State Of West Bengal vs Atul Krishna Shaw And Anr on 28 August, 1990

Equivalent citations: 1990 AIR 2205, 1990 SCR SUPL. (1) 91, AIR 1990 SUPREME COURT 2205, 1990 UJ(SC) 2 681 1991 SCC (SUPP) 1 414, 1991 SCC (SUPP) 1 414

Author: K. Ramaswamy

Bench: K. Ramaswamy, N.M. Kasliwal

PETITIONER:
STATE OF WEST BENGAL

Vs.

RESPONDENT:
ATUL KRISHNA SHAW AND ANR.

DATE OF JUDGMENT28/08/1990

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
KASLIWAL, N.M. (J)

CITATION:
1990 AIR 2205 1990 SCR Supl. (1) 91
1991 SCC Supl. (1) 414 1990 SCALE (2)406

ACT:
West Bengal Estates Acquisition Act, 1953: Sections 2(i), 4(1), 6(1) (e)--Explanation, 44(2a) and 44(3).

`intermediaries'--Notification vesting Estates and rights of Intermediaries in the State--Right of Intermediaries to retain title and possession in respect of `Tank fisheries'--Crucial date for establishing that disputed land was used for pisciculture is the period of vesting-Existence of fishery subsequent to vesting held irrelevant.

Administrative Law: Duty to give reasons--Primary authority-Appellate authority--Appellate Tribunal reversing order of primary authority--Appellate authority should assign its own reasons as to disagreement with reasons and findings of primary authority--Appellate Tribunal's order based on conjectures and surmises--Held order is vitiated by patent error of law apparent on the face of record.

Judicial Review: Appellate authority--Findings of fact

based on no evidence or based on conjectures and surmises--Power of Court to interfere, appreciate evidence and record its own findings of fact.

Right to reason is indispensable part of sound system of judicial review.

Words and phrases: 'Tank fishery'--'Pisciculture'--Meaning of.

HEADNOTE:

The land belonging to the respondent intermediaries comprising of certain plots stood vested in the State of West Bengal by operation of a Notification issued under Section 4(1) of the West Bengal Estates Acquisition Act, 1953. Since the plots were recorded as 'tank fisheries' (used as pisciculture), they stood excluded from the purview of the vesting Notification under Section 6(1)(e) of the Act and preserved to the respondent intermediaries.

Subsequently the primary authority--the Assistant Settlement Officer--initiated suo moto proceedings by issuing notice to the respon-

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dents under Section 44(2a) of the Act for correction of classification of lands on the ground that the plots were wrongly recorded as fishery plots. The respondents objected to reclassification of the lands by contending that in 1952 they were granted Dakhilas to the said land by one `B', the Principal landlady, and thereafter they have been cultivating pisciculture on the said plots of the land and conducting fishery business. The Assistant Settlement Officer rejected the claim of the respondents and ordered reclassification of the plots. The respondents filed an appeal before the Tribunal (District Judge) under section 44(3) of the Act. The Appellate Tribunal reversed the order of the Assistant Settlement Officer and confirmed the original classification of the plots.

Against the decision of the Appellate Tribunal, the State filed a writ petition in the Calcutta High Court which dismissed the petition in limine.

In appeal to this Court it was contended on behalf of the State: (i) that the Appellate Tribunal had reversed the findings without considering the validity of the reasons recorded by the Assistant Settlement Officer; (ii) that the Appellate Tribunal had taken irrelevant factor or non-existing factors into account and thereby its findings were based on no evidence and hence vitiated in law.

On behalf of the respondents it was contended that since the Appellate Authority has recorded the findings of fact that pisciculture was in existence as on the date of vesting the Supreme Court cannot interfere with the findings of fact recorded by the Appellate Court, particularly, when the High Court did not choose to interfere with the finding.

