

(2010) 08 GAU CK 0026
In the Gauhati High Court
Case No : W.A. No's. 81 and 88 of 2007

State of Tripura and Others	Vs	APPELLANT
Hamendra Narayan Datta and Others		RESPONDENT

Date of Decision : 19-08-2010

Acts Referred:

Administrative Tribunals Act, 1985 — Section 22(3)
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 32, Order 21 Rule 35, Order 23 Rule 1, Order 23 Rule 1(3), Order 23 Rule 1(4)
Constitution of India, 1950 — Article 136, 226, 227
Tripura State Security Order, 1358 — Section 8(1), 8(2)

Citation : (2011) 3 GLR 323 : (2010) 4 GLT 854

Hon'ble Judges : Maibam B.K. Singh, J; I.A. Ansari, J; C.R. Sharma, J

Bench : Full Bench

Advocate : S. Deb, P.K. Paul and M.K. Roy, for the Appellant; D.K. Biswas, S. Lodh and H.K. Bhattacharjee, for the Respondent

Final Decision : Dismissed

Judgement

C.R. Sarma, J.—The above two appeals are directed against the judgment and order, dated 28.4.07, passed by the learned Single Judge, in Ex.R No. OI of 2004. The appeals, having raised common questions of facts and law, and as agreed to by the learned Counsel for both the parties, were heard together and will be covered by the present common judgment and order.

2. This matter has a chequered history of sixty years, commencing from 1950, in which the Respondents, despite succeeding to get favourable orders in Civil Rule No. 258 of 80, Civil Rule No. 47 of 89, W.A. No 28 of 96 W.A. No. 33 of 96 and Ex.R No. OI of 2004, have not been able to get the orders, passed by the appropriate courts, enforced. The direction given in Civil Rule No. 258 of 1980, by order, dated 2.6.88, and in subsequent proceedings, requiring the State Respondents to pay compensation to the Petitioners in respect of the requisitioned land from the date of requisition till the land is acquired according to law or possession of the derequisitioned land is handed over. Failure of the Respondents

to implement the said orders/directions, passed by this Court, has given rise to various proceedings leading to the present appeals.

3. In order to appreciate the controversy, it would be necessary to briefly recapitulate the background facts, which are as follows:

(i) Late Harendra Narayan Datta, predecessor-in-interest of the Respondents and Sri Bani Bhusan Sen purchased 10 drone, 13 kanis, 3 gandas, 3 karas of land situated in Mouja Ganki, under Khowai Sub Division, in a certificate proceeding and thus they became owners of the said land. As admitted by the State Respondents, in paragraph 7 of their affidavit-in-opposition, filed in Civil Rule No. 258 of 1980, out of the said land, an area measuring 3 drone, 1 kani, 16 gandas, 2 krantas and 12 ? dhurs were requisitioned by the Government, vide notification No. 988/ PWD/147(a) dated 22-2-1950, under the provisions of The Tripura State Security Order for extension of the Khowai Air strip and out of the said requisitioned land, 1 drone, 5 kanis, 7 gandas, 2 karas, 1 kranta and 10 dhurs were acquired under the Land Acquisition proceeding. After the said acquisition, the remaining requisitioned land, measuring 1 drone, 12 kanis, 8 gandas, 1 kranta and 2 ? dhurs, were derequisitioned from the said requisitioned land by the Revenue department, vide their notification No. 37(212)/REV./68 dated 26.2.77, with direction to handover the possession of the said derequisitioned land to its owners i.e the Respondents.

(ii) In the schedule of the said derequisitioned land, While mentioning the old survey plot numbers as 292,293/p, 299/p, 516,554, it was indicated that the said land had fallen under survey plot No. 1403 of mouja Ganki. But subsequently, on the ground of bona fide mistake, a corrigendum to the order, dated 26.2.77, was issued deleting the words "present survey plot No. 1403". Thus, it was indicated that the said present survey plot No. 1403 was not the derequisitioned land. As revealed fi-om the letter, dated 20.9.1974, issued by the District Magistrate and Collector, West Tripura, the land, pertaining to CS plot No. 1403, was under the occupation of the Aviation Department on the southern side of the Air strip. According to the Petitioners, as stated in writ petition No. 258 of 80, the requisitioned land had fallen within the plot No. 1403.

(iii) As the derequisitioned land, in spite of the said order, was not handed over to the said owners, the legal heirs of late Hamendra Narayan Datta and Bani Bhusan Sen filed a writ petition C. R. 258 of 1980. After hearing both the parties, the said Civil Rule was allowed, by a Division Bench of this Court, by order, dated 2.6.88, directing the Respondents to hand over the possession of the de-requisitioned land along with requisition compensation, according to the principles laid down in The Tripura State Security Order, from the date of requisition till the land was either acquired by paying compensation or the possession is re-delivered to the Petitioner. In the said proceeding, the plea that the derequisitioned land was under the possession of the under-raiyats of the Petitioners and purchasers from the Petitioners was taken. But the Division Bench declined to accept the said plea and concluded that the requisitioned land

was under the possession of the State Respondents.

(iv) The above mentioned judgment and order, passed by the learned Division Bench, was not challenged and as such, the directions given, and the observations made therein attained finality, making it binding upon the present Appellants to comply with the directions given therein. However, as the directions given in the said proceeding, were not complied with, the writ Petitioners, again, approached this Court by filing Anr. writ petition, being Civil Rule No. 47 of 1989.

(v) A learned Single Judge of this Court, having heard both the parties and taking note of the available materials on records and the directions given by the Division Bench in the above mentioned Civil Rule, allowed the subsequent writ petition by judgment and order, dated 2.2.96, directing the Respondents therein to make sincere efforts to deliver possession of the derequisitioned land mentioned in the order, dated 26.2.97, of the Government of Tripura to the Petitioner and Sri Bani Bhusan Sen or their heirs within six months from the date of the judgment. In deciding the said proceeding, the learned Single Judge also observed that, in the event the Respondent Nos. 1 and 2 deliver possession of the said land to the Petitioner, they would cease to be liable from paying compensation for the derequisitioned land with effect from the date of delivery of the possession of the land to the Petitioner and such delivery of possession of derequisitioned land to the Petitioner would be without prejudice to the rights of other persons including under raiyats, if any, who will be entitled to enforce their rights against the Petitioners by due process of law.

(vi) It may be noted that in Civil Rule No. 47 of 89, it was contended, on behalf of the present Appellants (i.e the Respondents in the writ petitions), that the writ Petitioners were not entitled to get possession or compensation, for an area of 6.07 acres of derequisitioned land, on the ground that the said land was under occupation of the under raiyats from whom the Petitioners had received some korfe (compensation). But the learned Single Judge refused to accept the contention for several reasons. In deciding the said writ petition, notice was taken of the fact that the said contention, regarding possession of the land by the imder raiyats, was raised before the Division Bench in Civil Rule No. 258 of 1980 and that the Division Bench rejected the said contention as indicated above.

(vii) Against the judgment and order passed in Civil Rule No. 47 of 1989, the State of Tripura preferred a writ appeal being W. A. No. 33 of 96, while the Chairman, Airport Authority of India Ltd., preferred Anr. writ appeal being W.A. No. 28 of 96. Both the writ appeals were taken up together and a Division Bench of this Court dismissed the writ appeals. The judgment and order passed in Civil Rule No. 47 of 89 was challenged on the ground that the direction, given by the learned Single Judge, was not executable inasmuch as the derequisitioned land was not in possession of the authority. Refusing to accept the said contention, the Division Bench observed that inability of the State to execute and implement the direction issued by this Court, in Civil Rule No. 47 of 1989, would hardly make the said directions legally fragile and infirm.

(viii) Aggrieved by the said judgment and order, passed in W.A. No. 28 of 96 and W.A. No. 33 of 96, the Respondents-Appellants preferred petition for special leave to appeal (civil) being SLP (C) No. 20634-35/2002 of 2003. The Supreme Court vide order, dated 25.11.02, dismissed the said SLP on the ground that there was no merit.

(ix) Thus, with the dismissal of the SLP, preferred against the above mentioned writ appeals, the entire matter reached its finality requiring the Respondents-Appellants to comply with the directions made in Civil Rule No. 258 of 1980, Civil Rule No. 47 of 1989, W.A. No. 28 of 96 and W.A. No. 33 of 96.

(x) As in spite of the above directions, made by the competent courts of jurisdiction, the Respondents-Appellants failed to comply with the same, the Petitioner filed a writ petition under Article 226 of the Constitution read with Order XXI Rules 32 and 35 Code of Civil Procedure, which was registered as Execution Petition No. 01 of 2004, against the State of Tripura and the District Collector, West Tripura, seeking a direction for implementation of the aforesaid judgment and orders and also for attachment of the immovable as well as movable properties of the Respondents.

