
(2013) 08 CAL CK 0085
In the Calcutta High Court
Case No : Writ Petition No. 8341 (W) of 2012

Jogen Chowdhury and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 22-08-2013

Acts Referred:

Citation : (2013) 4 CALLT 259

Hon'ble Judges : Arun Mishra, C.J.; Joymalya Bagchi, J

Bench : Division Bench

Advocate : Kashi Kanta Moitra, Mr. Alope Kumar Ghosh, Sm. Rina Basu and Mr. Kinjal Kumar Boral, for the Appellant; Ashoke Kumar Banerjee, Ld. G.P., Smt. Reshmi Ghosh for the State, Sm. Sampa Sarkar for the Visva Bharati University, Shri Kishore Datta, Shri Siddhartha Ghosh for the Respondent No. 3, Shri Saktinath Mukherjee, Shri Saptangshu Basu, Shri Pradyumna Sinha, Shri Supratim Laha, Sm. Tanumita Bhattacharyya for the Respondent No. 6 and Shri N.C. Bihani for the Pollution Control Board, for the Respondent

Judgement

Arun Mishra, C.J.—The writ petition has been filed in order to preserve and protect Shantiniketan established by Rabindra Nath Tagore, great poet, storywriter, educationist and Nobel laureate complaining of the violation of the directions issued by the Hon'ble Supreme court in the case of Sushanta Tagore and Others Vs. Union of India (UOI) and Others, Prayer has been made to rescind, recall, revoke and/or withdraw the decision to allow the construction of building on "Khoai" land at Shantiniketan by Respondent No. 6, M/s. Aarsuday Projects & Infrastructure Pvt. Ltd. and to demolish the construction raised in an illegal manner.

2. It is averred in the petition that collusive and/or surreptitious acts of some of the respondents herein have resulted in widespread destruction of "Khoai" land created by the natural process of running rain water for millennia which is a rare geological phenomenon, and which, if destroyed, cannot be restored even with the help of science and thus requires preservation.

3. Sriniketan Santiniketan Development Authority (hereinafter referred to as "S.S.D.A") was constituted under the West Bengal Town and Country (Planning and Development) Act, 1979 (hereinafter referred to as "the Act of 1979"). The planning area as declared by the State Government in exercise of power u/s 9(1) of the Act of 1979 included the whole of Santiniketan. S.S.D.A. prepared a Land Use Map u/s 28 of the Act of 1979 and invited objections from the public at large. Various members of the public had pointed out myriad anomalies in the Map and made a number of concrete suggestions to preserve the environs of Santiniketan.

4. On 25.05.2000 a notification was issued by S.S.D.A. containing list of areas and buildings within the planning areas which required preservation and conservation. The said list did not contain the "Khoai" land and other areas of scenic beauty, historical, educational and cultural importance as required by the Act of 1979. Against this notification, a mass petition was preferred by 60 local residents of Purvapalli, Santiniketan to the District Magistrate against conversion of plot No. 1282/1763 into a residential area for ecological and environmental reasons.

5. A circular dated 25.04.2003 was issued by the State Government sanctioning the long term settlement of government land in favour of S.S.D.A. with a further right to S.S.D.A. to assign leasehold right to the residential flat owners for the un-expired period of lease.

6. S.S.D.A. in the year 2003 issued notices inviting proposals from the developers to build up residential-cum-commercial complex at plot No. 1282/1763 in Mouja Taltore, J.L. No. 69 ad-measuring 0.06 acres which is "Khoai" land.

7. Bengal Ambuja Housing Development Board also constructed residential-cum-commercial complex. Earlier a writ petition was filed in this Court which traveled up to Hon'ble Supreme Court in the case of *Susanta Tagore v. The Union of India & Ors.* (supra).

8. It is further averred in the petition that the land adjoining the southern boundary of Ballavpur Wild Life Sanctuary near its gate known as "Deer Park" in Santiniketan which is one of the last such "Khoai" lands adjacent to Visva Bharati campus area being situated behind Lal Bandh water body and approximately 150-200 metres from girls' hostel, science departments of the University and almost adjacent to boundary of Visva Bharati. The "Deer Park" was set up by the Government of West Bengal on a leased land from Visva Bharati.

9. In July 2001, a large number of persons applied to S.S.D.A. that the low lying land known as "Khoai" adjoining southern gate of the sanctuary be declared as buffer zone of the sanctuary u/s 18 of the Wild Life (Protection) Act, 1972. It is further averred that in the demand it has also been highlighted that this area is the drainage basin of the forest and locality and thus needed to be preserved as it is. Any construction on this "Khoai" land will disturb the ecology and deprive

school children of Visva Bharati of their picnic and sports facilities.

10. Representation was considered by the S.S.D.A. and the resolution being annexure P/1 to the petition was passed. The Forest Department, Government of West Bengal, however, could not take any decision. The S.S.D.A. on their part from 2001 to July 2009 did not sanction any building plan in the spot. The matter was continuously followed up by the applicants from 2002 to 2009.

11. It is further averred that in August, 2009, a real estate company, M/s. Aarsuday Projects & Infrastructure Pvt. Ltd., Kolkata, suddenly walled up a part of the "Khoai" in utmost haste whereupon representations were made by the people to the then Governor and to the State Government, West Bengal Pollution Control Board and S.S.D.A. The West Bengal Pollution Control Board inspected the site and wrote to S.S.D.A. in September, 2010 to curb illegal construction thereon. Thereafter, there was no activity for one year. However, the unauthorized wall remained and the respondent authorities did not take any step to demolish the same, causing great environmental hazard.

12. It is further averred that the authority to sanction building plans was delegated to all Panchayats sometime in 2010 or 2011 in the development area under S.S.D.A. though it has the legal authority to enforce the Land Use Plan. M/s. Aarsuday Projects & Infrastructure Pvt. Ltd. knowing fully well that there is a ban of construction on this piece of land, taking advantage of administrative changes, managed to get building plan sanctioned from the Panchayat, ignoring the report of West Bengal Pollution Control Board and permission was given to a company whose object is to profit from real estate. With this illegal sanction, the "Khoai" had been defaced with bulldozers and concrete columns and structures are being set up very fast since the third week of November, 2011. The petitioners filed various representations to the respondent authorities from 2009 onwards and in November, 2011 immediately took up the matter with the S.S.D.A., Panchayat, Zilla Parishad, S.D.O., S.D.P.O. and District Magistrate regarding attempt to make illegal construction on "Khoai" land.

13. It is further averred that "Khoai" is located adjoining to Ballavpur sanctuary of forest department and the said plot along with adjacent plots is a low-lying area. The construction on "Khoai" land adjacent to sanctuary gate will not only destroy the "Khoai" but also completely erode the scenic beauty of the locality. Access road to the Deer Park Sanctuary was built by the Department of Forest at considerable cost along with a stretch of the public concretized road to prevent large scale damage to it during monsoon to allow passage of water from high land on the South to "Khoai". However, the wall has now blocked the natural drainage and damaged the road. The wall has been put up across the Government road in a most illegal manner.

14. The walling up of the road by the private respondent is obviously unauthorized and it prevents free passage of water. Since last week of November, 2011, the private respondents had stepped up its construction activities on the

"Khoai" land destroying a part of it and if further construction is allowed to be continued, the entire topography of the area will be changed blocking the passage of storm water.

15. It is further averred that the Ruppur Gram Panchayat had been moved by local residents whereupon a stop work order has been issued by the Gram Panchayat on 25.11.11 filed as Annexure P/3 to the petition.

16. It is further averred that the construction activities, if completed, will lead to a rapid decline in the environment of the area. The State Government has notified and declared the concerned area to be a sanctuary on consideration of the fact that the said area is of adequate ecological, fauna and flora, geomorphological, natural or geological significance for the purpose of protecting, propagating and developing wild life or its environment.

17. The "Khoai" land not only has an environment issue attached to it but the said land has deep aesthetic essence and find place in very many creation of Rabindra Nath Tagore. Any attempt to encroach upon the "Khoai" land will, therefore, cause an irretrievable loss to the environment of Santiniketan. Hence, the petition has been preferred in this Court.

18. The District Magistrate, Birbhum has filed a report in this Court in which it has been mentioned that the construction work is being carried by Aarsuday Projects and Infrastructure Private Limited, respondent No. 6, on the land which was originally classified as "Danga" measuring 0.39 acres. The respondent No. 6 has dubiously sought for sanction of plan and permission of construction from the Prodhan, Ruppur Gram Panchayat as per proviso to Rule 28 of the West Bengal Panchayat Administration Rules, 2004, hereinafter referred to as the "Rules of 2004", dated 9th August, 2006 for construction of building structure in Panchayat area under the Development Authority whereas the "Panchayat Samity" is the appropriate authority to sanction plan. No such sanction has been granted by Panchayat Samity Ruppur Gram Panchayat has no authority to sanction building plan and give permission for construction. The District Magistrate has further submitted in the report that Executive Officer, SSDA vide Memo. No. SSDA/35/B-2/2012 dated 28.2.2012 has given No Objection Certificate to the Director of respondent No. 6 for conversion of land in question from "Danga" to "Bastu" and subsequently, D.L. & L.R.O., Birbhum has given permission for conversion under sub section 2(c) of section 4C of the West Bengal Land Reforms Act, 1955 on 9.1.2013. The District Magistrate has further submitted that Prodhan, Ruppur Gram Panchayat issued sanction for construction to the respondent No. 6 much before issuance of no objection certificate by the Executive Officer, SSDA and permission for conversion of land was granted by the concerned D.L. & L.R.O.

