
(2017) 03 CAL CK 0033
In the Calcutta High Court
Case No : 11004 (W) of 2011

M/s K.C. Das Pvt. Ltd

APPELLANT

Vs

The State of West Bengal & Others

RESPONDENT

Date of Decision : 14-03-2017

Acts Referred:

[Urban Land \(Ceiling and Regulation\) Act, 1976](#), [Section 1](#), [Section 6](#), [Section 20](#), [Section 10\(1\)](#), [Section 8\(1\)](#), [Section 10](#)

Citation : (2017) 03 CAL CK 0033

Hon'ble Judges : Samapti Chatterjee

Bench : SINGLE BENCH

Advocate : Saktinath Mukherjee, ?S. Panda,?T.K. Sil,?Chandi Chran De,?
Soumitra Bandyopadhyay

Final Decision : Allowed

Judgement

1. The following issues are to be determined in the present case :-

(i) While it is evident from the document produced that there were structure on the appointed date then whether the finding of appellate authority "No structure on the appointed date" was justified or not ?

(ii) Whether retention of the Urban Land (Ceiling and Regulation) Act, 1976 by the State of West Bengal is justified in view of commitment of the State Government before the Union Ministry of Urban Development in the year 2007 and abolition of the said Act in other parts of India in terms of the Urban Land (Ceiling & Regulation) Repeal Act, 1999 ?

(iii) Whether the competent authority was justified in passing the final order and statement allowing only 500 sq.mt. of land to retain without allowing any land and appurtenant for the dwelling units standing thereupon since long back prior to the appointed day ?

2. The petitioner's case in a nutshell is as follows :- By an indenture of sale on 11th September, 1951 K.C. Das Ltd. purchased a piece of land and tank together with a brick built privy containing a total area of 1 Bigha 15 Cottahs 3 Chattak and 26 Sq. ft. more or less lying and situated at being premises no.2 Jogendra Nath Bose Lane Kolkata subsequently known as No.4 Tala Park Avenue presently known as Tara Sankar Sarani. On 26th November, 1980 a draft statement under Section 8 (1) was issued by the competent authority in Case No. 6 (1) 172/V-2/76 holding total area as 2335.94 Sq. mt and 1855.94 Sq.mt as excess vacant land. The petitioner company on 24th December 1990 filed objection against such draft statement. Thereafter on 29th May, 1981 final order was passed by the competent authority. On 8th August, 1981 the petitioner company filed application under Section 20 of the said Act praying exemption.

On 10th November, 1991 final statement was issued holding 1855.94 Sq.mt. as excess vacant land. On 13th November, 1984 exemption order was passed. Since the Kolkata Corporation refused to sanction the plan for construction of factory on the land, the petitioner company on 16th June, 1989 requested the competent authority to change the land use.

On 4th September, 1995 the competent authority withdrew the exemption order. Since the encroacher were occupying the petitioner company's land therefore the petitioner company filed a title suit and a decree was passed on 31st July, 2006 by the Learned Civil Court in favour of the petitioner company against the caretaker of the company and the other encroachers. Against such decree the caretaker and the other encroachers preferred appeal and the appeal was also dismissed on 23rd December, 2009. Against such dismissal the Caretaker moved before this Hon'ble Court on 13th May, 2010. No interim order was passed, the matter is still pending.

On 15th December, 2010 notification under Section 10 (1) was published in the Kolkata Gazette. Against such notification petitioner company filed appeal and connected application before the appellate authority on 24th January, 2010. The petitioner company on 18th February, 2011 received a notice dated 15th February, 2011 under Section 10 (5) of the said Act thereby informing inter alia that possession of the vacant land would be taken over on 18th March, 2011. Petitioner company again on 22nd February, 2011 made an application before the appellate authority inter alia praying for stay of operation of the notice under Section 10 (5) . The appellate authority on 1st March, 2011 rejected the petitioner's prayer. Against such rejection on 14th March, 2011 the petitioner company filed a writ petition before this Hon'ble Court being W.P No.4695 (W) of 2011 where this Hon'ble Court was pleased to dispose of the said writ petition by directing the competent authority not to give any effect to the impugned notice for taking over possession till the disposal of the appeal.

On 8th June, 2011 the appellate authority dismissed the appeal. Thereafter the petitioner on 4th July, 2011 made a representation thereby requesting the State Government to adopt the Urban Land (Ceiling & Regulation) Repealing Act, 1999.

Hence the present writ petition.

