

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

**MAT 1095 OF 2019
With
I.A. CAN 1 of 2019
(Old CAN 12494 of 2019)**

**STATE OF WEST BENGAL & ORS.
VS**

RAMESWAR PRAMANIK & ORS.

**Before: The Hon'ble Justice Arijit Banerjee
&
The Hon'ble Justice Apurba Sinha Ray**

For the Appellants

Mr. S. N. Mookherjee, Ld. AG.
Mr. Supratim Dhar, Adv.

For the Respondents

Mr. Saktinath Mukherjee, Sr. Adv.,
Mr. Mrinal Kanti Das, Sr. Adv.,
Mr. Subhabrata Das, Adv.
Mr. Arindam Banerjee, Adv.

For Orders on

18.04.2024

Apurba Sinha Ray, J. :-

1. Brushing aside unnecessary details the factual aspects of this case may be narrated as hereunder:-

The predecessor-in-interest of the respondents had instituted Title Suit No. 33 of 1968 against the appellants herein praying for declaration of tenancy rights in respect of the suit land described in the schedule of the plaint. The said suit was decreed in favor of the predecessor- in-interest of the present respondents. It is alleged that during the pendency of the said suit, the predecessors of the respondents were forcibly dispossessed of an area of 39.02 acre out of 42.15 acre of the suit land. A case being no. LAII/39 of 1981-82 was started in respect of the said land of 39.02 acres and an award was passed in favour of the predecessors of the respondents.

2. The predecessors-in-interest of the respondents filed a land acquisition reference case being LRA No. 384 of 1985 for enhancement of the compensation amount. After hearing the parties the Learned Additional Special Land Acquisition Judge, 1st Court at Alipore, passed a judgment and order dated 23.12.1987 enhancing the amount of compensation. The Learned Judge was pleased to note that the predecessor-in-interest of the respondents was illegally dispossessed of the acquired land long before the formal notification, and as such he was entitled to equitable compensation for the deprivation of his property for the period from 16.11.1968 till the date of notification, in addition to his other dues.

3. The State of West Bengal preferred an appeal before this Court being FA No. 232 of 1988 which was dismissed by a Division Bench of this court on 15.04.2008. A special leave petition filed by the State of West Bengal before the Hon'ble Supreme Court of India against the said judgment and decree was also dismissed. A review application and thereafter a curative petition filed by the State of West Bengal were also dismissed by the Hon'ble Supreme Court of India. However, the compensation amount was released 45 years after taking possession of the land from the predecessors of the respondents when the said predecessors had already passed away.

4. The respondents filed a writ petition being WP 4586(w) of 2014 contending that 42.15 acres of land was the tenancy land of the predecessor-in-interest namely Krishna Pada Pramanick (since deceased) and out of the said land, 39.02 acres had been acquired although actual physical possession was taken on 16.11.1968. Therefore an area of 3.13 acres was still left with the present respondents. The said land is in illegal possession of the State and in spite of repeated representations to demarcate and give back the land to the writ petitioners, the same was not done on the ground that the entire matter regarding vesting of all the lands of the respondents was pending for final adjudication. According to the respondents, all such

litigations had ended in their favour but the said 3.13 acre was not demarcated and given back to the respondents for reasons best known to the State of West Bengal.

5. In the original affidavit-in-opposition filed on behalf of the State of West Bengal it was contended, inter alia, that the said lands had vested in the State and compensation therefor had already been disbursed. As such there was nothing left to be adjudicated upon. In the affidavit-in-reply it was specifically pointed out that the plea of vesting and payment of compensation which was a pretext on behalf of the State of West Bengal, in any event, related to the superior interest and not tenancy interest of the respondents. It was also alleged that the plea of the State in respect of the vesting of the land of the respondents had been negatived at least seven times before of the courts of law including thrice before the Hon'ble Supreme Court of India.

6. It was further alleged on behalf of the respondents /writ petitioners that a supplementary affidavit-in-opposition filed by the State of West Bengal contemplated a completely new line of approach to the effect that in respect of certain plot numbers, compensation had already been paid and in respect of the some other plot numbers there had been proceedings earlier. According to the present respondents,

those statements are without any substance and most of the dag numbers as stated therein were not the dag numbers of the lands belonging to the writ petitioners of the instant case. In some other cases it further appears that a portion of a particular dag was acquired earlier and the remaining portion is the subject matter of the instant litigation. According to the respondents, those statements having no foundation to stand were not worth consideration by the Learned Single Judge.

