

Krishna Chandra Santra & Others vs The Chairman Pollution Control Board on 30 August, 2022

BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH,
KOLKATA

.....

ORIGINAL APPLICATION No.21/2021/EZ
IN THE MATTER OF:

1. Krishna Chandra Santra
Son of Late Ganapati Santra
Residing at Village- Jalapara,
P.O.- Paltagarh, P.S.-Singur,
District-Hooghly, Pin-712409

2. Swapan Das
Son of Late Tarak Das
Residing at Village- Ghanshyampur,
P.O.- Paltagarh, P.S.-Singur,
District-Hooghly, Pin-712409

....Applicant(s)

Versus

1. The Chairman, Pollution Control Board
West Bengal, Office at Paribesh Bhawan,
10A, Block LA, Sector-III, Bidhannagar,
Kolkata-700106

2. Environmental Engineer,
Hooghly Regional Office,
West Bengal Pollution Control Board,
Department of Environment,
Himalaya Bhawan,
Delhi Road, Dankuni,
Dist.- Hooghly, Pin-712311

3. The District Magistrate, Hooghly
P.O. 7 P.S.-Chinsura, District-Hooghly,
Pin-712101

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4. Block Development Officer, Singur Block,
Singur, District-Hooghly, Pin-712409

5. Block Land & Land Reforms Officer,
Singur Block, Singur,
District-Hooghly, Pin-712409

6. Savadhipati, Hooghly Zila Parishad
District-Hooghly, Pin-712101

7. Pradhan, Baruipara Paltagarh Gram Panchayat,
Baruipara, Singur,
District-Hooghly, Pin-712409

8. Jyostna Das
Wife of Sri Tapan Das,
Village-Ghansyampur, P.O.-Paltagarh,
P.S.- Singur, District-Hooghly, Pin-712409

9. Raghunath Malik
Son of Late Kalicharan Malik,
Village-Ghansyampur,
P.O.-Paltagarh, P.S.-Singur,
District-Hooghly, Pin-712409

10. Ramchandra Malik
Son of Late Kalicharan Malik,
Village-Ghansyampur,
P.O.-Paltagarh, P.S.-Singur,
District-Hooghly, Pin-712409

...Respondent(s)

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COUNSEL FOR APPLICANT:
Mr. Nirbanesh Chatterjee, Advocate

COUNSEL FOR RESPONDENTS:

Mr. Prithwish Basu, Advocate for R-1 & 2,
Mr. Sibojyoti Chakraborty, Advocate for R-3, 4 & 5,
Ms. Priyanka Mondal, Advocate a/w
Mr. Gazi Faruque Hossain, Advocate for R-8, 9 & 10

JUDGMENT

PRESENT:

HON'BLE MR. JUSTICE B. AMIT STHALEKAR (JUDICIAL MEMBER) HON'BLE
M R . S A I B A L D A S G U P T A (E X P E R T M E M B E R)

Reserved On: - 23rd August, 2022 Pronounce On: - 30th August, 2022

1. Whether the Judgment is allowed to be published on the net? Yes

2. Whether the Judgment is allowed to be published in the NGT Reporter? Yes
JUSTICE B. AMIT STHALEKAR (JUDICIAL MEMBER) Heard the learned Counsel for the parties and perused the documents on record.

2. The allegations raised in this Original Application are that the Respondent Nos. 8, 9 and 10 are raising illegal constructions and filling the construction material in Bill (Big Pond/Vast Water Reservoir) which is connected with the Damodar Valley Corporation Canal.

3. The Applicants are co-owners of Plot No. 88, JL. No. 80 of Mouza, P.S. Singur under Baruipara Paltagarh Panchayat and have been using this water body as a source of irrigation for their agricultural fields but due to the illegal activities of the Respondent Nos. 8, 9 and 10, the said Bill is being destroyed.

4. At the time of admission, notices were issued to the Respondent Nos.8, 9 & 10, returnable within four weeks and Respondent Nos.1 & 2, represented through their Counsel, were directed to conduct a site inspection of the Bill in question and ascertain as to whether any illegal construction is being made by the Respondent Nos.8, 9 & 10 and as to whether a Grill Factory is functioning in the area near to the plot in question and that construction material is being deposited in the said Bill in violation of the Construction and Demolition (C&D) Waste Management Rules, 2016. The Respondent Nos.1 & 3 were also directed to ascertain the damage caused to the waterbody and calculate the Environmental Compensation which may be recovered from the violators.

