

Form J(2)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :

The Hon'ble Justice Bibek Chaudhuri

WPA 11647 of 1991

[Gouri Prasad Goenka & Ors. –Vs.-The State of West Bengal & Anr.]

with

WPA 11648 of 1991

[Jagadish Prasad Goenka & Ors. –Vs.-The State of West Bengal & Anr.]

with

WPA 11649 of 1991

[Sanjiv Goenka –Vs.-The State of West Bengal & Anr.]

For the petitioner : **Mr. Saktinath Mukherjee, Sr. Adv.**
Mr. Debanjan Mondal,
Mr. Arindam Banerjee,
Mr. Aniruddha Chatterjee,
Mr. Sanjiv Kumar Trivedi,
Mr. Sounabho Ghosh,
Ms. Iran Hassan,
Mr. Sanket Sarawgi,
Mr. Jasojeet Mukherjee,
Ms. Mahima Chelera

For the State : **Mr. T.M.Siddiqui,**
Mr. Tanoy Chakraborty,
Mr. Saptak Sanyal,
Mr. Paritosh Sinha,

Judgement on : **17.11.2023.**

Bibek Chaudhuri, J.

The above mentioned three writ petitions are filed on same facts and circumstances for identical reliefs. Therefore, this Court delivers the following common judgment in the above-mentioned writ petitions.

For the sake of convenience and brevity, the facts of WPA 11647 of 1991 are recorded below in brief.

It is the case of the petitioners that they are members of a Hindu Undivided Family of which petitioner No.1 is the 'Karta'. The remaining petitioners are the members of the said Hindu Undivided Family. Be it noted here that during the pendency of the writ petitions, petitioner No.2, Smt. Indu Goenka died and vide order dated 9th February, 2021, her name was deleted from the cause title of the writ petitions on the ground that her legal heirs and representatives are already on record. It is stated by the petitioners that the petitioner No.1 as 'Karta' of HUF is the owner of 1/4th share of the premises No.37B, Paikpara, Raja Manindra Road comprised in an area of 787.14 square metres, of which the share of petitioner No.1 is 196.78 square metres. The said premises had several buildings including residential buildings thereon. The other owners of the said premises are (a) Sri Rama Prasad Goenka, H.U.F. having 3/16 share, (b) Sri Jagadish Prasad Goenka, HUF having 1/4th share, (c) Sri Harsh Vardhan Goenka having 1/16th share and (d) Smt. Keshar Goenka having 1/4th share.

In addition to the aforesaid, the said Gouri Prasad Goenka, petitioner No.1 herein as Karta of HUF is also the owner of a tank comprised in an area of 1617.91 square metres in premises No.37F,

Paikpara, Raja Manindra Road. Petitioner No.1 as Karta of HUF is also the owner of undivided 1/4th share in land fully covered by a non-residential building comprising of an area of 568.56 square metres in premises No.1, Jadulal Mallick Road, Calcutta. The share of petitioner No.1 in the said premises comes to 142.14 square metres. Further case of the petitioner is that they duly declared the existence and ownership of the above-mentioned properties in their Income-tax and Wealth-tax filed and as HUF, they are being assessed to tax under the relevant provision of IT Act. Municipal Taxes are also paid by the said HUF.

It is stated by the petitioners that the said HUF of which petitioner No.1 is the 'Karta' did not hold any vacant land within the meaning of Urban Land (Ceiling and Regulation) Act, 1976. Moreover, as the Hindu Undivided Family is not "person" within the meaning of the said Act. It was not required by the said HUF to file any return under the said Act. However, through inadvertence and by mistake, the petitioner No.1 filed a return under Section 6(1) of the said Act before the respondent No.2. The Return was filed through bonafide mistake and under misappropriation of law in this respect occurring several errors in the said Return as regards the particulars of the properties held by the said HUF.

