

**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**

**W.P.L.R.T No. 160 of 2014**

**Calcutta Pinjrapole Society**

**Vs.**

**R.S.I. Pvt. Limited. & Ors.**

|                             |                                                                                                                                                           |
|-----------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| For the Petitioner          | : Mr. Mrinal Kanti Ghosh, Adv.<br>Mr. Kushal Chatterjee, Adv.<br>Mr. Sunil Kumar Singhania, Adv.<br>Ms. Kalpana Singhania, Adv.<br>Ms. Twinkle Kaur, Adv. |
| For the Private Respondents | : Mr. Subir Sannyal, Adv.<br>Mr. Debjit Mukherjee, Adv.<br>Mr. Ayan Banerjee, Adv.<br>Mr. Mainak Gupta, Adv.<br>Mr. Prasun Mukherjee, Adv.                |
| For the State               | : Mr. Soumitra Bandhyapadhyay, Adv.<br>Ms. Suchana Banerjee, Adv.                                                                                         |
| Hearing Concluded on        | : September 05, 2023                                                                                                                                      |
| Judgement on                | : September 14, 2023                                                                                                                                      |

**DEBANGSU BASAK, J.:-**

1. The petitioner has assailed an order dated May 2, 2014 passed by the West Bengal Land Reforms and Tenancy Tribunal in OA 1081 of 2014.
2. By the impugned order, the Tribunal has held that, the decree passed in the suit for eviction being Title Suit No. 101

of 2004 was a nullity and cannot be enforced. The Tribunal has directed the State to take proper action for taking control of the land which vested in the State.

**3.** Learned advocate appearing for the writ petitioner has submitted that, a suit for eviction against the private respondent was filed in the 2<sup>nd</sup> Court of the Civil Judge, Junior Division at Howrah being Title Suit No. 12, 1982. Such suit had been decreed on May 1, 2005. An appeal had been preferred by the private respondent being Title Appeal No. 78 of 2001 which was dismissed on June 30, 2010. A second appeal being SAT No. 431 of 2010 had been dismissed by the judgement and order dated October 17, 2012 passed by the High Court. A Special Leave Petition against the judgement and order dated October 17, 2012 which had been preferred was dismissed by an order dated August 12, 2013 passed by the Supreme Court. The Supreme Court had directed the execution proceedings to be disposed of as soon as possible.

**4.** Learned advocate appearing for the writ petitioner has submitted that, the decree for eviction had attained finality. It had been put into execution. In the execution proceeding, the private respondent had filed an application under Section 47 of the Code of Civil Procedure, 1908 which was registered as

Misc. Case No. 8 of 2013 on the plea that, the decree was a nullity and cannot be executed as against the private respondent in view of the land in question being vested with the State. Such application under Section 47 was dismissed on February 21, 2014. After the private respondent had been unsuccessful in the execution proceedings, it invoked the jurisdiction of the Tribunal, mala fide.

**5.** Learned advocate appearing for the writ petitioner has submitted that, as a land lord of the private respondent the petitioner has a right to execute the decree. In support of such contention, he has relied upon ***AIR 1985 Cal 37 (Ganesh Trading Co. Pvt. Ltd.)***.

**6.** Learned advocate appearing for the writ petitioner has contended that, no right of the private respondent stood affected by the claim of the alleged vesting. The order of vesting had been challenged in a revisional application. The order of vesting has not attained finality. No cause of action had arisen in favour of the private respondent for it to approach the Tribunal. He has relied upon ***2009 Volume 2 Calcutta High Court Notes 379 (Calcutta Swimming Club Vs. Lalit Singh & Ors.)*** in support of his contention.

7. Learned advocate appearing for the writ petitioner has relied upon **2004 Volume 7 Supreme Court Cases 166 (S.J.S Business Enterprises (P) Ltd. vs. State of Bihar and Others)** and submitted that, the suppression must be of a relevant fact. According to him, the issue as to whether the land in question had stood vested with the State or not was not a relevant issue in a suit for eviction filed by the writ petitioner against the private respondent.

8. Learned advocate appearing for the writ petitioner has contended that, the point of nullity cannot be raised before the Tribunal in view of the order passed under Section 47 of the Code of Civil Procedure, 1908. According to him, the impugned order should be set aside.

9. Learned advocate appearing for the private respondent has contended that, the writ petitioner was well aware of the order of vesting passed by the State Government while conducting the suit for eviction. The land having been vested with the State, the writ petitioner was not entitled to continue with the suit for eviction. The writ petitioner had obtained the decree of eviction by suppressing the material fact which was noted by the impugned order of the Tribunal. The Tribunal has correctly held that, the decree of eviction was a nullity.

**10.** Learned advocate appearing for the private respondent has contended that, the State had taken control of the land on October 30, 2000 and therefore, the decree for eviction cannot be executed. In support of such contention he has relied upon ***1997 Volume 3 Supreme Court Cases 261 (L. Chandra Kumar Vs. Union of India and Others)***.

**11.** Learned advocate appearing for the State has submitted that, the land in question stood vested under the Land Reforms Act, 1955. He has also referred to the notice dated October 30, 2000 issued by the State with regard to the vesting.

