
(2016) 05 CAL CK 0101

In the Calcutta High Court

Case No : M.A.T No. 134 of 2016 with CAN No. 1073 of 2016 and COT No. 5 of 2016

State of West Bengal

APPELLANT

Vs

Companion Traders Pvt. Ltd.

RESPONDENT

Date of Decision : 20-05-2016

Acts Referred:

Citation : (2016) 4 CalHCN 17 : (2017) 2 WBLR 536

Hon'ble Judges : Jyotirmay Bhattacharya and Ishan Chandra Das, JJ.

Bench : Division Bench

Advocate : Mr. L.K. Gupta, Ld. AAG, Mr. Tapan Kumar Mukherjee, Ld. AGP, Mr. Bikash Kumar Mukherjee and Mr. Somnath Naskar, Advocates, for the Appellant; Mr. Anindya Kumar Mitra, Sr. Advocate., Mr. Saptangshu Basu, Sr. Advocate., Mr. Abhrajit Mitra, Sr. Advocate., Mr

Final Decision : Disposed Off

Judgement

Jyotirmay Bhattacharya, J.—Two Mandamus Appeals were filed by two different sets of respondents challenging a common judgment and/or order passed by a learned Single Judge of this Court. One of such appeals was filed by the State of West Bengal and the others was filed by Kolkata Municipal Corporation.

2. The Mandamus Appeal which is directed against the judgment and/or order passed by a learned Single Judge of this Court on 19th December, 2015 in the writ petition being W.P No. 2384(W) of 2015 at the instance of the State of West Bengal was registered as MAT No. 134 of 2016 and the others appeal which is directed at the instance of the Kolkata Municipal Corporation was registered as M.A.T No. 22 of 2016.

3. Let us first of all give hereunder the gist of the impugned order passed by the learned Single Judge of this Court.

4. By the said judgment and/or order, the learned Single Judge directed the

Kolkata Municipal Corporation to sanction the building plan in question subject to the same being in compliance with the provisions of the Kolkata Municipal Corporation Act, 1980 and the Rules framed thereunder including the Kolkata Municipal Corporation Building Rules 2009 within a period of 4 weeks from date. Such direction was given by the learned Single Judge of this Court as the learned Single Judge was of the view that in view of the provision contained in Section 1(2) of the Urban Land Ceiling Act, the provisions of the said Act have been made applicable to the whole of the State of West Bengal and since Madurdaha Mouza is undisputed within the Kolkata Municipal Corporation area wherein the said Act applies, the West Bengal Land Reforms Act, 1955 has no application in respect of the matter covered by the Urban Land Ceiling Act excepting in relation to agricultural land, in view of the decision of this Hon"ble Court in the case of Paschimbanga Vumijibi Krishak Samity v. State of West Bengal reported in 1996(2) CLT 183. The learned Single Judge further observed that though the writ petitioner applied for "No Objection Certificate" from the urban land ceiling authority on 13th October, 2014 and competent authority having failed to furnish such certificate within three months from the date of submission of such application before the competent authority, the requirement of "No Objection Certificate" is deemed to have been waived upon expiry of three months from the date of its submission, in view of Rule 4(4) of the Kolkata Municipal Corporation Building Rules 2009.

5. The learned Single Judge thus, held that since three months time has expired on 13th January 2015, the Municipal authority cannot now refuse to grant any sanction to the building plan for non-submission of the "No Objection Certificate" from the competent authority under the Urban Land Ceiling Act.

The learned Single Judge is, thus, of the view that since all the formalities which are required to be complied with as per the provisions of the Kolkata Municipal Corporation Act and the Rules framed thereunder, have already been fulfilled by the writ petitioner, the municipal authority cannot withhold grant of sanction to the building plan submitted by the petitioners, Hence the aforesaid direction was passed.

6. The legality and/or propriety of the said judgment and/or order passed by the learned Single Judge of this Court is under challenge before us in these two Mandamus Appeals.

Re: MAT No. 134 of 2016 filed by the State Government.

7. As a matter of fact, the fate of this Mandamus Appeal depends upon our decision as to the applicability of the West Bengal Land Reforms Act in "Madurdaha Mouza". Before we enter into the discussion as to the applicability of the West Bengal Land Reforms Act, 1955 in Madurdaha Mouza, let us record hereunder the rival claims of the parties leading to filing of the writ petition before the learned Single Judge of this Court.

8. The writ petitioner Nos. 1-30 are all private limited companies. The writ

petitioner No. 31 is the Director and authorised representative of the writ petitioner Nos. 1-30. The writ petitioner Nos. 1-30 have acquired vast area of land in Mouza Madurdaha in the District of South 24 Parganas from different plots adjoining to each others by 54 several conveyance deeds.

