

(2013) 09 CAL CK 0107
In the Calcutta High Court

Case No : F.A. No. 202 of 2008 and C.A.N. No. 1054 of 2013

David Mantosh

APPELLANT

Vs

Apollo Gleneagles Hospital Ltd.

RESPONDENT

Date of Decision : 27-09-2013

Acts Referred:

Citation : (2014) 1 CHN 1

Hon'ble Judges : T.K. Dutt, J; Mrinal Kanti Chaudhuri, J

Bench : Division Bench

Judgement

Dr. Mrinal Kanti Chaudhuri, J.—This appeal is directed against the judgment and decree dated 24th April, 2008 passed by learned Judge, Small Causes Court, Sealdah in Title Suit No. 4 of 2005. The plaintiffs/appellants' case in short, is that the original plaintiff Daisy Mantosh and her brother James Mantosh were the owners of suit property measuring 2 bighas 2 katas 4 chataks 25 sq.ft. in Municipal premises No. 73, Canal Circular Road, Calcutta, 700054 being holding No. 42. After the death of Daisy Mantosh and her brother James Mantosh, present plaintiffs became the absolute owner of the suit property. The suit property originally belonged to one Abdul Jabbar who purchased the same in revenue sale. Abdul Jabbar transferred the suit property to one Molla Ataul Haque who again sold the said property to one Poonam Chand Seth by a deed of conveyance dated August 15, 1933. Poonam Chand Seth conveyed the said property by a deed of composition dated August 17, 1933 to Moti Chand Nakhat, Amrita Lal Shah, Thakor Lal Mehta and Champa Lal Daptari as trustees of a trust. Thereafter, said Moti Chand Nakhat, Amrita Lal Shah, Thakor Lal Mehta and Champa Lal Daptari sold the suit property to P.S. Mantosh, the predecessor-in-interest of the original plaintiff namely Daisy Mantosh and James Mantosh. After purchase, P.S. Mantosh mutated his name in the land records and Municipal records. After the death of P.S. Mantosh, his wife, sons and daughters inherited the said property as legal heirs.

2. Learned Police Magistrate at Sealdah in MP Case No. 678 of 1938 u/s 145 of

the Criminal Procedure Code passed a judgment and order dated 19th August, 1939 whereby late B.S. Mantosh, late James Mantosh were found to be the owners and possessors of suit premises bearing No. 73, Canal Circular Road, Calcutta.

3. Further case of plaintiffs/appellants is that Nabi Box never sold or transferred any right, title, interest and possession of the suit premises in favour of Moni Lal Goyee or Bijay Kumar Goyee. Moni Lal Goyee and Bijay Kumar Goyee instituted a Title Suit bearing No. 50 of 1942 in the Court of learned Ist Additional Subordinate Judge at Alipore against P.S. Mantosh and James Mantosh for recovery of possession and other relief's. Learned 5th Subordinate Judge at Alipore in T.S. No. 50 of 1942 passed a compromise decree dated 17.01.1949 whereby late B.S. Mantosh and James Mantosh were held to be owners and possessors of the said land at premises bearing No. 73, Canal Circular Road, Calcutta.

4. Further case of the plaintiffs/appellants is that the officers of Janapriya Hospital Corporation on January 25, 1992 trespassed into the suit premises and started taking samples of the soil of the suit property claiming that the said company took lease of the suit premises by virtue of an order passed by Government of West Bengal/defendant No. 4 and thereby the original plaintiffs were dispossessed from the suit promises. Subsequently, Janapriya Hospital Corporation Limited was renamed as Duncan Goenka Hospital Limited which was again renamed as Duncan Gleneagles Hospital Limited and finally renamed as Apollo Gleneagles Hospital Limited/defendant No. 1. The further case of the plaintiffs/appellants is that, after enquiry they came to know that in the month of March, 1992, a notification had been issued and published in the Calcutta Gazette, Extraordinary No. WBSO 247, I No. 93(1), dated February 15, 1990. By virtue of the said notification, the defendant No. 3 being the competent authority under Urban Land (Ceiling & Regulation) Act, 1976 (30/1976) claimed that M/s. Orient Beverage Limited, the defendant No. 2 was holding vacant land in excess of the ceiling limit and, therefore, the defendant No. 2 filed a statement under sub-section (1) of section 6 of the Urban Land (Ceiling & Regulation) Act, 1976 before the said authority, defendant No. 3. The defendant No. 2 specified the location, extent, value and other particulars of the alleged vacant land held by the company. The defendant No. 2 showed the suit premises as excess vacant land which belonged to the original plaintiffs and heirs of late James Mantosh. Further case of the plaintiffs/appellants is that a draft statement was prepared on the basis of statement filed by the defendant No. 2, M/s. Orient Beverage Limited and said draft statement was served on defendant No. 2 together with a notice stating that an objection if any, to the draft statement should be prepared within 30 days of the service of notice. Defendant No. 2 accordingly filed an objection u/s 8 of the Act and the vacant land held by the defendant No. 2 being excess of the ceiling limit was determined being situated at premises No. 73 including other premises of Canal Circular Road, Calcutta. On the basis thereof, a final statement was served upon the defendant No. 2. It was further claimed in the

said notification that under sub-section (1) of section 10 of the said Act it was notified for the information of the General Public that the vacant land as described in the said schedule held by defendant No. 2 is an excess of the ceiling limit and the said vacant land is to be acquired by the Government of West Bengal and the claim of all persons interested in such vacant land may be made by them to the competent authority within one month from the date of publication of the notice.

5. Further case of the plaintiffs/appellants is that by virtue of a notification issued in the Calcutta Gazette No. 312(1) dated May 11, 1990, being notification No. 20/T-U. L. (Cal) 6(1)126V7/76 dated May 4, 1990 the competent authority Calcutta i.e. defendant No. 3 declared that the alleged excess vacant land referred to the notification and described in the schedule thereto shall, be deemed to be acquired by the Government of West Bengal, defendant No. 4 with effect from May 5, 1990 under the provisions of sub-section (3) of section 10 of the said Act,. They further came to know that by virtue of letter No. 1500-UL/AV-11/19 dated 4th April, 1991 the suit premises along with other premises of Canal Circular Road were allotted to defendant No. 1 by defendant No. 3 and the defendant No. 1 was handed over the possession of the said premises by the defendant No. 3 on June 21, 1991.

6. In the circumstances, the original plaintiffs filed a writ petition being matter No. 1382 of 1992 under Article 226 of the Constitution of India to the Hon''ble High Court at Calcutta. Hon''ble Writ Court disposed of the said writ petition by order date July 22, 1992 by quashing the statement so far as it related to the suit premises. As against the said order dated July 22, 1992 the respondent/defendant No. 1 preferred an appeal bearing No. 324 of 1993. Hon''ble Division Bench disposed of the said appeal by order dated April 3, 1997 holding inter alia that the original plaintiff should take recourse to the Civil Court for relief''s and allowed the appeal by setting aside the order of Hon''ble Writ Court. A SLP was filed before Hon''ble Apex Court by the original plaintiffs. Hon''ble Apex Court dismissed the SLP by holding that if the petitioner has any appropriate remedy under the Urban Land (Ceiling & Regulation) Act of 1976 or any other law, it would be open to them avail of the same. The cause of action arose on April 3, 1997 when the Hon''ble Court allowed the plaintiffs to take recourse to Civil Court. Therefore, plaintiffs/appellants prayed for declaration that a notification dated February 12, 1990, April 4, 1991, the Statement filed by the defendant No. 2 under sub-section (1) of section 6 of the Urban Land (Ceiling & Regulation) Act, 1976, the draft statement prepared by the defendant No. 3 u/s 8 of the said Act are null and void and not binding upon the plaintiffs/appellants in so far as the same relates to the suit property. They prayed for further declaration that they are the owners of the suit premises at No. 73, Canal Circular Road, Calcutta and are entitled to possession of the suit premises and for a decree of recovery possession evicting the respondent No. 1 from the suit property and other relief''s.

7. Defendant Nos. 1 & 2 contested the suit by filing separate written statement. Defendant Nos. 3 & 4 also contested the suit by filing a joint written statement. They have denied all the material allegations.

8. Defendant No. 1/Apollo Gleneagles Hospital Limited in the written statement has stated that defendant No. 2/M/s. Orient Beverage Limited purchased the suit property in 1962 from Hindustan Housing & Land Development Trust Limited. At the relevant time its name was Orient Properties Private) Limited. After promulgation of Urban Land (Ceiling & Regulation) Act, 1976 the defendant No. 2 filed statement before competent authority u/s 6(1) of Urban Land (Ceiling & Regulation) Act, 1976. Therefore, the suit land was vested as an excess land of defendant No. 2. Thereafter, this defendant No. 1 took the suit land as lease for 30 years as per terms and conditions mentioned therein at consideration of salami and annual rent of Rs. 9,84,130/-. The suit premises was thereafter measured and demarcated by the office of Government of West Bengal and vacant position was delivered to the defendant No. 1 on 10th June, 1991. It may be mentioned that at the relevant time the name of defendant No. 1 was Janapriya Hospital Corporation Limited, After obtaining sanction from the Calcutta Municipal Corporation, the construction work of the hospital was started on and from 1994. This defendant is a bona fide lessee for valuable consideration. The formal deed of lease was executed on 2nd December, 1994 and it was duly registered. When the construction work of the hospital was completed, the plaintiff filed the writ petition in the Hon"ble High Court being No. 1382 of 1992. As against the order of Hon"ble Writ Court the matter went up to Division Bench of this Court. Hon"ble Division Bench set aside the order of Hon"ble Writ Court on 3rd April, 1997. Thereafter, the plaintiff moved before Hon"ble Supreme Court. Hon"ble Supreme Court dismissed the SLP application. According to the defendant No. 1, suit premises consisted of vacant land with few sheds and structure comprised of small plinth area. Defendant No. 1 took possession of the suit premises from the Government of West Bengal by way of registered deed of lease. It has been stated further by this defendant No. 1 that if the plaintiff, for argument sake had any colour of title over the suit property, the said title stood extinguished upon vesting. It has further been stated in the written statement that all the transactions are bona fide and all transactions were done according to law and without any. illegal gain or collusion. The plaintiff did not take any legal step before the appropriate forum in connection with their claims in the suit. Therefore, this defendant has prayed for dismissal of the suit.