7. It was further contended that the other averment made in the supplementary affidavit-in-opposition is equally not tenable in the eye of law since a novel and ingenuous attempt was made by the appellants by contending that a notice initiating a proceeding under Section 51 read with Section 14T(3) of the West Bengal Land Reforms Act, 1955 was issued. As the relevant issues in connection with the aforesaid land have long been disposed of and the relevant matter has been confirmed up to the Hon'ble Supreme Court of India, the allegations of the present appellants that the predecessors-in-interest and the respondents were entitled to retain a maximum of 24.20 acres of land under the West Bengal Land Reforms Act, 1955, and as they had 42.15 acres of land under their tenancy, 17.95 out of 42.15 acres of land should be treated to be vested under the State, has no leg to

stand upon. The allegations that the respondents are liable to return back the compensation are not supported by any strength of law.

8. The State of West Bengal, being the appellant herein, on the other hand, contended that the predecessors-in-interest of the writ petitioners have withdrawn compensation for 39.2 acres of land in LA Case No. LA-II/39 of 1981-82 which is beyond the retainable ceiling area of land as provided in Section 14M of West Bengal Land Reforms Act, 1955 and also in contravention of the provisions of Article 31A of the Constitution of India and Sections 14L, 14S and 14M of the West Bengal Land Reforms Act, 1955. It was also contended that the predecessors-in-interest of the respondents obtained the decree of declaration of title in respect of 42.15 acres of land in TS Case No. 33 of 1968 save and except they owned land as on 15.02.1971. It was further contended that the part of land in CS plot No. 6349, 6532, 6347, 6378, 6348, 6319 and 6619 comprising an area aggregating 2.86 acres being part of 3.13 acres claimed as per decree had already been acquired from the predecessors-in-interest of the writ petitioners in LA Case No. D2 of 1968-69 and LA-II of 56 of 1961-62 and compensations were paid.

9. According to the State of West Bengal while implementing the decree no one can travel beyond the decree as to the area specified

against each plot which is obviously far less than the claim. But the Learned Single Judge on his own motion wrongly rectified the unit of decimal in the decree as acre and further erred in law in supplying the correctional unit from decimal to acre in the decree and has acted beyond jurisdiction and the orders dated 03.07.2019 and 05.07.2019 are not sustainable in law. The State of West Bengal has also taken the point that the Learned Single Judge erred in law in holding that the writ petitioners hold only 3.13 acres excluding acquisition of 39.02 acres, which is far less than the ceiling under Section 14M of 7.5 hectors, is contrary to the provisions of statute as enshrined in West Bengal Land Reforms Act, 1955. It was also contended on behalf of the appellant-State that the Learned Judge failed to consider the pendency of Title Suit No. 230 of 1997 filed by the appellant State for declaration and permanent injunction in respect of the land including other land of the predecessors-in-interest of the writ petitioners. The case of the State that though in the decree, the area in CS plot number 6618 is 35 acres while compensation has been accepted for an area of 38.92 acres which is obviously 3.92 acres above the entitlement as per decree, was not considered by the Learned Single Judge.

10. According to the appellants the Learned Judge failed to appreciate that Late Krishna Pada Pramanick got license/lease for an

area of about 300 bighas of land from erstwhile Zamindars and out of which in LA-II/38 of 1961-62 he got compensation for 19.77 acres as land owner and area of 5.36 acres on behalf of the loss of earning by the order of the Special Land Acquisition Judge in LRA Case no. 35 of 1963 wherein the Learned Land Acquisition Judge observed that Krishna Pada Pramanick had accepted lease in respect of 51.986 acres and occupied 48.40 acres on encroachment and held to be rayat by possession for more than 12 years.

