

Mamoni Das & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Bhagbat Chowdhury,
Mr. Sk. Toslim Ali.
... for the petitioners.
Mr. Chandi Charan De,
Mr. Anirban Sarkar.
... for the State.

The instant writ petition arose from an order dated 6th September, 2018 passed by the 4th Bench, West Bengal Land Reforms and Tenancy Tribunal in O.A. 3176 of 2017; whereby and whereunder the application filed by the petitioners seeking adjudication under Section 15A of the West Bengal Land Reforms Act, 1955 in relation to recording of Bargadar is dismissed.

It appears that initially Chandra Kanta Man was the recorded Bargadar, who was cultivating the land. After his death the heir and legal representatives of the said Bargadar, one of his sons namely Madan Man, was nominated as Bargadar and, accordingly, the Record of Rights was corrected. The said Madan Man subsequently died and his son, namely, Bapi Man has been recorded as Bargadar in the Record of Rights.

The petitioner no. 1 is the married sister of said Bapi Man and made an application under Section 15A of the said Act for recording her name as Bargadar along with her aunt, who is the brother of Madan Man, since deceased.

Since the father has left behind him surviving widow, son and daughter, we are surprised why the

petitioner no. 2 was co-applicant, as she cannot inherit the estate left by the said deceased having not included as class-I heir under the Hindu Succession Act.

Be that as it may, the petitioner no. 1, who claimed to be a daughter of Madan Man raised such issue and on the last occasion an impression was created in our mind that there was a gross suppression of facts when she did not give consent to the name of said Bapi Man, her brother, to cultivate the land as Bargadar. The authorities cannot record such name without following the established procedure of law. Precisely for such reason the direction was passed on 17th December, 2021 directing the State to produce the relevant documents.

The State produces the file containing the documents pertaining to the recording the name of Bapi Man as Bargadar. The record would reveal that the proceeding was initiated by the competent authority under Section 15 and 15A of the said Act, as there was some dispute as to the right of cultivation as Bargadar. By an order dated 14th August, 2001 the said authority after hearing all the persons passed an order holding that the said Bapi Man would be the suitable person for cultivation as Bargadar after the death of his father.

Section 15A of the said Act postulates that when a Bargadar cultivating any land dies, the cultivation may be continued by the lawful heir of the Bargadar or where there are more than one lawful heir, by such lawful heir of the Bargadar as all the lawful heirs of the Bargadar may determine within the prescribed period. The proviso inserted to Sub-section 1 of

Section 15A contemplates a situation where the lawful heirs omit or fail to determine under Sub-section 1 thereof; in such event, the officer of the authority appointed under Section 18(1) of the said Act may nominate the lawful heir of the Bargadar who is in a position to cultivate the land as Bargadar and to continue the cultivation thereof.

The aforesaid provision gives a clear indication that in the event of failure of all the heirs to nominate one legal heir to cultivate the land as Bargadar, a proceeding shall be initiated by an officer appointed under Section 18(1) of the said Act and after determining the same shall nominate one legal heir to cultivate the land as Baradar. Since a proceeding was initiated as there was a dissent on the nomination of legal heir to cultivate the land and culminated into an order, such order remains binding upon all the legal heirs.

It appears that the petitioner no. 1 did not challenge the said order before the Tribunal and made an independent application under the aforesaid provision, which if entertained would have an impact on the earlier order passed as far back as on 14th August, 2001. If such application is allowed to be entertained and the order is passed, the earlier adjudication shall never attain finality which is against the public policy. Certainty is the virtue. Once adjudication is made by the competent authority, it cannot be reopened otherwise by established procedure of law.

The submission is sought to be advanced by the petitioners that they were not aware of the order dated 14th August, 2001 but from the impugned order it

appears that the Tribunal took note of the aforesaid fact and dismissed the application filed by the petitioners, which necessarily implied that the aforesaid facts were disclosed before the Tribunal, yet there was no attempt on the part of the writ petitioners to take appropriate steps.

In view of the above, we do not find that there is any infirmity or illegality in the impugned order passed by the Tribunal.

The writ petition is thus dismissed.

There will be no order as to costs.

(Harish Tandon, J.)

(Shampa Dutt (Paul), J.)