

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

Before:

**The Hon'ble Justice Soumen Sen
and**

The Hon'ble Justice Hiranmay Bhattacharyya

WPLRT 20 Of 2020

Hari Pada Jana & Ors.

Vs.

The State of West Bengal & Ors.

For the Petitioners : Mr. Raj Dip Ray Advocate

For the Respondents : Mr. Jahar Lal De,
Mr. Tapas Ballav Mondal Advocates

Heard on : 04.08.2021

Judgment on : 25.08.2021

Hiranmay Bhattacharyya, J.:-

This writ petition arises out of a judgment and order dated January 28, 2020 passed by the Second Bench, West Bengal Land Reforms and Tenancy Tribunal (for short “the said Tribunal”) in OA 2624 of 2020 (LRTT).

Shorn of unnecessary details, the undisputed facts giving rise to the instant writ petition may be summed up as follows: The

petitioners herein are the successors-in-interest of the erstwhile Big Raiyat Indra Narayan Jana. The said Indra Narayan Jana held several plots of land including the plot nos. 17 and 22 of Mouja Kalyanpur and plot no. 1817 of Mouja Keshrambha. The aforesaid plots stood vested to the State in connection with BR case no. 42/1 under Section 6(1) of the West Bengal Estate Acquisition Act, 1953 (for short "the EA Act"). The said plots were transferred by Indra Narayan Jana in favour of Surendra Nath Roy vide deed no. 8819 of 1966. Subsequently, Surendra Nath Roy transferred the said plots in favour of the private respondent nos. 5 and 6 vide registered deed being no. 6989 of 1970.

The private respondents herein as plaintiffs filed a Title Suit no. 186 of 1979 before the Court of Munsiff (now designated as Civil Judge, Junior Division), Dantan for declaration of title and for permanent injunction. The Learned Trial Judge by a judgment and decree dated June 27, 1981 decreed the said suit thereby declaring the right, title, interest and possession of the private respondents herein over the said plots and a decree for permanent injunction restraining the defendants from interfering with the peaceful possession of the private respondents herein. The State of West Bengal who was the defendant no. 1 in the said suit preferred an appeal being Title Appeal no. 327 of 1991. The learned First Appellate Court by a judgment and decree dated May 27, 1982 dismissed the said appeal thereby affirming the judgment and decree passed by the learned Trial Judge.

The concerned District Land and Land Reforms Officer passed an order on 03.06.1999 to divest the said lands. Subsequently, a notice dated November 4, 2003 was issued under Section 57 of the EA Act directing the petitioners and the private respondents herein to attend the hearing along with all necessary documents in connection with the plots in question. The parties duly attended the said hearing. The respondent no. 4 herein passed an order dated November 14, 2003 directing the petitioners herein to exercise option as to what land would be vested in exchange of the land to be divested as per the order of the Hon'ble Court. Since the petitioners refused to comply with such direction, the concerned authority directed the lands mentioned in Schedule A to the said order to vest in the State. A further direction was passed to take over possession of the plots mentioned in Schedule A and to make over possession of lands involved in the Title Suit in favour of the private respondents herein.

The petitioners challenged the aforesaid order dated November 14, 2003 passed by the respondent no. 4 herein by filing an application under Section 10 of the West Bengal Land Reforms and Tenancy Tribunal Act 1997 which was registered as OA 2624 of 2010 (LRTT). The learned Tribunal by a judgment and order dated January 28, 2020 dismissed the original application. The instant writ petition has been filed challenging the said judgment and order passed by the learned Tribunal.

Mr. Roy, the learned counsel for the petitioner, has contended that the concerned authority exceeded his jurisdiction by directing the petitioners to exercise option as to what land would be vested in exchange of the land which had to be divested as the same is contrary to the ratio laid down by this Court in the case of *Rajbala Barik vs. the State of West Bengal and ors.* reported at (2017) 4 CHN (Cal) 190. He further urged that the said authority acted without jurisdiction by directing some of the plots which were retained by the said Indra Narayan Jana to vest in the State. He also contended that the order of the learned Tribunal cannot be sustained in the eye of law as the same is contrary to the law laid down by this Hon'ble Court in *Rajbala Barik* (supra).

Per contra, Mr. Dey, the learned Counsel for the State of West Bengal contended that Indra Narayan Jana transferred the vested plots in favour of Surendra Nath Roy with a fraudulent intention. He further contended that the said Surendra Nath Roy, who is a post vesting transferee subsequently transferred the said vested plots in favour of the private respondents herein. He submitted that since the Civil Court declared the title of the private respondents herein over the said plots and passed a decree for permanent injunction against the State, the said plots had to be divested and as a result the interest of the State was affected. He further contended that since the vested plots were fraudulently transferred by Indra Narayan Jana, the State Government has the right to take possession of land equal in area to the land which was transferred in favour of the transferee and the same is to vest in the State from

out of land which was allowed to be retained by Indra Narayan Jana. He, thus, submitted that the authority was justified in directing the petitioners to surrender equal quantum of land in exchange of the land transferred by their predecessor-in-interest in favour of Surendra Nath Roy and ultimately to the private respondents herein. Mr. Dey further submitted that since the proceeding was initiated pursuant to the liberty granted by a Coordinate Bench of this Court in WPLRT 1078 of 2001, the authority had the jurisdiction to pass the order dated November 14, 2003. He concluded by submitting that the learned Tribunal by a reasoned order dismissed the original application and the same should not be interfered with by this Court under Article 226/227 of the Constitution of India.