3. Mr. Saktinath Mukherjee, learned senior counsel appearing for the petitioner strongly argued that after amendment of Urban Land (Ceiling & Regulation) Act, 1976 under Section 2 (q) vacant land does not include tank. Tank is not a vacant land. Section 2 (q) of the Urban Land (Ceiling & Regulation) Act, 1976 and Rule 23 of the Kolkata Municipal Act 1951 are quoted below :- "Section 2 (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 a building is not permissible under the building regulations in force in the area in which such land is situated;

(ii) in an area where there are building regulations, the land occupied by any building which has been constructed before, or is being constructed on the appointed day with the approval of the appropriate authority and the land appurtenant to such building; and

(iii) in an area where there are no building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day and the land appurtenant to such building;

Provided that where any person ordinarily keeps his cattle, other than for the purpose of dairy farming or for the purpose of breeding of live-stock, on any land situated in a village within an urban agglomeration (described as a village in the revenue records), then, so much extent of the land as has been ordinarily used for the keeping of such cattle immediately before the appointed day shall not be deemed to be vacant land for the purpose of this clause."

"Rule 23- The total area covered by all the buildings on any site used for a dwelling-house shall not exceed two-thirds, or, in localities where the erection of only detached buildings is allowed, one-half, of the total area of the site, and the area not so covered shall form part of the site :

Provided that the Commissioner may permit

(a) an area not exceeding 75 per cent of the total area of the building site, to be covered, in case the site is situated in a locality other than localities where erection of only detached building is allowed and abuts at the junction of two streets each of which is not less than five metres in width throughout the length of the site abutting on it, or

(b) an excess area not exceeding 5 per cent of the total area of the site, to be covered, in case the site is situated in a locality in which the erection of detached building is allowed."

In support of his contention Mr. Mukherjee relied on a Division bench decision reported in 1994 (1) CLJ Page 394 Paragraph-13(Ramkrishan Shaw vs Smt. Lachmania Devi & Ors) where the Hon"ble Court held that in view of the amendment of the Act and Rules framed thereunder Court has right to review its

order. Mr. Mukherjee also relied on a Hon'ble Division Bench decision reported in 1981 (1) CHN Page-27 Paragraph-9 (Sm. Srila Moitra vs The State of West Bengal & Ors) which is quoted below:-

"Para-9-It is not necessary for us to decide finally whether or not the provision of clause (I) of S. 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 authorities will not surely permit anybody to construct on the under ground 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 filled-up tank, but with the land of the tank with water on it. In our opinion, clause (I) of S 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 clauses (1) to (5) of Rule 1 of Part 1 of Schedule XVI to the Calcutta Municipal Act, can be converted into a building site by altering its condition. 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 S. 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 S. 11 (3) (b) of the Act under which the State Government has to fix the rate per square metre of vacant land in each zone acquired under 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 land 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."

On the same point Mr. Mukherjee further relied on a Single Bench decision reported in AIR 1986 (Cal) Page-85 Paragraphs-4 & 5 (Ramendra Kumar Banerjee and Others vs Dy. Secretary (Govt. of West Bengal), Land & Land Reforms Department and Others) which are quoted below :-

"Para-4-Section 28, Urban Land (Ceiling and Regulation) Act, 1976 provided that where any document required to be registered under S. 17 (1), Cls. (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.

Para-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, 1908, without any clearance from the Competent Authority under the Urban Land (Ceiling and Regulation) Act, 1976.

Mr. Mukherjee also relied on a Single Bench decision reported in 1993 (1) CHN Page-183 Paragraphs 8 & 9 (Induprova Mitra vs State of West Bengal & Ors).

4. Mr. Mukherjee further contended that as per the KMC Building Rules if someone possess 4 cottas of land then only in 2 cottas of land he could construct building.

5. Mr. Mukherjee further strongly contended that both the appellate authority and the competent authority erred in law by not giving benefit of Section 2 (g) of the said Act to the petitioner though the structure was existing since the day prior to the appointed date. He also contended that the appellate authority failed to consider that filing of return under Section 6 of the said Act did not change the status of land.

6. Mr. Mukherjee further strongly argued that it is evident from the sale deed and Municipal Inspection Books that there was existence of structure on the appointed date at the plot in question, therefore, it cannot be described as a vacant land.

7. Mr. Mukherjee further contended that the decision of the appellate authority thereby holding that the entire land as vacant land is not at all tenable in the eye of law is as much as before the appointed date there were structure along with appurtenant and additional land are to be excluded in terms of Section 2 (q) and Section 2 (g) of the said Act.

