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**(2008) 05 CAL CK 0017**  
**In the Calcutta High Court**  
**Case No : W.P.L.R.T. No. 593 of 2006**

M. Emdadul Hoque

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

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**Date of Decision :** 07-05-2008

**Acts Referred:**

Bengal General Clauses Act, 1899 — Section 22  
West Bengal Land Reforms Act, 1955 — Section 4C, 4C(2), 50, 51  
West Bengal Land Reforms and Tenancy Tribunal Act, 1997 — Section 10, 6

**Citation :** (2008) 4 CHN 677

**Hon'ble Judges :** Manik Mohan Sarkar, J; Kalyan Jyoti Sengupta, J

**Bench :** Division Bench

**Advocate :** Ashok Banerjee, Santimoy Panda, Abdul Alim, Saifuddin and H. Rahaman, for the Appellant; Indrajit Sen, Sitaram Samanta and Barnali Chatterjee, for the Respondent

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## Judgement

1. The judgement and order dated 9th August, 2006 of the learned Tribunal, West Bengal Land Reforms and Tenancy is under challenge in this application. The petitioner before the learned Tribunal basically challenged the order of cancellation of the order permitting conversion of character of land passed u/s 4C of the West Bengal Land Reforms Act, 1955 (hereinafter referred to as the said Act). The summarised fact of the case on which the present application has arisen is as follows:

The petitioner purchased plots of land measuring 1.38 acres and 7 cottahs respectively by and under two registered Deeds of Conveyance dated 30th January, 2001 and 27th June, 2003 bearing plot No. 2139/2375 situate at Mouza Dakshin Dhapamanpur, Police Station: Bhangore, Dist.: 24 Paraganas; (South). After purchasing the said lands the petitioner applied for mutation before the prescribed authority and the petitioner's name was duly and lawfully mutated and; such mutation certificate was issued by the concerned Revenue Officer and his name was duly recorded in the records-of-rights. The petitioner also paid Government revenues as chargeable. The petitioner obtained "no objection"

certificate from West Bengal Pollution Control Board as the said land was intended to be utilised for construction of a building for running an educational institution. Therefore, the petitioner applied for the conversion of the character of the land so that the same can be used for construction of the building. The District Land and Land Reforms Officer on receipt of this application initiated a conversion case being No. 1 of 2001 - 2002 u/s 4C of the West Bengal Land Reforms Act, 1955 (hereinafter referred to as the said Act) on 7th September, 2001. Upon proper enquiry, hearing and compliance of all the formalities the District Land and Land Reforms Officer issued conversion certificate. After observing all formalities the petitioner applied for sanction for the construction of the building to the Zilla Parishad concerned as the said land situates within the Panchayat area. Necessary sanction to the plan for construction of the building was granted. After obtaining sanction to the said plan the petitioner started construction of a building for establishing educational institution. While the said construction was going on or about 17th August, 2005, the Joint Secretary, Government of West Bengal by a Memorandum No. 4290 -I.S. dated 17th August, 2005 cancelled the order of conversion issued previously. The petitioner, being aggrieved by the said order, filed an application u/s 10 read with Section 6 of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997. The said application was registered as O.A. No. 2755 of 2005. The learned Tribunal having admitted the same passed interim order on 23rd September, 2005 to the effect that construction of the building will abide by the result of the application. The petitioner not being satisfied with the said interim order dated; 23rd September, 2005 approached this Court with an application being WPLRT No. 727 of 2005. The Division Bench presided in over by the Hon''ble Mr. Justice Asok Kumar Ganguly (as His Lordship then was) and the Hon''ble Mr. Justice Maharaj Sinha by an order dated 23rd November, 2005 were pleased to set aside order dated 17th August, 2005 passed by the Joint Secretary and directed Joint Secretary to hear the petitioner and to pass a reasoned order. Pursuant to the said order the Joint Secretary heard the matter and passed a fresh order dated 17th March, 2006 and his earlier order for cancellation of the order of conversion was again passed. The petitioner, being aggrieved by the said subsequent order of the Joint Secretary, approached the learned Tribunal once again with the application being O.A. No. 948 of 2006. The said application was ultimately heard by the learned Tribunal and the same was dismissed by the judgement and order impugned before us.

