(2002) 04 CAL CK 0012

Calcutta High Court

Case No: C.R. No. 1388 of 1997 and C.O. No. 2612 of 1991

Samsul Huda		APPELLANT
	Vs	
Mqsharaf Hussain		RESPONDENT

Date of Decision: April 2, 2002

Acts Referred:

- Bengal General Clauses Act, 1899 - Section 3(12), 3(17)
- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 15(2), Order 6 Rule 15(3), Order 6 Rule 8, 115
- Constitution of India, 1950 - Article 226, 227
- Court Fees Act, 1870 - Article 11
- Criminal Procedure Code, 1973 (CrPC) - Section 7, 9
- Essential Commodities Act, 1955 - Section 6C
- Public Premises (Eviction of Unauthorised Occupants) Act, 1971 - Section 9
- Telegraph Act, 1885 - Section 16(3)
- West Bengal Estates Acquisition Act, 1953 - Section 36
- West Bengal Land Reforms Act, 1955 - Section 10, 54, 9(1), 9(6)
- West Bengal Land Reforms and Tenancy Tribunal Act, 1997 - Section 14T, 2, 5, 5(1), 54
- West Bengal Land Reforms Rules, 1965 - Rule 8

Citation: (2002) 1 ILR (Cal) 418

Hon'ble Judges: Pratap Kumar Ray, J

Bench: Single Bench

Advocate: G. Das, Amar Ghosh, Jiban Ratan Chatterjee, Hiranmoy Bhattacharya, Yamin Ali, P.P. Roy, M.Q. Kabir, Ram Prokash Banerjee, Rabindranath Mahato, S.S. Arefin, D.P. Mukherjee, B. Banerjee, Amal Krishna Saha, Buddhadev Ghosal, P.B. Sahu, Bhabes Biswas, Rabindra Nath Mahato, Biswajit Basu, Susenjit Banik, Hasanuz Zaman, A.K. Jana, S.P. Roy Chowdhury, S.K. Das, Dipendu Mazumdar, Atashi Gupta, Sitaram Bhattacharjee and Prabir Banerjee, for the Appellant; D.P. Mukherjee, Bivash Banerjee, A.K. Bhattacharjee, S. Bhattacharjee, Pijush Kanti Khemra, Pijush Dutta, Sk. Siddique Rahaman, D.P. Mukherjee, B. Banerjee, Prabal Mukherjee, Dwijadas Chakraborty, N. Bhattacharjee, Priyobrata Mukherjee, S.P. Purakait, K.K. Dutt and Tapas Bhattacharya, for the Respondent

Judgement

Pratap Kumar Ray, J.

In these revisional applications filed u/s 115 of the Code of Civil Procedure, a common question of law is involved touching the maintainability of revisional applications under the aforesaid jurisdiction of Section 115 of the CPC hereinafter referred to as the said Code, in view of effect of Sections 6, 7, 8 and 9 of West Bengal Land Reforms Act and Tenancy Tribunal Act, 1997 as has been urged by the learned Advocates of the respective Opposite Parties, in the different pending cases herein. It is contended by the learned Advocates for the Opposite Parties that in terms of Sections 7, 8 and 9 of West Bengal Land Reforms and Tenancy Tribunal Act, 1997, hereinafter for brevity referred to as Tenancy Tribunal Act, a complete bar upon this Court has been imposed to entertain any revisional application u/s 115 of the CPC as arose challenging the order of learned District Judge exercising jurisdiction u/s 9(6) of the West Bengal Land Reforms Act, 1955, hereinafter for brevity referred to as Land Reforms Act. It is contended that the District Judge who was vested with the power and jurisdiction to decide the appeal arose out of preemption application is not a Court and/or a Tribunal but a persona designata and accordingly is an authority in terms of Section 6 of said Tenancy Tribunal Act. Hence, revisional applications are not maintainable. On the contrary, it has been vehemently argued by the learned Advocates appearing for the Petitioners in respects of different cases that learned District Judge while exercising the power u/s 9(6) of the Land Reforms Act is a Court and not an authority in terms of the definition of the authority u/s 2(b) of the Tenancy Tribunal Act and as a consequence thereof, West Bengal Land Reforms and Tenancy Tribunal, hereinafter for brevity referred to as Land Reforms and Tenancy Tribunal has no jurisdiction, power and authority to decide the legality and/or validity of order passed by the learned District Judge exercising such power, in terms of Section 6(a) of the said Tenancy Tribunal Act. For effective adjudication of the said questions and in view of submission of the learned Advocates for the Respondents relying upon a judgment of Single Bench of this Court passed in Kasinath Mondal and Ors. v. Bani Ballav Biswas and Ors. 2001 W.B.L. 451 (Cal.), the matter is required to be dealt with in details on analysing the relevant provisions of the Act as well as the judgment passed by the Learned Single Judge of this Court in Kasinath Mondalw to have the answer on the point of maintainability. The first question to be considered whether the learned District Judge while exercising the power u/s 9(6) of the Land Reforms Act is an authority in terms of Section 2(b) of Tenancy Tribunal Act, Section 9(6) of the Land Reforms Act reads as follows:

9(6) Any person aggrieved by an order of the Munsif under this section may appeal to the District Judge having jurisdiction over the area in which the land is situated, within thirty days, from the date of such order and the District Judge shall send a copy of his order to the Munsif. The fees to be paid by the parties and the procedure to be followed by the District Judge shall be such as may be prescribed.

2. Sections 2(b), 6, 7, 8 and 9 of the Tenancy Tribunal Act, being the relevant provisions for adjudication of this case are also quoted in extenso herein below:

2. Definitions: In this Act, unless there is anything repugnant in the subject or context;

(b) ''Authority'' means an officer or authority or functionary exercising powers or discharging functions as such under a specified Act;

6. Jurisdiction, power and authority of Tribunal: Subject to the other provisions of this Act, the Tribunal shall, with effect from such date as may be appointed by the State Government by notification in this behalf, exercise jurisdiction, power and authority in relation to--

(a) an order in original made by an Authority under a specified Act;

(b) an application complaining in action or culpable negligence of an Authority under a specified Act;

(c) an appeal against an order of the Mines Tribunal appointed u/s 36 of the West Bengal Estates Acquisition Act, 1953 (West Ben. Act I of 1954) ;

(d) adjudication of disputes and applications relating to matters under any provision of. a specified Act involving interpretation of any provision of the Constitution or of validity of a specified Act or of any other law for the time being in force ;

(e) adjudication of matters, proceedings, cases and appeals which stand transferred from the High Court and other Authorities to the Tribunal in accordance with the provisions of this Act.