5. In response an affidavit dated 19.07.2021 has been filed by the Respondent No.3, District Magistrate, Hooghly, stating therein that on receiving directions from the National Green Tribunal, the Block Development Officer and the Block Land & Land Reforms Officer, Singur, were directed vide order dated 07.07.2021 to cause a field inspection and prepare a comprehensive report on the illegal construction of Grill Factory and dumping/deposition of construction material in the Bill (Big Pond/Vast Water Reservoir), including whether all the documents pertaining to the Trade Licence, Consent to Establish, Consent to Operate and Land Conversion Certificate etc. have been issued by the Competent Authorities. Notice was also caused to be served on the Respondent Nos.8, 9 & 10 to stop filling up of the said Bill connected with the Damodar Valley Corporation (DVC) canal and not to make any illegal construction over the alleged scheduled property and to produce the requisite documents as mentioned above. The affidavit further discloses that the Block Development Officer and Block Land & Land Reforms Officer, on verification of the area submitted a comprehensive Status Report which is extracted herein below: -

"(A) From the report of the Block Development Officer, Singur, vide Memo No.1426/S dated 13.07.2021, it transpires the following: -

(i) That, almost 50 ft. Long and 20 ft. Width area have been occupied on the water body after filling in the land and the work of Grill Factory is going on.

(ii) That, as the water body is obstructed after illegal construction, flow area of water naturally reduces to upstream.

(iii) That, the agricultural land in the vicinity of the schedule land is directly affected due the lack of water.

(iv) That, on the inspection of the records the BDO, found that there is no Trade Licence issued by the Singur Panchayat Samity.

(B) From the report of the Block Land & Land Reforms Officer, Singur, vide Memo No.431/LR/Singur/2021 dated 08.07.2021, it transpires the following: -

(i) That from field enquiry report, the suit Plot/Property has been split up into two portions. One remained inaccessible shallow and marshy land comprising bamboo orchard etc. lying backward connected with DVC canal and the rest part is being converted into several constructions including the said illegally constructed Grill Factory which is running at present also, out of which some constructions have been made by making brick built structures which are in existence for a long period of time. It also appears from the report that the Grill Factory is under possession of Smt. Jyotsna Das, the Respondent No.8.

Thus the said 3 (three) respondents have converted total 14 deci of land in question without obtaining any permission from any competent Authority. They do not have any relevant dossier like Trade Licence, Consent to Establish, Consent to Operate whatsoever.

(ii) That, on perusal of the KB ROR (Khatian No.-422) of the plot concerned, it is found that the classification of the land has been changed from 'Doba' to 'Bill'. Furthermore, it is also to be stated that in RS ROR (Khatian No.-134), the classification of the land is recorded as 'Doba'.

(iii) Thus in view of the comprehensive report of BL&LRO, Singur, it is fairly established that the alleged area has been converted illegally. In this context it is pertinent to mention that other than the Respondents No.08, 09 & 10 there are so many well established shops, the constructions of which are made by several other persons over the alleged area, who appeared to be the co-sharers of the instant plot.

(C) That in response to the reply of the Notice issued, it is respectfully stated that even after serving of notice vide office Memo being No.488(3)/JM dated 07.07.2021 upon Respondent Nos.8, 9 & 10, no such Reply/correspondence through mail or hard copy has been received either by this office or the office of the BDO, or by the office of the BL & LRO from the Respondent."

6. It is stated in the affidavit that after conducting the field enquiry, a hearing was taken up at the Office of the Block Land & Land Reforms Officer, Singur, also. The Block Land & Land Reforms Officer, Singur, Hooghly sent detailed report containing the violation of Sections 4B, 4C(1), 4C(2) of the West Bengal Land Reforms Act, 1955 to the ADM(LR) & District Land & Land Reforms Officer, Singur, Hooghly, vide BL&LRO, Singur Memo No.339/LR/Singur/2021 dated 16.04.2021. It is also stated that simultaneously, having regard to the fathom of the complaint, Block Land & Land Reforms Officer, Singur served Notice under Section 4C (5) of the West Bengal Land Reforms Act, 1955, vide his Memo No.395/21 dated 08.06.2021 upon the Respondent Nos.8, 9 & 10 to restore the land in question to its original character or mode of use of the land since the Respondent Nos.8, 9 & 10 had caused unauthorized conversion of the said land, failing which action under Section 4D of said Act will be taken up against them. It is further stated that instruction was issued to the Block Land & Land Reforms Officer, Singur by the ADM(LR) & District Land & Land Reforms Officer, Singur, Hooghly, vide Memo No.IX-/Un- Autho-03(Singur)/2659/S/2021 dated 25.06.2021, to serve notice under Section 4C (5) of West Bengal Land Reforms Act, 1955 upon the Respondent Nos.8, 9 & 10 to stop the illegal filling of the concerned waterbody.

