

(2024) 01 CAL CK 0024
In the Calcutta High Court
Case No : M.A.T. No. 932 Of 2022

Anuradha Sen

APPELLANT

Vs

Kolkata Municipal Corporation & Ors.

RESPONDENT

Date of Decision : 09-01-2024

Acts Referred:

Kolkata Municipal Corporation Act, 1980 — Section 39, 183
West Bengal Inland Fisheries Act, 1984 — Section 1, 1(2), 1(3), 3, 4, 5, 6, 7, 9, 12,
13, 16, 17A, 17(1), 20, 21, 22, 23
West Bengal Inland Fisheries (Amendment) Act, 1993 — Section 1(2)
West Bengal General Clauses Act, 1895 — Section 6
General Clauses Act, — Section 5
West Bengal Land Reforms Act, 1955 — Section 4C

Citation : (2024) 01 CAL CK 0024

Hon'ble Judges : Arijit Banerjee, J; Apurba Sinha Ray, J

Bench : Division Bench

Advocate : Suddhasatva Banerjee, Pramit Bag, Ashis Kumar Mukherjee,
Saurabh Prasad, Anirban Gope, Sourajit Dasgupta, Abhinav Rakshit, Ashok Kr.
Banerjee, Arijit Dey, Anirban Ray, Raja Saha, Debraj Sahu

Final Decision : Disposed Of

Judgement

Arijit Banerjee, J

1. This appeal is directed against a judgment and order dated June 17, 2022, whereby the writ petition of the appellant herein, being W.P.A. 10390 of 2022, was disposed of by a learned Judge of this Court.

2. The appellant/writ petitioner approached the learned Single Judge with the following case:-

“(i) The writ petitioner and her husband Ganesh Chandra Sen, since deceased, purchased by two registered conveyances dated July 17, 2019 and July 24, 2019, Municipal Premises Nos. 93 and 111 Bhupen Roy Road, Behala, Kolkata – 700 034 (hereinafter referred to as “the said premises”).

(ii) The writ petitioner's husband passed away on May 24, 2022.

(iii) Mutation of the said premises has not yet been effected in the name of the writ petitioner. She resides permanently at "Ananda Niketan" 58A Diamond Harbour Road, P.O. Joka, P.S. Thakurpukur, Pin- 700104, District 24 Parganas (South), which is about 8 km. away from the said premises.

(iv) On or about June 9, 2022, the petitioner received telephonic information from certain persons in the locality where the said premises are situated, that the local councilor of Kolkata Municipal Corporation (in short 'KMC'), along with his men and associates, had forcibly entered the said premises by partially demolishing the boundary wall and had started digging the soil with excavators.

(v) On that very day, the petitioner visited the said premises and found that work of excavation of soil was going on there.

(vi) The petitioner rushed to the Behala Police Station to lodge a complaint. However, the complaint was not entertained by the police official who held out that since it was official work of KMC, they would not entertain any complaint.

(vii) Neither the petitioner nor her husband during his life time received any notice or intimation from any authority, far less the KMC."

3. In the writ petition, inter alia, the following prayers were made:-

"b) A writ of/in the nature of Mandamus and /or order or orders and/or direction or directions of like nature commanding the respondents and their men, agents or servants and each of them to forthwith vacate the premises no. 111, Bhupen Roy Road, Ward no 120(KMC), Police Station; Behala, Kolkata – 700034 and Municipal Premises No.93, Bhupen Roy Road, Ward No 120(KMC), Police Station; Behala, Kolkata – 700034 co-owned by your petitioner upon making good the damage caused by them before forcibly entry and digging of the soil;

c) A writ of/in the nature of Mandamus and/or order or orders and/or direction or directions of like nature commanding the respondents and their men, agents or servants and each of them to desist from in any manner entering upon the properties at premises no.111, Bhupen Roy Road, Ward no. 120(KMC), Police Station: Behala, Kolkata – 700034 and Municipal Premises No. 93, Bhupen Roy Road, Ward No 120 (KMC), Police Station: Behala, Kolkata – 700 034 or from disturbing the peaceful possession of the petitioner in the said premises in any manner whatsoever;

d) Rule NISI be made absolute if no cause or insufficient cause is shown by the respondents;

