

Form No. J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

W.P.L.R.T.42 of 2023

Saria Bewa alias Sayera Bewa

Vs.

The State of West Bengal & ors.

For the Writ petitioner : Mr. B. N. Ray, Advocate
Ms. Shetparna Ray, Advocate

For the State : Md. T. M. Siddiqui, Ld. A.G.P.
Mr. Supratim Dhar, Advocate

For the Respondent Nos.4 & 5.: Mr. Dhananjay Banerjee, Advocate
Mr. Jisan Iqbal Hossain, Advocate
Ms. Oindrila Ghosh, Advocate

Hearing on : 22.08.2023

Judgment on : 22.08.2023

DEBANGSU BASAK, J.:-

1. The writ petition is directed against an order dated September 23, 2022, passed by the West Bengal Land Reforms and Tenancy Tribunal in O.A.2692 of 2019.

2. By the impugned order, the Tribunal negated the challenge of the writ petitioner to the order passed by the Appellate Authority dated June 20, 2019.

3. Learned advocate appearing for the writ petitioner submits that, the writ petitioner purchased the immovable property in 2013. Prior to the purchase in 2013 proceedings under the provisions of the West Bengal Acquisition of Homestead Land for Agricultural Labourers, Artisan and Fishermen Act 1975 were undertaken. Initially an order was passed by the Block Land and Land Reforms Officer (B.L. & L.R.O) which was assailed on appeal. The Appellate Authority, remanded the matter for fresh consideration. He refers to the order of the Appellate Authority dated March 29, 2017. He submits that, the criteria for consideration of the proceedings were laid down. Thereafter, the concerned B.L. & L.R.O, passed an order dated May 31, 2018 which was appealed against. The Appellate Authority concurred with the view of the concerned B.L. & L.R.O by the order dated June 20, 2019. This was challenged before the Tribunal resulting in the impugned order.

4. Learned advocate appearing for the writ petitioner draws the attention of the Court to the various provisions of the Act of 1975. In particular, he refers to the definition of 'artisan' appearing in Section 2(a), 'homestead' appearing in Section 2(d) and 'occupier' as appearing in Section 2(f) of the Act of 1975. He also refers to the provisions of Section 4 of the Act of 1975. He contends that, the private respondents being

respondent nos.4 and 5 are in laws of so-called occupiers. One of them was not born on June 26, 1975 and other was a minor at that point of time. Moreover, they cannot be considered as occupier as on June 26, 1975 as one was not born and the other was minor. They claim to come into possession by marriage. He submits that, the ingredients under Section 4 of the Act of 1975 are absent in the facts and circumstances of the present case. Moreover, none of the authorities alluded to an order of vesting passed under Section 4 of the Act of 1975. He relies upon **2005 (1) Calcutta High Court Notes 235 (Mitali Goswami vs. State of West Bengal & ors.)** in support of his contentions.

5. State and the private respondents are represented.
6. Apparently, two applications were made before the concerned B.L. & L.R.O. invoking provisions of the Act of 1975. On the basis of such application, a proceeding was initiated. Initially, an order dated May 4, 2007 was passed by the concerned B.L. & L.R.O recording the land as 'homestead' under the provisions of the Act of 1975. An appeal was carried against such order which was disposed of by an order dated March 29, 2017 by remanding the issue to the concerned B.L. & L.R.O. Order of remand dated March 29, 2017 recorded that, it was to be determined whether the private respondents possessed any other landed property at the time of proceeding 42/07 and 43/07 and further whether the private respondents fulfilled the criteria to get homestead.

7. Subsequent to the order of the Appellate Authority dated March 29, 2017, the concerned B.L. & L.R.O on remand, initiated the proceedings resulting in its order dated May 31, 2018.

8. The concerned B.L. & L.R.O took the assistance of Revenue Inspector to make the spot enquiry. The Revenue Inspector submitted a report which was considered by the concerned B.L. & L.R.O while passing the order dated March 31, 2018.

9. We perused the report of the Revenue Inspector dated May 23, 2018 which is in the vernacular.

10. In the report dated May 23, 2018, the Revenue Inspector finds that the private respondents were in possession of the plots in question. It also records that prior thereto, the in-laws of the private respondents were in occupation of the land in question. In the report, both the respondents were found to be working as workers in Biri Manufacturing Factory.

11. Learned advocate appearing for the private respondents contends that the respondent no.5 is an agricultural labourer.

12. By the order dated May 31, 2018, the concerned B.L. & L.R.O. found that both the private respondents were in possession of the plots since 1975 through their predecessors. The petitioner failed to produce any relevant documents contrary to the claim of the private respondents regarding their possession since 1975. The private respondents did not

possess any land before being recorded as homestead beneficiaries over the plots concerned.

13. On the basis of such findings, the concerned B.L. & L.R.O opined that recording under Section 4 of the Act of 1975 in favour of the respondents was correct. The application of the petitioner was considered and rejected. Homestead was recorded in the name of the private respondents. The record of rights was corrected under Section 50 of the West Bengal Land Reforms Act, 1955. An appeal was preferred against the order dated May 31, 2018. The Appellate Court disposed of the appeal by the order dated June 20, 2019 concurring with the view of the concerned B.L. & L.R.O.