9. After acquiring the said plots of land, the petitioners applied before the Kolkata Municipal Corporation in short KMC authority to mutate the said plots of land in the names of the writ petitioners. Initially the KMC did not consider those applications for a long time and as such, the writ petitioners had to approach the Writ Court twice by way of writ petitions.

10. Ultimately in terms of the judgment and/or order passed by the Writ Court on 13th December, 2013 in W.P No. 656 of 2013, the names of the writ petitioners were mutated and various plots of land owned by petitioners were amalgamated.

11. Thereafter the Municipal authority allotted a single Municipal premises number to those amalgamated plots. Those amalgamated plots are now being identified as premises No.761 Madurdaha, Kolkata 700007.

12. Subsequently, the writ petitioners prepared a building plan and submitted the same before the Municipal authority for sanction. As per the decision taken in the meeting of KMC Municipal Building Committee held on 25th November, 2014, the building plan was corrected and changes as desired by the Municipal authority was incorporated therein. The Municipal Building Committee thereafter sanctioned the plan subject to submission of "No Objection Certificate" from the Urban Land Ceiling Department. Even though the writ petitioner was of the view that the Urban Land Ceiling and Regulation Act does not apply to Madurdaha Mouza and as such they were not required to submit any "No Objection Certificate" from the Urban Land Ceiling authority, but still then by way of abundant caution, the writ petitioner had applied for "No Objection Certificate" from the Urban Land Ceiling Authority on 13th October, 2014. The competent authority under the Urban Land Ceiling and Regulation Act neither granted any "No Objection Certificate" in favour of the petitioners nor refused to grant "No Objection Certificate" in favour of the petitioners within three months from the date of receipt of such application from the writ petitioners. The writ petitioners, thus, contended that in view of the provision contained in Rule 4(4) of the Kolkata Municipal Corporation Building Rules, the requirement of production of the "No Objection Certificate" by the petitioners as a condition precedent for grant of sanction to their building plan is deemed to have been waived, on the failure of the competent authority to furnish the certificate within three months from the date of reference to it. The writ petitioners thus, claimed that in view of such deeming provision contained in Rule 4(4) of the Kolkata Municipal Corporation Act, the Kolkata Municipal Corporation Authority cannot insist upon production of "No Objection Certificate" from the competent authority under the Urban Land (Ceiling and Regulation) Act as a condition for grant of sanction to the building plan submitted by the writ petitioners.

13. The writ petitioners thus, prayed for issuance of a writ of mandamus directing the Municipal authority to grant sanction to their building plans for enabling them to raise construction on their purchased plots within Mouza Madurdaha in the District of South 24 Parganas.

14. The Municipal authority contested the said writ petition by filing affidavit in connection with the said writ petition. They took a stand that the Municipal authority could not sanction the building plan as the petitioner did not submit the building plan accompanied by a "No Objection Certificate" from the competent authority as per the provision contained in rule 4(4) of the Kolkata Municipal Corporation Building Rules, 2009. It is stated in the said affidavit that the competent authority of ULC sought for clarification from the Special Secretary, Government of West Bengal, Urban Development (Urban Land Ceiling) Department with regard to disposal of ""No Objection Certificate" but no decision of the Government has yet been communicated to the competent authority of ULC in this regard.

15. It is thus, claimed that in so far as the petitioner's prayer for grant of sanction to building plan is concerned, the petitioners' such prayer is premature as grant of sanction to the building plan depends on the final outcome of the decision of the State of West Bengal which was added as a party in the writ petition.

16. State of West Bengal, the added respondent contested the said writ petition by filing affidavit. In the affidavit filed by the State respondent, the State respondent contended that in view of the provision contained in Section 1(2) of the West Bengal Land Reforms Act, 1955, the said Act applies to Madurdaha Mouza. It was further stated therein that since the Urban Land Ceiling and Regulation Act, 1976 is not applicable to the land in question as both the plots of land in question are recorded as bil, production of "No Objection Certificate" from the Urban Land (Ceiling and Regulation) Act, 1976 as per Rule 4(4) of the Municipal Building Rules 1990 cannot be insisted upon as a precondition for grant of sanction to the building plan. It was further alleged therein that the Kolkata Municipal Corporation authority, while considering the writ petitioners' application for grant of sanction to their building plan, will have to take into consideration the provision contained in Section 4C of the West Bengal Land Reforms Act 1955 in the context of the provision contained in Section 396(2)(a) of the Kolkata Municipal Corporation Act.

17. Let us now consider as to how far the learned Single Judge of this Court was justified in passing the impugned order in the context of the pleadings of the aforesaid parties.

