

Usha Ghosh Vs. Rabindranath Das and ors.

Usha Ghosh Vs. Rabindranath Das and ors.

SooperKanoon Citation : sooperkanoon.com/860921

Court : Kolkata

Decided On : Mar-07-2005

Reported in : AIR2005Cal190

Judge : Arun Kumar Mitra, J.

Acts : [West Bengal Estates Acquisition Act, 1953](#) - Sections 2, 2(1), 4, 5, 5A, 6, 6(1), 6(2), 6(5), 9(1), 44 and 66(1); ;Bengal Public Demands Recovery Act - Sections 20(1) and 34 to 37; ;Evidence Act - Section 114; ;[West Bengal Land Reforms Act, 1955](#) - Sections 2(7), 3(A) and 14S; ;West Bengal Non-Agricultural Tenancy Act, 1949; ;Bengal Tenancy Act, 1885 - Sections 3(11) and 103(B)(5); ;West Bengal Estates Acquisition Rules - Rule 4A; ;West Bengal Non-Agricultural Tenancy Act, 1947 - Section 24; ;[Code of Civil Procedure \(CPC\) , 1908](#) - Sections 11, 100, 109 and 110 - Order 1, Rules 4, 5 and 10(2); ;Code of Civil Procedure (CPC) (Amendment) Act, 1973; ;Hindu Law; ;[Constitution of India](#) - Article 133(1)

Appeal No. : S.A. Nos. 192, 193 and 194 of 1999

Appellant : Usha Ghosh

Respondent : Rabindranath Das and ors.

Advocate for Def. : Sudhish Ranjan Dasgupta, Sr. Counsel and ;Shagata Dutta, Advs.

Advocate for Pet/Ap. : Shaktinath Mukherjee, Sr. Counsel, ;Debaprasad Mukherjee, ;Kartick Bhattacharya and ;Debjit Mukherjee, Advs.

Disposition : Appeal dismissed

Judgement :

Arun Kumar Mitra, J.

1. Three second appeals being S.A. Nos. 192. 193 and 194 of 1999 came up for hearing together inasmuch these three second appeals came out of analogous judgments passed by the first appellate Court hearing three first appeals analogously, consequent to the judgment and decree (single) passed in three title suits which were also heard analogously. The factual background of the three appeals in brief can be stated in the manner as follows :-

One Sarojini Sarkar, the grandmother of Sri Kanak Kr. Sarkar (the plaintiff of Title Suit No. 614 of 1978) was the zamindar in respect of the property in C.S. Dag No. 235 under C.S. Khatian No. 1497 in Mouza-Chanak. In R. S. Record of Rights the said Dag and Khatian were split up and recorded as Dag No. 1) 557, Khatian No.-1970 where occupant was shown as Dhanapati Bhakat; 2) Dag No. 558, Khatian No.-1971 where occupant shown as Ramcharan Ram and; 3) Dag No. 559, Khatian No.-1972 which was shown as Dakhalkar Chandina under the occupation of one Ledu Karmakar, S/o-Late Radharaman Karmakar and the land involved here was 0.60 decimals with structure standing thereon.

2. Said Sarojini Sarkar sold the said suit property to Sri Monmothnath Ghosh, the brother-in-law of Sushil Sarkar (father of the plaintiff in T.S. No. 614 of 1978 Kanak Kr. Sarkar) through a registered sale deed dated 16-11-1931.

3. Monmothnath Ghosh, who is the brother-in-law of Sushil Sarkar filed a suit being Title Suit No. 783 of 1954 against Ledu Karmakar in respect of land along with structure thereon in respect of 'A' schedule property (Title Suit No. 614 of 1978) for eviction and khas possession.

4. West Bengal Estates Acquisition Act came into force in 1953 w.e.f. 12-2-1954. In view of notification issued under Section 4 of the said Act all intermediary interest vested, w.e.f. 10-4-1956 (Rayati and under Rayati interest vested).

5. Title Suit No. 783 of 1954 filed by Sushil Sarkar against Ledu Karmakar was decreed on 6-8-1956. Ledu Karmakar preferred appeal against the said decree which was registered as Title Appeal No. 884 of 1956. On 29-7-1957 the said appeal was dismissed. Monmothonth Ghosh filed Title Execution Case No. 225 of 1960 against Ledu Karmakar for recovery of possession. In the aforesaid execution case a compromise petition was filed by Santosh Kr. Karinakar, one of the heirs of Ledu Karmakar and Monmothonth Ghosh and possession was recovered from Santosh Kr. Karmakar by Monmothonth Ghosh by virtue of that compromise petition on 18-1-1961.

6. On 11-4-1963 Certificate Case being numbered 786 of 1963-64 was started against Ledu karmakar and subsequently against his legal heirs;

1) Santosh Kr. Karmakar (2) Paresh Ch. Karmakar (3) Naresh Ch. Karinakar and (4) Jogesh Ch. Karmakar, all sons of late Ledu Mohan Karmakar by the Junior Land Reforms Officer, Khardah. The said Certificate was allowed and the properties put to sale in auction.

7. No appeal was filed against the order allowing certificate and auction sale by Ledu Karmakar or his heirs.

8. Monmothonth Ghosh filed a Title Suit being numbered 71 of 1965 against Sarojini Sarkar and subsequently Sushil Krishna Sarkar was substituted on the death of Sarojini Sarkar.

9. Anil Krishna Sarkar purchased the property in auction sale in Certificate Case No. 786 of 1963-64 mentioned above. Anil Krishna Sarkar is the another son of Sarojini Sarkar and brother of Sushil Sarkar. This Anil Krishna Sarkar filed Title Suit No. 126 of 1966 against Sushil Sarkar.

10. Monmothonth Ghosh filed an application for setting aside the auction sale which was registered as Misc. Case No. 1 of 1966-67.

11. On 3-1-1972 Sudhir Chowdhury purchased the property from Anil Sarkar, who purchased from auction sale. On 6-3-1972 certificate sale was confirmed by Certificate Officer. On 24-3-1972 Misc. Case No. 1 of 1966-67 filed by

Monmothonath Ghosh for setting aside auction sale was rejected. Possession was delivered to Anil Krishna Sarkar by the Certificate Officer, Khardah. On 2-8-1972, Usha Ghosh purchased the property in Certificate Case No. 786 of 163-64 from Sudhir Chowdhury, who purchased from Anil Sarkar as referred to above. In the year 1975 and 1976 Sushil Sarkar and his wife Chamoli Sarkar expired. Compromise petition filed and decreed in Title Suit No. 1971 of 1955 and Title Suit No. 126 of 1966 on the following terms :-

1) Monmothonath Ghosh will have absolute right, title and interest of sale deed dated 16-11-1931 and;

2) Sushil, Anil, Sunil and Amal shall have no claim in future at any time after 5-5-1975.

12. Kanak Sarkar filed Title Suit No. 581 of 1976 against Monmotho praying for declaration that his father Sushil purchased the property from his mother Sarojini Sarkar by a registered deed of sale dated 16-11-1931 and the claim was that it was benami of his brother-in-law Monmotho. On 4-4-1978 Title Suit No. 581 of 1976 was decreed on compromise on the term that Monmotho is the benamdar of Sushil Sarkar.

13. In Title Suit No. 614 of 1978 Kanak Sarkar made State of West Bengal a pro forma defendant. The State of West Bengal filed an application in that suit under Order 1 Rule 10 (2) of the Code of Civil Procedure and was transposed to the category of principal defendant and the said order of transposition was passed on contested hearing vide Order No. 128 dated 17-12-1985 and the plaintiff therein did not take any step as required under Order 1 Rules 4 & 5 of CPC and accordingly, the learned Court heard arguments of all the parties.

14. Three appeals were preferred being Title Appeal Nos. 89, 90 and 91 and all of the year 1989. Title Appeal No. 89 of 1989 was filed by Supati Ghosh alone, Title Appeal No. 90 of 1989 was filed by the tenants and Title Appeal No. 91 of 1989 was filed by the subsequent assignee Rabindranath Das and Supati Ghosh. All these three appeals were taken up analogously for the purpose of hearing. The learned Court below on consideration of the submissions advanced by the learned

advocates of both the sides and having regard to the facts and circumstances and also considering the pleadings and evidences of the parties formulated the following points for its consideration :-

- 1) Are the suits tried analogously, maintainable?
- 2) Whether the original plaintiff Kanak Sarkar or his subsequent assignees had or have any interest in the suit property.
- 3) Whether the Certificate proceeding bearing No. 786 of 1963-64 before the J.L.R.O., Khardah is illegal and whether the same has not being effect upon the plaintiff-Kanak Sarkar or his assignees.
- 4) Whether the defendant Smt. Usha Ghosh acquired any right, title and interest in the property on the strength of her alleged purchase.
- 5} Whether the judgment and decree of the aforesaid three suits can be sustained.

15. The learned appellate Court below on contest allowed the three appeals and set aside the judgment and decree passed by the learned Munsiff in T.S. No. 468 of 1978. The appellate Court below observed that the plaintiff of that suit Smt. Usha Ghosh is entitled to no relief in respect of the property-in-question.

16. The learned appellate Court below set aside the judgment and decree passed in T.S. No. 614 of 1978 and 368 of 1978. The learned appellate Court below further held that the original plaintiff Kanak Sarkar and his subsequent assignees to the suit property are entitled to declaration of title in respect of 'A' Schedule properties (614 of 1978) as against the defendant with costs.

