

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Uday Kumar

W.P.L.R.T. No. 123 of 2025

Sri Pradip Kumar Khatua and Ors.
-vs-
State of West Bengal and Ors.

For the petitioners. : Mrs. Usha Maiti,
Mr. Sukanta Das,
Mr. Sakya Maity, Advs.

For the respondents : Sk. Md. Galib, Ld. Sr. Govt. Adv.,
Ms. Munmun Ganguly,
Mr. Bishnupada Jana, Advs.

Heard on : August 18, 2025.

Judgment on : August 18, 2025.

Sabyasachi Bhattacharyya, J.:

1. Affidavit of service filed today be kept on record.
2. The matter has a chequered history, relating back to the year 1954. On May 28, 1954, the father/predecessor-in-interest of the original applicants, namely Gour, Nityananda, Bankim and

Kanailal and the wife of the settlor, Kshetra Mohan, namely Kaushallya, transferred the disputed property in the said applicants' favour by way of a registered deed of settlement. The present writ petitioners are the said transferees and/or their legal heirs.

3. The said transfers were sought to be challenged in a proceeding under Section 5A of the West Bengal Estates Acquisition Act, 1953 and the deeds were cancelled in such proceeding. A challenge was preferred against such cancellation, which succeeded.
4. The appeal preferred by the transferees was allowed, thereby holding that the transferees were, in any event, in possession of the lands even before their names were recorded in the deed of settlement as being in possession and so the transfer was bona fide.
5. That apart, it was also observed by the appellate authority that a notification dated April 10, 1956, which was relied on by the State, came into force subsequent to the execution of the deed of settlement. Previously, the rigours of Section 5A were not applicable to raiyats but only by virtue of the said notification was the notion of Section 5A extended to raiyats. As such, the appellate authority held that the notification (and

consequently Section 5A) was not applicable to the transferees, who were raiyats.

6. The matter came up in a challenge preferred by the State before this court in a civil revisional application. The civil revisional application, however, abated in view of no steps for substitution having been taken on the demise of the opposite party no. 2 therein.
7. Thus, the order of the appellate authority, setting aside the cancellation of the said registered deed of settlement under Section 5A, attained finality.
8. Subsequently, a writ petition was moved by the transferees, giving rise to Civil Order no. 9495(W) of 1982, which was disposed of by an order dated October 11, 1982, directing the settlement officers concerned to correct the Records of Rights in pursuance of the judgment and decree passed in the proceeding under Section 5A as early as possible, preferably within two months from that date.
9. Such order not being complied with, another writ petition had to be preferred by the transferees, giving rise to Civil Order no. 3413(W) of 1992, which was disposed of by an order dated April 21, 1992 where the learned Single Judge observed that the representation of the writ petitioners in that regard should

be disposed of within a period of two months from the date of communication of the order “after giving the petitioners an opportunity of hearing and placing relevant documents, by passing a reasoned order”.

10. In similar tune, another learned Single Judge, by an order dated June 7, 1996 passed in CO 4597(W) of 1996, reiterated such direction by directing the B.L. & L.R.O. to dispose of the representation of the transferees by a reasoned order, after giving due opportunity of hearing to the parties concerned, within seven weeks from the date of communication.
11. The saga of the transferees' travails did not end there. A miscellaneous case, bearing Miscellaneous Case no. 22 of 2003, was initiated as per the directions of the different Benches of this court for correction of the Records of Rights. However, subsequently, the records of the said miscellaneous case went missing, which prompted the Land Reforms and Tenancy Tribunal, by an order dated December 12, 2012 to direct the miscellaneous case to be concluded, which, however, could not be complied with, in view of the records not being traceable.
12. Accordingly, a fresh miscellaneous case bearing no. 2 of 2013 was initiated. In the present writ petition, the entire order sheet

of the case has been annexed, from which we find that the miscellaneous case was treated as a proceeding under Section 44(2a) of the West Bengal Estates Acquisition Act, 1953 and upon compliance of due formalities and service of notice etc., by an order dated February 6, 2014, the B.L. & L.R.O. came to the conclusion that the case was disposed of without record corrections as applied by the applicants therein. By way of reasons, the B.L. & L.R.O. cited non-recording of any such order for record correction in any of the orders passed by this court or by the appellate authority while disposing of the proceeding arising out of the Section 5A cancellation.