9. The respondent/defendant No. 2 in its separate written statement also denied all the material allegation and contended that the suit is barred by the law of limitation. This defendant No. 2 has further stated that this company is a bona fide purchaser of the suit property for value and the company has purchased the suit land by a registered deed of conveyance by 30th November, 1962 from Hindustan Housing & Land Development Trust Limited. After purchase this defendant No. 2 was in possession of the suit premises till the surrender of the same to the defendant Nos. 3 & 4. This defendant No. 2 complied with all the

mandatory provision for Urban Land (Ceiling & Regulation) Act, 1976. It is further stated in the written statement that the Court has no jurisdiction to try this suit inasmuch as the relief sought for by the plaintiff/appellant is provided under the provision of Urban Land (Ceiling & Regulation) Act, 1976. This defendant has further stated that this company deposited Rs. 5000/- to the Calcutta Municipal Corporation on 14th August, 1965 for filling up the suit premises. Subsequently, in the year 1968, this defendant No. 2 mortgaged the entire property to the United Bank of India, Clive Ghat Street Branch, Calcutta for obtaining loan. After the liquidation of the entire amount, the said bank released all the mortgage documents in favour of the company by letter dated 29th March, 1990. It is further stated that the allegation of collusion levelled against this defendant with defendant Nos. 3 & 4 is without any merit as defendant Nos. 3 & 4 are statutory bodies and juristic persons. Moreover, the plaintiff/appellant has not explained as to why they or their predecessor-in-interest did not submit the statement as required u/s 6(1) of Urban Land (Ceiling & Regulation) Act, 1976. In such circumstances, this defendant has prayed for the dismissal of the suit.

10. Defendant Nos. 3 & 4 also contested the suit for filing a joint written statement and have denied therein all the material allegation. Defendant No. 3 is a competent authority under Urban Land (Ceiling & Regulation) Act, 1976 and defendant No. 4 is State of West Bengal. According to them, the suit is barred by limitation and the Court has no jurisdiction to try the suit. Their further case is that the suit property stood vested under Urban Land (Ceiling & Regulation) Act, 1976. The defendant No. 4 became owner of the suit property after vesting and during 1991 this defendant No. 4 leased out the suit property to the defendant No. 1 by execution of a deed of lease. Their further case is that plaintiff did not file any return u/s 6(1) of Urban Land (Ceiling & Regulation) Act, 1976. According to them, the suit property originally belonged to Sk. Khoda Box. After his death the property was inherited by his legal heirs. There was a partition suit between the heirs of Sk. Khoda Box before Hon'ble High Court at Calcutta in Suit No. 1598 of 1941 in which the predecessor-in-interest of plaintiffs/appellants claimed title on one portion of the property of Sk. Khoda Box. But the said claim was turned down by the Hon'ble High Court. The heirs of Sk. Khoda Box became absolute owner of the property. The suit land, as per order of Hon'ble High Court, was sold to Moni Lal Goyee and Bijay Kumar Goyee. Defendant No. 2 after filing return u/s 6(1) of Urban Land (Ceiling & Regulation) Act, 1976 complied all the provisions of the Act and informed the competent authority that the company agreed to surrender all rights title interest and possession of land at the suit premises No. 73 including other premises at Canal Circular Road, Calcutta in favour of Government of West Bengal subject to receipt of compensation according to the provision. Finally, notification u/s 10(1) of the Urban Land (Ceiling & Regulation) Act, 1976 was published on 12th February, 1990 in extraordinary issue of the Calcutta Gazette dated 15th February, 1990. Thereafter, declaration u/s 10(3) of the Act was published on 04.05.1990.

Subsequently said property including other was allotted to Janapriya Hospital Corporation Limited on lease for 30 years for setting up a modern hospital project and the same was handed over to the allottee on 21.06.1991. A writ petition was filed by the predecessor-in-interest of the plaintiff/appellant. Hon"ble Writ Court by order dated 26.08.1992 quashed the proceeding only in respect of premises No. 60, 72 and 73, Canal Circular Road and directed the writ petitioner to file return u/s 6(1) of the Urban Land (Ceiling & Regulation) Act, 1976. As against the said order an appeal was preferred before Division Bench of the Hon"ble High Court at Calcutta. Division bench by order dated 03.04.1997 allowed the appeal with liberty to the writ petitioner to avail the remedy by filing proper suit for adjudicating the right, title, interest of the suit premises in question. In the circumstances, these defendants are prayed for dismissal of the suit.

11. On the basis of the aforesaid pleadings learned Trial Court framed as many as following seven issues:

- 1) Is there any cause of action for the suit?
- 2) Is the suit maintainable?
- 3) Is the suit barred by limitation?
- 4) Is the suit bad for non-joinder of necessary parties?
- 5) Has the plaintiff any right title and interest over the land in suit?
- 6) Has the suit land vested to the State?
- 7) Is the plaintiff entitled to get a decree for declaration that notification No. 53-X-UL (Cal) dated 12.02.1990 is null and void or a declaration that the statement filed by the defendant No. 2 under provisions of Urban Land (Ceiling & Regulation) Act is null and void or declaration that the statement prepared by defendant No. 3 is null and void or a declaration that letter No. 1500-UL/AV/II/19 dated 04.04.1981 and the purported allotment of the suit premises to the defendant No. 1 is in-operative, collusive, fraudulent and void?

12. Learned Trial Court recorded the evidence of one Charles Mantosh on behalf of the plaintiffs/appellants as P.W. 1 and three witnesses of the defendants/respondents namely Dipak Kumar Ghosh as D.W. 1, and Ganapati Lal Agarwal as D.W.2 and one Amit Kumar Das as D.W.3 and exhibited some documents. After recording the evidence of both sides, perusing the documents learned Court below dismissed the suit on contest without any order as to cost.

13. Being aggrieved by and dissatisfied with the judgment and decree passed by the learned Court below the plaintiffs have preferred this appeal as appellants. This appeal has been contested by all the defendants. Now, the points for consideration are:

- 1) Whether the plaintiff/appellant's predecessor-in-interest acquired any right,

title, interest, possession over the suit land at plot No. 42 corresponding to Municipal premises No. 73 measuring 2 bighas 2 katas 4 chatak and 25 sq.ft. more or less in Mouza Surah, Thana Beliaghata, Sub-registration office Sealdah in the District 24 Parganas?

2) Whether the plaintiff/appellant acquired any right, title, interest and possession of the suit property after the demise of their predecessor-in-interest?

3) Whether the suit land legally stood vested to the State of West Bengal under Urban Land (Ceiling & Regulation) Act, 1976?

4) Whether the suit is barred by the law of limitation?

5) Whether judgment and decree passed by learned Court below are sustainable in law?

6) Whether the plaintiffs/appellants are entitled to get a decree of ownership, right, title and recovery of possession in respect of suit property?

Decision with Reasons

14. For the sake of interrelation and convenience all the points are taken up conjointly for decision. Both the parties have made verbal submissions as well as filed notes of argument.

15. Learned advocate on behalf of the plaintiffs/appellants categorically submitted that the predecessors-in-interest of the plaintiffs/appellants were all along owners and possessors of the suit property. They exhibited various documents of title tracing back about three generations of predecessor-in-interest. It is submitted that in Title Suit No. 50 of 1942 filed by Moni Lal Goyee and Bijay Kumar Goyee, the predecessor-in-interest of respondent No. 1 entered into a compromise with the predecessor-in-interest of appellants namely Daisy Mantosh. Accordingly, a compromise decree was passed in respect of the suit property. In the said compromise decree, the predecessor-in-interest of the plaintiff/appellant was held to be the owner and possessor of the suit plot No. 42 corresponding to Municipal premises No. 73, Canal Circular Road, Calcutta. It has further been submitted that the appellants produced a certified copy of the judgment, a Criminal Proceeding u/s 145 of the Cr.P.C. wherein learned Magistrate observed that the predecessor-in-interest of the plaintiffs/appellants produced the sale certificate by which suit property was purchased by Abdul Jabbar in the revenue sale. It is further submitted that subsequent transfer deeds till the acquisition of the right, title, interest by the predecessor-in-interest of the appellants are also produced and marked exhibits.

16. It is further submitted by the learned counsel for the appellants that there is no whisper as to how the predecessor-in-interest of the respondent/defendant namely Khoda Box acquired title over the suit property. The documents filed by the appellants have the evidential value and learned trial Court does not hold that the documents filed by the appellant have no evidential value. There is no

case of the defendants/respondents that the title of the plaintiff/appellant was extinguished by adverse possession. The documents filed by the appellants with regards to the title disclose the preponderance of title until lawful vesting. In fact, the compromise decree stated above settled the outstanding dispute between Nabi Box and Paul Mantosh and others.

17. With regards to the possession it is submitted that, the appellants have filed various documents including Corporation Tax Receipts, an Army derequisition letter, Khas Mahal Office Receipts, Redemption Papers issued by the Government of India in favour of Mrs. Bertha Mantosh, one of the predecessors-in-interest of plaintiff/appellant. These documents have been marked exhibited No. 35 to 51 of the Paper Book Part II. The respondent No. 1 has contended that the appellants have no possession after 1960. This assertion of the respondent No. 1 clearly denotes that they admitted the possession of the appellant till 1960, thereby invites presumption contemplated u/s 114, Illustration (d) of the Indian Evidence Act. But the appellants continued legal and physical possession till they were dispossessed in the year 1992. It is further submitted that the respondents failed to advance in pleading or proof that the appellants had been dispossessed after 1960 till 1992. Learned counsel for the appellant has finally submitted that on the point of title and possession the appellant filed four sets of documents which have been marked exhibit. First set relates to conveyance deed up to Mantosh. Second set of documents relates to order sheet i.e. the order of the Court namely Criminal and Civil and third set of documents relates to land record and fourth set of documents relates to Corporation Record.