7. Exercise by Tribunal of jurisdiction, power and authority exercisable by court: Save as otherwise expressly provided in this Act, the Tribunal shall, with effect from the date appointed by the State Government u/s 6, exercise all the jurisdiction, power and authority exercisable immediately before that day by any court including the High Court, except the writ jurisdiction under articles 226 and 227 of the Constitution exercised by a Division Bench of the High Court, but excluding the Supreme Court, for adjudication or trial or disputes and applications relating to land reforms and matters connected therewith or incidental thereto and other matter arising out of any provision of a specified Act.

8. Exclusion of jurisdiction of courts: On and from the date from which jurisdiction, power and authority become exercisable under this Act by the Tribunal, the High Court, except where that Court exercises writ jurisdiction under articles 226 and 227 of the Constitution by a Division Bench, or any civil Court, except the Supreme Court, shall not entertain any proceeding or application or exercise any jurisdiction, power or authority in relation to adjudication or trial of disputes or applications relating to land reforms or any matter connected therewith of incidental thereto or any other matter under any provision of a specified Act.

9. Transfer of case records from High Court: (1) All matters, proceedings, cases and appeals relating to land reforms and matter connected therewith or incidental thereto and other matters arising out of a specified Act pending before the High Court, except where a Division Bench of that Court exercises writ jurisdiction under articles 226 and 227 of the Constitution, on the date appointed by the State Government u/s 6, shall stand transferred to the Tribunal for disposal in accordance with the provisions of this Act.

(2) Where any matter, proceeding, case or appeal stands transferred from the High Court to the Tribunal under Sub-section (1):

(a) the High Court shall, as soon as may be after such transfer, forward the records of such matter, proceeding, case or appeal to the Tribunal in accordance with such procedure as may be prescribed ; and

(b) the Tribunal shall, on receipt of such records, proceed to dispose of such matter, proceeding, case or appeal so far as may be, from the stage reached before such transfer or form any earlier state or de novo as it may deem fit:

Provided that any interim order granted in a matter, proceeding or case by the High Court shall stand vacated on the expiry of twelve weeks from the date appointed by the State Government u/s 6 unless the Tribunal by an order varies, modifies or extends the same earlier on ah examination of the records of such matter, proceeding or case.

(3) (a) All proceedings pending before the Mines Tribunal appointed u/s 36 of the West Bengal Estates Acquisition Act, 1953 (West Ben. Act I of 1954, on the date appointed by the State Government u/s 6 of this Act, shall stand transferred to the Tribunal for disposal.

(b) Upon such transfer, the records of such proceedings shall be forwarded to the Tribunal in accordance with such procedure as may be prescribed.

3. u/s 9(6) of the Land Reforms Act, it appears that being aggrieved by an order of the Munsif passed u/s 9 of Land Reforms Act, aggrieved party may prefer an appeal to the District Judge having jurisdiction over the area in which the land is situated. The wording that the District Judge of the area in question and the wording order of Munsif as appearing in the said Section are relevant factors and vectors as will lead a positive rider to the answer on the question of maintainability as raised. Under the West Bengal Land Reforms Act, there is no definition of word ''Munsif and/or ''District Judge''. Such definition can be available from the General Clauses Act. u/s 3(17) of the General Clauses Act, the ''District Judge'' has been defined as follows:

''District Judge'' shall mean the Judge of a principal civil court of original jurisdiction, but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction.

4. Under the Bengal General Clauses Act, 1899, District Judge also has been defined u/s 3(12) of the said Act, which reads as follows:

3(12) ''District Judge'' shall mean the Judge of a principal Civil Court or original jurisdiction, but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction.

5. Hence, the definition of ''District Judge'' from the aforesaid General Clauses Act to be incorporated in Section 9(6) of the Land Reforms Act, which means ''Judge of a principal Civil Court of original jurisdiction''. So, it is clear from the definition of the District Judge in the General Clauses Act as well as in the Bengal General Clauses Act, that the meaning of the word ''District Judge'' as appearing u/s 9(6) of the Land Reforms Act to be ''a Judge of a principal Civil Court of original civil jurisdiction''. Furthermore, from the procedures of filling appeal u/s 9(6) of the said Land Reforms Act as appearing in the West Bengal Land Reforms Rules, 1965, it is abundantly clear that the District Judge while dealing with the appeal u/s 9(6) of the Land Reforms Act is a Civil Court exercising the power accordingly. The relevant provision of the West Bengal Land Reforms Rule, 1965, hereinafter referred to as Land Reforms Rules would satisfy such test. The Rule 8, which is the procedural rule for preferring appeal under the said Act prescribing Court Fees and other requirements is quoted in extenso hereinbelow:

8. Procedure for appeals and fees to be paid under Sub-section (6) of Section 9(1) Every appeal under Sub-section (6) of Section 9 shall be filed in the form of a memorandum and shall be signed and verified by the Appellant in the manner provided in sub-rules (2) and (3) or Rule 15 of Order VI of Schedule I to the Code of Civil Procedure, 1908. It shall be accompanied by an authenticated copy of the order appealed against and shall contain the following particulars, namely:

(a) the name and address of the Appellant;

(b) the name and address of the Respondent;

(c) the location and particulars of the holding in respect of which orders were passed by the Munsif; and

(d) the grounds of appeal.

(2) The Court-fees payable on the memorandum of appeal shall be such as are provided in Sub-clause (ii) of Clause (a) of Article 11 of Schedule II to the Court-fees Act, 1870 and shall be collected in the same manner as laid down in that Act.

(3) On the filing of an appeal, the Appellate Officer shall call for the records of the case from the officer or authority against whose order the appeal has been filed and after giving the Appellant and the Respondent an opportunity of being heard shall dispose of the appeal.

(4) A process fee of Rs. Three and paise fifty per party on whom a notice is tc be served shall be paid along with the memorandum of appeal.

