

Form No. J (2)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Aniruddha Bose
And
The Hon'ble Justice Harish Tandon
And
The Hon'ble Justice Asha Arora

W.P.L.R.T. No. 114 of 2015

Rajbala Barik
Vs.
The State of West Bengal & Ors.

Advocate for the Petitioner: Mr. Arka Pratim Chowdhury

Advocates for the State: Mr. Abhrotosh Majumder (Additional Advocate
General)

Mr. Soumitro Mukherjee,

Mr. Supratim Dhar,

Mr. Dhananjoy Nayak.

Heard On : 03.02.2017, 17.02.2017 & 04.08.2017

Judgment On: 11th August, 2017.

ANIRUDDHA BOSE, J.:-

1. This Reference calls for determination of the question as to whether under the provisions of the West Bengal Estates Acquisition Act,

1953, any post-vesting transferee can exercise the right of retention in terms of Section 6(5) of the said Act read with Rule 4A of the West Bengal Estates Acquisition Rules, 1954. The point of reference has not been specifically formulated by the Referring Bench. But the order of the Referring Bench comprising of two Hon'ble Judges of this Court passed on 6th July 2015 gives rise to this question, for answering which this Reference has been made. The petitioner in this proceeding has claimed in the writ petition that her father had purchased 42 decimal of land from one Himangshu Sekhar Maity in the year 1962. The petitioner had applied before the Block Land and Land Reforms Officer of Block Patashpur II, Purba Medinipur for recordal of her name in the Record of Rights under Section 50 of the West Bengal Land Reforms Act, 1955. It has transpired from earlier stage of the proceeding before the land authorities that the land purchased by the predecessor of the petitioner stood vested in the State under the 1953 Act at the point of time such of purchase. In the representation (annexed at page 42 of the writ petition) of the petitioner made under Section 14U (3) of the 1955 Act, she has asked for being recorded as a "post-vesting purchaser". The petitioner thereafter applied before the West Bengal Land Reforms and Tenancy Tribunal seeking in substance recordal of her name in pursuance of her application. Before the Tribunal, plea of the petitioner was that

vesting of the land had taken place after the said land was purchased by her predecessor in the year 1962.

2. The Tribunal disposed of the application of the petitioner, which was registered as O.A. No. 693 of 2012 by an order passed on 23rd April 2014, with the following observation and direction:-

“It is submitted by the Ld. Counsel for the applicant that the applicant’s father purchased the suit land by registered deed in the year 1962. Long after that the suit land was made vested in the State in a proceeding initiated under W.B.L.R. Act. Submitted further that under no circumstances the suit land may be computed to collect the total land of transferred, the applicant is entitled to get statutory relief.

Ld. Government Representative submits that the suit land, as appears from the record has already distributed by patta and pattaholders name have been recorded in the L.R. record of rights, vide annexure at page 12 to the application.

Having heard both sides, we do not find any necessity to wait for further report from B.L.&L.R.O. concerned. It appears vested was made wrongly and pattas have been issued on such land.

The applicant is entitled to get statutory relief, hence we pass the following orders:-

B.L.&L.R.O., Patashpur – II, District – Purba Medinipur is directed to consider and dispose of the representation of the applicant, vide annexure ‘C’ at page 9, if necessary pattas already issued be cancelled to provide statutory relief for the applicant within a period of six months from the date of communication of this order, after giving opportunity of hearing to the applicant and other interested persons, and passing a reasoned order in accordance with law.

The applicant is directed to serve copy of this application with all its annexure along with order passed by the Tribunal today upon the

aforesaid BL & LRO within four weeks from the date of receiving certified copy of this order.

In the event of filing any application by applicant for getting certified copy of the order as directed to be made herein, the said B.L. & L.R.O., should supply the certified copy within a period of 15 days from the date of filing such application.

With these terms, O.A. No. 698 of 2012 (LRTT) is disposed of.” (quoted verbatim).

3. The petitioner has taken a stand before us, referring to the Tribunal’s decision that the land having vested under the West Bengal Land Reforms Act, 1955, she is entitled to exercise the right of retention under Section 14U of the said Act as a post-vesting transferee. The Block Land and Land Reforms Officer, (BLLRO) Patashpur – II, however, rejected the petitioner’s plea holding that the subject-land stood already vested in the State under the provisions of Section 6(1) of the 1953 Act. The order of the BLLRO annexed to the writ petition does not reflect the exact date of passing such order though the proceeding appears to have had been initiated before the date on which the Tribunal had disposed of O.A. 698 of 2012. It also appears that the petitioner has filed another application before the Tribunal,

which has been registered as O.A. Case No. 490 of 2015 questioning the legality of the land authority's order. The writ petition giving rise to this Reference was instituted thereafter. The order of the BLLRO reads:-

“The case record is put up. Both parties appear and file their hazirans. Examined the enquiry report and perused the documents filed with the case record. Heard both parties and examined all other materials on record. Possession is proved in favour of patta holder. Possession, enquiry report is seen and made part of the proceeding.

