

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

F.M.A. 751 of 2019

Smt. Sunanda Chowdhury & Ors.

v.

The State of West Bengal & Ors.

With

W.P.L.R.T. 76 of 2019

Nishit Chowdhury (deceased) Rep. by

Baby Chowdhury & Ors.

Vs.

The State of West Bengal & Ors.

Before: The Hon'ble Justice Arijit Banerjee

&

The Hon'ble Justice Rai Chattopadhyay

For the appellants/ : Mr. Saktinath Mukherjee, Ld. Sr. Adv.
petitioners Mr. Sanat Kr. Roy, Adv.
Mr. Baidurya Ghosal, Adv.
Mr. Abhishek Banerjee, Adv.
Mr. Atanu Basu, Adv.

For the State : Mr. S.N. Mookherjee, Sr. Adv.
Md. T. M. Siddiqui, Ld. AGP.
Ms. A. Pandey, Adv.
Mr. D. Ghosh, Adv.

For the Burdwan : Mr. Kalyan Bandyopadhyay, Ld. Sr. Adv.
Municipality Mr. Soumitra Bandyopadhyay, Adv.
Mr. Subhasis Bandyopadhyay, Adv.

For the respondent no. : Ms. Falguni Majhi, Adv.
10 (in FMA 751 of 2019)

For orders On : 03.05.2024

Arijit Banerjee, J. :-

1. This appeal and the writ petition have been heard together and are being disposed of by this common judgment and order as they arise from the same set of facts. In the appeal, under challenge is an order of a learned Single Judge of this Court whereby the appellants' writ petition challenging a decision of the Purchase Committee of the Burdwan Municipality was disposed of. In the writ petition, an order of the West Bengal Land Reforms and Tenancy Tribunal is under challenge. By an order dated August 13, 2019, passed in FMA 751 of 2019, a co-ordinate Bench had directed that these two matters be heard together.

2. The appellants in FMA 751 of 2019 and the writ petitioners in WPLRT 76 of 2019, at all material times, owned substantial landed properties in the District of Burdwan, including two plots of land at Palashi and Sadhanpur. The Burdwan Municipality (in short, 'the Municipality') owned a plot of land at Nari, Burdwan which the Municipality proposed to use as a dumping ground for the waste products of the Municipality. There was strong public opposition to such proposal as the said plot of land was in the middle of the town. The appellants offered to exchange their land at Palashi with the Nari property of the Municipality. Such exchange took place by execution of registered deeds. The appellants also gifted their plot of land in Sadhanpur to the Municipality. The plot of land at Nari was mutated in the names of the appellants. The plots of land at Palashi and Sadhanpur were mutated in the name of the Municipality.

3. It appears that the Palashi property was partly tenanted and the Municipality also collected rent from such tenants.

4. In the Palashi property the appellants also had a rice mill.

5. Subsequently, the Municipality wanted to get back possession of the Nari property. A meeting of the Purchase Committee of the Municipality was held on March 9, 2017, for taking decision for purchase of the Nari property from the appellants. At the said meeting, the Additional District Magistrate (in short "ADM") expressed his opinion that transfer of the Palashi property by the appellants in favour of the Municipality was bad in law and void since neither the appellants nor the Municipality had taken requisite permission from the State Government under Section 6(3) of the West Bengal Estates Acquisition Act, 1953.

6. The Committee accepted such opinion of the ADM and resolved that the exchange deal entered into by and between the appellants and the Municipality was null and void. This resolution was challenged by the appellants before a learned Single Judge of this Court by filing WP No. 10679 (W) of 2018 which was disposed of by the learned Judge without interfering with the subject resolution, giving rise to FMA 751 of 2019.

7. On the basis of the aforesaid resolution, appeals were preferred by the Municipality before the ADM being the competent authority against the orders of the Revenue Officer passed in 6 mutation cases, mutating the Nari property in the name of the appellants. The ADM/his delegate allowed such appeal. That order was challenged by the appellants/writ petitioners herein before the West Bengal Land Reforms and Tenancy Tribunal (in short "LRTT") by filing O.A. No. 2587/2017 (LRTT). The Tribunal set aside the

order impugned and remanded the matter to the appellate authority for fresh consideration. The writ petitioners have challenged such order of the Tribunal by filing WPLRT 76 of 2019.

Case of the Appellants/Writ Petitioners

8. Appearing for the appellants in FMA 751 and the petitioners in WPLRT No. 76 of 2019, Mr. Saktinath Mukherjee, learned Senior Counsel, argued the following points:-

(i) The Municipality had no power, authority or jurisdiction to decide that the exchange deal entered into by and between the appellants and the Municipality was bad in law. A statutory authority like the Municipality could not have taken any such decision as the parent statute did not empower the Municipality to take such decision.

(ii) On an interpretation of the various sub-sections of Section 6 of the West Bengal Estates Acquisition Act 1955, a non-agricultural tenant is, as of right entitled to retain 15 acres of land. In the case where the land in question is a factory or a mill, only if the owner desires to retain more than 15 acres of land, the permission of the State Government under Section 6(3) of the Act would be necessary. In the present case the Palashi land which the appellants owned and which they transferred in favour of the Municipality in exchange for the Nari property of the Municipality, is much less than 15 acres in area. As such, as of right the appellants could retain such land and were at liberty to deal with the same without permission of the State Government under section 6(3) of the Act or otherwise.

(iii) Section 6(3) of the West Bengal Estates Acquisition Act applies only when there is excess land. When the land is within ceiling, the owner can retain such land as of right, as in this case. In such a case the question of Section 6(3) of the Act applying does not arise.

(iv) The Municipality's Purchase Committee could not have decided a question of title. It could not have said that the appellants did not have title because of vesting and on that basis could not have cancelled the Deed of Exchange.

