

(2023) 04 CAL CK 0079
In the Calcutta High Court
Case No : Criminal Revision No. 372 Of 2019

Pratap Naskar & Ors.

APPELLANT

Vs

State Of West Bengal.

RESPONDENT

Date of Decision : 26-04-2023

Acts Referred:

West Bengal Inland Fisheries Act, 1984 — Section 17A, 17A(1)(c)
West Bengal Land Reforms Act, 1955 — Section 4D

Citation : (2023) 04 CAL CK 0079

Hon'ble Judges : Shampa Dutt (Paul), J

Bench : Single Bench

Advocate : Pratip Kumar Chatterjee, Binay Panda, Subham Bhakat

Final Decision : Allowed

Judgement

Shampa Dutt (Paul), J

1. The present revision has been preferred praying for quashing the proceeding under Section W.B. 4 (D) L.R. Act read with Section 17 (A) Inland of Fisheries Act arising out of Sonarpur P.S. Case No. 813 of 2017 dated 05.05.2017 under Section 4(D) W.B. L.R. Act and Section 17(A) Inland of Fisheries Act (G.R. 3022 of 2017) and the charge sheet submitted therein, pending before the Ld. Additional Chief Judicial Magistrate, Baruipur, South 24 Parganas.

2. The petitioners case is that the club namely, Boalia Yuba Sangha, Boalia, P.O. – Garia, P.S. – Sonarpur, presently Narendrapur, Dist – South 24 Parganas, Kolkata - 84 was established in the year 1946 and the registration number of the said club is S/13514 of 1973-74 and since registration each and every year audit of the said club is duly done.

3. There are 250 members in the aforesaid club and out of them the petitioner no. 1 is the President, petitioner nos. 2 to 6 are Vice Presidents, petitioner no. 7 is the Secretary, petitioner nos. 8 & 9 are the Assistant Secretaries, petitioner no. 10 is the Treasurer, Petitioner no. 11 is the Game Secretary, petitioner nos.

12 to 14 are Assistant Game Secretaries, petitioner no. 15 is the Cultural Secretary, petitioner nos. 16 & 17 are Assistant Cultural Secretaries.

4. That one Manmohan Naskar along with Ors. filed a suit before the Court of Ld. Civil Judge (Jr. Divn.), 2nd Court, Baruipur, against Boalia Yuba Sangha, P.O. – Garia, P.S. – Sonarpur, Dist – South 24 Parganas being Title Suit No.86 of 2013 (Nil Kanta Naskar & Ors.Plaintiffs Versus Boalia Yuva Sangha.... Defendants). The defendants of the said suit duly contested the suit and ultimately by an order being no. 56 dated 17.11.15 the said suit was dismissed.

5. All on a sudden, the petitioners came to know that they have been made accuseds in connection with Sonarpur P.S. Case No. 813 of 2017 dated 05.05.2017 under Section 4(D) WB L.R. Act read with Section 17(A) Inland Fisheries Act and coming to know the said facts they caused an inquiry and came to know that BL & LRO, Sonarpur, 24 Parganas(S) had lodged a complaint before the Inspector-in-Charge, Sonarpur Police Station, South 24 Parganas against the club namely Boalia Yuba Sangha with reference (i) an enquiry conducted by Revenue Inspector – Garia- 1, dated 05.04.2017, (ii) Writ Petition No. 8112 (W) of 2017 alleging that "In connection with subject above this is to inform you that Boalia Yuba Sangha, Sonarpur 24 Parganas(S), Kol – 700150 has unauthorisedly converted part of R.S. Plot No. 862, L.R. 887, Mouza Kandarpur, Boalia, J.L. 49, P.S. – Sonarpur without obtaining any prior permission from Appropriate Authority, in spite of the fact that the said dag is duly recorded in favour of Collector 24 Parganas(S) and is a water body as per record of rights.

6. A field enquiry was conducted by Revenue Inspector – Garia-1 on 05.04.2017 at 11 A.M.

7. Notice was served upon them to show cause as to why action won't be taken against them for such violation of existing rules & regulations, but Boalia Yuba Sangha, Sonarpur did not pay any heed to the same.

8. As Manmohan Naskar failed to succeed in the aforesaid suit, his son namely, Santanu Naskar filed a writ petition in the form of Public Interest Litigation being W.P. No. 8112 (W) of 2017, to cancel the mutation granted in favour of the private respondents in respect of the plot of land situated at Mouza Kandarpur, Boalia, J.L. No. 49, appertaining to R.S. Plot No. 862, L.R. Plot No. 887, Area 0.05 acres, Nature – Doba, Dist – South 24 Parganas, and commanding the respondents to restore the water body in question to it's original form and also commanding the respondent authorities to demolish the construction made by the private respondent.

9. The complainant's son also prayed for order of injunction restraining the private respondent from filling up the water body as also from making any further construction over the said plot of land.

10. It is submitted by the petitioner herein that the Hon'ble High Court has not passed any order in the aforesaid Public Interest Litigation with the direction for

lodging FIR. Though there was no direction by the Hon'ble High Court even then by giving reference of the said writ petition (PIL) being W.P. No. 8112(W) of 2017, the FIR has been lodged against the petitioners.

11. In the complaint it has been stated that notice was served upon Boalia Yuba Sangha. But the petitioners emphatically deny and state that no such show cause notice was served.