8. Mr. Mukherjee further vehemently argued that competent authority, Kolkata misunderstood the provision of the Urban Land (Ceiling and Regulation) Act, 1976 and passed the impugned final order and statement declaring 1855.94 Sq.mt. as vacant land without holding any spot enquiry before coming to such conclusion abruptly.

9. Mr. Mukherjee further contended that since there are separate structures, sheds, boundary walls etc on the subject land constructed prior to 17th February 1976 each of the said building and structures is entitled to 500 sq. mt. of land as land appurtenant and additional land appurtenant measuring about 500 sq. mt. in terms of section 2 (g) of the said Act. Therefore there can hardly be any vacant land in terms of section 2 (q) of the Urban Land (Ceiling & Regulation) Act, 1976. Competent Authority Kolkata overlooked the provisions of law and

without applying its mind prepared the impugned final statement mechanically.

10. Mr. Mukherjee further contended that previously it was 1/3 of the vacant land by virtue of the 1990 amendment of the said Rule maximum ground coverage is 500 sq. mt.

11. Mr. Mukherjee also referred to some conditions of the notification dated 13th February, 1984 issued by Government of West Bengal Land and Land Reforms Department which are quoted below : "2. It shall start construction of the factory, Administrative Building etc which vacant land held by it and start functioning within a period of six months of two years from the date of issue of the order

3. It shall not, without the formal sanction of the State Government from the date of issue transfer the land described in the schedule below by way of the order of sale, gift mortgage other than mortgage without possession and to in favour of banking or other financial institutions referred to in section 19 of the Urban Land (Ceiling and Regulation) Act, 1976 for raising loan for the purpose of industry, lease or otherwise.

4. Transfer of the land as described in the Schedule below or any part thereof, to the banking and financial institutions referred to in item No.3 above, shall not be made by the company unless a notice is given to and permission in writing obtained from the State Government.

5. On breach of any of the terms and conditions specified above in respect of the lands, the exemption granted under this or Act shall be liable to be withdrawn in pursuance of the provisions of subsection (2) of section 20 of the Act .

6. The company shall not be entitled, in case of withdrawal of this order of exemption under sub-section (2) of section 20 of the Urban Land (Ceiling and Regulation) Act, 1976 to receive any compensation in respect of any building or structure constructed or erected or any improvement effected on such excess vacant land. It shall be permitted, if it so desires, to remove, within such time as may be specified by the Government, such building, erection or improvement at its own expense, without prejudice to the rights, titles or interests which any other person or any financial institution may have in the said buildings, erections etc.

7. The factory should undertake such measures as are necessary to prevent environmental pollution.

8. The actual utilisation and requirement of lands by the company will be reviewed after expiry of a period of two years from the date of issue of this order and if any area of lands remains unutilised after the said period, the State Government will be competent to withdraw the exemption in respect of such lands.

The Schedule Land measuring 1855 sq. mt. Out of 2355 sq. mt of vacant land at

4, Jala Park Avenue, Calcutta-700 002"

12. Mr. Mukherjee further contended that on the basis of the subsequent amendment the Court vested ample power to review its own order. In support of his contention Mr. Mukherjee relied on one Apex Court decision reported in 2003 (7) SCC Page-336 Paragraphs-19 & 23 (State of Maharashtra And Another vs B.E. Billimoria And Others) which are quoted below :- "Para-19-So far as the submission fo Mr. Dholakia to the effect that as on the appointed day, no construction had been made on the land in question and only a building plan therefor has been sanctioned, the exception contained in Section 2 (q) excludes the land on which construction of a building is not permissible under the building regulations in the force in the area in which such land I situated from the definition of "vacant land". The area where there are building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day with the approval of the appropriate authority and the land appurtenant to such building is also excluded. A plain and literal meaning attributed to sub-clause (I) of Section 2 (q) leaves no manner of doubt that for the purpose of applicability thereof, it is not necessary that constructions must exist on the appointed day. What is necessary is as to whether construction of a building is permissible or not. The scheme of the Act, particularly Section 29 thereof clearly shows that regulation of construction of building with dwelling units was contemplated by the makers of the legislation. As regards the space which is to be left vacant for the purpose of construction of a building,, a restriction on construction of building with dwelling units having been provided for in the Act, it is idle to suggest that for the purpose of exclusion of land in terms of sub-clause (I) of Section 2 (q), constructions must have exited on the land on the appointed day. Had the intention of Parliament been to exclude only such lands which have been directed to be left vacant only on the constructed buildings in terms of the building regulations, the same would have been stated expressly.

