

**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**

**WPLRT 182 of 2022**

**Yeh Chi Hui & Ors.**

**Vs.**

**The State of West Bengal & Ors.**

For the Petitioners : Mr. Ashok Kumar Banerjee, Ld. Sr. Adv.  
Md. Alaudding Mondal, Adv.  
Mr. Anirban Bose, Adv.

For the State : Mr. T.M. Siddiqui, Ld. AGP  
Mr. Mrinal Kanti Ghosh, Adv.

For the Respondent : Ms. Afrin Nahar Mondal, Adv.  
No. 5

Hearing Concluded on : June 23, 2023  
Judgement on : July 7, 2023

**DEBANGSU BASAK, J.:-**

**1.** Writ petitioners have assailed the order dated December 8, 2022 passed by the West Bengal Land Reforms and Tenancy Tribunal in OA No. 2654 of 2017.

**2.** Before the tribunal, the writ petitioners had questioned the legality, validity and propriety of the order dated June 15, 2017 passed by the appellate authority in connection with an appeal arising out of order dated August 4, 2016 passed by

the prescribed authority exercising jurisdiction under Section 14 T (3) of the West Bengal Land Reforms Act, 1955.

**3.** By the impugned order, the tribunal had found the writ petitioners to be pre-vesting purchasers. The tribunal had held that the acquisition of land was a form of transfer and therefore the authorities correctly invoked Section 14 T (3) of the Act of 1955 and that the writ petitioners were not entitled to challenge the vesting proceedings and were not entitled to any benefit under Section 14 U (3) of the Act of 1955. The tribunal however had granted liberty to the writ petitioners to apply for benefits under Section 14 U (3) of the Act of 1955 before the appellate authority within the time specified therein.

**4.** Learned senior advocate appearing for the writ petitioners has submitted that, the writ petitioners were added as party respondents to the vesting proceedings by an order dated July 21, 2015 as pre-vesting purchasers in respect of the land which was involved in the proceedings. The writ petitioners had purchased the land in question in the year 1995 before the vesting proceedings started on March 18, 1996 and the final vesting order being made on August 4, 2016.

5. Relying upon **82 Calcutta Weekly Notes 743 (the State of West Bengal versus Nimai Chand Kundu)** and **All India Reporter 1981 Calcutta 138 (Jayanta Kumar Banerjee versus The State of West Bengal and Others)** learned senior advocate appearing for the writ petitioners has contended that, as prior purchasers, the writ petitioners have right and interest in the land to challenge the vesting orders.

6. Relying upon **All India Reporter 1963 Supreme Court 1638 (Tilakayat Shri Gouindlalji Vs. State of Rajasthan & Ors.)** learned senior advocate appearing for the writ petitioners has contended that, acquisition does not amount to transfer. Acquisition had taken place due to operation of law and does not come within the purview of Section 14 U (1) of the Act of 1955 which talks about transfer by sale/gift or otherwise of partition of any land.

7. Moreover, according to the learned senior advocate appearing for the writ petitioners, in case of transfer of excess land over the ceiling by the big raiyat prior permission has to be taken from the concerned Block Land and Land Reforms Officer but prior permission is not required for acquisition of land by application of law. According to him, the respondents had wrongly invoked Section 14 T (3) and Section 14 U (1) of

the Act of 1955 in starting a vesting proceeding. In order to trigger Section 14 T (3) of the Act of 1955, there has to be excess of the ceiling limit which is a maximum of 24.22 acres for the big raiyat, the land being non-agricultural, there must be a transfer within the meaning of Section 14 U read with Section 14 T (3) in order to start a vesting proceeding. He has submitted that, the vesting proceedings were illegal and ultra vires the statute. In support of such contention, he has relied upon **86 Calcutta Weekly Notes to 38 (Durgesh Kumari Devi versus Bimal Kumar Jharjharia and others).**

8. Learned senior advocate appearing for the writ petitioners has contended that Chapter II B of the West Bengal Land Reforms (Amendments) Act, 1981 came into force on March 24, 1986. Such Act had specified the date of vesting to be February 15, 1971 in respect of agricultural land and Homestead. Such Act had specified the date of vesting of non-agricultural land to be on September 9, 1980. According to him, since the big raiyat had transferred the agricultural land before August 7, 1969 it should not be included in the purview under Section 14 T (3). He has contended that, in the vesting case No. 1/96 the date of vesting has been considered

as of February 15, 1971. Actual date of vesting should have been September 9, 1980.

