

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

WPA 16124 of 2023

**Swapan Mondal
Vs.
The State of West Bengal & Ors.**

Mr. N. G. Sarkar
Mr. Devranjan Das
..for the petitioner

Mr. Subhankar Chakraborty
Ms. Ruchira Manna
...for the respondent Nos. 6 and 7

Mr. Yash Vardhan Deora
..for the State

Item No.06

Heard & Judgment on: 19.07.2023

Bibek Chaudhuri, J.

The petitioner has approached this Court under the constitutional writ jurisdiction under Article 226 of the Constitution alleging, inter alia, that one letter of intent was issued in favour of the petitioner by the IOCL for granting distributorship of LPG in the year

2020. It was stipulated that in the letter of intent the petitioner was provided all infrastructure including the godown space as per specification along with NOC of the District Magistrate within four months from the date of issuance of letter of intent. However, the matter is still pending for non-availability of the NOC of the jurisdictional District Magistrate. It is alleged by the petitioner in paragraph 11 of the writ petition that the District Magistrate has refused to issue a 'no objection certificate' as the land was taken on lease from a member of scheduled tribe community. Lease being a transfer of property, hits by Section 14B of the West Bengal Land Reforms Act, 1955. Therefore, the District Magistrate has refused to grant 'no objection certificate' in favour of the petitioner.

It is contended on behalf of the petitioner that he has taken a piece of land on lease from a scheduled caste community on condition that he would pay a sum of Rs.17,500/- per annum to the lessor. Practically, the petitioner has been paying such amount to the lessor. According to the learned advocate for the petitioner the lease agreement is not a transfer as the lessor holds the right to terminate the lease on failure of any of the conditions of lease hold property. In support of his contention he refers to a decision of the Hon'ble Supreme Court in the case of **Chittoor Chegaiah and Ors. versus**

Pedda Jeeyangar Mutt and Anr. reported in **AIR 2010 S.C. 1278.**

In paragraph 20 of the said judgment it is stated as hereunder:-

" 20. Thus, a person shall qualify to be a landlord under the meaning of the Act if he is entitled to evict the tenant. Such entitlement can arise either directly due to the agreement entered into (i.e. by providing the conditions or terms of tenancy violating which the tenant may be evicted under Section 13. We find no reason why a permanent lease which provides terms would not result in a tenant-landlord relationship since it is implied in such an agreement that non fulfillment of the prescribed terms would give the right to the landlord to evict the tenant. One such term can be payment of periodic rent, which exists, in the present case. Thus, the respondents in the present case do qualify as landlords."

Thus, it is contended by the learned advocate for the petitioner that the position of the land owner/raiyat in relation to the petitioner is that of a lessor/landlord and he cannot be held to be a transferee in respect of the land in question where godown has been constructed by the petitioner. The learned advocate for the State Respondents refers to Chapter (ii)A of the West Bengal Land Reforms Act, 1955 which deals with the restriction of Alienation of Land by Scheduled Tribes.

Section 14B states:-

“14B. Restrictions on alienation of land by Scheduled Tribes.-

Save as provided in section 14C, [any transfer, other than restoration made under Section 14E, by a raiyat] belonging to a Scheduled Tribe of his [plot of land] or part thereof shall be void.”

He also refers to the definition of alienation contained in the West Bengal Alienation of Land (Regulation Act), 1960. Section 2 (1) of the said Act defines alienation in the following words:-

“Alienation in relation to any land means the transfer by sale, mortgage, lease, exchange, gift, will or otherwise of such land”

It is submitted by the learned advocate for the State Respondent that under the West Bengal Alienation of Land (Regulation Act), 1960 lease is one of the forms of alienation. Section 14B restricts alienation of land by a member of scheduled tribe community. Therefore, in respect of lease hold property the District Magistrate rightly refused to grant NOC.

Having heard the learned advocates for the parties and on careful perusal of the entire materials on record as well as the legal provisions cited by the learned advocates for the parties this Court is of the view that the definition of alienation as contained in the West Bengal Alienation of Land (Regulation Act), 1960 is not applicable in

the instant case in view of the provisions contained in Section 14C of the West Bengal Land Reforms Act.

Section 14C clearly states the modes of transfer of land by a scheduled Tribe.

“14 C. Modes of transfer of land by Scheduled Tribes.-

(1) A raiyat belonging to a Scheduled Tribe may transfer his [plot of land] or part thereof in any one of the following ways, namely

(a) by a complete usufructuary mortgage entered into with a person belonging [to a Scheduled Tribe] for a period not exceeding seven years;

(b) by sale or gift to the Government for a public or charitable purpose;

(c) by simple mortgage to the Government or to a registered cooperative society;

[(cc) by simple mortgage or mortgage by deposit of title deeds in favour of a scheduled bank, a cooperative land mortgage bank or a corporation, owned or controlled by the Central or State Government, or by both, for the development of land or improvement of agricultural production;]

[(d) by gift or will to a person belonging to a Scheduled Tribe;]

[(e) by sale or exchange in favour of any person belonging to a Scheduled Tribe;

Provided that any such raiyat may, with the previous permission, in writing, of the Revenue Officer, transfer by sale his [plot of land] or any part thereof to a person not belonging to any Scheduled Tribe:

Provided further that no such permission shall be granted by the Revenue Officer unless he is satisfied that no purchaser belonging to a Scheduled Tribe is willing to pay the fair market price of the [plot of land] or any part thereof and that the proposed sale is intended to be made for one or more of the following purposes, namely,-

- (a) for the improvement of any other part of the [plot of land], or
- (b) for investment, or
- (c) for such other purposes as may be prescribed]

[(2).....]

- (3) A complete usufructuary mortgage referred to in sub-section (1) may be redeemed at any time before the expiry of the term.

- (4) A mortgagor under a complete usufructuary mortgage intending to redeem such mortgage before the expiry of its term or any person acting on his behalf, may make an application for redemption in such form and containing such particulars as may be prescribed to the Revenue Officer. On receipt of such application the Revenue Officer shall after service of notice to the mortgage make an enquiry in the prescribed manner and pass a preliminary order declaring the amount due under such mortgage to the mortgagee at the date of such order and fixing a date for payment of such amount by the mortgagor. If the mortgagor pays such amount by the date so fixed the Revenue Officer shall make a final order directing the mortgagee to restore possession of the mortgaged property and to deliver up the mortgage-deed, to the mortgagor.
- (5) A final order made under sub-section (4) shall be executed by the Revenue Officer in such manner as may be prescribed.

Explanation.- In this section "complete usufructuary mortgage" means a transfer by a raiyat of the right of possession in any land for the purpose of securing the payment of money or the

return of grain advanced or to be advanced by way of loan upon the condition that the loan, with all transfer thereon, shall be deemed to be extinguished by the profits arising from the land during the period of the mortgage.”

In Section 14C, lease has not been declared as one of the modes of transfer. Therefore, the District Magistrate, South 24 Parganas proceeds with the matter on wrong assumption that the deed of lease is a mode of transfer within the contemplation of Section 14C of the West Bengal Land Reforms Act.

In view of such circumstances, I do not find restriction under any law from getting ‘no objection certificate’ from the District Magistrate by the petitioner. The instant writ petition is accordingly disposed of directing the writ petitioner to act in accordance with law as per the observation made hereinabove within 30 days from the date of communication of this order.

The parties are at liberty to act on the server copy of this order.

The instant writ petition is **disposed of** on contest.

However, there shall be no order as to costs.

(Bibek Chaudhuri, J.)