It is further submitted by the petitioners that though Return was filed under Section 6(1) of the said Act, the petitioner No.1 also filed an application under Section 21 of the said Act with the respondent No.1. The said application is still pending. Subsequently, the respondents did not take any action for nearly 12 years. However, on or about 11 August, 1981, the petitioner No.1 was served with a purported Draft Statement dated 6th August, 1988 prepared by the respondent No.2. The petitioner No.1 was called upon to file objection to the said purported Draft Statement within 30 days of the service of the said statement. From the said purported Draft Statement, the petitioner No.1 came to learn that Urban Land Case No.6(1)/114/1976 was initiated against the petitioner No.1 on the basis of the statement filed by him under Section 6(1) of the said Act. It is alleged by the petitioners that in the Draft Statement, the petitioner No.1 was shown as an 'individual' possessing total vacant land measuring approximately 1697.33 square metres. It was contended by the respondents that the petitioner No.1 would be allowed to retain 500 square metres of land under the said Act and the remaining portion of the land measuring about 1197.33 square metres were directed to be surrendered in favour of the respondents.

In the particulars of the properties contained in the said Draft Statement, premises No.37F Paikpara, Raja Manindra Road and 1,

Jadulal Mallick Road were shown as vacant lands but there are buildings and non-residential structures on the said property. The petitioner No.1 filed an objection to the said purported Draft Statement on or about 9/12th September, 1988. That on 1st December, 1988, the respondent No.2 issued a notice to the petitioner No.1 for hearing on 14th December, 1988. Thereafter, on 16th April, 1991, the petitioner No.1 received a purported final statement issued by the respondent No.2 with a notice dated 11th April, 1991 wherein it was held allegedly that the petitioner No.1 allegedly possesses in his individual capacity vacant land measuring about 2478.08 square metres, while he was entitled to possess 500 square metres of land being the ceiling limit under the said Act. Accordingly, he was directed to surrender the excess land. Receipt of such Final Statement was followed by a notice on behalf of the petitioners through their Advocate M/s. Khaitan & Company, Calcutta. The petitioners prayed for de-novo hearing of the matter in connection with the objection filed under Section 8 of the said Act. However, upon enquiry it was learnt that the respondent No.2 had already filed a proceeding under Section 10(1) of the said Act and as such there was no scope for further hearing in terms of the notice dated 28th June, 1991. According to the petitioners, the entire proceeding is arbitrary, illegal, *mala fide* without and/or in excess of

jurisdiction, without any authority of law. The respondents failed to interpret and thereby misinterpreted the provision of Section 6(1) in relation to Hindu Undivided Family.

On the above facts, the petitioners have prayed for the following reliefs in the above-mentioned writ petitions.

- (a) A Writ of and/or Order and/or Direction in the nature of Certiorari directing the respondents and each of them, their servants and/or agents to forthwith certify and send upto this Hon'ble Court the records relating to the case including the said purported Draft Statement and/or the purported Final Statement being Annexures 'C' and 'G' hereof respectively and/or any steps taken on the basis thereof and of all purported proceedings initiated/steps taken on the basis thereof or thereunder so that the same may be set aside and/or quashed and conscionable justice might be rendered;
- (b) A Writ of and/or Order and/or Direction in the nature of Mandamus commanding and directing the respondents and each of them, their servants and/or agents to forthwith withdraw, revoke, recall and/or cancel the said purported Draft Statement and/or the said purported Final Statement being Annexures "C" and "G" hereof

respectively and or any steps taken on the basis thereof or thereunder and to refrain from giving effect to or taking any steps in terms thereof or thereunder and to act in accordance with law;

- (c) A Writ of and/or Order and/or Direction in the nature of prohibition prohibiting the respondents and each of them, their servants and/or agents from taking any steps or further steps in terms of or pursuant to the said purported Draft Statement and/or the said purported Final Statement being Annexures "C" and "G" hereof respectively and/or any steps taken on the basis thereof or thereunder;
- (d) An appropriate Writ, Order or Direction do issue for production of all relevant records and for protection of all the rights of the petitioners and for granting the petitioners such relief as in the circumstances of the case shall be just and proper;
- (e) Rule Nisi in terms of prayers (a), (b), (c), and (d) above;
- (f) Injunction restraining the respondents and each of them, their servants and/or agents from giving effect to or taking any steps or further steps in terms of or pursuant to the said purported Draft Order and/or the purported

Final Order being Annexures "C" and "G" hereof respectively, till the disposal of this application;

- (g) Ad-interim order in terms of prayer (f) above;
- (h) Suitable order as to costs be made;
- (i) Such further or other order or orders be made and/or directions be given as to this Hon'ble Court may seem fit and proper.