(xi) Challenging the contentions raised in the said Ex.P. No. 01 of 2004, the contesting Respondents (i.e the State of Tripura and the District Magistrate and Collector, West Tripura, Agartala), in their affidavit-in-opposition contended, inter alia, that in a writ petition, filed under Article 226, no execution proceeding could be maintainable, that the . execution proceeding initiated against the Respondents cannot be allowed to stand on the ground that the Petitioners failed to state the detailed particulars of the land, in respect of which recovery of possession was sought, and that, as the beneficiary of the requisition was the Airport Authority of India Ltd., i.e the successor of the then Civil Aviation department, the present Respondents are not liable to pay compensation for the land. Regarding handing over of the possession, the Respondents, admitting the requisition of the land, by notification, dated 22.5.1950, for the Khowai Airport and derequisitioning of the land measuring 11.37 acres vide order, dated 26.2.1977, stated that from field verification, it appeared, that the Petitioners were already in possession of 7.17 acres of land, which they had subsequently transferred in favour of different persons, that there was some error in the khatian and the map resulting shortage of land measuring 4.97 acres and that as the said 4.97 acres of land had no existence in the locality, the Government was not in a position to implement the order, passed by the court.

During the pendency of the matter, the learned Single Judge, by order, dated 27.8.04, passed in Ex.R No. 01 of 2004 directed the Settlement Officer, West Tripura, Agartala, to identify the location of the derequisitioned land corresponding to the old plot numbers, which were given in the schedule as noted below:

Schedule of the land derequisitioned: Land bearing old survey plot Nos. 293/I",

299/P, 292, 516/P and 554 comprising an area of 1 done, 12 kanis, 8 gandas, 2 karas, 1 kranta and 2 ? dhurs fallen under present survey plot No. 1403 of mouza Ganji under Khowai Sub Division of West Tripura District.

(xii) Pursuant to the said order, the Settlement Officer submitted a report, on 16.9.91, taking a different ground than what was taken all throughout. As per the said report, the recorded area was much more than the actual ground area and that though the Revenue Department had derequisitioned 11.37 acres of land for handing over to the parties, the actual area of derequisitioned land in the sheet/ground was 7.42 acres and thus there was shortage of 3.87 acres. The Settlement Officer, in his report, also indicated that as per records, during the last two settlement operations, the derequisitioned land was not handed over to the Airport Authority of India Ltd. and that during the first settlement operation, the land was recorded in different khatian in the names of Ors. , who were either recorded as under raiyats under original jotedars, namely, Harendra Narayan Datta and Bani Bhusan Sen, or purchasers from the Petitioners. The Settlement officer, in his report, further stated that though he had invited the parties to submit proposal for proper solution of the case, no such proposal/suggestion was received from either of the parties.

(xiii) In view of the above report, it was contended, on behalf of the Respondents-Appellants, that as the land was not identifiable, the order of the Court was not executable. The writ petition was also contested on the question of maintainability. The learned Single Judge, considering the entire matter and taking note of the directions and observations made in the earlier proceedings, concluded that the kinds of objections, such as, non-availability of land, the land being in possession of the under raiyats and, finally ,the last report to the effect that the land was shown in excess, were wholly ill founded and that in view of the dismissal of the SLP filed against the judgment and order passed in W.A. No. 28 of 96, the Respondents were bound to implement the directions in Civil Rule No .47 of 1989.

In deciding the Ex.ROI of 2004, the learned Single Judge observed:

After the Division Bench judgment in W.A. No. 28 of 1996, which has also been affirmed by the Supreme Court, the Respondents are bound to implement the direction of the learned Single Judge in Civil Rule No. 47 of 1989. As per the said direction the State Respondents were to return the derequisitioned land to the parties mentioned in the notification dated 26.2.1977. Further direction issued was to pay requisition compensation in respect of the derequisitioned land till such time, the land was handed over to the parties. If for any reason, the Respondents are not in a position to deliver possession of the derequisitioned land, they are bound to pay acquisition compensation to the Petitioner and Ors. involved.

With the above observations, the learned Single Judge allowed the writ petition directing the State Respondents, either to deliver vacant possession of the land,

which was derequisitioned by the notification, dated 26.2.77, within two months from the date of the order or pay requisition compensation all throughout to the parties including the Petitioner. Alternatively, it was directed that if the derequisitioned land could not be handed over within the stipulated period, the Respondents shall initiate necessary process towards acquiring the land with payment of appropriate acquisition compensation to the Petitioner and Ors. . The entire process was directed to be completed within four months from the date of the said order. It was further provided, by the learned Single Judge, that if, within the stipulated period, the said directions are not complied with, the officers responsible, for non-compliance of the said directions, would be liable for Contempt of Court. With the above direction, the writ petition was allowed with cost of Rs. 20,000/- against the Respondents. It was also made clear that it would be open to the State Respondents to realise the amount, which might be involved towards implementation of the Court's order, from the Airport Authority, if the same is found to be recoverable from them.

Aggrieved by the said judgment and order, the Airport Authority of India Ltd. has preferred the writ appeal being W.A. No. 88 of 2007 and the State Tripura has also preferred the writ appeal being W.A. No. 81 of 2007 aforesaid.

(xiv) In the said appeals, the Appellants contended that the writ petition, filed under Article 226 of the Constitution of India read with Order XXI Rules 32 and 35 CPC for execution, was not maintainable and as such, the learned Single Judge ought not to have passed the impugned order. It was also contended, in the said appeals, that the learned Single Judge ought not to have set aside the report, submitted by the Settlement officer pursuant to the order dated 27.8.04, passed by the learned Single Judge and that by the impugned judgment and order, something impossible was directed to be performed. The Appellants relied on the last report of the Settlement Officer, wherein it was stated that the actual area of derequisitioned land was 7.42 acres against the recorded land of 11.37 acre due of shortage of 3.87 acres of land. In the said appeals, the following reliefs were sought:

(i) Admit this appeal;

(ii) Call for records;

(iii) issue notice upon the Respondents and each one of them to show cause as to why the impugned judgment passed on 24.8.07 in Ex.P. No. 01 of 2004 whereby the learned Single Judge shall not be set aside by allowing this appeal;

(iv) An order staying the operation of the impugned judgment dated 24.8.07 during the pendency of the appeal; and

(v) After hearing the parties be pleased to allow this appeal as stated above.

(xv) A Division Bench of this Court, while taking up both writ appeals together, vide order, dated 30.05.2008, passed in the appeals aforesaid, decided the question of maintainability of the Ex.P. No. 01 of 04 in affirmative with the

following observations:

We do not think it necessary for us to go into the question of maintainability of the execution proceeding filed by the Respondent Petitioner in which the impugned order dated 24.8.07 has been passed by the learned Single Judge. Such consideration, according to us, will not be required inasmuch as the learned Single Judge himself did not treat the proceeding before him as a proceeding in execution but had treated the same to be a proceeding under Article 226 of the Constitution seeking enforcement/implementation of the earlier orders of the court passed in different proceeding, details of which have already been noticed.

(xiv) Adverting to the second contention, i.e., the question of implementation of the orders, passed in the Ex.P. No. Ol of 2004 as well as in the earlier proceedings, the Division Bench took notice of the Settlement officer's report, signed on 3.3.2005, wherein it was stated that the actual requisitioned land was 7.42 acres and that the said land was under the possession of 15 persons, who were either under raiyats or purchasers from the predecessor-in-interest of the writ petitions.

In view of the above, the Division Bench observed:

The question, therefore, that has confronted us in the present appeals is whether in view of the facts emanating from the report of the Settlement officer dated 3.3.2005, which facts have not been objected to by the Respondent Petitioner in the written objections filed, the refusal of the Division bench hearing Civil Rule No. 258 of 1980 should continue or dissipate and on that basis whether the directions issued for return of the derequisitioned land and payment of requisition compensation should be continued or not. In our considered view, a co-ordinate Bench should not make an attempt to answer the aforesaid question keeping in mind the accepted norms of judicial discipline and decorum. We are, therefore, of the view that the aforesaid question should receive consideration of a larger Bench.

(xvii) Accordingly, as directed by the Hon'ble Chief Justice, the matter has come up before this Bench.

4. We have heard Mr. S. Deb, learned Senior counsel, appearing for the Appellants, and Mr. D.K. Biswas and Dr. H.K. Bhattacharjee, learned counsel appearing for the Respondents.

