

(2005) 11 CAL CK 0005

In the Calcutta High Court

Case No : A.P.O.T. No. 250 of 2005, G.A. No. 1224 of 2005 and W.P. No. 352 of 2005

State of West Bengal and Others

APPELLANT

Vs

Sanjeevani Projects (P) Ltd. and Others

RESPONDENT

Date of Decision : 16-11-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 19(1), 21, 226
Environment (Protection) Act, 1986 — Section 3(1), 3(2)
Environment (Protection) Rules, 1986 — Rule 5(3)
Land Acquisition Act, 1894 — Section 4
West Bengal Estates Acquisition Act, 1953 — Section 5(1), 6
West Bengal Inland Fisheries Act, 1984 — Section 17A, 17A(1), 2
West Bengal Land Reforms (Amendment) Act, 1981 — Section 2(7)
West Bengal Land Reforms Act, 1955 — Section 1, 1(3), 2(10), 2(7), 3A
West Bengal Land Reforms Rules, 1965 — Rule 5A
West Bengal Panchayat (Gram Panchayat Administration) Rules, 1981 — Rule 17(1), 23A, 23E, 23K
West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 — Rule 22, 22(2), 24, 26, 28
West Bengal Panchayat Act, 1973 — Section 23, 4(5)
West Bengal Town and Country (Planning and Development) Act, 1979 — Section 3(1), 3(2), 44

Citation : (2006) 1 CHN 241

Hon'ble Judges : Soumitra Pal, J; D.K. Seth, J

Bench : Division Bench

Advocate : Anindya Mitra, Anshu Nath Banerjee and Krishna Nanda Mukherjee, in APOT No. 250 of 2005, GA No. 1224 of 2005 and WP No. 352 of 2005 and Anindya Mitra, Anshu Nath Banerjee and Krishna Nanda Mukherjee, in APOT No. 252 of 2005, GA No. 1227 of 2005 and WP No. 367 of 2005, Balai Chandra Roy, Manick Chandra Das, Subrata Banerjee and Sanbhik Chowdhury, in APOT No. 250 of 2005, GA No. 1224 of 2005 and WP No. 352 of 2005 and Balai Chandra Roy, Manick Chandra Das, Subrata Banerjee and Sanbhik Chowdhury, in APOT No. 252 of 2005, GA No. 1227 of 2005 and WP No. 367 of 2005, Subir Bhattacharya, in APOT No. 250 of 2005, GA No. 1224 of 2005 and WP No. 352 of 2005 and Subir Bhattacharya, in APOT No. 252 of 2005, GA No. 1227 of 2005 and WP No. 367 of 2005, for the Appellant; Sakti Nath Mukherjee, Pratap Chatterjee, Jayanta Banerjee, Pramit Kumar Ray and S.K. Kanodia, in APOT No. 250 of 2005, GA No. 1224 of 2005 and WP No. 352 of 2005 and Samaraditya Pal,

Judgement

D.K. Seth, J.

Prelude:

1. These two appeals involve identical question of law and fact. Therefore both these matters were taken up and heard simultaneously. The appeals arise out of the interim orders granted by the learned Single Judge in the respective writ petitions filed by the respondent Sanjeevani Projects (P) Ltd. and Green Valley Towers (P) Ltd. respectively.

1.1. In course of hearing of the application for interim order the respective Counsel for the parties addressed the Court on the merit of the appeal. Therefore, at the suggestions of the parties the appeal was taken up for hearing. At the initial hearing of the appeal the parties had addressed the Court on the merit of the writ petitions as well. Since the Court was invited to decide the matter even on the question involved in the writ petition, therefore, it was deemed fit that the two writ petitions should also be disposed of, and the learned Counsel for the respective parties jointly suggested that the records of the writ petitions be called for and be decided along with the appeals.

1.2. Accordingly, the records of the respective writ petitions were called for. The writ petitions and the appeals were heard on merit. The respective Counsel for the parties had argued their respective cases extensively for a number of days. In the circumstances we propose to dispose of the appeal and the writ petitions together as hereafter.

The Writ Petitions : The Prayers : the Interim Orders : The Appeals :

2. The respondents as respective writ petitioners filed two writ petitions being Writ Petition No. 352 of 2005 and Writ Petition No. 367 of 2005. In the Writ Petition No. 352 of 2005, the following prayers were made :

(b) A writ of and/or in the nature of Certiorari do issue calling upon the respondents and/or each one of them to certify and transmit all records pertaining to the conversion of the nature of use of the said premises. Particulars whereof are pleaded in this petition as also those pertaining to the institution of any complaint FIR with Calcutta Leather Complex Police Station and /or any other police station against the petitioners or either of them so that conscionable justice may be rendered by quashing the same upon consideration thereof;

(c) A writ of and/or in she nature of Mandamus do issue commanding the respondents and/or each one of them--

(i) quashing and/or setting aside any criminal complaint and/or FIR that has

been lodged against the petitioners or either of them in respect of the properties being the said 16.6252 acres of land lying and situate at R.S. Dag No. 321/615 in Mouza Kochpukur, 24-Parganas South, belonging to the proforma respondents, by the respondent No. 3 or any other respondents with Calcutta Leather Complex Police Station and/or any other police station;

(ii) to issue sanction letter specifically confirming/directing/recording the conversion of nature of use of the said premises being the said 16.6252 acres of land lying and situate at R.S. Dag No. 321/615 in Mouza Kochpukur, 24-Parganas South so that dwelling units and other construction can be made at the said premises;

(iii) to issue appropriate letter slating that the petitioners do not require any other sanction letter for making any construction at the premises;

(iv) to forward and furnish a copy of the criminal compliant FIR as lodged by the respondent No. 3 and/or any other respondent(s) in Calcutta Leather Complex Police Station against the petitioners particularly the petitioner No. 1 in respect of the said premises, to the petitioners;

(d) A writ of and/or in the nature of prohibition do issue restraining the respondents, and/or each one of them--

(i) from interfering with/or hampering in any manner whatsoever the construction process at the said premises;

(ii) from arresting and/or apprehending the petitioner Nos.2 and 3 in any manner whatsoever;

(iii) from confiscating the properties of the petitioner in any manner whatsoever;

(iv) from insisting upon production of any conversion certificate in respect of the said premises;

(v) from acting and/or any further acting in pursuance of the criminal complaint and/or FIR instituted by the respondent No. 3 and/or any other respondents in Calcutta Leather Complex Police Station or any other police station against the petitioners in connection with the said premises;

(e) Rule NISI in terms of the above prayers;

(f) Rule NISI be made absolute if no cause and/or insufficient cause is shown;

(g) An order of mandatory injunction be passed commanding the respondents, their men, agents, servants, subordinates, successor-in-office, successor-in-interest and/or each one of them thereby directing--

(i) to quash and/or set aside any criminal complaint and/or FIR that has been lodged against the petitioners or either of them in respect of the properties being the said 16.6252 acres of land lying and situate at R. S. Dag No. 321/615 in Mouza Kochpukur, 24-Parganas South, belonging to the proforma respondents,

by the respondent No. 3 or any other respondents with Calcutta Leather Complex Police Station and/or any other police station;

(ii) to issue sanction letter specifically confirming/directing/recording the conversion of nature of use of the said premises being the said 16.6252 acres of land lying and situate at R. S. Dag No. 321/615 in Mouza Kochpukur, 24-Parganas South, so that dwelling units and other construction can be made at the said premises;

(iii) to issue appropriate letter stating that the petitioners do not require another sanction letter for making any construction at the premises;

(iv) to forward and furnish a copy of the criminal complaint FIR as lodged by the respondent No. 3 and/or any other respondent(s) in Calcutta Leather Complex Police Station against the petitioners particularly the petitioner No. 1 in respect of the said premises, to the petitioners;

(h) An order of injunction do issue restraining the respondents, their men, agents, servants, subordinates, successor-in-office, successor-in-interest and/ or each one of them --

(i) from interfering with or hampering in any manner whatsoever the construction process at the said premises;

(ii) from arresting and/or apprehending the petitioner Nos. 2 and 3 in any manner whensoever;

(iii) from confiscating the properties of the petitioners in any manner whatsoever;

(iv) from insisting upon production of any conversion certificate in respect of the said premises;

(v) from acting and/or any further acting in pursuance of the criminal complaint and/or FIR instituted by the respondent No. 3 and/or any other respondents in Calcutta Leather Complex Police Station or any other police station against the petitioners in connection with the said premises;

(i) Ad interim orders in terms of the above prayers;

(j) Costs of and incidental so this application be paid by the respondents;

(k) Such further and/or other orders be passed, directions and/or directions be given as to this Hon''ble Court may deem fit and proper.

2.1. Identical prayers were made in the other writ petition.

2.2. Green Valley Towers (P) Ltd. moved Writ Petition No.367/2005 on 25th February, 2005. In the said writ petition ad interim order was passed restraining the Gram Panchayat from taking any step for revocation of the sanctioned plan and the respondent/appellant from taking any step against the petitioner. Thereafter, the writ petition was released by the learned Single Judge on 1st

March, 2005. Thereafter, on 4th March, 2005 the application for interim order filed by Green Valley Towers (P) Ltd. was moved before the other learned Single Judge, when the same interim order was passed. On 9th March, 2005 Sanjeevani Projects (P) Ltd. moved its writ petition and similar interim order was passed by the other learned Single Judge. On 16th March, 2005, the appellant appeared in both these matters and submitted that the construction shall not be permitted to go on. However, no order modifying the interim order was passed. On the other hand the interim order was continued and directions were given for filing affidavits.

2.3. Two appeals were taken against the interim order passed respectively in the said two writ petitions. These two appeals were numbered as A.P.O.T. No. 252 of 2005 [Green Valley Towers (P) Ltd.] and A.P.O.T. No. 250 of 2005 (Sanjeevani Projects (P) Ltd.). Ultimately these two appeals were assigned to this Bench. This is how the matters have come up before this Court.

The Facts:

3. Extreme erudite arguments were made by the respective Counsel appearing on behalf of the respective parties. Various points were raised both on the question of facts as well as on the questions of law requiring an answer/determination of those which are otherwise very relevant and important for both the parties involving an interest of the people living in Kolkata at large. Before we shift to the respective arguments we may briefly refer to the facts relevant for the purpose of this case.

3.1. It was alleged that by transfer or otherwise the petitioner, Green Valley Towers (P) Ltd., became owner of or entitled to make construction on part of the disputed plot being L.R. Plot No, 321/615 Mouza Kochpukur formerly R.S. Plot No. 773 of Mouza Dhupamanpur. However, neither any deed of purchase nor of assignment nor of agreement had since been disclosed. On 25th September, 2001 the Land and Land Reforms Department, Government of West Bengal worked out the list of plots being part of the respective Mouza falling in the East Kolkata Wetland Area. A part measuring about 59.64 acres of Dhupamanpur, since amalgamated with Mouza Kochpukur, was shown within the wetland area. In the mutations certificate issued on 1st October, 2001, the character of the land shown was "beel maach chas" On 6th May, 2003, the petitioner submitted applications for conversion of the land and paid the requisite fees for conversion. These were recorded as conversion case No. 2/2002-03 to 6/2002-03 and 9/2002-03 to 13/2002-03. These applications, however, were rejected.

3.2. The fact of rejection of the prayer for conversion had come to the knowledge of the Green Valley Towers (P) Ltd. on the basis of the disclosure made by the Collector in the affidavit-in-opposition filed on behalf of the Government. Between 18th March, 2004 and 20th July, 2004 Sanjeevani Project (P) Ltd. entered into eight agreements of development with the owners of some other parts of the same land. On 7th September, 2004 the building plan was

sanctioned by the Bamunghata Gram Panchayat. On 17th September, 2004 the construction started on the basis of the sanctioned building plan. On 15th February, 2005 FIR was lodged with the local police station. On behalf of the Green Valley Towers (P) Ltd., the learned Advocate asked the police officer to supply a copy of the FIR. On 22nd February, 2005 the police arrested three labourers and one security officer from the site. They, however, were released on bail on 22nd February, 2005. On 22nd February, 2005 a spot enquiry was made. On 22nd February, 2005 the Land and Land Reforms Officer concerned asked Green Valley Towers (P) Ltd. to stop work of illegal construction since there was no valid conversion order from the department u/s 4C of the West Bengal Land Reforms (WBLR) Act, 1955 and that the land was classified as "beel maach chas".

