

**(2009) 12 CAL CK 0025**  
**In the Calcutta High Court**  
**Case No : Writ Petition No. 9383 (W) of 2008**

Bajranglal Sarda and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

**Date of Decision :** 24-12-2009

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 144(2)

West Bengal Inland Fisheries Act, 1984 — Section 17A, 17A(1), 17A(2), 17A(4), 17A(7)

**Citation :** (2009) 12 CAL CK 0025

**Hon'ble Judges :** Dipankar Datta, J

**Bench :** Single Bench

**Advocate :** Kashi Kanta Maitra, Amitava Mukherjee, Arpita Saha and Sourav Sengupta, for the Appellant; S.P. Ghosh and Jolly Chakraborty for Respondent No. 1 and Bimal Chatterjee, Biswajit Mukherjee and Rituparna Sarkar for Respondents 2 to 4, for the Respondent

**Final Decision :** Allowed

## Judgement

Dipankar Datta, J.—Challenge in this petition is to an order passed by the Municipal Commissioner, Kolkata Municipal Corporation (hereafter the Corporation) holding that the plot of land which the petitioners intend to develop was a tank/water body and therefore the bar of Section 17A of the West Bengal Inland Fisheries Act, 1984 (hereafter the Fisheries Act) is attracted. It was further held by him that since the petitioners had been gradually filling up the tank/water body, they shall restore the same in its original position.

2. The impugned order is undated and has been forwarded to the first petitioner by the Executive Engineer (C)/PMU of the Corporation by his letter dated 19.4.2008.

3. For the purpose of proper adjudication of the issue involved in this writ petition, the genesis of the dispute may be noticed.

4. The first two petitioners are joint directors of M/s. Ornate Builders Private

Limited, a company within the meaning of the Indian Companies Act, the third petitioner (hereafter the company). They claim that the company is the owner of a plot of land measuring about 10 cottahs 36 sq. ft. situate at 26A, Upendra Chandra Banerjee Road (formerly known as Kankurgachi Road) under P.S. Phoolbagan, Kolkata -700 054 (hereafter the said property). It is further claimed that the company purchased the said property in the year 1988 from its lawful owner by virtue of a registered deed of sale being No. 407 for the year 1988. On such purchase, the name of the company has been mutated in the records of the Corporation and it has been asserted that due taxes are being paid. The first two petitioners, it is also claimed, became Directors of the company on 20.1.2001.

5. The erstwhile directors of the company had submitted an application before the Corporation for construction of a multi-storied residential building on the said property. The Corporation had initiated steps for sanctioning the building plan and as a part thereof, the land was inspected by the Surveyor/Assistant Valuer and a report to that effect was submitted on 28.4.1988.

6. Interestingly, the report does not reveal that the said property comprises a water body.

7. In pursuance of the aforesaid report dated 28.4.1988, the Deputy City Architect, Borough No. III of the Corporation had written a letter dated 28.4.1989, Annexure P-13 to the petition, to the company in connection with its plan for development of the said property. A bare perusal thereof reveals that the proposal for erection of multistoried building for residential purpose had obtained clearance under the Town and Country (Planning & Development) Act, 1979 (hereafter the TCPD Act) and that the Municipal Building Committee of the Corporation had suggested certain measures to be taken on compliance whereof further action would be taken on the prayer of the company for issuance of building plan.

8. It appears from one of the annexures to the petition that this Court's writ jurisdiction had been invoked by the company whereupon an order dated 27.8.1992 was passed by a learned Judge directing the Corporation to take effective steps to consider grant of sanction to the building plan as per the prevailing law on the date of filing of application within a period of four months without prejudice and subject to the order of the Hon'ble Supreme Court on a pending matter. Constitutional validity of the Calcutta Municipal Corporation (Amendment) Act, 1990 was the subject matter of adjudication there.

