

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH,
KOLKATA**

.....
ORIGINAL APPLICATION No.108/2021/EZ

IN THE MATTER OF:

**Rasulpur Dana Welfare Society
Through its President
Having its registered office at
Village-Baidyadanga, P.O.-Rasulpur,
District-Purba Bardhaman-713151**

....Applicant(s)

Versus

**1. West Bengal Pollution Control Board
Through the Chairman,
Paribesh Bhawan, 10A, Block-LA, Sector-III,
Bidhannagar, Kolkata-700106**

**2. The Panchayat Pradhan
Nimo-I, Memari-1, Purba Bardhwan-713151**

**3. District Magistrate,
Purba Bhardhaman-713101**

**4. The Central Pollution Control Board
Through the Chairman,
Paribesh Bhawan, Maharshi Valmiki Marg,
East Arjun Nagar, Vishwas Nagar,
Shahdara, New Delhi-110032**

**5. The Block Land and Land Reforms officer,
Memari-1, Purba Bhardhaman-713146**

**6. District Land and Land Reforms Officer, Rajbari,
Purba Bhardhaman-713101**

**7. Parbati Ghosh,
Daughter of Nitya Gopal Ghosh
Village Baidyadanga, Rasulpur,
Burdawan-713151**

**8. Haru Ghosh,
Village Baidyadanga, Rasulpur,
Burdawan-713151**

**9. Anukul Biswas,
Village Baidyadanga, P.O. Rasulpur,
P.S Memari, District-Burdawan-713151**

....Respondent(s)

COUNSEL FOR APPLICANT:

Ms. Paushali Banerjee, Advocate

COUNSEL FOR RESPONDENTS:

**Mr. Dipanjan Ghosh, Advocate for R-1,
Mr. Sibojyoti Chakraborty, Advocate for R-3, 5 & 6,
Mr. Rajib Ray, Advocate for R-4,
Mr. Somnath Ghosh, Advocate a/w
Ms. Tapti Sarkar, Advocate for R-7 & 8,
Mr. Sandip Ghosh, Advocate a/w
Mr. Partha Sarkar, Advocate &
Ms. Mousaumi Chatterjee, Advocate for R-9**

JUDGMENT

PRESENT:

HON'BLE MR. JUSTICE B. AMIT STHALEKAR (JUDICIAL MEMBER)

HON'BLE MR. SAIBAL DASGUPTA (EXPERT MEMBER)

**Reserved On: - 27th July, 2022
Pronounce On: - 1st August, 2022**

1. Whether the Judgment is allowed to be published on the net? **Yes**
2. Whether the Judgment is allowed to be published in the NGT Reporter? **Yes**

JUSTICE B. AMIT STHALEKAR (JUDICIAL MEMBER)

Heard the learned Counsel for the parties and perused the documents on record.

2. This Original Application has been filed by the Applicant alleging that Respondent Nos. 7, 8 & 9 are destroying the two ponds in the Dag No. 463 and Dag No. 25, J.L. No. 135, Mouza-Baidyadanga under Memari-I Block, Rasulpur in Purba Bardhaman and are converting the two ponds into garbage dumps. It is further alleged that unauthorized and illegal constructions are being raised by them in collusion with Respondent No. 2, the Panchayat Pradhan Nimo-1, Memari-I, Purba Bardhaman, destroying the two ponds.

3. Notices were issued to the Respondents and respondents have filed their affidavits.

4. A Report dated 10.12.2021 has been filed by the Block Land and Land Reforms Officer, Purba Bardhaman, Memari-I, Memari, Purba Bardhaman along with the affidavit dated 14.12.2021 of the Respondent No.6, Additional District Magistrate & District Land and Land Reforms Officer, Purba Bardhaman. This letter which is addressed to the Additional District Magistrate and District Land and Land Reforms Officer, Purba Bardhaman, confirms that eight persons had tried to fill up the Plot No. 463 of Mouza-Baidyadanga, J.L. No. 135 and FIR's have been lodged against them. It was also noted in the report that on enquiry of Plot No. 25 of Mouza-Baidyadanga, J. L. No. 135, it has been found that one Anukul