6. On bare perusal of the said Rule, it appears that the appeal is required to be filed in the form of Memorandum of Appeal and the same is required to be signed and verified in terms of the provisions of the Code of Civil Procedure. Furthermore, under Clause (2) of Rule 8 of said Rule, it appears that the Court Fees are required to be paid in terms of Court Fees Act, 1870, for the purpose of effecting summons. Process fees also has been prescribed under Clause (4) of said Rule 8. Hence, from the aforesaid provisions, it is clear that District Judge in terms of Section 9(6) of the Land Reforms Act, acts judicially as a Court. Whether a District Judge u/s 9(6) of the Land Reforms Act is exercising judicial power as a Court can be tested even by the judicial pronouncements as made by the Apex Court of India as well as by the English Courts. These reports are profitable to be quoted for effective adjudication of the issue. In the case National Telephone Company Ltd. v. Post Master,1913 A.C. 546 it has been held that where by statutes matters were required to be determined by a Court of record with no further provision, the necessary implication would be that the Court would determine the matters as a Court. A Three Judges Bench of Apex Court also considered this aspect namely whether the District Judge in terms of Section 16(3) of the Indian Telegraph Act, 1885 would be considered as a Court exercising the power to determine the issue judicially as a Court. In the case of Kerala State Electricity Board, Trivandrum v. T.P. Kunhaliumma I.R. 1977 S.C. 282, the Apex Court considering the different provisions of the Telegraph Act and the expression of the word ''District Judge'' as appearing thereto as well as the relevant provisions of filing an application by payments of the Court Fees as stipulated under the rule, held that the District Judge in terms of Section 16(3) of the Indian Telegraph Act aforesaid is a Court for determination of the question as a Court.

7. Our High Court has also considered this aspect by different judgments holding, inter alia, that the District Judge is a Court in terms of Section 9(6) of the Land Reforms Act. A Division Bench of this Court in the case Paresh Nath Mondal v. Bijan Behari Mondal and Ors. 1982 (2) C.L.J. 33 held that the District Judge in entertaining appeals u/s 9(6) of the West Bengal Land Reforms Act, 1955 did not act as a persona designata but acted as a Court, Same view has been reiterated further by a Single Bench of this Court passed in the case Rathindra Nath Adhikari Vs. State of West Bengal and others, relying upon the view of the Division Bench judgment of Paresh Chandra Mondal. 1982 (2) C.L.J. 33 In view of the fact that there is a Division Bench judgment of this Court, which is binding upon, me as the same is a ratio-decidendi to the identical question of law as raised herein with reference-to the identical law that is the West Bengal Land Reforms Act, this Court is accepting the same view. Furthermore, in the Apex Court judgment of Kerala Electricity Boards with reference to the Telegraph Act as already referred to, the point has been finally settled, holding, inter alia, that the District Judge in terms of the Telegraph Act was a Court. On comparison of the provisions of both the two Acts wherein the word ''District

Judge'' appeared namely the Telegraph Act, 1885 and the Land Reforms Act, 1955, this point also will be clear. The relevant provisions from the Telegraph Act and the Land Reforms Act are quoted hereinbelow:

16(3) If any dispute arises concerning the sufficiency of the compensation to be paid u/s 10, Clause (d), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him.

9(6) Any person aggrieved by an order of the Munsif under this section may appeal to the District Judge having jurisdiction over the area in which the land is situated, within thirty days, from the date of such order and the District Judge shall send a copy of. his order to the Munsif. The fees to be paid by the parties and the procedure to be followed by the District Judge shall be such as may be prescribed.

8. On a bare perusal of both the aforesaid two provisions, it is ex facie clear that application of the word ''District Judge'' is identical, hence, judgment of the Apex court interpreting the power, jurisdiction of the District Judge as a Court in. term''s of provisions of Telegraph Act, 1885 is squarely applicable to interpret the word ''District Judge'' as appearing in Section 9(6) of the West Bengal Land Reforms Act, 1955. In that view of the matter, I am of clear view that the District Judge u/s 9(6) of the West Bengal Land Reforms Act, 1955 is a Court vested with the power to decide the appeal from the order of learned Munsif u/s 9(1) of the West Bengal Land Reforms Act is a Court.

9. Under the said Tenancy Tribunal Act, the Authority has been defined u/s 2(b) of the said Act, which means an Officer or the Authority or Functionary exercising powers or discharging function as such under a specified act. The words ''Officer'', ''Authority'', ''Functionary'' as used in the definition of ''authority'' have special significance to decide the present question involved namely whether District Judge having jurisdiction over the area who is vested with power to hear the appeal u/s 9(6) of the said Land Reforms Act is an Officer or Authority or Functionary under the specified Act namely the Land Reforms Act. In earlier paragraphs, it is held by the court upon having regard io judgment of Apex Court as well as this Court that District Judge is not a ''persona designata'' but a Court acting judicially as a class of District Judge. On a bare reading of the language whereby the ''Authority'' having been defined u/s 2(b) of the Tenancy Tribunal Act it appears that the same relates to an Officer or Authority or Functionary under specified Act. District Judge is not appointed as an Officer and/or Authority or Functionary under said West Bengal Land Reforms Act but District Judge is holding the post as a class in terms of the setting of the Court to deal with the matter judicially. A District Judge cannot be termed as an Officer or an Authority or Functionary under a specified Act.

10. For consideration of the issue whether District Judge exercising power u/s 9(6) of the said Land Reforms Act is an Officer or Authority under the specified Act, it can be

answered upon consideration of other decisions of different High Courts as well as Apex Court wherein the identical word ''District Judge'' and its power have been considered as ''exercising of power judicially as a Court''. u/s 9 of Public Premises (Eviction of unauthorized occupants) Act, 1971 hereinafter referred to as Public Premises Act an appeal lies to an Appellate Officer who shall be the District Judge of the State. Section 9 of the said Act reads as follows:

Section 9. APPEALS- (1) An appeal shall lie from every order, of the estate officer made in respect of any public premises u/s 5 for Section 5B] [or Section 5C] to an appellate officer who shall be the district judge of the district in which the public premises are situate or such other judicial officer of that district of not less than ten years'' standing as the district judge may designate in this behalf.

(2) An appeal under Sub-section (1) shall be preferred,-

(a) in the case of appeal from an order u/s 5, within (twelve) days from the date of publication of the order under Sub-section (1) of that section:

(b) in the case of an appeal from an order u/s (5B or Section 7) within (twelve) days from the date on which the order is communicated to the Appellant [and]

Provided that the appellate officer may entertain the appeal after the expiry of the said period [xxx] if he is satisfied that the Appellant was prevented by sufficient cause from filing the appeal in time.

(3) Where an appeal is preferred from an order of the estate officer, the appellate officer may stay the enforcement of that order to such period and on such conditions as he deems fit.

[Provided that where the construction or erection of any building or other structure or fixture or execution of any other work was not completed on the day on which an order was made u/s 5B for the demolition or removal of such building or other structure or figure, the appellate officer shall not make any order for the stay of enforcement of such order, unless such security, as may be sufficient in the opinion of the appellate officer, has been given by the Appellant for not proceeding with such construction or work pending the disposal of the appeal.]

(4) Every appeal under this section shall be disposed of by the appellate officer as expeditiously as possible.