**12.** The writ petitioner herein had filed a suit for eviction as against the private respondent being Title Suit No. 12 of 1982. Such suit had been decreed on March 3, 1982. A decree of eviction had been passed as against the private respondent in such suit. The private respondent had preferred an appeal from the decree of eviction. Such appeal being Title Appeal No. 78 of 2005 had been dismissed on June 30, 2010. The private respondent had carried a second appeal to the High Court being SAT No. 431 of 2010 which was dismissed on October 17, 2012. The private respondent had moved the Hon'ble Supreme Court under Article 136 of the Constitution against

the order of dismissal of the second appeal being Special Leave to Appeal (Civil) No. 19628 of 2013 which was dismissed on August 12, 2013.

**13.** The writ petitioner had put the decree for eviction into execution. In the execution proceedings, the private respondent had applied under Section 47 of the Code of Civil Procedure, 1908 which was registered as Misc. Case No. 10 of 2013. In such application, the private respondent had contended that the decree was a nullity and cannot be executed in view of the fact that the land in question stood vested with the State. Such an issue had been considered by the executing Court and the application of the private respondent was rejected by an order dated February 21, 2014.

**14.** Thereafter, the private respondent had applied before the Tribunal being OA No. 1081 of 2014 contending that, the decree for eviction was a nullity and cannot be executed as the land had vested with the State, which resulted in the impugned order. An order of vesting under Section 14 T (3) of the Act of 1955 have been passed on June 22, 1994. Such order of vesting had been challenged by the writ petitioner by way of a writ petition. The writ petitioner had also filed a writ petition challenging the vires of the provision of Section 14 T

(3) of the Act of 1955 in which, an order of status quo was granted which was subsequently made absolute.

**15.** The writ petition being WPA 7588 of 2001 in which the order of status quo was made absolute was disposed of on August 2, 2022 by granting liberty to the writ petitioner to approach the Tribunal. The petitioner had thereafter approached the Tribunal and obtained an order dated May 12, 2023 of status quo in respect of land concerned.

**16.** As on date, therefore, the order of vesting is sub-judice and has been made the subject matter of original application pending before the Tribunal in which there subsists an order of status quo.

**17.** The suit for eviction had been filed in the year 1982. The vesting order had been passed on June 12, 1994. Therefore, the petitioner could not have pleaded about an order of vesting in the plaint when it had filed the suit for eviction as against the private respondent. More importantly, the issue between the writ petitioner as the plaintiff and the private respondent as defendant in a suit of eviction is the relationship of land lord and tenant. Such relationship has not been denied. Therefore, ownership of the suit property did not assume any significance particularly when, the

respondent as the defendant in the suit for eviction has not claimed any right higher than that of a tenant under the writ petitioner in the suit for eviction.

**18.     *S.J.S Business Enterprises (P) Ltd. (supra)*** has noted that, the suppression claimed must be one with regard to a material fact and that, such fact is one which could have affected the merits of the case. As has been noted above, the issue of subsistence of the relationship of land lord tenant is not dependent upon the ownership of the land in question particularly when the private respondent as a tenant was not claiming any other relationship or right, title and interest in respect of the land in question.

**19.     In *Ganesh Trading Co. Pvt. Ltd. (supra)*** the High Court has held that, the claim of rent against a lessee who had suffered a decree for eviction but not evicted in execution thereof survived till the decree is satisfied.

**20.     *Calcutta Swimming Club (supra)*** has held that, in order to maintain a suit the plaintiff has to prove that right to sue had accrued in his favour. In the facts of the present case, the validity of the order of vesting could not have been made an issue at the behest of the private respondent, particularly when there was a valid challenge thereto pending before the

High Court with an order of status quo passed therein. No right to approach the Tribunal qua a tenant under the writ petitioner had accrued in favour of the private respondent.

**21.     *L. Chandra Kumar (supra)*** has held that, the Tribunals are competent to hear matters when the vires of statutory provisions are questioned excepting those which question their parent statute. It has observed that, Tribunals will continue to act as a Court of first instance in respect of areas and law for which they have been constituted. In the facts and circumstances of the present case, the private respondent could not have approached the Tribunal since no right of the private respondent stood affected.

**22.**     The issue of nullity on the ground of alleged vesting had been decided between the petitioner and the private respondent in the execution proceedings with the dismissal of the application under Section 47 of the Code of Civil Procedure, 1908 on February 21, 2014. The private respondent would not have invited the Tribunal to decide on such issue. The decision under Section 47 had been rendered prior to the private respondent approaching the Tribunal the issue therefore, had been settled by a Civil Court and could

not have been reopened by the Tribunal in a collateral proceeding or in any proceeding between the same parties.

**23.** The Tribunal had prejudged the issue as to the validity of the vesting order by the impugned order particularly when there was a challenge thereto pending.

**24.** In such circumstances, we set aside the impugned order of the Tribunal. We direct the executing Court to comply with the order dated August 12, 2013 passed by the Supreme Court in SLP No. 19628 of 2013 as expeditiously as possible and preferably within 6 months from the date of communication of this independent order.

**25.** WPLRT 160 of 2014 is allowed without any order as to costs.

**[DEBANGSU BASAK, J.]**

**26.** I agree.

**[MD. SHABBAR RASHIDI, J.]**

**Later :-**

Prayer for stay made is considered and refused.

There is a decree for eviction against the private respondent. There is a subsisting order of the Hon'ble Supreme Court directing the execution proceeding to be disposed of expeditiously. Therefore, question of granting stay does not arise.

**[DEBANGSU BASAK, J.]**

I agree.

**[MD. SHABBAR RASHIDI, J.]**