

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Prasenjit Biswas

F.M.A. 1080 of 2025

With

CAN 2 of 2025

**THE BURDWAN MUNICIPALITY
VS
SUBHAJIT DAS AND ORS.**

For the Appellant/Municipality : Mr. T. M. Siddique, Sr. Adv.,
Mr. Subhasis Bandopadhyay.

For the Respondent No. 1 : Mr. Uttiya Ray,
Ms. Anima Maiti,
Mr. Atish Santra.

For the State : Ms. Debdooti Dutta.

Judgment on : 09.03.2026

Madhuresh Prasad, J.

1. The appellant Municipality was one of the respondents before the learned Single Judge.
2. We have heard the parties.
3. The learned Senior Advocate representing the appellant submits that the learned Single Judge by the order under appeal dated 21.05.2025, saddled the Municipality with an exemplary cost of Rs.

5,00,000/- without even affording an opportunity of filing an affidavit-in-opposition.

4. The writ petitioner alleged in the writ proceeding that the Municipal authorities in connivance with the trust members, who were represented through Chairman of the Trust (Respondent No. 8), in the garb of taking steps for beautification, have started filling up/encroaching or altering the embankment of the petitioner's water area. The Hon'ble Single Judge, recorded a finding against the Municipal authorities and the police authority that they were interfering with the writ petitioner's possession. No finding was recorded against the Trust (Respondent no.8). As a consequence of such finding against the two authorities, the cost Rs. 5,00,000/-, was imposed only on the Municipal authorities.
5. It is submitted by the learned Senior Counsel for the appellant that in fact the writ petitioner had added filth to the water body and the municipal authorities were only taking steps to cleanse or maintain the cleanliness of the water body concerned.
6. It is submitted further that the authorities have acted in good faith. The two reports which were before the Hon'ble Single Judge do not reveal a factual position based on which the findings of the learned Single Judge can be sustained. The municipal Authorities have not in any way interfered with the writ petitioner's possession of the water area.
7. The learned advocate for the writ petitioner/respondent on the other hand submits that the report/s, and the photographs

annexed therewith leaves no scope for doubt to arrive at a finding that the Municipal authorities were actually altering, destroying/filling up the embankment of the water area which belongs to the writ petitioner. The Municipal Authorities have taken steps at the instance of respondent No. 8. That also, without issuing a notice as per Section 17 of the West Bengal Inland Fisheries Act, 1984. The order of the Hon'ble Single Judge, therefore, including the imposition of cost does not require any interference in the matter.

8. We have heard the learned Advocates, perused the writ record and the order of the learned Single Judge Bench. Upon going through the writ petition we find that in the writ petition, the writ petitioner made a general and omnibus allegation against "*respondent authorities*" that they are forcefully working upon the petitioner's water body in utter disregard to the Rule of Law. It is further alleged that "*in the garb of accomplishing some socially viable Government approve schemes, the respondent authorities have set forth to fill up a considerable portion of the original water body by rampantly using excavator machines and further by proposing to build fountain and pavement thereon and otherwise.*" In paragraph 5 the writ petitioner alleged that no permission was taken by the authorities from the petitioner for doing such work.
9. The writ petitioner thereafter goes on to make allegations against the Trust respondent No. 8 that they are rampantly working on the water area using excavator and other means and that they have

apparently taken control over the same. It is alleged by the writ petitioner that there is active support of the “*local body and administration*”. Similar allegations were made in paragraph 6 and 7 of the writ petition.

10. The case made out by the averments in the writ petition is a specific allegation against respondent No. 8; and general and omnibus allegations against the local body and administration of actively supporting such activity of respondent No. 8. There is no allegation whatsoever, exclusively against Municipal Authority (respondent No. 2). Even the Hon’ble Single Judge, in the order under appeal has recorded, findings, against the Municipal and police authorities holding them jointly responsible. Having recorded such findings jointly against both authorities, the learned Single Judge imposed an exemplary cost of Rs. 5 lakh exclusively against respondent No. 2, to be paid to the writ petitioner.
11. Therefore, we are of the view that imposition of penal cost by the learned Single Judge against the appellant, in absence of any specific exclusive allegation or finding against the respondent No. 2, is without any factual foundation laid in the writ petition, and otherwise also unsustainable.
12. The learned Single Judge has also considered the two reports, one submitted by the in-charge of the Purba Bardhaman Police Station and one submitted by the Chairman of respondent No. 2 Municipality. The report submitted by the Police Authority after

recording the background in which the report is being submitted contains a finding in the following terms:

“In course of physical visiting spot, it was noticed that an ongoing construction work is being carried out on the scheduled disputed land by Shri Shri Fouzdari Kali Mata Trust.”

13. The report of the Police Authority, therefore, does not even suggest that the respondent No. 2 Municipality is in any way responsible for damaging the water area, as contemplated in Section 17 A (1) (a) (b) (c) of the West Bengal Inland Fisheries Act, 1984 (hereinafter referred to as “1984 Act” for short).
14. Another report on record was the report dated 20.05.2025 submitted by the Chairman of the respondent No. 2 Municipality. As per the report of the Chairman it was the respondent No. 8 who made allegation that the owner (petitioner) of the pond was filling up the pond and creating an unhealthy atmosphere in that area. The report takes note of inconvenience being faced by the local residents and outsiders because the area nearby the pond had several doctors’ chambers and nursing home creating an unhealthy atmosphere. There was huge footfall resulting in nuisance and obstructed ingress and egress to and from the locality. Therefore, the Chairman decided to beautify the area of Kali Mata Thakurani Temple and its adjoining area along with pond, without changing its nature and character.
15. The Chairman’s report suggests that an area is being cleaned and also that the municipal authorities would take steps to replenish

the pond with fresh water, alongwith other ornamental works. Therefore, the Chairman's report also does not support the petitioner's allegation.

