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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
VIKRAM NATH; J., SANDEEP MEHTA; J.
CIVIL APPEAL NO(S). 2920 OF 2018; JANUARY 29, 2026
M/S AARSUDAY PROJECTS & INFRASTRUCTURE (P) LTD. *versus* **JOGEN CHOWDHURY & ORS.**

Public Interest Litigation (PIL) - Property Rights - The Supreme Court set aside a Calcutta High Court judgment that had ordered the demolition of a residential building constructed by the appellant near Visva-Bharati University – Noted that the High Court had initially ruled the construction illegal on the grounds that it was raised on preserved "khoai" land and lacked approval from the competent authority (Panchayat Samiti) - Supreme Court found that the High Court's conclusions were based on conjectures rather than scientific evidence and failed to account for the appellant's right to property under Article 300A of the Constitution - Key Legal Issues & Findings – i. Burden of Proof in PIL and Disputed Facts: The Court emphasized that in a PIL, the burden lies squarely on the petitioners to provide clear, cogent, and reliable material - held that writ jurisdiction should not be invoked to resolve contested factual issues—such as the geological nature of land—which cannot be determined solely on affidavits; ii. Nature of "Khoai" Land - noted that "khoai" is not a recognized category under West Bengal revenue laws but a colloquial term for geological formations - Reports from the District Magistrate and the West Bengal Pollution Control Board (WBPCB) failed to provide objective or scientific evidence that the specific subject plot was "khoai" land; iii. Procedural Irregularities vs. Substantive Illegality - held that even if the Gram Panchayat was not the competent authority to sanction the building plan (vesting instead with the Panchayat Samiti), such a lapse constituted a "minor procedural irregularity" that was curable, especially since the plan had been vetted by the higher-tier Zilla Parishad - This did not warrant the "draconian consequence" of demolition; iv. Procedural Irregularities vs. Substantive Illegality - held that even if the Gram Panchayat was not the competent authority to sanction the building plan (vesting instead with the Panchayat Samiti), such a lapse constituted a "minor procedural irregularity" that was curable, especially since the plan had been vetted by the higher-tier Zilla Parishad - This did not warrant the "draconian consequence" of demolition; v. Bona Fides and Concealment of Facts: Noted that the PIL lacked bona fides as several writ petitioners owned existing residential structures within the same tract of land, a fact they failed to disclose - The petition "selectively targeted" the appellant's construction while ignoring similar surrounding structures - set aside the High Court's demolition order, and expunged adverse remarks against the Sriniketan Santiniketan Development Authority (SSDA). Due to the lack of bona fides and non-disclosure of material facts, the Court imposed costs of ₹1,00,000 on the writ petitioners. Appeals allowed. *[Relied on Sushanta Tagore and Ors. v. Union of India and Ors., (2005) 3 SCC 16; Chairman, Grid Corporation of Orissa Ltd. (GRIDCO) v. Sukamani Das, (1999) 7 SCC 298; Shubhas Jain v. Rajeshwari Shivam, (2021) 20 SCC 454; Paras 36, 45 - 47, 49 – 52, 58]*

WITH CIVIL APPEAL NO(S). 2921 OF 2018; CIVIL APPEAL NO(S). 2922-2923 OF 2018

For Appellant(s): Mr. Ranjan Mukherjee, AOR Mr. Siddharth Bhatnagar, Sr. Adv. Mr. Nirnimesh Dube, Adv. Mr. Ankur S. Kulkarni, Adv. Mr. Pratham Mehrotra, Adv. Ms. Pracheta Kar, Adv. Mr. Nadeem Afroz, Adv. Ms. Priya S. Bhalerao, Adv. Ms. Divyansha Gajallewar, Adv. M/s Lex Regis Law Offices, AOR Mr. Prasenjit Keswani, Sr. Adv. Mr. Amol Chitale, Adv. Ms. Shweta Singh Parihar, Adv. Mrs. Pragya Baghel, AOR Mr. Sarthak Sharma, Adv.

For Respondent(s): Mr. Siddharth Bhatnagar, Sr. Adv. Mr. Nirnimesh Dube, Adv. Mr. Ankur S. Kulkarni, Adv. 1 Mr. Pratham Mehrotra, Adv. Ms. Pracheta Kar, Adv. Mr. Nadeem Afroz, Adv. Ms. Priya S. Bhalerao, Adv. Ms. Divyansha Gajallewar, Adv. M/s Lex Regis Law Offices, AOR Mr. Nikilesh Ramachandran, AOR M/S. Plr Chambers And Co., AOR Mr. Sanjay Kumar Visen, AOR Mr. G.arudhra Rao, Adv. Mr. Abhijit Sengupta, AOR Mr. Paras Chauhan, Adv. Mr. Balmiki Prasad, Adv. Mr. Birendra Kumar, Adv. Mr. N.maylsamy, Adv. Mr. S.prasada Rao, Adv. Mr. Vishal Arun, AOR Mr. Jaideep Gupta, Sr. Adv. Mr. Partha Sil, AOR Mr. Chirag Joshi, Adv. Mr. Utkarsh Dwivedi, Adv. Mr. Srijit Datta, Adv. Mr. Kunal Mimani, AOR Ms. Shraddha Chirania, Adv. Ms. Astha Sharma, AOR Mr. Ranjan Mukherjee, AOR Mr. Rana Mukherjee, Sr. Adv. Mr. Manoj, Adv. Mr. Paritosh Sinha, Adv. Mr. Amitava Mitra, Adv. Mr. Naman Agarwal, Adv. Ms. Aparna Sinha, AOR

For Intervenor(s) Mr. C.A. Sundaram, Sr. Adv. Mr. Udayaditya Banerjee, Adv. Mr. Samrat Sengupta, Adv. Mr. Soumya Dutta, AOR Mr. Siddhant Jaiswal, Adv. Mr. Siddhant Upmanyu, Adv. Mr. Abhijit Pandey, Adv.

J U D G M E N T

Mehta, J.

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1. Heard.

I. SUBJECT MATTER AND SCOPE OF THE PRESENT APPEALS

2. The instant appeals with special leave are directed against the judgment and order dated 21st & 22nd August, 2013 passed by the Division Bench of the High Court at Calcutta[1] in Writ Petition No. 8341(W) of 2012, whereby the said writ petition in the nature of public

[1] Hereinafter, being referred to as the "High Court".

interest litigation preferred by respondent Nos. 1-7[2] came to be accepted and the High Court directed the demolition of the building constructed by the appellant-M/s. Aarsuday Projects & Infrastructure (P) Ltd.[3] on the subject plot[4] and also directed Aarsuday Projects to pay compensation to the tune of Rs.10,00,000/-, which was to be used for the purpose of restoration and preservation of the area in question. The High Court also saddled Aarsuday Projects with costs of Rs.25,000/- payable to the writ petitioners therein.

3. Simultaneously, the High Court also directed the initiation of appropriate proceedings against the officers of Sriniketan Santiniketan Development Authority[5] who had issued the "No Objection Certificate" for conversion of land from *"danga"* to *"bastu"* and District Land & Land Reforms Officer, Birbhum (DL&LRO, Birbhum), as well as against the concerned officers of the Ruppur Gram Panchayat for alleged violation of the mandate of judgment rendered by this Court in the case of ***Sushanta Tagore and Ors. v. Union of India and Ors.***[6] For the sake of ready reference, the operative portion of the impugned judgment is reproduced hereinbelow: -

"In the instant case, the land in question is of immense public importance. Considering the environmental ambience and the international heritage, importance of Visva Bharati and Santiniketan, we find that the construction made for private gain in the land which has been converted to "khoai" a rare gift of nature, and/or in areas the inextricably connected to "khoai", is wholly impermissible and violative of principles laid down by the Hon'ble Supreme Court in the aforesaid decision of Susantha Tagore (supra). Private rights/interests have to give way to larger public interest.

(…..)

It is apparent that there were various illegal encroachments, which have been made in the area of Santiniketan and Visva Bharati, though there are resolutions that such structures have to be demolished in accordance with law, but no steps have been taken by the respondents. Coming to yet another aspect, we find that the District Magistrate has ordered as the lodging of first information report against the builders for illegal construction by the builders and for taking steps against the Sriniketan Santiniketan Development Authority and DLLRO. Though we appreciate report but we record the steps have to be taken to their logical conclusion implemented along with resolutions in true spirit and not allowed to remain as mere lip service to the cause of preservation of ecology and heritage.

Since we find flagrant violation of the decision of the Hon'ble Supreme Court in Sushanta Tagore's case, we propose to initiate action against the responsible officer of Sriniketan Santiniketan Development Authority, who had issued the no objection, and the District Land & Land Reforms Officer as well as against the concerned officers of the gram panchayet as to why they should not be dealt with suitably for violating the mandate of the apex court in the manner in which they have done. The officers, as aforesaid, should have first of all considered the decision of the Hon'ble Supreme Court and ought to have acted in accordance with it, but ignoring the mandate of the Hon'ble Supreme Court they had acted directly against the same. Thus, they are supposed to explain why they should not be hauled up for violating the decision of the Hon'ble Supreme Court.

Let appropriate proceedings be separately registered against them and be placed before us for consideration.

We are, therefore, of the opinion that since the development plan prepared by the Sriniketan Santiniketan Development Authority was required to be modified in terms of the notification issued

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[2] Before the High Court, there were 8 writ petitioners, and all were made party-respondents in Civil Appeal No. 2920 of 2018. However, the name of Shri Sushanta Tagore was deleted from the array of parties *vide* this Court's order dated 27th July, 2015 owing to his death.
[3] Hereinafter, being referred to as the "Aarsuday Projects".
[4] Plot No. 3644/3782 admeasuring 0.39 acres in Mouza Ballavpur, J.L. No. 63, District Birbhum.
[5] Hereinafter, being referred to as the "SSDA". [6] (2005) 3 SCC 16.

on January 25, 2010, no right can accrue to the respondent no. 6 therefrom so as to sustain a totally illegal and unauthorised act in raising a large scale multi-storied construction in an ecologically and culturally preserved area adjoining a wild life sanctuary and destroying "khoai" land.

It is apparent that it was necessary to work out peripheral limits of buffer zone in and around Visva Bharati campus, which has not been done so far. it was also necessary to carry out changes in development plans mentioned in notification dated 25.04.2010 issued under the Act of 1979. We restrain any kind of construction till such exercise is done and the development plan is modified by the Sriniketan-Santiniketan Development Authority in terms of the notification dated January 25, 2010 in mouzas covered in it issued under the West Bengal Town & Country (Planning and Development) Act, 1979.

We find that objection raised from time to time remain unheeded to. Prompt action ought to have been taken by the District Magistrate and the Superintendent of Police against the Sriniketan-Santiniketan Development Authority and other concerned bodies not only to stop the construction in question but to demolish it as the same is totally illegal.

