

06 **10.08.
2022**

Ct. No. 04

Ab

WPLRT 80 of 2022

**Sudarshan Mondal and another
Vs.
The State of West Bengal and others.**

Mr. Pradip Kumar Mondal.
... for the petitioners.

**Mr. Chandi Charan De,
Mr. Anirban Sarkar.**
... for the State.

**Mr. Praloy Bhattacharjee,
Ms. Sumita Sarkar.**
... for the respondent nos. 6 & 7.

A litigation between the parties is continuing since long on the issue of the status of the writ petitioners as 'bargadars'.

Way back in the year 1997, an application was made to record the name of the writ petitioners as bargadars in respect of the subject land and amidst the pendency of the same, a writ petition was moved by the school management being WP 4673 (W) of 1998 and an order was passed directing the parties to maintain *status quo* with regard to the subject land until the disposal of the application filed by the writ petitioners before the competent authority.

The writ petitioners claimed that the barga parcha (draft record of right) was issued in their name by the Block Land and Land Reforms Officer and since thereafter they are continuing to cultivate the land.

The Tribunal was approached as the application filed by the writ petitioners was not disposed of and an allegation was also made that despite the order of *status quo* there has been a substantial change effected by the private respondents in violation of the said order. By the

impugned order, the Tribunal directed the authority to dispose of the applications, which have been pending, within a time frame, but curiously enough proceeded to record several facts, which would ultimately swayed the mind of the said authority while deciding the same.

The only grievance raised by the writ petitioners against the said determination is that the Tribunal failed to take into account that there has been a conscious violation of the order of *status quo* passed by this Court in the writ petition and ought to have passed an appropriate order in this regard.

It appears from the impugned order that the applications have not been decided as yet, otherwise the ultimate direction for disposal thereof could not have been passed.

Such being the position, until there is a sufficient material disclosed, it was not proper on the part of the Tribunal to pass any order thereupon. Furthermore, the remedy against the aforesaid allegation is also available and having not availed the same, it was not obligatory on the part of the Tribunal to enter upon the aforesaid issues.

Be that as it may, the question whether the writ petitioners have acquired the status of bargadar is yet to be decided by the authority. There has been a serious question raised upon issuance of barga parcha and, in fact, in course of the proceeding, the writ petitioners were directed to submit the original of the same, which has been done.

There was no material before the Tribunal to arrive at a conclusive finding whether the aforesaid document is fake or manufactured one and, therefore, in absence thereof, it was not proper on the part of the Tribunal to withhold the original parcha when a prayer was made for return of the same to be produced before the

competent authority. The Tribunal appeared to have taken a shelter under Order XIII Rule 9(1) proviso (b) of the Code of Civil Procedure, which, according to the Tribunal, put an absolute fetter in returning the document filed before the Tribunal. Order XIII Rule 9 is reproduced as under:

“9. Return of admitted documents.”-(1) Any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit or placed on the record shall, unless the document is impounded under Rule 8, be entitled to receive back the same,-

- (a) where the suit is one in which an appeal is not allowed, when the suit has been disposed of, and
- (b) where the suit is one in which an appeal is allowed, when the Court is satisfied that the time for preferring an appeal has elapsed and that no appeal has been preferred or, if an appeal has been preferred, when the appeal has been disposed of:

[Provided that a document may be returned at any time earlier than that prescribed by this rule if the person applying therefor-

- (a) delivers to the proper officer for being substituted for the original,-
- (i) in the case of a party to the suit, a certified copy, and
- (ii) in the case of any other person, an ordinary copy which has been examined, compared and certified in the manner mentioned in sub-rule (2) of Rule 17 of Order VII, and
- (b) undertakes to produce the original, if required to do so:]

Provided also, that no document shall be returned which, by force of the decree, has become wholly void or useless.

(2) On the return of a document admitted in evidence, a receipt shall be given by the person receiving it.”

From the reading the aforesaid provision it is manifest that any person desirous of receiving any document produced by him in the Court and has been taken on record is entitled to receive the same provided

the conditions set forth therein are duly complied with. We do not find any absolute fetter being put under the aforesaid provision from returning the document produced by a party to the proceeding or a non-party to the proceeding to get back the said document. Obviously, a document has to be admitted in evidence. The requirement incorporated in the said proceeding is required to be complied with and we do not find any justification in the decision of the Tribunal in blanketly refusing to return back the said document citing the aforesaid provision.

It invites an ancillary question whether the Tribunal admitted the said document after inviting the parties to adduce oral evidence and tender the document and the document so admitted is required to be marked exhibit so as to form part of the record. Neither the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 nor the Rules framed therein contained any exhaustive provision in this regard. Section 16 of the said Act conferred power upon the Tribunal as vested in the Civil Court for the purpose of requiring the discovery, inspection and production of the document and also examining the witness or issuing Commission for examination of the witness. Such power being evident from the aforesaid provision.

The first and foremost thing, which requires for consideration, is whether there was any oral evidence produced by the respective parties before the Tribunal proceeded to decide the matter finally. Obviously, the tribunal applications are decided on affidavits and the documents being part of the said applications have been annexed and there cannot be any ambiguity in our mind, which forms part of the record. However, the moment the original document is directed to be produced in order to verify whether the document

annexed to the applications is the replica of the same and the moment it is satisfied that it is so, we do not find any justification in refusing to return the said document to a person, who produced the same.

However, the precaution can be taken thereto by seeking an undertaking and/or indemnity from a person that he would be required to produce the same as and when directed to ensure that the document is not lost and /or destroyed, if the serious question of its genuinity and/or authenticity was raised.

Such being the situation, we cannot countenance to the view of the Tribunal that there has been a complete embargo created under Order XIII Rule 9(1) proviso (b) in returning the document produced before the Tribunal. We, therefore, set aside the later order dated 23rd March, 2022 whereby the writ petitioners were denied to get back the original barga parcha.

However, liberty is granted to the writ petitioners to apply for a certified copy of the said document and the moment such application is made, the Tribunal shall supply the same within three days therefrom and the moment the certified copy is filed, an undertaking is given by the writ petitioners that they would produce the original before the Block Land and Land Reforms Officer where the main application under Section 18(1) of the West Bengal Land Reforms Act is pending, the original shall be returned to the writ petitioners.

With these observations, the writ petition is disposed of.

There shall, however, no order as to costs.

(Harish Tandon, J.)

(Shampa Dutt (Paul), J.)

