

September 26, 2023
AD 461
Court No.14
SG

WPA 18551 of 2023

Bharat Halder
vs.
The State of West Bengal and others

Mr. Lakshminath Bhattacharya
... for the petitioner

Mr. Santanu Kumar Mitra
Mr. Amartya Pal
... for the State

Mr. Subhashis Saha
Ms. Stela Sen
Mr. Mainak Chatterjee
... for the respondent Nos.8 – 10

Mr. Shyamal Kumar Sinha
... for the respondent Nos.11 – 14

Mr. Manas Kumar Das
Mr. Aritra Kumar Thokdar
... for the respondent No.15

Further report filed by the State is taken on record.

Learned advocate appearing for the petitioner submits as follows. The petitioner has inherited the barga rights over the land in question from his father along with his mother and four sisters. However, the petitioner is in exclusive possession of the land. His mother and three sisters out of four have illegally transferred their rights to the respondent Nos.8 to 10 in violation of Section 15 of the West Bengal Land Reforms Act. Now, the private respondents are disturbing the peaceful possession of the petitioner in respect of the property and trying to prevent him from cultivating the land. Reliance is placed on an unreported decision of this

Court in WP 21987 (W) of 2006 (*Bousar Sk vs. State of West Bengal*).

Learned advocate for the added respondent No.11 to 14 submits as follows. The allegations made in the writ petition are denied. The said added respondents had been taking care of the ailing father of the petitioner. After his demise as his heirs they are also entitled to cultivate the barga land.

Learned advocate for the respondent Nos.8 to 10 submits as follows. The said respondents are in actual possession of the land. If at all, a decision as to who has the right to cultivate the land can be taken only by a civil court.

Learned advocate for the added respondent No.15 adopts the submissions of the petitioner.

Learned advocate for the State relies on the report and submits as follows. After demise of the original bargadar, the present petitioner and his mother and four sisters became entitled to cultivate the said land. But, the mother and the three sisters had given such land in question on lease to the respondent Nos.8 and 9. On a complaint made by the petitioner, the police have initiated a proceeding under Section 107 of the Code.

It is true that in view of Section 15 of the WBLR Act, the rights of a bargadar in respect of a land can be inherited, but cannot be transferred. Therefore, any lease made by any of such heirs transferring such rights has to be held as illegal.

It appears that a civil dispute exists between the private parties. If any further relief is sought by any of the parties, then the same has to be before the civil court.

However, according to the decision in *Bousar Sk* (supra), police protection can be granted to protect the rights of a bargadar to cultivate a land.

Therefore, the police shall keep a sharp vigil at the locale and ensure that no breach of peace takes place.

In the event the petitioner wants to exercise his right to cultivate the land without any disturbance from any quarter, the respondent authorities shall render necessary assistance till the issue can be settled before a civil court.

With these observations, the writ petition is disposed of.

Urgent certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

[Jay Sengupta, J.]