Resultantly, as the construction of the building is found to be wholly unauthorised and illegal for the reasons, as aforesaid, we direct demolition of the same. The District Magistrate, Birbhum and the Superintendent of Police, Birbhum as also the Bolpur-Srinikektan Panchayet Samity shall take action for demolishing the building within a period of one month from date and to file their compliance report before this court. We direct the authorities, as aforesaid, not only to demolish the building in question in totality but to restore the land, as it was, as far as possible and to keep it as such. They are also directed to ensure that no constructional activity in the area covered by notification on 25/1/2010 of Santiniketan and Visva Bharati to be undertaken till the development plan is modified in accordance with law in terms of the notification dated January 25, 2010 and without prior approval of the Apex Advisory Committee constituted in terms of notification dated January 18, 2011 and without consultation with the West Bengal Pollution Control Board. We further direct till consultation with the Archaeological Survey of India is completed, no permission for raising any construction to be accorded in future by any authority, such as, Sriniketan Santiniketan Development Authority, Bolpur-Srinikektan Panchayet and other local bodies, authorities such as municipality, etc. in Mouzas included in notification dated 25.1.2010 and in Visva Bharati/Santiniketan.

As the construction had been raised by the respondent no. 6 in a wholly unauthorised manner and that too without providing any ingress and egress to the road and thereby creating disturbances to the. Visva Bharati University and damage to Khoai land, we direct compensation of Rs. 10 lakhs to be paid by the respondent No. 6, which is to be used for the purpose of restoration of the land and preservation of the area in question. The amount of compensation is to be spent at the advice of the Apex Advisory Committee. The respondent No. 6 is further directed to pay costs of litigation Rs.25,000/- to the writ petitioners."

4. The aforesaid judgment of the High Court forms the subject matter of challenge in the present appeals by special leave. The particulars of the appeals are set out hereunder:-

- **Civil Appeal No. 2920 of 2018:** Preferred by Aarsuday Projects, the developer of the subject plot.

- **Civil Appeal No. 2921 of 2018:** Preferred by the SSDA, challenging the adverse observations made by the High Court against it and its officers, as well as the consequential directions for initiation of action against its officer(s).

- **Civil Appeal Nos. 2922-2923 of 2018:** Preferred by the subsequent purchasers of flats constructed by Aarsuday Projects on the subject plot.

5. It is apposite to note herein that this Court, *vide* order dated 6th September, 2013, while issuing notice in the appeal preferred by Aarsuday Projects, directed the parties to maintain *status quo* in all respects with regard to the subject building(s) as well as the subject land, in the following terms:

"In the meanwhile, the petitioner and respondents shall maintain *status quo* as obtaining today in all respects with regard to the subject building(s) as well as the subject land."

II. BACKGROUND AND EVOLUTION OF THE CONTROVERSY: -

6. The controversy in the case at hand revolves around the disputed construction raised by Aarsuday Projects on a plot of land admeasuring 0.39 acres, near the Visva-Bharati University, which, according to the High Court was in the nature of preserved land falling in the category of *"khoai"* land. There is no dispute amongst the parties that no category by the name of *"khoai"* land exists under the revenue laws of the State of West Bengal. The said description appears to have been borrowed from the writings of the Nobel Laureate, Shri Rabindranath Tagore, who referred to a peculiar geological formation found in and around the Birbhum region, created by natural decay and erosion, by wind and water, of small hills comprising red laterite soil rich in iron, resulting in the formation of natural gullies and canyon-like terrain.

7. In judicial parlance, the existence of *"khoai"* land was recognised for the first time by the High Court at Calcutta and subsequently by this Court in the case of ***Sushanta Tagore (supra)***. In the said case, the Courts were concerned with the large-scale construction of residential-cum-commercial complexes within the territorial limits of Santiniketan, District Birbhum, West Bengal, which were alleged to have adversely impacted the ecological balance, cultural ethos, and environmental sanctity of the region.

8. The litigation originated from a public interest petition instituted before the High Court, *inter alia*, alleging that unregulated and indiscriminate construction activity in and around Santiniketan had resulted in serious degradation of its cultural and environmental heritage, undermining the ideals and objectives underlying the establishment of VisvaBharati University.

9. A Division Bench of the High Court *vide* judgment dated 20th August, 2004, dismissed the writ petition filed in the nature of public interest litigation, holding that since Visva-Bharati University was not the owner of the entire 3,000 hectares of land in question, the relief sought for by the PIL petitioner therein could not be granted. The High Court opined that, in the absence of any statutory restriction, the State was competent to deal with such land in accordance with law, and that the establishment of residential structures or other peaceful activities in the vicinity of a university could not, by itself, be termed illegal. While acknowledging that increasing population and construction activity would inevitably alter the character of areas surrounding Santiniketan over a period of time, the High Court held that neither the Visva-Bharati Act, 1951 nor the ideals of Rabindranath Tagore mandated that the entire Santiniketan has to be preserved as an exclusive or static zone in perpetuity. It was further observed that regulating construction on the basis of the poet's ideals, in the absence of a clear statutory framework, would be impractical and unenforceable. The High Court concluded that although the proposed housing project therein would alter the local topography, no overriding public interest warranted restraint, particularly where development was planned, systematic, and in conformity with applicable laws.

10. The aforesaid judgment of the High Court was challenged before this Court in ***Sushanta Tagore (supra)***.

11. This Court, while adjudicating the matter, took cognizance of the fact that the West Bengal Pollution Control Board (WBPCB) had imposed restrictions upon municipal authorities, prohibiting the sanction of building plans for large housing complexes without prior environmental clearance. This Court also referred to and extracted relevant portions of the report submitted by the WBPCB. For ready reference, these observations from ***Sushanta Tagore (supra)*** are reproduced hereinbelow: -

"Report of the Pollution Control Board

20. From the report sent by the W.B. Pollution Control Board, it would appear that it had issued a direction restricting the municipal corporations, etc. from sanctioning any building plan of big housing complexes without obtaining its environmental clearance. Having regard to the peculiar features and the fact that SSDA's working area includes maintenance and preservation of cultural heritage and natural environment of Sriniketan-Santiniketan and further in view of the increase in the price of the land of Khoai and as people visiting Santiniketan enjoy Khoai by seeing in different climatic and scenic conditions, it was stated:

"Increasing constructional activity in SriniketanSantiniketan area may cause serious disruption in natural drainage system. It is therefore necessary to examine the drainage pattern (both dry weather flow and storm water flow) in the area and document it as per field condition. It is suggested that SSDA could take up the job examining the drainage pattern and system and document them in a map (marked with contour). The coming rainy season (July-September) could be ideal for the field study.

As Santiniketan is getting developed as tourist place, therefore, it is essential to preserve the natural beauty and heritage which people like to enjoy. It is true that planned housing is one of the components of urbanisation. There is a great demand of housing not only from the local residents but also from people outside. Many want to keep a second home for use during weekends, holidays and festivals. Housing needs supporting infrastructures, also required to be constructed. Further, it will require adequate water supply, sanitation and drainage, solid waste management, etc.

Urbanisation will have impact on ambient air quality unless problem-mitigation measures are taken properly. The rapid EIA report submitted by BPHDCL though indicated that suspended particulate matters in ambient air at Sonar Taree area are below maximum permissible limit, but the same near Pearson Memorial Hospital was more than the permissible limit in December. Even on some days of December the SPM was more than the permissible limit at Sonar Taree area. However, other parameters of ambient air are well below the permissible limit." It was opined:

"SSDA should follow land use and development control plan already prepared by Urban Development (T&CP) Department. In addition, SSDA must see to conservation of the natural heritage of the place as far as practicable. It is also true that when development of Santiniketan-Sriniketan area is a necessity due to promotion of tourism and urban pull, there must be certain changes in the land use pattern resulting in disappearance of Khoai landscape from certain places. Hence SSDA must look into this aspect while planning for development of area keeping changes of Khoai land formation minimal."

Among other things, the report recommended that:

(i) no more housing projects be undertaken until SSDA's perspective plan 2025 including Visva-Bharati's special requirements was approved,

(ii) ensure minimal damage to the remaining Khoai so as to preserve its natural beauty, heritage and natural drainage system,

(iii) a satellite township be built at a suitable distance from the Visva-Bharati area."

12. Taking note of the aforesaid report, as well as the provisions of the Visva-Bharati Act, 1951, this Court proceeded to hold that while development and change are inevitable, Santiniketan, having regard to its unique cultural, educational, and ecological character,

stands on a distinct footing. This Court emphasized that the statutory scheme underlying the Visva-Bharati Act, 1951 mandated preservation of the traditions, ethos, and environmental ambience of the institution and its surroundings, particularly the *"khoai"* landscape, which forms an integral part of Nobel Laureate, Shri Rabindranath Tagore's literary philosophy. It was observed that indiscriminate and large-scale residential or commercial construction would not only alter the topography of Santiniketan but also defeat the very object and purpose of the enactment. This Court further held that development must be sustainable, planned, and in conformity with environmental and pollution control laws, and that there could be no parity/perpetuity of illegality merely because unauthorized constructions may have come up in the past.

13. Having held so, this Court addressed the prevailing equities and noted that the project in question had received approvals at various stages, that substantial investment had already been made, and that similar housing projects had already come into existence in the area. In those circumstances, while refraining from disrupting the construction already undertaken, this Court issued clear directions that, in future, the SSDA must scrupulously adhere to the statutory provisions, the objectives of the Visva-Bharati Act, 1951 and the recommendations of the WBPCB, recognizing that the SSDA bears a higher and distinct responsibility in view of the *sui generis* character of Santiniketan. Relevant findings from the said judgment are reproduced hereinbelow: -

"25. The Division Bench of the High Court, as noticed hereinbefore, arrived at a finding that the continued increase of building activities will slowly change the place almost beyond recognition of the poet and the activities of Bengal Ambuja Housing Complex Ltd. will to some extent change the topography of Santiniketan in the canal front. Despite holding so, the High Court observed that such changes are necessary having regard to the continued increase in population of Santiniketan and, as the Act does not contain any provision Santiniketan was required to be made an exclusive spot forever and, furthermore, as allowing Santiniketan in its original form would be impractical, it can be permitted to become residential town or even industrial town provided the growth is planned, systematic and in accordance with the laws relating to freedom from population.

26. **If by reason of any activity, the tradition and special features of Visva-Bharati are not preserved, the very purpose of the enactment would be defeated. It has not been denied or disputed that even now Visva-Bharati organises classes in open air and also on Khoai lands, particularly, drawing and painting classes.**

(.....)

29. **The Division Bench of the High Court, in our opinion, was not correct in holding that in the event the building activity in the territorial area comprising Santiniketan as specified in the Act was to take place in accordance with the spirit and ideas of Rabindranath Tagore, such activity cannot be monitored in the practical world and, therefore, would constitute illegal and impractical way of thought and furthermore although the House Complex Project of Respondent 10 would change the topography of Santiniketan in the canal front, there was no public interest calling for restraint of such a change.**

30. The West Bengal Pollution Control Board is a statutory body. The environmental impact assessment in terms of the provisions of the laws governing ecology of the area is imperative. The Pollution Control Board which has statutory duties to perform had issued certain directions for preservation and conservation for cultural, historical, archaeological, environmental and ecological purposes. Such directions are binding on the State as well as SSDA. If any construction is carried out on the Khoai, the same indisputably will destroy its unique natural and cultural heritage, as opined by the Board, and, thus, all constructional activities must abide by the same.

