

Form No. J(2)

In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar

W.P.L.R.T. 142 of 2025

**Amar Nath Am and others
Vs.
The State of West Bengal and others**

For the petitioner	:	Mr. Shyama Prasad Purkait Mrs. Moumita Mandal
For the State	:	Mr. Sk. Md. Galib Ms. Sujata Mukherjee
Heard on	:	10.09.2025
Judgment on	:	10.09.2025

Sabyasachi Bhattacharyya, J.:-

1. The present challenge has been preferred against an order of the Tribunal whereby the learned Tribunal dismissed the original application filed by the writ petitioners.
2. The Original Application arose from the inaction on the part of the BL&LRO to dispose of an application of the applicants, for exchange of a part of the land initially sought to be retained by the predecessor-in-interest of the writ petitioners in connection a vesting under Section 6 of the West Bengal Estates Acquisition

Act, 1953 (in short “1953 Act”) for other land now offered by the petitioners.

3. In brief, the predecessor-in-interest of the writ petitioners, the original intermediary, had filed a ‘B’ form, thereby disclosing his option of retention of lands, to be excluded from the purview of vesting under Section 4 of the 1953 Act.
4. Thereafter, an amendment was sought to the said choice of lands sought to be retained, due to certain inadvertent omissions, which was permitted in the year 1979 by the respondent authorities.
5. Thereafter, the present writ petitioners, the successors-in-interest of the original intermediary, again made a representation before the concerned BL&LRO stating therein that by mistake, the *bastu*, that is, the dwelling house of the writ petitioners, was surrendered by not including the said property within the list of lands sought to be retained in the Form ‘B’. The writ petitioners now seek to retain the said *bastu* property and offer other land, originally retained by their predecessor, for vesting.
6. The said representation having not been disposed of by the concerned BL & LRO, the petitioners moved the Tribunal.

7. The learned Tribunal dismissed the original application, primarily on the ground that the predecessor-in-interest of the writ petitioners had already exercised such option.
8. Learned counsel appearing for the writ petitioners cites *West Bengal Govt. Employees (Food & Supplies Coop. Housing Society Ltd. and others Vs. Sulekha Pal (Dey) and others* reported at (2003) 9 Supreme Court Cases 253 for the proposition that there cannot be any merit in an objection based on laches and delay in respect of retention. It was held by the Hon'ble Supreme Court that the authorities of the State had not lawfully and factually dispossessed the petitioners therein, who were the heirs of the intermediary, of the *khas* possession of the lands in question. The right to vindicate and protect their interest in the lands-in-question in terms of the enabling provisions of the 1953 Act, it was held, would enure till they are dispossessed in the manner envisaged and by observing the formalities contemplated under the statutory provisions.
9. Learned Senior Government Advocate controverts such argument and submits that an application, practically seeking an exchange of the properties originally retained, that too by the heirs of the original intermediary, after a prolonged delay, ought not to be entertained. It is contended that since the petitioners'

predecessor-in-interest had already given such option, the same cannot be reopened after so many years.

10. Learned Senior Government Advocate cites a judgment reported at 1984(1) CLJ 161 (*Krittibas Bhattacharya and others Vs. State of West Bengal and others*), a judgment passed by a learned Single Judge of this Court, in support of such contention.
11. Learned Senior Government Advocate next cites a judgment reported at (1997) 5 Supreme Court Cases 317 (*State of W.B. and another Vs. Arun Kumar Basu and another*) as well as (2001) 5 Supreme Court Cases 664 (*Tandon Brothers vs. State of W.B. and others*), for the proposition that the vesting is complete upon publication of notification under Section 4(1) of the 1953 Act.
12. It is submitted that thereafter, the heirs of the original intermediary cannot, at any point of time, seek an amendment to the original properties sought to be retained.
13. Learned Senior Government Advocate next cites a judgment in the case of *Rajbala Barik Vs. State of West Bengal* reported at (2017) 4 CHN 190, where a Full Bench of this Court had held that a post-vesting transferee cannot come within the ambit of the expression “intermediary”.
14. Learned counsel also cites an unreported judgment of this court in WPLRT 48 of 2011 in support of the contention that once an option for retention had been given, the heirs of the original

intermediary cannot come after a prolonged delay (in the said case seventeen years) seeking an interchange of the vested land.