3.3. In the circumstances the Green Valley Towers (P) Ltd. had moved the writ petition (W.P. No. 367 of 2005) on 25th February, 2005. An ad interim order was granted thereon on the same date. After the matter was released by the learned Single Judge on 1st March, 2005, same interim order was passed on the said application on 4th March, 2005 by the other learned Single Judge when the same was then moved. Sanjeevani Projects (P) Ltd. on similar facts moved its writ petition on 9th March seeking identical reliefs and similar interim order was passed by the learned Single Judge. On the prayer of the Government respondent, after its appearance, for stopping construction the interim order was not modified but was continued with the direction for filing affidavits.

3.4. The present two appeals taken against the interim orders have now since been assigned to this Bench upon release on 5th May, 2005 by the regular Bench. This Bench on 19th August, 2005 granted the interim order and directed the District Land and Land Reforms Officer (DL & LRO) to inspect the site and submit a report. The DL & LRO after his inspection submitted a report with photographs.

The Arguments : Sanjeevani Projects :

4. The main question that has been sought to be put forth by Mr. Sakti Nath Mukherjee, learned Senior Counsel, appearing on behalf of Sanjeevani Projects (P) Ltd., was that Section 4C of the West Bengal Land Reforms Act, 1955 (WBLR Act) has no manner of application in the present case. He had also argued that the land, being land falling on the north of the canal of Mouza Dhapamanpur, was not included within the wetland listed by the department in terms of the earlier decision of the High Court in a public interest litigation moved by People United for Better Living in Calcutta (Public), a public spirited body. By reason of the impact of the West Bengal Land Reforms (Amendment) Act, 1981 the owners are raiyat with heritable and transferable right in respect of the land held by them within the ceiling. Admittedly the owners were holding the land within the ceiling and as such by reason of the definition of land defined in Section 2(7) as amended by the 1981 Act, there was no restriction on the use of the land and as such no conversion was necessary. According to Mr. Mukherjee conversion would be required in a case where a raiyat is allowed to retain land in excess of the

ceiling. No restriction can be imposed in respect of the land held by a raiyat within the ceiling. However, such right of the raiyat is subject to restrictions and limitations prescribed under the law.

4.1. The dispute that has been raised by the State Government is threefold. First that the land is part of the East Kolkata Wetland; second that any conversion or construction on such wetland is prohibited by this Hon'ble High Court in *People United for Better Living in Calcutta-Public and another Vs. State of West Bengal and others*, , and third that conversion though applied for was not granted u/s 4C. It may be noted that Sanjeevani Projects (P) Ltd. had applied for conversion on 8th October, 2002. This was rejected on 3rd March, 2005 after the writ petition was filed. Mr. Mukherjee pointed out that the decision in Public 1993 (2) CLJ 105 (supra) and contended that the list mentioned in paragraph 23 of the said judgment prohibited "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 are further directed to maintain the nature and character of the wetlands 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".

4.2. In this background, Mr. Mukherjee contended further that the Plot No. 321/615 though erroneously continued to be Recorded as "beel maach chas" has for decades been a high land. Irrespective of such change of the nature of land a tank even though used for agricultural purpose is a non-agricultural plot. He relied on the decision in *Fakir Chandra Chakravarty v. Pandit Sri Lakshmi Kant Jha and Ors.* 75 CWN 952 (P.N. Mookerjee and A.K. Mookerjee, JJ.) and *Binoy Kumar Saha and Another Vs. The Revenue Officer, Malda and Others*, . The records-of-rights of R.S. Plot No. 321/615 annexed to A/R in the Trial Court indicates the plot to be "beel maach chas" (tank fishery) attested on July 25, 1988 and shows the plot to be in Mouza Kochpukur at least from 1988 (Pages 263 & 264 of the Compilation). It is not a case of the State that the petitioners are converting an agricultural plot to some other kind of plot, surreptitiously or otherwise in violation of the legal provisions. The only ground taken for refusal to permit conversion, despite accepting and receiving the conversion fees, is that the plot lies within wetland, which factually will appear not to be so.

4.3. He contended further that the State in its affidavit-in-opposition has disclosed that the Environment Department, Government of West Bengal forwarded to the Director of Land Records & Survey and Joint Land Reforms Commissioner, Government of West Bengal, a list of Mouza falling within wetlands as per Annexure "C" by letter dated 18th September, 2000 and has referred to and relied thereupon (Pages 199-201 of the Compilation). The above report was prepared after a meeting between the Secretary, Environment Department and the Director, Land Records and Survey and with a view to indicating and identifying the Mouzas involved under Annexure "C" to the writ

petition filed by the Public. The List of Mouzas annexed to the said letter dated 18th September, 2000 Mouza Kochpukur does not find any reference. No plot in Mouza Kochpukur is alleged to be covered by Annexure "C". The plots in question were never within South Bidhannagar P.S. and were never transferred from Kochpukur Mouza. On the contrary on the footnote (Page 200 of the Compilation) it is clearly stated that "In addition the area to the North of Eastern Metropolitan Canal of Mouza Dhapamanpur lies outside the designated wetland area boundary". There can be no doubt or dispute about the location of Plot No. 321/615; it is to the North of Krishnapur Canal. According to him, by Notification dated 30th July, 1975, a part of Mouza Dhapamanpur was transferred from P.S. Bhangore to Salt Lake P.S. with the remarks : "Excluding the portions (which are on the North of the Krishnapur Canal) comprised in Plot Nos. 771 to 775."

4.4. The State in paragraphs 3(b), 3(c) and 3(d) of its affidavit-in-opposition (Page 188 of the Compilation) has made an attempt to confuse the issue. Annexure "C" to the petition in Public v. State (supra) has been clarified officially by the Environment Department and communicated to the Director of Land Records and Survey (Page 199 of the Compilation). There is no ambiguity either in the survey undertaken or in the list of wetland Mouzas with the footnote as communicated identifying the Mouzas covered by Annexure "C" of the petition in Public v. State (supra), which is also confirmed and corroborated by the Wetland Management Plan.

4.5. The land owners of the plot involved, after purchase applied for conversion in October, 2002 by way of abundant caution and after statutory enquiries, the S.D.L. & L.R.O. on 28th July, 2003 (Pages 260-262 of the Compilation) decided to grant conversion by the authorities and passed the challans (Page 76 of the Compilation) and assessed the conversion fees. At the same time, the District Magistrate, 24-Parganas (South) in his letter dated 4th November, 2004 addressed to A.D.M. and DL & LRO wrote that it appears that the said persons have applied for conversion of their lands and had even deposited the requisite fees for conversion in our office, but we have not been able to issue them the permission for conversion for various reasons, the most important one being the deliberations at the State Level relating to the lands falling in the East Kolkata Wetland (EKW). It appears that the lands of the applicant fall under the "added area" of East Kolkata Wetland (Page 113 of the Compilation). The significance of the expression "the added area" used by the D.M. in his letter dated 4th November, 2004 will appear from the Wetland Management Plan viz; the break up of the sectorwise land use of the EKW area as found from the analysis of the satellite supported by actual ground survey is given at page 11 of the Management Plan in which at page 17 thereof Mouza Kochpukur is shown as an Added Mouza. Dag No. 312/615 (Old R.S. Dag No. 773) is shown at page 147 of the Wetland Management Plan in its entirety as Urban Rural Settlement as a part of new addition. At page 147 of the Wetland Management Plan, there are three columns namely (i) agricultural area, (ii) water body oriented, area and (iii) Urban Rural Settlement. Dag No. 773 or 312/ 615 is shown to be falling only

under Urban Rural Settlement; no part thereof falls under any of the two other columns.

4.6. In paragraph 6 of the writ petition, it is specifically alleged that conversion of part of plot No. 312/615 has already been allowed for setting up of Aquatica. The State has left this statement uncontroverted (Para 4 of the A/O of the State at page 190 of the Compilation). The permission for conversion from Sali land to Water Park was granted to Aquatica on 29th May, 2000 (Page 132 of the Compilation). The Aquatica includes Restaurants, Towers, Water Parks and Resorts etc. for commercial purpose. On the other hand, on 2nd December, 2000, at least 4 notifications u/s 4 of the LA Act were issued for proposed acquisition of altogether an area of 33.25 acres out of plot No. 321/615 which is the land involved in this writ petition for the purpose of implementation of Rajarhat New Township Project in Mouza Kochpukur (A/R -- Annexure "R-3" at pages 265-284 of the Compilation). The proposed acquisition of the major part of the area was withdrawn by notifications dated 7th September, 2004 (A/R -- Annexure "R-3" pages 285-287 of the Compilation). Only a portion measuring 1.91 Acres out of plot No. 312/615 was acquired by the Government for constructing the road linking the PWD main road on the North of Krishnapur Canal with the Rajarhat Township for which compensation was paid to four of the Proforma respondents being owners of the relevant portions (Para 25 of affidavit-in-reply at page 245 -- Annexure "R-5" and "R-6" at pages 281 to 308 of the Compilation).

4.7. In view of the facts emerging from the official records and from records annexed by the State, as part of their affidavit-in-opposition in the instant case, no part of the land involved in the writ petition can be justifiably alleged to be a wetland which is the only ground taken for not granting conversion. The petitioners are not inviting this Hon''ble Court to go into any disputed question of fact, merely praying that the materials produced by the State and the action taken by the State may be taken into consideration for upholding the stand of the petitioners. It is not open to the State to take a stand which is unjust, unreasonable, whimsical, arbitrary and contrary to the admitted facts and mala fide for defeating the rights of the petitioners flowing from their admitted ownership.

4.8. In view of the judgment of the Hon''ble Division Bench in Paschim Banga Bhumijibi Krishak Samity v. State of West Bengal 1996 (2) CLJ 285, definition of land sought to be introduced by the WBLR (Amendment) Act of 1981 cannot be treated as continuing to be operative at least after July 26, 1996. It has been held by this Hon''ble Court (Hon''ble Justice N.K. Mitra, as His Lordship then was) that the old unamended definition of land continues to remain operative in view of the judgments in Paschim Banga Bhumijibi Krishak Samity (supra) and Prafulla Kumar Maity v. Amal Krishna Mishra and Ors. 1997 (2) CHN 20. Section 4C has not been enforced by notification u/s 1(3) of the West Bengal Land Reforms Act (Paragraphs 8 to 12 of the A/O, Page 125 of the Compilation). In the A/O, the

State has alleged that the issue has been finally decided by the Division Bench in *Vassanti Devi Pandey v. State of West Bengal* 2004 (2) CLJ 123. The State pleads that Section 1(3) applied to the principal Act and it exhausted its force after enforcement of its principal Act. The decision has not reacted finality. Inasmuch as, the SLP has since been admitted by and the matter is now pending before the Hon''ble Supreme Court.

4.9. The ROR has at best a presumptive value, which is rebuttable. Admittedly and actually the land became high long time ago. There was no tank fishery. The fisheries department confirmed it by its letter dated 19th September, 1997 (page 257 of the Compilation). The previous owners had applied for amending the ROR but the State chose to remain inactive.

4.10. The judgment in the Public (supra) does not appear to have been moved as a PIL or a representative action. Under Rule 12 of the 226 Rules, a writ petition can be moved in a representative capacity. The Public (supra) does not appear to have been moved with such leave. The judgment in the Public (supra) cannot bind the owners of the plots involved in the present writ application as they were not made parties and they had no idea or opportunity of defending themselves or placing their case before this Court. In the circumstances, the petitioners are entitled to move this writ application and have it independently adjudicated by this Hon''ble Court and the Public (supra) cannot stand in the way. In support of this contention, Mr. Mukherjee relied upon the decisions in *Shivdeo Singh and Others Vs. State of Punjab and Others*, ; *Union Carbide Corporation, etc., etc. Vs. Union of India, etc. etc.*, and *Ram Janam Singh Vs. State of Uttar Pradesh and another*, .