(.....)

33. It may be true that the development of a town is the job of the Town Planning Authority but the same should conform to the requirements of law. Development must be sustainable in nature. **A land use plan should be prepared not only having regard to the provisions contained in the 1979 Act and the Rules and Regulations framed thereunder but also the provisions of other statutes enacted therefor and in particular those for protection and preservation of ecology and environment.**

34. **As Visva-Bharati has the unique distinction of being not only a university of national importance but also a unitary one, SSDA should be well advised to keep in mind the provisions of the Act, the object and purpose for which it has been enacted as also the report of the West Bengal Pollution Control Board. It is sui generis.** 35. It is idle to compare Santiniketan with any other university. Truism is that Santiniketan has unique features. Its environmental ambience, thus, must be maintained. There is no other university which having regard to the purport and object of the Act, as would appear from the objects and reasons thereof, can be compared with Visva-Bharati. Our attention has not been drawn to any other statute establishing any university which has such unique features as Visva-Bharati.

36. **Only because some advantages would ensue to the people in general by reason of the proposed development, the same would not mean that the ecology of the place would be sacrificed. Only because some encroachments have been made and unauthorised buildings have been constructed, the same by itself cannot be a good ground for allowing other constructional activities to come up which would be in violation of the provisions of the Act. Illegal encroachments, if any, may be removed in accordance with law. It is trite law that there is no equality in illegality.**

37. The Parliamentary Debates, some of which we have noticed hereinbefore, clearly go to show that the Act was enacted with particular objectives in view. **Such statutory objects could not have been given a go-by. It is not suggested that Santiniketan should remain as it was in 1921 but it cannot be permitted to become full of concrete jungles and industrial hub. For carrying out further constructional activities, it may not be necessary for a builder to apply to the University for seeking its permission but the local selfgovernment which is responsible therefor must take into consideration the salutary principles laid down in the pollution control laws as well as the Act. The land use and future planning of Santiniketan must be done in such a manner so that the changes be brought about which would not be beyond the recognition of the poet as also the provisions of the Act. SSDA in that sense must distinguish itself from the other development authorities. It has an extra burden to shoulder. It cannot shut its eyes to the provisions of the Act and the object and purport it seeks to achieve. It cannot ignore the environmental impact assessment made by the Board. It is one thing to say that SSDA may permit small constructions to be made by the owners of the land or additions or allow alterations to the existing building for residential purposes but it is another thing to say that it would not consider the effect of the changes which may be brought about by turning Santiniketan into a commercial and industrial hub.**

(.....)

Conclusion

39. The question is what do we do in the instant case?

40. SSDA issued notices as regards adoption of the land use map as far back as in the years 1999 and 2000. **The State Government had granted a longterm settlement in favour of SSDA with a further right to the residential flat owners for the unexpired period of lease by an order dated 25-42003. In 2003 itself, the project had been given a green signal and it is stated before us that Respondent 10 has already spent about 1.5 crores of rupees.**

41. **Our attention has further been drawn by Mr Sanghi that the house project of Bengal Peerless has already come into being. In that view of the matter, we do not intend to stop the construction activities which are being carried out by Respondent 10 but direct that in**

future SSDA must keep in mind the statutory provisions referred to hereinbefore as also the observations made by us herein."

[Emphasis supplied]

14. The present litigation seems to be a sequel to the above judgment. The public interest litigation being Writ Petition No. 8341(W) of 2012 came to be filed in the High Court alleging *inter alia* that the permission granted to Aarsuday Projects to construct a residential building was illegal inasmuch as the permission for construction was not granted by the competent authority and that the construction was being raised on *"khoai"* land which was impermissible in view of the mandate of this Court in ***Sushanta Tagore (supra)***.

15. The High Court accepted the averments made in the writ petition as well as the inspection reports called by it during the course of adjudication and on that basis, by the impugned judgment, directed demolition of the building constructed by Aarsuday Projects for residential and commercial purposes and also gave ancillary directions reproduced (*supra).*

III. FACTUAL MATRIX OF THE PRESENT CASE: -

16. Before adverting to the submissions of learned counsel for the parties, it would be apposite, for the sake of convenience, to set out a chronological list of dates relevant and essential for the disposal of the present appeals.

2002: The Land Use and Development Control Plan in respect of Sriniketan Santiniketan Planning Area including the subject plot admeasuring 0.39 acres was published by the competent planning authority, wherein the subject plot was designated for "residential use".

11.08.2009: Aarsuday Projects, purchased the subject plot by way of a registered sale deed.

03.12.2009: The subject plot was recorded as *danga* (barren land) in the Record of Rights.

29.12.2009: The Ruppur Gram Panchayat issued a "No Objection Certificate" for residential construction on the subject plot, conditional upon procurement of conversion permission for the same.

25.10.2010: The Urban Development Department, Government of West Bengal, directed the SSDA to revise the Development Plan for eleven *mouzas* including Mouza Ballavpur, keeping in view the spirit of conservation and preservation.

30.06.2011: Aarsuday Projects started the development on the subject plot.

10.09.2011: SSDA constituted a three-member SubCommittee, comprising representatives of the VisvaBharati Anchal Abasik Samiti and Visva-Bharati University, for selection and implementation of the schemes approved by it.

21.10.2011: The building plan submitted by Aarsuday Projects proposed a plinth area of over 300 square metres. Consequently, the Ruppur Gram Panchayat forwarded the same to the Zilla Parishad, Birbhum, for vetting and approval in terms of the second proviso to Rule 28 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004.

04.11.2011: The Zilla Parishad, Birbhum vetted the building plan and forwarded it to the Ruppur Gram Panchayat.

04.11.2011: The Ruppur Gram Panchayat treated the vetted plan as approved and communicated the same to Aarsuday Projects.

27.01.2012: SSDA directed inspection of the site and called for a report from the Sub-Committee prior to considering the grant of "No Objection Certificate" for construction on the subject plot.

08.02.2012: The Sub-Committee conducted inspection of the site and submitted its report, finding no impediment to the grant of "No Objection Certificate" for conversion of land for residential construction, i.e., from *"danga"* to *"bastu"*.

28.02.2012: SSDA accorded "No Objection Certificate" for conversion of the land to *bastu* (residential use).

17.04.2012: The present writ petition being Writ Petition No. 8341(W) of 2012 in the nature of public interest litigation, was filed before the High Court seeking revocation of the sanction/permission granted to Aarsuday Projects for construction of the building, primarily on two grounds, (a) permission to construct granted to Aarsuday Projects was illegal inasmuch as the permission was not granted by the competent authority and (b) the construction was being raised on *"khoai"* land, which was impermissible in view of the mandate of this Court in ***Sushanta Tagore (supra)***.

It is relevant to note that no interim stay on construction was granted by the High Court at the initial stage.

05.06.2012: SSDA recorded the grant of "No Objection Certificate" to Aarsuday Projects. **The said action was taken in the presence of representatives of Visva-Bharati University.**

09.01.2013: The District Land & Land Reforms Officer, Birbhum (DL&LRO, Birbhum), approved the conversion of the subject plot from *"danga"* to *"bastu"* for the purpose of setting up a commercial housing project, subject to completion within a period of six months.

July, 2013: Construction of the disputed building was completed by Aarsuday Projects.

11.07.2013: The High Court called for reports from the District Magistrate and the West Bengal Pollution Control Board (WBPCB) on the issue as to whether the subject plot was *"khoai"* land and whether due clearances/permissions had been taken by the builder, i.e., Aarsuday Projects for raising construction on the subject plot.

19.07.2013: WBPCB submitted its inspection report stating that ***the adjacent area to the subject plot was a low-lying area locally known as "khoai" land, and further observed that no clearance from the Board was required as the built-up area of the construction raised by Aarsuday Projects measured less than 20,000 square metres.***

23.07.2013: The District Magistrate submitted a report without recording any specific finding on the nature of the land, stating that clarification had been sought from the SSDA regarding the basis for grant of "No Objection Certificate" for construction on the subject plot.

14.08.2013: SSDA filed its objections/exceptions to the District Magistrate's report, asserting that the "No Objection Certificate" was granted considering that the subject plot was earmarked for "residential use" in the Land Use and Development Control Plan, 2002 and that substantial human settlement already existed in the area.

21/22.08.2013: The High Court rendered the impugned judgment, holding that the Panchayat Samiti alone was the competent authority to grant the permission for construction and that no such permission had been obtained. It was further held that the

officers of the SSDA, Gram Panchayat, and DL&LRO, Birbhum had acted in violation of the judgment in ***Sushanta Tagore (supra)***, and that the development plan ought to have been modified in compliance with the said judgment. Consequently, the construction carried out by Aarsuday Projects was declared to be illegal and directions were issued for demolition of the disputed construction. The High Court also held that the construction had caused disturbance to Visva-Bharati University and damage to *"khoai"* land, and accordingly directed the developer, i.e., Aarsuday Projects, to pay compensation of Rs. 10,00,000/-. Further, costs of Rs. 25,000/- was imposed on Aarsuday Projects, payable to the writ petitioners. Liberty was granted to the purchasers to work out their equities with the builder/developer, i.e., Aarsuday Projects.

The aforesaid judgment of the High court is the subject matter of challenge in the present appeals by special leave, preferred independently by Aarsuday Projects, the SSDA and the subsequent purchasers of flats built by Aarsuday Projects.

IV. SUBMISSIONS ON BEHALF OF AARSUDAY PROJECTS: -

17. Mr. Siddharth Bhatnagar, learned senior counsel appearing on behalf of Aarsuday Projects, assailed the impugned judgment of the High Court on the following counts: -

A. That the High Court completely glossed over the vital fact that the subject plot admeasuring 0.39 acres was privately owned property, lawfully acquired by Aarsuday Projects under a registered sale deed and that the entire area, including the subject plot, had been earmarked for residential and commercial use under the Land Use and Development Control Plan, 2002 notified by the SSDA, being the sole competent authority for landuse planning in the region.

B. That it was clearly demonstrated before the High Court that historically the Panchayat Samiti had not been according building permissions for several years and that applications for construction exceeding the jurisdiction of the Gram Panchayat were routinely forwarded to the Zilla Parishad for vetting. In the present case, the Aarsuday Projects' building plan was submitted to the Ruppur Gram Panchayat which forwarded the same to the Zilla Parishad, Birbhum, which in turn vetted the same in accordance with law. The vetted plan was returned to the Ruppur Gram Panchayat, which treated the plan to be approved, conveyed the said approval to Aarsuday Projects and only thereafter was the construction undertaken.

C. That even assuming, *arguendo*, that the Gram Panchayat was not the competent authority to accord approval to the building plan and that such authority vested exclusively in the Panchayat Samiti, the same constituted, at best, a minor procedural irregularity which was curable in nature. It was urged that such an alleged defect in the grant of approval could not have been treated as fatal so as to warrant demolition of the entire structure, especially when the building plan had been vetted by the Zilla Parishad, construction was undertaken *bona fide*, and no statutory framework mandated demolition as the sole consequence of such an irregularity.