(5) The cost of any appeal under this section shall be in discretion of the appellate officer.

For the purpose of this section, a presidency-town shall be deemed to be a district and the chief judge or the principal judge or the City Civil Court therein shall be deemed to be the district judge of the district.

in case of an appeal from ah order u/s 5C, within twelve days from the date of such order.

11. A question cropped up whether the District Judge under the Public Premises Act is a ''persona designata'' or a sub-ordinate Court under the High Court, before Jammu and Kashmir High Court. Dr. A.S. Anand, J. (as His Lordship then was and thereafter became the Chief Justice of India) held in the case Badrinath Gupta Vs. Estates Officer (Controller of Aerodromes), as follows:

A perusal of Section 9 of the Act shows that an appeal lies to the District Judge of the District concerned. This District Judge is not prescribed as an appellate authority by his name and no District Judge has been singled put from the class of District Judges to whom the appeals may lie u/s 9 of the Act. The term ''persona designata'' implies the appointment of a person or the selection of a person in his individual and personal capacity as opposed to his capacity as a member of a particular class. With a view to determine whether the appointment of a person has been made as a persona designata or as a particular member of a class, it is necessary to find out whether the person appointed has been appointed by his name only or has he been appointed because of his occupation, profession or the post held by him. In the Full Bench authority of our High Court, 1971 JKLR 157 : AIR 1971 J&K 16 (supra) it was held the question whether an authority has been appointed as a Persona designata or as a court depends also on the nature of the duties and the manner in which the duties are performed by the authority concerned. Their Lordship went on to hold ;

...if the appointment is by name in the individual capacity of the officer he is persona designata ; if the Presiding Officer of a Civil Court is selected as an authority and empowered to act judicially and possesses all the trappings of a court and has to abide by'' the rules'' of evidence, the appointment is as a court and not as a persona designata.

In view of this clear pronouncement of the Full Bench of this Court, there remains no means of doubts to hold that the District Judge while hearing the appeal u/s 9 of the Act does not act as a persona designata but acts as a Civil Court subordinate to the High Court. The District Judge has been prescribed the appellate authority not in his personal or individual capacity but by virtue of the post that he is holding and no district Judge has either been designated as the appellate authority by name nor has any District Judge been singled out for functioning as the appellate authority.-Moreover, the nature of his duties enjoin upon him to act judicially and he possesses all the trappings of a Court. In the face of the binding authority of this Court, the rulings cited by Sri Bakshi cannot come to his aid. I would, therefore, hold that the District Judge while acting u/s 9 of the Act, acts as a court subordinate to the High Court and not as a persona designata. I, therefore, do not find any force in the objection raised by the Learned Counsel for the Respondent that the District Judge hearing the present appeal is only a persona designata and his order is not revisable u/s 115, CPC and overrule the said objection.

12. On analysis of the wording as appears in Section 9 of said Public Premises Act, it appears that the provision of the appeal before a District Judge of the District has been qualified by another word ''an Appellate Officer''. Despite such wording that ''an Appellate Officer who shall be the District Judge of the District'' in the judgment of Badrinath Gupta,(Supra) Dr. A.S. Anand, J. (as His lordship then was) held that District Judge is not a ''persona designata'' but Court acting judicially. On comparison of provision Section 9 of said Public Premises Act qua Section 9(6) of the said Land Reforms Act, it appears that under the Land Reforms Act, there is no mentioning of the word ''Appellate Officer'' but a clear expression in the statute that the appeal will lie to the ''District Judge'' having jurisdiction over the area. Hence, on a bare comparison of the two provision of Section 9 of Public Premises Act and the Section 9(6) of the West Bengal Land Reforms Act, it is abundantly clear that the ''District Judge'' cannot be termed as an officer or authority, on consideration of the judgment as referred to passed by Dr. A.S. Anand, J. (as His Lordship then was).

13. An identical question cropped up on issue of status of the Sessions Judge of a District who is the Appellate Authority u/s 6C of the Essential Commodities Act, 1955, where a point was raised that the power as an Appellate Authority as exercised by the Sessions Judge was nothing but the power of the ''persona designata'' and not a Court. As an answer to the question, such argument was not accepted by the Apex Court in a Bench decision comprising of Hon''ble Three Judges of the Apex Court in the case Thakur Das (Dead) by Lrs. Vs. State of Madhya Pradesh and Another, of the said report of Thakur Das 7) would be profitable to Court which reads as follows:

8. Sections 7 and 9 of the Code of Criminal Procedure, 1898, envisage division of the State into various Sessions Divisions and setting up of Sessions Court for each such division, and further provides for appointment of a Judge to preside over that court. The Sessions Judge gets his designation as Sessions Judge as he presides over the Sessions Court and thereby enjoys the powers and discharges the functions conferred by the Code. Therefore, even if the judicial authority appointed u/s 6C is the Sessions Judge it would only mean the Judge presiding over the Sessions Court and discharging the functions of that Court. If by the Sessions Judge is meant. the judge presiding over the Sessions Court and that is the appointed appellate authority, the conclusion is inescapable that he was not persona designata which expression is out or described as an individual as opposed to a person ascertained as a member of a class or as filling a particular character (vide The Central Talkies Ltd., Kanpur Vs. Dwarka Prasad, and Ramchandra Aggarwal and Another Vs. State of Uttar Pradesh and Another,).

9. Our attention was drawn to a cleavage of opinion amongst High Courts on the construction of the expression "judicial authority" used in Section 6C. In State of Mysore v. Pandurang P. Naik (1971) 1 Mys LJ 4Q1 the Mysore High Court was of the opinion that though a District and Sessions Judge was appointed as a judicial authority by the State Government in exercise of the powers conferred by Section

6C of the Act in that capacity it would not be an inferior criminal court within the meaning of Section 435. Same view was taken by the Gujarat High Court in State of Gujarat v. CM. Shah, 1974 Cri LJ 716 (Guj). The exact specification of the appellate authority constituted by the notification could not be gathered from the judgment but it appears that the appeal was heard by the Additional Sessions Judge which would indicate that even if a District and Sessions Judge was appointed as ''judicial authority'' that expression would comprehend the Additional Sessions Judge also or the Sessions Judge could transfer such appeal pending before him to Additional Sessions Judge which was a pointer that he was not a persona designata. After referring to certain sections of the Code of Criminal Procedure it has been held that the Additional Sessions Judge hearing an appeal u/s 6C is not an inferior criminal court within the meaning of Section 435 (1). Our attention was also drawn to State of Madhya Pradesh v. Basanta Kumar 1972 Jab LJ (SN) 80. Only a short note on this judgment appears in 1972 J.L.J 80 but it clearly transpires that the point under discussion has not been dealt with by the Court.