19. It is further submitted by the District Magistrate in the report that construction raised by the respondent No. 6 is unauthorized and illegal. It is also apparent that one extra floor has been added using the natural undulating

topography of "Khoai" land. From the front view, it appears as three storied building but from the back view, it can be seen as a four storied building. The construction has been raised illegally without valid sanction and permission from the appropriate authority and SSDA has not taken appropriate action to stop illegal construction. It is further submitted by the District Magistrate in the report about the illegal conversion of land from "Danga" to "Bastu". Clarification has been sought by him from the Executive Officer of SSDA, regarding the basis of issuance of No Objection Certificate. Action has also been initiated for illegal conversion of the land from "Danga" to "Bastu" as per communication, being Annexure VI, filed along with the report. On 23.7.2013, the District Magistrate has directed the Executive Officer, SSDA and Executive Officer, Bolpur-Sriniketan Panchayat Samity to lodge complaints with Bolpur Police Station against the Directors and Proprietors of the respondent No. 6 for unauthorized construction.

20. The West Bengal Pollution Control Board, respondent No. 2, has filed inspection report in which following observations and comments have been made:

Observations:

The construction site in concern is situated at a distance of about seventy meters on the southern side of the boundary wall of the Ballavpur Wild Life Sanctuary (locally known as "Deer Park"). During inspection it was observed that construction of boundary wall as well as basic construction of a four storied building has been completed. Masonry activities were in progress during inspection. No responsible representative of the concerned construction company was available at the site to deliver relevant information to the inspecting officials. The adjacent area of the alleged site is low lying area formed by partial erosion of laterite soil and colloquially known as "Khoai". Number of privately owned houses has come up in the near vicinity of the site in concern on the northern side (away from the sanctuary). Considerable human settlement has already come up in the near neighborhood of the sanctuary.

The inspecting officials were informed by the SSDA authority that the alleged construction company has not obtained any permission from SSDA for its construction activity; further the executive officer informed that a letter of denial was issued in 2010 to the concerned company by SSDA.

It was known from the SDLLR office that as per the classification of lands of L & LR department no classification named "khoai" exists.

Birbhum Zilla Parishad issued approval of building plan to the alleged company for their construction work on the site in concern in 2011.

The Forest Range Officer of Bolpur range informed the inspecting officers that the concerned company has not taken any permission from them for their construction activity.

Comments:

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Physical observation suggests that the area of concern is very sensitive from ecological point of view. Indiscriminate construction activities and consequent development of human settlement may affect the ecological balance of the area. In fact this possibility has been explicitly expressed in the judgment of the Hon"ble Supreme Court. Also the municipal solid waste and effluent generated from the habitation in this eco-sensitive area may create additional problems.

21. It is apparent from the observations that the construction site is situated about 70 meters on the southern side of the boundary wall of the Ballavpur Wild Life Sanctuary and the adjacent area of the construction site is low lying area known as "khoai". Permission has not been obtained from SSDA. No classification named "khoai" exists as per the classification of lands by L & LR Department. Area of construction is very sensitive from ecological point of view and that construction activity is not advisable as that will affect the ecological balance of the area.

22. In the affidavit filed by the respondent No. 3, SSDA, it is contended that permission for construction has been vetted by the Zilla Parishad and has been issued by Gram Panchayat in accordance with the amended provisions or Rules 2004. In course of enquiry conducted by the incumbent, it was revealed that Gram Panchayat had followed the relevant provisions of law in sanctioning the building plan and did not violate the proviso contained in Rule 28 of the Rules of 2004. The respondent No. 6 has applied for issuance of "NOC" for conversion of land from "Danga" to "Bastu" On 28.2.2012, No Objection Certificate was issued though obtaining of NOC from respondent No. 3 is neither mandatory nor a requirement of law but such certificate was obtained by D.L. & L.R.O. more as a pre-caution under the Land Reforms Act.

23. It is further submitted by SSDA that under the classification of the land, there is nothing called the "Khoai" land. There is no such classification. A low land containing morrum through which rainwater passes, becomes undulated due to flowing course of water. In the process of flow of water, the upper layer of the morrum gets washed out exposing the stones and laterite soil. The area on which this change takes place on the surface of the land is called "Khoai". This normally happens in low-lying land through which the rainwater passes.

24. In the additional affidavit filed by SSDA, it is contended that the Land Use Map for the SSDA area, a deer park area where the construction by the respondent No. 6 is coming up is shown as residential/vacant area and not "khoai" land. It is not "Khoai" land but residential area. All lands in Santiniketan are not "Khoai" lands.

25. In the affidavit-in-opposition filed by the respondent No. 6, it is contended that the land is not "Khoai" land. In the land record, land is not recorded as "Khoai". No Objection Certificate had been issued on 28.2.2012 by S.S.D.A. D.L. & L.R.O. has allowed the conversion of "Danga" to "Homestead" on 8.1.2013

under sub section 2 of section 4C of the Act of 1955. It is denied that though sanction has been taken for three storied building and there is actually construction of a four storied building. The road level is over 12 feet above "Khoai". It was not a buffer zone of the sanctuary where the building has been constructed. Old age home has also been constructed by the SSDA, adjacent to the Ballavpur Wild Life Sanctuary of the Forest Department. Thus, it cannot be said to be a buffer zone. Other facts have also been denied.

26. The respondent No. 6 has filed exception to the Report of the District Magistrate, wherein reliance has been placed upon Rule 19 of the Rules of 2004. It is contended that permissions from Gram Panchayat and Zila Parishad have been duly obtained and under the amended Rules of 2004. Entire file of the plan and documents was submitted to the Birbhum Zilla Parishad for vetting of the plan and documents. Thereafter pursuant to the communication dated 3.11.2011 of Birbhum Zilla Parishad, Pradhan of Ruppur Gram Panchayat vide Memo dated 5.11.2011 had sent the sanctioned plan duly vetted by the District Engineer, Birbhum Zilla Parishad. It is wrong to contend that conversion of the land used from Danga to Bastu was not done properly. Ruppur Gram Panchayat issued N.O.C. on 29.12.2009 on the application made by the respondent No. 6 to issue N.O.C. On 31.12.2009 the respondent No. 6 had applied for conversion of classification of land with D.L. & L.R.O., Bolpur as per the application Annexure "R8" to the affidavit. Application was also filed before the SSDA for issuing N.O.C. for conversion of land from Danga to Bastu, which was accorded and N.O.C. was issued by the SSDA on 28.2.2012. Land use in development plan is shown as residential. The order was passed under the Act of 1955 by D.L. & L.R.O. on 09.11.2013. It is denied that the allegation that one additional floor has been constructed is incorrect. Valuation of the property is Rupee One Crore Eighty Lakhs. Building had duly been completed by 31.7.2013. There is no definition of "Khoai" land in the Act of 1955. In the record of rights the land had been recorded as Danga, i.e. highly arable fertile agricultural land. The Respondent No. 6 has also executed deed of conveyance for some flats and some agreements have also been duly entered into.

27. The respondent No. 4, Visva Bharati University, has filed reply in the form of exception to the report of the District Magistrate, Birbhum. It is contended that simpliciter lodging of criminal complaint against the Directors and/or Proprietors is not going to solve the problem. The District Administration and SSDA are required to demolish the subject construction as it has been raised unauthorisedly and in illegal manner, contiguous to Visva-Bharati Campus as well as the same has been raised on khoai lands and such construction is not permissible in view of the high level meeting dated 31.12.2010 held at Bolpur Sub-Divisional Officer and the meetings dated 25.2.2012 and 16.5.2012 filed collectively as annexure "R1" to the Reply.

28. It is further contended by Visva-Bharati that Urban Development Department of Government of West Bengal had issued Notification on 25th January, 2010.

The same has been issued as per agreement of SSDA u/s 31(4)(a)(ii) of the Act of 1979 expressed vide communication dated 26.10.2009. It has been declared that mouzas as mentioned in schedule within the jurisdiction of SSDA required preservation and conservation for historical, architectural, environmental and ecological purposes. It was further mentioned that in accordance with the spirit of such preservation the SSDA shall prepare a detailed development plan to carry out such amendment of the Development Plan and carry out such changes in the Development Plan as may be necessitated due to notification in terms of the provisions of the Act of 1979. For this purpose SSDA may take help of expert body and duly take note of the proposals formulated by such expert bodies in the shape of the proposed management plan. Mouza "Ballavpur" where plot is situated is also included in the aforesaid area for the purpose of conservation of historical, architectural, environmental and ecological purposes and accordingly SSDA was required to carry out amendment of the development plan already prepared by it under the Act of 1979.

29. It is further the stand of the Visva-Bharati University that the land is undoubtedly "khoai" land and the State of West Bengal may be asked to abide by the resolution arrived at on 4th August, 2012 to decide the exact peripheral limits of the "buffer zone" in and around Visva-Bharati Campus, which has not yet been done.

30. It is further contended by Visva-Bharati University that construction site is within 500 metres of the heritage ashram of Santiniketan which the Government of India, Government of West Bengal and Visva-Bharati are in the process of preservation. In fact Government of India has already applied to the UNESCO for inscription of the Santiniketan Ashram as "World Heritage Site". The application is under active consideration of UNESCO.

31. It is further contended by Visva-Bharati University that the Report of the District Magistrate does not say anything about the long-term solution to this problem. The District Administration should direct SSDA to carry out necessary changes and modification in its Development Plan in terms of the Government Notification dated 25.1.2010 and setup a separate Management Committee consisting of experts and stake holders to oversee the aspect of preservation of the notified area. The Registrar had informed the District Magistrate and SSDA to stop unauthorized construction around the sanctuary upon receipt of complaint from the Deer Park Abasik Samity. Communication, annexure "R5" was sent. The Government has totally shaken off its responsibility and shifted the entire burden on SSDA. Construction which is the subject matter of the petition which is made on a plot which is contiguous to the Visva-Bharati Campus and it is within 150 metres of Siksha-Bhavana (Science Faculty) educational area of Visva-Bharati. In fact the site does not have direct access to the P.W.D. Road. It cannot be reached except through the Visva-Bharati Campus in the Siksha-Bhavana area and there is no drainage or waste disposal system in the area. The land falls within the territorial limits of Visva-Bharati as declared in the Visva-Bharati Act, 1951. The

land is "Khoai" land. The site being-contiguous to the wildlife sanctuary will destroy "Khoai" land and the natural habitat of small animals. Interest of Visva-Bharati and Santiniketan will be seriously hampered due to this construction project in question.