17. The learned appellate Court below further held that the plaintiff Kanak Sarkar and his subsequent assignees are entitled to decree for recovery of possession in respect of 'B' Schedule properties from the defendant No. 1, Smt. Usha Ghosh.

18. The learned first appellate Court also directed the defendant No. 1 to vacate 'B' Schedule property within a period of 30 days from the date of order failing which it was directed that the plaintiff would be entitled to get the decree executed through Court.

19. By the aforesaid judgment all the three appeals were disposed of and; Hence these three second appeals.

20. The learned counsel for the appellant submitted that there is no dispute that the property involved in the suit being Plot No. 559 appertaining to Khatian No. 1972 and measuring 6 decimals of land was recorded in the finally published Revisional Record of Right in the name of Monmothonath Ghosh as an intermediary with one Ledu Karmakar recorded as a tenant under the said Monmothonath Ghosh.

21. The learned counsel submitted that this record of rights has been exhibited as Ext. 'R' in Title Suit No. 614 of 1978.

22. The learned counsel submitted that the Record of Rights under the West Bengal Estates Acquisition Act is prepared and finally published with a view to serve as the foundation for the implementation of the West Bengal Estates Acquisition Act. The learned counsel in this context relied on a decision of one Division Bench of this High Court reported in (1970) 74 Cal WN 166, Collector of 24 parganas v. Life Insurance Corporation of India. The learned counsel referred to the observations made in paragraph 2 of the said judgment. The learned counsel laid stress on the last 5 lines of this particular paragraph 2 of this judgment which are quoted hereinbelow: -

'In our opinion, the learned appellate tribunal was in error in its approach, as indicated above the record of rights which is prepared under the Act is for carrying out the purposes of the Act and the purposes of the Act, primarily, at least, have reference to the date of vesting, which is the relevant date for judging the rights of the parties under the Act. The records, therefore, must have reference to the state of things as it exists at the said date of vesting.'

23. The learned counsel for the appellant then submitted that the record of rights was prepared with reference to the date of vesting viz., 1st Baishakh, 1362 B.S. corresponding to 15th April, 1955. The learned counsel submitted that only a person recorded in the record of lights could exercise the right of retention in accordance with the provisions of the said Act.

24. The learned counsel then submitted in specific that Section 4 of the Act provided for issuance of a notification bringing about vesting of all estates and rights of every intermediary in each such a stage on or before 1st Baishakh, 1362 B.S.

25. The learned counsel then submitted that Section 5 of the said Act deals with the effect of notification issued under Section 4 and provides 'for vesting of all estates and all rights of intermediaries in such a estate.'

26. The learned counsel then relied on the provisions of Section 6 of the said Act which deals with the right of intermediaries to retain certain lands. The provisions of Section 6 of the said Act quoted hereinbelow :

The learned counsel for the appellant then submitted that some facts are admitted such as;

Monmotho was the purchaser under the registered deed of sale dated 16th November, 1931.

Monmotho was the brother-in-law of Sushil (was the father of plaintiff Kanak Sarkar) as the owner-landlord filed Title Suit Nos. 783 of 1954 against Ledu Karmakar for eviction and possession.

Ledu was in possession on the date of vesting i.e. 15-4-1954. The suit of Monmotho for khas possession itself shows that not Monmotho but Ledu was in possession.

It is also admitted that Title Suit No. 783 of 1954, filed by Monmotho was decreed on 6-8-1956 in favour of Monmotho and none else.

When the suit was decreed the interest of Monmotho had already vested (on 15-4-1954) and it is not in dispute that Monmotho never opted to retain the property.

Ledu preferred an appeal being T.A. No. 884 of 1956 and the said appeal was dismissed on 29-7-1957.

Monmotho, himself filed Title Execution Case No. 225 of 1960 against Ledu.

In the execution case heirs of Ledu and Monmotho entered into a compromise and possession was allegedly recovered from the heirs of Ledu by Monmotho himself though, he had lost his title and right to possession because of his non retention and consequent vesting.

Admittedly, in connection with Certificate Case No. 786 of 1963-64 in which the interest of Ledu was attached and sold in auction, it was Morimotho who filed an application for setting aside the auction sale and Misc. Case No. 1 of 1966-67 was ultimately rejected on 24th March, 1972.

27. The learned counsel submitted that the above facts clearly point out that Monmotho was not only the purchaser and thus owner under the registered deed from Sarojini but he was always acting as owner in the eviction suit against the tenant Ledu and also in connection with the certificate sale under the Bengal Public Demands Recovery Act.

28. The learned counsel for the appellant then submitted that the State of West Bengal in its written statement had taken the plea that Monmotho was an intermediary and Monmotho did not submit any 'B' form for retaining the property-in-question and accordingly, his right and title vested in the State whereupon Ledu Karmakar became a direct tenant under the State in respect of 6 decimals, of land in Dag No. 559. at a rental of Rs. 18.30/-.

29. The learned counsel submitted that it is also the case made out by- the State of West Bengal that Ledu defaulted in the matter of payment of rent to the Government and his interest was sold in auction in certificate Case No. 786 of 1963-64 under the Bengal Public Demand Recovery Act and the certificate sale was confirmed by Certificate Officer on 6-3-1972 and possession was delivered to the purchaser in the certificate sale to Anil Sarkar on 27-3-1972.

30. The learned counsel laid stress on the point that Anil was none else but the uncle of Kanak.

31 The learned counsel then submitted that in view of the admitted non retention of plot being numbered 559 by Monmotho, who alone was recorded as the

intermediary and who alone was entitled to retain(it, the subsequent plea of Morimotho being a benamdar cannot prevail and cannot enable Kanak to avoid the consequence of vesting under the West Bengal Estates Acquisition Act.

32. The learned counsel then emphatically submitted that there cannot be any benami retention under the West Bengal Estates Acquisition Act nor any retention contrary to the entries in the record of rights:

33 The learned counsel then sought to explain the purpose of introduction of the West Bengal Estates Acquisition Act and submitted that the said Act was introduced to impose a ceiling in respect of every intermediary after taking into consideration his total holding of land.

34. The learned counsel further submitted that whatever might be the position prior! to the date of vesting, after the date of vesting the pre-existing relationship cannot survive and Ledu acquired a post vesting statutory status under Section 6(2) of the said Act. Ledu became a statutory tenant directly under the State from the date of vesting as claimed by the State of West Bengal.

35. According to the learned counsel though the intermediaries did not retain under Section 6, the tenant under the intermediary did exercise his option for retention which is clear from the case made out by the State.

36. The learned counsel then submitted that it was only after certificate sale, the plea has been raised that Monmotho was a benamdar of Sushil Sarkar, father of Kanak from before the Estates Acquisition Act.

37. The learned counsel submitted that the respondents tried to* make out a Case or rather Kanak Sarkar tried to make out a case that though Monmotho was recorded in the R.S. Record of Rights, Sushil was the real intermediary and though Monmotho did not opt to retain this particular plot, the right of Sushil still survives. The learned counsel in this context relied on a decision reported in (1937) 168 Ind Cas 415, Mannu Khan v. Habibulla. The learned counsel relying on this judgment submitted that ryotwari holding cannot be held benami.

38. The learned counsel also submitted that under the Estates Acquisition Act a choice for retention is to be exercised by the recorded intermediary and the Government is to consider it according to law and allow the intermediary to retain the land if otherwise permissible.

39. The learned counsel then submitted that only the intermediary on the date of vesting can exercise the right of retention and not even a post vesting purchaser. In this context the learned counsel relied on a decision reported in 1977 V.(1) (1) Cal LJ 672 : AIR 1977 NC 261 (Cal) delivered by the learned single Judge of this High Court in Ratikania Mosat v. State of West Bengal. The learned counsel relying on this judgment submitted that here the learned single Judge observed that an intermediary is entitled to retain possession under Section 6(1) is required to file a return to the appropriate authority on or before the expiry of April 30th 1958 and this is what Rule 4 (A) provides.

40. The learned counsel also relied on in this regard on a judgment reported in 1971 Vol. (1) Cal LJ 557 delivered by one Hon'ble Division Bench of this High Court in Monoronjan Belthoria v. Deputy Commissioner of Purulia.

41. The learned counsel for the appellant submitted for this a choice for retention is exercised before taking of possession the intermediary cannot claim to have retained any land. No intermediary can exercise his right of retention after he has parted with the possession or the possession has been taken over. In this regard the learned counsel relied on a decision reported in (1962-63) 67 Cal WN 12, Gour Gopal Mitra v. State of West Bengal. In this judgment the learned single Judge of this High Court observed that under Section 6(5) of the [West Bengal Estates Acquisition Act, 1953](#) intermediary has a right and an opportunity even after the prescribed time limit has passed, to make a claim for retention of lands under Section 6(1) CD & J thereof so long he has not parted with the possession of his lands under the prima facie authority to which the intermediary can make such claim is the Revenue Officer.

42 The learned counsel submitted that it will appear from the records that Ledu was a recorded tenant in the record of rights. He was a tenant of the land and not a tenant of the structure. A tenant of the structure is never recorded in the record

of rights as a tenant. In any view of the matter Monmotho being not in khas possession of the land, which was let out to Ledu, had no right to retain the land which was not in his khas possession. The learned counsel in this regard relied on a judgment reported in : AIR1984 Cal122 , Benode Behari Ghosal v. Shew Kamal Singh. The learned counsel relying on this judgment submitted that in this judgment the Hon'ble Division Bench observed that korfa tenancy was not transferable in law and as such the purchaser from a korfa under tenant was in the position of a trespasser who purchased in auction the right, title and interest of rayati landlord.