18. We find from the record that the land which the petitioner purchased in Madurdaha Mouza situates in two plots being Dag Nos. 455 and 457 which are recorded as bill in the re-visional record of rights, finally published in 1955. "Bil" means tank which is different from Sali and/or agricultural land. Those two plots

of land were requisitioned by the State under Section 4(1) of the West Bengal Fisheries (Regulation and Acquisition) Act, 1965 and possession thereof was taken by the Collector as back as on 13th November, 1966 in L.A case No. L.A XX 45 of 66 67. Since the time of such requisition, these two plots of land were in possession of the Fisheries Department of the State of West Bengal till those two plots of land were de-requisitioned and possession thereof was delivered to the writ petitioners on 19th February, 2015. From the notification issued by the Government of West Bengal Land and Land Reforms Department on 19th February, 2015, it appears that vast area of land including those two plots of land were requisitioned by the Government under the West Bengal Fisheries (Regularisation and Acquisition) Act, 1965 but ultimately the Fisheries Department vide its Memo dated 2nd February, 2015 intimated different Government Officials including the Principal Secretary that those plots which fall under Schedule Wet Land (Conservation and Management) Act and those which are water bodies, fully or partially and low lands may not be released from requisition. A schedule was prepared showing various plots of land lying in different Mouzas such as Bhagawanpur, Karimpur, Mukundapur, and Kalikapur which can be released from requisition and L.A Collector, South 24 Parganas was authorised to specify by order in writing after making necessary enquiry, the person who appears to be entitled to the possession of such land along with quantity of land and take further necessary action as per the Act. The plots of land which were purchased by the petitioner i.e., R.S Plot Nos. 455 and 457 (part) lying at Madurdaha Mouza were included in the said schedule meaning that those two plots of land were released from requisition and possession of those two plots of land were made over to the writ petitioners. At the time of the delivery of possession of those two plots of land, the petitioners found that the character of those two plots of land was changed from "bill" to "Concrete land". As a matter of fact, change of character of the land from "bill" to the concrete land was mentioned in the physical verification report prepared by the Fisheries Department after holding spot inspection from 27th -30th January, 2015. Thus, the factual position is that at the time of taking over possession of these two plots of land in pursuance of requisition order, the character of these two plots were bill but at the time of delivery of possession of these two plots of land to the writ petitioners, the said bill i.e., tank, fishery was converted into solid land. Such conversion was made during the period when these two plots of land were in possession of the Government Department i.e., requisitioning authority and because of such conversion of these two plots of land in its character, the Government decided to de-requisition those two plots of land and ultimately possession thereof in the altered character, was made over to the writ petitioner.

19. In this context we will have to ascertain the legality of such conversion in the light of the provision contained in Section 4C of the West Bengal Land Reforms Act, 1955. Section 4C dealing with permission for change of area, character or use of land was added to the West Bengal land Reforms Act, 1955 by the West Bengal Land Reforms (Amendment) Act, 1981 with retrospective effect from 7th

August, 1969. The applicability of the said provision of Section 4C of the West Bengal Land Reforms Act, 1955 to those plots of land of the writ petitioners depends upon applicability of the West Bengal Land Reforms Act, 1955 to the Mouza Madurdaha. As such we feel that our first endeavour will be to find out the applicability of the West Bengal Land Reforms Act, 1955 to Madurdaha Mouza. To decide the said issue we will have to fall back upon the provision contained in Section 1 sub-Section 2 of the West Bengal Land Reforms Act, 1955 which is set out hereunder:

"Section 1(2): it extends to whole of West Bengal except the area described in Schedule 1 of the Kolkata Municipal Corporation Act, 1980 but not excepting the area included in the said Schedule which immediately before coming into force of the Kolkata Municipal Corporation (Amendment) Act, 1983 was comprised in the Municipality of Jadavpur, South Suburban or Garden Reach.

Provided that the State Government may, from time to time by notification in the official gazette, extend and bring into force the provision of this Act, in whole or in part, to such part or parts of the area described in schedule 1 of the Kolkata Municipal Corporation Act, 1980, w.e.f. such date or dates as may be specified in the notification".

20. Reading the said provision it appears to us that the West Bengal Land Reforms Act, 1955 will not apply to Madurdaha Mouza if it is found that the Madhurdaha Mouza was not included in Schedule 1 of the Kolkata Municipal Corporation Act, 1980. On the contrary, if we find that, that the said Madhurdaha Mouza was comprised in any of the Municipalities of Jadavpur, South Suburban or Garden Reach before the Kolkata Municipal corporation (Amendment) Act, 1983 came into operation and the same was included within the jurisdiction of Kolkata Municipal corporation by the Kolkata Municipal Corporation (Amendment) Act, 1983 the provisions of the West Bengal Land Reforms Act, 1955, will apply to Madhurdaha Mouza. In this regard we have consulted Schedule 1 of the Kolkata Municipal Corporation Act, 1980 as it stood prior to introduction of the Kolkata Municipal Corporation (Amendment) Act, 1983. The boundaries of Kolkata Municipal Corporation as per Schedule 1 of the Kolkata Municipal Corporation Act, 1980 was as follows :-