32. Additional affidavit has been filed by the respondent No. 6 in view of the exception filed by the respondent No. 4. It is reiterated that construction plan was duly sanctioned by the competent authority of Gram Panchayat and it was vetted by the Zila Parishad. Communication dated 26.10.2009 of SSDA cannot be treated as declaration. As such, the same has no binding effect or historical impact. It is denied that construction is contiguous to Visva-Bharati Campus. Other facts have also been denied.

33. The petitioners have filed rejoinder also reiterating the facts mentioned in the petition and denying the facts mentioned by the respondent Nos. 3 and 6.

34. Shri Kashi Kanta Moitra, learned Senior Counsel appearing on behalf of the petitioners has submitted that construction in question is illegal. It was submitted that Gram Panchayat or Zilla Parishad was not the competent authority to grant permission to raise the construction and Panchayat Samity was the competent authority which has not accorded any permission to raise the construction in the area in question. It was also submitted that land in question has developed as "Khoai" which is rare product of the nature though the land was recorded as "Danga" and at the time when permission for construction was granted by Gram Panchayat or Zilla Parishad, there was no conversion of Danga land to Bastu land. On Danga land permission to raise construction could not have been granted. It was also submitted that permission to raise the construction was granted by Gram Panchayat on 05.11.2011, whereas NOC has been granted by the S.S.D.A. in February, 2012 and D.L. & L.R.O. has ordered the conversion of the land in January, 2013. Before conversion of the land, construction had been raised which was wholly unauthorized and that too based on permission accorded by incompetent authority. It was also submitted that the sanction granted was illegal and void. It was further submitted that in view of the decision of the Apex Court with respect to Santiniketan itself in the case of Sushanta Tagore (supra), the construction is wholly unauthorized and the sanction granted was contemptuous to the directions issued by the Hon"ble Supreme Court to S.S.D.A. and other authorities. They have not taken care to apply or refer to the decision of the Hon"ble Supreme Court in which "Khoai" land has been ordered to be preserved in Santiniketan and it has been ordered that there shall be no further construction by way of multi storeyed buildings in the area of Santiniketan. Learned counsel has also submitted that the land on which construction has been raised is not only 70 meters away from the wild life sanctuary but is in the deer park of Santiniketan which is adjacent to the wild life sanctuary at Ballavpur. For Ballavpur Sanctuary notification was issued under the provisions of Wild Life (Protection) Act, 1972 in July 1977. It was also submitted by the learned Senior Counsel that in view of the fact that under the Act of 1979, Notification No. 4655-

For. Dated 11.07.1977 (Annexure R/2) has been issued by the State Government notifying the area i.e. Mouja Ballavpur within the jurisdiction of S.S.D.A. requiring preservation and conservation for the purpose of protecting, propagating and developing wild lives or its environment, no permission to raise the construction could have been granted. It was also submitted that there is no approach road available to reach the building in question, which has been illegally raised. The ingress and egress is from the area of Visva Bharati campus there is no direct access to the P.W.D. road, the building cannot be stretched through Visva Bharati campus in Siksha Bhavan, Science Departments of the University and even closer to boundary of Visva Bharati. It was also submitted by the learned Senior Counsel that unauthorized construction around wild life sanctuary is not permissible. He has also submitted that the District Magistrate as well as Pollution Control Board have opined that this is "Khoai" land on which the construction has been raised. It was also submitted that the State Government, considering the fact that it is to be declared as World Heritage has formed a State Level Committee under the Chairmanship of Chief Secretary vide Notification dated 18th January, 2011 Annexure R/4 filed along with affidavit-in-opposition filed by respondent No. 4. Permission has not been obtained from the aforesaid Committee to raise the construction in question.

35. It was further submitted by the learned Senior Counsel appearing on behalf of the petitioners that it was necessary to bring the changes in the Development Plan prepared by the S.S.D.A. in view of the Notification dated 25th January, 2010 in which direction was issued to the S.S.D.A. to carry out the amendments in detail as may be necessitated in terms of the provisions of the Act of 1979. Learned Senior Counsel has also referred to various resolutions filed by the respondent No. 4 in which it was decided to work out the buffer zone around the Wild Life Sanctuary, Visva Bharati University Campus. These aspects have not been taken care of in spite of the fact that members of the S.S.D.A. as well as Panchayat attended various meetings of which resolutions have been filed collectively as Annexure R/1 by Visva Bharati University. They have, in fact violated these notifications, resolutions and have acted wholly unauthorisedly. S.S.D.A. as well as D.L. & L.R.O., the Gram Panchayat/Zilla Parishad have acted without jurisdiction and in flagrant violation of the provision of law the actual action is juxtaposed to resolutions and what they are required to do as per the mandate of the Hon"ble Supreme Court in the case of Sushanta Tagore (supra) and other provisions of law have been conveniently ignored while illegally giving permission to build.

36. The learned Senior Counsel submitted that respondent authorities such as S.S.D.A., Panchayat and local bodies have failed to take steps with vigilance to protect the environment and ambience of Visva Bharati which is a unique University in the world and Mouza is declared heritage as per the notification and is required to be preserved and protected for adequate ecological, fauna and flora, geomorphological, natural or geological significance. It was also submitted that various resolutions indicate that there are various encroachments in the

area of the University and the respondent authorities have failed to take care of such encroachments. They have not been able to remove the rank encroachers also from the area of Visva Bharati University.

37. The learned Senior Counsel has referred to certain extractions from the works of Rabindra Nath Tagore and submitted that action is against his dream and he has submitted that even the Nobel Prize which was given to the laureate has been stolen. Now the remaining asset, namely, the soil of Shantiniketan, which cannot be stolen at least can be preserved. Shantiniketan is an international asset which is required to be preserved and there is total failure on the part of the respondents to act on the basis of precautionary principle to preserve environmental balance, flora and fauna. The action is in flagrant violation of the constitutional imperatives including the duty enjoined under Article 51A of the Constitution of India.

38. Mr. Ashok Banerjee, learned Government Pleader, appearing on behalf of the District Magistrate and the State has submitted that construction raised is wholly unauthorized and illegal. Permission could only be accorded by Panchayat Samity, no application was filed to Panchayat Samity. The land in question had been converted into "Khoai" land though the same was recorded as Danga land. The conversion order passed by the D.L. & L.R.O. converting land from Danga to Bastu is illegal. Such "Khoai" land could not have been ordered to be converted. Issuance of No Objection Certificate by the S.S.D.A. is also illegal. First Information Report has been lodged at the concerned Police Station as per the directives issued by the District Magistrate for raising illegal construction of the building in question.

39. Shri N.C. Bihani, learned counsel, appearing on behalf of West Bengal Pollution Control Board has submitted that the area in question has been formed into "Khoai" land which is a rare gift of nature. Other buildings have also come up which are also objectionable. The area is located just 70 meters away from the Wild Life Sanctuary. Wild Life Sanctuary was notified under the Act of 1972 on 11th July, 1977. Earlier a report was submitted by Pollution Control Board before the Hon'ble Supreme Court which has to be taken into consideration. It is not environmentally sound to permit any kind of construction in the area in question as the area is required to be preserved and protected considering the importance of "Santiniketan and Visva Bharati" which are rare assets. The construction raised is illegal and is required to be dismantled.

40. Sm. Sampa Sarkar, learned counsel, appearing on behalf of the Visva Bharati University has submitted that land in question has been formed as "Khoai" land. In view of the Notification dated 25th January, 2010, construction could not have been permitted to be raised and NOC could not have been issued by the S.S.D.A. Buffer Zone is required to be specified around the Visva Bharati campus, which has not been done as yet. The heritage Ashram of Santiniketan is likely to be declared world heritage site by the UNESCO and a Committee has been formed under the Chairmanship of Chief Secretary as apparent from Annexure R/4.

Construction is unauthorised which is around Sanctuary, site does not have direct access to the P.W.D. road. She has submitted that the ingress and egress to the building is through the area of Visva Bharati Campus in the Siksha Bhavan Science Faculty area which is not permissible. The construction raised on the land is destroying the "Khoai" land and habitat of small animals and interest of Visva Bharati and Santiniketan is seriously jeopardized. The area is within 500 meters from the heritage Ashram. Thus, the construction raised is wholly impermissible and without any authority. There are other similar encroachments which have been made and appropriate directions may be issued to the concerned authorities not to permit any construction and to remove the encroachments as decided by them in various meetings of which resolutions have been filed collectively (Annexure R/1) along with its reply by respondent No. 4.

41. Shri Kishor Datta, learned counsel, appearing on behalf of the respondent No. 3 has submitted that construction has been raised in accordance with the sanction granted by the competent authority i.e. Gram Panchayat and considering the area of construction Zilla Parishad had vetted the plan, which has been communicated by the Pradhan of Gram Panchayat. Thus, there is no illegality in the construction which has been raised. He further submitted that S.S.D.A. had issued NOC which was not required to be issued as conversion has been ordered by D.L. & L.R.O. It was also submitted by Shri Datta that the land has been ear marked as residential area in development plan. Thus, there is no violation of the same.

