

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH,
KOLKATA**

.....

ORIGINAL APPLICATION No.79/2023/EZ

IN THE MATTER OF:

1. Sri Sandip Mitra

**S/o Late Pravash Mitra,
Residing at Village – Shitalpur,
Post Office – Ramchandrapur,
Police Station – Bagnan,
District – Howrah, Pin -711303**

2. Sri Subir Mitra

**S/o Late Pravash Chandra Mitra,
Residing at Village – Shitalpur,
Post Office – Ramchandrapur,
Police Station – Bagnan,
District – Howrah, Pin -711303**

....Applicant(s)

Versus

1. The State of West Bengal

**Through the Principal Secretary,
Department of Environment,
Government of West Bengal,
Prani Sampad Bhawan,
10A, Block-LB, Sector-III,
Bidhannagar, Kolkata-700106**

2. Principal Secretary,

**Irrigation and Waterways Department,
Jalasampad Bhawan,
1st Floor, Western Block,
Bidhannagar, DF - Block,
Kolkata-700 091**

- 3. The West Bengal Pollution Control Board,
Through the Member Secretary,
Department of Environment,
Government of West Bengal,
Paribesh Bhawan,
10A, Block-LA, Sector – III,
Bidhannagar, Kolkata-700 098**
- 4. District Magistrate, Howrah,
Having office at 6, Rishi Bamkim Chandra Road,
Howrah – 711 101**
- 5. Union of India,
Service through Secretary,
Ministry Of Environment, Forests and Climate Change,
Indira Paryavaran Bhawan,
Jorbagh Road, New Delhi – 110003**
- 6. The Block Land and Land Reforms Officer,
Bagnan – 1, Post and Police Station Bagnan,
District – Howrah, Pin – 711 303**
- 7. Executive Engineer
Howrah Division PHE,
43, N. S. Road, Susama Mansion,
4th Floor, Howrah – 711 101**
- 8. Superintendent of Police
District Howrah,
Having office at H8JV + P4V, Station Road,
Howrah Railway Station,
Mali Panchghara, Howrah,
West Bengal – 711 101**
- 9. Officer In Charge
Bagnan Police Station,
P.O. – Bagnan,**

District – Howrah, Pin – 711 303

**10. The Panchayat Pradhan,
Khalore Gram Panchayat,
Bagnan, Howrah, Pin – 711 303**

**11. Tarun Maity
S/o Late Keshab Chandra Maity,
Residing at Village Ramchandrapur,
P.S. – Bagnan, District – Howrah,
Pin – 711 303**

....Respondent(s)

COUNSEL FOR APPLICANT:

Mr. Priyabrata Thakur, Advocate

COUNSEL FOR RESPONDENTS :

**Mr. Sibojyoti Chakraborty, Advocate for State Respondents
Mr. Dipanjan Ghosh, Advocate for R-3,
Mr. Prithwish Basu, Advocate for R-11**

JUDGMENT

PRESENT:

**HON'BLE MR. JUSTICE B. AMIT STHALEKAR (JUDICIAL MEMBER)
HON'BLE DR. ARUN KUMAR VERMA (EXPERT MEMBER)**

**Reserved On:- 11th September, 2023
Pronounce On:- 20th September, 2023**

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 Applicants as well as the learned Counsel for the Respondents and perused the documents on record.

2. The Applicants who are stated to be owners of plot of land under Mouza: Shitalpur, P.S. – Bagnan, District – Howrah have filed the present Original Application alleging therein that they are joint owners of a parcel of doba/water body measuring about 4.7 decimals by purchasing the same from Pradip Kumar Mitra, Nilkantha Mitra, Mitali Biswas, Tapash Basu and Rebarani Majumder through Sale Deed No.02625 dated 08.01.2007, Registration No.4494/2007.

3. It is stated that the Applicant No.1 has received a parcel of pond measuring about 2.88 decimal in R.S. Dag No.181, R.S. Khatian No.541, L.R. Khatian No.314/1 and Doba measuring about 1.01 decimal in R.S. Dag No. 182, R.S. Khatian No. 541, L.R. Khatian No.314/1 and Doba measuring about 0.62 decimal in R.S. Dag No.186, L.R. Khatian No. 541, L.R. Dag No.314/1 through Gift Deed No.050602633 dated 18.11.2020.