9. The proposal was once again placed before the Municipal Building Committee for its consideration on 8.2.1994 when, it appears, the following resolution was passed:

The Municipal Building Committee considered the plan proposal and recommended it for sanction subject to compliance with the following requisition

a. The entire ground-floor beside the Service unit shall have to be provided for

car parking spaces only and an essential Service Unit in the ground-floor should be furthest away from the Upendra Ch. Banerjee Road.

b. Vent shaft as shown may be removed as the plan case is proposed under old building rule.

c. All other departmental requisitions shall have to be complied with.

10. By letter dated 18.4.1994, the City Architect's Department of the Corporation conveyed the above suggestion to one of the directors of the company. Whether or not the erstwhile directors of the company had taken steps to comply with the suggestion of the Municipal Building Committee extracted (supra), however, has not been disclosed in the petition.

11. On 14.10.2004, the company had approached the competent authority of the Corporation with a prayer for granting necessary permission to construct a boundary wall upto 8 ft. on the eastern side of the said property and on a portion of its northern side for the purpose of its protection. In reply, the competent authority of the Corporation by memo dated 19.10.2004 conveyed to the directors of the company that no permission, as prayed for, is required to be granted.

12. Soon thereafter, on 22.12.2004, the first two petitioners had arranged raw materials and had engaged masons and labourers for the purpose of raising construction of boundary wall when local people under the leadership of the fifth respondent herein obstructed such construction work and tried to assault them. Apprehending breach of peace and order in the locality, the petitioners had moved the learned Executive Magistrate, Sealdah u/s 144(2) of the Criminal Procedure Code. On 10.2.2005, the learned Magistrate upon perusal of the police report that had been called for earlier directed the Officer-In-Charge, Phoolbagan Police Station to ensure that the fifth respondent herein is restrained from causing any obstruction of lawful work in respect of the said property and to maintain peace and tranquility.

13. It is alleged that as a counter-blast, the fifth respondent had moved an application before the Executive Magistrate u/s 144(2) of the Code. However, on 22.2.2005, the learned Magistrate directed the Officer-In-Charge to enquire locally and to send a report by 21.3.2005 while ensuring that no breach of peace takes place and that the parties maintain status quo as on date in respect of the said property.

14. The local people thereafter initiated public interest litigation before this Court which was registered as W.P. No. 7201(W) of 2005. In that petition, they alleged that the petitioners were converting the water body into solid land by filling it up in an illegal manner. However, on 17.6.2005, the said writ petition was dismissed for default and has not been restored yet.

15. All on a sudden, on 10.8.2005, the petitioners noticed a board that was placed in front of the said property declaring the same to be a water body. The

board was allegedly placed by the Corporation. Challenging such action, the first two petitioners had moved a writ petition before this Court being W.P. No. 16958(W) of 2005. On that writ petition a learned Judge of this Court on 16.12.2005 passed the following order:

The learned Advocate appearing on behalf of the petitioners submits that the respondents Kolkata Municipal Corporation Authorities are preventing the petitioners from constructing boundary wall at the plot in question.

The learned Advocate representing the Kolkata Municipal Corporation authorities on instruction submits that no permission is required for the erection of the boundary wall upto 8 feet height along with the alignment of property line.

The learned Advocate of the Kolkata Municipal Corporation Authorities however submits that the real objection has been raised by the respondent No. 3 on the ground that the substantial portion of the said land is water body.

Undisputedly, the petitioners cannot fill up any part and/or portion of the water body for the purpose of construction work.

Admittedly, no building plan has yet been sanctioned and, therefore, the petitioners are not entitled to carry on any construction work at the plot in question.

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Let there also be an interim order restraining the respondents from preventing the petitioners from constructing the boundary wall upto 8 feet height as according to the Municipal Authorities no permission is required for erection of the boundary wall upto the said 8 feet height along with the alignment of the property line. The petitioners are, however, specifically restrained from carrying on any other construction work apart from the erecting of boundary wall in the meantime.

The petitioners are also specifically restrained from filling up any part and/ or portion of the water body in the meantime.

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16. The said petitioners thereafter applied for police protection/assistance and on such assistance being rendered, they claim to have constructed a boundary wall for protecting the said property and are in absolute possession thereof.

