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WPLRT 43 of 2020
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WPLRT 47 of 2020
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WPLRT 48 of 2020
with
WPLRT 49 of 2020
with
WPLRT 50 of 2020

Jadav Das & Ors.
Vs.
State of West Bengal & Ors.

Mr. Mrinal Kanti Ghosh
Mr. K.C Sahoo
Mr. Kartik Das

... For the Petitioners

Mr. Santi Pada Pahari
...For the Private Respondents

Mr. Cahdni Charan De, Ld. AGP
Mr. Anirban Sarkar
... For the State in
WPLRT 43,44 & 49 of 2020

Mr. Soumitra Bandyopadhyay
Mr. Priyabrata Battabyal
... For the State in
WPLRT 45,47,48 & 50 of 2020

Ms. Chaitali Bhattacharya
Mr. Kartik Chandra Kapas
... For the State in
WPLRT 46 of 2020

By consent of the parties all the writ petitions are heard analogously since those involve common questions of fact and law and the original applications out of which the writ petitions arise were disposed of by a common

judgment and order dated October 21, 2020 passed by the Learned West Bengal Land Reforms and Tenancy Tribunal.

The petitioners claiming to be the land owners have filed the writ petitions challenging the order dated October 21, 2020 passed in eight original applications whereby the orders passed by the Bhag Chas Officer in B.C. Case nos. 66, 61,34,36,37,59,62,35/E-1/09 were upheld thereby confirming the orders accepting the barga right of the original applicants.

One Ranjan Kanta Das was the original raiyat of the plots in question. Upon his death his brother Dibakar Das i.e. the predecessor-in-interest of the writ petitioners became the sole owner of the suit property by virtue of inheritance. Dibakar Das filed a Title Suit being no. 18 of 2003 before the learned Civil Judge, Junior Division, Second Court, Contai for declaration of his right, title and interest over the suit property and for permanent injunction. The Learned Judge of the Civil Court below by a judgment and decree dated August 25, 2009 declared the right, title and interest of Dibakar Das in respect of the plots in question and defendants of the said suit property were permanently restrained from disturbing the peaceful possession of Dibakar Das in respect of the plots in question.

The original applicants claiming to be the bargadars in respect of the plots in question applied before the Bhag Chas Officer under

Section 21D read with Section 21B of the West Bengal Land Reforms Act, 1955 for recording their names in the record of rights.

Bhag Chas Officer initiated Bhag Chas cases on the basis of the petitions filed by the original applicants.

The Revenue Officer passed orders dated November 19, 2010 in Bhag Chas Case directing that the name of the original applicants are to be recorded as bargadars in respect of the plots in question.

Being aggrieved against the said order, the predecessor-in-interest of the petitioners preferred separate appeals before the appellate authority. The appellate authority by an order dated December 12, 2011 remanded the matter to the Block Land & Land Reforms Officer, Egra-I with direction to rehear the case after maintaining all formalities including field enquiry and upon giving an opportunity of hearing to all the interested persons concerned. Thereafter, the appellate authority proceeded to hear the said appeals afresh and by an order dated March 26, 2011 disposed of the appeals by setting aside the orders passed by the Revenue Officer in the aforesaid Bhag Chas cases.

Aggrieved by the said order dated March 26, 2011 passed by the appellate authority, the original applicants approached the Learned West Bengal Land Reforms and Tenancy Tribunal. The orders passed by the appellate authority on March 26, 2012 and

December 12, 2012 were set aside by the Learned Tribunal by the impugned order. The learned Tribunal also upheld the orders passed by the Bhag Chas Officer in the aforesaid Bhag Chas cases.

Mr. Ghosh, the Learned advocate for the petitioner submits that the Learned Tribunal erred in law by setting aside the order dated March 26, 2012 passed by the appellate authority when the parties participated in the hearing of the appeal without raising any objection. He further submits that the Revenue Officer directed the names of the original applicants to be recorded as bargadar in spite of the fact that they did not produce any document to show delivery of produce to the owner. Thus, according to Mr. Ghosh, the orders passed by the Bhag Chas Officer cannot be sustained in the eye of law.

Mr. Santi Pada Pahari, learned advocate appearing for the original applicants/private respondents herein contended that the learned Tribunal was perfectly justified in upholding the orders of the Bhag chas Officer by which the names of the original applicants were directed to be recorded in the record of rights as the said order was passed upon considering the report of the field enquiry and other available materials, which were before the Bhag Chas Officer.

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

It appears from the order dated December 12, 2011 that the appellate authority was not satisfied with the service of notice upon Dibakar Das in the Bhag Chas proceedings. Accordingly, the appellate authority remanded the matter to the Revenue Officer directing him to rehear the matter afresh upon giving an opportunity of hearing to the interested persons concerned. The said order dated December 12, 2011 had attained finality as none of the parties to the proceeding had challenged the said order before the Learned Tribunal.

Curiously enough, the appellate authority after disposing of the appeal by passing an order of remand on December 12, 2011 took up the hearing of the appeals afresh *suo moto* and disposed of the said appeals by orders dated March 26, 2012 thereby setting aside the orders passed by the Bhag Chas Officer.

An authority after passing an order cannot sit in appeal over its own order and nullify the said order. It cannot also review its own order *suo moto*. Thus, the appellate authority acted wholly without jurisdiction by setting aside its own order dated December 12, 2011.

Even otherwise the appellate authority after passing the order dated December 12, 2011 could not have proceeded to hear the said appeals afresh as it became *functus officio* after passing the order dated December

12, 2011. Since the entire proceeding before the appellate authority subsequent to the passing of the order dated December 12, 2011 was wholly without jurisdiction, mere participation of the parties cannot validate such proceeding. The learned Tribunal, in our considered view, was justified in setting aside the order passed by the appellate authority dated March 26, 2012 for the reasons as stated hereinbefore. However, the Tribunal erred in law by setting aside the earlier order of remand passed by the appellate authority on December 12, 2011 which had attained finality as none of the parties to this proceeding challenged the said order before the Learned Tribunal. Furthermore, Dibakar Das being a raiyat was an interested person insofar as recording the names of the original applicants as bargadars is concerned and as such an opportunity of hearing is now to be afforded to the heirs of the said Dibakar Das i.e. the writ petitioners in the Bhag Chas cases since Dibakar Das had died in the meantime.

For the reasons as aforesaid, the portion of the impugned order setting aside the orders of the appellate authority dated March 26, 2012 is affirmed. However, the other portions of the impugned order whereby the orders of the appellate authority dated December 12, 2011 were set aside and consequently the orders passed by the Bhag Chas Officer in Bhag Chas cases were affirmed are

accordingly set aside.

The orders passed by the appellate authority on December 12, 2011 is thus restored. The concerned Revenue Officer is directed to comply with the directions contained in this order as well as the order dated December 12, 2011 and dispose of the B.C. Case nos. 66, 61, 34, 36, 37, 59, 62, 35/E-1/09 as expeditiously as possible, preferably on or before 31st December, 2021.

In view of the above all the writ petitions are disposed of without any order as to costs.

Urgent Photostat copy of this order, if applied for, be given to the parties upon compliance of all undertakings.

(Hiranmay Bhattacharyya,J.)

(Soumen Sen, J.)

