

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. 584 of 2006

With

I.A No : CAN 1 of 2023

Rajarhat Fishermen's Co-operative Society Limited
Vs.

The State of West Bengal & Ors.

For the Petitioner : Mr. Sourabh Guha Thakurata, Adv.
 Ms. Mallika Roychowdhury, Adv.
 Ms. Tanuka Basu, Adv.

For the State : Mr. Lalit Mohan Mahato, AGP
 Sk. Md. Galib, Adv.
 Ms. Sujata Mukherjee, Adv.

Hearing Concluded on : October 3, 2023
 Judgement on : October 10, 2023

DEBANGSU BASAK, J.:-

1. Writ petitioner has assailed the order dated August 30, 2004 passed by the West Bengal Land Reforms and Tenancy Tribunal in Misc. Case No. 197/204 (LRTT) arising out of OA 1979 of 2003 (LRTT).

2. By the impugned order, the Tribunal has held that, the land in question stood vested with the State and that the State is free to take possession thereof in terms of Section 10 (1)

read with Section 10 (3) of the West Bengal Estate Acquisition Act, 1953. The Tribunal has upheld the order dated March 12, 2000 passed in Case No. 7 of 2000 by the District Land and Land Reforms Officer and dismissed the Original Application of the writ petitioner.

3. Learned advocate appearing for the writ petitioner has submitted that, the writ petitioner is a cooperative society, registered under the Co-operative Societies Act. The writ petitioner is the owner and occupier and has been in physical possession of plot Nos. 1, 2, 3, 45, 76 and 89 aggregating to an area of 79.11 acres comprised in JL No. 25 under R.S. Khatian No. 8 in Mouza Nayabad.

4. Learned advocate appearing for the writ petitioner has contended that, the land in question originally belonged to the Mondals who gave izara settlement and perpetual patta in favour of the Sarkars. He has contended that, a Partition Suit was filed under which, the Sarkars had been declared as the owners and co-sharers of the land in question. Sarkars had sold the property to Suburban Agricultural Dairy Fishery Private Limited (SADFPL) in the year 1939 by a registered

deed. The writ petitioner had purchased the land in question from SADFPL in the year 1960 and has been in continuous occupation thereof, undertaking pisciculture thereat. The land in question had been mutated in its favour. The writ petitioner had paid rent to the State who accepted the same.

5. Learned advocate appearing for the writ petitioner has contended that, under Revenue Settlement Operations, Khanda Khatians were opened separately for agricultural and non-agricultural land of SADFPL and rent were assessed under Section 4 of the West Bengal Estate Acquisition Act, 1953. The writ petitioner had filed objections under Section 44 of the Act of 1953 which were disallowed. The writ petitioner had preferred an appeal under Section 44 (3) of the Act of 1953 which was disposed of by an order dated June 15, 1957. He has referred to the order dated June 15, 1957 passed by the Tribunal in such proceedings and contended that, the plots in question were held to be tank fisheries.

6. Learned advocate appearing for the writ petitioner has pointed out that by a letter dated September 21, 1991, the District Magistrate called upon SADFPL to make over

possession of the land in question to the State on November 27, 1997 which SADFPL did not comply with. SADFPL had challenged such notice by filing a writ petition. The notice dated September 21, 1991 had been set aside by the High Court by an order dated September 18, 1995. No appeal had been carried against such order.

7. Learned advocate appearing for the writ petitioner has contended that, land in question was retained by SADFPL and therefore, it did not vest with the State. SADFPL had submitted Form B return and retained the land in question. In support of such contention, he has referred to Form B filed by SADFPL in 1959.

8. Learned advocate appearing for the writ petitioner has referred to Section 5A (3) (ii) of the West Bengal Estate Acquisition Act, 1953 and contended that, SADFPL had sold the land in question to the writ petitioner from out of the portion of the retained land.

9. Learned advocate appearing for the writ petitioner has contended that, the writ petitioner applied for correction of the records of rights in the settlement records. Such

representation not being considered, the writ petitioner had moved a writ petition being WP No. 15555 (W) of 1997 which was disposed of by directing the authorities to consider and dispose of such representation. By an order dated March 12, 2000 the authority had disposed of such representation. He has contended that, such an order was back dated.

10. Learned advocate appearing for the writ petitioner has contended that, State had filed a suit for declaration being Title Suit No. 13 of 1972 against SADFPL for declaration that the land in question was tank fisheries and that the defendant is entitled according to its choice to retain only 25 acres. Such suit had stood abated.