10. As against this, this over question was examined by a Full Bench of the Andhra Pradesh High Court in Public Prosecutor (A.P.) v. L. Ramayya 1975 Cri LJ 144 (FB) (Andh Pra). Two questions were referred to the Full Bench. The first was: whether the District and Sessions Judge who is appointed judicial authority for hearing appeals u/s 6C is a persona designata or an inferior criminal court and the second was whether even if it is an inferior criminal court, a revision application against the order of the appellate authority would lie to the High Court? The Full Bench answered the first question in the affirmative. While summing up its conclusions, the Court held that when a judicial authority like an officer who presides over a court is appointed to perform the functions, to judge and decide in accordance with law and as nothing has been mentioned about the finality or otherwise of the decisions made by that authority, it is an indication that the authority is to act as a court in which case. it is not necessary to mention whether they are final or not as all the incidents of exercising jurisdiction as a Court would necessarily follow. We are in broad agreement with this conclusion.

14. Having regard to the aforesaid decision of Thakur Das{ Supra) and the decision of Badrinath 6upta (Supra) and also taking note of the language as used in Section 9(6) of the said Land Reforms Act, I am of the clear view that the District Judge who is hearing the appeal u/s 9(6) of the said Act is a Court acting judicially and not an Officer or an Authority or Functionary under the specified Act that is Land Reforms Act. A bare reading of the West Bengal Land Reforms Act, it appears that there are so many Officers appointed under the said Act to deal with various matters namely the Revenue Officers who decide the question of Land Ceiling Area qua vesting of it in terms of Section 14T of the said Act, an Officer exercise the power u/s 54 of the Land Reforms Act and so on. But s, 9(6) of the said Land Reforms Act wherein the word ''District Judge'' has been used, it is abundantly clear on plain reading of the statute that he is not an Officer or Authority or Functionary under West Bengal Land

Reforms Act but he is acting as a Court judicially.

15. Now, since the learned Advocates of the Opposite Parties have relied upon a judgment of the Single Judge of this Court in the case Kasinath Mondal(Supra) advancing the argument that in view of incorporation" of West Bengal Land Reforms Act under Specified Act, in the Tenancy Tribunal Act, 1997, no revision application will lie in the High Court at Calcutta, that question now to be dealt with. u/s 2(b) of the said Tenancy Tribunal Act, the authority has been defined, which clearly means an officer or authority or functionary exercising powers or discharging functions as such under a specified act. The specified act has been mentioned in Section 2(r)(ii) wherein West Bengal Land Reforms Act, 1956 is included. u/s 6, which is the statutory provision under said Tenancy Tribunal Act, vesting jurisdiction, power and authority to the Tribunal, it is provided therein, inter alia, under Clause (a) .of Section 6that any order made by an authority under a specified Act would be subject matter of challenge within the jurisdiction power and authority of Tribunal. Hence, from the phraseology as used in Section 6(a) of the Tenancy Tribunal Act, it is clear that the jurisdiction of the Tribunal is limited in respect of the orders as would be passed by an authority under a specified act. u/s 2(b) of the Tenancy Tribunal Act, authority has been defined where same has been defined as an Officer or authority or functionary exercising powers under specified act. Though West Bengal Land Reforms Act has been incorporated as a specified act u/s 2(r) (ii) but as already held that a District Judge exercising power u/s 9(6) of the said Act is a Court functioning judicially as a Court, hence, by any stretch of imagination it cannot be said that the District Judge is exercising power as an Officer or an Authority or functionary exercising powers or discharging function as such under the specified act in terms of Section 2(b) of the Tenancy Tribunal Act. As I have already held that District Judge is not at all a persona designata in terms of Section 9(6) of the Land Reforms Act and it is a Court determining a question judicially as a Court, accordingly, the order passed by the Learned District Judge exercising power u/s 9(6) of the Land Reforms Act cannot be said as an order passed by an authority in terms of Section 2(b) of the Tenancy Tribunal Act. In that view of the matter, Section 6 of the Tenancy Tribunal Act has no applicability so far as the orders as passed by learned District Judge of the Court below exercising power u/s 9(6) of the Land Reforms Act. In that view of the matter, Sections 7 and 8 of the Tenancy Tribunal Act also has no applicability to oust the jurisdiction of the High Court in exercising the power u/s 115 of the Code of Civil Procedure, Section 7 of the Tenancy Tribunal Act provides the jurisdiction, power and authority as would be exercisable by the Tribunal in terms of jurisdiction, power and authority as vested u/s 6 of the Tenancy Tribunal Act. Since while dealing with Section 6 of the Tenancy Tribunal Act I have already held that any order passed by the District Judge. exercising power u/s 9(6) of the Land Reforms Act cannot be said as an order passed by an authority, accordingly, Section 7 also has no applicability to oust the jurisdiction of High Court in deciding the Civil Revisional matters arose out of challenge of the order passed by the Learned District Judge exercising the power

u/s 9(6) of the Land Reforms Act. As a consequence thereof Section 8 of the Tenancy Tribunal Act also has no applicability. Section 8 starts with the word ''on and from the date from which jurisdiction* power and authority become exercisable under this Act by the Tribunal, the High Court, except where that court exercises writ jurisdiction under Arts. 226 and 227 of the Constitution by Division Bench, or any Civil Court, except the Supreme Court, shall not entertain any proceeding''. From this very word as appearing in Section 8 it is clear that the jurisdiction of the High court was taken away only in respect of the jurisdiction, power and authority as would be exercisable under Tenancy Tribunal Act by the Tribunal which means the jurisdiction, power and authority as vested to the Tribunal u/s 6 of the Tenancy Tribunal Act. Hence, Section 8 is also subject to the conditions as stipulated in Section 6 of the Tenancy Tribunal Act where I have already held that Section 6 has no applicability, since the order of learned District Judge exercising power u/s 9(6) of the Land Reforms Act is not an order by an authority in terms of Section 2(b) of the Tenancy Tribunal Act but an order passed by a Court to determine an issue judicially as a Court. Hence, Section 8 also accordingly has no applicability in the instant case.

