

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble Justice PARTHA SARATHI SEN

W.P.A. 4329 of 2025

Subarna Biswas (Samaddar)

Vs.

The State of West Bengal & Ors.

For the Petitioner:

Mr. Kaushik Dey,Adv.,
Mr. Abhijit Sarkar,Adv.,
Mr. Abhik Chitta Kundu, Adv.

For the State :

Mr. Soumitra Bandyopadhyay, Adv.,
Mr. Ram Chandra Guchhait, Adv.

Last Heard On:

11.06.2025

Judgement On:

11.06.2025

Partha Sarathi Sen, J.

1. The affidavit-of-service as filed today is taken on record.
2. The subject matter of the instant writ petition is the order dated 12.11.2024 as passed by the respondent no.2 authority, whereby and whereunder the petitioner's prayer for issuance of landloser certificate was not considered favourably.
3. In course of his argument, Mr. Dey, learned advocate appearing on behalf of the writ petitioner at the very outset draws attention of this Court to the Government of West Bengal, Labour Department Notification No.301-EMP/1M-10/2000 dated 21.08.2002. It is submitted by Mr. Dey that

pursuant to the said notification dated 21.08.2002 as published by the Labour Department, Government of West Bengal, a member of uprooted/affected family is entitled to be considered against vacancies reserved for the exempted categories with effect from 17.10.1977.

4. It is further submitted by Mr. Dey that in order to get benefit of the said notification, the said member has to satisfy that either his families have been uprooted from their places of residence due to acquisition of homestead land or their main source of income is substantially affected due to loss of agricultural land as a result of acquisition.

5. At this juncture, Mr. Dey draws attention of this Court to page no.120 of the instant writ petitioner being a copy of the memo dated 05.01.2005 as issued by the Labour Department, Government of West Bengal wherein a clarification was given with regard to the word “family” in terms of the notification dated 21.08.2002. It appears that by virtue of the said notification dated 05.01.2005, the Labour Department has made an attempt to clarify as to who come under the periphery of ‘family’ and the relevant portion of the said memo dated 05.01.2005 is quoted hereinbelow in vertatim:-

“the family” will be regarded as comprising the following members:-

(1) Land loser – himself/herself.

(2) Wife/Husband of land loser.

(3) Dependant Sons/Unmarried daughters of the land loser.”

6. It is submitted that in an earlier round of litigation as filed by the writ petitioner a coordinate Bench while passing the judgment and order dated 09.12.2021 in WPA 1467 of 2009 directed the Director of Employment, National Employment Exchange, Exempted Category Cell to pass a suitable order and pursuant to such order the O.S.D & E.O, Director of Employment, West Bengal had declined to pass a favourable order dated 17.02.2022 in favour of the writ petitioner for registering her name in the exempted category.

7. It is submitted by Mr. Dey that the said order dated 17.02.2022 was again challenged by the instant writ petitioner by filing a writ petition being WPA 6930 of 2022 and a coordinate Bench by a judgment and order dated 16.09.2022 set aside the said order dated 17.02.2022 and directed the said director to reconsider the prayer of the writ petitioner in the light of the judgment an order dated 21.04.2015 as passed in WP 5651 (W) of 2011 (*Subrata Hara versus The State of West Bengal & Ors.*).

8. It is submitted by Mr. Dey that while passing the judgment and order dated 21.04.2015 in WP 5651 (W) of 2011, another coordinate Bench of this Court while disposing the said writ petition based on self-same subject came to a specific finding that the rights created by virtue of the notification dated 21.08.2002 cannot be taken away by a subsequent notification and, therefore, directed the respondent authorities to register the name of the writ petitioner in WP 5651 (W) of 2011 in the exempted category consisting of land losers permanently.

9. It is submitted by Mr. Dey that the said order and judgment dated 21.04.2015 was affirmed by a Division Bench of this Court in MAT 1138 of 2015 and the said judgment was also not interfered with by the Hon'ble Supreme Court in Special Leave to Appeal (C) No.15778 of 2016. It is, thus, submitted by Mr. Dey that the respondent no.2 authority while passing the order under challenge has failed to visualize the true spirit of the order dated 16.09.2022 as passed in WPA 6930 of 2022 vis a vis the judgment and order dated 21.04.2015 as passed in WP 5651 (W) of 2011, the judgment and order dated 29.02.2016 as passed in MAT 1138 of 2015 by the Division Bench of this Court and the judgment and order dated 08.07.2016 as passed in Special Leave to Appeal (C) No.15778 of 2016.

