

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 Supratim Bhattacharya

WPLRT 3 of 2026
Naba Kumar Basak
Vs.
The State of West Bengal and others
With
WPLRT 5 of 2026

Jayanta Kumar Basak @ Jayanta Basak and others
Vs.
The State of West Bengal and others

For the petitioners in both the matters	:	Mr. Ankit Agarwal, Ms. Alotriya Mukherjee, Ms. Arpita Paul Biswas
For the State in WPLRT 3 of 2026	:	Mr. Chandi Charan De, AGP, Ms. Reshma Chatterjee
For the State in WPLRT 5 of 2026	:	Mr. Soumitra Bandopadhyay, Sr. Govt. Adv., Ms. Suchana Banerjee
For the respondent no.10 in both the matters	:	Mr. Mihir Kr. Das, Mr. Swadhin Pan
For the respondent no.11 in both the matters	:	Mr. Gopal Ch. Ghosh, Sr. Adv., Mr. Rajkrishna Mondal, Ms. Suravi Ghosh
Heard on	:	09.02.2026 and 10.02.2026
Judgment on	:	10.02.2026

Sabyasachi Bhattacharyya, J.:-

1. The present challenge has been preferred against a judgment of the West Bengal Land Reforms and Tenancy Tribunal, whereby the learned Tribunal directed physical possession of the subject land to be restored to the private respondents after eviction of the present petitioners, who were held to be illegal occupants in respect of the said land. While doing so, the learned Tribunal observed *inter alia* that while a civil decree had been passed in favour of “a certain Basak family members”, the said decree had not been executed by recourse to due process prescribed under the Code of Civil Procedure and that there was no material to demonstrate that the decree was put into execution, nor was there any delivery of possession recorded under Order XXI of the Code of Civil Procedure. The learned Tribunal further observed that it is well-settled that a decree of declaration of title does not *ipso facto* terminate possession recorded under a statutory regime unless followed by lawful execution proceedings.
2. Being aggrieved by the said judgment, the present two writ petitions have been filed.
3. The petitioners in WPLRT 5 of 2026 were not parties to the original application filed by the private respondents before the Tribunal, in respect of which the impugned order has been passed, despite being the decree holders in the suit referred to by the Tribunal, whereas the

petitioner in WPLRT 3 of 2026 was impleaded as party to the said proceeding, although not a party to the said suit. Thus, since the petitioners in WPLRT 5 of 2026 are directly affected by the impugned judgment of the Tribunal, as they had obtained the decree from the civil court, *inter alia* declaring their title and confirming their possession in respect of the subject land, which was virtually nullified by the Tribunal in the impugned judgment, leave is granted to the said petitioners to move their writ petition on the prayer made by learned counsel for the said petitioners.

4. Learned counsel appearing for the petitioners in both the proceedings submits that the petitioners in WPLRT 5 of 2026 had previously filed a suit, *inter alia*, for declaration of title and confirmation of possession, consequentially seeking a relief that the purported *patta* granted in favour of the private respondents be recorded to be void, being without any foundation. Other consequential reliefs such as injunction were also prayed in the suit.
5. It is submitted that although initially the State as well as the private respondents, who were all defendants in the suit, contested the suit by filing written statements, subsequently the defendants did not contest the suit. Accordingly, an *ex parte* decree was passed, declaring the title and possession of the writ petitioners in WPLRT 5 of 2026, who were plaintiffs in the said suit, bearing Title Suit No. 177 of 2012, as well as granting consequential reliefs, including a declaration to the effect that the purported grant of *patta* in favour of

the defendants/private respondents was void, being without any basis or foundation.