5. Raising the question of maintainability, Mr. S. Deb, learned Senior counsel, appearing for the Appellants, submitted that the execution proceeding, preferred by the Respondents, was not maintainable in the eye of law and as such, the impugned order, passed by the learned Single Judge, was liable to be set aside and quashed. Secondly, the learned Senior counsel contended that, in view of the report, dated 3.3.2005, submitted by the Settlement Officer, as no land was available for delivery of possession, the learned Single Judge committed error by directing to hand over possession of the land. It is also submitted that the learned

Single Judge, having directed the Settlement Officer, to identify the derequisitioned land, ought not to have refused to accept the report submitted by the Settlement Officer. Lastly, it has been contended that, as the Settlement Officer's report, revealed that excess land was shown ki the derequisitioned order and as the remaining land of 7.42 acres was found in possession of the under raiyats and purchasers of the predecessors-in-interest of the writ Petitioners, the orders, passed in C.R. No. 258 of 1980 and other subsequent proceedings, whereby and whereunder the Respondents were directed to hand over possession of the land with compensation, are required to be reviewed.

In support of his contention, the learned Senior counsel, appearing for the Appellants relied on the following decisions:

- (1) Food Corporation of India Vs. S.N. Nagarkar,
- (2) Moranmar Basselios Cathalicos and Anr. v. Most Rev. Mar Paulose Athanasius and Ors. (AIR 1954 SC 526),
- (3) Lily Thomas, Vs. Union of India and Others,
- (4) Board of Control for Cricket, India and Another Vs. Netaji Cricket Club and Others,
- (5) Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others,
- (6) The State of West Bengal and Others Vs. Kamal Sengupta and Another,
- (7) State of Orissa and Others Vs. Md. Illiyas,
- (8) Pradip Chandra Parija and Others Vs. Pramod Chandra Patnaik and Others,

6. Strongly contesting the said arguments. advanced by the learned senior counsel for the Appellants, Mr. D.K. Biswas, learned Counsel, appearing on behalf of the Respondents, has submitted that except oral submission, there is no application stating the grounds, on which review has been sought for, and that the Court would not travel 22 years back to correct any judgment on the ground that the Settlement Officer's report revealed that there was no land for handing over possession. It is further submitted that the report of the Settlement officer, which is the sheet anchor for the Appellants and which is claimed to have contained subsequently discovered evidence, in fact, neither revealed/discovered new fact, nor the same is an instrument prepared bona fide. The learned counsel pointed out that the order, dated 27.8.2004, was passed for locating the derequisitioned land from the plot No. 1403, the existence of which land was never denied. According to the learned counsel for the Respondents, the same details, as mentioned in the last report, were also earlier placed before the courts and that the plea that land was under the possession of under raiyats and purchasers were taken before the courts in the earlier proceedings and the courts, after due consideration, rejected the said plea. It is further submitted that the predecessors-in-interest of the Petitioners had more than 3 (three)

times the land, requisitioned by the State, and that the land, found to be in occupation of the raiyats, were beyond the requisitioned land and as such, the matter being argued and decided by court of law, cannot be re-opened either in review or execution proceeding. It is contended by Mr. Biswas, learned counsel, that, in view of absence of any error apparent or mistake of Court, the prayer for review on the ground of subsequent discovery of evidence is a misconceived one, because the Appellants could not substantiate that in spite of due diligence the evidence could not be produced earlier. It is further submitted that in view of dismissal of the SLP by the Supreme Court, on the ground that there is no merit, there is no scope to reopen the matter at this belated stage.

In support of his submission, the learned counsel has placed reliance on the following decisions:

- (1) Puran Singh and others Vs. State of Punjab and others,
- (2) Ravinder Kaur Vs. Ashok Kumar and Another,
- (3) The Commissioner, Kamataka Housing Board v. C. Muddaiah, 2007 AIR SCW 5577;
- (4) K.A. Ansari and Anr. v. Indian Airlines Ltd, AIR 2009 SC 263;
- (5) Gopabandhu Biswal Vs. Krishna Chandra Mohanty and Others,

7. In the case of Food Corporation of India v. S.N. Nagarkar (supra), it was observed-

it is well settled that in exercise of writ jurisdiction, the court may mould the relief having regard to the facts of the case and interest of justice.

8. In the case of Moranmar Basselios Cathalicos and Anr. v. Most Rev. Mar Paulose Athanasius and Ors. (supra), it was observed that a review may be allowed on three specified grounds, namely, (i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed, (ii) mistake or error apparent on the face of the record and (iii) for any other sufficient reason. Regarding the term "any other sufficient reason", the Supreme court observed-

It has been held by the Judicial Committee that the words "any other sufficient reason" must mean "a reason sufficient on grounds, at least analogous to those specified in the rule". See-Chhajju Ram v. Neki, AIR 1922 PC 112 (D). This conclusion was reiterated by the Judicial Committee in- AIR 1934 213 (Privy Council) and was adopted by our Federal Court in- AIR 1949 106 (Federal Court) at pp.i 10,111(F).

9. In the case of Lily Thomas and Ors. v. Union of India and Ors. (supra) the Supreme Court, discussing the power and scope of review and referring to the case of Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji

Arjunsinghji, observed that review is not an appeal in disguise. It cannot be denied that justice is a virtue, which transcends all barriers and the rules or procedure or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption, which, in fact, did not exist and its perpetration shall result in a miscarriage of justice, nothing would preclude the court from rectifying the error. The Supreme Court referred to the case of *S. Nagaraj and Others Vs. State of Karnataka and Another*, wherein it was observed "review literally and even judicially, means reexamination or reconsideration. Basic philosophy inherent on it is the universal acceptance of human fallibility. Yet in the realm of law the Courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exception? both statutory and judicially have been carved out to correct accidental mistakes or miscarriage of justice". The mere possibility of two views on the subject is not a ground for review. The Supreme Court further observed that if the court finds that the error, pointed out in the review petition, was under a mistake and the earlier judgment would not have been passed, but for erroneous assumption, which in fact did not exist, and its perpetration shall result in a miscarriage of justice, nothing would preclude the court from rectifying the error.

10. In the case of *Board of Control for Cricket in India and Anr. v. Netaji Cricket Club and Ors.* (supra), the Supreme Court, making reference to Section 114 and Order XLVII Rule (1) Code of Civil Procedure, discussed the scope of review. In the above referred case, the Supreme Court observed:

We are, furthermore, of the opinion that the jurisdiction of the High Court in entertaining a review application cannot be said to be *ex facie* bad in law. Section 114 of the Code empowers a court to review its order if the conditions precedent laid down therein are satisfied. The substantive provision of law does not prescribe any limitation on the power of the court except those which are expressly provided in Section 114 of the Code in terms whereof it is empowered to make such order as it thinks fit.

Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words "sufficient reason" in Order 47 Rule 1 of the Code are wide enough to include a misconception of fact or law by a court or even an advocate. An application for review may be necessitated by way of invoking the doctrine "*actus curiae neminem gravabit*".

It is also not correct to contend that the court while exercising its review jurisdiction in any situation whatsoever cannot take into consideration a subsequent event. In a case of this nature when the court accepts its own mistake in understanding the nature and purport of the undertaking given by the

learned Senior Counsel appearing on behalf of the Board and its correlation with as to what transpired in the AGM of the Board held on 29.9.2004. The subsequent event may be taken into consideration by the court for the purpose of rectifying its own mistake.

11. In the case of *S. Nagaraj and Others Vs. State of Karnataka and Another*, the Supreme Court observed -

Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the court. In administrative Law the scope is still wider. Technicalities apart if the court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order. Here as explained, the Bench of which one of us (Sahai, J.) was a member did commit an error in placing all the stipendiary graduates in the scale of First Division Assistants due to State's failure to bring correct facts on record. But that obviously cannot stand in the way of the court correcting its mistake. Such inequitable consequences as have surfaced now due to vague affidavit filed by the State cannot be permitted to continue.

12. In the case of *Surguja Transport Service v. State Transport Appellate Tribunal and Ors.* (supra), the Supreme Court, while discussing the application of the principle of Order 23 Rule 1 CPC in respect of the writ petitions, filed under Article 226/227 of the Constitution of India, observed that when, once a writ petition filed in a High Court is withdrawn by the Petitioner himself, he is precluded from filing an appeal against the order passed in the writ petition, because he cannot be considered as a party aggrieved by the order passed by the High Court. The Supreme court further observed that principle of res judicata applies to a case, where the suit or an issue has already been heard and finally decided by a court. In case of abandonment or withdrawal of a suit, though there is no prior adjudication of a suit or an issue involved, yet Sub Rule (4) of Rule 1 of Order XXIII of the code provides that a second suit will not lie when the first suit is withdrawn without permission to institute a fresh suit for the subject matter of the suit or part of a claim, as referred to Sub Rule (3) of Rule 1 of Order XXIII of the code.