The petitioner No.1, on behalf of him and other petitioners have filed a supplementary affidavit on 2nd July, 2021. It is further contended by the petitioner that there is no excess vacant land within the meaning of Urban Land (Ceiling and Regulation) Act, 1976. The petitioner No.1 filed a return under Section 6(1) of the said Act on 11th August, 1976 for himself and for the other petitioners, being the member of Hindu Undivided Family of which the petitioner No.1 is the 'Karta'. The Final Statement was prepared stating the following shares of the family in the below mentioned properties as per the chart.

Sl. No.	Undivided Share	Premises No.	Proportionate Area
1.	1/4	37B, Paikpara, Raja Manindra Road	186.00 sq.mtr.
2.	1/12	37G, Paikpara, Raja Manindra Road.	122.03 sq. mtr.
3.	1/12	37M, Paikpara, Raja Manindra Road	430.06 sq. mtr.
4.	1/4	1, Jadulal Mallick Road	142.14 sq. mtr.

5.		37N, Paikpara, Raja Manindra Road	2117.26 sq. mtr.
		Total :	2997.49 sq. mtr.

It is stated by the petitioner that the competent authority had held that there is an extent of excess vacant land of 1978.08 square metres. Thus, the competent authority arrived at by taking only an area of 500 square metres purportedly under Section 4(1) of the said Act from the aforesaid 2478.08 square metres wrongly treating the Return is as an individual. On the other hand, the Return should not have treated as an individual but being a Hindu Undivided Family of four members, the benefit of Section 4(7) of the said Act ought to have been given in respect of each of the said family members. The respondents failed to consider that the petitioners are entitled exclusion under Section 2(q)(i) of the said Act. In addition, despite premises No.37G, Raja Manindra Road being a recorded tank in the Municipal records, the same is beyond the purview of vacant land as defined in the said Act. Accordingly, upon reading the provision of Section 4(1) with Section 4(7) of the said Act, there is entitlement of deduction of quantum of 2000 square metres for the four family members constituting HUF. Additionally, the properties fallen under the area covered by the Calcutta Municipal Act, 1951 and specially under Schedule XVI of the Calcutta Municipal Act, an area of 1/3rd of

total land is required to be kept vacant while constructing on a site. As such, in terms of the law clarified by the Hon'ble Supreme Court, 1/3rd of the total land area is required to be deducted in terms of Section 2(q)(i) of the said Act but the respondents failed to deduct the proportionate land taking into account the relevant provision of Calcutta Municipal Act.

The respondent No.2 has filed an affidavit in opposition to the writ petition and the supplementary affidavit on 1st July, 2022. It is contended on behalf of the respondents that the petitioners failed to establish violation of any fundamental or legal right, which requires the interference of this Court under Article 226 of the Constitution.

It is further pleaded that the petitioner No.1 submitted Returns under Section 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976 in his individual capacity. On the basis of the said Return a Draft Statement was prepared under Section 8(1) of the said Act in the name of the petitioner No.1 and other co-sharers in respect of the subject property. The Return is filed and they participated in the adjudicatory process before the competent authority. During the hearing, it was learnt that one K.P.Goenka was the original owner of the said properties. On the death of the said K.P.Goenka, his three sons, namely petitioner No.1, namely Gouri Prasad Goenka, Rama Prasad Goenka and Jagdish Prasad Goenka and their mother, Keshar

Devi became the absolute owner of premises No.37B, Paikpara, Raja Manindra Road. During the lifetime of K.P.Goenka, premises No.37B, Paikpara, Raja Manindra Road was partitioned by a registered deed of partition amongst his three sons and himself. The property of premises No.37F Paikpara, Raja Manindra Road and 37N, Paikpara, Raja Manindra Road were also distributed to his three sons. Premises No.37B Paikpara, Raja Manindra Road was owned by K.P.Goenka and his three sons jointly.

It is also stated by the respondent No.2 that upon hearing, notification under Section 10(1) of the said Act was duly published inviting claims of all persons interested in the said vacant land. Challenging the said notice, the petitioner No.1 and his other brothers along with their co-sharers have filed the aforesaid three writ petitions.

The petitioner No.1 has filed an affidavit-in-reply against the aforementioned affidavit-in-opposition reiterating the stand of the petitioners made out in the writ petition.

