

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
And
The Hon'ble Mr. Justice Biswaroop Chowdhury**

**FMA 1653 of 2025
with
CAN 2 of 2024**

**Gouri Prasad Goenka and Ors.
Vs.
State of West Bengal and Anr.**

with

**FMA 1654 of 2025
with
CAN 2 of 2024**

**Jagadish Prasad Goenka and Ors.
Vs.
State of West Bengal and Anr.**

with

**FMA 1655 of 2025
with
CAN 2 of 2024**

**Sanjiv Goenka
Vs.
State of West Bengal and Anr.**

For the appellants
in FMA 1653 of 2025 : Mr. Anindya Kumar Mitra, Snr. Adv.,
Mr. Soumabho Ghose
Mr. Iram Hassan

For the appellants
in FMA 1654 of 2025 : Mr. Shakti Nath Mukherjee, Snr. Adv.,
Mr. Iram Hassan,
Ms. Yukti Agarwal
Mr. Aurin Chakraborty, Advs.

For the appellants
in FMA 1655 of 2025 : Mr. Arindam Banerjee,
Mr. Himanshu Bhawsinghka

For the State
in all matters : Mr. Vivekananda Bose,
Mr. Amadipta Sengupta

Heard On : 09.04.2026

Judgment on : 09.04.2026

Sabyasachi Bhattacharyya, J.:

1. None appears for the State/respondents at the time of call, nor has any appeal been preferred by the respondents against the common judgment by which all the writ petitions, which are the geneses of the present appeals, were allowed.
2. Learned senior counsel appearing for the appellant in each of the matters argue that although the learned Single Judge accepted the proposition advanced by the appellants to the effect that each member of a Hindu Undivided Family (HUF) is treated to be individual owners

by dint of the deemed partition as contemplated in Section 4(7) of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as 'the 1976 Act') and directed the respondents to grant relief to the appellants taking each of them as separate persons and declaring their ceiling limit as per the provision of Section 4(7), and considered the arguments of the parties on two other cardinal points involved, did not categorically return any finding on those.

3. The first such issue, on which no specific finding was rendered by the learned Single, is whether the land within the subject plot which is vacant but no construction is permissible thereon as per the governing Building Regulations, should be excluded from the definition of "vacant land" as defined in Section 2(q)(i) of the 1976 Act.
4. The second question which came up for consideration is whether the tank, which comprises a portion of the subject plots, also comes within the purview of the exclusion of 2(q)(i) by dint of its very nature.
5. Upon a consideration of the arguments of learned senior counsel for the appellants, we find that the learned Single Judge, although recording the arguments of the appellants in the ratio of the impugned judgment and not differing from such contentions in principle, did not give effect to those in the ordering portion of the impugned judgment.
6. Moreover, the respondent-State also did not categorically rebut such contentions of the appellants by any cogent argument or citation.

7. Even on merits, we find that the second and third grounds, which were omitted to be adjudicated upon specifically in the impugned judgment, are tenable in the eye of law for the following reasons:
8. As held by the Hon'ble Supreme Court in *State of Maharashtra and another vs. B.E. Billimoria and others*, reported at (2003) 7 SCC 336, land on which construction cannot be undertaken in terms of the governing Building Regulations comes within the purview of Section 2(q)(i) of the 1976 Act.
9. Secondly, by its very nature, construction cannot be made on a tank, which is a water body, thus, bringing a tank also within the ambit of Clause (q) (i) of Section 2, since no construction can be said to be permissible on such a water body.
10. As such, we find merits in the arguments of learned senior counsel for the appellants and dispose of the present appeals accordingly.
11. Thus, FMA 1653 of 2025, FMA 1654 of 2025 and FMA 1655 of 2025 are disposed of by modifying the impugned judgment dated November 17, 2023 passed in WPA 11647 of 1991, WPA 11648 of 1991 and WPA 11649 of 1991 respectively, to the following extent:
12. The respondent authorities shall recalculate the permissible ceiling limits of the subject plots by treating each of the writ petitioners/appellants, who are individual members of the concerned HUF, in their individual capacity.

13. Secondly, the respondent authorities shall exclude the portion of the subject plots in respect of which construction of a building is not permissible under the Building Regulations in force by keeping such portion of the property outside the ambit of “vacant land” as contemplated in 1976 Act.
14. Thirdly, the tank shall also be brought under the exclusion in calculating ceiling limits, deeming the same to come under the exclusion as provided in Section 2 (q) (i) of the 1976 Act.
15. Consequentially, the applications bearing CAN 2 of 2024, filed in connection with the respective appeals, stand disposed of as well.
16. In view of the long pendency of the matter, it is expected that the respondent authorities shall carry out the aforesaid calculations at the earliest, if necessary, upon giving a limited hearing to the appellants and/or their representatives, and take further steps accordingly in accordance with law, preferably within three months from the date of communication of this judgment to the respondent authorities.
17. We make it clear that if the subject plots are found to be within ceiling limit after giving effect to the aforesaid observations, the respondent authorities shall declare the same accordingly in terms of law.
18. It is made clear that we sustain the portion of the impugned judgment whereby the draft and final statements which were assailed in the respective writ petitions was cancelled and rescinded.

19. There will be no order as to costs.
20. Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Biswaroop Chowdhury, J.)

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(AK)