42. Shri Saktinath Mukherjee, learned Senior Counsel, appearing on behalf of the respondent No. 6 with his usual skill and flair has tried to put up a bold front contending that since there is a Development Plan prepared by the S.S.D.A. sometime in the year 2000, the area in question being shown as residential area, the same has to prevail. His other thrust was on the fact that land had been recorded since time immemorial as Danga land, which is highly arable agricultural land. It has been ordered to be converted into Bastu land. Faced with the situation that conversion order has been passed in 2013, whereas permission has been accorded by Gram Panchayat/Zilla Parishad on 05.11.2011, learned counsel submitted that no such conversion was necessary in view of the fact that in the Development Plan the area is preserved for residential purposes. Thus, proceeding u/s 4C of the Act of 1955 was superfluous. It was also submitted by the Senior Counsel that in view of the provisions contained in sections 23 read with section 114 of the West Bengal Panchayat Act, 1973 and the Rules 17, 27, 28 and 29 the permission to raise construction is not illegal. When the court made query with respect to the provisions of section 114A of the West Bengal Panchayat Act learned Senior Counsel submitted that no specification has been prescribed by Panchayat Samity, as such, provisions contained in section 114A cannot be said to be operative and there has to be preparation of plan under the provisions contained in section 114A and in any view of the matter Rule 28 is repugnant to the provisions contained in sections 23 of the Act and Panchayat Samity cannot deal with such proposals as it is for the Gram Panchayat to deal

with such matters as provided in section 23.

43. It was also submitted by the learned Senior Counsel for Respondent No. 6 that notification issued by the State Government in 1997 cannot be said to be in accordance with the provisions of the Act of 1979. Thus, the construction activity cannot be set at naught by applying the provisions of the Act of 1979. Permission for construction had been duly accorded and the conversion of the land has also been ordered by the competent authority. There is no violation of the decision of the Hon'ble Supreme Court in *Sushanta Tagore v. Union of India* (supra). The land in question is not "Khoai" land since it was recorded as "Danga" land and there is no prohibition to raise the construction in the area in question. He has relied upon the decision in the case of *State of Rajasthan and Others Vs. Basant Nahata*,

44. First we deal with the few facts which are not disputed one. It is not disputed that heritage Ashram of Santiniketan is located 500 meters away from the area in question. It was also not disputed before us that the area in question is a "Deer Park" adjacent to the wild life sanctuary. It was also not disputed before us that the Mouza Ballavpur where the construction had been raised had been declared, vide notification dated 25.1.2010 to be an area which require preservation and conservation for historical, architectural, environmental and ecological purposes under the Act of 1979. It was also not disputed before us that there is a directive issued to SSDA to prepare a development plan and to carry out amendments of the development plan and carry out changes in the development plan as may be necessitated in terms of the provisions of Act of 1979.

45. It was also not disputed that Apex Advisory Committee has been constituted vide notification dated 18.1.2011 headed by the Chief Secretary, Government of West Bengal. The said Committee has been constituted considering the important component of World Heritage Site to prepare a comprehensive site management plan. UNESCO/WHO has been assured that a proper site management plan will be put in place soon and hence, the aforesaid notification was issued as Government of India has recommended the inscription of Santiniketan core area as a world heritage site to UNESCO. The most important issue for UNESCO is maintenance of Outstanding Universal Value of the site. This can be achieved by evolving a proper strategy for maintenance of the ambience of Santiniketan defined by a harmonious balance of nature and innovative human endeavour. It was also mentioned in the notification that the fast pace of unplanned urbanisation and development activities pose a challenge to the authenticity and integrity of the original landscape and distinctive cultural setting of the heritage site of Santiniketan. The problem has been compounded by the existence of multiple authorities. Accordingly Apex Advisory Committee has been constituted with the following terms of reference:

(1) To coordinate initiatives centering around the Site Management Plan.

(2) To create an appropriate plan where all policy issues relating to Site Management Plan can be discussed keeping in view the central question of maintenance of the original character of Santiniketan core areas.

(3) To issue advisories to the University Management, planning authorities and local bodies on issues relating to the management of site and enter into a mutually agreed working arrangement to ensure that the ambience of the Santiniketan core area is not compromised.

(4) To work towards framing of a comprehensive legislation in consultation with all stakeholders for safe keeping of the heritage components of Santiniketan and its surroundings.

46. It was also not disputed before us that various resolutions have been passed and the copy of which have been filed collectively as Annexure R-1 by Respondent No. 4 along with the exception of the report of District Magistrate. The resolution dated 13.12.2010 passed in the presence of various authorities and members including that of SSDA, Municipality, P.W.D., etc. indicates that there is indiscriminate construction of commercial housing and market complex adjacent to Ashram area. Secondly, unauthorized use of the campus road by commercial vehicles. The grievance was also considered to stop heavy vehicles through campus area of Visva Bharati and to restrict multi-storied housing and commercial complexes. It was also opined that indiscriminate use of campus area caused serious damage to the environments of the campus area as well as it affects the safety and security of the students of Visva Bharati. The decision of *Sushanta Tagore v. Union of India* (supra), came up for consideration. It was observed that instructions and directions of the Hon'ble Supreme Court are required to be scrupulously observed. It was assured by the Vice Chairman of the Bolpur Municipality that they will not take up any such project and grant any permission which may affect to the environment and sanctity of Visva Bharati. Various other decisions were taken. Decision Nos. 2 and 3 are to the effect that for removal of encroachment from Visva Bharati area and adjacent P.W.D. road, the rapid actions should be taken in accordance with law. It was also decided that for construction of any commercial campus, multi-storied building, market, hotel etc. adjacent to Visva Bharati campus should be restricted and to be governed as per the decision of the Hon'ble Supreme Court and SSDA, Government Offices, Municipality, Panchayat Samity and Gram Panchayat to follow the same scrupulously. Following are the relevant resolutions taken in the meeting dated 13.12.2010:

2. For removal of encroachment from Visva-Bharati area and adjacent P.W.D. road, rapid action should have to be taken as per existing rule.

3. For construction of any commercial campus, multi storied building, market, hotel etc. adjacent to Visva-Bharati campus should be restricted and to be governed as per rules. In this regard the Judgment of the Hon'ble Supreme Court of India have to be adhered by the concerned authorities like SSDA,

Government Offices, Bolpur Municipality, Bolpur Sriniketan Panchayat Samiti and Ruppur Gram Panchayat.

47. It was also resolved that since the cultural heritage and its ambience of Santiniketan is a matter of proud, the same is required to be protected and everybody should extent their hands altogether.

48. Yet another resolution dated 31.12.2010 has been placed on record, A meeting was held in connection with the issue relating to the construction of commercial housing complexes in plots adjacent to Visva Bharati campus. The meeting was attended by the authorities of Municipalities, SSDA as well as Panchayat Samity. The alleged illegal unplanned construction of commercial housing complex adjacent to Visva Bharati campus came up for consideration in the meeting and it was decided that if the erection of the building alluded to is illegal, then the local body, District Magistrate and Superintendent of Police would forthwith stop the construction. If any local body is in the process of initiating permissions for any construction affecting the ambience of Ashram campus, then the process would be immediately halted till more intensive and broad based examinations are conducted to see whether all the paradigms that need to be examined are being done. In case, any building permission has meanwhile been issued, then the permit may have to be re-examined. It was also mentioned that the parameters of the Management Plan for Santiniketan as is being evolved by the Archeological Survey of India and more so while Santiniketan is on its way to be processed for being declared as the World Heritage Site. It was also mentioned that the issues relating to the interfaces between core area and buffer area, no mans land as well as the review of the existing LUDCP and other locally applicable norms and guidelines and the questions of physical connectivity may be examined by an Apex Advisory Committee formed vide notification dated 18th January, 2011 under the office of the Chief Secretary.

49. Yet another minutes of the meeting dated 25.2.2011 of the Apex Advisory Committee which reflects that the core area consisted of two components (a) in Sriniketan area and (b) in Santiniketan. It further indicates that the buffer zone is a zone around the core area required for protecting the core area. A joint survey by SSDA and Visva Bharati for facilitating actual mapping for assessing number of illegal constructions within and outside 500 meters of core area and also for ascertaining whether the Visva Bharati core area falls within Bolpur Municipality or in planning authority area of SSDA was required to be undertaken. It expressed concern over the prospect of coming up of a multi storied structure at Jamtala behind Darshan Bhaban. It was also mentioned that the management plan is being prepared by ASI. It was resolved:

(1) A Committee under the DM, Birbhum would be formed with representatives of Visva Bharati, Bolpur Municipality, SSDA, ASI, concerned Panchayat/Panchayat Samity and technical representatives of UD and MA with the following tasks:-

(a) to identify/demarcate the core area and buffer zone;

(b) to facilitate survey for identification of plots belonging to V/V/Municipality/SSDA with the assistance from the ASI and consultant of V/V;

(c) to prepare the self imposed code of conduct (MoA) for administration of core area and buffer zone;

(d) to take initiative for inclusion of the said code of conduct in the LUDCP of the area concerned;

50. Yet another minutes of the meeting of the Apex Advisory Committee held on 16.5.2012 with regard to the problems of mushrooming of commercial housing in plots contiguous to core Ashrama and other areas of Visva Bharati campus mostly in Mouza-faced by Visva Bharati has been placed on record. It was pointed out that the plots do not have access to proper municipal or public roads. Promoters are using the narrow campus roads of Visva Bharati to get sanction from the Municipality and to carry construction materials. Safety and security of Pathnabhavana school students are being endangered and there are instances of accidents and other security problems. It was also decided that the District Magistrate and Superintendent of Police would be well advised to arrange to demolish unauthorised buildings and illegal construction adjacent to Panchayat areas and the District Magistrate should specifically communicate to the Municipality that they should not sanction any building plan in the areas contiguous to Visva Bharati campus and in the buffer zones without specific no objection from SSDA and should not grant any NOC without consulting the Apex Advisory Committee formed by Visva Bharati within the area notified on 25.1.2010 under the Act of 1979. The problem of encroachment in campus was also came up for consideration. It was decided that the District Magistrate and the Superintendent of Police will look into the matter. In case, rehabilitation is required for old settlers, District Magistrate may evolve suitable scheme in line with Government Policies.

51. The aforesaid resolutions speak what the authorities are required to do in order to preserve and protect the heritage site of immense international importance. However, the action which has been challenged is contrary to what has been resolved and mandated as per law. It passes comprehension how the officers could have acted in the manner in which they have done as projected in the instant case to which we will refer later on.

