assessment Roll Book and the inspection book maintained by the KMC, recording inter alia, the name of the petitioner company as the owner of the premises.

3. It is pertinent to mention that the said amalgamated plot of land purchased by the petitioner company was lying vacant and due to lack of maintenance huge number of weeds, bushes, shrubs fully covered the said plot of land along with the dirty filthy water which got accumulated on the said plot during monsoon season. Taking the fullest advantage of the land lying vacant the local people used the plot to dispose of their garbage, litter into the plot of land. As a result the land turned out to be a breeding ground for mosquito larvae on the stagnated water obstructing the free flow of the water. Eventually, the plot turned out to be a dumping yard. The petitioner took the initiative to

clear the rubbish from the plot of land as the people of the locality raised hue and cry by threatening to lodge a complaint before the Municipal authorities. In consequence thereto, the petitioner company made a representation to the Municipal authorities being the respondent No. 4 herein, seeking inter alia, a permission for removing the garbage and cleaning the stagnated water. However, the Municipal authorities instead of granting the permission as sought for by the petitioner in the representation for cleaning of the dumping ground, the Municipal authority on the contrary issued a Notice bearing Ref. No. 5/124/2023 dated February 21, 2023 under section 496A of Kolkata Municipal Act, 1980 (hereinafter referred to as the said act) directing inter alia, that the persons responsible shall remove and treat the stagnant water within 7 days in terms of the said provision of law and restore the water body to its original condition.

4. The petitioner company being aggrieved by the issuance of the Notice filed a writ petition being No. WPO 1217 of 2023, challenging inter alia, the issuance of the notice under Section 496A by the respondent No. 4 herein, before this Court. By an order dated May 22, 2023, the Coordinate Bench of this court disposed of the matter, directing inter alia, *“the petitioner to submit a representation /objection against the impugned notice dated April 27, 2023 not later than May 30, 2023. If such representation is submitted, the concerned respondent authority, being the Executive Engineer Civil shall consider such representation and decide the issue with regard to the alleged illegal filling up of the water body at premises No. 328, Diamond Harbour Road, Kolkata by*

passing a reasoned order after giving an opportunity of hearing to the petitioner as well as any other interested parties, to the persons responsible, and such reasoned order to be communicated to the parties immediately thereafter. As the entire exercise is to be completed within a period of 8 weeks from the date of such representation and the direction contained in the notice dated April 27, 2023 to restore the land to its original condition shall remain stayed till the decision is communicated to the parties in terms of the order.” In compliance of such order dated May 22, 2023, the petitioner company made a representation to the concerned authority on May 30, 2023 being annexure P12 annexed to the writ petition. The concerned authority considered and disposed of the representation by passing an order dated July 12, 2023 which is the subject matter of challenge in the instant writ petition.

5. At the backdrop of the instant case the following issues which arises for consideration are as follows:

- i. To decide the issue whether the land in question can be allotted to section 17A (1) (a) of West Bengal Inland Fisheries Act, 1984 (amendment) despite being clarified as ‘Bastu’ and not being used for the purpose of pisciculture.
- ii. Whether a plot of land already been earmarked as ‘Bastu’ since its inception by the Block Land & Land reforms office department can be treated as a water body for the purpose of Pisciculture under Section 17A(1)(a) of the West Bengal Inland Fisheries Act?

- iii. Whether the action of the Municipal authorities in issuing impugned notice can be held to be arbitrary, malafide and in utter violation of principles of natural justice?
- iv. Whether the authority concerned after receiving a complaint through whatsapp message / SMS arrived at a finding on the basis of a report submitted by the self-appointed authority without going through the relevant documents as submitted by the petitioner company for consideration?

6. The petitioner submits that subsequent to the Order dated May 22, 2023 the petitioner company submitted a representation dated May 30, 2023 along with the copies of the relevant documents with regard to the petitioner's right, title and interest in respect of the said plot of land along with the copies of the record of rights the mutation certificate as extract from the mutation certificate assessment book as maintained by the authorities of the Kolkata Municipal Corporation. The said representation was taken into consideration by the competent authority and after giving an opportunity of hearing the respondent No. 4, being the competent authority by an order dated July 12, 2023 disposed of the representation directing inter alia, the petitioner to register and restore the water body to its original condition within a period of 30 days from the date of receipt of the order and to maintain the water body by following the rules prescribed under the West Bengal Inland Fisheries Act without considering relevant document and the case made out by the petitioner company.