Biswas was attempting to fill the western side of the pond and notice had been issued to him earlier on 04.07.2016 to stop such work. It is also stated that there is a Kachcha Road on the western side of the pond and the remaining area has been filled with garbage and bushes. This confirms the allegations made by the Applicant. However, the report of the Block Land and Land Reforms Officer, Purba Bardhaman, was scanty in information in as far as the total area of the pond; how much of the area has been filled up with garbage and bushes and how much area has been utilized for construction of Kachcha Road is not stated. The area encroached is not clearly mentioned. Since, this report did not disclose the complete facts and also whether penalty/fine had been imposed on the encroachers over the waterbody and whether encroachers have been removed, the Tribunal directed the District Magistrate, Purba Bardhaman to file a fresh affidavit.

5. In response, affidavit dated 24.05.2022 has been filed by Respondent No.5, District Magistrate, Purba Bardhaman, stating therein that in pursuance of the letter of Block Land & Land Reforms Officer, Memari-I, an enquiry was conducted by the Revenue Inspector and as per the enquiry report a notice was issued to Anukul Biswas (Respondent No.9) to stop filling the pond in question. Another enquiry was conducted on 31.03.2022 and enquiry report dated 01.04.2022 has been submitted, from which it is seen that the total area of the Plot No.25 is 0.44 acres; a waterbody exists on 0.36 acres and 0.06 acres of the area at the eastern side of the pond is filled up with earth and is used as

'Pukur Par' and road, and 0.02 acres of area on the western side is filled up and is being used as a Kachha road. It is stated that the recorded Raiyat namely Amit Kumar Ganguly, Ashim Kumar Ganguly, Ashish Kumar Ganguly and Asit Kumar Ganguly were issued notices under Section 4C (5) of the West Bengal Land Reforms Act, 1955 dated 17.05.2022, for restoration of the waterbody but the Revenue Inspector was informed that the recorded raiyats had already sold the land to others namely Sujit Ghosh, Pankaj Gayan and Pratima Biswas (since deceased) who were issued notices under Section 4C (5) of the West Bengal Land Reforms Act, 1955 dated 18.05.2022, for restoration of the waterbody within 2 days. Another enquiry was conducted by the Revenue Inspector, Nimo-I on 19.05.2022 and as informed by the Additional District Magistrate & District Land & Land Reforms Officer, Purba Bardhaman vide his letter dated 21.05.2022, the total area of Plot No.463 is 0.61 acres out of which 0.21 acres has been filled up and it is found that there were six pucca constructions. It is stated that: -

- (a) The recorded raiyats of Khatian No.539 of the said plot namely Bani Chandra W/o Sujit Chandra has a pucca house over 1,000 sq. ft. area.
- (b) The recorded raiyat of Khatian No. 756, Uttam Das Gupta S/o Dijendralal Dasgupta has one pucca house over 858 sq. ft. area.

- (c) A two storied building was found constructed over 2659 sq. ft. area made by one Monojit Ghosh but he is not a recorded raiyat.
- (d) One Gouranga Ghosh, Biplab Bairaggya and Dibakar Ghosh S/o Haru Ghosh who were also not recorded raiyats had made pucca houses over the area of 1365 sq. ft., 1159 sq. ft. and 858 sq. ft. respectively.
- (e) In the North-Eastern side there is also a road encroachment over 342 sq. ft. area and garbage was found covering an area of 858 sq. ft. and the remaining 0.40 acre area was found to be a waterbody filled with water hyacinths.

