
(1995) 11 CAL CK 0035
In the Calcutta High Court
Case No : F.M.A.T. No. 3713/92

Malina Rani Saha

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 29-11-1995

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(1), 10(3), 11(3)(b), 17(1), 2

West Bengal Inland Fisheries Act, 1984 — Section 17A, 20

Citation : 100 CWN 502

Hon'ble Judges : Nirendra Krishna Mitra, J;Mukul Gopal Mukherjee, J

Bench : Division Bench

Advocate : Chira Ranjan Mitra and Subir Hazra, for the Appellant;Sukiram Biswas and Rekha Sarkar, for the Respondent

Final Decision : Allowed

Judgement

Mukul Gopal Mukherjee, J.—The present appeal is directed against the judgment and order dated 25.9.92 passed by a learned Single Judge of our Court in C.O. No. 12285(W) of 1983. The writ petitioner is the appellant before us. She is the owner of Holding No. 295 in Ward No. 8 within the Municipality of North Barrackpore. Her premises consists of a pucca building with ancilliary structures upon land and the total area is about 25 cottas 9 chittaks and 36 square feet equivalent to 1713/13 square meters. She become owner of the premises by way of successive purchase and has developed the land. Her contention inter alia is that the initially became owner of 42 acres of land with building construction and a pre-existing pond under several deeds of conveyance executed between 4.4.67 and 14.9.72. The entire purchase land consisted partly of three plots namely 1936, 1939, 1940 and wholly of plot no. 1940/3351. At the time of her purchase plot No. 1940/3351 was a pond and she extended it into plot No. 1940 which was already purchased by her and such extension of the pond was completed by the end of the year 1968 much before the Urban Land (Ceiling and Regulation) Act, 1976 came into force with effect from 17.2.76. The entire Holding is situated

in Municipal agglomeration of North Barrackpore in the District of 24-Parganas.

2. A proceeding under Urban Land (Ceiling and Regulation) Act, 1976 was started by the Competent Authority. On 3.6.77 she filed a return in the prescribed form u/s 6 of the Urban Land (Ceiling and Regulation) Act, 1976. Her case inter alia is that even though she had no obligation under the law yet she filed a return u/s 6 even though she was not in possession of any vacant land beyond ceiling limit, which she did being an ignorant lady and on wrong advice. She also filed an application u/s 20(1) of the Urban Land (Ceiling and Regulation) Act, 1976 for exemption of excess land being a tank which was used by her as a fishery. This was also done under a mistaken view of law.

3. The Assistant Secretary, Government of West Bengal, Land and Land Reforms Department, rejected the said application u/s 20 of the said Act. A draft statement was served on the petitioner. Her objection was heard on 15.2.83 a notice u/s 9 of the Urban Land (Ceiling and Regulation) Act, 1976 was served on her. In that notice the lands comprising in plot No. 1940 and 1940/3351 measuring 902.8 square meters was treated as excess vacant land.

4. The writ petitioner appellant thereafter filed a writ application for a writ of mandamus commanding the respondents to cancel, rescind, set aside and or withdraw the notice (Annexure D) to the writ application commanding the respondents not to treat the tank as excess vacant land and to take possession thereof. She also challenged the order rejecting her prayer for exemption u/s 20(1) of the Act.

5. The State respondents contended that the tank comes within the definition of vacant land. The authorities have taken all measures by inspecting the plots and thereafter took a decision as regards the exact portion which would vest in the State. It was contended on behalf of the State that the prayer for exemption has been rejected after duly taking into account the contentions of writ petitioner appellant.

6. Mr. Mitra, learned Advocate contended before the learned Single Judge that tank does not come within the definition of vacant land. He contended further that as regards the application u/s 2(1) of the Urban Land (Ceiling and Regulation) Act, 1976. there was no appropriate consideration by the Authorities of the relevant materials contended on behalf of the writ petitioner appellant which was so done without due application of mind.

7. It was contended before the Court below that from the Annexure B to the writ application attached to the final draft statement by the Competent Authority u/s 9 of the Act the excess vacant land was shown with red borders which consisted entirely the tank in question. It contains deep water and had no access from the main road. There were private residential holdings on three sides of the tank and on the other side was the retainable land of the petitioner and the plot could not be put to any use as it did not abut on the main road.