16. Similarly, Section 9 also has no applicability as Section 9 is dependent upon the factors namely that the order under a specified act in terms of Section 2(b) of the Tenancy Tribunal Act must be an order by an authority and that the Tribunal must be vested with the jurisdiction, power and authority in terms of Section 6(a) of the Tenancy Tribunal Act to deal with said order which to be assailable before the Tribunal being an order passed by authority of a specified act in terms of Section 2(b) of the Tenancy Tribunal Act, that such power, jurisdiction and authority of a Tribunal to be exercisable in terms of Section 7 of the Tenancy Tribunal Act on fulfillment of conditions of exercise of such power available in terms of Section 2(b) read with Section 6 of the Tenancy Tribunal Act and further that the ouster clause u/s 8 would have applicability fulfilling the. condition that the order would be an order passed by an authority under specified act in terms of Section 2(b) read with Section 6 and 7 of the Tenancy Tribunal Act.

17. However, a doubt has been cropped up only because of mentioning the provision that ''all matters'', proceedings, cases and appeals relating to Land Reforms and matters connected their with or incidental thereto and other matters arising out of a specified act pending before the High Court shall stand transferred to the Tribunal for disposal in Section 9 of the Tenancy Tribunal Act. Section 9 Sub-section (1) reads as follows:

9. Transfer of case records from High Court: (1) All matters, proceedings, cases and appeals relating to land reforms and matter connected therewith or incidental thereto and other matters arising out of a specified At pending before the High Court, except where a Division Bench of that Court exercises writ jurisdiction under articles 226 and 227 of the Constitution, on the date appointed by the State Government u/s 6, shall stand transferred to the Tribunal for disposal in accordance

with the provisions of this Act.

18. The language ''all matters, proceedings, cases and appeals relating to the Land Reforms and matter connected their with or incidental thereto'', as is appearing in Section 9 of the said Act would be harmoniously interpreted with the other section of the Tenancy Tribunal Act namely Sections 2(b), 6, 7 and 8 of the said Act. u/s 2(b) as already held that the order must be passed by an authority in terms of the definition in the Act that is by an Officer and/or authority empowered to Act accordingly. u/s 6 of the said Act only those orders as are passed by an authority under a specified act would be the subject matter of challenge before the Tribunal. u/s 7 of the said Act, Tribunal was vested to deal with only those matters over which it has jurisdiction in terms of Section 6. Similarly, u/s 8, the power, jurisdiction and authority is vested to the Tribunal relating to those orders passed by the authority u/s 2(b) read with Section 6 and those would be decided by the Tribunal and only to that extent, the jurisdiction of the other Courts were taken away. Hence, for all practical purposes, Section 9 of the said Tenancy Tribunal Act, which provides the transfer of the case from High Court, would be limited in respect of those cases on which the Tribunal has the jurisdiction to decide. In terms of Section 2(b) read with Sections 6, 7 and 8 of the said Act, the meaning of word ''all matters'' as mentioned in Section 9 is limited and contoured to the extent of the matters, which can be decided by the Tribunal namely the matters arising out of an order passed by the authority under the specified act. The definition of the word ''all matters'' will take its colour from the earlier Sections 2(b), 6, 7 and 8 of the said Act. It is settled legal position that a statutory provision to be interpreted to give a harmonious meaning of all the provisions. It is also a settled legal position that a meaning of a word under a statute takes its colour and shape from the other words and statutory provision as is appearing in the said statute. In interpreting the statutory provisions in a particular Section, the entire statute to be looked into, The relevant paragraphs from the construction of Statutes by Earl. T. Crawford reprinted edition of 1975 will be profitable to understand the issue and same is quoted hereinbelow:

$165. Statutes as a Whole- Inasmuch as the language of a statute constitutes the depository or reservoir of the legislative intent, in order to ascertain or discover that intent, the statute must be considered as a whole, just as it is necessary to consider a sentence in its entirety in order to grasp its true meaning. Consequently, effect and meaning must be given to every part of the statute, which is being subjected to the process of construction to every section, sentence, clause, phrase and word. This is a principle based upon human experience with man''s modes of expression and the inevitable limitations of our language. So far as statutes are concerned, ordinarily, many words arid phrases and often sentences must be used to express the legislative idea or intent. Abstractly, a word or phrase might easily convey a meaning quite different from the one actually intended and evident when the word or phrase is considered with those with which it is associated. The same is equally true with sentences and paragraphs. Abstractly, the thought expressed in a

detached sentence or paragraph may have little or no resemblance to the idea actually intended. Each word, phrase, clause and sentence are the elements from which the legislative intent is formed. The various words, phrases, clauses and sentences make up the framework, which supports the legislative intent. They are mutually dependent. Co-operatively, they convey the ultimate idea.

Moreover, a statute should be construed as a whole because it is not to be presumed that the legislature has used any useless words, and because it is a dangerous practice to base the construction upon only a part of it, since one portion may be qualified by other portions. In addition to being subject to qualification, words are not always used accurately by the legislature. The thought conveyed by the statute in tis entirety may reveal the inaccurate use.

Hence, the court should, when it seeks the legislative intent, construe all of the constituents parts of the statute together, and seek to ascertain the legislative intention from the whole act, considering every provision thereof in the light of the general purpose and object of the act itself, and endeavoring to make every part effective, harmonious, and sensible, this means, of course, that the court should attempt to avoid absurd consequences in any part of the statute and refuse to regard any word, phrase, clause or sentence superfluous, unless such a result is clearly unavoidable. The Court must construe the statute in this manner, for by failing to do so, the statute is not considered in its entirety and the intention of the legislature is likely to be defeated.

19. Hence, on applying the aforesaid test of statutory interpretation, the purpose of Section 9 to be interpreted upon consideration of the entire, statutory provisions of the Act itself in that angle. The language of the Section 9, which provides ''all matters proceeding, cases and appeals relating to Land Reforms and matter connected therewith and incidental thereto and other matters arising out of a specified Act pending before the High Court ...shall stand transferred to the Tribunal for disposed'' to be interpreted on applications of the other statutory provisions of the said Act namely Section 2(b), Sections 6, 7 and 8. On a combined reading of those Sections, it is clear that all matters pending in High Court which shall be transferred to the Tribunal, must be the matters over Which Tribunal has the jurisdiction to decide. Such jurisdiction to be looked into from the Section 6(a) read with Section 2(b) bt the statute which provides that hearing of those cases as were not only be relating to the Land Reforms but also would be the Orders passed by the Authority under such specified Act. Hence, if any order is passed not by any authority under a specified Act but by a Court of law in terms of the jurisdiction vested to such Court under a specified Act, surely that matter would not be considered as a matter which would be transferred for hearing before the Tribunal even if those matters were pending before the High Court.