Para-23-In Bhavnagar University v. Palitana Sugar Mill (P) Ltd. this Court held : (SCC pp. 121 & 125. Paras 27 & 40)

"27-An owner of a property, subject to reasonable restrictions which may be imposed by the legislature, is entitled to enjoy the property in any manner he likes. A right to use a property in a particular manner or in other words a restriction imposed on user thereof except in the mode and manner laid down under the statute would not be presumed.

40. The statutory interdict of use and enjoyment of the property must be strictly construed. It is well settled that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The State and other authorities while acting under the said Act are only creature of statute. They must act within the four corners thereof".

Mr. Mukherjee also relied on a Single Bench decision reported in 1994 (1) CLJ

Page 394 Paragraph-13 (Ramkrishan Shaw vs Smt. Lachmania Devi & Ors)
which is quoted below :-

"Para-13-Having heard Mr. Saktinath Mukherjee with Mr. Bhaskar Ghosh for the petitioner and Mr. Ranjit Kr. Banerjee, learned Senior Advocate for the other side this Court finds the only point as to review the judgment dated 9th September, 1986 is that the right to preemption was considered in the absence of a valid notification under Section 4 of the West Bengal Estates Acquisition Act not being published mentioning the date on which all the rights and interests of nonagricultural tenants and under tenants that shall vest in the state free from encumbrances. Since the law has been amended and the notification has been found to be not necessary, it must be construed the effect of the absence of notification was there on the date of the judgment as on 9th September, 1986. If there is an effective impact the of subsequent legislation with retrospective effect, si considered, then the judgment dated 9th September, 1986 requires to be reviewed in the proper perspective. Regard being had to the materials on record and the change of law as it stood discussed above this Court finds merit in the contention of the petitioner seeking review and/or re-consideration of the judgment order dated 9th September, 1986. This Court appreciates that in view of the changes made by the West Bengal Land Reforms (3rd Amendment Bill 1986) and Section 3A of the West Bengal Land Reforms Act, 1955 the order dated 9th September, 1986 has to be reviewed. This Court further appreciates that in view of the changes made in the legal provision relating to the question involved in the revisional application,, the order dated 9th September, 1986 has to be reconsidered accordingly. The effect of vesting of the rights of nonagricultural tenants and under tenants having been negated on the ground of absence of the notification under Section 4 of the West Bengal Estates Acquisition Act can no longer be sustained on the face of the change of legal provision.

For the foregoing reasons this Court reviews the order dted 9th September, 1986 and finds that the order dated 9th September 1986 discharging the Rule is reconsidered. The review application is allowed. After consideration of merit it is found that the claim for preemption view of the change provision of law cannot be sustained and the Rule shall be deemed to be made absolute by setting aside all the impugned orders allowing the preemption which is the subject matter of the Rule in question"

13. Mr. Mukherjee also submitted that as per Rule 62 of the KMC Building Rules 1990 it was half of the land. He also referred to Rule 20 (1) of 1951 KMC Act and Building Rules. On that point Mr. Mukherjee relied on a Hon"ble Apex Court decision reported in AIR 2003 Supreme Court Page-4368 (State of Maharashtra and Another vs B.E. Billimoria and Others).

14. Mr. Mukherjee further vehemently urged that if the decision of the competent authority is illegal, arbitrary malafide and arrived at a perverse manner beyond the scope of the law laid down under the said Act of 1976 then that decision

cannot be sustained. On that issue Mr. Mukherjee referred Section 10 (2) , Section 10 (3) of the said Act of 1976 which are quoted below :-

"Section 10 (2)-After considering the claims of the persons interested in the vacant land, made to the competent authority in pursuance of the notification published under sub-section (1), the competent authority shall determine the nature and extent of such claims and pass such orders as it deems fit.

Section 10 (3)-At any time after the publication of the notification under sub-section (1) the competent authority may, by notification published in the Official Gazette of the State concerned declare that the excess vacant land referred to in the notification published under subsection (1) shall, with effect from such date as may be specified in the declaration, be deemed to have been acquired by the State Government and upon the publication of such declaration, such land shall be deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date so specified."