(v) It is strange that the Block Land and Land Reforms Officer (BL & LRO) preferred appeals before the ADM/Collector against his own orders of mutation in favour of the appellants. Be that as it may, the appeals were time barred. Section 55 of the West Bengal Land Reforms Act, 1955, provides for 30 days limitation period for filing appeal to the Collector under Section 54 of the said Act. The Collector not being a "Court", Section 29(2) of the Limitation Act will not apply. Hence, Section 5 of the Limitation Act will not apply. The Collector had no power to condone the delay in presenting the appeals. The appeals should have been thrown out at the threshold. In this connection, the following decisions were relied upon:- ***Ganesan v. Commissioner, Tamil Nadu Hindu Religious & Charitable Endowments Board & Ors., reported in (2019) 7 SCC 108 Para 60, Sakuru v. Tanaji, reported at AIR 1985 SC 1279 & Minor Subir Ranjan Mondal v. Sitanath Mukherjee, reported at (1994) 1 CLJ 106.***

(vi) LRTT did not have jurisdiction to decide the question of title. Not that LRTT did not have jurisdiction as a whole to entertain the Original Application.

1. ***Ramesh Ch. Sood. v. A.S.O.. Sub-Division, Ranaghat and Ors., reported at AIR 1972 CAL 455 Page. 5,6.***

2. ***Smt. Marchhia Sahun and Anr. v. The State of West Bengal & Ors., reported at AIR 1979 CAL 94 Page 6.***

3. ***Ayubali Sardar & Anr. V. Derajuddin Mallick & Ors., reported at 1975(2) CLJ 305 Page 16.***

4. ***Smt. Jharna Ghosal v. Satyendra Prosad Dhar, reported at AIR 1978 (1) CLJ 193 274 Page 19.***

Case of the State Government

9. Learned Advocate General appeared for the State and made submission mostly with reference to the paper book in WPLRT 76/2019.

10. He submitted that between November 24, 2015, and February 8, 2016, six Exchange Deeds were executed by and between the Municipality and the private parties who are the writ petitioners/appellants in the present proceedings.

11. After the execution of the Exchange Deeds, pursuant to mutation proceedings, the concerned record of rights was rectified in favour of the private parties.

12. Learned Advocate General then referred to various documents whereby (i) the Municipality sought permission from the State under Section 80(b) of the West Bengal Municipal Act, 1993 for sale of the plots received

from the private parties herein; (ii) the Municipality requested the concerned Collector to value the said plots; (iii) approval granted by the State under Section 80(b) of the 1993 Act; (iv) valuation of the land made by the Collector at Rs. 10 Crore; and (v) notice inviting electronic tender floated by the Municipality for sale of the concerned land.

13. The Purchase Committee of the Municipality at its meeting decided that the exchange of land was not legal because prior permission of the Government had not been obtained. It was decided that the mutation in favour of the private parties herein should be reversed. This gave rise to the entire dispute between the parties.

14. Learned Advocate General referred to Section 54(1)(a) of the West Bengal Land Reforms Act, 1955, which provides for appeal to the Collector. Section 2(4) of the Act defines 'Collector'. There is a Government notification to the effect that Collector includes District Land and Land Reforms Officer (DL & LRO). Section 54(3) of the Act provides that after admitting an appeal, the Collector will be entitled to transfer the same for hearing to any officer subordinate to him but superior to the Officer whose order is under appeal.

15. Learned Advocate General stated that one of the grievances of the writ petitioners is that since the DL & LRO who was also the ADM, was a member of the Purchase Committee which took the decision to nullify the Exchange Deeds, he should not have entertained the appeal and condoned the delay. By doing so he acted as a Judge in his own cause, in breach of the established principles of natural justice. Learned Advocate General submitted that there is no merit in such grievance. Before the delay is condoned there is no appeal in the eye of law. Hence, before exercising his

power under Section 54(3) of the 1955 Act, the DL & LRO necessarily had to condone the delay. The doctrine of necessity was squarely attracted in the facts of the case. Learned Advocate General relied on the following 3 decisions:-

- (i) ***The Judges v. Attorney-General For Saskatchewan, reported at (1937) 53 TLR 464= (1937) CWN 109 1st para.***
- (ii) ***J. Mohapatra & Co. & Anr. v. State of Orissa & Anr., reported at (1984) 4 SCC 103 paragraphs 11, 12.***
- (iii) ***Charan Lal Sahu v. Union of India, reported at (1990) 1 SCC 613 Para 105.***

16. Next, taking up the point of whether or not the DL & LRO had power to condone the delay, learned Advocate General referred to Section 55 of the 1955 Act which provides for 30 days limitation period for filing the appeal before the Collector. He then referred to Section 29(2) of the Limitation Act, 1963.

17. Learned Advocate General referred to Section 14(H) and Section 19 (2) of the West Bengal Land Reforms Act and submitted that those two sections specifically make Section 5 of the Limitation Act applicable for condonation of delay in filing appeal. However, neither Section 54 nor Section 55 of the Land Reforms Act makes Section 5 of the Limitation Act applicable or otherwise empowers the appellate authority to condone delay in filing an appeal. Hence, it may be argued that if an appeal is filed under Section 54 of the Land Reforms Act beyond the statutorily prescribe period mentioned in Section 55 of the Act, the appellate authority would have no power to condone the delay or accept the appeal, as has been argued on behalf of the

appellants. Learned Advocate General submitted that authorities suggest that even if Section 5 of the Limitation Act may not apply in terms to a proceeding before a forum which is not a Civil Court, the principles of Section 5 and also Section 14 of the Limitation Act would apply if the nature of the proceeding so warrants.

18. Learned Advocate General referred to the preamble to the Land Reforms Act, Section 1(A) of the Act and Article 319 of the Constitution. He submitted that keeping in view the nature and object of the Land Reforms Act which is to achieve egalitarian distribution of land amongst the citizens of the State of West Bengal, it would be in public interest to apply the principles of Section 5 for condonation of delay in filing an appeal under Section 54 of the Land Reforms Act. In this connection learned Advocate General relied on the following decisions:-

- (i) Sasanka Sekhar Maity & Ors. v. Union of India & Ors., reported at (1980) 4 SCC 716 paragraphs 5-7, 23, 24 (object of LR Act).**
- (ii) J. Kumaradasan Nair & Anr. v. Iric Sohan & Ors., reported at (2009) 12 SCC 175 Paragraphs 16-18.(principles of Section 5 will apply).**
- (iii) Andhra Pradesh Power Coordination Committee & Ors. v. Lanco Kondapalli Power Limited & Ors., reported at (2016) 3 SCC 468 Paragraphs 30, 31.**
- (iv) Pradeshik Cooperative Dairy Federation Ltd. v. Authority Under Minimum Wages Act & Ors., reported at (2016) SCC Online All 3579 Paragraph 8.**

(v) ***Subimal Bhunia v. State of West Bengal & Ors., reported at (2009) SCC Online Cal 1905 Paragraph 7.***

(vi) ***Sisir Kumar Nanda & Ors. v. The State of West Bengal & Ors., (2010) SCC Online Cal 1143 paragraph 3.***

19. Learned Advocate General also referred to Section 54(5) of the Land Reforms Act which empowers the State Government, on its own motion, to make necessary correction in the record of rights. Such action of the State Government is immune to challenge except in a proceeding under Article 226 of the Constitution. Learned Advocate General submitted that even if the Court is against the State on the point of applicability of the principle of Section 5 of the Limitation Act to an appeal filed belatedly under Section 54 of the Land Reforms Act, the Court should decide the dispute between the parties on merits.

