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**(2006) 06 CAL CK 0011**  
**In the Calcutta High Court**  
**Case No : Writ Petition No. 13257 (W) of 2004**

Loknath Pal and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

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**Date of Decision :** 09-06-2006

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2  
Criminal Procedure Code, 1973 (CrPC) — Section 144  
West Bengal Inland Fisheries (Amendment) Act, 1993 — Section 17A, 17A(1)  
West Bengal Panchayat Act, 1973 — Section 23

**Citation :** (2007) 1 CHN 20

**Hon'ble Judges :** V.S. Sirpurkar, C.J.; Aniruddha Bose, J

**Bench :** Division Bench

**Advocate :** Probal Mukherjee and Rajat Dutta, for the Appellant; Indrajit Dasgupta, for Gram Panchayat and Amlan Mukherjee, for the Respondent

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## Judgement

V.S. Sirpurkar, C.J.—In this public interest litigation, the petitioners have come up with a plea that a pond in the village, allegedly owned by the respondent Nos. 10 and 11 is not only being illegally filled up but a huge construction thereupon is coming up at the instance of those respondents.

2. According to the petition, the said pond has an area of about 1 acre 53 satak and all through the year, the pond retains the water. The petitioners point out that originally some other persons were the owners of the said tank along with other contiguous land. However, the respondent Nos. 10 and 11 became the owners by virtue of a sale deed few years ago. The petitioners complain that from 28th of May, 2003 the respondent Nos. 10 and 11 started construction activity by making pillars in the tank. There are some photographs filed along with the writ petition which show substantial construction activity on the bank of the said tank. It is the contention of the petitioners that though they protested against the said illegal work, however, no heed was paid. It is also suggested that a representation was made on the 3rd of June, 2003 before the Pradhan of Simulpur Gram Panchayat urging him to take administrative steps. It is also

pointed out by the petitioners that at their instance a notice dated 11th of June, 2003, was also issued from the office of the Block Land and Land -Reforms Officer, Gaighata directing the respondents to stop construction, but the respondents did not pay any heed to that notice. It is then pointed out that the construction was going on repeatedly and that the petitioners approached the Additional District Magistrate and the District Land and Land Reforms Officer, North 24-Parganas, Barasat inviting their attention to the illegal activity. They further pointed out that ultimately an application u/s 144 of the Code of Criminal Procedure was also taken out and on that application, a restraint order was issued against the respondent Nos. 10 and 11 restraining them from proceeding with the construction activity. However, in spite of this the construction activity had not stopped and, therefore, they have also filed an FIR on 21st of July, 2003. The petitioner relied on Section 17A(1) of the West Bengal Inland Fisheries (Amendment) Act, 1993; wherein it is suggested that no water area measuring 5 cottahs or 0.035 hectare or more, which retains water for a minimum period of six months in a year can be converted into solid land for the purpose of construction of any building or otherwise. On these grounds, the petitioners ultimately chose to come before this Court by way of public interest litigation, praying, inter alia:

(1) A writ of/or in the nature of Mandamus commanding the respondent authorities, its men, agent, subordinates to take appropriate steps towards preservation of the water-body measuring 1 (one)acre 53 (fifty-three) satak situated in Mouza No. 85, Dag No. 1757 within the area of Simulpur, P.O. Thakurnagar, P.S. Gaighata, District North 24-Parganas without any further delay and to take steps in accordance with law for preservation of any further conversion of the said pond forthwith;

(b) A writ of/or in the nature of Mandamus commanding the respondent, its men, agents, subordinates to restore the pond and its embankment measuring 1 (one) acre 53 (fifty-three) satak situated in Mouza No. 85, Dag No. 1757 within the area of Simulpur, P.O. Thakurnagar, P.S. Gaighata, District 24-Parganas in question at the earliest.