17. The aforesaid writ petition, however, was disposed of on 16.11.2006 by another learned Judge of this Court by passing, inter alia, the following order:

\*\*\* The subject matter of this case relates to a plot of land measuring about 10 cottah 36 sq. ft. lying and situated at 26-A, Upendra Chandra Banerjee Road formerly known as Kankurgachi Road, under Police Station -Phool Bagan, Kolkata -700 054. The subject matter of challenge in this writ application is a notice/ notice board dated August 10, 2005 placed at the aforesaid plot of land of the

petitioner declaring the above land as water body and not to make any construction on that land.

In my view the dispute as to whether the aforesaid plot of land is water body or not that can only be decided by the appropriate authority in accordance with the Provisions of West Bengal Inland Fisheries Act, 1984 (hereinafter referred to as to said Provision). In the application being CAN No. 7953 of 2006 it has been stated that by virtue of a notification dated August 5, 1994, the Department of Fisheries, Government of West Bengal, delegated the power to the Commissioner of Kolkata Municipal Corporation to take action under the said Provision.

Having heard the learned Counsels appearing on behalf of the respective parties, I am of the view, that the appropriate authority under the said Provision can only decide the said dispute. In that view of the matter I give liberty to the petitioner to file a representation before the Commissioner of Kolkata Municipal Corporation. If such representation is made, the Commissioner of Kolkata Municipal Corporation is directed to consider the same after giving an opportunity of hearing to the petitioner and other interested party and to dispose of the same in accordance with law within a period of 6 (six) weeks from the date of receipt of such representation. The Commissioner of Kolkata Municipal Corporation is further directed to communicate his decision to the petitioner within a week from date of passing such order.

I make it clear that I have not entered into the merits of the case. All points are kept open. \*\*\*

18. In the meantime, however, the West Bengal Pollution Control Board had received complaint regarding illegal filling up of the water body comprised in the said property. The Board had directed by order dated 6.3.2006 to restore the water body within a month. An appeal was preferred there against before the Appellate Authority. The order under appeal was set aside and the Board was directed to decide the matter afresh. By order dated 29.1.2006, the Board disposed of the complaint holding that power had been delegated to the Corporation vide notification dated 5.8.1994 and the complainant may approach the Corporation for relief.

19. It is not in dispute that in terms of the Fisheries Act, the Municipal Commissioner of the Corporation has been designated as the competent authority [as defined in Section 2(ii) thereof]. The said competent authority, in compliance with the order dated 16.11.2006, heard the parties and an order was passed holding that the said property was, in fact, a tank as per records maintained by the Corporation and that some portion of it had been filled up in a slow but systematic manner. A water body which was originally measuring 10 cottahs had resultantly become a ditch measuring 3 cottahs approximately. In view of the finding that the said property is a tank, a direction to restore it in its original condition was passed by the competent authority.

20. This order of the competent authority also appears to be undated. However,

it was conveyed to the first petitioner by the Director General (PMU) of the Corporation vide letter dated 11.6.2007.

21. This undated order of the competent authority was again challenged by the petitioners by filing a further writ petition being W.P. No. 14824(W) of 2007. After hearing the parties, I had the occasion to dispose of the writ petition on 9.8.2007 by passing the following order:

\*\*\*The order of the Municipal Commissioner is assailed by Mr. Bandyopadhyay, learned senior counsel for the petitioners on two grounds, viz, (i) copies of records, relied on by the Municipal Commissioner, were neither furnished to the petitioners nor were they given opportunity to inspect the same; and (ii) the documents which were annexed by the petitioners to their representation in support of their claim were not at all considered by the Municipal Commissioner.

Elaborating on point No. (ii), he has drawn the attention of this Court to a purported list of tanks within Borough 3 prepared by the Corporation which does not include the tank in question allegedly filled up by the petitioners.

Mr. Mukherjee, learned Counsel for the Corporation seeks time to obtain instructions.

