

**(2000) 12 CAL CK 0036**

**In the Calcutta High Court**

**Case No :** Civil Revisional Jurisdiction W.P.L.R.T. No. 818 of 2000

Shantiniketan Society and Another

APPELLANT

Vs

State and Others

RESPONDENT

**Date of Decision :** 05-12-2000

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Land Acquisition Act, 1894 — Section 23, 24  
Mineral Concession Rules, 1949 — Rule 57(2), 59  
Non Agricultural Tenancy Act, 1949 — Section 14M, 3  
West Bengal Estates Acquisition (Amendment) Act, 1963 — Section 17B, 2, 4, 44(2), 5  
West Bengal Fisheries (Requisition and Acquisition) Act, 1965 — Section 4  
West Bengal Land Reforms Act, 1955 — Section 2(7), 3

**Citation :** (2001) 1 CALLT 231 : (2001) 1 CHN 259 : 105 CWN 654

**Hon'ble Judges :** Satyabrata Sinha, J;Pratap Kumar Ray, J

**Bench :** Division Bench

**Advocate :** Mr. Samaraditya Pal, Mr. Ramapati Roy, Ms. Pompey Bose, Ms. Miru Hazra and Ms. Sanghamitra Kayal, for the Appellant; Mr. Balai Roy, Mr. A.N. Banerjee and Mr. Ziaul Islam, for the Respondent

## Judgement

S.B. Sinha, J.—This writ application arises out of a judgment and order dated 22nd August, 2000 passed by the West Bengal Land Reforms and Tenancy Tribunal (hereinafter referred to for the sake of brevity as the "said Tribunal") in T.A. 761 of 2000 arising out of W.P. No. 8247 (W) of 1999.

2. The petitioners herein are transferees of two plots being portion of Plot No. 356 and plot No. 358 situate in Mouza Kalikapur. The basic fact of matter is not much in dispute.

3. In the revisional survey settlement records of rights Plot No. 356 was recorded as Beel, whereas Plot No. 358 was recorded as Beel Machchas. The original owner of the said land was one Bejoy Krishna Roy, who died on 3.11.1960. The legislature of the State of West Bengal enacted West Bengal Estates Acquisition Act, 1953 (hereinafter referred to as "the said Act") to provide for the State

acquisition of estates, of rights of intermediaries therein and of certain rights of raiyats and under-raiyats and of the rights of certain other persons in lands comprised in estates. The said Bejoy Krishna Roy was not an intermediary within the meaning of the provisions of the said Act. In terms of the provisions of the said Act, the estate of the intermediaries etc., vested in the State of West Bengal on or about 15th April, 1955. No proceeding against Bejoy Krishna Roy was taken for a long time in terms of the provisions of the said Act. However, on or about 20th January, 1964 a Big Raiyat Case No. 168 of 1964 was initiated in the name of the said Bejoy Krishna Roy. In the year 1966 a requisition was made purported to be under the West Bengal Fisheries (Requisition and Acquisition) Act, 1965, relevant portion whereof reads thus :--

"Now, therefore, in exercise of the power conferred by sub-section (1) of section 4 of the West Bengal Fisheries (Regulation and Acquisition) Act, 1965 (West Bengal Act XX of 1965) and read with the Authority so vested in me as aforesaid, I do hereby requisition the fishery with without adjoining lands mentioned in schedule below and make the following further order, namely;

i, Delivered possession of the fishery with without adjoining land to this office K.G.O. Sri H. Mukherjee in 13.11.66 at 8 A.M.

Schedule

Description of fishery/fishery and land.

Dag Nos. 354. 355. 356. 359. 367. 358. 356/406."

The legality or validity of the said requisition was questioned in a writ application filed before this Court which was marked as C.R. 3000 (W) of 1966. In the aforementioned writ application, the vires of the West Bengal Fisheries (Requisition and Acquisition) Act, 1965 was also questioned. The said writ application was dismissed by an order dated 17.4.1972. An appeal taken there against was also dismissed. An application for grant of special leave was filed before the apex Court against the said order which was also dismissed. In the meanwhile, however, another proceeding marked as B.R. Case No. 19/1968 was initiated against the aforementioned Bejoy Krishna Roy, who as noticed hereinbefore died as far back as on 3.11.1960. For the first time, a proceeding u/s 44(2a) of the said Act was initiated in relation to the lands in question. The said proceeding, was once again initiated against the said Bejoy Krishna Roy and marked as Case No. 47 of 1968. On or about 7.3.1968, an order was passed therein by the competent authority, as a result whereof, classification in relation to the lands in question was changed from Beel Machchas to Sali. In the said proceeding, it was noticed, "it further transpires that Bejoy Krishna Roy died on 3.11.1960 leaving behind sons and daughters as heirs. It also appears that the notice is paid as it was issued on the dead person and also a prayer to withdraw the said notice. Being interrogated Sri Tarani Sen Halder could not exactly furnish names of the legal heirs".

4. The competent authority further took into consideration the fact that Bejoy Krishna Roy was detached as B.R. No. 19 in Behala "C". Camp and the case was still pending wherein the next date for hearing had been fixed on 15.6.1968. It was stated :--

"Sri Bejoy Krishna Roy was detached as B.R. Case No. 19 in Behala "C" Camp and the case was still pending the next date of hearing was fixed on 15.3.68. But it was learnt from O/C Jadavpur "C" Camp No. 1 that B.R. Case No. 168 in the name of Sri Bejoy Krishna Roy was already disposed of on 20.1.1964. The khas lands allowed to retain and made to vest as follows-

Retained

Vested

Agricultural 9.10 X

Non-Agricultural 15.00 121.80

Homestead .56 X

5. As regard classification of land, the competent authority observed :

"As the B.R. Case No. 19 of Behala "C" Camp in the name of Sri Bejoy Krishna Roy is pending an area of 89.00 acres in Plot No. 358 now should be taken into account Out of 90.16 acres (i.e. 89.00 Plus 1.10) of agricultural land Sri Roy may retain 15.00 as he had already been allowed to retain 0.10 acres of agri. In Jadavpore "C" Camp No. 1 Regarding plot No. 356 having 39.18 acres which recorded as was held to possession by Sm. Jhanendramoyee w/o. Narayan Ch. Pramanick as Sebait of the deity Durgamata Thankurani declared as "secular" u/s 6(i)(ii) on enquiring of the extent of 19.59 acres and the remaining area of 19.59 acres were held in possession by Manik Pramanick, Sadhan Ch. Pramanik, Swutradhar Pramanik all s/o Fakir and Jagannath Pramanick s/o. Muktaram. So far as Sm. Jhanendramoyee as Sebait is concerned, reference should at once be made to)/C's Jadavpore "C" Camp No. 1 and Barisha "C" Camp No. 11 to furnish to the Khas Lands categoriwise of the said person at an early date. I presume the prescribed ceiling of Khas lands would exceed the limit J.L.R.O. Behala should take the copies of the notes of the relevant Khatians where those had been change of rents. This is essential."

6. Yet again in B.R. Case No. 19 of 1968 an exparte order was passed on 15.3.1968 as a result whereof the lands were shown as vested lands and its classification was "Shall" lands as was contended by the State. The said order dated 15.3.68 reads thus :--

"None appears on call at 3 P.M. The case is therefore taken up ex-parte. It appears from the petition dt. 28.2.68 at Sl.3 filed with the proceeding that the B.R. is Sri Chittaranjan Roy as prayed for time which has allowed up to 15.3.68 (this day) in order to facilitate the parry for submission of the returns. In spite of this fact, none appears, though the date of hearing on this day was known to the

party as remained from the signature of the agent on this plan at 28.2.68. It is therefore resumed that the B.R. on his legal heirs as one unit of the B.R. did not wish to retain any khas land lying in the jurisdiction of this Behala "C" Camp. It is therefore ordered that the following khas lands shown below categoriwise are going to vest.

My information is that B.R. had khas lands within the jurisdiction of Barrawar "C" Camp No. 2. He may have land in other police stations. So Cho II may be requested to circulars to all the camp in the District".

7. Plot No. 356 appertaining to Khatian No. 18 of village Kalikapur measuring an area of 35.80 acres was shown to have vested as khas land of the intermediary. Feeling aggrieved, a writ application was filed before this Court questioning the order passed in Case No. 47 of 1968. P.K. Banerjee, J. (As His Lordship then was) by an order dated 4.2.72 disposed of the writ application but therein a mistake was committed in so far as the requisition order made under the West Bengal Fisheries Act has also been set aside.