43. The learned counsel submitted that earlier judgment in suits between Monmothonath and Kanak cannot be binding upon the State or upon other parties. They were not contested proceedings, it was disposed of on the basis of compromise. The State was not a party and the State's right cannot be affected which is there under the Estates Acquisition Act.

44. The learned counsel further submitted that any proceeding initiated by benamdar or a proceeding initiated against the benamdar when culminating in a decision, becomes binding on the real owner. When Monmotho challenged the certificate sale but ultimately failed, the decision cannot be ignored by Kanak who claimed to be the real owner. A certificate sale under the Bengal Public Demands Recovery Act cannot be challenged except under the circumstances specified under Sections 34 to 37 of the said Act. The learned counsel emphatically submitted that a certificate sale under the said Act cannot be challenged except on the ground of fraud, in the instant case there is no finding about fraud.

45. The learned counsel then submitted that in the plaint of Kanak there was no pleading of fraud. A plea of fraud must be founded upon detailed particulars and such a plea cannot be entertained until if the particular kind of fraud pleaded is proved. The learned counsel in support of his such contentions relied on three decisions reported in (i) (1962-63) 66 Cal WN 254, Banku Behari Mukherjee v. Amulya Ghosh, (ii) AIR 1916 Cal 876 and (iii) AIR 141 PC 93.

46. The learned counsel submitted that in the decision reported in (1962-63) 66 Cal WN 254 (supra) the learned single Judge of this High Court observed that the

rule of law is that if a person, either male or female executes a deed and is misled by the fraud or misrepresentation by another person procuring the execution of the deed so that he or she does not know what is the instrument to which he or she puts his or her hand, the deed is not his or her deed at all because he or she was neither allowing nor intended to execute a deed of that character or clause. In such a case the onus shifts to the person who procures the execution of the deed to prove that the executants knew the contents of the deed or the same was explained to him.

47. In the judgment reported in AIR 1916 Cal 876 (supra) it has been observed by one Division Bench of this High Court that general allegations of fraud are sufficient to set aside a decree on the ground of fraud.

48. In the judgment of the Privy Council reported in (supra) it has been observed that fraud must be established beyond all reasonable doubts and it cannot be based on suspicion and or conjectures.

49. The learned counsel then attacked the learned appellate Court below and submitted that in the instant case no document has been produced before the Court to show that the Certificate Officer issued a proper certificate to charge the person with the liability and accordingly the sale-in-question did not pass any title upon the auction purchaser.

50. The lower appellate Court has ignored the materials on record namely, the fact that Monmotho applied for setting aside the sale and failed. Secondly, there is a presumption under Section 114 of the Evidence Act about regulating and compliance with the requirement of law in respect of official proceedings. The lower appellate Court below ignored the principle and without holding that the presumption has been rebutted by the plaintiff has alleged the plaintiff to raise the plea that the defendants have not produced any supporting document. This is beyond the scope of statutory provision.

51. The learned counsel for the appellant then submitted that in : AIR1929 Cal679 the particular certificate under the Bengal Public Demands Recovery Act was produced and was found to be not a proper certificate at all. In the instant case

nothing has been produced by the plaintiff and the Court proceeds really upon the presumption and invalidity of the certificate.

52. The learned counsel further submitted that the lower appellate Court In the instant case has proceeded to take note of the alleged subsequent events and has taken the view that in such a case the amendment of the plaint is not necessary. This is contrary to the settled principles of law. In this regard the learned counsel relied on a decision reported in : [1968]3SCR163 , Nair Service Society Ltd. v. K. C. Alexander. The learned counsel laid stress on the observations made by the Hon'ble Apex Court fn paragraphs 28 and 29 of this judgment and submitted that in paragraph 29 the Hon'ble Apex Court has clearly observed that it is a fixed principle of law that a suit must be tried on the original cause of action and this principle governs not only the trial of suits but also of appeals. For the purpose of discussion the observations made in paragraphs 28 and 29 referred to above are quoted hereinbelow :

'28. This brings us to the general proposition whether the High Court should have allowed the amendment late as it was. The plaintiff is right that the application was made literally on the eve of the judgment. This argument is really based on delay pm1 laches. The application has not been made for the first time in this Court when other considerations might have applied. It was made in the High Court after the argument based on the documents on record was, urged. This argument was also urged in the Court, of trial. The contention of the Society was thus present on both the occasions and it would have been better if the Society was directed to amend the pleadings before the argument was heard. The omission, however, remained.'

'29. Now it is a fixed principle of law that a suit must be tried on the original cause of action and this principle governs not only the trial of suits but also appeals. Indeed the appeal being a continuation of the suit new pleas are not considered. If circumstances change they can form the subject of some other proceedings but need not ordinarily be considered in the appeal. To this proposition there are a few exceptions. Sometimes it happens that the original relief claimed becomes inappropriate, or the law changes affecting the rights of the parties. In such cases

Courts may allow an amendment pleading the changed circumstances. Sometimes also the changed circumstances shorten litigation and then to avoid circuity of action the Courts allow an amendment. The practice of the Courts is very adequately summarized in *Ram Ratan Sahu v. Mohant Sahu*, (1907) 6 Cal LJ 74 *Mookherjee and Holmwood, JJ*, have given the kind of changed circumstances which the Courts usually take notice, with illustrations from decided cases. The judgment in that case has been consistently followed in India. In *Raicharan Mandal v. Biswanath Mandal* AIR 1915 Cal 103 other cases are to be found in which subsequent events were noticed. The same view was taken by the Federal Court in *Lachmeshwar Prasad v. Keshwar Lal* following the dictum of Hughes C.J. in *Patterson v. State of Alabama*, (1934) 294 US 600 at p. 607. In *Surinder Kumar v. Gian Chand* : [1958]1SCR548 this Court also took subsequent events into account and approved of the case of the Federal Court. In view of these decisions it is hardly necessary to cite further authorities.'

53. The learned counsel in his reply to the submissions made by the learned counsel for the respondents submitted that if there is a non agricultural tenant, its claim that Monmotho is not. a non agricultural tenant, he would be recorded 'Dakhalkar' or 'Dakhaldar' or non agricultural tenant from before the date of vesting .without there being a superior hand - interest holder.

54. It was further submitted by the learned counsel for the appellant that there was ,110 superior hand interest, holder or landlord of Monmotho and there; is ho question of Monmotho being a non agricultural tenant. There is no record in favour of the Monmotho being a non agricultural tenant. There is also no record in favour of Monmotho in anywhere regarding his Dakhalkar as it was inter alia done in connection with the preparation of the Revisional Record of Rights, on the contrary Ledu alone v/as recorded as 'Dakhalkar Chandina' indicating he was a non agricultural tenant. The learned counsel in this regard relied on two decisions reported in 1978 Vol (1) Cal LJ 532, *Mishri Show v. Belur Nikunjamoyee Gadar Institution* and (1966) 70 Cal WN 1079, *Ashrukana Dutta v. Diptimoy Pal*. The learned counsel laid stress on the observations made in paragraph 7 of the judgment of *Mishri Show* (supra) which is quoted hereinbelow :

'7. I, accordingly, make this Rule absolute, set aside the order of the lower appellate Court and restore that of the trial Court. In the circumstances of the case, both parties will bear their respective costs throughout.'

55. The learned counsel also relied on a Government Circular dated 14-9-1994 Issued by the State Government in connection with the- promulgation of Section 3(A) of the West Bengal Land Reforms Act. The said circular is quoted hereinbelow :

GOVERNMENT OF WEST BENGAL

Office of the Director of Land Records & Surveys and Joint Land Reforms Commissioner, West Bengal
Memo No. : 6/4735/C/92 Dated 14-9-94
Circular

Subject: Effective date of accounting and vesting of ceiling surplus non-agricultural lands held by different classes of tenants and application of Section 3A of W.B.L.R. Act, 1955.

In suppression of all previous circulars instructions relating to accounting and vesting of non-agricultural lands. It is clarified that all non- agricultural lands belong to erstwhile intermediaries and raiyats shall vest : (if found excess) to the State, with effect from 15-2-71 under Section 14S of W.B.L.R. Act, 1955. To remove all doubts and confusions the statutory provisions are explained below :

(1) Section 3A of the W.B.L.R. Act, applies only to those non-agricultural tenants who were outside the Jurisdiction and provisions of the W.B.E.A. Act 1953 and guided by W.B.N.A.T. Act, 1949.

(2) Exclusively non-agricultural tenants, like 'Dakhalkar', 'Dakhalkar Chandina' or 'Dakhalkar Basat Proja' etc. of all grades were outside the purview of W.B.L.R. Act and were exclusively guided by W.B.N.A.T. Act, 1949 (hereinafter all class of Dakhalkar i.e. Dakhalkar Chandina and Dakhalkar Basat Proja, will be stated as Dakhalkar only).

(3) The system of intermediary was in existence upto 8-9-80 i.e. the day, before Section 3A of W.B.L.R. Act came into force. Hence there might be a 'Dakhalkar'

under tenant under a 'Dakhalkar' before 9-9-80.

(4) All types of 'Dakhalkar' tenants could hold any quantum of land in khas possession and in W.B.E.A. Act no land of a 'Dakhalkar' of any type was vested.