The Arguments : Green Valley Towers :

5. Mr. Samaraditya Pal, learned Senior Counsel, appearing on behalf of the Green Valley Towers (P) Ltd., on the other hand, contended that according to the State the land is recorded in the ROR as "beel maach chas". It is a settled law that the entries in the ROR have only presumptive value. Such presumptive value, in this case, stands rebutted by : (a) the certificate granted by the Pradhan/Panchayat to the effect that currently the land is not fit for maach chas and is being used for agriculture for a long time and there was no objection if converted; (b) the Assistant Director of Fisheries opined that there may not be any objection though the khatian of the land shows "beel maach chas" at the time of mutation; (c) the inspection report pursuant to the Appeal Court's order does not reveal that pisciculture is continuing; (d) it is nobody's case that pisciculture is being carried on. It is the current actual user of the land, which will determine its character even though the current user is not backed by an amendment of the ROR. On this very plot LR 321/615 permission for conversion has been given to Aquatica in 2000 and Aquatica has constructed a huge project involving restaurants, guesthouses, amusement park, conference room etc. Similarly the Government itself has constructed high and big residential accommodation on land almost adjacent to the petitioners lands and constructions have been made on the north

of the Canal. The State's contention that the application for conversion has been rejected is not correct. It will appear from the letter dated 27th November, 2003 addressed by the D.M. to the Director of Land Records and Surveys that: "Meanwhile, the petitioners application for conversion is kept pending". In the same letter the D.M. referring to the statement of the petitioner records that conversion, for which Rs. 1,50,000/-has been paid on demand, was duly processed and comments: "From the records it appears that they are claiming in respect of Item 4 are correct".

5.1. The State contends that the area comprised in L.R. Dag No. 321/615 is within the area designated as wetlands as per the judgment in Public People United for Better Living in Calcutta-Public and another Vs. State of West Bengal and others, is wholly mala fide and erroneous. The Committee set up by the Government for the purpose of identifying the lands falling within the wetlands as per Annexure "C" to the petition in Public (supra) has itself in the letter dated 18th September, 2000 has categorically said that: "In addition, the area to the North of Eastern Metropolitan Canal of Mouza Dhapamanpur lies outside the designated wetland area boundary". It is an admitted position that this area was later amalgamated with Mouza Kochpukur. which also in its entity is outside the wetlands. A series of land acquisition cases and notices under LA Act, 1894 have been issued in respect of different areas of land for "implementation of Rajarhat New Township Project" in L.R. Dag No. 321/615 in Mouza Kochpukur. These notices were issued from November, 2002 onwards. The fact a road under construction to the North of the canal and running through inter alia L.R. Dag no. 321/615 is conclusive evidence that L.R. Dag No. 321/ 615 is not part of wetlands. This will also be clear from the coloured sketch map (page 37 of affidavit-in-opposition).

5.2. The State has purported to contend that DL & LRO, South 24-Parganas had issued the "No Objection Certificate" in favour of Aquatica by mistake. No particulars or records were produced to establish how and why such mistake has occurred. Assuming that there was any mistake and consequently the "no objection" was illegal, then why no steps have been taken to demolish the project and, restore it to its alleged original position. The State Government cannot be permitted to take any plea of its own default in law to the prejudice of a citizen particularly when even after the realization of mistake or illegality, the State by its words or conduct (including inactivity) permits the persons concerned to proceed with a project and : (a) silently acquiesces in those persons investing several crores of rupees in connection with the setting up of the project, (b) knowing fully that the very nature of the project would mean affection of third party rights i.e. those who buy apartments/plots in the project.

5.3. The State has also contended that the sanction granted by the Panchayat is illegal. The combined operation of Section 23 read with Rule 23E of the West Bengal Panchayat {Gram Panchayat Administration} Rules, 1981 is that in normal circumstances Gram Panchayat is to withhold permission until the change of

classification order is produced before him. Here by reason of the fact already mentioned in relation to conversion and payment of conversion processing fees, the Gram Panchayat did not consider it to be a proper case for withholding permission. The Gram Panchayat sanction was given on 7th September, 2004 whereas the conversion fees processing charge was paid on 27th July, 2003. The Gram Panchayat instead of raising any objection permitted the construction to proceed. By reason of Section 4(5) of the West Bengal Panchayat Act, 1973 every Gram Panchayat shall be a body corporate having its perpetual succession and a common seal and shall, by its corporate name sue and to be sued. Being a body corporate, it is an independent entity and is not part of the State Government. The Gram Panchayat concerned i.e. Bamoonghata Gram Panchayat is a respondent in this case and has not either by affidavit or otherwise disowned the efficacy of the sanction.

5.4. Justice of the case requires that the petitioner be permitted to carry on with the building activities and complete the same. The conduct of the State and the Panchayat, as indicated above, raises an equity in favour of the petitioners. The State and the Panchayat have acted as mute spectators vis-a-vis the development and building activities in question and have allowed them to proceed to a substantial length and it will be wholly inequitable to permit them to turn around and contend that such development work is illegal. He relied upon the decision in *Municipal Corporation of Bombay v. Secretary for State for India* 7 Bom. LR 27.

5.5. There is no question of estoppel against a statute. There is no absolute statutory bar either in Section 4B or 4C of the West Bengal Land Reforms Act or Section 23 of the Panchayat Act. All these provisions are enabling in nature subject to the fulfilment of the conditions mentioned therein. It is the duty of the Government and the Panchayat to exercise such enabling power in the facts and circumstances of the case and this Hon'ble Court should give such direction, if necessary. As such police investigation has to be interfered with and a Mandamus should be granted as prayed for.

5.6. In any event this is a case of gross discrimination violating Article 14 of the Constitution. On the very same plot of land permission has been granted to the project called "Aquatica" which has been fully constructed and is operational. The land has been acquired by the Government for implementation of "Rajarhat New Township Project". The road have been constructed running through inter alia this plot namely L.R. Dag No. 321/615. There is no rational justification and none has been shown to exist by the State.

The Arguments : The State :

6. Mr. Anindya Mitra, learned Senior Counsel, on behalf of the appellant-State respondent in the writ petition, submitted that this writ petition is for quashing of FIR, issue of sanction letter for conversion of use of land, and writ of Prohibition restraining interference with construction process in respect of the concerned

area 10.24 acres (Green Valley Towers) and 20.96 acres (Sanjeevani Projects), all within L.R. Dag No. 321/615 of Mouza - Kochpukur, corresponding to the former R.S. Plot No. 773 of Mouza -- Dhapamanpur (A/O, Page-6, sub-para (a) -- Green Valley Towers). The nature of land is "beel maach chas" recorded both in R.S. Khatian and L.R. Khatian. According to the petitioner, lands are actually used as agricultural land (writ petition, Para No. 3 of Green Valley Towers and Para No. 1 of Sanjeevani Projects). The application u/s 4C of WBLR Act, 1955 is for conversion from "beel maach chas" to bastu. So, it is admitted fact that the concerned land is not homestead land and accordingly no building complex can be constructed unless and until conversion is allowed u/s 4C of WBLR Act, 1955.

6.1. On 17th September, 2004 the petitioner obtained sanction of building plan from Pradhan of Bamoonghata Gram Panchayat and commenced construction of building. On 15th February, 2005, an FIR was lodged by S.D.L. & L.R.O., Baruipur. On 25th February, 2005, writ petition was moved by Green Valley and ad interim order of injunction was obtained restraining interference by the police and restraining Gram Panchayat from revoking the sanctioned building plan. This ad interim order was issued by the learned Single Judge, who released the matter on 1st March, 2005. The matter was assigned to the other learned Single Judge. This interim order was continued by the other learned Single Judge on 4th March, 2005 and has been continued thereafter from time to time. Sanjeevani moved their writ petition before the other learned Single Judge on March 9, 2005 and obtained similar interim order. As a result, criminal proceedings u/s 4D of the WBLR Act, 1955 for violation of Section 4C of the WBLR Act, 1955 could not be continued. Police could not take any action for stopping the illegal work of construction. These two appeals were preferred on 13th April, 2005, but the regular Division Bench released the matter. Ultimately, the appeals were assigned before the present Division Bench and interim order was passed by the Hon'ble Appellate Court on August 19, 2005 restraining the writ petitioners from carrying out any work of construction and directing inspection of the site and report.

6.2. After February 25, 2005 under cover of the interim order the writ petitioners have carried out the work of construction. The stage of work of construction in February 21, 2005 was negligible as will appear from photographs annexed to the affidavit affirmed on 5th September, 2005 and the state of work of construction as in August, 2005 was still at early stage as will appear from the inspection report dated 22nd September, 2005 filed under the order of the Division Bench and photographs annexed thereto. By consent of the parties the writ petition are to be decided by the Division Bench.

6.3. The writ petition is liable to be dismissed on the basis of the averments made in the writ petition. Admittedly, no order for conversion of land into bastu as required u/s 4C of the WBLR Act, 1955 has been obtained. Consequently, penalty u/s 4D of the said Act is attracted, for which FIR has been lodged. No argument has been made why FIR should be quashed. No copy of FIR has been

annexed to the writ petition. FIR is for violation of Section 4C of the WBLR Act, 1955, which attracts provisions of Section 4D of the said Act and an offence u/s 4D of the said WBLR Act, 1955 is cognizable and non-bailable. No ground for quashing of FIR is made out.

6.3.1. In the petition, it is wrongly stated that fees for conversion have been paid. In fact, Court-fees for initiation of conversion cases have only been paid (Application for conversion at pages 37-52 of Sanjeevani). It so appears from the challans depositing Court-fees for conversion Case No. 2/2002-03 to 6/2002-03 and conversion Case No. 9/2002-03 to 13/2002-03 at pages 53-72 of the writ petition of Sanjeevani.

6.3.2. u/s 4D of the WBLR Act, 1955 any change of mode of use of land without taking order from the Collector u/s 4C of the WBLR Act, 1955 is a cognizable and non-bailable offence and punishable with imprisonment of three years and fine of rupees fifty thousand or both. The petitioner started work of construction being fully aware of the illegality and they wanted to carry out the illegal work of construction under protection of interim order obtained from this Hon'ble Court. Writ petitions are mala fide and made with oblique motive.

6.3.3. The building plan as sanctioned by the Gram Panchayat is clearly illegal and void. Gram Panchayat has no jurisdiction to sanction construction of building on land recorded otherwise than as homestead land until the applicant produces the order allowing the change of classification of land by the Collector in view of Rule 23A or 23E of the Panchayat Administration Rules, 1989 since repealed by West Bengal Panchayat (Gram Panchayat Administration) Rules, 2000 and reenacted in Rule 22 or Rule 26 of the Rules of 2004. Therefore, regardless of the question of the wetland, the sanction of the building plan is without authority of law and void. The petitioner was obviously aware of law and cannot take advantage of it.

6.3.4. The writ petition should be dismissed and the illegal construction should be demolished. The due process of law stopped by the interim order passed by the learned Single Judge, should be vacated.

Re: Wetland:

6.4. In the writ petition, the issue of wetland has not been raised. This issue is not relevant because even if the land is not wetland, it is admittedly "beel maach chas" and no building can be constructed thereon without first obtaining order u/s 4C of the WBLR Act, 1955 from the Collector. Admittedly, no sanction of the Collector has been obtained u/s 4C of the WBLR Act, 1955. In fact, the writ petitioner knew that the application for conversion was likely to be rejected by the Authority as will appear from the owner's letter dated 17th October, 2003 addressed to the District Magistrate. The said letter was suppressed in the writ petition and is annexed to the A/O (page 26, Annexure - R2 of Sanjeevani). The formal order of rejection of application for conversion was issued on 3rd March, 2005. The writ petitioners have not filed any writ petition challenging the order of

rejection dated 3rd March, 2005.

6.4.1. This plot of land is within the area covered by Annexure "C" to the writ petition and the order passed by this Hon"ble Court in the case reported in People United for Better Living in Calcutta -- People United for Better Living in Calcutta-Public and another Vs. State of West Bengal and others, , [A/O sub-paragraphs (d) and (e) of paragraph 3 Green Valley]. In A/R, it is disputed that the lands in question are wetland and covered by the order of this Hon"ble Court. This disputed question of fact cannot conveniently be decided in the writ proceedings. It is also not necessary to go into this question because this writ petition is confined to the petitioners right to carry on construction and quashing, of FIR. Since it is an admitted violation of Section 4C of the WBLR Act, 1955, Section 4D of the WBLR Act, 1955 is attracted, FIR undisputedly discloses cognizable offence.