8. A review application was filed for reviewing the order dated 4.2.72 passed by P.K. Banerjee, J. and the same was disposed of by granting leave to file a fresh writ application to challenge the legality or validity of the order passed in Cases No. 47 of 1968, whereafter another writ application was filed which was marked as C.R. No. 10496(W) of 1980 and by an order dated 15.5.81 the said writ application was allowed and the order made u/s 44(2a) proceeding dated 7.3.68 was set aside. It was observed :

"The Rule must, therefore, be made absolute. The proceeding u/s 44(2a) including initiation being Case No. 47 P.S. Tollygunge, District 24-Parganas, and the final order passed thereon are hereby set aside. This order is however made without prejudice to any right the respondents might have to initiate fresh proceeding u/s 44(2a) after due notice to the persons interested in the matter".

9. The petitioner herein purchased 134 bighas and odd of lands appertaining to C.S. Plot Nos. 356 and 358 between 1989 to 1993.

10. The respondents herein pursuant to or in furtherance of the liberty granted in their favour passed an ex parte order in a new case which was marked as Case No. 1 of 1993 on 16.3.93 purported to be in terms of section 44(2a) of the said Act.

11. A writ application was filed questioning the said order dated 16.3.93 which was marked as C.O. No. 18859(W) of 1994 and by a judgment and order dated 22nd September, 1994 the aforementioned writ application was allowed stating :--

"Annexure "C" to the writ application, being an exparte order cannot be sustained in law inasmuch as from the said order, it transpires that the Officer concerned did not apply his mind to the facts of the case nor any cogent reasons was given by him while passing the impugned order. Accordingly, the said order

stands quashed. Let there be re-hearing of the matter within three months from the date of communication of this order to the concerned respondent which the petitioner will communicate within four weeks from date. Objection is to be filed within eight weeks from date. In default, the Officer concerned will be at liberty to proceed exparte. With these observations, the writ application is allowed. There will be no order as to costs. "

12. The petitioner herein filed an application for mutation on 4.11.94. The said application was disposed of. Pursuant to the direction of Mitra, J. in the aforementioned writ application, another proceeding u/s 44(2a) of the said Act was initiated which was numbered as 1/95 of 1995.

13. As against the said order, a writ application was filed before this Court which was marked as W.P. No. 8247(W) of 1999. The said writ application, as indicated hereinbefore, upon Constitution of the Tribunal was transferred wherein the order impugned herein was passed.

14. However before we consider the merit of the matter, we may note certain other facts. As the application for mutation filed by the petitioner herein had not been disposed of for a long time, the petitioner filed a writ application before this Court wherein a direction was issued upon the B.L. & L.R.O. to dispose of the application upon giving an opportunity of hearing to all interested parties and by assigning good and sufficient reasons in support thereof by order dated 16.1.98. The said application for mutation filed by the petition herein was dismissed by the B.L. & L.R.O. in Misc. Case No. 1/98 by an order dated 11.5.98, inter alia, on the ground that the land in question has already vested in the State of West Bengal and further held that the petitioner being post vesting transferee did not derive any title thereto. Before the learned Tribunal the respondents in their affidavit-in- opposition however disclosed that on 14.9.98 in Case No. 1/95 which was in continuation of the earlier Case No. 1/93 directed vesting of the land. The petitioner allegedly having come to learn of the said order dated 14.9.98 filed a supplementary affidavit questioning the legality of the said order, inter alia, on the ground that the same had been passed without issuing any notice to the petitioner herein. We may place on record that admittedly by reason of the aforementioned order dated 14.9.98 it was held that the nature of the land was Shall.

15. The petitioner herein also filed a writ application against the said order dated 11.5.98 passed in Misc. Case No. 1 of 1998 which was marked as WP No. 20708(W)/98 and by a judgment and order dated 18.9.98 the said order was set aside and the matter was remitted back to the B.L. & L.R.O. for consideration of the matter afresh directing :--

"I have gone through the impugned order sought to be quashed, I find that there is no whisper on discussion nor there has been any attempt to adjudicate this point as mentioned in paragraph 178 of the petition. In my view the point which has been taken is required to be decided in terms of the earlier order and also for

deciding the real controversy between the parties. The learned Advocate appearing for the State very fairly submits that the impugned order has not been passed upon consideration of the real controversy which has been mentioned in paragraph 178 of the writ petition. He submits that in order to expedite the matter let this matter be decided afresh considering the point in paragraph 178 of the petition instead of keeping the matter pending.

I appreciate the fair submissions of the learned Advocate for the State. Accordingly, I set aside the impugned order being annexure "C" dated 11.5.98. I direct the B.L. & L.R.O. viz, the respondent No. 5 to consider the case afresh in terms of the earlier order passed by this Court and he shall decide the point and question raised in paragraph 178 of the writ petition. Such disposal shall be completed within a period of six weeks after Puja Vacation."

16. Thereafter the impugned order was passed by B.L. & L.R.O. in Misc. Case No. 30 of 1998 dismissing the said mutation application, inter alia, on the ground that in terms of the orders passed in Case No. 47 of 1968 and Misc. Case No. 1 of 1998 dated 11.5.98 the property has vested in the State of West Bengal and the petitioners herein are post vesting transferees. The present writ application was filed questioning the said order. By reason of the impugned order, the said application had been dismissed by the learned Tribunal.

17. Mr. Pal, learned senior Counsel, appearing on behalf of the petitioners herein, inter alia, submits that a bare perusal of the impugned order would clearly show that the learned Tribunal not only failed to keep itself within the bounds of rigours of judicial review but also misdirected itself in law by posing a wrong question. According to the learned counsel, the learned Tribunal acted illegally and without jurisdiction in so far as it usurped the role of the Revenue Officer and although no material existed on record, it proceeded to decide the suo moto proceeding u/s 44(2a) of the Act on a misconceived notion. Mr. Pal, learned counsel, would urge that the learned Tribunal committed an error in so far as it took into consideration the orders passed in the proceedings which stood quashed by this Court for arriving at its conclusion and it also misconsidered and misinterpreted the decision of this Court in the case of Subodh Kumar Mitra and Another Vs. The Revenue Officer and Others, .

18. Mr. Pal, learned counsel for the petitioner would further urge that the Division Bench decision of this Court reported in 1975(1) CLJ 312 (State of West Bengal & Ors. v. Pijus Kanti Roy) was wrongly applied in the instant case. It was pointed out that the aforementioned decision has been distinguished by this Court in the case of Provash Chandra Mondal and Another Vs. State of West Bengal, . Our attention has been drawn to the fact that while passing the impugned order the learned Tribunal failed to take into consideration that by reason of a supplementary affidavit the petitioner had questioned the legality and validity of the order dated 14.9.98 which admittedly was passed in violation of the principles of natural justice. The learned counsel would contend that in any event the said order was passed on surmises and conjectures and curiously enough

had not been referred to by the appropriate authority in its order dated 5.2.99 while rejecting the petitioner's application for mutation in their names in relation to the plots in question. Reliance by the learned Tribunal on the quashed proceeding, Mr. Pal, learned counsel, submits amounts to a total non-application of mind on the part of the learned Tribunal.

19. It has been contended by the learned counsel that the very fact that the statutory authority as also the learned Tribunal times without number have referred to the quashed proceeding clearly establishes total non-application of mind on their part.

20. In this connection our attention has been drawn to a decision of this Court reported in 1982 CLJ 9 wherein it had been held that in such a situation, initiation of Big Raiyat case would be without jurisdiction. The learned counsel would further contend that the statutory authority proceeded on misconception by mixing up the mutation case with the proceeding u/s 44(2a) of the Act. According to the learned Counsel, the error of jurisdiction on the part of the learned Tribunal would appear from the fact that it approved the decision of the specially empowered officer in so far as it relied upon the inspection report in a quashed proceeding.

21. Mr. Pal with reference to various paragraphs of the impugned judgment submitted that the Tribunal has committed several errors of law apparent on the face of the record. Such errors of law, contends Mr. Pal, would attract the principles of "Judicial review", in support whereof reliance has been placed on Judicial Review of Administrative Action by De Smith, Woolf and Jowell, 5th Edn. Page 286 and Sushil Kumar Sasmal v. State of West Bengal, reported in 1999(1) CHN 93.

22. According to the learned counsel, the errors of law which had been committed by the learned Tribunal are :

(1) It had failed to take into consideration that "beel" and "tank fishery" are not mutually exclusive.