6. It is submitted that in the absence of any challenge to the said decree by any of the defendants in the suit, the said decree attained finality. Despite such state of affairs, it is argued that the learned Tribunal, unlawfully, ignored the said decree merely on the ground that the civil court did not have jurisdiction to grant such reliefs. Moreover, the learned Tribunal recorded that the said decree was not put into execution, which according to the petitioners, is not necessary for the same to have a binding effect on the parties.
7. Accordingly, learned counsel for the petitioners argues that the learned Tribunal acted without jurisdiction in ignoring the civil court's decree and passing an order of eviction.
8. Learned counsel next argues that no provision, either under the West Bengal Land Reforms Act, 1955 (for short "the 1955 Act"), the West Bengal Land Reforms Rules, 1965, or the West Bengal Land and Land Reforms Manual, 1991 permit the Tribunal to pass an order of eviction in favour of any person at the first instance.
9. It is contended that although Section 49 of the 1955 Act envisages possession to be given to the *patta* holder at the first instance, after the grant of such *patta* (in the present case, the private respondents have alleged that they were in possession by dint of a *patta* but subsequently were dispossessed unlawfully by the petitioners in WPLRT 5 of 2026), the Revenue Officer does not have further

jurisdiction to restore possession if there is a further instance of dispossession. Thus, the authorities as envisaged under the 1955 Act did not have any further power to grant an order of eviction or to put the private respondents into possession, particularly in the teeth of the valid decree of the civil court.

10. Learned counsel for the petitioners cites a coordinate Bench judgment of this Court in *Khitish Chandra Kamila vs. State of West Bengal & Ors.* reported at (2004) 1 CHN 387, for the proposition that the Tribunal had no power to nullify the decree of a civil court.
11. In the said case, the Division Bench was considering a situation where the Tribunal had passed an order bypassing the binding judgment and decree of the order of this Court on the strength of Section 57B(2)(C) of the West Bengal Estates Acquisition (Second Amendment) Act, 1973, which contemplates a bar to the jurisdiction of the civil court. The learned Tribunal, upon consideration of the same, had held in the said case that the decree will abate so far as it relates to the matters specified in clauses (a), (b) and (c). However, the Division Bench went on to observe that the aforesaid stand taken by the Tribunal is not correct, either on fact or in law.
12. It was further observed, by relying on a judgment of the Hon'ble Supreme Court in the matter of *Union of India vs. K.N. Sankarappa*, reported at (2001) 1 SCC 582, that the Hon'ble Supreme Court, in a slightly different situation, had held that an executive or legislature, without enacting appropriate legislation, cannot set at naught a

judicial decree where the State authorities had taken a plea of maintainability or abatement of the suit in view of the bar under Section 57B(2) of the 1953 Act.

13. Learned counsel appearing for the writ petitioners in both the matters next cites *Sudharani Maity & Ors. vs. State of West Bengal & Ors.*, reported at (2003) 1 CHN 1, another co-ordinate Bench judgment of this Court, in support of the self-same proposition.
14. Learned senior counsel appearing for the private respondents argues that the suit filed by the petitioners in WPLRT 5 of 2026 was not maintainable *ex facie* in view of the bar contemplated in Section 61 of the 1955 Act. It is submitted that, as such, the decree passed in such suit was rightly held by the learned Tribunal to be a nullity irrespective of whether any challenge was preferred to the decree of the civil court.
15. Learned senior counsel takes this Court through the pleadings of the plaint in the suit filed by the writ petitioners in WPLRT 5 of 2026 and thereby seeks to impress upon us that the plaintiffs were fully aware of the *patta* having been granted in favour of the present private respondents. Thus, it is argued that the suit was not maintainable in law from the inception.
16. It is further argued that since a valid *patta* had been granted in favour of the private respondents, the civil court's decree could not nullify the same.

17. Furthermore, the private respondents contend that in aid of the said *patta*, the Tribunal was well within its jurisdiction to direct possession of the property to be handed over to the private respondents in implementation of the order passed by the Revenue Officer, since the writ petitioners had dispossessed the private respondents in the first place.
18. Learned senior counsel next cites a judgment reported at *State of West Bengal vs. Hari Mohan Dana (D) by LRs. & Ors.*, reported at (2008) 17 SCC 66. In the said judgment, the Hon'ble Supreme Court was considering a case where, despite a proceeding being initiated by the Revenue Officer under Section 14T(3) of the 1955 Act, a civil suit was filed in the court of a Munsiff for declaration of title and permanent injunction.
19. The Hon'ble Supreme Court, in the ultimate analysis, held that the very initiation of the civil proceedings by the title suit was *non est* and outside the purview of the civil court and, as such, allowed the challenge against the judgment passed in the second appeal arising out of such suit, granting liberty to the appellant therein to prefer a challenge against the order of the Revenue Officer.
20. Relying on the said judgment, learned senior counsel submits that in similar circumstances, since the Hon'ble Supreme Court had observed that the civil court does not have jurisdiction to adjudicate on a suit for declaration of title and consequential reliefs where there is a specific bar under the appropriate provisions of the governing land

statute, the same proposition ought to be applied in the present case as well.