7. The Report dated 13.07.20221 submitted to the Additional District Magistrate (G), Hooghly has been filed as Annexure-R-3/2 (colly) which reads as under: -

"1. The subject plot (Plot No.88, Mouza-Ghanashyampur, JL No. 80 having an area of 1.05 Acre) has been split up into two portion - one remained inaccessible shallow and marshy land comprising bamboo orchard etc. lying back along with DVC Canal and the rest apart being illegally converted into several construction including the said illegally constructed Grill Factory.

2. The Respondent No.8 possessed having an area of 0.03 acre and converted it accordingly without permission from competent authority. Respondent Nos.9 & 10 possessed admeasuring an area of 0.11 and converted it accordingly without permission from competent authority.

3. The total alleged area in the subject plot, found to be aggregating 0.14 acre.

4. As the water body obstructed after illegal construction, flow area of water naturally reduces to upstream.

5. Agricultural land directly affected due to lack of water.

6. No trade licence issued by the Singur Panchayat Samiti, Consent to Operate, Consent to Establish, land Conservation Certificate are available to the Respondent Nos. 8, 9 & 10."

8. An affidavit dated 09.08.2021 has been filed by the Respondent No.3, District Magistrate, Hooghly, stating therein that the Block Land & Land Reforms Officer, Singur has been directed vide letter dated 25.06.2021 to serve notice under Section 4C (5) of the West Bengal Land Reforms Act,

1955, upon the Respondent Nos.8, 9 & 10 to stop illegal filling of the Bill and in compliance thereof notices have also been issued by the Block Land & Land Reforms Officer, Singur to the Respondent Nos.8, 9 & 10 on 08.06.2021.

9. Another affidavit dated 06.09.2021 has been filed by the Respondent No.3, District Magistrate, Hooghly, stating therein that a spot enquiry was again conducted by the Block Land & Land Reforms Officer, Singur on 17.08.2021 in respect of LR Plot No.88, Mouza-Ghanshyampur, J.L. No.80, i.e., the plot in question, in which it was revealed that the Respondent Nos.8, 9 & 10 are using their portion of the said plot for commercial purpose and have not restored the land to its original character inspite of directions issued by the District Magistrate in his notice dated 07.07.2021. It is also stated that a complaint was lodged in the form of FIR dated 23.08.2021 against the Respondent Nos.8, 9 & 10 by the Block Land & Land Reforms Officer, Singur under Section 4D of the West Bengal Land Reforms Act, 1955 with the Singur Police Station for causing change in the area, character and mode of use of the land measuring 18 deci. out of 1.05 acres of Plot No.88, unauthorizedly without obtaining permission of the Collector and in violation of the provisions of Section 4C of the West Bengal Land Reforms Act, 1955. The Report of the Block Land & Land Reforms Officer, Singur has been filed at page no.178 of the paper book and mentions that no restoration of the land in question to its original character has been carried out by the said respondents.

10. The Respondent Nos.1 & 2, West Bengal Pollution Control Board has also filed an affidavit dated 07.09.2021, wherein it is stated that the Sub-Inspector, Singur Police Station visited the site of M/s Das Engineering Works on 21.08.2021 but found the Unit to be closed and the owner of the said Unit was found unavailable in the locality. The electricity of the Unit was also disconnected by West Bengal State Electricity Distribution Company Ltd. (WBSEDCL) on 19.08.2021. A closure notice was also issued on 11.08.2021 against M/s Das Engineering Works by the West Bengal Pollution Control Board.

11. Thereafter, an affidavit dated 24.02.2022 has been filed by the Respondent No.3, District Magistrate, Hooghly, stating therein that again a spot enquiry was conducted jointly by the Block Development Officer, Singur and Block Land & Land Reforms Officer, Singur of the premises in question on 18.02.2022 and their report along with the report of the Singur Police Station has been received which reveals as under: -

"6. That, upon spot enquiry over the L.R. Plot No.-88, classified as "Bill" of Mouza - Ghanshyampur, J.L. No.80 of P.S.-Singur on 18/02/2022, it reveals

a) That the respondent no. 02, 09 & 10 have restored the land/area in question to its original form/previous condition.

b) That the Grill Factory which were constructed over the water body in question is fully demolished by the respondents. At present there is no encroachment found over the suit plot/land in question.

c) That the respondent no.8, 9 & 10 have lifted/cleaned all the debris from the site/water body in question.

d) Regarding the status of F.I.R. lodged by the BL & LRO, Singur against said Respondents on 23.08.2021 and the Singur Police Station started Case (Charge sheet no.239/2021) on 24.09.2021 accordingly."

