

Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Supratim Bhattacharya

MAT 293 of 2025
IA No: CAN 1 of 2025
CAN 2 of 2025

Biswajit Halder
Vs.
Paban Halder and others

For the appellant : Mr. Partha Pratim Roy,
Mr. Lakshminath Battacharya

For the respondent
no. 1 : Mr. Sarwar Jahan,
Mr. Gourav Das,
Ms. Shalini Sen,
Ms. Sahina Parvin

Heard on : 27.01.2026

Judgment on : 27.01.2026

Sabyasachi Bhattacharyya, J.:-

Re: CAN 1 of 2025

1. Affidavit-of-service filed today be kept on record.
2. From the averments made in the condonation application, we find that the appellant pleads ignorance of the upgradation of the writ petition, upon which the same was disposed of by the impugned judgment.

3. From the impugned judgment dated August 12, 2024, we find a recording that the matter was upgraded on a further notice served upon the State counsel but do not find anything to indicate that any specific notice of such upgradation was given to the private respondent/present appellant.
4. Accordingly, we find the reason for the delay, being belated knowledge of the appellant regarding the impugned judgment, to be credible.
5. Accordingly, CAN 1 of 2025 is allowed on contest, thereby condoning the delay in preferring MAT 293 of 2025.
6. There will be no order as to costs.

Re: MAT 293 of 2025
CAN 2 of 2025

7. The appeal is now taken up for passing appropriate orders.
8. None appears for the State at the time of call.
9. The backdrop of the case is that initially the private respondent herein moved a writ petition alleging illegal filling up of a waterbody.
10. Pursuant to the same, a learned Single Judge of this Court directed the District Magistrate, South 24 Parganas to cause the representation of the writ petitioner therein (present private respondent) to be considered by a competent authority within a period of two months from the date of communication of the copy of the said order.
11. Pursuant to the said order dated August 02, 2021 passed in WPA 10840 of 2021, the District Magistrate referred the matter to the Sub-

Divisional Officer, Diamond Harbour who, vide order dated August 27, 2021, observed that despite opportunity being given to both the present appellant and the private respondent, they failed to produce any documentary evidence in support of their construction. Accordingly, the said parties were directed by the Sub-Divisional Officer to remove all of their “unauthorized and illegal” constructions made over the subject property, being Dag no. 560 classified as Khal (waterbody) of Mouza – Tentulberia, J.L. No. 08, P.S. – Mathurapur, District: South 24 Parganas within fifteen days from the date of receipt of the said order.

12. Being aggrieved thereby, the present appellant moved a writ petition bearing WPA 20208 of 2021 which was disposed of by another learned Single Judge of this Court vide order dated June 21, 2022, observing therein that the Sub-Divisional Officer was not the jurisdictional authority and setting aside the order of the Sub-Divisional Officer on such ground, simultaneously directing the Block Development Officer, Mathurapur-I Block, to consider the representation submitted by the private respondent within one month from the date of communication of the order of the learned Single Judge, after giving reasonable opportunity of hearing to all the interested parties.
13. Pursuant thereto, the Block Development Officer, Mathurapur-I Development Block, South 24 Parganas passed an order dated October 17, 2022. In the said order, the Block Development Officer observed *inter alia* that although he was not the jurisdictional authority since, as per the Notification No. 1748-Fish/C-I/9R-

03/2017 dated July 20, 2017, the District Magistrate was the competent authority to undertake a proceeding under Section 17A of the West Bengal Inland Fisheries Act, 1984 (hereinafter referred to as “the 1984 Act”), in deference to the direction of the learned Single Judge, the Block Development Officer expressed the opinion that both parties failed to produce any legal and authorized documents or any evidence in support of construction.

14. Subsequently, the present private respondent moved the last writ petition, bearing WPA 9564 of 2023, from which the present appeal arises.
15. The grievance of the private respondent/writ petitioner was that the order of the Block Development Officer dated October 17, 2022 was not being implemented.
16. In impugned judgment passed in the said writ petition, it was recorded by the learned Single Judge that the matter was upgraded upon notice to the State.
17. Accordingly, the matter was taken up for hearing on August 12, 2024 and the learned Single Judge disposed of the writ petition, bearing WPA 9564 of 2023, *inter alia* observing that the respondent no.2/District Magistrate was the appropriate authority and directed the respondent no.2 to cause necessary demolition of the unauthorized structure and restoration of the waterbody, on the premise that there was no impediment as to why the order of the Block Development Officer shall not be effected and carried out forthwith.