**9.** Learned senior advocate appearing for the petitioners submitted that, the land had been described as “Tanks of Fishery” in schedule A and B of the vesting order dated August 4, 2016. The land being non-agricultural the authorities had violated the Act of 1955.

**10.** In the alternative, learned senior advocate appearing for the writ petitioners has contended that, if the vesting proceedings were correctly started than an acquisition of the land do not amount to transfer within the meaning of Section 14 T (3) and 14 U of the Act of 1955. The original raiyat was entitled to retain 24.22 acres of land and had done so. The original raiyat had been left with only 17.51 acres of land which was far less than the ceiling limit. The writ petitioners being pre-vesting transferees were entitled to apply for retention of such land and had done so.

**11.** Learned senior advocate appearing for the writ petitioners has drawn the attention of the Court to the various findings of the tribunal and contended that, such findings were erroneous. He has contended that the authorities acted

arbitrarily and in violation of the legitimate expectation of the writ petitioners.

**12.** The respondent No. 5 has supported the case of the writ petitioners. Learned advocate appearing for the respondent No. 5 has contended that, the order passed by the prescribed authority, at the first instance, was in violation of an order passed by the High Court which directed that, no final order can be passed in the vesting proceedings without the leave of the Court. According to him, the writ petition in which such order was passed is still pending after being transferred to the tribunal for disposal. He has relied upon various pronouncement of the High Court to contend that, since Section 14 V of the Act of 1955 had been declared to be ultra-virus, the vesting proceeding was bad.

**13.** Learned advocate appearing for the State has submitted that, the writ petitioners invoked Section 14 U (3) of the Act of 1955. He has drawn the attention of the Court to the supplementary affidavit filed before the tribunal where the writ petitioners reiterated their stand with regard to Section 14 U (3) of the Act of 1955. He has contended that, the writ petitioners also took a stand that the writ petitioners were legally entitled to purchase the land post left vesting. He has

contended that, since the writ petitioners had invoked Section 14 U (3) of the Act of 1955 they should not be allowed to take a stand that the proceedings of vesting were improper. He has contended that, the writ petition should be dismissed.

**14.** Satish Chandra Baidya, since deceased, had been the owner of 47.25 acres of land comprised in Dag No. 53. In 1968, the classification of the entire 47.25 acres of land had been changed from “Tank of Fishery” to “Agricultural” by the Assistant Settlement Officer in proceeding No. 20 of 1968 under Section 44 (2a). By an order dated May 27, 1968 the concerned Block Land and Land Reforms Officer had declared landed properties of Satish Chandra Baidya comprised inter alia in Dag No. 53 to be vested with the State. This vesting order had been challenged by Satish Chandra Baidya by a writ petition. The High Court had allowed such writ petition quashing the vesting order dated May 27, 1968 by holding that, the land comprised was not “Agricultural” but “Tank of Fishery” and therefore could not be vested.

**15.** In the interregnum, in 1970, 31.82 acres of land belonging to late Satish Chandra Baidya had been acquired by the land acquisition department of the State. Land acquisition

notice had been issued on December 28, 1970 and possession taken on December 30, 1970.

**16.** In 1984, fresh proceedings under Section 14 T of the Act of 1955 being case No. 47 of 1984 had been initiated by the concerned Block Land and Land Reforms Officer. This had been challenged by way of a writ petition before the High Court and the vesting proceeding had been stayed.

**17.** Heirs and legal representatives of late Satish Chandra Baidya had sold 45.241 decimal of land comprised in Dag No. 53 to the writ petitioners in 1995.

**18.** On April 16, 1996 one of the heirs of late Satish Chandra Baidya give a declaration in Form 7AA that 23 acres and 4.46 acres of land belonging to late Satish Chandra Baidya had been acquired by the State.

**19.** In 1996 another vesting proceeding had been started in respect of all lands belonging to late Satish Chandra Baidya being case No. 1/96 under Section 14 T (3) of the Act of 1955. This vesting proceeding had been challenged by way of a writ petition. In such writ petition an order dated March 28, 1996 had been passed by the High Court requiring no final order to be passed without prior leave of the Court. Such writ petition had been transferred to the tribunal for disposal. The writ

petition on transfer had been dismissed for default for nonappearance of the writ petitioners therein before the tribunal. Consequently the interim order dated March 28, 1996 had stood vacated.