6. It is also stated by the District Magistrate that proceedings have been started against some persons for allegedly filling up the waterbody known as 'Shib Pukur' vide Memari P.S. F.I.R. No.511/2016 dated 13.08.2016 under the provisions of Section 4D of the West Bengal Land Reforms Act, 1955 and in the said case Charge sheet has already been submitted and the case is pending for adjudication in the court of Judicial Magistrate, 2nd Court, Bardhaman. It is further stated that notices were issued to:

- 1) Sri Dibakar Ghosh S/o Haradhan Ghosh;
- 2) Sri Uttam Dasgupta;
- 3) Smt. Bani Ghosh;
- 4) Sri Parbati Ghosh S/o Nityagopal Ghosh;
- 5) Sri Ramesh Ghosh;
- 6) Sri Samaresh Ghosh;

7) Sri Gouranga Ghosh and

8) Smt. Shyamali Boiragi W/o Biplab Boiragi

They were directed to restore the waterbody of plot no.463, Mouza-Baidyadanga, J.L. No.135 within 7 days.

7. Along with the affidavit of the District Magistrate, Purba Bardhaman, a letter dated 23.05.2022 of the Block Land & Land Reforms Officer, Memari-I has been filed as Annexure-R-1, wherein it is stated that in the proceedings under Section 4C (5) of the West Bengal Land Reforms Act, 1955, Anukul Biswas, Pankaj Gayen and one Sujit Ghosh appeared before the said authority in the proceedings and submitted a deposition they will restore the actual character of the land within 7 days. Accordingly, time of 7 days was granted to them in the proceedings under Section 4C (5) of the West Bengal Land Reforms Act, 1955.

8. Thus, from the documents on record, we find that the admitted position that emerges is that the waterbody recorded in Dag No.463 and Dag No.25, J.L. No.135, Mouza Baidyadanga, under Memari-I Block, Rasulpur, Purba Bardhaman have been illegally occupied by the aforesaid persons.

9. The Respondent No.7, Parbati Ghosh, in her affidavit dated 05.01.2022 has stated that although the classification of the land of the two ponds is mentioned as 'Pukur' in the Land Revenue Record, the ponds are unusable for fish farming or for aquatic animals but that the ponds are not breeding ground of mosquitoes and flies.

10. The Respondent No.8, has also filed a counter-affidavit dated 25.04.2022 sworn by one Dibakar Ghosh also known as Har Ghosh S/o Taraknath Ghosh stating therein that he is neither the owner nor in possession of the land in question and he has no connection with regard to the Dag No.463 and Dag No.25, Mouza-Baidyadanga, under Memari-I Block, Rasulpur, Purba Bardhaman. Though in paragraph 6 of his affidavit he admits that there are ponds in Dag No.463 and Dag No.25, J.L. No.135, Mouza-Baidyadanga, under Memari-I Block, Rasulpur, Purba Bardhaman, though he has denied that the said ponds have been filled with garbage.

11. It is however, surprising that in paragraph-4, II of his affidavit the deponent, Respondent No.8, has stated that since his birth he used to reside at the addresses mentioned in the cause title permanently which is other than the said plot of land Dag No.463, Mouza-Baidyadanga, J.L. No.135, Khatian No.148, Memari.

12. The Respondent No.9 in his affidavit dated 15.07.2022 has stated that he is a co-owner of the property, J.L. No.135, Plot No.25, total area of land 44 Satak, Nature of land is Pukur and this land had been purchased by his late wife Pratima Biswas. It is also stated that in the C.S. Record of Rights, Dag/Plot No.25 is recorded as 'Sona' although in the Land Revenue Records of Rights the same land is recorded as 'Pukur'.

13. From the above, analysis and scrutiny of records, we find that there is absolutely no dispute that the plots in question are recorded as 'Pukur' (waterbody) in the Land Revenue Records which

is borne out from the documents filed as Annexure-A to the original application as well as the averments of Respondent Nos.7, 8 & 9, and Plot No.463 is also recorded as 'Pukur'. The Report of the Block Land & Land Reforms Officer clearly establishes that the Respondent No.9 had attempted to fill up the Western side of the pond and he was issued a notice on 04.07.2016 to stop the same. It is also established that part of the Plot Nos.463 and 25 have been converted to a Kachcha road on the Western side and the remaining area has been filled up with garbage and bushes.