12. As regards the FIR lodged by the Block Land & Land Reforms Officer, Singur at Singur Police Station against the Private Respondent Nos.8, 9 & 10, it is stated that the matter is presently sub-judice in the Court of Additional Chief Judicial Magistrate, Chandannagar.

13. The Applicant has filed an affidavit disputing the enquiry findings of the District Magistrate, Hooghly and has stated that the entire Plot No.88, J.L. No.80 of Mouza-Ghanshyampur has been classified as 'Bill' and therefore, no construction whether pucca or kachcha could be permitted to exist there on. It has been stressed by the Applicant that filling of Plot No.88 with earth is confirmed and only two temporary sheds have been removed by the Respondent Nos.8, 9 & 10 but a pucca two storied building has been constructed by Respondent No.8 and a one storied building had been constructed by Respondent Nos.9 & 10 over the Plot No.88 which is still in existence and those constructions have not been removed nor has the waterbody been restored to its original form. In support of his contention the Applicant has filed photographs taken on 12.05.2022 showing constructions on the land in question.

14. The Respondent Nos.1 & 2, West Bengal Pollution Control Board has filed another affidavit dated 17.05.2022 stating therein that M/s Das Engineering Works has been operating at the Southern side of the Bill without obtaining either Consent to Operate or Consent to Establish from the West Bengal Pollution Control Board but at the same time no spray painting device or mechanism was found at the site and it was informed by the representative of the Unit that the painting was being done manually. It was established that the Unit was engaged in manufacturing Almirah, Grill manufacturing etc. which falls in the 'Orange Category' of the Industry Category list. It is also stated that under the Central Pollution Control Board (CPCB) Guidelines dated 07.03.2016, Almirah, Grill manufacturing (by dry mechanical process and without painting operation) is considered as 'White Category' activity. The West Bengal Pollution Control Board has also categorized 'Manual Brass Painting' as Exempted Category activity under Sl. No.24 of its Guidelines. It is stated that the Unit in question does not fall within 'Ambit of Consent Administration' and therefore, considering the degree of pollution generated, the question of imposing Environmental Compensation against the Unit cannot be recommended.

15. A perusal of the Central Pollution Control Board Guidelines dated 07.03.2016 as circulated under the West Bengal Pollution Control Board letter dated 14.06.2016 filed by the West Bengal Pollution Control Board shows Almirah, Grill manufacturing (dry mechanical process and with painting) at Sl. No.16 as falling under the 'Orange Category'.

Almirah, Grill manufacturing (dry mechanical process without painting operation) at Sl. No.37 falls in the 'White Category'.

16. However, a perusal of the Guidelines under the Note to the 'White Category' shows that in respect of Sl. No.37 Almirah, Grill manufacturing, it is clearly stated that "Sl. No.37 (Almirah, Grill manufacturing) is not permitted in the municipal areas of West Bengal", thus, irrespective of the fact that under Note (a), there is no necessity of obtaining consent for White Category of industries and an intimation to the West Bengal Pollution Control Board is sufficient, such activity is not permitted at all within municipal areas of West Bengal. White Category with the Note appended thereto reads as under: -

"WHITE CATEGORY Sl. No. Activity 1 Assembly of air coolers/conditioners, repairing and servicing 2 Assembly of bicycles, baby carriages and other small non-motorizing vehicles 3 Baling (hydraulic press) of waste papers 4 Bio fertilizer and bio-pesticides without using inorganic chemicals 5 Biscuits trays etc. from rolled PVC sheet (using automatic vacuum forming machines) 6 Blending and packing of tea (including tea garden) 7 Block making of printing without foundry (excluding wooden block making) 8 Chalk making from plaster of paris (only casting without boilers etc. - sun drying/electrical oven) 9 Compressed oxygen gas from crude liquid oxygen (without use of any solvents and by maintaining pressure & temperature only for separation of other gases) 10 Cotton and woollen hosiery making (dry process only without any dyeing/washing operation) 11 Diesel pump repairing and servicing (complete mechanical dry process) 12 Electric lamp (bulb) and CFL manufacturing by assembling only 13 Electrical and electronic item assembling (completely dry process) (including manufacturing of electrical and electronic items, electronic and mechanical toys, hardware for computers and other information technology instruments) 14 Engineering and fabrication units (dry process without any heat treatment/metal surface finishing operations/painting) 15 Flavoured betel nuts production/grinding (completely dry mechanical operations) 16 Fly ash bricks/block manufacturing 17 Fountain pen manufacturing by assembling only 18 Glass ampoules and vials making from glass tubes (including laboratory wares) 19 Glass putty and sealant (by mixing with machine only) 20 Ground nut decorticating 21 Handloom/carpet weaving (without dyeing and bleaching operation) 22 Leather cutting and stitching (> 10 machine and using motor) 23 Manufacturing of coir items from coconut husks 24 Manufacturing of metal caps, containers etc. 25 Manufacturing of shoe brush and wire brush 26 Medical oxygen 27 Organic and inorganic nutrients (by physical mixing) 28 Organic manure (manual mixing) 29 Packing of powdered milk [including repacking of chemicals, bitumen etc. in small container without any processing or heating] 30 Paper pins and u clips [including safety pins] 31 Repairing of electric motors and generators (dry mechanical process) 32 Rope (plastic and cotton) 33 Scientific and mathematical instrument manufacturing 34 Solar module non-conventional energy apparatus manufacturing unit 35 Solar power generation through solar photovoltaic cell, wind power and mini hydel power (< 25 MW) 36 Surgical and medical products assembling only (not involving effluent/emission generating processes) 37 Almirah, grill manufacturing (Dry mechanical process and without painting operation) Note:

