

06.08.2025
Court No.19
DL/Item No.-27
[Prabir/Milan]

WPA 7270 of 2025
Shrabani Sardar
versus
The State of West Bengal & Ors.

Mr. Jayanta Kumar Das,
Ms. Madhumanti Das
....for the Petitioner

Mr. Ayan Banerjee,
Mr. Amritlal Chatterjee
....for the State

Mr. Soumya Banerjee,
Ms. Suchita Banerjee,
....for the Respondent No.6

Mr. K.D. Poddar,
Mr. Amit Kumar Dutta
....for the Respondent No.7

Mr. Sujit Bhunia
....for the Respondent No. 8 to 10

1. Affidavit of service filed on behalf of the petitioner in Court is taken on record.

2. The writ petitioner, the respondent State and its instrumentalities i.e. the respondent nos.1 to 5, the respondent no.6, the respondent no.7 and respondent nos.8 to 10 are represented by their respective counsels.

3. The subject matter of challenge in the instant writ petition is the memo no.217/BKP/R dated 29.11.2024 as issued by the respondent no.5/authority

whereby and whereunder, the respondent no.5/authority communicated to the writ petitioner that since the writ petitioner was not found in effective possession of EP No.18, SP No.11, Jatindas Nagar Colony (hereinafter referred to as the, “said premises” in short) or any part of it, she is not found eligible for issuance of F.H.T.D. in her favour as per prevalent RR norms and concerned G.Os and the reasoned order dated 10.01.2024.

4. At the time of hearing, Mr. Das, learned advocate appearing on behalf of the writ petitioner draws attention of this Court to the averments as made in the instant writ petition by the present writ petitioner. It is submitted that the predecessor-in-interest i.e. the grandfather of the writ petitioner, namely, Surendra Chandra Dutta, since deceased during his lifetime had migrated from the then East Pakistan (now Bangladesh) and had settled in the said premises.

5. It is further submitted by Mr. Das that it is further case of the writ petitioner that the said Surendra Chandra Dutta died leaving behind his two sons namely, Dilip Kumar Dutta and Subrata Dutta. It is further contended that the said Dilip Kumar Dutta also died leaving behind the respondent nos.8 to 10 as his legal heirs. It is further contended by Mr. Das that it is the further case of the writ petitioner that the said

Subrata Dutta also died leaving behind his widow, Manju Dutta since deceased, his son, namely, Samaresh Dutta being the private respondent no.7 herein and the writ petitioner as his daughter.

6. At this juncture, Mr. Das took me to page no.29 and 30 of the instant writ petition being a copy of the memo dated 03.01.2013 as issued by the State Public Information Officer & Director (Land), Office of the Refugee Rehabilitation Commissioner, whereby and whereunder the father of the present writ petitioner was communicated in respect of the said property that Dilip Kumar Dutta and Subrata Dutta were found to be in occupation.

7. It is further submitted by Mr. Das that from page no.30 and 31 of the instant writ petition, it would reveal that in an earlier round of litigation at the instance of the private respondent no.7 herein, a Co-ordinate Bench of this Court by its order dated 15.02.2021 as passed in WPA 3614 of 2021 directed the respondent no.6 herein to consider the representation of the private respondent no.7 herein in accordance with law and to pass a reasoned order thereafter.

8. It is submitted that by an order dated 30.11.2021, the respondent no.4 authority herein found no merit in the representation of the respondent no.7

herein and thus rejected the representation of the private respondent no.7.

9. It is further submitted by Mr. Das that from page no.38 to 42 of the instant writ petition, it would reveal that the said order dated 30.11.2021 was challenged by the mother of the present writ petitioner and the private respondent no.7 by filing WPA 2574 of 2023, which was disposed of on 06.10.2023 by another Co-ordinate Bench of this Court whereby and whereunder, the said Co-ordinate Bench again directed the respondent no.5 authority to re-consider the representation dated 10.12.2018 and 08.11.2020 in the light of the observations made in the said order dated 06.10.2023.