(5) The very purpose of Section 3A of W.B.L.R. Act, 1955, was to abolish the intermediary system running in respect Of some categories of exclusively non-agricultural tenants, who were known as occupier in Bengal Tenancy Act, 1885 and subsequently termed as 'Dakhalkar' as well as to bring the khas land hold by such occupier as Dakhalkar under the purview of vesting provisions as laid down under Chapter IIB of W.B.L.R. Act.

(6) The erstwhile intermediaries like 'Maliki' Madhyaswatwadhikari' etc. who held agricultural land, orchard, tank fisheries etc. along with other non-agricultural land were never a person like 'Dakhalkar' and never were guided exclusively by W.B.N.A.T. Act. The non-agricultural land held by them was very much under the purview of ceiling provisions under W.B.E.A. Act and as laid down in Section. 6(1)(c) they could retain only 15 acres of land, maximum as raiyat.

Similarly the raiyats and under-raiyats having non-agricultural lands also could retain only 15 acres of non-agricultural land at the maximum.

(7) The 'Akrishi' Khanda Khatian opened as per 'B' Form submitted by the Chapter II intermediaries like 'Maliki' and 'Madhyaswatwadhikari' etc. under Rule 4A of W.B.E.A. Rules, does not create any tenancy like dakhalkar and those lands when found in excess, of 15 acres, were vested to the State as per provisions of W.B.E.A. Act, These 'Akrishi' Khanda Khatians are not frit by the provision of Section 3A of W.B.L.R. Act. Khanda Khatians are always part of the.....and had no separate identity. For preparation of C.A. Rolls and for detection of ceiling surplus land and to facilitate other ancillary works, Khanda Khatians are generally opened. Hence, after change of definition of 'land' as per Section 2(7) of W.B.L.R. Act, the non-agricultural land recorded in the R.S. Khanda Khatians as 'Akrishi Proja' originated from 'Maliki' or 'Madhyaswatwadhikari' khatians now recorded as raiyat in W.B.L.R. Act shall be accounted for in calculation of the ceiling excess area of a family with effect from 15-2-71 as the amended Section 2(7) comes

effective from 7-8-69.

(8) It is reiterated that all 'Akrishi' land belonging to a raiyat either of W.B.E.A. Act or of W.B.L.R. Act shall be taken into account while calculating the land of raiyat's family with effect from 15-2-71 for determining the ceiling excess land of a raiyat for vesting. Only non-agricultural khas land of a 'Dakhalkar' status, who has become a raiyat on 9-9-80, for the purpose of ceiling calculation, will be taken into account as land of the raiyat and his family with effect from 9-9-80.

This should be strictly followed. Sd/-R Bandyopadhyay Director of Land Records and Surveys and Joint Land Reforms Commissioner, West Bengal.

57. The learned counsel lastly submitted that the plea of res Judicata is not applicable and also unfounded. The concept of res judicata is not confined to Section 11 of the Code of Civil Procedure. The principle of res judicata apply even apart from the Code of Civil Procedure for the purpose of bringing out finality. The learned counsel relied on a judgment in this regard reported in : AIR1981 Cal114 , Debabrata Tripathy v. State of West Bengal. The learned counsel laid stress on the observations made in Paragraphs 2 and 3 of this judgment which are quoted hereinbelow :

'2. Mr. Saktinath Mukherjee, the learned Counsel appearing for the petitioner contended that the power under Section 44(2a) is to revise an entry or entries relating to the finally published record-of-rights. Such power of revision may be exercised either on an application made by an aggrieved party within a prescribed time or suo motu by the Revenue Officer within the specified time. Mr. Mukherjee contended that suo motu power to revise an entry or entries of the finally published record-of-rights can be exercised in appropriate circumstances. But the said power cannot be exercised for the purpose of reviewing a decision already made by a competent Revenue Officer over the self-same matter, Mr. Mukherjee next contended that as a matter of fact, the decision passed by the Revenue Officer in respect of all other properties excepting 'E' Schedule properties, had merged in the decision made by the Appellate Tribunal as stated hereinbefore. So far as Schedule 'E' properties are concerned, Mr. Mukherjee contended, that the Appellate Tribunal had set aside the adjudication made by the Revenue Officer

and had directed the Revenue Officer to decide the case afresh concerning the said 'E' Schedule properties. He submitted that the Revenue Officer accepted the contention of the petitioners that the parties were governed by the Mitakshara School of Hindu law. He further contended that even before the Appellate Tribunal the fact that family was governed by the Mitakshara School of Hindu law was not disputed and the only point of dispute was whether 'E' Schedule properties were personal properties of some of the co-parceners or whether the said properties were also the ancestral properties of the co-parceners who were governed by the Mitakshara School of Hindu Law. Mr. Mukherjee contended that the Appellate Tribunal having accepted the contention of the petitioners that the Revenue Officer did not properly decide the facts and circumstances relating to 'E' Schedule properties set aside the decision of the Revenue Officer concerning the said 'E' Schedule properties and directed the Revenue Officer to decide afresh as to whether or not the said 'E' Schedule properties were self-acquired of some of the coparceners. Mr. Mukherjee contended that in view of the said adjudication made by the Appellate Tribunal upholding the finding that the petitioners were governed by the Mitakshara School of Hindu Law, there could not be any further occasion for the successor Revenue Officer to take a contrary view that the family was not governed by the Mitakshara School of Hindu Law. Mr. Mukherjee in this connection relied on the decision of the Supreme Court made in the case of (1) Gojer Brothers (P) Limited v. Sri Ratan Lal Singh reported In AIR 1971 SC at page 431 (sic) and contended that merger was not a creature of Civil Procedure Code but it is a well accepted principle of jurisprudence. He contended that whenever an order had been tested by the Appellate Authority and the Appellate Authority had disposed of the appeal on merits, the adjudication made by the trial authority would completely merge in the Appellate Order. Mr. Mukherjee contended that in the facts and circumstances of the case, there was no manner of doubt that the earlier adjudication made by the Revenue Officer in the said 44 (2a) proceedings had merged in the adjudication made by the Appellate Tribunal on the question of personal law of the parties and after the Appellate Order, the Revenue Officer had only carried out the direction of the Appellate Tribunal to make a finding as to the manner of acquisition of the 'E' Schedule properties. The learned Counsellor the petitioners also referred to another decision of the Supreme Court made in the

case of (2) Smt. Ujjam Bai v. State of Uttar Pradesh, reported in AIR 1962 SC 1621. It was held by the Supreme Court in the said decision that jurisdiction means authority to decide and whenever a judicial or quasi judicial Tribunal is empowered or required to enquire into a question of Law or fact for the purpose of giving a decision on it, its findings thereon cannot be impeached collaterally or on an application for certiorari. It was also held that where a quasi-judicial authority has jurisdiction to decide a matter, it does not lose its jurisdiction by coming to a wrong conclusion, whether it is wrong in law or in fact. The Supreme Court further held that the characteristic attribute of a judicial Act or decision is that it binds whether it be right or wrong. An error of law or fact committed by a judicial or quasi-judicial body cannot, in general, be impeached otherwise than on appeal unless the erroneous determination relates to a matter on which the jurisdiction of that body depends. The Supreme Court further held that the said principles govern not only the finding of inferior Courts *stricto sensu* but also the findings of administrative bodies which are held to be acting in a judicial capacity. Such bodies are deemed to have been invested with power to err within the limits of their jurisdiction; and provided that they keep within those limits, their decisions must be accepted as valid unless set aside on appeal. After reviewing a number of decisions, the Supreme Court held in the said case that the doctrine of *res Judicata* has been applied to such decisions.'

'3. The learned Counsel for the petitioners also referred to a decision of this Court made in the case of (3) Benode Bihari v. State of West Bengal, reported in : AIR 1971 Cal 400 . In the said decision the initiation of a subsequent proceeding under Section 5A of the West Bengal Estates Acquisition Act by a successor Revenue Officer was considered by this Court and it was held that the Estates Acquisition Act did not permit successive proceedings only because the successor Revenue Officer was of the view that the earlier adjudication was erroneous. It was held that Section 5A of the Estates Acquisition Act empowered the competent Revenue Officer to adjudicate and to decide whether the transfer in question had really come within the mischief of Section 5A of the Act and if an adjudication in that regard had already been done by a competent Revenue Officer, the same issue could not be allowed to be re-agitated only because the successor in office chose to dislike or disagree with the view taken by the predecessor. It was

submitted by the learned Counsel for the petitioners that in the instant case, a competent Revenue Officer came to the finding that the petitioners were governed by the Mitakshara School of Hindu Law and as such they were coparceners having interest in the property. The said adjudication was further tested by the Appellate Tribunal and was also upheld by the Appellate Tribunal. The successor Revenue Officer thereafter had been trying to reopen the matter and review the correctness of the said adjudication. It was contended by Mr. Mukherjee that the purported 44(2a) suo motu proceeding was not initiated on any prima facie finding about any other error or errors relating to an entry or entries in the finally published revisional record-of-rights but the said purported suo motu proceeding was sought to be initiated by the successor Revenue Officer solely on the ground that recording the names of the petitioners on the footing that they were coparceners was not correct and as such the records should be revised. Mr. Mukherjee contended that in the aforesaid facts and circumstances, it must be held that the said proceeding initiated by the successor Revenue Officer was absolutely illegal and without jurisdiction and the Rule should be made absolute.'