Allowing the Appeal, this Court,

HELD: 1. Giving of reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of sound system of judicial review. Reasoned decision is not only for the purpose of showing that the citizen is receiving justice, but also a valid discipline for the Tribunal itself. Therefore, statement of reasons is one of the essentials of justice. [99C-D]

1.1 The appellate authority in particular a trained and experienced District Judge is bound to consider the entire material evidence adduced and relied on by the parties and to consider whether the reasons assigned by the primary authority is cogent, relevant to the
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point in issue and based on material evidence on record. The appellate authority being final authority on facts, is enjoined and incumbent upon it to appreciate the evidence; consider the reasoning of the primary authority and assign its own reasons as to why it disagrees with the reasons and findings of the primary authority. Unless adequate reasons are given, merely because it is an appellate authority, it cannot brush aside the reasoning or findings recorded by the primary authority. [99D; 102E-F]

2. If the appellate authority had appreciated the evidence on record and recorded the findings of fact, those findings are binding on this Court or the High Court. By process of judicial review this Court cannot appreciate the evidence and record its own findings of fact. If the findings are based on no evidence or based on conjectures or surmises and no reasonable man would, on given facts and circumstances, come to the conclusion reached by the appellate authority on the basis of the evidence on record, certainly this Court would oversee whether the findings recorded by the appellate authority is based on no evidence or beset with surmises or conjectures. [99A-C]

2.1 In the instant case the Appellate Tribunal disregarded the material evidence on record, kept it aside, indulged in fishing expedition and crashed under the weight of conjectures and surmises. The appellate order is, therefore, vitiated by manifest and patent error of law apparent on the face of record. The order of Appellate Tribunal is quashed and the order of Assistant Settlement Officer is restored. [103F-G; 104D]

3. Tank fishery means the lands being used for pisciculture or any fishing in a reservoir or storage place whether formed naturally or by artificial contrivance as a permanent measure except such portion of embankment as are included in a homestead or in a garden or orchard to be tank fishery. Such lands occupied by pisciculture or fishing stand preserved to the intermediaries and thus stands excluded from the operation of sections 4 and 5 of the West Bengal Estates Acquisition Act, 1953. But the crucial date for establishing, as a fact that the pisciculture was being carried on in

the disputed land is the period of vesting. The existence of fishery subsequent to that period is not of any relevance. [100G-H; 101E]

Chamber's 20th Century Dictionary, page 829; Webster comprehensive Dictionary, Vol. II and Stroud's Judicial Dictionary, Vol. II 4th Edn., page 1051, referred to.

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3.1 In the instant case the respondents did not produce before the Assistant Settlement Officer either post or pre-record till date of vesting to establish that from 1952 to 1955-56 i.e. from the date of obtaining settlement till date of vesting, the lands were recorded in settlement records as pisciculture of fishery. Therefore, there is no documentary evidence to establish that the lands were being used, on the date of settlement or also on the date of vesting, as pisci-culture or fishery. [101F; 102A]

4. Admittedly the High Court did not go into any of the questions raised by the appellant in the writ petition. It summarily dismissed the writ petition. The High Court com-mitted error of law in dismissing the writ petition in limine. [98G; 103F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1422 of From the Judgment and Order dated 5.7.1971 of the Calcutta High Court in Civil Order No. 1826 of 1971. T.C. Ray, G.S. Chatterjee and D.P. Mukherjee for the Appel- lant.

P.K. Chatterjee, Ranjan Mukherjee, N.R. Choudhary, Somnath Mukherjee and P.K. Moitra for the Respondents. The Judgment of the Court was delivered by K. RAMASWAMY, J. This appeal by special leave under Art. 136 of the Constitution arises against the order dated July 5, 1971 made by the Calcutta High Court in Civil Order No. 1826 of 1971 dismissing the writ petition in limine. The material facts are that the lands of Hal Plot Nos. 2202, 2204, 2206, 2209, 2210, 2212, 2214, 2219, 2220, 2225. 2226, 2228, 2229, 2232, 2233, 2234, 2236 and 2239 of Mouza Kisho- rimohanpore, J.L. No. 168, P.S. Jaynagar were recorded in the final Khaitan Nos. 143 and 144 of J.L. No. 168 as "Tank Fishery" (being used for pisciculture) and by operation of s. 6(1)(e) of West Bengal Estates Acquisition Act 1 of 1954, for short 'the Act' stand excluded from its purview. The Asstt. Settlement Officer initiated suo moto proceedings on May 14, 1968 that they have not been properly classified and prima facie require correction of classifications of those lands. Accordingly, he drew up the proceedings under s.44(2A) of the Act, issued notice to the respondents who are brothers, intermediaries. They filed their written objections and appeared through counsel. They also filed the documents, examined three witnesses apart from themselves. On behalf of the State one Mr. Ranjit Kumar Dutta, Revenue Officer. Yadavpur Settlement was examined. The objections raised by the respondents are that the lands originally belong to Smt. Banodamayee Dasi, Superior Landlady, who granted to them dakhilas Nos. 9 and 10 in the year 1359 B.S. i.e. 1952 A.D. Thereafter they have been cultivating pisciculture in the said lands. They got embankment raised around the land. They have

