

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

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

WPLRT No. 146 of 2015

Sm. Aroti Paul and Another
Vs.
The State of West Bengal and others

For the petitioners	:	Mr. Supratim Dhar, Ld. Sr. Adv., Mr. Jagabandhu Roy, Mr. Balailal Sahoo ... Advocates
For the State	:	Mr. Lalit Mohan Mahata, Ld. AGP, Mr. Rudranil De ... Advocates
Heard on	:	12.08.2025 & 20.08.2025
Reserved on	:	20.08.2025
Judgment on	:	27.08.2025

Sabyasachi Bhattacharyya, J.:-

1. The writ petitioners had challenged an order dated July 13, 2015 passed by the First Bench of the West Bengal Land Reforms and Tenancy Tribunal in O.A. 306 of 2015 (LRTT), whereby the petitioners' application

for a direction on the Block Land and Land Reforms Officer (BL & LRO), Goghat – II at Kamarpukur, District – Hooghly, regarding permission to give a fresh option to surrender 84 decimals of land in Mouza - Idalbati in plot no. 1704 in exchange of vested lands being 56 decimals in plot no. 6843 and 28 decimals in plot no. 6932, has been turned down.

2. Learned senior counsel appearing for the writ petitioners argues that initially a determination was made by the concerned BL & LRO on September 3, 1985 in respect of the land of the predecessor-in-interest of the petitioner to be vested with the State under the West Bengal Land Reforms Act, 1955 (hereinafter referred to as “the 1955 Act”). However, one of the married daughters of the original *raiyyat* was excluded from the family of the *raiyyat* for the purpose of calculation of the ceiling limit, in derogation of Section 14K(c) of the 1955 Act. Whereas the date of vesting was February 15, 1971, which was to be taken as the cut-off date under Chapter – II B of the 1955 Act for the purpose of calculation of the ceiling limit, the said daughter was married in the year 1977 and, as such, was erroneously excluded from the calculation.
3. Learned senior counsel next argues that there was no independent enquiry under Section 14N of the 1955 Act, read with Rule 14B of the West Bengal Land Reforms Rules, 1965 (for short, “the 1965 Rules”), for the purpose of calculating as to what portion of the vested land was irrigable and what was not. The composite adjudication under Section 14T(3) of the 1955 Act, without a prior independent adjudication under Section 14N, it is argued, deprived the petitioners’ predecessor from

preferring a challenge under Section 14-O against such adjudication. Since separate appeals are provided for in the statute, under Section 54 against an order under Section 14T (3) and under Section 14-O against orders under Section 14N of the 1955 Act, it is argued that non-adjudication under Section 14N vitiated the determination.

4. Thus, the said adjudication ought to have been reopened and a fresh option of retention permitted to be given by the petitioners.
5. It is further argued that the original *raiyyat* died on June 17, 1990, whereas the vesting proceeding was pending even thereafter. Learned senior counsel appearing for the writ petitioners contends that the original order of vesting was challenged by way of a writ petition, which was subsequently transferred to the Tribunal but was later on dismissed for default. During the pendency of the writ petition, there was a stay order operating, due to which the vesting proceeding was stalled. It is submitted that upon transfer to the Tribunal, by operation of law, the stay order expired after the period stipulated under the West Bengal Land Reforms and Tenancy Tribunals Act, 1997 (in brief, “the 1997 Act”). It is argued that a vesting proceeding is not concluded till possession is taken under Section 14SS of the 1955 Act. The continuance of the vesting proceeding after the demise of the *raiyyat* was vitiated in law and a nullity, being in the name of a dead person.
6. It is next contended by the petitioners that the dismissal for default of the writ petition challenging the vesting, subsequently transferred to the Tribunal, could not operate as *res judicata*.

7. Learned senior counsel cites *Reazuddin Ahmed – versus – State of West Bengal & Ors.*, reported at 1982 (1) CLJ 434, and *Haidar Ali Mondal v. State of West Bengal and Ors.*, reported at 88 C.W.N. 536, in support of the contention that there has to be an adjudication under Section 14K(d) of the 1955 Act prior to passing a vesting order to find out what portion of the land is comprised of irrigated area. In absence of the same, the vesting itself is vitiated.
8. Learned senior counsel cites *Gokul Chandra Pal – versus – State of West Bengal & Ors.*, reported at (1988) 2 CHN 41, in order to support the contention that the relevant date for a determination under Section 14T(3) of the 1955 Act is the date on which Chapter – II B came into force. Thus, the date of consideration ought to have been taken to be the date of vesting and, as such, the exclusion of the daughter of the original *raiyat*, who was married after the date of vesting, was bad in law.
9. Learned senior counsel cites *Surya Dev Rai – versus – Ram Chander Rai and others*, reported at (2003) 6 SCC 675, to argue the scope of Article 226/Article 227 of the Constitution of India and the interference thereunder.
10. It is contended that before coming to a conclusion finally as regards vesting, an opportunity ought to have been given to the *raiyat* to amend the appropriate form, for which proposition learned senior counsel cites *Krittibus Bhattacharya and Others – versus – State of West Bengal and Others*, reported at (1983-84) 88 CWN 485.