e) Any further change of any nature whatsoever to and in respect of the premises no. 111, Bhupen Roy Road, Ward No. 120(KMC), Police Station: Behala, Kolkata – 700 034 and Municipal Premises No. 93, Bhupen Roy Road, Ward No. 120(KMC), Police Station: Behala, Kolkata – 700 034 co-owned by your petitioner till the disposal of this application;

f) Injunction directing the respondents to forthwith remove their men and machine (Excavator) from the properties at premises no. 111, Bhupen Roy Road, Ward No. 120(KMC), Police Station: Behala, Kolkata – 700 034 and Municipal, Premises no. 93, Bhupen Roy Road, Ward no. 120(KMC), Police Station: Behala, Kolkata – 700 034.

g) A fit and proper person be appointed as Special Officer to ensure that change, loss, damage or deterioration whatever caused to the properties at premises no. 111, Bhupen Roy Road, Ward no. 120 (KMC), Police Station: Behala, Kolkata – 7000 034 and Municipal Premises no. 93, Bhupen Roy road, Ward no. 120 (KMC), Police Station: Behala, Kolkata – 700034 co-owned by your petitioner till the disposal of this application;

h) Special Officer appointed by this Hon'ble Court be directed to file a report regarding existing nature and character of the properties situated at premises no. 111, Bhupen Roy Road, Ward no. 120(KMC), Police station: Behala, Kolkata – 700 034 and Municipal Premises no. 93, Bhupen Roy Road, Ward no. 120(KMC), Police Station: Behala, Kolkata – 700 034."

4. When the writ petition was first moved, an order dated June 10, 2022, was passed by the learned Single Judge, the relevant portion whereof reads hereunder:-

"Learned Senior Advocate representing the Kolkata Municipal Corporation submits that the land is a Tank.

Learned Advocate seeks time for taking proper instruction in the matter.

In view of the same, let the matter appear in the list once again on 14th June, 2022. Specific instruction shall be taken whether any notice was given to the petitioner prior to entering upon her land and excavating the same.

Instruction shall also be taken as to whether the land in question is a Tank or not.

As an interim measure, till the matter is decided by the Court, upon receiving further instruction from the Kolkata Municipal Corporation, the men and agents of the Kolkata Municipal Corporation, are restrained from entering into the aforesaid two premises till 17th June, 2022 or until further order whichever is earlier."

5. When the matter next appeared before the learned Judge on June 14, 2022, an order was recorded, the relevant portion whereof reads as follows:-"It appears from the document annexed at page 144 of the writ petition that the nature of use of the premises No.93, Bhupen Roy Road, Ward No.120, (KMC), Police Station Behala, Kolkata-700 034 is 'land plus tank'.

Learned Advocate for the petitioner submits that the sale deed in favour of the petitioner in respect of the said property does not mention about the existence of a tank.

The aforesaid document records the name of the sellers of the property in question. The name of the petitioner is yet to be mutated in the records maintained by the Kolkata Municipal Corporation.

It has been submitted by the learned Senior Advocate representing the Kolkata Municipal Corporation that the Corporation was simply taking steps to restore the tank to its original condition.

The provision of law according to which the restoration work is undertaken by the Corporation be shown before the Court on the next date.”

6. The matter was next listed before the learned Judge on June 17, 2022. On behalf of KMC it was submitted that the petitioner had filled up a water body at the said premises. The powers, functions and duties of the KMC, under Section 39 of the KMC Act, 1980 and Section 17A of the West Bengal Inland Fisheries Act, 1984 required KMC to take steps to restore the water body to its original state. Accordingly, action had been taken by KMC. It was further submitted that since the petitioner has not mutated her name in the records of KMC in respect of the said premises, nor intimated to KMC that she along with her husband had purchased the aforesaid premises, prior notice could not be served on her.

7. The learned Judge noted that the records of KMC mentioned that premises no. 93, Bhupen Roy Road comprising an area of 11 Cotthas and 23 Sq. ft. is recorded as “land plus tank”. The area of the land or the dimension of the tank is not mentioned in the records.

8. The writ petitioner submitted before the learned Judge that she and her husband had purchased only 8 Cotthas 8 Chittaks (more or less) of land at the said premises. The sale deed does not mention any water body. She is not aware as to whether or not any water body existed at the said premises.