52. First, we want to project the mandates issued by the Hon''ble Supreme Court with respect to the same area in question in a matter which traveled to the Hon''ble Supreme Court in *Sushanta Tagore & Ors. v. Union of India & Ors.* (supra). Though the Apex Court did not interfere with the construction which had been raised in the peculiar facts but at the same time had issued various directions which were binding upon the various authorities while dealing with such a matter of raising construction of a large multi storied complex in the area in question. Before the Apex Court, the same area came up for consideration, which is known as "Deer Park Area". The Apex Court has considered the

importance of Visva Bharati University conceived and established by Rabindra Nath Tagore, the great poet, story writer, song composer, playwright, essayist, painter, Educationist and Nobel Laureate on 23.12.1921. It has also emphasized that environmental ambience has to be maintained in consonance with the ideals of Tagore and for which the same was established. Considering public interest litigation which was filed in order to prevent continuing process of defacement of the ambience and environment which was destroying the very purpose for which Visva Bharati was conceived and founded by Rabindra Nath Tagore, the concept of preservation of area known as "Khoai" also came up for consideration before the Hon"ble Supreme Court. The Apex Court has observed that "khoai" being land created in the natural process through running rain water for millennia which is a rare natural phenomenon and which, if destroyed, cannot be restored even with the help of science and, thus, preservation was required.

53. The Apex Court considered the report of the West Bengal Pollution Control Board. The Pollution Control Board with respect to the area in question has emphasised the importance of "khoai" land as people visiting Santiniketan enjoy "khoai" by seeing in different climatic and scenic conditions. It was also pointed out that there are increasing constructional activity in Sriniketan-Santiniketan area may cause serious disruption in natural drainage system. As Santiniketan is getting developed as tourist place, it is essential to preserve the natural beauty and heritage which people like to enjoy. Urbanization will have impact on ambient air quality unless problem-mitigation measures are taken properly. The suspended particulate matters in ambient air at Sonar Torea area are below maximum possible limit but the same near Pearson Memorial Hospital were more than the permissible limit even in the month of December. It was also suggested by the Pollution Control Board that there must be certain changes in the "land use pattern" resulting in disappearance of "khoai" landscape from certain places. SSDA must look into this aspect while planning for development of area keeping changes of "khoai" land formation at minimal. It was suggested by Pollution Control Board in 2005 that no more housing projects be undertaken until SSDA's perspective plan 2025 including Visva Bharati's special requirement was approved. To ensure minimal damage to the remaining "khoai" so as to preserve its natural beauty, heritage and natural drainage system, a satellite township be built at a suitable distance from Visva Bharati area. The Apex Court in the backdrop of the aforesaid report, considered the importance of Visva Bharati, the purpose for which it has been created and laid down that if tradition and special features of Visva Bharati are not preserved, the very purpose of the enactment would be defeated. It has not been denied or disputed that even now Visva Bharati organize classes in open areas and also on "khoai" lands, particularly, drawing and painting classes. It was emphasised that changes have taken place everywhere in India but Santiniketan should maintain the tradition and special features of Visva Bharati in terms of the statutory scheme. The observation of the High Court has been disapproved that building activity in the area would not disturb the ecology. The Apex Court has disapproved observation of the High

Court that it cannot be monitored in the practical world and change of topography of Santiniketan in the canal front, no public interest calling for restraint on such a change is warranted.

54. It was further emphasised by Apex Court in Sushanta Tagore's case that the West Bengal Pollution Control Board is a statutory body. The environment impact assessment in terms of provisions of the laws governing ecology of the area is imperative and directions issued by Pollution Control Board are binding upon the State as well as SSDA. If any construction is carried out on the "khoai", it will destroy its unique natural and cultural heritage and all constructional activities must abide by the same. The Apex Court has observed that ecological balance has to be maintained keeping in view the provisions of directive principles of State policy and Article 21 of the Constitution and the provisions of Article 51A(g) of the Constitution which prescribes the duty of every citizen of India in order to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures. The Apex Court adversely commented upon the construction of huge residential and commercial complexes. The land plan under the Act of 1979 must also take care of the provisions of the other statutes enacted therefore and particularly those for protection and preservation of ecology and environment. The SSDA was directed to keep in mind the provisions of the Act, the object and purpose for which it has been enacted and the report of the West Bengal Pollution Control Board. Ecology of the area was ordered to be preserved and merely because certain buildings have come up in illegal manner cannot be a good ground for allowing other constructional activities to come up which would be in violation of the provisions of the Act. Illegal encroachment, if any, may be removed in accordance with law. Though it is not necessary for a builder to apply to the University for seeking its permission but the local self government which is responsible therefore must take into consideration the salutary principles laid down in the Pollution Control Laws as well as the Act. The land use and future planning of Santiniketan must be done in such a manner so that the changes be brought about which would not be beyond the recognition of the poet as also the provisions of the Act. Again SSDA was directed to distinguish itself from the other development authorities. It has an extra burden to shoulder. It has to consider the environmental impact assessment made by the Pollution Control Board and cannot ignore it.

The Apex Court has laid down thus:

26. If by reason of any activity, the tradition and special features of Visva-Bharati are not preserved, the very purpose of the enactment would be defeated. It has not been denied or disputed that even now Visva-Bharati organises classes in open air and also on Khoai lands, particularly, drawing and painting classes.

27. Indisputably, changes are taking place everywhere in India but Santiniketan should maintain the tradition and special features of Visva-Bharati in terms of the statutory scheme.

29. The Division Bench of the High Court, in our opinion, was not correct in holding that in the event the building activity in the territorial area comprising Santiniketan as specified in the Act was to take place in accordance with the spirit and ideas of Rabindranath Tagore, such activity cannot be monitored in the practical world and, therefore, would constitute illegal and impractical way of thought and furthermore although the House Complex Project of Respondent 10 would change the topography of Santiniketan in the canal front, there was no public interest calling for restraint of such a change.

30. The West Bengal Pollution Control Board is a statutory body. The environmental impact assessment in terms of the provisions of the laws governing ecology of the area is imperative. The Pollution Control Board which has statutory duties to perform had issued certain directions for preservation and conservation for cultural, historical, archaeological, environmental and ecological purposes. Such directions are binding on the State as well as SSDA. If any construction is carried out on the Khoai, the same indisputably will destroy its unique natural and cultural heritage, as opined by the Board, and, thus, all constructional activities must abide by the same.

32. It may be true that the appellants herein have their own houses within 3000 acres of land but they have been residing therefore a long time. What is being objected to by them is constructions of huge residential and commercial complexes which even according to the High Court would not only change the topography but also would change the place almost beyond the recognition of the poet.

33. It may be true that the development of a town is the job of the Town Planning Authority but the same should conform to the requirements of law. Development must be sustainable in nature. A land use plan should be prepared not only having regard to the provisions contained in the 1979 Act and the Rules and Regulations framed thereunder but also the provisions of other statutes enacted therefore and in particular those for protection and preservation of ecology and environment.

34. As Visva-Bharati has the unique distinction of being not only a university of national importance but also a unitary one, SSDA should be well advised to keep in mind the provisions of the Act, the object and purpose for which it has been enacted as also the report of the West Bengal Pollution Control Board. It is *sui generis*.

35. It is idle to compare Santiniketan with any other university. Truism is that Santiniketan has unique features. Its environmental ambience, thus, must be maintained. There is no other university which having regard to the purport and object of the Act, as would appear from the objects and reasons thereof can be compared with Visa-Bharati. Our attention has not been drawn to any other statute establishing any university which has such unique features as Visva-Bharati.

36. Only because some advantages would ensue to the people in general by reason of the proposed development, the same would not mean that the ecology of the place would be sacrificed. Only because some encroachments have been made and unauthorised buildings have been constructed, the same by itself cannot be a good ground for allowing other constructional activities to come up which would be in violation of the provisions of the Act. Illegal encroachments, if any, may be removed in accordance with law. It is trite law that there is no equality in illegality.

37. The Parliamentary Debates, some of which we have noticed hereinbefore, clearly go to show that the Act was enacted with particular objectives in view. Such statutory objects could not have been given a go-by. It is not suggested that Santiniketan should remain as it was in 1921 but it cannot be permitted to become full of concrete jungles and industrial hub. For carrying out further constructional activities, it may not be necessary for a builder to apply to the University for seeking its permission but the local self-government which is responsible therefore must take into consideration the salutary principles laid down in the pollution control laws as well as the Act. The land use and future planning of Santiniketan must be done in such a manner so that the changes be brought about which would not be beyond the recognition of the poet as also the provisions of the Act. SSDA in that sense must distinguish itself from the other development authorities. It has an extra burden to shoulder. It cannot shut its eyes to the provisions of the Act and the object and purport it seeks to achieve. It cannot ignore the environmental impact assessment made by the Board. It is one thing to say that SSDA may permit small constructions to be made by the owners of the land or additions or allow alterations to the existing building for residential purposes but it is another thing to say that it would not consider the effect of the changes which may be brought about by turning Santiniketan into a commercial and industrial hub.

41. Our attention has further been drawn by Mr. Sanghi that the house project of Bengal Peerless has already come into being. In that view of the matter, we do not intend to stop the construction activities which are being carried out by Respondent 10 but direct that in future SSDA must keep in mind the statutory provisions referred to hereinbefore as also the observations made by us herein.