It is submitted by Mr. Saktinath Mukherjee, learned senior counsel on behalf of the petitioners in all the three matters that the Urban Land (Ceiling and Regulation) Act, 1976 was promulgated for the purpose of providing for imposition of a ceiling on vacant land in urban agglomeration and for acquisition of such land in excess of the

ceiling limit, to regulate the construction of buildings on such land and in matters connected therewith, with a view to bringing the concentration on urban land in the hands of a few persons and speculation and profiteering therein with a view to bringing about an equitable distribution of land in urban agglomeration to sub-serve the common good.

Section 4(1) deals with the ceiling limit of urban lands. Section 4 (1) runs thus:-

"4. **Ceiling limit.**- (1) Subject to the other provisions of this Section, in the case of every person, the ceiling limit shall be, -

- (a) where the vacant land is situated in an urban agglomeration falling within category A specified in Schedule I, five hundred square metres;
- (b) where such land is situated in an urban agglomeration falling within category B specified in Schedule I, one thousand square metres;
- (c) where such land is situated in an urban agglomeration falling within category C specified in Schedule I, one thousand five hundred square metres;
- (d) where such land is situated in an urban agglomeration falling within category D specified in Schedule I, two thousand square metres;

(2).....

(3).....

(4).....

(5).....

(6).....

(7) where a person is a member of a Hindu undivided family, so much of the vacant land and of any other land on which there is a building with a dwelling unit therein, as would have fallen to his share had the entire vacant land and such other land held by the Hindu undivided family been partitioned amongst its members at the commencement of this Act shall also be taken into account in calculating the extent of vacant land held by such person.

(8).....

(9).....

(10).....

(11)....."

It is further submitted by the learned senior counsel that the petitioners fall in category A. The property involved in these three writ petitions are situated within Kolkata Municipal Corporation. The ceiling limit which an individual can retain is five hundred square metres in an urban agglomeration falling within category A specified in Schedule I of Section 4 (1) (a) since the subject land involved in these matters is situated within Kolkata Municipal Corporation. Thus, the ceiling per individual is five hundred square metres.

Mr. Mukherjee next draws my attention to Sub-Section (7) of Section 4 of the said Act. The provision provides that where a person is a member of a Hindu Joint Family, so much of the vacant land and any

other land on which there is building with a dwelling unit therein as would fall in to his share at the entire vacant land and such other land held by Hindu Undivided family been partitioned amongst these members at the commencement of this Act shall be taken into account in calculating the extent of vacant land. He also refers to Section 2(i) defining "person" which includes an individual, a family, a firm, a company or an association or body of individuals, whether incorporating or not. Thus, it is urged by the learned senior counsel on behalf of the petitioner that the Hindu Undivided Family is treated as a juristic person so long it remains undivided. It is also pointed out by him that the petitioners are Mitakashra Coparceners within Hindu Undivided Family. According to Section 4(7), the Hindu Undivided family will not be treated as a person but the members of the Hindu Undivided Family will have their share worked out as if there was a partition on the date of commencement of this Act. The HUF without a partition would be entitled to be treated as a person and Urban Ceiling limit for the Hindu Undivided Family would be five hundred square metres. Mr. Mukherjee illustrates the legal position of a factual illustration inviting this Court to suppose that in Mitakashra joint family there are father with two sons, four grand sons and six great grand sons. The father and three generations under him would have been entitled to one ceiling.

Therefore, it appears to the legislature that it would have been extremely unfair and unjust for a family having so many members to treat a Hindu Undivided Family as a person and prescribe the ceiling limit to five hundred square metres for all the family members of HUF. Therefore, the Act says, on the date of commencement of the Act the HUF would be deemed to have been partitioned. Thus, a fictional partition is contemplated under Section 4(7) of the said Act so that each member of the HUF would be entitled to a share. If Section 4(7) was not in the statute, then the HUF would have been entitled to one share. Thus, it is submitted by the senior counsel that the members of HUF consisting of four persons would be entitled to a share in respect of urban land and the ceiling limit would be five hundred square metres for each of the members of the HUF. Mr. Mukherjee refers to the definition of "vacant land" provided in Section 2q(i) of the said Act. The provision reads thus:-

"2q. Vacant land means land not being land mainly used for the purpose of agriculture in an urban and agglomeration but does not include – (i) land on which construction of a building is not permissible under the building regulations in force in the area in which such land is situated ;

(ii).....