8. The learned Single Judge was of the view that really two questions arose for the court's decision. One was with regard to the question whether a tank and/or a pond came within the definition of a vacant land and the other question being whether in the facts of the case, the rejection of the writ petitioner's application u/s 20 by the appropriate authority has been proper.

9. The learned Single Judge thought, on a consideration of the provisions of the Bengal Municipal Act as also the provisions of Section 2(q) of the Urban Land (Ceiling and Regulation) Act, 1976 and the various reported decisions holding the field, that there was no absolute prohibition against construction of a building on a tank. However, the Learned Single Judge thought while making such a construction, a necessary change has to be affected to the satisfaction of the concerned authorities, both from the sanitary and engineering point of view so that construction could be made permissible on such a tank-land. The learned Single Judge relied on the decisions in (1) Dattray Shankar Bhat v. State of Maharashtra reported in AIR 1981 Bombay 326, (2) Prabhakar Nashar Pawar v. State of Maharashtra reported in AIR 1984 Bombay 122 and (2) the Allahabad High Court judgment in State of U.P. v. Radharaman Agarwal reported in AIR 1987 Allahabad 272 and [4] the Supreme Court decision in State of Gujarat and Others Vs. Parshottamdas Ramdas Patel and Others, It was accordingly held by the learned trial Judge that in order to exclude any land from the purview of a vacant land it should be shown that it was such a land on which construction of a building was not permissible under the building regulations in force in the area in which the said land is situated. The learned Single Judge held from an interpretation of all those judgments that the ratio propounded is that the prohibition against construction must be absolute and complete.

10. The learned trial Judge, thereafter, did choose to examine the provisions of the Municipal Laws applicable in the State of West Bengal. His Lordship thought that there was no absolute prohibition against construction over a tank site. Construction on such a site could be made if such conditions are fulfilled according to the modern techniques of construction so that the construction could be made permissible even under the existing Municipal Laws relating to building construction.

11. The learned Single Judge thought that the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 is a beneficial legislation where the provisions are to be construed in a manner which would tend to realise the object of the Act. Taking into consideration the main object of the Act which was to prevent the concentration of Urban Land in the hands of a few persons and profiteering therein and to bring about an equitable distribution of land in urban agglomeration to sub serve the common good, his lordship thought that a tank site could very well be rendered suitable in terms of the Municipal Regulations so as to build up a construction thereupon. Distinguishing the judgments as cited by the Learned Advocate for the appellant the Learned Single Judge held that there was no absolute prohibition against construction of a structure over a tank after

making some minor changes. Even though it was argued before the Learned Single Judge that the ceiling has to be determined on the basis of the relevant date of coming into force of the statute and on the basis of nature and character of the land as existing on that date, the learned Single Judge held that there was no scope for holding that tank is a vacant land within the meaning of Section 2(q) of the Act and that according to the definition every bit of land within urban agglomeration is vacant land unless it has been excluded by the definition itself. His Lordship was of the view that it did not appear that the nature and the character of the land as on the date of vesting has to be taken into consideration but it was only required to be considered, if such land was excepted by any of the exception provided in Section 2(q) and if it is not specifically excepted, it has to be held that the land is vacant land within the meaning of that definition.

12. Even though it was apparent that the rejection of the application u/s 20 was so made by way of a cryptic communication as contained in the order itself. His Lordship perused the file of the case which was so produced by the learned Advocate for the State respondents and observed inter alia that there was non-application of mind by the Competent Authority and a mechanical order was passed. Accordingly his Lordship directed the concerned Authorities to dispose of the writ petitioner's application u/s 20 in accordance with law.

13. The main gravamen of the writ petitioner appellant's contention is that the excess vacant land u/s 9 of the Urban Land (Ceiling and Regulation) Act, 1976, has been declared on the basis of sections 4 and onwards, whereas the appellant petitioner contends that there is no vacant land in her holding and it is excepted u/s 2(q)(i) of the said Act. which is quoted below :

(q) Vacant land" means land, not being land mainly used for the purpose of agriculture, in as Urban Agglomeration, but does not include (i) land on which construction of a building is not permissible under the building regulations in force in the area in which such land is situated;

14. In support of the contention of the writ petitioner appellant that the building regulations under the Bengal Municipal Act, 1932, which was in force at the material time did not permit erection of a building on the site of a pond or tank or any water area, and we quote herein below the relevant provisions as to such building regulations as contained in Clause I of schedule VI.