6.4.2. There is an alternative forum for deciding the disputed question of wetland.

6.4.3. The order of rejection of the application for conversion is on the ground that the plots are within the area covered by Annexure "C" to the writ petition mentioned in the judgment reported in People United for Better Living in Calcutta -- People United for Better Living in Calcutta-Public and another Vs. State of West Bengal and others, . This order of rejection is not subject-matter of this writ petition. In any event, the order of the Collector refusing change of use is appealable u/s 54 of the WBLR Act, 1955. Appellate Authority is the Commissioner of the Division. The order of the Commissioner of the Division can be challenged by filing an application before the West Bengal Land Reforms and Tenancy Tribunal. In view of alternative statutory remedy provided, the validity of the order of rejection of the Collector should not be gone into in this writ proceeding directly or indirectly. Writ petitioners can agitate this question in the statutory appeal.

Re : Applicability of Section 4C of the WBLR Act:

6.5. Mr. Mitra contended that Mr. Mukherjee's contention that in the absence of any specific notification u/s 1(3) of the WBLR Act, 1955, Section 4C of the WBLR Act cannot be enforced, has since been answered the Division Bench of this Court in the case of Vassanti Devi Pandey v. State of West Bengal 2004(2) CLJ 123, wherein it was held that Part IIB of the WBLR Act has become operative in a situation where no separate notification u/s 1(3) was issued after its insertion through the WBLR (Amendment) Act, 1981 introducing Section 4C as well.

6.5.1. Relying on the decision in Kamal Kumar Basu and Ors. v. State of West Bengal and Ors. 1997(2) CLJ 160, Mr. Mitra contended that when no permission u/s 4C of the WBLR Act, 1955 is obtained, use of the land cannot be converted by making construction thereon. In the said decision, it is also held that the municipal authority cannot sanction any plan for sanction of the building without express permission u/s 4C of the WBLR Act, 1955.

6.6. Relying on the decision in Santosh Kumar Verma and others Vs. State of Bihar and others, , he contended that wrong exemption of some unit does not entitle the writ petitioner's to claim similar relief in respect of his unit particularly when Vishal Construction (Aquatica) has not been made a party to this proceeding. He then relied on the decision in Chandigarh Administration and another Vs. Jagjit Singh and another, , where, in a similar case, it was held that the "High Court cannot ignore the law ... and say because in one case a particular order has been passed ... the same must be repeated irrespective of the fact whether such order is contrary to law or otherwise". In Assistant Custodian E.P. and Ors. v. Brij Kishore Agarwala and Ors., (1975) 2 SCR 359 , it was held that the State Government is not bound by illegal act of its offices.

6.7. In the decision in M/s. Jayant Vitamins Ltd. Vs. Chaitanyakumar and another, , it was held that investigation is not to be stayed even if FIR discloses no ground. Therefore, even on that save no relief can be had. That apart in this case prima facie case appears to have been made out.

6.8. In the circumstances, the writ petition should be dismissed and these appeals should be allowed.

The Argument: Environment Department:

7. Mr. Manick Chandra Das, learned Counsel appearing on behalf of the Environment Department, adopted the submission made by Mr. Mitra. In addition he contended that the Ministry of Environment and Forest, Government of India in exercise of the powers conferred u/s 3(1) and Section 3(2)(v) of the Environment (Protection) Act, 1986, read with Rule 5(3)(d) of the Environment (Protection) Rules, 1986 directed that on and from 27th January, 1994 (Annexure X), expansion or modernization of any activity (if pollution load exceeds) of the existing one or new projects listed in Schedule I to the said notification shall not be undertaken in any part of India except with environmental clearance accorded by the Central Government in accordance to the procedure specified in the said notifications. The said notification was amended on 7th July, 2004. The amendment was notified in the Extraordinary Gazette being No. 50801 (E) dated 7th July, 2004 (Annexure X). By the said amendment, Item No. 31 "new construction projects" and Item No. 32 "new industrial estates" were inserted in Schedule I.

7.1. Upon a surprise inspection of the project of the Sanjeevani Projects, namely, "Sanjeeva Town" located near Aquatica on 29th June, 2005, it was found that the said project started construction without obtaining permission of the State Board. Accordingly, an inspection report was submitted to this Board (Annexure X).

7.2. That the unit had applied for "No Objection Certificate" only on 5th August, 2005 along with Environmental Impact Assessment and Environmental Management Plan. After preliminary scrutiny of the NOC application it appears that the said project required environmental clearance from the Ministry of

Environment and Forests under Environmental Impact Assessment Notification No. 80(E) dated 7th July, 2004 issued by the Ministry of Environment and Forest, Government of India (MOFE). State Board duly informed Sanjeevani Projects about the same and requested not to progress with the construction at the site by a memo dated 22nd September, 2005 (Annexure X).

7.3. That, Hon"ble Supreme Court of India in connection with Matter No. W.P. (Civil) 460 of 2004 was pleased to issue directions, from time to time, that none of the units which are required to obtain environmental clearance from the Ministry of Environment and Forest, Government of India, can proceed with any work without obtaining environment clearance. Very recently. Government of India also issued a direction on 11th August, 2005 (Annexure X) upon all the State Governments that none of the units, coming under the purview of the said notification can start their project without EIA clearance and if it is found that any unit is continuing with any such project without EIA clearance, the same should be informed to the Central Government for placing the matter before the Hon"ble Supreme Court and shall also issue closure notice against such unit.

7.4. That in the Application for Consent submitted by Sanjeevani Projects, it was mentioned that said housing complex would discharge 86.4 cum per day KLD (Approx.) litres per day, which requires environmental clearance from the Ministry of Environment and Forest, Government of India.

The Confine:

8. We need not deal with all the points raised by the respective Counsel for the respective parties. We may answer the question only on the points, which are relevant for our present purpose.

Whether Permission to Convert Granted to Another Entitles the Petitioner to Claim Conversion:

9. The land is recorded as "beel maach chas". The Government might have permitted another person to establish a resort comprising of a portion of the land for construction of water body meant for water sport. But that would not enable the writ petitioner to claim any benefit, which is otherwise not permitted in law. If the Government does something in respect of one party the same does not entitle another to claim the benefit of the principles enshrined in Article 14 of the Constitution when the law does not permit and the discretion is left with the Government or the authority concerned.

9.1. In Santosh Kumar Verma and others Vs. State of Bihar and others, , the Apex Court had held that no Mandamus should be issued to violate law. In Anand Buttons Ltd. Vs. State of Haryana and Others, , the Apex Court had held that a wrong exemption to one does not entitle another to claim similar relief. The Supreme Court in Chandigarh Administration and another Vs. Jagjit Singh and another, , had held that High Court cannot ignore law and say that because in one case a particular order has been passed similar order must be repeated in

respect of the other irrespective of the fact whether such order is contrary to law or otherwise. In *Assistant Custodian E.P. and Ors. v. Brij Kishore Agarwala and Ors.*, (1975) 2 SCR 359, the Apex Court had held that State Government is not bound by its illegal act of its officers.

9.2. Even if the land is gradually filled up and the same has turned into a high land, the character of the land cannot be changed until a conversion is granted. Without obtaining permission for conversion if gradually the land, which is "beel maach chas" is filled up, the same would not entitle a person to claim advantage of the illegal activity to contend that the land was an agricultural land and not a water body. If it is so then it would amount to giving a premium to an illegal activity stealthily perpetuated.

Whether a Raiyat Has a Right to Convert:

10. The Panchayat had sanctioned the plan for construction on the land described as "beel maach chas" without conversion of the land. On a spot enquiry it was found that portions of the land are under water and on some part there are some aquatic vegetation and on parts thereof construction has been made. It seems that pan of the land has since been filled up for the purpose of the construction and construction had started even before the permission for conversion was granted. The right of heritability and transferability accrued, u/s 3A read with Section 4 of the WBLR Act, on the raiyat is subject to restrictions and limitations with regard to the characteristics of the land. The definition of land in Section 2(7) of the WRLR Act, even though includes all kinds of land, the same does not imply conferment of a right on a raiyat to convert the land from one character to another which is otherwise prohibited even if the land held is within the ceiling. The transferability and heritability is confined to the land held. This right cannot be stretched to a right to freedom of conversion. It does not entitle a raiyat to convert the land. Similarly the definition of land being all inclusive would also not imply conferment of right on a raiyat to convert the land.

10.1. The rights of a raiyat in relation to his holding are dealt with by the West Bengal Land Reforms Act in Chapter II. Section 4 restricts the rights of raiyat to the surface of the land without any subsoil right. Sub-section (4) of Section 4 was also slightly modified by the WBLR (Amendment) Act, 1981. Sub-section (1) restricts the right of a raiyat in the use of the land comprised in the holding for the purpose for which the land was settled by the State directly or indirectly. In case of failure to keep a land under personal cultivation consistent with the original purpose of the tenancy for a consecutive period of three years without their being any mortgage is also a reason to vest the land. If there is a failure to bring the land into personal cultivation within three years from the enactment of the Act then the same would also be a ground for vesting. Whereas Section 4B, since inserted by WBLR Act XXIII of 1974 and then substituted by the 1981 amendment with retrospective effect from 7th August, 1969, requires the raiyat holding any land to maintain and preserve such land without changing or converting the same for any purpose other than for which it was settled or

previously held except with the previous order of the Collector u/s 4C. This is also a hindrance or restriction from seeking conversion of the user of the land from one to other. An Explanation was added to Section 4C by the WBLR (Amendment) Act, 2000, explaining the mode of use viz: residential, commercial, industrial, agricultural excluding plantation of tree, pisciculture, forestry, sericulture, horticulture, public utilities or other use of land. Section 4C provides for the procedure for seeking permission for change of use of land and requires making of an application therefor. Such application is to be made before the Collector. Under Sub-section (2) the Collector has been given the power to reject or allow the application for conversion on such terms and conditions as may be prescribed after making inquiry and giving an opportunity of hearing to the applicant. Whereas Sub-section (3) requires the specification of a date from which such change or conversion or alteration shall take effect. Sub-section (4) empowers the Collector, if he is so satisfied that the land is being converted for any purpose other than the purpose for which it was settled or was previously held, or attempts were 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.

10.2. This question came up before this Court in *Kamal Kumar Basu and Ors. v. State of West Bengal and Ors.* 1997 (2) CLJ 160, wherein construction over a pond without permission as required u/s 4C was disallowed. In *Paschim Banga Bhumijibi Krishak Samity v. State of West Bengal* 1996 (2) CHN 11 : 1996 (2) CLJ 285 : 1996 (2) CLT 183 : *Paschimbanga Bhumijibi Krishak Samiti and Others Vs. State of West Bengal and Others*, para 141, it was held that Section 4C was neither arbitrary nor the same infringes the right to enjoy the property. In *Debabrata Mukherjee v. State* 1999 (2) CLJ 55, this High Court has recognized the effectivity of Rule 164 of the West Bengal Land and Land Reforms Manual. It presupposes that the provision of Rule 164 is not in conflict with any of the provision of the Act or the rules. On the other hand the West Bengal Inland Fisheries (Amendment) Act, 1993, which has come into force with effect from 16th June, 1994, puts an embargo on the conversion of water area for other use by inserting Chapter III A to introduce Section 17A in the West Bengal Inland Fisheries Act, 1984 (1984 Act). Section 17A(1)(b) provides that "no person shall 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 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".

10.3. In the West Bengal Estates Acquisition Act, 1953, after vesting the right to retain land or holding by a raiyat was prescribed in Section 6 thereof limiting the ceiling of such holding. However, in respect of tank fishery no ceiling was prescribed. The phrase "tank fishery" has not been defined in the West Bengal Land Reforms Act. The phrase "tank fishery" has been defined in the West Bengal Estates Acquisition Act, 1953 (WBEA Act) in the Explanation to Section 5(1)(e) thereof. In Section 2(vi) of the West Bengal Inland Fisheries Act, 1984, a tank

fishery has been explained to have the same meaning as in the WBEA Act. Now, the WBEA Act explained tank fishery to mean "a reservoir or place for the storage of water, whether forced naturally or by excavation or by construction of embankments, which is being used for pisciculture or for fishing, together with the sub-soil and the banks of such reservoir or place, except such portion of the banks as are included in a homestead or in a garden or orchard and includes any right of pisciculture or fishing in such reservoir or place." Thus, according to this definition, a tank fishery is an water area formed naturally or artificially on a depressed land or by construction of embankment, including a beel within its fold. Inasmuch as a beel is a place or reservoir where water is stored i.e., a water area. It might have been formed naturally or by excavation or by construction of embankments. If such a beel is used for pisciculture, then it would definitely be a tank fishery. That apart the 1993 Amendment of the 1984 Act in Section 17A(1)(b) has used the expression "water area" a very wide expression to include "beel maach chas". Admittedly, the land is recorded in the R. S. record-of-rights as "beel maach chas". The phrase "maach chas" means cultivation offish namely hatching and rearing offish. The word "pisciculture" is defined in Chambers 20th Century Dictionary to mean "the rearing of fish by artificial methods". In Webster Comprehensive Dictionary. Volume-II, "pisciculture" means "hatching and rearing offish. The land is also recorded as "beel maach chas" in the L. R. record-of-rights as well.