11. The Learned Single Judge, according to the State, has failed to take note that the observation of acquiring tenancy in the order of the Learned Civil Court was challenged by the State in appeal but the same being dismissed and the special leave petition, review petition and curative petition filed before the Hon'ble Supreme Court, also having been dismissed, the ownership over 42.15 acres was upheld and as such the rayat held 42.15 acres by virtue of declaration in Title Suit No. 33 of 1968. It was also contended that the predecessors-in-interest of the respondents held 42.15 acres plus other land as on the date of vesting under the West Bengal Land Reforms Act, 1955. The Learned Single Judge has failed to consider that Krishna Pada Pramanick held 300 bighas of land on 15.04.1955 and on 07.08.1969 he held 42.15 acres as per the decree plus other lands. The Learned Judge has also failed to consider that the determination of ceiling area

of rayat on the cardinal date is by way of suo moto proceeding under Section 14T(3) as the rayat did not file return in forms 7A and 7AA within the time stipulated in West Bengal Land Reforms Act, 1955 and West Bengal Land Reforms Rules, 1965. According to the State of West Bengal, the Learned Single Judge has failed to appreciate that the West Bengal Land Reforms Act, 1955 is a special statute having overriding effect on other laws as provided in Section 3 and Section 14J of the Act. It is also pointed out that the Learned Single Judge failed to appreciate that already compensation in respect of 2.86 acres out of claimed 3.13 acres in several plots mentioned in annexures R-6 to the supplementary affidavit was paid in LA Case D2 of 1968-69 and LA-II/56 of 1960-61 save and except payment of compensation for 39.02 acres for CS plot 6618 in place of area of 35 acres of LA Case No. LA-II/39 of 1981-82.

Court's View:-

12. The main contention of the writ petitioners/respondents herein is that the tenancy right of their predecessor-in-interest in respect of the suit land vis-à-vis his status as a rayat has long been recognized and the same has been upheld upto Hon'ble Apex Court, but now, the

State of West Bengal is taking new pleas to resist the demarcation of 3.13 acres of land out of 42.15 acres without any cogent reason.

13. It is also contended on their behalf that all issues relating to the said property had been settled upto the Hon'ble Apex Court and therefore, as there is no error on the face of the judgment impugned, the same should be upheld by this Court.

14. The instant case has no doubt a chequered history but the concise chronological events, as depicted in paragraph 5 of the Stay Petition, filed by the State in the appeal will be helpful to understand the relevant issues involved herein. The chronological events are as hereunder:-

a) Date of vesting under West Bengal Estate Acquisition Act, 15.04.1955.

b) Right of Fishing extinguished from 15.04.1955.

c) In LRA Case 35 of 1963 got observation that 53.16 lease hold land without any cogent document and over 48.40 acre of land as right of tenancy by virtue of adverse possession over vested land more than 12 years, and was allowed compensation in respect of 19.7 acre of land out of 25.13 acre in acquisition.

d) Then filed Title Suit being No. 33 of 1968 and got decree over 42.15 acre.

e) Proceeding under West Bengal Estate Acquisition Act could not be taken in view of setting aside of notice under section 6.

f) In Appeal before the Hon'ble High Court and the Hon'ble Supreme Court, the State failed to establish vesting of the land under West Bengal Estate Acquisition Act inspite of efforts in different Courts."

15. Para 7, 8, 9 and 10 are also relevant and they are quoted hereunder for the purpose of proper understanding of the issues:-

"7) That your petitioners state that the predecessor in interest finally held land on 15.02.1971 to the tune of 42.15 acre plus 2.90 acre as on 15.02.1971 or subsequent till his death in 1992.

8) That your petitioners state that the writ petitioners including the predecessor in interest was allowed compensation for 39.02 acre of land in and after 1982 for acquisition. The said 39.02 acre is much above the ceiling area as prescribed in West Bengal Land Reforms Act. Such a payment over 24.20 acre as retainable ceiling and acceptance thereto without exercising return is erroneous and wrongful and liable to be refunded. It is settled principle of law that there could be no estoppels against provision of statute. Moreover, there is the provision for refund of amount if found excess or not admissible.