18. With regards to the vesting under Urban Land (Ceiling & Regulation) Act, 1976, it is submitted, that the notification under Official Gazette is not sufficient for vesting because such notification must be coupled with further notice on the persons in occupation in compliance with Rules 5(2)(a) and 6 of the Urban Land (Ceiling & Regulation) Rules framed thereunder. It is further submitted that no notice of the Urban Land (Ceiling & Regulation) Rules was ever served on the appellants who are the real owner having lawful possession over the suit property prior to their dispossession in 1992. Therefore, the entire proceeding of vesting of the suit property is vitiated. The appellants, therefore, rely upon the following decision of law:

- 1) Kothuru Babu Surendra Kumar (died) and others Vs. Special Officer and Competent Authority, ULC, Vijayawada and others,
- 2) Pannaben Niranjana M. Mehta died through Heirs Vs. Competent Authority and Addl. Collector and Others,
- 3) State of U.P. Vs. Chhuttan and Others,

19. The judgment reported in Union of India and Others Vs. M/s. Ganesh Das Bhojraj, to the effect that no further notice apart from notification in the Official Gazette is necessary for vesting under the Urban Land (Ceiling & Regulation) Act is not applicable in the present case inasmuch as the said judgment was

rendered on the basis of section 25 of the Customs Act, where the provisions of Rule 5 of Urban Land (Ceiling & Regulation) Rules were not considered by the Hon"ble Apex Court. The Urban Land (Ceiling & Regulation) Rules postulates additional pre-conditions to vesting in addition to General Gazette notification and, therefore, the decision relied upon by the respondent stated above has no application in the instant case. The argument advanced by the learned counsel for the State of West Bengal/respondent No. 4 that appellant cannot challenge the vesting, is without any merit in view of the fact that the jurisdiction of the Civil Court in the matter of adjudication of title and possession is the settled law. On that score, the appellants have relied upon the following decisions:

- 1) Dhulabhai and Others Vs. The State of Madhya Pradesh and Another,
- 2) Shiv Kumar Chadha and Others Vs. Municipal Corporation of Delhi and Others,
- 3) Ramesh Chand Ardawatiya Vs. Anil Panjwani,
- 4) Ramesh Gobindram (dead) through Lrs. Vs. Sugra Humayun Mirza Wakf,

20. It is submitted that the relevant authorities of the Urban Land Ceiling Rules not only violated the Urban Land Ceiling Rules framed under the Urban Land Ceiling Act but also all norms of natural justice in giving no notice to the appellants who are the lawful owners and possessors in the suit property prior to their illegal dispossession in 1992. The crux of the dispute falls within the domain of the Civil Courts and is not confined to the periphery of the Urban Land (Ceiling & Regulation) Act in view of the fact that the right, title and interest of the parties are to be decided in the Civil Suit and not by any authority of the Urban Land (Ceiling & Regulation) Act. Even land revenue authorities cannot decide all the relief"s claimed in the Suit. Moreover, this Hon"ble Court in the Appeal bearing No. 324 of 1993 preferred by respondent No. 1 held that the appellants" right to avail of the remedy lies in filing of the Civil Suit for adjudicating the right, title and interest. Even Hon"ble Apex Court while disposing of the Special Leave to Civil Appeal No. 12726 of 1997 held that if the predecessor-in-interest of the present appellant has any appropriate remedy under Urban Land (Ceiling & Regulation) Act or any other law, it would be open to her to avail herself of the same. Therefore, Civil Court is a proper forum, and leave was granted by Hon"ble Division Bench as well as by Hon"ble Apex Court to avail the forum of Civil Court for adjudication of the right, title and interest of the appellant of the suit property. It is further submitted that D.W.1 in his examination-in-chief (at Page 208 Paper Book Part I) and P.W. 1 in the cross-examination (at Page 192 Paper Book Part I) have revealed that there was structure on the suit property. The total area of vacant land if any with the structure will not exceed the ceiling limit under Urban Land (Ceiling & Regulation) Act so as to necessitate the filing of return or giving any declaration in respect of such property under Urban Land (Ceiling & Regulation) Act.

21. With regards to the issue of limitation, learned counsel for the appellants has submitted that the appellants and their co-owner Daisy Mantosh were

dispossessed unlawfully from the suit property by Janapriya Hospitals Corporation, later renamed as Apollo Gleneagles on 25th January, 1992. Therefore, Daisy Mantosh as co-owner and executrix of the will of James Mantosh filed writ petition bearing No. 1382 of 1992. Hon''ble Court was pleased to dispose of the writ petition inter alia quashing impugned statement in respect of several plots including the suit plot. Against the said order, Duncan Goenka preferred an appeal bearing No. 324 of 1993. The Hon''ble Division Bench disposed the same by setting aside the decision of Hon''ble Single Bench, reserving the right of the writ petitioner to avail themselves of the remedy by filing of a suit for adjudicating the right, title and interest of the properties. The appellants moved special leave petition. Hon''ble Apex Court passed order dated 28th July, 1997 and dismissed the SLP with the observation that if the petitioner (Daisy Mantosh, the appellants'' co-owner, since deceased) has any appropriate remedy under the Urban Land (Ceiling & Regulation) Act, 1976 or any other law, it will be open to her to avail herself of the same. Therefore, Daisy Mantosh served notice on the Government on 4th November, 1997 and filed suit on June 29, 1998 bearing No. T.S. 101 of 1998 which was later renumbered as Title Suit No. 4 of 2005. It is finally submitted that the appellants filed the suit in pursuance with the order of Hon''ble Division Bench and Hon''ble Apex Court without any undue delay. Therefore, the cause of action of the appellants to file the suit was matured upon the disposal of the SLP preferred against the judgment of Hon''ble Division Bench granting leave to file the suit. The judgment of Hon''ble Division Bench was not interfered and liberty was given to the appellants'' predecessor-in-interest to avail of any remedy either in the Urban Land (Ceiling & Regulation) Act or any other law. Consequently, section 14 of the Limitation Act will be applicable to deduct the period of the pendency of writ and appeal proceeding before Division Bench and SLP before Hon''ble Apex Court. The appellants, therefore, rely on the following decisions of law:

- 1) Rameshwarlal Vs. Municipal Council, Tonk and Others, .
- 2) Union of India (UOI) and Others Vs. West Coast Paper Mills Ltd. and Another, .
- 3) Shakti Tubes Ltd. tr. Director Vs. State of Bihar and Others, .

22. It is submitted by learned counsel appearing on behalf of the respondent No. 1/Apollo Gleneagles Hospital Limited that this respondent No. 1 is a bona fide lessee of the suit premises. Learned counsel has further submitted that suit property was owned by Sk. Khoda Box and after his death, the same devolved upon his legal heirs. The Partition Suit bearing No. 1598 of 1941 was filed in Hon''ble High Court at Calcutta among the heirs of Sk. Khoda Box. P.S. Mantosh claims a portion and the said claim was turned down by Hon''ble High Court. Subsequently, the suit property was sold to Moni Lal Goyee and Bijay Kumar Goyee on 23rd April, 1942. Moni Lal Goyce and Bijay Kumar Goyee sold the said property in favour of Hindustan Housing & Land Development Trust Limited on 15th June, 1957. Hindustan Housing & Land Development Trust Limited thereafter sold the said property in favour of Orient Properties (Private) Limited

on November 30, 1962. The name of the Orient Properties (Private) Limited was renamed as Orient Beverage Limited. According to this defendant/respondent, once upon a time Mantosh were in possession. After 1960, they were not in possession.

23. On 15th September, 1976 Orient Beverage Limited submitted the statement u/s 6(1) of the Urban Land (Ceiling & Regulation) Act, 1976 to the competent authority disclosing the particulars of vacant land held by Orient Beverages Limited/respondent No. 2 and subsequently this respondent No. 2 agreed to surrender its right in respect of excess vacant land including the suit property. The respondent No. 3 i.e. competent authority served final statement u/s 9 of the Urban Land (Ceiling & Regulation) Act upon the respondent No. 2 on February 12, 1990. Notification dated February 12, 1990 u/s 10(1) of Urban Land (Ceiling & Regulation) Act was published in Calcutta Gazette, Extraordinary on 15th February, 1990. On May 28, the possession was taken over by competent authority as excess vacant land under the Urban Land (Ceiling & Regulation) Act. The said property was allotted to respondent No. 1 by an allotment letter dated 4th April, 1991. On 21st June, 1991, possession over the said land was handed over to the respondent No. 1. On 2nd December, 1994, necessary deed of lease of the said property was executed by the State of West Bengal in favour of respondent No. 1. Respondent No. 1 established a hospital with all modern medical facilities which is still functioning.

24. The appellants and their predecessor-in-interest did not have any right, title and interest over the suit property and, therefore, no notice of proceeding under Urban Land (Ceiling & Regulation) Act had been served upon them. The notification u/s 10(1) and section 10(3) of the Urban Land (Ceiling & Regulation) Act were published in the Calcutta Gazette on February 15, 1990 and on May 11, 1990 respectively. The appellants did not make any claim before the competent authority in respect of the said property. The case of the appellant that they were dispossessed on January 25, 1992 is absolutely false because the Senior Valuation Officer, Valuation Department, Calcutta Improvement Trust took possession of the said property on May 28, 1990. Moreover, the appellant did not lodge complaint before local police station in connection with the alleged dispossession on January 25, 1992. The appellants, in fact, were not in possession of the said property at any material point of time. The order of MP Case No. 678 of 1938 was passed on 13th August, 1939. No document has been filed by the appellant to show that the appellants were in possession of the said property after 1946. The demand notices, rate bills etc. issued by the Calcutta Municipal Corporation had been addressed to the predecessor-in-interest of the appellants. The appellants were not in possession of the said property.