D. That the SSDA had constituted a three-member Sub-Committee for the selection and implementation of the construction schemes in the Santiniketan area, which duly considered and approved Aarsuday Projects' application for conversion of the subject plot from *"danga"* to *"bastu"*. The said Sub-Committee comprised of the representatives of Visva-Bharati Anchal Abasik Samiti and Visva-Bharati University, and at no stage of its deliberations was any objection raised regarding the subject plot being in the nature of *"khoai"* land. Furthermore, the conversion of land use of the subject plot from *"danga"* to *"bastu"* being permissible under the applicable rules, no *mala fides* or ill intention could be

attributed to Aarsuday Projects in undertaking construction pursuant to the permission/sanction granted by the SSDA.

E. That the High Court completely glossed over the material placed on record demonstrating the existence of extensive construction of residential premises in the surrounding area, including on adjoining plots as well as on plots situated opposite the subject plot owned by Aarsuday Projects. In such circumstances, the decision to single out Aarsuday Projects for the extreme measure of demolition, which is both drastic and disproportionate, on the basis of unreliable material and unsubstantiated findings, is wholly arbitrary and unjustified.

F. Mr. Bhatnagar further submitted that the reliance placed by the High Court on the reports of the District Magistrate and the West Bengal Pollution Control Board (WBPCB) for concluding that the disputed construction was unauthorised and illegal is absolutely unjust and arbitrary. He pointed out that the report of the WBPCB clearly indicated that the subject plot was situated in a residential area; that the built-up area of the residential building raised by Aarsuday Projects measured less than 20,000 square metres and hence, no permission was required from the WBPCB and that the *"khoai"* like recess/depression existed adjacent to the subject plot. He submitted that the report of the District Magistrate is also based on sheer conjectures and surmises, since no scientific survey, technical study, or contemporaneous land record was relied upon to substantiate the conclusion that the land was of *"khoai"* nature or otherwise restricted for residential construction. It was urged that both the reports are conspicuously silent on the material aspect as to how several pre-existing buildings in the immediate vicinity of the construction raised by Aarsuday Projects had been permitted to be erected, a circumstance which had a direct bearing on the character of the area and the uniform application of the regulatory framework. He, therefore, submitted that since the very foundation of the impugned judgment rests upon the reports of the WBPCB and the District Magistrate, which are unreliable and unsupported by cogent material, the judgment cannot be sustained either on facts or in law.

On these grounds, learned senior counsel urged that the impugned judgment does not stand to scrutiny being founded on conjectures and surmises and rendered in complete disregard of admitted and unimpeachable documentary evidence available on record, and therefore, the same deserves to be set aside.

V. SUBMISSIONS ON BEHALF OF RESPONDENT NOS. 1-7 (WRIT PETITIONERS BEFORE THE HIGH COURT): -

18. Mr. Jaideep Gupta, learned senior counsel appearing on behalf of Respondent Nos. 1-7 (Writ Petitioners before the High Court), supported the impugned judgment to the hilt and urged that the same calls for no interference by this Court, *inter alia*, on the following grounds: -

A. That the impugned judgment is unassailable both on facts and in law, inasmuch as the reports submitted by the WBPCB and the District Magistrate unequivocally establish that the disputed construction was raised by destroying *"khoai"* land and in clear violation of the judgment passed in ***Sushanta Tagore (supra)***. It was therefore contended that the High Court was justified in exercising its writ jurisdiction to direct demolition of what was found to be an illegal and unauthorised construction.

B. That the construction was undertaken without obtaining permission from the competent authority, namely, the Panchayat Samiti, and that the manner in which Aarsuday Projects assumed permission merely on the basis of a file vetted by the Zilla

Parishad demonstrates clear connivance between Aarsuday Projects and the concerned authorities.

C. That the *ex-post facto* conversion of the land from *"danga"* to *"bastu"* was wholly unjustified and contrary to law, and consequently, the directions issued by the High Court quashing such permission and conversion, and holding the construction to be grossly illegal and unauthorised, cannot be faulted and should not be interfered with by this Court in exercise of its extraordinary jurisdiction under Article 136 of the Constitution of India.

D. That this Court, in ***Sushanta Tagore (supra)***, had as early as in the year 2005, emphasised the need for preservation of the Santiniketan area, including lands described as *"khoai"*, and had cautioned against construction activities detrimental to its ecological and cultural character. It was therefore contended that the subsequent grant of permission to construct and the conversion of land in the present case were contrary to the spirit and mandate of the said judgment and amounted to a disregard of the directions issued by this Court.

E. That, in these circumstances, the High Court rightly entertained the challenge to such blatantly illegal actions and justly issued directions for demolition of the unauthorised structure as well as for initiation of appropriate proceedings against the erring officials, which were in the nature of restorative justice intended to undo the damage caused to the environment, cultural heritage and ethos of Visva-Bharati by the unlawful acts of the parties concerned.

On these grounds, learned senior counsel implored this Court to dismiss the appeals with costs.

VI. SUBMISSIONS ON BEHALF OF THE SSDA:-

19. Mr. Abhrotosh Majumdar, learned senior counsel, appearing on behalf of the SSDA submitted that the role discharged by the SSDA in the present case was strictly within the confines of its statutory functions and in accordance with the prevailing legal framework. It was urged that the "No Objection Certificate" issued by the SSDA was confined only to the conversion of the land from *"danga"* to *"bastu"*, which was permissible and within the statutory framework having regard to the fact that the subject plot was already earmarked as "residential" under the notified Land Use and Development Control Plan, 2002. The SSDA was neither the sanctioning authority for the building plan nor did it grant any permission for construction, such authority admittedly vested with the local bodies under the applicable laws. The subsequent approval granted by the competent revenue authority further validates the conversion. In these circumstances, it was submitted that the construction undertaken pursuant to valid approvals from the competent authorities could not be characterized as illegal, nor could the SSDA be faulted for having acted within its limited statutory role.

20. It was further submitted that subsequent to the passing of the impugned judgment, the SSDA has taken several concrete, *bona fide* and consistent steps towards preservation of the ecological and cultural heritage of the Santiniketan–Sriniketan region balancing the objective of conservation and planned development of the area. It was pointed out that in pursuance of the order dated 6th September, 2013 passed by this Court directing maintenance of *status quo*, SSDA immediately issued a public notice clarifying that no further "No Objection Certificate" would be issued for conversion of land or for development in the concerned *mouzas*, and thereafter, acted strictly in accordance with the orders passed by this Court from time to time.

21. Learned senior counsel appearing for the SSDA lastly submitted that the authority undertook a comprehensive exercise for revision of the Land Use and Development Control Plan, including appointment of IIT, Kharagpur as consultant, preparation of a revised plan covering 44 *mouzas*, inviting objections from the public, placing the revised plan before the Apex Advisory Committee, and obtaining approvals from the State Government under the provisions of the West Bengal Town & Country (Planning and Development) Act, 1979, followed by publication of the approved plan. It was, therefore, urged that in view of the subsequent actions taken by the SSDA in compliance with the directions of this Court and the statutory framework, the adverse remarks and consequential directions issued against the SSDA and its officers in the impugned judgment are liable to be expunged.

VII. SUBMISSIONS ON BEHALF OF VISVABHARATI UNIVERSITY: -

22. Mr. Rana Mukherjee, learned senior counsel, appearing on behalf of Visva-Bharati University, strenuously supported the impugned judgment. He submitted that the disputed construction was raised on *"khoai"* land, without securing permission from the competent authority, namely, the Panchayat Samiti and without obtaining due conversion from the SSDA, rendering the construction wholly unauthorized and illegal. It was, thus, contended that the impugned judgment is legally sound and does not call for interference by this Court. He accordingly urged that the appellants are not entitled to any relief and that the appeals deserve to be dismissed.

VIII. ANALYSIS AND DISCUSSION: -

23. We have heard and considered the submissions advanced by learned counsel for the parties and have carefully gone through the impugned judgment as well as the material placed on record.

a. Admitted Facts Emerging from the Record

24. We shall, at the outset, enumerate certain admitted and undisputed facts emerging from the record.

A. The entire parcel of land (admeasuring 28.12 acres) of which the subject plot admeasuring 0.39 acres forms a part is situated in District Birbhum and falls within the territorial jurisdiction of the Ruppur Gram Panchayat. The said land was never a part of the land owned by Visva-Bharati University, though it is contiguous thereto, and had, much prior to the disputed construction, been notified as falling within the planning area of the SSDA.

B. The SSDA, being the designated planning authority, had published a Land Use and Development Control Plan, 2002, wherein the subject plot situated in Mouza Ballavpur, District Birbhum, admeasuring 0.39 acres and forming part of a larger tract of land admeasuring 28.12 acres, was included within the planning area as "residential" land.

C. The subject plot on which the disputed construction was raised is private land, lawfully acquired by Aarsuday Projects by way of a registered sale deed dated 11th August, 2009 from its erstwhile owners. The said sale deed has never been questioned or disputed before any forum.

D. The land in question stood recorded as ***"danga" [barren land]*** in the revenue records. There is no contemporaneous document or material on record indicating the existence of any *"khoai"* type recess or undulation either on the subject plot or on the adjoining plots.

E. Although deliberations had been ongoing for a considerable period regarding declaration of areas adjoining Visva-Bharati University as preserved land, no formal notification to that effect had been issued prior to the commencement or completion of the disputed construction.

F. The record further reflects that a substantial number of residential structures had already come into existence on the larger tract of land adjoining Visva-Bharati University, within which the disputed construction is situated. Some of these constructions exist adjacent to and opposite to the disputed construction. The entire area appears to be a systematically plotted landscape inhabited by a large number of people.

b. Findings Recorded by the High Court

25. We shall now advert to certain relevant findings recorded by the High Court in the impugned judgment. Relevant extracts from the impugned judgment are reproduced hereinbelow for ready reference: -

"Coming to the instant case when we gauge it in the perspective of directions issued by the Hon'ble Supreme Court in the case of Sushanta Tagore (supra), firstly we find it is the same area described as Deer Park where construction is being raised. SSDA while issuing N.O.C. has not at all consulted the Pollution Control Board. They have not taken into consideration the Notification dated 25th January, 2010 issued in Act of 1979. Nor it has consulted the Apex Advisory Committee constituted on 18th January, 2011. The Report submitted before the Apex Court by the Pollution Control Board in 2005 itself mentions that there should not be any constructional activity in the area in question. As per the decision of the Hon'ble Supreme Court in the case of Sushanta Tagore (supra), report was binding upon the SSDA and Panchayat/Zilla Parishad and could not have given a go-bye to it. It is not in dispute that SSDA while issuing N.O.C. in February, 2012 has not at all considered the decision of the Hon'ble Supreme Court in Sushanta's case, neither the District Land & Land Reform Officer considered the decision of the said case while ordering the conversion of land in January, 2013. As per the Pollution Control Board, no such activity is permissible in the area. The land had formed by natural process into 'khoai' land though the land is classified as Danga land. The same is contiguous to wildlife sanctuary also, which is 70 metres away. The area is in Deer Park, thus, there is flagrant violation of the aforesaid directions issued by the Apex Court which were required to be observed while dealing with such N.O.C., conversion and the permission to raise construction.