2. The learned Tribunal upheld the order passed by the Joint Secretary, Land and Land Reforms and dismissed the application. In substance, the learned Tribunal held that the said permission for conversion of the land u/s 4C of the West Bengal Land Reforms Act, 1955 was granted by the concerned Collector in violation of the order of injunction passed by the learned Single Judge of this Court in the case of People United for Better Living in Calcutta - People United for Better Living in Calcutta-Public and another Vs. State of West Bengal and others, . It is observed by the learned Tribunal that in paragraph 42 of the said

judgement the learned Single Judge granted order of injunction restraining the State respondents from reclaiming any further wetland and further prohibiting respondents from granting any permission to any person whatsoever for the purpose of changing the use of the land from agricultural to residential or commercial in the area as indicated in the map annexed to the petition and marked with the letter "C". The State respondents have further directed to maintain the nature and character of the wetland in their present form and to stop all encroachment of the wetland area as indicated in the map annexed to the petition and marked with the letter "C". The State respondents have further directed to take steps so as to prohibit alienation and if required by extending the statutory provision in regard thereto. It was found both by the Joint Secretary, Land and Land Reforms and the learned Tribunal that in complete disregard to the said order of dismissal, permission order was granted for conversion. Therefore, such permission is nullity and, liable to be withdrawn.

3. Mr. Ashok Banerjee, learned Senior Advocate, appearing in support of this application, contends that to the notice and knowledge of all concerned the applicants applied for permission of West Bengal Pollution Control Board, who in turn, granted "no objection" and then applied for mutation and the same was effected, the plan for construction of the school building was also duly sanctioned by the concerned Zilla Parishad. Before that the application for granting permission for conversion of the character of the land was made to the Collector who granted permission after due enquiry and investigation. After all this, the petitioner has constructed his building at an enormous cost and has started running a school. A large number of students have already been admitted and have been studying. Affiliation and recognition of the appropriate school board have been obtained. According to him, the land situates within mouza Dakshin Dhapamanpur and the same is I not covered by the judgement rendered in that case. It will appear from the Government notification subsequent to the said judgement that Dhapamanpur mouza was not covered by the order of injunction passed in the said judgement. Moreover, he submits, the said judgement was rendered in the context of the wetland and it will appear from the records of rights that from the beginning the character of the land purchased by the petitioner was always agricultural and/or homestead but not wetland nor even low land. He further contends that the judgement of the learned Single Judge is really contrary to the provisions of Section 4C of the West Bengal Land Reforms Act applicability of which was neither challenged nor by judicial pronouncement in absence of challenge operation of any provision of the law can be stayed universally. By the aforesaid judicial pronouncement the learned Single Judge has encroached upon the field of legislature. Until and unless a particular piece of legislation is struck down operation of the same cannot be suspended by passing order of injunction by the Court and such a judgement is unconstitutional and we should ignore the said judgement.

4. He further contends that the effect of the said judgement has come to an end the moment the State legislature has enacted a law for conservation,

management and protection of the wetland vis. the East Kolkata Wetland (Conservation and Management) Act, 2006. The said Act came into force on 31st March, 2006 and the same cannot have any retrospective operation. Even original part of Dhapamanpur area was excluded and this portion has been included later on by a notification by way of extension. Therefore, it is clear that when the Act came into operation and the judgement of the learned Single Judge was subsisting the mouza under which the land in question situates did not fall within the sweep of the said judgement or the said Act. He thus contends that the approach of the learned Tribunal was not in right direction to decide the matter. He says lastly that Joint Secretary has no power under the law to cancel order of conversion under the law.

5. Mr. Indrajit Sen, learned Counsel for the State, submits that the order of injunction passed by the learned Single Judge was not appealed against. The same has been accepted by the parties. Whether order is right or wrong cannot be examined and questioned before this Court in a collateral proceedings. So long the judgement of the learned Single Judge, howsoever wrong, remains valid and subsisting unless it is set aside by the appropriate forum. The operative portion of the language of the said judgement is absolutely clear to mean that any kind of permission under any Act is prohibited, for any land situates within the area of Dhapamanpur. The District Collector disregarded totally the said departmental circular issued basing on the said judgement. Therefore, order granting permission by the Collector is a nullity and it is well-settled law as has been correctly found on the proposition of law by the learned Tribunal that any action or act taken in violation of prohibitory order of injunction is null and void and effect thereof cannot be given.

6. Moreover, the said Act has come into force and the entire mouza of Dhapa within which the land in question situates, has been brought within the purview of the said Act. Under such circumstances, the judgement of the learned Tribunal cannot be interfered with and the application should be dismissed.

7. After hearing the learned Counsels and going through the records, the judgement and order of the learned Tribunal and the order of the Joint Secretary to the Government of West Bengal dated 17th March, 2006 the points for consideration before us are as follows:

(i) Whether the Joint Secretary to the Government of West Betfgal, Land and Land Reforms Department has jurisdiction to pass impugned order though the same has been done pursuant to the order of the Division Bench of this Court dated 23rd November, 2005;

(ii) Whether the lands in question being plot Nos. 2139/2375 situate at present within the mouza Dakshin Dhapamanpur, P.S.: Bhangore, South 24-Paraganas do come within the purview of the wetland so as to bring the judgement passed by the learned Single Judge in the matter No. 2851 of 1992;

(iii) Whether the order of injunction passed in the aforesaid matter by the

learned Single Judge is operative in this case or not.

