

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

**THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE PRASENJIT BISWAS**

WPLRT 64 OF 2022

**Abhijit Tie Up (P) Ltd. & Ors.
Vs.
The State of West Bengal & Ors.**

Appearance:

For the Petitioner : **Mr. Shaktinath Mukherjee, Sr. Adv.
Mr. Siddhartha Banerjee, Adv.
Mr. Rahul Karmakar, Adv.
Mr. Soumajit Majumdar, Adv.
Ms. Shayantee Dutta, Adv.**

For the State : **Mr. Chandi Charan Dey, Ld. AGP
Mr. Anirban Sarkar, Adv.**

Judgment On : **14.09.2023**

Harish Tandon, J.:

The instant writ petition raises an important and seminal point relating to the status of the writ petitioner in relation to a factory land where the mutation in the Record of Right was denied taking shelter under the various provisions of the West Bengal Estates Acquisition Act, 1953 and the West Bengal Land Reforms Act, 1955.

The facts are more or less undisputed. One Bissesswar Dutta was the owner of a plot of land measuring 22 Bighas of garden land with a structure and duly mutated his name in the Record of Right. Upon the death of the said owner his widow and the son transferred and conveyed the said land in favour of one Indian Malleable Castings Pvt. Ltd. Subsequently, the Record of Right was corrected and the land comprised under the said deed of sale was referred as Karkhana instead of Bagan. Thereafter, a winding-up petition was filed against the said Indian Malleable Castings Pvt. Ltd. being CP no. 72 of 1975 and an order was passed by the Company Court for sale of the assets of the said company. The writ petitioner purchased the land from the Court sale and subsequently applied for mutation of their names in the Record of Rights. Since the authorities refused to record the name taking shelter under the various provisions of the aforesaid Act, the Tribunal was approached and the Tribunal Application was ultimately dismissed. The instant writ petition is filed assailing the order of the Tribunal.

The respondent/State filed a written note of arguments supporting the judgment of the Tribunal citing various provisions of the Act which shall be dealt with hereinafter. However, Mr. Mukherjee, the learned Senior Advocate appearing for the writ petitioner raises an important issue in relation to Section 4, Section 5 and Section 6 of the West Bengal Estate Acquisition Act and contends that the harmonious reading of the aforesaid provision leaves no ambiguity that the non-agricultural tenant was kept outside the purview of the vesting provisions. According to him, the definition of a intermediary under Section 2 (f) of the Act of 1953 is explicit and categorical that it would mean a proprietor, tenure holder or any other intermediary above a Rayat or a non-agricultural tenant and, therefore, by virtue of Section 4 of the said Act, the right of intermediary had vested with the State. It is further submitted that the definition of a intermediary is exposite that non-agricultural tenant were kept outside the purview of the vesting provision of the said Act which would further be evident from Section 6 (1) (g) thereof. According to Mr. Mukherjee, the provisions contained under Section 6 of the Act confers right upon the intermediary to retain certain categories of the land w.e.f. the date of the vesting and in relation to a land comprised only mills, factories or workshop, such retention is subject to the provision of sub-Section (3) thereof. Mr. Mukherjee further submits that sub-Section (3) of Section 6 is again applicable in case of a land comprised in tea garden, mill, factory and workshop in relation to an intermediary or where the land is held under lease to be entitled to retain only so much of such land as in the opinion of the State Government is required for such purposes and a

person holding under a lease for the purpose of assessment of compensation is deemed to have intermediary. Mr. Mukherjee further takes us to sub-Section (5) of Section 6 of the said Act wherein the right to retain the land under sub-Section (1) of the said Section is provided and in the event no choice is exercised, the Revenue Officer of its own after giving an opportunity of being heard shall permit the retention of the land subject to the limits specified in Clause (c), (d) and (j) of sub-Section (1) of Section 6 of the Act. It is further contended that the right of a Raiyat or non-agricultural tenant has not been disturbed under the said Act and the vesting provision is applicable in case of an intermediary above the Raiyat or non-agricultural tenant. Mr. Mukherjee further relied upon the provision of the Section 3A of the West Bengal Land Reforms Act, 1955 in support of his contention that the State Government was conscious that the Raiyat and/or non-agricultural tenants are not subject to the vesting under the Act of 1953 and introduced such amendment by way of Section 3A imbibing within itself the non-agricultural tenant and the vesting of such land in the State free from all encumbrances. The said amended Section came into effect on and from the 9th Day of September, 1980 which would be evident from sub-Section (5) of Section 3A of the Act of 1955 and, therefore, prior to the said effective date the right of the non-agricultural tenant did not vest under the Act of 1953. Mr. Mukherjee further submits that explanation appended to sub-Section 1 of Section 3A of the Act postulates that Section 5 and 5A of the Act of 1953 shall not affect in any way the vesting of the rights and interest of the non-agricultural tenant or under tenant under the West Bengal Non-