been conducting fishery business. In the fields survey the property was recorded in their name as the occupiers. On account of the injunction issued 'by the High Court the attestation in the original settlement was not effected. When they approached the Junior Land Revenue Officer for receipt of the rents, after due enquiry by endorsement dated April 30, 1958 A.D., the Tehsildar made an endorsement on the body of the receipt "for Pisciculture". They were con- ducting fishery in a large scale. They had applied to the Chief Minister Dr. B.C. Roy for a loan of Rs.25,000. An endorsement on the application was made by the concerned Secretary. When the miscreants sought to disturb the embark- ments, they made a complaint to the police, who initiated action in this regard. Agricultural Income-tax Department levied on them income-tax relying on pisciculture being done by the respondents.

The Asstt. Settlement Officer considered the entire evidence on record in great detail like Civil Court and held that the three witnesses examined in proof of the respond- ents conducting pisciculture in the disputed plots of lands are interested and brought up witnesses for the detailed reasons given in support thereof; the respondents did not produce the report of the Junior Revenue Officer who direct- ed to accept the rents from the respondents. Admittedly, all the lands stood vested in the year 1955-56 in the State by operation of the notification issued under s. 4(1) of the Act. Though the settlement was stated to have been obtained from the Principal Landlady in the year 1952 (1359 B.S.), they did not produce any pre or post settlement records for the period upto 2955-56, the year of vesting, to establish that the disputed lands are recorded as tank fishery. Mr. R.K. Dutta examined on behalf of the State stated that he made local inspection on April 11. 1968 A.D. and found recorded the class of land in 18 days (plots). Serial Nos. 2202, 2204, 2206. 2209, 2210, 2212, 2214, 2219, 2220.2225. 2226. 2228, 2229, 2232, 2233, 2236 and 2239 within that Mouza. The present Days (Plots) Nos. 2206, 2239, 2229, 2225, 2212, 2219, 2220 are small Dobas i.e. "ponds" and he did not find any sign of pisciculture in those plots. Plot Nos. 22 10, 2209, 2233 and 2234 are blind canals. There was no connection whatsoever of those plots with river or big canals.

He stated that there was water within those days (plots), but he did not find any sign of pisciculture therein. He did not find any water in plot Nos. 2202, 2232, 2204, 2214, 2236, 2239, 2228 and 2226 either existing or drained in those plots. Danga (elevated land) "Layek Jangal Bheter"

> (like jungle inside). "Layek Jangal" (jungle outside) and there was no water at all. He also made local enquiries from other persons in the neighbourhood and they testified to the same fact. He admitted that adjacent to these plots there were two plots, namely, plot Nos. 2201 and 2235, but outside the disputed lands wherein pisciculture was being carried out in those plots at the time of inspection. He also stated that the people examined by him have stated that till date the lands remained in the same condition. In the settlement plan (map) the plots were not classified as pisciculture. Only two plots i.e. 2201 and 2235 were classified as pisci- culture.
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> It may be stated at this juncture that though Mr. Dutta was subjected to gruelling cross-examination at great length on the nature of pisciculture and characterstics etc. as regards the existence of the condition of the lands at the time of his inspection and that he did not find any trace of carrying pisciculture, no cross-examination was