20. As regards the issue of vesting of the concerned land under the West Bengal Estates Acquisition Act, learned Advocate General made three submissions. Firstly, he submitted that the petitioners have accepted the factum of vesting of the land by submitting Form B under Rule 4A of the West Bengal Estates Acquisition Rules 1954. Having done so they cannot urge that they are non-agricultural tenants and therefore the concerned land could not have vested in the State. Secondly, he submitted that as on the date of vesting, the record of rights establishes that the petitioners were not non-agricultural tenants. Thirdly, he submitted that the final record of rights prepared under Section 44(2) of the Estates Acquisition Act would show that on the date of vesting, the property was a rice mil. “Akrishi Proja” was a default entry after vesting to describe an occupancy on the basis of

Section 6(1)(g) of the Act, read with Section 6(3) of the Act. Such entry did not make the petitioners non-agricultural tenants as on the date of vesting. Accordingly, they had no right to transfer the land.

21. Learned Advocate General referred to various sections of the Estates Acquisition Act. He referred to Section 2(b) of the Act which defines agricultural land. Section 2(e) says what the date of vesting would be. Section 2(f) defines “estate”. Section 2(i) defines an intermediary. Section 2(j) defines non-agricultural land. Section 2(k) defines non-agricultural tenant. He also referred to Sections 4(1), 5(1), 6(1)(c) and (g), Section 6(2), Section 6(3) and Section 44 of the Act.

22. Learned Advocate General then referred to Rule 4A of the West Bengal Estates Acquisition Rules, 1954 which indicates the procedure for retention of land by filing form B. He referred to the decision of the Hon’ble Supreme Court in the case of ***State of West Bengal v. Scene Screen (P) Ltd., reported at (2000) 7 SCC 686***. He relied on paragraph 20 of the judgment to contend that once a person has filed a return in form B under Rule 4A, he has accepted that the concerned land has vested and that he is an intermediary. Having done so, he cannot contend otherwise. In the said judgment the Supreme Court observed as follows:-

“20. In the present case, as noted above, Respondent 2 filed a return in Form ‘B’ stating therein that he intended to retain the land in dispute with him after vesting. Such a return could only be filed by an intermediary. Respondent 2 by submitting return accepted the position that he was an intermediary coming within the purview of the Act. Therefore, the question to be considered is

whether the claim for retaining the land under the provision of Section 6(1)(b) is acceptable. For deciding that question it was not necessary for the Division Bench to embark upon the enquiry whether Respondent 2 was a non-agricultural tenant and on that basis consider the further question whether his interest in the land at all vested under the Act. The respondent having himself accepted the position that he was an intermediary, the High Court in the writ jurisdiction should not have embarked upon an enquiry which was clearly beyond the scope of the proceeding. Therefore, in our considered view, the Division Bench of the High Court was not right in taking up the question whether Krishnamoni from whom father of Respondent 2 purchased the land was a tenure holder and whether the interest of his father after him, of Respondent 2 was also that of a tenure holder. In that connection certain provisions of the Bengal Tenancy Act, 1885 and decisions of the Calcutta High Court and the Privy Council have been referred to. In view of the matter we have taken we do not feel called upon to determine the question of correctness of the findings in that regard on merits. At the cost of repetition we may reiterate that the entire discussion on that question was unnecessary for decision of the case.”

23. Learned Advocate General submitted that it is admitted that the petitioners were recorded as proprietors of the concerned land. In this connection he also referred to pages 174 to 184 of the writ petition which are extracts from the relevant land records. The petitioners have been

described as “Lakhi Raj” in such records. Learned Advocate General cited Rampini on Bengal Tenancy Act, 1985 to argue and demonstrate that “Lakhi Raj” means proprietor.

24. Learned Advocate General submitted that retention by filing Form B under Rule 4A of the 1954 Rules means retention post-vesting.

Case of the Municipality

25. Mr. Bandopadhyay, learned Senior Advocate, representing Burdwan Municipality submitted that there are two challenges before us. One is against the order of the West Bengal Land Reforms and Tenancy Tribunal dismissing the private party’s Original Application challenging the Appellate Authority’s orders setting aside the mutation of the concerned property in the names of the private parties. The other is against the order of the learned Single Judge dismissing the writ petition challenging the Municipality’s resolution to take appropriate steps for the cancellation of the mutation made in favour of the private parties. He said that he will first make submission on the appeal against the learned Single Judge’s order.

26. Learned Senior Counsel submitted that the core issue is whether or not the deeds of exchange are legally valid. He said that such issue is to be decided by the Civil Court before which Burdwan Municipality’s suit is pending praying for declaration that the exchange deeds are invalid in the eye of law and consequential perpetual injunction.

27. Learned Counsel submitted that an extremely valuable plot of land was given to the private parties by the Municipality in exchange of plots of land the value whereof was considerably less. In other words, the value of the Municipality’s land in Nari District was much much more than the value

of the 2 plots of land of the private parties at Sadhanpur and Palashi. This was a mistake on the part of the Municipality. Hence, the civil suit has been filed to correct the mistake. The Municipality's property is public property and must be protected at all costs.

28. Mr. Bandopadhyay submitted that earlier a writ petition had been filed by the private parties containing prayers similar to the prayers in the present writ petition. A question arose as to whether the deeds of exchange have been acted upon. The learned Judge appointed a learned Advocate as Special Officer to inspect the three plots of land at Nari, Sadhanpur and Palashi. The report filed by the Special Officer showed that the land at Nari continued to be used as a dumping ground. The lands at Palashi and Sadhanpur were pre-dominantly vacant with a rice mill on one of the plots. Learned Counsel submitted that this demonstrated that the Deeds of Exchange were not acted upon by the parties. He further submitted that the report of the Special officer filed in the earlier writ petition has been suppressed in the present writ petition. The earlier writ petition was ultimately withdrawn by the petitioners.

