

Form No. J(2)

**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. 116 of 2018

Sri Hirupada Saha & anr.

Vs.

The State of West Bengal & ors.

With

W.P.L.R.T.53 of 2019

Narayan Saha @ Narayan Chandra Saha & ors.

Vs.

The State of West Bengal & ors.

With

W.P.L.R.T.100 of 2019

The State of West Bengal & ors.

Vs.

Sri Hirupada Saha & ors.

With

W.P.L.R.T.42 of 2020

The State of West Bengal & ors.

Vs.

Sri Narayan Chandra Saha & ors.

For the private writ Petitioners in
WPLRT 116/18, WPLRT 53/19
and for the private respondents

in WPLRT 100/19
and WPLRT 42/20 : Mr. Ashim Kumar Roy, Advocate
Mr. Anirban Roy, Advocate
Mr. Debjit Basu, Advocate

For the State in
WPLRT 116/18
WPLRT 53/19 and
appellants in
WPLRT 100/19 and
WPLRT 42/20 : Md. T. M. Siddiqui, Ld. A.G.P.
Mr. S. Adak, Advocate

Hearing on : 16.08.2023

Judgment on : 16.08.2023

DEBANGSU BASAK, J.:-

1. Four writ petitions are taken up for analogous hearing, as they involve the same parties.
2. Two writ petitions are at the behest of the two natural persons while the other two are at the behest of the State.
3. Before the Tribunal, two Original Applications were filed by the private writ petitioners complaining of non-compliance of the order of the High Court passed in Civil Order No.14439 (W) of 1996 dated September 24, 1996.
4. Learned advocate appearing for the private writ petitioners submits that, the High Court, quashed the proceedings under Section 14T(3) read with Section 14T(10) of the West Bengal Land Reforms Act, 1955 initiated

in respect of a larger area of land in which the land belonging to the private writ petitioners was also involved.

5. He refers to an order dated May 15, 1997 passed by the concerned Block Land and Land Reforms Officer. He submits that the concerned Block Land and Land Reforms Officer claimed that the order of the High Court dated September 24, 1996 passed in C.O. No.14439 (W) of 1996 was complied with. Actual compliance was done. Consequently, the private writ petitioners approached the Tribunal for compliance.

6. Learned advocate appearing for the private writ petitioners submits that the private writ petitioners purchased the immovable properties concerned in the year 1977 by registered deeds of conveyance. His clients are pre-vesting purchasers. Consequently, his clients are entitled to various reliefs under the provisions of the West Bengal Land Reforms Act, 1955 including that of Section 14U(3) of the Act of 1955. He points out that, the authorities, granted relief under Section 14U(3) of the Act of 1955 to various other parties as well as on June 13, 1992. The private writ petitioners are entitled the similar reliefs.

7. Relying upon **(1988) 2 Supreme Court Cases 602 (A.R. Antulay vs. R.S. Nayak and another)** and **(2013) 2 Supreme Court Cases 41 (Manager, National Insurance Company Limited vs. Saju P. Paul and another)**, learned advocate appearing for the private writ petitioners submits that, the order of the High Court passed in Civil Order No.14439 (W) of 1996 dated September 24, 1996 is binding upon the State.

Subsequent orders of the Supreme Court in different other matters will not alter the situation. State is obliged to act in terms of the order dated September 24, 1996 passed in Civil Order No.14439 (W) of 1996.

8. Learned advocate appearing for the State submits that, the private writ petitioners are not entitled to any relief in the proceedings. He submits that, by operation of the Act of 1955, the land in question stood vested on February 15, 1971. The private writ petitioners are purchasers from the big raiyat. He refers to the provisions of Section 14U(1) of the Act of 1955 and submits that, no prior permission was taken by the big raiyat for transferring the land in question to the private writ petitioners. The transfer in favour of the private writ petitioners were in the year 1977. Consequently, the private writ petitioners cannot claim to be pre-vesting purchasers of the immovable property.

9. Referring to the Division Bench judgment reported at **(1996) 2 Calcutta High Court Notes 212 (Paschimbanga Bhumijibi Krishak Samiti & ors. vs. State of West Bengal & ors.)** learned advocate appearing for the State submits that, three orders of stay were passed by the Hon'ble Supreme Court from time to time. He submits that, lastly the Hon'ble Supreme Court allowed the proceeding initiated under Section 14T(3) of the Act of 1955 to continue despite the pendency of the appeal directed against **Paschimbanga Bhumijibi Krishak Samiti & ors. (supra).**

10. Learned advocate appearing for the State has submitted that, two Miscellaneous proceedings were initiated one being Misc. Case No.1 of 1997 and other being Misc. Case No.5 of 1997. He submits that, in Misc. Case 1 of 1997, the order dated May 15, 1997 of the concerned Block Land and Land Reforms Officer recording that the order of the High Court dated September 24, 1996 passed in Civil Order No.14439 (W) of 1996 was complied with. In actual fact, there was no compliance which necessitated the private writ petitioners to approach the Tribunal. He submits that, the State initiated proceeding under Section 14T(3) of the Act of 1955 which was registered as Misc. Case No.5 of 1997. The heirs and legal representatives of the big raiyat assailed the proceeding being Misc. Case No.5 of 1997 before the High Court in a writ petition. The writ petition was transferred to the Tribunal. Such writ petition is still pending.