directed nor was suggested to the contrary. The Asstt. Settlement Officer after consideration of the entire evidence found that the respondents claimed to have started fishery after obtaining settlement from landlady in the year 1952, they admitted that Khasra enquiry was conducted in the year 1954 (1361 B.S.) in their presence and examined witnesses. The Enquiry Officer did not enter in the Khasra record that any pisci- culture was being carried on in any disputed plots except plot Nos. 2201 and 2235. On the other hand he noted that there is no fishery in any of those plots except those two specified plots. The vesting of plots under the Act took place in the year 1955-56. Except the receipt issued by the Tehsildar, no documentary evidence of payment of rent has been produced. The Tehsildar had no business to write on the receipt "for pisciculture", nor record of enquiry made by Junior Land Revenue Officer in this regard was produced. It is, therefore, clear that in the Khasra enquiry it was not recorded that the suit plots are fishery and in none of the plots it was recorded that any pisciculture was being con- ducted. The attestation took place in July 1959, i.e. after seven years from 1359 B.S. (1952) the year so settlement and three years from the date of starting the so called fishery. No documentary evidence except the solitary receipt which was rejected by the Asstt. Settlement Officer was produced to show that any pisciculture was being conducted. The receipt given by the Tehsildar is obviously to accommodate the respondents. There is no sufficient proof of laying any road to carry the fish from the said plots. Sri Atul Kumar Sahoo, one of the respondents, when was examined as a witness admitted it. Admittedly, fishery was carried out in plot Nos. 2201 and 2235 which are linked up with river Alian Khal with tide but they are not part of lands in dispute. None of the plots which are subject matter of the suit is linked up with river or any big canal with tide.

With regard to making an application to the Chief Minis- ter the copy has not been produced. There is no evidence whether these plots of lands having been mentioned in that application. Since, admittedly, the respondents are having fishery in plot Nos. 2201 and 2235, it was likely that the loan application would relate to those plots. The total extent of the disputed land is about 550 Bighas. Even ac- count books showing income and expenditure of fishery were not produced, though time was allowed to produce the docu- ments more than once. Some lands are dry lands and some lands are with the shrubs inside river embankment and out- side. So the question of fishery over those plots does not arise. Only to refute this factual situation the respondents tried to patch it up by saying that these plots were dried up for some months in every year. But they have failed to prove the existence of any fishery over those plots by adducing sufficient and reliable evidence. When there is no evidence to show the existence of fishery in any of the disputed plots, it is obvious that plots were wrongly re- corded as fishery. Primary authority considered the oral evidence and rejected it for valid reasons and ordered that the classification of plot Nos. 2202, 2239, 2225, 2232, 2204, 22 10, 2234, 22 14. 2236, 2228 and 2226 in. Hal Kha- tian Nos. 134 and 144 within Mouza Kishorimohanpore, J.L. No. 168, P.S. Jaynagar as recorded as "Ghert" and piscicul- ture in column No. 23 should be deleted and instead the classification of plots Nos. 2202 and 2209 should be record- ed as 'Layek Jungle

Outside' plot Nos. 2202, 2204, 2236 and 2228 should be recorded as 'Layek Jungle Outside'. Plot Nos. 2201, 2234 should be recorded as 'pond', 22 14 and 2226 should be recorded as 'Danga'. Recording in column No. 23 to the effect 'pisciculture' in plot Nos. 2209, 2229, 2206, 22 12, 22 19, 2233 and 2220 should be deleted.

Against this order an appeal was filed before the Tribu- nal (IXth Addl. District Judge, Alipore) under s. 44(3) of the Act which by Judgment dated March 4, 1971 in E.A. No. 49 of 1968 in one paragraph with cryptic order assuming the role of an administrator reversed the order of the A.S.O. The conclusions, without discussing the evidence recorded by the Appellate Judge are that in the C.S. Khatain he found that these lands were recorded as Layek Jungle Vitar and Bahir, doba pukur and Khal. He had gone through the R.S. Map and from the map he found no sign of jungle as against the disputed lands. One salt manufacturing company was in occu- pation of the disputed land before the respondents took settlement from the original landlady. The existence of salt manufacturing company shows that there was salt water on the disputed lands. With a view to develop the land they applied for the loan to the Chief Minister on May 25, 1955. That shows that there exists fishery in the disputed land. The Junior Land Revenue Officer found on May 11, 1958 after inspection the existence of fishery. Therefore, it shows that on the date of vesting there exists fishery in the lands. Local witnesses who were examined support the exist- ence of fishery for a pretty long time. Against this there is no rebutting evidence adduced by the State. Accordingly he set aside the order of the Asstt. Settlement Officer and confirmed the original classification. The State filed the writ petition and the High Court, as stated earlier, dis- missed the writ petition in limine.