- i) that land scheduled in margin on 1st page has been vested in the state of W.B. under provision of sec. 6(1) of W.B.E.A. Act (vide B.R. case no.274/1978).*
- ii) The suit land got recorded in R.S. R.O.R. in favour of one Himanshu Sekhar Maity, enlisted B.R. under provision of W.B.E.A. Act. In B.R. case no. 274 of 1978, the B.R. Sri Maity stated above was allowed to retain agri. Land 25*

acres, non-agri. Land 1.31 acres and Homestead land 20 acre on the date of disposal of the case on 08.12.1978. The excess ceiling limit land of 9.02 acre inclusive of suit land was surrendered for vesting in the state of W.B though the suit land had been transferred to one Gobardhan Das by virtue of Regd. Deed being no. 3187 dt. 25.05.1962.

iii) Date of vesting u/s 6(1) of W.B.E.A. Act is declared as a fixed date on 14.04.1956. So date of disposal does not bear any material validation.

iv) The deed executed by the B.R. is illegal and the petitioner may be compensated by the seller of the suit land but may not be given any compensation at cost of Govt's property.

Hence I consider this vesting as proper fair and just in the eye of law. The petitioner's representation is duly considered and rejected." (quoted verbatim).

4. In the writ petition, the petitioner has prayed for, inter alia, a mandatory direction on the authorities to treat the subject-land as retained land of the respondent no. 4 (the raiyat from whom subject land was purchased) upon deducting from the retained land of such raiyat which is still in his possession. In two earlier proceedings, W.P.L.R.T. No. 40 of 2012 (***Dr. Pratyush Kumar Kar Vs. State of West Bengal & Ors.***) and W.P.L.R.T. 82 of 2012 (***Smt. Khyantamoni Mondal & Ors. Vs. State of West Bengal & Ors.***), on similar questions of law two Division Benches of this Court had directed the land authorities to explore the possibilities of such exchange of retained land with vested land transferred after vesting. The B.L.L.R.Os concerned in those two proceedings were given liberty to reopen the respective B.R. cases under Section 6(1) of the 1953 Act. So far as present Reference is concerned, the Referring Bench declined to follow the same course. The Referring Bench opined:-

“Considering the submissions of Mr. Sadananda Ganguly to the effect that under the West Bengal Estates Acquisition Act, 1953 such retention is impermissible, but, taking into consideration the two Judgements referred to above, which have been produced by the learned Counsel for the petitioner, we looked into the provisions of

Section 6(5) of the West Bengal Estates Acquisition Act, 1953. The sub-section gives a right to an intermediary to exercise his choice of retention within a particular time and if no such choice is exercised by him during that period, the Revenue Officer shall, after giving an opportunity of hearing to him, allow him to retain so much of lands which do not exceed the limits specified. In the instant case, the petitioner is a post-vesting transferee and not an intermediary and therefore, he cannot equate himself to the status of an intermediary for claiming the right granted under Section 6(5) of the West Bengal Estate Acquisition Act, 1953.”

5. The learned counsel for the petitioner appeared before us and addressed us at length on 17th February, 2017. He wants us to follow the course directed in W.P.L.R.T. 40 of 2012 and W.P.L.R.T. 82 of 2012. On the next day the matter was listed, he did not appear. When this matter is called on for hearing today also, the petitioner goes unrepresented. Since we have heard the petitioner at length as also the learned Counsel for the State, we shall address the Reference on the specific question of law, to which we have already referred to.

6. Learned counsel appearing for the petitioner has also urged before us that as there was no specific mandate of the Court on the land authorities in WPLRT 40 of 2012 and WPLRT 82 of 2012 and the direction upon the land authorities was for exploring the possibility exchange of retained land with vested land, the Reference ought to be answered sustaining the view taken by two Hon'ble Division Benches in W.P.L.R.T. 40 and W.P.L.R.T. 82, both of 2012.

7. On behalf of the State main submission is that the question of exploring the possibility outlined in the directions of the two Benches would be a superfluous exercise considering the fact that under the statutory provisions, a transferee of post-vesting land under the 1953 Act does not fit into the definitions or descriptions of an intermediary or raiyat in the manner contemplated in that statute and hence such transferee does not have any right under the Act for retention of land, which has already vested. The Referring Bench has also taken this view, because of which this Reference has been made. In our opinion it is necessary to examine if it is at all permissible under the statute to explore possibilities of such exchange of retained land for vested land transferred or not. Otherwise, the two orders of the Division Benches from which the Referring Bench has sought to differ, would by implication confer on the land authorities the power or jurisdiction to permit such exchange. We cannot terminate the Reference on the sole ground that the two earlier directions of Divisions Benches of this

Court in W.P.L.R.T. 40 of 2012 and W.P.L.R.T. 82 of 2012 did not lay down any conclusive principle of law.