21. The learned Additional Government Pleader, appearing on behalf of the State, argues that under Section 49, sub-sections (3) and (3A) of the 1955 Act, ample authority has been given to the Revenue Officer to enforce delivery of possession.
22. Thus, it is argued that the Tribunal did not travel beyond its jurisdiction in directing such possession to be granted.
23. The learned Additional Government Pleader next argues that the suit filed by the writ petitioners in WPLRT 5 of 2026 was a patently *mala fide* one, since the plaintiffs therein had admitted in the plaint regarding their knowledge that the subject plots were comprised of land vested in the State Government.
24. As such, it is argued that there was no error on the part of the learned Tribunal in holding that the suit was not maintainable and the decree did not operate as a bar to the Tribunal passing the impugned order.
25. The learned Additional Government Pleader reiterates that under Section 61 of the 1955 Act, there is a specific bar of the civil court assuming jurisdiction in matters which fall within the domain of the authorities under the 1955 Act. A valid *patta* having been granted in favour of the private respondents, it is submitted that the civil court's decree was a nullity.

26. Upon a careful consideration of the arguments of the parties, we find that there are two major issues which are required to be adjudicated for a complete adjudication of the present *lis*. The first of the said questions is whether the learned Tribunal was justified in ignoring the civil court's decree on the grounds as recorded in the impugned judgment of the Tribunal. Secondly, whether the Tribunal had the authority in law to pass a direction regarding reinstatement of the private respondents in physical possession of the subject properties.
27. Taking first things first, it is well-settled that a decree passed by a civil court is binding between the parties and conclusively determines their right, title and interest *inter se*. Even going by the definition of "decree" in Section 2 of the Code of Civil Procedure, 1908, it is amply clear that a decree constitutes a conclusive determination of the right, title and interest between the parties to the suit in which the same is passed. We cannot lose sight of the fact that in the suit filed by the writ petitioners in WPLRT 5 of 2026, not only the private respondents but also the State was a party. The defendants/respondents, although initially having entered appearance in the suit, failed subsequently to contest the same, due to which an *ex parte* decree was passed in the same, which has not yet been challenged by any of the defendants, either the private respondents or the State authorities. Thus, as of today, the said decree has attained finality.
28. In our view, which is strengthened by the ratio laid down in *Sudharani Maity (supra)* and *Khitish Chandra Kamila (supra)*, the

learned Tribunal acted without jurisdiction in defying the civil court's decree, which conclusively determined the right, title and interest between the parties, and proceeding to pass directions for eviction of the writ petitioners.

29. The Tribunal, while doing so, observed in the impugned judgment that while a civil decree has been passed in favour of "certain Basak family members", the said decree had not been executed by recourse to due process prescribed under the Code of Civil Procedure, thereby ignoring the fact that the final and binding nature of a civil court's decree is not dependent upon whether it is executed or not. The civil court's decree inherently has a finality, which shines in its own light, with or without any execution taking place in terms thereof.
30. Hence, the consideration of the learned Tribunal as to whether the decree was put into execution was entirely beside the issue.
31. Moreover, since the decree declared the title and confirmed the possession of the plaintiffs in the suit (petitioners in WPLRT 5 of 2026), there could not be any further occasion for an execution case being filed to put the plaintiffs in possession, as their possession had already been confirmed by the civil court.
32. Insofar as the judgment cited by learned senior counsel appearing for the private respondents is concerned, conspicuously, the said matter went up to the Hon'ble Supreme Court in a challenge against a decree passed by a civil court. As held earlier, the parties aggrieved by a civil court's decree have every right to challenge the same by way of a

regular appeal before the appropriate court. In *Hari Mohan Dana (supra)*, it was a civil court's decree which was challenged up to the Hon'ble Supreme Court, in which context only the Hon'ble Supreme Court held that the civil court did not have jurisdiction in view of a bar of law as embodied in Section 61 of the 1955 Act.