9) That the writ petitioners being the legal heirs of Krishnapada Pramanik the then Raiyat is entitled to inherit the property what the predecessor in interest has left legally. As such as on the date of vesting under West Bengal Land Reforms Act the

total property as a whole would be owned by the Raiyat is 24.20 acre and the rest is mandated to be vested. Therefore, there is payment of compensation beyond ceiling as applicable under West Bengal Land Reforms Act.

10) That your petitioners state that the claim and prayer in the writ petition for 3.13 acre residue of 42.15 acre in decree is obviously beyond the retainable ceiling area and cannot get ownership beyond 24.20 acre of land. As such said area including other land in excess of 24.20 acre cannot be owned by the Raiyat after 15.02.1971 or inherited by the writ petitioners."

16. From the above it is found that the notice under Section 6 of the West Bengal Estate Acquisition Act was set aside and therefore relevant proceeding under the West Bengal Estate Acquisition Act could not be taken up from the side of the appellants. It is the admission of the State that the State has failed to establish vesting of the land under West Bengal Estate Acquisition Act. According to the State, the predecessor-in-interest of the respondents namely, Krishnapada Pramanick held land to the tune of 42.15 acres plus 2.90 acres on 15.02.1971 and subsequent thereafter till his death in 1992. As the said Krishnapada Pramanick was allowed compensation for 39.02 acres of land which is much above the ceiling area as prescribed in West Bengal Land Reforms Act, 1955 the respondents are bound to refund the excess compensation money to the State exchequer.

17. However, after going through the materials on record it transpires that the ownership of Krishnapada Pramanick in respect of the suit premises as per schedule to the plaint of Title Suit No. 33 of 1968 has been declared by a competent civil court and the said judgment was not challenged in any appeal.

18. The schedule mentioned in the decree passed in Title Suit No. 33 of 1968 is as hereunder:-

“HIGH COURT FORM NO. (J) 25 *DECREE IN ORIGINAL SUIT.*
(Order 20, Rules 6 and 7 Code of Civil Procedure)
District : 24 Parganas. In the 2nd Court of Sub-Judge at Alipore.
Title Suit No. 33 of 1968
Krishna Pada Pramanick, s/o of Late Lal Chand Pramanick, of Vill.
Nayapatti, P.S. Rajarhat, District – 24 Parganas.

...Plaintiff

 $V_S.$

State of West Bengal

...Defendant

Claim for suit for declaration of title Rs. 5010/- (Rupees Five thousand and ten only).

Schedule

All that portion of tank fishes C.S. plot No. 6347 suit premises .11 Dc. c.s. plot No. 6618 suit land area 35 acres (western portion c.s. plot no. 6350 suit land area 3.53 acres (southern portion)).

C.S. Plot No. 6348 Suit land area 1.60 acres
C.S. Plot No. 6349 Suit land area .11 decimals
C.S. Plot No. 6608 Suit land area .50 decimals
C.S. Plot No. 6536 Suit land area .31 decimals
C.S. Plot No. 6532 Suit land area .13 decimals
C.S. Plot No. 6278 Suit land area .54 decimals

This suit coming on this day for final disposal before Sr. A.K. Sil, Sub-Judge, in the presence of Sri Anadilal Mukherjee, Advocate for the plaintiff and of Sri Sambhunath Mukherjee, advocate for the defendant.

It is ordered and decreed that the suit be and the same is decreed on contest with cost against the defendant. The plaintiff's tenancy right in respect of the suit property described in the schedule to the plaint is hereby declared in the light of the observation made in the body of the judgment in deciding issue numbers 1, 4 and 5.

*C.S. Plot No. 6319 Suit land area .05 decimals (southern portion)
C.S. Plot No. 6607 Suit land area .02 decimals (southern portion)
C.S. Plot No. 6619 Suit land area .14 decimals (southern portion)
C.S. Plot No. 6609 Suit land area .11 decimals (southern portion)*

All within C.S. Khatian Nos. 4.11 Mouza Krishnapore, R.S. Rajarhat, 24 parganas measurement being 42.15 acres in area more or less being portion of "Samitir Bheri" 6619 (part) and 6609 (part) all within khatian numbers 4.11 Mouza Krishnapore, J.L. No. 17, P.S. Rajarhat, District - 24 parganas measuring 100.26 acres in area more or less commonly as "Samitir Bheri" and that the sum of Rs. 846/- (Rupees Eight hundred and forty six only) to the plaintiff.