13. Being aggrieved by the same, a challenge was preferred by way of OA 803 of 2014 before the Land Reforms and Tenancy Tribunal. By the impugned judgment dated February 12, 2025 passed in the said proceeding, the learned Tribunal, despite spending 22 pages in narrating the entire background of the case, arguments and judgments cited by all parties, dismissed the proceeding as not maintainable in view of availability of the alternative remedy of appeal under Section 44(3) of the West Bengal Estates Acquisition Act, 1953.

14. The present writ petition has been preferred against the said order of the Tribunal.
15. Learned counsel appearing for the petitioners argues that after the proceeding under Section 5A of the 1953 Act culminated in the appellate forum setting aside the cancellation of the deed of settlement executed by Kshetra Mohan Khatua, there was no scope of reopening the said issue after almost half a century.
16. It is further argued that in terms of the directions of different Benches of this court, it was the incumbent duty of the B.L. & L.R.O. to effect the necessary corrections pursuant to the order of the court. It is argued that the proceeding ought not to have been treated as one under Section 44(2a) of the 1953 Act but as the compliance / implementation of the directions of this court. As such, no appeal lay under Section 44(3) of the 1953 Act.
17. Learned Senior Government Advocate, while opposing the writ petition, submits that there was no other option before the B.L. & L.R.O. but to take up the application for correction or rectification of the Records of Rights as one under Section 44(2a) of the 1953 Act, since that is the specific provision which confers such power on the B.L. & L.R.O.

18. Learned Senior Government Advocate draws the attention of this court to the subsequent orders of the learned Single Judges of this court where the representation of the petitioners were directed to be considered by passing a reasoned order after giving due opportunities of hearing to the parties, as such, in consonance with Section 44(2a) of the 1953 Act.
19. Thus, it is argued that the proceeding was one under Section 44(2a) and an appeal was maintainable under Section 44(3). By placing reliance on the judgment of the Supreme Court in *Raj Kumar Shivhare vs. Assistant Director, Directorate of Enforcement and Anr.*, reported at (2010) 4 SCC 772, learned Senior Government Advocate argues that the jurisdiction of the High Court under Article 226 is not barred by availability of alternative remedies; however, it is equally obvious that the court would take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdictions consistent with the provisions of the enactment.
20. Learned Senior Government Advocate also places reliance on *Union of India vs. Guwahati Carbon Limited* reported at (2012) 11 SCC 651 where it was observed, by placing reliance on a previous judgment passed by the Supreme Court in *Whirlpool Corporation vs. Registrar of Trade Marks*, reported at (1998) 8

SCC 1, that the High Court has imposed upon itself certain restrictions, one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction.

21. Learned Senior Government Advocate also cites an unreported judgment in the matter of *Kartick Chandra Mondal & Ors. vs. Badal Kumar Das & Ors.* where the Supreme Court, *inter alia*, observed that the provision of Section 10(3) of the Act has not been correctly interpreted by the High Court in the said case and that sub-clauses (a) and (b) of Section 10(3) should be read disjunctively. It was opined by the Supreme Court that the interest of justice would be served if the appellants were relegated to the remedy of availing an appeal under Section 44(3) of the 1953 Act.
22. It may be noted here that learned counsel for the petitioners has relied on a coordinate Bench judgment of this court in the matter of *Basudev Mondal & Ors. vs. State of West Bengal & Ors.* reported at (2005) 4 CHN 184 *inter alia* for the proposition that if there has already been an adjudication under Section 5A of the 1953 Act, the said issue cannot be reopened under Section 44(2a) of the said Act.

23. Upon a careful consideration of the arguments of the parties, we find that the appellate authority's order setting aside the cancellation of the deed of settlement executed by Kshetra Mohan Khatua in favour of his four sons under Section 5A of the 1953 Act has attained finality, with the abatement of the challenge filed against the same by the State. Thus, the said issue cannot be reopened at this stage.
24. We also do not find any mention in any of the proceedings as to any challenge being thrown before the competent civil court against the registered deed of settlement in question by any other heir of the settlor or any interested third party at any point of time. Thus, by dint of the said deed of settlement, which was not cancelled under Section 5A of the 1953 Act, it is the transferees and their heirs who have attained an indefeasible right in the property in question. Hence, there does not arise any question of there being any further interested party to the proceeding for correction of the Records of Rights, pursuant to the deed of settlement, in the absence of any challenge to the said deed before a competent civil court and/or any other forum known to this court or apprised to this court.