58. The learned counsel submitted that in view of his contentions made above, all the three appeals should be allowed and the judgments and decree delivered by the 2nd appellate Court below should be set aside.

59. The learned counsel for the respondents Mr. Dasgupta submits that these second appeals should not be entertained or should be dismissed inasmuch as there is no substantial question of law involved in these second appeals.

60. The learned counsel submitted that having regard to the judgment and decree dated 6-8-1956 in Title Suit No. 784 of 1956 of the 2nd Court of Munsif at Sealdah passed in favour of Monmothnath Ghosh against Ledu Karmakar and affirmed in Title Appeal No. 884 of 1956, where the claim of tenancy made by Ledu Karmakar (under whom Usha Ghosh claims his successor -in-interest) in respect of the suit land was rejected. The entries relied on by the appellants cannot stand.

61. The learned senior counsel on behalf of the respondents submitted that the question of title was decided in the Civil suit viz. Title Appeal No. 884 of 1956, arising out of Title Suit. No. 784 of 1954 between the said parties and hence the

entries in record-of-rights, relied on behalf of the appellant, on question of status of Ledu Karmakar in respect of the land in the present suit has no value. The learned counsel in this regard relied on a decision reported in (1922) 35 Cal LJ 200 : AIR 1921 Cal 761 (1), Jaladhar Bhowmick v. Birendra Nath Rai Chauduri. The learned counsel relied on the observations made in this judgment by Hon'ble Division Bench of this High Court in the penultimate paragraph of this judgment which is quoted hereinbelow :

'The defendants contend, however, that as on the 29th May, 1914, that is, during the pendency of the second appeal in the previous litigation, a record-of-rights was finally published containing entries which support their allegations, the decree of this Court is of no effect. The Courts below have overruled this contention and have held that the record-of-rights cannot nullify the effect of the previous decision as res judicata. We are of opinion that the contention of the defendants is untenable. Our attention has not been drawn to any authority, nor has reference been made to any principle which lends support to the view that the effect of the publication of the record-of-rights is to sweep away all previous decisions between the parties, Such a consequence would not have followed, even if the entry in the record-of-rights had the effect of a decision in a suit between the parties : Balkishan v. Kishan Lal. We hold accordingly that the view taken by the Subordinate Judge is correct, that his decree must consequently be confirmed and this appeal dismissed.'

62. The learned counsel also relied on a decision reported in : AIR1967 Cal10 , Kazi Mohammad Hossain v. Sibram Bandopadhyaya. The learned counsel referred to the observations made in paragraph 14 of this judgment. The observations of said paragraph 14 is quoted hereinbelow :

'14. In support of this view I shall refer to the Division Bench decision in Jaladhar Bhowmick v. Birendra Nath Rai Chaudhuri, (1922) 35 Cal LJ 200 : AIR 1921 Cal 761 (1). This case is an authority for the proposition that the effect of the publication of the record of rights is not to sweep away all previous decisions between the parties. At page 201 of the report Mookherjee A.C.J. observed as follows : 'The defendants contend, however, that as on the 29th May, 1914, that is,

during the pendency of the second appeal in the previous litigation, a record of rights was finally published containing entries which support their allegations, the decree of this Court is of no effect. The Courts below have overruled this contention and have held that the record of rights cannot nullify the effect of the previous decision as *res judicata*. We are of opinion that the contention of the defendants is untenable. Our attention has not been drawn to any authority, nor has reference been made to any principle which lends support to the view that the effect of the publication of the record of rights is to sweep away all previous decisions between the parties. Such consequence would not have followed, even if the entry in the record of rights had the effect of a decision in a suit between the parties *Balkishan v. Kishan Lal*, ILR(1889) 11 All 148.'

63. The learned counsel on the same context then relied on another decision of the learned Single Judge of this High Court reported in (1961-62) 65 Cal WN 738, *Jitendra Nath Rakshit v. Sudhir Kr. Rakshit*. The learned counsel laid stress on the right column of the 2nd paragraph of this judgment which is quoted hereinbelow for the sake of discussion.

The learned District Judge interpreted the words 'an order passed in revision' as an order actually revising an entry in the finally published settlement khatian. He observed that unless the interpretation was adopted, the words 'in revision' would be superfluous and it would have been sufficient for the sub-section to say that any person aggrieved by an order passed under Sub-section (2a) may appeal in the prescribed manner. It is true that the words 'in revision' might have been left out, but the point whether the words must necessarily be interpreted as meaning an order revising an entry in the finally published settlement khatian. Under Sub-section (2a) of Section 44 a party aggrieved by an entry in the finally published settlement khatian may file a revisional application before the specially empowered officer; and the officer may, after hearing both parties, reject the revisional application so that he does not revise the entry in the settlement record. But still the order passed by him can only be described as an order passed in revision under sub-section (2a) of Section 44. In the circumstances, we hold that an appeal under Sub-section (3) would lie even when the specially empowered officer rejects the revisional application and does not actually revise any entry in

the finally published settlement record.

The learned District Judge gave another ground for dismissing the appeals, namely, that title suits over the disputed property had been filed by both the parties and that the parties should await the decision in those title suits. In fact, the specially empowered officer refused to revise the entry in the finally published settlement record principally on that ground, namely, that title suits over the disputed property had been filed by both the parties and that the parties should await the decision in those title suits. In fact, the specially empowered officer refused to revise the entry in the finally published settlement record principally on that ground, namely, that both parties had filed title suits over the disputed property and intricate questions of title were involved which could best be decided by the Civil Court. The learned District Judge observed that he could not find fault with the specially empowered officer for having left the C.S. records undisturbed in the circumstances. We think that in view of the pendency of the title suits filed by both the parties in respect of the disputed property, the question of title and possession should be left to be finally decided in the suits. It was quite proper on the part of the said specially empowered officer and the learned District Judge not to try and decide the question in the summary proceeding under Section 44 of the Estates Acquisition Act.'

64. The learned counsel relying on this judgment submitted that in T.A. No. 884 of 1956 the learned subordinate Judge at Alipore inter alia held in the manner as follows :-

'The suit is about two chataks of land, described by boundaries, within C.S. Plot No. 235 of Mouza Chanak.....The defendant states that he has gone upon the land after taking settlement of from the plff.'s agent Sushil Sarkar. He has failed to make out his case of settlement.....I hold that the deftd, has totally failed to prove that he was given settlement of suit land or four cattahs of suit-dag by the plff. or Sushil (PW.1).....I therefore, find that the deftd. Wrongfully trespassed on the land..... The suit was filed in September, 1954 and the dispossession took place in December, 1953.....I am of opinion that the defendant has failed to prove his tenancy right in the suit land and that he must be

evicted.'

65. The learned counsel submitted that such being the position, the present claim of Usha Ghosh is barred by res judicata under Section 11 of the Code of Civil Procedure.

66. The learned counsel then submitted that Sudhir Chowdhury, the defendant No. 4 in the above Title Suit numbered 614 of 1978 in his written statement as also in his deposition as P.W.6 admitted that he had not obtained possession of the suit lands excepting the portion held by her husband in the dispensary.

67. The learned senior counsel further submitted that the entries in the record-of-rights, which is not a document of title has only a statutory presumption. The entries are clearly wrong in view of the decision in the above T.A. No. 884 of 1956.

68. The learned counsel placed reliance on the decision reported in : AIR1956 Cal669 , (Pankajini Debi v. Sudhir Dutta). For the proposition that the record-of-rights is not a document of title and also if the person in whose name the record-of-rights stands admits that the presumption can be rebutted by an admission of the party (here Monrhothonath Ghosh) is in whose favour the settlement entry stands. 69.' The learned counsel then submitted that the argument on behalf of the appellant that the interest of Monrhothonath Ghosh vested in the State under the provision of West Bengal Estates Acquisition Act is also barred by constructive res judicata in view of the earlier decision between the same parties/their predecessor-in-interest that is Monrhothonath Ghosh v. Ledu Karmakar in Title Suit No. 783 of 1954 and in Title Appeal No. 384 of 1956.

70. The learned counsel then placed reliance on Section 11(iv) of the Code of Civil Procedure which is constructive res judicata as provided in C.P.C. For the sake of discussion the said Section 11(iv) is quoted hereinbelow :

'No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which

such issue has been subsequently raised, and has been heard and finally decided by such Court.'

71. The learned counsel submitted that Sudhir Chowdhury, the defendant No. 4 in the title Suit No. 614 of 1978 in his written statement as also in his deposition as P.W.6 admitted that he had not obtained possession from Anil Sarkar that he could not deliver possession of the suit lands excepting the portion held by her husband in the dispensary.

72. The learned counsel further submitted that the entries in the record-of-rights, which is not a statement of title, has only a statutory presumption. The entries are clearly wrong in view of the decision of the Title Appeal No. 884 of 1956 referred to above by him.

73. The learned counsel then submitted that insofar as recording in the name of Ledu Karmakar, the record-of-rights stands as 'Dakhalkar Chandina' and insofar as the Dakhalkar Chandina the rules relevant are as follows :

74. According to the learned counsel the Technical Rules and Instructions of the Settlement Department, issued by the Director of Land Records are as follows :-

'Rule 27. 'Occupants of non-agricultural lands.- In non-agricultural lands, the status should be recorded as dakhalkar in column 15. This can be explained further by the addition in column 16 of such words as basat, chandina etc.'