(iii)....."

Referring to the above provision it is submitted by Mr. Mukherjee that under the Municipal law, in respect of a part, there is a maximum area on which one person can make a construction. The remaining area is required to be kept vacant under the Municipal Act. In respect of the Kolkata Municipal Corporation Act construction is permissible only on two-third area of land and one-third area is required to be kept vacant under the municipal law. However, this vacant portion of a building which is statutorily required to be kept vacant cannot be treated as vacant land under Section 2q(i) of the Urban Land (Ceiling and Regulation) Act, 1976.

Referring to the supplementary affidavit filed by the petitioners on 2nd July, 2000 it is submitted by Mr. Mukherjee that the subject properties are given holding numbers. In each property the petitioners being HUF have fractional share. The HUF is not owning the property in 16 annas share. The numbers were indicated in the chart hereinabove. The last column indicates the area involved in each property and altogether the petitioners of WPA 11647 of 1991 possess 2498 square metres of land in urban agglomeration. It appears from the final statement dated 11th April, 1991 prepared by the respondent No.2 being annexure 4 to the writ petition that the competent authority had purported to hold that there was an excess vacant land of 1978 square metres. However, in view of Section 4(7)

of the said Act the HUF shall be deemed to have partitioned on the date of commencement of the Act as if there was no partition. This deemed partition by way of statutory fiction entitles each member of HUF to have the share measuring about 500 square metres. Thus, in case of four members in HUF, they are entitled to an area of 500 square metres each, total being 2000 square metres.

In order to draw a distinction between the West Bengal Estates Acquisition Act and Urban Land (Ceiling and Regulation) Act, 1976 Mr. Mukherjee refers to a decision of the Division Bench of this Court reported in AIR 1972 Cal 177. It is argued by him that in West Bengal there are few undivided families. Therefore, West Bengal legislature did not take adequate care of HUF. Each HUF irrespective of members would be entitled to get one ceiling. In **Fatehchand Mishra and Ors. versus the State of West Bengal and others** reported in **AIR 1972 Cal 177** the Division Bench of this Court was pleased to hold that the vesting Coparcenery property under the West Bengal Estate Acquisition Act cannot be regarded as effecting partition of Coparceners. There is, therefore, no scope for calculating or ascertaining the shares of Coparceners on the date of vesting. However, in distinct trust the Estate Acquisition Act, Section 4(7) of the Urban Land (Ceiling and Regulation) Act, 1976 it is provided that for the purpose of determining the ceiling limit, on the date of

commencement of the Act, there should be deemed partition and each Coparcener is given a share.

Mr. Mukherjee next refers to paragraph 325 of Mulla's Principles of Hindu Law, 15th Edition at page 444 to submit how partition of a Hindu joint family property may be effected. It is profitable to quote paragraph 325 at page 444 of the Principles of Hindu Law by Mulla.

"Partition is a severance of joint status, and as such it is a matter of individual volition. All that is necessary, therefore, to constitute a partition is a definite and unequivocal indication of his intention by a member of a joint family to separate himself from the family and enjoy his share in severalty. The Supreme Court pointed out in the undermentioned case (Raghavamma versus Chenchamma, 1964 SC 136) that there should be an intimation, indication or representation of such intention and that what form that manifestation should take would depend upon the circumstances of each case. It is implicit in this principle that this manifestation or declaration of intention should be to the knowledge of the persons affected for a mere uncommunicated declaration may amount to no more than merely harbouring an intent to separate. It is immaterial, in such a case, whether the other members assent. Once a member of a joint family has clearly and unequivocally intimated to the other members his desire to sever himself from the joint family, his right to

obtain and possess his share is unimpeachable whether or not they agree to a separation, and there is an immediate severance of the joint status.”