11. The private writ petitioners are purchasers of a portion of immovable property governed by provisions of Act of 1955. The big raiyat from whom the private writ petitioners purchased immovable property in the year 1977, instituted a writ petition being C.O. No.14439 (W) of 1996 before the High Court challenging the proceeding under Section 14T of the Act of 1955 initiated as against them.

12. The High Court, by the order dated September 24, 1996 passed therein, quashed the proceedings under Section 14T(3) read with Section 14T(10) of the Act of 1955.

13. The private writ petitioners were not parties to the proceeding being Civil Order No.14439 (W) of 1996. Therefore, the private writ petitioners are not governed by the order dated September 24, 1996 passed by the High Court.

14. **A. R. Antulay (supra)**, is of the following view:-

“183. But the point is that the circumstance that a decision is reached per incuriam, merely serves to denude the decision of its precedent value. Such a decision would not be binding as a judicial precedent. A co-ordinate Bench can disagree with it and decline to follow it. A larger Bench can overrule such decision. When a previous decision is so overruled it does not happen – nor has the overruling Bench any jurisdiction so to do – that the finality of the operative order, inter partes, in the previous decision is over-turned. In this context the word ‘decision’ means only the reason for the previous order and not the operative order in the previous decision, binding inter partes. Even if a previous decision is over-ruled by a larger Bench, the efficacy and binding nature, of the adjudication expressed in the operative order remains undisturbed inter partes. Even if the earlier decision of the Five Judge Bench is per incuriam the operative part of

the order cannot be interfered within the manner now sought to be done. That apart the Five Judge Bench gave its reason. The reason, in our opinion, may or may not be sufficient. There is advertence to Section 7(1) of the 1952 Act and to the exclusive jurisdiction created thereunder. There is also reference to Section 407 of the Criminal Procedure Code. Can such a decision be characterised as one reached per incuriam? Indeed, Ranganath Misra, J. says this on the point: (para 105)

Overruling when made by a larger Bench of an earlier decision of a smaller one is intended to take away the precedent value of the decision without effecting the binding effect of the decision in the particular case. Antulay, therefore, is not entitled to take advantage of the matter being before a larger Bench.”

15. **Saju P. Paul and another (supra)** is of the view that pendency of considerations of issues by a larger Bench does not mean that course espoused by the reported decision of the Supreme Court should not be applied. In the facts of that case, situation in law obtaining in terms of the reported judgments of the Supreme Court, despite the pendency of questions before larger Bench, was directed to be applied.

16. In the facts of the present case, in view of the various orders of the Hon'ble Supreme Court, passed in the appeal directed against **Paschimbanga Bhumijibi Krishak Samiti & ors. (supra)** proceeding under Section 14T of the Act of 1955 can continue.

17. In the **Pramod Gupta (supra)** the Supreme Court, dealing with the principle of *res judicata* made the following observations :-

“29. The principle of res judicata would apply only when the lis was inter partes and had attained finality in respect of the issues involved. The said principle will, however, have no application inter alia in a case where the judgment and/or order had been passed by a court having no jurisdiction therefor and/or in a case involving a pure question of law. It will also have no application in a case where the judgment is not a speaking one.”

18. In the facts of the present case, none of the private writ petitioners were parties to the proceedings being Civil Order No.14439 (W) of 1996. Therefore, they cannot set up plea of *res judicata* as against the State respondents.

19. The private writ petitioners are admitted purchasers of immovable properties 1977. Act of 1955 specifies that the land governed under the

Act of 1955 stood vested with the State with effect from February 15, 1971. Section 14U(1) of the Act of 1955 allows a big raiyat to dispose of portion of the immovable properties, after obtaining permission to do so, pending adjudication process of the quantum of land allowed to be retained. In the facts of the present case, admittedly, no permission of the authority was obtained under Section 14U by the big raiyata prior to sale of the immovable property concerned to the private writ petitioners herein.

20. By the impugned two orders of the Tribunal, various directions were issued upon the concerned Block Land and Land Reforms Officer.

21. Since, the private writ petitioners herein are found not to be entitled to the benefits given to the big raiyat in Civil Order No.14439 (W) of 1996 dated September 24, 1996 and since, Section 14T(3) proceedings was assailed at the behest of the big raiyat and the writ petitions in respect thereof is pending before the Tribunal and since, there is an order of stay with regard thereto passed by the Tribunal, we are of the view that none of the directions issued by the Tribunal, in the two writ petitions are maintainable.

22. In such circumstances, all the directions in the two impugned orders are set aside.

23. Since, the private writ petitioners are not entitled to the relief as prayed for in the proceedings before the Tribunal in O.A.811 of 2017 and O.A.1664 of 2016 are dismissed. **WPLRT 116 of 2018, WPLRT 53 of**

2019, WPLRT 100 of 2019 and WPLRT 42 of 2020 are disposed of accordingly without any order as to costs.

(Debangsu Basak, J.)

24. I agree.

(Md. Shabbar Rashidi, J.)

CHC