10. In his next limb of submission, Mr. Das took me to page no.43 of the instant writ petition, being a copy of memo dated 15.12.2023. It is submitted by Mr. Das that from the said memo it would reveal that the respondent no.4 authority asked the writ petitioner to attend the hearing in terms of the order dated 06.10.2023 as passed by a Co-ordinate Bench of this Court, however, the outcome of such hearing was never communicated to the present writ petitioner.

11. It is further submitted by Mr. Das that pursuant to a query made by the writ petitioner, the respondent no.5/authority issued the memo under

challenge wherefrom it would reveal that the observation and/or communication as made by the respondent no.5/authority is faulty, in as much as, the same is not in accordance with the observations made by the Coordinate Bench of this Court on 06.10.2023 in WPA 2574 of 2023.

12. It is further submitted by Mr. Das that by issuing the memo under challenge, the respondent no.5/authority had made an attempt to take away a valuable right of the writ petitioner, which accrued in favour of the writ petitioner on account of death of his father. It is further submitted by Mr. Das that from the memo under challenge, the respondent no.5/authority has misconstrued the true meaning and purport of the words 'effective possession'. It is thus submitted by Mr. Das that appropriate relief/reliefs may be granted to the writ petitioner by quashing the memo dated 29.11.2024.

13. *Per contra* Mr. Banerjee, learned advocate appearing on behalf of the respondent State and its instrumentalities draws attention of this Court to the memo dated 26.05.2025 as prepared by the respondent no.5/authority which has been filed by him and which is taken on record. Attention of this Court is also drawn to the Annexure 8 to such report being a copy of the guidelines for implementation of the scheme of

conferment right and title to refugee settlers in urban areas of West Bengal dated 20.04.1987.

14. It is further submitted by Mr. Banerjee that from said guidelines, it would reveal that in order to have entitlement of Patta, apart from line of succession maintaining possession over the leased out property is also a determinating factor. It is further submitted by Mr. Banerjee that on perusal of the memo dated 29.11.2024 which is under challenge, it reveals that the present writ petitioner was not in effective possession of the said premises and, therefore, by no stretch of imagination, it may be held that there was any illegality and/or irregularity on the part of the respondent no.5/authority in issuing the memo dated 29.11.2024.

15. In course of hearing, Mr. Poddar, learned advocate appearing on behalf of the private respondent no.7 while adopting argument of Mr. Banerjee, contended that the writ petitioner is a married lady and she resides at her matrimonial home and, therefore, the present writ petitioner is not in effective possession of the said property as rightly observed by the respondent no.5/authority.

16. Mr. Bhunia, learned advocate appearing on behalf of the private respondent nos.8 to 10, however disputed the contentions as raised by Mr. Banerjee and Mr. Poddar. Mr. Bhunia has placed his reliance upon

the judgment and order dated 06.10.2023 as passed by a Co-ordinate Bench of this Court in WPA 2574 of 2023. It is submitted by Mr. Bhunia that in course of hearing WPA 2574 of 2023, it was submitted on behalf of the respondent State that the legal heirs of the occupiers are entitled to share of their predecessor-in- interest. It is thus submitted by Mr. Bhunia that since the claim of the writ petitioner is justified, appropriate relief may be granted to the writ petitioner.

17. On careful consideration of the entire materials as placed before this Court and after giving due thought over the submissions as made by the learned advocates for the contending parties, it appears to this Court that the moot question which arises for consideration before this Court is whether the respondent no.5/authority while issuing the order under challenge is at all justified in coming to a finding that the present writ petitioner is not found eligible for issuance of F.H.T.D in her favour as per prevalent RR norms, concerned GOs since the writ petitioner was not found to be in effective possession of the said premises.