(a) There is no necessity of obtaining consent for White Category of industries and an intimation to WBPCB is sufficient.

(b) Industry/industrial activity mentioned in the White category is permitted in any area in West Bengal subject to site clearance by local authority.

(c) Sl. No.31 (Repairing of electric motor and generator) is not permitted in congested area.

(d) Sl. No.37 (Almirah, grill manufacturing) is not permitted in municipal areas of West Bengal."

17. The Respondent Nos.8, 9 & 10 have filed their affidavit dated 22.07.2021, sworn by Sri Raghunath Malik, Respondent No.9, stating that they have admitting in paragraph-6 thereof that the area of Plot No.88 is 1.05 acres and it is recorded as Bill but there is no waterbody present in the area except when there is heavy rain during the rainy season. It is also stated that the alleged Bill consists of Plot No.88, 112, 113, 116 Plot No.88, 112 are adjacent to the metal road which connects Durgapur Highway to the Singur Station and in this area several people have raised constructions over the embankment long ago. The original owner of the Plot No.88 & 112 was Zamindar of Barman. Paragraph-6 of the affidavit which is an admission of the Respondent No.9 reads as under:

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"6. That the statement made in para no. 5(ii), 5(iii) is not correct all in all respect. It is true that the area of plot no. 88 is 1.05 acre and at present it is recorded as Bill. But there is no existency of water in the said Bill baring existency of water when heavy rain all in rainy season so, question remain vast water of calling the same as pond does not arise at all. It is not true that local farmers used water of the Bill for irrigation purpose. Only in the rainy season when nearby place filled with the water staged over this alleged 'Bill' and to discharge the stage water in the rainy season some people dig up a channel and connected the same with DVC. But irrigation water never reached to the so-called Bill. The said Bill never help the farmers to use the water for irrigation from that parikha / alleged bill even there no scope to reach or stay water for irrigation. The alleged bill consisted of plot no. 88, 112, 113, 116, plot no. 88, 112 adjacent to the metal road which connected Durgapur High way to the Singur Station and the road called as Swarnaprava Mallick Road. The width of Southern side of plot no. 88, 112 have 20-22' ft. and several people raised various construction over embankment long ago. The original owner of plot no. 88, 112 was Zamindar of Barman. Subsequently the heirs of Zamindar started to sold out the same to the different person and after several transfer some portion of plot no. 88 i.e. embankment including abandone parikha came to the hand of these respondents. Respondents no. 8 to 10 purchased some portion of plot no. 88, directly from the Barman in the year Respondent No. 8 became the owner of cottah plot no.88 by way of purchase from Raghunath Malik in the year 1999. This aid 1 Cottah of land is embankment and the same is velly described by it periphery."

18. In paragraph-7 of the affidavit, it is admitted that the Respondent No.8 set up a Grill Factory but did not fill up any waterbody. The Respondent Nos.9 & 10 never filled up any waterbody and purchased the property in Plot No.88 in a demarcated way. More than 70% of the purchased property is embankment of parikha of the adjacent road. It is also stated in the same paragraph that "the applicant totally purchased water area filled up with bushes and have been trying to place their claim of the embankment" which have been possessed by Respondent Nos.8, 9 & 10.

19. Another affidavit dated 09.08.2021, sworn by Sri Raghunath Malik (Respondent No.9) has been filed on behalf of the Respondent Nos.8, 9 & 10 stating therein that the land in question has never been used as Bill and it has wrongly been classified as Bill.