29. As regards the point of the appellant that the Appellate Authority should not have condoned the delay in filing the appeals, Mr. Bandopadhyay submitted that the appellant should not be permitted to urge this point. He pointed out that the delay was condoned by the Appellate Authority by order no. 5 dated May 22, 2017, and the appeals were finally decided by order no. 9 dated June 15, 2017. He submitted that before the tribunal, only Order no. 9 i.e. the final order was challenged and not order no. 5 whereby delay in filing the appeals was condoned. Not having challenged condonation of

delay before the Tribunal, the appellants are precluded from doing so before this Court.

30. Mr. Bandopadhyay then drew our attention to paragraph 9 of the petition in WPLRT 76/2019. In the said paragraph it is stated that a Deed of Exchange was executed and registered on November 24, 2015 by and between the Municipality and the appellants herein. Our attention was then drawn to page 111 of the same petition which is a letter dated November 4, 2016, addressed by the joint secretary to the Government of West Bengal to the Chairman of Burdwan Municipality granting approval for sale of the two plots of land in question, under Section 80 of the West Bengal Municipal Act, 1993. These two plots of land were the subject matter of the Deed of Exchange referred to above. Mr. Bandopadhyay submitted that the approval granted was subject to the conditions mentioned in the said letter including the conditions that the sale was to be by auction to the highest bidder and utmost transparency was to be maintained in the matter of disposal of the two plots of land. He submitted that the Municipality could not have executed the said Deed of Exchange without prior approval of the State Government. He referred to Section 80 of the 1993 Act, which reads as follows:-

“80. Disposal of property.- The property belonging to a Municipality may be disposed of in the manner provided in this section, namely –

(a) the Chairman-in-Council may, in its discretion, dispose of, by sale, lease or otherwise, any movable property belonging to the Municipality:

Provided that the State Government may by rules prescribe the value which, if it increases during the process of sale, shall require the prior sanction of the State Government;

(b) the Board of Councillors may, for valuable consideration, let out on hire, give in lease, or sell or otherwise transfer, any immovable property belonging to the Municipality for carrying out the purposes of this Act:

Provided that the State Government may by rules prescribe the mode of such sale and specify the value which, if it increases by way of consideration, shall require the prior approval of the State Government in this behalf;

(c) the Municipality shall not transfer any immovable property vested in it by virtue of this Act, but shall cause the same to be maintained, controlled and regulated in accordance with the provisions of this Act and the rules and the regulations made thereunder:

Provided that the State Government may authorise, in the public interest, the disposal of such immovable property by the Municipality if the Board of Councillors so requires for reasons to be recorded in writing.”

31. Learned Senior Counsel submitted that firstly, the exchange deal was entered into by the Municipality much prior to grant of approval by the Government. Secondly, even assuming that post facto approval is permissible, the conditions stipulated in the approval order have not been fulfilled by the Municipality. Hence, the exchange is void.

32. Referring to the judgment and order of the LRTT which has been challenged in the writ petition, learned Senior Counsel submitted that the Tribunal has remanded the matter back to the Appellate Authority for fresh consideration and decision since certain points were not considered by the Appellate Authority. There is nothing wrong with the Tribunal's order. The petitioners cannot have any legitimate grievance regarding such order.

33. Referring to Section 6(3) of the West Bengal Estates Acquisition Act, Mr. Bandopadhyay submitted that no order was ever passed by the Government allowing the petitioners to retain any land.

34. He then submitted that the entire claim of the petitioners is based on a decree of the Civil Court. However, the Civil Court lacked jurisdiction to entertain the suit in view of the bar in Section 57B of the West Bengal Estates Acquisition Act, as well as the bar in Section 21 of the West Bengal Land Reforms Act. The challenge to vesting of the land in question before the civil court was not maintainable. The concerned decree is a nullity, enforcement whereof can be resisted at any stage including the stage of execution of the decree and even in a collateral proceeding. In this connection he relied on the decision of the Hon'ble Supreme Court in the case of ***Sushil Kumar Mehta v. Gobind Ram Bohra reported at (1990) 1 SCC 193 para 26***. He said that since the Civil Court's decree is a nullity, Record of Rights prepared or amended on the basis of such a decree is also bad in law.

35. Learned Senior Counsel then submitted that the Municipality realised that the exchange of land deal was illegal. Accordingly the Municipality took a resolution to annul the deal. A suit has been filed in the competent Civil

Court for cancellation of the exchange deeds. If some wrong has been committed by the Municipality in respect of a public property, the Municipality can always rectify the same. In this case the exchange deal was in breach of the provisions of Section 80 of the 1993 Act. Just as a Court can suo motu correct any illegality or error in its order in exercise of inherent jurisdiction, any public authority like the Municipality can also rectify any wrongful act done in breach of statutory provisions. In this connection reliance was placed on the decision in the case of ***A.R. Antulay v. R.S. Nayak, reported at (1988) 2 SCC 602.***

36. Learned Senior Advocate then referred to the prayers in the writ petition. He submitted that the main prayer is for a mandamus directing the respondents to ensure that possession of the land in question is made over to the appellants. He then referred to the impugned judgment and order of the learned Single Judge. He said that the learned Single Judge has noted that the decision of exchange has been challenged and cancellation thereof has been sought for in a civil suit filed by the Municipality against the appellants. Accordingly, the learned Judge held that a question of title of the appellants in respect of the concerned land arises. The writ court ordinarily would not decide a question of title.