18. The learned Single Judge further directed that the respondent no.2 before the writ court, that is, the District Magistrate, shall then take all necessary and consequential steps to give immediate effect to the order dated October 17, 2022 passed by the Block Development Officer, by causing removal and demolition of the unauthorized structure and by restoring the waterbody.
19. The learned Single Judge also directed that if any police assistance is required to that end, the same would be given.
20. Learned counsel for the appellant argues, by placing reliance on a coordinate Bench decision in *Anuradha Sen vs. Kolkata Municipal Corporation and others*, reported at 2024 SCC OnLine Cal 185, that the provisions of Section 17A of the 1984 Act could not be invoked unless there was a specific finding that the waterbody-in-question was being used for the purposes of pisciculture and was required for such purpose.
21. Learned counsel places reliance on the specific language of Section 17A (1) as well as 17A (2) of the 1984 Act in support of the contention that before coming to a finding that there is a contravention of the provisions of sub-section (1) of Section 17A, it is necessary to come to a finding that the waterbody was used for the purpose of promotion of pisciculture.
22. Learned counsel further submits that since the District Magistrate was the appropriate authority even to undertake an enquiry under Section 17A of the 1984 Act, and not the mere implementing authority, the learned Single Judge erred in law in directing the order

of the Block Development Officer, who did not have jurisdiction under the 1984 Act to pass such order, to be implemented by the District Magistrate.

23. It is contended that the entire approach was *de hors* the law.
24. Heard learned counsel for the appellant as well as the private respondent.
25. It is made clear by learned counsel for the private respondent that the grievance of the private respondent is that unauthorized construction is being made by the appellant herein on the subject plot in an attempt to fill up the waterbody situated there.
26. Upon a consideration of the arguments of the parties and perusing the ratio laid down in *Anuradha Sen (supra)*, this Court is of the firm opinion that Section 17A of the 1984 Act contemplates that before any order is passed thereunder, there has to be a satisfaction recorded by the appropriate authority that the waterbody-in-question, where the alleged illegal construction is being made, is necessary for the purpose of promotion of pisciculture.
27. Section 17A (1) of the said Act, particularly in sub-sections (a) and (b) thereof, prohibits any water area including embankment, which is *capable of being used as a fishery*, or any naturally or artificially depressed land which retains water for a minimum period of six months in a year, to be put to *use other than fishery, as may result in abolition of fishery* and under sub-section (b), from filling 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.

28. Under sub-section (2), if the competent authority, on receipt of an information or on his own motion or otherwise, is satisfied that any water area including embankment or naturally or artificially depressed land holding, referred to in clause (a) of sub-section (1), is being, or is about to be, put to any *use other than fishery* or any such water area including embankment or naturally or artificially depressed land holding is being, or is about to be filled up, in contravention of the provisions of sub-section (1), *and that it is necessary for the purpose of promotion of pisciculture, checking of destruction of fisheries and prevention of environmental degradation* so to do, he 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.
29. Apart from taking over management and control under sub-section (2) of Section 17A, sub-section (10) of the said Section also provides that the competent authority may, by a written notice, require any person who, by contravening the provisions of sub-section (1), puts any water area including embankment or naturally or artificially depressed land holding to any use other than fishery or fills up such water area or depressed land holding with a view to converting it into solid land, to require such 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 to its original condition at his own

expense. Under Clause 9(b) of Sub-section 10 of Section 17A, if such person fails to restore the water area or depressed land in terms of Clause (a), the competent authority may, by order in writing, not only take over the management and control of the water area or depressed land but also restore it to its original condition and recover the entire cost in this behalf or any part thereof from the offender by invoking the provisions of the Bengal Public Demands Recovery Act, 1913.

30. In terms of the Notification placed before us, bearing Notification No. 1748-Fish/C-I/9R-03/2017 dated July 20, 2017, the jurisdictional District Magistrate is the appropriate authority to undertake a proceeding under Section 17A of the 1984 Act. It is palpable that in the present case, although there was a direction of a learned Single Judge for the Block Development Officer to consider the representation in that regard, the Block Development Officer did not have the authority or jurisdiction to pass any such order and/or to come to a finding that the construction being made by either of the parties before us was illegal or unauthorized and/or in contravention of the 1984 Act. It is well-settled that the direction of a Court on an authority to consider a matter does not clothe such authority with the jurisdiction to decide such matter, unless the statute specifically empowers such authority to do so.

