

**IN THE HIGH COURT AT CALCUTTA**  
**Civil Revisional Jurisdiction**  
**Appellate Side**

Present:

**The Hon'ble Justice Debasish Kar Gupta**  
**And**  
**The Hon'ble Justice Md. Mumtaz Khan**

***COLRT No. 9 of 2015***  
***The State of West Bengal & Ors.***  
***Versus***  
***Sri Rajendra Nath Khanra***

For the Petitioners/State

: Mr. Lakshmi Kumar Gupta, Ld. Addl.  
Advocate General,  
Mr. Supratim Dhar

For the Respondent

: Mr. Robilal Moitra, Sr. Adv.,  
Mr. Soumitra Bandyopadhyar,  
Mr. S. Tripathi,  
Mr. Buddhadeb Ghosh

**Heard on : 13/6/2016, 21/6/2016, 29/6/2016, 11/7/2016, 14/7/2016, 18/7/2016 & 19/7/2016**

**Judgment on: 19/08/2016**

**Debasish Kar Gupta , J. :**

This writ application is directed against a final order dated April 28, 2011 passed by the West Bengal Land Reforms and Tenancy Tribunal, First Bench, in the matter of Rajendra Nath Khanra vs. The State of West Bengal & Ors. in O.A.1589 of 2009 (LRTT). By virtue of the impugned order the learned Tribunal set aside the order of the respondent no.3 and the District

Land and Land Reforms Officer concerned in respect of the land in question giving liberty to the respondent no.3 to dispose of the B-Form, by passing a reasoned order if it is filed by the respondent in respect of the land in question within a period of six months from the date of receipt of the impugned order. This matter has a chequered history.

One Khudiram Khanra purchased 41 acres of land lying and situated at Khatian No.67, Mouza-Haradhanpur, JL-20, Police Station-Sagar, District-South 24-Parganas in an auction sale (hereinafter referred to as the land in question) on December 8, 1954 as Karta of a joint family. The aforesaid Khudiram Khanra and his two brothers namely, Nemaï Charan Khanra and Hrishikesh Khanra were three members of the above family. A B.R. Case No.14 of 1956 under the West Bengal Estates Acquisition Act, 1953 was initiated in respect of the agricultural and non-agricultural lands owned and possessed by the aforesaid joint family in the name of the aforesaid Karta (Khudiram Khanra) including the land in question. A declaration was filed in respect of the agricultural and non-agricultural land owned and possessed by the aforesaid joint family including the land in question by the aforesaid Khudiram Khanra as Karta of the above Hindu joint family under sub-section (1) of Section 6 of the West Bengal Estates Acquisition Act, 1953. Taking into consideration the above declaration, the Revenue Officer concerned passed an order of vesting of 35.56 acres of land after allowing retention of a land measuring 4.96 acres by an order dated December 5, 1957.

Two brothers of aforesaid Khudiram Khanra namely, Bomkesh Khanra

and Hrishikesh Khanra filed a title suit bearing T.S.No.375 of 1959 before the 3<sup>rd</sup> Court of the Munsiff, Diamond Harbour for a declaration that they had shares in the land in question which was decreed on April 29, 1961 declaring that the aforesaid two brothers had 2/3<sup>rd</sup> share in the land in question along with the aforesaid Khudiram Khanra.

Thereafter (1) Hrishikesh Khanra, (2) Bomkesh Khanra, (3) Shanti Bhusan Khanra, (4) Ranjan Kumar Khanra, (5) Ranjit Khanra, (6) Rabindra Nath Khanra, (7) Rajendra Nath Khanra, (8) Samarenda Nath Khanra, (9) Amarendra Nath Khanra, (10) Bimalendu Khanra, (11) Satyandra Nath Khanra and (12) Sagar Chandra Khanra filed an application under Article 226 of the Constitution of India bearing C.O. No.12027 (W) of 1994 alleging inaction on the part of the respondent no.3 for recording their names in the Record of Right in respect of the land in question. The above writ application was disposed of by an order dated July 5, 1994 with a direction upon the aforesaid 12 writ petitioners to submit a fresh representation before the Block Land & Land Reforms Officer who was directed to dispose of the above representation within the period specified therein. They filed a representation before the respondent authority in terms of the above order. The respondent authority passed an order dated May 4, 2000 in compliance of the aforesaid order rejecting the above representation of the aforesaid writ petitioners.

The writ petitioners filed an original application bearing O.A.1673 of 2000 assailing the aforesaid order of the respondent authority which was disposed of by the learned Tribunal by an order dated July 4, 2001 with a

direction on the applicants to prefer statutory appeal before the District Land & Land Reforms Officer, South 24-Parganas and Appellate Authority under Section 54 of the West Bengal Land Reforms Act 1955, against the order impugned to the above original application.