Case of the Appellants/Writ Petitioners in reply

37. In reply, Mr. Sakti Nath Mukherjee, learned Senior Counsel appearing for the appellants referred to the order whereby the Additional District Magistrate (ADM) condoned the delay on the part of the Municipality in challenging, by way of appeals, the orders mutating the Nari property in the name of the appellants. It was submitted that the said ADM was a member

of the Purchase Committee which had resolved to challenge the deeds of exchange. Hence, he should not have taken up the matter as a party interested. He also had no jurisdiction to condone the delay since he was not a Court. The order condoning the delay is a nullity in the eye of law. Such order can be challenged at any stage and even in a collateral proceeding. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of ***Kiran Singh & Ors. v. Chaman Paswan & Ors., reported at AIR 1954 SC 340.***

38. Mr. Mukherjee submitted that it is funny that the concerned ADM, acting as the appellate authority, condoned the delay and then recused himself from hearing the appeal on the ground that he was a member of the Purchase Committee. He should not have touched the matter at all.

39. He argued that the doctrine of necessity relied upon by learned Advocate General is not applicable in the facts of the instance case. Other officers of the State were available who could act as the Appellate Authority. In any event, not being a Court, the Appellate Authority did not have jurisdiction to condone the delay in filing the appeal.

40. Regarding the contention of the Municipality that the Civil Court could not have permitted the petitioners or their predecessors to retain excess land, Mr. Mukherjee submitted that the Civil Court did not do so. He referred to page 60 of the writ petition which is a portion of the Civil Court's decree and submitted that the Court merely recorded that Schedule 'ga' property which was the rice mill, has been permitted by the State to be retained by the petitioner. The Court did not order or permit retention. The

petitioners exchanged land which they were permitted to retain. No further permission of the Government was necessary.

Court's view

41. Although these two matters have been heard together, two different orders are under challenge in these two proceedings. In the intra-court appeal, a judgment and order of a learned Single Judge of this Court passed on December 5, 2018, is under challenge. In the writ petition, an order of the land tribunal is assailed. Hence, we propose to deal with the two matters separately in so far as recording our judgment and order is concerned.

Re: FMA 751 of 2019

42. The appellants approached the learned Single Judge challenging a resolution of the Purchase Committee of Burdwan Municipality, passed on March 9, 2017. As we have recorded earlier, the Municipality owned a plot of land at Nari, Burdwan. The appellants owned two plots of land at Palashi and Sadhanpur, Burdwan. The land at Nari and the land at Palashi were exchanged by execution of registered deeds of exchange. In other words, the Municipality give the land at Nari to the appellants. In exchange, the appellants transferred the land at Palashi to the Municipality. In addition, the appellants gifted their Sadhanpur land to the Municipality. These transactions were duly given effect to in the record of rights. The Nari land stood mutated in the names of the appellants. The Palashi and Sadhanpur lands were mutated in the name of the Municipality. However, the Municipality was subsequently of the view that the deal that had been entered into by and between it and the appellants, was contrary to law since prior approval of the State Government had not been obtained under Section

80 of the West Bengal Municipal Act, 1993, and also under Section 6 of the West Bengal Estates Acquisition Act, 1953. The Municipality was of the view that without such prior approval, neither could the Municipality transfer the Nari land to the appellants, nor the latter could transfer their Palashi and Sadhanpur land to the Municipality.

43. Accordingly, a meeting of the Purchase Committee of the Municipality was held on March 9, 2017. The relevant portion of the minutes of that meeting reads as follows:- “ADM & DLLRO stated that the land exchanged by Shri Nishit Kumar Chowdhury and others at Sadhanpur Mouza is classified as “Chalkal” which was exchanged in lieu of the land at Kalna Road. It is also noted in the SL No. 46 in the register maintained under Sections 6(3) of the WB Estate Acquisition Act 1953. Hence, the prior approval of the Government is required for any transfer of such land. But no permission was obtained from the Government. As well as, Burdwan Municipality has not also obtained any Government approval before the exchange of their land.

In view of the above District Magistrate opined that the entire process of that exchange is not legal as it has no prior approval of the Government. He also requested at ADM & DLLRO to take necessary action to revoke any mutation done in this effect and to issue show cause to the concerned BLLRO.

In case Burdwan Municipality faces any problem to use the land as dumping ground as per present practice, Chairman, Burdwan Municipality shall lodge an FIR against the miscreants immediately.”

44. This resolution of the Municipality was challenged by the appellants before the learned Single Judge. The learned Judge after recording the detailed arguments advanced on behalf of the parties, came to the finding that disputed questions of fact are involved including disputes relating to title to property. Such disputes cannot be conveniently adjudicated upon by the writ Court. Further, the learned Judge noted that a civil suit has been filed by the Municipality challenging the validity of the concerned deeds of exchange of land executed by and between the Municipality and the appellants. The Municipality has claimed that the deeds of exchange are illegal and should be declared as such. The learned Judge further noted that an Original Application file by the appellants/writ petitioners before the land tribunal, challenging the order of the appellate authority under the west Bengal Land Reforms Act, 1955, reversing the mutation of the Nari property in the name of the appellants, is pending adjudication. Accordingly, the learned Judge disposed of the writ petition with the following observations:-

“In such circumstance, since, the parties have already approached to diverse forai raising the issues involved in the present writ petition, therein, it would be appropriate to permit the parties to have the disputes resolved thereat. It is clarified that, none of the observations made by the Court will prejudice any of the parties to the proceedings noted herein. The direction contained herein is not a pronouncement on the maintainability of the pending proceedings. All points raised in such proceedings are kept open.”

45. Being aggrieved, the writ petitioners are before us by way of the present appeal.

46. We have noted in detail the extensive arguments advanced by learned Senior Counsel for the appellants, learned Advocate General for the State and learned Senior Counsel for Burdwan Municipality. Various points have been urged by learned Senior Counsel for the appellants including the point that the Municipality could not have decided the legality or otherwise of the concerned deeds of exchange. The Municipality has no power to take a decision touching title to property.

47. We need not discuss in any detail, the points argued by learned Counsel for the parties in so far as they are relevant for the present appeal. This is because, we are of the considered view that the learned Single Judge was perfectly justified in not interfering with the resolution dated March 9, 2017, in view of pendency of the civil suit between the parties before the competent Court. In fact, the civil suit has been filed pursuant to the resolution adopted by the Municipality at the meeting of the Purchase Committee on March 9, 2017. Rightly or wrongly the Municipality has taken a view that the exchange deed between the parties falls foul of law and cannot be sustained. Naturally the Municipality itself could not nullify the registered deeds of exchange. It has no such authority. To this extent we are in agreement with learned Senior Counsel for the appellants. However, the Municipality has approached a competent forum for adjudication as regards the legality/ validity or otherwise of the concerned deeds of exchange. We are of the considered view that the civil Court should decide that issue.