Agricultural Tenancy act, 1949 in the State under sub-Section (1) thereof. However, sub-Section (2) was further placed where the non-agricultural tenant holding in his Khas possession any land to which the provision of sub-Section (1) applied be entitled to retain as a Raiyat, the said land subject to the ceiling limit given under Section 14M of the act of 1955, Mr. Mukherjee is very much vocal in his submission that by introduction of Section 3A of the Act of 1955 the non-agricultural tenant have been equated with the Raiyat w.e.f the said date and entitled to retain the land subject to the ceiling area defined in Clause (e) of sub-Section (1) of Section 14M is beyond 24 Acres or 7 standard hectares. Mr. Mukherjee further submits that Section 4B which was introduced by way of an amendment more particularly, sub-Section (2) thereof inexplicitly indicate that where an intermediary has been allowed to retain land irrespective of area and classification with or without any order passed under Clause (g) of sub-Section 1 and sub-section 3 of Section 6 of the Act of 1953 or general transfer has taken place at the behest of such retainer. Such retainer or transferee shall be deemed to hold a land or part thereafter as lessee directly w.e.f the date of the vesting under the Act of 1953 or from the date of such transfer as the case may be. According to Mr. Mukherjee, the aforesaid provision is applicable in relation to an intermediary having an interest in the land by virtue of Raiyat or a non-agricultural tenant and, therefore, the stand of the Government in this regard is misplaced. Lastly, Mr. Mukherjee submits that the original owner was holding the property as Raiyat which would be evident from the entry in the Record of Rights to have been shown

as a STITHIBAN and having transferred the land to a company much before coming into force of the Act of 1953 and the Record of Right was corrected as Karkhana, the provision of the aforesaid Act contemplates the purpose for which the land is used which is distinct from the other aspects. He further submits that the moment the right of a Raiyat is transferred and neither the Act of 1953 nor 1955 takes away the right of the Raiyat, the Raiyat continues to remain in such capacity under the State upon vesting of the right of the intermediary which in unequivocal term is by virtue of a right of a Raiyat. Mr. Mukherjee thus submits that in whichever angle the case is considered, there is no necessity of approaching the Government for taking a lease and, therefore, the order of the Tribunal is infirm and/or illegal.

On the other hand, the State in his written notes of argument relied upon a definition of non-agricultural tenant under the West Bengal Non-Agricultural Tenancy Act, 1949 in support of his contention that any land which is not used for agriculture or horticulture or held on any lease for purposes not connected therewith irrespective of whether it is used for any other purpose or not would be regarded as a non-agricultural tenant. It is further contended that the aforesaid definition leaves no ambiguity that the land held on any lease for the purpose connected with the agriculture or horticulture irrespective of whether it is used for any other purpose cannot be a non-agricultural tenant under the aforesaid definition section. It is further contended that at one point of time the plots in question were

regarded as bagan and pond and, therefore, the original purpose was agriculture and/or horticulture and, therefore, comes within the purview of the Act of 1953. It is further contended that there was no express permission sought for converting the subject plots of land from an agriculture/horticulture to a non-agricultural land and, therefore, the Act of 1949 does not apply. Taking aid of the definition of Non-Agricultural Tenancy Act of 1949 it is submitted that the land does not come under the purview of the said Act as it remained an agricultural tenancy and, comes under the purview of an Act of 1953. It is further contended that under Clause (g) of sub-Section (3) of Section 6 thereof a recourse is required to take a long term lease from the Government. It is thus contended that all the plots being the subject matter of the instant writ petition were regarded as Karkhana in the finally published RS Record of Rights and were retained under Section 6 (1) (g) read with Section 6 (3) of the Act of 1953 and, therefore, it is obligatory on the part of the writ petitioners to approach the Government for a long term lease.

The facts adumbrated hereinabove are undisputed but the parties are at variance on the applicability of the several provisions of the Act touching upon the incidences and the consequences flowing therefrom. Admittedly, the plot of land comprising of 22 Bighas of green land (Bagan) was sold, transferred and conveyed to **M/s. Indian Malleable Castings Pvt. Ltd.** much before coming in force of the Act of 1953, the said company subsequently used and utilized the said green land (Bagan) for the purpose

of factory (Karkhana) and indubitably the record of right also reflects so. The West Bengal Non-agricultural Tenancy Act was promulgated in 1949 after independence and the object and the reasons for incorporation of the said Act appears to be laudable in the sense that because of the radical growth in the urban areas the tenants were facing the menace of mass eviction in the hands of unscrupulous landlords as there was no protection against the eviction provided under the Transfer of Property Act which was in vogue at that relevant point of time. Though the Act came after independence yet the object and the reasons would evince that during the British Era a Committee of enquiry was constituted in 1938 with regard to the rights and the obligations of the non-agricultural tenant in the then province. A comprehensive Bill was introduced by the Bengal Legislative Assembly before it was segregated from the province and thereafter the said Act was introduced giving protection to a non-agricultural tenant against the eviction and also the corresponding obligations of the landlord and such non-agricultural tenant. The definition of the 'non-agricultural tenant' under Section 2 (5) of the Act of 1949 postulates that a person holding non-agricultural land under another person and is, or but for a special contract would be liable to pay rent for such person for that land and does not include a person who holds any premises or part of any premises, situated on non-agricultural land or owned by another person, and who is, or but for a special contract would be liable to pay a rent for such premises or such part of the premises to such person. The explanation appended thereto defines the word 'Premises' to mean any building such as house,

manufactory, warehouse, stable, shop or hut whether constructed of masonry, bricks, concrete, wood, mud and metal or any other material whatsoever and includes any land appertaining to such building.