Section A - Building sites

1. No piece of land shall be used as a building site unless the Chairman is satisfied.

(a) that the site is fit to be built upon from sanitary and engineering points of view;

(b) that it is well drained or is capable of being well drained and the owner will take the necessary steps to drain it; and

(c) that where the site is within thirty feet of a tank the owner will take such measures as shall prevent any risk of the drainage from such building passing into the tank.

2. Except with the written permission of the Chairman the foundations of buildings, other than huts, shall rest on natural grounds.

5. The plinth of every such building, except in the case of motor garages and coach houses, shall be at least 45.72 centimetres above (one foot and a half) the level of the centre of the nearest street.

15. The learned Advocate for the appellant in this context submitted that no under ground or basement floor is permissible, because the plinth must have to be one and a half feet above the nearest road level at the centre and the foundation of the building shall rest on natural ground.

6. Dwelling on the aforesaid regulation as to building sites, it was submitted that the terms of such regulations with their clear implications prohibit the very idea of erection of any building on a tank pond or any wafer area, inasmuch as, such area cannot be used as a building site both from sanitary and engineering points of view, unless the same is filled up and converted into a solid piece of sand with more than sufficient strength to bear the load of a building construction and, in that case, the tank, pond or the water area would cease to be there; and so long the area remains full of water, in depth, it is absurd to imagine that any Municipal Authority will ever sanction a plan for erection of a building on the bed of a pond, or any one would venture to do so. Over this issue, the writ petitioner appellant placed the following decisions before the Hon"ble Single Judge, Mr. Justice Shamsuddin Ahmed, as His Lordship then was and also before us.

Paragraph 7 and 9 of the above judgment are quoted below :

Paragraph 7

It is not necessary for us to decide finally whether or not the provision of Clause (i) of Section 2(q) provides for an absolute prohibition, but assuming that it does, let us consider whether a tank is a vacant land or not. The underground of the tank is undoubtedly land. The Municipal Authority will not surely permit anybody to construct on the underground land of a tank, nor will anybody wish to construct on tank-land. There can be no doubt that if the water of the tank is drained out and the excavation is filled up in the manner provided in clause (3) of Rule 1, the permission to construct will be granted. As soon as, however, the tank is filled up, there will be no existence of the tank, and the site will be a different site. The filled-up tank is solid land like any other building site. We are, however, not concerned with a filled-up tank, but with the land of the tank with water on it. In our opinion. Cl. (1) of Section 2(q) of the Act postulates the existing state of the land and not its altered state or improved state. Any land, which comes within the prohibitions under Clause (1) to (5) of R. 1. of Part I of Sch. XVI to the Calcutta Municipal Act, can be converted into a building site by

altering its condition. A piece of land with a building site, but it will become so if the building is demolished and removed. Clauses (ii) and (iii) of Section 2(q) of the Act have excluded lands with buildings from the category of vacant land. This also indicates that the existing condition of the land should be taken into consideration for the purpose of the definition of vacant land. In this connection, we may refer to the provision of Section 11(3)(b) of the Act under which the State Government has to fix the rate per square meter of vacant land in each zone acquired u/s 10(3) of the Act for calculation of payment to the persons interested. The rate that may be fixed will be applicable to all vacant lands in the zone. In our opinion, if the legislature had intended to include tank as vacant land, it would not have surely prescribed one uniform rate for solid land and for tank which is undoubtedly of lesser value than solid land. Section 11(3)(b) also indicates that tank is not included within the definition of vacant land.

Paragraph 9

It is, however, contended by the learned Additional Advocate-General that the object of the Act being to sub serve the common good, which is expressly stated in the preamble referred to above, the provision of Section 2(q) of the Act, and for the matter of that, the building regulations too should be construed in a manner consistent with the object of the Act. It is true that a beneficial statute should be construed with an eye to the object sought to be achieved by it. At the same time, it is a well established principle of law that an expropriatory legislation should be strictly construed. The Act with which we are concerned is admittedly an expropriatory statute, for, it has been earlier noticed, the Government will acquire the vacant lands in excess of the ceiling limit. Generally, all such legislations are enacted for public good. No doubt, the Court should see that the object that is sought to be achieved is not frustrated. At the same time, the Court should not lose sight of the citizens who are being divested of their properties. In other words, the rule of strict construction is not to be given a go by in the ground that the statute, though it is expropriatory, yet it is for public good.