48. The resolution of the Municipality's Purchase Committee that was impugned before the learned Single Judge only authorised the concerned officer to take appropriate steps in the matter. Such steps have been taken

before the appropriate fora. On one hand, a civil suit has been filed assailing the deeds of exchange. On the other hand, mutation granted by the concerned Block Land and Land Reforms Officer in favour of the appellants in respect of the Nari land, was challenged by way of appeal before the appellate authority under the West Bengal Land Reforms Act, 1955. In other words, the resolution under challenge in the present writ proceedings, has worked itself out. Now, whether or not the view of the Municipality as regards the exchange deeds being illegal, is correct, will be decided by the Civil Court before which the suit is pending.

49. We see no infirmity in the approach or decision of the learned Single Judge. It is not that the writ Court lacks jurisdiction to decide questions of title to land or disputed questions of fact. Ordinarily the writ court does not entertain such issues as the same can normally be adjudicated only after recording of evidence entailing witness action. Since the crux of the dispute between the parties i.e., legality or otherwise of the exchange deal between the parties is the subject matter of a civil suit pending before a competent Civil Court, the learned Judge was perfectly justified in refusing to interfere in the matter. We are in agreement with His Lordship. Accordingly this appeal fails and is dismissed.

Re: WPLRT 76 of 2019

50. The order of the appellate authority, allowing 6 appeals against the orders of the Revenue Officer, granting mutation of the Nari Property in favour of the writ petitioners herein, was challenged by the writ petitioners herein before the West Bengal Land Reforms and Tenancy Tribunal by filing O.A. No 2587/2017 (LRTT). By a judgment and order dated May 10, 2019,

the tribunal set aside the order of the appellate authority in respect of Appeal Case No. 59/2017 arising out of Mutation Case No. MA /2016/0201/5262 and remanded the matter to the appellate authority for fresh adjudication within a period of six months after granting opportunity of hearing to all the parties, in accordance with law. The tribunal ordered such remand as it came to the conclusion that certain important points had not been considered by the Appellate Authority. The Original Application was not pressed by the applicants in so far as the appellate authority's order in the other 5 appeals was concerned.

51. Being aggrieved by the tribunal's order of remand, the present writ petition has been filed.

52. It was strenuously argued on behalf of the writ petitioners that the Additional District Magistrate (in short "ADM"), Burdwan, should not have acted as the Appellate Authority as he was a party to the resolution adopted by the Purchase Committee of the Municipality to the effect that the mutation granted by the concerned Revenue Officer in favour of the petitioners in respect of the Nari land, should be challenged by way of statutory appeals. It is true that the ADM did not hear the appeal on merits but sent the appeals for being heard by the Deputy District Land & Land Reforms Officer after condonation of delay in presenting the appeals. However, even the prayer for condonation of delay should not have been considered by the ADM. By condoning the delay he acted as a Judge in his own cause. It was further argued that in any event, the Appellate Authority under Section 54 and 55 of the West Bengal Land Reforms Act, did not have the power to condone the delay in filing the appeals.

53. There is substantial merit in the aforesaid argument advanced on behalf of the writ petitioners. *Nemo judex in causa sua*- nobody can be a Judge in his own cause. This is such an established principle of law that no authority need be cited in support thereof. It is a wing of the principles of natural justice. Any person, who has an interest in a *lis*, should not act as an adjudicating authority in so far as that *lis* is concerned. The reason is that it is a common human instinct to support and try to uphold once own decision.

54. At the meeting of the Purchase Committee of the Municipality, dated March 9, 2017, the ADM opined that the exchange deal entered into by and between the Municipality and the writ petitioners herein, was illegal and void. Decision was taken by the Committee to take appropriate action. Pursuant to such decision, statutory appeals were presented before the appellate authority who happened to be the ADM. The ADM should definitely have recused himself from hearing the matter including the application for condonation of delay. By condoning the delay, he definitely acted as a Judge in his own cause as he was interested in seeing that the exchange deal between the parties was nullified in the appeal proceedings. He should not have touched the matter even with a bargepole.

55. Learned Advocate General argued that under Section 54 of the West Bengal Land Reforms Act, 1955, the appeal necessarily had to be presented before the Collector, who was the Additional District Magistrate. Hence, it was necessary for the ADM to admit the appeal by condoning the delay as without such condonation of delay, there would be no appeal in the eye of law. After doing so, the ADM transferred the appeals to an officer

subordinate to him. i.e, the Deputy DL & LRO in this case, for being heard on merits. Learned Advocate General sought to justify such act on the part of the ADM by relying on the doctrine of necessity.

56. Learned Advocate General relied on the decision of the Judicial Committee of the Privy Council in the case of ***The Judges v. Attorney-General For Saskatchewan (supra)***. Sir Sidney Rowlatt, while delivering the judgment, observed that “the reference in question placed the Court in an embarrassing position, all its members being from the nature of the case personally interested in the point of controversy. They took the view (quite rightly in their Lordships’ opinion.) that they were **bound to act ex necessitate.**”

Learned Advocate General also relied on the decision of the Hon’ble Supreme Court in the case of ***J. Mohapatra & Co. & Anr. v. State of Orissa & Anr., Supra.*** in particular reliance was placed on a portion of paragraph 12 of the reported judgment, which reads as follows:-

“12. There is, however, an exception to the above rule that no men shall be a Judge in his own cause, namely, the doctrine of necessity. An adjudicator, who is subject to disqualification on the ground of bias or interest in the matter which he has to decide, may be required to adjudicate if there is no other person who is competent or authorized to adjudicate or if a quorum cannot be formed without him or if no other competent tribunal can be constituted. In such cases the principle of natural justice would have to give way to necessity for otherwise there would be no means of deciding the matter and the machinery of justice or

administration would break down. Thus, in *The Judges v. Attorney-General for Saskatchewan*, the Judges of the Court of Appeal were held competent to decide the question whether Judges of the Court of Appeal, of the Court of King's Bench and of the District Courts of the Province of Saskatchewan were subject to taxation under the Income-tax Act, 1932, of Saskatchewan on the ground that they were bound to act *ex necessitate*. The doctrine of necessity applies not only to judicial matters but also to quasi-judicial and administrative matters....”