(2) It failed to take into consideration that a non-agricultural tenant being not an inter-mediary, the question of vesting of his land does not arise.

(3) It has misread and misinterpreted the order of this Court dated 4th February, 1972.

(4) Reliance upon the meaning of "beel" from Wilson Glossory and not following the judgment of this Court amounts to misdirection in law.

(5) It has relied upon the "quashed" proceedings and section 44(2a) of the West Bengal Estates Acquisition Act in so far as it held that subsequent purchasers are not required to be given an opportunity of hearing.

23. It was submitted that the Division Bench decision of this Court in State of West Bengal v. Pijus Kanti, reported in 1975(1) CLJ 312, whereupon the learned

Tribunal relied upon should not be treated to a binding precedent in view of the fact that the same had been distinguished in a Division Bench decision of this Court in *Monoranjan Belthori v. Deputy Commissioner of Purulia*, reported in 1979(1) CLJ 557. In any event contends the learned counsel as the decisions of the apex Court as regard compliance of the principles of the natural justice, in terms of the decision of the apex Court in *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and *Another, , Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , Basudeo Tiwary Vs. Sido Kanhu University and Others, , D.K. Yadav Vs. J.M.A. Industries Ltd., Cantonment Board v. Taramani Devi*, reported in 1992 supp(2) SCC 501 and *Union of India and Another Vs. Tulsiram Patel and Others*, had not been considered therein, the same should be held to have been impliedly overruled and/or rendered per incuriam. Strong reliance in this connection has been placed on *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, and *Young v. Bristol Aeroplane Co. Ltd.*, reported in 1944(2) All ER 293.

24. Mr. Balai Roy, the learned Senior Counsel, appearing on behalf of the Respondents, on the other hand, submitted that the petitioners or their predecessors-in-interest having not questioned the order dated 15th March, 1968 made in B.R Case No. 19 of 1968, the same is binding upon them and in that view of the matter, it could not have subsequently been challenged before the learned Tribunal. It was further submitted that the said order operates as constructive *res judicata* as against the petitioner. According to the learned counsel it is now beyond any cavil of doubt that principles of constructive *res judicata* also apply in all judicial or quasi judicial proceedings. The learned Counsel relied on *Devilal Modi v. Sales Tax Officer*, reported in AIR 1967 SC 1150 *State of Punjab and others Vs. M/s. Surinder Kumar and Co. and others*, and *Forward Construction Co. and Others Vs. Prabhat Mandal (Regd.), Andheri and Others, .*

25. It has further been submitted that in terms of the order passed by the Hon'ble Mr. Justice K.J. Sengupta, as an order of limited remand was made with regard to the statements made in paragraph 17B of the application and having regard thereto, it is not permissible for the writ petitioner to attack the said judgment on other grounds. The learned counsel further submitted that from Wilson's Glossary it would appear that "beel" cannot form a part of a non-agricultural tenancy as it is a marshy land. Mr. Roy would urge that such meaning of "beel" occurring in Wilson's Glossary has also been found favour with a Division Bench of this Court in *Subodh Kumar Mitra and Another Vs. The Revenue Officer and Others, , and*, thus, no illegality can be said to have been committed by the learned Tribunal in proceeding on that basis. It was urged that all observations of the Tribunal are not its ratio and having regard to the limitation of power of judicial review of this Court, it may interfere with the impugned judgment only in the event, illegality, irrationality and procedural irregularity is found in relation thereto.

26. The learned counsel has taken us through various provisions of the West Bengal Estates Acquisition Act, Rules framed thereunder and the records of rights of the concerned plots and submitted that Bijay Krishna Roy and his successors were not entitled to retain entire tank fishery. In terms of the West Bengal Estates Acquisition Act, contends the learned counsel, Bejay Krishna Roy was entitled to retain only 15 acres of non-agricultural land and in view of the fact that he had been permitted to retain such lands, all other lands must be held to have vested either under the provisions of West Bengal Estates Acquisition Act or under West Bengal Land Reforms Act and in that view of the matter this Court should not exercise its discretion under Article 226 of the Constitution of India.

27. Having regard to the points at issue, it may, not be necessary for this Court to deal with all the contentions raised at the Bar.

28. The West Bengal Estates Acquisition Act, 1953 (hereinafter called and referred to for the sake of brevity as the "said Act") came into force with effect from 12th February, 1954 to provide for the State acquisition of estates of rights of intermediaries therein and of certain rights of raiyats and under-raiyats and of the rights of certain other persons in lands comprised in such estates by the State.

29. Section 2 provides for the definition clause. Some of the provisions which require our consideration, have been defined in the said provision, the relevant clauses whereof are 2(b), 2(f), 2(h), 2(i), 2(j) and 2(k) which read thus :-

"Section 2(b) "agricultural land" means land ordinarily used for purposes of agriculture or horticulture and includes such land, notwithstanding that it may be lying fallow for the time being;

Section 2(f) "estate" or "tenure" includes part of an estate or part of a tenure;

Section 2(h) "Incumbrance" in relation to estates and rights or intermediaries therein does not include the rights of a raiyat or of an under raiyat or of a non-agricultural tenant [but shall, except in the case of land allowed to be retained by an intermediary under the provisions of section 6, include all rights or interests of whatever nature, belonging to intermediaries or other persons, which relate to lands comprised in estates or to the produce thereof];

Section 2(i) ["Intermediary" means a proprietor, tenure-holder, under-tenure, holder or any other intermediary above a raiyat or a non- agricultural tenant and includes a service tenure-holder and, in relation to mines and minerals, includes lessee and a sub-lessee;

Section 2(j) "non-agricultural land" means land other than agricultural land [or other than land comprised in a forest;]

Section 2(k) "non-agricultural tenant" means a tenant of non-agricultural land who holds under a proprietor, a tenure-holder [a service tenure holder] or an under tenure-holder;"

Section 3 provides for a non-obstante clause.

30. By reason of the said Act, the State Government is empowered by a notification issued in that regard to declare that with effect from the date mentioned therein, all estates and the rights of every intermediary in each such estate situated in any district or part of a district specified therein, shall vest in the State free from all incumbrances.

31. Sub-section (6) of section 4 of the said Act which is material for the purpose of this case and which was substituted by sub-section (6) of section 2 of the West Bengal Estates Acquisition (2nd Amendment) Act, 1954 reads thus :

"Section 4. Notification vesting estates and rights of intermediaries.-

(1) .....

(6) Notwithstanding anything contained in the foregoing sub-sections, an intermediary, may, at any time before the 15th day of February, 1955, apply to the State Government to have all his estates, tenures, undertenures and other rights as intermediary, to be vested in the State and the State Government may, after considering the facts and circumstances of the case, if it thinks fit, make an order granting the application. Upon the order being made, all such estates, tenures under-tenures and rights of the intermediary, shall vest in the State Government on and from the date of the order, free from incumbrances (other than the rights of subordinate intermediaries, if any) and the provisions of this Act, except the foregoing sub-section and clauses (a) and (b) of section 5, shall, with necessary modifications apply as if, in relation to such estates, tenures, under-tenures and rights of the intermediary, references to the publication of a notification u/s 4 or to the date of vesting were references to the order granting the application or to the date of such order, and references to the vesting u/s 5 were references to the vesting under this sub-section. The State Government shall have also power to make such other orders for giving effect to the provisions of this sub-section as it deems necessary."

32. Section 5 provides for the effect of notification which reads thus :--

Section 5. Effect of notification.--(1) Upon the due publication of a notification u/s 4, on and from the date of :

(a) the estates and the rights of intermediaries in the estates, to which the declaration applies, shall vest in the State free from all incumbrances; in particular and without prejudice to the generality of the provisions of this clause, every one of the following rights which may be owned by an intermediary shall vest in the State, namely;

(i) rights in sub-soil, including rights in mines and minerals;

(ii) rights in hats, bazars, ferries, [...] fisheries, tolls and other sairati interests;

(aa) all lands in any estate comprised in a forest together with all rights to the

trees therein or to the produce thereof and held by an intermediary or any other person shall, [.....];

(b) all grants of, and confirmation of titles to, estates and rights therein, to which the declaration applies and which were made in favour of intermediaries shall determine;

(c) [(subject to the provisions of sub-section (3) of section 6, every non-agricultural tenant holding any land) under an intermediary, and until the provisions of Chapter VI are given effect to every raiyat holding any land under an intermediary], shall hold the same directly under the State, as if the State had been the intermediary, and on the same terms and conditions as immediately before the date of vesting :

Provided that if any non-agricultural tenant pays rent wholly in kind or partly in kind any partly in cash, then, notwithstanding anything contained in the foregoing clause, he shall pay such rent as a Revenue Officer specially empowered by the State Government in this behalf may determine in the prescribed manner and in accordance with the principle laid down in clause (11) of section 42:

Provided further that any person aggrieved by an order passed by the Revenue Officer determining rent under the first proviso may appeal to such authority and within such time as may be prescribed;

(d) [every non-agricultural tenant holding under an intermediary and until the provisions of Chapter VI are given effect to, every raiyat holding under an intermediary], shall be bound to pay to the State his rent and other dues in respect of his land, accruing on and from the date of vesting, and every payment made in contravention of this clause shall be void and of no effect.