Given under my hand and seal of this court, this 6th day of June, 1975."

19. It appears from the record that the State did not prefer any appeal against the said judgment and decree and accordingly the same has attained finality. In this regard the observation of the Hon'ble Division Bench in another proceeding, that is, FA No. 232 of 1988 is very much relevant. In the said proceeding the learned advocate appearing on behalf of the State filed an application under Order 41 Rule 27 of the Code of Civil Procedure, 1908 thereby praying for taking into consideration some additional documents in support of his contention that the property had already vested in the State. FA 232 of

1988 was filed by the State of West Bengal challenging the order enhancing the amount of compensation. For the purpose of proper adjudication we think that the judgment passed on 15.04.2008 in FA No. 232 of 1988 is required to be quoted hereunder:-

“This First Appeal is at the instance of the State of West Bengal in a proceeding under Section 18 of the Land Acquisition Act, 1894, and is directed against an award dated 23 November, 1987, passed by the Additional Special Land Acquisition Judge, First Court, Alipore, in L.R.A Case No. 384 of 1985 thereby enhancing the amount of compensation by reassessing the market value of the acquired lands both "bil" and "bundh" - to at Rs. 7,000/- per cottah. The said court further directed that the Referring claimants would also get solatium at the rate of 30% on the entire market value and recurring compensation at the rate of 9% per annum from the period November 16, 1968 till 7 March, 1982.

Being dissatisfied, the State of West Bengal has come up with the present appeal.

Mr. Mahato, the learned advocate appearing on behalf of the appellant, at the very outset submits before us that he does not press the grounds taken in the Memorandum of Appeal as regards enhancement of valuation but wants to restrict his submission to a different question.

According to Mr. Mahato, the land acquired by the Notification had already vested in the State, and, therefore, the

referring claimants were not entitled to get any amount of compensation whatsoever. In support of such new plea, Mr. Mahato filed an application under Order 41 Rule 27 of the Code of Civil Procedure thereby praying for taking into consideration some additional documents in support of his contention that the property had vested in the State.

Such application was opposed by the respondents/Referring claimants, and Mr. Das, the learned senior advocate appearing on behalf of the respondents, vehemently opposed the aforesaid contention of Mr. Mahato. According to Mr. Das, in an appeal preferred against an award enhancing the amount of compensation on a reference made by his clients to whom the Collector proposed compensation, the State has no right to contend at this stage that the property did not belong to the Referring claimants. Such contention, according to Mr. Das, is beyond the scope of Reference under Section 18 of the Act.

Moreover, Mr. Das by drawing our attention to the award of the compensation passed by the Collector itself at page 5 of the paper book points out that the Collector himself has mentioned in the award that title of the referring claimants had already been declared an per judgment in Title Suit No. 33 of 1968 and C.O. No. 8786 (W) of 1981. Mr. Das, therefore, submits that even on merit, such plea is not tenable having been already decided by a competent civil court where the State of West Bengal was a party; but the State had not preferred any appeal against such decree.

Therefore, the only question that arises for determination in this appeal is whether in an appeal preferred against the award enhancing the amount of compensation, the State can take a new plea that the Referring claimants, whom the State itself accepted as owner, had no title to the property.

In our view, such point has already been answered by the Apex Court in the case of U.P. State Industrial Development Corporation -vs- Rishabh Ispat Ltd. & Ors. Reported in (2007) 2 S.C.C. page 248. In the said decision, a similar point arose before the Apex Court and at paragraph 10 of the judgment, the said court held that the plea taken by the State disputing the title of the person to whom award had already been given could not be raised in a proceeding under Section 18 of the Land Acquisition Act.

Although Mr. Mahato tried to convince us that such plea is permissible by referring to the decision of the Full Bench of the Allahabad High Court in the case of Makhanlal & Ors. -vs- Secretary of State reported in AIR 1934 Allahabad page 260, we are not at all convinced by such submission. In that case, the State, at the initial stage of acquisition, declared that the property belonged to the State itself and such declaration was challenged. In the case before us, the State while declaring compensation had accepted the Referring claimants as the owner of the property after suffering a decree in a Civil Suit and the reference was made by those persons claiming enhanced amount as compensation, and such application having been allowed, this appeal has been preferred. Therefore, in this proceeding, there is no scope of

adjudicating the question whether the respondents had title to the property.