Now we propose to take up the question with respect to the competence of Gram Panchayat/Zilla Parishad to accord permission to raise the construction. The same is illegal and void for various reasons.

Firstly it is uncontroverted fact that permission had been accorded on 5th November, 2011, whereas land had not been converted on aforesaid date from Danga to Bastu. N.O.C. had been issued by SSDA on 28th February, 2012 for proposed conversion of the plot at Mouza Bhallvpur from Danga to Bastu and it is not also in dispute that the District Land & Land Reforms Officer has passed the order of conversions on 9th January, 2013.

It is also not in dispute that construction had been completed by the middle of 2012. On query being made to the learned Senior Counsel appearing on behalf of the respondent No. 6, it was stated that the structure of building had been constructed by the middle of 2012. By that time the land had not been ordered to be converted from Danga to Bastu. Thus, it is apparent that even before the conversion of the land, construction activity of the building had been undertaken which was clearly an unauthorised act. No such permission to raise building could have been granted before conversion of the land from Danga to Bastu. Danga land is not for the purpose of construction. Danga land is highly arable agricultural land. Thus, the permission granted by Gram Panchayat after being vetted by Zila Parishad on 5th November, 2011 was illegal and void. Before conversion of the land no such permission could have been accorded. Apart from that Gram Panchayat was not competent to accord the sanction for the reasons to follow.

(.....)

A conjoint roading of the provisions contained in sections 23, 94, 114 and 114A of the Panchayat Act and Rules 17, 27 and 28 of the Rules of 2004 make it clear that when the area in question is governed by any authority under the Act of 1979 and since it is not in dispute that SSDA is one of such authority under the Act of 1979, obviously the Development Plan prepared by the SSDA under the Act of 1979 which is a law for the time being in force, the notification of such Development Plan is relevant for the purposes of section 114A of the Panchayat Act and when such Development Plan is there then the Panchayat would not be competent to deal with matters of sanction of buildings in such area and it has to be dealt with by a larger and different body, namely, Panchayat Samity constituted under section 94 of the Panchayat Act which has to consider various aspects for grant of sanction. The condition precedent for attracting section 114A of the Panchayat Act is the notification of a development plan for the area either under the said provision of law or any other law for the time being in force, that is, the Act of 1979 in the instant case. Such plan being in existence in the facts of the instant case, we are unable to accept the submission of the learned Senior Counsel that the said section is inoperative as specifications have not been notified by the Samity in terms thereof for grant of sanction. No such case however has been made out by respondent No. 6 in its pleadings. Nonetheless, we are of the opinion that notification of specifications for sanction is an exercise after power to grant sanction has vested in the Samity and not a condition precedent for vesting of such power in terms of section 114A of the Panchayat Act. Hence, such plea cannot be a valid ground to clothe the Panchayat with power to grant sanction in any area falling within a development area notified under the Act of 1979. Furthermore, the prayer for grant of sanction in the instant case was to be adjudged by the Samity in the light of the guidelines laid down by the Supreme Court in Susanta Tagore (supra) and the Government Notification dated 25/01/2010 dealing various Mouzas including Mouza – Ballavpur required preservation and conservation for historical, architectural, environmental & ecological purposes.

The Panchayat Samity has not been moved in the instant case which was required to consider the application for grant of sanction as per the procedure and provisions contained in Rule 28 of the Rules of 2004. The provision contained in Rule 28 of the Rules of 2004 cannot be said to be ultra vires and repugnant to the provisions contained in section 23 in any manner whatsoever. In view of the specific provision contained in Section 114A read with Rule 28, the Gram Panchayat was not competent authority to deal with the application at all. It is trite law when law prescribes mode of doing a thing that has to be done in that manner only. Thus, the permission which had been accorded was illegal and void. Vetting of plan by engineer of Zila Parishad does not improve the case as sanction is a matter to be considered by Panchayat Samity.

It has also been submitted by Mr. Saktinath Mukherjee, learned senior advocate appearing on behalf of the respondent No. 6, that there was no necessity to obtain conversion for the development plan from the Sriniketan Santiniketan Development Authority, in whose development plan the area has been shown for the residential purposes.

We are of the opinion that when the land was admittedly recorded as Danga land, without its conversion to Bastu land the same could not have been used for raising building construction. As a matter of fact, the conversion permission was accorded on January 9, 2013, whereas the construction has already been made in illegal and unauthorised manner be made in the year 2012 on the basis of the illegal permission granted in the year 2011.

(.....)

Not only the mandate of the aforesaid Notification issued under Act of 1979 has been violated by grant of permission in the aforesaid illegal manner. Even before prayer for conversion of the land, permission to raise construction had been granted. On the other hand, meetings were held and various resolutions have been passed by the concerned bodies which were attended by the authorities of SSDA as well as Panchayat, but reality is that they violated the mandates of the resolution and constitutional imperatives as projected by the Hon'ble Supreme Court in the case of Sushanta Tagore (supra). As a matter of fact, they are required to work out buffer zone and no

construction area. We have no iota of doubt that the building which has been constructed was wholly impermissible, alternatively, even if purported sanction had been accorded by the competent authority, construction on such land and area in question is illegal and unauthorized. Firstly, the land has been transformed to 'Khoai' which is a rare gift of Nature. It is not recorded in the revenue records as 'Khoai' land as admittedly, no such classification of land as 'Khoai' but as per reports of the District Magistrate as well as Pollution Control Board, same is 'Khoai' land. Fact is that 'Danga' land has been converted into 'Khoai' land and we have no hesitation to accept the report of the District Magistrate as well as the report of the Pollution Control Board in this regard. The District Magistrate in his report has pointed out that permission for construction of three storied building was applied for, but one extra floor has been added using the natural undulating topography of "khoai" land. The following is the observation made by the District Magistrate in its report:

"Aarsuday Projects & Infrastructure Pvt. Ltd. applied to Ruppur Gram Panchayat for construction of III storied building but from the field verification It appears that one extra floor has been added using the natural undulating topography of khoyai land. From the front view it appears as III storied building but from back view It can be seen as IV storied building Photographs of building are enclosed as Annexure-V. Hence the construction of commercial housing Aarsuday Projects & Infrastructure Pvt. Ltd. Is unauthorised complex by and Illegal."

From the report of District Magistrate it is apparent that the building is four storied. Photographs have been filed with the Report to prove the fact that khoai land has been used for raising construction by the builder, the respondent No. 6. Besides, District Magistrate has pointed out that construction is illegal and SSDA had issued N.O.C. in illegal manner. The District Magistrate has rightly mentioned that before conversion of the land, no permission to raise construction could have been granted as has been done in the instant case.

Even otherwise conversion was bad in law. We find from the Report submitted by the West Bengal Pollution Control Board that the adjacent area of the alleged site is low lying area formed by partial erosion of laterite soil and colloquially known as 'khoai', as the Pollution Control Board had inspected after the construction has been raised. When the report of the Collector as well as the Pollution Control Board are read together, there is no room to doubt that 'khoai' land has been used for the building. Whatever could be seen is apparent from the report of the Pollution Control Board that adjacent area is low lying area known as 'khoai'. In fact low lying area has been used in construction of four storied building as apparent from the report of the District Magistrate."

26. On a perusal of the aforesaid findings, it becomes apparent that the conclusion of the High Court, declaring the disputed construction to be illegal, was primarily founded on the following considerations: -

A. That the disputed construction of Aarsuday Projects was raised on land treated as falling within a preserved category, i.e., *"khoai"* land.

B. That the reports submitted by the District Magistrate and the WBPCB were read to conclude that the subject plot was in the nature of *"khoai"* land.

C. That the Panchayat Samiti was the sole competent authority to grant permission for construction, and that no such permission had been obtained by Aarsuday Projects from the said authority. Instead, permission was purportedly obtained from the Gram Panchayat, which was held to be incompetent to grant such approval under the extant statutory provisions/framework.

D. That the SSDA committed a grave error in permitting conversion of the nature of the land from *"danga"* to *"bastu"* after the construction work had been commenced.

E. That no permission had been obtained from the WBPCB for raising the construction, rendering the structure wholly illegal.

c. Regulatory Approvals, Permissions, and Factual Chronology Relating to the Disputed Construction

27. Before appreciating the submissions advanced at the Bar and analysing the reasons assigned by the High Court in the impugned judgment, whereby it not only directed demolition of the disputed construction belonging to Aarsuday Projects but also imposed costs and ordered initiation of appropriate proceedings against the officers concerned, it would be apposite to advert to certain admitted documents and orders placed on record.

28. The SSDA, being the designated planning authority, had published a Land Use and Development Plan in the year 2002, wherein the subject plot situated in Mouza Ballavpur, District Birbhum, admeasuring 0.39 acres and forming part of a larger tract of land admeasuring 28.12 acres, was included within the planning area as "residential" land. The developer, i.e., Aarsuday Projects purchased the subject plot by way of a registered sale deed dated 11th August, 2009. Thereafter, an entry was made in the revenue records on 3rd December, 2009 recording the nature of the land as "*danga*" (barren land). On 29th December, 2009, the Ruppur Gram Panchayat issued a "No Objection Certificate" in favour of Aarsuday Projects for construction on the subject plot, conditional upon the procurement of requisite land conversion for the same. Subsequently, by a communication dated 25th January, 2010, the Urban Development Department, Government of West Bengal, directed the SSDA to revise the development plan for eleven *mouzas*, including Mouza Ballavpur, keeping in view the spirit of conservation and preservation.

29. On 10th September, 2011, the SSDA constituted a three-member Sub-Committee comprising of representatives from the Visva-Bharati Anchal Abasik Samiti and Visva-Bharati University. It may be noted that since the building plan submitted by Aarsuday Projects proposed a plinth area exceeding 300 square metres, the Ruppur Gram Panchayat on 21st October, 2011, forwarded the same to the Zilla Parishad, Birbhum, for vetting and approval in terms of the second proviso to Rule 28 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 2004. The Zilla Parishad vetted the building plan and returned the same to the Gram Panchayat on 4th November, 2011, whereupon, on 5th November, 2011, the Gram Panchayat communicated the approval to Aarsuday Projects. Thereafter, on 27th January, 2012, the Director, SSDA, directed inspection of the site and called for a report from the Sub-Committee prior to considering the grant of "No Objection Certificate" for conversion of land from *"danga"* to *"bastu"*. The Sub-Committee furnished its inspection report on 8th February, 2012, finding no impediment to the grant of "No Objection Certificate" and conversion of land for construction, pursuant to which the SSDA accorded its approval and issued a "No Objection Certificate" for conversion of the land from *"danga"* to *"bastu"* on 28th February, 2012.

