

11th March, 2024
(D/L No.5)
(SKB)

W.P.L.R.T. 95 of 2022
With
IA NO: CAN 1 of 2023

Gurudas Roy Chowdhury
-Versus-
State of West Bengal and others

Mr. Haradhan Banerjee,
Ms. Manideepa (Paul) Roy,
Mr. Nilmoni Das,
Ms. Saheli Biswas
... for the petitioner.

Mr. T. M. Siddiqui,
Mr. Supratim Dhar,
Ms. Madhu Priya,
Ms. Megha Sarkar
... for the State.

1. Heard learned counsel for the parties.
2. This petition arises out of an order dated 18.5.2022 passed by West Bengal Land Reforms and Tenancy Tribunal (in short 'Tribunal'). The petitioner before the Tribunal is before us against the aforesaid order. This is the second visit of the petitioner to this court under Article 226/227 of the Constitution of India.
3. During his earlier visit in WPLRT 26 of 2021, a Division Bench of this Court had remanded the matter to the Tribunal for hearing of the interim application for injunction, mainly, on two grounds:
 - i) Nature of settlement in favour of the petitioner and

ii) Date of vesting in the government, *inter alia*, other relevant points raised by the petitioner.

4. After remand of the matter, it was heard at length and the interim order “impugned now” came to be passed. The fact leading to filing of this case is that the petitioner’s predecessor-in-interest was the lessee in respect of 2.64 acres of land pertaining to Plot No.161/1000 recorded in C.S. No.737. The lessor in respect of the aforesaid land is stated to be the Ex-Jamindar from whom predecessor-in-interest of the present petitioner, whose name is Debendra Nath Roychowdhury, had taken the lease of the land which subsequently was recorded in R.S. Khatian No.845 showing the name of father of the present petitioner as ‘Dakhaldar’.
5. It is further case of the petitioner that the petitioner became a Raiyat in respect of the aforesaid land by virtue of Section 3A of the West Bengal land Reforms Act, 1955 (in short ‘WBLR Act, 1955’) in respect of aforesaid Plot No.161/1000 having an area of 4.44 acres. The aforesaid land was recorded in the name of the father of the petitioner in R.S. Khatian No.226 with the classification ‘itkhola’(brickfield).
6. The further case of the petitioner is that aforesaid Debendra Nath Roychowdhury, predecessor-in-interest of the petitioner was a non-agricultural

tenant under the Zamindar Atindra Nath Das and subsequently under Naresh Chandra Basu. Said Naresh Chandra Basu had granted 'Khajna' receipt in respect of the land showing possession of the petitioner's predecessor-in-interest over the land in question. Those Khajna receipts and correspondence with the Land Reforms Department, Government of West Bengal, as well as the Collector of the District were filed before the learned Tribunal in the form of photocopies.

7. It was submitted before the Tribunal that those documents, *prima facie*, show that the State of West Bengal recognized the petitioner and his predecessor-in-interest as owner in respect of the land-in-question and at this stage contradicting its own stand the State could not have stated that the land has been vested by operation of West Bengal Estates Acquisition Act (in short 'WBEA Act').
8. According to the petitioner, the cause of action arose on 09.12.2020 when the petitioner saw a Notice Board installed in the land in question by the District Magistrate with the notice that the said land belongs to the Government and "trespassers will be prosecuted". Thereafter, the petitioner moved before the Tribunal for the relief sought for in the main

petition and also filed the present petition for injunction.

9. Before the Tribunal, it was contended by the State that the petitioner has failed to prove at least the *prima facie* case and balance of convenience does not lean in his favour as the land has already been vested in the Government and the petitioner shall not suffer irreparable injury in the event of non-grant of injunction.
10. To substantiate such contention, it was submitted by the State that the lessor of the petitioner's predecessor in interest was granted short-term lease and the nature of that lease was to expire after a specified time. It was further submitted that the said lease in respect of lessor of the predecessor-in-interest of the petitioner had not been extended since 1952.
11. The petitioner, being a sub-lessee, cannot have any claim over the property in question merely because he is recorded as a 'Dakhaldar' without proving the title of a lessor. The extent of right of the petitioner over the land-in-question is as a sub-lessee only and it is co-terminus with the right, title and interest of the original lessor.
12. Learned Tribunal painstakingly took all the arguments of the parties alongwith materials

produced before it into consideration and came to pass the impugned order.

13. Though the Tribunal has not covered the order by discussing the separate ingredients of injunction like existence of *prima facie* case, balance of convenience, irreparable injury and the last but not the least public interest in the impugned order, the tenor of the order makes out that he has supplied reasons for sustaining his order.
14. In our considered view, this is a case of a sub-lessee asserting right and title over the land-in-question on the basis of right and title of his lessor; acceptance of rent even by the government from the petitioner and his predecessor in interest after coming into force of the relevant land reforms law etc. and recording of the name of the father in respect of the land in the revenue record as "dakhalkar".
15. The objection of the State is to the extent that the petitioner through his predecessor-in-interest has not derived any title from the lessor as the land-in-question was a short-term lease and it was never extended after 1952.
16. Argument was also placed regarding operation of Section 44(2)a of the WBEA Act. In our considered view, when the land is stated to have vested in the

Government and has already recorded in Khatian No.1, the claim of title of the petitioner has been weakened to a great extent to claim at least injunction, though he may be having a very good case so far as claim of title in the final proceeding is concerned.

17. The learned Tribunal though has discussed all the aspects of the case as directed by this court in WPLRT 26 of 2021, has failed to appreciate the aforesaid aspect of the case.

18. When the land is asserted to come to have vested in the government by operation of law, it is the duty of the petitioner to prove the vesting to be bad in law in the final adjudication. By granting injunction, however, the recording in the revenue records cannot be disturbed when the land-in-question is found to be open field used for 'itkhola' (brickfield) alone.

19. In view of our discussion (supra) while affirming the impugned order, we direct the Tribunal to conclude the proceedings within three months from the date of receipt of a copy of this order. Opportunity of hearing and opportunity of adducing evidence shall be afforded to both the parties concerned. Till final disposal of the proceeding, the State is directed not to change the nature, character and user of the land.

20. Learned Tribunal should not be influenced by any of our observation supra as those are tentative and based on records available at hands and the arguments advanced by learned counsel for the parties.
21. With the aforesaid observations, the instant writ petition is disposed of.
22. In view of the aforesaid order, the application being CAN 1 of 2023 is, accordingly, disposed of.
23. Urgent photostate certified copy of this order, if applied for, be supplied to the parties on usual undertakings after compliance of all necessary formalities.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)