18. For effective adjudication of the instant *lis*, this Court at the very outset proposes to look to the relevant portions of the aforementioned guidelines dated 20th April, 1987:-

“(V) Where lease-deed has been executed and lease-holder/holders have since expired, the

surviving members of the family, on record, may produce succession certificate or alternatively swear affidavit to the effect that they are the heirs of the deceased lease-holders and are maintaining possession of the leased property. The eligibility of such cases should be determined on verification of the contents of the affidavits as far as possible and necessary action in regard to delivery of free-hold deeds be taken accordingly. In such cases the surviving members in effective possession may be given allowed provided there is an amicable settlement among the claimants”.

19. On careful perusal of the aforementioned clause of the said guidelines, it appears to this Court that it is the policy of the Government that in order assess the eligibility for grant of Patta the Government will look to those surviving members in effective possession of land in question either jointly or separately which is determined on the basis of verification.

20. Keeping in mind the aforementioned guidelines, if I look to the factual aspects of this case, it appears to this Court that the respondent no.5/authority communicated the writ petitioner that her claim for Patta cannot be considered since she was not found to be in effective possession of the said property.

21. On being asked by this Court, Mr. Das learned advocate appearing on behalf of the writ

petitioner could not show any scrap of papers to substantiate that the writ petitioner is in effective possession of the said premises either in full or in part.

22. At this juncture, I again propose to look to the relevant portion of the judgment of the order dated 06.10.2023 as passed in WPA 2574 of 2023 by a Co-ordinate Bench of this Court. The relevant portion of this judgment and order dated 06.10.2023 is quoted herein below in verbatim:-

“The Deputy R.R. Commissioner, West Bengal, while disposing of the representation in terms of the order passed in WPA 3614 of 2021 negated the claim of Samaresh Dutta (son) of late father Subrata Dutta to the extent of 50% share in the plot-in-question observing that he had failed to establish the same. As per official records Subrata Dutta, predecessor in interest of the petitioner and his brother Dilip Kumar Dutta had equal share in the plot-in-question. It is true that Samaresh Dutta (son) of late Subrata Dutta cannot claim the entire 50% share of his late father in the plot-in-question. However, the petitioner, being the wife of Subrata Dutta, her son Samaresh Dutta and daughter Shrabani Sardar being the other legal heirs of Subrata Dutta are jointly entitled to have the half share of their predecessor-in-interest to the extent of 2 cottahs and 1 chittack in the plot-in-question”.

23. Apart from the aforementioned quoted portion, this Court has meticulously gone through the

judgment and order dated 06.10.2023 as passed by the said Co-ordinate Bench of this Court. It appears to this Court that the relevant guidelines dated 24.09.1987 as produced before this Court by Mr. Banerjee was not placed before the concerned Co-ordinate bench of this Court.

24. Undoubtedly, the predecessor-in-interest of the present the writ petitioner and the private respondent no.7 left behind his widow Majnu Dutta since deceased, the present the writ petitioner and the private respondent no.7 as his legal heirs within the meaning of Hindu Succession Act, 1956.

25. Admittedly the writ petitioner is claiming her right as accrued on account of death of her father, Subrata Dutta. However, the guidelines relating to the distribution of Patta dated 20.04.1987 clearly indicates that apart from the line of succession maintaining effective possession over the property in question is one of the main criteria for obtaining relief. The said guidelines also indicate that in order to determine the effective possession, verification is being done.

26. At this juncture, if I again look to the memo under challenge dated 29.11.2024, it reveals that the respondent no.5/authority came to factual finding on verification that the writ petitioner is not in effective possession of the said premises either in full or in part.

27. This Court sitting in a judicial review, cannot interfere with such factual finding unless any glaring illegality and/or irregularity and/or perversity is shown on behalf of the writ petitioner.

28. This Court thus finds that the decision as arrived at by the respondent no.5/authority with regard to the distribution of Patta over the said property depriving the present writ petitioner is absolutely justified and there is hardly any scope to interfere with the same.

29. The instant writ petition is devoid any merit and is thus dismissed.

30. There shall, however, be no order as to costs.

31. 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.)