Subsequently, the West Bengal Estate Acquisition Act, 1953 was promulgated to provide for the acquisition of estate or rights of intermediaries therein and of certain rights of raiyats and under raiyats and of the rights of certain other persons in land comprised in estates. The primary object of promulgation of the Act of 1953 was abolition of a Zamindari system. By the Act of 1953, the right of intermediary extinguished with the avowed object of bringing an agrarian reforms; the intermediary is defined in Section 2 (i) of the Act of 1953 as follows:

“2(i). ‘intermediary’ means a proprietor, tenure-holder, under-tenure-holder or any other intermediary above a raiyat or a non-agricultural tenant and includes a service tenure-holder and, in relation to mines and minerals, includes a lessee and a sub-lessee.”

The meaningful reading of the said definition conveyed a laudable object of the said legislation that a proprietor, a tenure-holder, under-tenure-holder or any other intermediary above a raiyat or non-agricultural tenant shall stand vested with the State free from all encumbrances under Section 4 of the Act of 1953. The non-agricultural tenant is again defined in the said Act of 1953 to mean a tenant of non-agricultural land who holds under a proprietor, a tenure-holder, a service tenure-holder or an under tenure-holder. It is apposite to record that the said Act of 1953 having an

avowed object of extinguishing the Zamindari system and vest the land with the State but protected the interest of a raiyat or a non-agricultural tenant as such right did not vest into the State. In other words, the non-agricultural tenant were kept outside the purview of the Act of 1953 as they do not satisfy the definition of an intermediary given under Section 2 (i) of the said Act. By virtue of Section 4 of the Act of 1953, the State Government by notification shall declare the effective date of vesting of all estates and the rights of the intermediaries and it is not in dispute that the property situated in the area has also come within the purview of such notification.

Section 5 of the Act of 1953 is a repository of the effect of the notification and have undergone several amendments subsequently, brought by the legislatures; Section 5 (1) (c) deals with the non-agricultural tenancy subject to the provision of Section 6(3) wherein every non-agricultural tenant holding a land under intermediary and until the provision of Chapter VI are given effect to, shall hold the same directly under the State treating the State to be an intermediary on the same terms and conditions as immediately before the date of vesting. Clause (d) of the aforesaid provision makes obligatory on the every non-agricultural tenant holding under an intermediary to pay to the State his rent and other dues in respect of his land on and from the date of vesting.

The composite reading of the aforesaid provisions leaves no ambiguity that the non-agricultural tenant is treated to have held the tenancy under the intermediary and such tenancy has been kept outside the purview of the

Act of 1953. The said non-agricultural tenant shall continue to hold the land directly under the State as the right of the intermediary vested with the State and the State is regarded as an intermediary for the purpose of collection of the rent and the other obligations attached to such non-agricultural tenancy and shall continue to hold the land on the same terms and conditions as he was before the date of vesting. Section 6 of the said Act of 1953 though starting with the non-obstante Clause yet give a protection on the right to the intermediary to retain the land with effect from the vesting with certain conditions of the other provisions and imbibed within itself the land comprised in mills, factories and workshops. Section 6(3) of the Act of 1953 provides that in case the land is comprised in mill, tea-garden, factory and workshop the intermediary, or where the land is held under a lease, the lessee, shall be entitled to retain so much of such land as in the opinion of the State Government is required for such purposes. The combined reading of the various sub-sections under Section 6 is exposit to the extent that the land comprised in non-agricultural tenancy shall not be disturbed and a right of the intermediary to retain such land is provided therein, which leads to unequivocal conclusion that the non-agricultural tenancy was kept outside the purview of the Act of 1953 and does not get effected or extinguished by its operation. The aforesaid conclusion will get further impetus from a subsequent amendment having brought by inserting Section 3A of the West Bengal Land Reforms Act, 1955. The said Section is quoted as under:

“3A. Rights of non-agricultural tenants and under-tenants in non-agricultural land to vest in the State. – (1) The rights and interests of all non-agricultural tenants and under-tenants under the West Bengal Non-Agricultural Tenancy Act, 1949 (West Ben. Act XX of 1949) shall vest in the State free from all encumbrances, and the provisions of Sections 5 and 5A of the West Bengal Estates Acquisition Act, 1953 (West Ben. Act I of 1954) shall apply, with such modifications as may be necessary, mutatis mutandis to all such non-agricultural tenants and under-tenants as if such non-agricultural tenants and under tenants were intermediaries and the land held by them were estates and a person holding under a non-agricultural tenant or under-tenant were a raiyat.