However, the partition refers to in Section 4(7) of the said Act is a deemed partition. For calculating the ceiling limit unity of possession and unity of title of a Hindu undivided family in case of deemed possession is not affected as in the case of partition of a joint Hindu family property. Here, there is a statutory comment that there was a deemed partition on the date of commencement of the Act. It does not determine on the individual's notion. In all other cases, partition depends upon the intention of the individual. Mr. Mukherjee next refers to the decision of the Hon'ble Supreme Court in the case of **State of Maharashtra another versus B. E. Billimoria and others** reported in **(2003) 7 SCC 336**. He particularly draws my attention to paragraphs 6 and 19 of the said report which clearly holds that exclusion of area within the meaning of Section 2q(i) would be available notwithstanding whether there is actually any construction existing on the land as on the appointed date. **B. E. Billimoria** (supra) though delivered on 14th August, 2003 is a clarificatory judgment is thus required to be given retrospective effect. **B. E. Billimoria** (supra) had not been considered either in the draft or final report. Thus, both draft and final statement are illegal

and cannot be considered. It is, of course, submitted by Mr. Mukherjee in the **State of West Bengal K.C. Das Private Limited reported in 2023 SCC online Cal 1515**, reference was made of the case of **B. E. Billimoria** (supra). However, in K.C. Das (supra) this Court merely distinguishes **B. E. Billimoria** (supra) on the facts and circumstances of that case. This cannot erode precedential value of **B. E. Billimoria**. Pertinently **B. E. Billimoria** and other judgments and Section 2(q) of the said Act have been referred to a larger Bench of the Hon'ble Supreme Court in **M/s. Kewal Court Private Limited and Another versus the State of West Bengal and others** on 9th October, 2023. However, such reference also does not erode the precedential value of **B. E. Billimoria** which shall remain a precedence until and unless the larger Bench speaks otherwise. The decision of **Ashoke Sadarangani versus Union of India** reported in **(2012) 11 SCC 321** may be relied on in support of my observation.

Mr. Mukherjee further submits that a tank is not a vacant land within the meaning of Section 2q of the 1976 Act and the area covered by a tank is thus required to be excluded from the purview of the vacant under the said Act. In support of his contention he refers to the decision of this Court in **Sm. Srila Moitra versus State of West**

Bengal, AIR 1981 Cal 126 and **Induprova Mitra versus State of West Bengal** reported in **1993 1 CHN 183**.

Thus, it is submitted by Mr. Mukherjee that both the draft and final statement were not correctly prepared and the said statements were liable to be quashed. He also prays for a further declaration in favour of the petitioners that the ceiling limit ought to be calculated on the basis of provision contained in Section 4(7) of the said Act.

The learned advocate for the respondents, specially respondent No.2, on the other hand, submits that in view of the advice of the Law Ministry, Government of India which is annexed as **P-1** to the affidavit-in-opposition, the fiction of Section 4(7) of the 1976 Act would not apply and the HUF would be considered as one unit for the purpose of exemption under Section 4 of the said Act. It is also submitted by the learned advocate on behalf of the State Respondents that premises No.37Q Paikpara Raja Manindra Road was not a tank at the commencement of 1976 Act. Therefore, the said premises was rightly considered as vacant land.

The learned Advocate for the respondents next contends that the petitioner no. 1 submitted return under the relevant provision of Urban Land (Ceiling and Regulations) Act, 1976 treating his family as one unit. Draft statement and final statement was prepared according to the said return submitted by the petitioner no. 1. The

said return is in the nature of an admission to the effect that the petitioner never wanted to take recourse of Section 4(7) of the said Act. Draft statement and the final statement were prepared on the basis of the return filed by the petitioner no. 1. At this stage, the petitioners cannot seek for the relief as prayed for by them in the instant writ petition.

It is further submitted by the learned Advocate for the respondents that the petitioners had obtained benefit on the plea that the properties were under the shadow of the 1976 Act in wealth tax proceeding as appearing from the decision of this Court in Gouri Prasad Goenka and family (HUF) –Vs.- Commissioner of Wealth Tax, reported in 1991 SCC Online Cal 348. The petitioners were conspicuously silent about the said proceeding. Having obtained a benefit of the lesser valuation of the properties in wealth tax proceedings on the score that the properties were under the said Act, the petitioners cannot challenge the draft and final statement prepared by the respondent no. 2 under the said Act. In support of his contention the learned Advocate for the respondent has placed reliance of a decision of the Hon'ble Supreme Court in K.D. Sharma – Vs.- Steel Authority of India Limited, (2008) 12 SCC 481.