30. On 17th April, 2012, the writ petition forming the basis of the present appeal, came to be filed before the High Court seeking revocation of the sanction granted to Aarsuday Projects primarily on the ground that the land in question was *"khoai"* land. Meanwhile, on 5th June, 2012, the SSDA endorsed the grant of "No Objection Certificate" in the presence of representatives of Visva-Bharati University. On 9th January, 2013, the DL&LRO, Birbhum, approved conversion of the subject plot from *"danga"* to *"bastu"* for setting up the commercial housing project. By July, 2013, construction of the building stood completed and even possession of certain units was handed over to the respective buyers. In the same month, the High Court called for reports from the District Magistrate and the WBPCB. The WBPCB, submitted its report dated 19th July, 2013, wherein it noted that

while the land adjacent to the subject plot was a low-lying tract locally known as *"khoai"*, no "No Objection Certificate" was required from the WBPCB, as the built-up area of the construction raised by Aarsuday Projects measured less than 20,000 square metres.

31. The District Magistrate, submitted a report dated 23rd July, 2013, with no specific finding on the nature of the land and sought clarification from SSDA regarding the basis of the grant of "No Objection Certificate". SSDA filed its objections on 14th August, 2013, reiterating that the subject plot was earmarked for "residential use" as per the Land Use and Development Control Plan, 2002 and that substantial human settlement already existed in the adjoining areas. Thereafter, the High Court passed the impugned judgment dated 21st and 22nd August, 2013.

32. It is essential to note here that another writ petition, being Writ Petition No. 34241(W) of 2013 (Dharmendra Kumar Sharma v. State of West Bengal), raising identical issues was filed before the High Court in relation to a building situated on a plot adjacent to the subject plot. In the said proceedings, the District Magistrate submitted a report before the High Court stating that the land in question was not in the nature of *"khoai"* and had been earmarked for "residential use" under the Land Use and Development Control Plan, 2002 prepared by the SSDA. In the same writ petition, Visva-Bharati University filed an affidavit in opposition admitting that the plot therein was privately owned, accessible by a PWD road, situated outside the boundaries of Visva-Bharati, and not located on *"khoai"* land. The relevant extracts from the said report and affidavit are reproduced hereinbelow for ready reference: -

"**Report of District Magistrate**

It also appears from the said report that sanction for existing single storied building was given by the Sriniketan Santiniketan Development Authority vide memo no SSDA/707/13/B-5/157/74/92 dated 07/07/1992 and no sanction for the said double storied residential building was accorded by S.S.D.A. it is mentioned in the report that double storied building might have been constructed before inception of S.S.D.A on 14th December, 1989. **The said plot is not of 'KHOAI' nature and is marked as residential area in the Land Use and Development Control Plan prepared by S.S.D.A.**

Report as submitted by Executive Officer, Sriniketan Santiniketan Development Authority along with enclosures are annexed herewith.

Affidavit of Visva-Bharati University

6. **The house has been constructed on a private plot. The plot is not owned by Visva Bharati.** No construction or extension activity is going on in this building. **The house is outside the boundary of Visva Bharati and not on khoai land.**

7. **However, the house can be accessed from PWD road through the Visva Bharati premises only on Shyambati side, as also from the Siksha Bhavana side.** Earlier Visa Bharati did not have a boundary wall and the old inhabitants used to access their houses through the PWD road within the Visva Bharati Campus. At present Visva Bharati has started constructing a boundary wall, all around the campus and has been car-marking one a two PWD to roads to provide access to the house in these localities.

8. **The building is located within a few meters of the fencing of the Ballavpur Wildlife Sanctuary as well as Visva Bharati premises.**"

[Emphasis supplied]

These admissions and findings lend support to the contention that the subject plot owned by Aarsuday Projects, being similarly situated and adjacent the said land, could not have been treated as *"khoai"* land in absence of credible and unimpeachable material, the

burden of establishing which rested squarely upon the writ petitioners (respondent Nos. 1-7 herein).

33. Furthermore, in response to an application made under the Right to Information Act, 2005, the Panchayat Samiti replied *vide* communication dated 16th April, 2015, that it became competent to accord permission for grant of building construction only in the year 2006. However, the first such construction permission was granted by the Panchayat Samiti only on 5th March, 2012. It was further clarified that, prior thereto, permissions for construction were being routinely accorded by the Gram Panchayat. The said response lends support to the submission of the Aarsuday Projects that, during the relevant period when Aarsuday Projects initiated the construction on the subject plot, the practice of granting permissions through the Gram Panchayat, with vetting by the Zilla Parishad as and when required, was being consistently followed. Consequently, the approval by the Ruppur Gram Panchayat to the building plan on 5th November, 2011 cannot be faulted and outrightly rejected.

34. Even if it is assumed, *arguendo*, that there was any infirmity in the timing or manner of conversion of the subject plot from *"danga"* to *"bastu"*, such infirmity could not have the effect of invalidating the entire construction raised by Aarsuday Projects. At best, such an infirmity would warrant regulatory scrutiny or corrective measures in accordance with law. It would not, however, justify the extreme consequence of demolition of a completed structure, particularly when the land was earmarked for "residential use" as per the Land Use and Development Control Plan, 2002 and the conversion was subsequently approved by the competent authority and no statutory provision mandated demolition as an automatic or inevitable consequence of such a defect.

35. The classification of land as *"danga"* or *"bastu"* is essentially a revenue classification, and in the absence of a specific statutory prohibition, the mere fact that conversion was granted subsequent to the approval of the building plan could not, by itself, render the construction raised by Aarsuday Projects, illegal. The omission to address this issue is of relevance, particularly when the land was otherwise earmarked for "residential use" under the notified Land Use and Development Control Plan, 2002.

36. Likewise, even if it is assumed that the Gram Panchayat was not the competent authority to accord approval to the building plan and that such authority vested exclusively in the Panchayat Samiti, the same would constitute, at best, a procedural irregularity. Such an irregularity, especially where the building plan had been duly vetted by the higher forum, i.e., the Zilla Parishad and construction was undertaken in a *bona fide* manner, was clearly curable in nature. In the absence of any tangible evidence of fraud, misrepresentation, or deliberate circumvention of statutory requirements, such a procedural lapse, even if assumed to exist, for arguments sake, could not render the construction *per se* illegal, nor could it justify the issuance of a direction for demolition, which is an extremely draconian consequence reserved for cases of blatant and substantive illegalities and violation.

37. Another aspect which merits consideration is that the Sub-Committee constituted by the SSDA, which comprised of the representatives of the VisvaBharati Anchal Abasik Samiti and Visva-Bharati University, was actively involved in examining the application seeking conversion of the subject plot from *"danga"* to *"bastu"*. Upon inspection, the SubCommittee submitted its report dated 8th February, 2012, wherein it specifically recorded that there was no impediment to the grant of a "No Objection Certificate" or to the conversion of the land for residential purposes. The absence of any objection at this stage, particularly from representatives associated with Visva-Bharati, assumes

significance, as it reinforces the *bona fide* manner in which Aarsuday Projects proceeded with the construction and detracts from the premise that the construction was undertaken in disregard of environmental considerations or institutional sensitivities.

38. At this stage, it would also be apposite to note some developments subsequent to the events in question. On 25th September, 2019, the Central Government issued Notification No. S.O. 3527 (E) providing for demarcation of Eco-Sensitive Zones around the Ballavpur Wildlife Sanctuary and preparation of Zonal Master Plans, wherein it was expressly provided that no alteration or restriction would be made in respect of existing infrastructure. Additionally, in response to a query raised by Aarsuday Projects, the SSDA, by a letter dated 9th February, 2025, informed that the subject plot had been marked as "Retail Commercial & Business" in the 'Land Use Map' of the proposed Land Use and Development Control Plan prepared in the year 2017. The said communication also referred to the declaration of the Eco-Sensitive Zone adjoining the protected forest area and clarified that no new permanent structures would be permitted within the Eco-Sensitive Zone.

39. In the aforesaid factual backdrop, it is evident that Aarsuday Projects undertook and completed the construction after securing the requisite permissions and sanctions from the competent authorities and exercising jurisdiction at the relevant point in time. The building plan was duly vetted by the Zilla Parishad and thereafter treated as approved by the Ruppur Gram Panchayat. The clarification furnished in response to the application made under the Right to Information Act, 2005, on 16th April, 2015, further establishes that, during the relevant period, the Gram Panchayat was exercising the authority to accord building permissions, with vetting by the Zilla Parishad, wherever required. The SSDA and its duly constituted Sub-Committee examined in detail and accorded approval to the application filed by Aarsuday Projects for conversion of the land from *"danga"* to *"bastu".* This action was subsequently confirmed by the competent revenue authority, namely, the DL&LRO, Birbhum. Significantly, there was no contemporaneous material on record establishing that the subject plot was in the nature of *"khoai"* land. On the contrary, the report submitted by the District Magistrate and the affidavit filed by Visva-Bharati University in a separate writ petition being Writ Petition No. 34241(W) of 2013, concerning the plot adjacent to the subject plot, categorically indicated that the land in the vicinity was not *"khoai"* and was recorded and treated as residential land. In these circumstances, no *mala fides* or deliberate mischief or wrongdoing can be attributed to the actions of Aarsuday Projects in undertaking and completing the disputed construction.

d. Assessment of the High Court's Approach on the Nature of the Land and Regulatory Permissions

40. The thrust of the impugned judgment of the High Court is essentially twofold. **First,** the High Court proceeded on the premise that the land on which the disputed construction was raised, was *"khoai"* land deserving preservation, drawing heavily from the judgment of this Court in ***Sushanta Tagore (supra)*** and with references to the writings of the Nobel Laureate, Shri Rabindranath Tagore, wherein *"khoai"* was described as a unique natural formation of aesthetic and visual significance, frequented by visitors to Santiniketan and serving as a source of artistic inspiration. **Second,** the High Court held that the construction was undertaken without obtaining due permission from the competent authority and prior to the grant of conversion of the land use by the SSDA and thus, the entire construction was illegal and liable to demolition.

41. However, upon a careful reading of the impugned judgment, we find no discussion or finding with respect to the fact that the subject plot on which the disputed construction

was raised by Aarsuday Projects was privately owned land, nor is there any consideration of the fact that the larger tract of land of which the subject plot forms a part had already witnessed substantial human settlement. The judgment is also conspicuously silent on the crucial aspect that plots adjoining the subject plot had already been utilised for construction of residential buildings much prior to the disputed construction. In order to demonstrate this apparent anomaly, it would be apposite to extract and reproduce the site plan of larger tract of land admeasuring 28.12 acres bearing reference to existing construction. These documents are being extracted *infra* ***(see, Page No. 84-85)***. The omission to advert to these vital aspects assumes considerable significance, particularly in view of the constitutional protection of the right to property guaranteed under Article 300A of the Constitution of India, which unequivocally provides that ***"no person shall be deprived of his property save by authority of law"***. Any interference with privately owned property, including by way of demolition or deprivation of its beneficial use, must therefore rest on a clear statutory foundation and be preceded by due consideration of all relevant factual and legal circumstances, which exercise, appears not to have been undertaken in the present case.