10. At this juncture, Mr. Dey again draws attention of this Court to the judgment and order dated 01.08.2024 as passed by another coordinate Bench in WPA 28752 of 2024. Attention of this Court is also drawn to the order dated 12.11.2024 as passed by the respondent which is under challenge in the instant writ petition. It is submitted that the respondent no.2 authority while considering the representation of the writ petitioner (copy of which has been annexed at page nos.152 to 156) has again failed to visualize the true spirit of the judgment and order dated 21.04.2015 as passed in WP 5651 (W) of 2011 and most surprisingly the said respondent no.2 authority imported the definition of 'family' while dealing with the relevant notification dated 21.08.2002.

11. It is, thus, submitted by Mr. Dey that the respondent no.2 authority has failed to visualize that the definition of 'family' within the meaning of Section 14K(c) of the West Bengal Land Reforms Act, 1955 operates in a different domain and such definition is quite distinguishable from the purport and meaning of the 'family' as per the notification dated 21.08.2002.

12. It is, thus, submitted by Mr. Dey that it is a fit case for issuance of appropriate writ/writs for quashing of the order dated 12.11.2024. It is further submitted that appropriate relief/reliefs may be granted to the writ petitioner in terms of the prayer made in the instant writ petition.

13. Per contra, Mr. Bandyopadhyay, learned senior government advocate appearing on behalf of the respondent State and its instrumentalities also draws attention of this Court to the judgment and order dated 01.08.2024 as passed in WPA 28752 of 2022 as filed by the instant writ petitioner.

14. It is submitted that while disposing the said writ petition, a coordinate Bench of this Court though set aside the order impugned before him, however, the said coordinate Bench permitted the writ petitioner herein to submit a comprehensive representation claiming a land loser certificate.

15. Mr. Bandyopadhyay in his next fold of submission draws attention of the Court to the copy of the representation dated 30.04.2024 as submitted by the writ petitioner with the respondent no.2 authority. It is submitted by Mr. Bandyopadhyay that from the said representation it would reveal that the writ petitioner has requested for granting land loser certificate. It is, thus,

submitted by Mr. Bandyopadhyay that at this stage the writ petitioner cannot be permitted to mold her prayer, inasmuch as, from the said representation it would reveal that her representation dated 30.04.2024 is not at per with the direction as passed by a coordinate Bench on 01.08.2024.

16. It is submitted further on behalf of the State that the respondent no.2 authority has assigned sufficient reason for not granting land loser certificate in favour of the writ petitioner in view of the fact that the writ petitioner came into the family of the alleged land loser only after her marriage, that is, on and from 27.06.2018 whereas the original land loser died on 09.12.1999.

17. This Court has meticulously perused the entire materials as placed before this court. This Court has given its due consideration over the submissions of the learned advocates for the contending parties.

18. Undisputedly, the writ petitioner's grandparents-in-law's land was acquired by the Government. It is equally undisputed that pursuant to the notification dated 21.08.2002 no person of the said land loser has enrolled himself or herself against the exempted category. It is equally undisputed that no land loser certificate was issued in the name of the writ petitioner for which the writ petitioner approached this Court on a number of occasions.

19. It has been noticed by this Court that subsequently on 05.01.2005 the Labour Department made an endeavour to explain the meaning and purport of the word 'family' in the light of the earlier notification dated 21.08.2002.

20. Sufficient materials have been placed before this Court that on an earlier notification the claim of the writ petitioner for grant of land loser certificate was not considered favourably relying upon the subsequent notification dated 05.01.2005. Such finding was set aside by a coordinate Bench vide judgment and order dated 16.09.2022 passed in WPA 6930 of 2022. It was further directed in the said judgment and order dated 16.09.2022 that the authority concerned will reconsider the prayer of the writ petitioner in terms of the judgment and order passed by another coordinate Bench on 21.04.2015 as passed in WP 5651 (W) of 2011.

21. Admittedly, in WP 5651 (W) of 2011 the writ petitioner was not a party. In course of his submission, Mr. Bandyopadhyay vehemently argued that in the said judgment and order dated 21.04.2015 the subsequent notification dated 05.01.2005 was neither set aside nor declared non-operative nor declared ultravires.

22. This Court has meticulously gone through the judgment and order dated 21.04.2015 as passed by a coordinate Bench in WP 5651 (W) of 2011. This Court considers that for effective adjudication of the instant lis, the relevant portions of the said judgment and order dated 21.04.2015 are required to be looked into and those are quoted hereinbelow in verbatim:-

“I have perused the affidavit-in-opposition filed by the State Government. The only substantial point taken in that affidavit is that by another notification dated 5th January, 2005 published on 23rd June, 2011 the

category of persons who could come within the definition of family members was narrowed so as to exclude the grand children of the land loser.