Explanation.- Nothing in sections 5 and 5A of the West Bengal Estates Acquisition Act, 1953 shall be construed to affect in any way the vesting of the rights and interests of a non-agricultural tenant or under-tenant under the West Bengal Non-Agricultural Tenancy Act, 1949 in the State under sub-section (1) of this section.

(2) Notwithstanding anything contained in sub-section (1), a non-agricultural tenant or under-tenant under the West Bengal Non-Agricultural Tenancy Act, 1949 (West Ben. Act XX of 1949), holding in his khas possession any land to which the provisions of sub-section (1) apply, shall, subject to the other provisions of this Act, be entitled to retain as a raiyat the said land which together with other lands, if any, held by him shall not exceed the ceiling area under Section 14M.

(3) Every intermediary, -

(a) whose land held in his khas possession has vested in the State under sub-section (1), or

(b) whose estates or interests, other than land held in his khas possession, have vested in the State under sub-section (1),

Shall be entitled to receive an amount to be determined in accordance with the provisions of section 14V.

(4) The provisions of this section shall not apply to any land to which the provisions of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 (West Ben. Act XXXII of 2001), apply.

(5) This section shall be deemed to have come into force on and from the 9th day of September, 1980.”

Upon incorporation of Section 3A of the Act of 1955, for the first time, the rights and interests of the non-agricultural tenant stood vested in the State free from all encumbrances as those non-agricultural tenants were the intermediaries in the land held by them under estates and the person holding the non-agricultural land were a raiyat. By virtue of the aforesaid Section, the provisions contained under Section 5 and the 5A of the Act of 1953 was extended to those non-agricultural tenants meaning thereby that they would be regarded as a tenant directly under the State and shall pay the rent directly to the State. The Sub-Section 2 of Section 3A of the Act of 1955 has a overriding effect on Sub-Section 1 of Section 3A which is primarily related to the vesting of non-agricultural tenancy into the State, be entitled to retain as a raiyat of the said land but subject to the ceiling limit of Section 14M of the Act of 1955. The cumulative effect of the aforesaid provisions leaves no ambiguity that the non-agricultural tenancy was kept outside the purview of the Act of 1953 but later on included in the Act of

1955 and upon introduction of Section 3A of the Act of 1955 stood vested with the State and their status was considered as a raiyat holding a land directly under the State on the same terms and conditions as it was before the date of vesting, however, subject to the ceiling limit under Section 14M of the Act of 1955.

A point is raised by the State that the land was originally an agricultural land (Bagan) and, therefore, even if it is subsequently recorded as Karkhana it does not *ipso facto* change its character as such recording is erroneous. As indicated above, the said land was all along used as 'Karkhana' which is undisputed (before the promulgation of Act of 1953 or an Act of 1955) and continued thereafter. What is material in this regard is the nature of the land as on the date of the vesting and it is undisputed that it was recorded as Karkhana at such relevant point of time. The Division Bench Judgment rendered in case ***Collector of 24- Parganas vs. Life Insurance Corporation of India***, reported in **74 CWN 166** throws light on the aforesaid concept wherein it is held that mere record of right prepared under the Act of 1953 refers to the date of vesting being a relevant date to ascertain the rights of the parties under the said Act, what is important in this regard is the nature of the land as on the date of the vesting and if the land is under the non-agricultural tenancy it would be deemed to be so on the advent of Act of 1953. The relevant excerpts from the aforementioned judgment is quoted as under:

“2. That the disputed lands were Beels at the date of preparation of the record of rights is not disputed. But the parties differ on the question whether the same were Beels from before the date of vesting under the West Bengal Estates Acquisition Act or converted into Beels after the said date. The Assistant Settlement Officer, who dealt with the matter in the first instance, was apparently of the view that the disputed lands were not Beels at the date of vesting, but were converted into Beels after that date and as, apparently, in his view, the date of vesting was the relevant point of time he refused the opposite parties’ application for correction or revision of the record of rights by changing the description of the disputed lands into Beels. The petitioners’ real grievance was that the learned Assistant Settlement Officer did not allow them an opportunity to adduce full evidence, including production of documents and cross-examination of the State’s witnesses. The appellate tribunal below, however, being of the view that the relevant point of time would be the date of preparation of the record of rights, allowed the petitioners’ appeals and their applications for revision of the record of rights by directing the description of the disputed lands as Beels, upon the view that they having been admittedly Beels at the date of preparation of the said records, no other question would be relevant and the point whether they were Beels at the date of vesting might be left open and undecided in our opinion, the learned appellate tribunal was in error in its approach, as indicated above. The record of rights which is prepared under the Act is for carrying out the purposes of the Act and the purposes of the Act, primarily, at least, have reference to the date of vesting, which is the relevant date for judging the rights of the parties under the Act. The records, therefore, must have reference to the state of things as it exists at the said date of vesting. ”