Shri Roy, the learned St. Counsel appearing for the State contended that the Asstt. Settlement Officer has carefully assessed the evidence and recorded the findings. The Appellate Tribunal has reversed the findings without considering the validity of the reasons recorded by the Asstt. Settlement Officer. It has taken irrelevant factors or non-existing factors into account and thereby the find- ings recorded by the Appellate District Judge is based on no evidence. On the other hand it is beset with conjecture and surmises. Shri Chatterji, the learned Sr. Counsel appearing for the respondent's contended that the appellate authority has recorded the findings of fact that pisciculture was in existence as on the date of vesting. This Court cannot interfere with the findings of fact recorded by the appel- late court, in particular, when the High Court did not choose to interfere with the finding. The record in the settlement refers that the lands are used for pisciculture. It is open to the State to establish that the lands are not being used as pisciculture. In its absence the findings recorded by the appellate court is one of fact and this Court cannot interfere with that finding.

Admittedly the High Court did not go into any of the questions raised by the appellant in the writ petition. It summarily dismissed the writ petition. Therefore, what we have to read is only the orders of the Appellate Tribunal and the Asstt. Settlement Officer--the primary authority together with the record of evidence.

Counsel took us through the evidence to show that the findings recorded by the appellate Judge are based on either no evidence or surmises and con-

jectures. We have given our anxious consideration to the respective contentions and considered the evidence on record once again. It is indisputably true that it is a quasi-judicial proceeding. If the appellate authority had appreci- ated the evidence on record and recorded the findings of fact, those findings are binding on this Court or the High Court. By process of judicial review we cannot appreciate the evidence and record our own findings of fact. If the findings are based on no evidence or based on conjectures or surmises and no reasonable man would on given facts and circumstances, come to the conclusion reached by the appel- late authority on the basis of the evidence on record. certainly this Court would oversee whether the findings recorded by the appellate authority is based on no evidence or beset with surmises or conjectures. Giving of reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of sound system of judicial review. Reasoned decision is not only for the purpose of showing that the citizen is receiving jus- tice, but also a valid discipline for the Tribunal itself. Therefore, statement of reasons is one of the essentials of justice.

The appellate authority in particular a trained and experienced District Judge is bound to consider the entire material evidence adduced and relied on by the parties and to consider whether the reasons assigned by the primary authority is cogent, relevant to the point in issue and based on material evidence on record. The District Judge has forsaken this salutary duty which the legislature obviously entrusted to him. The question, therefore, is whether the reasons assigned by the appellate tribunal are based on no evidence on record or vitiated by conjectures or surmises. For appreciating this point it is necessary to look into the purpose of the Act and relevant provisions therein. The Act has been made to acquire the estates, all rights. of inter- mediaries therein and of certain rights of raiyats and trader raiyats of non-agricultural tenants in occupation of the lands comprised in the State. Section 4(1) empowers the State Government to issue notification under the Act from time to time declaring that with effect from the date men- tioned in the notification all estates and all rights of every intermediary in each such estate situated in the district or a part of the district specified in the notifi- cation "shall vest in the State" free from all incumbrances. The procedure has been provided in this behalf in sub-sec- tion (2) to (6) of s. 4 of the Act, the details of which are not relevant for the purpose of this case. The effect of the notification as adumbrated in s. 5 thereof is that all grants of, and confirmation of titles to, estates and rights therein, to which the declaration applies and which were made in favour of the intermediaries shall determine.

Thereby, by statutory operation the pre-existing rights and all grants of and confirmation of the titles to the estate and the rights therein statutorily have been determined by issuance and publication of the notification under s. 4(1) read with s. 5 of the Act. Section 6 of the Act employing non-obstante clause carved out exceptions

to the operation of ss. 4 and 5 and preserve the right of intermediary to retain possession and title of certain land in certain circumstances. Sub-section (1) postulates thus:

"Notwithstanding anything contained in Sections 4 and 5, an intermediary shall, except in the cases mentioned in the proviso to sub-section (2) but subject to the other provi- sions of that sub-section be entitled to retain with effect from the date of vesting--

(e) tank fisheries;

Explanation--"tank fishery" means a reservoir or place for the storage of water, whether formed naturally or by excava- tion or by construction of embankments, which is being used for pisciculture or for fishing, together with the subsoil and the banks of such reservoir or place, except such por- tion of the banks as are included in a homestead or in a garden or orchard and includes any right of pisciculture or fishing in such reservoir or place."

