High Court at Calcutta

Constitutional Writ Jurisdiction

Appellate Side

PRESENT:
THE HON'BLE JUSTICE SABYASACHI BHATTACHARYYA
AND
THE HON'BLE JUSTICE SANDIP KUMAR DE

WPLRT No. 260 of 2014

Smt. Sabita Halder

Vs.

The State of West Bengal and others

For the petitioner.: Mr. Ashoke Kr. Banerjee, Sr. Adv.,
Mr. Sanjay Mukherjee, Adv.

For the State: Mr. Nilanjan Bhattacharjee,Sr.Standing Counsel,
Ms. Jayita Dhar Chakraborty, Jr. Govt. Adv.

Last heard on: 29.09.2026

Judgement on: 07.10.2026

Sandip Kumar De, J.:

1. The present writ petition concerns a challenge to a judgment and order dated August 1,2014 passed by a Bench presided over by the learned Chairman of the West Bengal Land Reforms and Tenancy Tribunal, Kolkata in OA 2115 of 2012(LRTT) whereby the learned tribunal has dismissed the original

application of the writ petitioner challenging the order passed by the BL&LRO, Kasba ATM Block in Misc. Case No.10 of 2009.

2. The facts of the case are as follows:

(a) One Bijoy Krishna Pal was the original owner of the Plot No.4283,Khatian No.437,Khanda Khatian No.2641,Mouza: Kasba, JL No.13, measuring about 5 cottahs('the said plot of land' for short) which was part of 'Ga' schedule property falling in the share of said Bijoy Krishna Pal in a suit for partition being TS 79 of 1951 decreed on compromise. It is pertinent to mention here that Bijoy had three more brothers, viz., Gangadas, Abhay and Krishnadas. The partition suit was amongst these four brothers. Bijoy got the 'Ga' schedule properties measuring about 2.71 acres of land.

(b) In the said suit, the 'Ga' schedule property was entire 2.71 acres of land falling in the share of said Bijoy Krishna Pal. In LA Case No.II of 1956, out of 2.71 acres, 0.68 acres in Dag No.437 was identified as vested land. Said Bijoy Krishna sold the entire 2.71 acres to one Mohanlal Dutta in 1961 and Mohanlal Dutta sold the said remaining 2.02 acres leaving the vested part of 0.68 acres to various purchasers including one Satya Ranjan Dutta who purchased 0.33 acres out of 2.02 acres. The 2.02 acres of land was separated from parent Khatian No.437 and was recorded as retained land in a Khanda Khatian No.2641.

(c) Satya Ranjan Dutta sold 10 cottahs of land out of 0.33.acres to Karthick and Sunil Basu in 1976 by a registered deed of conveyance and said Kartick and Sunil Basu sold 0.08 acres to one Snigdha Dey in 1980. The present writ petitioner purchased 0.05 acres (5 cottahs) out of 0.08 acres from Snigdha Dey on December 20,2002, being the said plot of land.

(d) One BR Case No.4 of 1967 was apparently started under Section 6(1) of the West Bengal Estates Acquisition Act,1953('the 1953 Act' for short) by the Revenue Officer for determination of ceiling limit of retainable land and surplus lands of the intermediaries but the record of the said case was not found later on. Invoking powers under Section 6(5) of the 1953 Act,the Revenue Officer started a proceeding under Section 57A of the 1953 Act read with Section 151 of the Code of Civil Procedure,1908 for reconstruction of BR Case No.4 of 1967 and the proceeding was initiated de novo to ascertain from the raiyat, the quantum of land possessed by him and the option to retain the land in his khas possession.

(e) Since Bijoy Krishna was dead by that time, his legal heirs were notified but none turned up at the hearing. The proceeding was concluded by directing inter alia, that 'B' schedule properties would be retained by the raiyat which included the land recorded in Khanda Khatian No.2641 in Khatian No.437 and the said plot of land.