11. Learned advocate appearing for the writ petitioner has relied upon **90 Calcutta Weekly Noted Page 44 (Smt. Shanti Debi vs. State of West Bengal)** for the proposition what would constitute a tank fishery within the meaning of the Act of 1953. He has also relied upon **1985 Volume 3 Supreme Court Cases 717 (Saroj Kumar Bose vs. Kanailal Mondal and Others)** in support of his contention that, the land in question is a tank fishery.

12. Learned advocate appearing for the State has contended that, the writ petitioner claims to have purchased the land in question on October 10, 1960. According to him, the land in question had vested with the State on April 15, 1955 under the provisions of the Act of 1953, since the vendor of the writ petitioner being SADFPL was an intermediary on the land in question.

13. Learned advocate appearing for the State has drawn the attention of the Court to the number of proceedings that SADFPL had initiated against the State in respect of the land in which it was an intermediary. The land in question is a portion of the land in which SADFPL was an intermediary.

14. Learned advocate appearing for the State has relied upon ***1993 Supp. (4) Supreme Court Cases 674 (State of West Bengal and Others vs. Suburban Agriculture Dairy & Fisheries Pvt. Ltd. and Another)*** and contended that all the issues raised by the writ petitioner herein has been answered there.

15. Learned advocate appearing for the State has contended that, the SADFPL did not file Form B. The writ

petitioner is a post vesting transferee and therefore, has no claim in respect of the land in question. He has relied upon **2015 Volume 4 CHN 190 (Rajbala Barik vs. State of West Bengal)** in support of the contention that, post vesting transferee cannot exercise right of retention.

16. Learned advocate appearing for the State has drawn the attention of the Court to the averments made in the affidavit-in-opposition of the State. He has contended that, in the CS Record of Rights the entire land was shown as Dag No. 1. In the RS Record of Rights Dag No. 1 had been split up and it includes the land in question. He has referred to the order of the Tribunal dated October 6, 2006 rendered in TA No. 59 of 2003. He has contended that, despite the direction granted by the Tribunal to SADFPL, no Form B had been filed within the period stipulated. The order dated October 6, 2004. therefore, has become binding upon the parties. Since the writ petitioner has traced its title through SADFPL, it was bound by the order dated October 6, 2004.

17. Learned advocate appearing for the State has contended that, SADFPL had challenged the order dated

October 6, 2004 by the Tribunal in WPLRT 777 of 2004 which was dismissed on November 10, 2015. He has also referred to the averments made by the writ petitioner in its affidavit-in-reply and submitted that, there was no denial of the factual scenario pleaded by the State in its affidavit-in-opposition.

18. Referring to the order dated June 15, 1957 passed by the Estate Acquisition Tribunal, learned advocate appearing for the State has contended that, such Tribunal decided about the rate of rent by assessing the property as lease hold property. State Tribunal has also arrived at the conclusion that such lease deemed to have been given by the State Government. He has contended that, in view of the ratio laid down in ***Subarban Agricultural Dairy Fishery Private Limited (supra)*** neither the writ petitioner nor SADFPL acquired any right in the property in question on the date of disposal of the appeal.

19. Learned advocate appearing for the State has submitted that, the concerned BL&LRO passed an order dated March 12, 2000 acting in terms of the order dated September

9, 1997 passed in WP No. 15555 (W) of 1997. This order has given rise to the present proceedings.

20. Learned advocate appearing for the State has submitted that, a Big Raiyat Proceedings being BR No. 1 of 1991 was initiated in respect of land held by SADFPL, under Section 6(5) of the Act of 1953 which was disposed of on March 11, 1991. SADFPL did not show the land in question as plots to be retained by SADFPL. Consequently, the land in question stood vested with the State after SADFPL being allowed to retain 25 acres of agricultural land, 0.63 acres of non-agricultural land and 0.36 acres of home stead land under such BR proceedings.

21. In reply, learned advocate appearing for the writ petitioner has drawn the attention of the Court to the documents claimed to be certified copy of Form B filed by SADFPL. In response to the query as to whether, such Form B was filed within the time prescribed or not, he has submitted that the, same was not.

