

(2001) 12 CAL CK 0004

Calcutta High Court

Case No: Writ Petition No. 17207 (W) of 2001

Biswananda Naskar

APPELLANT

Vs

State of West Bengal
and Others

RESPONDENT

Date of Decision: Dec. 24, 2001

Acts Referred:

- West Bengal Inland Fisheries Act, 1984 - Section 17A(10)
- West Bengal Inland Fisheries Rules, 1985 - Rule 4

Citation: AIR 2002 Cal 160 : 107 CWN 807

Hon'ble Judges: Pranab Kumar Chattopadhyay, J

Bench: Single Bench

Advocate: HIRAK MAITRA and ROY, for the Appellant; A.N. BANERJEE and ZIAUL ISLAM, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. The petitioner herein has filed the instant writ petition challenging the action of the respondent authorities in the matter of removal of earth from the lands of the petitioner and has also questioned the legality and/or validity of the steps taken by the respondent authorities in the matter of taking over the management and control of the water body in question without giving an opportunity of hearing to the petitioner. It appears from the records that a considerable part of a water body which is locally known as Daktar Bheri has been illegally filled up by earth. It has been alleged by the respondent authorities that the petitioner herein intended to convert the said, water body into a land in violation of the provisions of the West Bengal Inland Fisheries (Amendment) Act, 1993. It has been submitted on behalf of the respondent authorities that a general notice was displayed at site of 15th November, 2001 asking stoppage of the illegal work of filling up the water-body by

earth and also for restoring water-body to its original condition. According to the petitioner by natural process the area has been filled up gradually and the same is not fit for pisciculture.

2. It has been contended on behalf of the petitioner that an application has already been filed on behalf of the petitioner before the concerned Block Land and Land Reforms Officer for correction of record of rights in respect of the lands in question on the ground that the area in question has already been converted to homestead land by natural process and there is no natural course of water and according to the petitioner pisciculture is impossible in the said area at the present moment.

3. In any event it is an admitted position that the water-body has been filled up either at the instance of the petitioner or due to the natural process as suggested by the petitioner and the respondents have taken steps for restoring water-body to its original condition.

4. It has been submitted on behalf of the respondents that as no steps had been taken by the owner to restore the water-body to its original condition and as such the Fisheries Department, Government of West Bengal has taken steps for removal of the earth for the purpose of restoration of the water-body to its original condition and the competent authority under the West Bengal Inland Fisheries Act has taken over the management and control of the water-body in question owned by the petitioner herein.

5. It has been submitted on behalf of the petitioner that no notice under Sub-section (10)(a) of Section 17-A of the West Bengal Inland Fisheries (Amendment) Act, 1993 was served upon the petitioner and as such the subsequent steps taken by the respondent authorities regarding removal of earth and/ or taking over the management and control of the water-body owned by the petitioner is not sustainable in the eye of law.

6. The respondents however specifically mentioned in the affidavit-in-opposition that as the name and address of the concerned person was not readily available, a general notice was displayed at the site on 15th November, 2001 issuing direction for stop- ping of earth filling work and also for restoration of the water-body to its original condition.

7. Referring to the subsequent order dated 20th November, 2001 issued by the Competent Authority And Assistant Director of Fisheries, North 24-Parganas, the learned Counsel of the respondents submitted that the petitioner failed to restore the water-body to its original condition within the specified period as mentioned in the notice issued under Sub-section (10)(a) of Section 17-A and as such steps have been taken under Sub-section (10)(b) of the said Act and the management and control of the water body was taken over by the said competent authority in terms of the said order dated 20th November, 2001.