7. The petitioner submits that the respondent No. 4 passed the impugned order without proper application of mind and has failed to consider the representation in its true letter and spirit and has arrived at a conclusive finding merely on the basis of a report alleged to have been received by Jadavpur University, classifying the said plot of land as the water body. It is further submitted that on the basis of a report filed by the Jadavpur University, it cannot be considered, since the said university is not the competent authority to ascertain the nature and character of the plot of land. It was further submitted that the petitioner company was not given any opportunity by the respondent No. 4 to contest and/or controvert the alleged complaint received through whatsapp message and the same is not sustainable in the eye of law which is contrary to the principles of natural justice. The finding arrived at by the respondent No. 4 is arbitrary, illegal and not tenable in the eye of law and the same is liable to be quashed and/or set aside since it dehors the provisions of law. The learned counsel for the petitioner further submits that the error of law is capable of being rectified by judicial review. Reasonableness in the order and/or fairness in the procedure indisputably can also be gone into by the writ court and relies upon judgment namely **K.I. Snehard & Ors - Versus- Union Of India**, reported in **(1987)4 SCC Page 431**, and submitted that this judgment is relevant to judicial review, particularly concerning the requirement for “speaking orders” or reasoned decisions. When an administrative or quasi-judicial body makes a decision without providing reasons (a “non-speaking order”), it can be challenged through judicial review.

The court will examine whether the decision-making process was fair and rational, and the absence of reasons can be a significant factor in finding the decision flawed. The **K.I. Snephard & Others case** is not directly about non-speaking orders, but it is related to judicial review, specifically the principles of fairness and rationality in decision-making. This case established that administrative actions, even those not strictly judicial or quasi-judicial, are subject to judicial review if they affect the rights of individuals. **V.C. Banaras Hindu University & Ors. -Versus- Srinath**, reported in **(2006) 11 SCC Page 42**, this case significantly impacts judicial review in cases where administrative decisions lack a reasoned or “speaking” order. The judgment highlights that a failure to provide reasons in an order, especially in disciplinary actions, can be grounds for judicial review, particularly if it prevents proper scrutiny of whether the decision was arbitrary, illegal, or unreasonable. **RBG Rig Corporation, Mumbai-Versus- Commissioners Of Customs (Imports)Mumbai**, reported in **(2011)3 SCC Page 573**, this judgment is relevant to the concept of judicial review, specifically concerning the deference a subordinate authority should show to a higher court's decision. The Supreme Court in this case established that if a subordinate authority believes a court order is contrary to law, it has the option to seek clarification or modification from the same court or approach a superior forum. **Shelter Projects Ltd.& Anr. -Versus- The Kolkata Municipal Corporation in APO No. 51 of 2020 with WPO No. 203 of 2018**, the judgment, specifically the one dealing with the non-speaking order regarding amalgamation, is applicable to judicial review in

the context of the Kolkata Municipal Corporation. Hon'ble Calcutta High Court in this case highlights the importance of reasoned decisions in administrative actions and the potential for judicial review when such reasons are absent.

Kalabharati Advertising – Versus- Hemant Vimalnath Narichania, (2010) 9 SCC Page 437, this judgment relies that unless the statute/rules so permit, the review application is not maintainable in case of judicial/ quasi-judicial orders.

8. Per Contra, the respondent authorities strenuously argued and submits that the petitioners have approached to stall the proceedings initiated by the competent authority since the petitioner company has no cause of action on the basis of the prima facie finding with regard to the existence of the water body at the said premises in question. The respondents further takes the issue of maintainability and submits that the order passed by the Executive Engineer concerned being the respondent No. 4 pertains to the existence of the water body at the premises in question, and to be followed by appropriate proceeding in accordance with law. It was further submitted that upon physical inspection of the site and other available materials indicates the existence of the water body in the said premises particularly when the depressed land is capable of containing and retaining the water for more than six months. It is further submitted that there was no reason to arrive at a finding with regard to the locus of the complainant to lodge a complaint since the petitioners have admitted in certain paragraphs of the writ petition that the land in question accumulates water, therefore the laws says that the depressed land amongst

other while accumulating water and remaining stagnant more than six months cannot be permitted to be filled up and any attempt for filling up the site attracts the provision of Section 17A of the Inland Fisheries Act, 1984 as amended and Section 63 of the WBT&C (P&D) Act, 1979. It is further submitted that the allegation made by the writ petitioners against the order of the respondents are wholly misconceived and untenable, specially when the petitioners shall get opportunity to defend their case in the proceeding under the said Sections made under reference initiated by the competent authority who shall take the final decision in the matter. It is further submitted that the question of non-existence of the water body at the said premises cannot be resolved in the writ jurisdiction and the petitioner failed to maintain the plot in question in appropriate manner therefore, such failure has invited the appropriate action to come into play. It is further submitted that the present status of the land clearly demonstrates that the same is a water body but not Bastu. The petitioners cannot be permitted to take advantage of it's description and /or classification of long past at this stage to develop the land in filling up the waterbody with rubbish, concrete materials etc in derogation of violation of Section 53 of the said Act, 1979 and section 17 A of the said Act 1984 as (Amended in 1993).