We have heard the learned advocates for the parties and perused the materials on record.

The Government of West Bengal introduced the West Bengal Estate Acquisition Bill for the purpose of abolition of the zamindari system and other rent receiving interest who are all known as intermediary. The said Bill after having been passed became the West Bengal Estate Acquisition Act, 1953. The EA Act provides for the acquisition of estates, all the rights of the intermediary therein and of certain rights of raiyats and under raiyats and of the rights of certain other persons in the lands comprised in the estates. The said Act came into force on February 12, 1954.

Section 5 of the EA Act provides that upon publication of notification under Section 4 of the said act all estates and the rights of the intermediaries of the estates shall vest in the State free from all encumbrances. Thus, upon issuance of such notification all estates and the rights of intermediaries vest in the state on and from the date of vesting. However, Section 6 of the said Act gives right to the intermediaries to retain certain class of lands specified in various sub-clauses of Subsection 1 of Section 6 of the EA Act. Subsection 5 of Section 6, however, mandates an intermediary to exercise his choice for retention of land falling under subsection 1 of Section 6 within such time and in such manner as prescribed in the Rules. If, however, no choice is exercised by such intermediary during the time limit prescribed under the rules, the EA Act casts an obligation upon the Revenue Officer to give an opportunity of being heard to such intermediary and allow him to retain so much of the lands as do not exceed the limits specified in clauses (c), (d) and (j) of Subsection 1 of Section 6. Rule 4A of the West Bengal Estate Acquisition Rules 1954 (for short “the EA Rules”) provides that every intermediary shall make his choice of retention by furnishing a statement in writing in Form B.

Record reveals that Indra Narayan Jana the ex-intermediary who was the owner of several plots of land including plot no. 17, 22 and 1817 filed B form and exercised his option to retain several plots excepting the aforesaid plot no. 17, 22 and 1817. Accordingly, the BR proceeding no. 42/1 was initiated and the same was concluded after due consideration of the B Form filed by ex-

intermediary thereby accepting the choice of retention exercised by the ex-intermediary. Thus, the aforesaid plot nos. 17, 22 and 1817 which were not retained by the ex-intermediary stood vested to the State free from all encumbrances.

It is not in dispute that the ex-intermediary transferred the aforesaid vested plots to Surendra Nath Roy who subsequently transferred the same in favour of the private respondents herein. Since the aforesaid plots as well as the right of the ex-intermediary in the said plots stood vested to the State free from all encumbrances, the transferee namely Surendra Nath Roy did not acquire any right, title and interest in the said plots by virtue of the said transfer as the said transfer was a void one. Consequently, the private respondents herein who are the subsequent purchasers also did not acquire any right, title and interest in the said plots by virtue of purchase from Surendra Nath Roy.

The private respondents approached the Civil Court for declaration of their title and for permanent injunction. The State of West Bengal defended the said suit contending that the suit lands i.e. the lands in respect of which the private respondents herein claimed to have acquired title had vested in the State free from encumbrances and that the plaintiffs/private respondents herein have no right, title and interest in the said lands. However, since the State accepted rent from plaintiffs/ private respondents herein in respect of the said plots, the learned Trial Judge was of the view that such acceptance of rent by the State of West Bengal created a

tenancy right in favour of the plaintiffs/ private respondents herein and accordingly decreed the said suit in favour of the private respondents herein thereby declaring the right, title, interest and possession of the private respondents herein in the said lands. It is interesting to note here that the State of West Bengal who was the defendant no. 1 in the said suit did not dispute the possession of the private respondents herein in the said land. Thus, a decree for permanent injunction was also passed in favour of the private respondents herein. The said decree being affirmed in appeal had attained finality.

It is further evident from the record that the concerned District Land and Land Reforms Officer passed an order to divest the said lands involved in the said Title Suit. Such order of divesting is a consequence of the decree passed by the Civil Court.

The main contention of the writ petitioner is that the order dated November 14, 2003 passed by the respondent no. 4 was without jurisdiction. The State respondents, on the other hand, contended that such issue has already been set at rest by this Hon'ble Court in the earlier proceedings and it is contended on behalf that the said respondent was authorized by law to pass such order.

Let us first decide as to whether such jurisdictional issue has already been decided against the petitioners herein in the earlier proceedings.