8. Before we discuss the aforesaid questions we feel it appropriate to record the following admitted positions:

- (i) the petitioner purchased the lands as mentioned above;
- (ii) After purchase the petitioner's name has been mutated in the Land Revenue Department and necessary rates and "taxes" were realised;
- (iii) On initiation of mutation case being No. 52/IX/2001-2002 conversion of the land for construction of the school building was granted on or about 7th September, 2001. Before construction the said plots of land have been recorded as danga (vacant land) as it appears from order itself.
- (iv) Construction of the building plan was made with the permission of the Zilla Parishad upon due and lawful sanction of the building plans.

9. On the question of jurisdiction raised in this case we are of the view that the Joint Secretary under the said Act or otherwise has no jurisdiction to cancel the permission granted u/s 4C of the West Bengal Land Reforms Act but the judgement and order passed by this Court as noted above may have some relevance in this context as pursuant to the direction thereunder the Joint Secretary had passed: the aforesaid order. We, therefore, quote the exact language of the Division Bench in the order dated 23rd November, 2005:

In that view of the matter this Court disposes of the writ petition by directing the Joint Secretary to hear the petitioner before passing any order. This Court makes it clear that while passing any such order the Joint Secretary will be guided by the relevant provisions of law. Thus he could not decide the matter blindly just because this Court had directed. He was obliged to check up the provision of law whether he had power to cancel the permission granted u/s 4C of the Land Reforms Act.

Section 4C of the said Act is set out hereunder:

4C. Permission for change of area, character or use of land.-

(1) A raiyat holding any land may apply to the Collector for change of area of character of such land or for conversion of the same for any purpose other than the purpose for which it was settled or was being previously used or for alteration in the mode of use of such land.

Explanation.- For the purposes of this sub-section, mode of use of land may be residential, commercial, industrial, agriculture excluding plantation of tea, pisciculture, forestry, sericulture, horticulture, public utilities or other use of land.

(2) On receipt of such application, the Collector may, after making such inquiry as may be prescribed and after giving the applicant or the persons interested in such land or affected in any way an opportunity of being heard, by order in writing either reject the application or direct such change, conversion or

alteration, as the case may be, on such terms and conditions as may be prescribed.

(3) Every order under Sub-section (2) directing change, conversion or alteration shall specify the date from which such change, conversion or alteration shall take effect.

(4) A copy of the order passed by the Collector directing change conversion or alteration, if any, under Sub-section (2), or in an appeal therefrom shall be forwarded to the Revenue Officer referred to in Section 50 or Section 51, as the case may be, and such Revenue Officer shall incorporate in the record-of-rights changes effected by such order and revise the record-of-rights in accordance with such order.

(5) If the Collector is satisfied that any land, is being converted for any purpose other than the purpose for which it was settled or was being previously held, or attempts are being made to effect alteration in the mode of use of such land or change of the area or character of such land, he may, by order, restrain the raiyat from such act.

10. It is clear from the aforesaid Section that the Collector alone and none else has power to grant or to reject permission. Under such circumstances we think that the Joint Secretary should not have passed any order for cancellation. According to us, he should have rested the matter. Of course, he could have sent back the matter to the Collector for reconsideration as the question was raised that the permission was said to have been granted in violation of the order of injunction. Under the provisions of Section 22 of Bengal General Clauses Act, 1899 an authority who has been given power under any State Act, to issue orders, he has power inter alia to rescind, if the same is done by mistake of law or on fraud practised by interested persons. Otherwise, the State Government was to challenge the aforesaid order of granting permission before the appropriate forum, since Collector acts under the above Section as quasi-judicial authority.

11. We think that the learned Tribunal has not correctly read the scope and purport of the Division Bench order and thereby the learned Tribunal overruled the question of jurisdiction assuming that the High Court has conferred all powers to decide. The High Court by previous judgement consciously kept all questions of law open including the question of jurisdiction for decision. We could have set aside the matter on this ground alone and sent back the matter before the Collector for fresh decision. We feel that when the Tribunal exercising its plenary jurisdiction has decided the matter on merit and when core issue in this matter relates to the interpretation of the order passed by this Court in writ jurisdiction by the learned Single Judge we now proceed to deal with the other questions.