"A line drawn along the outer edge of Pramanick Ghat Road, Kashi Nath Dutta Road, Kali Charan Ghosh Road and Ramkrishna Ghose Road, thence southward along the Western edge of the Eastern Railway to the point where the boundary line meets the New Canal; thence eastward along the southern and western bank of the New Canal to the point where it meets the outlet for storm water thence westward along the southern embankment of storm water outlet where it meets the north-west boundary point of Paschim Chowbhaga; thence southward along the western and northern boundary of Paschim Chowbhaga up to Rajdhanga Road; thence along the eastern and southern edge of Rajdhanga Road to the point where it meets Kasba Road; thence along the eastern edge of Kasba Road to the point where it meets Sarat Ghose Garden Road, then along the southern

edge of Sarat Ghose Garden Road to the point where it meets Kalipada Roy Lane; thence along the eastern edge of Kalipada Roy Lane to the point where it meets the south-western boundary of Haltoo Union Board, thence along the southern, western and northern boundary of Haltoo Union Board to the point where it meets Jheel Road; thence along the eastern edge of Jheel Road to the point where it meets Garfa Road; thence along the Northern edge of Garfa Road and Jadavpore Station Road to the point where it meets Raja Subodh Chandra Mullick Road; thence Southwards along the eastern edge of Raja Subodh Chandra Mullick Road up to the Southern boundary of mouza of Jadapore; thence along the western edge of Raja Subodh Mullick Road to the point where it meets Tolly's Nullah thence along the northern and eastern bank of Tolly's Nullah to the point where it meets Tallygunge Circular Road, thence westward along the southern edge of Tollygunge Circular Road to the point where it meets the Southern boundary of the Port Commissioner, land acquired for the purpose of constructing King George's dock and its connected works, and thence along the southern boundary of the Port Commissioners' land above referred to, as it stands at the commencement of this Act up to the point where it meets Diamond Harbour Road; thence along the western boundary of Diamond Harbour Road to the point where it meets the southern boundary of the Port Commissioners' land above referred to; thence along the southern, western and northern boundary of the said land up to the point where it meets Karl Marx Sarani as its junction with New Taratola diversion road; thence eastward along the northern edge of Circular Garden Reach Road to the point where it meets the Port Commissioners' land above referred to; thence northward along the western boundary of this land to the point where it meets Garden Reach Road; thence westward along the northern edge of Garden Reach Road to the point where it meets Prince Dilwarjan Lane; thence northward along the eastern edge of Prince Dilwarjan Lane and the western boundary of the Port Commissioners, land above referred to, to the point where it meets the river Hooghly; thence along the river Hooghly where it meets southern side road in continuation of Clyde Row, thence it meets eastern side of St. George's Gate Road, along the eastern boundary of St. George's Gate Road where it meets Kidderpore Road; thence along the western boundary of Kidderpore Road where it meets Casuarina Avenue, and Red Road where it meets to the southern point of Lawrence Road; thence along the southern side of Lawrence Road and Eden Garden Road and a line drawn in continuation of Eden Garden Road to the river Hooghly; thence along the river Hooghly to the western terminus to the outer edge of the Pramanick Ghat Road."

21. Thus, if the said Schedule 1 of the Kolkata Municipal Corporation Act, 1980 is considered then we find that Madurdaha Mouza was not included within the said Schedule. Thus, Madurdaha Mouza did not fall within the boundaries of the Kolkata Municipal Corporation as per Schedule 1 of the Kolkata Municipal Corporation Act, 1980. Madurdaha Mouza which was a part of Jadavpur Municipality as per the notification published in the Calcutta Gazette extraordinary issue dated 15th May, 1980 was not included within the boundaries

of the Kolkata Municipal Corporation as per Schedule 1 of the Kolkata Municipal Corporation Act, 1980. The said Madurdaha Mouza was brought within the boundaries of the Kolkata Municipal Corporation by way of Kolkata Municipal Corporation (Amendment) Act, 1983 w.e.f. 4th January, 1984. By virtue of such amendment, the original boundaries of the Kolkata Municipal Corporation was changed and the boundaries of the Kolkata Municipal Corporation was thus, extended in the following manner:-