A reading of these provisions clearly indicates that notwithstanding the determination of pre-existing rights, titles and interest of the holders of the estate in the notified estate, subject to proviso to subsection (2) and other provisions of sub-section, sub-section 1(c) retains the rights and possession of intermediary in respect of tank fisheries. Tank fishery means the lands being used for pisciculture or any fishing in a reservoir or storage place whether formed naturally or by artificial contrivance as a permanent measure except such portion of embankment as are included in a homestead or in a garden or orchard to be tank fishery. Such lands occupied by pisciculture or fishing stood preserved to the intermediary. In Chamber's 20th Century Dictionary at page 829. the word 'pisciculture' defined to mean "the rearing of fish by artificial methods". In Webster Comprehensive Dictionary, Vol. II 'pisciculture' means hatching and rearing of fish. In Stroud's Judicial Dictionary, Vol. II, 4th Edition at page 1051 the term 'several fishery' is sometimes said to be a right of fishing in public waters, which may be exercisable by many people. Therefore, when by means of reservoir a place for storage of water whether formed naturally or by excavation or by construction of embankment, is being used for pisciculture or for fishing is obviously a continuous process as a source of livelihood. would be 'tank fisheries' within the meaning of s. 6(1)(e). Such tanks stand excluded from the operation of ss. 4 and 5. The question, therefore, emerges whether the disputed plots are tank fisheries. Undoubtedly, as rightly contended by Shri Chatterji that if the findings recorded by the appellate tribunal that the disputed plots of land are tank fisheries, are based on evidence on record, after its due consideration in proper perspective certainly that finding is binding on this Court, as being a finding of fact. The finding recorded by the appellate tribunal is based on five grounds, namely- nonexistence of the forestry in the map; making application for loan' revenue receipts produced by the respondent; previous salt cultivation and the oral evidence adduced on behalf of the respondents. Yet another ground is absence of rebuttal evidence by the State. We have already noted the findings recorded by the Asstt. Settlement Officer. They need no reiteration. Mr. Dutta examined on behalf of the State made personal inspection. The contention of Shri Chatterjee is that he inspected the land in the year 1968, but the relevant date is of the year 1952 and there is no evidence contrary to the existence of land in 1952 being used for pisciculture. It

is true that the crucial date for establishing, as a fact that the pisciculture was being carried on in the disputed land is the period of vesting, namely, 1955-56. The existence of fishery subsequent to that period is not of any relevance. Admittedly. the respondents did not produce before the Asstt. Settlement Officer either post or pre-record till date of vesting to establish that from 1952 to 1955-56 i.e. from the date of obtaining settle- ment till date of vesting, the lands were recorded in set- tlement records as pisciculture or fishery. Admittedly, in 1954 the Khasra enquiry was conducted in the presence of the respondents. The findings recorded in the relevent columns are that no pisciculture or fishery was being carried on except in two plots i.e. 2201 and 2235 which are not subject matter of enquiry but are situated adjacent to these lands. Those findings were not challenged at any time. The report of the Tehsildar directing payment of the land revenue was not produced. What was produced is only receipt on the body of which an endorsement "for pisciculture" was made by the Tehsildar. The reason given by the Asstt. Settlement Officer in rejecting the receipts was that there was no need for the Tehsildar to write "for pisciculture" and that was not the practice. This finding was not disputed by the appellate Judge. Therefore, there is no documentary evidence to establish that the lands were being used, on the date of settlement or also on the date of vesting, as pisciculture or fishery. The finding recorded by the Asstt. Settlement Officer is based on the evidence given by Mr. Dutta, who on personal inspection, found that the lands remained in the same condition from the date of vest- ing till date of his inspection in the year 1968. This finding was also not contradicted in the cross examination of Mr. Dutta, though he was subjected to gruelling cross- examination. Therefore, the finding that the State has not produced any rebuttal evidence is palpably wrong on the face of the record. The further findings that the map does not indicate that there exists any forestry, is also a conclu- sion reached by the appellate authority without discussing the evidence of Mr. Dutta who had stated in his evidence that there are shrubs outside and inside the lands in dis- pute. It is the specific case of the respondents that they made embankment, but Mr. Dutta finds that there was no embankment to any of the plots. That was also a finding recorded by the Asstt. Settlement Officer. There is no discussion by the appellate authority of the evidence given on that count. Though written objections were filed and evidence was adduced by the respondents, neither in the objections nor in the oral evidence tendered by the two respondents or their witnesses it was shown that the lands were used earlier for salt cultivation by erstwhile land- holder. Therefore, this is an extraneous factor which the District Judge picked from his hat without any foundation. The solitary revenue receipt produced by the respondents was rejected by the Asstt. Settlement Officer for cogent rea- sons. The appellate authority being final authority on facts, is enjoined and incumbent upon it to appreciate the evidence; consider the reasoning of the primary authority and assign its own reasons as to why he disagrees with the reasons and findings of the primary authority. Unless ade- quate reasons are given merely because it is an appellate authority, it cannot brush aside the reasoning or findings recorded by the primary authority. By mere recording that Dakhilas (rent receipts) show that lands are used as pisci- culture is a finding without consideration of the relevant material on record. The other finding that respondent ap- plied to the Chief Minister for loan and that it would establish that the loan amount was utilised for developing fishery is also a surmise drawn by the appellate authority. It is already seen that admittedly the respondents have plot Nos. 2201 and 2235 in which they have been carrying on fishery operations. The application said to have been filed before the Chief Minister has not been produced. The account books of the respondents have not been produced. When the documentary evidence, which being the lust evidence, is available but not produced an adverse