13. Discussing the power of the Tribunal to review its order in the case of *State of West Bengal and Ors. v. Kamal Sengupta and Anr.* (supra), it is observed that the power of the Tribunal to review its order/decision is akin to that of the civil court u/s 114 read with Order 47 Rules 1 and 2 CPC and that the Tribunal can review its decision on the grounds enumerated in Order 47 Rule 1 CPC and not otherwise. In this case, the Supreme Court discussed the scope and power of review of the Tribunal u/s 22(3) of the Administrative Tribunal Act, 1985:

The term "mistake or error apparent" by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision.

14. In the case of *Pradip Chandra Parija and Ors. v. Pramod Chandra Patnaik and Ors.* (supra), the Supreme Court referred to the decision held in the case of *Sub-Committee of Judicial Accountability Vs. Union of India and others*, wherein it was observed:

no coordinate Bench of this Court can even comment upon, let alone sit in judgment over, the discretion exercised or judgment rendered in a cause or matter before Anr. coordinate Bench.

15. In the case of *State of Orissa and Ors. v. Md. Illiyas* (supra), the Supreme Court observed:

When the allegation is of cheating or deceiving, whether the alleged act is wilful or not depends upon the circumstances of the case concerned and there cannot be any straitjacket formula. The High Court unfortunately did not discuss the factual aspects and by merely placing reliance on an earlier decision of the Court held that prerequisite conditions were absent. Reliance on the decision without looking into the factual background of the case before it, is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates: (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by

the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent,)See *The State of Orissa Vs. Sudhansu Sekhar Misra and Others*, and *Union of India (UOI) and Others Vs. Dhanwanti Devi and Others*, A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in an Act of Parliament. In *Quinn v. Leatham* (1901 ACC 495) the Earl of Halsbury, L.C. observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be the exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides.

16. In the case of *Gopabandhu Biswal v. Krishna Chandra Mohanty and Ors.* (supra), the Supreme court observed-

The power of review which is granted to an Administrative Tribunal is similar to the power given to a civil court under Order 47 Rule 1 of the Code of Civil Procedure. Therefore, any person (inter alia) who considers himself aggrieved by a decree or order from which an appeal is allowed, but from which no appeal has been preferred can apply for review under Order 47 Rule 1(1)(a). An appeal lies to this court from a decision of the Administrative Tribunal. If an appeal is preferred, the power to review cannot be exercised. In the present case, a SLP was preferred from the judgment of the Tribunal in T.A. No. Ol of 1989 to this Court, and the SLP was rejected. As a result the order of the Tribunal in TA No. 1 of 1989 became final and binding. The rejection of a petition for leave to appeal under Article 136 of the Constitution, in effect, amounts to declining to entertain an appeal, thus making the judgment and order appealed against final and binding. Once a SLP is filed and rejected, the party cannot go back to the Tribunal to apply for review. In the case of *State of Maharashtra and another Vs. Prabhakar Bhikaji Ingle*, this Court held that when a SLP from the order of the Tribunal was dismissed by a non-speaking order, the main order was confirmed by the Supreme Court. Thereafter the power of review cannot be exercised by the Tribunal. The court said that the exercise of power of review by the Tribunal in such circumstances would be deleterious to judicial discipline. Once the Supreme Court has confirmed the order passed by the Tribunal, that becomes final. In *Sree Narayana Dharmasanghom Trust Vs. Swami Prakasananda and Others*, the above decision was reaffirmed. This Court held that after an order of this Court dismisses the SLP in limine from a judgment of the High Court, the High Court cannot review it. The court followed the earlier judgment in *State of Maharashtra v. Prabhakar Bhikaji Ingle*

17. In the case of *The Commissioner, Kamataka Housing Board v. C. Muddaiah* (supra), the Supreme Court observed-

We are of the considered opinion that once a direction is issued by a competent court, it has to be obeyed and implemented without any reservation. If an order passed by a court of Law is not complied with or is ignored, there will be an end of Rule of Law. If a party against whom such order is made has grievance, the only remedy available to him is to challenge the order by taking appropriate proceedings known to law. But it cannot be made ineffective by not complying with the directions on a specious plea that no such directions could have been issued by the court. In our judgment, upholding of such argument would result in chaos and confusion and would seriously affect and impair administration of justice. The argument of the Board, therefore, has no force and must be rejected.

18. Referring to the contention of the Appellant in the above referred case, regarding no work, no pay policy, the Supreme Court observed-

In appropriate cases, however, a court of Law may, nay must, take into account all the facts in their entirety and pass an appropriate order in consonance with law. The court, in a given case, may hold that the person was willing to work but was illegally and unlawfully not allowed to do so. The court may in the circumstances, direct the authority to grant him all benefits considering as if he had worked. It, therefore, cannot be contended as an absolute proposition of law that no direction of payment of consequential benefits can be granted by a court of Law and if such directions are issued by a court, the authority can ignore them even if they had been finally confirmed by the Supreme Court of the country (as has been done in the present case). The bald contention of the Appellant-Board, therefore, has no substance and must be rejected.

19. In the case of *K.A. Ansari and Anr. v. Indian Airlines Ltd.* (supra), the Supreme Court observed -

The Respondent-Indian Airlines was obliged to obey and implement the said direction. If they had any doubt or if the order was not clear; it was always open to them to approach the court for clarification of the said order. Without challenging the said direction or seeking clarification, Indian Airlines could not circumvent the same on any ground whatsoever. Difficulty in implementation of an order passed by the court, howsoever, grave its effect may be, is no answer for its non-implementation. In our opinion, in the miscellaneous application, no fresh relief on the basis of a new cause of action, had been sought. It was an application filed for pursuing and getting implemented the relief granted in the writ petition, namely, placement in appropriate grade in which he was placed at the time when letter dated 23rd April, 2003 was issued. This was precisely done by the learned Single Judge vide his order dated 4th March, 2005. Without examining those factual aspects of the matter, in our judgment, the Division Bench was in error in holding that after the disposal of the writ petitions, miscellaneous application was not maintainable and the only remedy available to

the Appellant was to approach the authorities and if his interpretation was not acceptable to them, then he could file a fresh writ petition.

20. In the case of *Ravinder Kaur v. Ashok Kumar and Anr.* (supra), a decree for eviction of the tenant was obtained and the execution of the same was delayed by the judgment debtor on various grounds. Later on, the possession of the property was given to the decree holder by the executing court after breaking open the lock with the help of police. On an application for restitution u/s 144 Code of Civil Procedure, the High Court, by the impugned order, directed the executing court to, first, consider the objections of the Respondents before issuing warrant of possession and, during pendency of such consideration, further directed restoration of possession in favour of the Respondents. Hence, an appeal was preferred before the Supreme Court by the landlady. While allowing the appeal and setting aside the order, passed by the High Court, with an exemplary cost of Rs. 25,000/-, the Supreme Court observed-

Therefore, raising a dispute in regard to the description or identity of the suit schedule property or a dispute in regard to eviction by the abuse of the process of court. Courts of Law should be careful enough to see through such diabolical plans of the judgment-debtors to deny the decree-holders the fruits of the decree obtained by them. These type of errors on the part of the judicial forums only encourage frivolous and cantankerous litigations causing law's delay and bringing bad name to the judicial system.

21. In the case of *Puran Singh and Ors. v. State of Punjab and Ors.* (supra), the Supreme Court observed-

We have not been able to appreciate the anxiety on the part of the different courts in judgments referred to above to apply the provisions of the Code to writ proceedings on the basis of Section 141 of the Code. When the Constitution has vested extraordinary power in the High Court under Articles 226 and 227 to issue any order, writ or direction and the power of superintendence over all courts and tribunals throughout the territories in relation to which such High Court is exercising jurisdiction, the procedure for exercising such power and jurisdiction have to be traced and found in Articles 226 and 227 itself. No useful purpose will be served by limiting the power of the High Court by procedural provision prescribed in the Code. Of course, on many questions, the provisions and procedures prescribed under the Code can be taken up as guide while exercising the power, for granting relief to persons, who have invoked the jurisdiction of the High Court. It need not be impressed that different provisions and procedures under the Code are based on well-recognised principles for exercise of discretionary powers and they are reasonable and rational. But at the same time, it cannot be disputed that many procedures prescribed in the said Code are responsible for delaying the delivery of justice and causing delay in securing the remedy available to a person who pursues such remedies. The High Court should be left to adopt its own procedure for granting relief to the persons concerned. The High Court is expected to adopt a procedure which can be held to

be not only reasonable but also expeditious.

22. In the light of the above principles of law laid down by the Supreme Court and keeping in mind the entire facts and circumstances of the matter m hand, we proceed to deal with the matter.