33. As opposed thereto, in the present case, the precise contention of the writ petitioners, which is justified according to us, is that the civil court's decree has never been challenged by any of the defendants/respondents herein. Having not done so, the decree was permitted to attain finality. Even going by the judgment of *Hari Mohan Dana (supra)*, the civil court's decree had to be challenged before the competent appellate court for it to be set aside on the ground that it was *non est*. Without being set aside by any appellate court and/or being held to be *non est* by any competent court, the civil court's decree cannot be bypassed by the learned Tribunal, as reiterated time and again in *Sudharani Maity (supra)* and *Khitish Chandra Kamila (supra)*.
34. Secondly, in the case of *Hari Mohan Dana (supra)*, the respondents therein had not "seriously disputed" the arguments based on Section 61 of the 1955 Act relating to the bar of the civil court. Thus, in the light of such concession, the Hon'ble Supreme Court proceeded to adjudicate on the said issue. Although we are conscious of the fact that irrespective of counsel's consent on law, the judgment of the Hon'ble Supreme Court would otherwise be binding on us, in view of

the factual distinction, inasmuch as the Hon'ble Supreme Court's judgment was rendered in the context of a challenge against the civil court's decree itself whereas in the present case no appeal has been preferred at all against the civil court's decree, we find that the said decision does not come to the aid of the respondents in the present case, where the civil court's decree has not been challenged before the appellate court but has been held by the learned Tribunal, entirely without jurisdiction, to be a nullity.

35. It is to be considered further that in circumstances where the primary relief sought in a suit is the declaration of title and possession of the plaintiffs and only as a consequential relief, a challenge is thrown to the recording of names in the records of rights or grant of *patta* or other settlement, it is the primary relief which has to be looked into in order to assess whether the suit is maintainable or not.
36. Proceeding from such perspective, since the primary relief claimed in the suit filed by the writ petitioners in WPLRT 5 of 2026 was declaration of title, the said relief, not being able to be granted by the Tribunal or any authority under the 1955 Act, the suit could not be said to have been barred before the civil court. Consequentially, any ancillary relief granted by the civil court in aid of the said primary relief could not also be held to be not maintainable. The position might have been otherwise if the sole or primary relief sought before the civil court by the plaintiffs was a correction of the records of rights, or a cancellation or annulment of the *patta*, in which case, it

might still have been argued that Section 61 of the 1955 Act operated as a bar to the civil court. However, it not being so, the said bar cannot be said to have been attracted to the suit.

37. Thus, from the above discussions, we find that the question as to whether the civil court had jurisdiction in the facts and circumstances of the present case is at least arguable. Hence, unless a competent appellate court set aside such decree on the ground that the same was without jurisdiction, the decree of the civil court remains binding and could not be ignored at the drop of a hat by the Tribunal or by any other forum or authority. Even otherwise, neither the learned Tribunal nor any authority under the 1955 Act has to power to declare the title or possession of a person, which comes squarely within the exclusive domain of the civil court. Hence, proceeding from such premise as well, it cannot be held that the civil court's jurisdiction was barred by operation of Section 61 of the 1955 Act.
38. Coming to the second question, we do not find any provision within the four corners of the West Bengal Land Reforms Act, 1955 or the corresponding Rules or the 1991 Land Manual empowering the Revenue Officer or the Tribunal to direct eviction of a person and enforcement of possession of any *patta* holder, except at the first instance, when a *patta* is annulled.
39. Sub-section (3) of Section 49 of the 1955 Act, relied on by the learned Additional Government Pleader, speaks of a situation where an order has been made under sub-section (2) of Section 49, which is for

annulment of the settlement or both the settlement and the transfer in a case where the criteria stipulated in the said sub-section are satisfied. Only in case of such annulment of settlement and/or transfer, sub-section (3) of Section 49 comes into operation, by dint of which the Revenue Officer may enforce delivery of possession of such land to the Collector by using such force as may be required after evicting the person in actual occupation of such land.