20. Furthermore, the dictionary meaning of the language ''all matters relating, to the land Reforms pending in High Court'' if applied, the same would lead to a

conflicting situation in between the earlier Sections of the same statute namely the definition of Authority, jurisdiction and power of the Tribunal in terms of Section 2(b) and Section 6(a) respectively. It is a settled position in the field of statutory interpretation that harmonious construction of all the provisions to be made to avoid any apparent conflict, if any. Applying such test also, Section 9 to be interpreted in the angle of Section 2(b) and Section 6(a) of the statute. It is a settled law that all parts of a statute should, if possible be constituted so as to be -consisted with the other. Reliance may be placed to the judgment passed in the case Le Leu v. The Common Wealth 19 C.L.R. 305 (312), wherein it is held that effect should be given to every part of the Act. Further in the case being a full Bench judgment of Punjab High Court in the case Shahzada Nand and Sons and Others Vs. Central Board of Revenue and Others, , wherein it is held that a Section in an Act should not be considered in isolation and the construction should harmonies with the subject matter and other Sections of the statute. Further, golden rule of interpretation of the words appearing in a statute is not to rely upon the dictionary meaning when the same would defeat the intention of the statutes as well as its context and structure.

21. In the instant case, Section 9 if it is looked into in isolation to other Sections and dictionary meaning is applied relating to the words ''all matters under Land Reforms pending in the High Court'' the same would lead to an absurdity as the matters upon which the Tribunal would have no jurisdiction to decide also would be transferred. Hence, in the present case, the dictionary meaning of the words aforesaid as appearing in Section 9 to be avoided and the words to be interpreted in terms of the context of the statute. Reliance may be placed to the judgments of the Apex Court passed in the case Sabir Ahmed v. Shyamlal AIR 2002 S.C.W. 762, wherein while interpreting the word ''shop-cum-flat'' as appearing in East Punjab Urban Rent Restriction Act, 1941, the Court held that the dictionary meaning of "the word ''flat'' should be avoided to construe the meaning of the word. ''shop-cum-flat'' and the Court held that context of the statute to be looked into to interpret the said word. Hence, having regard to the aforesaid judgments and the rules for interpretation of a statute, it is abundantly clear that only those pending matters upon which Tribunal has the jurisdiction would be transferred and not all pending matters under Land Reforms. The word ''all matters pending'' would take its colour and shape from the other statutory provisions of the statute. Hence, I am of the clear view that Section 9 has no applicability in respect of the transfer of the cases pending before this Court wherein the subject matter of challenge is an order passed by learned District Judge exercising power judicially as a Court in terms of Section 9(6) of the West Bengal Land Reforms Act.

22. Point as taken by the learned Advocates relying upon the judgment of a Single Bench of this Court passed in Kasinath Mondal is now being dealt with. In the case Kasinath Mondal(Supra) while dealing with an application under Article 227 of the Constitution of India as arose out of challenge of an order passed by an Appellate

Authority u/s 54 of the Land Reforms Act, 1955, the court observed in para. 13 relating to challenge of interlocutory orders granting or refusing injunction in connection with an application u/s 8 of the West Bengal Land Reforms Act upon holding, inter alia, that without preferring any appeal before the learned District Judge, no interlocutory application could be filed before the Tribunal. Paragraphs 12 and 13 of the aforesaid judgment is quoted hereinbelow for effective appreciation of the argument as advanced:

12. Thus, merely because Section 6(a) of the Act authorizes the Tribunal to exercise jurisdiction over ''an order in original made by an Authority under a Specified Act,'' that does not mean the every original order passed by an authority will be subject to the scrutiny of the Tribunal. As, pointed out above, if an original order passed by an authority is an appealable one under the Specified Act, the Tribunal will not have jurisdiction to entertain any application u/s 10(1) against such order. Similarly, if any original order is passed by an authority which is not an appealable one, the Tribunal shall not entertain unless it is satisfied that such order will cause undue hardship to the Applicant.

13. For instance, an order granting or refusing preemption u/s 8 of the W.B. Land Reforms Act, although is an order in original ''made by an authority under a specified Act'' cannot be carried to a tribunal by an aggrieved person without preferring an appeal before the learned District Judge. But an interlocutory order, e.g. order granting or refusing injunction, allowing or rejecting amendment of pleading etc. can be challenged before the Tribunal if the Applicant can show that such illegal order has caused undue hardship to him. Similarly, an interlocutory order passed by an appellate authority under a Specified Act can also be challenged before the Tribunal subject to the aforesaid conditions because accordingly to the definition of ''Authority'' mentioned in Section 2(b) of the Act even an appellate authority under a Specified Act comes within such definition. In this connection, it is needless to mention that an interlocutory order passed in aid of final relief in the proceedings, if such interlocutory orders are not expressly appealable, can be challenged before the appellate forum in the appeal that is preferred against final decision provided it affects such final decision. Therefore, if such an interlocutory order is challenged before a Tribunal, it will, before admission of the proceedings, consider whether such remedial measures available to challenge such order in appeal against final order are adequate or not as enjoined in Section 10(3) of the Act.

23. It appears that Court observed ''Similarly, an interlocutory order passed by an appellate authority under a Specified Act can also be challenged before the Tribunal subject to the aforesaid conditions because accordingly to the definition of ''Authority'' mentioned in Section 2(b) of the Act even an appellate authority under a Specified Act comes within such definition'', but by such observation, His Lordship never opined that the District Judge was not a Court but a persona designata while

discharging the function u/s 9(6) of the Land Reforms Act and also never held that the application u/s 115 of the CPC would not be maintainable challenging the order passed by the learned District Judge exercising the power u/s 9(6) of the Land Reforms Act. Hence, the observation as has been taken as a ground for transfer of these cases to the Tribunal has no legal basis. With due respect to His Lordship, it 4s clear that His Lordship never decided that question as is now in hand for determination. In that view of the matter, that judgment has no applicability on the question as raised herein. Furthermore, from the judgment it appears that no argument was advanced before His Lordship with reference to the interpretation of different statutory provisions under the said Act qua the status of the District Judge not as a persona designate or not an Authority in terms of Section 2(b) of Tenancy Tribunal Act. No argument was advanced on that point and there was no adjudication. Accordingly, the views as expressed by His Lordship cannot be said as a binding precedent" as a "Ratio Dicidendi" before this Court even though this Court is exercising the power sitting in the co-ordinate bench. Reliance may be placed to the judgment in the case State of Punjab Vs. Baldev Singh, , a judgment of Constitution Bench, wherein it is held "a decision is an authority for what it decides and not that everything stated therein constitutes a "precedent". The Court are obliged to employ an intelligent technique, in the use of "precedents" bearing it in mind that "a decision of the Court takes its colour from the questions involved in the case in which it was rendered". The same principle was reiterated in the judgment passed in the case Commissioner of Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd., , under para. 39 which reads as follows:

The principle laid down by this Court in Jagan Mohan Rao case therefore, is only to the extent that once an assessment is validly reopened by issuance of notice u/s 22(2) of the 1922 Act (corresponding to Section 148 of the Act) the previous underassessment is set aside and the ITO has the jurisdiction and duty to levy tax on the entire income that had escaped assessment during the previous year. What is set aside is, thus, only the previous under-assessment and not the original assessment proceedings. An order made in relation to the escaped turnover does not effect the operative force of the original assessment, particularly if it has acquired finality, and the original order retains both its character and identity. It is only in cases of "under-assessment" based on Clauses (a) to (d) of Explanation I to Section 147, that the assessment of tax due has to be recomputed on the entire taxable income. The judgment in Jagan Mohan Rao case therefore, cannot be read to imply as laying down that in the reassessment proceedings validly initiated, the Assessee can seek reopening of the whole assessment and claim credit in respect of items finally concluded in the original assessment. The Assessee cannot claim recomputation of the income or redoing of an assessment and be allowed a claim which he either failed to make or which was otherwise rejected at the time of original ^assessment which has since acquired finality. Of course, in the reassessment proceedings it is open to an Assessee to show that the income alleged

to have escaped assessment has in truth and in fact not escaped assessment but that the same had been shown under some inappropriate head in the original return, but to read the judgment in Jagan Mohan Rao case as if laying down that reassessment wipes out the original assessment and that reassessment is not only confined to ''escaped assessment'' or ''under assessment'' but to the* entire assessment for the year and start the assessment proceedings de novo giving right to an Assessee to reagitate matters which he had lost during the original assessment proceeding, which had acquired finality, is not only erroneous but also against the phraseology of Section 147 of the Act and the object of reassessment proceedings. Such an interpretation would be reading that judgment totally out of context in which the questions arose for decision in that case. It is neither desirable nor permissible to pick out a work or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be the complete ''law'' declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court, a decision of this Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings. In Madhav Rao Scindia v. Union of India this Court cautioned:

It is not proper to regard a word, a clause or a sentence occurring in a judgment of the Supreme Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment.

24. The observation as passed by His Lordship in the judgment Kasinath Mondal(Supra) as earlier referred to was an observation while dealing with a question about maintainability of a pending case in High Court wherein impugned order was passed by an authority u/s 54 of the West Bengal Land Reforms Act. There is no doubt that the Officer exercising power u/s 54 of the West Bengal Land Reforms Act is the Collector and/or the Commissioner of the Division as the case may be being vested with power to hear the appeals. In that context, the order passed under s, 54 by the Collector and/or the commissioner of the Division is nothing but an order passed by an authority u/s 2(b) of the Tenancy Tribunal Act. While adjudicating that issue, His Lordship observed aforesaid, as an example, relating to the interlocutory matters in connection with application on pre-emption.

25. There was little scope before His Lordship to adjudicate the question involved herein, as nobody urged on the points that District Judge dealing with the matter was not an Officer or authority dealing the appeals u/s 9(6) of the West Bengal Land Reforms Act. In that view of the matter, the observation as made by His Lordship

with due respect to His Lordship can be termed as observation passed pre-incursion on the basis of the settled Apex Court judgment on that point. Reliance may be placed to the decision passed in the case Municipal Corporation of Delhi Vs. Gurnam Kaur, . The reports at pages 110 to 111, which will be profitable for consideration of the matter is quoted herein below

11. Pronouncement of law, which are not part of the ratio decidendi are classed as obiter dicta and are. not authoritative. With all respect to the learned Judge who passed the order in Jamma Das case and to the learned Judge who agreed with him, we cannot concede that this Court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavements or public streets, and without any citation of authority. Accordingly, we do not propose to uphold the decision of the High Court because, it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions. A decision should be treated as given per incurring when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows, no argument was addressed to the court on the question whether or not any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter. Professor P.J. Fitzgerald, editor of the Salmond on Jurisprudence, 12th edn. Explains the concept of sub silentio at p. 153 in these words:

A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court, in such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B.

Point B is said to pass sub silentio.

12. In General v. Worth of Paris Ltd. (k), the only point argued was on the question of priority of the claimant''s debt, and, on this argument being heard, the court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in Lancaster Motor Go. (London) Ltd. v. Bremith Ltd, the court held itself not bound by its previous decision. Sir Wilfred Greene, M.R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier court before it could make the order

which it did; nevertheless, since it was decided ''without argument, without reference to the crucial words of the rule, and without any citation of authority'', it was not binding and would not be followed. Precedents sub silent and without argument are of no moment. This rule has ever since been followed. One of the chief reasons for the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be reopened. The weight accorded to dicta varies with the type of dictum. Mere casual expressions carry no weight at all. Not every passing expression of a judge, however, eminent, can be treated as an ex cathedra statement, having the weight of authority.

26. In this contest, the view of Prof. P.J. Pitzgerat in the 12th Edition of ''Salmonds on Jurisprudence'' at page 153 is profitable to be quoted. ''A decision passes sub silence in the technical sense that has come to be attached to that phrase when the particular point of law involved in the decision is not perceived the Court or present in its mind''. Having regard to the aforesaid proposition of law, the observation of His. Lordship in para. 13 of judgment Kasinath Mondal is attracted by the doctrine of sub silenced since in the judgment of Kasinath Mondal(tm) nowhere such point was urged about maintainability of an application arose out of an order in preemption matter, under West Bengal Land Reforms Act, within the jurisdiction of the High Court either u/s 115 of the CPC or Article 227 of the Constitution of India, on assailing the order either of learned Munsif u/s 9(1) or an order of learned District Judge, an appellate authority u/s 9(6) of Land Reforms Act. Hence, observation in para. 13 of the said judgment Kasinath Mondal(1) is not a binding precedent to me and it can be termed as ''Obiter Dicta''. Having regard to the aforesaid reasoning as made by me and having regard to the judgments of the Apex Court, I am of clear view that the applications u/s 115 of the CPC are maintainable before this Court whereby challenge has been made in respect of the orders passed by learned District Judge exercising his power as an Appellate Authority u/s 9(6) of the West Bengal Land Reforms Act and West Bengal Land Reforms and Tenancy Tribunal Act has not taken away such jurisdiction of High Court even in respect of the pending cases and the said Act has no applicability. Hence, it is held that revisional applications are maintainable. Let these applications be posted for hearing on merits. Since this Court has no determination at the present moment to decide the Civil Revision matters, let all these matters be released from my list and be placed to the appropriate Bench for hearing on merits.