16. Neither the report dated 13.05.2025 submitted by the police, nor report of the Chairman dated 20.05.2025, indicates that any activity was being carried on even to suggest that the respondent No. 2 was:

- Putting to use the water area for a purpose other than fishery;
- Filling up of the water area with a view to converting it into solid land for construction of any building thereon or for any other purpose, and;
- Dividing the water area into parts so as to use any part for any purpose other than pisciculture.
- There is also no allegation regarding transfer of any part of such water area.

17. We find that there is nothing in the two reports, based on which a finding can be recorded regarding any of the above activity prohibited under Section 17A(1) of the 1984 Act being carried on by any authority, let alone respondent No.2.

18. The learned Single Judge, however, in the order under appeal has recorded a finding in the following terms:

“20. In view of the discussion made hereinabove, this Court has every reason to believe that respondent No. 2/ authority and the police authority are practically working in a concerted way in order to deprive the writ petitioner from his valuable right as enshrined under Article 300A of the Constitution of India.”

19. We find that there is no material to support such finding, either in the averments made in the writ petition, or in the two reports submitted by the Burdwan Police Station and the Chairman of Respondent No. 2.
20. In absence of any foundation either in the averments in the writ petition filed by the private respondent or in the two reports dated 13.05.2025 and 20.05.2025 there was no occasion for the writ Court to record a finding in paragraph 20 of the order under appeal that the respondent No. 2/ appellant and the police authority are working in a concerted way to deprive the writ petitioner from his valuable right under Article 300 A of the Constitution of India. The findings are stigmatic and the consequence of such finding was imposition of a penal cost quantified by the learned single Judge at Rs. 5 lakhs, upon the appellant.
21. The substance of the allegations made in the writ petition was that the respondent No. 8 was carrying on the illegal activity. The municipal Authorities were allegedly in connivance with respondent No. 8. The allegation against the appellant in substance was of allowing or secretly being involved in the illegal act of respondent No. 8. Therefore, finding regarding an illegal act by the respondent No. 8 was a pre requisite to a finding of connivance by any authority. There being no finding of illegal activity being carried on by respondent No. 8, the finding and penal consequences against

the appellant, by the learned Single Judge is without reference to any material on record, are conjectural and unsustainable.

22. The law is well settled as regards relief being granted by the High Court in exercise of writ jurisdiction under Article 226 of the Constitution of India. The High Court in exercise of such jurisdiction cannot consider grant of relief when there is no factual foundation in the averment of the writ petition, based on which such a relief can be granted. The apex Court in the case of ***Ramrao & Ors v. All India Backward Class Bank Employees Welfare Association & Ors.*** Reported in ***(2004) 2 SCC 76*** held that the High Court in exercise of writ jurisdiction could not have considered grant of relief wherefor no factual foundation existed or was laid in the pleadings of the parties.
23. In the instant case also, the finding of the learned Single Judge in the judgment under appeal, are without any foundation in the pleading; or in the two reports placed before the writ Court. The findings recorded by the learned Single Judge, therefore, are unsustainable and liable to be set aside.
24. We also considered the allegations, keeping in background the fact that it is the responsibility of the municipal authorities to look after the public convenience, health and hygiene as per the statutory mandate under the Municipal Act. We are also conscious of the fact that the 1984 Act is for a special purpose, being the maintenance of water area and inland fisheries. Section 17 A of the 1984 Act mandates that the competent authority, (the Municipal

Commissioner) shall take steps, if it is satisfied that any of the activity prohibited under Section 17A (1) is being carried on. The competent authority may also take over the management and control of such water area including embankment, or naturally or artificially depressed land holding, as the case may be, if it is of the opinion that the same is necessary for promotion of pisciculture, checking the destruction of fisheries; and prevention of environment degradation. The competent authority is vested with powers under the 1984 Act, but to be exercised only in the manner as specified in the 1984 Act. The Municipal Authority/ Competent Authority does not have unbridled power under Section 17 of the 1984 Act to take any step, without following the procedure prescribed therein. It is trite that when the statute prescribes a thing to be done in a particular manner, it can be done in that manner alone and all other modes of performance are necessarily forbidden. The law to this effect was stated by the Hon'ble Supreme Court of India, with reference to earlier judgments of the Apex Court, in the case of ***Chief Information Commissioner and Another vs. State of Manipur and Another*** reported in ***(2011) 15 SCC 1***.

25. Learned Senior Advocate representing the respondent No. 2 made a categorical statement that respondent No. 2 is not taking any steps whatsoever in respect of the writ petitioner's water area; and any steps, if required will be taken, but only in accordance with the procedural prescription in the 1984 Act. Such submission of the learned Senior Advocate for the respondent No. 2 is being recorded

in the present order. The respondent No. 2 would be bound by such submission. Therefore, no further order(s) are required to be passed in the present proceedings.

26. We have already held the finding against the respondent No. 2; and cost imposed by order of the learned Single judge to be unsustainable. The judgment of the learned Single Judge is, therefore, set aside. The appeal and writ petition stand accordingly disposed of.
27. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Madhuresh Prasad, J.)

I agree.

(Prasenjit Biswas, J.)