55. Coming to the instant case when we gauge it in the perspective of directions issued by the Hon''ble Supreme Court in the case of Sushanta Tagore (supra), firstly we find it is the same area described as Deer Park where construction is being raised. SSDA while issuing N.O.C. has not at all consulted the Pollution Control Board. They have not taken into consideration the Notification dated 25th January, 2010 issued in Act of 1979. Nor it has consulted the Apex Advisory Committee constituted on 18th January, 2011. The Report submitted before the Apex Court by the Pollution Control Board in 2005 itself mentions that there should not be any constructional activity in the area in question. As per the decision of the Hon''ble Supreme Court in the case of Sushanta Tagore (supra),

report was binding upon the SSDA and Panchayat/Zilla Parishad and could not have given a go-bye to it. It is not in dispute that SSDA while issuing N.O.C. in February, 2012 has not at all considered the decision of the Hon'ble Supreme Court in Sushanta's case, neither the District Land & Land Reform Officer considered the decision of the said case while ordering the conversion of land in January, 2013. As per the Pollution Control Board, no such activity is permissible in the area. The land had formed by natural process into "Khoai" land though the land is classified as Danga land. The same is contiguous to wildlife sanctuary also, which is 70 metres away. The area is in Deer Park, thus, there is flagrant violation of the aforesaid directions issued by the Apex Court which were required to be observed while dealing with such N.O.C., conversion and the permission to raise construction.

56. Now we propose to take up the question with respect to the competence of Gram Panchayat/Zilla Parishad to accord permission to raise the construction. The same is illegal and void for various reasons.

57. Firstly it is uncontroverted fact that permission had been accorded on 5th November, 2011, whereas land had not been converted on aforesaid date from Danga to Bastu. N.O.C. had been issued by SSDA on 28th February, 2012 for proposed conversion of the plot at Mouza Ballavpur from Danga to Bastu and it is not also in dispute that the District Land 8B Land Reforms Officer has passed the order of conversions on 9th January, 2013.

58. It is also not in dispute that construction had been completed by the middle of 2012. On query being made to the learned Senior Counsel appearing on behalf of the respondent No. 6, it was stated that the structure of building had been constructed by the middle of 2012. By that time the land had not been ordered to be converted from Danga to Bastu. Thus, it is apparent that even before the conversion of the land, construction activity of the building had been undertaken which was clearly an unauthorised act. No such permission to raise building could have been granted before conversion of the land from Danga to Bastu. Danga land is not for the purpose of construction. Danga land is highly arable agricultural land. Thus, the permission granted by Gram Panchayat after being vetted by Zila Parishad on 5th November, 2011 was illegal and void. Before conversion of the land no such permission could have been accorded. A part from that Gram Panchayat was not competent to accord the sanction for the reasons to follow.

59. It was submitted by the learned Senior Counsel appearing on behalf of the respondent No. 6 that considering the provisions of sections 23, 94 and 114 of the West Bengal Panchayat Act, 1973 and Rules 17, 27, 28 and 29 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004, Gram Panchayat was the competent authority to grant sanction after the plan had been vetted by Zilla Parishad. We are unable to accept the submission raised by the learned Senior Counsel for various reasons.

60. No doubt section 23 of the Panchayat Act confers the power upon Gram Panchayat to control building operation. Section 23 lays down that no person shall erect any new structure or new building or make any addition to any structure or building in any area within the jurisdiction of a Gram Panchayat except with the previous permission in writing of the Gram Panchayat, provided that such permission shall be subject to the Rules. There are certain riders subject to which Panchayat has to act.

61. Section 94 of the Panchayat Act provides for establishment of "Panchayat Samiti" and its constitution. The same is a different larger representative body than Panchayat. "Panchayat Samiti" is consisting of Pradhans of the various Gram Panchayats within the block to be ex-officio members. There are other members also as provided in section 94 and they form a larger responsible body.

62. Section 114 of the Panchayat Act deals with vesting in Panchayat Samiti with certain powers. It was submitted by the learned Senior Counsel that no such power has been conferred upon Panchayat Samiti to deal with the matters pertaining to grant sanction to raise construction. However, the submission raised by the learned Senior Counsel ignores the provisions contained in section 114A of the Panchayat Act. The provision of section 114A of the Panchayat Act was inserted in the year 1991. It contains non-obstante clause in respect of the provisions contained in sections 23, 24 and 25 and authorises the State Government in the public interest to declare by notification, its intention to prepare and publish a Development Plan in respect of an area within jurisdiction of a Panchayat Samiti in accordance with such procedure as may be prescribed or in accordance with the provision of any other law for the time being in force and upon the issue of such notification, no new structure or new building shall be erected or constructed or no addition to any structure or building shall be made in such area except with the permission granted by the Panchayat Samiti or any person or persons as may be empowered in this behalf. It is not in dispute that there is a Development Plan for the area in question, which has been notified under the Act of 1979 (being a law for the time being in force) and hence, has to be treated as Development Plan for the purpose of section 114A.

63. Now we come to the scheme of the Rules. Rule 17 of the Rules of 2004 deals with the application to be filed in Form 4 to the concerned Gram Panchayat. The provision contained in Rule 27 of the Rules of 2004 deals with the manner of processing of an application. Rule 27 reads thus:

Rule 27(1) On presentation of an application under sub-rule (1) of rule 17, the Pradhan or the Upa-Pradhan or any other members authorised by the Gram Panchayat in this behalf, shall examine the right, title and interest of the applicant in respect of the land on which the structure or the building is proposed to be erected along with the building plan and the site plan, and, after such enquiry as may be considered necessary, shall within a period of thirty days from the date of receipt of the application, place it before the Gram Panchayat for granting or, as the case may be, refusing permission for the erection or

construction applied for.

64. Rule 28 of the Rules of 2004 deals with the construction of building or structure in Panchayat area under Development Authority is SSDA. It is not in dispute that the area in question was under the SSDA and the area falls within the Panchayat area. It is provided that in case the area falls under the Development plan published in terms of section 114A of the Act or under any Development Authority as defined under the Act of 1979 shall be subject to the provisions of any rule made or order or direction by the competent authority issued under any provision of the aforesaid Act and for such area, the first proviso to Rule 28 of the Rules of 2004 makes it clear that application has to be filed to Panchayat Samiti and not to Gram Panchayat. Rule 28 of the Rules of 2004 is as follows:

Rule 28.-Notwithstanding anything contained in these rules, any application made under sub-rule (1) of rule 17 pertaining to the area falling under any Development Plan published in terms of section 114A of the Act or under any Development Authority as defined in the West Bengal Town and Country (Planning and Development) Act, 1979 (West Ben. Act XIII of 1979) shall be subject to the provisions of any rule made or any order or direction of a competent authority issued under any of the aforesaid Acts, as may be applicable in this behalf:

Provided that an application, along with building plan, site plan, and other documents relating to construction of a new structure or building or making any addition or alteration of the existing structure or building in Panchayat area falling under any Development Authority shall be made in Form 4A to the Panchayat Samiti having jurisdiction for granting permission for such construction by the Panchayat Samiti or any authority, person or persons as may be empowered by the Panchayat Samiti in this behalf:

Provided further that an application for construction of a new structure or building or for making an addition to or alteration of the existing structure or building having a plinth area of more than 300 square metres with brick or concrete footing or a height of more than 6.5 metres shall be sent to the Zilla Parishad for vetting:

Provided also that the applications, which are required to be vetted by the Zilla Parishad shall be sent by the Panchayat Samiti within a period of thirty days from the date of such receipt of the application to the Zilla Parishad which shall return such application either with its vetting or objections, as the case may be, to the Panchayat Samiti within a period of thirty days from the date of its receipt for granting or refusing permission, as the case may be, for construction or addition or alternation as applied for.

65. A conjoint reading of the provisions contained in sections 23, 94, 114 and 114A of the Panchayat Act and Rules 17, 27 and 28 of the Rules of 2004 make it clear that when the area in question is governed by any authority under the Act

of 1979 and since it is not in dispute that SSDA is one of such authority under the Act of 1979, obviously the Development Plan prepared by the SSDA under the Act of 1979 which is a law for the time being in force, the notification of such Development Plan is relevant for the purposes of section 114A of the Panchayat Act and when such Development Plan is there-then the Panchayat would not be competent to deal with matters of sanction of buildings in such area and it has to be dealt with by a larger and different body, namely, Panchayat Samity constituted u/s 94 of the Panchayat Act which has to consider various aspects for grant of sanction.

66. The condition precedent for attracting section 114A of the Panchayat Act is the notification of a development plan for the area either under the said provision of law or any other law for the time being in force, that is, the Act of 1979 in the instant case. Such plan being in existence in the facts of the instant case, we are unable to accept the submission of the learned Senior Counsel that the said section is inoperative as specifications have not been notified by the Samity in terms thereof for grant of sanction. No such case however has been made out by respondent No. 6 in its pleadings. Nonetheless, we are of the opinion that notification of specifications for sanction is an exercise after power to grant sanction has vested in the Samity and not a condition precedent for vesting of such power in terms of section 114A of the Panchayat Act. Hence, such plea cannot be a valid ground to clothe the Panchayat with power to grant sanction in any area falling within a development area notified under the Act of 1979. Furthermore, the prayer for grant of sanction in the instant case was to be adjudged by the Samity in the light of the guidelines laid down by the Supreme Court in *Susanta Tagore* (supra) and the Government Notification dated 25.01.2010 dealing various Mouzas including Mouza-Ballavpur required preservation and conservation for historical, architectural, environmental & ecological purposes.

67. The Panchayat Samity has not been moved in the instant case which was required to consider the application for grant of sanction as per the procedure and provisions contained in Rule 28 of the Rules of 2004. The provision contained in Rule 28 of the Rules of 2004 cannot be said to be ultra vires and repugnant to the provisions contained in section 23 in any manner whatsoever. In view of the specific provision contained in section 114A read with Rule 28, the Gram Panchayat was not competent authority to deal with the application at all. It is trite law when law prescribes mode of doing a thing that has to be done in that manner only. Thus, the permission which had been accorded was illegal and void. Vetting of plan by engineer of Zila Parishad does not improve the case as sanction is a matter to be considered by Panchayat Samity.

68. It has also been submitted by Mr. Saktinath Mukherjee, learned Senior Advocate appearing on behalf of the respondent No. 6, that there was no necessity to obtain conversion for the development plan from the Sriniketan-Santiniketan Development Authority, in whose development plan the area has

been shown for the residential purposes.