In support of his contention Mr. Mukherjee relied on a decision reported in 97 CWN Page-413 Paragraphs-8 & 9 (Nirmal Kirshna Dutta & Ors vs State of West Bengal & Ors) which are quoted below :-

"Para-8-Some decisions have been referred to on behalf of the petitioners, in course of hearing. From an analysis of the said decisions, the ratio, which a Court of law ought to apply in dealing with such cases, becomes discernible without much difficulty. In the first place, the principle is that a person holding land below the ceiling need not file a return [vide the case of Ajita Ray vs The Competent Authority decided by me and reported in 1989 (1) C.L. J.I. Secondly, a tank is not a building site in terms of Calcutta Municipal Act and as such cannot be said to be a land on which construction of building is possible; Clause (I) of Section 2 (q) takes this land out of the category of vacant land; thirdly the Urban Land Ceiling Regulation Act being an expropriatory statute, requires strict construction (vide the case of Smt. Srila Moitra vs State of West Bengal reported in AIR 1981 Calcutta 126); I would like to add to the above another principle that an act if required to be done by a statue in a particular manner it has to be done either in that manner or not at all [vide State of Gujrat vs Shantilal Mongaldas & Ors?reported in AIR 1969 S.C. 634].

Para-9-In the facts of the present case as outlined hereinbefore the impugned order of vesting has been passed not only in a glaringly perverse manner, overlooking all relevant facts and documents but also in absolute contravention and breach of the legal principles as summarised above. It would not be unreasonable to conclude on from the manner in which the proceedings had been carried on that the conclusion was a foregone one. The non-service of any notice on the petitioners, who clearly fall within the definition of "holders" as given in the aforesaid Act renders the proceeding totally illegal and unenforceable being in contravention of statutory provisions and being flagrantly violative of the principles of natural justice and the plea, taken on behalf of the respondents that

the opportunity of hearing afforded on the conclusion of the final stage cured such procedural irregularity, is unsustainable in view of the Supreme Court's decisions quoted and referred to hereinabove. As regards, premises No.33 it is not intelligible as to how possession could be delivered on 30th April, 1987 when even on the stand taken by the State respondents it could obtain possession only on 19.10.87 following the notification under Section 10 (3) of the aforesaid Act published on 15.9.87. Contradictory dated of delivery of possession clearly spell out the collusion and malafide between the respondents, which the petitioners have alleged in no unmistakable term."

15. Therefore, before departure from his argument Mr. Mukherjee submitted that Court should declare that the Urban Land (Ceiling & Regulation) Act, 1976 is no longer a valid law in the State of West Bengal after quashing the impugned order dated 8th June, 2011 passed by the appellate authority in Appeal Case No.1 of 2011 and also after setting aside the impugned order dated 29th May, 1981 and the Final Statement dated 10th November, 1981 passed and prepared by the competent authority in Case No. 6 (1) 172/V-2/76 as well as the notice dated 15th February, 2011 and the notice dated 7th December, 2010 published in the Kolkata Gazette on 15th December, 2010.

16. Per contra Mr. Chandi Charan De, learned Advocate appearing for the respondent authority submitted that the proceeding was initiated by the then competent authority Kolkata and a draft statement was prepared declaring 1855.94 Sq. mts of excess vacant land over the said premises on 15th November, 1980.

17. Mr. De further submitted that an opportunity was given to the returnee to file objection if any against that draft statement.

18. Mr. De further vehemently urged that on 24th December, 1980 the Governing Director of the said company filed one objection against the draft statement and their main contention in the said objection inter alia was that company was a reputed one and desires to set up a factory in the vacant land. Therefore, if the excess vacant land is acquired it will cause undue hardship to the company. Evidently the company failed to raise any objection against the calculation of excess vacant land as prepared by the competent authority Kolkata. In their objection petition they raised question in respect of structures, dwelling house etc. Therefore, the Final Statement under Section 9 of the said Act was prepared and served upon the company on 17th November, 1981. Pursuant to the liberty granted by this Hon'ble Court the company applied for exemption under Section 20 of the Urban Land (Ceiling & Regulation) Act, 1976 which was allowed by the Government with some conditions.

19. Mr. De further contended that one of the conditions imposed by the exemption issuing authority was that they should start construction of the proposed factory alternative building etc within six months from the date of issuance of the order dated 13th November, 1984. It was further stated in the

said order that the said proposed factory should start functioning within two weeks from the date of issuance of the order. But unfortunately sometime in the year 1995 after lapse of more than 10 years it was detected by the Urban Development Department, Urban Land Ceiling Branch that the above mentioned two conditions were not complied by the company and therefore, the said department on 4th September, 1995 withdrew the exemption order.

20. Mr. De further contended that the said company again on 18th October, 2002 prayed for a fresh order of exemption under Section 20 (i) (a) for setting up a modern diagnostic laboratory and nursing home on the aforesaid land. Unfortunately the said exemption petition was rejected by the concerned authority thereby directing the competent authority, Kolkata to complete the proceeding in respect of the aforesaid land vide Memo No.2133-UL/IL/98/81 dated 10th November, 2010. Accordingly the competent authority Kolkata completed the proceedings up to the stage of 10 (5) of the Urban Land (Ceiling & Regulation) Act, 1976. Feeling aggrieved by the notification of the competent authority under Section 10 (1) the company on 7th December, 2010 preferred an appeal before the appellate authority. The Principal Secretary Urban Development under Section 33 of the said Act on 24th January, 2011 dismissed the said appeal.