(f) The writ petitioner applied to get her name mutated in the record of the municipal authorities and such application gave rise to a proceeding before the concerned BL&LRO who did not grant mutation in favour of the petitioner. Challenging the same, the petitioner moved the learned Tribunal in OA 493 of 2005 and the same was dismissed. In WPLRT 750 of 2007, a coordinate Division Bench of this Court set aside the order passed by the Tribunal and, inter alia, directed for withdrawal/cancellation of possession order and directed for mutation of the name of the petitioner upon enquiry and verification of record of BR Case No.4 of 1967. The said order was challenged before the Hon'ble Supreme Court in SLP(C)No.14448 of 2008 by the state government and the same was dismissed.

(g) Due to non-compliance of the order passed by the coordinate Division Bench, an application for Contempt of Court was taken out by the petitioner being CPAN 805 of 2008 and such proceeding gave rise to Misc. Case No.10 of 2009 before the concerned BL&LRO. In the said proceeding, the concerned BL&LRO initiated a fresh enquiry and, in his order, he treated the said plot of land as vested land, the purchase of the petitioner as a post-vesting transfer and refused mutation in favour of the petitioner.

(h) Challenging the said order passed by the BL&LRO, the petitioner filed OA 2115 of 2012 wherein the order impugned has been passed.

3. In the judgment and order impugned, the learned Tribunal recorded that the state miserably failed to produce the case records of BR Case No.4 of 1967. State further submitted that mutation was allowed in favour of the petitioner in compliance of the order passed by this Court on May 13,2008. State submitted that 25% of the suit property belonged to Bijoy and such 25% included land outside the retained land. The writ petitioner and her predecessors-in-title were all post-vesting transferees right from Mohanlal Dutta. State relied on the Khatian No.437 and Khanda Khatian No.2641 which included the said plot of land and it was the stand of the state that 25% share of Bijoy stood vested as non-retained land in BR Case No.41 of 1985. Therefore, the findings and decision of the BL&LRO in Misc.Case No.10 of 2009 was correct. The parties cited several decisions before the Tribunal and the learned Tribunal dealt with all the cases.

4. The learned Tribunal recorded that all pre-existing rights of intermediaries, raiyat, under-raiyat and other legal heirs as the case may be, in the estates to which a declaration applied, stood vested in the state w.e.f.15.4.1955/14.4.1956, the dates of vesting, free from all encumbrances. The rights of the intermediaries vested in state under Section 5 of the 1953 Act except the land retained as per Section 6 of the 1953 Act. The learned Tribunal further recorded that in BR Case No.41 of 1985, the permissible

limit of land was allowed to be retained by Bijoy and the balance land stood vested in state.

5. The learned Tribunal further recorded that Bijoy did not claim regarding his share of 2.71 acres at the time of disposal of BR Case No.41 of 1985 and while the RSROR was prepared, the record related to title suit was not brought to the notice of the authorities. Thus, at this stage, the claim of ownership of Bijoy cannot be made in respect of the said plot of land. It was further recorded that the BR Case No.41 of 1985 was not defective and since 66 decimals of land belonging to Bijoy stood vested under the 1953 Act, all the transfers including the last transfer in favour of the writ petitioner are post-vesting transfers. Therefore, there was no irregularity in the order passed by the BL&LRO in Misc. Case No.10 of 2009. The original application being OA 2115 of 2012 was, resultantly, dismissed.

6. The learned senior counsel for the writ petitioner submitted that by a decree of compromise dated July 12,1951 recorded in the suit for partition amongst the four brothers being Title Suit no. 79 of 1951, the entire 2.71 acres of land was allocated to Bijoy Krishna Pal. The said decree was passed much prior to the promulgation of the 1953 Act. It is evident from the record of rights that vesting to the extent of 0.68 acres took place under LA case no.II of 1956 in Khatian no.437 ROR page no.477 and vested land Schedule ‘C’. It is further

evident that the balance 2.02 acres of land stood recorded as retained raiyati land under RS Khanda Khatian no.2641.