11. Learned senior counsel lastly cites *Satyadhyan Ghosal and others – versus – Deorajin Debi (Smt) and Another*, reported at AIR 1960 SC 941, to explain the concept of *res judicata*. A dismissal for default, and not on merits, it is argued, cannot operate as *res judicata*. However, it is contended that the learned Tribunal proceeded on the premise that since the previous Tribunal application of the writ petitioners' predecessor was dismissed for default, the adjudication could not be reopened, which is erroneous and contrary to the settled position of law, according to the petitioners.
12. Learned Additional Government Pleader (AGP) controverts the above submissions and argues that upon an adjudication under Section 14T(3) being done (in the present case, on September 3, 1985) the vesting is concluded. The demise of the original *raiyat* in 1990, subsequent thereto, does not vitiate such vesting retrospectively.
13. Mere, non-taking of possession under Section 14SS does not keep the vesting process open, it is submitted.
14. Learned AGP argues that an exhaustive exercise of giving several opportunities of hearing to the *raiyat* was undertaken by the BL & LRO. Innumerable hearing dates were fixed, but the original *raiyat* avoided the same and ultimately, upon giving adequate hearing to the *raiyat*, the determination under Section 14T (3) was done.
15. Learned AGP further contends that vesting happens by operation of law and is not dependent on possession being taken and, as such, stood concluded in the present case on the date of vesting itself.

16. Since the previous Tribunal application of the writ petitioners' predecessor-in-interest was dismissed for default, the said chapter, it is argued, cannot be reopened.
17. Learned AGP relies on *Bharat Singh and others – versus – State of Haryana and others*, reported at AIR 1988 SC 2181, for the proposition that both facts and evidence are to be pleaded in a writ petition, unlike a suit. In the present case, no evidence of the allegations made is found from the writ petition or its annexures and, as such, the present writ petition ought to be dismissed.
18. Heard learned counsel for the parties. Upon consideration of the above contentions, this Court arrives at the following **FINDINGS**:

(i) **Non-consideration of Section 14K and Section 14N of the 1955 Act**

19. The admitted fact of the case, as evident from the annexures to the writ petition as well, is that by an order dated September 3, 1985, the concerned Revenue Officer adjudicated the portion of the land of the original *raiyat*, the predecessor-in-interest of the writ petitioners, which was to be vested and the portion thereof which was to be retained. The original *raiyat* was given hearing before doing so. It is reflected in the order itself that a determination under Section 14K (c) of the 1955 Act was done prior to coming to the findings in the said order. The specific adjudication of irrigated and non-irrigated areas was undertaken while doing so, which is also evident from the said order itself. Thus, it cannot

be said that no opportunity of hearing was given to the *raiyat* or that there was no adjudication under Section 14N or Section 14K prior to passing the order under Section 14T(3).

- 20.** Relying on the principles laid down in *Bharat Singh (supra)*¹, it may very well be said that unlike a suit, where evidence need not be pleaded, a writ petition is a self-sufficient proceeding, where both pleadings and the evidence are required to be averred and annexed. We do not find anything on record to substantiate the allegations of the writ petitioners that their predecessor, the original *raiyat*, was not given adequate opportunity of hearing. Rather, the contrary is evident from the order-sheet of the said proceeding, annexed to the writ petition itself.

(ii) Effect of demise of original raiyat in the year 1990

- 21.** The next question which arises is whether the demise of the original *raiyat* on June 17, 1990 vitiated the vesting. The vesting order was passed on September 3, 1985. Thus, under Section 14S of the 1955 Act, the vesting stood complete on the said date, upon an adjudication being made compositely under Section 14T(3) as well as Section 14K(c) and Section 14K(d), read with Section 14N, of the 1955 Act. The very language of Section 14SS of the said Act makes it abundantly clear that the vesting occurs much prior to the possession being taken. Sub-section (1) of Section 14SS begins with the expression “Upon vesting of any land in the State under any of the provisions of this Act, ...”. Thus,

1. *Bharat Singh and others – versus – State of Haryana and others, reported at AIR 1988 SC 2181*

the vesting precedes the possession. Hence, it cannot be argued that unless possession is taken, the process of vesting is not complete. The entire scheme of the 1955 Act indicates that the vesting is complete on an adjudication under Section 14T(3), by operation of Section 14S of the said Act.