(2) For the removal of doubts it is hereby declared that notwithstanding anything to the contrary contained in any judgment, decree or order of any Court or Tribunal or in any other law, all rights and interests in mines and minerals of all intermediaries, being lessees and sub-lessees in any notified area shall be deemed to have vested in the State with effect from the date of vesting mentioned in the notification u/s 4 in respect of such notified area.

(3) It is further declared that notwithstanding anything to the contrary contained in any judgment decree or order of any Court or Tribunal or in any other law, all lands in any estate comprised in a forest with all rights to the trees or to the produce thereof as mentioned in clause (aa) of sub-section (1) in any notified area shall be deemed to have vested in the State with effect from the date of vesting mentioned in the notification u/s 4 in respect of that area."

33. Section 6 provides for right of intermediary to retain certain lands. Clauses (c), (d) and (e) of section 6 of the said Act read thus :--

"(c) non-agricultural land in his khas possession [Including land held under him

by any person, not being a tenant, by leave or license], not exceeding fifteen acres in area, and excluding any land retained under clause (a):

Provided the total area of land retained by an intermediary under clause (a) and (c) shall not exceed twenty acres as may be chosen by him;

Provided further that if the land retained by an intermediary under clause (c) or any part thereof is not utilised for a period of five consecutive years from the date of vesting, for a gainful or productive purpose, the land or the part thereof may be resumed by the State Government subject to payment of compensation determined in accordance with the principles laid down in sections 23 and 24 of the Land Acquisition Act, 1894;

(d) agricultural land in his khas possession, not exceeding twenty five acres in area, as may be chosen by him:

Provided that in such portions of the district of Darjeeling as may be declared by notification by the State Government to be hilly portions, an intermediary shall be entitled to retain all agricultural land in his khas possession, or any part thereof as may be chose by him;

(e) tank fisheries;

Explanation--"tank fishery" means a reservoir of place for the storage of water, whether formed naturally or by excavation or by construction of embankments, which is being used for pisciculture or for fishing, together with the sub-soil and the banks of such reservoir or place, except such portion of the banks as are included in a homestead or in a garden or orchard and includes any right of pisciculture or fishing in such reservoir or place."

34. The West Bengal Estates Acquisition Act, thus, provides for acquisition of estates, of the rights of the intermediaries therein and certain rights of raiyats and under-raiyats and of the rights of certain other persons in lands comprised in estates. Originally the Act did not touch the rent receiving interest of the raiyats and under-raiyats but upon coming into force of section 52 of the West Bengal Estate Acquisition Act such measure has been brought into force. By a notification dated 10th April 1956 raiyats and under-raiyats were included within the definition of intermediaries and their interests also vested in the State with effect from the date of notification. The said notification was amended in the year 1955 by way of complementary legislation on the vesting of certain rights of raiyats and under-raiyats in the State.

35. Rights of non-agricultural tenants have been directed to be vested in the State by reason of section 3A of the West Bengal Land Reforms Act which reads thus:--

"Section 3A. Rights of non-agricultural tenants and under-tenants in non agricultural land to vest in the State.--(1) The rights and interest of all non-agricultural tenants and under-tenants under the West Bengal Non-Agricultural

Tenancy Act, 1949 (West Bengal Act XX of 1949) shall vest in the State free from all encumbrances, and the provisions of sections 5 and 5A of the West Bengal Estates Acquisition Act, 1953 (West Bengal Act 1 of 1954) shall apply, with such modifications as may be necessary, mutatis mutandis to all such non-agricultural" tenants and under-tenants as if such non-agricultural tenants and under-tenants were intermediaries and the land held by them were estates and a person holding under a non-agricultural tenant or under-tenant were a raiyat.

Explanation.--Nothing in section 5 and 5A of the West Bengal Estates Acquisition Act, 1953 shall be construed to affect in any way the vesting of the rights and interests of a non-agricultural tenant or under-tenant under the West Bengal Non-Agricultural Tenancy Act, 1949 in the State under sub-section (1) of this section.

(2) Notwithstanding anything contained in sub-section (1), a non-agricultural tenant or under-tenant under the West Bengal Non-Agricultural Tenancy Act, 1949, holding in his khas possession any land to which the provisions of sub-section (1) apply, shall, subject to the other provisions of this Act, be entitled to retain as a raiyat the said land which together with other lands, if any, held by him shall not exceed the ceiling area u/s 14M.

(3) Every intermediary.-

(a) Whose land held in his khas possession has vested in the State under sub-section (1), or

(b) Whose estates or interests, other than land held in his khas possession, have vested in the State under sub-section (1), shall be entitled to receive an amount to be determined in accordance with the provisions of section 14V.

(4) The provisions of this section shall not apply to any land to which the provisions of the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981 (West Bengal Act XXXVII of 1981) apply.

(5) This section shall be deemed to have come into force on and from the 9th day of September, 1980.]"

36. The definition of "land" as also undergone an amendment. Section 2(7) of West Bengal Land Reforms Act as amended reads thus :-

"Section 2(7). "Land" means land of every description and includes tank, tank-fishery, fishery, homestead, or land used for the purpose of livestock breeding, poultry farming, dairy or land comprised in tea garden, mill, factory, workshop, orchard, hat, bazar, ferries, tolls or land having any other sairati interests any other land together with all interests, and benefits arising out of land and things attached to the earth or permanently fastened to anything to earth."

37. The said provision, thus, came into force with effect from 9.9.1980 and the lands of the Non-Agricultural Tenants vested only with effect from that date. If aforementioned late Bejoy Krishna Roy was a non-agricultural tenant, his tenancy vested only from that date and, thus, any proceeding which might have

issued prior thereto are non-est in the eye of Law. It would therefore, be noticed that whereas; in terms of the West Bengal Estates Acquisition Act the right, title and interest of the non-agricultural tenants did not vest, the same are sought to be vested by reason of section 3A of the West Bengal Land Reforms Act. It must also be borne in mind that whereas; by reason of the aforementioned provisions a raiyats land to the extent of 25 acres and non-agricultural land to the extent of 15 acres besides homestead are saved from vesting, there has been no limit whatsoever with regard to the tank fisheries. All tank fisheries are therefore, exempted from vesting.

38. The case at hand has to be considered having regard to the aforementioned legal provisions. It may also be noticed that by reason of amendments made in the years 1981 and 1986 in the West Bengal Land Reforms Act several changes had been made as regard the ceiling limit of the lands to be held by the raiyats and under-raiyats and for the said purposes Chapter 11B was inserted.

39. By reason of the definition of "land" tank fishery and fishery also came within the purview of its definition. In the West Bengal Estates Acquisition Act and West Bengal Land Reforms Act, fishery had not been defined. As by reason of section 6 of the said Act the intermediary had been allowed to retain the tank fisheries, the rights of fishery other than tank fishery of an intermediary may be vested but the tank fishery is saved thereunder.

40. The vires of several provisions of the said Act came up for consideration before a Division Bench of this Court in *Paschim Banga Bhumijibi Krishak Samity v. State of West Bengal* reported in 1996 (2) CHN 212 : 1996 WBLR 242 wherein section 14V. vis-a-vis section 2(7) was declared unconstitutional. However, the said matter is pending before the apex Court of India. We had referred to the aforementioned provision only with a view to complete the legislative history so far as it covers the matter in question under the aforementioned Act.

41. The dictionary meaning of the word "fishery" is as follows :--

"The act or process of taking fish; the place for catching fish; a fishing establishment; the legal right to take fish at a particular place or in particular waters."

harton's Law Lexicon defines "fishery" as follows :--

"The right to take fish. Fishing are either free, common or several. A free fishery is the exclusive right of fishing in a public river and is a royal franchise. Common fishery or piscary is the right of fishing in another man's water. No right can exist in the public to fish in an island, non-tidal lake. A several fishery is the exclusive right of fishing. The term "fishery" is also applied to fishing grounds or parts of the sea where at certain seasons numbers of fish are taken."