12. Mr. Pratip Kumar Chatterjee, learned counsel for the petitioners has submitted that the FIR made against the club relates to plot no. 862, L.R. 887, Mouza – Kandapur, Boalia, J.L. 49, P.S. – Sonarpur, South 24 Parganas.

13. That as per C.S. Record of Rights the aforesaid R.S. Plot No. 862, L.R. 887, was C.S. Plot No. 813 and the area of land was 9 decimals classified as 'Danga'.

14. That the said C.S. Plot was divided into two parts. One is R.S. Plot No. 862 classified as 'Shali', area of land 5 decimals and another is R.S. Plot No. 863 classified as 'Shali', area of land 4 decimals.

15. But in the L.R. Record of Rights it has been wrongly and/or inadvertently recorded as 'Doba', and for correction of which necessary proceedings has to be drawn up.

16. So, it is clear that the plot in question was never classified as 'Doba' and it has been wrongly recorded as "Doba" in the L.R. record of rights and practically the said plot of land is a 'Shali' land and at no point of time it was/is 'Doba'.

17. The aforesaid plot was vested to the State which was subsequently recorded in the name of "Boalia Yuba Sangha".

18. The aforesaid club is within the Sonarpur – Rajpur Municipality and in the year 2013, the municipality issued Municipal Mutation Certificate along with Municipal Assessment Certificate.

19. The club also pays municipal tax.

20. One ICDS School is functioning from the said club.

21. The Chairman, Rajpur – Sonarpur Municipality also issued a certificate in the name of "Boalia Yuba Sangha".

22. That since 2009, a multi Gym is being run in the said club and for that the club also received money from the MLA Development Fund.

23. The club also obtained M.P. LAD Fund in the year 2013, for the construction of the 1st floor of the club and for construction of the second floor in the year 2016.

24. It is apparent from the fact of the instant case that the guidelines laid down in the case of the State of Haryana Vs Bhajan Lal, 1992 SUPP(1)SCC 335, are applicable to the instant case and as such, the total proceedings in this case

should be set aside and/or quashed.

25. Mr. Binay Panda, learned counsel for the State has placed the case diary and submitted that there is a Prima Facie case against the petitioners considering the materials in the case diary and charge sheet has been rightly filed against them under Section 4D of the WBLR Act and Section 17A of the West Bengal Inland Fisheries Act, 1984. The revision is thus liable to be dismissed.

26. On hearing the learned counsels for both sides and considering the materials on record the following facts are before this court :-

i. The complaint has been filed by the BL & LRO, under Section 4D WBLR Act for illegal conversion of part of R.S. plot no. 862, Mouza Kandarpur Boalia on 05.05.17.

ii. From the LR record of rights submitted by the BL & LRO, it is seen that the total area is 0.05 acres, which is equal to 3.025 cottahs.

iii. The petitioner has filed a copy of 'CSROR' received on making an application showing the land as 'Shali'.

iv. Title Suit 86/2013 filed against the petitioner's club in respect of the same property was dismissed for default on 17.11.2015 by the learned Civil Judge (JR. Div.), Baruipur.

v. Govt. Fund under several schemes has been provided by the District Magistrate's Office by letters dated 19.03.2013, 25.01.2016 and others, to the petitioners club for implementation of several schemes including fund for construction of building by the club on the allegedly disputed land.

vi. An agreement has also been executed between the government through the District Magistrate and the petitioners club on 25.01.2016 for implementation of such development locally.

27. Admittedly the area of the land/doba (disputed) is 0.05 acres which is equal to 3.025 cottahs.

28. Section 17A of the West Bengal inland fisheries Act lays down:-

"17A. Bar to conversion of water area etc. for other use.-

(1) No person shall-

(a) Put any water area including embankment [* * *], which is capable of being used as fishery, or any naturally or artificially depressed land holding [* * *], 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 [within the jurisdiction of any Municipal Corporation or any Municipality], or

(b) Fill up any water area [in part or in full] 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) [within the jurisdiction of any Municipal Corporation or any Municipality divide any water area] including embankment or naturally or artificially depressed land holding as aforesaid into parts so as to make any such part [* * *] 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.

[Provided that the restrictions contained in clause (a) or clause (c) shall apply in respect of any area measuring 5 cattahs or 0.035 hectare or more falling within the jurisdiction of any Gram Panchayat.]”

29. The allegation of dividing water area including embankment or naturally or artificially depressed land holding as aforesaid into parts as per Section 17A (1) (c) of the Act is also absent in this case.

30. So clearly the area is less than 5 cottahs. The financial support and agreement with the government for construction on the land by the club also clearly shows that the conversion if any has been made with the consent/permission of the government.

31. As such the materials on record and the case diary do not make out a prima facie case against the petitioners as to the offence alleged, as shown in the charge sheet submitted.

32. CRR 372 of 2019 is allowed.

33. The proceedings arising out of Sonarpur P.S. Case No. 813 of 2017 dated 05.05.2017 under Section 4(D) W.B. L.R. Act and Section 17(A) Inland of Fisheries Act (G.R. 3022 of 2017) and the charge sheet submitted therein, pending before the Ld. Additional Chief Judicial Magistrate, Baruipur, South 24 Parganas, is hereby quashed.

34. There will be no order as to costs.

35. All connected Applications stand disposed of.

36. Interim order if any stands vacated.

37. Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

38. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.