

13.04.2022
Item No.35.
Court No.6.
AB

**F.M.A. 2003 of 2018
With
IA CAN 1 of 2019
(Old CAN 2023 of 2019)**

**Swapan Chakraborty & Others
Vs
The State of West Bengal & Others**

Mr. Biswarup Biswas ...for the Appellants.

Mr. Susovan Sengupta,
Mr. Subir Palfor the State.

By consent of the parties, the appeal and the application are taken up for hearing.

It appears that the land of the writ petitioners, who are appellants before us, had vested in the State under the provisions of the West Bengal Land Reforms Act, 1955. The writ petitioners challenged such vesting by way of a civil suit. The Trial Court dismissed the suit. The First Appellate Court affirmed the Trial Court's decree. The second appeal of the writ petitioners was allowed by this Court and the vesting was set aside.

It appears that thereafter, various proceedings had been initiated by the writ petitioners to have the Record of Rights corrected and for getting back possession of the land in question. The Record of Rights was corrected, both RS and LR. However, possession has still not been obtained by the writ petitioners.

At one point of time, the writ petitioners came to know that patta had been allegedly granted by the State in respect of the land in question. However, it is an admitted position that the patta stands annulled by the concerned Sub Divisional Officer, who, as per the West Bengal Land & Land Reforms Manual, 1991, exercises the powers of the Revenue Officer under Section 49(2) of the West Bengal Land Reforms Act, 1955.

The grievance of the writ petitioners is that in spite of such annulment of patta, possession has not yet been given to them.

The learned Single Judge held that the writ petitioners have a grievance, which touches the West Bengal Land Reforms Act, 1955, and, accordingly, the jurisdiction of the High Court under Articles 226 and 227 of the Constitution stands ousted by the West Bengal Land Reforms and Tenancy Tribunal Act, 1997, since the 1955 Act is an Act specified in the Schedule to the 1997 Act. The learned Single Judge relegated the writ petitioners to the West Bengal Land Reforms and Tenancy Tribunal. Being aggrieved, the writ petitioners are before us by way of this appeal.

We have heard Mr. Biswas, learned Counsel appearing for the appellants and Mr. Sengupta, learned Advocate for the State.

Mr. Sengupta submitted that the decree obtained by the writ petitioners in the second appeal

from this Court declaring the vesting to be bad, is without jurisdiction and hence, a nullity.

Mr. Biswas appearing for the appellants strenuously disputes this contention of Mr. Sengupta.

We make no comment in that regard since it is not necessary for us to do so to dispose of this appeal.

It appears that the appellants are seeking implementation of an order of the concerned Sub Divisional Officer, who has annulled the patta in respect of the land of the writ petitioners. As a corollary thereof and as a consequential relief, the writ petitioners claim possession of the land. We are told that they have made an application before the concerned Sub Divisional Officer for putting them in possession of the land in question, but the Officer has not yet taken any step in this regard.

We agree with the learned Single Judge that the writ petitioners/appellants are seeking enforcement of an order of the concerned Sub Divisional Officer passed under Section 49(2) of the West Bengal Land Reforms Act, 1955, and as such, the proper forum for the appellants would be the West Bengal Land Reforms and Tenancy Tribunal. The jurisdiction of the High Court under Articles 226 and 227 of the Constitution are specifically excluded by the 1997 Act excepting for the jurisdiction of the Division Bench of the High Court to entertain appeals from orders of the learned Tribunal.

The appellants will be at liberty to approach the West Bengal Land Reforms and Tenancy Tribunal praying for the reliefs that they prayed before the learned Single Judge of this Court in the writ petition. Since the appellants were litigating in this Court bona fide, they ought to get the benefit of Section 14 of the Limitation Act.

Since we have not called for affidavits, the allegations in the stay application are deemed not to be admitted by the respondents.

FMA No.2003 of 2018 stands disposed of along with CAN 2023 of 2019.

Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Krishna Rao, J.)

(Arijit Banerjee, J.)