8. The main question involved in this Reference is the extent of right of a post-vesting transferee to be involved in the process of retention of vested land. Section 4 of the 1953 Act specifies the time and procedure for vesting of the estate stipulated in the Act and Section 5 prescribes the extent of vesting. The right of retention flows from the provisions of Section 6 of the 1953 Act, upon exercise of choice for retention in terms of Section 6(5) of the Act read with Rule 4A of the West Bengal Estates Acquisition Rules 1954.
9. The issue of right of a post-vesting transferee over retention of vested land had arisen in the case of **Rati Kanta Mosat Vs. State of West Bengal & Ors.** [(1977)1 CLJ 672]. In this judgment, an Hon'ble Single Judge of this Court held:-

“5. In respect of the contention that the plaintiff was entitled to retain those lands on the basis of his return, it is to be observed that the right of retention has been only given to the intermediary or persons deemed to be so. It is not provided in the statute, as it was not possible to do so, that a transferee from the

intermediary on purchase of lands after vesting would be entitled to file a return in respect of such lands which may not have been retained by the intermediary on the date of vesting. As is well known, on the date of vesting, an intermediary interest in the land vested in the State subject only to the right of retention by the intermediary under the provisions of Section 6; it cannot be construed that such right was also available to his transferee after the date of vesting, as in the absence of retention by the intermediary such lands remained vested in the State since the date of vesting without any scope for its retention by the intermediary. I am, therefore, of opinion that the mere fact that the plaintiff filed a return in respect of the suit lands for retention of the lands did not entitle him to a declaration of title to those lands only on the basis of such retention by him.

6. In regard to the second aspect, it is to be noted that an intermediary who is entitled to retain possession under Sub-section (1) of Section 6 is required to file a return to the

appropriate authority on or before the expiry of 30th day of April, 1958. This is provided in rule 4A of the West Bengal Estates Acquisition Rules. Under the proviso to the said Rule, it is laid down that a raiyat or an under raiyat who is to be deemed an intermediary under section 52 holds land which does not exceed the ceiling land down under clause (c) or clause (d) of subsection (1) of Section 6 of the Act, he will not be required to exercise such choice. This provision does not extend to the intermediaries. Even assuming such opportunity was also available to an intermediary, it can only be done in cases where the lands held by him did not exceed the ceiling. In the case before me, no attempt was made to establish that the plaintiff's vendor held the lands below the ceiling and the plaintiff being the suitor was responsible for the carriage of proceeding and the burden of proof entirely lay on the plaintiff to establish that his vendor did not hold land in excess of the ceiling, assuming that the provision applies to an intermediary. There being no such evidence, it is

not possible to hold that the plaintiff's vendor, the admitted intermediary was rightfully entitled to retain the land which, on such valid retention, could only clothe the plaintiff with title in respect of the suit lands. That was, however, unfortunately not the position in so far as the plaintiff is concerned".

10. This view was sustained by a Division Bench of this Court in the case of **Monoranjan Belthoria Vs. Deputy Commissioner of Purulia** [1973(1) CLJ 557]. In this case the intermediary had transferred 12.43 acres of land in favour of another person before exercising his retention option. The intermediary had land in excess of ceiling limit and hence his right, title and interest in his khas lands had vested in the State. The transferee approached the Court at the stage of Section 10 proceeding initiated by the State for possession of vested land. One of the grounds taken was that the post-vesting transferee was not given a notice of such proceeding. In that context, it was held by the Division Bench:-

"We have already observed upon the publication of a Notification under Section 4, all interests of the intermediaries in the notified area were extinguished. Section 6 of the West Bengal Estates Acquisition Act engrafts an exception by

conferring upon the intermediaries right to retain lands specified in the different clauses of subsection (1) of Section 6 of the Act. This right of retention, as already observed, is to be exercised by an intermediary or his legal heir or legal representative may exercise the same right when the intermediary dies after the date of vesting. Until appropriate orders under section 6 of the said Act is made on intermediary who owns lands in excess of the ceiling has only inchoate rights over the lands which he opts to retain. When before retaining any particular land an intermediary sells the said land the said transfer is not binding upon the State Again, such right of retention attaches to the status of those who were intermediaries of the date of vesting. They could not transfer by way of sale such rights of retention in favour of strangers. One who is not an intermediary, cannot obviously exercise the rights under section 6 of the West Bengal Estates Acquisition Act. We however, make it clear that in this case we are making no observation in respect of right of

transfer by a raiyat or an under-raiyat whose khas lands are below the ceiling prescribed by clauses (c) and (d) of Section 6(1) of the Act.”

