

**IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)
APPELLATE SIDE**

Present:

The Hon'ble Justice Harish Tandon

and

The Hon'ble Justice Shampa Dutt (Paul)

**WPLRT 10 of 2022
Sudarshan Kamila & Ors
Vs.
The State of West Bengal & Ors.**

and

**WPLRT 11 of 2022
Anil Kumar Kamila & Ors.
Vs.
The State of West Bengal & Ors.**

Mr. Tanmoy Mukherjee,
Mr. Manoranjan Jana,
Mr. Salil Maiti,
Ms. Mitali Jana.

.....For the Appellants.

Mr. Anirban Ray,
Mr. T.M. Siddiqui,
Mr. Nilotpall Chatterjee.

.....For the State.

Heard on : 17.06.2022

Judgment on : 24.06.2022

Shampa Dutt (Paul), J.:

As the dispute involved in both the appeals are similar and in respect of the same property, both the appeals being no. WPLRT 10 of 2022 and WPLRT 11 of 2022 are taken up for disposal together.

These are appeals against order dated 29.01.2021 passed in O.A.-2731/09 (MA-777/2010) (LRTT) and O.A.-2732/09 (MA-778/2010) (LRTT) by the West Bengal Land Reforms and Tenancy Tribunal, wherein the Ld. Tribunal in the said contempt applications, on considering the matter on record, including order dated 21.05.2010 in Misc. Case no. 03 of 2010 passed by the contemnor and on hearing the contemnor B.L. & L.R.O. Khejuri-I, District Purba Midnapore, was pleased to dismiss the contempt petitions in both the cases.

It was the case of the writ petitioners before the Tribunal that in spite of being informed with the said order and on hearing the matter at length, the contemnor did not do anything and as such the contempt petition was filed against the contemnor for willfully and deliberately violating the order dated 05.02.2010, passed in O.A. no. 2731/2009 and O.A. no. 2732/2009.

It is the case of the petitioners that they have right, title and interest in the case land equivalent to that of Kshitish Chandra Kamila who in terms of

order of the Hon'ble High Court, Calcutta in connection with WPLRT no. 545 of 2001 got the benefit of correction of records and orders of vesting removed.

The Tribunal vide orders dated 05.02.2010 in both the cases had directed the B.L. & L.R.O. Khejuri-I, to treat the O.A.'s as representations of the applicants and to dispose of the same **in accordance with law** after giving a reasonable opportunity of being heard to all concerned, within six month.

The Tribunal then considered the compliance report submitted by the contemnor, wherein the contemnor had disposed of the representations, which were the O.A. applications before the Tribunal and ordered that the finally **published ROR will remain unchanged.**

The Ld. Tribunal held that as the contemnor B.L. & L.R.O. Khejuri-I, disposed of the representation as directed by the Tribunal within a period of six months, there was no scope for the Tribunal to give any relief to the applicants by going into the merit of the order passed by the contemnor in Misc. Case no. 03 of 2010. The aggrieved parties were given liberty to file appropriate proceedings for fresh cause of action. The **Ld. Tribunal finally dismissed the contempt proceedings in both the cases.**

The cases before this Court are against the said orders of the Tribunal dated 29.01.2021.

It is the case of the writ petitioners that the writ petitioners in WPLRT 10 of 2022 are the legal heirs of Late Satish Chandra Kamila and Ors and the writ

petitioners in WPLRT 11 of 2022 are the legal heirs of Jagadish Chandra Kamila & Ors. Kshitish, Satish and Jagadish are all the sons of the original owner Mahendra Nath Kamila and they all inherited 1/3 share in the same property.

It is submitted by the writ petitioners herein, that 1/3 share of the inherited property in respect of Kshitish Chandra Kamila, the writ petitioner in WPLRT no. 545 of 2001 has been corrected and recorded in his name as "Raiyat" in the LR settlement ROR by deleting and removing all errors, free from all encumbrances and peaceful physical absolute possession was given to the said Kshitish Chandra Kamila by the B.L. & L.R.O. Khejuri-I, vide order dated 14.02.2005 passed in Misc. Case no. 45/2003 in compliance with the direction of the Hon'ble Court.