69. We are of the opinion that when the land was admittedly recorded as Danga land, without its conversion to Bastu land the same could not have been used for raising building construction. As a matter of fact, the conversion permission was accorded on January 9, 2013, whereas the construction has already been made in illegal and unauthorised manner be made in the year 2012 on the basis of the illegal permission granted in the year 2011.

70. Coming to the next question with respect to the effect of declaration issued under the Act of 1979 by the State Government on 25th January, 2010, communication was sent by SSDA in terms of the provision contained in section 31(4)(a)(ii) of the Act of 1979 in which the SSDA has agreed for declaring various mouzas as mentioned in the schedule to the Notification within the jurisdiction of the area or SSDA required for preservation and conservation for historical, architectural, environmental and ecological purposes. Once the aforesaid Notification had been issued it was not permissible to undertake any kind of activities which was permitted in unfair manner by the Gram Panchayat. Apart from that, in the notification there was mandate upon the SSDA to modify its Development Plan and to carry out such changes in the Development Plan in terms of notification.

71. The Development Plan relied upon by the respondent No. 3, SSDA, which was prepared as stated at bar in 2000, necessitated changes in order to preserve Mouza Ballavpur for the purpose of conservation of historical, architectural, environmental and ecological purposes. Unfortunately SSDA has not undertaken the aforesaid exercise and it has ignored the mandate of the Notification under Act of 1979 and the various meetings referred to above, in which it was resolved that SSDA must carry out exercise of amending the Development Plan. It has not been done for the reasons best known to SSDA. Probably it would have been difficult to grant sanction and permission in case it carries out the mandate of the aforesaid Notification. Building activities appears to be more lucrative to SSDA than preservation of heritage of international importance. They are taking every step to shatter the dream of Tagore in which he wanted this great country to awake. They are taking every step in spite of being party to the various meetings in breach of what they resolved. At the same time they are violating not only the mandate of the Supreme Court, the provisions of the law and acting collusively in order to oblige the builders who are spoiling the entire edifice and fabric of Visva-Bharati and Santiniketan and the ideas for which it has been created by the great visionary and a noble laureate, namely, Tagore.

72. With respect to preservation of the area in question, Mr. Kashi Kanta Moitra, learned senior advocate appearing on behalf of the writ petitioners, has referred to the English Writings of Tagore, Volume 1, Poem 22 of the Lovers' Pride (Tagore's own translation), which is quoted as under:-

I SHALL GLADLY suffer the pride of culture to die out in my house, if only in

some fortunate future I am born a herd boy in the Brinda forest.

The herd boy who grazes his cattle sitting under the banyan tree, and idly weaves gunja flowers into garlands, who loves to splash and plunge in the Jamuna's cool deep stream.

He calls his companions to wake up when morning dawns, and all the houses in the lane hum with the sound of the chum, clouds of dust are raised by the cattle, the maidens come out in the courtyard to milk the kine.

As the shadows deepen under the tomal trees, and the dusk gathers on the river-banks; when the milkmaids, while crossing the turbulent water tremble with fear; and loud peacocks, with tails outspread, dance in the forest, he watches the summer clouds.

When the April night is sweet as a fresh-blown flower, he disappears in the forest with a peacock's plume in his hair; the swing ropes are twined with flowers on the branches; the south wind throbs with music, and the merry shepherd boys crowd on the banks of the blue river.

No, I will never be the leader, brothers, of this new age of new Bengal; I shall not trouble to light the lamp of culture for the benighted. If only I could be born, under the shady Ashoka groves, in some village of Brinda, where milk is churned by the maidens.

73. Rabindranath Tagore's dream was to build an abode of peace and learning in the lap of Nature. He conceived "Shantiniketan" as a unique experiment of Gurukul learning of Upanishadic and Oriental philosophy in the midst of nature. Espousing his deep apathy towards the creed of unbridled greed which had led the occidental civilisation to repeated wars, Tagore in his introduction to L.K. Elmhirst's book "The Robbery of the Soul" espoused:-

The temptation of an inordinately high level of living, which was once confined only to a small section of the community, becomes widespread. The blindness is sure to prove fatal to the civilization which puts no restraint upon the emulation of self indulgence. ("The Robbery of the Soil" in English Writings of Rabindranath Tagore, Vol III, 866).

Tagore further lamented,

When they had reduced the limited store of material in their immediate surroundings, they produced to wage various wars among their different sections, each wanting his own special allotment of the lion's share. In their scramble for the right of self-indulgence, they laughed at moral law and took it to be a sign of superiority to be ruthless in the satisfaction each of his own desire. They exhausted the water, cut down the trees, reduced the surface of the planet to a desert, riddled with enormous pits and made its interior a rifled pocket, emptied of its valuables. (870) ("The Robbery of the Soil" in English Writings of Rabindranath Tagore, Vol. III, 870).

74. In contrast to such mindless pursuit of materialism, Tagore proposed the ideology of Visva-Bharati as not a quest for wealth but one for happiness:-

We have started in India, in connection with Visva-Bharati, a kind of village work the mission of which is to retard this process of nice suicide... According to us the poverty problem is not so important. It is the problem of unhappiness that is the great problem. The search for wealth which is the synonym of the production and collection of things, can make use of men ruthlessly, can crush life out of the earth and for a time can flourish ("The Robbery of the Soil" in English Writings of Rabindranath Tagore, Vol. III, 871).

75. In our opinion, the brazen illegal acts of the promoters and the convenient collusion of the statutory authorities particularly SSDA has shattered the sylvan dream of Tagore and destroyed the "Abode of Peace" revisioned by the Great Bard into a nightmare of corporate avarice and filthy pursuit of material wealth.

76. Not only the mandate of the aforesaid Notification issued under Act of 1979 has been violated by grant of permission in the aforesaid illegal manner. Even before prayer for conversion of the land, permission to raise construction had been granted. On the other hand, meetings were held and various resolutions have been passed by the concerned bodies which were attended by the authorities of SSDA as well as Panchayat, but reality is that they violated the mandates of the resolution and constitutional imperatives as projected by the Hon'ble Supreme Court in the case of Sushanta Tagore (supra). As a matter of fact, they are required to work out buffer zone and no construction area. We have no iota of doubt that the building which has been constructed was wholly impermissible, alternatively, even if purported sanction had been accorded by the competent authority, construction on such land and area in question is illegal and unauthorized. Firstly, the land has been transformed to "Khoai" which is a rare gift of Nature. It is not recorded in the revenue records as "Khoai" land as admittedly, no such classification of land as "Khoai" but as per reports of the District Magistrate as well as Pollution Control Board, same is "Khoai" land. Fact is that "Danga" land has been converted into "Khoai" land and we have no hesitation to accept the report of the District Magistrate as well as the report of the Pollution Control Board in this regard. The District Magistrate in his report has pointed out that permission for construction of three storied building was applied for, but one extra floor has been added using the natural undulating topography of "khoai" land. The following is the observation made by the District Magistrate in its report:

Arsuday Projects & Infrastructure Pvt. Ltd. applied to Ruppur Gram Panchayat for construction of III storied building but from the field verification it appears that one extra floor has been added using the natural undulating topography of khoyai land. From the front view it appears as III storied building but from back view it can be seen as IV storied building. Photographs of building are enclosed as Annexure-V. Hence the construction of commercial housing complex by Arsuday Projects & Infrastructure Pvt. Ltd. is unauthorised and illegal.

77. From the report of District Magistrate it is apparent that the building is four storied. Photographs have been filed with the Report to prove the fact that khoai land has been used for raising construction by the builder, the respondent No. 6. Besides, District Magistrate has pointed out that construction is illegal and SSDA had issued N.O.C. in illegal manner. The District Magistrate has rightly mentioned that before conversion of the land, no permission to raise construction could have been granted as has been done in the instant case.

78. Even otherwise conversion was bad in law. We find from the Report submitted by the West Bengal Pollution Control Board that the adjacent area of the alleged site is low lying area formed by partial erosion of laterite soil and colloquially known as "khoai", as the Pollution Control Board had inspected after the construction has been raised. When the report of the Collector as well as the Pollution Control Board are read together, there is no room to doubt that "khoai" land has been used for the building. Whatever could be seen is apparent from the report of the Pollution Control Board that adjacent area is low lying area known as "khoai". In fact low lying area has been used in construction of four storied building as apparent from the report of the District Magistrate.

79. The Apex Court has laid down in *Sushanta Tagore* that on khoai land no constructional activities are permissible. Thus, the construction raised on khoai land is otherwise impermissible and liable to be demolished.

80. There is yet another flaw in the permission to raise construction. Vide notification dated January 18, 2011, considering the importance of Visva Bharati and Santiniketan, an Apex Advisory Committee under the chairmanship of the Chief Secretary, Government of West Bengal, has been constituted, which has conducted various meetings. The minutes of the same have been placed on record.

81. Considering the notification issued on January 18, 2011 and terms of reference, without consultation of such committee, the permission to raise construction cannot at all be accorded; neither the no objection certificate could be issued by SSDA nor the conversion of land can be granted by the District Land & Land Reforms Officer concerned. As apparent from the terms of reference of the said Apex Advisory Committee, the ambience of the Santiniketan core area is not to be compromised, the site management plan is to be prepared in consultation with the aforesaid Apex Advisory Committee. It is apparent from the minutes of the meeting, which have been filed, that in the meeting held on May 16, 2012 it was resolved that no building plan should be sanctioned and that in the first meeting dated February 25, 2011 it was resolved that there should not be any illegal construction within and outside 500 meters of core area. It is pertinent to mention that as heritage ashram is situated around 500 meters of the building in question.

82. Thus, the permission accorded is violative of resolution dated February 25, 2011. According to resolution dated February 25, 2011, it would be necessary to

identify or demarcate the "core area and buffer zone". The Archeological Survey of India was also required to give their assistance in the process of identification. It would also necessary to prepare the self-imposed code of conduct for administration of core area and buffer zone. It was further resolved that no construction would be permitted to be undertaken.