In Ambika Prasad Thakur & Ors. vs. Ram Ekbal Rai (Dead) by His Legal Representatives & Ors., reported in AIR 1966 SC 605, the

Apex Court have recognized the concept of existence of a thing in its continuity in juxtaposition with the date of vesting and applied the rule of presumption in favour of its continuance in the following:

“15. The survey records of 1892, 1895, 1904 and 1909 disclose that the ancestors of the plaintiffs held some of the Fortier plots of Dubha Mal. The High Court was, therefore, asked to draw the inference that then ancestors held those plots during 1845 to 1863 when the Taufir land accreted. The question is whether such an inference should be drawn. Now, if a thing or a state of things is shown to exist, an inference of its continuity within a reasonably proximate time both forwards and backward may sometimes be drawn. The presumption of future continuance noticed in Illustration (d) to Section 114 of the Indian Evidence Act, 1872. In appropriate cases, an inference of the continuity of a thing or state of things backwards may be drawn under this section, though on this point the section does not give a separate illustration. The rule that the presumption of continuance may operate retrospectively has been recognized both in India, see Anangamanjari Chowdhurani v. Tripura Soondar Chowdhurani and England, see Bristow v. Cormican, Doe v. Young. The board observation in Manmatha Nath Haldary v. Girish Chandra Roy and Hemendra Nath Roy Chowdhury v. Jnanendn Prasanna Bhaduri that there is no rule of evidence by which one can presume the continuity of things backwards cannot be supported. The presumption of continuity weakens with the passage of time. How far the presumption may be drawn both backwards and forwards depends upon the nature of the thing and the surrounding circumstances. In the present case the High Court rightly refused to draw the inference from the state of things during 1892 to 1909 that the ancestors of the plaintiffs held frontier plots of Dubha Mal in 1863. The High Court pointed out that even during 1894 to

1905 the ownership of some of the plots had changed and also that the frontier Mal plots and the corresponding Taufir plot were not always held by the same person. In 1845, part of the Mal lands was under water. The frontier Mal lands re-formed between 1845 to 1863 where subject to annual inundation. It is well-known that settlement of Char lands are seasonal and temporary. There is a considerable gap of time between 1892 and 1845. It is not safe to assume that the state of things during 1894 to 1905 existed during 1845 to 1863.”

The point that the non-agricultural tenancy was kept outside the purview of the Act of 1953 gets further impetus from the judgment of the Supreme Court in case of **Shivsankar Nandi vs. Prabartak Sangha & Ors.**, reported in **AIR 1967 SC 940** in the following:

“9. Counsel however contended that the first respondent having merely the right to receive rent, it was an ‘intermediary’ within the meaning of Act 1 of 1954, that under that Act the interests of such an intermediary vested in the State on the extension of that Act to Chandernagore and therefore the Association had no locus standi to apply for transfer. This contention also cannot be accepted, for an ‘intermediary’ as defined in Section 2 (1) (i) of that Act means ‘a proprietor, tenure-holder, under-tenure holder, or any other intermediary above a raiyat or a non-agricultural tenant and in relation to mines and minerals, a lessee or a sub-lessee’. It is thus obvious that the 1st respondent being itself a non-agricultural tenant in respect of the entire land including the land in dispute it does not fall within this definition. Not being thus an intermediary it is impossible to say that its interests in the land in dispute vested in the State or that therefore it was not entitled to apply under Section 24.”

The State has taken a point that by virtue of Section 6 (3) of the Act of 1953, the non-agricultural tenancy was impliedly taken within the engulf of the aforesaid Act does not appear to be sound for the reasons that the State with the conscious mind that the non-agricultural tenancies were kept outside the purview of the Act of 1953, introduced Section 3A in the Act of 1955 imbibing the non-agricultural tenant and such tenancy to be vested in the State. The stand of the State does not appear to be sound and logical that even after the incorporation of Section 3A in the Act of 1955, Section 6 (3) of the Act of 1953 includes the non-agricultural tenancy as the power was given to the intermediary to retain such land. The object and the reasons behind the incorporation of Section 6 (3) of the Act 1953 can be visualized that the non-agricultural tenancy was kept outside the purview of the Act and, therefore, their right should not be affected on vesting of the intermediary right as the intermediary was entitled to retain such land so as to protect the interest of the non-agricultural tenant. Sub-Section 2 of Section 3A of the Act of 1955 which was brought by an amendment in 1986 having a retroactive effect from 09.09.1980 creates an embargo in holding the land above the ceiling limit which does not affect the right of a non-agricultural tenant to continue with the occupation if the land comprised in such non-agricultural tenancy falls within the ceiling limit provided under Section 14M of the said Act. Section 14M in Act of 1955 are brought under Chapter II B relatable to the ceiling of the land held by the raiyat and there is no ambiguity to say that after the incorporation of Section 3A, the non-agricultural tenant is entitled to hold the land subject, however, to the

ceiling limit provided therein. Section 14Z (2) of the Act is relatable to a land comprised in mill, factory and others but we are concerned with the factory, mill or workshop in the present purpose where the State Government may permit such raiyat to retain the land in excess of the prescribed ceiling which in the opinion of the State Government is required for such purposes. The aforesaid Sub-Section 2 of Section 14Z has its applicability in the event the land is in excess of the ceiling limit provided in Section 14M of the Said Act and cannot be extended to a situation where the land falls within such ceiling limit. In the instant case, the land is within the ceiling limit and, therefore, the Sub-Section 2 of Section 14Z of the Act of 1955 is not applicable.