"A line drawn along the outer edge of Pramanick Ghat Road, Kashinath Dutta Road, Kali Charan Ghosh Road and Ramkrishna Ghosh Road, thence southward along the western edge of the Eastern Railways where the boundary line meets the New Canal, thence eastward along the southern bank of the New Canal and Kestopur Canal up to the point where it meets the Eastern Metropolitan Bypass; thence southward along the Western edge of Eastern Metropolitan Bypass to the point where it meets the New Canal; thence southward along the eastern bank of the New Canal to the point where it meets the outlet for stormwater; thence south-east along the western edge of Dr. B.N. Dey Road to the end of Dhapa Mauza (J.L No.2); thence southward along the eastern boundary of Dhapa Mauza (J.L No.2); up to the point where it meets the southern boundary of Chowbhaga Mouza (J.L. No.3); thence further west along the southern boundaries of Chowbhaga Mauza (J.L. No.3); thence southward along the eastern boundaries of Chowbhaga (J.L No. 3); Nonadanga (J.L. No. 10). Madurdaha (J.L No.12); Kalikapur (J.L No.20); Barakhola (J.L No. 21); mauza to the point where it meets the northern boundary of Chak Ganiagachi Mauza (J.L. No. 24); thence eastward along the northern boundary of Chak Ganiagachi Mauza (J.L. No. 24); to the point where it meets the north-eastern boundary of Nayabad Mauza (J.L. No.25); thence south and westward along the eastern and southern boundaries of Nayabad Mauza (J.L. No. 25); to the point where it meets the northern boundary of Chak Garia Mauza (J.L. No. 26); thence south and Westward along the eastern and southern boundaries of Chak Garia Mauza (J.L. No. 26); and southern boundaries of Brij (J.L. No. 27) and Baisnabghata (J.L. No. 28) Mauzas to the point where it meets the eastern boundary of Kamadahari Mauza (J.L. No. 49); thence southward along the eastern boundary of Kamadahari Mauza (J.L. No. 49); thence Westward along the southern boundaries of Kamdahari (J.L. No.49), Brahmapur (J.L. No.48), Rainagar (J.L. No. 47), Bansdroni (J.L. No. 45), Chakdah (J.L. No. 44) and Purba Putiari (J.L. No. 43) Mauzas to the point where it meets the eastern bank of Kaorapukur Khal; thence across the Kaoraopukur Khal eastward to the point where it meets Dhalipara Road; thence westward along Dhalipara Road and along Dag Nos. 80, 81, 82, 83, 87, 88, 91, 92, 93, 96, 354, 353,100, 103,102 of Chak Thakurani Mauza (J.L. No.24); thence southward along Dag Nos. 3563, 3564, 3813, 3565, 3566, 3585, 3584 up to Dag No. 3586 of Purba Barisha Mauza (J.L. No.23); thence westward up to Dag No. 3612 of Purba Barisha Mouza (J.L. No.23); thence again southward along Dag Nos. 3809, 3613, 3795, 3796, 3797, 3799, 3800, 3801 and 3802 of Purba Barisha Mauza (J.L. No. 23); thence westward along Mahatma Gandhi Road to the point where it

meets Diamond Harbour Road; thence across Diamond Harbour Road and westward along the southern boundary of Mauza Paschim Barisha (J.L. No. 19) up to Dag No. 2161 of Paschim Barisha Mauza (J.L. No. 19); thence northward along Dag Nos. 2160, 2159, 2158, 2157, 2154, 2652, 2651, 2280, 2650, 2153, 2139, 2642, 2638, 2587, 2354 and 2353 of Mouza Paschim Barisha (J.L. No.19); thence further north along Dag Nos. 2335, 2324, 2396, 2234, 2208 and 2215 of Mauza Sarsuna (J.L. No.17); thence westward along Dag Nos. 2309, 2275, 2199, 2201, 2130, 2127, 2124, 2123, 2122, 2120, 2119, 2118, 2116, 2348, 2374, 745, 744, 742, 741, 739 and 738 of Mouza Sarsuna (J.L. No. 17); thence northward along Dag Nos. 737, 736, 735, 734 and 973 of Mouza Sarsuna (J.L. No.17) and along Dag Nos. 177, 176, 175, 174, 173, 172 and 171 of Mouza Sonamukhi (J.L. No. 34); thence west and northward along Dag Nos. 726, 725, 722, 718, 717, 716, 699, 1648, 696, 682, 681, 680, 679, 678, 672, 671, 1652, 590, 591, 593, 594, 537, 533, 532, 531, 530, 529, 527, 526, 525, 524, 470, 473, 472 and 113 of Sarsuna Mauza (J.L. No. 17); thence westward along Dag Nos. 780, 779, 841, 812, 719 and 452 of Mauza Shibrampur (J.L. No.18); thence northward and westward along the western boundary of Shibrampur Mauza and southern edge of Shibrampur Road to the point where it meets Ho Chi Minh Sarani; thence eastward along southern edge of the Ho Chi Minh Sarani to the point where it meets Kastodanga Road; thence further east along the northern edge of Ho Chi Minh Sarani to Dag No. 2588 of Mauza Sarsuna (J.L. No. 17); thence northward along the western edge of Beledanga Road up to Dag No.2933 to Mauza Parui (J.L. No.3); thence further north along Dag Nos. 2933, 2932, 2931, 2930, 2929, 2874, 2873, 2872, 2871, 2868, 2870, 2869, 2855, 2854, 2853, 2852 and 2849 of Mauza Parui (J.L. No.3); thence eastward along Dag Nos. 2848, 2847, 2843, 2840, 2838, 3501 and 2836 of Parui Mouza (J.L. No.3); thence northward along Dag Nos. 2835, 2834, 2833, 2832, 2831, 2824, 2823, 2813, 2809, 2808, 2807, 2806, 2802 and 2801 of Pauri Mauza (J.L. No.3); thence further north along Dag Nos. 768, 767, 765, 764, 763, 762, 761, 758, 757, 719, 1231, 714, 716, 715, 1189, 713, 1190, 703, 313, 330 and 329 of Behala Mauza (J.L. No.2); thence westward along Dag Nos. 328, 327, 325, 320 and 317 of Behala Mauza (J.L. No.2); thence northward along Dag Nos. 257, 256, 253, 251, 250, 127, 126, 120, 121, 66 and 65 of Mouza Behala (J.L. No.2) to the point where it meets Budge Road and thence westward along Budge Road up to Hatchala Hindu Burial Ground; thence northward along the western boundary of the Port Commissioner's land up to the point where it meets Trenching Ground Road near its junction with Dinu Mistry Lane; thence westward along the northern boundaries of Ram Das Hati, Makhalthati and Panchur Mauzas to the point where it meets Kankhuli Road; thence southward along the eastern edge of Kankhuli Road to the point where it meets the western boundary of Panchur Mauza; thence west and northward and again westward along the eastern and northern boundaries of Panchur Mauza to the point where it meets Akra Road; thence across Akra Road and northward, eastward, again northward, westward, southward and again westward along eastern, northern and western boundaries of Akra Mauza to the point where it meets the river Hooghly; thence