The third authority, relied upon by learned Advocate General is the decision of the Hon'ble Supreme Court in the case of ***Charan Lal Sahu v. Union of India, supra***. In particular reliance was placed on paragraph 105 of the reported judgment which reads as follows:-

“105. The question whether there is scope for the Union of India being responsible or liable as a joint tort-feasor is a difficult and different question. But even assuming that it was possible that the Central Government might be liable in a case of this nature, the learned Attorney General was right in contending that it was only proper that the Central Government should be able and authorised to represent the victims. In such a situation, there will be no scope of the violation of the principles of natural justice. The doctrine of necessity would be applicable in a situation of this nature. The doctrine has been elaborated, in *Halsbury's Laws of England*, 4th Edition, p, 89, paragraph 73, where it was reiterated that even if all the members of the Tribunal competent to determine a matter

were subject to disqualification, they might be authorised and obliged to hear that matter, by virtue of the operation of the common law doctrine of necessity. An adjudicator who is subject to disqualification on the ground of bias or interest in the matter which he has to decide may in certain circumstances be required to adjudicate if there is no other person who is competent or authorised to be adjudicator or if a quorum cannot be formed without him or if no other competent tribunal can be constituted. In the circumstances of the case, as mentioned hereinbefore, the Government of India is only capable to represent the victims as a party. The adjudication, however, of the claims would be done by the Court. In those circumstances, we are unable to accept the challenge on the ground of the violation of principles of natural justice on this score. The learned Attorney General, however, sought to advance, as we have indicated before, his contention on the ground of de facto validity. He referred to certain decisions. We are of the opinion that this principle will not be applicable. We are also not impressed by the plea of the doctrine of bona fide representation of the interests of victims in all these proceedings. We are of the opinion that the doctrine of bona fide representation would not be quite relevant and as such the decisions cited by the learned Attorney General need not be considered.”

57. The doctrine of necessity is a common law doctrine not unknown to the Indian Jurisprudence. However, as the description of the doctrine indicates, if it is absolutely necessary that an adjudicator who is disqualified to

adjudicate by reason of his personal interest in the matter, must act as an adjudicator because no other adjudicator is available, only then the doctrine of necessity will be attracted. In such circumstances, even a person may validly act as a Judge in a cause in which he has some kind of stake. In the present case, Section 54 of the 1955 Act provides that an appeal will lie from the order of a Revenue Officer to the Collector. The Collector in the present case was the ADM of Burdwan who had been instrumental in adoption of the resolution to challenge the mutation granted by the revenue officer, by way of appeal. The Government could have and should have transferred the case to the Collector of some other District or some other officer in the administration holding equivalent or a superior post. It is not that there was no other officer in the administration who could act as the Appellate Authority. There was no absolute necessity for the ADM of Burdwan to act as the Appellate Authority even for the purpose of condoning the delay and admitting the appeal. The doctrine of necessity is not attracted to the facts of the instant case.

58. Even if we were to agree with learned Advocate General, which we do not, that the doctrine of necessity compelled the ADM to act as the Appellate Authority, still, he did not have the power to condone the delay in admitting the appeals. Section 29 (2) of the Limitation Act, 1963 reads as follows:-

“29.(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed

for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.”

59. Section 5 of the Limitation Act, reads as follows:-

“5. **Extension of prescribed period in certain cases.**— Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.— The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.”

60. Interpreting the aforesaid two sections, the Hon’ble Supreme Court has laid down that Section 5 of the Limitation Act does not apply to a statutory authority or a tribunal unless the statute constituting such authority or tribunal expressly provides for the applicability of Section 5 of the Limitation Act. In other words unless an Appellate Authority including a tribunal, which is not a ‘court’ is specifically empowered by some special law to condone the delay in presentation of an appeal, that authority or tribunal cannot condone the delay.

61. In the case of **Sakuru v. Tanaji, supra**, the Hon’ble Supreme Court observed in paragraph 3 of the judgment:- “..... the provisions of the

Limitation Act, 1963 apply only to proceedings in 'Courts' and not to appeals or applications before bodies other than 'Courts' such as quasi-judicial Tribunal or Executive Authorities, notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on 'Courts' under the Codes of Civil and Criminal Procedure. The Collector before whom the appeal was preferred by the appellant herein under Section 90 of the Act not being a Court the Limitation Act, as such, had no applicability to the proceedings before him. But even in such a situation the relevant special statute may contain an express provision conferring on the Appellate Authority, such as the Collector, the power to extend the prescribed period of limitation on sufficient cause being shown by laying down that the provisions of Section 5 of the Limitation Act shall be applicable to such proceedings....."

62. In the case of ***Ganesan v. Commissioner, Tamil Nadu Hindu Religious & Charitable Endowments Board & Ors., supra***, at paragraphs 59.1 to 60.2 of the reported judgment, the Hon'ble Supreme Court held as follows:-

"59.1. The suits, appeals and applications referred to in the Limitation Act, 1963 are suits, appeals and applications which are to be filed in a Court.

59.2. The suits, appeals and applications referred to in the Limitation Act are not the suits, appeals and applications which are to be filed before a statutory authority like Commissioner under Act, 1959.

59.3. Operation of Section 29(2) of the Limitation Act is confined to the suits, appeals and applications referred to in a special or local law to be filed in Court and not before statutory authorities like Commissioner under Act, 1959.

59.4. However, special or local law vide statutory scheme can make applicable any provision of the Limitation Act or exclude applicability of any provision of Limitation Act which can be decided only after looking into the scheme of particular, special or local law.

60. We, thus, answer question Nos.2 and 3 in the following manner:

60.1. The applicability of Section 29(2) of the Limitation Act is with regard to different limitations prescribed for any suit, appeal or application when to be filed in a Court.

60.2. Section 29(2) cannot be pressed in service with regard to filing of suits, appeals and applications before the statutory authorities and tribunals provided in a special or local law. The Commissioner while hearing of the appeal under Section 69 of the Act, 1959 is not entitled to condone the delay in filing appeal, since, provision of Section 5 shall not be attracted by strength of Section 29(2) of the Act.”