Having heard learned Counsel for the parties, this Court is of the considered view that the writ petition need not be kept pending for the purpose of enabling Mr. Mukherjee to take instruction since no instruction is required to be taken in respect of point No. (ii) urged by the petitioners. It appears from a bare perusal of the impugned order that no discussion has been made by the Municipal Commissioner as to why the documents produced by the petitioners did not appeal to him or were not considered by him to be creditworthy. An order passed by an administrative authority in exercise of quasi-judicial function must manifest consideration and application of mind in respect of documents placed by a party in support of its claim and in its absence, the order may be termed as perverse. What be the worth of the documents relied on by the petitioners, the same warranted a consideration by the Municipal Commissioner. Unfortunately, the documents produced by the petitioners have not been given any consideration worth the name. Non-application of mind by the Municipal Commissioner is writ large. Accordingly, the Court holds that the impugned order is perverse and the same stands quashed.

In view of the above finding and the order this Court proposes to pass, this Court feels no necessity to examine point No. (i) urged by Mr. Bandyopadhyay.

The issue is remitted back to the Municipal Commissioner for de-novo consideration. The Municipal Commissioner while giving a decision in terms of this order shall not rely on any document unless a copy thereof has been furnished to the petitioners or at least a reasonable opportunity of inspection of the same is afforded to them. The Municipal Commissioner shall proceed to decide the issue denovo without being influenced by his earlier decision and pass

an appropriate reasoned order in accordance with law within four weeks from date of receipt of a copy of this order.

The writ petition stands allowed to the extent indicated above.

22. In compliance with the aforesaid order, the competent authority once again heard the petitioners and passed the order referred to at the beginning of this judgment.

23. It appears from the impugned order that the competent authority framed the following issue for decision:

The basic issue in the present dispute revolves around the point as to whether the premises 26A, Kankurgachi Road, P.S. Phool Bagan, Kolkata-700 054 presently numbered as 26A, Upendra Chandra Banerjee Road, is/was a pond or a tank.

24. Ultimately, he concluded as follows:

In the conspectus if (sic of) the nature and character of the premises are studied from the LB. as available from 3/86-87 it would be revealed what a tank was originally measuring about 11 Cottahs becomes Land and Doba during 3/98-99. Even during 3/92-93 the said premises was described as tank measuring 10 Cottahs 36 sq. ft. Post 98-99 physical verification and survey cannot throw (sic throw) any light to the actual character of the premises during 3/86-87. Therefore, from the evidence on record it can be concluded that the tank/water body which existed during 3/86-87 has been consistently filled up. The petitioners took over the company in the year 2001 when the nature and character of the premises has changed. In the circumstances I have no hesitation to hold that in view of Section 17A of the West Bengal Inland Fisheries Act the petitioners should restore the said premises in original condition i.e. water body/tank.

25. On the date I reserved judgment, Mr. Ghosh produced copy of an enquiry report prepared by the Law Officer, Fisheries Department, Government of West Bengal. It is found from the report that the property is a vacant land and measuring about 10 cottahs 6 chittaks. At one corner of the said property, there is a small room with a signboard in the name of Milan Sangha. Also there is a small doba measuring less than 1 cottah which is full of weeds and totally unfit for pisciculture. The report is countersigned by the Principal Secretary, Fisheries Department. It is clear from the said report that whatever water area is in existence at present, the same is not fit for pisciculture.

26. I have heard Mr. Maitra, learned Senior Advocate for the petitioners, Mr. Chatterjee, learned Senior Advocate for the Commissioner of the Corporation (the competent authority) and Mr. Ghosh, learned Advocate for the State.

27. None has appeared for the fifth respondent and consequently his version was not available.

28. I am convinced that the decision making process of the competent authority leading to the impugned order is defective, thereby having the effect of vitiating it.

29. In the first place, the competent authority framed an incomplete issue and, inevitably, gave an incomplete answer. Based on such incomplete answer vis-avis Section 17A of the Fisheries Act, to my mind, the impugned order cannot be sustained.

30. For a decision on this contentious point, it would be necessary to read Section 17A of the Fisheries Act, which was introduced by way of an amendment with effect from 2.3.1994 (hereafter the relevant date). To the extent relevant for a decision on the present petition, Section 17A is reproduced below:

17A. (1) No person shall

(a) put any water area including embankment measuring 5 cottahs or 0.035 hectare 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.