7. The learned senior counsel for the writ petitioner further submitted that Bijoy transferred the entire 2.71 acres to Mohanlal Dutta in 1961. Subsequently, Mohanlal Dutta transferred 2.02 acres recorded under Khand Khatian 2641 to six subsequent purchasers. Amongst those six purchasers, one of them was Satya Ranjan Dutta who purchased his 0.33 acres of land.

8. The clear bifurcation is found from the record of rights, as submitted by the learned senior counsel for the writ petitioner, to the effect that in Khatian no.437, 0.68 acres of land has been recorded as vested land and Khanda Khatian no.2641 records 2.02 acres of land as raiyati land. Satya Ranjan Dutta's land stood recorded in Khanda Khatian no.2641 under retained Raiyati Khatian. It is further submitted that Satya Ranjan Dutta did not purchase any part of the vested 0.68 acres of land under Khatian no.437. Name of Satya Ranjan Dutta was mutated. The learned senior counsel for the writ petitioner further submitted that subsequently, Satya Ranjan Dutta sold the 10 cottahs of land to Kartik and Sunil Basu in 1976.Subsequently, Kartik and Sunil Basu sold 0.08 acres of land to one Snigdha Dey who mutated her name under Khanda Khatian no.2641 and paid land revenue. The present writ petitioner purchased five cottahs of land from Snigdha Dey by registered deed

of conveyance dated December 20,2002 and thereafter sought mutation in their own name. The learned senior counsel for the writ petitioner referred to the order dated October 15,2004 passed by this Hon'ble Court in WP17814 (W) of 2004 wherein this Court directed that the petitioner's land should not be acquired or taken up without due process of law and require prior notice. The learned senior counsel then placed the order dated September 19, 2007 passed by the learned tribunal in OA 493 of 2007 whereby the learned tribunal dismissed the original application filed by the petitioner with regard to the mutation. The learned senior counsel for the writ petitioner then referred to the judgement and order dated May 13,2008 passed by this Hon'ble Court in WPLRT750 of 2007 whereby the Division Bench set aside the order passed by the learned tribunal, directed withdrawal/cancellation of possession, directed mutation of the petitioner's property, and ordered a further inquiry after verification of all available records of BR case No.4 of 1967, amongst other orders. He further submitted that a special leave petition was filed by the State against the same, being SLP (C)14448 of 2008 before the Hon'ble Supreme Court, and the same was dismissed.

9. Learned senior counsel for the writ petitioner then submitted that an application for Contempt of Court was filed seeking the compliance of the order dated May 13, 2008 as aforesaid in CPAN 805 of 2008. Instead of

resolving the matter in terms of the directions stated above, the concerned BL&LRO initiated a proceeding being Misc. Case No.10 of 2009. He further submitted that the name of the writ petitioner was erroneously recorded in Khatain no.437 instead of Khanda Khatian no.2641. Such mutation has also been challenged. The concerned BL&LRO, in his order, treated the said plot of land as vested land, the purchase of the petitioner as a post-vesting transfer, and refused mutation in favour of the petitioner. Challenging the said order passed by the BL&LRO, the petitioner filed OA 2115 of 2012 and the order dated August 01,2014 passed by the Bench presided over by the learned Chairman of the Tribunal in OA 2115 of 2012 is pending consideration at present before this Court in the present writ petition.