22. As noted above, the writ petitioner has claimed rights through SADFPL in respect of the land in question. SADFPL

had possessed a large quantity of land, including the land in question on the date of coming into effect of the Act of 1953. A Big Raiyat Proceedings being BR No. 1 of 1991, under Section 6 (5) of the Act of 1953 was initiated in respect of land held by SADFPL. Such proceedings had been disposed of on March 11, 1991 allowing SADFPL to retain 25 acres of agricultural land, 0.63 acres of non-agricultural land and 0.36 acres of home stead land. Consequently, balance land held by SADFPL had stood vested with the State by operation of law with effect from April 15, 1955. SADFPL did not show the land in question to have been retained by it in such Big Raiyat Proceedings. The writ petitioner has claimed to have purchased the land in question aggregating to an area of 79.11 acres from SADFPL in the year 1960 which is after vesting with effect from April 15, 1955. At the time of sale, that is, in 1960 SADFPL had no right, title and interest, in respect of the land in question to convey to the writ petitioner. Therefore, no right title or interest in respect of the land in question had accrued to the writ petitioner by virtue of the deed of conveyances executed by SADFPL or otherwise.

23. Authorities had issued a notice dated May 3, 1972 under Section 10 (1) of the Act of 1953 to the intermediary for making over possession of the land comprised in Khatian No. 1 of Mouza Chakgaria and Khatian No. 8 of Mouza Nayabad.

24. A writ petition being CO No. 16339 (W) of 1988 had been filed in respect of plot No. 1 of Khatian No. 10 Mouza Chakgaria excluding plots of Khatian No. 8 of Mouza Nayabad. The writ petitioner has claimed rights in respect of some plots in Khatian No. 8 of Mouza Nayabad. Such writ petition had been disposed of on May 17, 1991 which directed that such order would govern plots and mouzas included in Case No. 1 of 1972-1973 consequently, bringing the land in question within its open ambit.

25. A First Miscellaneous Appeal had been filed against the order dated May 17, 1991 passed in the writ petition being FMAT No. 2532 of 91 which was disposed of on October 8, 1991 directing the State to initiate proceedings under the West Bengal Land Reforms Act, 1955. State had preferred a Special Leave Petition which was disposed of by **Suburban**

Agriculture Dairy & Fisheries Pvt. Ltd. and Another (supra).

26. Suburban Agriculture Dairy & Fisheries Pvt. Ltd. and Another (supra) has set aside the order of the Division Bench and restored the direction of the learned Single Judge. It has held as follows :-

“19. The appeal is accordingly allowed. The order of the Division Bench of the High Court is set aside. The direction of the Single Judge is restored. The appellant is free to issue notice to the respondent under Section 10(2) of the Act and conduct an enquiry into and find : (1) on the date of the vesting whether the lands were being used for pisciculture or fishing i.e. tank fisheries; (2) whether the respondent had submitted Form ‘B’ within the prescribed time exercising the option to retain possession of the lands in question as tank fisheries; and (3) whether the respondent is continuing to use the lands in question as tank fisheries. Reasonable opportunities shall be given to the respondents to prove its/their case.

20. On the enquiry if it is found that the lands are not tank fisheries as on the date of the vesting or that the respondent had not submitted option in Form ‘B’ to retain possession of the lands as tank fisheries within the prescribed period, then the lands stood vested in the State free from all incumbrances and authorities are entitled to take possession of the land under Section 10(1) read with Section 10(3). In case if it finds

that the lands were being used as tank fisheries as on the date of vesting and that the respondent exercised the option within the time to retain possession and is continuing to use the tank fishery for pisciculture or for fishing; and if it has been continuing in possession of tank fishery, it is free to impose, if not already imposed, such terms and conditions as may be necessary to ensure continued use of tank fishery for pisciculture or for fishing, subject to payment of such rent as may be fixed or revised and ultimately entered in the Record of Rights. In case the respondent commits contravention thereof, it is open to the State to resume possession. In case the respondent is not using the tank fishery for pisciculture or for fishing or has alienated the lands it is open to the appellants to take possession of the lands and all sales if made by the respondent do not bind the State.”

27. Exercises directed by **Suburban Agriculture Dairy & Fisheries Pvt. Ltd. and Another (supra)** had been undertaken and a notice under Section 10 (2) of the Act of 1953 was issued by the authorities. Such notice had been challenged in WP No. 1323 of 1998 by the intermediary. Such writ petition had been transferred to the Tribunal and was registered as TA No. 59 of 2003. The Tribunal by an order dated October 6, 2004 had disposed of TA No. 59 of 2003

granting SADFPL a chance to exercise its right of retention.

Relevant portion of such order is as follows :-

“Under the circumstances LRTT directs Suburban, if it so desires, to submit ‘B’ Form indicating its choice for retention of non-agricultural land only from the sold part of Dag No. 1 within 6 weeks from the date of this decision.”

“It is made clear that if Suburban fails to submit any ‘B’ Form within six weeks from the date of this decision the appropriate authorities will be at liberty to take appropriate steps in accordance with law.”