42. The petitioners herein by several deeds, inter alia, purchased plot Nos. 356 and 358 from the heirs of Bijoy Krishna Roy since deceased. As noticed hereinbefore, several proceedings in relation to the aforementioned plots and

other plots held by him were initiated, some of them being u/s 44(2a) of the West Bengal Estates Acquisition Act. Section 44(2a) of the said Act as inserted with retrospective effect reads thus :--

"Section 44 Draft and final publication of the record of rights--

(1).....

[(2a) An officer specially empowered by the State Government may [on application within nine months, or of his own motion within [thirty-five years] from date of final publication of the record-of-rights or from the date of coming into force of the West Bengal Estates Acquisition (Second Amendment) Ordinance, 1957, whichever is later, revise an entry in the record finally published in accordance with the provisions of sub-section (2) after giving the persons interested an opportunity of being heard and after recording reason therefore :

Provided that nothing in the foregoing paragraph shall be deemed to empower such officer to modify or cancel any order passed u/s 5A, while revising any entry :

Provided further that no such officer shall entertain any application under this sub-section or shall of his own motion take steps to revise any entry, if an appeal against an order passed by a revenue officer on any objection made under sub-section (1), has been filed before the commencement of the West Bengal Estates Acquisition (Second Amendment) Ordinance, 1957, before a Tribunal appointed for the purpose of this section, and notwithstanding anything in this section, any such appeal may continue and be heard and disposed of as if the West Bengal Estates Acquisition (Second Amendment) Ordinance, 1957, have not been promulgated.]"

43. By reason of the aforementioned provision, entry as regard classification in the record of rights finally published, may be changed subject to fulfillment of the conditions mentioned therein. A bare perusal of the aforementioned provision would clearly go to show that a drastic power had been conferred upon the appropriate authority in terms of the aforementioned provision of the said Act.

44. We may place on record that apart from the aforementioned provision no other provision exists either in the West Bengal Estates Acquisition Act or in the West Bengal Land Reforms Act whereby and whereunder the classifications of the land can be changed so as to hold that the same had vested in the State. Such change in the classification of land in terms of section 44(2a) of the West Bengal Estates Acquisition Act must be done having regard to the nature as existing on the date of vesting and not prior thereto.

45. We may further place on record that in terms of the provision of Chapter II or Chapter HA of West Bengal Land Reforms Act, properties held by a raiyat beyond ceiling limit may be directed to be vested, but while passing an order thereunder the concerned Revenue Officer must proceed on the basis that the

entry made in the record of right is correct.

46. One of the main questions which arise for consideration would be as to whether having regard to the provisions of the said Act an opportunity of hearing should be granted to the post vesting transferees.

47. In *Monoranjan Belthoria & Anr. v. Deputy Commissioner of Purulia & Ors.*, reported in 1979(1) CLJ 557, relying on the decision of the apex Court in AIR 1974 SC 234, it has been held :--

"The Division Bench which decided the case of (4) *State of West Bengal v. Pijush Kanti Roy* (supra), did not refer to all the relevant provisions of the West Bengal Estates Acquisition Rule relating to the preparation of the said Rules. The Schedule "B" contains detailed procedure for preparation of revision of the records. These rules contain provisions for hearing the parties at the different stages. In this connection, we may refer to Rule 6 of the schedule B relating to attestation inter alia provides that a proclamation published before the attestation begins. The proclamation shall also specify that all persons who have derived or lost interest in any Khatian should invariably be present at the time of attestation and that all changes which occurred in any tenancy since the last preparation of the draft or finally published record-of-rights due to--(a) inheritance, succession, transfer or otherwise; (b) amalgamation or sub-division of tenancies; (c) surrender or abandonment of tenancies (d) new settlement; or (e) any other reasons shall be brought to the notice of the Revenue Officer. As each person appears before him the Revenue Officer shall examine his khatian readout all the entries make corrections where required, and see that the khatian is complete in all particulars. Disputes regarding the ownership of land, or the ownership of any interest in land, shall be decided by the Revenue Officer in a summary manner and on the basis of present possession or possession during the agricultural year preceding the year in which the date of vesting u/s 4 of the Act falls where notification under that section has been issued". In case revision is made of the Record-of-Rights previously published in Chapter X of the Bengal Tenancy Act, no fresh enquiry regarding the details indicated in Rule 6 would be necessary if they are found to be correct on the basis of present and actual possession or possession during the period stated above where notification of vesting u/s 6 of the Act has been issued. There is no reason why different standard should be applied at the stage of revision of records u/s 44(2a) to deny right of hearing to persons interested at the stage of revision u/s 44(2a) of the West Bengal Estates Acquisition Act.

For the foregoing reasons, we are unable to agree with the law laid down by the Division Bench in *State of West Bengal v. Pijush Kanti Ray* (supra), but it is not necessary to make a reference to a larger Bench because the present case relates to a proceeding u/s 6(1) and not u/s 44(2a) of the West Bengal Estates Acquisition Act."

48. In *Provash Chandra Mondal and Another Vs. State of West Bengal*, , it has

been held :--

"It may be noted that the facts that give rise to an inference of independent status under the State as referred to by Sen, J. are also the kinds of facts that would include a case within the category of "known" transferees who are entitled to notice in terms of the Supreme Court decision. One way of harmonising the decisions up to date on this question may be to hold that ordinarily either for the purpose of section 44(2a) (with which we are not concerned here) or section 6 of the W.B.E.A. Act transferees after vesting are entitled to no notice but when the names of such transferees are known to the authorities on account of reason such as, mutation of their names and rents being accepted by the State they should be given notice even through primarily equities between the transferers and transferees are to be confined interests."

49. A contention has been raised that the Supreme Court in Gurcharan Singh and Others Vs. Prithi Singh and Others, was not dealing with a post vesting transferee. From paragraph 2 of the said decision however, it does not appear that the said contention is correct. It was held :--

"While it is true that a landowner who fails to reserve or select his permissible area within the prescribed period, cannot exercise that right subsequently, and thereafter it is for the Collector to determine the defaulter's permissible and surplus areas, in exercising this power under sections 58, the Collector has to act judicially. He is bound to give notice to the landowner, and the transferees from him, if known. Thereafter he has to hear the parties who appear, and to take into consideration their representations and then pass such order as may be just."

50. The decision of the apex Court, therefore, was based on Justice.

51. In State of West Bengal v. Pijus Kanti, reported in 1975(1) CLJ 312, the State had no knowledge or information as regard the purchase of the post vesting subsequent transferee of the intermediary. The challenge was confined only to classification in persona. There was no dispute with regard to the classification of land.

52. The West Bengal Land Reforms Act makes a specific provision for hearing the "persons interested" in the matter. It does not use the expression the intermediary" or "raiyat". Had the intention been that only the ex- intermediary or raiyat could be heard the legislation could have said so in no uncertain terms. It had chosen to use a word having a broader concept.

53. It further appears in paragraph 9 of the judgment as quoted supra, with utmost respect to the Hon"ble Judges, the correct question was not posed. No legal fiction as regard the liability of the purchaser when purchasing the property can arise either in law or on fact. A wide range of period has been provided for reclassification of land. The doctrine of "caveat emptor" merely suggests that a person must exercise due diligence about the ownership of the property. But he cannot fore-see that the concerned authorities would exercise their discretion for

initiating a suo moto proceeding after a long time. Another practical difficulty has not been considered by the learned Judges, i.e. after transferring the property the ex-intermediary may not be interested as he at that point of time may not care as to whether his property is directed to have been vested or not as he has already washed his hands off the property.

54. We have further to bear in mind that in this case, the vesting takes place by reason of section 3A of the West Bengal Land Reforms Act, which came into force on 9.9.1980. Prior thereto there was no vesting of the interest of the non-agricultural tenants in terms of the provision of the West Bengal Estates Acquisition Act.

55. It may be one thing to say that the concerned Revenue Officer while initiating the proceeding is not aware that a transfer has taken place. But it is another thing to say despite such notice he does not hear the transferee.