The Statutory Appellate Authority remanded the matter back to the Block Land and Land Reforms Officer by an order dated January 22, 2004 passed in Appeal Case No.70 of 2002 for consideration of the prayer of the appellants of that appeal afresh in the light of the decree obtained by the aforesaid petitioners in T.S. No.375 of 1959.

By an order dated September 6, 2006 passed in Case No.41 of 2001, the respondent no.3 rejected the prayer of the applicants once again on the ground that after the order of vesting dated December 18, 1956 passed in B.R. Case No.33 of 1956 under Section 6 of the West Bengal Estates Acquisition Act, the name of the applicants could not be recorded in the Record of Right in respect of the land in question taking into consideration the decree passed in the T.S. No.375 of 1959. The Statutory Appellate Authority rejected the appeal bearing No.34 of 2008 by an order dated October 20, 2008 upholding the aforesaid order passed by the respondent no.3. The impugned order was passed against the aforesaid orders.

Having heard the learned Counsels appearing for the respective parties at length as also after considering the facts and circumstances of this case on the basis of the material on record we find that admittedly Khudiram Khanra was the Karta of the joint family which possessed agricultural and non-agricultural lands including the land in question. It

was also not in dispute that on the basis of the declaration made by the aforesaid Karta in Form-B in connection with B.R. Case No.33 of 1956 the joint family was allowed to retain 4.96 acres of agricultural land as also 2.47 of non-agricultural land after vesting of 33.09 acres of agricultural land of the said joint family to the State.

After perusal of the records we find that the aforesaid fact of vesting of the land was not disclosed by the respondent (who was one of the plaintiffs in the title suit) in title suit bearing T.S. No.375 of 1959. Therefore, the learned Civil Court had no scope to consider the effect of vesting of a portion of the land in question in the State. Nor the above decree had any effect on the land which had been vested to the State by virtue of the order dated December 18, 1956 passed in B.R. Case No.14 of 1956 under Section 6 of the West Bengal Estates Acquisition Act 1953. The share of the petitioner in respect of the land in question amongst 12 co-sharers/plaintiffs had only been declared by virtue of the above decree having no effect on the order of vesting. Therefore, unless an approach is made by the petitioner before the appropriate authority under the West Bengal Estates Acquisition Act, 1953 for seeking appropriate relief with regard to his share in the land in question amongst 12 co-sharers, no relief can be granted to the respondent by any Forum of law other than the appropriate forum prescribed under the West Bengal Estates Acquisition Act, 1953.

It will not be out of context to observe that suppression of the material fact of order of vesting of a portion of the land in question dated December 18, 1956, passed in B.R. Case No.33 of 1956 under Section 6 of the West

Bengal Estates Acquisition Act 1953 on the basis of the declaration of Karta Khudiram Khanra treating the entire land owned and possessed by the joint family of the respondent leads us to arrive at a conclusion that the respondent did not approach the learned Tribunal with clean hands due to such misrepresentation.

In view of the above we find substance in the submissions made by Mr. Lakshmi Kumar Gupta, learned Additional Advocate General, West Bengal, appearing on behalf of the petitioners, that in the event approach is made before the competent authority under the West Bengal Estates Acquisition Act 1953 by the respondent for enjoying his right on the basis of decree of declaration made in his favour amongst 12 plaintiffs, there will be a scope for consideration of his above right in the light of the settled principles of law as decided in the matter of **Fatechand Mahesri & Ors. vs. State of West Bengal**, reported in **AIR 1972 Cal 177** in treating the joint family as an “intermediary” as a single unit for the purpose of retention of land as also for compensation under the above Act.

Further, in view of the above discussions we do not find substance in the submissions made by Mr. Rabilal Moitra, learned Senior Advocate, appearing on behalf of the respondent, that the writ petitioner was in possession of the land in question and for that reason he was entitled to submit his option in B-Form under the West Bengal Estates Acquisition Act, 1953, for retention of his share of land on the basis of the decree of declaration under reference in the light of the decisions of **Gour Gopal Mitra & Anr. vs. State of West Bengal**, reported in **67 CWN 12, Niranjana**

**Chatterjee & Ors. vs. State of West Bengal & Ors.**, reported in **2007 (3) CHN 683**, **Mohammad Ali vs. The State of West Bengal & Ors.**, reported in **(2012) 3 WBLR (Cal) 590**, **Prabhangshu Sekhar Maity vs. State of West Bengal**, reported in **2012 (4) CHN (CAL) 167** and **Lakshmi Narayan Roy & Ors. vs. Land Reforms Officer & Ors.**, reported in **80 CWN 42**, so long as the order of vesting of portion of the land in question was in existence and without taking any steps in accordance with law before the competent authority in connection with the order of vesting.

As a result, this writ petition is allowed. The impugned order is quashed and set aside.

There will be, however, no order as to costs.

Urgent photostat certified copy of this judgment, if applied for, be given to the parties, on priority basis.

I agree.

*(Debasish Kar Gupta, J.)*

*(Md. Mumtaz Khan, J.)*