10.4. Section 4D of the WBLR Act added by the 1981 Amendment effective from 7th August, 1969 makes change, conversion or alteration in the area, character or mode of use of any land except in accordance with Section 4C, or in violation of any order passed by the Collector, a cognizable and non-bailable offence punishable with imprisonment for a term extending to three years with fine extended to 50,000 rupees or with both under Sub-section (5) of Section 4C. Provided that no prosecution shall lie if action has been taken u/s 4(4) and in cases where change of character or conversion was made in accordance with the provisions of any other law for the time being in force.

10.5. Thus, in view of the provisions contained in Chapter II of the WBLR Act and the West Bengal Inland Fisheries Act, 1984 as amended through the 1993 Amendment, a tank fishery cannot be converted into any other character except in accordance with the provisions contained therein. The provisions contained in the 1984 Act since assented to by the President under the proviso to Article 254(2) of the Constitution of India having contained an overriding effect in Section 23 thereof, a tank fishery cannot be converted and such conversion would be punishable u/s 20 thereof. u/s 44 of the West Bengal Town and Country (Planning and Development) Act, 1979, use of land is restricted the approved land use map prepared thereunder. Thus, a raiyat cannot claim any right for conversion of a land described as "beel maach chas" except with the permission as contained in the respective provisions of the respective Acts. All the three Acts mentioned above having overriding effect, provisions of one or the other would eclipse or supersede the rest. But then all these Acts having been legislated by

the West Bengal Legislature with overriding effect having received assent of the President would definitely override the central legislation, if any. However, it may be noted that in between the respective Acts, there is no conflict. In these circumstances, all these Acts prohibiting conversion of water bodies even if the "beel maach chas" is no more a water body or partly filled up, even then cannot be used otherwise except as it were. Therefore, we hold that a raiyat has no legal right to convert.

WBLR Act: Section 4C : Whether Enforceable :

11. Mr. Mukherjee had contended that Section 4C of the WBLR Act has not become operative because of the reason of the decision in *Paschim Banga Bhumiijibi Krishak Samity* 1996 (2) CLJ 285 (supra), by reason whereof the 1981 amendment cannot be treated as continuing to be operative after 26th July , 1996 holding that the old unamended definition of land continues to remain operative in view of the judgment in *Paschim Banga Bhumiijibi Krishak Samity* (supra) and *Prafulla Kumar Maity v. Amal Krishna Mishra and Ors.* 1997 (2) CHN 20. But such a contention does not seem to cut any ice in the present case. Even without the amendment of the definition of land the conversion could still be a subject-matter of sections 4B, 4C and 4D.

11.1. The other limb of Mr. Mukherjee's argument was that Section 4C had never been enforced. Inasmuch as no notification enforcing Section 4C, as required u/s 1(3) of the WBLR Act, has been published for enforcing the said provision.

11.2. Admittedly, the WBLR Act was enforced in the State of West Bengal through different notifications issued from time to time, the history of which is not necessary to be tracked at the present stage, and also to the territories transferred from Bihar to West Bengal. There is no dispute that Chapter II had since been enforced in the State of West Bengal including the area where the present land is situated. This is not in dispute. According to Mr. Mukherjee fresh notification was required for enforcement of the insertions made in this chapter through the 1981 amendment, in view of the provisions contained in Section 1(3) of the WBLR Act treating the said provision as remaining. But, in our view, the phrase "remaining provisions" was qualified in contradistinction to Section 1 of the WBLR Act as originally enacted comprising of 60 sections. Section 1 had come into force at once and the remaining 59 sections were supposed to be enforced on the issue of respective notifications enforcing respective sections to respective part or whole of a district. Admittedly these remaining parts have since been enforced.

11.3. In such circumstances, if any amendment is made and any section has been added or inserted or substituted, and if the Amendment Act itself says that the same would come into force on a specific date in the whole of the State without restricting it to any area or district and without providing for issue of a fresh notification for making such amendment or substitution or insertion dependant on any notification for being effective, in that event, the legislative

intent of enforcing the provisions itself would no more be dependant on issue of fresh notification within the scope of Section 1(3) on the analogy that it would be a remaining part within the meaning of the said Act as it stood when it was so enacted.

11.4. The phrase "remaining part" mentioned therein is to be construed according to the intention of the legislature at the time of the enactment of the WBLR Act, which enacted the remaining 59 sections. Once these remaining 59 sections have been enforced through notifications, any amendment by way of substitution or insertion or addition made to such legislation since enforced, cannot be construed as the remaining portion of the WBLR Act as it stood when it was so enacted by the legislature long before the 1981 amendment. 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.

11.5. Furthermore, the notification inserting Rule 5A in the West Bengal Land Reforms Rules (WBLR Rules) published in the Calcutta Gazette on 15th July, 1988 providing for an inquiry to be made and terms and conditions to be imposed under Sub-section (2) of Section 4C itself indicates that these provisions had since been enforced and had been made effective. Therefore, we are unable to agree with the contention of Mr. Mukherjee that Section 4C has not become effective in the absence of the notification u/s 1(3).

11.6. Mr. Mitra contended that in the case of Vassanti Devi Pandey, 2004(2) CLJ 123 (supra), it was held that Chapter IIB of the WBLR Act has become operative. But this contention may not help Mr. Mitra to the extent of the question raised by Mr. Mukherjee since it related to the enforcement of Chapter IIB not in relation to Chapter II. But the fact remains that there was no independent or fresh notification u/s 1(3) for the enforcement of Chapter IIB. Thus, if Chapter IIB could become enforceable without such notification u/s 1(3), then Chapter II can also follow without it. In Niranjana Khanna and Another Vs. Shyamal Kumar Mukherjee and Others, , a distinction was made as to the retrospectivity of the addition of the provisions and the enforceability of the added provisions. It was held that the additions of the provisions made have been desired to be retrospective in operation, but not the added provisions. Thus, in the absence of appropriate notification u/s 1(3) of the principal Act, in spite of such addition

with retrospective effect nonetheless these additions would be a provision within the meaning of the expression "remaining provisions" in Section 1(3) and would accordingly require a notification thereunder, not for the addition, but for its coming into force. The addition would take effect in accordance with Section 1(2) of the amendment Act with effect from 7th August, 1969, but the added provisions themselves are supposed to come into force only in accordance with the provisions of Section 1(3) on the issue of appropriate notification. In the said decision, this Court had held, in relation to Sections 2(7) and (10) of the WBLR Act amended by the 1981 Amendment, that the substituted provisions of Sections 2 and 3 would not require any further notification for being enforced. Therefore, it would be deemed to have come into force on and with effect from 7th August, 1969 as enjoined u/s 1(2) of the 1981 amendment Act whereby those provisions were substituted.

11.7. But we are unable to agree with the said proposition in view of the discussion made above apart from the fact that it is not in dispute that Section 2 and Section 3 of the principal Act and Chapter II was duly enforced by appropriate notifications u/s 1(3). Once this section was so enforced the new provisions substituted in its place would no longer require any further notification u/s 1(3) for enforcement of the substituted or added or inserted provisions, since it is no more a portion remaining to be enforced within the meaning of Section 1(3). The expression substituted in a statutory provision whereby an earlier provision is substituted by another new provision virtually repeals and enacts. The Supreme Court in *State of Maharashtra Vs. The Central Provinces Manganese Ore Co. Ltd.*, , had held that the two may not be several but may be an integral process. Therefore, no further notification would be necessary, *Wetland : The Decision in Public (supra) : Whether Binds the Petitioners:*

12. Mr. Mukherjee contended that the decision in *Public (supra)* was not a decision in a Public Interest Litigation (PIL). The present petitioners or their predecessors were not parties to the said proceedings. Therefore, the decisions in the said proceeding would not bind the petitioners.

12.1. The petition was moved by a group of person for the better living of the people in Calcutta. Public was a body constituted to look after the well being of the people living in Calcutta. They did not have any independent or individual interest. It was the interest of the people living in Calcutta at large. Therefore, it is very difficult to say that the decision in *Public (supra)* was not a decision in a PIL. If it is a decision in PIL, it definitely binds the Government. In our view, it also binds the petitioners or their predecessors-in-interest. In any event, even assuming that the decision does not bind the petitioners or their predecessors-in-interest on account of their not being parties in the proceedings, it definitely binds the Government, a party to the proceedings. Therefore, as soon a prayer for conversion is made in respect of such land before the Government, the Government being bound by the decision in *Public (supra)*, the Government cannot act contrary to the direction given in the said decision. Therefore, the

Government cannot grant permission to convert the wetland in violation of the direction contained in the said decision. That apart, the decision may not bind the petitioners or their predecessors-in-interest in respect of the right in the land but the right of the petitioners or their predecessors-in-interest in the land was subject to the restrictions imposed by law. As discussed above, law permits the petitioners or their predecessors-in-interest to enjoy the land and preserve the characteristics thereof. The law does not permit conversion or change of user. The procedure for conversion is governed by Section 4C of the WBLR Act conferring a discretion on the Government. The Government has every right to grant or refuse permission to convert. A raiyat has no absolute right to claim conversion. Therefore, the Government has every discretion in the matter. If such discretion is exercised by the Government and bona fide, the Court is not supposed to question the same. Even if the land may not come within the decision in *Public* (supra), even then there is no provision which may bind the Government or preclude it in exercise of its discretion to declare any further land or add any further area for being preserved as wetland. If it so does, it would be a policy decision with which the Court cannot interfere.

12.2. Having regard to the situation as it stood when the decision in *Public* (supra) was rendered, the Court might have issued direction in respect of the area which is to be preserved as wetland might have been sufficient. But the fact remains that the city of Kolkata is developing fast and it had extended its area. Various other parts in the outskirts in the city, which were generally comprised of agricultural lands, water bodies or other low-lying areas absorbing discharge of excess, rainwater of the city as well as effluent, were developed and constructed upon. It is a common knowledge that various new townships and residential projects have come up extensively in the outskirts of the city. New projects are being undertaken in the low-lying water bodies in the Eastern part of Kolkata. The Rajarhat Township is also coming up on the low-lying land in the Eastern part of Kolkata developed either upon agricultural lands or water bodies, depriving of the area for discharge of excess rainwater and absorption of effluents, requiring other areas of discharge of the effluents of the new township as well as discharge of the excess rainwater apart from those of the city of Kolkata. These might lead the Government to exercise its discretion to add more areas. The decision in *Public* (supra) does not restrict the Government's right within the confine of Schedule "C" to the petition in *Public* (supra). There was no embargo on the Government that it cannot add to the said schedule any further area for such purpose. This area has been proposed to be added to the wetland by the Management Committee of East Kolkata Wetland System. The decision of this Committee also does not restrict the Government's discretion to add further areas apart from or in addition to the areas proposed by the Committee.

12.3. This right or discretion of the Government is not in conflict with the right of the petitioners or their predecessors-in-interest to enjoy the property within the scope of the legal provisions subject to the restrictions provided therein as applicable in the present case. Therefore, the contention of Mr. Mukherjee does

not seem to persuade us to hold otherwise. We are, therefore, unable to agree with the contention of Mr. Mukherjee.