56. There cannot be any doubt whatsoever that in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, and thereafter the law with regard to the principles of Natural Justice has undergone a sea change. In *Maneka Gandhi (supra)* it has been held :--

"This decision broadened the area of application of the rules of natural justice and to borrow the words of Prof. Clark in his article on "Natural Justice. Substance and Shadow" in Public Law Journal, 1975, restored light to an area "benighted by the narrow conceptualism of the previous decade". This development the law had its parallel in India in the *Associated Cement Companies Ltd. v. P.N. Sharma* where this Court approvingly referred to the decision in *Ridge v. Baldwin (supra)* and, later in *State of Orissa v. Dr. Binapani Dei* observed that : "If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power". This Court also pointed out in *A. K. Kraipak v. Union of India* another historic decision in this branch of the law, that in recent years the concept of quasi-judicial power has been undergoing radical change and said :

The dividing line between an administrative power and a quasi judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised.

The net effect of these and other decisions was that the duty to act judicially need not be super-added, but it may be spelt out from the nature of the power conferred, the manner of exercising it and its impact on the rights of the person affected and where it is found to exist, the rules of natural justice would be attracted."

57. In the aforementioned decision A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , has been referred to with approval.

58. Having regard to the decisions of the apex Court in D.K. Yadav Vs. J.M.A. Industries Ltd., , the question does not appear to be res integra any more.

59. It is now a well settled principle of law that principles of natural justice shall be deemed to be implied unless the exists a statutory interdict. This aspect of the matter has been considered by one of us (S.B. Sinha, J.) in Jenson & Nicholson (I) Ltd. v. Union of India reported in 1997(3) ICC 621 wherein upon consideration of a large number of Supreme Court decisions, it was held :--

"In Institute of Chartered Accountants of India Vs. L.K. Ratna and Others, emphasis has been laid on the need on predecisional hearing.

In Swadeshi Cotton Mills Vs. Union of India (UOI), , S.L. Kapoor Vs. Jagmohan and Others, , and State of Assam and Another Vs. Mahendra Kumar Das and Others, have curved out an exception to the rule that no document should be taken behind the back of the delinquent, only in a case where the disciplinary authority and the appellate authority had come to an independent findings without considering the findings of the enquiry officer. A detailed discussion on the subject is not necessary in view of the decision of this Court in Swapan Kumar Ray v. Indian Airlines Ltd. reported in 1996(1) CHN 147."

60. In Vrajlal Manilal and Co. Vs. Union of India (UOI) and Another, , the apex Court considering a matter relating to the power of the Central Government to pass an order Rule 57(2) and Rule 59 of Mineral Concession Rules, 1949, held :--

"Where the Central Government passes an order without giving opportunity to the petitioner to meet the case against him the order is vitiated a being contrary to the principles of natural justice, in that the decision is rendered without affording to the petitioner a reasonable opportunity of being heard which is a sine qua non of a fair hearing".

61. In R. Surinder Singh Kanda v. Government of the Federation of Malaya reported in 1962 Appeal Cases, 322, Lord Denim, J. observed :--

"If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know that evidence has been given and what statements have been made affecting him; and then he must be given a fair opportunity to correct or contradict them. This appears in all the cases from the celebrated judgment of Lord Loreburn L.C. In Board of Education v. Rice down to the decision of their Lordship"s Board in Ceylong University v. Fernando. It follows, of course, that the judge or whoever has to adjudicate must not hear evidence or receive representation from one side behind the back of the other. The Court will not inquire whether the evidence or representations did work to his prejudice. Sufficient that they might do so. The Court will not go into the likelihood or prejudice. The risk of it is enough. No one who has lost a case will believe he has

been fairly treated if the other side has had access to the judge without his knowing".

62. There cannot be any doubt whatsoever that the rule of natural justice is not a rigid rule and varies from case to case. In the fact of this case, I am of the opinion that the petitioner has sufficiently been prejudiced.

63. There cannot be any open and shut case nor can the rule of grasp of steel can be applied. See *John v. Rees* (1970(1) Chancery 345 at 402.

64. Similarly in *R. v. Thames Magistrate*, reported in 1974(2) All E R 1219 the Court held that even non grant of an adjournment in a criminal case sought for by the accused for the purpose of preparation of case comes within the purview of the principles of natural justice.

65. In the instant case also the proceeding is a quasi-judicial in nature and before a penal action can be taken against the proceedee a fair procedure was required to be adopted.

66. In *Sri Hanuman Steel Rolling Mill and Another v. C.E.S.C. Limited* reported in 1996(1) CHN 469 : [1997(2) ICC 745 (Cal)], it has been held :--

"In *Wade's Administrative Law*, 6th edition, page 497, the learned author observed :--

The hypothesis on which the Courts built up their jurisdiction was that the duty to give every victim a fair hearing was just as much a canon or good administration as of good legal procedure. Even where an order or determination is unchallengeable as regards its substance, the Court can at least control the preliminary procedure so as to require fair consideration of both sides of the case. Nothing is more likely to conduce to good administration."

Apart from the rules of *audi alteram partem*, which means that no one shall be condemned unheard, corollary of which is that he should be given reasonable notice of the nature of the case to be met, there are other rules of common law to the same effect. (See *Franklin v. Minister, Town and Country Planning* 1947 AC 87 : (1947)2 All. ER 289, *John v. Rees* (1970) Ch D 345). In case any person has acquired any right in any property or his right is being affected by the process, he would be afforded reasonable opportunity of hearing and also to meet the cause against him.

In *De-Smith's Judicial Review of Administrative Action*, 5th Edition, at page 403 the learned authors have referred to various decisions while emphasising the need to comply with the principles of natural justice in a case of forfeiture or deprivation of some right as also in the cases where applications are required to be filed as for example the cases of license.

67. In *Attorney General of Hong Kong v. Ng Yuen Shiu*, reported in 1983(2) All ER 346, even in a case of illegal immigrant it was held that the principles of natural justice should be held to applicable to him as much as if it is a British

subject. It was observed :--

"The justification for it is primarily that, when a public authority has promised to follow a certain procedure, it is in the interest of good administration that it should act fairly and should implement its promise, so long as implementation does not interfere with its statutory duty. The principle is also justified by the further consideration that, when the promise was made, the authority must have considered that it would be assisted in discharging its duty fairly by any representations from interested parties and as a general rule that is correct."

68. In *Rees and others v. Crane*, reported in 1994(1) All ER 833, it has been held :--

"It is clear from the English and Commonwealth decisions which have been cited that there are many situations in which natural justice does not require that a person must be told of the complaints made against him and given a chance to answer them at the particular stage in question. Essential features leading the Courts to this conclusion have included the fact that the investigation is purely preliminary, that there will be a full chance adequately to deal with the complaints later, that the making of the inquiry without observing the *audi alteram partem* maxim is justified by urgency or administrative necessity, that no penalty or serious damage to reputation is inflicted by proceeding to the next stage without such preliminary notice, that the statutory scheme properly construed excludes such a right to know and to reply at the earlier stage.

69. But in their Lordships' opinion there is no absolute rule to this effect even if there is to be, under the procedure, an opportunity to answer the charges later. As De Smith's *Judicial Review of Administrative Action* (4th edn. 1980) p 199 puts it :

"Where an act or proposal is only the first step in a sequence of measures which may culminate in a decision detrimental to a person's interests, the Courts will generally decline to accede to that person's submission that he is entitled to be heard in opposition to this initial act, particularly if he is entitled to be heard at a later stage." (My emphasis)

70. In considering whether this general practice should be followed, the Courts should not be bound by rigid rules. It is necessary, as was made clear by Tucker LJ in *Russell v. Duke of Norfolk* [1949]1 All ER 109 (as approved by Lord Guest in *Wiseman v. Borneman* [1969]3 All ER 275 : [1971] AC 297 and by Lord Morris of Borth-y-Gest in *Furnell v. Whangarei High Schools Board* [1973]1 All ER 400 : [1973] AC 660) to have regard to all the circumstances of the case :

"There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with, and so forth. Accordingly, I do not derive much assistance from the

definitions of natural justice which have been from time to time used, but, whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case."

71. Plainly in the present case there would have been an opportunity for the respondent to answer the complaint at a later stage before the tribunal and before the Judicial Committee. That is a pointer in favour of the general practice but it is not conclusive. Section 137 which sets up the three-tier process is silent as to the procedure to be followed at each stage and as a matter of interpretation is not to be construed as necessarily excluding a right to be informed and heard at the first stage. On the contrary its silence on procedures in the absence of other factors indicates, or at least leaves open the possibility, that there may well be circumstances in which fairness requires that the party whose case is to be referred should be told and given a chance to comment. It is not a priori sufficient to say, as the appellants in effect do, that it is accepted that the rules of natural justice apply to the procedure as a whole but they do not have to be followed in any individual stage. The question remains whether fairness requires that the audi alteram partem rule be applied at the commission stage."