9. After hearing the rival contention of the parties and considering the materials available on records, I am of the considered view that the petitioner company has been able to make out a prima facie case against the Municipal authorities against the restoration of the water body to its original condition

despite the plot of land have been over the years marked and classified as 'Bastu' by the competent authority being the respondent No. 5. It is evident from a report dated May 8, 2005 filed by the respondent No. 5 in pursuance of the order of this court that the plot has been classified as 'Bastu' and not a water body. From various departmental documents annexed to the Writ Petition along with the pond list obtained from the Official Website of the Kolkata Municipal Corporation, it appears that the plot of land all along been classified and used as 'Bastu' and nowhere from the list of the said plot of land appears to be classified as a pond.

10. It is also not in dispute from the mutation certificate issued by the Kolkata Municipal Corporation authorities that the nature of the plot of land has been identified as the 'land' and not a 'water body'. The entire dispute with regard to the land in question arises out of a complaint lodged through a whatsapp message to the authority concerned. Upon receipt of such complaint the authority concerned on the basis of an alleged report arrived at a finding that the said plot of land comes within the ambit of Section 17A(1)(a) of the West Bengal Inland Fisheries Act. Therefore, directs the petitioner company to restore the water body to its original condition within a period of 30 days from the date of receipt failing which appropriate proceedings shall be initiated in accordance with law. The said notice was under challenge before this Court and the same was disposed of by the Coordinate Bench of this Court on May 22, 2023 directing inter alia, the petitioner to submit a representation against the said notice for considering alleged illegal filling up of the water body on the

premises in question by passing a reasoned order after giving an opportunity of hearing. In compliance of such order the respondent No. 4 passed an order on July 12, 2023 being the subject matter of the challenge in the instant writ petition. Upon bare perusal of the impugned order it appears that the respondent No. 4 considered the issue of the illegal filling of the water on the basis of a report filed by the Jadavpur University without taking into consideration of the relevant documents submitted by the petitioner company at the time of hearing. The respondent No. 4 acted arbitrarily and illegally to arrive at a finding that the petitioner must restore the water body to its original condition within a period of 30 days from the date of receipt of the order under the express provision of the enactment of the West Bengal Inland Fisheries Act (Amendment). It is pertinent to mention that from the plain reading of section 17A(1)(a) of the West Bengal Inland Fisheries Act, 1984 as amended clearly envisages that if any water area including the embankment or naturally or artificially depressed land holding which retains water for a minimum period of 6 months in an year, to such use, other than fisheries as may result in fishery within jurisdiction of any municipal corporation or any municipality.

11. In the conspectus of the above case it is not established that the said plot of land in question was ever put to use by the Writ Petitioner being the owner of the said plot for the purpose of pisciculture. It is an admitted fact that after purchase of the said plot, the land was lying vacant and due to lack of maintenance huge number of weeds, dirt, bushes, shrubs etc grew and fully covered the said plot of land allowing the water to accumulate during the

monsoon season. Since the plot of land was all along kept vacant, the neighbour, local resident tried to pile up their garbage and litter and plot of land turned to be a dumping yard. Pursuant to the order of this Court the petitioner company has made treatment to clean the stagnant water in the plot of land. The two judgments relied upon by the petitioners are, **Bajranglal Sarda and Others -Versus- The State of West Bengal and Others** reported in **2009 SCC Online Cal 2713 (2010) 4 CHN 125 (Cal)** passed by the Hon'ble Justice Dipankar Dutta and another judgement of the Division Bench of this Court – in **MAT No. 932 of 2022 Anuradha Sen Versus Kolkata Municipal Corporation and Others.**