(b) Sanjanendra Nath Tagore v. Competent Authority & Ors. 1981 CHN 261, B.C. Roy, J. (Paragraph 24 at page 281, first eleven lines)

Paragraph 24

It has been also urged that tank which is not a vacant land has been illegally taken to be a vacant land and the claim for exemption was illegally rejected. There is merit in this contention advanced on behalf of the petitioner. It appears from the draft statement prepared by the Competent Authority that there are agricultural lands, tanks and marshy lands covered with water and recorded as such in the settlement record of rights. These lands, therefore, in accordance with the provisions of Section 2 of the said Act cannot be treated either as urban land or as vacant land within the meaning of the provisions of Section 2(o) and 2(q) of the said Act as such the exemption claimed in respect of these lands

should have been considered and proper order should have been made on the application filed u/s 20 of the Act.

(c) Benjamin Mohanty v. State of Orissa, AIR 1982 Orissa 236. R.N. Misra C.J. and B.K. Behera. J.

Paragraph 8

Rule 530(b)(iv) of the Orissa Municipal Rules provides that no land shall be used as site for erection or re-erection of masonry building if the soil or sub-soil is saturated with water in consequence of which there is likely to be dampness of floor and walls of the building. The Division Bench decision of the Calcutta High Court in *Srila Moitra v. State*, AIR 1981 Calcutta 126 does support this view. It has been held by the Division Bench that a tank is not a vacant land and such land would be exempted u/s 2(q)(i) of the Act Endorsing the view expressed by the Division Bench of the Calcutta High Court, we hold that land on which construction of building would not be permitted to raise under the Building Regulations would be excluded from the operation of the Act.

(d) Ramendra Kumar Banerjee & Ors. v. Dy. Secretary (Govt. of West Bengal) Land & Reforms Department & Ors. AIR 1968 Calcutta 85, Suhas Chandra Sen. J.

Paragraph 3

The case of the petitioners is that the petitioners are the absolute owners in possession of a tank. The area of the tank has been given in paragraph 2 of the petition. It's tank measuring about 2.01 acres in CS and R.S. plot Nos. 1311, 1320 and a portion of plot No. 1322 appertaining to C.S. Khatian No. 580 and R.S. Khatian No. 1003 of Mouza Kasba, being premises No. 9 Bosepukur Road. Ward No. 70, within the Corporation of Calcutta and the said tank has been used as pisciculture for more than 50 years or so. The petitioners have further stated that the petitioners wanted to settle the property in favour of Ramkrishna Mission. Respondent 6, who agreed to accept the offer made by the petitioner by a resolution passed on 17th Feb., 1984. Respondent 2, however, has refused to register the documents of transfer on the ground of a circular issued by the Govt. of West Bengal No. 2110(13) U.L. dt. 24/27.4.1981. The Circular dt. 24/27.4.1961 to the effect that the judgment of the Calcutta High Court in the case of *Srila Moitra v. State of West Bengal* is under appeal in the Supreme Court. In the case of *Srila Moitra v. State of West Bengal* (C.R. No. 1489(W) of 1979), (FMAT No. 985 of 1980) by judgment dated December 16, 1980 (reported in *Sm. Srila Moitra Vs. State of West Bengal and Others*, it was held by a Division Bench of this Court that a "tank" is not land within the meaning of Sections 2(o) and 2(q)(i), Urban Land (Ceiling and Regulation), Act, 1976, and the Rules framed thereunder. The petitioners' contention before respondent 2 was that in view of the judgment of Calcutta High Court, Respondent No. 2 should register the documents of transfer forwarded by the petitioners. The petitioners have now moved this writ petition by which the petitioners have sought a direction upon the respondents for registering the documents of transfer by the petitioners in

respect of the aforesaid land of registration.

Paragraph 4

Section 28, Urban Land (Ceiling and Regulation) Act, 1976 provided that where any document required to be registered u/s 17(1), Clause (a) to (e) purports to transfer by way of sale, mortgage, lease or otherwise any land or any building, then no registering authority under the Registration Act, shall register any such document unless the transferor produces the evidence to show that he has given notice of the intended transfer to the competent authority under the Urban Land (Ceiling and Regulation) Act, 1976 and where such transfer is by way of sale, the period of sixty days has elapsed. The case of the petitioner is that "land" does not include "tank". A Division Bench of this Court has also taken the view that a tank does not come within the mischief of the Urban Land (Ceiling and Regulation) Act, 1976.