23. We have already noticed that the question of maintainability of the Ex.P. No. O1 of 2004 has already been decided by the Division Bench, by order, dated 30.05.2008, passed in this set of writ appeals. In view of the report, dated 3.3.2005, submitted by the Settlement Officer, the Division Bench, by the said order, observed that it is necessary to be examined by a larger Bench as to whether the refusal of the Division Bench hearing C .R. No. 258 of 1998 should continue or dissipate and on that basis whether direction issued for return of the derequisitioned land and payment of requisition compensation should be continued or not.

Therefore, we are required to decide the short question, whether in view of the report of the Settlement officer, signed on 3.3.05, the direction, issued in C.R. No. 258 of 1980 for return of the derequisitioned land and payment of compensation, should be continued or not?

24. In view of the principles of law pronounced by the Supreme Court in the above referred cases, any person, considering himself aggrieved by a decree or order, may apply for a review of judgment to the Court, which passed the decree or made the order. Order 47 Rule (1), which provides for review reads as follows:

Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

25. In view of the above statutory provisions, an aggrieved person may apply for review of the order on tiie grounds, firstly, new or important matter or evidence, which after the exercise of due diligence, was not brought to his knowledge or could not be produced by him at the time, when the decree or order was passed or made, secondly, there was some mistake or error apparent on the face of the record and thirdly, for any other sufficient ground.

26. In the present case, it is submitted, by the learned senior counsel, on behalf of the Appellants, that in view of the last report of Settlement officer, it has been discovered now that more land was shown in the record at the time of passing the derequisition order, that, in fact, there was less amount of derequisitioned land and that the said derequisitioned land was under the possession/occupation of under-raiyats or purchasers from liie predecessors-in-interest of the land and as such, there was no land for handing over of the possession as directed by the courts in the earlier proceedings. Therefore, it is submitted, that the orders passed, in the earUer proceedings, including Civil Rule No. 258 of 1980, which was the source of all subsequent orders, need to be reviewed.

27. Admittedly, no review application, citing the grounds for review, as required by the statute, has been preferred by the Appellants. The Appellants, by filing the present writ appeals, have challenged the correctness of the impugned order, dated 24.7.2007, passed by the learned Single Judge in Ex.R No. 01 of 2004 and sought the reliefs aforesaid.

28. In these appeals, there is no prayer for review. The Appellants have simply prayed for quashing/setting aside the order, dated 24.8.07, aforesaid. The submission for review of the earlier orders has been orally made by the learned Senior coimsel appearing for the Appellants. Therefore, in fact, there is no Aplication stating the grounds, for review of the earlier orders.

29. Refuting the submission, made by the learned Senior counsel, appearing on behalf of the Appellants. Mr. D.K. Biswas, learned counsel, appearing for the Respondents, has submitted that there is no sufficient and reasonable ground for review of the earlier orders and the plea that the land was under the occupation ofthe raiyats, and purchasers were taken in earlier proceedings too, and in view of the refusal of the courts to accept the said plea, the findings, revealed by the report submitted by the Settlement officer, is not discovery of new materials or evidence warranting review of the earlier orders, which attained finality with dismissal of the SLP by the Supreme Court. It is also submitted that there is no error apparent on the face of the record and that no mistake was committed by the courts in passing the said orders and as such, there is no ground for review.

30. In view of the said rival submissions, we feel it appropriate to examine if the report of the Settlement officer has revealed discovery of new materials or evidence, wdiich the Appellants, in spite of exercise of due diligence could not discover and place before the court in the earlier proceedings. For this exercise, we have to travel to the earlier decisions. In deciding the said Civil Rule No. 258 of 1980, the Division Bench made the following directions and observations:

From the above orders, letters etc which were written by the functionaries of the State Government and not denied by the Respondents in their counter it is absolutely clear that out of the three drones and odd area of land requisitioned by the Respondents under the provisions of Tripura State Security Order only an area of 1 drone and odd land was acquired for which compensation was paid to

this Petitioners and the remaining area is still with the Respondents for which the Respondents have neither paid compensation as required under the aforesaid order nor have delivered possession to the Petitioners after derequisitioned. In fact the District Magistrate and Collector wanted to utilize the land for some other purpose such as construction of college building stadium etc. We are therefore, unable to accept the contention of the Respondents that the requisitioned lands are in possession of under raiyats or the Petitioners so that a part of the land was sold. As the land was in possession of the Respondents, under law they are bound to pay compensation to the Petitioners from the date of requisition till the land is acquired by paying compensation according to law or handover the possession of the land after derequisitioning it.

The court further observed:

There is no dispute that the possession of the land so requisitioned has not been handed over to the Petitioners. As the possession is with the Government and as it has got right to use the property for any purpose we fail to comprehend how some other persons have acquired raiyati rights over the suit land. The affidavit in support of the counter of the Respondents is sworn by the Under Secretary of the Government. But in the said affidavit it has not been stated as to which paragraphs are true to information gathered from records. The revenue records are with the State Government and as such we expect from the Respondents to clearly state regarding the names of the under-raiyats, giving description of the land under their possession and also the particulars of the land alleged to have been sold by the Petitioners. In absence of these particulars and in view of our observation stated above we are unable to accept the contentions put forward before us on behalf of the Respondents. On the other hand, from the letters written by the functionaries of the State, which we shall presently discuss, it is absolutely clear that the land requisitioned is under the possession of the State Government and in view of the provisions contained in the Tripura State Security Order they are legally bound to handover the possession of the land and pay compensation if the land is not required for the purposes for which it was requisitioned.

31. While deciding the Civil Rule No. 258 of 1980, the Division Bench further observed that the Sub-Divisional Officer (SDO), Khowai, vide letter dated 15th March, 1967, informed the District Magistrate and Collector, Tripura at Agartala, that the remaining land, that is the land, which was not acquired and possession of which was taken over by the Sub-Divisional Officer, was not handed over to the Petitioners. As revealed from the order, dated 5.7.68, passed by the learned Administrator, the court noticed that out of 10 drones 13 kanis, 3 gandas and 3 karas of the land owned by the Petitioners, the Respondents took over possession of 3 drones, 9 kanis, 17 gandas, 3 karas and 10 dhurs and out of the said area, 1 drone, 4 kanis and 14 gandas had been formally requisitioned and compensation was also paid to the Petitioners and the balance of the land continued to be shown in the khatian, in the name of Aviation Department and

that the Petitioners were paying land revenue. The learned Administrator, in his order, noted that the District Magistrate had taken necessary action to enquire into the matter in order to find out whether the balance of these land was required, by the Aviation Department and if not required whether it could be returned to the Petitioners. By his letter, dated 4.3.68, the SDO, Khowai, wrote to the District Magistrate and Collector, Tripura, informing him, inter alia, that the possession of the land, which was not acquired, may be handed over to the Petitioners, if there was no bar from the Land Acquisition Officer. In the said judgment, it was noted that balance of the requisitioned land was shown in the khatian of Aviation Department by the Survey and Settlement department and the District Magistrate had informed that the Aviation Department would have to pay recurring compensation for utilisation of the land from the date of taking over of the possession. The Under Secretary to the Government of Tripura asked the Petitioner-Respondents to give a fresh undertaking to the effect that they would not claim any compensation for the period under requisition if their land, which was requisitioned, in 1950, for the air strip, is derequisitioned. Accordingly, the Petitioner-Respondents furnished an undertaking. In the light of the available official correspondences, the Division Bench came to the conclusive finding that the remaining de-requisitioned area was still with the Respondents and the Respondents had neither paid compensation nor delivered the possession to the Petitioners even after passing of the de-requisitioned order. It was also noticed that the District Magistrate and Collector wanted to utilise the land for some other purposes, such as, construction of college building, stadium, etc., and the Division Bench further observed: "We are, therefore, unable to accept the contention of the Respondents that the requisitioned land are in possession of under-raiyats of the Petitioners or that a part of the land was sold. As the land was in possession of the Respondents, they are bound to pay compensation to the Petitioners from the date of requisition till the land is acquired by paying compensation according to law or hand over the possession of the land after derequisitioning it. As the Respondents have failed to discharge their legal obligation, the Petitioners are entitled to get relief from this Court.

32. Civil Rule No. 47 of 1989 was disposed of by the learned Single Judge by order, dated 2-2-96. In the said proceeding also, the plea of possession of the de-requisitioned land by under-raiyats was taken, but the learned Single Judge also refused to accept the said plea on the ground that this contention was raised in the earlier Civil Rule No. 258 of 1980. The Division Bench, by its judgment and order, dated 2.6.88, rejected the said contention with the following words:

We are therefore, unable to accept the contention of the Respondents that the requisitioned lands are in possession of under-raiyats of the Petitioners or that a part of the land was sold. As the land was in possession of the Respondents, under law they are bound to pay compensation to the Petitioners from the date of requisition till the land is acquired by paying compensation according to law or handover the possession of the land after de-requisitioning it. As the Respondents have failed to discharge their legal obligation the Petitioners are

entitled to get relief from this Court.