northward along the eastern bank of the river Hooghly and eastward along the southern bank of the river Hooghly up to the point where it meets eastern side road in continuation of Clyde Row; thence eastward along the southern edge of Clyde Row to the point where it meets St. George's Gate Road (Munsi Premchand Sarani); thence southward along the eastern edge of St. George's Gate Road (Munsi Premchand Sarani) to the point where it meets Kidderpur Road; thence northward along the Western edge of Kidderpur Road and Red Road to the point where it meets Lawrence Road; thence westward along the southern edge of Lawrence Road and Eden Garden Road and a line drawn in continuation of Eden Garden Road to the river Hooghly; thence northward along the eastern bank of the river Hooghly to the western terminus of Pramanick Ghat Road".

22. Thus, it appears to us that Madurdaha Mouza was not within the boundaries of the Kolkata Municipal Corporation as per Schedule 1 of the Kolkata Municipal Corporation Act, 1980 and the said Madurdaha Mouza was included within the boundaries of the Kolkata Municipal Corporation by the Amendment Act, 1983 and prior to the Kolkata Municipal Corporation (Amendment) Act, 1983 came into operation on 4th January, 1984, Madurdaha Mouza was included in Jadavpur Municipality. In such view of the fact, we have no hesitation to hold that in view of the provision contained in Section 1(2) of the West Bengal Land Reforms Act, 1955, the West Bengal Land Reforms Act, 1955 is applicable to the Madurdaha Mouza which was brought within the boundaries of the Kolkata Municipal Corporation by Amendment of Schedule 1 in 1983.

23. Before drawing the conclusion as to the applicability of the West Bengal Land Reforms Act, 1955 to Madurdaha Mouza, conclusively we feel that we should discuss the last part of the submission of Mr. Mitra, with regard to the proviso added to Section 1, sub-Section 2 of the said Act. The following proviso was added to Section 1(2) of the said Act:-

"Provided that the State Government may from time to time by notification in the official gazette, extend and bring into force the provisions of this said Act, in whole or in part, to such part or parts of the area described in schedule-1 of the Kolkata Municipal Corporation, 1980, w.e.f such date or dates as may be satisfied in the notification".

24. By introducing the said proviso by way of amendment of the West Bengal Land Reforms (Amendment) Act, 1983 w.e.f. 24th March, 1986 a provision was made in the said Act to the effect that even though the provisions of the West Bengal Land Reforms Act, 1955 were not applicable to any part or parts of the area mentioned in Schedule-1 of Kolkata Municipal Corporation Act, 1980 by virtue of Section 1(2) of the said Act, but still then by issuance of a notification the provisions of the said Act may be extended to the area included in the Schedule 1 of the Kolkata Municipal Corporation with effect from any date to be specified in the said notification.