- 15.** However, we are unable to agree with the contention of the learned Senior Government Advocate.
- 16.** Although the propositions laid down in *Arun Kumar Basu (supra)* and *Tandon Brothers (supra)* as well as in *Rajbala Barik (supra)*, to the extent that vesting happens as soon as a notification under Section 4(1) of the 1953 Act is published, is well-settled, the Supreme Court, in *Sulekha Pal (Supra)*, by considering the then pre-existing judgments governing the field, came to the conclusion that the right of retention is not curtailed before *khas* possession of the lands-in-question was taken, under Section 10(2) of the 1953 Act.
- 17.** As such, the position of law in the light of *Sulekha Pal (supra)*, is that despite the land having vested in the State with the publication of the notification under Section 4 of the 1953 Act, the right of retention remains with the intermediary and his heirs till *khas* possession of the vested lands are taken by the State.
- 18.** Insofar as *Rajbala Barik (supra)* is concerned, the Full Bench was dealing a post-vesting transferee, who was held not to come within the ambit of the expression “intermediary”.

- 19.** The logic was that the right of retention arises simultaneously with the vesting and can be exercised immediately thereafter. However, a transferee after the vesting has already taken place cannot claim such right.
- 20.** Such proposition, as such, is not applicable to the present case since the writ petitioners are the heirs of the original intermediary and claim through him by inheritance and not post-vesting transferees.
- 21.** The propositions laid down in *Arun Kumar Basu (supra)* and *Tandon Brothers (supra)* cannot be questioned. Even as per the scheme of the 1953 Act, particularly in view of Sections 4 and 5 thereof, vesting occurs as soon as the notification under Section 4 (1) is published.
- 22.** However, as held above, for the specific purpose of retention, *Sulekha Pal* laid down that there is some dilution in the concept of vesting insofar as the right of the intermediary and his heirs to retain land is concerned.
- 23.** In *WPLRT 48 of 2011*, the coordinate Bench proceeded on the premise that there was no mistake or omission which could have prompted an amendment of the list of originally retained lands.
- 24.** However, in the present case, the writ petitioners have made a representation on the specific ground that by the mistake their

bastu land was wrongly omitted from the list of retained properties.

- 25.** In consonance with the view taken in *Sulekha Pal (supra)*, we are of the opinion that not only the intermediary but his heirs are entitled to retain the lands of their choice.
- 26.** Such choice remains till possession of the vested property is taken by the State under Section 10(2) of the 1953 Act, although notionally the vesting occurs with the publication of the notification under Section 4(1).
- 27.** In the present case, even the respondent authorities have allowed a previous amendment in the year 1979, thereby conceding to such proposition of law. Also, it is nobody's case that possession in terms of Section 10 (2) of the 1953 Act has already been taken.
- 28.** In *Krittibas Bhattacharya (supra)*, the right of the intermediary (or his heirs) to amend their original list of lands to be retained was recognized. If allowed, such amendment would relate back to the date of submission of the original 'B' Form.
- 29.** In view of the above, we are of the considered opinion that the learned Tribunal acted without jurisdiction in dismissing the application of the writ petitioners for changing their option in respect of the lands to be retained by them on the ground that

the predecessor-in-interest of the petitioners had already exercised such option.

- 30.** Accordingly, WPLRT 142 of 2025 is allowed on contest, thereby setting aside the judgment dated January 27, 2025 passed by the Third Bench, West Bengal Land Reforms and Tenancy Tribunal in O.A. No. 4151 of 2022 (LRTT).
- 31.** The concerned BL & LRO, that is, the respondent no.3 shall allow the representation of the writ petitioners, as annexed at page-48 of the writ petition, thereby permitting the writ petitioners to retain their *bastu* land in exchange of other land which was originally retained by their predecessor-in-interest, subject to the total quantum of land retained by them being within the statutory ceiling limit, by treating such alteration to relate back to the date of submission of the original 'B' Form by their predecessor-in-interest, the original intermediary.
- 32.** There will be no order as to costs.
- 33.** Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)