75. The learned counsel submitted that the submission on behalf of the appellant that Monmothnath Ghosh was an intermediary and that he was required to retain the suit lands are not tenable for the reasons set out below :-

The learned counsel then referred to Clauses (b), (i), (j), (k), (p) of Section 2 of the West Bengal Estates Acquisition Act. For the purpose of discussion the said provisions are quoted hereinbelow :

'(b) 'Agricultural-land' means land ordinarily used for the purposes of agriculture or horticulture and includes such land, notwithstanding that it may be lying fallow for the time being;

(i) 'intermediary' means a proprietor, tenure-holder, under-tenure-holder or any other intermediary above a raiyat or a non-agricultural tenant and includes a service tenure-holder and, in relation to mines and minerals, includes a lessee and a sub-lessee;

(j) 'non-agricultural land' means land other than agricultural land or other than land comprised in a forest;

(k) 'non-agricultural tenant' means a tenant of non-agricultural land who holds under a proprietor, a tenure-holder, a service tenure-holder or an under-tenure-holder;

(p) expression used in this Act and not otherwise defined have in relation to the areas to which the Bengal Tenancy Act, 1885, applies, the same meaning as in that Act and in relation to other areas meaning as similar thereto as the existing law relating to land tenures applying to such areas, permits.

76. The learned counsel submitted that Section 3(11) of the Bengal Tenancy Act provides proprietor means a person owning, whether in trust or for his own benefit, an estate or a part of an estate.

77. The learned counsel then submitted that admittedly the suit property is non-agricultural in character as in the remarks column of the record-of-rights, there is an entry that a room stands thereon. Further in the record-of-rights in the column of status the words 'Dakhalkar Chandina' is mentioned which implies that the land is non-agricultural in character as stated above.

78. The learned counsel further submitted that the question of retention of the suit property by Monmothnath Ghosh does not arise for the reasons that the status of Monmotho Ghosh or for the matter of that can never be that of an 'intermediary' as contended on behalf of the appellant and for such proposition the learned counsel relied on the decision reported in : [1967]2SCR558 , Shibsankar Nandy v. Prabartak Sangha. The learned counsel mainly placed reliance on the observations made in paragraph 9 of this judgment which is quoted hereinbelow :

'9. Counsel however, contended that the first respondent having merely the right to receive rent, it was an 'intermediary' within the meaning of Act 1 of 1954, that under that Act the interests of such an intermediary vested in the State on the extension of that Act to Chandernagore and therefore the Association had no locus standi to apply for transfer. This contention also cannot be accepted, for an 'intermediary' as defined in Section 2(1)(i) of that Act means 'a proprietor, tenure-holder, under-tenure-holder, or any other intermediary above a raiyat or a non-agricultural and in relation to mines and minerals, a lessee or a sub-lessee.' It is thus obvious that the 1st respondent being itself a non-agricultural tenant in respect of the entire land including the land in dispute it does not fall within this definition. Not being thus an intermediary it is impossible to say that its interests in the land in dispute vested in the State or that therefore it was not entitled to apply under Section 24.'

79. The learned counsel also relied on a decision reported in (1971) 75 Cal WN 952, Fakir Chandra Chakravarty v. Pandit Sri Lakshmi Kant Jha. The learned counsel mainly laid stress on the observations made in Paragraph 7 & 8 of this judgment which are quoted hereinbelow :

'7. Having heard the learned Advocates and having considered the materials before us, we are clearly of the opinion that the matter has been really approached in the three Courts below from a standpoint, which does not seem to be strictly relevant. The only question, which ought to have been considered in the facts of this case, was whether plaintiff No. 2 was an intermediary within the meaning of the West Bengal Estates Acquisition Act as if he was an intermediary, his interest would, obviously, vest in the State with effect from 1st Baisakh, 1362 B.S., be the disputed property a tank fishery or not, and he would be disentitled to realise rent from the appellant for the disputed year, namely, 1362 B.S. if, on the other hand, he is not an intermediary, he will be entitled to realise the said rent from defendant No. 1 appellant irrespective of the question whether the disputed property is a tank fishery or not within the meaning of the aforesaid Act. We have, therefore, to consider only whether plaintiff No. 2 is an intermediary under the above Act.'

'8. The disputed tank would, obviously, come within the definition of 'non-agricultural land', as contained in Section 2 Clause (j) and the plaintiff No. 2, upon that footing, would obviously, come within the definition of 'non-agricultural tenant', as defined in Section 2 Clause (k) of the said Act. The defendant No. 1 would also be a non-agricultural tenant on the same reasonings. If, therefore, a non-agricultural tenant of a superior degree be an intermediary under the said statute, the last non-agricultural tenant in actual occupation of the demised land being only excepted from the relative definition, as contained in Section 2 Clause (i), the instant appeal should succeed, otherwise this appeal must fail. As we had occasion to say in a previous case, if the matter had been *res integra*, something could have been said in support of the above view having regard to the wording of the definition of intermediary in the aforesaid Section 2(1) and that might have been of assistance to the appellant. There is, however, the recent decision of the Supreme Court reported in *Shibsankar Nandy v. Prabartak Sangha*, AIR 1967 SC 940 where, at p. 948 this point appears to have been considered in a short paragraph and their Lordships' conclusion was that non-agricultural tenant of whatever degree would be excepted from the above definition of intermediary under the above Act. We are bound by the said decision and, accordingly, we have to hold in the instant case that plaintiff No. 2 would not be a intermediary with the result, as already stated, that he will be entitled to realise rent from defendant No. 1 for the year 1362 B.S.

Upon that view, this appeal must fail and it will be dismissed.

There will, however, be no order for costs, either in this Court or in any of the Courts below.'

80. The learned counsel submitted that it has been held that whether the land-in-question is non-agricultural, the same would come within the definition of 'non-agricultural land' as contended in Section 2 Clause (j) and that in view of the decision in *Shibsankar Nandy's case* : [1967]2SCR558 (*supra*) their Lordships' conclusion was that non-agricultural tenant of whatever degree would be excepted from the above definition of intermediary under the above Act.

81. The learned counsel relied on the judgment reported in (1970) 74 Cal WN 806, Md. Idris, Md. Muslim Javed v. Sm. Lakhpati. The learned counsel specially referred to the provisions of paragraph 2, 4 and 5 of this judgment which are quoted hereinbelow :

'2. A short question arises in this appeal, namely whether 'intermediary' under the [West Bengal Estates Acquisition Act, 1953](#), as defined under Section 2 Clause (i), includes a non-agricultural tenant above the last non-agricultural tenant in occupation or possession of the disputed land. The suit, out of which this appeal arises was a suit for ejectment or eviction of the defendant-respondent from the disputed land, the plaintiff-appellant, claiming to have terminated the defendant-respondent's non-agricultural tenancy by an appropriate notice under Section 9 sub-section (1) Clause (ii) to entitle him to recover possession of the disputed land from the defendant-respondent under the said section.'

'4. Admittedly, on the findings made by the three Courts below, the plaintiff and the defendant are both non-agricultural tenants in respect of the disputed land, the plaintiff being the non-agricultural tenant of the superior degree and, in that capacity, the landlord of the defendant. According to our learned brother R. N. Dutt J. and the learned Subordinate Judge, a non-agricultural tenant, who is not the actual occupant of the land, or, in Other words, a non-agricultural tenant above the last non-agricultural tenant in occupation of the disputed land, would come within the definition of 'intermediary', as given in Section 2 Clause (i) of the West Bengal Estates Acquisition Act, and, upon that view, they held that the plaintiff would be an intermediary with the consequence that his interest must be held to have vested in the State, thus depriving him of his right and locus standi to institute the present suit. In this case, no other question would arise as the defendant's tenancy was terminated, admittedly, after the date of vesting, as given in the above Act. We have, therefore, to consider whether the view of this Court and of the learned Subordinate Judge on the meaning of the word 'intermediary' under the above Act, as stated hereinbefore, was correct or whether the contrary view of the learned Munsiff is to be accepted.'

'5. If the matter had been res integra, a good deal, possibly, might have been said in support of the view, taken by our learned brother R. N. Dutt J. and the learned Subordinate Judge in view of the words 'any other intermediary apart from a proprietor, tenure-holder, under-tenure-holder above a non-agricultural tenant', as contained in the relevant definition in Section 2(i) of the above Act. The point, however, is no longer open in view of the decision of the Supreme Court, reported in (1) *Sibsankar Nandy v. prabartak Sangha* : [1967]2SCR558 , where Paragraph 9 at p. 943 clinches the issue in favour of the appellant. Their Lordships of the Supreme Court in that paragraph expressed the view that a person, who is a non-agricultural tenant, irrespective of the degree of such tenancy, would be excluded from the definition of intermediary in Section 2(i) noted above. In view of the said decision, we are bound to hold that the plaintiff would not be an intermediary under the above Act and his interest cannot be said to have vested in the State.'

82. The learned counsel submitted that relying, on the above Supreme Court judgment this Court held that a person, who is a non-agricultural tenant irrespective of the degree of such tenancy would be excluded from the definition of intermediary in Section 2(i) of the Act.