inference has to be drawn by the Tribunal concerned against the respondents for non-production and had it been produced, it would have gone against the respondents. A police complaint was said to have been made concerning disturbance in the enjoyment of the lands in question. No documentary evidence was produced or summoned. Even if it is done it might be self serving one unless there is a record of finding of possession and enjoy- ment by the respondents for fishery. Even then also it is not binding on the State nor relevant in civil proceedings. The contention of Shri Chatterjee that it is the duty of the appellant to produce the record to repudiate the find- ings recorded by the appellate authority is without sub- stance. In a quasi-judicial enquiry is for the parties who relied upon certain state of facts in their favour have to adduce evidence in proof thereof. The proceedings under the Act is not like a trial in a Civil Court and the question of burden proof does not arise. In the absence of abduction of the available documentary evidence, the necessary conclusion drawn by the Asstt. Settlement Officer that the loan appli- cation made might pertain to plot Nos. 2201 and 2235 is well justified. The appellate authority is not justified in law to brush aside that finding. The other finding that the witnesses examined on behalf of the respondents support the existence of the fishery for a pretty long time is also without discussing the evidence and assigning reasons in that regard. The Asstt. Settlement Officer extensively considered the evidence and has given cogent reasons which were neither discussed nor found to be untenable by the appellate authority. Thus, we have no hesitation in coming to the conclusion that the Appellate Tribunal disregarded the material evidence on record, kept it aside, indulged in fishing expedition and crashed under the weight of conjec- tures and surmises. The appellate order is, therefore, vitiated by manifest and patent error of law apparent on the face of the record. When so much is to be said and judicial review done, the High Court in our considered view, commit- ted error of law in dismissing the writ petition in limine. In the facts and circumstances of this case, in particular, when the litigation has taken well over 28 years till now, we find it not a fit case to remit to the High Court or Tribunal for fresh consideration.

It is contended that the respondents are entitled to the computation of holding under the Act, since they are pos- sessed of some other lands. We direct that if any determina- tion of total holding of the lands including plot Nos. 2201 and 2235 and any other lands are to be made under the Act or any other Land Reform Law singly or conjointly it is open to the appropriate authorities to determine the hold- ing of the respondents in accordance with law after giving reasonable opportunity to the respondents and the State after excluding the plots of lands in dispute Shri Roy, learned counsel for the State repeatedly asserted that the lands no longer remain to be fishery land and became part of urban area around the Calcutta City and building operations are going on. On the other hand the counsel for the respondents asserted to the contrary. We have no definite evidence on record. Therefore, if the lands are still found to be capable of using for fishery purpose and in case the State intends to lease it out for fishing operations, to any third party, as per rules in vogue, first preference may be given to the respondents. subject to the usual terms. as per the procedure prevalent in the State of West Bengal in this regard.

Accordingly, we quash the order of Appellate Tribunal dated March 4. 1971 and restore the order of the Asstt. Settlement Officer elated July 12. 1968.

The appeal is allowed accordingly and the parties are directed to bear their respective costs.

T.N.A. Appeal allowed.