11. On behalf of the petitioner, a point has been taken that she has been in possession of the land when proceeding under Section 44(2a) was going on for revision of record of rights and no notice was given to her. On this point, there is a Full Bench decision of this Court in the case of **Atul Chandra Mahato Vs. State** (AIR 2003 Cal 73). The question referred to the Full Bench of this Court in **Atul Chandra Mahato** (supra) was whether a post-vesting transferee was entitled to notice in a proceeding under Section 44(2a) of the 1953. Proceeding under the aforesaid provision is undertaken for final publication of Record of Rights. The Full Bench opined that a subsequent transferee would be entitled to notice in respect of such proceeding to vindicate his claim of ownership and possession and to establish what was the true state of affairs on the date of vesting. This Reference dealt with interpretation of the expression “person interested” employed in that Section. In **Monoranjan Belthoria** (supra) also similar view was expressed so far as opportunity of hearing in a proceeding under Section 44(2a) is concerned, but the Division Bench distinguished a proceeding under Section 44(2a) of the 1953 Act and retention proceeding under Section 6(5) of the same statute. We have reproduced the opinion of the Division Bench on

this aspect earlier in this judgment. In this Reference, the question of service of notice under Section 44(2a) of the 1953 Act is not the one which we are deciding. We are dealing with the right of a post-vesting transferee to retain vested land in exchange of retained land of the intermediary.

12. Under Section 4 of the 1953 Act, the State Government may from time to time by notification declare that with effect from the date mentioned in the notification, all estates and the rights of every intermediary in each such estate situated in any district specified in the notification, shall vest in the State free from all incumbrances. The consequences following such notification and vesting has been provided under Section 5 of the Act whereas Section 6 is to some extent an exception to Sections 4 and 5 of the said Act, which would be discernable from the non-obstante clause appearing therein. It is manifest from Section 6(1) of the Act that the intermediary was entitled to retain certain land as on the date of the vesting. The right conferred under Section 6 of the act to the intermediaries to retain the land does not mean that the retained land is beyond the periphery of the vesting under Section 4 of the Act. The vesting and the right of retention are two different concepts although operating simultaneously. It is clear that the intermediary was allowed to retain land out of the lands, which vested in the State as tenants under the State. Even though the factum of vesting of estates and the deemed

settlement of Raiyat's right in respect of the retained lands take place simultaneously yet in law two must be treated as different transactions. First, the vesting of the estate in the State is absolute and free from all encumbrances; and secondly, it is followed by the State of Raiyat's right on the quondum proprietors. It is, therefore, only after the estates have vested in the Government that the right of the retention really arises. The word 'retention' has a special significance under Section 6(1) of the Act entitling the intermediaries to retain the land, subject to undertaking certain exercise i.e. submission of 'B' Form in due time.

13. In case of ***Tarumoni Mondal Vs. Prafulla Kumar Mondal & Ors.*** [(2006)3 CHN 1], it has been held that by virtue of Section 4 of the West Bengal Estate Acquisition Act, the moment the notification is published, the estate vests with the State, subject to retention under Section 6 of the said Act. The resultant effect is that on vesting of entire estate in the State, if any transaction is made subsequent thereto, it is inoperative, bad, illegal and the post vesting transferee does not acquire any right, title and interest therein. The different dates and/or time limits are provided in Section 6 for exercising an option of retention and even in case of a proceeding under Section 44 of the Act the Revenue Officer has to see the right, title and interest as on the date of the vesting.

14. In our opinion, right of retention under the statutory scheme has been preserved for an intermediary. A post-vesting transferee cannot come within the ambit of that expression. The meaning or import of the term intermediary cannot be expanded to cover a post-vesting transferee. We agree with the opinion of the Division Bench in the case of **Monoranjan Belthoria** (supra) and the single Judge in **Rati Kanta Mosat** (supra). In a situation where a person has purchased land which has already vested in the State, the 1953 Act does not confer on him or her any right to retain such land by way of an arrangement with the original intermediary. Such an exercise would require specific statutory provision like Section 14U of the 1955 to be a permissible course.

15. The 1953 Act does not provide for such exchange mechanism. The 1953 Act also does not contemplate any role for a post-vesting transferee on the question of retention of land. In such circumstances, we are of the opinion that remanding a matter of this nature to the land authorities for exploring the possibility of retention by a post vesting transferee of an intermediary in respect of estate

which has already vested in the State cannot arise as the law does not permit such exchange of retention. The reference is answered accordingly.

16. Let the writ petition be placed before the appropriate Bench for disposal on merit.

(Aniruddha Bose, J.)

(Harish Tandon, J.)

(Asha Arora, J.)