The identical situation arose in case of ***Juhi Finalease (p) Ltd. & Anr. V. The State of West Bengal & Ors.*** reported in ***(2017) 3 CHN 97***. In the said case, the argument was advanced on behalf of the State that the land in question vested in its entirety upon the State under the provision of Section 4 of the Act of 1953 and the right of retention of land upto the ceiling limit was dependent upon the exercise of option of the intermediary and, therefore, in absence of any material such option was exercised, the land stood vested with the State. A further argument was advanced on behalf of the State that the retention of land in Clause (g) of sub-Section (1) of Section 6 of the Act of 1953 is not controlled or guided by the provision of the Act of 1949 and, therefore, the retention cannot be presumed to be automatic. Admittedly, in the given case the land comprised of a mill or

factory having various shades and structures standing thereupon and the applicability of Section 6 (3) of the Act of 1953 was questioned therein. The Division Bench after considering the respective submissions advanced at the Bar held:

32. Section 4 of the said Act, 1953, provides for issuance of notification from time to time declaring vesting of all estates and the rights of every intermediary in each such estate situated in any district of the State of West Bengal in the State free from all encumbrances from the date mentioned in such notification.

33. The provisions of Section 5 of the said Act, 1953, deal with the effect of notification issued under Section 4 of the said Act, 1953. According to the provision of clause(a) of sub-section(1) of Section 5 of the said Act, 1953, upon the deemed publication of a notification under Section 4 of the said Act, 1953, and upon the date of vesting the estates and the right of the intermediary in the estates, to which the declaration applies, shall vest in the State free from all encumbrances.

34. In Section 6 of the said Act, 1953, right of intermediary to retain different categories of land are dealt with. It is provided in the above Section that notwithstanding anything contained in Sections 4 and 5, an intermediary shall, except in the cases mentioned in the proviso to subsection (2) but subject to the other provisions of that Section, be entitled to retain with effect from the date of vesting. Sub-section(1) of Section 6 of the said Act, 1953, deals with retention of different categories of land under different clauses.

35. Provisions of Clauses (a), (b) and (g) of sub-section(1) of Section 6 of the said Act, 1953, deal with only land comprised in and not appertaining to the categories of lands mentioned in the above clauses. The above interpretation of the aforesaid provisions of the said Act, 1953, lends support from a decision of a division bench of this Court in the matter of Saregama India Limited (Supra)

36. The term “comprising” is defined in the Concise Oxford English Dictionary, Twelfth Edition, (at page 295 in South Asia Edition), as - consist of; be made,*(also be comprised of) make up; constitute.

37. The above term is defined in the New International Webster's Comprehensive Dictionary of English Language, Deluxe Encyclopedic Edition, (at page 269), as - to include and contain; consist of; embrace.

38. So, under the scheme of the said Act, 1953, land appertaining to the lands mentioned in clauses (a), (b) and (g) will not come under any of the aforesaid clauses.

39. The lands mentioned in clauses (a), (c) and (d) of sub-section(1) of Section 6 of the said Act, 1953, have their respective ceiling.

40. Therefore, the land of an industrial unit appertaining to the land comprised in a mill, factory and workshop should not come under clause(g) of sub-section(1) of Section 6 and the same will be governed by clause(c) of sub-section(1) of Section 6 of the said Act, 1953, provided factory related activity appears to be carried on such land on the date of vesting.

41. Under the provision of clause(b) of sub-section(1) of Section 6 of the said Act, 1953, land comprised in or appertaining to buildings and structures (owned by the intermediary or by any person, not being a tenant, holding under him by leave or license) can be retained without any ceiling. It will not be out of context to observe here that under the above provision, lands described in clause(b) of sub-section(1) of Section 6 of the said Act, 1953, whether or not in the possession of the intermediary or the person concerned, can be retained without any ceiling.

42. Necessary to point out that the said Act, 1953, does not provide for taking over any building and structure and as a result does not contain any provision for assessment and payment of compensation. However, retention of agricultural or non-agricultural land is subject to the further condition of being possessed in khas by the intermediary seeking retention.

43. Under the provision of sub-section(2) of Section 6 of the said Act, 1953, the intermediary retaining the land loses his pre-vesting status and deemed to hold such land directly under the State from the date of vesting as a tenant, subject to payment of such rent as may be determined under the provision of the above Act and as entered in the record of rights finally published under Chapter V of the said Act, 1953, except that no rent shall be payable for the land referred to in clause(h) or (j) of sub-section(1) of Section 6 of the above Act. Proviso to sub-section(2) of Section 6 of the said Act, 1953 applies to leasehold land only.