21. Mr. De further contended that the land in question was purchased long back by the company in the year 1951` but till the said Act of 1976 came into force the company never required to build up any production unit or factory or office over the land in question within the period of long 25 years. He further contended that the Governing Director of the company submitted the original 6(1) return and wrote in the said return form that the land was a vacant land. Not only that further in the year 1984, the company was given liberty to construct the factory, administrative building etc but the company failed to avail such exemption order thereby constructing factory, administrative building etc. Therefore, the only intention of the company is to evade the proceeding mentioned in the said Act of 1976.

22. Mr. De also drew my attention to some portion of the objection dated 24th December, 1980 appearing at Page-45 of the writ petition which is quoted below :- "9-The said land has been and still is mortgaged to the United Commercial Bank, Calcutta as security for loan taken by your petitioner.

10-In the premises, your petitioner submits that your Honour will be pleased to exempt your petitioner from the provisions of the said Chapter III, subject to such condition or conditions as to your Honour may deem fit and proper."

23. Mr. De also drew my attention at Page-23 of the affidavit-inopposition , Form I of the said Act of 1976. In the said Form under Serial No.5 the Governing Director of the said company declared as follows :- "5. State if the vacant land is-

(i) only a vacant land

(ii) land with a building or

(iii) land with a building with a dwelling unit therein."

24- Before parting with his argument Mr. De submitted that the Governing Director of the said company declared in Form I under Sub section 1 of Section 6 of the said Urban Land (Ceiling & Regulation) Act, 1976 submitted to the competent authority Kolkata who is the prescribed authority under the Urban Land (Ceiling & Regulation) Act, 1976 and the said authority passed the final order after being satisfied regarding the actual status of the land that it was "Vacant Land" on the relevant date. That being the scenario the relief as prayed for by the petitioner in the writ petition cannot be granted by this Hon"ble Court. Therefore, the writ petition should be dismissed.

25. Considering the submissions advanced by the learned Advocates appearing for the parties, perusing the records I find that it is evident from the schedule of the indenture dated 11th day of September, 1951, between Amulya Charan Dutt @ Amulya Krishna Dutt and Lalmohan Dutt and Dwijendra Nath Dutta of the 1st part and Arun Bose of the 2nd part and K.C. Das Ltd the 3rd part that all that piece or parcel of bare land and tank together with a brick built privy containing a total area of 1 Bigha 15 Cottahs 3 Chittaks and 26 sq.ft. more or less situate lying at and being premises no.2 Jogendra Nath Bose Lane formerly known as No.1 Jogendra Nath Bose Lane purchased by the petitioner company was not at all a vacant land. There was tank as well as a brick built privy also.

26. It is also evident from the KMC record appearing at Page 42 of the writ petition which is a certified copy of inspection book in respect of 4 Tara Sankar Sarani with effect from 3/79-80, relevant portion whereof is quoted below :-

Premises No.4 Description Name and address of recorded owner

4 Cor D.H. & Land M/s. K.C.Das Ltd, 3, Ram Krishna Lane, Cal-3

Details

Corner plot

Total Area= 1B-15CH-25 Sft.

Addn.

Cor/BW-1r+Ver-Muraridhar Tewari (Owner"s Darwan))

R.T. /B.W. ?1r++1r (Sm) Thakurghar)--730-p.m. + Tax + 1P !Asb/B.W-1r)

Land 1B-8CH @ 40/- P.K. P.M. = 9840/-

Certified copy of Inspection Book in respect of Premises No.4 Tarasankar Sarani. Wd-005, Qtr.3/73-74. Assessee No.11-00524000090. Challan No.A0261729 Dt. 28/2/2011.

Premises No. Nature of use Name and address of recorded owners

4 Land+Tank M/s. K.C. Das Ltd, 3, Ramkrishna Lane, Cal- 3

27. It is also evident from the objection letter dated 24th December, 1980 issued by the Governing Director of K.C. Das Private Ltd to the competent authority Kolkata under the Urban Land (Ceiling & Regulation) Act, 1976, Some extract of the said objection letter is quoted below :- "3-That with a view to expansion of its business both at home and abroad, your petitioner purchased vacant land at No.2 Jogendra Nath Bose Lane, now No.4, Talla Park Avenue, Calcutta-700 002, measuring 2355.94 sq. metres in 1951 in order to construct a new and modern factory with Research and Development Division, Export Division, Laboratory, Staff and Director's quarters. That the said land was improved upon after purchase by building 1-"ft high boundary wall, tube well and Darwan's quarters. Your petitioner has been unable to construct the proposed new factory due to lack of adequate funds and other factors beyond its control.

