

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).4 4 1 / 2 0 0 5

(From the judgement and order dated 15/ 0 9 / 2 0 0 4 in FMA No. 11/ 2 0 0 4 of The  
HIGH COURT OF CALCUT T A)

IS L A M P U R M U N I C I P A L I T Y & ANR.

Petitioner(s)

VER SUS

CHAUDHU R I M. M A N J A R A F A Q U E & ORS.

Respondent(s)

(With appln(s) for permission to file rejoinder affidavit and prayer for interim relief  
and office report )  
(For final disposal)

Date: 28/ 1 1 / 2 0 0 7 This Petition was called on for hearing today.

CORAM :

HON' B L E Dr. J U S T I C E A R I J I T P A S A Y A T  
HON' B L E MR. J U S T I C E P. S A T H A S I V A M

For Petitioner(s) Mr. L.N. R ao, Sr. Adv.  
Mr. P. S. N a r a s i m h a, Adv.  
Mr. Pijush K. Roy, Adv.  
Mr. G. Ram a k r i s h n a P r a s a d, Adv.

For Respondent(s) Mr. Tapash Ray, Sr. Adv.  
Mr. Satish Vig, Adv.

Mr. Rajiv Dutta, Sr. Adv.  
Ms. Kaad a m b a r i, adv.  
Mr. Sachin Pu ri, adv.  
Mr. Md. Ju med Alam, Adv  
Mr. Ra me sh w a r P r a s a d Goyal ,Adv  
Mr. Vikas Tomer, adv.  
Mr. Sumit Babb ar, Adv.

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UPON hearing counsel the Court made the following  
O R D E R

Leave granted.  
The appeal is allowed in terms of  
the signed order.

(Shashi Sareen)  
Court Master

(Vijay Aggarwal)  
Court Master

(signed order is placed on the file)

ISLAMPUR MUNICIPALITY & ANR.

... Appellant(s)

Versus

CHAUDHARI M. MANJARAFAQUE & ORS.

... Respondent(s)

JUDGMENT

Dr. ARIJIT PASAYAT, J.

Heard learned counsel for the parties.

Leave granted.

Challenge in this appeal is to the judgment of a Division Bench of the Calcutta High Court allowing the appeal filed by Appellant No. 1, Islampur Municipality and Anr. to the extent indicated in the order. Before the Division Bench challenge was to the order passed by learned Single Judge of the High Court.

Respondent No. 1 applied for license for holding haat (market) in Plot No. 676 which according to him belongs to him because of proceedings under Section 6(1) of the West Bengal Estate Acquisition Act (in short the 'Acquisition Act') in which he was allowed to retain the

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said land. Since his application for grant of permission to run the market was not favourably considered, he filed a writ petition before the High Court and learned Single Judge allowed that writ application with certain directions. The order of learned Single Judge was challenged in the writ appeal filed before the Division Bench.

Elaborate reference was made to the Bihar Land Reforms Act, Bihar and West Bengal Transfer of Territories Act, 1956 (in short the 'Territories Act') and West Bengal Agricultural Produce Marketing Regulation Act 1972 (in short the 'Marketing Act'). According to appellant No. 1- Municipality, pursuant to the resolution by the Regulated Marketing Committee (hereinafter referred to as the 'Committee') land was proposed to be given to the

municipality and the municipality was to take over the possession of the said market. The High Court referred to a notification in 1974 under the Marketing Act declaring the Islampur Bazaar on which the committee existed. The High Court found that it was not clear from the notification whether the plot in question i.e. Plot No. 676 was covered by the said notification. Accordingly,

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the High Court directed several courses to be adopted.

In support of the appeal, learned counsel for the appellants submitted that unfortunately the notification subsequent to the 1974 notification was not brought to the notice of the High Court. In this context, reference is made to the Notification No. 3996 - MW & C/IM- 7/ 89 dated 30<sup>th</sup>

June, 1993. According to him, the table appended to the notification clearly indicated that for the purpose of market area entire Islampur sub division comprising several police stations was included. It was also specifically indicated that the principal marketing yard covered Mouzas Islampore and Choprajihar. In the table there is also reference to the sub market yard with which we are not concerned. It is contended that had the High Court taken note of this notification, situation would have been different.

Learned counsel for the respondent No. 1 on the other hand submitted that this notification was not a part of the records before the High Court and therefore the High Court had no occasion to take note of this notification. Additionally, it is submitted that even if the notification for the sake of arguments covers the plot

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in question, that will not stand on the way of grant of license to a private market yard. Learned counsel for the appellant disputes the later part of the submission made by learned counsel for respondent No. 1.

As it appears from the scheme of the Act, the larger area is

the market area within which principal market yard and the sub market yard are situated. The first category i.e. market area is larger in area than the Principal market yard and notified sub market yard. As the High Court did not have the occasion to consider the effect of the notification dated 30<sup>th</sup> June, 1993, we deem it proper to remit the matter to the High Court to consider the effect of this notification and to adjudicate various connected issues which relate to permissibility of grant of license to a private market yard.

According to learned counsel for respondent No. 1, the Marketing Act is nothing but a statute regulating the functioning of the market area, marketing yard and the sub marketing yard. The High Court shall consider all the connected issues in the proper perspective but first taking note of the notification dated 30<sup>th</sup> June, 1993 and effect and relevance thereof. The appeal is allowed to

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the aforesaid extend. Considering the fact that the matter is pending since long, we request the Division Bench to dispose of the matter as expeditiously as possible preferably by the end of May, 2008.

.....J.  
(Dr. ARI J I T PA S A Y A T)

.....J.  
( P.S A T H A S I V A M)

New Delhi,  
November 28, 2007.