63. Section 55 of the West Bengal Land Reforms Act reads as under:-

“55. **Limitation for appeals.** —Save as expressly provided in this Act or the rules made thereunder, the period of limitation for an

appeal under section 54 shall run from the date of the order appealed against and shall be as follows, that is to say-

(a) when the appeal lies [to a Collector] [Substituted by West Bengal Act No. 50 of 1981, dated 24.3.1966 with retrospective effect from 7.8.1969.]—thirty days;

(b) when the appeal lies to the Commissioner of a Division_sixty days;”

64. Section 55 does not make Section 5 of the Limitation Act applicable to an appeal preferred under Section 54 of the 1955 Act. This is in contra distinction with appeals under, for example, Sections 14H, 14O and 19(2) of the 1955 Act. Each of those sections makes the provisions of Section 5 of the Limitation Act, 1963, applicable to an appeal under that Section. In the same statute, in respect of certain appeals under certain sections, Section 5 of the Limitation Act has been made applicable expressly thereby empowering the Appellate Authority to condone delay in presenting an appeal upon sufficient cause being shown. However, in respect of an appeal under Section 54 of the same statute, the legislature consciously did not make the provisions of Section 5 of the Limitation Act applicable.

65. What indubitably follows from the aforesaid discussion is that the Collector /ADM could not have entertained or admitted the appeals against the orders of the Revenue Officer granting mutation of the concerned lands on the basis of the relevant deeds of exchange, beyond a period of 30 days from the date of the order of the Revenue Officer. The Collector had no power or authority or jurisdiction to condone the delay in presentation of the

appeals and to admit the appeals. The appeals were hopelessly barred by limitation.

66. Learned Advocate General relied on a number of decisions to contend that even where Section 5 of the Limitation Act may not be applicable in terms, the principles thereof should apply. Let us consider those cases:-

(i) *J. Kumaradasan Nair & Anr. v. Iric Sohan & Ors., Supra.*

In this case, the Hon'ble Supreme Court held that a revisional application does not answer the description of a 'suit' as defined in Section 2(l) of the Limitation Act. Therefore, the provisions of Section 5 of the Limitation Act may not apply in terms to a revisional application filed in Court but the principles thereof would apply. The issue as to whether or not the principles of Section 5 will also apply to proceedings before a Tribunal or Statutory Authority unless the parents statute provides for the same, was not an issue before the Hon'ble Supreme Court in the aforesaid case. Hence, in our considered view, the said decision does not advance the State's case to any extent.

(ii) *Andhra Pradesh Power Coordination Committee & Ors. v.*

Lanco Kondapalli Power Limited., Supra. In this case, the Hon'ble Supreme Court held that the principles underlying the provisions of the Limitation Act, 1963, though not the provisions themselves, particularly those underlying Sections 5 and 14 of the Limitation Act, 1963, apply to the State Electricity Regulatory Commission, under the Electricity Act, 2003, when the Commission functions as statutory adjudicatory quasi-

judicial /Judicial Authority for determining claims or disputes between licensees and generating companies. As we read it, this observation was made in the facts of that case. The decision of a Coordinate Bench in ***Sakuru v. Tanaji, Supra***, was not noticed by the Hon'ble Bench in the said case. In ***Sakuru v. Tanaji, Supra***, it has clearly been held that the provisions of the Limitation Act apply only to proceedings in Courts and not to appeals or applications before bodies other than Courts such as quasi-judicial Tribunals or Executive Authorities.

(iii) ***Pradeshik Cooperative Dairy Federation Ltd. v. Authority Under Minimum Wages Act & Ors., Supra***. In this case a Division Bench of the Allahabad High Court followed the decision in ***J. Kumaradasan Nair & Anr. v. Iric Sohan & Ors., Supra***, which we have dealt with hereinabove. The Supreme Court in ***J. Kumaradasan Nair & Anr. v. Iric Sohan & Ors., Supra***, did not notice the Coordinate Bench decision in ***Sakuru v. Tanaji, Supra***.

(iv) ***Subimal Bhunia v. State of West Bengal & Ors., Supra***. In that case, a Coordinate Bench of this Court directed the Appellate Authority under Section 54 of the West Bengal Land Reforms Act, 1955, to admit an appeal against the order of vesting passed by the Revenue Officer "by condoning the delay by passing a formal order in the application under Section 5 of the Limitation Act within two weeks from the date of communication of the order and thereby to hear the appeal on

merit and to pass a reasoned decision in appeals.” Whether or not the Appellate Authority had the power to condone the delay, was not in issue at all in the said case. In any event, the decision in ***Sakuru v. Tanaji, supra***, was not noticed by the Division Bench of this Court.

(v) ***Sisir Kumar Nanda & Ors. v. The State of West Bengal & Ors., Supra***. In this case, the Appellate Authority under Section 54 of the West Bengal Land Reforms Act, 1955, refused to entertain an appeal by rejecting the application made for condonation of delay. The Land Tribunal upheld that order. The matter being carried to a Division Bench of this Court, it was held that when a prima facie arguable case has been made out by the person intending to challenge the order of the Revenue Officer before the Appellate Authority, technicalities like delay should not stand in the way. The order of the Appellate Authority refusing to condone the delay and the order of the Land Tribunal affirming such order of the Appellate Authority, were set aside by the Division Bench of this Court in exercise of writ jurisdiction. The Appellate Authority was directed to decide the appeal on merits.

Again, in this case there is no discussion as to whether or not the Appellate Authority under Section 54 of the West Bengal Land Reforms Act, has the power to condone delay in presentation of an appeal.

67. Therefore, none of the aforesaid decisions cited by learned Advocate General advances the case of the State or the Municipality or detracts from

the argument advanced on behalf of the writ petitioners regarding the Appellate Authority under Section 54 of the West Bengal Land Reforms Act not having power or jurisdiction to condone delay in presenting an appeal.

68. The LRTT did not dilate on the issue of limitation at all. Had it done so, it would have seen that the question of remand to the Appellate Authority does not arise. The statutory appeals are completely time barred and the Appellate Authority has no power to condone the delay.

69. Therefore, we set aside the order of the LRTT as also the order of the Appellate Authority passed in the 6 appeals being Appeal Nos. 58 to 63 of 2017.

70. This writ petition therefore succeeds and is disposed of accordingly. There will be no orders as to costs.

71. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities

(ARIJIT BANERJEE, J.)

I agree.

(RAI CHATTOPADHYAY, J.)