

D/L- 12
05/08/2025
Ct. No.-6
Aritra

C.O. 2749 of 2025

**Damu Bag & Ors.
Vs.
State of West Bengal & Ors.**

Mr. Anindya Lahiri, Sr. Adv.
Mr. Amal Kumar Datta
Mr. Debashis Das
Mr. Bratin Suin

...for the petitioners

Mr. Shyamal Sarkar, Sr. Adv.
Mr. Debjit Mukherjee
Mr. Abhishek Jain

....for the opposite party No.3

This application under Article 227 of the Constitution of India is at the instance of the plaintiffs and is directed against a judgment and order dated July 10, 2025 passed by the learned Additional District Judge, Fast Track Court, Dubrajpur, District-Birbhum in Miscellaneous Appeal No.53 of 2024.

By the impugned judgment and order, the miscellaneous appeal was allowed thereby setting aside the order of *status quo* passed by the learned trial judge on an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure.

Mr. Lahiri, learned senior advocate appearing for the petitioner submits that the names of the predecessor-in-interest of the petitioners were duly recorded in the C.S. Record of Rights in respect of plot Nos.4 and 164 within Mouza-Bhadulia, J.L. No.58 under Police Station-Khayrasole at present Lokepur in the district of Birbhum.

He submits that the opposite party No.3 herein was/is trying to enter into the suit land and to disturb the peaceful possession of the plaintiff in respect of the suit property. He further submits that the said opposite party was/is trying to excavate the suit lands. Mr. Lahiri further submits that no document has been produced by the opposite party No.3 in support of their contention that the possession of plot No.164 was handed over to the opposite party No.3.

Mr. Sarkar, learned senior advocate appearing for the opposite party No.3 submits that the plot No.164 is a vested land and plot No.4 is a forest land which belongs to the Forest Department and subsequently it has been handed over to the opposite party No.3 for the purpose of excavating the coal for its power plant. Mr. Sarkar drew the attention of the Court to the description of the mine at Gangaramchak – Bhadulia and submits that the latitude and longitude of such mine has been mentioned in the annexure and plot No.164 falls within the aforesaid area.

Heard the learned advocates for the respective parties and perused the materials placed.

The petitioners herein filed a suit for declaration of title and for permanent injunction restraining the defendants/opposite parties and their men, agents and employees from disturbing the peaceful possession of the petitioners in respect of the suit land being plot Nos.4

and 164. The case made out in the plaint is that the C.S. Plot No.4 and 164 total measuring about 5.85 acres were duly recorded in the name of Nemai Bag having 8 annas share and Baridbaran Bag having 8 annas share jointly. After their death, the plaintiffs being their heirs and legal representatives have inherited the aforesaid plots of land and are in possession of the same.

The petitioners state that the suit plots have never been acquired under any provisions of a statute and the petitioners are still in possession of the suit lands and the defendants/opposite parties are trying to disturb the peaceful possession of the petitioners in respect of the aforesaid plots of land.

However, from the plaint this Court finds that though it has been claimed that after the death of the ancestors of the plaintiffs they were living there but the petitioners have admitted that they failed to record their names in the L.R. Record of Rights as per the provisions of the West Bengal Land Reforms Act.

The defendant No.3/opposite party No.3 contested the application for injunction before the learned trial judge. However, the learned trial judge allowed the application under Order 39 Rule 1 and 2 of the Code of Civil Procedure thereby passing an order of *status quo* with regard to nature, character and existing possession of the suit property till the disposal of the suit.

Being aggrieved of such order, the opposite party No.3 preferred an appeal being Miscellaneous Appeal No.53 of 2024 and the learned judge of the First Appellate Court allowed the miscellaneous appeal thereby setting aside the order of *status quo* passed by the learned trial judge.

From the documents placed before this Court which were part of the records before the learned trial judge as well as appellate court, this Court finds that suit plot No.4 measuring about 1.57 acres is a forest land and the same was recorded in the name of the Forest Department, Government of West Bengal. The L.R. Record of Rights also reveals that plot No.164 measuring about 2.36 acres is recorded in the name of the Collector of State of West Bengal under Khatian No.1. Thus the plot No.164 is a vested land. It further appears from the office order dated June 4, 2019 that the Forest Range Officer, Dubrajpur Range handed over the physical possession of the schedule land in favour of the opposite party No.3 and the Officers of the opposite party No.3 acknowledged taking over the possession of plot No.4 from the Forest Department on June 7, 2019.

Even if it is accepted that there is no document to show that plot No.164 has been handed over to the opposite party No.3, but the fact remains that the said plot is a vested land and, therefore, the petitioner cannot claim any right thereon at this stage. No material has

been produced to show that the order of vacating had been set aside by the appropriate forum.

Thus, it *prima facie* appears to this Court the plaintiffs/petitioners have failed to prove that they have a *prima facie* case to go for trial in respect of the aforesaid plots of land. Document reveals that the possession of the plots of land has already been handed over to the opposite party No.3. Thus the balance of convenience and inconvenience is against the plaintiffs. The purpose for which the plots have been permitted to be used by the opposite parties are no doubt a public purpose.

The learned judge of the Appellate Court took note of the aforesaid documents and correctly applied the well-settled proposition of law that in case of conflict between two Record of Rights the current Record of Rights will prevail over the previous one and the current Record of Rights stands in the name of the Collector of State of West Bengal and the defendant No.3/opposite party No.3 has been permitted to carry out the work of excavation on the said plot of land.

For all the aforesaid reasons this Court is not inclined to interfere with the judgment and order dated July 10, 2025, passed by the learned Additional District Judge, Fast Track Court, Dubrajpur, District-Birbhum in Miscellaneous Appeal No.53 of 2024.

At this stage, Mr. Lahiri, learned senior advocate appearing for the petitioner submits that the hearing of the suit be expedited.

In the light of the submissions made by Mr. Lahiri, learned senior advocate for the petitioner, CO 2749 of 2025 stands disposed of by requesting the learned Civil Judge (Jr. Div.), Dubrajpur, District-Birbhum to make an endeavour to dispose of the Title Suit No.123 of 2023 as expeditiously as possible without granting any unnecessary adjournments to either of the parties.

There will be no order as to costs.

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

(Hiranmay Bhattacharyya, J.)