It appears from the averments made in the said affidavit that the writ petitioner's claim for employment was rejected on the basis of this notification.

This is simply erroneous. Rights were created by the notification dated 21st August, 2002 and right to nominate a family member for employment was included as per the said notification. The notification was in exercise of statutory powers. Now, this vested right could not be easily taken away by a subsequent notification. In fact there is no recital in the subsequent notification that it would have retrospective effect. In fact the subsequent notification could not have any retrospective effect to take away vested rights of the land loser and his family members. To that extent the subsequent notification is bad in law. As the writ petitioner has not asked for quashing of the same, I am not setting it aside. The notification of 2012 is simply ignored as being nonest.

The interim order passed by this Court in this writ application directed inclusion of the petitioner's name provisionally in the list of exempted category candidates.

Under those circumstances, I direct the respondent no.4 to immediately register the name of the petitioner in the exempted category consisting of land losers permanently and not provisionally as directed by the interim order. This should be completed within four weeks from the date of communication of this order."

23. As rightly argued by Mr. Bandyopadhyay that the coordinate Bench while disposing WP 5651 (W) of 2011 though not set aside the subsequent

memorandum dated 05.01.2005, but it has been expressly held by the said Court that rights created by virtue of the notification dated 21.08.2002 cannot be permitted to be taken away by the subsequent notification dated 05.01.2005.

24. As rightly argued by Mr. Dey, this Court has noticed that the writ petitioner is similarly circumstanced with the writ petitioner in WP 5651 (W) of 2011, inasmuch as, in WP 5651 (W) of 2011 the writ petitioner's grandfather was a land loser whereas in the instant writ petition, the instant writ petitioner's grandparent-in-law was a land loser.

25. This Court, thus, considers that the rights as accrued in favour of the original land loser and/or his successor(s)-in-interest cannot be taken away by the subsequent notification dated 05.01.2005 as rightly observed by a coordinate Bench of this Court on 21.04.2015 while disposing WP 5651 (W) of 2011 which subsequently got affirmed before the Hon'ble Division Bench as well as before the Hon'ble Supreme Court.

26. At this juncture, if I look to the judgment and order dated 01.08.2024 as passed by another coordinate Bench in WPA 28752 of 2022, it appears to this Court that the said judgment no way bars the relief as claimed by the writ petitioner in the instant writ petition.

27. It has been contended by Mr. Bandyopadhyay that the writ petitioner cannot be permitted to mold her prayer since in WPA 28752 of 2022 the prayer of the writ petitioner was for issuance of appropriate writ/writs for

grant of land loser certificate. It has been argued on behalf of the State that while passing the order under challenge, the respondent no.2 has assigned sufficient reason for not granting land loser certificate, inasmuch as, the present writ petitioner became the family member of the original land loser on account of her marriage only on 27.06.2018 though the original land loser died on 09.12.1999.

28. This Court has noticed that the respondent no.2 authority while passing the order under challenge has imported the meaning and definition of 'family' placing reliance of the provisions of Section 14K(c) of the Land Reforms Act, 1955 .

29. In considered view of this Court such attempt on the part of the respondent no.2 is unreasonable, undesirable and has got no basis at all. This Court is in agreement with the argument of Mr. Dey that the definition of 'family' within the meaning of Section 14K(c) of the Land Reforms Act, 1955 operates in a different domain and the same is quite distinguishable from the meaning and purport of the family as per notification dated 21.08.2022.

30. This court, thus, finds sufficient merit in the instant writ petition and accordingly the instant writ petition is allowed.

31. Consequently, the order dated 12.11.2024 as passed by the respondent no.2 authority is hereby set aside.

32. The respondent no.2 authority is hereby directed to issue a land loser certificate in the name of the writ petitioner positively within thirty days from the date of communication of this order.

33. The respondent nos.2, 4 and 5 are further directed to enroll the name of the writ petitioner in the employment exchange under exempted category as land loser with effect from 27.06.2018 positively within ninety working days from the date of communication of the server copy of this order.

34. The time limits as fixed by this Court are mandatory and peremptory

35. Liberty is given to the learned advocate on record for the writ petitioner to communicate the server copies of this order to the respondent no.2, 4 and 5 for their immediate compliance. The respondent no.2, 4 and 5 are directed to act on the server copy of this order.

36. Before parting with it is made clear that since no affidavit is called for, the allegations made in the instant writ petition are deemed to have been denied.

37. With the aforementioned observations the instant writ petition being WPA 4329 of 2025 is disposed of.

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

(Partha Sarathi Sen, J.)