12. Both the judgments pertains to the applicability of the Section 17A(1) of the West Bengal Inland Fisheries Act, 1984. In the case of **Anuradha Sen (supra)** it has been observed by relying upon **Bajranglal Sarda and other Versus The State of West Bengal & Ors. (supra)** held “that before the competent authority exercises power under Section 17A of the 1984 Act it has to come to a finding that the water body in question is being used or is capable of being used as fishery or for pisciculture or satisfying any other conditions specified in Section 17A(1) of the 1984 Act. Without arriving at such a finding the competent authority which in this case is the Commissioner of KMC would have no jurisdiction to take any action under Section 17A for the 1984 Act. It is the finding of fact that a water body comes within the purview of Section 17A (1) of the 1984 Act, that would vest a competent authority with jurisdiction to take action under section 17A of the Act. Without coming to such a conclusion

any action taken by the competent authority is purported exercise of power under section 17A of the 1984 Act would be without jurisdiction and therefore null and void in the eye of law. It has also been clarified in the case of **Concern for Calcutta Vs. State of West Bengal (Supra)** that the provision of 1984 Act including section 17A are aimed at conserving, developing, propagating, protecting and exploiting Inland Fisheries in the State of West Bengal. It is nobody's case and definitely not the case of KMC, at least on record, that the land in question in the present case is or was being used for the purposes of Pisciculture so as to bring it within the ambit of Section 17A. That Section makes it abundantly clear, that the water bodies intended to be included within its ambit are such water bodies which were being used or were capable of being used at fisheries. Section 17A imposes a restriction that such water bodies should not be put to any use which may result in abolition of fisheries.”

Dealing with the jurisdiction of the High Court under Articles 226/227 of the Constitution of India in respect of powers of judicial review, it is observed that judicial review is more effective and meaningful when applied to “speaking orders”, which are decisions accompanied by clear reason and justifications. Speaking order allow courts to assess the legality, rationality and fairness of the decision-making process. In **Sarvepalli Ramaiah (D) Tr. Lrs vs District Collector Chittoor Dist.** reported in **2019 (4) SCC 500**, it was held that “*Judicial review under Article 226 is directed, not against the decision, but the decision-making process. Of course, a patent illegality and/or error apparent on the face of the decision, which goes to the root of the decision, may vitiate the*

decision-making process. In this case there is no such patent illegality or apparent error. In exercise of power under Article 226, the court does not sit in appeal over the decision impugned, nor does it adjudicate hotly disputed questions of fact.” In **The Jana Enterprise vs The State Of West Bengal & Ors.** it was held that “*a mere disagreement with the decision-making process or the decision of the administrative authority is no reason for a constitutional court to interfere. The threshold of mala fides, intention to favour someone or arbitrariness, irrationality or perversity must be met before the constitutional court interferes with the decision-making process or the decision*”.

13. In the present case the competent authority without considering the materials available on records arbitrarily arrived at a finding that the plot of land in question is a water body despite the fact that the said land over the years having been classified as ‘Bastu’. For invoking Section 17A(1)(a) of the West Bengal Inland Fisheries Act, 1984 the petitioner authority has to make an independent inquiry and not upon a borrowed satisfaction for arriving at a finding that the plot of land is a water body. Upon considering the impugned order and the departmental records annexed to the writ petition, the Court is of the prima facie view that the order of the competent authority is perverse in nature and is liable to be set aside since the relevant documents submitted were not taken into consideration and merely on the basis of an alleged report filed by the Jadavpur University the competent authority has classified the said plot of land as a water body. The competent authority also did not make any independent inquiry to ascertain the user of the land i.e. whether it was at all

used for the purpose of pisciculture or not. Any finding based on speculation and guess work rather than concrete evidence is deemed to be perverse. If any power is exercised by any authority in a decision-making process and if it is found to be flawed, it undermines the principles of justice and fairness, resulting to a miscarriage of justice. Thus, the impugned order dated July 12, 2023 is set aside directing inter alia, the petitioner to file a fresh representation before the authority concerned, within a fortnight annexing all the relevant documents for proper consideration and adjudication of the same. The competent authority shall fix a date and give a hearing to the concerned parties and pass a reasoned order in accordance with law within a period of three weeks and shall communicate the same to the parties accordingly. It is made clear that the competent authorities shall arrive at a conclusive finding after scrutinizing, examining and making an independent enquiry by way of an inspection or otherwise upon considering the relevant departmental records for ascertaining the nature and character of the land in question.

14. With the above observation and directions, the writ petition is disposed of without expressing any opinion on the merits of the case. However, there shall be no order as to cost.

15. Urgent Photostat certified copy of this order, if applied for, be given to the Ld. Advocates for the parties upon compliance of all necessary formalities.

(Smita Das De, J.)

