

**Sri Ananda Sardar and others
Vs.
Sri Bhutanath Sardar and others.**

**Mr. Dipankar Dandapath.
... for the appellants.**

Assailing the judgment and decree of both the courts below, the present second appeal is filed at the behest of the defeating defendants on the score that both the courts below ought to have taken into account the evidence adduced by the plaintiffs/respondents, which runs counter to the report/decision taken by the competent authority under Section 18 of the West Bengal Land Reforms Act, 1955 and should have held that the defendants/appellants are the recorded Bargadars in respect of the subject plots of land.

A prelude to the litigation can be adumbrated to the effect that a suit for declaration of right, title and interest in respect of the subject plots with further prayer of permanent injunction was filed by the plaintiffs/respondents against the defendants/appellants claiming themselves to be the raiyats and alleging that the defendants/appellants are interfering with their peaceful possession in respect of the aforesaid suit plots. The defendants/appellants appeared and took a defence that they are the recorded Bargadars in respect of the suit plots, which would be evident from the record of rights and, therefore, the Civil Court cannot decide such issue.

Obviously, such defence sees the basis under Section 21 of the West Bengal Land Reforms Act, 1955 (hereinafter referred to as 'said Act') providing as follows:

“21. Bar of jurisdiction.”-(1) No order or other proceedings whatsoever under this Chapter shall be questioned in any Civil Court and no Civil

Court shall entertain any suit or proceeding in respect of any matter mentioned in [sections 17, 18, 19B and 20B].

(2) On the appointment of officer or authorities under this Chapter all proceedings pending before any Bargadas Conciliation Board established under the West Bengal Bargadars Act, 1950 (West Ben. Act II of 1950), shall stand transferred to the officer or authority having jurisdiction over the area in which the land, to which the proceedings relate, is situated.

[(3) If any question as to whether a person is or is not a bargadar arises in the course of any [suit, case, appeal or other] proceedings before any Civil or Criminal Court, the Court shall refer it to the officer or the authority mentioned in sub-section (1) of section 18 [for decision and such Court shall dispose of the suit, case, appeal or other proceedings in accordance with the decision communicated to it by the officer or authority mentioned in sub-section (1) of section 18 to whom the question was referred.]

[(4) On a reference being made under sub-section (3) of this section to the officer or authority mentioned in sub-section (1) of section 18 or decision, such officer or authority shall personally make such enquiry as may be prescribed, shall arrive at a decision after giving all the parties to the suit, case, appeal or other proceedings an opportunity of being heard and shall communicate his or its decision in the prescribed manner to the Court which made the reference. After communication of his or its decision to the referring Court, such decision shall not be altered or revised except in an appeal under section 19].”

The trial court referred the issue relating to Bargadar to the competent authority appointed under Section 18 of the said Act for a decision as to whether the defendants are Bargadars in respect of the suit plots or not? The said decision was communicated to the trial court and on the basis thereof, the judgment was passed, which is affirmed by the first appellate court.

The Counsel for the defendants/appellants vociferously submits that without any order removing the Bargadar or terminating the right as Bargadar is passed under Section 18 of the said Act in a proceeding initiated in this regard, their right as Bargadars being absolute cannot be taken away. It is arduously submitted by the

Counsel for the defendants/appellants that the report/decision of the competent authority is infirm as it cannot defy nor ignore the entries made in the record of rights, which still stands in the name of the defendants/appellants and, therefore, the court should ignore and/or discard such report/decision being inconsistent and/or contrary to such record of rights.

After taking into consideration the language employed in Section 21 of the said Act, there is no ambiguity in our mind that in any proceeding, be it suit, appeal or otherwise initiated before the Civil or the Criminal Court, any question as to whether a person is or not a Bargadar arises, it is a mandate on the court to refer such question to the officer constituted under Section 18(1) of the said Act for a decision and after the said decision is communicated proceed to dispose of the said suit, appeal or a proceeding.

In fact, the trial court exercised such power mandated under the aforesaid provision by referring the question to the competent authority, who submitted the report that the defendants/appellants are not Bargadars in respect of certain suit plots. On the basis thereof, the trial court decreed the suit in part, which does not appear to the defendants/appellants in tune with their expectations and assailed the said judgment before the higher forum and ultimately before this Court.

After the agrarian reforms, the West Bengal Land Reforms Act, 1955 was promulgated in relation to a land tenure consequent upon the vesting of all the States and certain rights therein and to consolidate the law relating to the land reforms in the State. The rights of the Bargadar, which was somewhat precarious, get sanctity of the law and the adequate protections under the aforesaid Act. Section 21 of the said Act, in literal sense, somewhat abridges the power of the Civil Court in adjudicating an issue as to whether any person is a Bargadar or not and such decision can only be taken by

an authority appointed under Section 18 of the said Act.

A unique feature, which appears from the language used in the said Section, is that such decision would remain binding on the Civil Court and there is no power vested upon the court to take contrary or inconsistent decision that of the decision of the authority under Section 18 of the said Act. The aforesaid observation gets fructified with the expressions used in sub-section (3) "in accordance with the decision communicated to it by the officer".

It is axiomatic to say that the suit would be decided on the basis of the decision taken by the authority under Section 18 of the said Act and if any other interpretation is assigned to the aforesaid expressions, it shall be opposed to the legislative intent and shall render such expressions redundant or otiose. The legislatures were conscious that the decision taken by an authority, though have a sanctity over the Civil Court, yet susceptible to errors and adequate measures have been provided therein permitting a party feeling aggrieved by such decision to prefer an appeal before the Collector under Section 19 of the said Act.

The obvious reason for incorporating the aforesaid remedy by way of an appeal can further be visualized that in sub-section (4), a clear mandate is given that the moment the decision is communicated to a referring court, the referring court is denuded of powers to alter or revise the same, which is absolutely vested upon the Collector under Section 19 of the said Act.

Such being the position of law stands on a meticulous reading of the provisions as referred above, we do not find any justification in the stand of the defendants/appellants that the decision of the competent authority under Section 18 of the said Act is erroneous and not in tune with the documents.

So far as the stand of the plaintiffs/respondents in the evidence is concerned, in view of the provisions

contained under Section 21 of the said Act, the court is not swayed by the stand of the parties, but has to confine its final decision within the four corners of the decision communicated to it by an authority under Section 18 of the said Act and, therefore, it is immaterial that any of the parties to the proceeding has taken a contrary stand to the decision of the authority communicated to the Civil Court under Section 21 of the said Act.

In view of the findings made herein above, we do not find involvement of substantial question of law in the instant appeal and the same is hereby dismissed.

In view of the dismissal of the appeal itself, the connected application being CAN 1 2023 has become infructuous and the same is also dismissed.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)