33. Admittedly, no appeal was filed by the Respondent against the said judgment and order, dated 2.6.88, passed by the Division Bench in Civil Rule No. 258 of 1980 and thus, the findings, on the issue, attained finality. Therefore, the correctness and executability of the same cannot be allowed to be agitated at this belated stage by the Respondents by filing an appeal against the judgment and order, dated 28.4.07, passed in Ex.R No. O1 of 2004 and take the plea that the derequisitioned land was not available for handing over to its owners and that the Respondents are not in a position to implement the order.

34. The findings reached, and the observations made in the Civil Rule No. 47 of 1989, came to be challenged by preferring W.A. No. 28 of 1996 and W.A. No. 33 of 1996 by (A) The Chairman of Airport Authority of India Ltd. and (B) The State of Tripura. A Division Bench of this Court, by a common judgment and order, dated 14.6.02, refused to interfere with the findings given in Civil Rule No. 47 of 1989 and, accordingly, dismissed the appeal and upholding and confirming thereby the order and direction made in Civil Rule No. 47 of 89. In dismissing the said appeals, the Division Bench made the following observations:

9. The sole ground of challenge projected by the Appellants in the instant cases appears to be that the judgment and order dated 2.2.96 passed by this Court in Civil Rule No. 47 of 89 is incapable of execution inasmuch as it is the case of the Appellants that no portion of the derequisitioned land is in possession of the authority. This is the precise question that was raised in the earlier round of litigation. Learned counsel for the Appellants, in addition to the contentions already advanced in the earlier round of litigation to the effect that the writ Petitioner was himself responsible for transferring some of the land to different purchasers, has contended that to begin with the State never got the possession of the land which was requisitioned in the year 1950. On the aforesaid basis, it is sought to be contended, on behalf of the Appellants, that though the derequisitioned notification clearly mentions that the area mentioned therein is to be derequisitioned and possession thereof is to be handed over to the owners, in fact, there is no such land available with the authority. We find the submissions advanced both perplexing and startling. However, as the said question has already been gone into in the earlier round of litigation i.e. in Civil Rule No. 258/80, we do not consider it necessary on our part to once again enter into the aforesaid controversy and to record any finding thereof. The aforesaid contentions advanced have been answered earlier by this Court in the judgment and order dated 2.6.88 on an elaborate consideration of the communications, orders and notifications issued by the State Authority on the basis of which this Court has already held that the land in dispute is within the boundaries and is encircled by the fencing by the Khowai Airport. That apart, the inability of the State to execute and implement the directions issued by this Court in Civil Rule No. 47/89 would hardly make the said directions legally fragile and infirm. The validity of the directions contained in the said judgment cannot be judged by the yardstick

of the ability of the State to comply with the same.

35. The learned Single Judge, in deciding the Civil Rule No. 47 of 1989, which have given rise to the above writ appeals, took note of the contention, raised by the Appellants, that the derequisitioned land was under the possession of 12 raiyats and observed that if the land was found to be in possession of under raiyots, then, the Government of Tripura in the order, dated 26.2.77, need not have mentioned that the possession of the land be given to Sri Hemendra Narayan Datta and Sri Bani Bhusan Sen. The observations made, in this regard, by the learned Single Judge read as under:

Once, however, the Government specified in writing in the said order dated 26th Feb."77 made under Sub-Section 1 of Section 8 of the Tripura State Security Order 1358 T.E. that Sri hemendra Narayan Datta, the present Petitioner and Sri Bani Bhusan Sen be given possession of the derequisitioned land, the legal consequence is that delivery of possession of the said land has to be given to the said Sri Hemendra Narayan Datta and Sri Bani Bjhusan Sen as would be clear from the provisions of Sub-Sections 1 and 2 of Section 8 of the Tripura State Security Order 1358 T.E.

36. The writ appeals, namely, W.A. No. 28 of 1996 and W.A. No. 33 of 1996, preferred against the said judgment and order, were dismissed. Being aggrieved, the Respondents preferred SLP being SLP No. 20634-35 of 2003. The Supreme Court, by order, dated 25.11.2002, dismissed the same on the ground that there was no merit. Thus, with dismissal of the SLP, the entire matter attained its finality.

37. Having failed to substantiate the plea of non-availability of the derequisitioned land on the ground that the derequisitioned land was under the possession of the raiyat of the Petitioners and purchasers, the Respondents, once again, in Ex.P. No. O1 of 2004, took the same stand that land was not available. The learned Single Judge, in Ex.P. No. O1 of 2004, directed the Settlement Officer to fiimish a report towards identification and location of the derequisitioned land covered by the old survey plots under the present survey plot No. 1403. Pursuant to the said order, the report (signed on 3.3.2005) has been fiimished indicating therein that the recorded area was much more than the actual area and that, though the Revenue department had derequisitioned 11.37 acres of land for handing over to the parties, the actual requisitioned land in the sheet/ ground was 7.42 acres thereby resulting into shortage of 3.87 acres due to recording of excess area in the old khatian. The Settietment Officer, in his report, also stated that the parties were invited to submit their proposal towards proper solution of the matter, but no such proposal/ suggestion was received by them. In view of the said report, the learned Single Judge, in deciding tiie Ex.RO 1 of 2004, by order dated 28.4.07, observed:

The question, whicli arises for consideration is, whether the successive directions of this Court can be diluted in the above manner. The report furnished by the

Settlement officer cannot be accepted for more than one reasons. The reflection made in the report that excess area was shown in derequisitioning of the land, was never the ground urged in any of the earlier proceedings. After the notification of the Government itself on 26.2.1977 with subsequent corrigendum dated 3.8.1979 derequisitioning the area of land about which mention has been made in the earlier proceedings, it does not lie on the mouth of the Government to say that excess area was shown derequisitioned. In the earlier round of litigations, the defence of the Respondents was that the lands are in occupation of the under raiyats. On the other hand, the derequisitioned land was in the occupation of the Respondents themselves.

38. Challenging the decision of the learned Single Judge, made in Ex.R No. 04 of 2004, in these appeals, two primary pleas were taken. Firstly, it was contended, on behalf of the Appellants, that no appeal/application under Order XXI Rule 32 and Rule 35 CPC would lie for execution of orders passed in a writ proceeding. The question of maintainability was answered by the Division Bench in the affirmative making it redundant for further discussion. As noticed earlier, the question of maintainability has already been decided in affirmative by the Division Bench by its order, dated 30.05.2008, passed in W.A. No. 81 of 2007 and W.A. No. 88 of 2007, thereby making it redundant for further discussion.

39. The second question arose regarding identity and the location of the derequisitioned land measuring 11.37 acres covered by various plots. As noted by the Division Bench, in his report, dated 3.3.05, submitted in pursuant to the order, dated 27.8.04, passed in Ex.R No. 01 of 2004, the Settlement Officer mentioned that though in the notification, dated 26.2.77, the Government had derequisitioned 11.37 acres of land, the actual area of derequisitioned land on the ground was 7.42 acres. The second significant fact, indicated in the said report, was that 15 persons were in possession/occupation of different places of the areas and the derequisitioned land, to the extent of 7.42 acres, was either in possession of under raiyats under the predecessor-in-interest of the Petitioner i.e. late Hemendra Narayan Datta, or their purchasers. Though in the report of the Settlement Officer, it has been stated that the derequisitioned land was 7.42 acres instead of 11.37 acres, the State Respondents clearly admitted in the affidavit-in-opposition filed in Civil Rule No.258 of 80, that the land measuring 3 drones, 1 kani, 16 gandas, 2 krantas and 12 ? dhurs, pertaining to old survey plots and belonging to the predecessor-in-interest of the Respondents i.e. the petitioners (in the Writ Petition No.258 of 1980), was requisitioned and that out of the said land, 1 drone, 5 krantas, 7 gandas, 1 kranta, 1 kara and 10 dhurs were acquired vide Land Acquisition proceeding No.2223/ 24 dated 5.5.55. In the said affidavit, it was also admitted that the remaining requisitioned area, measuring 1 drone, 12 krantas, 8 gandas, 2 karas, 1 kranta and 2 ? dhurs was directed to be derequisitioned and handed over to the owner vide order, dated 26.2.77. Since filing of the said affidavit-in-opposition till 3.3.05 i.e. the date of submission of the report, by the Settlement officer, the State Respondents, at no point of time came, up with the contention that the requisitioned land or Ae

derequisitioned land was much less than what was shown on record. The subsequent various correspondences made by the officers of the Respondents (as noted in the earlier proceedings), more particularly the letter, dated 23.11.98, issued by the SDO, Khowai, West Tripura to the District Magistrate and Collector (Annexure-23) on the subject "derequisition of the land of 1 drone, 12 kanis, 8 gandas, 2 karas, 1 kranta and 2 ? dhurs and handover possession thereof clearly show that the SDO, on enquiry, found that the derequisitioned land was situated on the south western portion of the existing aerodrome and that the land was recorded in favour of the Civil Aviation department of the Central Government. The Assistant Survey officer, by his letter, dated 11.10.78 (Annexure-22) addressed to the SDO, Khowai, West Tripura, clearly stated that the land had fallen on the south western portion of the existing aerodrome and that the land was recorded in favour of the Civil Aviation department of the Central Government. By letter, dated 2.2.77, the Under Secretary to the Government of Tripura, Revenue department (A-16), asked Sri Hemendra Narayan Dutta to give fresh undertaking stating that they would not claim compensation for the period under requisition if their land, which was requisitioned in 1950 for the air strip is derequisitioned. The SDO, Khowai, by his letter, dated 1.1.79, (Annexure-28) addressed to the Addl. District Magistrate and Collector, West Tripura, Agartala, informed that the derequisitioned land was required for construction of educational complex.