**20.** The writ petitioners had been permitted to participate in the proceeding under Section 14 T (3) of the Act of 1955 being case No. 1/96. Pursuant thereto the writ petitioners had participated in such proceedings. The concerned Block Land and Land Reforms Officer had passed an order of vesting on August 4, 2016. The writ petitioners had filed an appeal under Section 54 of the Act of 1955 before the appellate authority which was registered as LR Appeal No. 16 to 5 of 2016. The appellate authority had upheld the order of vesting. The writ petitioners had moved the tribunal challenging the order of the Block Land and Land Reforms Officer as well as the appellate authority, before the tribunal.

**21.** The writ petitioners before us are claiming right, title and interest in respect of immovable property that had belonged to late Satish Chandra Baidya. According to the writ petitioners, they had purchased out of the land that Satish Chandra Baidya was entitled to retain. One of the issues before us is whether Satish Chandra Baidya, since deceased

was left with any land after the acquisition proceedings for him to pass on to his heirs and legal representatives and for them to sell the same.

**22.** The records that have been produced before us establish that, 31 acres of land had been acquired with Satish Chandra Baidya, since deceased being entitled to retain 24.22 acres. Acquisition authorities had paid for the 31 acres of land acquired. In fact, Satish Chandra Baidya, since deceased and his heirs and legal representatives have received compensation for land which did not belong to them. A portion of the land belonging to late Satish Chandra Baidya had admittedly vested and the amount of land he was entitled to retain was acquired. The vesting order had been passed on August 4, 2016. The vesting had taken effect from February 15, 1971. Therefore, late Satish Chandra Baidya had no land for his heirs and legal representatives to succeed to and sell to the writ petitioners in 1995. Even going by the contentions of the writ petitioners that the date of vesting has to be taken as September 9, 1980 then also the vendors had nothing to transfer to the writ petitioners in 1995. The issue that had been framed in the previous paragraph is answered against the writ petitioners.

**23.** The ratio that has been laid down in ***Nemai Kundu (supra)*** cannot be applied herein as the facts and circumstances are completely different. There, the vendor had sold land which he retained after vesting. In the present case, the land that had been retained was acquired by the State.

**24.** In ***Jayanta Kumar Banerjee (supra)*** it has been held that, acquisition of interest in a property is not the sole test for determining the locus standi to move a writ Petition, but prejudicial affection of right concerning the property should be the test to determine the locus standi. The tribunal did not question the locus standi of the writ petitioners to approach it. The tribunal had noted that the writ petitioners approached the tribunal challenging the legality and validity of an order of vesting and that in the fag end of the proceedings before it, the writ petitioners had filed a supplementary affidavit putting forward a claim as to the benefits under Section 14 U (3) of the Act of 1955. Again, the facts and circumstances of the present case a completely different to that of ***Jayanta Kumar Banerjee (supra)***.

**25.** In ***Tilkayat Shri Govindlalji (supra)*** the constitutional validity of Nathdwara Temple Act, 1959 had been challenged. It held that, under the provisions of such

act, the right to manage the properties of the temple was a purely secular matter and could not be regarded as a religious practice or as amounting to affairs in matters of religion.

**26. *Durgesh Kumari Devi (supra)*** has held that, execution of a conveyance for the sale of land in execution of a decree for specific performance of an agreement for sale is not a private sale of land and consequently Section 26 of the Urban Land (Ceiling and Regulation) Act, 1976 does not apply.

**27. *Brahmaputra Metallica Limited (supra)*** has dealt with the doctrine of legitimate expectation in the context of incentives promised by the State. In the facts of that case, the Court had found that, the State held out his solemn representation on certain terms and that it would be unfair and admittedly to deprive the industrial units within the State of their legitimate entitlement. In the facts and circumstances of the present case, the writ petitioners have not drawn the attention of the Court to any representations being made by the State with regard to the vesting or the acquisition for the writ petitioners to claim legitimate expectation or promissory estoppel.

**28.** The writ petitioners had claimed that the land in question was “Tank of Fishery” and therefore immune from

vesting. The land in question had been added to the Kolkata Metropolitan Development Authority area. The land had been developed over a period of time and can no longer be said to be “Tank of Fishery” as claimed by the writ petitioners. In fact, the writ petitioners have used such land for purposes other than fishery. The writ petitioners have not established that the land is still being used as a fishery. The writ petitioners themselves having put the land into a different user, cannot claim that the land continues to be “Tank of Fishery”. In any event, a vesting order had been passed in respect thereof.

**29.** In view of the discussions above, we have not found any ground to interfere with the impugned order of the tribunal.

**30.** WPLRT 182 of 2022 is dismissed without any orders to cost.

**[DEBANGSU BASAK, J.]**

**31.** I agree.

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