12.4. It is immaterial whether there is any prohibition or not in converting the land on account of its not being declared wetland within the scope of the order passed in Public (supra). A land, which was directed to be declared a wetland, may be subject-matter of the decision in Public (supra). But that order does not restrict the Government from declaring any further land as wetland if it considers so necessary. The decision in Public (supra) related to an issue, which is of general interest of the people living in Kolkata. It is not an ordinary litigation; it has impact on the environment of the city of Kolkata for better living for the people. Admittedly, the slope of the city is from west to east. Not only effluent but also the excess rainwater is also discharged through these wetlands. Admittedly, parts of this wetland beyond or on the north-east of the canal are acquired by the Government for establishment of a new town at Rajarhat where a satellite town is coming up. The space for absorbing rainwater and receiving effluent are decreasing by reason of construction of various townships and residential areas. This is for the Government to think that whether any of these areas are to be preserved for the purpose of effluent discharge and for discharge or absorption of excess rainwater and for ensuring adequate and effective drainage system for the city of Kolkata.

12.5. It is our common experience that a little excess rain inundates parts of the city. But such inundation is cleared through the drainage system after some time. But if there are some blockage in the drainage system or the discharge area is filled up then there would be a difficult situation of draining out excess rain water resulting into waterlogging of parts of the city continuing for a longer period affecting the entire inhabitants of the locality, causing various inconvenience emanating from the waterlogging leading to extreme kind of pollution and extensive damages and devastation of hygienic condition, a potential source of epidemic and of various kinds of diseases. The commercial activities of some people may be a fundamental right for them to carry on business. But such fundamental right has to be reconciled with the eco- system. One's fundamental right, when enforced, if affects the fundamental right of others, in that event, the Court has a duty to look into the convenience and the greater interest of the public. Fundamental right of an individual cannot override the fundamental rights of the mass. In such a situation Court is bound to hold in favour of the fundamental rights of the mass. The fundamental rights of an individual is restricted for the benefit of the people at large. One cannot be allowed to carry on commercial activities and earn profit at the cost of others particularly when it affects the life and health of the people and sanitation of the area. In such a situation the State is duty-bound to adhere to the well being of the people at large and cannot close its eyes and dispense favour to a group of people at the cost of the citizens at large.

12.6. Having regard to the recent continuous rain, we have seen the city of

Kolkata to be waterlogged for days together. The Government is expected to think of a long term planning for saving the city and take a decision for preserving the low-lying areas and the water bodies having regard to the present day development and take appropriate decision within the scope and ambit of the Environment (Protection) Act, the Town and Country Planning Act and such other provisions of law operating in the field. It is expected that the Government should monitor the activities of the development by the developers and shall scrutinize the impact and consequences thereof. Therefore, it might make appropriate provision for obtaining permission from a body to be constituted consisting of representatives from the Environment Department, the Town and Country Planning Department, and the members of the Wetland Management Committee and the Municipal Authorities for the purpose of granting permission for development and construction in any area at the outskirts of the city particularly in any low-lying areas or agricultural lands including any development for establishment of industries or industrial estates and prevention of filling up of such areas for any purpose whatsoever and for preservation of the purpose and the mode of user and character thereof. Silence of the Constitution: Enforceability of Fundamental Rights Against/Between Private Individuals/Citizens:

13. The Constitution of India in Part III guaranteed certain fundamental rights, which include right to life. The meaning and extent of right to life has now been crystallized through various decisions of the Apex Court. The right to life includes right to live under a congenial and peaceful atmosphere. It means a dignified living, a healthy living. A man is born free. The nature is in abundance. The nature is a gift of the God as the life itself. The God has created nature to sustain life. Life cannot be lived without the nature. The nature provides the air to breath, land to live, water to drink and flora fauna to sustain upon. A man has a right to breath pure air, drink and use pure water and live in a clean land. Man is a civilized person. They live together. For their sustenance and better living, man has created cities. The cities are managed by municipal bodies. Man has created law for better living and for protecting life. It is man who also creates hindrance to life and living by adopting various means polluting the air, water and the nature. Certain activities of some people offend the right of a man to live the life as the God had destined. They generate various kinds of environmental pollutions. In order to protect man from such pollution, there is a worldwide effort. Environmental laws are being enacted. Even provisions for environmental protection have been incorporated in various other municipal laws.

13.1. The fundamental rights that has been guaranteed is enforceable against the State. The rights conferred under Article 19(1) guaranteed certain fundamental rights, which include right to reside and settle in any part of the territory of India. The Article 19(1) is subject to the power of the State to impose restrictions on the exercise of those rights. The Article was intended to protect these rights against the State action other than in the legitimate exercise of its power to regulate private rights in the public interest. Violation of the

fundamental rights of one individual by another individual without the support of the State is not within the purview of Article 19 as was held in *P.D. Shamdasani Vs. Central Bank of India Ltd.*, . Article 21 guarantees fundamental rights to live. The object of Article 21 is to protect encroachment upon personal liberty by the executive save in accordance with law and in conformity with the provisions thereof *A.K. Gopalan Vs. The State of Madras*, . There is no doctrine of State necessity in India, *Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd.*, This right is not available against an individual. The Constitution is silent on this question. But sometimes the Constitution speaks volume through silence. When Constitution guarantees a particular right enforceable against a State, it does not grant licence to an individual to tread upon such fundamental rights by an individual particularly when it involves the right of the mass who are otherwise unable to obtain relief and match the might of the individual treading upon their right. In some cases the right affected may not be detected immediately. The activities of such individual may be remotely connected with such infringement. The effect of infringement may be realized at a later point of time. Such infringement may be in violation of or in breach of law, yet being remotely connected may not be a subject-matter of an individual suit. Even then it would be difficult for a person to protect or secure his own right guaranteed under Article 21 for a dignified and decent life as against a mighty individual and the State might not be active in enforcing the law; in such a case a public spirited body or individual may come in aid and seek remedy through Article 226 of the Constitution of India as against the State to activate it to undertake necessary steps for protecting life and liberty to the individual or the mass, as the case may be. It is the duty of the State to protect the life and the liberty of the mass. It is the duty of the State to enforce the law. In the absence of any civil rights Act as exists in the United States of America, an individual cannot enforce his right against another individual to enforce his right guaranteed under Article 21, in such a case, the Constitution through its silence mandates, the State to take upon itself the responsibility to protect the same. It is the duty of the State under the Constitution to see that the right is enforced in its adherence not in breach.

13.2. In this case, the Government itself had activated itself and had been taking steps against which the petitioners themselves had come up and attempted to secure its own fundamental rights guaranteed under Article 19(1)(g). The fundamental rights of an individual has to yield to that of the another. One cannot enforce one's fundamental rights at the cost of the fundamental rights of another individual. In such a case, it is open to the State to defend the interest of or such individual or the mass, as the case may be, and take appropriate steps and enforce the law as against such breach in order to secure and protect the right guaranteed under Article 21 of such individual or the mass, as the case may be. It cannot shirk its responsibility. The silence in the Constitution will then stare sternly on the face of the State. In such a case when an individual has no remedy to enforce his fundamental rights guaranteed under Article 21 as against

an individual because of the situation, it is the duty of the Court to see that the State lives up to the expectation and activate itself to prevent the breach and enforce the law and also to muster a plan and adopt a policy to protect such fundamental rights of an individual or mass, as the case may be, to life.

Can the "Settlement" be changed from its Present Position to Another?:

14. Having regard to the present situation we do not think that the State can have any alternative but to preserve, maintain and retain the wetland. It cannot permit the same to be converted into housing projects even though in the management plan of East Kolkata Wetland the concerned plot has been shown as "settlement" in full. Inasmuch as "settlement" does not mean urbanization of the area. "Settlement" means a sporadic residential quarter of the people living around and thriving on the wetland. Such "settlement" does not invite conversion to township by full urbanization of the area by constructing housing projects for residence for urban people altogether. The "settlement" cannot be converted into townships through housing projects or grant of indiscriminate permission to construct on the land. If such wetland is inhabited by some people who are thriving or living on the wetland, the same would not affect the ecosystem and that the "settlement" without disturbing the eco-system was catering to the needs for which it was so long maintained and retained. But the same cannot now be converted into a township destroying the eco-system and changing the wet characteristics of the area altogether.

14.1. In any event the petitioners claimed that their predecessors were using these lands for agricultural purposes. It has not been claimed that these lands were settlement in full. If it were a settlement, then how could it be utilized for agricultural purpose? It is not the case that the owners were residing on the land or that there was any settlement.

Panchayat Act: Section 23: Panchayat (Administration) Rules, 1981: Rules 23A, 23E:

15. u/s 23 of the West Bengal Panchayat Act, 1973 and Rules 23A and 23E of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 1981, the Panchayat cannot grant sanction for construction on wetland. Therefore, even if somehow or other part of the land has been filled up (gradual and stealthily over a long period of time) the same would not entitle the Panchayat to grant sanction for construction on a land described as "beel maach chas" in the record-of-rights. The Inland Fisheries Act prohibits filling up of tank fisheries. Even if the project being lesser in dimension requiring no pollution control clearance under the Environment (Protection) Act, 1986 even then the same would not entitle the Panchayat to grant sanction for construction on wetland or water bodies.

15.1. Section 23 empowers the Panchayat to control building operations. In order to effectuate such functions, rules have been prescribed in the West Bengal Panchayat (Gram Panchayat Administration) Rules, 1981 since substituted by West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004 with effect

from 23rd November, 2004 substituting Rules 23A and 23E of the 1981 Rules by Rules 22 and 26 of the 2004 Rules, the provisions whereof are identical with each other. The 1981 Rules stood repealed on the enforcement of the 2004 Rules. Under Rule 23A of the 1981 Rules (Rule 22 of the 2004 Rules) restricts construction or erection by filling up of any tank, pond or other water body, marshy land or any other water area and confers a mandate on the Gram Panchayat to take steps as may be considered appropriate for the purposes enumerated in Clauses (a) to (j) thereunder, which includes taking of steps for drainage facility in the locality, or from environmental and ecological point of view or for any other use of public interest or for production of micro and macro organism or for production of aquatic flora or fauna.

15.2. In case of violation or breach under Sub-rule (2), added to Rule 22 of the 2004 Rules, on the report of the Panchayat the police is supposed to take appropriate action. Under Rule 23E of the 1981 Rules (Rule 26 of the 2004 Rules), the Panchayat is supposed to withhold permission for construction or erection upon any land recorded otherwise than as a homestead land until the applicant produces an order allowing change of classification of such land by the Collector or any other competent authority. Under Rule 23K of the 1981 Rules (Rule 32 of the 2004 Rules), Panchayat has discretion to withhold or refuse permission for erection or construction if the proposed structure or building is likely to disturb the environmental and sanitation perspective of the locality. Thus, in the present case, the sanction could not have been granted by the Panchayat without the conversion. Therefore, the grant of sanction is in breach of the provisions contained in the Panchayat Act and the Rules and as such void ab initio and is of no consequences. Therefore, the sanction is liable to be declared void and is also liable to be quashed.

15.3. At the same time, Rule 28 of the Panchayat Administration Rules, 2004 provides that notwithstanding anything contained in the said rules any application under Rule 17(1) pertaining to Kolkata Metropolitan Area defined in the West Bengal Town and Country (Planning and Development) Act, 1979 shall be subject to any provision or rule made or any order or direction of the competent authority issued under the 1979 Act. u/s 44 of the 1979 Act, a land cannot be used for any purposes other than what is permitted by the land use map prepared under the said Act. The question of using the land has to be examined from the land use map as well.

The Directive Principles of State Policy and Fundamental Duties :

16. The Constitution of India in Article 48A directs that the State shall endeavour to protect and improve the environment among others. The directive principles at one point of time were held to be unenforceable. The directive principles have been described as forerunners of the U.N. Convention on Right to Development as an inalienable human right in *Air India Statutory Corporation, etc. Vs. United Labour Union and others* [overruled], wherein it was observed that they stand elevated to human rights. According to the Apex Court, the directive principles

have a positive aspect. The directive principles have been held to supplement fundamental rights in achieving a Welfare State. Legislation enacted to implement the directive principles should be upheld, as far as possible. When necessary, even Constitutional provisions as to fundamental rights should be adjusted in their ambit so as to give effect to the directive principles. Reference may be had to the decisions in *Chandra Bhavan Boarding and Lodging, Bangalore Vs. The State of Mysore and Another*, ; *State of Kerala and Another Vs. N.M. Thomas and Others*, ; *Lingappa Pochanna Appelwar Vs. State of Maharashtra and Another*, ; *Manchegowda and Others Vs. State of Karnataka and Others*, ; *Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others*, ; *Jalan Trading Co. (P) Ltd. and Others Vs. D.M. Aney and Another*, ; *D.R. Kohli and Others Vs. Atul Products Ltd.*, ; *Laxmi Kant Pandey Vs. Union of India (UOI)*, and *Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association Vs. Union of India (UOI) and Others*, .