72. In a situation of this nature, it is difficult to comprehend as to how principle of natural justice can be held to be excluded.

73. The decision of this Court in *State of West Bengal & Ors. V. Pijus Kanti Roy*, reported in 1975(1) CLJ 312, having not considered vital aspect of the matter and in particular the interpretation of the words in "persons interested" cannot be said to have laid down the law in absolute terms.

74. In *Commissioner of Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd.*, , Anand, J. (as the learned Chief Justice then was) held :--

"It is neither desirable nor permissible to pick out a word or a sentence from the Judgment of the Supreme Court, divorced from the context of the question under consideration and treat it to be the complete "Law" declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court."

75. In *Young v. Bristol Aeroplane Co.. Ltd.*, reported in 1944(2) All ER 293, it has been held :--

"Where the Court has construed a statute or a rule having the force of a statute, its decision stands on the same footing as any other decision on a question of law. But where the Court is satisfied that an earlier decision was given in ignorance of the terms of a statute or a rule having the force of a statute the position is very different. It cannot, in our opinion, be right to say that in such a case the Court is entitled to disregard the statutory provision and is bound to follow a decision of its own given when that provision was not present to its mind. Cases of this description are examples of decisions given per incuriam. We

do not think that it would be right to say that there may not be other cases of decisions given per incuriam in which this Court might properly consider itself entitled not to follow an earlier decision of its own. Such cases would obviously be of the rarest occurrence and must be dealt with in accordance with their special facts. Two classes of decisions per incuriam fall outside the scope of our enquiry, namely (i) those where the Court has acted in ignorance of a previous decision of its own or of a Court of coordinate jurisdiction which covers the case before it--in such a case a subsequent Court must decide which of the two decisions it ought to follow; and (ii) those where it has acted in ignorance of a decision of the House of Lords which covers the point--in such a case a subsequent Court is bound by the decision of the House of Lords."

76. This matter has already been considered in *Jaya Sen v. Sujtt Kumar Sarkar*, reported in ILR 2000(1) A&N 145.

77. From a perusal of the order sheet it does not appear that notices had even been served upon the former intermediary. The order sheet shows that the notices had been issued but it does not show that they have been served. In this situation we are of the opinion that principle of natural justice having not been complied with at all, the entire order is a nullity.

78. In any event, the learned Tribunal in his judgment has not considered the effect of the order dated 14th September, 1998. In the said order it is stated :--

"I also frankly admit that after long gap of 42 years, it is very difficult to ascertain the classification of the disputed land prevalent on the cardinal date of vesting, except keeping a good faith to the corroborative documents and/or evidence as described hereinbefore."

79. The order is not sustainable on that ground alone inasmuch as there is no clear cut finding that the said conclusion was arrived at upon considering the materials on records.

80. It is relevant to note that although in its order dated 5.2.1999, the said order dated 14th September, 1998 has not been referred to, the respondents herein in their affidavit-in-opposition supported the same relying on or on the basis of the aforementioned order dated 14th September, 1998. In fact although the Revenue Officer did not refer to the order dated 14.9.98 which had been disclosed for the first time in his rejoinder affidavit by the State and challenged by way of a supplementary affidavit. It was held : "So, it is not disputed that the disputed land is vested". The very fact that petitioner herein had filed an application for mutation is clearly an indicative of the fact that the question of vesting was very much in question.

81. The learned Tribunal, without considering the validity of the order dated 14th September, 1998, which, according to the State, is the basis of order dated 5.2.99 failed to consider even the same and proceeded on the basis that a post vesting transferee is not entitled to notice or natural justice. Natural Justice is

not an unruly horse and cannot be applied in rigidity. It must be applied in a case of this nature. Persons have purchased the property rightly or wrongly by spending of crores of rupees and then by stroke of pen, the same cannot be directed to have been vested without giving them an opportunity of hearing. The matter might have been different if such order had been passed after hearing Bijoy Krishna Roy or his heirs.

82. The only other question of some substance made on behalf of the State is that the order dated 15th March had not been set aside.

In paragraph 3(i) of the affidavit-in-opposition, it is stated :--

"3. At the outset I state the following facts :--

(i) The disputed R.S. Plot No. 356 of Mouza-Kalikapur, J.L. No. 20 belonged to one Sri Bijoy Krishna Roy a big raiyat and Ors. the total area of the plot is 89.00 acres. In R.S. Record of right the plot was classified as "BIL, MACH CHAS". Since the classification was found to be incorrect in respect of its actual nature and use, a suo-moto proceeding u/s 44(2a) of W.B.E.A. Act being No. 47 of 1968 was initiated for correction of record in respect of classification of some plots including the instant Plot No 356 and it was disposed of by correcting the record of classification from "BIL MACH CHAS" to "Sali". The said proceeding was initiated and completed by the then Assistant Settlement Officer (A.S.O.) with the remark that the said plot of land was used on or before the date of vacating as "Sali". After correcting the record of right the said plot was accordingly included in C.R. Case No.19 of 1968 which was pending against said Sri Bijoy Krishna Roy, big raiyat and subsequently in the recording it was declared vested as ceiling surplus land of said Bijoy Krishna Roy under Estate Acquisition Act, 1953 (hereinafter called "the said Act")."

83. With reference thereto the Tribunal in its impugned order recorded :--

"Since 90.16 acres of land comprised in plot Nos. 356 and 358 became agricultural land as a result of the said correction of record of rights the impugned proceeding No.19/1968 was drawn up by the Revenue Officer attached to Behala Settlement "C" Camp to determine the extent of the land that the said Bejoy Krishna Roy who died in 1960 would be entitled to retain u/s 6(1) of the Act as on the date of vesting being 15th April, 1955. [page 400]."

84. Thus, the order dated 7th March 1968 is the basis for change of the classification which in turn led the authorities who passed the order dated 15th March. The order dated 7th March 1968 having been set aside and, thus, the order dated 15th March must also be held to be bad in law.

85. In Sri Dilip Kr. Roy v. Sanatan Tewari, reported in 1980(1) CLJ 9, G.N. Ray, J. has held that initiation of the proceedings of BR 19 of 1968 is void and, thus, the same reason applies to the said proceedings also. In any event, the purported order dated 15th March 1968, has lost all its relevance after the passing the orders dated 14th September, 1998 and 5th February 1999, by the Revenue

Authorities and the order of the learned Tribunal dated 22.8.2000.

86. A question has arisen as to whether the said order would operate as res judicata. There cannot be any doubt whatsoever as has rightly been submitted by Mr. Roy that the general principle of constructive res judicata is also applicable in the Revenue Proceedings. But it is now a well-settled that the said principle will have no application where the order has been passed without jurisdiction.

87. The third important question which has been raised is as to whether by remark in the Wilson's Glossary as regard the meaning of the word "BEEL" is correct. It is true that Wilson's Glossary was issued for guidance of Revenue Authorities but the same is not at all conclusive. Any remark made in the record of rights is not a conclusive one.

88. The word "BEEL" has been described as Marsh. In the Remarks column it is stated "Includes unculturable land producing grasses only or low culturable lands growing "boro" paddy".

89. In *Shanti Debi v. State of West Bengal*, reported in 1985(2) CHN 272, it has been held :--

"Both the Special Judge and the assistant Settlement Officer proceeded on the basis that as there was no exercise by the petitioner's vendor before the date of vesting, any right of pisciculture or fishing in the said beel, it was not a tank fishery. It may be stated that "tank fishery" has been defined in the explanation to clause (e) of sub Rule (1) of section 6 of the Act. Under the definition, "tank fishery", inter alia, includes any right of pisciculture or fishing. Thus whether a reservoir or place for storage of water e g a tank or a beel as a "tank fishery" or not inter alia depends upon answer to the question whether the intermediary claiming it to be a "tank fishery" has any right of pisciculture or fishing in such tank or beel. It is, therefore, the existence of the right that is material for the purpose of deciding whether or not a particular tank or beel is a tank fishery and not whether such right has been exercised or not. Both the learned District Judge and the Assistant Settlement Officer have proceeded on the basis that as no such right has been exercised in the disputed beel, it is not a "tank fishery". In our opinion, they have made a wrong approach to the question. It is not the case of the opposite party before the Settlement Officer or before the learned Special Judge that the petitioner's vendors had no such right, but their case is that the right of pisciculture or fishing was never exercised before the date of vesting."