10. The learned senior counsel for the writ petitioner relied on the materials such as:- (i) LA case no.II of 1956 ; (ii) case no. 02 of 2013 under Section 10(2); (iii) Khatian no.437; (iv) vested land schedule 'C'; & (v) Misc. Case no.10 of 2009 showing Bijoy Krishna Pal's 1/4th share or 0.68 acres of land as vested land. He further submitted that the balance land, leaving the 0.68 acres and being 2.02 acres of land, was recorded under Khanda Khatian no.2641. He further submitted that the reasoning of the tribunal is internally inconsistent as one line of reasoning treated portions of land as retained by the members of Pal family while another reasoning treated Bijoy Krishna Pal as owner to the

extent of 1/4th share. He submitted that the dispute would be resolved without looking into Khatian no.437 regarding the vested land and only by looking at Khanda Khatian no.2641. He further submitted that the record of the State reveals that 0.68 acres has been identified as vested land and 2.02 acres as retained /raiyati share. He further submitted that the foundational record of BR case no.4 of 1967 could not be found which actually could have resolved the dispute. He submitted that the order under challenge being order dated August 01,2014 in OA 2115 of 2012 (LRTT) be set aside and name of the petitioner be mutated properly in the record of rights.

11. The learned senior counsel relied on a decision of the Hon'ble Supreme Court reported in the case of *Comptroller and Auditor General of India vs. K.S Jagannathan AIR 1987 SC 57* and relying on paragraph 20 of the said report he submitted that where the decision of the Government is vitiated by mala fide or illegal and irrelevant considerations by ignoring relevant considerations and materials on record, in all such cases the High Court can, in exercise of its jurisdiction under Article 226 of the Constitution of India, issue a writ of mandamus and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or the authority. In a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which

the Government or a public authority should have passed or given having lawfully and properly exercised its discretion. He then relied on another decision of the Hon'ble Supreme Court in the case of *State of Rajasthan vs. Ganeshi Lal AIR 2008 SC 690* and relying on paragraphs 13 to 15 of the said report, the learned senior counsel submitted that circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

12. The Learned Senior Standing Counsel appearing for the State opposed the submissions made by the learned senior counsel for the writ petitioner. The Learned SSC of the State submitted that the said plot of land is part of LR plot no.4283 in Mouza Kasba JL no.13 having a total area of 2.71 acres. He further submitted the present status of the land as recorded are as follows:

LR Khatian No.	Name of the Raiyat	Area in acre
2295	অভয় পদ পাল	0.5655
2296	কৃষ্ণদাস পাল	0.5654
3412	সুদীপ কুমার দাস	0.0120
3413	চন্দনা দাস	0.0948
3414	মল্লিকা সরকার	0.0121
3423	গোবিন্দ দেবনাথ	0.0413
3424	মেসার্স এন জি কনস্ট্রাকশন	0.0639
	Total	1.355 acres

He submitted that the writ petitioner relied upon RS Khatian no. 2641 which appears to be in Khanda Khatian coming out of Khatian no.437 in Mouza Kasba,RS Khanda Khatian no.437, 1.35 acres of land was allowed to be retained on behalf of the erstwhile intermediaries Abhoy Pada Pal and Krishna Pada Pal. Therefore, the learned SSC submitted that all the 1.35 acres of land is to be treated as land of Abhoy Pada and Krishna Pada Pal. The learned SSC of the State then submitted that it appears from the record of rights that Bijoy Krishna and Ganga Das Pal had no retained share in the suit property and none of them were recorded owners from whom the subsequent purchasers purchased the said plot of land, lastly the writ petitioner. He further submitted that the proceeding initiated against Ganga Das Pal was finally settled by the Hon'ble Court's judgement and order dated *April 16,2003 in a Civil Appeal* and the same is reported in *(2003)9 SCC 253*. In the observation of the Hon'ble Supreme Court, it was recorded that the vesting is total and complete once notification is issued under Section 4 of the 1953 Act and got published by combined operations of Sections 4 and 5 of the 1953 Act. What is secured under Section 6 of the 1953 Act is the right to hold on to the possession, subject to the limits prescribed in the statute by operation for retention of the same before Khas possession of the properties has been taken over as enshrined under Section 10 (2) of the 1953 Act.