16.1. In *The Municipal Corporation of Greater Bombay Vs. M/s. New Standard Engineering Co. Ltd., and The Dharwad Distt. P.W.D. Literate Daily Wages Employees Association and others, etc. Vs. State of Karnataka and others etc.*, , the Apex Court held that the directive principles and the fundamental rights are to be harmoniously construed. At the same time, it is equally true that the directive principles do not confer any enforceable rights and their alleged breach does not invalidate a law, nor does it entitle a citizen to complain of its violation by the State so as to seek mandatory relief against the State. Reference may be had to *K.M. Chikkaputtaswamy and Others Vs. State of Andhra Pradesh and Others*, *In Re: The Kerala Education Bill, 1957*. Reference Under Article 143(1) of The Constitution of India, , *Deep Chand Vs. The State of Uttar Pradesh and Others*, *The State of Madras Vs. Srimathi Champakam Dorairajan*, and *U.P. State Electricity Board, v. H. S. Jain* .

16.2. But the fact remains that in this case there are legislations seeking to protect environment. Therefore, when there are legislative enactments by reason of the directive principles, the State cannot overlook the same and is bound to enforce it. In case the fundamental rights of a citizen comes in conflict, in that event, such fundamental rights has to yield to the provisions contained in the legislation which advances the directive principles and such fundamental rights have to be construed harmoniously to enable the directive principles to be advanced but not to defeat the same.

16.3. This is more so because of incorporation of fundamental duties in Part IVA of the Constitution. Under Clause (g) of Article 51A, every citizen has a fundamental duty to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures. The concern for living creatures would not mean an indifference to human beings. The concern should equally be distributed for the human beings who also deserve compassion no less than the living creatures in case living creatures do

not encompass human beings. A citizen has a duty to preserve natural environment and to protect and improve the same particularly the water bodies. Therefore, an individual cannot seek enforcement of fundamental rights, which is in conflict with his fundamental duties enshrined in Article 51A(g) of the Constitution.

16.4. Admittedly, fundamental duties cannot be enforced through writs. They can only be promoted by Constitutional methods. But they can be used for interpreting ambiguous statutes. Reference may be made to *The Mumbai Kamgar Sabha, Bombay Vs. Abdulbhai Faizullabhai and Others*, and *West Bengal Head Masters' Association and Another Vs. Union of India (UOI) and Others*, . In *Rural Litigation and Entitlement Kendra and Others Vs. State of Uttar Pradesh and Others*, and *Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others*, , the fundamental duties have been particularly invoked in litigation concerning the environment. On the principle that as the duties is obligatory on citizens, the State should also observe them. The Apex Court had issued various orders with reference to Article 51A(g) to protect natural environment in *Mumbai Kamgar Sabha (supra)*; *Rural Litigation and Entitlement Kendra Vs. State of U.P.*, and *Banwasi Seva Ashram Vs. State of U.P. and Others*, .

16.5. In the above context, having regard to the directive principles and the fundamental duties as discussed above, now let us examine the situation in the present case on environmental issue as hereafter.

Environmental Point:

17. It appears from the affidavit filed by Mr. Manick Das learned Counsel for the Pollution Control Board, that in exercise of powers conferred u/s 3(1) and Section 3(2)(v) of the Environment (Protection) Act, 1986 read with Rule 5(3)(d) of the Environment (Protection) Rules, 1986 issued a notification on 27th January, 1994 published in the Official Gazette (Annexure "X" to the Affidavit of Pollution Control Board) prohibiting expansion or modernization activity exceeding the pollution load listed in Schedule I except with the environmental clearance by the Central Government in accordance with the procedure prescribed in the said notification. This notification was amended by a further notification published on 7th July, 2004 including new construction projects and new industrial estates in Item Nos. 31 and 32 to Schedule I. Upon an inspection, it was found that Sanjeevani Projects had undertaken a new construction project without obtaining permission, though it exceeds the pollution load provided in the notification (Inspection Report, Annexure "X" of the Affidavit of Pollution Control Board). However, Sanjeevani Projects applied for "No Objection Certificate" on 5th August, 2005 along with environmental impact assessment and environmental management plan. On scrutiny, it appears that it required environmental clearance as required under the 7th July, 2004 notification from the Ministry of Environment and Forest, Government of India (MOEF). The Sanjeevani Projects was informed accordingly and was requested not to progress any further with the work at the proposed site by the State Board's Memo dated 27th September,

2005 (Annexure "X" to the Affidavit of Pollution Control Board). The Supreme Court in Matter No. WP (Civil) 460 of 2004 issued directions from time to time that none of the units requiring environmental clearance from MOEF can proceed with any work without environmental clearance (EIA). The Government of India has also issued a direction upon all the State Governments on 11th of August, 2005 (Annexure "X" to the Affidavit of Pollution Control Board), to inform the Central Government all cases coming under the purview of the notification undertaking projects without EAI clearance for being placed before the Apex Court and to issue closure notice against such unit. Mr. Das submitted that on the face of the application made by the Sanjeevani Projects, environmental clearance from MOEF is required.

17.1. The question remains that even if the pollution load is less than the required minimum prescribed in the directions dated 7th July, 2004, but there are more than one project in the same locality individually having less than the minimum of the pollution load but exceeding far above the minimum in aggregate whether each of them would be entitled to EIA clearance? If it is so, in that event, the developers would divide the project in dribbles and find out ways and means to wriggle out of the restrictions. Since the clearance would affect the individual or the mass and interest of an individual or the common people living in and around, it is the duty of the Pollution Control Board to assess the impact of all the projects undertaken in the area and study the feasibility of situation and then declared a policy in respect of a particular area prohibiting creation or construction or establishment of township, having projects, industry or industries etc. in any area of construction so as to ensure and protect the right of the individual or the mass, as the case may be, guaranteed under Article 21 of the Constitution of India.

17.2. In any event, the provisions contained in the Panchayat Act and the Rules, the Environment Act and the Rules, the Town and Country Planning Act and Rules, the West Bengal, Land Reforms Act and the Rules, the Inland Fisheries Act and the Rules are to be adhered to. But one thing is common that there is no conflict with regard to the provisions for construction or erection on a water body or a land otherwise than a homestead land and requires clearance and in some cases it is altogether prohibited except as permitted under those provisions. In such circumstances, it is not permissible either for the Panchayat to grant sanction and permit the construction to go on. It is incumbent on the Pollution Control Board to stop construction until clearance is accorded. It is incumbent on the Department of Land and Land Reforms to stop construction until the conversion is allowed. It is incumbent on the Town and Country Planning Department to stop construction contrary to land use map. It is incumbent on the State to see that all these provisions are enforced and that the right to life of the mass guaranteed under Article 21 is protected and enforced.

Whether the FIR can be Quashed :

18. In the writ petition prayer has been made for quashing of the FIR. Having

regard to the facts and circumstances as discussed above, it appears that conversion of a land without prior permission/conversion granted by the competent authority u/s 4C of the WBLR Act is an offence within the meaning of Section 4D thereof. Therefore, the FIR in this case, on account of the construction activities of the petitioners on a land other than homestead without conversion in accordance with Section 4C, discloses a prima facie case. Once a prima facie case is made out, the FIR cannot be quashed. Conclusion:

19. In these circumstances, we are of the view that: (1) without the conversion u/s 4C of the WBLR Act, the petitioners have no right to carry on any construction on the site. (2) The appropriate authority has a right to reject or refuse conversion. (3) The State is not bound by reason of its grant of conversion to another unit even if it is granted legally. It is the discretion of the State, which it is free to exercise. (4) The State has right to declare its policy and take a decision with regard to a particular area in a particular manner. (5) The petitioners have no right to convert though it might hold the land with transferable and heritable right. (6) Section 3A read with Section 4 of the WBLR Act though confers absolute right in respect of the land held by a raiyat within the ceiling, it does not confer any right to convert. (7) The change in the definition of land in Section 2(7) of the WBLR Act by the 1981 Amendment does not imply conferment of right on a raiyat to change the use of the land or convert the same. (8) Section 4C of the WBLR Act is not dependent for its enforceability upon a fresh notification u/s 1(3) of the WBLR Act. (9) The amendment substitution or insertion of a provision already enforced u/s 1(3) is not dependent for its enforcement upon a fresh notification u/s 1(3) of the principal Act when the amendment Act itself provides for the enforcement of the amended provision. (10) The distinction sought to be made in the decision in *Niranjan Khanra* (supra) about the effectivity of the enforcement of the insertion or amendment and the enforceability of those provisions does not seem to be acceptable to us in view of the decision in *Vassanti Devi Pandey* (supra) being more sensual is acceptable to us for the reasons given and the discussion made in this judgment. (11) The land being recorded as "beel maach chas" the characteristics of the land is to be decided on the basis of the record-of-rights. The rebuttability of the presumptive value of the record-of-rights does not flow from the stealthily act of a raiyat over a long period changing the character of the water body to a high land. The land retains its character in view of the prohibition against conversion provided for in the WBLR Act. (12) The Panchayat cannot grant sanction for construction or erection upon a land recorded in the record-of-rights otherwise than homestead until a certificate of conversion is granted by the competent authority is produced. As such the grant of sanction without such certificate by the Panchayat is contrary to law and without jurisdiction. Thus, the sanction granted in this case is void ab initio and as such it is to be so declared and quashed. (13) The petitioners have no right to carry on the construction over a land recorded as "beel maach chas". It cannot carry on the construction in breach of the respective provisions of the WBLR Act and the

Rules, the Panchayat Act and the Rules, the Environment Act and the Rules, the Town and Country Planning Act and the Rules, the Inland Fisheries Act and the Rules. (14) The land is not included in the wetland declared in Annexure "C" to the petition in Public (supra). But the land is proposed to be added to the wetland area by the Wetland Management Committee as it appears from the Management Plan of East Kolkata Wetland. (15) The decision in Public (supra) is binding on the Government as well as on the petitioners even if their predecessors-in-interest were not parties to that to the extent and for the reasons stated hereinbefore. (16) The decision in Public (supra) does not prevent or preclude the State or the Management Committee of the East Kolkata Wetland System from adding or including other areas to or in the wetland area. (17) The wetland being the lifeline of the drainage system of the city of Kolkata for discharge of effluent and drainage of excess rainwater, it is required to be preserved and maintained and no construction should be permitted. A comprehensive plan is required to be adopted for protecting the city from being inundated or waterlogged and for appropriate arrangement for sanitation. (18) It is the duty of the State to protect the people living in Kolkata from outbreak of diseases and epidemics due to inadequate sanitation and drainage system or from clogging the existing system by allowing construction over sites in and around the wetland even though it is not declared or included in Annexure "C" to the petition in Public (supra). (19) It is the duty of the State to protect the right to life of the individual/mass/people living in Kolkata and is enforceable even against an individual when the activities of such individual affect such right even though remotely and that too at a later stage. (20) Such question is left at the hands of the State to decide at its own wisdom and discretion. Such discretion of the State is free and absolute. Any decision so taken cannot be interfered with by the Court unless mala fide is shown. Such discretion cannot be defeated by the principle of discrimination if granted to one even legally. (21) The State is supposed to take particular care for the preservation and retention of the wetland for the purposes mentioned in this judgment and those in the Public (supra) and is supposed to take appropriate steps. (22) The FIR having disclosed prima facie case as discussed hereinbefore, no relief can be had by the petitioners in these writ petitions having regard to the facts and circumstances of the case as discussed above. (23) The petitioners are not entitled to any relief as prayed for. (24) The area having been described as urban/rural settlement in full in the Management Plan of East Kolkata Wetland does not confer a right on the petitioners to convert the same to an urbanized township. (25) The writ petitions are, therefore, liable to be dismissed and the interim order passed therein are liable to be set aside and the appeals are to be allowed.

Order:

20. In the result, these appeals succeed and are hereby allowed. The orders appealed against are hereby set aside. The writ petitions, therefore, fail and are hereby dismissed. The plan sanctioned by the Panchayat is hereby declared without jurisdiction and void ab initio and as such stand quashed.