In reply, it is submitted by Mr. Mukherjee, learned Senior Counsel on behalf of the petitioners that the provision of Section 4(7)

of the said Act being a statutory provision would override any ministerial guideline or advice on the issue as to whether HUF would be considered as one unit for the purpose of exemption under Section 4 of the said Act or not. It is further submitted by Mr. Mukherjee that in the returns filed by the respective petitioners of these writ petitions under the said Act, premises no. 37G, Paikpara, Raja Manindra Road was declared to be tank. Therefore, there is no document produced by the respondents to show that the said premises was not a tank. On the contrary, in the assessment book (annexure – A/1) of Kolkata Municipal Corporation the said premises was recorded as tank at all material points of time.

It is further submitted by Mr. Mukherjee that the contention by the respondents that in view of getting benefit under the Wealth Tax Act showing the said properties above ceiling limit of the 1976 Act has no leg to stand because of the fact that the wealth tax proceedings or the judgment therein was not material for the adjudication of the present writ petition. Non-disclosure of existence of such proceedings cannot be treated to be suppressed of material fact in support of his contention, Mr. Mukherjee refers to a decision of this Court in **Balaram Mukherjee –Vs.- The State of West Bengal & Ors.** reported in **(1980) 2 CHN 371** and another decision of the Hon'ble

Supreme Court in **S.J.S. Business Enterprises (P) Ltd. -Vs.- The State of Bihar & Ors.** reported in **(2004) 7 SCC 166.**

The subject properties have been still under the shadow of the 1976 Act. Automatically, the valuation of the properties would be decreased since 1976 Act is an encumbrance with their being an embargo against transfer of properties under Section 5 of the 1976 Act. Therefore, in wealth tax proceedings, the valuation of the said properties has been correctly considered to be impaired or lowered than a property which is free from any encumbrance. The said fact cannot operate as an estoppel against the petitioners from challenging a proceeding under the 1976 Act.

Having heard the learned Counsels for the parties at length and on careful consideration of the entire materials-on-record this Court is fully satisfied that according to Section 4(7) of 1976 Act there was deemed dissolution of HUF from the date of commencement of the Act for the purpose of determining the ceiling limit of each person forming the HUF. The said provision states about deemed, imaginary and/or fictional partition under the law. In **Russell -Vs.- Russell, 14 Ch D 471** the expression 'deemed' was defined in the following words:- 'A rule which allowed a committee of a mutual insurance society to expel a member, (on) the ground that if the committee shall at any time deem the conduct of any member suspicious,' etc, said : 'I have to

say a word as to the use of the word 'deem'. That word has more than one meaning but one of its meanings is to adjudge or decide. In fact, the old word 'deemster' or 'dempster' was the name for judge. To 'deem' at one time meant to decide judicially. Consequently, taking that meaning, what they had to do was to deem that the member's conduct was suspicious and such as made him unworthy. That was in fact a decision not merely depending upon opinion, but depending on inquiry.'

In **St. Aubyn (L.M.) -Vs.- A.G., 1952 AC 15 = (1951) All ER 473 (HL)** it was held that the word 'deemed' is used to impose an artificial construction of a word or phrase in a statute that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a comprehensive description that includes what is obvious, what is uncertain and what is, impossible'.

Under the 1970 Act it is implied in the definition of 'person' that HUF is a juristic person. But if the said provision is read with Section 4(7) of the said Act HUF is a juristic person until partition and after partition it gets dissolved and individual members get the shares as per their entitlement when Clause 7 of Section 4 deals with fictional or deemed partition in case of HUF in relation to the amount of the property each member of the HUF is entitled to retain, the ceiling limit

of the HUF shall have to be considered on the basis of the provision contained in Section 4(7) of the said Act.

For the reasons stated above, this Court is of the view that the petitioners are entitled to the relief as prayed for in the instant writ petition. Accordingly, the draft and final statement prepared by the respondent no. 2 being annexures 'C' and 'G' respectively are set aside and cancelled. The respondents are directed to grant relief to the petitioners taking each of the petitioners as separate persons and declaring their ceiling limit as per the provision of Section 4(7) of the Urban Land (Ceiling and Regulations) Act, 1976.

Entire exercise shall be completed within three months from the date of the judgment.

The instant writ petition is, thus, disposed of on contest.

However, there shall be no order as to costs.

(Bibek Chaudhuri, J.)