31. In the present case, the District Magistrate has been directed to implement the order of the Block Development Officer by the impugned order of the learned Single Judge instead of the District Magistrate, who is the competent authority, being directed to

undertake an independent proceeding under the provisions of Section 17A of the 1984 Act. Thus, since the Block Development Officer did not have jurisdiction under the law to take such decision, the learned Single Judge acted *de hors* the law and his jurisdiction in directing such order of the Block Development Officer, passed without jurisdiction, to be implemented by the competent authority or otherwise.

32. With deepest respect, the appropriate course of action would be to direct the jurisdictional District Magistrate, who is the competent authority to do so, to initiate a proceeding under Section 17A of the 1984 Act to ascertain whether any offence has been committed under the said provision.
33. We further take note of the fact, upon our query to learned counsel for the parties who have fairly assisted us, that even under the West Bengal Land Reforms Act, 1955, in particular Section 4C thereof, permission is required to change the area, character or use of a “land” [which includes “tank, tank-fishery and fishery” as per Section 2 (7) of the 1955 Act]. Section 4D provides for offences and penalties in respect of violation of such provision by altering the nature and character of any land except in accordance with permission under Section 4C.
34. Since in the present case there have been allegations of illegal filling up of a tank/tank-fishery and the connected embankment as well as a depressed land in the vicinity, this Court is of the opinion that there might very well be contravention of Sections 4C and 4D of the West

Bengal Land Reforms Act, 1955 as well, although for obvious reasons, we do not express any final opinion at this stage on such alleged violation.

35. In view of the above, MAT 293 of 2025 is allowed on contest, by setting aside the impugned judgment dated August 12, 2024 passed in WPA 9564 of 2023. Any action taken pursuant to or consequential to such judgment is hereby revoked, annulled and quashed as well.
36. We hereby direct the District Magistrate/Collector, South 24-Parganas (respondent no. 3 in the present appeal) to initiate a proceeding under Section 17A (2) of the West Bengal Inland Fisheries Act, 1984 to ascertain whether there has been any contravention of the provisions of sub-section (1) of Section 17A of the said Act, either by the appellant or the private respondent or by any third party to the present litigation in respect of the subject plot, being Dag no. 560 classified as Khal (waterbody) of Mouza – Tentulberia, J.L. No. 08, P.S. – Mathurapur, District: South 24 Parganas.
37. During such hearing, the concerned District Magistrate shall give ample opportunity of hearing and of production of relevant documents, if necessary, to all the concerned parties and thereafter take such proceeding to its logical culmination. It is expected that the entire exercise as directed above shall be concluded as expeditiously as possible, positively within four months from the date of communication of this order to the concerned District Magistrate, being the respondent no. 3 herein. In the event any contravention of Section 17A of the 1984 Act is found out, the District Magistrate shall

take appropriate consequential measures accordingly in terms of the provisions of sub-section (2) and/or sub-section (10) of Section 17A of the 1984 Act.

38. Since the respondent no. 3 herein, that is the District Magistrate, is also the Collector, as informed by learned counsel for the parties, under the West Bengal Land Reforms Act, 1955, we also simultaneously direct the respondent no. 3 to initiate an enquiry as to whether there has been any violation of Section 4C of the West Bengal Land Reforms Act, 1955 and if so found, to take appropriate steps against the offenders under Section 4D of the said Act in respect of the subject plot as well.
39. It is expected that such proceeding shall also be concluded at the earliest, within an outer limit of four months from date.
40. We make it clear that it will be open to the respondent no. 3 herein, that is, the District Magistrate/Collector, South 24-Parganas to simultaneously carry on with the said proceedings, since most of the evidence and the parties in both the proceedings will be the same.
41. However, the separate identities of the said proceedings shall be distinctly maintained by the concerned District Magistrate while doing so.
42. CAN 2 of 2025 is consequentially disposed of as well.
43. We make it clear that we have not entered into the merits of the enquires and/or investigations and/or proceedings to be undertaken by the concerned District Magistrate as per our directions and it will

be open to the said District Magistrate to take steps independently and in accordance with law as per the directions issued above.

44. The parties and all concerned shall act on the written communication of the learned Advocates for the parties, coupled with a server copy of this order, for the purpose of compliance of the directions issued hereinabove.
45. There will be no order as to costs.
46. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)