40. Sub-section (3A) of Section 49 is merely an enabling provision in furtherance of sub-section (3), providing that for the purpose of enforcing delivery of possession of any land and evicting any person, a written requisition and other modalities for police help can be resorted to.
41. However, such scheme of Section 49, sub-sections (2), (3) and (3A), is not applicable when the *patta* holder was put in possession in the first place, as is the case of the private respondents, and was allegedly dispossessed subsequently. In case of such subsequent dispossession, nothing in Section 49 or, for that matter, any other provision in the 1955 Act, the corresponding Rules or the Land Manual of 1991 empowers the Revenue Officer to enforce further possession in favour of the *patta* holder in the event there are subsequent instances of dispossession, *ad infinitum*.
42. In such a situation, the appropriate remedy before the *patta* holder would be to take resort to appropriate provisions before a competent

civil court under Section 6 of the Specific Relief Act, 1963 and/or by filing a regular civil suit.

43. The Rule referred to by the Tribunal is also not applicable in the present case. Rule 20A of the West Bengal Land Reforms Rules, 1965 speaks about the terms and manner of settlement of lands at the disposal of the State Government under Section 49. As per Clause 3(b)(i) of Rule 20A, the Collector or the District Land and Land Reforms Officer or the Sub-Divisional Officer, within whose jurisdiction the land is situated, shall deliver possession of the land to the person with whom it has been settled, if necessary after evicting the person in actual occupation of such land in the manner laid down in sub-section (3) of Section 49.
44. Thus, on a plain reading of the said provision, it is clear that Rule 20A operates within the aegis of sub-section (3) of Section 49 of the parent statute, that is, the 1955 Act. Since we have already held that Section 49(3) itself is not applicable, there is no question of Rule 20A being attracted as well.
45. The Tribunal apparently resorted also to the provisions of the 1991 Manual, which are also not germane in the present context.
46. Thus, the second issue is also decided in favour of the writ petitioner,s to the effect that the Revenue Officer, within the four corners of the 1955 Act or the corresponding Rules or Land Manual, has no authority to evict a person and restore possession to an

alleged *patta* holder, except immediately after annulment of a settlement or transfer.

47. Moreover, it is the Tribunal which granted eviction in the present case. No provision within the contemplation of the 1955 Act empowers the Tribunal, in any event, to do so. The Tribunal, it is to be remembered, is not the Revenue Officer and in any event cannot usurp the jurisdiction of such Officer.
48. Apart from the above two issues, there are certain sub-issues, which cannot also be glossed over. For example, the petitioners in WPLRT 5 of 2026, who were the decree holders in the suit, the decree passed in which was ignored by the Tribunal, were never impleaded in the original application before the Tribunal, which, in any event, rendered the original application bad for non-joinder of necessary parties. However, in an oblique manner, the said writ petitioners, who were plaintiffs in the suit, were named in a subsequent notice issued pursuant to the impugned order of the Tribunal. Such exercise itself smacks of *mala fides*.
49. Secondly, the writ petitioner in WPLRT 3 of 2026, who was not even a party to the suit, was impleaded in the original application, which was also erroneous due to mis-joinder of party.
50. Be that as it may, since we have already held that the impugned judgment of the learned Tribunal was palpably *de hors* the law and without jurisdiction, there is no necessity to further dwell on the other minor issues.

51. In view of the above observations, WPLRT 3 of 2026 as well as WPLRT 5 of 2026 are allowed on contest, thereby setting aside the impugned judgment dated December 02, 2025 passed by the Third Bench, West Bengal Land Reforms and Tenancy Tribunal in O.A. No. 2177 of 2023 (LRTT). Any action taken in pursuance of the said judgment, including eviction of the writ petitioners, stands hereby reversed. The respondents shall take immediate steps to ensure that the possession of the writ petitioners in respect of the subject plots is restored within a period of 90 days.
52. There will be no order as to costs.
53. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)