20. An affidavit dated 15.02.2022 has been filed by Respondent No.8, Jyostna Das, wherein it is stated that she has not filled up the Bill in question but has purchased one cottah of land classified as "Pukur Par" in 1999 and raised a temporary tin shed on a bamboo structure which was used for Grill manufacturing but thereafter, an inspection was carried out by Block Land & Land Reforms Officer, Singur and a closure order was issued on 11.08.2021 by the West Bengal Pollution Control Board with disconnection of electric supply and thereafter, the temporary structure has been removed and the waterbody has been restored to its original character. Paragraph-11 of the affidavit wherein Respondent No.8, Jyostna Das, has stated that she has filed pictures showing restoration of the Bill/waterbody and removal of debris. This amounts to an admission by the Respondent No.8 that the Plot No.88/Dag No.88 is a waterbody and the photographs filed with the affidavit of Respondent No.8, Jyostna Das clearly show her restoring the same as waterbody along with her husband Tapan Kumar Das as shown below the photographs filed from page nos.227 to 230 of the paper book.

21. The Respondent No.8 has filed another affidavit dated 18.07.2022 repeating the averments of her previous affidavit dated 15.02.2022. Along with the affidavit photographs have been filed showing pucca constructions made on Dag No.112 and in paragraph-7 of the affidavit of Jyostna Das, it is stated that she is a co-owner along with several other persons who have not been impleaded in the present original application but who have made constructions without any permission from the Authority. Paragraph-7 of the affidavit reads as under: -

"7. I repeat that the Applicant is the co-owner with several other persons who are not made impleaded in the said application. The co-owners who have constructed without any permission from the authority concerned are: Dilip Malik, son of Jaganath Malik (paca construction in plot no. 88), Basudeb Naga, Kartick Chandra Das, Parul Das, Nirmal Das, Karnal Das and Ram Chandra Malik. In Plot No. 112 Sri Sagar Das (Paca Shop Room), Rabin Koley (Kacha Shop room), Joydev Das (para two storied Building), Gadadhar Nayek (Paca Shop room), Mangala Mukherjee (Dwelling house 50 years old), Nabin Chandra Das (Dwelling House 60 years old), Narayan Das (Kacha shop room 30 years old), Gobinda Das (shop room), Joydev Das (room), Basudev Das (Paca Shop room), Singur Sriramkrishan Bhjakta Sangha, Ghanashyampur Baroary (Mandir). The pictures of some of the constructions of Dag no.88, 112 and 116 are annexed herewith and marked as annexure C."

22. We find that the original application has been filed on allegations of filling up of Bill (Pond)/Waterbody/Water Reservoir by the Respondent Nos.8, 9 & 10 and setting up of an illegal Almirah and Grill Factory by the Respondent Nos.8, 9 & 10, on the plot mentioned in the original application in respect of which allegation has been made and which is Plot No.88, J.L. No.80, Mouza Ghanshyampur, Police Station-Singur under Baruipara, Paltagarh Anchal area 1.05 acres. The position which emerges from the Report of the Block Development Officer and Block Land & Land Reforms Officer, Singur, is that the said Plot No.88 is a Bill (Pond/Water Reservoir) recorded as such in the Record of Rights (ROR) and that the Respondent Nos.8, 9 & 10 are in illegal occupation of the same under Section 4D of the West Bengal Land Reforms Act, 1955 and this land has never been de-classified as such under Section 4C of the West Bengal Land Reforms Act, 1955. The affidavit of the Respondent Nos.8, 9 & 10 also clearly discloses the admitted position that the Plot No.88 measuring 1.05 acres is recorded as a Bill in West Bengal Land Records though their claim is that it has never been used as a waterbody and that water fills in the area only during the rains. The Respondent No.8 has also admitted to have constructed a Grill Factory on a portion of the said plot which though has now been demolished after notices were issued by the Block Development Officer and Block Land & Land Reforms Officer, Singur which is also confirmed by the Field Enquiry Report dated 18.02.2022, but this Report at page no.242 of the paper book which has been filed as Annexure to the affidavit of the District Magistrate, Singur dated 24.02.2022, clearly mentions that it was observed that water can flow through the waterbody and that the original bed of the waterbody has recovered. Copy of the Field Enquiry Report dated 18.02.2022 reads as under:

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Sl. No. Question arised Observation at remarks site 1 Regarding Grill Factory At the time of lifting/clearing all the constructed at Inspection, it debris from the site/water body has observed site/water body fully that water can demolished and flow through debris shifted the water body from site 2 Regarding removing of Grill Factory illegal construction, constructed at encroachment of Grill site/water body Factory situated over fully the site/plot demolished 3 Regarding restoring the The structure Original bed of site in original in constructed at the water body question back to its site fully recovered, original form demolished, water can flow and the freely through demolished the canal materials shifted from the bed 4 Regarding cleaning and It has been The spot has restoring the spot observed that been cleaned the spot has and the fully been encroachment restored recovered

23. The learned Counsel for the Respondent Nos.8, 9 & 10 has further referred to the Enquiry Report at page no.243 of the paper book which mentions that the temporary shed constructed illegally on the plot in question has been removed and that portion has been restored. However, the same Report confirms that the Respondent Nos.8, 9 & 10 have encroached portion of Plot No.88 by filling earth in it.