4. It is also stated that the Applicants had owned 4.7 decimal of Doba/Pond along with another 0.62 decimal, total about 5.32 decimals of Doba under the said area.

5. It is alleged that the Respondent No.11 claiming to be one of the co-owners of the said water body/Doba situated at Khatian No.502, 323 and 404, J.L. No. 76, P.S. – Bagnan, Mouza – Shitalpur, District – Howrah measuring about 0.3 decimal situated at Dag No.181; 2.8 decimal situated at Dag No.186; 2.5 decimal situated at Dag No.182 is illegally filling up the said water body.

6. It is alleged that on 04.02.2023, the Respondent No.11 entered into the locality along with other co-sharers and filled up the water body partially with mud and debris supplied through trucks.

7. At the time of admission, the Tribunal constituted a Committee comprising of the following members: -

- (i) Senior Scientist, West Bengal Pollution Control Board;
- (ii) Executive Engineer, Irrigation and Waterways Department, Govt. of West Bengal; and
- (iii) District Magistrate, Howrah or his nominee not below the rank of Additional District Magistrate.

8. The Committee was required to visit the site and inspect the same and submit its Report on affidavit.

9. The Respondent No.4, District Magistrate & Collector, Howrah, has filed affidavit dated 25.08.2023 and it is stated that the site constituting Plot No.181 of Mouza-Shitalpur, J.L. No.76 comprises of a water body which appears to be a pond. No water body filling activity was observed at the site. It is informed by the local people in the area that the pond has been in continuous use for fish farming and bathing activity. The land record details have been given in a table which reads as under: -

<i>Plot No.</i>	<i>Classification as per record</i>	<i>Total area</i>
<i>181</i>	<i>Pukur</i>	<i>38 Decimal</i>
<i>182</i>	<i>Doba</i>	<i>05 Decimal</i>
<i>186</i>	<i>Doba</i>	<i>15 Decimal</i>

10. With regard to Plot No.182 of the same Mouza, it is stated that the same was inaccessible but parts of it were visible from the road-

side behind the pond comprising Plot No.181 and it also appeared to be a water body surrounded by embankment and mesh net fencing along its boundary. No filling activity was observed in the said water body and from all appearances; it seemed to be in use for fishing activities as informed by the local residents.

11. So far as the third plot, LR Dag No.186 of the same mouza is concerned, it is stated that about 15 decimal of land as per the land records is classified as 'Doba'. On visual inspection, the site was entirely covered in dense layer of water hyacinths and other aquatic plant growths. This plot lies adjacent to another Plot No.1443 of Mouza-Khalore, J.L. No.74 and boundary between the two was physically demarcated by a partially submerged metal barricade like structure. At the conjunction of these two plots, there is a kuccha pathway branching away from the main road leading to the adjacent site on Plot No.1443 where an under-construction overhead reservoir surrounded by a concrete boundary wall was visible. It is stated that the Executive Engineer, Public Health Engineering, Howrah, informed that the adjacent plot of land No.1443 of Mouza-Khalore, J.L. No.74, is being used for construction of overhead reservoir for supplying drinking water under Jal Jeevan Mission Scheme. No water body filling activity was observed at the site.

12. It is further stated that a small triangular patch of land of area approximately 160 sq. ft. which now forms part of the entry pathway to the Public Health Engineering construction site, belongs to Plot No.186, which forms less than 1/40th of the total plot area.

The rest of the pathway belongs to the adjacent Plot No.1443. On enquiry, the Committee Members were informed by the local people that this portion of the plot had naturally evolved into a lowland decades ago and was traditionally being used for thoroughfare into the vacant parcel of land in the adjacent Plot No.1443 by local people as well as a cattle passage way.