25. On the other hand, respondent No. 2 was in possession of the suit property from 1965 and thereafter on 15th September, 1976 statement u/s 6(1) of the Urban Land (Ceiling & Regulation) Act, 1976 was furnished by the Orient Beverage Limited. The appellants were not in possession of the property since

1960. The right to sue accrued within three years from their of dispossession under Article 58 of the Limitation Act, 1963. Therefore, Title Suit being No. 4 of 2005 is barred by limitation. It is further submitted that the possession of the respondent No. 2 Orient Beverage Limited became adverse to the knowledge of the appellants' predecessor-in-interest since 1965 inasmuch as no suit was filed for recovery of possession within the period of 12 years when the possession of the Orient Beverage Limited became adverse to the appellant. Moreover, the appellants' contention that they were prosecuting with diligence in the legal proceeding in good faith in Writ Court is without any merit. They were fully aware that the Writ Court has no jurisdiction to adjudicate right, title and interest over the suit property. Neither the Division Bench of the Hon''ble High Court nor Hon''ble Supreme Court of India ever extended the period of limitation. The decision of law relied upon by the appellants are distinguishable from the fact of the instant case. Moreover, the appellants did not plead in the plaint that they Were pursuing, diligently and in good faith, a legal proceeding in the Writ Court. Therefore, they cannot get the benefit of section 14 of Limitation Act, 1963. It is further submitted that the entry in the revenue records does not confer title which can only be decided by Civil Court. It is further submitted by the learned counsel of the respondent No. 1 that the competent authority followed the procedure laid down in the Urban Land (Ceiling & Regulation) Act. Learned counsel has relied upon the following judgments:

- 1) Khatri Hotels Private Limited and Another Vs. Union of India (UOI) and Another,
- 2) Ajab Enterprises Vs. Jayant Vegoiles and Chemicals Pvt. Ltd.,
- 3) Ketan V. Parekh Vs. Special Director, Directorate of Enforcement and Another,
- 4) Suraj Bhan and Others Vs. Financial Commissioner and Others,
- 5) (2005)1 CHN 7 (12)
- 6) M.P. Peter Vs. State of Kerala and Others,
- 7) Mackintosh Burn Ltd. Vs. State of West Bengal and Others,

26. It has been submitted by learned advocate for the respondent Nos. 3 and 4, the competent authority, Calcutta under Urban Land (Ceiling & Regulation) Act and State of West Bengal that suit property was owned and possessed by Moni Lal Goyee and Bijay Kumar Goyee since 1942 and they sold the said property on 15th June, 1957 in favour of Hindustan Housing & Land Development Trust Limited. Hindustan Housing & Land Development Trust Limited sold the same in favour of Orient properties on 30.11.1962. The Orient Properties was renamed as Orient Beverage Limited/respondent No. 2 who submitted statement u/s 6(1) of Urban Land (Ceiling & Regulation) Act, on 15.09.1976. Finally, by issuing notification dated 12th February, 1990 u/s 10(1) of the Urban Land (Ceiling & Regulation) Act, 1976, the order of vesting was passed on 04.05.1990 u/s 10(3) of Urban Land (Ceiling & Regulation) Act, 1976. On 04.04.1991, the said

premises along with the other properties was allotted to the defendant/respondent No. 1 and on 21st June, 1991 the possession of the suit property was handed over to the defendant/respondent No. 1. The plaintiff/appellant, in spite of knowledge of notice of draft statement and final statement and also vesting u/s 10 of Urban Land (Ceiling & Regulation) Act, did not file any return nor did they take any step under Urban Land (Ceiling & Regulation) Act, 1976. Section 40 of the Urban Land (Ceiling & Regulation) Act, 1976 provides barring provision of filing suits and other legal proceedings against the Government or any Officer of the Government. It is submitted further by the learned counsel on behalf of the respondent Nos. 3 & 4 that since no statement u/s 6(1) of the Urban Land (Ceiling & Regulation) Act before the competent authority was filed by plaintiffs/appellants, the competent authority was not obliged to serve upon the plaintiffs with draft statement u/s 8(3) of the said Act prepared on the basis of the statement filed by defendant/respondent No. 2. Hence, predecessor-in-interest of the plaintiff cannot approach the Civil Court on the plea that competent authority did not comply the provisions of the Act or violated the fundamental principles before taking possession of their land. The predecessor-in-interest of the present appellants namely Daisy Mantosh had full knowledge of both draft statement and the orders of acquisition of land from Orient Beverage Limited because those were published in the Official Gazette, although she was never served with draft statement nor was she ever communicated the order of acquisition of land of Orient Beverage Limited which has been claimed by Daisy Mantosh to be her own. She could have preferred appeal u/s 33 of the Urban Land (Ceiling & Regulation) Act against the said order. Therefore, the jurisdiction of Civil Court to entertain the declaratory suit of Mrs. Mantosh is barred by the decision of The State of West Bengal Vs. The Indian Iron and Steel Co. Ltd., . It is further submitted that Civil Court has got no jurisdiction to adjudicate the order of competent authority under West Bengal Urban Land (Ceiling & Regulation) Act, 1976. Following decisions are relied upon by the defendant Nos. 3 & 4 on the aforesaid points:

- 1) State of Kerala Vs. Ramaswami Iyer and Sons,
- 2) Govt. of A.P. and Others Vs. J. Sridevi and Others,
- 3) West Bengal Properties Ltd. and another Vs. State of West Bengal and others,
- 4) State of A.P. Vs. Smt. Prameela Modi and Others,
- 5) Commissioner, Bangalore Development Authority Vs. K.S. Narayan,
- 6) 2004(1) ICC Cal (DB) 477 Paragraph 7 (Biswanath Majhi v. Karuna Sindhu Dey & Ors.)
- 7) Devasahayam (D) by LR. Vs. P. Savithramma and Others,
- 8) 2006 (9) SBR 52, Para 6, 7, 8, 9 & 10 (Ganapati Bai & Anr. v. State of M.P. & Ors.)

- 9) Samir Chandra Das Vs. Bibhas Chandra Das and Others,
- 10) Mr. V. Narayanaswamy Vs. Mr. C.P. Thirunavukkarasu,
- 11) Bar Council of Maharashtra Vs. M.V. Dabholkar and Others, ;
- 12) The State of West Bengal Vs. The Indian Iron and Steel Co. Ltd.,

27. Learned counsel for the respondent Nos. 3 & 4 has further reiterated that Civil Court has got no jurisdiction to decide the orders and notification of the competent authority under Urban Land (Ceiling & Regulation) Act, 1976 and plaintiffs' alleged right, title and interest over the suit property can be decided if the order of vesting passed by competent authority including orders, declaration, notifications of the said authority are set aside and declared to be null and void. But the Civil Court has got no jurisdiction to decide the matter in issue relating to vesting.

28. Therefore, it is submitted that suit is not maintainable. It is further submitted that the suit is barred under Limitation Act inasmuch as that plaintiffs/appellants were required to take step within three years from the date of knowledge which took place between 1990, 1991 and 1992. But the suit was filed during 1998. Moreover, plaintiffs/appellants have not at all averred to get benefit of section 14 of the Limitation Act. It is further submitted that plaintiffs/appellants have failed to prove their case by adducing oral evidence, because the legality and authenticity of the document have not been proved by the P.W. 1 in any way. It is further submitted that the order passed by Criminal Court has no evidentiary value. Moreover, with regards to service of notice and knowledge they have relied upon the following decisions:

- 1) Ashis Kumar Hazra Vs. Rubi Park Co-operative Housing Society Ltd. and others,
- 2) Sri. Ameeruddin Kodakaeri Vs. Hussainsab Hakki,
- 3) The Special Deputy Collector, Land Acquisition C.M.D.A. Vs. J. Sivaprakasam and Others,
- 4) 2005(2) ICC (Kant) 554 Paras 14, 16 & 24 (Bhagawan, since deceased by His L.Rs. and Ors. v. Dwarka Nath & Ors.)
- 5) Calcutta Gujrati Education Society and Another Vs. Calcutta Municipal Corporation and Others,
- 6) 2011(8) SCC 380 at Page 383, 384 Para 20 (P.D. Dinakaran (J) v. Judges Enquiry Committee & Ors.)
- 7) 2006 (4) ICC 598 Para 18 and 23
- 8) Bar Council of Maharashtra Vs. M.V. Dabholkar and Others,
- 9) The State of West Bengal Vs. The Indian Iron and Steel Co. Ltd., regarding Criminal Court Judgment section 43 of the Indian Evidence Act

10) Krishnan Asari and Another Vs. Adaikalam and Others, regarding Article 59 of the Limitation Act

11) Soraban Bewa Vs. Jinnath Bibi,

12) Rajgopal (Dead) by Lrs. Vs. Kishan Gopal and Another,

13) 2004(1) ICC (Cal) (DB) 227(A) Para 16 (Khan Bahadur Sk. Mohammad Jan v. Sk. Saifur Rahaman & Ors.)

14) Kashi Nath (Dead) through Lrs. Vs. Jaganath,

15) J.J. Lal Pvt. Ltd. and Others Vs. M.R. Murali and Another,

16) L.I.C. of India and Another Vs. Ram Pal Singh Bisen,

17) 2004(1) ICC (Kant) 858 (B) Para 11 (Krishna v. Sanjib)

It is, therefore, submitted that learned trial Court is justified in dismissing the suit.

29. We have carefully heard the submissions made by learned counsels of both sides. We have also perused the notes of argument submitted by the respective parties. We have also perused the pleadings and evidences both oral and documentary and bestowed serious consideration.

30. It is the settled principle of law that Civil Court is competent enough to adjudicate right, title, interest and possession of the suit property. On the point of acquisition of title of the suit property by the predecessor-in-interest of plaintiffs/appellants, it has been categorically stated in the pleading that the predecessor-in-interest of the original plaintiff acquired the right, title, interest and possession of the suit property by way purchase by registered deed of indenture dated 12th August, 1937. From the said indenture marked Exhibit 6 (page 33 of Paper Book Part II) it appears that Paul Super Mantosh purchased the suit land from Moti Chand Nakhat, Amrita Lal Shah, Thakor Lal Mehta and Champa Lal Daptari measuring 2 bighas 2 katas 4 chataks and 25 sq.ft. corresponding to Municipal premises No. 73, Canal Circular Road in Mouza Surah, Thana Beliaghata. From the said Exhibit it further transpires that the details of the acquisition title of previous vendor have been set forth. After the death of Paul Super Mantosh, his wife Bertha Mantosh, daughter Daisy Mantosh and son James Mantosh inherited the said property.

31. Further case of the appellants with regards to acquisition of title is that Moni Lal Goyee and Bijay Kumar Goyee filed Title Suit bearing No. 50 of 1942 in the 1st Court of Subordinate Judge, Alipore, 24 Parganas against B. S. Mantosh and others. The said suit was decreed on compromise on 8th January, 1949. This judgment is marked Exhibit 9 (at Page 66 of Paper Book Part II). The terms and conditions of the compromise petition in accordance with which the decree was passed reveals that "the principal defendants namely Mrs. B. S. Mantosh and others will remain in possession as before as absolute owner" of 2 bighas 15

katas 4 chataks and 19 sq.ft. on the western portion of the land ? shown by Mr. Radhika Jiban Mukherjee, learned Commissioner for local investigation in his plan dated 15th March, 1948 as the holding No. 42 (in blue border) and holding No. 43 (in green border) of Sub-division 7 of Grand-division 3, Dihi Panchanan Gram (corresponding approximately to premises No. 73, Canal Circular Road). That the plaintiffs will give up all their claims to this land and their claims for the same will stand dismissed.