42. It is also evident that the writ petitioners (respondent Nos. 1-7) before the High Court did not place on record any contemporaneous documentary evidence or admissible material to establish that the disputed construction was, in fact, raised on *"khoai"* land. The assertion of the writ petitioners (respondent Nos. 1-7) that the entire tract of land was of *"khoai"* nature appears to have been premised on a broad and generalized assumption drawn from the judgment of this Court in ***Sushanta Tagore (supra)***, without any site-specific evidence. The High Court, in turn, appears to have proceeded on the same assumptions.

43. The absence of reliable and contemporaneous material conclusively establishing the nature of the subject plot is further evident from the fact that the High Court itself deemed it necessary to call for reports from the District Magistrate and the WBPCB to ascertain whether the land on which the disputed construction stood was, in fact, *"khoai"* land. This fact, in itself, indicates that the question regarding the nature of the land was not free from doubt and involved seriously disputed questions of facts emanating from the material placed before the High Court at the threshold. Thus, we feel that the writ petition ought not to have been entertained.

44. That threshold having been crossed, it becomes necessary for this Court to closely examine these two reports, both to assess their evidentiary value and to determine whether they furnish credible and cogent material sufficient to sustain and affirm the conclusion that the subject plot was of *"khoai"* nature, so as to justify the directions issued by the High Court.

45. Relevant extracts from the report of the District Magistrate are reproduced hereinbelow: -

"2. Aarsuday Projects & Infrastructure Pvt. Ltd. having address at 26, Lake Avenue, Kolkata 700 026 has dubiously sought for sanction of plan & permission of construction from the Pradhan, Ruppur Gram Panchayat. As per proviso (7) for Rule 28 of the Amendment to Control of Building operations vide NO.4163/PN/O/I/3R-7/04, dated 9th of August, 2006 for Construction of Building Structure in Panchayat Areas under Development Authority. Panchayat Samity is the appropriate authority to sanction such plan but not the Gram Panchayat (copy enclosed as Annexure I). In this case, Aarsuday Projects & Infrastructure Pvt. Ltd. managed to get sanction of plan from Ruppur Gram Panchayat which has no authority to sanction building plan and give permission for construction (copy enclosed as Annexure II).

3. Executive Officer, SSDA through his office Memo NO.SSDA/35/B-2/2012 dated 28/02/2012 has given No Objection Certificate to Director, Aarsuday Projects & Infrastructure Pvt. Ltd. for conversion of land in question from Danga to Bastu (copy enclosed as Annexure III) and subsequently DLLRO, Birbhum has given permission for Conversion under subsection 2(c) of Section 4C of WBLR Act 1955 on 09/01/2013 (copy enclosed as Annexure IV).

4. It appears that Pradhan, Ruppur Gram Panchayat issued Sanction to Aarsuday Projects & Infrastructure Pvt. Ltd. on 05/11/2011 i.e. much before No Objection Certificate issued by Executive Officer, SSDA and permission for conversion of land issued by DLLRO, Birbhum.

5. Aarsuday Projects & Infrastructure Pvt. Ltd. applied to Ruppur Gram Panchayat for construction of III storied building but from the field verification it appears that one extra floor has been added using the natural undulating topography of khoai land. From the front view it appears as III storied building but from back view it can be seen as IV storied building. Photographs of building are enclosed as Annexure-V. Hence the construction of commercial housing complex by Aarsuday Projects & Infrastructure Pvt. Ltd. is unauthorised and illegal.

6. It appears that Aarsuday Projects & Infrastructure Pvt. Ltd. constructed commercial housing complex in Mouza Ballavpur in Ruppur Gram Panchayat of Bolopur P.S. illegally without valid sanction and permission from the appropriate authority and SSDA has not taken appropriate action to stop illegal construction.

7. Clarification has been sought from the Executive Officer, SSDA by the undersigned vide memo No.833/1/XXI/Dev. Dated 09/07/2013 regarding the basis of issuance of No Objection Certificate to Aarsuday Projects & Infrastructure Pvt. Ltd. for illegal conversion of land from Danga to Bastu and direction was given for initiation of legal action against those persons who violated the law. (copy enclosed as Annexure VI)."

Observations: A careful perusal of the aforesaid report of the District Magistrate indicates that, while it levels serious allegations against the developer, i.e., Aarsuday Projects as well as against the officers of the Gram Panchayat and the SSDA in relation to the grant of permissions and conversion of land, the report does not refer to any contemporaneous site inspection by a Geologist or other scientific expert or to any objective assessment based on reference to revenue, planning, or land records to substantiate the conclusion that the subject plot itself was in the nature of *"khoai"* land. The observations regarding utilization of natural undulating topography are not supported by any technical survey, demarcation, or documentary evidence identifying the subject plot as *"khoai"*. In the absence of such material evidence, the report could not furnish a reliable basis for concluding that the disputed construction raised by Aarsuday Projects was on *"khoai"* land.

46. Relevant extracts from the report of the West Bengal Pollution Control Board (WBPCB) are reproduced hereinbelow: -

"**Observations:**

• The construction site in concern is situated at a distance of about seventy meters on the southern side of the boundary wall of the Ballavpur Wild Life Sanctuary (locally known as 'Deer Park'). During inspection it was observed that construction of boundary wall as well as basic construction of a four storied building has been completed. Masonry activities were in progress during inspection. No responsible representative of the concerned construction company was available at the site to deliver relevant information to the inspecting officials.

• The adjacent area of the alleged site is low lying area formed by partial erosion of laterite soil and colloquially known as "khoai". Number of privately owned houses has come up in the near vicinity of the site in concern on the northern side (away from the

sanctuary). Considerable human settlement has already come up in the near neighbourhood of the sanctuary.

- The inspecting officials were informed by the SSDA authority that the alleged construction company has not obtained any permission from SSDA for its construction activity; further the executive officer informed that a letter of denial was issued in 2010 to the concerned company by SSDA.

- It was known from the SDLLR office that as per the classification of lands of L&LR Department no classification named "khoai" exists.

- Birbhum Zilla Parishad issued approval of building plan to the alleged company for their construction work on the site in concern in 2011.

- The Forest Range Officer of Bolopur range informed the inspecting officers that the concerned company has not taken any permission from them for their construction activity.

Comments:

- For construction activities projects having total built up area more than 20000 square meter needs to obtain prior environmental clearance from the State Environmental Impact Assessment Authority (SEIAA) as per the Environmental Impact Assessment Notification of the Ministry of Environment and Forests, Government of India dated 14th September, 2006 and its amendments made thereafter.

- Physical observation suggests that the area of concern is very sensitive from ecological point of view. Indiscriminate construction activities and consequent development of human settlement may affect the ecological balance of the area. In fact this possibility has been explicitly expressed in the judgment of the Hon'ble Supreme Court. Also the municipal solid waste and effluent generated from the habitation in this ecosensitive area may create additional problems."

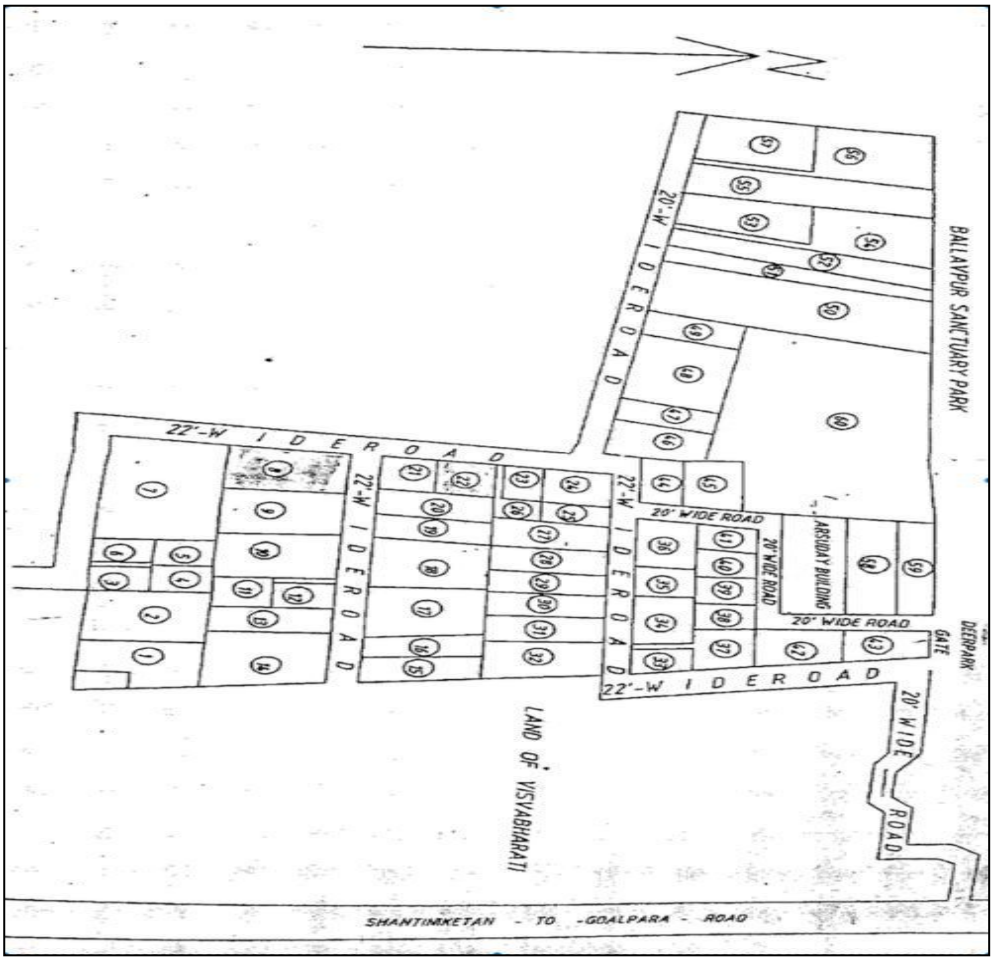
Observations: A careful perusal of the report of the WBPCB indicates that it does not record any finding to the effect that the subject plot on which the disputed construction was raised was itself *"khoai"* land. The report merely notes that the adjacent area to the site is a low-lying tract formed by partial erosion of laterite soil and colloquially referred to as *"khoai"*, while at the same time acknowledging that, as per the classifications of land maintained by the Land & Land Reforms Department, no category of land described as *"khoai"* exists in the revenue records. The report further records that a number of privately owned houses had already come up in the vicinity and that substantial human settlement existed in the surrounding area. Importantly, the report clarifies that prior environmental clearance from the State Environmental Impact Assessment Authority is required only for construction projects having a total built-up area exceeding 20,000 square metres in terms of the Environmental Impact Assessment Notification and its subsequent amendments, a threshold which was not crossed by the disputed construction made by Aarsuday projects on the subject plot. It is also pertinent to note that the WBPCB was not the authority vested with the jurisdiction to render a definitive opinion on the nature or classification of land, and any observations made by it in this regard can, at best, be of a general or incidental nature and cannot be treated as conclusive or determinative of the character of the subject plot.