9. The learned Judge disposed of the writ petition with the following observations and directions:-

“In view of the above, this Court thinks it fit to direct the men and agents of the Kolkata Municipal Corporation to make a physical inspection of the property in question to ascertain as to the position where the water body actually existed.

The petitioner will be entitled to produce all evidences in support of the nature of the land at the time of inspection.

By consent of the parties, the date of inspection is fixed on 25th June, 2022 at 12 noon. It is made clear that no further notice of inspection is required to be issued by the Kolkata Municipal Corporation to the petitioner as the date of inspection is being fixed upon consent of the parties.

The inspection report shall be prepared and served upon the petitioner or her authorized representative within a week thereafter.

If it transpires from the inspection report that the portion of the land which the

petitioner purchased comprised of the water body, then the Kolkata Municipal Corporation shall direct the petitioner to take steps for restoring the water body to its previous state 3 within the time to be specified by the Kolkata Municipal Corporation.

Till a formal decision is taken and communicated by the Kolkata Municipal Corporation to the petitioner about the actual position with regard to existence of the water body and further steps to be taken in the matter, the parties are directed to maintain status quo as on date till a week after the order is communicated to the petitioner.”

10. Being aggrieved by the said order, the writ petitioner has come up in appeal.

11. When the appeal was admitted, a Coordinate Bench passed an order dated June 24, 2022, the relevant portion whereof reads as follows:-

“Because of paucity of time, it was not possible for us to go into the depth of the matter today. However, the inspection that has been directed by the learned Single Judge be carried out on the date and the hour fixed by the Corporation Officers in the presence of the appellant’s representatives. An inspection report shall be filed before us on the next date. We make it clear that no further action will be taken by the Corporation Officers in respect of the property in question till further orders.”

12. On June 29, 2022, the inspection report was filed in Court by KMC.

13. On July 4, 2022, when the matter was again listed, liberty was granted to the appellant to file exception to KMC’s report. Direction was given for exchange of affidavits in connection of the stay application. It was further directed that status quo “as of date as regards nature and character of the land in question be maintained by all the parties until further orders.” Thereafter on diverse dates, time for exchange of affidavits was extended. On two occasions, i.e., August 1, 2022 and August 8, 2022, adjournment was granted on the prayer of the appellant.

14. Thereafter from time to time the matter was heard and finally it was agreed upon that the appeal itself should be heard out. On December 2, 2022, direction was given for filing of paper books. The interim order that had been extended from time to time was directed to continue till the disposal of the appeal.

15. At the hearing of the appeal a preliminary objection as to maintainability of the appeal was taken by Mr. Ashok Kumar Banerjee, learned Senior Advocate representing KMC. He argued that the order impugned in this appeal was passed by consent of the parties. Hence, no appeal is maintainable against such order.

16. Mr. Suddhasatva Banerjee, learned Advocate for the appellant argued that consent was given only as regards the date of inspection. No consent was given for ascertainment of the nature and character of the land in question by KMC. Hence, the appeal is maintainable. The learned Judge ought not to have directed

the KMC officers to ascertain as to where the water body actually existed. Such a direction pre-supposed that a water body in fact existed at the said premises, although, presently there is no sign of any water body at the said premises. The appellant did not fill up any pond or water body.

17. It is very difficult to accept the appellant's contention that she did not consent to physical inspection of the property in question being held by the KMC officials and only consented to the date of inspection. Why would she agree to the date of inspection if she fundamentally was opposed to such inspection? Obviously because she did not find physical inspection to be objectionable, she agreed to the date and time of inspection of the said premises.

18. However, the appellant may well be aggrieved by the learned Judge disposing of the writ petition without granting her prayers in the writ petition. There is no indication in the order that the appellant had agreed to the learned Judge disposing of the writ petition with only the directions contained in the impugned order. It was the learned Judge's decision to dispose of the writ petition by the impugned order with the directions contained in that order. It further does not appear that apart from consenting to the local inspection and the date and time of such inspection, the appellant consented to the other portion of the impugned order.