“LRTT also holds that Suburban should get an opportunity to retain so much of sold part of Dag No. 1 as do not exceed the limit specified in clause (c) of sub-section (1) of section 6 of the Act.”

28. Such order of the Tribunal had been assailed by SADFPL by way of a writ petition being WPLRT No. 777 of 2004 which was dismissed on November 10, 2016. Nothing has been placed before us to suggest, let alone establish that, SADFPL had complied with the direction dated October 6, 2004 and submitted Form B indicating its choice of retention of non-agricultural land from the sold part of Dag No. 1. In view of the failure of SADFPL to submit form B within the time stipulated, the default clause contained in the order dated October 6, 2004 had come into operation and the authorities

have become entitled to take appropriate steps in accordance with law.

29. The writ petitioner had assailed the notice dated September 21, 1991 issued under Section 10 (2) of the Act of 1953 against the direction of SADFPPL. Such writ petition had been registered as CO No. 15366 (W) of 1991. Such notice had been struck down by the High Court on September 18, 1995. Thereafter, the writ petitioner had applied for correction of the record of rights and acceptance of rent.

30. The writ petitioner had also filed a writ petition being WP No. 145 (W) of 1997 which was disposed of on September 9, 1997 by directing the State to consider the representation dated September 25, 1996. In compliance with such direction, the authorities had rejected the representation dated September 25, 1996 which decision was assailed in the OA No. 1979 of 2003 giving rise to the impugned order.

31. As has been noted above, SADFPPL had transferred the land in question to the writ petitioner. The land in question, and the fate of the writ petitioner is governed by the decision rendered in ***Suburban Agriculture Dairy & Fisheries Pvt.***

Ltd. and Another (supra) where it was observed that, if SADFPL has alienated the land it is open to the State to take possession of the land and sales if made by SADFPL shall not bind the State. SADFPL had never filed any Form B showing the land in question as retained land.

32. SADFPL had been granted liberty to file Form B by the Tribunal in its order dated October 6, 2004 within the time period stipulated therein. Such order had also provided that in the event SADFPL failed to submit any form B the authorities would be at liberty to take appropriate steps in accordance with law. The writ petitioner has relied upon Form B claimed to have been filed in 1959 by SADFPL. Such Form B therefore, was not in terms of the order of the Tribunal dated October 6, 2004. Such Form B had been filed, assuming that there was such a filing, beyond the period stipulated under the Act of 1953. Therefore, such Form B could not have been taken into consideration for the purpose of determination of retained land of SADFPL. Significantly, SADFPL did not state before the Tribunal in TA 59 of 2003 where the order dated October 6, 2004 was passed that it had

submitted Form B allegedly in 1959. Therefore, the Form B submitted in 1959 cannot be taken into consideration for the purpose of determining the retained land of SADFPL.

33. By virtue of the ratio of ***Suburban Agriculture Dairy & Fisheries Pvt. Ltd. and Another (supra)*** the transfer of the land in question by SADFPL in favour of the writ petition does not affect the right of the State to take possession of the land in question and that the transfer does not have a binding effect on the State. In view of such pronouncement of the Supreme Court, which governs the land in question, the abatement of the suit filed by the State or the findings of the Estate Acquisitions Tribunal, has lost any and every significance, if there had been any.

34. ***Rajbala Barik (supra)*** has held that, a post vesting transferee cannot exercise right of retention and that, a person who has purchased land which has already vested in the State does not confer any right to retain such land by way of an arrangement with the original intermediary. It has also held that, the Act of 1953 does not contemplate any role for a post vesting transferee on the question of retention of land. As

a post vesting transferee, the writ petitioner has no right with regard to the retention to be made by the intermediary. In any event, in the facts and circumstances of the present case, the intermediary did not file requisite Form B showing that, the land in question had been retained by the intermediary.

35. Consequently, no right of SADFPPL had flowed to the writ petitioner in respect of the land in question as SADFPPL had none.

36. In view of the finding that, no right has flowed to the writ petitioner in respect of the land in question, the contention of the writ petitioner on the basis of the ratio of ***Smt. Shanti Debi (supra)*** and ***Saroj Kumar Bose (supra)*** cannot be accepted.

37. In view of the discussions above, we find no merit in the present writ petition. W.P.L.R.T No. 584 of 2006 along with IA No: CAN 1 of 2023 are dismissed without any order as to costs.

[DEBANGSU BASAK, J.]

38. I agree.

[MD. SHABBAR RASHIDI, J.]