The only point taken by Mr. Mahato having failed, we find no merit in this appeal and the same is dismissed. In the facts and circumstances, there will, however, be no order as to costs.

The interim order granted earlier stands vacated.

In view of our aforesaid findings, we dismiss the application under Order 41 Rule 17 of the Code of Civil Procedure filed by the State as, in our view, those documents are not necessary for adjudication of the dispute involved in this appeal.

Urgent Xerox certified copy of this order, if applied for, be given to the parties within a week.”

20. It is further found that special leave application against the said judgment and order dated 15.04.2008, review application as well relevant curative petition were all dismissed by the Hon’ble Supreme Court.

21. The judgment and decree passed in Title Suit No. 33 of 1968 having become final, the predecessor-in-interest of the writ petitioners/respondents was recognized and declared as the owner of the suit property involved in Title Suit no. 33 of 1968.

22. However, as regards the contention of the writ petitioners/respondents that all issues relating to the said suit property have been settled upto Hon'ble Supreme Court, in my view, the same is not correct. It is true that the issue of ownership of the suit property of Krishnapada Pramanick has been settled. But as regards the issues whether Krishnapada Pramanick could retain lands in excess of ceiling limit as prescribed under the West Bengal Land Reforms Act, 1955 or whether he was exempted from filing return as required under Sections 7A, 7AA of the Act, 1955 are not settled. There is no observation of the Hon'ble Supreme Court on such scores since these issues were never raised and considered.

23. However, the final observation of the Learned Single Judge in disposing of the writ petition is as follows:-

“Though the matter has come up before me for hearing after completion of affidavits, I understand that the dispute lies within a very short compass. However, to achieve that brevity, I will have to record the facts in a summary manner.

The predecessor-in-interest of the petitioners sued the State of West Bengal for a declaration of its title and a decree was passed in its favour which achieved finality. The State of West Bengal dispossessed the petitioners' predecessor-in-interest and did not return the land even after the decree, which was rendered in 1975. In the meanwhile, by two separate proceedings for

land acquisition it purported to acquire 39.02 acres of land from the entirety of 300 bighas of land comprising the so-called Samiter Bheri under the Act II of 1948. In respect of the award of compensation the petitioners' predecessor-in-interest moved a reference before the Civil Court and the compensation was enhanced. The State of West Bengal preferred an appeal from the said decree being F.A. no. 232 of 1988 where only one ground was pressed. The State of West Bengal, as appellant, took the point that the land acquired by the notification of 1981-82 had already vested under the provisions of the West Bengal Estate Acquisition Act and therefore, the claimants were not entitled to any compensation in respect of 39.02 acres of land under the 1981 - 82 acquisition. They had already received compensation in respect of 1961-62 acquisition. The Hon'ble Division Bench of this Court by a judgment dated April 18, 2008 was pleased to negate the submission on the basis of the decree in the Title Suit as also whether the State could take the point that the referring payments had no title to the property after the State had accepted them as owner. This judgment was attempted to be carried in Appeal to the Hon'ble Supreme Court by way of a petition for special leave to appeal which was dismissed on September 8, 2008. I am told that the petition for review and a curative application were taken out and were similarly dismissed. The present petitioners claimed to be owners in respect of 3 acres and odd of land for the said Samiter Bheri. The exact amount of the land would be 42.15 acres-39.02 acres being 3.13 acres. It is the case of the petitioners that out of 42.15 acres, only 39.02 acres have been acquired by the respondents. That leaves 3.13 acres in the ownership of the petitioners of which they are not in a possession. The petitioners wanted documents to be produced by the

respondents to show how if at all there is legal authority to deprive them of this and furthermore I the event that there is no such authority to put them back into possession after removal of the encroachers. I am told by Mr. Dhar that it is a specific case of the State that it has not taken possession of the 3.13 acres and that there is no notification acquiring the said land. He, on the other hand, submits that 42.15 acres of land out of which compensation was paid for 39.02 acres to the petitioners and/or their predecessor-in-interest is far in excess of the ceiling under Section 14-M of the West Bengal Land Reforms Act, as amended. He submits that since the lands one liable to be vested under Section 14-T of the said Act of 1955, therefore, the question of acquisition does not arise.