13. Along with this affidavit, an Inspection Report has been filed of an inspection carried out on 18.08.2023. The Inspection Report reads as under: -

“The observations of the constituted Committee are as follows:

1. The sites as mentioned in the instant order of Hon’ble NGT comprises of three Plots - LR Dag Nos.-181, 182 and 186 of Mouza- Shitalpur, J.L. No- 76. A summary of the land ownership details as per available land records is as follows:

<i>Plot No.</i>	<i>Classification as per record</i>	<i>Total area</i>
<i>181</i>	<i>Pukur</i>	<i>38 Decimal</i>
<i>182</i>	<i>Doba</i>	<i>05 Decimal</i>
<i>186</i>	<i>Doba</i>	<i>15 Decimal</i>

2. The site constituting the plot no. 181 of Mouza- Shitalpur, J.L. No- 76 as physically identified by the BLLRO, Bagnan-I comprised of a water body which appeared to be a pond. No water body filling activity or other ongoing activity was observed at this site. As per information from local people and the appearance of the water body, it appears that the pond has been in continuous use for fish farming and bathing/washing activity.

3. *The site constituting the plot no. 182 of Mouza- Shitalpur, J.L. No- 76 was inaccessible and hence, could not be scrutinized closely. However, parts of it were visible from the road-side behind the pond comprising plot no. 181 mentioned above, and it appeared to be a water body surrounded by embankments and mesh net fencing along its boundary. No water body filling or other ongoing activity could be observed at the site. From all appearances, it seemed to be in use for fishing activities as corroborated by some of the local residents of the area.*
4. *The third plot, LR Dag no. 186 of Mouza- Shitalpur, J.L. No- 76, consists of about 15 decimal of land as per the land records and is classified as 'Doba'. On visual inspection, the purported site as physically identified by the BLLRO, Bagnan-I, was entirely covered in a dense layer of water hyacinths and other aquatic plant growths. As seen in the sketch map, this particular plot lies adjacent to another plot no. 1443 of Mouza- Khalore, J.L. No. 74, and the boundary between the two was physically demarcated by a partially submerged metal barricade-like structure. At the conjunction of these two plots, a kuccha pathway branching off the main road could be observed, leading to the adjacent site on plot no. 1443 where an under-construction overhead reservoir surrounded by a concrete boundary wall was visible. As submitted by Executive Engineer, Public Health Engineering, Howrah, the adjacent plot of land no. 1443 of Mouza- Khalore, J.L. No. 74, is being used for construction of overhead reservoir for supplying drinking water under Jal Jeevan Mission scheme. No water body*

filling or any other ongoing activity could be observed at the site.

- 5. Based on physical measurements, the BLLRO, Bagnan-I and her team identified that a small triangular patch of land of area approximately 160 sq. ft. which now forms part of the entry pathway to the PHE construction site, belongs to plot no. 186, which forms less than 1/40th of the total plot area. The rest of the pathway belonged to the adjacent plot no. 1443. On enquiry, the committee members were apprised by local people that this portion of the plot had naturally evolved into a lowland decades ago and was traditionally being used for thoroughfare into the then vacant parcel of land in the adjacent plot no. 1443 by the local people and cattle as a passage way. This is corroborated by the written response of Executive Engineer, PHE, Howrah.*
- 6. On close scrutiny, the anterior portion of the kuccha pathway leading to the PHE site seemed to be covered with a few wooden planks and appeared to be filled up with soil and debris material. The Executive Engineer, PHE, Howrah submitted that strengthening works of the pre-existing kuchha pathway at the site were undertaken for facilitating movement of vehicles to the construction site as there were no alternative access roads to the site of construction. It has been further submitted by him that all works have been restricted to the construction site and the pre-existing access pathway to the site, and no water body has been filled up in the process. Based on the above submissions, it appears that the observed strengthening of the aforementioned kuccha access*

pathway had been undertaken as part of the ongoing construction activities for the overhead reservoir.”

14. The Respondent No.11 in his affidavit dated 08.09.2023 has stated that L.R. Plot No.1443, 1440, 1440/2174 of Mouza-Khalore, J.L. No.74, have been acquired by the Government of West Bengal through Howrah Zilla Parishad for proposes of construction of overhead water tank by the Public Health Engineering Department, Government of West Bengal. It is also stated that after the acquisition of the said plots construction of the overhead reservoir tank has been initiated which is connected from Ramchandrapur main road through a narrow passage which has been temporarily renovated for purposes of carrying out construction of the overhead reservoir tank. It is further stated that just beside the narrow passage a water body classified as ‘Doba’ which falls under L.R. Plot No.186, and the remaining part of the pathway belongs to the Plot No.1443 which is also use for local people as a passage way since a long time.

