

21.09.2023.  
Item No. 3.  
Court No. 13  
ap

**R.V.W. No. 173 of 2023**  
**With**  
**I.A. No. CAN 1 of 2023**  
**In**  
**F.M.A. No. 302 of 2019**

**M/s. K.C. Das Private Limited**  
**Versus**  
**The State of West Bengal & Ors.**

Mr. Saktinath Mukherjee, Id. Sr. Advocate,  
Mr. Saptangsu Basu, Id. Sr. Advocate,  
Mr. Subhabrata Das.

...For the applicant.

Mr. S. N. Mookherjee, Id. Advocate General,  
Mr. T.M. Siddiqui, AGP,  
Mr. S. Bandopadhyay,  
Mr. Suddhadev Adak.

...For the State.

**1.** Review is sought of the judgment and order delivered by a Division Bench comprised of one of us (**Supratim Bhattacharya, J.**) dated 19<sup>th</sup> June, 2023 in F.M.A. No. 302 of 2019 (State of West Bengal & Ors. – Vs. – K.C. Das Private Limited).

**2.** The principal issue before the earlier Division Bench was the scope and application of Section 2(q) of the Urban Land (Ceiling and Regulation) Act, 1976. The contention of the review applicant is that the land beyond the ceiling limits within the Urban Agglomeration over which the construction is not permitted under the Building Rules of the Municipal Corporation having jurisdiction over the urban area is

not a land within the meaning of Section 2(q) and hence cannot be hit by the mischief of the said Act.

**3.** It is submitted by Mr. Saktinath Mukherjee, learned Senior Advocate that in the decision of the Supreme Court of India in the case of ***State of Maharashtra & Anr. – Vs. – B. E. Billimoria & Ors.*** reported in ***(2003) 7 Supreme Court Cases 336***. The Hon'ble Supreme Court of India in paragraphs 6 and 19 was explicit and clear that the land over which the construction cannot be made as per the Municipal Building Rules falling under urban area, cannot rest in the State under the said Act of 1976.

**4.** It has further been held by the Hon'ble Supreme Court of India that no construction needs to exist on such land.

**5.** There is some evidence that there has been construction to some extent but the same is, however, not relevant in view of the aforesaid ***Billimoria decision (supra)***, Mr. Mukherjee argues that, in the judgment dated 19<sup>th</sup> June, 2023 the earlier Division Bench has misread the application of paragraphs 6 and 19 of the ***Billimoria decision (supra)*** and has refused to apply the exception under Section 2(q)(i) to the writ petitioner/respondent's land. There are other grounds urged against the said decision, that need not be addressed here.

**6.** It is submitted by Mr. Saktinath Mukherjee that a misreading of a judgment of the Hon'ble Supreme Court of India which is binding under Article 141 of the Constitution of India is also a ground for invoking Section 114 of the Code of Civil Procedure, 1908 read with Order 47 Rule 1 thereof as has been pronounced by the Hon'ble Supreme Court of India in the case of **BCCI – Vs. – Netaji Cricket Club** reported in **AIR 2005 Supreme Court 592**, particularly paragraphs 88, 89, 90 and 92 thereof.

**7.** This Court has carefully considered the judgment of the Co-ordinate Bench dated 19<sup>th</sup> June, 2023. The view taken by the said Division Bench could if at all and at best, be categorized, as erroneous in law. There is sufficient reasoning provided by the said Division Bench after setting out paragraphs 6 and 19 of the **Billimoria decision (supra)**, indicating that the view taken is a conscious view.

**8.** In the backdrop of the above, this Court finds that the **BCCI decision (supra)** cannot come to the aid of the review applicant.

**9.** This Court is, therefore, of the view that the judgment and order dated 19<sup>th</sup> June, 2023 passed by the earlier Division Bench cannot be reviewed by this Court.

**10.** Hence, R.V.W. No. 173 of 2023 must fail and is hereby dismissed.

**11.** In view of dismissal of the main review application, the connected application being CAN 1 of 2023 shall also stand dismissed.

**12.** There will be no order as to costs.

**13.** All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

***(Rajasekhar Mantha, J.)***

***(Supratim Bhattacharya, J.)***