20.1. The land being proposed to be included in the wetland, the Management Committee of the East Kolkata Wetland System shall take appropriate steps for including those lands in the wetland area and to preserve and maintain the same as wetland as proposed. The Management Committee of the East Kolkata Wetland System shall advise the Government accordingly and shall take appropriate steps towards that end.

20.2. The writ petitioners/respondents and the appellants are directed to restore the water area before 31st May, 2006 i.e., before the onset of the next monsoon and preserve the same as wetland.

20.3. The Management Committee of the East Kolkata Wetland System is also directed to take steps in consultation and co-ordination, as it may deem fit, with the other departments to prepare an appropriate long term plan for maintenance, preservation and retention of the wetland for protecting the right to life of the people living in Kolkata guaranteed under Article 21 in the matter of discharge of effluent and drainage of rainwater for saving the city from being waterlogged and to provide an adequate sanitation and drainage system by monitoring all housing and industrial projects in and around the wetland area or adjacent thereto and the outskirts of the city as indicated in the judgment in co-ordination with the Department of Environment, Ministry of Forest, Government of India; Pollution Control Board, Government of West Bengal, the respective Municipal Authorities of the city of Kolkata and the outskirts including the Panchayats, the Land and Land Reforms Department, the Town and Country Planning Department and the competent authority under the West Bengal Inland Fisheries Act declaring the wetland and the area to be free from all construction for all time to come as it may deem fit and proper.

20.4. There will, however, be no order as to costs.

20.5. Urgent xerox certified copy of this judgment, if applied for, be given to the parties on usual undertaking.

Soumitra Pal. J.

21. I have read the proposed judgment to be delivered by Hon''ble Dilip Kumar Seth, J., and I fully agree with the same. However, I pen down a few sentences.

22. During argument and from the affidavits filed on behalf of the State respondents and the West Bengal Pollution Control Board ("the Board" for short) it was revealed that the applications for the conversion of the character of the concerned plots of land from "beel maach chas" to "bastu" are yet to be approved. Further, the Member Secretary of the Board by its memo dated 22nd June, 2005 addressed to M/s. Green Valley Towers Pvt. Ltd. annexed to its affidavit (Annexure X) intimated as under:

"Sub: Environmental clearance of housing projects : Notification No. SO 801(E) dated 7.7.2004 issued by the Ministry of Environment & Forest, Govt. of India.

Sir,

We would like to draw your attention to the above Notification of Govt. of India (Ministry of Environment and Forest) under which new construction projects above 1000 persons, or discharging sewage above 50,000 ltrs. per day or with an investment of above Rs. 50 crores would require environmental clearance from the Govt. of India.

2. In this regard, the EIA Notification 60(E) dated 27.1.1994 as amended time to time further says "No construction works, preliminary or otherwise, relating to setting up of the project may be undertaken till the environmental clearance is obtained.

3. In view of the above, you are requested to take necessary steps so that the environmental clearance is obtained before the construction activities start.

23. Thereafter, on 7th September, 2005 the Member Secretary of the Board issued a memo to M/s. Green Valley Towers (Annexure X) as under :

Sub: NOC for your proposed housing project "Ideal villas" at Mouza: Kochpukur, S-24 Parganas

Ref: Your NOC application dated 1.2.2005

Sir,

With reference to the above, you are requested to submit the revised EIA/ EMP report within 12/09/2005, so as to process your NOC application through environmental public hearing.

24. Similarly, the Chief Engineer of the Board issued a memo dated 22nd September, 2005 to M/s, Sanjeevani Projects Pvt. Ltd., being Annexure X to the affidavit submitted by the Board, which is set out hereinbelow :

Sub : Construction in Sanjeeva Town

Ref: This office Memo No. 415(1-1)-2N-137/2005 dated 4.7.2005

Sir,

In reference to above your application for NOC alongwith, EIA/EMP reports etc. have been received by this office on 5.8.05. This office is scrutinizing the content of this report. From preliminary studies it appears that the said project attracts provision of Notification No. S.O. 801(E) dated 7.7.2004 and it requires final clearance from MOEF, GOI. Till such receipt of final clearance you are requested not to progress any further with any construction work at the proposed site.

25. The notification No. 801 (E) dated 7th July, 2004, amending the earlier notification dated 27th January, 2004 brings within its fold "New construction projects" specified therein, under the scanner of environmental clearance; It has been submitted on behalf of the Board that the projects under construction fall

under the heading new construction projects.

26. It has been specifically contended on behalf of the Board that on an inspection of the projects it was observed that the projects had commenced without obtaining its permission. On 1st February, 2005, M/s. Green Valley had approached the Board for environmental clearance, whereas Sanjeevani Projects had applied for no objection certificate on 5th August, 2005 along with Environmental Impact Assessment and Environment Management Plan. On scrutiny of the application it had appeared that the project required environmental clearance from the Ministry of Environment and Forests under Environment Impact Assessment Notification 80KE) dated 7th July, 2004 issued by the Ministry of Environment and Forests (MOEF), Government of India. It was argued that the Apex Court in connection with matter No. W.P. (Civil) 460 of 2004 from time to time had issued directions that none of the units which are required to obtain environmental clearance from the Ministry of Environment and Forest, Government of India, can proceed with any work without obtaining the environmental sanction. It was contended that the Government of India on 11th August, 2005 had intimated, since a number of units were continuing to operate without prior environmental clearances in spite of the order of the Supreme Court, the State was requested to identify such defaulting units and take immediate steps to close them down. Therefore, the letters dated 22nd June, 2005 and 22nd September, 2005 were issued.

27. It is pertinent to note that pursuant to our order dated 19th August, 2005, the Additional District Magistrate and District Land and Land Reforms Officer, South 24-Parganas had filed a report dated 23rd August, 2005 which is on record. It appears from the said report that the Plot No. 321/615 was classified as "beel maach chas" in the LR. records-of-rights. The Collector did not accord permission u/s 4C of the West Bengal Land Reforms Act, 1955 to convert the classification of the said plot. The entire plot was previously covered by water and its character was changed by filling of earth. Some portions of the said plot outside the project site still retain its character as a wetland. Some water, grass and hogla were found within the project site also. Physical inspection revealed that some portions of the plot still bear substantial traces of water and aquatic vegetation. Some portions of the plot have been converted into solid land and numerous constructions have been made on it.

28. The question is whether the respondents were justified in taking such an action. To address the issue and answer the question it has to be seen what had led the authorities to issue notification and consequently the letters.

29. In the past threat to environment was hardly an issue. However, the march of civilization led to the setting up of industries. To provide shelter to the burgeoning population forests were cleared, water bodies were filled up. Deforestation led to the shrinking of the forest cover. Industries which had provided employment to millions discharged toxic gases and effluents, thus polluting air and water. The environment--air, water and greenery which had

provided succor to the mankind--is under serious jeopardy. The existence of mankind is at stake. It is a worldwide phenomenon. These issues have been debated worldwide. United Nations Organisation has stepped in. Nations have taken note of the impending catastrophe. Deliberations still continue about how to avert the disaster which is imminent. Suggestions have been recommended accordingly. Today hardly a day passes when we do not hear about the ill-effects of global warming, greenhouse effect and desertification. In short, concern for the protection of the environment is high on the global agenda.

30. In India with the passage of time the awareness for preservation of the environment has grown. Since mid 70s effective Constitutional and legislative steps have been taken. Insertion of Article 48A under the Directive Principles of State Policy and Article 51A(g) under the Chapter on Fundamental Duties pursuant to forty-second amendment to the Constitution of India was a step in that direction. Article 48A postulates that "The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country." Similarly, Article 51A(g) lays down that it is the duty of every citizen of India "to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures." Therefore, though Articles 48A and 51A(g) come within the Directive Principles of State Policy and Fundamental Duties respectively which are not legally enforceable, Courts should not and cannot shirk its responsibility from intervening if occasion so arises.

31. The post forty-second amendment era saw a number of legislations being enacted -- Environment (Protection) Act, 1986, Air (Prevention and Control of Pollution) Act, 1981 and National Environment and Tribunal Act, 1995. Amendments have been carried out to some of the existing legislations to achieve the desired goal as enshrined in Article 48A and necessary rules under the relevant statutes have been framed.

32. In the instant appeals, as already noted, the letters dated 22nd June, 2005 and 22nd September, 2005 issued by the Pollution Control Board to M/s. Green Valley Towers Pvt. Ltd., and M/s. Sanjeevani Projects Pvt. Ltd. respectively are in consonance with and in implementation of the Notification No. 801(E) dated 7th July, 2004 which was issued in exercise of the power conferred by Sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 read with Clause (d) of Sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986. In my considered view, the stand of the Board is just, proper and legal as the construction is being carried out in that part of the city of Kolkata -- the east -- which according to the report is a periurban region, a unique example of utilization of the city waste which otherwise creates great problem of disposal. Here, the sewage flowing over the wetlands getting isolated and naturally oxidised supports fisheries and livelihoods of thousands of people very effectively. It also plays a remarkable role in by transforming waste into organic manure much more useful for agricultural products and which is essential for the

upkeep of the eco-system (Page 14 -- Management Plan of East Kolkata Wetland, Department of Environment, Government of West Bengal). Any attempt to fill up these areas as evident from the report dated 23rd August, 2005 shall certainly lead to the total loss of vegetal cover and the wetlands and shall lead to a colossal disaster -- more serious than what was caused by the recent downpour -- in the city where all the levels of pollution be it air, water and land have grown at an alarming pace due to the wanton destruction of the environment. A further destruction may lead to a point of no return. Therefore, the action of the authorities particularly that of the Board -- to save the vanishing green, to maintain the water bodies, wetlands and all its surroundings are not only legal but also timely since in the management plan of East Kolkata Wetland, as adopted by the Managing Committee of the East Kolkata Wetland System prepared by the Department of Environment, Government of West Bengal, recommendations have been made which are as under:

It is further recommended that a more detailed management plan is to be prepared taking all these sectors in comprehensive way under the broad principle of wise use practices.

Till such time, the two overriding and inflexible principles that should govern the wise use management of the EKW system are :

(a) in no case, and under no circumstances will any water area be allowed to be converted:

(b) in each case relating to a development proposal, prior permission of the Environment Department or its designated delegated Authority will be required.

(c) The waste recycling practice may be allowed in areas other than substantially waterbody-oriented area, on case to case basis, to be examined by the Deptt. of Environment or its designated delegated authority.

(d) Excavation of new channels or desiltation of the silted channels for the purpose of sewage flow may be allowed for promoting sewage fed pisciculture. The proposals should however be examined beforehand by the Environment Department or its designated delegated authority.

33. The recommendations which are part of the Management Plan of East Kolkata Wetland have been prepared by a Committee consisting of technical experts which cannot be ignored. It makes two important recommendations -- (a) under no circumstances a water body shall be allowed to be converted, and (b) any development proposal shall be preceded by a prior permission of the environment department which in the instant case has not been done. In fact, the petitioners have flagrantly violated the provisions of law be it relating to conversion of the classification of land under the West Bengal Land Reforms Act, 1955 or the Environmental Laws particularly the Environment (Protection) Act, 1986, the rules and the notifications framed thereunder, which should be deprecated. It is also surprising that the law enforcing agencies of the State

failed to act authoritatively by maintaining strict vigil over the area in question and allowed the plot of land to be filled up and the construction to proceed considerably when conversion of the plot of land -- a site which was within the East Calcutta Wetland Area and included as a site of international importance in 2002 -- was rejected during 2003 as evident from the stay applications filed on behalf of the State.

34. Hence, in view of the notification dated 7th July, 2004 coupled with the fact that no approval for conversion of the plot of land had been obtained by the writ petitioners, the sanctions to the building plans by the concerned Gram Panchayat for the construction of the villas are illegal and, therefore, quashed. Therefore, demolition and nothing short of it is the only solution to restore the already affected water body or the wetland. As already directed by Hon''ble D.K. Seth, J. in his judgment, the writ petitioners/respondents and the appellants shall restore the water area before the onset of the next monsoon and preserve the same as wetland.

35. In the facts and circumstances, the writ petitions being W.P. No. 352 of 2005 and W.P. No. 367 of 2005 are dismissed and the appeals being A.P.O.T. No. 250 of 2005 and A.P.O.T. No. 252 of 2005 are allowed.

36. There will, however, be no order as to costs.

37. Urgent xerox certified copy of this judgment, if applied for, be given to the appearing parties on priority basis.