14. One more affidavit dated 26.07.2022 has been filed by the District Magistrate & Collector, District Purba Bardhaman, wherein it is stated that the Block Land & Land Reforms Officer Memari-I vide his letter dated 21.07.2022 informed the District Magistrate, Purba Bardhaman that as per the enquiry report dated 27.06.2022 submitted by Revenue Inspector, Nimo-I, with respect to Plot No.25, Mouza-Baidyadanga, J.L. No.135, that presently the Plot No.25, has been restored to its actual classification i.e. 'Pukur'. It is also stated that with respect to the Plot No.463, Mouza-Baidyadanga, J.L. No.135, the Block Land & Land Reforms Officer, Memari-I, Bardhaman had vide letter dated 21.07.2022 inter alia informed the District Magistrate, Purba Bardhaman that the total area of Plot No.463 is 0.61 acres, out of which 0.21 acres has been filled up and six pucca constructions were found to have been made thereon and in the North-Eastern side there is also an encroachment of over 342 sq. ft. area and some garbage found over 858 sq. ft. area and the rest 0.40 acres area is filled with water but the same is covered with

water hyacinth. It is further stated that from the previous records as available in the office it appears that after getting complaint of illegal filling up of waterbody an enquiry was conducted by the Revenue Inspector on 12.08.2016, over the said plot of land and as per report of the Revenue Inspector a notice for restoration of waterbody was served upon eight persons vide Memo No.752, dated 17.08.2016, and thereafter, as per provisions of Section 4D of the West Bengal Land Reforms Act, 1955 First Information Reports (F.I.Rs.) have been lodged with the Officer-in-Charge, Memari Police Station vide office memo No.808-814 dated 30.08.2016 and presently the said case is pending adjudication in the Trial Court.

15. The Hon'ble Supreme Court in (2011) 11 SCC 396, *Jagpal Singh & Ors. vs. State of Punjab & Ors.*, in Paragraph 16, 17, 18 & 22 has held as under: -

“16. The present is a case of land recorded as a village pond. This Court in Hinch Lal Tiwari vs. Kamala Devi, AIR 2001 SC 3215 (followed by the Madras High Court in L. Krishnan vs. State of Tamil Nadu, 2005 (4) CTC 1 Madras) held that land recorded as a pond must not be allowed to be allotted to anybody for construction of a house or any allied purpose. The Court ordered the respondents to vacate the land they had illegally occupied, after taking away the material of the house. We pass a similar order in this case.

17. In this connection we wish to say that our ancestors were not fools. They knew that in certain years there may be droughts or water shortages for some other reason, and water was also required for cattle to drink and bathe in etc. Hence they built a pond attached to every village, a tank attached to

every temple, etc. These were their traditional rain water harvesting methods, which served them for thousands of years.

18. Over the last few decades, however, most of these ponds in our country have been filled with earth and built upon by greedy people, thus destroying their original character. This has contributed to the water shortages in the country.

22. Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorized occupants of Gram Sabha/Gram Panchayat/Poramboke/Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession. Regularization should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land.”

16. In (2019) 20 SCC 581, *Jitender Singh vs. Ministry of Environment & Ors.*, the Hon'ble Supreme Court in Paragraph 23 has given the following directions: -

“23. For the reasons stated above, we allow the appeal and set aside the impugned order passed by the NGT. The allotment of

all waterbodies (both ponds and canals), including Khasra Nos.552 and 490 to Respondent No.6, or any other similar third party in village Saini, tehsil Dadri, district Gautam Budh Nagar is held to be illegal and the same is hereby quashed. Since this Court has on 15.07.2019 already directed the parties to maintain status quo, Respondent Nos.1 to 5 shall restore, maintain and protect the subject-waterbodies in village Saini. Respondents are further directed to remove all obstructions from the catchment area through which natural water accumulates in the village ponds, all within a period of three months.”