4. That your petitioner has constructed a factory and opened a showroom in Bangalore in 1972. Your petitioner has a plan to set up a factory in or around Bombay in the near future. Your petitioner desires to set up the proposed new factory in Calcutta on its own land before setting up anymore factories in other States, because of the increasing demand for your petitioner products in West Bengal, and it will be more economically viable and convene from the point of view of management and control. Your petitioner submits that the setting up of its factory on its own land in Talla Park Avenue, Calcutta-700 002 will not only offer opportunities of employment to some more personnel but also augment the State and Central revenue by means of its increased sales in the States and through it exports abroad.

5. That your petitioner submits that it will be against public policy and interest to acquire the aforesaid excess land causing serious damage and hardship to a thriving industry leading to the loss of the opportunity for employment of more workers in the business.

6. Your petitioner states that it is necessary or expedient in the public interest to allow your petitioner to set up its proposed new factory on its said land.

7. If the provisions of Chapter III of the Urban Land (Ceiling and Regulation) Act, 1976 are enforced upon your petitioner, it will cause undue hardship to your petitioner in as much as it will not be possible for your petitioner to acquire and/or purchase any other suitable land at a reasonable price, for establishing its said proposed factory in order to attain its object by new and improved means. The price of the land has risen by more than 100% and it is almost impossible for your petitioner to acquire suitable land for establishing your petitioner's new factory, at the present market price."

28. I find though the Governing Director being an old lady inadvertently described the entire land as a vacant land in her statement but in the letter dated 14th November, 1980 Smt. Annapurna Das, filed a statement under Section 1 of the said Act of 1976 in the capacity of Governing Director of the K.C. Das Private

Ltd of the Form holds vacant land to the extent of 2355.94 Sq. mt. at premises no.4 Talla Park Avenue. The Court cannot shut its eyes as to the record wherefrom it revealed that along with vacant land there was a tank and a brick built privy also. Under Section 2 (q) of the said Act of 1976 land with a structure cannot be treated as vacant land.

29. It is also evident from the inspection books for the year 1973-74 and 1979-80 of the Kolkata Corporation that on the appointed date of the said Act of 1976 there were two separate dwelling units measuring 2000 Sq. ft. for accommodation of the caretaker one tubewell and boundary wall and also a tank were existing. That separate dwelling units measuring 2000 Sq. ft. on the land of the said premises and boundary walls were built up long before the present Act came into force. Therefore, the petitioner company is entitled to land appurtenant as additional land appurtenant in terms of Section 2(g) of the said Act. It is well established from the record that there is hardly any vacant land within the meaning of Section 2 (q) of the said Act, resultantly vesting of any part of the vacant land does not arise.

30. It is also evident from the records that Managing Director of the petitioner company filed a return under Section 6 of the said Act before the competent authority Kolkata without mentioning of dwelling units of the said land. Pursuant to such return submitted by the petitioner, the competent authority Kolkata prepared a draft statement and initiated the impugned proceeding being Case No. 6(1)/ 172/V-2/76 and served a notice and draft statement dated 26th November, 1980 under the said Act holding total area as 2355.94 Sq. ft. mt. and 1855.94 mt. to be the vacant land though I cannot ignore the fact that on 24th December, 1980 the petitioner filed an objection mentioning there in existence of dwelling units on the said land as has been described above.

31. Court also cannot shut its eyes on the point that the competent authority passed the final order in the said matter on 29th May, 1981 thereby holding 1855.94 Sq. mt. out of total 2355.94 as vacant land though till date no copy of the enquiry report ever served upon the petitioner.