15. It is stated that the present dispute is relates to L.R. Dag No.186 of Block-Bagnan, Mouza-Khalore and the allegation of the Applicant is that the Respondent No.11 is illegally filling up the water body and changing the nature and character of the water body.

16. The allegations have been denied by the Respondent No.11 and it is stated that L.R. Dag No.186 under Mouza-Khalore, Block-Bagnan, totally consists of 15 decimal of land which is classified as water body and out of that 15 decimal 142 sq. ft. of land has been

transformed into a road on temporarily by the Public Health Engineering Department for the purpose of construction of the overhead reservoir tank. Out of the total 15 decimal of plot area of L.R. Dag No.186, Mouza-Khalore, Block-Bagnan, 5 decimal of land is owned by the Respondent No.11 and 4 decimal is owned by one Swapam Kumar Mitra and the remaining 6 decimal is owned by the Applicant of the Original Application. It is also stated that the Applicant has filed a number of civil litigations against the Respondent No.11 with regard to Plot No.186, Mouza-Khalore, Block-Bagnan, due to which the Respondent No.11 could not clean up the said water body nor fishing could be carried out in the said plot.

17. It is further stated that an order of status quo has also been passed by Civil Court at Uluberia with regard to Plot No.186 on the application of the Applicant of the present Original Application.

18. The Respondent No.2, Irrigation & Waterways Department, Howrah Division, Govt. of West Bengal, has filed its affidavit dated 08.09.2023 adopting the affidavit filed by the District Magistrate & Collector, Howrah.

19. From the documents on record, it is noticed that the Applicants and the Respondent No.11 are parts owners of the Plot No.186 which is also established from the averments of paragraph-7 of the Original Application as also the averments made in the affidavit of the Respondent No.11 namely that the Respondent No.11 owns 5 decimal of L.R. Dag No.186 though this figure is

stated to be 2.8 decimal by the Applicant in paragraph-7 of his Original Application. There is no dispute between the parties L.R. Dag No.186 is a water body.

20. A small portion of it comprising about 15 decimal of land temporarily transformed into a road by the Public Health Engineering Department for purposes of construction of the overhead reservoir tank. As per the contention of the Respondent No.11, the overhead tank is being constructed of L.R. Plot No.1443, 1440, 1440/2174 of Mouza-Khalore, J.L. No.74. These plots are stated to have been acquired by the Government of West Bengal for Howrah Zilla Parishad for construction of overhead water tank. These plots are not claimed by the Applicant to be owner thereof.

21. The allegation of the Applicants is that the Respondent No.11 is filling up the water body illegally whereas the contention of the Respondent No.11 to the contrary is that the temporary road has been constructed by the Public Health Engineering Department to facilitate the movement of men and material for construction of the overhead tank. The overhead tank itself is not encroaching into the L.R. Plot No.186.

22. We have heard learned Counsel for the parties and perused the documents on record.

23. It is not in dispute that 'Doba' is a water body. From the documents on record, it appears that there is a civil litigation pending between the Applicants and the Respondent No.11 with

regard to part of Plot No.186 and there is an order of status quo passed by the Civil Court.

24. Be that as it may, L.R. Plot No.186 is a water body and its character as such needs to be protected. The Public Health Engineering Department has constructed a temporary pathway by using wooden planks filled with soil and debris. This temporary construction needs to be removed as soon as the work of construction of the overhead water tank on J.L. Plot No.1443, Mouza-Khalore, J.L. No.74 is completed and the water body of Plot No.186 needs to be restored as a water body.

25. We accordingly dispose of this Original Application with a direction that the Public Health Engineering Department, Government of West Bengal, shall take steps for removal of the temporary passage constructed on the L.R. Plot No.186, Mouza-Khalore, as soon as the construction of the overhead tank on Plot No.1443, Mouza-Khalore, J.L. No.74 is completed i.e. preferably within a period of six months, i.e. by **20.03.2024** and file affidavit of compliance by **31.03.2024**.