19. Accordingly, we are of the view that this appeal is maintainable.

20. The appellant's learned Counsel raised a point of fundamental importance, i.e., whether or not the Municipal Commissioner could exercise powers under Section 17A of the West Bengal Inland Fisheries Act, 1984 (in short the 1984 Act)? Learned Counsel argued that the West Bengal Inland Fisheries (Amendment) Act, 1993, (in short the 1993 Amendment Act), which inserted Section 17A in the 1984 Act by way of insertion of Chapter IIIA, was never notified and therefore, Section 17A never came into force. Section 17A is a very long section and it is not necessary to set out the same here. In essence that section provides that no water area existing on the relevant date, measuring 5 Cottahs or more and which is capable of being used as fishery, or any naturally or artificially depressed land holding measuring 5 Cottahs or more, which retains water for a minimum period of 6 months in a year, shall not be put to any use other than fishery, as may result in abolition of fisheries.

21. The predominant purpose of the provision is to conserve, develop, propagate, protect and exploit Inland Fisheries in West Bengal. The section also empowers the competent authority, who is the municipal commissioner, to take steps to achieve the aforesaid object, if necessary by restoring filled up water bodies if the same come within the purview of that Section.

22. Since a very important point was raised by learned Counsel for the appellant, we had requested learned Advocate General for the State, to assist this Court. The State produced copy of a notification dated June 16, 1994, published in The Calcutta Gazette, Extraordinary, by order of the Governor. The notification reads

as follows:-

"In exercise of the power conferred by sub-section (2) of Section 1 of the West Bengal Inland Fisheries (Amendment) Act, 1993, the Governor is pleased hereby to appoint the 16th day of June, 1994, as the date on which the said Act shall come into force."

23. Although the original notification could not be produced, we see no reason to doubt the authenticity of the copy of the notification produced before us. It thus appears to us that the 1993 Amendment Act was brought into force June 16, 1994.

24. Learned Counsel for the appellant next argued that even assuming that by issuing the notification dated June 16, 1994, the Amendment Act of 1993 was brought into force, the effect of that would be that Chapter IIIA would stand inserted in the 1984 Act. Section 17A is a part of Chapter IIIA. It was necessary to issue a separate notification for bringing into force Chapter IIIA of the 1984 Act.

25. There being no such notification, chapter IIIA including Section 17A never came into force. In this regard, learned Counsel referred to Section 1(3) of the 1984 Act which is to the effect that the Act then "shall come into force on such date as the State Government by notification may appoint, and different dates may be appointed for different provisions of this Act". Learned Counsel referred to a notification dated November 12, 1998, bringing into force Sections 3 to 7, 9, 12, 13, 16 and 20 to 23 of the 1984 Act. He submitted that there is no such notification for Chapter IIIA of the Act. In this connection learned Counsel also referred to Section 6 of the West Bengal General Clauses Act 1895, Section 5 of the General Clauses Act 1897 and the decision of the Hon'ble Supreme Court in the case of State of Orissa v. Chandrasekhar Singh Bhoi, ETG., reported at 1969 (2) SCC 334. We shall revert to these, if necessary later in this judgment.

26. The alternative submission of learned Counsel for the appellant was that even assuming that Section 17A became operational on June 16, 1994, by virtue of a notification of that date published in the Calcutta Gazette Extra ordinary, Section 17A is not applicable to the facts of the present case. There is no evidence on record to show that the concerned land is capable of being used as fishery or is a naturally or artificially depressed land holding measuring 5 kattahas or more which retains water for a minimum period of 6 months in a year. In this connection Section 17A(1) of the 1984 Act may be noted.

"17A. (1) No person shall__

a) Put any water area including embankment measuring 5 cottahs or 0.035 hectre or more, which is capable of being used as fishery, or any naturally or artificially depressed land holding measuring 5 cottahs or 0.035 hectare or more, which retains water for a minimum period of six months in a year, to such use, other than fishery, as may result in abolition of fishery, or

b) fill up any water area 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, or

c) divide any water area including embankment or naturally or artificially depressed land holding as aforesaid into parts so as to make any such part measure less than 5 cottahs or 0.035 hectare 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."

27. Learned Counsel submitted that neither in the affidavit of KMC filed in this appeal nor anywhere else there is anything on record to show that the land in question is capable of being used as a fishery or for Pisciculture. Without coming to such a finding, KMC could not have invoked Section 17A of the 1984 Act. In this connection, reliance was placed by learned Counsel on the decision of 2 learned Single Judges of our Court in two cases, namely, *Concern for Calcutta and others v. State of West Bengal and Ors.*, reported at (1996) 1 CHN 123 and *Bajranglal Sarda & Ors., State of West Bengal & Ors.*, reported at (2010) 4 CHN 125 (Cal), I will revert to these decisions later in this judgment.