24. The Respondent No.8 in her affidavits has sought to allege that there are large number of other persons who are also in occupation of Plot No.112 and other plots, but no action has been taken against them and that the action of the Applicant against the Respondent Nos.8, 9 & 10 is motivated by mala fides.

25. The Hon'ble Supreme Court in Civil Appeal No. 4787 of 2001; (Hinch Lal Tiwari Vs. Kamala Devi & Ors.), (2001) 6 SCC 496, decided on 25.07.2001 has observed as under: -

"It is important to notice that the material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. The Government, including the Revenue Authorities i.e. Respondents 11 to 13, having noticed that a pond is failing in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large. Such vigil is the best protection against knavish attempts to seek allotment in non-abadi sites. For the aforementioned reasons, we set aside the order of the High Court, restore the order of the Additional Collector dated 25-2-1999 confirmed by the Commissioner on 12-3-1999. Consequently, Respondents 1 to 10 shall vacate the land, which was allotted to them, within six months from today. They will, however, be permitted to take away the material of the houses which they have constructed on the said land. If Respondents 1 to 10 do not vacate the land within the said period the official respondents i.e. Respondents 11 to 13 shall demolish the construction and get possession of the said land in accordance with law. The State including Respondents 11 to 13 shall restore the pond, develop and maintain the same as a recreational spot which will undoubtedly be in the interest of the villagers. Further it will also help in maintaining ecological balance and protecting the environment in regard to which this Court has repeatedly expressed its concern. Such measures must begin at the grass-root level if they were to become the nation's pride."

26. Reference has also been made to the judgment of the Hon'ble Supreme Court passed in Civil Appeal No. 5109 of 2019; (Jitendra Singh Vs. Ministry of Environment & Ors.), (2019) 20 SCC 581, decided on 25.11.2019. Para 23 of the judgment reads as under: -

"23. For the reasons stated above, we allow the appeal and set aside the impugned order passed by the NGT. The allotment of all water bodies (both ponds and canals), including Khasra Nos.552 and 490 to Respondent No.6, or any other similar third party in village Saini, tehsil Dadri, district Gautam Budh Nagar is held to be illegal and the same is hereby quashed. Since this Court has on 15.07.2019 already directed the parties to maintain status quo, Respondent Nos.1 to 5 shall restore, maintain and protect the subject-water bodies in village Saini. Respondents are further directed to remove all obstructions from the catchment area through which natural water accumulates in the village ponds, all within a period of three months."

27. In (2011) 11 SCC 396, Jagpal Singh & Ors. vs. State of Punjab & Ors., in Paragraph 16, 17, 18 & 22 the Hon'ble Supreme Court has held as under: -

"16. The present is a case of land recorded as a village pond. This Court in Hinch Lal Tiwari vs. Kamala Devi, AIR 2001 SC 3215 (followed by the Madras High Court in L. Krishnan vs. State of Tamil Nadu, 2005 (4) CTC 1 Madras) held that land recorded as a pond must not be allowed to be allotted to anybody for construction of a house or any allied purpose. The Court ordered the respondents to vacate the land they had illegally occupied, after taking away the material of the house. We pass a similar order in this case.

17. In this connection we wish to say that our ancestors were not fools. They knew that in certain years there may be droughts or water shortages for some other reason, and water was also required for cattle to drink and bathe in etc. Hence they built a pond attached to every village, a tank attached to every temple, etc. These were their traditional rain water harvesting methods, which served them for thousands of years.

18. Over the last few decades, however, most of these ponds in our country have been filled with earth and built upon by greedy people, thus destroying their original character. This has contributed to the water shortages in the country.

22. Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorized occupants of Gram Sabha/Gram Panchayat/Poramboke/Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession. Regularization should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land."