25. Mr. Gupta, learned Additional Advocate General, submitted that the proviso has no application in the present case as it is nobody's case that Madurdaha Mouza was included in Schedule-1 of Kolkata Municipal Corporation Act, 1980 and thereby the application of the West Bengal Land Reforms Act, 1955 was excluded, but subsequently the State Government extended the operation of the West Bengal Land Reforms Act, 1955 to Madurdaha Mouza by issuance of notification as per the proviso to Section 1(2) of the said Act.

26. Mr. Gupta further submitted that original provision contained in Section 1(2) of the said Act was amended and the provision relating to the exception clause starting from "except the area prescribed in Schedule-1 of the Kolkata Municipal Corporation area Garden Reach" was inserted therein by way of substitution vide West Bengal Land Reforms (Amendment) Act, 1981. According to Mr. Gupta no further notification under Section 1(3) of the said Act is necessary for enforcement of the said amended provision which came into effect from 24th March, 1986, as this was not a new provision introduced in the said Act by way of amendment but something was added by way of substitution in the existing provision which remained operative since 1956. We agree with such contention of Mr. Gupta, and we hold that for enforcing any amended provision which is introduced by way of substitution, no further notification is necessary under Section 1(3) of the said Act.

27. We thus, hold that the West Bengal Land Reforms Act, 1955 is applicable to Madurdaha Mouza, as it was not included in the first schedule of Kolkata Municipal Corporation Act, 1980 and was added by way of Amendment of the boundaries of Kolkata Municipal Corporation by Kolkata Municipal Corporation (Amendment) Act, 1983 and prior to its inclusion of the said Mouza within the Schedule of Kolkata Municipal Corporation by 1983 amendment, the said Madurdaha Mouza was included within Jadavpur Municipality.

28. Let us now consider as to whether the provision contained in Section 4C of the West Bengal Land Reforms Act, is attracted for conversion of the character of the petitioners' land from bil to solid concrete land or not.

29. Section 4C of the West Bengal Land Reforms Act provides that a raiyat holding any land may apply to the Collector for change of area or character of such land or for conversion of the same for any purpose others than the purpose for which it was settled or was being previously used or for alteration in the mode of use of such land.

30. The explanation which is added to the said Section provides as follows :-

"For the purpose of this sub-Section, mode of use of land may be residential, commercial, industrial, agriculture excluding plantation of tea, pisciculture, forestry, sericulture, horticulture, public utilities or others use of land".

31. Rule 5A prescribes the manner following which change of character, conversion or alteration of any mode of use of land held by raiyat is to be made.

It is provided therein that any raiyat intended to change the character, convert or alter the mode of use of any land held by him shall make an application to the officer concerned, empowering, in writing, to discharge the function of the Collector of such change, conversion or alteration under Section 4C in Form 1A and shall be accompanied by such documents as mentioned in the said Form 1A, Sub Rule 2 of Rule 5A provides that if the application as mentioned in sub-Rule(1) relates to permission for change, conversion or alteration of any land having water body of any description or size, such application shall be accompanied by an affidavit in Form 1B for creation of compensatory water body on equal or larger size of such water body which is sought to be changed, converted or altered in the same Mouza or in the adjoining Mouza. If the provision contained in Section 4C read conjointly with Rule 5A then on conjoint reading of those provisions of the Acts and Rules it appears to us that it is only when a raiyat intends to change the character or convert or alter the mode of user of any land held by him, he is required to submit an application to the officer concerned seeking such change, conversion or alteration under Section 4C of the said Act.

32. Here is the case where we find that those two plots of land of the writ petitioners were requisitioned by the Government as back as on 10th November, 1966. At the time when possession of those two plots of land was taken by the Collector, those two plots of land were bil i.e., tank fishery. However, at the time when possession of those two Plots of land was delivered to the writ petitioners after de-requisitioned of those two plots of land on 19th February, 2015, the character of those two plots of land was changed from bil to solid concrete land. Thus, such change occurred at point of time when the possession of those two plots of land was with the Government. The raiyat who was the owner of the said plots of land never intended to change the character of such land. Since the raiyat who is holding such land never intended to convert the said land from bil to solid concrete land, in our view, such Raiyat was not required to apply for such conversion under Section 4C of the said Act. Section 4C of the said Act does not impose any obligation upon the State Government to apply for such conversion before any authority. When such conversion was found to have occurred during the time when the possession of those two plots of land was with the State Government, we are of the view, that the State Government was not required to apply for such conversion under Section 4C of the said Act. Thus, in our considered view, Section 4C of the said Act is not attracted in the instant case for conversion of the land from bil to solid concrete land. However, necessary changes in the record of right should be made by following Section 50 or Section 51 of the West Bengal Land Reforms Act, 1955.