25. The first direction by the writ court pursuant to the appellate authority's order setting aside the cancellation of the deed of settlement under Section 5A was passed in Civil Order no. 9495(W) of 1982 on October 11, 1992, whereby the learned Single Judge straightaway directed the settlement officers concerned to correct the Records of Rights in pursuance of the judgments passed in the Section 5A proceeding, without leaving it open for any further adjudication to be done. However, learned counsel for the State has a point in arguing that the scope of the said direction was interpreted by the subsequent orders of two learned Single Judges of this court, respectively in Civil Order no. 3413(W) of 1992 and in CO 4597(W) of 1996, whereby the B.L. & L.R.O. was directed to consider the representation of the petitioners to correct the Records of Rights by passing a reasoned order and after giving due opportunity of hearing to the parties concerned.
26. Such direction, even if construed to be in the light of Section 44(2a) of the 1953 Act, was duly complied with by the B.L. & L.R.O. in Miscellaneous Case no. 2 of 2013, as evident from the order sheet of the said proceeding. Only upon due communication and upon appropriate notices being served, the matter was taken up finally, but the B.L. & L.R.O., acting

entirely *de hors* his jurisdiction, merely observed that since there was no specific direction by the writ court to correct the Records of Rights or any observation in that regard in the appellate authority's order arising out of the order under Section 5A of the 1953 Act, the B.L. & L.R.O. refused to carry out such correction, thereby giving a go-by to the tenor of the repeated directions of different Benches of this court and the fact that the Section 5A cancellation was set aside, which has attained finality.

27. Even if the proceeding was considered to be one under Section 44(2a) of the 1953 Act, no option was left before the B.L. & L.R.O., in view of the registered deed of settlement staring at his face and since the cancellation under Section 5A of the said deed was set aside, which has attained finality, and in the absence of any challenge before a competent Civil court against the said registered deed of settlement from any corner, but to correct the Records of Rights in the name of the transferees.
28. Having not done so, the B.L. & L.R.O. has committed a palpable jurisdictional error.
29. Since the order of the B.L. & L.R.O. has merged with the order of the Tribunal, we are in seisin of the order of the B.L. &

L.R.O. as well. Undoubtedly, it is trite law that Article 226 of the Constitution of India is the power of judicial review flowing from the Constitution and all statutory bars of jurisdiction under statutes subservient to the Constitution cannot circumscribe or curtail such right of judicial review, which is a part of the basic structure of the Constitution. It is also equally true that the High Court imposes self-imposed restrictions in the event it so feels necessary, if an alternative remedy is available. However, such self-imposed restriction should not become an excuse for the High Court to shirk its duty and shut its eyes where there is a palpable error of jurisdiction and the parties are suffering for over half a century due to no fault of their own. Relegating the parties to an appeal under Section 44(3) of the 1953 Act at this stage, when all the rights in favour of the writ petitioners have been conclusively decided by several forums, would be a gross injustice. As such, in order to correct the *ex facie* error committed by the B.L. & L.R.O., we decide to invoke our jurisdiction under Article 226 of the Constitution of India and set aside such order.

30. Accordingly, WPLRT 123 of 2025 is allowed on contest, thereby setting aside the judgment and order dated February 12, 2025 passed by the West Bengal Land Reforms and Tenancy Tribunal in OA 803 of 2014 (LRTT) as well as Order

no. 9 dated February 6, 2014 passed by the B.L. & L.R.O., Egra-II in Miscellaneous Case no. 2 of 2013 and directing the said B.L. & L.R.O. to immediately modify / correct the Records of Rights by reflecting the name of the transferees in the registered deed of settlement executed by Late Kshetra Mohan Khatua on May 28, 1954 and/or the heirs and legal representatives of the said transferees, in the event of demise of any of the transferees in the meantime, being the writ petitioners herein, within a period of three weeks from the date of communication of this order to the concerned B.L. & L.R.O.

31. The parties, as well as all concerned, shall act on the server copy of this order for the purpose of compliance, without insisting unnecessarily on production of the certified copy of the same.

32. No order as to costs.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)