32. It is also not out of place to mention that on the one hand the competent authority held that the entire land as vacant land and allowed only 500 Sq. mt. to be retained by the petitioner and on the other hand the competent authority being satisfied about the hardship of the petitioner in case of acquisition of the vacant land advised the petitioner to make application for exemption under Section 20 of the said Act. Therefore, unless the extent of vacant land was properly determined after providing the benefit under Section 2 (g) of the said Act of 1976 the authority could not legally declare the entire land as vacant land. Unfortunately the authority instead of accepting the contention of the petitioner assured that the application for exemption if made would be considered sympathetically. Though on 29th July, 1981 the petitioner filed an application for exemption under Section 20 of the said Act before the Assistant Secretary Land Reforms Department but the petitioner received final statement on 10th

November, 1981 wherefrom it revealed that despite there being two separate dwelling units boundary walls and the tubewell the competent authority arbitrarily illegally whimsically in violation of Section 2 (g) of the said Act have declared 1855.94 Sq. mt. out of total 2355.94 Sq. mt. to be surrendered as vacant land as contended by the petitioner. On the other hand it is evident that by an order dated 13th November, 1984 in exercise of power conferred by Clause (a) Sub Section (1) of Section 20 of the said Act the State Government was pleased to exempt the said vacant land from the provisions of Chapter III of the said Act on certain conditions.

33. It is also revealed from records that since the Kolkata Corporation refused to sanction any construction or factory over the said land, therefore the petitioner decided to set up one modern diagnostic laboratory and nursing home on the said land and the petitioner by letter dated 14th June, 1989 informed the competent authority Kolkata about such change of plan and requested for granting permission to that effect. When everything is under process then all of a sudden petitioner was served with the impugned order dated 4th September, 1995 thereby informing that the Governor was pleased to withdraw the exemption order and therefore provisions of Chapter-III of the said Act would be made applicable to the said vacant land.

34. It is crystal clear from the Section 2 (g) of the said Act of 1976 that land appurtenant in relation to any building means as follows :-

"Section 2 (g)- "land appurtenant", in relation to any building, means,-

(i) in an area where there re building regulations, the minimum extent of land required under such regulations to be kept as open space for the enjoyment of such building, which in no case shall exceed five hundred square metres; or

(ii) in an are where there re no building regulations, an extent of five hundred square metres contiguous to be land occupied by such building and includes, in the case of any building constructed before the appointed day with a dwelling unit therein, an additional extent not exceeding five hundred square metres of land, if any, contiguous to the minimum extent referred to in sub-clause (i) or the extent referred to in sub-clause (ii) as the case may be".

Therefore, as per definition of Section 2 (g) of the said Act of 1976 that land kept as open space for the enjoyment of such building cannot be described as vacant land as has been argued by Mr. De. It cannot also be ignored by the Court that vacant land does not include tank. In the present case it is evident from the records that there is a tank in the said land. That being the scenario in my considered view such land cannot be treated as vacant land by the authority. According to KMC Building Rule 23 of 1951 there was a provision that the total area covered by building shall not exceed 1/3 while according to the 1990 KMC Building Rule maximum percentage of ground coverage of a plot size of 500 Sq. mt or more in case of residential building shall be 50 % . It is also the same under Rule 70 in KMC Building Rules, 2009.

35. Apprise of the discussions as above, considering the decision in Ramkrishan Shaw case (supra) & Sm. Srila Moitra case (supra) where the Hon''ble Court held that Court has right to review its own order on the basis of subsequent amendment and also considering the facts that without giving an opportunity of hearing to the petitioner the impugned order was passed by the concerned authority such action in my considered view clearly hits by denial of natural justice to the petitioner. It is very much pertinent to mention here that the said Act came into force in the year 1976 in 64 Urban agglomeration spread over 17 States and 3 Urban Territories and covered towns with population of more than 2 lacs as per 1971 census. It is also not out of place to mention that since the said Act could not meet its intended objects the Government of India decided to repeal the Act with passing the Urban Land (Ceiling & Regulation) Repeal Act, 1999. Various states subsequently repealed the said Act barring few States namely Andhra Pradesh, Assam, Bihar and West Bengal.

36. Therefore, in my considered view the impugned order dated 8th June, 2011 passed by the Appellate Authority in Appeal Case No. 1 of 2011 as well as the impugned order dated 29th May, 1981 and the Final Statement dated 10th November, 1981 passed and prepared by the Competent Authority in case No. 6 (1) 172/V-2/76 , the Notice dated 7th December, 2010 published in Kolkata Gazette on 15th December, 2010 and the Notice dated 15th February, 2011 cannot be sustained in the eye of law.

37. Accordingly the impugned order dated 29th May, 1981 and the Final Statement dated 10th December, 1981 passed and prepared by the competent authority in Case No. 6 (1) 172/V-2/76 as well as the Notice dated 15th February, 2011 and the Notice dated 7th December 2010 published in the Kolkata Gazette on 15th December, 2010 are hereby quashed and set aside without any order as to costs.]

38. Resultantly, this writ petition is allowed without any order as to costs.

39. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties after fulfilling all the formalities.