Paragraph 5

In view of the judgment of this Court, this petition must succeed. There will be an order directing the respondents to register the documents in respect of the tank as mentioned in para 2 of this petition under the provisions of the Registration Act, 1980, without any clearance from the Competent Authority under the Urban Land (Ceiling and Regulation) Act, 1976.

(e) *Sm. Mira Rani Das v. State of West Bengal & Ors.* 96, Calcutta Weekly Notes, 823, N.K. Mitra, J.

Paragraph 3

The respondent No. 2, however, in the Return Case No. 630 started consequent to the petitioner's filing a return under the Urban Land (Ceiling and Regulation) Act, 1976, relying upon an exparte enquiry report of the local KGO dated 27th August, 1984, held that the petitioner was in occupation of 3309-13 sq. meters as excess vacant land being the said 90 decimals of the said tank, holding the tank as a vacant land observing, inter alia, that since the nature of the land was non-agricultural, there was no bar in holding such tank as vacant land and issued the necessary, draft statement u/s 6(1) and also subsequently, made the final statement u/s 9 of the aforesaid Act. The said statements of the respondent No. 2 have been challenged by the writ petitioner in the present Civil Order.

Paragraph 6

Considering the facts and circumstances of the case I find there is much substance in the contentions of Mr. Mukherjee. A land in order to be termed as vacant land within the meaning of the Urban Land (Ceiling and Regulation) Act, 1976, must be a land as it is, on which building can be raised and/or construction can be made under the relevant Building Regulations. A tank is a water reservoir, either natural or excavated and no such tank as it is. under any Building Rules, without filling it up, and as such, a tank as it is, cannot be brought within the

purview of the aforesaid Act of 1976 and also cannot be termed as vacant land. The moment a tank is filled up, it loses the character of tank and land and/or building site, inasmuch as, it no longer remains as a water reservoir. Admittedly, 90 decimals of the disputed plot No. 703 which is under the ownership and occupation of the writ petitioner, still remains as a tank and as such, because of the reasons as aforesaid, it cannot be termed as vacant land and hence the impugned statement made by the respondent No. 2 either u/s 6(1) or u/s 9 and 10(1) of the aforesaid Act, and cannot be sustained in law and are hound to be quashed,

(f) Induprova Mitra v. State of West Bengal & Ors. 97, Calcutta Weekly Notes; 515, N.K. Mitra. J.

Decisions that were referred to in the Judgment were as follows :-

Probhakar N. Pawar v. State, AIR 1984 Bombay 122

Srila Moitra v. Union of India & Ors. 1981(1) CLJ 148 : AIR 1981 Calcutta 126

State of Gujarat and Others Vs. Parshottamdas Ramdas Patel and Others,

State of Uttar Pradesh and Others Vs. L.J. Johnson and Others,

State of U.P. v. Radha Raman Agarwal, AIR 1987 Allahabad 272(FB)

16. In the above case, shorn of all details, the facts as stated by the writ petitioner who owned properties, including holding constituting a pond, a prayer for not vesting thereof was rejected by the appellate authority. The case was keenly contested by Dr. Mukherjee, Ld. Counsel, appearing on behalf of the petitioner who contended that if the area of the said tank is excluded, the petitioner could not be held to be owning and/or possessing any excess vacant land as per the provisions of the Urban Land (Ceiling and Regulation) Act, 1976.

17. N.K. Mitra, J. held that considering the facts and circumstances of the case and the contentions of the learned counsels for the parties, there was much substance in the contentions of Dr. Mukherjee Vacant land has been defined in Section 2(q) in the Urban Land (Ceiling and Regulation) Act, 1976 as follows :-

(q) "Vacant land" means land, not being land mainly used for the purpose of agriculture, in an urban agglomeration, but does not include.

(i) land on which construction of building is not permissible under the building regulations in force in the area in which such land is situated.