8. The respondent authorities specifically mentioned in the affidavit-in-opposition that the name and address of the concerned person was not readily available at the relevant point of time as a result whereof a general notice had to be displayed at the site on 15th November, 2001 and the said notice was issued under Sub-section (10)(a) of Section 17-A of the said Act. Since the name of the concerned person was admittedly not available with the respondent authorities question of serving notice on the petitioner could not and did not arise. As such it can be safely inferred that the competent authority never served requisite written notice upon the petitioners in terms of the provision of Sub-section (10) (a) of Section 17-A of the West Bengal Inland Fisheries (Amendment) Act, 1993.

9. The relevant provisions of Sub-section (10) (a) of Section 17-A of the said Act is set out hereunder :

"..... 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.

(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 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....."

10. The manner of serving the notice has also been specifically mentioned in the West Bengal Inland Fisheries Rules 1985. The Rule 4 of the said rules is set out hereunder:

".....4. Notice and manner of serving notice.-

(1) The notice as per Sub-section (1) of Section 8 shall be served on every owner and occupier of the tank inviting their objection as to the intention of such taking over the management and control of such tank. The notice shall also be served by hanging a copy thereof in a prominent place near the tank in the presence of at least two witnesses of the locality.

(2) If after due diligence, any owner or occupier is found not available, the notice may be served on an adult member of his family....."

11. From the aforesaid provision of Rule 4 it is clear that notice should be served on every owner and occupier of the tank for inviting their objection before taking over the management and control of such tank. It has also been provided in the said rule that the notice should be served by hanging a copy thereof in a prominent place near the tank. This requirement of serving notice by hanging is an additional requirement over and above serving notice personally on the owner and occupier.

12. Mr. A.N. Banerjee, learned counsel appearing on behalf of the respondent authorities submitted that the respondent authorities have duly complied with the requirement of the provisions of the Act regarding service of notice by displaying a general notice at site.

13. I am unable to accept such contention of the learned counsel of the respondents. It has been specifically provided in the said rules that notice has to be served on every owner and occupier of the tank and furthermore, the notice shall also to be served by hanging a copy thereof in a prominent place. Accordingly, the respondents are bound to serve prescribed notice under Sub-section (10)(a) of Section 17-A of the Act on every owner and occupier.

14. I am also constrained to observe that even from the affidavit of the respondents it does not appear that any effective attempt was at all made by the respondent authorities to find out the recorded owner. In this matter. Competent Authority, who is also the Assistant Director of Fisheries. North 24-Parganas, did not comply with the requisite provisions of the West Bengal Inland Fisheries (Amendment) Act, 1993 and Rules framed thereunder at all.

15. I strongly disapprove the conduct of the Competent Authority in the present case as the said competent authority being a responsible Government Officer did not care to follow the relevant provisions of the West Bengal Inland Fisheries (Amendment) Act, 1993 and Rules framed thereunder before taking over the

management and control of the water body in question.

16. In view of the aforesaid circumstances, the step taken by the respondent authorities namely, the Fisheries Department, Government of West Bengal for removal of the earth from the water-body in order to restore the water-body to its original condition is not sustainable in the eye of law. Unless the requisite notice is served by the competent authority under Sub-section (10)(a) of Section 17-A of the West Bengal Inland Fisheries (Amendment) Act, 1993 in the prescribed manner, no step can be taken by the authority in terms of Sub-section (10)(b) and Sub-section (10)(c) of Section 17-A of the said Act of 1993. Accordingly, the writ petition succeeds and the same is, therefore, allowed.

17. The respondent authorities are restrained from taking any step in the matter of taking over the management and control of the water area in question or to remove the earth in order to restore the water-body into its original condition without complying with the requirements of Sub-section (10)(a) of Section 17-A of the West Bengal Inland Fisheries (Amendment) Act, 1993 and other relevant provisions of law.

18. The order being Memo No. 1283(2) dated 20th November, 2001 Issued by the competent authority being annexure R-2 to the affidavit-in-opposition also stands quashed.

19. There will be, however, no order as to costs.

20. Let xerox plain copy of this order duly countersigned by the Assistant Registrar, (Court), be given to the learned Advocate of the respective parties on usual undertaking.