Mr. Dey is right in contending that the issuance of notice under Section 57 of the EA Act was found to be valid by a Co-ordinate Bench of this Court in WPLRT 749 of 2007. The Co-ordinate Bench refused to set aside the said notice on the ground that the same was issued by an officer authorised under the EA Act. However, mere issuance of such notice directing the parties to attend a hearing along with necessary documents does not vest a jurisdiction upon such authority to decide an issue which the statute does not empower it to decide. Refusal to set aside the notice by a Co-ordinate Bench does not clothe the authority issuing such notice to assume a jurisdiction which is not vested under the statute. Another Co-ordinate Bench of this Court in a writ petition being WPLRT 1078 of 2001 left the petitioner free from taking any fresh action but it was specifically observed therein that such fresh action shall have to be in accordance with law. The fresh proceeding, therefore, has to be authorised by law. Thus, this Court is of the considered view that the jurisdictional issue raised by the petitioner has not been settled by this Court in earlier proceedings.

The next issue that arises is whether the divesting of lands can be a ground for reopening the Big Raiyat proceeding in the instant case.

It is evident from the materials on record that the private respondents herein have acquired right, title, interest and possession in respect of plots in question by virtue of creation of tenancy right upon payment and acceptance of rent by the State.

The deeds executed by the predecessor-in-interest of the petitioners followed by the subsequent transfer deed did not confer any right, title and interest upon the private respondents. Thus, we are unable to accept the argument of Mr. Dey that execution of the deed by the predecessor-in-interest of the petitioners affected the right of the State.

An intermediary is under an obligation to exercise his choice for retention of land as provided under Subsection 5 of Section 6 of the EA Act. An intermediary enjoys absolute freedom in making a choice of land to be retained within the permissible limits as prescribed under Section 6(1) of the EA Act. The State cannot dictate the intermediary or his successors to exercise such option in a particular manner. In the instant case the ex-intermediary exercised his option to retain some plots according to his choice. The concerned authority upon being satisfied that the intermediary is entitled to retain such lands accepted the same and the plots in question stood vested to the State.

The authorities reopened the Big Raiyat proceeding on the ground that the predecessor-in-interest of the writ petitioners transferred the vested property in favour of the predecessor in title of the private respondents herein. It is already observed by us herein before that the acquisition of title by the private respondents in respect of the plots in question was not by virtue of the deed executed by the predecessor-in-interest of the petitioners herein. Thus, acquisition of title by the private respondents in respect of

the plots in question has no nexus with the act of exercising option of retention by the ex-intermediary. The authority failed to appreciate that recording of the names of the private respondents in the plots in question is not a direct consequence of the execution of the deed by the predecessor-in-interest of the petitioners herein. Therefore the order of divesting cannot be the valid ground for reopening the Big Raiyat proceeding in the instant case.

The next issue is whether an authority under the EA Act can reopen the BR proceeding for the purpose of directing exchange of land transferred to a post vesting transferee with that of the retained land of the ex-intermediary.

It is elementary that a statutory authority can exercise only such powers that are conferred upon it by the statute. The authorities exercising power and authority under the EA Act has to act within the framework of the said statute. In response to a query of this Court, the learned State counsel could not enlighten this Court of any provision under the EA Act which empowers an authority under the EA Act to direct the transferor or his successors-in-interest to surrender land from out of land retained by such ex-intermediary in exchange of the vested land transferred by the predecessor-in-interest of the petitioners.

The authority passed the order dated November 14, 2003 directing the petitioners to surrender equal quantum of land in exchange of the vested lands as the predecessor-in-interest of the petitioners transferred the vested lands.

The issue as to whether an authority under the EA Act has the power to direct exchange of the land transferred to a post vesting transferee with that of the land retained by him is no longer *res integra*. Three Hon'ble Judges of this Court in *Rajbala Barik* (supra) has held that the EA Act does not provide for any exchange mechanism. This Hon'ble Court in *Rajbala Barik* (supra) held as follows :-

"13. In case of Torumoni 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 according.”

The effect of the order dated November 14, 2013 is that the petitioners being the successor-in-interest of the ex-intermediary is compelled to surrender a portion of his retained land in exchange of the land transferred by their predecessor-in-interest. The EA Act also does not provide for exchange of land transferred out of the vested land with that of the retained land. Thus, in view of the reasons as aforesaid as well as the proposition of law laid down by this Court in *Rajbala Barik* (supra) we are of the considered opinion that the authority acted wholly without jurisdiction in passing the said order.

The learned judges of the Civil Court after taking into consideration the evidences on record held that the private respondents herein are in possession of the plots in question and accordingly passed a decree for permanent injunction in their favour. The said decree is binding upon the State. The order passed by the authority on November 14, 2013 also suffers from infirmity as the said order directed possession of the plots in question to be made over to the private respondents.

The Learned Tribunal mechanically affirmed the order passed by the authority by not taking into consideration the aforesaid legal

aspects and also misinterpreting the ratio of the decision in the case of *Rajbala Barik* (supra).

For the reasons as aforesaid this Court holds that the judgment and order dated January 28, 2020 passed by the Tribunal in OA 2624 of 2010 (LRTT) and the judgment of the authority dated November 14, 2003 passed in case no. 42/1 of 2000 under Section 6(1) of the EA Act suffers from infirmity and the same are accordingly set aside and quashed. WPLRT no. 20 of 2020 thus, stands allowed without, however any order as to costs.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

I agree.

(Hiranmay Bhattacharyya, J.)

(Soumen Sen, J.)