17. In (2001) 6 SCC 496, *Hinch Lal Tiwari vs. Kamala Devi & Ors.*, the Hon'ble Supreme Court held as under: -

“It is important to notice that the material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. The Government, including the Revenue Authorities i.e. Respondents 11 to 13, having noticed that a pond is failing in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large. Such vigil is the best protection against knavish attempts to seek allotment in non-abadi sites. For the aforementioned reasons, we set aside the order of the High Court, restore the order of the Additional Collector dated 25-2-1999 confirmed by the Commissioner on 12-3-1999. Consequently, Respondents 1 to 10 shall vacate the land, which was allotted to them, within six months from today. They will, however, be permitted to take away the material of the houses which they have constructed on the said land. If Respondents 1 to 10 do not

vacate the land within the said period the official respondents i.e. Respondents 11 to 13 shall demolish the construction and get possession of the said land in accordance with law. The State including Respondents 11 to 13 shall restore the pond, develop and maintain the same as a recreational spot which will undoubtedly be in the interest of the villagers. Further it will also help in maintaining ecological balance and protecting the environment in regard to which this Court has repeatedly expressed its concern. Such measures must begin at the grass-root level if they were to become the nation's pride.”

18. The Hon'ble Supreme Court in (2018) 13 SCC 390, *National Institute of Medical Science University Rajasthan & Anr. vs. State of Rajasthan & Ors.*, has approved the view taken by the Hon'ble Supreme Court in *Jagpal Singh (supra)*. Paragraphs 41, 42 & 43 of the judgment which read as under: -

“41. This view was followed and endorsed in Jagpal Singh in the following words:

“In M.I. Builders (P) Ltd. v. Radhey Shyam Sahu the Supreme Court ordered restoration of a park after demolition of a shopping complex constructed at the cost of over Rs. 100 crores.

In Friends Colony Development Committee v. State of Orissa¹ this Court held that even where the law permits compounding of unsanctioned constructions, such compounding should only be by way of an exception. In our opinion this decision will apply with even greater force in cases of encroachment of village common land. Ordinarily, compounding in such cases should only be allowed where the land has been leased to landless labourers or members of Scheduled Castes/Scheduled Tribes, or the land is

¹(2004) 8 SCC 733

actually being used for a public purpose of the village e.g. running a school for the villagers, or a dispensary for them.

In many States government orders have been issued by the State Government permitting allotment of Gram Sabha land to private persons and commercial enterprises on payment of some money. In our opinion all such Government orders are illegal, and should be ignored.”

42. Keeping in mind the view expressed by this Court in these and other decisions, we also direct the demolition of the unauthorized construction by or on behalf of NIMS on Khasra No. 526. The demolition should be carried out by the Jaipur Development Authority with the assistance of the State Government and the Collector of Jaipur District on or before 30th November, 2017. The Director General of Police of Rajasthan is directed to render all necessary assistance in the process of demolition. The cost of demolition and removal of rubble etc. will be at the expense of NIMS. Any pending application made by NIMS for compounding the unauthorized construction or regularizing it stands superseded in view of our decision.

43. We are giving these peremptory time bound directions in view of the fact that the learned Single Judge felt it appropriate, while dismissing the writ petitions filed by NIMS, to grant interim relief limited to only 7 days. More importantly, we are of opinion that the possibility of water being now made available to Jaipur City in due course of time takes far greater precedence over the interests of NIMS and those associated with it.”

19. For reasons aforesaid, we dispose of the original application and direct the District Magistrate, Purba Bardhaman to take all steps for removal of encroachments from Plot No.463 and Plot

No.25, J.L. No.135, Mouza-Baidyadanga, under Memari-I Block, Rasulpur, Purba Bardhaman within one month and restore the area of 0.61 acres of the Plot No.463 and area 0.44 acres of the Plot No.25, J.L. No.135, under Memari-I Block, Rasulpur, Purba Bardhaman to its original form as waterbody and take steps for removal of water hyacinths and file affidavit of compliance within three months i.e. by 31st October, 2022.

20. With the aforesaid directions, the Original Application No.108/2021/EZ is disposed of.

21. There shall be no order as to costs.

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B. AMIT STHALEKAR, JM

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SAIBAL DASGUPTA, EM

Kolkata
August 01, 2022
Original Application No.108/2021/EZ
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NGT