40. Despite such letter issued by the Sub-Divisional Officer, Khowai, the Government did not take any steps to hand over the derequisitioned land. The report submitted by the Settlement Officer is contradictory to what was contended by the S.D.O., Khowai, in his letter aforesaid. The contention in the Section Officer's report, that excess area was shown in the derequisitioned land, was never pleaded by the State Respondents or the Airport authority in the earlier proceedings. That apart, the State Respondents by its notification, dated 26.2.77, and by the subsequent corrigendum, dated 3.8.79, passed, orders for releasing the derequisitioned land. The letter No. 685/KH/ Rev/VIII-4/66, dated 15th March, 1967, written by the Sub Divisional Officer, Khowai, to the District Magistrate and Collector, West Tripura, Agartala clearly indicates that after acquiring 1 drone, 4 kanis, 14 gandas out of 3 drone, 9 kanis, 17 gandas, 3 krans and 10 dhurs, the possession of the remaining land was taken by the SDO and that the said land was, thereafter, neither acquired nor returned to the applicants. Even on 4.3.1968, the SDO, in his letter written to the District Magistrate and Collector, stated that the possession of the requisitioned land was taken and that a portion of the land was acquired. The SDO, who took the possession, stated that the possession of the land was taken as per Respondents' order. Therefore, it does not lie in the mouth of the Respondents now to say that there was less land and that there was no available land for handing over possession. The statement, made in the said letter, not being controverted/modified, it stood established that the land was in the possession of the Respondent. The present Respondents i.e. the owners of the land, contended

that as they had much more land than what was requisitioned land, they had tenants in respect of their other land. This contention of the Respondent cannot be ruled out. In his letter, dated 30.8.71, written to the Under Secretary, Revenue department, the Land Acquisition officer. West Tripura indicated the various plot numbers and amount of the land and clearly stated 3 drone, 1 kani, 16 gandas, 0 kara, 2 kranta and 12 ? dhurs i.e 19.925 acres of land was requisitioned. He gave the plot wise area of the land. By his letter, dated March 4/5, 1968, the SDO, Khowai, informed the District Magistrate and Collector that the possession of the land was taken and, therefore, that demand for land revenue was not raised thereafter. In Anr. report, dated 10.7.1989, submitted by Sri Pran Gopal Saha, Surveyor, it was stated that the Sr. Aerodrome Officer admitted that they were to deliver possession of 1 drone, 12 kanis and odd land from the land in their possession. Again, on 29.6.1991, the SDO, Khowai, informed the District Magistrate and Collector that the derequisitioned land was situated between the air strips and as such, he suggested to hand over the land from the northern side of the air strip including some portion of the air strip land covered by CS plot No. 1141. Further, vide letter, dated 27.6.91, the Deputy Collector, Revenue, Khowai informed the SDO, Khowai. that the derequisitioned land was covered by plot Nos. 1141 and 2185. He stated that the derequisitioned land was within the air strips surrounded by the airport land. Thus, till 1991, it was admitted by the Respondents that the derequisitioned land was in their possession and land was available for being handed over to the writ Petitioners. In another report, dated 16.9.91, the joint committee, submitted, inter alia, the following report:

The committee examined the report of the Asst. Survey Officer, Khowai under No. 5636-37/F.16/ASO/KH/37 dated 31.5.91 vide flag "F" In his report Asst. Survey Officer had enclosed a statement showing a tenanted lands within the requisition area. On examination of the statement, it was found that 1.33 acres of land recorded as the tenanted land of the Petitioners, was situated within the requisition area. The committee was of the opinion that those 1.38 acres of land should be lessened from the released area of 11.28 acres (1 drone, 12 kanis, 3 gandas, 2 karas, 1 kranta and 2 ? dhurs) for determining the actual area to be handed over to the Petitioners.

In view of the above suggestion the area to be handed over to the Petitioners came to 9.90 acres. In this respect the committee invites attention towards the letter dated 29.6.91 of the SDO, Khowai vide Flag "G" wherein the Sub Divisional Officer, Khowai suggested to , handover land to the Petitioners from the northern side of the airstrip to be carved out from the last settlement plot No. 568 (corresponding to Revisional survey plot No. 1141). The committee was also of the same view as that would maintain the proper shape of airstrip.

In khatian No. 197/1 and 197/2 of the Civil Aviation department, 63.76 acres of land has been recorded during Revisional survey operation. If the Government approved the views of the committee, the area of the Civil Aviation department

will come down to 53.86 acres (63.76 acres - 9.90 acres) and khatian No! 197/1 and 197/2 will be required to be corrected accordingly.

41. In view of the above, if the said report of the joint coininittee was acted upon, 9.90 acres of land could have been handed over. The minute of the discussion held on 16.4.92, in the chamber of the Government Advocate, which was attended by the Aerodrome Officer, L.A. Collector and the Settlement Officer, it was found, from records, that out of the total derequisitioned land of 11.37 acres, the owner had settled 6.07 acres with 12 families and as such, 5.30 acres of land should be given back to the owner out of CS plot No. 1141 (old plot 568).

42. From the above correspondence and reports, it is found that it was the consistent stand of the Government that there was land for handing over to the owners. At no point of time, it was found by the Respondents that there was no land available from being handed over. The State Respondents never took any steps to amend/modify the admission made in their pleadings as well as in the above stated official correspondence. Therefore, now, at this stage, the Respondents cannot be allowed to take the stand that there was no land to hand over. Even on 16.9.91, there was 9.90 acres of land for handing over possession. In 1991, a report was submitted by a joint committee consisting of the District Collector, Khowai, the Settlement officer and the Land Acquisition Officer. In their said report, dated 14.11.91, it was stated that out of the total area of the derequisitioned land measuring 11.28 acres, 6.07 acres of land was in possession of tenants. Therefore, on 14.11.91, apart from the said 6.07 acres, there was land in the possession of the Respondents for being handed over to the Petitioners.

The plea that land was under the possession of raiyot and purchasers were taken up in the earlier proceedings also. The Court considered and adjudicated on the matter and Court declined to accept the said pleas by judgment and order, dated 2.6.1988, passed in Civil Rule No. 258 of 1980. No appeal or review in respect of the said judgment and order was ever, as indicated above, preferred and, thus, the Respondents, in the said writ petition, failed to challenge the same.

The Division Bench, by order, dated 3.5.1988, passed in W.A. No. 81 of 2007 and W.A. No. 88 of 2007, while directing to place the matter before the Hon'ble Chief Justice, for referring the matter to a larger Bench, observed:

We have already noticed that in the order dated 2.6.88 passed in Civil Rule No. 258 of 1980 this Court had expressed its reluctance to accept the stand taken by the State which is more or less identical with what has been projected before us in the present appeals. Such reluctance, inter alia, was on the ground that the details of the under-riyats and purchasers of the derequisitioned land, besides other particulars of the creation of such rights, were not made available to the court. The said particulars are now available in the report of the Settlement officer dated 3.3.2005 submitted pursuant to the order of the court dated 27.8.2004. The facts stated in the said report of the Settlement officer dated 3.3.2005 are

not only based on a field survey but also on the basis of the revenue records which have been appended to the said report. The question, therefore, that has confronted us in the present appeals is whether in view of the facts emanating from the report of the Settlement officer dated 3.3.2005 which facts have not been objected to by the Respondent Petitioner in the written objections filed, the refusal of the Division Bench hearing Civil Rule No. 258 of 1980 should continue or dissipate and on that basis whether the directions issued for return of the derequisitioned land and payment of requisition compensation should be continued or not. In our considered view, a co-ordinate Bench should not make an attempt to answer the aforesaid question keeping in mind the accepted norms of judicial discipline and decorum. We are, therefore, of the view that the aforesaid question should receive consideration of a larger Bench.