28. Appearing for the State Government, learned Advocate General submitted that Section 1(3) of the 1984 Act is a legislative exercise leaving it to the discretion of the Government to appoint a date for bringing into force the 1984 Act or different dates for bringing into force different provisions of that Act. However, the Amendment Act of 1993 is a separate legislative exercise. Section 1(2) of the 1993 Amendment Act reads:- "it shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint".

29. Learned Advocate General submitted that there is no provision like Section 1(3) of the 1984 Act, in the 1993 Amendment Act. Hence, as soon as the notification of June 16, 1994, was published in the Official Gazette of that date, the 1993 Amendment Act and all its provisions immediately came into force. Thus, Section 17A of the 1984 Act came into force on June 16, 1984. In this connection learned Advocate General relied on the following two decisions of Coordinate Benches of this Court:- (i) *Bhaswati Roy Pandey & Ors. v. The State of West Bengal & Ors.*, reported at (2004) 2 Cal LJ 123 para 7. (ii) *State of West Bengal v. Sanjeevani Projects (P) & Ors.*, reported at (2006) 1 CHN 241.

30. Learned Senior Counsel appearing for KMC argued that the appellant cannot travel beyond her own pleadings in the writ petition. It is admitted in the writ petition that the appellant or her late husband did not give notice of transfer of the concerned property in their favour. KMC had no knowledge that the appellant and/or her husband acquired the said property by purchase. Section 183 of the Kolkata Municipal Corporation Act, 1980, requires that notice of all transfers be given to KMC. Since KMC was not put on notice in the present case, no prior intimation could be given to the appellant before KMC entered the premises in question. This KMC had to do in discharge of its statutory duty to remedy the

mischievous of a water body having been filled up contrary to the law of the land. In this connection, learned Senior Counsel relied on the decision of the Hon'ble Supreme Court in the case of V. K. Majotra & Ors. v. Union of India & Ors., reported at (2003) 8 SCC 40. paragraph 8.

31. On the point of whether or not Section 17A of the 1984 Act has come into operation, learned Senior Counsel adopted the submission made by learned Advocate General on behalf of the State.

Court's view

32. I have carefully considered the rival contentions of the parties. I am unable to accept the contention urged on behalf of the appellant that by the notification dated June 16, 1994, Chapter III A of the 1984 Act was merely brought into the statute book but it did not become operational. To make it operational, a separate notification was required to be issued and published in the Official Gazette as per the stipulation of Section 1(3) of the 1984 Act. This was essentially the argument of learned Counsel for the appellant.

33. Learned Advocate General was right in arguing that there is no provision like Section 1(3) of the 1984 Act in the 1993 Amendment Act. Section 1(3) would apply to the provisions of the 1984 Act as originally enacted. The subsequent Amendment Acts including the 1993 Amendment Act is a separate and distinct piece of legislation. There is no warrant or logic for importing a provision like Section 1(3) of the 1984 Act in the Amendment Act of 1993. It is only if there was such a similar provision in the 1993 Amendment Act, a separate notification would have been required to be issued to bring into effect Chapter IIIA of the 1984 Act, after making Chapter IIIA a part of the 1984 Act by publishing the notification dated June 16, 1994, in the Official Gazette. However, in my considered view, that is not the case. That was not the intention of the legislature also.

34. In this connection the decision in the case of Bhaswati Roy Pandey, (supra) may be noted. That case concerned the West Bengal Land Reforms Act, 1955. Section 1(3) of that Act indicated that Section 1 was to come into effect immediately and the 'remaining provisions' of the Act were to come into force upon publication of notification in the Official Gazette. Amendment Acts were promulgated in 1971 and 1972 which were duly brought into force by publishing requisite notifications in the Official Gazette. The question arose as to whether separate notifications were required to be published in the Official Gazette to bring into force the amended provisions which had been incorporated in the original statute by way of the Amendment Acts of 1971 and 1972. It was argued on behalf of the State that the Amending Acts of 1971 and 1972 being Acts which were later in time compared to the principal Act, the provisions of Section 1(3) of the principle Act cannot be made applicable in respect of such later laws as the same would be repugnant to the later laws. It was submitted that both the amending Acts of 1971 and 1972 having been enforced on specified dates of

enforcement of the provisions mentioned therein, the amended provisions became enforceable from the same date and such enforcement was not dependent upon any further notification under Section 1(3) of the Principal Act. This argument was accepted by a Coordinate bench of our court.