44. Under the provision of sub-Rule (2) of Rule 4 of the said Rules, 1954, if the land held by the intermediary be non-agricultural land, then he shall hold it as a tenant under the said Act, 1949, holding non-agricultural land for not less than twelve years without any lease in writing. If the land held by the intermediary is agricultural land, he shall hold it, mutata mutandis on the terms and conditions mentioned in the specific Section of the Bengal Tenancy Act, 1885. So, the status of post vesting intermediary retaining any land under Section 6 of the Said Act, 1953, is not that of a licensee, but that of a statutory tenant.

45. Noteworthy, under the provisions of Section 7 of the West Bengal Non-Agricultural Tenancy Act, 1949, the right of retainer over the land is transferable.

46. Subsequently, the non-agricultural tenancy and under tenancies were made to vest under Section 3A of the West Bengal Land Reforms Act, 1955, (hereinafter referred to as the said Act, 1955) with effect from September 9, 1980, and only the provisions of Section 5 and 5A of the said Act, 1953, have been made applicable but sub-section(3) of Section 6 of the said Act, 1953, has no application in respect of vesting under Section 3A of the said Act, 1955.

47. Sub-section(3) of Section 6 of the said Act, 1953, is in the nature of proviso to sub-section(2) of Section 6 of the above Act. It carves out an exception from sub-section(2) of Section 6 of the above Act. It deals with the retention of land comprised in a tea-garden, mill, factory or workshop by the intermediary. According to the above provision the intermediary, or where a land is held under a lease, the lessee, shall be entitled to retain only so much of such land as in the opinion of the State Government, is required for the tea-garden, mill, factory or workshop, as the case may be, and a person holding under a lease shall, for the purpose of assessment of compensation, deemed to be an intermediary. A Division Bench of this Court, while analyzing the provisions of clause(g) of sub-section(1) of Section 6 with that of sub-section(3) of Section 6 of the said Act, 1953, in the matter of BRC Construction Company Private Limited v. State of West Bengal, reported in 2015 (3) CHN (CAL) 658, observed as follows:—

“57. Upon a careful analysis of the provisions of section 6(1) (g) read with section 6 (3), it can even be applied to one cattah plot with a small manufacturing unit. It may well be that post-vesting tenant of one cattah plot

has no other plot and in the event of his stopping the operation of such unit after date of vesting there may be a claim of the State Government to revise the order of retention and resume even to such one cattah plot such an application of said two provisions will be contrary to the scheme of the Act seeking to bring about agrarian reform.

58. But, such an interpretation of the two provisions, namely, section 6(1) (g) and 6 (3) read with recently introduced explanation are not of any assistance to the State Government. As revision of section 6(3) and any vesting of a portion of the whole of the retained plot of land with structures thereon will be an unjust deprivation and deprivation offending the provisions of Articles 14 and 300A of the Constitution of India. An intermediary holding a bare plot of land will be entitled to compensation according to the scheme of sections 16 and 17. But, a post-vesting tenant holding mill, factory structures will be having no compensation at all for structures and buildings as the Act does not provide for it. The provision of sections 16 and 17 are illusory in their content and in their application to lands comprised in mills and factories when they are sought to be vested upon revision. The provisions of section 16(1) (g) lead to absurdity.

59. The Estates Acquisition Act does not contemplate vesting of land with structures and, therefore, do not provide for any compensation not even of their vesting.

60. We are informed that the decisions of this Court on similar lines in Saregama India Limited v. State of West Bengal reported in 2014 (2) Calcutta Law Times 311 and the State of West Bengal v. Star Iron Works Limited reported in 2012 (2) Calcutta Law Times 639 were challenged before the Supreme Court of India and the challenges proved to be futile.”

48. It was held by another division bench of this Court in the matter of The State of West Bengal v. Star Iron Works, reported in AIR 2012 Cal 148, in respect of a mill which was closed before the date of vesting there could not be any question of assessing the requirement of factory and the relevant portion of the above decision is quoted below:—

“32. Having regard to the scheme of the said West Bengal Estates Acquisition Act and the language of sub-section(3) including the proviso thereto, there can be no doubt that Section 6(3) applies only to mill or factory which was in operation or was functioning on the date of vesting. In respect of a mill which was closed

long before the date of vesting there could not be any question of assessing the requirement of factory. Section 6 (3) does not directly deal with the right of retention. It really deals with the extent of retention and such extent is required to be determined having regard to the requirement of a mill, factory.

(Emphasis supplied).