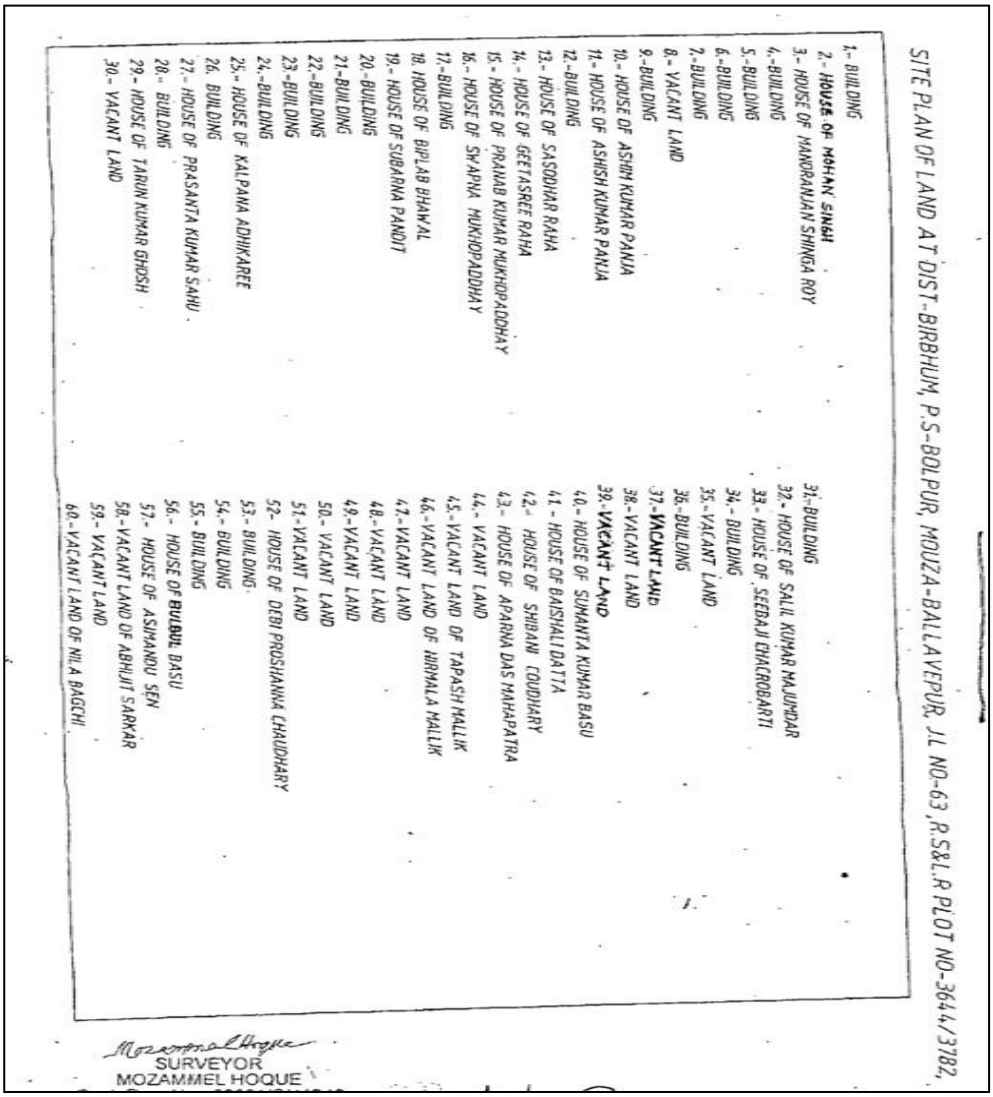
47. Upon an overall consideration of the material placed on record, including the reports of the District Magistrate and the WBPCB, on which the impugned judgment heavily relies, it becomes evident that neither of the aforesaid reports furnishes any clear, contemporaneous, or objective material establishing that the subject plot on which the

disputed construction was raised was itself *"khoai"* land or that construction was totally impermissible thereupon. While both reports advert to emphasized concerns regarding environmental sensitivity and procedural irregularities, they stop short of identifying the subject plot as falling within any preserved or prohibited category of land, and in fact acknowledge that no classification of land described as *"khoai"* exists in the revenue records. The WBPCB's report, in particular, confines its observations to the nature of the adjacent area and clarifies that the subject construction did not attract the requirement of prior environmental clearance under the applicable statutory regime. The District Magistrate's report is based merely on conjectures and surmises and was submitted without the concerned official even bothering to undertake a proper site inspection or getting a spot verification done through an expert. Hence, in the absence of reliable scientific material establishing the *"khoai"* character of the subject plot, the foundational premise on which the High Court proceeded to issue the directions cannot be said to be conclusively borne out from the record.

e. Bona Fides of the Writ Petitioners (Respondent Nos. 1-7) and Burden of Proof in Public Interest Litigation

48. Since the public interest litigation targeted construction on a single plot forming part of a larger tract admeasuring approximately 28.12 acres, it becomes necessary to examine the location of the subject plot in its proper spatial and factual context. For this purpose, reference may be made to the layout plan of the entire tract of land, placed on record which presents a comparative visualization of the position of the plot owned by Aarsuday Projects *vis-à-vis* other plots comprised within the same parcel. For the sake of ready reference, the said layout plan, along with a chart detailing the ownership particulars, is reproduced hereinbelow: -





49. A perusal of the ownership details reflected in the aforesaid layout plan reveals that residential houses belonging to certain writ petitioners (respondents herein) themselves, including Respondent No. 2-Mohan Singh (House No. 2); Respondent No. 3-Prasanta Sahu (House No. 27) and Respondent No. 4-Bulbul Basu (House No. 56), are situated within this very tract of land. It is also not in dispute that, on the date when approval for construction was granted and the conversion order in respect of the subject plot was issued, there was no contemporaneous document or credible material on record establishing that the subject plot was in the nature *"khoai"* land. The situation remains the same even today.

50. As a matter of fact, even the reports submitted pursuant to the directions of the High Court, including those of the District Magistrate and the WBPCB, do not specifically identify the subject plot as *"khoai"* land. On the contrary, a pertinent finding emerging from the survey material collected by WBPCB is that *"khoai"* formations were noticed on the land adjacent to the subject plot on which Aarsuday Projects has raised the disputed construction. This finding assumes significance, as it clearly negates the assumption that the subject plot itself was of *"khoai"* nature.

51. During the course of hearing, learned counsel representing Aarsuday Projects placed on record photographs depicting the disputed construction/building and the adjoining structures. The said photographs, which deserve reference in the judgment are superimposed hereinbelow: -

A perusal of the photographs clearly shows that preexisting residential structures stood directly opposite the disputed construction/building, separated merely by a road, and were also located within the same larger tract of land. It is difficult to perceive that *"khoai"* indentations could solely and exclusively exist on the single plot of land owned by Aarsuday Projects, while the nature of the land on which the adjoining and opposite constructions stood unremarkable. The omission to question the validity of these constructions before the writ court, despite them being located within the same parcel of land, raises a serious doubt as to the *bona fides* of the writ petitioners (respondent Nos. 1-7 herein) and lends credence to the contention that the writ petition selectively targeted the newly raised construction of Aarsuday Projects.

52. Equally significant is the principle governing the exercise of jurisdiction in public interest litigation (PIL). While writ jurisdiction serves an important constitutional purpose, the burden squarely lies on the writ petitioners to place clear, cogent, and reliable material on record in support of the allegations made. Courts exercising writ jurisdiction must remain circumspect while entertaining petitions that hinge upon disputed questions of fact, particularly where such disputes require detailed examination of evidence or adjudication of rival factual claims. Public interest litigation cannot be permitted to become a vehicle for selective or targeted challenges, nor can it be invoked to resolve contested factual issues which are not capable of determination on affidavits alone.

53. Reference in this regard may be made to the decisions of this Court in ***Chairman, Grid Corporation of Orissa Ltd. (GRIDCO) v. Sukamani Das***[6] and ***Shubhas Jain v. Rajeshwari Shivam***[7].

54. Applying the aforesaid principles to the case at hand, it becomes evident that, in the absence of unimpeachable material conclusively establishing the *"khoai"* character of the

[6] (1999) 7 SCC 298.
[7] (2021) 20 SCC 454.

subject plot, the High Court ought to have exercised greater restraint in invoking its writ jurisdiction to grant far-reaching reliefs on the basis of assumptions or inferential reasoning.

55. Viewed cumulatively, the material placed on record does not support the foundational assumptions on which the writ petition proceeded. In the absence of clear, specific, and contemporaneous scientific evidence establishing that the subject plot was of *"khoai"* nature, the invocation of public interest jurisdiction to assail the construction undertaken by Aarsuday Projects cannot be sustained, particularly where similarly situated constructions within the same tract of land were left unchallenged.

IX. CONCLUSION

56. As an upshot of the foregoing discussion and for the reasons recorded hereinabove, the judgment and order dated 21st & 22nd August, 2013 passed by the Division Bench of the High Court at Calcutta in Writ Petition No. 8341(W) of 2012 does not stand to scrutiny and deserves to be set aside.

57. Hence, the instant appeals are decided in the following terms:

- **Civil Appeal No. 2920 of 2018**, preferred by Aarsuday Projects, the developer of the subject plot, is allowed and the judgment and order dated 21st & 22nd August, 2013 passed by the Division Bench of the High Court is hereby set aside.

- **Civil Appeal No. 2921 of 2018**, preferred by the Sriniketan Santiniketan Development Authority (SSDA) challenging the adverse observations made against it and its officers, as well as the consequential directions for initiation of proceedings, is allowed in view of the findings recorded in **Civil Appeal No. 2920 of 2018** preferred by Aarsuday Projects and the subsequent actions taken by the SSDA. The adverse remarks and consequential directions issued against the SSDA and its officers in the impugned judgment shall, accordingly, stand expunged.

- **Civil Appeal Nos. 2922-2923 of 2018**, preferred by the subsequent purchasers of flats constructed by Aarsuday Projects on the subject plot, are disposed of in terms of the judgment rendered in **Civil Appeal No. 2920 of 2018**.

58. In the course of the discussion made hereinabove, we have found that the writ petition instituted before the High Court lacked *bona fides*, inasmuch as certain among respondent Nos. 1-7 (writ petitioners before the High Court) admittedly had existing residential structures in the immediate vicinity and within the same tract of land as the disputed construction raised by Aarsuday Projects. The said material fact was not disclosed while invoking the extraordinary jurisdiction of the High Court by way of public interest litigation. In view thereof, we deem it appropriate to impose costs quantified at Rs.1,00,000/- (Rupees One Lakhs only) to be paid by the writ petitioners, i.e., respondent Nos. 1-7 in **Civil Appeal No. 2920 of 2018**. The said amount shall be deposited with the West Bengal Legal Services Authority within a period of two months from today. Proof of such deposit shall be filed before the Registry of this Court within two weeks thereafter.

59. Pending application(s), if any, shall stand disposed of.

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