- 22.** Hence, the subsequent demise of the original *raiyat* in the year 1990 does not vitiate the vesting in any manner.

(iii) Effect of previous challenge

- 23.** The order of vesting was specifically challenged by the original *raiyat* by way of a writ petition, which was subsequently transferred by operation of the 1997 Act to the Tribunal. Upon the said application being dismissed for default by the Tribunal for non-appearance of the original *raiyat*, the proceeding came to an end.
- 24.** The principle laid down in *Satyadhyan Ghosal (supra)*² is indisputable, to the effect that unless there is an adjudication on merits, the principle of *res judicata* does not come into play. However, although it cannot be said that the challenge to the vesting order is barred by *res judicata*, the dismissal for default of the Tribunal application debars the writ petitioners from challenging the self-same vesting order, since they claim thorough the original *raiyat*, by operation of the principle of Order IX Rule 9 of the Code of Civil Procedure.

2. *Satyadhyan Ghosal and others –versus – Deorajin Debi (Smt) and Another, reported at AIR 1960 SC 941*

- 25.** It is well-settled that where there is no specific provision or rules governing writ petitions in a particular field, the principles of the Code of Civil Procedure apply to writ petitions or applications akin to it.
- 26.** Even otherwise, no challenge has been preferred to the vesting orders subsequently. Thus, the question of *res judicata* on such count is academic.

CONCLUSIONS

- 27.** Till date, the vesting order dated September 3, 1985 has not been challenged either by the original *raiya*t or by the writ petitioners subsequent to the dismissal of the previous dismissal of the previous challenge to the same for default. Hence, the vesting has attained finality and cannot now be reopened on either the ground of non-compliance of Section 14N, read with Section 14K(d), or Section 14K(c) of the 1955 Act.
- 28.** Accordingly, not only does the previous dismissal of the Tribunal application stand in the way of a further challenge to the vesting order, in fact, no further challenge has been preferred at all. Thus, the vesting order has attained finality and cannot now be reopened on any ground whatsoever.
- 29.** Although Section 14T (3A) of the 1955 Act permits the Revenue Officer to reopen a final determination under Section 14T (3) on the parameters laid down in sub-Section (3A), such an option is not available to the *raiya*t.

30. In view of the above observations, *Reazuddin Ahmed (supra)*³ and *Haidar Ali Mondal (supra)*⁴ are not germane in the present case, since we have already held that the issue of vesting cannot be reopened.
31. Even otherwise, the order of vesting itself reflects clearly that the Revenue Officer fully considered the provisions of Section 14K(c) and Section 14N, read with Section 14K(d), of the 1955 Act while passing the order dated September 3, 1985.
32. Insofar as *Krittibus Bhattacharya (supra)*⁵ is concerned, the said case arose from a civil suit. The learned Single Judge of this Court dwelt on the scope of amending Form-B under the West Bengal Estate Acquisition Rules, 1954 and dealt with the scope of adducing evidence in a suit. We do not find any manner of application of the proposition laid down therein in the present case.
33. *Surya Dev Rai (supra)*⁶ merely lays down the general scope of interference under Articles 226 and 227 of Constitution of India and do not have any direct bearing upon the present consideration.
34. In view of the above discussions, we do not find any illegality or irregularity in the impugned order of the Tribunal.
35. Accordingly, WPLRT No. 146 of 2015 is dismissed on contest, thereby affirming the judgment dated July 13, 2015 passed by the First Bench,

3. *Reazuddin Ahmed – versus – State of West Bengal & Ors., reported at 1982 (1) CLJ 434*

4. *Haidar Ali Mondal v. State of West Bengal and Ors., reported at 88 C.W.N. 536*

5. *Krittibus Bhattacharya and Others – versus – State of West Bengal and Others, reported at (1983-84) 88 CWN 485*

6. *Surya Dev Rai – versus – Ram Chander Rai and others, reported at (2003) 6 SCC 675*

West Bengal Land Reforms and Tenancy Tribunal in O.A. 306 of 2015 (LRTT).

- 36.** There will be no order as to costs.
- 37.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)