83. We find from the minutes of the meeting dated December 31, 2010 that the District Magistrate and the Superintendent of Police were directed to take steps for stopping the illegal construction being undertaken and that even if any permission had been given, it was required to be re-examined. It was resolved in the meeting held on December 31, 2010 thus the permission accorded by the Bolpur-Sriniketan Gram Panchayat in the month of November 2011, that is, after eleven (11) months of the said resolution, was in violation of the aforesaid resolution in which the representative of the panchayat was present. Thus, in view of the aforesaid resolution dated December 31, 2010, no such construction activity could have been permitted at all. It was misadventure on the part of the builder, Sriniketan-Santiniketan Development Authority as well as the gram panchayat to enter into the exercises. The minutes of the meeting dated December 31, 2010 referred to above also intend to restrict the construction of commercial multi storied building and commercial complexes.

84. It was resolved as far back as on December 13, 2010 that no such construction would be allowed in the area in question and that the committee is proud of cultural heritage of Santiniketan and its ambience. The committee is liable to protect the ashram environment and everybody should extend their hands altogether. But the builder, Sriniketan-Santiniketan Development Authority, Gram Panchayat and District Land & Land Reforms Officer actually joined hands to perpetrate the illegality and doing exactly the opposite to what they had resolved and what they were expected to do as per the scheme/law bearing in mind the importance of the area.

85. It is also apparent from the exception used by the Visva Bharati that the site in question does not have any direct access to the P.W.D. road, and cannot be reached except through the Siksha Bhavana (Science Faculty) area of Visva Bharati campus, and there is no drainage or waste disposal system in the area. The land is khoai land near to 70 meters of the wild life sanctuary and 500 meters distant of the heritage ashram.

86. There is a concept of sustainable development. Development cannot be made effecting adversely the ecology of the area. Though there is no direct access to the P.W.D. road, there is no doubt that considering the environmental aspects including the importance of khoai land and also that no ingress and egress is possible without passing through the Science Faculty of the University campus, the action taken is wholly unsustainable.

87. It was, therefore, incumbent to consider the effect of project on ecology of the area in question. In the case of Centre for Public Interest Litigation and

Others Vs. Union of India (UOI) and Others, , it has been observed that while distributing the natural resources, the State is bound to act in consonance with the principles of equality and public trust and ensure that no action is taken which may be detrimental to public interest. The Government is bound to protect environment, forest, air, water, coastal zones, etc. and is bound to act as guardian and trustee in relation to catchment area of the pond, lake or river. Considering the constitutional imperative of Articles 48, 48A, 51A(g) the Apex Court in M.C. Mehta Vs. Kamal Nath and Others, has evolved polluterpay-principle. In Fomento Resorts and Hotels Ltd. and Another Vs. Minguel Martins and Others, the Supreme Court has observed that it is duty caste upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes.

88. In the instant case, when we consider the importance of Santiniketan and Visva Bharati, which is unique in the world, the construction activity in question could not have been permitted to be undertaken by the authorities.

89. In Intellectuals Forum, Tirupathi Vs. State of A.P. and Others, it has been laid down that the Government is bound to protect historical tanks qua concept of sustainable development and public trust doctrine. Destruction of local ecological resources is not permissible. The principle of inter generational equity to be applied for protecting the natural resources has been emphasised.

90. In Jagpal Singh & Ors. v. State of Punjab & Ors., (Civil Appeal No. 1132 of 2011) decided on January 28, 2011, the Apex Court has laid down that the gram panchayat cannot regularise the illegalities and cannot permit construction on gram sabha land.

91. In M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others, , the Apex Court has ordered restoration of a park after demolition of a shopping complex constructed at the cost of over Rs. 100 crores.

92. In Friends Colony Development Committee Vs. State of Orissa and Others, , the Apex Court has observed that even where the law permits compounding of unsanctioned construction, such compounding should only be by way of an exception. When property is of importance of village common land, such orders cannot be passed.

93. In Hinch Lal Tiwari Vs. Kamala Devi and Others, , Apex Court has held that when the property is recorded as a pond, that must not be allowed to be allotted to anybody for construction of a house or any like purposes.

94. In the instant case, the land in question is of immense public importance. Considering the environmental, ambience and the international heritage, importance of Visva Bharati and Santiniketan, we find that the construction made for private gain in the land which has been converted to "khoai" a rare gift of nature, and/or in areas the inextricably connected to "Khoai", is wholly impermissible and violative of principles laid down by the Hon''ble Supreme Court

in the aforesaid decision of Susantha Tagore (supra). Private rights/interests have to give way to larger public interest.

95. Though the pronouncement of the judgment has been started in open Court on August 21, 2013, today, that is, on August 22, 2013, at the fag end of the judgment, Mr. Biswaroop Bhattacharya, learned advocate, appears along with Mr. Sirsanya Bandyopadhyay, learned Advocate, states without filing any application that he has instruction to appear on behalf of a person who has purchased a flat in the building in question.

96. In our view, as the intervenor had stepped into the shoes of the builder and as no application has been filed before the hearing was concluded and even now and as we have examined the case set up by the builders in detail, we feel it is not necessary for us to hear the intervenor as his case is the same as that of the builders. The prayer to defer judgment is rejected.

97. However, it will be open to the intervenor/purchaser to work out equities against the builders as we are going to order demolition of the building.

98. It is apparent that there were various illegal encroachments, which have been made in the area of Santiniketan and Visva Bharati, though there are resolutions that such structures have to be demolished in accordance with law, but no steps have been taken by the respondents.

99. Coming to yet another aspect, we find that the District Magistrate has ordered as the lodging of first information report against the builders for illegal construction by the builders and for taking steps against the Sriniketan-Santiniketan Development Authority and DLLRO. Though we appreciate report but we record the steps have to be taken to their logical conclusion implemented along with resolutions in true spirit and not allowed to remain as mere lip service to the cause of preservation of ecology and heritage.

100. Since we find flagrant violation of the decision of the Hon''ble Supreme Court in Sushanta Tagore's case, we propose to initiate action against the responsible officer of Sriniketan-Santiniketan Development Authority, who had issued the no objection, and the District Land & Land Reforms Officer as well as against the concerned officers of the gram panchayat as to why they should not be dealt with suitably for violating the mandate of the apex court in the manner in which they have done. The officers, as aforesaid, should have first of all considered the decision of the Hon''ble Supreme Court and ought to have acted in accordance with it, but ignoring the mandate of the Hon''ble Supreme Court they had acted directly against the same. Thus, they are supposed to explain why they should not be hauled up for violating the decision of the Hon''ble Supreme Court.

101. Let appropriate proceedings be separately registered against them and be placed before us for consideration.

102. We are, therefore, of the opinion that since the development plan prepared

by the Sriniketan-Santiniketan Development Authority was required to be modified in terms of the notification issued on January 25, 2010, no right can accrue to the respondent No. 6 therefrom so as to sustain a totally illegal and unauthorised act in raising a large scale multi storied construction in an ecologically and culturally preserved area adjoining a wild life sanctuary and destroying "khoai" land.

103. It is apparent that it was necessary to work out peripheral limits of buffer zone in and around Visva Bharati campus, which has not been done so far. It was also necessary to carry out changes in development plans mentioned in notification dated 25.04.2010 issued under the Act of 1979. We restrain any kind of construction till such exercise is done and the development plan is modified by the Sriniketan-Santiniketan Development Authority in terms of the notification dated January 25, 2010 in mouzas covered in it issued under the West Bengal Town & Country (Planning and Development) Act, 1979.

104. We find that objection raised from time to time remain unheeded to. Prompt action ought to have been taken by the District Magistrate and the Superintendent of Police against the Sriniketan-Santiniketan Development Authority and other concerned bodies not only to stop the construction in question but to demolish it as the same is totally illegal.

105. Resultantly, as the construction of the building is found to be wholly unauthorised and illegal for the reasons, as aforesaid, we direct demolition of the same. The District Magistrate, Birbhum and the Superintendent of Police, Birbhum as also the Bolpur-Srinikektan Panchayat Samity shall take action for demolishing the building within a period of one month from date and to file their compliance report before this Court. We direct the authorities, as aforesaid, not only to demolish the building in question in totality but to restore the land, as it was, as far as possible and to keep it as such. They are also directed to ensure that no constructional activity in the area covered by notification on 25.1.2010 of Santiniketan and Visva Bharati to be undertaken till the development plan is modified in accordance with law in terms of the notification dated January 25, 2010 and without prior approval of the Apex Advisory Committee constituted in terms of notification dated January 18, 2011 and without consultation with the West Bengal Pollution Control Board. We further direct till consultation with the Archeological Survey of India is completed, no permission for raising any construction to be accorded in future by any authority, such as, Sriniketan Santiniketan Development Authority, Bolpur-Srinikektan Panchayat and other local bodies, authorities such as municipality, etc. in Mouzas included in notification dated 25.1.2010 and in Visva Bharati/Santiniketan.

106. As the construction had been raised by the respondent No. 6 in a wholly unauthorised manner and that too without providing any ingress and egress to the road and thereby creating disturbances to the Visva Bharati University and damage to Khoai land, we direct compensation of Rs. 10 lakhs to be paid by the respondent No. 6, which is to be used for the purpose of restoration of the land

and preservation of the area in question. The amount of compensation is to be spent at the advice of the Apex Advisory Committee. The respondent No. 6 is further directed to pay costs of litigation Rs. 25,000/- to the writ petitioners.

107. The writ petition is, thus, allowed.

108. Mr. Saptangshu Basu, learned senior advocate appearing for the respondent No. 6 prays for stay of operation of the order. We direct status quo, as of today, is to be maintained for fifteen (15) days.

Joymalya Bagchi, J.

I agree.