32. The terms of the said compromise decree further reveals that "the plaintiff will get a decree for the balance land, that is, for the eastern portion of holding No. 43 as shown by the said Commissioner in the said case plan in green border and the area of this land for which the plaintiff will get a decree will be 1 bigha 2 kata 3 chatak and 22 sq.ft. From the terms and conditions of the said compromise decree it is crystal clear that predecessors-in-interest of present appellant were owners and possessors of the said property long before the passing of the compromise decree. This is evident from the title deed (Exhibit 6) by which P.S. Mantosh purchased the suit land from Moti Chand Nakhat and others. This is further evident from Exhibit 21 (Page 107 of Paper Book II) wherein P.S. Mantosh filed application for recording and registration of his name in the estate (revenue-free property). From this exhibit, it appears that the name of P.S. Mantosh was recorded as purchaser of the suit land after service of notice and no objection was filed by any person. Relevant sale deed was also examined and consulted and one witness was also examined and thereafter transfer of possession was processed. The order of LRO was passed on 09.02.1938. Therefore, Exhibit 21 (at Page 107 of Paper Book II) is a land record showing the possession of P.S. Mantosh after his purchase by registered deed dated 12th August, 1937 marked as Exhibit 6 (Page 33 of Paper Book II). This document of title and the document of land record shows that plaintiff/appellant's predecessor-in-interest P.S. Mantosh purchased the suit property and thereby acquired the title over the same and thereafter he recorded his possession in the land record. These documents are totally unchallenged and undisputed. This evidence of title and possession has been further corroborated by the decree of Title Suit No. 50 of 1942 (marked Exhibit 9) as elucidated above (Page 66 of Paper Book II) wherein title and possession of Mrs. B. S. Mantosh and others, the successors of P.S. Mantosh have been declared. This compromise decree is also another valid piece of evidence of title and possession of the plaintiff/appellant.

33. The appellant has also filed a series of correspondence to the Collector of the Calcutta Corporation marked Exhibits 13, 14, 15, 16, 17, 18 (at Page 99, 100, 101, 102, 103 and 104 of Paper Book II) in connection with premises No. 73, Canal Circular Road whereby Mr. B. S. Mantosh, James Mantosh were requested to pay the rate bills. Therefore, the Corporation record and land record succinctly denote the presumption of possession.

34. Plaintiffs filed certified copy of deed of conveyance dated 15th August, 1933 (Exhibit 4) by which Molla Ataul Haque, the previous vendor of P.S. Mantosh sold

the suit land to Poonam Chand Seth in connection with Municipal premises No. 73, Canal Circular Road corresponding to holding No. 42. Appellants have also filed certified copy of the deed of transfer dated 29th September, 1927 by which Molla Ataul Haque acquired the said property from Abdul Jabbar (marked Exhibit 2). Molla Ataul Haque submitted application for registration to the estate (revenue-free property) in Case No. 813 of 1932-33 (marked Exhibit 19) and his name was recorded by order of LRO on 18th May, 1933. From Exhibit 20 it appears that the vendor of predecessor-in-interest of plaintiff also submitted application for registration to the estate (revenue-free property) in Case No. 1027 of 1933-34. On 30.04.1934, LRO recorded the name of Moti Chand Nakhat and 3 others on the ground of transfer and possession after service of notice and after perusing the documentary evidence where no objection was filed. From the aforesaid documents namely deed of indenture and land record it is evident that the previous vendor of plaintiffs' predecessor-in-interest (P.S. Mantosh) had title and possession over the suit property at plot No. 42 corresponding to premises No. 73, Canal Circular Road.

35. From the certified copy of deed of transfer dated 29th September (marked Exhibit 2) it appears that the predecessor-in-interest of Molla Ataul Haque namely Abdul Jabbar acquired the title of the suit property by way of purchase under the Act XI of 1859 of the land hereditament in premises No. 73, Canal Circular Road, Mouza Surah and the sale certificate dated 14.08.1920 was granted by the Collector of 24 Parganas and Abdul Jabbar paid consideration amount of Rs. 1375. Although the said sale certificate was not produced before the learned Court below, the existence of sale certificate is forthcoming in the judgment of M.P. Case No. 1678 of 1938 u/s 145 of Criminal Procedure Code. Certified copy of the said judgment dated 27.07.1939 of M.P. Case is marked Exhibit 7 (at Page 39 of Paper Book II). On the perusal of the said judgment it transpires that there was a previous dispute with regard to the suit property between Sk. Nabi Box and others with the predecessor-in-interest of Mrs. Mantosh and others for demarcation of holding No. 42. Sk. Nabi Box wanted to dispossess Mrs. Mantosh from holding No. 42 by way of raising construction of wall. Therefore, notice u/s 144 Cr.P.C. was issued against Sk. Nabi Baux and others in apprehension of breach of peace. After expiry of the statutory period of section 144, Mrs. Mantosh and others prayed for drawing up proceeding section 145 of Cr.P.C.. In that proceeding Mrs. Mantosh filed sale certificate (marked Exhibit 10) by which Abdul Jabbar purchased the suit property at holding No. 42 in revenue sale in 1919. Assessment record of Calcutta Municipal Corporation (Exhibit 12) reveals the name of Abdul Jabbar in respect of suit holding No. 42, premises No. 73, Canal Circular Road. It was stated by Mrs. Mantosh that Abdul Jabbar sold the suit property to Molla Ataul Haque by Exhibit 11 and Molla Ataul Haque again sold the same to Poonam Chand Seth by indenture (Exhibit 12) in 1933. Poonam Chand Seth sold the said land to Moti Chand and others vide Exhibit 8. The predecessor-in-interest of Mrs. Mantosh i.e. P.S. Mantosh purchased the said property from Moti Chand by deed of indenture (marked

Exhibit 6) in 1937. It has also stated by Mrs. Mantosh that her predecessor-in-interest i.e. P.S. Mantosh got his name mutated in the Collectorate Register marked Exhibit 9. Therefore, the existence of the title deed of the predecessor-in-interest of the appellants' vendor is forthcoming. The appellants also filed the relevant documents of ownership of the vendor of plaintiff/appellant's predecessor-in-interest save and except the sale certificate in favour of Abdul Jabbar. But from the judgment, the existence of sale certificate filed by Mrs. Mantosh is forthcoming. From the judgment, it also appears that Nabi Box also filed sale certificate (marked Exhibit A) which reveals that he purchased holding No. 43. Holding No. 42 is quite separate from holding No. 43 (marked Exhibit B) by which Nabi Box purchased holding No. 43. It further appears from the judgment that the demarcation as to the separate existence of plot No. 42 was decided on the basis of survey report (Exhibit 3) and this survey was done under Sections 40 and 41 of Bengal Survey Act. Learned Magistrate held that Mrs. Mantosh and others were in possession of holding No. 42. Learned Magistrate further held that holding Nos. 42 and 43 are separate and the same has been established by holding survey as per Bengal Survey Act.

36. It has been submitted by learned counsel for the respondent that the judgment of the Criminal Court has no binding effect upon the Civil Court because Civil Court has to decide independently the question of title and possession. This legal position is not at all disputed and it is the settled principle of law. But the existence of sale certificate as well as the survey under sections 40 and 41 of Bengal Survey Act for the purpose of demarcation and for showing the separate existence of holding No. 42 and 43 are quite relevant and admissible u/s 13 of Evidence Act.

37. Section 13 of the Evidence Act provides that where the question is as to the existence of any right or custom, the following facts are relevant: a) any transaction by which the right or custom in question is created, claimed, modified, recognised, asserted or denied or which was inconsistent with its existence; b) particular instances in which the right or custom is claimed, recognised or exercised or in which its exercise was disputed, asserted or departed from. A judgment showing the identity of the suit land with that described in the plaint and sale certificate is held admissible (*Anunda v. Gunee*, 25 WR 80). The word transaction" in section 13 includes judgments not inter partes are admissible as evidence either as transactions or instances (*Md. Ameen v. Hasan* reported in 9 Bombay LR 65).

38. With regards to the question of evidentiary value of order u/s 145 of Cr.P.C., it has been held by Hon"ble Privy Council that such order is admissible in evidence *Dinmoni Chowdhurani Vs. Brojo Mohini Chowdhurani*, . In *Shanti Kumar Panda Vs. Shakuntala Devi*, , it has been held by Hon"ble Apex Court that at the time of final adjudication by competent Court, the proceeding u/s 145 of Cr.P.C. has value only as a piece of evidence until the entitlement of possession is determined by a Court having competence to enter into adjudication of civil

right, which an Executive Magistrate cannot. At the stage of final adjudication of right, which would be on the evidence adduced before the Court, the order of Magistrate is only one out of several pieces of evidence.

39. In a subsequent suit for title or possession relating to the same land, an order u/s 145(6) Cr.P.C. is admissible u/s 13 of the Evidence Act as the evidence of the following facts: (i) as to who were the parties to the dispute, (ii) as to what land was in dispute, (iii) as to who was declared entitled to retain possession. Therefore, the plaintiffs/appellants have filed certified copy of the judgment and decree of Title Suit No. 50 of 1942 (marked Exhibit 9) and certified copy of the sale deed dated 12.08.1937 (marked Exhibit 6) as valid document of title showing acquisition of title of the suit property by the predecessor-in-interest. They have also filed documents in connection with land record and corporation record already elucidated above. Therefore, they have been able to prove the title and possession over the suit property.

40. Moreover, the correspondence between Land Acquisition Collector, Calcutta with Mrs. B.S. Mantosh (marked Exhibit 34, 35 and 36 at Page No. 191, 192, 193 of Paper Book) disclose the relevance of possession of the plaintiff/appellant's predecessor-in-interest. Series of rate bills of Calcutta Municipal Corporation in relation to B. S. Mantosh, Daisy Mantosh and James Mantosh (marked Exhibit 37 to 40) also denote the relative value of possession.