26. We are not expressing any opinion with regard to the right and title over L.R. Plot No.186 or part thereof, which matter falls exclusively within the jurisdiction of the Civil Court and an order of status quo is also pending. However, since this Tribunal has been constituted specifically to examine environmental issues for protection of environment, the status quo granted by the Civil Court shall not in any manner hinder the Respondent No.7 from removing

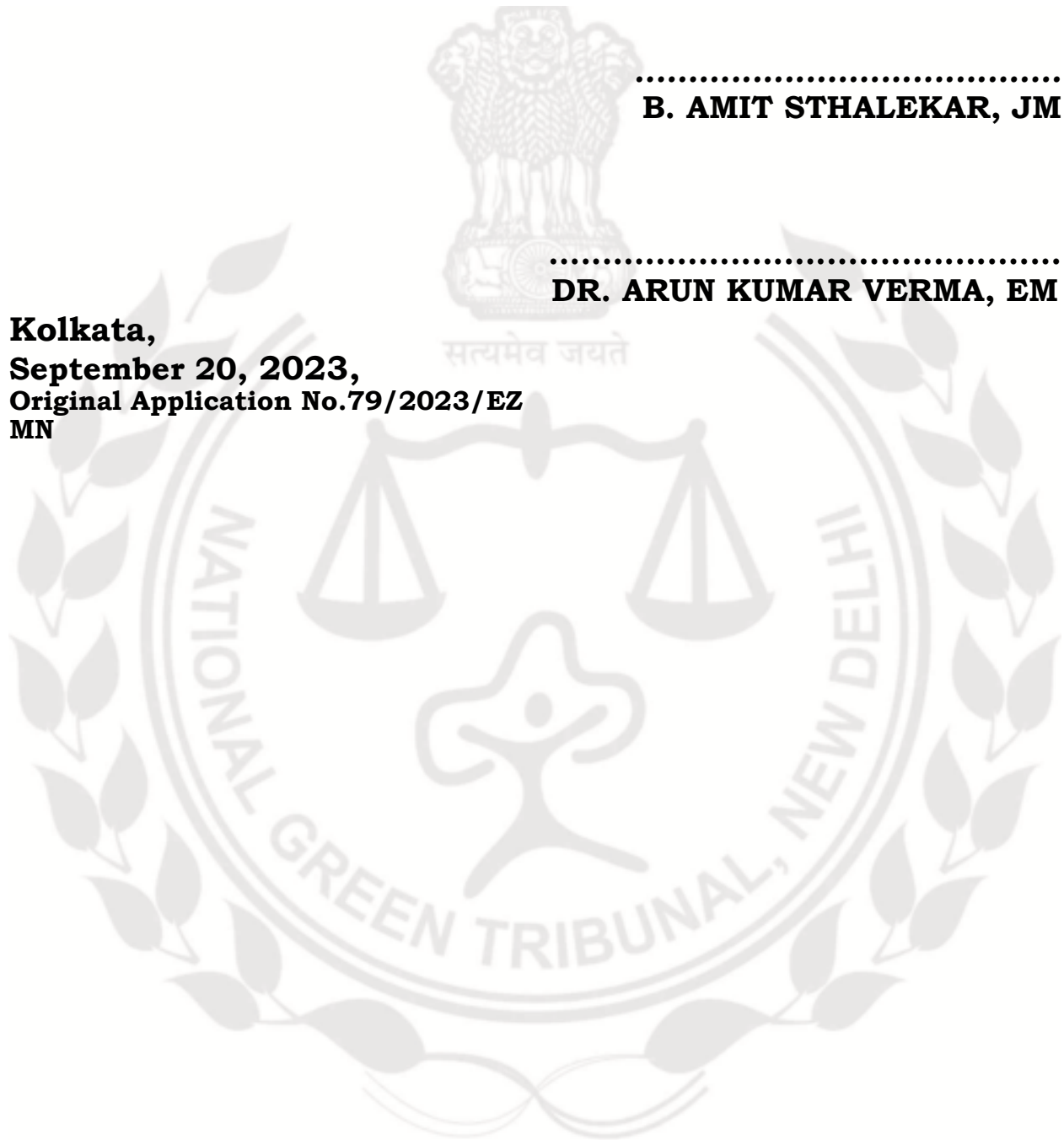
the temporary passage way constructed on L.R. Plot No.186 or restoration of the water body as a water body.

27. There shall be no order as to costs.

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B. AMIT STHALEKAR, JM

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DR. ARUN KUMAR VERMA, EM

**Kolkata,
September 20, 2023,
Original Application No.79/2023/EZ
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NGT