

15.04.2024
8-9
Ct. no. 652
sb

CO 3678 of 2018

**Sri Tarun Kumar Singha Roy
Vs.
Sri Badal Porel**

**With
CO 3681 of 2018**

**Sri Arun Dey
Vs.
Sri Badal Porel**

Mr. Gopal Chandra Ghosh ...for the Petitioner

In spite of service, opposite party is not represented.

The petitioner herein contended that the opposite party as petitioner filed an application for preemption in respect of 2 sataks of land in Dag no. 339 under Khatian no. 153 within Mouza- Rangamati claiming his status as Bargadar in respect of the said plot of land. It is alleged by petitioner that in the said application, the opposite party failed to furnish required particulars for maintaining the said application for preemption.

It is further case of the petitioner that the opposite party was/is never a Bargadar in respect of the suit property and his name was erroneously recorded as Bargadar in the record of rights. He further submits that the property in question and its surrounding land are no longer arable and those are being used by the

owners thereof as homestead land by constructing house buildings thereon. The opposite party has no other documents in support of his claim of Bargadarship except the entry in L.R. record of right, which has been erroneously prepared. He further submits that the suit property is the property of Deity represented by it's shebait.

Petitioner's further case is opposite party himself filed an affidavit before executive Magistrate, Arambagh on 28.9.2015 wherein he clearly admitted that suit property is under direct cultivation of the Shebait of the deity and further admitted that neither the opposite party nor anybody else of his Family even cultivated land in question as Bargadar and was/is not in possession thereof.

Since, the opposite party herein filed the preemption case claiming himself as a Bargadar and since the petitioner herein has denied his right of Bargadarship, so the petitioner herein filed an application under Section 21(3) of the West Bengal Land Reforms Act, 1955 for referring the matter before the prescribed authority to determine as to whether the opposite party is a Bargadar in respect of the suit property or not.

Learned court below by the order impugned dated 12.7.2017, was pleased to reject the prayer of the petitioner in both the cases being preemption case no.

25 of 2016 and preemption case no. 26 of 2016. Accordingly, the petitioner has prayed for setting aside the order impugned.

I have considered the submissions made by the petitioner. On perusal of the preemption application as well as objection filed by the petitioner herein it appears that the petitioner herein has raised serious dispute regarding the claim of Bargadarship made by the pre-emptor/opposite party herein.

Section 21(3) of the West Bengal Land Reforms Act provides that if any question as to whether a person is or is not a bargadar arises in the course of any proceedings before any civil or criminal court, the Court shall refer it to the officer or authority mentioned in sub-section (1) of section 18 for decision and such Court shall dispose of the suit in accordance with the decision communicated to it by the officer/authority appointed under section 18(1) of the Act.

From the aforesaid provision as laid down in section 21(3) of the Act, it is clear that such reference is compulsory whenever dispute arises before court and not only the reference has to be made for decision in such cases but also such court shall dispose of the original case in accordance with the decision communicated to it by the concerned authority.

Since in the present case, the dispute has been raised by the petitioner herein as to whether the

opposite party is a Bargadar in connection with the suit property or not, in respect of which he has claimed to have exercised his right of preemption, I find that the court below was erred in rejecting the said application.

In such view of the matter, the order no. 13 dated 12th July, 2017 passed in both preemption case no. 25 of 2016 and preemption case no. 26 of 2016 are hereby set aside. The court below in both the preemption cases are directed to refer the dispute as to whether the opposite party is a Bargadar or not in respect of the suit property before the prescribed authority appointed under Section 18(1) of the West Bengal Land Reforms Act, within a period of four weeks from the date of communication of the order.

Both C.O. 3678 of 2018 and C.O. 3681 of 2018 are accordingly disposed of.

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

(Ajoy Kumar Mukherjee, J.)