I have subjected Mr. Dhar to a searching examination on the face of the records and it is established that the proceeding for vesting under Section 14-T have not yet been concluded. It is trite that the vesting under the provisions of the West Bengal Estate Acquisition Act, 1953 occurs on the notification bringing Chapter of the said Act into force being published whereas vesting under Section 14-T in respect of land which are not excess for the ceiling under Section 14-M occurs only after completion of the vesting proceeding in terms of the Act of 1955 read with West Bengal Land Reforms Rules, 1965 and read with West Bengal Land Reforms Manual. Since the vesting has not been completed under the Act invoked by Mr. Dhar it is procedural sword which he had brandished and which unfortunately is still sheered. As such, I hold that there is no vesting of the said land or any part of them under the Act of 1955. As such, there is no defence of the respondents as of today to refuse to accept the petitioners as the owners

of 3.13 acres of land in the said Samitir Bheri. The writ petition can be disposed of by a direction on the respondent authorities along with their ameens and surveyors to forthwith demarcate 39.02 acres of land of which the State has taken possession and acquired. Naturally, the balance being 3.13 acres would constitute the area owned by the writ petitioners. In the event that the State of West Bengal seeks to complete the proceeding of vesting under Section 14-T. I am sure it will keep in mind the fact of 3.13 acres is far less than the ceiling under Section 14-M of 7.5 hectares. This will not prevent the respondents from claiming any equity on the basis of excess compensation paid by the respondents subject to the law of Eminent Domain which has been revived after the forty-fourth amendment. Let the process of demarcation be completed within a period of four weeks from the date of communication of this order.

The writ petition is allowed to the above extent.

Urgent photostat certified copy of this order, if applied for, be given to the parties.”

23.1. After going through the above judgment of the Learned Single Judge it appears that basically the Learned Single Judge has directed that demarcation of 3.13 acres of land as discussed in the said judgment should be done subject to the proceedings undertaken under Section 14(T) of the Act, 1955 which has been pending for a long time. By keeping the same pending, the State, in fact, has protracted and delayed the logical conclusion of the instant matter. One must keep in

mind that under the Act of 1955, vesting takes place only after the Revenue Officer determines the extent of excess land that is to vest in the State under Section 14S of the Act and then takes possession of such lands. This determination takes place in a proceeding under Section 14T(3) of the Act. That proceeding is still pending as regards the lands involved in the present case.

A private party cannot wait for an indefinite period to get his property or dues in accordance with law. As the State has failed to dispose of the proceeding under Section 14T of the West Bengal Land Reforms Act, 1955 in time, we think there is no illegality by directing the State to demarcate 3.13 acres of land as discussed hereinabove subject to the result of the proceedings under Section 14T of the aforesaid Act. However, there are certain remarks made by the Learned Single Judge in the impugned judgment regarding the pending proceeding under Section 14(T) of the Act, 1955 which should be ignored for the ends of justice.

23.2. The plea that part of the land in CS plot Nos. 6349, 6532, 6347, 6378, 6348, 6319 and 6619 for an area totalling to 2.86 acres being part of 3.13 acres claimed as per decree had already been acquired from the predecessors-in-interest of the respondents in LA Case No. D2 of 1968-69 and LA-II of 56 of 1961-62 and compensations were

paid, appears to be a new plea. There is nothing on record that such plea was taken by the appellants-State in any earlier proceeding. Such plea of the State has become barred by the principles of constructive res judicata and therefore the same cannot be agitated before this appellate forum.

24. Accordingly, we find no legal infirmity or irregularity in the impugned judgment. Thus the instant appeal is dismissed but there will be no order as to costs. The impugned judgment is passed in W.P. No. 4586(W) of 2014 dated July 3, 2019 and July 5, 2019 are hereby affirmed. IA CAN 1 of 2019 (Old CAN 12494 of 2019) is also disposed of.

25. Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

I Agree.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)