28. In (2018) 13 SCC 390, National Institute of Medical Science University Rajasthan & Anr. vs. State of Rajasthan & Ors., the Hon'ble Supreme Court has approved the view taken by the Court in Jagpal Singh (supra). Paragraphs 40, 41, 42, 43 & 44 of the judgment read as under: -

"40. In M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu and Ors. 1 this Court directed enforcement of the rule of law by demolition of unauthorized constructions. It was held as follows:

"The High Court has directed dismantling of the whole project and for restoration of the park to its original condition. This Court in numerous decisions has held that no

consideration should be shown to the builder or any other person where construction is unauthorized. This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorized construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency.

(1999) 6 SCC 464 Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion the wherever it is required to be exercised has to be in accordance with law and set legal principles. As will be seen in moulding the relief in the present case and allowing one of the blocks meant for parking to stand we have been guided by the obligatory duties of the Mahapalika to construct and maintain parking lots."

41. This view was followed and endorsed in Jagpal Singh in the following words:

"In M.I. Builders (P) Ltd. v. Radhey Shyam Sahu the Supreme Court ordered restoration of a park after demolition of a shopping complex constructed at the cost of over Rs. 100 crores.

In Friends Colony Development Committee v. State of Orissa 2 this Court held that even where the law permits compounding of unsanctioned constructions, such compounding should only be by way of an exception. In our opinion this decision will apply with even greater force in cases of encroachment of village common land. Ordinarily, compounding in such cases should only be allowed where the land has been leased to landless labourers or members of Scheduled Castes/Scheduled Tribes, or the land is actually being used for a public purpose of the village e.g. running a school for the villagers, or a dispensary for them.

In many States government orders have been issued by the State Government permitting allotment of Gram Sabha land to private persons and commercial enterprises on payment of some money. In our opinion (2004) 8 SCC 733 all such Government orders are illegal, and should be ignored."

42. Keeping in mind the view expressed by this Court in these and other decisions, we also direct the demolition of the unauthorized construction by or on behalf of NIMS on Khasra No. 526. The demolition should be carried out by the Jaipur Development Authority with the assistance of the State Government and the Collector of Jaipur District on or before 30th November, 2017. The Director General of Police of Rajasthan is directed to render all necessary assistance in the process of demolition. The cost of demolition and removal of rubble etc. will be at the expense of NIMS. Any pending application made by NIMS for compounding the unauthorized construction or regularizing

it stands superseded in view of our decision.

43. We are giving these peremptory time bound directions in view of the fact that the learned Single Judge felt it appropriate, while dismissing the writ petitions filed by NIMS, to grant interim relief limited to only 7 days. More importantly, we are of opinion that the possibility of water being now made available to Jaipur City in due course of time takes far greater precedence over the interests of NIMS and those associated with it.

44. The petitions are dismissed with the above directions."

29. In view of the overwhelming documentary evidence on record filed by way of Field Enquiry Report and Enquiry Report as well as the submissions made by the Respondents in their respective affidavits, it is established that the Respondent Nos.8, 9 & 10 have encroached upon and made constructions on Plot No.88/Dag No.88, J.L. No.80 of Mouza, P.S. Singur under Baruipara Paltagarh Panchayat which is admittedly recorded as Bill (Pond/Water Reservoir) and is a waterbody and have also filled up portion of Plot No.88 which may have been removed subsequently but it is established that they are encroachers upon the waterbody in violation of Section 4D of the West Bengal Land Reforms Act, 1955 and are liable for eviction from the said plot. So far as the other plots are concerned in respect of which it is alleged by the Respondent Nos.8, 9 & 10 that they have also made constructions on those plots which are also waterbody but no action has been taken against them only because they are not impleaded in the present original application. We may observe that in view of the law laid down by the Hon'ble Supreme Court in Jagpal Singh, Hinch Lal Tiwari, Jitendra Singh and National Institute of Medical Science University Rajasthan (Supra), the State is liable to evict all such encroachers upon waterbodies with a clear stipulation that they shall also restore the waterbody to its original character as such.

30. We, therefore, direct the State Respondents to take steps for eviction against the Respondent Nos.8, 9 & 10 from Plot No.88/Dag No.88, J.L. No.80 of Mouza, P.S. Singur under Baruipara Paltagarh Panchayat in accordance with law within a period of three months.

31. So far as the other persons who have encroached upon the plots as mentioned in the affidavit of Respondent No.8 are concerned, action shall be taken by the State to evict those persons after giving them due notice and holding proceedings for eviction under the West Bengal Land Reforms Act, 1955, within three months.

32. With the aforesaid directions, the Original Application No.21/2021/EZ is accordingly disposed of.

33. There shall be no order as to costs.

..... B. AMIT STHALEKAR, JM SAIBAL DASGUPTA,
EM Kolkata August 30, 2022 Original Application No.21/2021/EZ MN