(2) If the competent authority, on receipt of an information or on his own motion or otherwise, is satisfied that -

(a) 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

(b) any such water area including embankment or naturally or artificially depressed land holding is being, or is about to be, filled up, or

(c) any such water area including embankment or naturally or artificially depressed land holding is being, is about to be, divided into parts, or any part of any such water area including embankment or naturally or artificially depressed land holding as so divided is being, or is about to be, transferred to any other person, 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." (4) The management and control of such water area including embankment or naturally or artificially depressed land holding may be transferred by the competent authority to any person for proper utilization for pisciculture 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.

(7) If the person referred to in Sub-section (4) fails to utilize the water area including embankment or naturally or artificially depressed land holding, as the case may be, in accordance with the prevailing norms of pisciculture, the competent authority may, after giving notice to such person, resume the management and control of such water area including embankment or naturally or artificially depressed land holding, as the case may be, without payment of any rent or compensation to such person; and such water area including embankment or naturally or artificially depressed land holding, as the case may be, may thereafter be managed by the competent authority or transferred to some other person for pisciculture. (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 utilization 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 subsections (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.

31. Fishery has been defined in Section 2(vi) of the Fisheries Act. It reads:

2(vi) fishery means any activity or occupation connected with conservation, development, propagation, protection, exploitation or disposal of fish and fish products, or any place or water area where such activity or occupation is carried on, and includes a tank fishery.

32. Mr. Chatterjee has argued that the said property is not naturally or artificially depressed land holding but a water area as mentioned in the first part of Clause (a) of Section 17A(1) of the Fisheries Act and that there has been contravention of provisions of Clause (b) thereof.

33. There could be no reason to doubt that wherever "water area including embankment or naturally or artificially depressed land holding as aforesaid" and "such water area including embankment or naturally or artificially depressed land holding" have been used in Section 17A, the expressions "as aforesaid" and "such" refer either to "any water area including embankment measuring 5 cottahs or 0.035 hectare or more, which is capable of being used as fishery" or to "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". I am conscious that Clause (b) of Section 17A(1) does not contain the words "as may result in abolition of fishery", which find place only in Clause (a) thereof. However, having regard to the object of the Fisheries Act, the words "for any other purpose" in Clause (b) is wide enough to include within its reach "as may result in abolition of fishery".

34. In order to attract Section 17A(1) of the Fisheries Act that debars conversion of a water area of the requisite nature and area to any other use including construction of building thereon, as in the present case, it was therefore imperative for the competent authority to reach a satisfaction that not only a water area of the requisite size is being sought to be filled up or has been filled up for use other than fishery as may result in abolition of fishery but also that such water area is capable of being used as fishery.

35. From the order of the competent authority it is revealed that no finding has been given as to whether the water body which, according to him, was existing and has since been gradually filled up, was at all capable of being used as fishery or not.

36. Mr. Chatterjee contended that the competent authority was not required to say specifically in his order that the water body is or was capable of being used as a fishery. According to him, there being credible and unimpeachable evidence that there existed a water body measuring more than 5 cottahs, which over a

period of time has been gradually filled up, the absence of an additional finding that the water area is capable of being used as a fishery, if at all a lacuna, is not fatal.

37. I regret, I am not persuaded to agree with Mr. Chatterjee that the competent authority was not required to give a finding that the water body was also capable of being used as fishery. In the event Mr. Chatterjee's contention is to be accepted, the words "which is capable of being used as fishery" appearing in Clause (a) of Section 17A(1) of the Fisheries Act and required to be read in Clause (b) thereof in view of the expression "as aforesaid" would be rendered surplusage.

38. The legislature is presumed not to waste words or to say something that would be in vain. At the same time, I am not oblivious that such presumption is not a strong presumption and it is not uncommon to find the legislature inserting superfluous provision under the influence of what may be abundant caution. However, it appears to be well settled principle of construction that words in a statute are designedly used, and an interpretation must be avoided, which would render the provision either nugatory or part thereof otiose. Therefore, as far as possible, full meaning must be given to each and every word of a statute.

