

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

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

WPLRT 63 of 2023

**Subal Mandal & Ors.
VS.
State of West Bengal & Ors.**

For the Petitioners : Mr. Pinaki Dhole, Advocate

*For the Respondent
Nos. 8 to 13* : Ms. Indrani Pal, Advocate

For the State : Mr. Sirsanya Bandopadhyay, Jr. Standing Counsel
Mr. Arka Kumar Nag, Advocates

Heard & Judgement on: June 28, 2023

DEBANGSU BASAK, J.

1. An order dated March 24, 2023 passed by the West Bengal Land Reforms and Tenancy Tribunal in OA No. 2144 of 2002 is under challenge in the present writ petition.
2. Learned advocate appearing for the writ petitioners submits that, there was a civil suit filed between the private parties. In fact, a civil suit was filed by the private respondents against the writ petitioners in which, the private

respondents claimed 100 per cent right, title and interests in respect of the immovable property concerned. Such civil suit, was ultimately not proceeded with by the private respondents and the same was dismissed for default.

3. Learned advocate appearing for the writ petitioners points out that, during the pendency of such civil suit, the concerned Block Land and Land Reforms Officer (BL&LRO) proceeded to invoke provisions of Section 50(f) of the West Bengal Land Reforms Act, 1955 and purported to correct the Record of Rights by inserting the names of the private respondents and by deleting the names of the writ petitioners therefrom. He submits that, the concerned BL&LRO did not possess jurisdiction to decide the title upon the immovable property concerned. The BL&LRO proceeded to do so.

4. Learned advocate for the writ petitioners points out that, an appeal was carried from the order in original of the BL&LRO. The Appellate authority, dismissed the appeal. The writ petitioners preferred an Original Application before the West Bengal Land Reforms and Tenancy Tribunal. Such Original Application being OA 2144 of 2002 was dismissed by the learned tribunal.

5. Learned advocate appearing for the writ petitioners draws our attention to the provisions of Sections 50 as well as Section 54 of the West Bengal Land Reforms Act, 1955 (Act of 1955 in short).

6. Learned advocate appearing for the private respondents submits that the writ petitioners are guilty of suppression of material facts. The writ petitioners are claiming title through the heirs of one gentleman, who left behind a will. Probate proceeding was initiated in respect of such will. Grant of probate was declined. An appeal was carried which was also dismissed.

7. Learned advocate appearing for the private respondents submits that, the writ petitioners are claiming title through persons who were the applicants for the grant of probate. The writ petitioners, therefore, cannot claim valid title

through such persons. She submits that essentially these facts were suppressed by the writ petitioners.

8. Learned advocate appearing for the private respondents, relies upon **(2010) 4 WBLR (Cal) 423 [Badal Moyee Das vs. State of West Bengal & Ors.]** and submits that, an application under Section 50 of the West Bengal Land Reforms Act, 1955 was maintainable to correct and change the Record of Rights. In respect of such contention, she also relies upon **2009(3)CHN (SC), Page 107 [Ramdas vs. Sitabai & Ors.]**.

9. The names of the writ petitioners were noted in the Record of Rights at the point of time when an application under Section 50 of the West Bengal Land Reforms Act, 1955 was filed at the behest of the private respondents. There is a dispute as to whether, Section 50(a) or Section 50(f) of the Act of 1955 was available to the private respondents or not. Section 50(a) of the Act of 1955 allows the prescribed authority to maintain Record of Rights by incorporating therein changes on account of transfer or inheritance.

10. In the facts of the present case, the private respondents applied for correction of Record of Rights by virtue of dismissal of the application for grant of probate. They were essentially claiming right to the immovable property concerned by way of inheritance and seeking correction of the Record of Rights on such basis.

11. Prior to the application under Section 50 of the Act of 1955 being made by the private respondents, they filed a civil suit being Title Suit no. 289 of 1997 in the Court of the Civil Judge, Junior Division, First Court, Malda. Such suit was ultimately not proceeded with by the private respondents.

12. We perused the prayers of the plaint of such title suit. We find from such prayers of the plaint in the title suit that, the private respondents as the plaintiffs in such title suit, sought a declaration that, they are the sole and absolute owners of the immovable property concerned.

13. Title Suit no. 289 of 1997 was ultimately dismissed for default on July 12, 2001.

14. Therefore, the private respondents failed to secure a declaration of title in respect of the immovable property concerned from a civil Court. The private respondents as plaintiffs, racked up the issue of title by filing a civil suit and approached a Civil Court where, they failed to obtain a declaration of title as they sought for.

15. The prescribed authority acting under Section 50 of the Act of 1955 is not entitled to decide title of the parties in respect of an immovable property. In the facts of the present case, the concerned BL&LRO proceeded to trace the title of the rival parties and found that the title of the private respondents was higher or better than the title claimed by the writ petitioners and proceeded to correct the Record of Rights on such basis. In our view, the concerned BL&LRO erred in exercising a jurisdiction of evaluating rival title of the private parties in a proceeding under Section 50 of the Act of 1955. The concerned BL&LRO did not possess requisite jurisdiction to do so.

16. The writ petitioners carried an appeal from the order of the concerned BL&LRO which was dismissed. The Original Application was also dismissed by the impugned order. At all stages, the authorities, failed to appreciate that, a prescribed authority exercising jurisdiction under Section 50 of the Act of 1955 was not vested with the authority to decide the title and correct the Record of Rights on the basis of such decision. Essentially, the concerned BL&LRO did so.

17. Badal Moyee Das (Supra) is a case where, an application under Section 50 of the Act of 1955 was made by a purchaser of a land by a sale deed. The facts and circumstances of the present case are absolutely different.

18. In **Ramdas** (supra), the issue therein was governed by the Transfer of Property Act, 1882. There was a suit filed claiming half share in respect of the

plot concerned. One of the parties to the suit divested its right, title and interest in respect of the suit property. Again, the facts and circumstances of the present case are different.

19. In such circumstances, we set aside the impugned order of the learned tribunal dated March 24, 2023. We also set aside the order of the appellate authority dated April 23, 2002 as well as the order of the concerned BL& LRO dated May 31, 2000. The concerned BL& LRO will restore the names of the persons in the Record of Rights as obtaining on the date prior to the order dated May 31, 2000. He will do so within a period of seven days from the date of communication of this order to him.

20. We add that we did not decide on the title of the rival private parties. The rival private parties are at liberty to agitate their claims in respect of the right, title and interest in the property concerned before an appropriate forum, in accordance with law, if they are entitled to. This judgment and order cannot be construed as a declaration of title in favour of the writ petitioners or negation of the claim of title of any of the private respondents.

21. With the above observations, WPLRT 63 of 2023 is disposed of without any order as to costs.

22. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Debangsu Basak, J.)

23. I agree

(Md. Shabbar Rashidi, J.)