12. Entire matter hinges on one point whether in violation of the order of injunction of the learned Single Judge permission has been granted or not. The

said judgement was rendered on 21st September, 1992 and permission has been granted subsequently. The learned Tribunal has recorded the correct position of law that any action taken or anything done in violation of the order of injunction passed by the competent Court of Law is null and void. We need not repeat the same as proposition of law is so well-settled. But in fact whether the same is applicable or not is the precise issue here. It is, thus, necessary to set out the exact text of the order of injunction passed by the learned Single Judge:

...there shall also be an order of injunction prohibiting the respondents from granting any permission to any person whatsoever for the purpose of changing the use of the land from agricultural to residential or commercial in the area as indicated in the map annexed to the petition and marked with the letter "C".

13. We must say that it has been correctly pointed out by Mr. Banerjee that the nature of the land recorded was of non-agricultural (danga) and it will be reflected from the records-of-rights and even from the letter of permission itself. Therefore, the aforesaid prohibition is applicable in case the nature of the land was either recorded or used as agricultural. In the records nowhere it has been mentioned that it is an agricultural one. Significantly shali character of land was not subject-matter of permission for conversion. We are, therefore, of the view that the said order of injunction has no manner of application in the petitioner's case as the petitioner never applied for conversion from use of the land from agricultural purpose to residential or commercial purpose. The land was of a danga (barren) character and permission was sought for use of the said danga land for construction of the building for educational institution.

In any view of the matter the aforesaid order was restricted to the area indicated in the map annexed to the petition and marked with the letter "C" Annexure "C" has been reproduced in the impugned judgement of the learned Tribunal and it is very difficult to ascertain the area from the map indicated in the Annexure "C" A specific point was taken before the Joint Secretary that the concerned plot of land was not situated within the area of East Calcutta Wetland Area as Annexure "C" to the petition. The Joint Secretary in his order at page 3 has recorded that there was no detailment of mouza and the plot numbers which can be seen in the Annexure "C" to the writ petition submitted before the Hon'ble Green Bench. But subsequently the area was added with the concerned mouzas. It is, therefore, clear that the aforesaid plot numbers were not covered by Annexure "C" and thus, any order passed in the said judgement is not applicable in the petitioner's case. The learned Tribunal on the aforesaid factual score has relied on some other material at the time of hearing which was produced and was not placed before the learned Single Judge in the said writ petition. The learned Tribunal has relied on a xerox copy of the map maintained by the Directorate of Survey of the Government of the West Bengal with a super imposition of the map annexed in the Annexure "C" of the writ petition being matter No. 2851 of 1992. Taking these together the learned Tribunal found that the subject-matter of the plots of land was covered by Annexure "C" With great respect the learned

Tribunal should not have relied on any material except Annexure "C" annexed to the writ petition. The Joint Secretary has found that Annexure "C" does not mention any specific plot or mouza which was subsequently added. In our view, any addition of any plots or mouza subsequent to the order of injunction is of no relevance and does not help in this case. It is significant to mention that the aforesaid judgement was rendered in connection with conversion of the wetland. The learned Tribunal also repeated what the learned Single Judge had done in His Lordship's judgement as to the need of preservation of the wetland particularly in Calcutta. Obviously the nature of the land recorded herein cannot be by any stretch of imagination, a wetland. The definition of "wetland" is very clear and it has been recorded in paragraph 4 of the judgement of the learned Single Judge. The learned Tribunal unnecessarily reiterated and repeated the findings of the learned Single Judge to decide this case although question before the learned Tribunal was whether the permission was granted in violation of the order of injunction or not.

14. We have noted that aforesaid order of injunction does not affect the subject-matter of the land in question.

15. Learned Tribunal has also discussed and observed that in view of the East Kolkata Wetland (Conservation and Management) Act, 2006 inclusion of the mouza in question and of the plot numbers the permission granted is required to be cancelled. We think that this portion of the judgement of the learned Tribunal is absolutely misplaced in this case as the Act came into force in 2006 and has no retrospective operation and the permission was granted in the year, 2001, so thus Act has no manner of application. Rather from the Schedule of the Act it appears that originally it was not within the wetland area and by the subsequent notification this was brought within the purview of the wetland. How far it is justified or not is another question and we are not commenting on that. In the affidavit-in-opposition the point has also been taken that the subject-matter was of sale of the land in favour of the petitioner in violation of the order of injunction passed by the learned Single Judge. We do not find any such blanket order of injunction passed by the learned Single Judge. In paragraph 42 the last sentence thereof directs the State respondents to take steps so as to stop the alienation and, if required, by extending the statutory provisions in regard thereto. We do not find that any such step was taken at the time of the sale of the said property after passing of the said judgement. Had it been so the registering authority would not have registered. It is, therefore, incorrect to say that the learned Single Judge had prohibited by passing order of injunction alienating any land. We, therefore, hold that factually on merit the judgement and order of the learned Tribunal is not sustainable nor the order of the Joint Secretary. Both are set aside and the permission granted earlier stands revived.