

WPLRT 445 of 2001
CAN 2 of 2004 (Old CAN 5447 of 2004)
(applications not found)

Mr. Milan Chandra Bhattacharya, Senior Advocate
Mr. Bhabani Prasad Mondal
Mr. Sukanta Mondal

... for the petitioners

Mr. Chandi Charan De, Ld. AGP
Mr. Soumitra Bandyopadhyay
Mr. Anirban Sarkar

... for the State

The writ petition is directed against an order dated December 4, 2000 passed by the West Bengal Land Reforms and Tenancy Tribunal in O.A. No. 836 of 2000.

By the impugned order, the learned Tribunal, directed the concerned Block Land and Land Reforms Officer (BL& LRO) to draw up suo motu proceeding under Section 44 (2a) of the West Bengal Estate Acquisition Act 1953 and to ascertain the fact of possession and decide afresh as to who where the actual owners of the land on the date of vesting under the provisions of the Act of 1953.

Learned Senior Advocate appearing for the writ petitioner submit that the title to the land was decided by the Civil Court in a suit filed by the mother of the writ petitioner. He refers to the Appellate Court's judgement and decree

passed in T.A. 174 of 1989 and T.A. 189 of 1999 which emanated out of a decree of dismissal passed in T.S. No. 68 of 1980. He submits that, the Civil Court held that, mother of the writ petitioner did not hold any land beyond the ceiling. Therefore, the exercise for fresh ascertainment is incorrect.

Referring to the impugned order he submits that, an administrative member cannot be appointed as Chairman of Land Reforms and Tenancy Tribunal. In support of such contention, he refers to section 4 of the West Bengal Tenancy Tribunal Act 1997.

Learned Senior advocate for the writ petitioner submits that, concerned BL& LRO cannot decide title more particularly in the facts of the present case since the suit court decided the title to the land. There are two suits involved. One is Title Suit No. 46 of 1949. The other is Title Suit No. 68 of 1980.

The State is represented.

The impugned order, considers the provisions of the Act of 1953 and the decree passed on appeal in the title suit filed by the private parties.

As rightly pointed out on behalf of the petitioner, the suit no. 46 of 1949 was filed under the provisions of the

Act of 1953 coming into force. There is nothing on record to establish that State was a party to such suit.

Therefore, the decree passed in second appeal being SA 453 of 1953 cannot be pressed into service for the purpose of claiming right, title and interest by the mother of the writ petitioner in respect of the property concerned as against the State.

Title Suit No. 68 of 1980 was filed subsequent to Section 57B of the Act of 1953 coming into force and, therefore, the decree passed therein is not binding on the State.

By the impugned order, the learned Tribunal took note of the rights of the parties in the second appeal being S.A. 453 of 1953. The learned Tribunal found that there was an issue of joint family involved. Possession of land in question was required to be ascertained. In such context, the learned Tribunal directed an undertaking an exercise under Section 44 (2a) of the Act of 1953.

We find no reason to interfere with the impugned order as, the possession of the land in question and consequently the amount of retention of the same is required to be ascertained in an exercise undertaken under the Act of

1953, which apparently, is yet to be concluded.

The contention that, an administrative member cannot be appointed as a Chairman under the Act of 1997 is not relevant in the facts and circumstances of the present case. An administrative member was a senior member of a bench consisting of an administrative member and a judicial member. There is nothing on record to suggest that the administrative member acted as Chairman in the matter.

In such circumstances, we find no merit in the present writ petition.

WPLRT 445 of 2001 along with all connected applications are dismissed without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)