41. P.W. 1 Charles Mantosh has deposed as to how they acquired title and possession of the suit property and this finds corroboration from the documentary evidences already narrated above. From the aforesaid documents specially the judgment of T.S. 50 of 1942, it is crystal clear that Moni Lal Goyee and Bijay Kumar Goyee had no title and possession over the suit property at holding No. 42 corresponding to Municipal premises No. 73, Canal Circular Road. The title and possession of Moni Lal Goyee and Bijay Kumar Goyee is over of holding No. 43 as shown in the map prepared by learned local Investigation Commissioner. This decree was passed on 08.01.1949. It is surprising to note that Moni Lal Goyee and Bijay Kumar Goyee sold the suit property to Hindustan Housing & Land Development Trust Limited as it appears from the certified copy of the deed of conveyance dated 15th June, 1957 (Exhibit 10). Since Moni Lal Goyee and Bijay Kumar Goyee had no right, title, interest and possession over the suit property at holding No. 42, after the passing of compromise decree, they cannot sell the said property to Hindustan Housing & Land Development Trust Limited during 1957. No seller can give better title to the purchaser than what he had. Therefore, the purchaser i.e. Hindustan Housing & Land Development Trust Limited acquired no valid right, title, interest and possession over the suit property by virtue of Exhibit 10. This deed is not only void but also void ab initio. Therefore, subsequent transfer of title by Moni Lal Goyee and Bijay Kumar Goyee to Hindustan Housing & Land Development Trust Limited and by Hindustan Housing & Land Development Trust Limited to Orient Properties Limited (later Orient Beverage Limited) -respondent/defendant No. 2 are illegal and no valid

title ever passed to respondent/defendant No. 2. The claim of the defendant/respondent No. 2 as owner and possessor of the suit property is, therefore, unsustainable in the eye of law. Therefore, defendant No. 2 Orient Beverage Limited has no right to claim any valid title over the suit property and also to file any return claiming as holder/owner of the same u/s 6(1) of Urban Land (Ceiling & Regulation) Act, 1976.

42. Respondent No. 2 has stated in separate written statement that the company is a bona fide purchaser of the suit property of value and has purchased the suit property by registered deed of conveyance dated 30.11.1962 from Hindustan Housing & Land Development Trust Limited. Since Hindustan Housing & Land Development Trust Limited acquired no valid title over the suit property from Moni Lal Goyee and Bijay Kumar Goyee they cannot transfer any title over the suit property to defendant/respondent No. 2. The defendant/respondent No. 2 cannot be stated to be a bona fide purchaser of value of the suit property. Decree of Civil Suit, land record and Corporation record are sufficient to hold that vendor of Hindustan Housing & Land Development Trust Limited had no right, title and possession over the suit property. It has been stated by the respondent No. 2 that the company deposited Rs. 5000/- to the Calcutta Municipal Corporation on 14th August, 1965 for filling up the suit land. This deposit of amount does not tantamount to any exercise of overact of the possession over the suit property. Even the incurring of loan from the United Bank of India by the defendant/respondent No. 2 by mortgaging the suit property is not at all an evidence of overact of possession. There are all mere paper transaction without any legal validity. Moreover, the respondent/defendant No. 2 did not at all raise any plea of acquisition of title over the suit property by way of adverse possession. No such case of adverse possession has ever been made out either in the pleading or in evidence.

43. It is pertinent to note that save and except filing of the written statement, no oral evidence has been adduced by the defendant/respondent No. 2.

44. It has been submitted from the end of contested defendants that Civil Court has no jurisdiction to make any declaration with regard to legality and propriety of vesting. Their case is that Urban Land (Ceiling & Regulation) Act, 1976 provides the opportunity of appeal u/s 33 if any person is aggrieved by the order of competent authority. It is also submitted that the Act itself provides the scope of revision by State Government u/s 34 of the Act. Furthermore, it is also submitted that u/s 40 of the Urban Land (Ceiling & Regulation) Act, no suit or other legal proceeding shall lie against the Government or any officer of Government in respect of anything which is in good faith done or intended to be done by or under this Act. It is pertinent to quote the relevant provisions of sections 33, 34 and section 40 of the Urban Land (Ceiling & Regulation) Act, 1976:

Section 33. Appeal.--(1) Any person aggrieved by an order made by the competent authority under this Act, not being an order u/s 11 or an order under

sub-section (1) of section 30, may, within thirty days of the date on which the order is communicated to him, prefer an appeal to such authority as may be prescribed (hereinafter in this section referred to as the appellate authority):

Provided that the appellate authority may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section (1), the appellate authority shall, after giving the appellant an opportunity of being heard, pass such orders thereon as it deems fit as expeditiously as possible.

(3) Every order passed by the appellate authority under this section shall be final.

Section 34. Revision by State Government.--The State Government may, on its own motion, call for and examine the records of any order passed or proceeding taken under the provisions of this Act and against which no appeal has been preferred u/s 12 or section 30 or section 33 for the purpose of satisfying itself as to the legality or propriety of such order or as to the regularity of such procedure and pass such order with respect thereto as it may think fit:

Provided that no such order shall be made except after giving the person affected a reasonable opportunity of being heard in the matter.

Section 40. Indemnity.--No suit or other legal proceeding shall lie against the Government or any officer of Government in respect of anything which is in good faith done or intended to be done by or under this Act.

45. On a close and careful examination of the aforesaid provision it does not appear that the jurisdiction of the Civil Court is expressly barred in the matter of adjudication of rival claim of title and ownership and also in the field of scrutiny and examination as to whether the mandatory provisions and statutory rules have been complied with or whether the Tribunal has complied with fundamental principles of judicial procedure.

46. Hon''ble Apex Court in The State of West Bengal Vs. The Indian Iron and Steel Co. Ltd., has clearly observed that even if the jurisdiction of Civil Court is excluded where the statute gives a finality to the order of special Tribunal in the matter of levy of tax, the Civil Court can examine the cases where statutory provisions have not been complied with or statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure. Hon''ble Apex Court relied upon the decision of Privy Council reported in AIR 1940 105 (Privy Council) . It has been observed therein that "it is settled law that the exclusion of jurisdiction of a Civil Court is not to be readily inferred but that such exclusion must either be explicitly expressed or clearly implied. It is also well-settled as observed by His Lordship that even if the jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure".

47. In Ramesh Gobindram (dead) through Lrs. Vs. Sugra Humayun Mirza Wakf, Hon''ble Apex Court has observed in Paragraphs 5 and 6 that "the well-settled rule in this regard is that the Civil Courts have the jurisdiction to try all suits of civil nature except those entertainment whereof is expressly or impliedly barred. The jurisdiction of Civil Courts to try suits of civil nature is very expansive. Any statute which excludes such jurisdiction is, therefore, an exception to the general rule that all disputes shall be triable by a Civil Court. Any such exception cannot be readily inferred by the Courts. The Court would, lean in favour of a construction that would uphold the retention of jurisdiction of the Civil Courts and shift the onus of proof to the party that asserts that Civil Court's jurisdiction is ousted.

48. Even in cases where the statute accords finality to the orders passed by the Tribunals, the Court will have to see whether the Tribunal has the power to grant the relief's which the Civil Courts would normally grant in suits filed before them. If the answer is in negative exclusion of the Civil Courts jurisdiction would not be ordinarily inferred. In Rajasthan State Road Transport Corporation and Another Vs. Bal Mukund Bairwa, , a three-Judge Bench of that Court observed:

There is a presumption that a Civil Court has jurisdiction. Ouster of Civil Court's jurisdiction is not to be readily inferred. A person taking a plea contra must establish the same. Even in a case where jurisdiction of a Civil Court is sought to be barred under a statute, the Civil Court can exercise its jurisdiction in respect of some matters particularly when the statutory authority or Tribunal acts without jurisdiction.

49. Finally, Hon''ble Apex Court in Paragraph 21 held that with regards to the exclusion of the jurisdiction of the Civil Court it is to be considered "whether the Tribunal is under the Act or the Rules required to deal with the matter sought to be brought before a Civil Court. If it is not, the jurisdiction of the Civil Court is not excluded."

50. In the instant case, there is no dispute that competent authority under the Urban Land (Ceiling & Regulation) Act, 1976 has no jurisdiction to determine the right, title, interest and possession over the disputed property. Therefore, the jurisdiction of Civil Court is not at all barred.

51. from the foregoing analysis, it is crystal clear that defendant/respondent No. 2 has no right, title, interest and possession over the suit property and defendant No. 2 has no right to file any return u/s 6(1) of Urban Land (Ceiling & Regulation) Act, 1976.

52. Therefore, the crucial point that comes for our consideration is whether the vesting of the suit land on the basis of return filed by defendant No. 2 who is not a holder and has no right, title and interest over the disputed property is justified and proper in the eye of law.

53. Section 6(1) of the Urban Land (Ceiling & Regulation) Act, 1976 provides

"every person holding vacant land in excess of the ceiling limit at the commencement of this Act shall, within such period as may be prescribed, file a statement before the competent authority...." The definition of the word "holder" is not forthcoming in the Act but definition of the word "to hold" as per section 2 of the Act reveals that- (i) to own such land; or (ii) to possess such land as owner or as tenant or as mortgagee or under an irrevocable power of attorney or under a hire-purchase agreement.

54. In the instant case, the defendant/respondent No. 2 cannot be deemed to be a holder of the vacant land as defendant No. 2 has no valid title over the suit property and, therefore, defendant No. 2 is not owner of the suit property.

55. Sub-section (4) of section 6 provides that the statement under sub-section (1) of the Act shall be filed in case of a family by the husband or the wife. Sub-section (1) of section 8 provides that on the basis of the statement filed u/s 6 and after such enquiry as the competent authority may deem fit to make the competent authority shall prepare a draft statement in respect of the person who has filed the statement u/s 6. Sub-section (3) provides that draft statement shall be served in such manner as may be prescribed on the person concerned together with a notice stating that any objection to the draft statement shall be preferred within 30 days of the service thereof. As to the manner of service under sub-section (3) of section 8, the same is prescribed by Rule 5 of the Urban Land (Ceiling & Regulation) Rules, 1976 (the Rules). Rule 5 of the Rules in so far as the same is relevant for the purpose of the present case lays down that the draft statement must be served, together with the notice referred to sub-section (3) of section 8 on - (i) the holder of the vacant lands, and (ii) all other persons, so far as may be known, who have, or likely to have any claim to, or interest in the ownership, or possession, or both, of the vacant lands, by sending the same by registered post addressed to the person concerned - (i) in case of the holder of the vacant lands, to the address as given in the statement filed in pursuance of Sub-section (1) of section 6 and (ii) in case of other persons at their last known address.