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38. From the records, it does not appear that the lands in question was ever allowed to be retained by the State Government under Section 6(3) of the West Bengal Estates Acquisition Act after assessing the requirement for the purpose of said running factory. The learned senior counsel of the respondent Company specifically submitted before us that there was no question of applicability of Section 6(3) of the West Bengal Estates Acquisition Act in the facts of the present case as the respondent No. 1 Company acquired the lands from the learned Receiver appointed by the High Court and the said lands are recorded as the retained lands of the predecessors-in-title. It is the specific case of the said Company that the respondent Company cannot be deprived of the said land by unjust and illegal invocation of Section 6(3) of the West Bengal Estates Acquisition Act.”

49. Under the provision of sub-section (5) of Section 6 of the said Act, 1953, If no choice is exercised by an intermediary for retention of land under sub-section(1) of Section 6 of the above Act, the Revenue Officer shall, after giving him an opportunity of being heard, allow him to retain so much of land as do not exceed the limits specified in clauses (c), (d) and (j) of that sub-section.

It is held in the aforesaid decision that if the non-agricultural land is held by the intermediary it would continue to hold the same as a tenant under the Act of 1949 provided it is beyond the 12 years under sub-Rule (2) of Rule 4 of the West Bengal Estate Acquisition Rules, 1954 and, therefore,

the status of a post vesting intermediary retaining any land is not that of a licensee but that of a statutory tenant. It is further held that after the introduction of Section 3A in the Act of 1955, the provisions of Section 5 and 5A of the Act of 1953 is made applicable but the provisions contained under Section 6 (3) of the Act of 1953 has no manner of applications in relation to a vesting contemplated under Section 3A of the Act of 1955. It is further held that the aforesaid last Section as mentioned above is in effect, Proviso to the sub-Section (2) of Section 6 of the Act of 1953 and the cumulative effect of the above would bring no ambiguity that the non-agricultural tenant can retain the land provided it falls within the ceiling limit of Section 14M in the instant case. Indubitably the land in question is well within the ceiling limit indicated under Section 14M and, therefore, we do not find any ambiguity in this regard.

We may also not lose the sight of the another judgment of the Division Bench rendered in case of ***BRC Construction Company Pvt. Ltd & Anr. Vs. The State of West Bengal & Ors. reported in (2015) 3 CHN 658*** wherein somewhat identical points arose in relation to the applicability of Section 6(3) of the Estate Acquisition Act vis-à-vis a Section 3A of the West Bengal Land Reforms Act. Taking an inspiration from the judgment of the Apex Court in case of Shivsankar Nandi (*Supra*), the Division Bench held that there is no provision under the Estate Acquisition Act to treat the non-agricultural tenant as deemed intermediary and, therefore, such non-agricultural tenancy shall not vest under the Estate Acquisition Act and,

therefore, was kept outside the purview thereof. The reason for holding the same was on bringing Section 3A in the West Bengal Land Reforms Act w.e.f September 9, 1980 wherein the said non-agricultural tenancy came to be vested with the State with such retroactive effect. We have been given to understand that the Special Leave Petition against the ‘judgment’ of the Division Bench (above-noted) has been admitted but till date the judgment has not been set aside nor the operation of the said judgment has been stayed by the Supreme Court so long the judgment is set aside by the higher forum, the binding effect of the said judgment cannot be ruled out. The contention of the State that Section 6(3) of the Estate Acquisition Act interplay with Section 4 of the said Act is not acceptable. The Division Bench ultimately held:

“61. Our Conclusions, therefore, are that:

- (a) the state cannot resume any land, which is within ceiling limit, according to Section 6 (3) of the Estates Acquisition Act, 1953.***
- (b) the State cannot resume any land with structures under Section 6(3) of the Estates Acquisition Act, as it does not contain any provision for vesting of structures,***
- (c) as the land of the petitioner is well within the ceiling limit with existing structures, even assuming that Section 6 (3) applies to the land, still the State cannot resume the land in question.”***

In view of the discussion made hereinabove the non-agricultural tenancy was kept outside the purview of the Estate Acquisition Act as the non-agricultural tenant was never regarded as deemed intermediary and,

therefore, does not come under the mischief of the said Act. Furthermore, the status of the land has to be construed on the date of the vesting, i.e. the promulgation of the Estate Acquisition Act and the Record of Right signifying the status of the land would be relevant factor for the purpose of such vesting. However, upon introduction of Section 3A of the West Bengal Land Reforms Act, 1955 the right, title and interest of the non-agricultural tenant or under tenant governed by the West Bengal land Agricultural Tenancy Act, 1959 became vested with the State free from all encumbrances subject however, that they were in Khas possession and the land held by them shall not exceed the ceiling area fixed under Section 14M of the said Act. Admittedly, the land in question is well within the ceiling limits provided under Section 14M of the West Bengal Land Reforms Act, 1955 and, therefore, there is no occasion for seeking any permission for fresh lease as contemplated by the State in this regard.

In view of the discussion made hereinabove the order of the Tribunal is hereby set aside. The application filed before the Tribunal stands allowed.

However, there shall be no order as to costs.

I agree.

(PRASENJIT BISWAS, J.)

(HARISH TANDON, J.)