The writ petitioners in WPLRT 10/2022 and WPLRT 11/2022 are the legal heirs of Satish Chandra Kamila and Jagadish Chandra Kamila, who were respondent no. 17 & 16 respectively in WPLRT 545 of 2001.

But the shares in the said property to the extent of 1/3 share in respect of the other two legal heirs of Mahendra Nath Kamila being Jagadish Chandra Kamila and Satish Chandra Kamila was not recorded.

The writ petitioners herein then filed O.A. 2731 of 2009 and O.A. 2732 of 2009 before the WBLRTT under Section 10 read with Section 6 of the WBLRTT Act, 1997 and rules there under, against the inaction etc. on the part of respondent no. 2, B.L. & L.R.O. Khejuri-I, regarding correction of records of

right and removing the erroneous note of vesting in respect of the 1/3 share of Satish Chandra Kamila and Jagadish Chandra Kamila in the land, status of which had been finally decided by the Hon'ble Court in WPLRT no. 545 of 2001 (Kshitish Chandra Kamila Vs. State of West Bengal and Ors.), where in Jagadish Chandra Kamila and Satish Chandra Kamila were respondents no. 16 & 17 respectively.

It was their case before the Tribunal that though the order of the Hon'ble Court has been complied with by the respondent in respect of Kshitish Chandra Kamila vide order dated 14.02.2005 in Misc. Case no. 45/2003, of the then B.L. & L.R.O. Khejuri-I, the same has not been done in respect of the predecessors of the writ petitioners in WPLRT 10/2022 and WPLRT 11/2022 (Satish Chandra Kamila and Jagadish Chandra Kamila).

The said act of the respondent is arbitrary and discriminatory and the petitioner had been denied justice. The applicants before the Tribunal prayed for necessary relief against the State respondents for correction of records as per judgment and order passed by the Hon'ble Division Bench in WPLRT no. 545 of 2001 as done in the case of Kshitish Chandra Kamila but their prayer was rejected.

That vide order dated 05.10.2010, the Ld. Tribunal directed the B.L. & L.R.O. Khejuri-I, District Purba Midnapore to treat the O.A.'s as representation of the applicants and dispose of the same in accordance with law after giving a

reasonable opportunity of being heard to all concerned in deciding the application within a period of six months from date of communication.

That vide orders dated 21.05.2010 passed in Misc. Case no. 03/2010, the representations in both the cases were disposed of by holding that **the finally published ROR will remain unchanged.**

The writ petitioners then filed contempt proceedings against the B.L. & L.R.O. Khejuri-I, being (MA-777/2010) (LRTT) and (MA-778/2010) (LRTT) for non compliance of the order of the court. The Tribunal dismissed/disposed of the contempt applications vide orders dated 29.01.2021 (under appeal) by holding that there was no scope for the forum to give any relief to the applicants by going into the merit of the orders passed by the contemnor in Misc. Case no. 03/2010.

It is seen by this court that the Ld. Tribunal in its writ jurisdiction failed to consider the case of the petitioner therein and erroneously without making any effort to decide the case on merit, directed the B.L. & L.R.O. Khejuri-I, to dispose of the applications in O.A.-2731/2009 and O.A. 2732/2009 by the treating the same as representations of the applicants. The representations in both cases were disposed of by the B.L. & L.R.O. Khejuri-I, vide order dated 21.05.2010 in Misc. Case no. 03/2010. The said orders in Misc Case No. 03/2010 was not properly considered by the Ld. Tribunal and erroneously held that they could not go into the merit of the case. The Ld. Tribunal admittedly did not go into the merit of the case and also did not make

any effort to protect the right of the applicants in any manner what so ever. The Tribunal did not even consider, if the facts and finding of the B.L. & L.R.O. Khejuri-I, was correct or in accordance with law. It is seen that the Tribunal has clearly shirked its duty and instead of protecting the rights of the petitioners/applicants has avoided to do its duty as enshrined in the Constitution.