In the Calcutta Municipal Act, there are certain criteria regarding describing a land as a building site. No doubt, in so many words, it has not been specifically stated in Calcutta Municipal Acts anywhere that tank is not a building site or that no construction is possible on a tank, and no doubt, the Division Bench judgment in Srila Moitra's case (supra) was subsequently set aside by the Supreme Court, of course, not on merits, but only on the ground that the writ petitioner Srila Moitra withdrew the writ application, but at the same time, nowhere in the Calcutta

municipal Act it is stated that tank can be considered to be building site. A tank is a water reservoir, either naturally created, or artificially made. A tank contains an embankment, the underground land and the bed of the tank. A tank is no doubt land, but it is not solid land. A building under the Calcutta Municipal Acts is permissible to be constructed on solid land which is vacant, that is not put to any use. The underground of the tank is undoubtedly land. The Municipal Authorities will not surely permit anybody to construct on the underground land of a tank, nor will anybody wish to construct on tank land. It is conceivable that a building can be constructed on a tank as it is, without first filling it up, and in our view, that is obviously the reason, why the possibility of a tank being a building site has not been considered in the Calcutta Municipal Acts. A building site means a site or place, on which construction can be raised without changing the nature and character of the site. Further, a building is constructed on the solid surface of the earth. A tank, however, without being filled up, cannot be held to be a building site, inasuch as, no construction is possible on a tank as it is, without filling it up, that is to say, without changing the nature and character of a tank and then it becomes solid land. A tank as such, has no solid surface. No doubt construction can be made over a tank but cannot be made on a tank as it is. If tank as such, is to be treated as a building site, then a river over which a bridge is constructed, can very well be termed as a building site also.

Clause (i) of Section 2(q) of the Act postulates the existing state of the land and not its altered state or improved state. A piece of land with a building thereon is not a building site, but it will become so if the building is demolished and removed. Clauses (ii) and (iii) of Section 2(q) of the Act have excluded lands with buildings from the category of vacant land. This also indicates that the existing condition of the land should be taken into consideration for the purpose, of the definition of vacant land. In this connection, we may refer to the provisions of Section 11(3)(b) of the Act under which the State Government has to fix the rate per square meter of vacant land in each zone acquired u/s 10(3) of the Act for calculation of payment to the persons interested "The rate that may be fixed will be applicable to all vacant lands in the zone. In my opinion, if the legislature had intended to include tank as vacant land, it would not have surely prescribed one uniform rate for both solid land and for tank, the latter being undoubtedly of lesser value than solid land. Section 11(3)(b) also indicates that tank is not included with in the definition of vacant land.

18. It is an admitted fact that the tank in question is of the area of 902.82 square meters, equal to 15 cottahs and more, and it has been in use for rearing of fish by the writ petitioner appellant which fetches her substantial income to sustain her in old age. The Hon"ble Single Judge held that though it was not possible or permissible for making any building construction on the bed of the tank, as it was, yet he was pleased to hold that there was no absolute prohibition in the building regulations against building construction at the tank site. The learned trial Judge proceeded to say that "it is clear on perusal of those regulations that construction on which site can be made after such conditions

have been fulfilled. I may also note that under modern technique, a basement floor is constructed in all high rise buildings, any construction on such a basement floor, the solid earth has to be dug out and erected. Regulations also provide that the foundation must be on the solid land. Foundation, can, therefore, be laid in the bed of a tank. To my mind, there is no absolute prohibition under the Municipal laws to make construction on a tank site.

19. The foregoing observations of Hon''ble Single Judge, including the underlined portion, besides being contradictory, have no basis in reality and are also opposed to the findings in the decisions mentioned hereinbefore.

20. The Hon''ble Single Judge overlooked the basic point which has been accepted in all the referable decisions that the nature and character of the land, sought to be vested under the Urban Land (Ceiling and Regulation) Act, 1976, ought to be taken for consideration as they existed on the date of vesting, i.e. on 17.2.1976, and not in their hypothetically altered or improved state in the future. The following observation of the Bombay High Court Prabhakar Narhar Pawar Vs. State of Maharashtra and Another, which was subsequently confirmed by the Supreme Court, though in a different context, is apt to be quoted in this behalf :

So far as the decision holds that the relevant date for determination of the purpose of Section 2(q) (i) of the Act, Urban Land (Ceiling and Regulation) Act, 1976, is the date on which the land is sought to be dealt with, that is the commencement date referred to in Section 3 (7-2-1976) State of Gujarat and Others Vs. Parshottamdas Ramdas Patel and Others,

21. The Hon''ble Single Judge, trying the case, in preference to the several decisions of this Hon''ble Court and that of Orissa High Court, quoted hereinbefore, chose to put reliance on the following reported decisions including the Supreme Court judgment mentioned in the preceeding paragraph.

(a) AIR 1984 Bombay 122, Pravakar Pawar v. State of Maharashtra.