3. This writ petition was opposed by way affidavit-in-opposition filed by the respondent Nos. 10 and 11. They, inter alia, plead that they are not carrying out any construction activities on the land that they had purchased from one Murari Mohan Saha and Bharati Mohan Saha. It is reiterated that the respondents, thereafter, applied for the sanctioned plan for construction of a shop room on the bank of the tank and accordingly Simulpur Gram Panchayat sanctioned the building plan and on the basis of such sanctioned plan, a shop room was constructed on the bank of the tank in question. In the name of sanction, the respondents have filed a map. They further say that on 28th of July, 2003 the petitioners filed a suit for declaration and injunction, being Title Suit No. 168 of 2003, before the Civil Judge, (Junior Division), Bongaon, 24-Parganas North and obtained an injunction under Order 39 Rules 1 and 2 of the CPC restraining the

opposite parties from interfering with the construction of the petitioners till August 14, 2003. They also make a reference to the notice issued by the Fisheries Department to them dated 10th of September, 2003. However, nothing further has been stated regarding the proceedings. It is further asserted by the respondents that they are making construction on their own land after due sanction by Simulpur Gram Panchayat and they are not polluting, in any manner whatsoever, the environment. They also point out that there can be no public interest in the matter and that they are supported with the injunction order. They make a plea that the entire pond and the fisheries remained as usual and the production of fish also remained unaffected and as such there is no question of any public interest.

4. Today when the matter is taken up, nobody on behalf of the respondent Nos. 10 and 11 is present. The learned Counsel, appearing on behalf of the respondent Nos. 1 to 6, reiterated that even they have filed affidavits in which they have pointed out that the concerned land has still not been mutated in the names of respondent Nos. 10 and 11. It is then reiterated that the Block Land and Land Reforms Officer had received a representation from the petitioners regarding the illegal construction and in pursuance thereof, a memo order was passed to stop filling up of the said tank and cutting of branches of the trees of the adjoining area of the said tank. It is further reiterated that the Block Land and Land Reforms Officer had informed the respondents that he would personally inspect the premises in question. Accordingly a spot enquiry was conducted on the 2nd of July, 2003 and it was found that the respondents had constructed ten shops covering an area of 0.025 acres of land with guard wall by constructing pillars within the guard wall. It is then reiterated that the illegal construction was immediately stopped, but the respondents again started making illegal construction. It is further reiterated that the Block Land and Land Reforms Officer also lodged an FIR dated 28th of July, 2003 before the Gaighata Police Station against the respondents and that the said FIR is still pending. It is pointed out that a chargesheet was filed against the respondents and on the basis of that FIR a case was filed before the Sub Divisional Judicial Magistrate, Bongaon. A reference is also made to the title suit and the injunction order. In short, the respondents suggest that they have taken action in pursuance of the Fisheries Act as also at the instance of the Block Land and Land Reforms Officer.

5. Today when the matter has appeared before us, the learned Counsel appearing on behalf of the Panchayat, says that there is no sanction given by the Panchayat for any kind of construction activity and that the Panchayat has already issued a notice against the said respondents. By this, it clearly goes to suggest that the respondent Nos. 10 and 11 are acting like police and are proceeding with the construction work in spite of restraint orders firstly at the instance of the Panchayat as also at the instance of the Block Land and Land Reforms Officer. The learned Counsel for the respondents points out that the said suit in which injunction was granted is also no more pending and is dismissed in default thereby there is no order of injunction. When we asked specifically the

parties, it was pointed out by the learned Counsel for the petitioner that the respondent Nos. 10 and 11, in the suit, had not joined the Panchayat or the Fisheries Department or the Government as parties to the suit. Therefore, it is clear that there is no injunction against any of the statutory authorities and injunction, if any, is only against the private defendants, few of whom are not even parties before us. It is all, therefore, clear that the construction has been made in total derogation of rules and regulations and without obtaining any sanction. Initially there was a status quo order passed and it is reported that further construction is not being made since a status quo order has been passed earlier by this Court. We, therefore, direct that the District Magistrate, who had not been made a party, shall immediately enquire into the matter and so also the Pradhan would act in terms of Section 23 of the West Bengal Panchayat Act. If it is found that the construction is not made in pursuance of any sanctioned plan, the District Magistrate shall act in terms of his powers, to stop such illegal construction. The Fisheries Department shall also complete their proceedings in pursuance of Section 17A of the West Bengal Inland Fisheries (Amendment) Act, 1993 under which the notices have been given to the respondents and the proceedings shall be completed as early as possible but not beyond six months. The local police are directed to co-operate with the Panchayat as also the District Magistrate in pursuance of any action which they decide to take including the demolition action in pursuance of the orders passed. With thus we dispose of the writ petition.

6. Urgent xerox certified copy, if applied for, be supplied to the parties on propriety basis.

Aniruddha Bose, J.

7. I agree.