Now it is for this court to consider the relief prayed for by the writ petitioners, who are the legal heirs of Satish Chandra Kamila & Ors. and legal heirs of Jagadish Chandra Kamila & Ors..

The case herein is very simple and clear. The predecessors of the writ petitioners, Satish Chandra Kamila, Jagadish Chandra Kamila and Kshitish Chandra Kamila are three brothers. They each acquired 1/3 share in the property in question. The status of which has been finally decided by the Hon'ble Court in WPLRT-545 of 2001. In compliance with the direction of the Hon'ble Court, the then B.L. & L.R.O. Khejuri-I, in Misc. Case no. 45/2003 vide order dated 14.02.2005, corrected the erroneous records and also removed the order of vesting in respect of the 1/3 share of Kshitish Chandra Kamila, the writ petitioner in WPLRT 545 of 2001.

The predecessors of the writ petitioners here in (being respondents no.17 and 16 in WPLRT 545 of 2001) being Satish Chandra Kamila and Jagadish Chandra Kamila stand in the same footing, also having 1/3 share each in the same property.

As is well settled, a co-sharer, is a person who has a share in a common property, as per land revenue record, in a particular area of land. Each co-sharer has exactly the same right as that of another co-sharer. But when a person ceases to be a co-sharer, his proprietary interest is lost.

As such when 1/3 share in a property in respect of one co-sharer has been duly recorded by correcting the erroneous records and recording of vesting removed, the same applies in respect of the other two co-sharers in exactly the same manner.

Vesting relates to the land as a whole and not in respect of a share in the land and the land in this case is one and the same, in respect of which the predecessor of the petitioners herein Satish Chandra Kamila and Jagadish Chandra Kamila and Kshitish Chandra Kamila all have 1/3 share. The correction of erroneous record of rights and removal of recording of vesting in respect of 1/3 share of Kshitish Chandra Kamila has been done in compliance of Hon'ble Court's order in WPLRT 545 of 2001. The present writ petitioners who stand in the same footing in all respect and have exactly the same right as that of Kshitish Chandra Kamila in respect of the same property have been denied relief by the state respondent, specifically the B.L. & L.R.O. Khejuri-I vide order dated 21.05.2010 in Misc Case 03/2010.

Thus considering the said facts and findings as discussed above, the report dated 21.05.2010 of the B.L. & L.R.O. Khejuri-I, passed in Misc. Case no. 03/2010 in respect of the writ petitioners in both the cases being O.A. no.

2731/2009 and O.A. no. 2732/2009 are hereby set aside, as it is neither a reasoned order nor in accordance with law, in view of the fact that it has not been done in accordance with the direction of the Hon'ble Court in WPLRT 545 of 2001, (as done in the case of Kshitish Chandra Kamila the writ petitioner there in), even though the predecessors of the writ petitioners in both the writ petitions were respondent no. 16 & 17 in WPLRT 545/2001 and they stand exactly on the same footing as Kshitish Chandra Kamila.

Accordingly, the B.L. & L.R.O. Khejuri-I, is hereby directed to correct the erroneous record of rights and remove the record of vesting from the LR ROR in respect of the 1/3 share of the writ petitioners in WPLRT 10/2022 and WPLRT 11/2022, as per status declared in respect of one of the co-shares Kshitish Chandra Kamila by the Hon'ble Court (Division Bench) in WPLRT 545/2001 in respect of the land in this case, within two months from the date of communication of this order.

The writ petitions are thus allowed and are accordingly disposed of.

Urgent certified website copies of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

I agree,

(Harish Tandon, J.)

(Shampa Dutt (Paul), J.)