56. Defendants/respondents Nos. 3 and 4 by filing the application under Order 41 Rule 27 of the CPC have prayed for accepting the judgment in Title Suit No. 6 of 2010 dated March 31, 2012 passed by learned Small Causes Court, Sealdah including the plaint of the Title Suit No. 6 of 2010 as additional evidence.

57. We have carefully perused the said petition together with pleading and judgment of the said T.S. No. 6 of 2010. From the said pleading it appears that plaintiffs/appellants namely David Mantosh and others have properties at holding No. 41 of Sub-division 7 of Grand Division III of Panchanan Gram measuring 1 bigha 3 kata 15 chatak 40 sq.ft. at Municipal premises No. 60, Canal Circular Road. The said suit was dismissed on the petition filed under Order 14 Rule 2(2), Order 10 Rule 1 & 2, Order 6 Rule 16 and Order 7 Rule 11 read with section 151 of CPC by the respondent challenging the maintainability and praying for rejection of the plaint. Learned Trial Court allowed the said petition holding that

the suit was not maintainable in view of the bar contained in Order 2 Rule 2 of the Code of Civil Procedure.

58. By filing this petition the respondent Nos. 3 & 4 have prayed for acceptance of the pleading and judgment of T.S. No. 6 of 2010. It has been submitted in the said petition that the land at Title Suit No. 6 of 2010 together with land at Title Suit No. 4 of 2005 taking together would exceed the ceiling limit prescribed under Urban Land (Ceiling & Regulation) Act, 1976.

59. On the other hand, affidavit on-opposition has been filed by the present appellants/plaintiffs stating therein that the suit property together with other property in Title Suit No. 6 of 2010 are not entirely vacant land. There are structures over the said land. If the entire lands of both suits are taken together, the same will not exceed ceiling limit under Urban Land (Ceiling & Regulation) Act, 1976.

60. On a close and careful perusal of the application under Order 41 Rule 27 of CPC and affidavit-in-opposition filed by the plaintiffs/appellants together with evidence of P.W. 1 Charles Mantosh in his cross examination and the examination-in-chief of D.W.1 Dipak Kumar Ghose, it transpires that there were structures on the suit property. The examination-in-chief of D.W.1 Dipak Kumar Ghose (at Page 208 Paper Book Part I) reveals that there were few sheds and structure over the premises. He has stated that he is an employee designated in the post of Senior Manager, Corporate Affairs of defendant No. 1 (at Page 212 of Paper Book Part I) "as per information gathered from office I say that there were few shades and structure over the premises and after disposal of the statement u/s 6(1) of the Urban Land (Ceiling & Regulation) Act as filed by the defendant No. 2, suit property including other was vested by the State Government". At the same time, in the cross-examination of P.W. 1 Charles Mantosh (at Page 192 of Paper Book Part I) he has stated that "at the time of taking possession by the Government there was some structure on the suit property". Furthermore, in the written statement, the defendant/respondent No. 1 has also stated that the suit premises consisted of vacant land with few sheds and structure comprised of small plinth area.

61. Learned counsel for the appellants has submitted that non-suit land at holding No. 41 corresponding to Municipal premises No. 60, Canal Circular Road and the suit holding No. 42 corresponding to Municipal premises No. 73, Canal Circular Road were covered by number of structures and quarters and godowns and those premises were used for horticulture purpose. It is further submitted that all the vacant lands if taken together would not exceed the ceiling limit prescribed under Urban Land (Ceiling & Regulation) Act, 1976 and, therefore, there was no scope for the appellants for filing return or giving any declaration in respect of the suit property inasmuch as such property under Urban Land (Ceiling & Regulation) Act, 1976 contemplates ceiling limit in respect of vacant land only.

62. We have bestowed serious consideration on the submissions of both sides and perused the application under Order 41 Rule 27 of CPC together with the affidavit-in-opposition and evidences of P.W. 1 and D.W. 1.

63. On a careful consideration of the submission made by learned counsel for the appellants and a close perusal of the affidavit-in-opposition and the evidences of P.W. 1 and D.W.1, as well as the averments of written statement filed by defendant/respondent No. 1 wherein the defendant/respondent No. 1 has categorically admitted that the suit premises consisted of vacant land with few sheds and structures comprised of small plinth area, it transpires that the submissions of learned counsel for the appellants has sufficient merit. We accept the said submissions.

64. In the instant case it transpires from the decree of Civil Court as well as from the land record and Corporation record that the predecessor-in-interest of the appellants were and subsequently the appellants are the holder of the land in question and they are entitled to the service of notice under Sub-section (3) of section 8 of the Act. It is an admitted position that since no notice was served upon the plaintiffs/appellants, the proceeding would stand vitiated being violative of the statutory provision of the Rule 5 of the Rules read with section 8(3) of the Act. This principle of law has been upheld by Hon"ble High Court at Gujarat in Pannaben Niranjana M. Mehta died through Heirs Vs. Competent Authority and Addl. Collector and Others, . The Hon"ble Court in the said decision further held in Paragraph 16:

as already noted hereinabove during the course of the proceedings under the Act culminating into the taking over of possession of the land all notices and notifications have been issued in the name of the declarant. A perusal of the notifications u/s 10(1) and section 10(3) of the Act shows the name of the declarant Niranjana Maganlal Mehta under "name of landholder" despite the fact that the petitioner Pannaben was holder of the land. Thus by the said notifications u/s 10(1) and section 10(3) of the Act, what is vested in the Government is the land belonging to declarant to who was not the holder of the land. In the present circumstances, it cannot be stated that the land belonging to the petitioner has been vested in the Government under the said notifications. In the circumstances, the notifications under sections 10(1) and 10(3) of the Act stand vitiated as they do not indicate the name of the holder. Consequently, taking over of possession pursuant to such notifications also stands vitiated.

65. In the present case also name of defendant No. 2 was found in notifications under sections 10(1) and 10(3) as land holder, although the defendant No. 2 was not the holder of the land and, therefore, by virtue of the notifications under sections 10(1) and 10(3) of the Act the land of the declarant was vested; but the declarant was not the holder of the land. Therefore, the aforesaid notifications stand vitiated as those notifications do not indicate the name of the holder. Consequently, taking over the possession pursuant to such notifications also stands vitiated.

66. Hon''ble Court has further held that the orders passed by the competent authority as well as subsequent proceedings taken under the Act stand vitiated on account of non-compliance with the mandatory provisions of the Acts and Rules and are, therefore, required to be quashed and set aside.

67. Similarly, Hon''ble High Court of Andhra Pradesh at Hyderabad in WP No. 8411 of 1992 Kothuru Babu Surendra Kumar (died) and others Vs. Special Officer and Competent Authority, ULC, Vijayawada and others, has held that "issuance and service of notice as contemplated under sub-rule (2) of Rule 5 of the Rules is mandatory. Therefore, the statement prepared u/s 10 of the Act without following the mandatory requirement under Rule 5(2) is clearly invalid and illegal".

68. While upholding the aforesaid principle of law Hon''ble Court quoted relevant portion of a decision passed by the said Court in M/s. L.S. and Co. Vs. State of A.P. and others, in connection with the issue of draft statement and final statement u/s 8(4) and section 9 of the Act and the effect of the Rule 5 of the Rules:

the scheme of the Act contemplates issuance of notice and hearing of objections of the persons furnishing the statements and all other interested persons. The Act gives such protection to all the concerned at every stage of the proceedings. After all, any decision of the special officer and competent authority under the provisions of the Act are fraught with serious consequences in respect of the urban property. Rights in immovable properties cannot be allowed to be adjudicated by the quasi-judicial authorities like the special officer and competent authority in a casual and perfunctory manner. The scheme of the Act and particularly sections 8 and 9 of the Act and the rules framed thereunder would show that the procedure to be adopted by the special officer and competent authority is to be reasonable and fair. The scheme of the Act ensures an elaborate hearing by the special officer and competent authority in adjudication of the statements filed by the persons holding the vacant land. Any deviation in this regard would have to be viewed very seriously.

69. In the aforesaid case, notice to all the interested persons was not issued. Therefore, Hon''ble Court quashed all consequential proceedings, including one u/s 10(1) and 10(3) of the Act.

70. Hon''ble Apex Court in State of Punjab (Now Haryana) and Others Vs. Amar Singh and Another, held that any person who is not the party to the proceedings, does not have a right of appeal, except with the leave of the Court. In view of the law laid down, by the said Court (Hon''ble Court of Andhra Pradesh at Hyderabad) the right of appeal is not available to a third party but not by any other person. Therefore, the appellants did not have any right of appeal because they are not the declarant.

71. The said Court in W.P. No. 6855 of 1984 dated 26.08.1988 held that without notice taking action is void. While holding so, the said Hon''ble Court quashed the

notification issued u/s 8(4) of the Act, as the same was issued without issuing notice to the major son of the declarant. Finally, the said Hon"ble Court held:

what is culled out from the above discussion is that competent authority who has finalised the statement u/s 8(4) of the Act and final statement u/s 9 and notification issued u/s 10(1), 10(3) and 10(5) of the Act failed to follow the mandatory provisions by issuing notice to the persons likely to be affected, the petitioners who are purchasers of the above lands and it is also within their knowledge; and the records also reveal that Smt. Tulsamma, the 4th and 5th respondent in the writ petitions admitted that she has no interest in the above lands as she has sold the same to the society and the same was discussed by the competent authority in his earlier proceedings dated 28.05.1984. In view of the same non-issuance of notice and its service upon the interested persons is fatal and the entire proceedings and the final statement u/s 8(4) of the Act; and the proceedings of the 2nd respondent dated 12.04.1990 and the consequential orders of the 1st respondent u/s 8(4) and section 9 of the Act dated 09.02.1991 and the notification issued u/s 10(1); 10(3) and 10(5) of the Act are all of no consequences and consequently they are declared as non est, The writ petitions are accordingly allowed....