90. In *Gopeswar Setiar Vs. Addl. Collector, Estates Acquisition, Maldah*, , it has been held :--

"The word Beel (or Bil) is a generic term for a number of geographical features. The word ordinarily means a marsh and "includes unculturable land producing grasses only or low culturable lands growing "boro" paddy" (see Guide and Glossary to Survey and Settlement Records in Bengal 1917, published by Order of the Government of Bengal.)

According to Wilson's Glossary Beel means "a lake, a pond, a swamp, a low marshy grounds."

Nature creates Beels and lakes in more ways than one. "They are sometimes formed when waters from several directions accumulate in a particular low land, producing in course of time a stagnant pool of water of large area. It often happens that when a river changes its course leaving its old bed dry, beels and lakes are found here and there in the site of the old bed. The same laden tides and current of the Sea sometimes throw up a beach across the mouth of a river or an arm or inlet of sea, which chokes up the river, or an arm causing the formation of a lake behind it. These are chiefly the ways in which beels or lakes are formed." (T.N. Ghosh-Law of Alluvion and Diluvion).

91. The aforementioned decisions are not an authority for the proposition that a beel can never be a tank fishery. In the aforementioned cases Wilson's Glossary was referred to. But the learned Tribunal was not correct in following the said decisions blindly. He failed to take into consideration that remarks are not exhaustive. The nature of right, in view of the aforementioned decisions must be deciphered for the purpose of grant of settlement. The conduct of the parties and the attending circumstances would also be relevant. The very fact that in the remarks column "Beel Mach Chas" has been mentioned, clearly goes to show that the right of tank fishery can be treated in relation to a beel also. The "Beel Mach Chas" clearly shows that fishery is possible also in a beel.

92. It is further to be noticed in the record of rights the raiyat's name has been noted or recorded as an "Akrishi Praja" which means a non-agricultural tenant. If this entry remains, there would not be any vesting prior to coming into force of the West Bengal Land Reforms Act because Bijoy Krishna Roy was not an intermediary within the meaning of section 2(i) of West Bengal Estates Acquisition Act.

93. In *Shibsankar Nandy Vs. Prabartak Sangha and Others*, it has been held :--

"Counsel however contended that the first respondent having merely the right to receive rent, it was an "intermediary" within the meaning of Act 1 of 1954, that under that Act the interests of such an intermediary vested in the State on the extension of that Act to Chandernagore and therefore the Association had no locus standi to apply for transfer. This contention also cannot be accepted, for an "intermediary" as defined in section 2(1)(i) of that Act means "a proprietor, tenure-holder, under-tenure holder, or any other intermediary above a raiyat or a non-agricultural tenant and in relation to mines and minerals, a lessee or a sub-lessee". It is thus obvious that the 1st respondent being itself a non-agricultural tenant in respect of the entire land including the land in dispute it does not fall within this definition. Not being thus an intermediary it is impossible to say that its interests in the land in dispute vested in the State or that therefore it was not entitled to apply u/s 24."

94. Reference in this connection may also be made to *Prafulla Bala Debi and*

Another Vs. State of West Bengal and Others, .

95. The very fact that section 44(2)(a) proceeding had been initiated for the purpose of classification of land held by non-agricultural tenant is itself a pointer to the fact that the same is a special provision. Furthermore, having regard to the provisions contained in section 6(c) and section 6(e) of the said Act even if the land is considered to be a non-agricultural tenancy it the situation will not be changed as there cannot be any ceiling so far as holding of tank fishery is concerned because nothing has been mentioned in this regard either in the West Bengal Estates Acquisition Act or the West Bengal Land Reforms Act. As non-agricultural land when the tank fishery had been treated separately by the State, reference to non agricultural land by the State does not advance its case and, thus, the submission of Mr. Roy to the effect that the purchasers were entitle only to 15 acres of land would not be correct.

96. Mr Pal, had referred to various parts of the judgment to show the certain observations and/or attract the principle of "error of law".

97. By De Smith, Woolf and Jowell on judicial Review of Administrative Action, 5th Edn. Pag 286, it is stated:--

The concept of error or law includes the giving of reasons that are bad in law or (where there is a duty to give reasons) inconsistent, unintelligible or substantially inadequate. It includes also the application of wrong legal test to the facts found, taking irrelevant considerations into account and falling of take relevant considerations into account, exercising a discretion on the basis of any other incorrect legal principles, misdirection as to the burden of proof, and wrongful admission or exclusion of evidence, as well as arriving at a conclusion without any supporting evidence. Error of law also includes decisions which are unreasonably burdensome or oppressive. Thus whether or not the drawing of an inference from the primary facts, or the application of a statutory term to the facts and inferences drawn therefrom, is held or assumed to be a matter of fact (or fact and degree) or a matter of law, the Court may still hold the decision erroneous in point of law if any of the above defects is present."

98. This aspect of the matter as also been considered in Sushil Kumar Sasmal v. State of West Bengal, reported in 1999(1) CHN 92, wherein it has been held :--

"If a statutory authority takes into consideration irrelevant fact and fails to take into consideration relevant fact, an error on the fact of the record is committed (See De Smith's Judicial Review of administrative Action, 4th Edn. Page 136). It is further well known that a statutory authority must pose into himself the correct question so as to acquaint himself with the fact of the matter with a view to answer the jurisdictional question, failing which he would be guilty of commission of mis-direction in law.

It is further well settled that the matter relating to exercise of jurisdiction has been widened in view of the decision in Anisminic Ltd. v. Foreign Compensation

Commission, reported in (1969)2 A.C. 147 and R. v. Corwell C.S. Exparte Huntington, reported in 1992(2) All ER 566, which has been upheld its appeal in 1994(1) All ER 694. As the appellate authority has committed the aforementioned errors of law, which would go to the root of the jurisdiction, in the opinion of this Court a case has been made out by the petitioner for issuance of a writ of Certiorari."

99. Furthermore, the agricultural tenancy, as noticed hereinbefore, has only vested from 5th September, 1980. It misread and misinterpreted the order of this Court dated 4th February, 1972. It further relied upon the quashed proceeding and the purported inspection report which were wholly inadmissible in evidence.

100. The word "quash" has been defined in The Law Lexicon, at 1587, to mean that "To overthrow or annul, to make void; to abate; (Tomlins Law Dic.) (as) Quashing a conviction. To annul; to make null and void; to throw out as invalid; to put an end to a legal proceeding. Mr. Abbott, in his Law Dictionary, defines "quash" to mean to annul, overthrow, or by judicial Acts".

101. In Black's Law Dictionary the word "quash" has been defined in the following term :--

"quash (kwahsh), vb. 1. To annul or make void; to terminate <quash an indictment> <quash proceedings> 2. To suppress or subdue: to crush out <quash a rebellion>."

102. For the aforementioned reasons the impugned order of the learned Tribunal cannot be sustained which is set aside accordingly and both the orders impugned before it are set aside. However, having regard to the special facts and circumstances of this case it is directed that the Revenue Officer shall hear the matter afresh and will give an opportunity of hearing to the petitioner herein. The petitioner need not be given any separate notice. It shall appear before the concerned Revenue Officer within three weeks from date. Separate notices however, may be issued and served upon the heirs of Bijoy Krishna Roy and having regard to the fact that the various proceedings are pending for a long time, it is desirable that the same should be disposed of as early as possible and preferably within a period of three months from date. If there exists any connected proceedings, an attempt shall be made to hear out the same also together with these proceedings or one after other as the concerned Revenue Officer may think it proper.

103. This order is being passed having regard to the fact that once it is held that the properties have not vested either in terms of section 44(2)(a) of the West Bengal Estates Acquisition Act or under any other law, the names of the petitioner should be mutated. On the contrary if the said lands are already vested in the State, the question of mutation of the name of the writ petitioners would not arise.

104. It will also be open to the concerned authorities to consider as to whether the petitioner or any of them intends to change the nature and character of the land, and if so, for the said purpose evidently section 4(c) of the West Bengal Land Reforms Act would be attracted.

105. The writ petitioners having regard to the pendency of the proceedings are directed to maintain status quo in relation to the lands in question and they shall not raise any construction whatsoever. This application is allowed with the aforementioned observations and directions but in the facts and circumstances of this case there will be no order as to costs.

P.K Ray, J.

106. I agree.

107. Application allowed