35. In the case of State of west Bengal and ors. v. Sanjeevani Projects (p) limited and ors., (supra), one of the issues that arose was whether or not Section 4C of the West Bengal Land Reforms Act, 1955 had ever been enforced. It was argued on behalf of the private party that Section 4C had never come into operation since no notification as required under Section 1(3) of the 1955 Act was ever published. Section 4C had been incorporated in the original Act by an amending Act. Such amending Act was duly notified in the Official Gazette. A Coordinate Bench held that there was no necessity for issuing a separate notification to bring into force Section 4C which stood inserted in the principal act by way of the Amendment Act. In this Connection, the Coordinate Bench, at paragraph 11.4 of the reported judgment, held, inter alia, as follows:-

"11.4. The amendment is also an independent legislation by the legislature. If at the time of amendment the legislature intended the legislation/enactment to take effect from a particular date independent of any notification for enforcement of a particular provision separately in that event it would not require a fresh notification within the scope of Section 1(3). The very intention of the legislature having been indicated in the Amendment Act itself expressly that the same would be effective from a particular date, no further notification would be required. The enactment of the Act itself is an enforcement through such enactment being notified. The Amendment Act is an enactment so notified and this notification would be sufficient to enforce the provision according to the mention expressed in the Amendment Act itself, it may not require any further notification."

36. Respectfully agreeing with the aforesaid, I am of the considered opinion that Section 17A of the 1984 Act came into force on June 16, 1994, i.e., the date of publication of notification in the Official Gazette bringing into force the 1993 Amendment Act. Hence, I am unable to accept the contention of the appellant that Section 17A of the 1984 Act was never brought into force.

37. As regards the argument that in the facts and circumstances of this case, Section 17A of the 1984 Act could not be invoked, in my view, there appears to be substantial merit in this point urged on behalf of the appellant. As observed by a learned Judge in the case of Concern for Calcutta v. State of West Bengal, supra, the provisions of the 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 as fisheries. Section 17A imposes a restriction that such water bodies should not be put to any use which may result in abolition of fisheries.

38. In the case of Bajranglal Sarda, Supra, another learned Judge of our Court in a detailed judgment, held that before the competent authority could exercise power under Section 17A of the 1984 Act, it had to come to a finding that the water body in question is being used or is capable of being used as a fishery or for Pisciculture or that any other of the conditions specified in Section 17 A (1) of the 1984 Act is satisfied. 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 of the 1984 Act. It is a finding of fact that a water body comes within the purview of Section 17A (1) of the 1984 Act, that would vest the 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 in purported exercise of power under Section 17A of the 1984 Act, would be without jurisdiction and therefore null and void in the eye law.

39. In the present case, we do not find on record any finding of the competent authority that the land in question comes within the purview of Section 17A (1) of the 1984 Act. Hence, the entire exercise undertaken by the Commissioner of KMC purportedly under Section 17A of the 1984 Act, is without jurisdiction. The competent authority had no power to enter into the concerned land. The entire action taken by the competent authority in respect of the concerned land is illegal and is quashed. KMC shall forthwith vacate the concerned premises and hand over possession thereof to the appellant.

40. However, this will not prevent the competent authority from initiating proceeding for ascertaining as to whether or not the land in question comes within or not the four corners of Section 17A of the 1984 Act. Such proceedings will be held observing the principles of natural justice i.e., all concerned persons including the appellant will be given due opportunity of hearing. The concerned parties would be at liberty to place such documents before the competent authority as they may be advised. If upon such enquiry, the competent authority comes to a reasoned decision holding that the land in question answers the description of lands mentioned in Section 17A of the 1984 Act and that it was a water body within the purview of that Section which had been illegally filled up, the competent authority would be at liberty to take necessary steps in respect of such land in accordance with law.

41. The appeal accordingly stands disposed of. There will be no order as to costs.

42. Urgent certified website copies of this order, if applied for, be supplied to the parties subject to compliance with all the requisite formalities