72. In the present case also non-issuance of notice and its service upon the appellants is fatal and entire proceedings and final statement u/s 8(4) of the Act and section 9 of the Act, notification u/s 10(1), 10(3) and 10(5) are vitiated and declared as non est.

73. It is evident that competent authority has not followed the mandatory provisions of the Acts and rules in the matter of issuance of notice and service thereof. Therefore, non-compliance of mandatory provisions of the Acts and rules invites the jurisdiction of the Civil Court to examine the cases whether statutory Tribunal has acted in conformity with the fundamental principles of judicial procedure as upheld by Hon"ble Privy Council in the decision in the Secretary of State v. Mask and Company reported in 1940 PC 105 mentioned above. Therefore, Civil Court has jurisdiction to adjudicate rival claims of right, title and possession as well as to examine whether competent authority followed the mandatory provisions of Acts and rules or acted in conformity with the fundamental principles of judicial procedure.

74. Submission of the learned counsel for respondent Nos. 3 and 4 namely Competent Authority, Calcutta and State of West Bengal as well as the written notes of argument submitted by the aforesaid respondents reveal that although the competent authority neither served Mrs. Daisy Mantosh with draft statement nor communicated her the order acquiring the defendant No. 2's land which Mrs. Mantosh claimed to be her own, she had knowledge of both draft statement and order acquiring land from the defendant No. 2 because notifications were published in Official Gazette and she procured the same and exhibited them in the suit. This submission of the learned counsel of respondent Nos. 3 and 4 has no merit. The non-compliance of mandatory provisions of service of notice by

following Rule 5 of the Urban Land (Ceiling & Regulation) Rules totally vitiates the notifications and subsequent proceedings. Therefore, the entire proceeding of vesting is vitiated by non-compliance of mandatory provisions and, therefore, vesting of the suit property and taking possession of the same by the respondent Nos. 3 and 4 are vitiated and stand quashed.

75. On the point of limitation it is submitted by learned counsel for the appellants that they pursued proceeding before Writ Court, Division Bench and Hon''ble Apex Court diligently with good faith and bona fide. It is pertinent to quote the provision of section 14 of the Limitation Act:

in computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court to first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature is unable to entertain it.

In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

76. In Shakti Tubes Ltd. tr. Director Vs. State of Bihar and Others, , Hon''ble Apex Court had made detailed observation with regards to the impact of section 14 of the Limitation Act. Hon''ble Apex Court relied upon the decision of three-Judges'' Bench of Hon''ble Apex Court in Rameshwarlal Vs. Municipal Council, Tonk and Others, . It was held therein:

normally for application of section 14, the Court dealing with the matter in the first instances, which is the subject of the issue in the later case, must be found to have lack of jurisdiction or other cause of like nature to entertain the matter. However, since the High Court expressly declined to grant relief relegating the petitioner to a suit in the Civil Court, the petitioner cannot be left remediless. Accordingly, the time taken in prosecuting the proceedings before the High Court and this Court, obviously pursued diligently and bona fide, needs to be excluded.

77. Hon''ble Apex Court further relied upon decision of the said Court in Union of India (UOI) and Others Vs. West Coast Paper Mills Ltd. and Another, when Court held as under:

it is true that the writ petition was not dismissed by the High Court on the ground of defect of jurisdiction. However, section 14 of the Limitation Act is wide in its application, inasmuch as it is not confined in its applicability only to cases of defect of jurisdiction but it is applicable also to cases where the prior proceedings have failed on account of other cause of like nature. The expression

"other cause of like nature" came up for the consideration of this Court in Roshanlal Kuthalia v. R. B. Mohan Singh Oberoi and it was held that section 14 of the Limitation Act is wide enough to cover such cases where the defects are not merely jurisdictional strictly so called but others more or less neighbours to such deficiencies. Any circumstances, legal or factual which inhibits entertainment or consideration by the Court of the dispute on the merits comes within the scope of the section and a liberal touch must inform the interpretation of the Limitation Act which deprives the remedy of one who has a right.

78. In the present case, when possession of the suit land was taken over by the respondent Nos. 3 and 4 and handed over to the respondent No. 1 during 1992, Daisy Mantosh moved a writ petition bearing No. 1382 of 1992, Hon''ble Writ Court found that the parties who filed statement u/s 6(1) Urban Land (Ceiling & Regulation) Act have no right, title and interest over the disputed properties. Hon''ble Writ Court held that on the basis of a return furnished by a person in respect of properties over which he does not appear to have any right, title or interest, such properties cannot be vested with the State depriving the rightful owner from raising any objection in the matter. Therefore, Hon''ble Writ Court quashed the vesting in respect of said property at premises No. 73, Canal Circular Road and also other plots namely in respect of 60 and 72 of Canal Circular Road. Hon''ble Writ Court further observed that it is unfortunate that State Government has delivered possession of the disputed plot to the respondent No. 1 for construction of a hospital.

79. Hon''ble Writ Court further observed that the aforesaid three plots including the suit plot should stand exempted from being acquired under the Urban Land (Ceiling & Regulation) Act, 1976. Hon''ble Writ Court also observed that the appellants/petitioners may file necessary return if they have got any excess land.

80. Being aggrieved by and dissatisfied with the said order, an appeal was preferred by defendant/respondent No. 1 being No. 324 of 1993. Hon''ble Division Bench vide judgment dated 3rd April, 1997 disposed of the said appeal by observing that where there is serious dispute on the question of title of the property in dispute, the matter is to be disposed of by way of title suit, inasmuch as the right, title and interest has to be adjudicated on the basis of some records and documents and the same could be adjudicated by the Civil Court not by the Writ Court. Hon''ble Division Bench placed reliance of the decision of Hon''ble Apex Court in Sohanlal Vs. The Union of India (UOI), . Therefore, Hon''ble Division Bench held that writ petitioners/opposite parties are not entitled to any relief in the Writ Court unless the right, title and interest of the writ petitioners/opposite parties are conclusively proved and adjudicated by the Civil Court. Therefore, Hon''ble Division Bench set aside the order passed by Hon''ble Writ Court and allowed the appeal reserving the right of the writ petitioners/opposite parties to avail of the remedy of filing a suit for adjudicating the right, title and interest of the properties.

81. Being aggrieved by and dissatisfied with the aforesaid order of the Hon''ble

Division Bench the appellants preferred a SLP before Hon''ble Apex Court. Hon''ble Apex Court dismissed the SLP by observing "no intervention is called for. We may, however, add that if the petitioner has any appropriate remedy under the Urban Land (Ceiling & Regulation) Act, 1976 or any other law, it would be open to her to avail of the same. The SLP is dismissed".

82. On a close and careful scrutiny of the orders of Hon''ble Writ Court, Hon''ble Division Bench and Hon''ble Apex Court it transpires that the appellants were pursuing their remedy diligently on good faith or bona fide. Although Writ Court held prima facie that plaintiffs/appellants had right, title and interest over the suit property and the defendant/respondent No. 2 had no right, title and possession, Hon''ble Division Bench categorically observed that since serious dispute emerges on the question of right, title and interest of the suit property, Civil Court is the appropriate forum to adjudicate.

83. The same view has also been upheld by Hon''ble Apex Court. Therefore, the appellants are pursuing their legal remedy diligently on good faith or bona fide.

84. In view of the aforesaid facts and circumstances and the decision of law of Hon''ble Apex Court cited above, we are of considered view that the appellants are entitled to get benefit of section 14 of the Limitation Act. Therefore, the time during which the plaintiffs/appellants had been prosecuting with due diligence and good faith the writ application, appeal before Hon''ble Division Bench and SLP before Hon''ble Apex Court, shall be excluded. Therefore, the suit cannot be stated to be barred by limitation.

85. Learned Trial Court misguided itself and overlooked the aforesaid proposition of law on the point of acquisition of title, legality of vesting and the applicability of section 14 of Limitation Act. Therefore, the judgment and decree passed by learned Trial Court are vitiated by misconception of facts and law and cannot sustain and are liable to be set aside.

86. Finally, learned senior advocate appearing for the appellants/plaintiffs submitted that although the compromise decree in T.S. 50 of 1942 records the ownership and possession of the plaintiffs/appellants to the extent of 2 bighas 15 katas 4 chataks and 19 sq.ft. on the holding No. 42 and the part of holding No. 43, the appellants/plaintiffs claim only 2 bighas 2 katas 4 chataks and 25 sq.ft. in holding No. 42 corresponding to Municipal premises No. 73, Canal Circular Road as incorporated in the schedule of the plaint. They have no claim over the rest of the land.

87. We have also carefully perused the decisions of law cites from the end of defendant/respondent Nos. 1, 3 & 4 and considered the same. The facts and circumstances and proposition of law of those decisions are distinguishable with reference to the present case and the ratio of those decisions of law have no application in the present case.

88. Having considered the submissions of learned counsels of both sides and

after considering the pros and cons of the materials on record and the principle of law elucidated above, we unhesitatingly hold that the suit property measuring 2 bighas 2 katas 4 chataks and 25 sq.ft. in plot No. 42 corresponding to Municipal premises No. 73, Canal Circular Road owned and held by the plaintiffs/appellants cannot be vested and taken over by the respondent/defendant Nos. 3 and 4 being Competent Authority, Calcutta and State of West Bengal and the same cannot be leased out to the defendant/respondent No. 1 Apollo Gleneagles Hospital Limited and defendant/respondent No. 1 acquired no valid right, title, interest and possession over the suit property for the reason mentioned hereinabove.

89. Therefore, the appeal succeeds and stands allowed.

90. The judgment and decree passed by learned Trial Court are hereby set aside. The suit is decreed. Plaintiffs/appellants' ownership, right, title and interest over the suit property measuring 2 bighas 2 katas 4 chataks and 25 sq.ft. in plot No. 42 corresponding to Municipal premises No. 73, Canal Circular Road are hereby declared. The defendant/respondent No. 1 Apollo Gleneagles Hospital Limited is directed to deliver and/or hand over the vacant possession of the suit property or its value thereof to the plaintiffs/appellants within 3 months from this date failing which the plaintiffs/appellants will be at liberty to put the decree into execution in accordance with law.

91. No order as to costs.

92. Let a copy of this judgment along with the lower Court record be sent down to the Trial Court for information and necessary action. Photostat copy of the judgment if applied for, be made over the parties on compliance of usual formalities.

Tapan Kumar Dutt, J.

I agree.