83. The learned counsel then relied on a judgment of the Hon'ble Division Bench of this High Court reported in 1976 (1) Cal LJ 58, *Amulya Kr. Sur v. Dilip Kr. Sur*. The learned counsel mainly laid stress on the observations made in paragraphs 5 and 6 of this judgment which are quoted herein-below :

'5. Mr. N. C. Chakrabortti, learned Advocate appearing on behalf of the defendant No. 1 appellant has strenuously urged that the interest of the plaintiff in the suit property having vested in the State of West Bengal under the provisions of the [West Bengal Estates Acquisition Act, 1953](#), the suit was not maintainable at his instance. There can be no doubt that the party who alleges the vesting of the interest of the other party and the non-maintainability of the suit on that ground, the onus lies on him to prove the same. It is contended on behalf of the appellant that as the plaintiff had only the rent receiving interest, he was an intermediary within the meaning of the definition of the term under Section 2(i) of the West Bengal Estates Acquisition Act. Under Section 2(i) 'intermediary' means a

proprietor, tenure-holder, under-tenure-holder or any other intermediary above a raiyat or a non-agricultural tenant and includes a service tenure-holder and, in relation to mines and minerals, includes a lease (lessee) and a sublease (lessee). It thus appears from the definition that a non-agricultural tenant is not an intermediary. The term 'non-agricultural tenant' has been defined in Section 2(k) of the said Act as meaning a tenant of non-agricultural land who holds under a proprietor, a tenure-holder, a service tenure-holder or an under-tenure-holder. Under Section 2(j), 'non-agricultural land' means land other than agricultural land or other than land comprised in a forest. Section 2(b) defines 'agricultural land' as meaning land ordinarily used for purposes of agriculture or horticulture and includes such land, notwithstanding that it may be lying, fallow for the time being. The combined effect of the definitions of these terms is that if a land is non-agricultural land, that is, not ordinarily used for purposes of agriculture or horticulture, the person who holds such land under a proprietor, a tenure-holder, a service tenure-holder or an under-tenure holder is a non-agricultural tenant.

In paragraph 5 of the written statement, it has been categorically stated by the defendant No. 1 that the property in suit is a jalkar for a longtime. It is also not disputed before us on behalf of the appellant that the suit property was a jalkar on the date of vesting under the said Act and is being used as such. There can be no doubt that ordinarily land comprised in a jalkar is non-agricultural purpose. It is not the case of the appellant that the property in suit which is a jalkar, was ever used for agricultural purposes; on the other hand, it is the contention of both parties that it is a jalkar from long before the date of vesting. In these circumstances, it must be held that the property in suit is non-agricultural in character. The plaintiff and his co-sharers were lessees in Mourasi Mokurari right in respect of the suit property, holding under the proprietor thereof. In the absence of any other evidence, prima facie it appears that the respondents Nos. 1 (1) to 1 (7) who are the legal representatives of the plaintiff and their co-sharers are non-agricultural tenants in respect of the suit property.'

'6. It is, however, contended by Mr. Chakrabortti that a non-agricultural tenant who was not in actual possession of the non-agricultural land comprised within the tenancy on the date of vesting, is also an intermediary. We are unable to accept

this contention. The definition of the term referred to above, does not provide that the non-agricultural tenant must also be in actual possession. As soon as it is found that a person is a non-agricultural tenant in respect of the land, he goes out of the mischief of the Act, notwithstanding the fact that he was not in actual possession and had different grades of tenants under him on the date of vesting. In this connection, we may refer to a decision of the Supreme Court in (1) *Shibsankar Nandy v. Prabartak Sangha* : [1967]2SCR558 . In that case, one of the questions that came up for consideration before the Supreme Court was, whether the respondent No. 1 was entitled to make an application for pre-emption under Section 24 of the West Bengal Non-Agricultural Tenancy Act, 1947. The respondent No. 1 was admittedly not in possession of the land in dispute. The Supreme Court observed as follows :

'Counsel however contended that the first respondent having merely the right to receive rent, it was an 'intermediary' within the meaning of Act 1 of 1954, that under that Act the interests of such an intermediary vested in the State on the extension of that Act to Chandernagore and therefore the Association had no locus standi to apply for transfer. This contention also cannot be accepted, for an 'intermediary' as defined in Section 2(i) of that Acts means 'a proprietor, tenure-holder, under-tenure-holder, or any other intermediary above a raiyat or a non-agricultural tenant and in relation to mines and minerals, a lessee or a sub-lessee.' It is thus obvious that the 1st respondent being itself a non-agricultural tenant in respect of the entire land including the land in dispute it does not fall within this definition. Not being thus an intermediary it is impossible to say that its interests in the land in dispute vested in the State or that therefore it was not entitled to apply under Section 24.'The above decision of the Supreme Court clearly laid down that even if on the date of vesting a non-agricultural tenant was not in possession of the land and had only the rent receiving interest, still he cannot be held to be an intermediary within the meaning of the definition of the term under Section 2(i). There is therefore, no substance in the contention of Mr. Chakrabortti that as the plaintiff was not in actual possession of the property in suit, he was an intermediary and that his interest vested in the State. The appellant has, therefore, failed to discharge his onus as to the vesting of interest of the plaintiff in the State under the provisions of the [West Bengal Estates Acquisition Act, 1953](#).'

84. The learned counsel relying on this judgment submitted that the onus lies on the person who alleges vesting of interest of the other party to prove the same.

85. The learned counsel submitted that it was held that even if a non-agricultural tenant is not in actual possession of the non-agricultural land comprised within the tenancy on the date of vesting, his interest does not vest in the State.

86. The learned counsel submitted that the above view has been reiterated in *Sk. Abdul Sovan v. Sk. Abdul Malek* reported in (1986) 90 Cal WN 939.

87. The learned counsel submitted that in view of the observations of the different Courts the principle which comes out goes to say that the interest of Monmotho Ghosh vested in the State is not correct. Monmotho Ghosh was not an intermediary under the West Bengal Estates Acquisition Act, hence, the question of his retention of the suit land does not arise.

88. The learned counsel further submitted that the appellate Court below found that Monmotho Ghosh was a benamdar of Sushil Krishna Sarkar, father of the plaintiff. The learned counsel submitted that in view of the decision of the Hon'ble Apex Court reported in 0044/1956 : [1956]1SCR691 , *Sree Meenakshi Mills Ltd., Madurai v. Commissioner of Income-tax, Madras*, such finding being one of fact cannot be assailed in the present Second Appeal. For the convenience of the discussion the said observations made in paragraphs 25, 26 and 27 are quoted hereinbe-low :

'25. Applying these principles, admittedly there is no question here of construction of any statutory provision or document of title. The issues which arise for determination whether the sales entered in the books of the appellant in the names of the intermediaries were genuine and if not, to whom the goods were sold and for what price, are all questions of fact. Their determination does not involve the application of legal principles of facts established in the evidence. The findings of the Tribunal are amply supported by, evidence and are eminently reasonable. It should, therefore, follow that there is no question which could be referred to the Court under Section 66(1).'

'26. It was argued for the appellant that what the Tribunal had found was that the intermediaries, firms and companies were benamidars for the appellant, that a question of benami was one of mixed law and fact, and that accordingly a finding thereon was open to review under Section 66 (1). Whether that is a correct reading of what the Tribunal had found will presently be considered. Assuming that such is the finding what is the ground for holding that a finding of benami is one of mixed law and fact? The only basis for that a transaction is benami is a matter of inference from various primary basic facts such as who paid the consideration, who is in enjoyment of the properties and the like. But that is not sufficient to make the question one of mixed law and fact unless, as already stated, there are legal principles to be applied to the basic findings before the ultimate conclusion is drawn. But no such principles arise for application to the determination of the question of benami, which is purely one of fact, and none has been suggested by the appellant.'

'27. In *Gangadara Ayyar v. Subramania Sastrigal* the Federal Court had to consider whether concurrent findings of benami by the Courts below could be reviewed by it, and it was held that it could not be done as the practice of the Court was not to interfere with the concurrent findings of fact unless there were exceptional grounds therefor and that there were none such in that case. It should be noted that the finding of benami in that case was a matter of inference from primary facts found which are set out at page 573 (of Mad LJ) : (at p. 92 of AIR). But it was nevertheless held to be a question of fact. In *Misrilal Nayak v. Mt. Surji* AIR 1950 PC 28 : (1950) 1 Mad LJ 294 (X) it was held by the Privy Council that a finding of benami was one of fact not open to attack in second appeal. This contention of the appellant must accordingly be rejected.

89. The learned counsel further submitted that the alleged sale in Certificate Case No. 786 of 1963-64 against Ledu Karmakar is without jurisdiction, a nullity and did not affect the right, title and interest of Monmotho Ghosh or the real owner Sushil Krishna Sarkar in respect of the suit property and the learned counsel in support of his such contention gave out certain reasonings which are as follows :

It was found in the suit including appeal mentioned above that Ledu Karmakar had no right, title and interest or possession in the suit property and consequently he had no saleable interest in the certificate sale;

90. It was then submitted that possession having already been recovered from Ledu Karmakar's heirs in 1961 in Title Execution Case No. 225 of 1960 as mentioned above, i.e. long before the initiation of the Certificate Case Ledu Karmakar had no interest in the suit land and as such the Certificate Case was itself bad, illegal, void and a nullity.

91. The learned counsel then referred to the provisions of Section 20(1) of the Public Demands Recovery Act. The said provision is quoted hereinbelow :

'Where property is sold in execution of a certificate, there shall vest in the purchaser merely the right, title and interest of the certificate-debtor at the time of sale, even though property itself is specified.'

92. The learned counsel then referred to the decision reported in (1909) 10 Cal LJ 201, *Mussammat Raja Koer v. Gunga Singh* and submitted that in the said judgment it has been laid down that 'it is settled law that effect of a sale under the Public Demands Recovery Act is to pass to the purchaser merely the right, title and interest of the persons named as the judgment debtors in the certificate. Where therefore such persons had no subsisting interest in the properties :

Held, the purchaser acquired no title whatsoever. The real owners of the property are not estopped from setting up their title because they did not register their names in the Collectorate.