39. What Clauses (a) and (b) of Section 17A(1) seek to prevent is that no water area existing on the relevant date, measuring 5 cottahs or more and which is capable of being used as fishery, shall be put to any use other than fishery or filled up with a view to converting it into solid land for the purpose of construction of any building thereon or for any other purpose, including a purpose that may result in abolition of fishery. The words "which is capable of being used as fishery" after the words "water area including embankment measuring 5 cottahs or 0.035 hectare or more" assumes significance in the light of Sub-section (2) of Section 17A which confers power on the competent authority, if contravention of provisions contained in Sub-section (1) thereof by any person is established, to take over management and control of such water area, if necessary, inter alia for the purpose of "promotion of pisciculture" and "checking of destruction of fisheries". Sub-sections (4) and (7) of Section 17A also refer to handing over of management and control of a water area for "proper utilization for pisciculture" and "for pisciculture" respectively. The predominant purpose is to give effect to the object of the Fisheries Act, i.e. for conservation, development, propagation, protection, exploitation and disposal of inland fish and fisheries in West Bengal. It is, therefore, held that the words "which is capable of being used as fishery" have been deliberately used with a definite purpose and not as a superfluous provision, by way of abundant caution.

40. The competent authority after recording a finding that the said property indeed comprised of a water body measuring more than 5 cottahs has not given a separate finding as to whether it was capable of being used as fishery or not since, as noticed above, he posed an incomplete question for giving an answer. In the absence of such a finding, the competent authority could not have direct,

in terms of provisions contained in Sub-section (10) of Section 17A of the Fisheries Act, to restore the water body to its original condition.

41. This is considered to be sufficient ground to interfere but there are other reasons too.

42. Referring to a list of ponds/ tanks within Borough III of the municipal limits of Kolkata (Annexure P-16 to the petition) prepared by the Corporation in consultation with the Fisheries Department, Government of West Bengal, Mr. Maitra argued that the same does not include the said property as one comprising a water body. He further argued that when the said list was placed before the competent authority, he brushed aside the same, rather inappropriately, on the ground of discrepancies in preparation thereof and preferred to place reliance on the municipal assessment books and the "Smart's Sheet" prepared in the year 1900. According to Mr. Maitra, the competent authority, being the Municipal Commissioner of the Corporation, could not have reject a plea based on his personal idea of discrepancies in preparation of the list without either letting the petitioners know what the discrepancies are or without specifying who was responsible therefore. Once the competent authority observed that the particular point "need to be looked into", Mr. Maitra contended that the competent authority should not have left the point undecided on the one hand and proceed to decide against the petitioners on the other by relying on the municipal assessment books and the "Smart's Sheet". There being a presumption that official acts are valid, the petitioners were entitled in law to rely on the official list of ponds/ tanks prepared by the Corporation and the approach of the competent authority in not giving due consideration to the same and observing that the petitioners appear "to be seeking advantage of the subsequent errors of commission and omission" are clear instances of error committed in exercise of jurisdiction.

43. Per contra, Mr. Chatterjee contended that there was no lis between the petitioners and the competent authority and, therefore, question of any bias on his part does not arise. On the basis of the materials placed before him, Mr. Chatterjee further contended, the competent authority passed the order impugned which by no stretch of imagination can be said to be arbitrary or unreasonable.

44. The competent authority had been directed by the Court on more occasions than one to decide the issue as to whether the bar of Section 17A of the Fisheries Act would be attracted or not in compliance with natural justice principles. The order impugned herein was passed by the competent authority in discharge of quasi-judicial functions. It was open to him, in the process, to reject a particular piece of evidence and to accept the other upon recording of reasons. However, his approach to deal with the plea the petitioners raised relying on the list of ponds/ tanks manifests predilection to decide against the petitioners, come what may, presumably to justify his earlier order since set aside by the Court. No valid reason acceptable to the Court has been assigned as to why the evidence

produced by the petitioners was not considered credit-worthy (which incidentally was an official document emanating from the records of the Corporation itself) whereas the contra-evidence appealed to him in preference to the evidence produced by the petitioners. Strangely, even in the counter affidavit that has been filed on behalf of the Corporation by its Executive Engineer, the veracity of the list of pond/tanks has not been doubted at all. Mere reference to discrepancies, without anything more, and proceeding to pass the final order despite observation in the order to the effect that the discrepancies "need to be looked into" is a serious defect in the decision making process not liable to be overlooked.