43. A careful reading of the judgment and order, passed in Civil Rule No. 258 of 1980, reveals that, the Division Bench while disposing the Civil Rule No. 258 of 1980, refused to accept the plea of possession of the derequisitioned land by the raiyats and purchasers, on the ground of non-availability of detailed particulars of such raiyats and purchasers. In this regard the Division Bench had also considered various letters written by the functionaries of the State and arrived at the absolute and clear conclusion that the requisitioned land was under the possession of the State Government and held that, in view of the provisions contained in the Tripura State Security Order, they were legally bound to handover the possession of the land and pay compensation. On the basis of the order passed by the Administrator on 5.7.68 (annexure-4 to the writ petition), the Division Bench observed, "we find a clear picture that out of 10 drones, 13 kanis, 3 gandas and 3 karas of land owned by the Petitioners, the Respondent took over possession of 3 drones, 9 kanis, 17 gandas, 3 karas and 10 dhurs of land out of the said area and out of which 1 drone, 4 kanis, 14 gandas was formally requisitioned.

44. Though 27 years have elapsed since the time of the present litigation between the parties, the State Respondents chose, for the reasons best known to them, not to take any steps either to amend their pleadings or to rectify the mistakes, if any, in respect of the correspondences, which have been made by the various State functionaries, admitting the fact that the possession of the derequisitioned land had not been handed over to the Petitioners. That apart, the Respondent-authorities never filed any appeal or review petition against the findings reached, observations made and the decisions arrived at in the Civil Rule No. 258 of 1980. Immediately after disposal of the Civil Rule No. 250 of 1980, the Government, if it had so desired, could have preferred appeal or review petition against the said order by causing a detailed survey and by submitting detailed particulars of derequisitioned land indicating the names of the under raiyats and the purchasers, if any, of the Petitioners. But the Respondents neither challenged the said order nor implemented the directions given therein.

45. In view of above, it cannot be held that the Respondents/Appellants

exercised due diligence in due time to reveal the correct position. In the subsequent proceedings also, the present Appellants failed to take appropriate steps to produce the materials to substantiate their plea.

46. Similarly, the direction made in Civil Rule No. 47 of 89 also attained finality with the dismissal of the SLP by the Supreme Court, filed against the judgment and order passed in W.A. Nos. 28 and 33 of 1996. Fact remains that the writ Petitioners, in Civil Rule N. 258 of 1980 and Civil Rule No. 47 of 1989 were the lawful owners of the land in question and their land was requisitioned sixty years ago i.e. in 1950 and in spite of taking pains to seek necessary relief by instituting various proceedings, they have not been able to enjoy the fruit of the reliefs granted to them as far back as on 2.6.88 and thereafter. In the requisition order, passed in 1950, it was clearly mentioned that the land was requisitioned from the possession of the said writ Petitioners, who are Respondents in this set of appeals. Therefore, in view of the admission made in paragraph 7 of the counter affidavit, filed by the State Respondents on 14.2.83, the State Respondents are required to release the derequisitioned land or to pay compensation. After the notification dated 26.2.77 aforesaid and the subsequent corrigendum dated 3.8.79 and in view of the subsequent correspondences aforesaid the Respondents cannot be allowed to take the plea, at this belated stage that the land is not available either to be derequisitioned or to be handed over to the owners. The land, in question, having been derequisitioned vide order, dated 26.2.77, after its requisition in 1950, the State authorities are duty bound either to hand over the land to the owner or to pay compensation after initiating acquisition proceedings. The Settlement Officer vide Order, dated 27.8.04, was directed to identify the location of the land. Therefore, the responsibility of the Settlement Officer was to the extent of identifying and locating the land. The dispute as regards possession by under-riyats and purchasers having been raised, considered and decided earlier, in Civil Rule Nos. 258/80 and 47/89, it cannot once again be adjudicated upon. That apart, the joint committee constituting the D.C., Khowai the Settlement Officer, West Tripura, Agartala and the Land Acquisition Officer, in its report dated 16.9.91, considering the report of Survey officer, Khowai dated 31.5.91, clearly indicated that the area of the land to be handed over to the Petitioners came to 9.90 acres and that the Sub Divisional Officer, Khowai, suggested to hand over the land from the northern side of the air strip. It was further mentioned in the said joint report that if the proposal is approved by the Government then the area of the Civil Aviation department would come down to 53.86 acres (63.76 acres - 9.90 acres) and that the khatian No. 197/1 and 197/2 would be required to be corrected accordingly. In view of the said report, if the land measuring 9.90 acres was available for being handed over to the owners on 16.9.91, it cannot be accepted that there was no land for handing over to the Petitioners. The report dated 27.8.04 submitted by the Settlement officer is found to be contradictory to the report submitted by the said joint committee and various correspondences made by the Government functionaries. That apart, vide order, dated 27.8.2004, passed by

the learned Single Judge, a direction was made to locate the land from the plot Nos. 293/p, 299/p, 292, 516/p and 554 comprising an area of 1 drone, 12 kanis, 8 gandas, 2 krantas, 1 kara and 1 ? dhurs, which were covered by present survey plot No. 1403. In his letter dated 30.8.71, the Land Acquisition officer gave the plot wise area of the requisitioned land. As discussed earlier, the concerned Government officials indicated that the derequisitioned land was within the land of the Airport Authority. In the derequisition order, dated 26.2.11, it was mentioned that the said land had fallen under plot No. 1403. But by a subsequent corrigendum, the plot No. 1403 was deleted from the order, dated 26.2.77. Therefore, in view of the said corrigendum, there was no point in trying to locate the land within plot No. 1403. As per the relevant map the plot No. 1403 shows the air strip. In some of the correspondences, as indicated above, it was stated by the officials of the State that the derequisitioned land was covered by plot Nos. 1141 and 2185.

47. In view of the above, it is found that the report of Settlement Officer is contradictory to the earlier report and stand of the Government. That apart, the report that the land was under the possession of raiyats and purchasers is not a discovery of new fact nor is it a piece of evidence, which could not be produced by the State Respondents in spite of due diligence earlier. In other words, it cannot be held that, in spite of due diligence, the Respondents could not produce the evidence/materials as indicated in the report of the Settlement Officer (singed on 03.03.05) at the earliest stages of the proceedings. Therefore, the present findings, recorded by the Settlement officer cannot be sufficient ground to reopen the matter by way of review at this belated stage. That apart, all the orders, in the earlier proceedings, were passed on the basis of the materials available on record. There is nothing on record to show that there was any error apparent on the face of the record in passing the said orders or that the court was under any mistaken view of the matter, which could lead it to commit mistake. Therefore, we find no sufficient ground to support the Appellants' contention for review of the matter.

In the present appeal, the Appellants have prayed for setting aside the order, dated 24.8.07, passed in Ex.P. No. Ol of 2004. Even if the said order is set aside by allowing the appeal, directions made in Civil Rule No. 258 of 1980 and Civil Rule No. 47 of 1989 shall still remain in force. In view of the decision rendered by the Supreme Court in the case of The Commissioner, Karanataka Housing Board (supra), Respondents are duty bound to comply with the directions given earlier in the proceedings above-mentioned.

48. In view of the specific directions made in the Civil Rule No. 258 of 1980 and Civil Rule No. 47 of 1989, which attained finality and in the absence of any scope to review the said orders, we find no reason to examine the question regarding non-availability of the land and re-open thereby, indirectly, the matter which was decided on 2.6.88.

The learned Single Judge considering the entire facts and circumstances of the

case refused to accept the said report of the Settlement Officer and taking note of the successive directions made by the court refused to accept the plea that there was no land to be handed over to the present Respondents and correctly directed by its order, dated 24.8.07, to deliver vacant possession of the derequisitioned land as per notification, dated 26.2.77, within two months from the date of the order and pay requisite compensation all throughout, or in the alternative initiate necessary process towards acquiring the land and pay appropriate compensation for acquisition to the Petitioners and Ors. . The entire process was directed to be completed within four months from the date of the order. In view of the ratio of the case in the case of The Commissioner, Karnataka Housing Board (supra), if the State Respondent is not in a position to handover the land, the writ Petitioners are entitled to receive compensation.

49. In the light of the above discussion, we find no merit in this set of appeals requiring interference with the impugned judgment and order. Accordingly, these appeals fail. We order that the directions given by the learned Single Judge in the impugned order, be carried out and the entire process be completed within a period of six months from the date of this order. No cost.