The doctrine of representation and the principle of estoppel are not to be extended to cases of sales under the Public Demands Recovery Act.'

93. The learned counsel then submitted that the present suit is not hit by the provisions of Section 34 to 37 of the Public Demands Recovery Act. Sections 34 and 35 speak of suit or proceeding by Certificate-debtor for cancellation or modification of certificate. The questions of limitation and of the grounds for such cancellation do not arise here. The suit being not for recovery of possession in

consequence of sale in a certificate proceeding, the provisions of Section 36 is not attracted.

94. The learned counsel submitted that Section 37 of the Act applies only to questions arising between the certificate holder and certificate debtor or their representatives relating to the making, execution, discharge or satisfaction of a certificate etc.

95. According to the learned counsel, none of the above principles apply in the instant case.

96. The learned counsel referred to the decisions reported in : AIR1924 Cal638 , Joggeswar Mahato v. Jhapal Santhal : AIR1928 Cal808 , Harendra Kumar Rai v. The Secretary of State and (1898) 25 LA. 151, Balkishen Das v. Simpson. It was held that if the Certificate-Debtor did not owe anything to the certificate-holder there will be no jurisdiction to sale. '

97. The learned counsel then placed reliance in a Privy Council judgment reported in , Secretary of State v. Mask & Co.. It was submitted that in this case the following observations have been made :

'The exclusion of the jurisdiction of the Civil Courts is not to be readily inferred but such exclusion must either be explicitly expressed or clearly implied. Even if jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.'

98. It was submitted again by the learned counsel that same principle has been adopted by the Hon'ble Apex Court in the decision reported in : [1969]1SCR785 , Musamia Imam v. Rabari Govindbhai and the learned counsel laid stress on the observations made in paragraph 7 of this judgment.

99. The learned counsel submitted that in Gur Narayan v. Sheo Lal Singh reported in (1919) 46 Ind App 1, the Judicial Committee observed 'So long as a benami transaction does not contravene the provisions of law the Courts are bound to give

effect. As already observed, the benamidar has no beneficial interest in the property or business that stands in his name; he represents, in fact, the real owner, and so far as their relative legal position is concerned he is a mere trustee for him. Their Lordships find it difficult to understand why in such circumstances an action cannot be maintained in the name of the benamidar in respect of the property although the beneficial owner is no party to it. The bulk of judicial opinion in India is in favour of the proposition that in a proceeding by or against the benamidar, the person beneficially entitled is fully affected by the rules of *res judicata*. With this view their Lordships concur.....whether he is made a party or not, a proceeding by or against his representative in its ultimate result is fully binding on him. In case of a contest between an alleged benamidar and an alleged real owner, other considerations arise with which their Lordships are not concerned in the present case.'

100. The learned counsel then submitted that the Nagpur judgment reported in AIR 1937 Nagpur 63 (*supra*) has no manner of application in this case as the law relating to Ryatwari tenure as appears from the judgment itself.

101. According to the learned- counsel ryatwari tenure commences by allotment by the Deputy Commissioner of Unoccupied Land in a ryatwari village. It must have its origin in a contract between the Government represented by the Deputy Commissioner on the one hand and the ryot on the other.

102. It was further submitted that the law in West Bengal relating to riayti holding is altogether different.

103. The learned counsel lastly submitted that the allegations have been made on behalf of the appellant that Monmotho filed application/appeal for setting aside the sale and failed. Such fact is not proved by any evidence. Usha Ghosh in her deposition only stated that Monmotho Ghosh applied before the Certificate Officer for stay of the sale to file an appeal and such application was rejected.

104. The learned counsel for the respondents submitted that Monmotho was not an intermediary and the appellant's attempt to make him intermediary to establish *Ledu* is beyond the scope of any law.

105. The learned counsel submitted that three appeals should be dismissed with costs.

106. Heard the learned counsel for the parties in extenso. Now, from the submission this Court is to find out whether there is any substantial question of law in these appeals so that this Court can interfere with the judgment. Now, let me scan the submissions in the light of the judgments or in the light of the facts or admitted records regarding involvement of substantial questions of law.

107. It has been submitted by the learned counsel for the appellant that Monmotho was an intermediary, his right vested in the State and Ledu remained under the sovereign state but I find it is admitted position that Ledu had no right, title and interest and his possession was recovered by virtue of Title Execution Case and this recovery of possession was admittedly made from the heirs of Ledu Karmakar. If Ledu Karmakar had no right, title and interest, Usha Ghosh cannot derive a valid title from Ledu whether in certificate sale or not. With respect, I agree with the principle laid down in 60 CWN 793 (supra) where the Hon'ble Division Bench of this High Court observed that the settlement record is not a document of title. It does not create or extinguish title to land. At the most, it must be relevant as some evidence of title to the recorded plots of land and may raise a presumption of title by virtue of the statutory presumption of correctness attaching to its entries under 103(B)(5) of the Bengal Tenancy Act. Such evidence is rebuttable and can be rebutted. I also agree to the principle laid down in Shib Sankar Nandy's case : [1967]2SCR558 (supra) and I don't find that Monmotho was an intermediary.

108. The question of benami insofar as Monmotho's holding as benamidar is concerned, I respectfully agree with the submissions made by the learned counsel for the respondents that the question of benami is a question of fact and the same has been decided by the lower appellate Court which is the last Court of finding of fact and this Court should not enter into the question of benami. The position in the record-of-rights is this that Ledu Karmakar's name was recorded with the observation in 13th column as 'Dakhalkar Chandina' and in 16th column recording was there regarding a, tin shed. If that is the position of record-of-rights, the

provisions of Section 24 of the Non-Agricultural Tenancy Act is attracted and in this regard I, respectfully agree with the judgment reported in (170) 74 Cal WN 166 (supra) where it has been observed that a person, who is a non-agricultural tenant, irrespective of the degree of such tenancy, would be excluded from the definition of intermediary in Section 2(i) of the West Bengal Estates Acquisition Act.

109. All these principles are settled and decided.

110. In Shib Sankar Nandy's case (supra) also, it has been observed that non-agricultural tenant of 'whatever degree' would be excepted from the definition of intermediary under the Act.

111. I also respectfully agree with the observations made in Fakir Chand Chakravarty's case (supra) where also it has been held that the land-in-question is non-agricultural and the said land would come within the definition of non-agricultural land as contained in Section 2, clause (J) of the Act.

112. I also find that whether the question of benamidar is a question of fact or not has already been decided by the Courts below and in the Meenakshi Mill's case 0044/1956 : [1956]1SCR691 (supra) it has been held that this question cannot be again raised in second appeal.

113. Reference may be drawn to the decision reported in : [2001]251ITR84(SC) (Santosh Hazari v. Purushottam Tiwari) where the Hon'ble three Judges' Bench has decided as to what is substantial question of law and I am tempted to quote the relevant observations regarding substantial question of law which has been made in paragraph 12 of this judgment, which is quoted hereinbelow :

'12. The phrase 'substantial question of law', as occurring in the amended Section 100 is not defined in the Code. The word substantial, as qualifying 'question of law', means - of having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with - technical, of no substance or consequence, or academic merely. However, it is clear that the Legislature has chosen not to qualify the scope of 'substantial question of law' by suffixing the words 'of general importance' as has been done in

many other provisions such as Section 109 of the Code of Article 133(1)(a) of the Constitution. The substantial question of law on which a second appeal shall be heard need not necessarily be a substantial question of law of general importance. In *Guran Ditta v. R. Ram Ditta* (AIR 1928 PC 172), the phrase 'substantial question of law' as it was employed in the last clause of the then existing Section 110, CPC (since omitted by the Amendment Act, 1973) came up for consideration and their Lordships held that it did not mean a substantial question- of general importance but a substantial question of law which was involved in the case as between the parties. In *Sir Chunilal v. Mehta & Sons Ltd. v. Century Spg. and Mfg. Co. Ltd.* : AIR 1962 SC1314 the Constitution Bench expressed agreement with the following view taken by a Full Bench of the Madras High Court in *Rimmalapudi Subba Rao v. Noony Veeraju* : AIR1951 Mad969 :

'[W]hen a question/Of law is fairly arguable, where¹ there is room for difference of opinion on it or where the Court thought it necessary to deal with that question at some length and discuss alternative views, then the question was practically covered by the decision of the highest Court or if the general principles to be applied in determining the question are well settled and the only question was of applying those principles to the particular fact of the case it would not be a substantial question of law.' and laid down the following test as proper test, for determining whether a question of law raised in the case is substantial : 'The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest Court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.'

114. In view of the discussions made above I don't find that any substantial question of law is involved in the instant appeals which need be decided.

115. All the three appeals heard analogously, being S.A. Nos. 192, 193 and 194 of 1999 are dismissed and in the facts and circumstances I hold that the parties are to bear their own costs.

116. A decree may be drawn up accordingly-

117. The records of the Courts below be sent down forthwith.

118. Urgent xerox certified copy, if applied for, will be handed over to the parties as expeditiously as possible.

Later on 7-3-2005

119. Mr. Mukherjee, the learned counsel for the appellant prays for stay of operation of the judgment and order.

120. There will be stay for a period of 2 (two) months from date in all three matters.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com