45. Next, perusal of the impugned order reveals the focus of the competent authority on establishing that the said property comprised of a water body, measuring more than 10 cottahs, and that it has gradually and systematically been filled up for converting it into solid land. This, according to him, is barred by provisions contained in Section 17A(1) of the Fisheries Act. In the process, the competent authority relied on the municipal assessment books for the quarters 3/1986-87, 3/1992-93 and 3/1998-99. He noticed that at or about the first quarter referred to above, the said property was part of the mother property i.e. 26, Upendra Chandra Bannerjee Road, nature of use whereof was "D.H.R., T.B.W. 8s Tank" (D.H.R. and T.B.W. standing for Dwelling House R.T. Shed and Temporary Brick-work respectively). With effect from 3/1987-88, premises No. 26 had been divided into 26A, 26B and 26C. Thereafter, premises No. 26B had been further subdivided into 26B and 26D with effect from 1/ 1989-90. While nature of use of the said property at or about 3/1992-93 was "tank", the same became "tank and land" at or about 3/1998-99. He laid much emphasis on the fact that such recording in the municipal assessment books had never been objected to by the vendor of the said property, viz. Smt. Gindibai Jain or by the company at or about the relevant time annual valuation of the said property was assessed. Hence, the petitioners were required to restore the water body in its original condition.

46. From the municipal assessment books, it is clear that at least till during the third quarter of 1992-93 a tank measuring about 10 cottahs existed at the said property. However, there is no evidence of clinching nature to prove that on the relevant date, the tank in question measured more than 5 cottahs. In fact, the relevant municipal assessment book records that the property, during third quarter 1998-99, had been referred to as land and tank. The exact areas of the land and the tank, however, are conspicuous by its absence. What was the position on the relevant date is thus unknown. That the water body in question measured more than 5 cottahs on the relevant date is a finding based on surmise. I, accordingly, have no option but to hold that there was no concrete evidence before the competent authority for arriving at the finding that Section 17A would be attracted to the said property on the relevant date.

47. The last reason for which I am inclined to hold the decision-making process

of the competent authority leading to the impugned order to be vitiated is this. The erstwhile directors of the company after purchasing the property in 1988 had submitted a proposal for sanction of building plan. The property was inspected by the Surveyor and Valuer attached to the appropriate department of the Corporation. In the report prepared on site inspection, it has not been indicated that the multistoried building that is proposed to be constructed is on a property, major portions whereof is a water body. The Municipal Building Committee had recommended the proposal of the company for sanction of building plan. The proposal had also been given the clearance of the competent authority under the TCPD Act.

48. It does not appear from the recommendation that a water body existed, which was sought to be filled up and converted to solid land for the purpose of construction of multistoried building thereon. Non-mentioning of existence of any water body in these records of the Corporation do seem to suggest that the water body had been filled up much prior to the relevant date, and at least before the inspection was conducted in 1988.

49. I thus hold the impugned order of the competent authority indefensible. It is, accordingly, set aside.

50. In normal circumstances, in cases of this nature where the decision making process leading to the impugned order is found to be defective, a remand is appropriate. However, having regard to the finding arrived at to the effect that there was absence of clinching evidence based whereon it could be contended with some degree of conviction that a water body measuring more than 5 cottahs existed on the relevant date and that it is capable of being used for pisciculture, a remand would be futile. Hence, I am also not inclined to do so. The matter must rest here.

51. The writ petition stands allowed. The petitioners shall be entitled to take further steps in accordance with law.

52. However, parties shall bear their own costs.

53. Urgent photostat certified copy of this judgment, if applied for, be furnished to the applicant as early as possible.