17.09.2026
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WPA 4021 of 2017
Joka Organisation for Protection of Environment & Development & Others
- Versus –
The State of West Bengal & Others

with
IA No.CAN 1 of 2017 (Old No.CAN 6726 of 2017)
In Re.: Sunil Haldar & Another
- **Applicants**
+
IA No.CAN 2 of 2023
+
IA No.CAN 3 of 2025
+
IA No.CAN 4 of 2026

Mr. Kallol Basu,
Mr. Suman Banerjee
….for the petitioners.

Mr. D.N. Ray,
Mr. Ajit Kumar Mishra,
Mr. Madhu Jana,
Mr. Aman Mishra
…..for the State/Respondents.
Mr. Alak Kr. Ghosh,
Mr. Arijit Dey
….for the K.M.C.
Ms. Jhuma Sen
Mr. Samsul Laskar
… for the Respondent nos.22 & 23/ Applicants.

The present application, being CAN 6726 of 2017 has been preferred praying for recalling the order dated 16.06.2017 passed by this Court in a Public Interest Litigation (in short, PIL) being WPA no. 4021 (W) of 2017. By the said order the police authorities were directed to render all assistance to the Assistant Director of Fisheries, South 24-Parganas (in short,

ADF), being the respondent no.10 in the writ petition towards restoration of the water body. Pursuant to an earlier order, the parties have exchanged their affidavits.

Ms. Sen, learned advocate appearing for the respondent nos.22 and 23 in the writ petition, being the applicants herein submits that the land at plot no.757, Khatian no.2561, Mouza-Joka, J.L. no.21, under Thakurpukur Police Station comprises of a total area of 0.75 acres, out of which 0.11 acres had been converted into *Bastu* for homestead use. Considering an application for conversion under section 4C of the West Bengal Land Reforms Act, 1955 (in short, WBLR Act), the competent authority converted the classification from *'Shali'* to '*Bastu land for homestead use' vide* memo dated 19.06.2012. The said order of conversion still subsists and no appeal against the same has yet been preferred. The foundation of the writ petition was based on letters dated 26.06.2014 and 18.09.2014 by which the Department of Fisheries had written letters to the State agencies for taking necessary steps for restoration of the water body. At no point of time the concerned land was recorded as a water body or a *doba* or as a pond. In the said conspectus, the Department of Fisheries could not have insisted upon the District Land & Land Reforms Officer (in short, DL&LRO) to take steps for removal of alleged erroneous recording. The learned advocate-on-record of the applicants could not apprise this Court of such relevant facts and as such, the interim order dated 16.06.2017 needs to be recalled

since for the laches on the part of the learned advocate, the applicants cannot be made to suffer. The Court in exercise of its inherent powers can always recall its order when it has been obtained without apprising the correct facts.

Ms. Sen argues that a PIL is not an adversarial litigation amongst the parties and through the same only a public grievance can be ventilated. However, the primary dispute in the writ petition is as to whether the applicants have filled up any water body on a plot of land. The dispute, thus, has a civil profile. The steps taken by the Department of Fisheries is also contrary to the provisions of the 1984 Act. In the absence of a finding of the competent authority under the said provisions, the Hon'ble Court ought not to have issued directions upon the police authorities by the order dated 16.06.2017. In support of such contention, reliance has been placed upon the judgment delivered in the case of *Bajranglal Sarada & Ors. Vs. State of West Bengal & Ors.,* reported in *2010 (4) CHN 125 (Cal).*

Mr. Basu learned advocate appearing for the writ petitioners denies and disputes the contention of Ms. Sen and submits that the recalling application is itself not maintainable since the order dated 16.06.2017 was passed upon contested hearing and in presence of the learned advocate representing the applicants. It is only after a criminal proceeding was initiated and steps were taken towards restoration of the water body, the

applicants mentioned the application(s) for enlistment and hearing.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

Records would reveal that after repeated representations submitted by the petitioners protesting against illegal filling up of a water body, the ADF *vide* memo dated 26.12.2011 sought for an opinion from the Director of Fisheries (in short, DF) as regards the steps required to be taken. In the said letter the DF was apprised that an enquiry was conducted on 09.11.2011 and it was ascertained that '*the area alleged for filling is a solid land now, surrounded by brick wall and some temporary constructions for go down were also noticed*'. Subsequent thereto, a memo dated 19.06.2012 as regards conversion was placed before the Deputy Director of Fisheries (in short DDF) by which the classification of the concerned land was altered. Considering the said memo, the DDF submitted a representation on 18.09.2014 to the DL & LRO for immediate correction of records and to extend all co-operation for restoration of the water body. In support of such contention, the DDF submitted photographs, a registered site plan of a plot as well as undertaking given by the applicants in the form of an affidavit through their learned advocate that they would dig a pond. In the midst thereof, the ADF submitted a complaint before the policed authority which was

registered as FIR no.319 dated 04.07.2013 in Haridevpur Police Station.

The argument of Ms. Sen that the memo dated 19.06.2012 is sacrosanct inasmuch as no statutory appeal has been preferred against the same, is not acceptable to this Court since in terms of the provision of Clause (h) of Schedule-II it was incumbent upon the applicants to create compensatory water body within a period of 90 days. As such provision was not complied with the memo dated 19.06.2012 has no substance in the eye of law.

The parameters towards recalling an order do not postulate a rehearing of the dispute since a party has not highlighted all the aspects of the case. The applicants cannot re-argue the entire matter at this stage. There is also no averment in the recalling application to the effect that there had been any misrepresentation on the part of the writ petitioners.

In view thereof, the recalling application, being IA No.CAN 1 of 2017 (Old No.CAN 6726 of 2017) application is dismissed.

(Partha Sarathi Chatterjee, J.) **(Tapabrata Chakraborty, J.)**