(b) AIR 1981 Bombay 326 Dattaray v. State

(c) State of Gujarat and Others Vs. Parshottamdas Ramdas Patel and Others,

(d) AIR 1087 Allahabad 272 State of U.P. v. Radharaman Agarwal.

22. The cases mentioned in the preceding paragraph, are easily distinguishable because in none of them any tank, pond or water area was involved. The excess vacant land in each of the cases was dry land, but subject to some disabilities on the part of the owners thereof without touching the Municipal regulations as to building construction. In one case there was lead acquisition proceeding, in another the land was included in a master plan for development. In one case the plea of compulsory keeping of open space in future building construction was raised and in the Allahabad case the dispute arose out of assessment of the quantum of vacant land, which was high and dry land, and in all these cases lands were fit to be built upon within the ambit of the building regulations, by the

State or any public authorities, is not by the owners thereof. Hence there was no question of prohibition of building construction in the absolute, and, therefore, it was wholly misconceived by the Hon''ble Single Judge, in the present case, to overrule the apt cases quoted on behalf of the appellant in the present appeal.

23. There is yet another perspective to be looked into, which is the West Bengal Inland Fisheries Act, 1984.

24. Although Section 2(q) (1) of the Urban Land (Ceiling and Regulation) Act, 1976, prohibits absolutely against construction of building in any tank or water area, there has been a new enactment to amend the above mentioned Act, and Section 17A has been inserted therein for the purpose of promotion of pisciculture, checking of destruction of fisheries and prevention of environmental degradation and sic Section (i) and (ii) of aforesaid Section 17A of West Bengal Inland Fisheries Act, 1984, which came into force on June 16, 1994 are set out below :

17A. (1) No person shall

(a) put any water area including embankment measuring 5 cottahs or 0.35 Bactars or more, which is capable of being used as fishery or any naturally or artificially depressed land holding measuring 5 cottahs or 0:035 hectare or more, which retains water for a minimum period of six months in a year, to such use other than, fishery, as may result in abolition of fishery, or

(b) fill up any water area including embankment or naturally or artificially depressed land holding as aforesaid, with a view to converting it into solid land for the purpose of construction of any building thereon or for any other purpose, or

(c) divide any water area including embankment or naturally or artificially depressed land holding as aforesaid into parts so as to make any such part measure less than 5 cottahs or 0.035 hectare for any purpose other than pisciculture or transfer any part of any such water area including embankment or naturally or artificially depressed land holding as so divided to any other person.

(ii) Any person who commits any offence by contravening the provisions of Sub-Section (1) shall, without prejudice to the provisions of Sub-Section (10), be punished with imprisonment for a term which may extend to two years or with fine which may extend to two lakh rupees or with both, and the provisions of Section 20 shall not apply to such person.

25. Hence, the question of filling up of the tank, in question, is banned for ever, on penalty of fine, imprisonment or both, and the said tank can never be treated as vacant within the meaning of section 2(q) (1) of the Urban Land (Ceiling and Regulation) Act, 1976, and this new development, too, should be treated as a further and compelling ground for allowing the present appeal.

26. Though urged, on behalf of the appellant, at the hearing of the writ petition,

the Hon''ble Single Judge ought to have avoided an unreasonable, artificial, or anomalous, construction being put to Section 2(q)(i) of Urban Land (Ceiling and Regulation) Act, 1976, and accepted the dictum that the Building Regulations are mean for practical people and ought to be construed" in the light of practical considerations, and that quite often Judges rely on what they regard as a sensible or common sense interpretation in order to reach the true meaning of a statute, and adopt that interpretation which leads to reasonably practical result.

27. The learned Advocate for the appellant referred to Maxwell on interpretation of Statute's, Twelfth Edition Chapter 10, page 203 in this context. Thus it was contended by the appellant that for public good and in protection of the appellant's legitimate property rights, the instant First Miscellaneous Appeal is fit to be allowed, on reversal of the judgment of the Hon''ble Single Judge. In the facts and circumstances of the present case we are of the considered view that the land covered by the tank or pond is not a vacant land and with that direction we shall call upon the Competent Authority to consider the application u/s 20 of the Urban Land (Ceiling and Regulation) Act, 1976 as redundant in the eye of law and pass an appropriate order within a period of one month from the date of communication of this judgment.

In the result the appeal stands allowed to the extent as indicated above.

There will be no order as to costs.

Nirandra Krishna Mitra, J.

I agree