33. It is however, clarified that despite this order is passed holding the raiyat was not required to apply for conversion of the bil to the concrete land as such conversion was done at a point of time when the Raiyat was not in possession of the said land, the concerned authority, if so desires, may enquire into as to who was responsible for such conversion, and may also initiate legal proceeding

against the person responsible for such conversion if permissible under law.

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34. Even the Municipal record shows that those two plots of land belonging to the writ petitioners were recorded as vacant land. The vacant land was assessed by the Municipal Authority. Rates and taxes was imposed upon the holding of the writ petitioners. At present physically there is no existence of bil in those two plots of land belonging to the writ petitioners.

35. When the tank fishery is filled up and further when construction is possible on the filled up land, such land became vacant land within the meaning of vacant land as defined in Section 2(o) of the Urban Land Ceiling Act in view of the Division Bench decisions of this Court in Shila Maitra's Case.

36. The Municipal authority, in our considered view, is required to consider the writ petitioners' application for grant of sanction to their building plan by taking into account the nature of the land as it stands now we have already mentioned above that the nature of the land, as it stands now, is vacant land. It is nobody's case that this is an agricultural land and/or the land belonging to the petitioner is used for agricultural purpose. If the land is not an agricultural land then certainly it will be an urban land within the meaning of the urban land as defined under Section 2(o) of the Urban Land (Ceiling and Regulation) Act, 1976. In view of the definition of the vacant land as mentioned in Section 2 (q) of the said Act, we hold that those two plots of land belonging to the writ petitioners are urban vacant land. As such the provisions contained in the Urban Land (Ceiling and Regulation) Act 1976 is applicable in the present case. If the said Act is applicable in the present case then in view of the provision contained in Rule 4 of the Kolkata Municipal Corporation Building Rules 2009, the writ petitioners are required to submit "No Objection Certificate" from the competent authority appointed under the said Act.

37. Here is the case where we find that the writ petitioners had already applied for "No Objection Certificate" before the competent authority under the Urban Land Ceiling Authority on 30th October, 2014. The petitioners' prayer for grant of such "No Objection Certificate" has neither been allowed nor been rejected by the competent authority under the Urban Land Ceiling and Regulation Act. In view of the provisions contained in Rule 4(4) of the Kolkata Municipal Corporation Building Rules 2009, the deeming provision regarding grant of such "No Objection Certificate" is attracted after expiry of three months from the date of submission of such application before the competent authority. Since the said three months' period expired on 30th January, 2015, the Kolkata Municipal Corporation cannot insist upon production of "No Objection Certificate" from the competent authority under the Urban Land Ceiling and Regulation Act as a pre-condition for grant of such sanction. We hold that since the deeming provision is attracted in the instant case and after the expiry of three months from the date of submission of such application for issuance of the "No Objection Certificate",

production of "No Objection Certificate" is deemed to have been waived.

38. Thus, in our considered view, the Municipal authority while considering the building plan submitted by the writ petitioners for its sanction should not insist upon production of the No Objection Certificate from the competent authority under the Urban Land Ceiling and Regulation Act in view of the deeming provision contained in Rule 4(4) of the Kolkata Municipal Corporation Building Rules 2009.

Court's conclusion on both the appeals :-

39. However, after considering the provisions of Section 396 of the Kolkata Municipal Corporation Act, 1980, we find that production of "No Objection Certificate" from the competent authority under the Urban Land Ceiling and Regulation Act, is not the only criteria for grant of sanction to the building plan. Sub-Section 2 of Section 396 of the said Act provides that the sanction of a building or a work may be refused on various grounds and one of the grounds as mentioned in Section 396 (2)(a) is that if the building or work or the use of the site for the building or the work or any of the particulars comprised in the site plan, ground plan, elevation, Section, or specification contravenes the provisions of this Act or the Rules and Regulations made thereunder or of any others law in force for the time being, sanction may be refused. We cannot anticipate at this stage as to which others laws for the time being in force may be found to be complied with by the writ petitioners in the process of granting sanction to the building plan. As such, we dispose of both these appeals by modifying the impugned order to the extent that the Municipal Authority while considering the building plan submitted by the writ petitioners will consider the writ petitioners' prayer for grant of sanction to the said building plan by applying the laws applicable thereto without, however, insisting upon production of "No Objection Certificate" from the urban Land (Ceiling and Regulation) Act, 1976 or "the conversion certificate" from the Land Reforms Department under Section 4C of the West Bengal Land Reforms Act 1955. The Municipal Authority is, thus, directed to take its ultimate decision on the writ petitioners' prayer for sanction of the building plan as early as possible, but positively within three months from date.

40. Both These appeals are thus, disposed of with the above modification.

41. The cross-objections are also thus disposed of in the line of the order passed herein above.

42. Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible.

Ishan Chandra Das, J.—I agree.