14. Being aggrieved by the decision of the Appellate Authority dated June 20, 2019, the petitioner approached the Tribunal by way of O.A.2692 of 2019 in which the impugned order was passed.

15. As the preamble of the Act of 1975 states that the Act of 1975 was to provide for acquisition of land in rural areas on which, homestead was constructed by any person being an agricultural labourer, artisan or fishermen and to confer title of such land in favour of such person.

16. Word artisan, homestead and occupier are defined under Act of 1975. It would be apposite to refer to the definition of such words in the Act of 1975.

“2(a) “artisan” means a handicraftsman and includes potter, carpenter and blacksmith;

(d) "homestead" means a dwelling house which is complete in itself and is not shared in common with any person other than a person belonging to the same family and includes any courtyard, compound, garden, place of worship, family graveyard, tank, well, privy, latrine, drain and boundary wall annexed to or appertaining to such dwelling house but does not include a brickbuilt structure with a pucca roof:

Provided that in the district of Darjeeling excluding its Siliguri sub-division a homestead shall include a brick-built structure with a pucca roof;

Explanation- For the purpose of this clause, "family" includes husband, wife, son daughter and any lineal descendant of any son or daughter;

(f) "occupier" means an agricultural labourers or an artisan or a fisherman who is in possession of any land of another person, either as a lessee or as a licensee or as a trespasser and who holds no other land in any capacity whatsoever and includes the heirs of such person;"

17. It is also apposite to consider Section 4 of the Act of 1975 which is as follows:-

"4. Acquisition of lands for occupiers.-*Where an occupier has been in*

possession of any land on the 26th day of June, 1975 then –

- (a) if the land in his possession does not exceed .0334 hectare, such land, and*
- (b) if the land in his possession exceeds .0334 hectare, so much of such land as does not exceed .0334 hectare, shall stand acquired by the State Government and shall thereupon stand transferred to and vest absolutely in favour of such occupier.”*

18. Section 4 of the Act of 1975 came up for consideration in **Mitali Goswami (supra)** which is of the following view:-

“6. In order to attract the provisions of the 1975 Act, the occupier must be in possession of the land on 26th June, 1975. The “occupier”, defined under section 2(f) of the West Bengal Acquisition of Homestead Land for Agricultural Labourers, Artisans and Fishermen Act, means the possession of a land of another either as a lessee, licensee or a transferor who holds no other land in any way whatsoever. Even if we ignore the information slips even then there must be certain material to show that these persons were in occupation of the land in 1975. In one case, namely, respondent No.9 himself stated that he was aged about 28 years on 19th July, 1994. On calculation, it

appears that he would be 9 years old in 1975.”

19. The Act of 1975 is not limited to an artisan but also governs a fisherman or an agricultural labourer. The definition of ‘artisan’ appearing in Section 2(a) of the Act of 1975 is required to be considered in such context. The definition as it stands is one which is inclusive. It includes potter, carpenter and blacksmith. Nothing is placed before us to suggest that a biri worker will not come within the definition of artisan as appearing in the Act of 1975.

20. ‘Homestead’ is defined in Section 2(d) of the Act of 1975 which requires that it should be a dwelling house complete in itself and not shared in common with any person other than the person belonging to the same family.

21. “Occupier” is defined under Section 2(f) to mean an agricultural labourer or an artisan or a fisherman who is in possession of any land of another person either as a lessee or as a licensee or as a trespasser and that he does not hold other land in any capacity whatsoever. Heirs of such persons are also included in the definition of occupier.

22. By dint of the inclusive definition of occupier both the private respondents will come within the meaning of occupier since their predecessors-in-interest were in occupation of the land in question. This is established from the report of the Revenue Inspector.

23. Section 4 was interpreted in **Mitali Goswami (supra)**. Section 4 requires an occupier to be in possession of any land on June 26, 1975.

Section 4 prescribes that if an occupier is in possession of any land on June 26, 1975 then, if the possession does not exceed 0.0334 hectare then such land will stand acquired by the State Government and if it exceeds 0.0334 hectares then so much of the land that does not exceed 0.0334 hectares will stand acquired by the State Government.

24. In the facts of the present case, the Revenue Inspector report establishes that the predecessor-in-interest of the private respondents were in possession of the land considered on June 26, 1975.

25. All ingredients of the Act of 1975 stands satisfied for its invocation so far as the private respondents in respect of the land in question are concerned. These facts were elaborately dealt with by the concerned B.L. & L.R.O. and upheld on appeal by the Appellate authority and concurred by the Tribunal in the impugned order.

26. In such circumstances, we find no merit in the present writ petition.

27. **W.P.L.R.T. 42 of 2023** is **dismissed** without any order as to costs.

(Debangsu Basak, J.)

28. I agree.

(Md. Shabbar Rashidi, J.)