13. The learned SSC of the State then submitted that initially a case being BR Case no.4 of 1967 under Section 6(1) of the 1953 Act had been initiated for determination of retainable and surplus land of the intermediary but the said office record is now missing. Subsequently, a proceeding for reconstruction of the said BR Case no.4 of 1967 was initiated.

14. In course of reconstruction proceeding it appears that the legal heirs of Bijoy Krishna Pal had not exercised the choice of retention and, accordingly, a *de novo* proceeding under Section 6(5) of the 1953 Act to ascertain from the Raiyat the quantum of land he possesses throughout the West Bengal and to ascertain which land the legal heirs of the Big Raiyat want to retain in their khas possession. Notices were sent to the legal heirs for submitting their option in form B in order to retain land in khas possession, but none turned up in the said proceeding. Accordingly, the concerned revenue officer proceeded *ex parte* against the big raiyat. It appeared from finally published record of right of mouza: Borokhola, J.L. no: 21, Kasba J.L no: 13 Garfa J.L. No:19 and Madurdaha J.L no: 12 of Ps: Tollygunge, that the raiyat Shri Bijoy Krishna Pal possessed land above the ceiling limit that is Agri-40.78 acre, non-Agri- 16.61 acre and homestead - 0.53 acre prescribed under West Bengal Estate Acquisition Act hence the raiyat should submit his option in Form B. He further submitted in Schedule ‘C’ of the order passed in the said

proceeding the list of vested land was prepared and the plot of land in question fell in the said schedules in the proceedings. He further submitted that the said order of vesting has not been challenged before any court of law by the legal heirs of Bijoy Krishna Pal. He further submitted that on February 24,2005, the Collector took possession of the land under Section 10(2) of the 1953 Act. He further submitted that notice was duly served upon the present writ petitioner with regard to Section 6(5) of the1953 Act.

15. The learned SSC of the State further submitted that the decree of compromise passed in the suit for partition as aforesaid was never produced before the concerned officer at any point of time. The entire proceeding proceeded on the basis of RS Khatian no.437 wherein all the brothers were given ownership in equal shares. None of the four brothers or their legal heirs ever raised any claim as to Bijoy Krishna Pal's sole ownership over the subject plot of land. The learned tribunal also held in paragraph 12 of the judgment and order impugned that the vesting proceeding initiated against everyone of the four Pal brothers holding them as co-owner having equal share. The petitioner purchased the plot of land in December 2002, i.e., much after the date of vesting in BR case no. 41 of 1985 having retrospective effect. Therefore, being a post-vesting purchaser, the writ petitioner has no *locus standi* to challenge the order of retention and/or vesting. Since the outcome of BR Case

no.41 of 1985 has attained finality as none of the legal heirs of Late Bijoy Krishna Pal challenged the same before any court of law, the mutation could not have been granted in favour of the petitioner. He further submitted that entry in the record of rights and/or mutation is only to enable the State to collect rent from personal possession and enjoyment of the property and such mutation does not create any title or interest.

16. The learned SSC of the State, in support of his submission, relied on the decision of the Hon'ble Supreme Court in the case of *West Bengal Government Employees (Food and Supplies) Cooperation Housing Societies Ltd. And Ors. Vs. Sulekha Pal(Dey) and Ors. (2003)9 SCC 253* and submitted that the judgement of the Hon'ble Supreme Court relates to another co-sharer of Bijoy Krishna Pal. The learned SSC submitted that the Hon'ble Supreme Court held in the said decision that when the collector takes khas possession of the estate and rights of an intermediary therein, the intermediary will have not only an opportunity but a right to choose the land which he could retain as provided in terms of Section 6(1) of the 1953 Act. In the present case such opportunity was granted to the intermediary, but the same was not availed of. The learned SSC of the State next relied on a judgement of a Special Bench of this Court in the case of *Rajbala Barik vs. State of West Bengal (2017)4 CHN 190* and relying on paragraphs 11 to 15 of the said report, he submitted that

the writ petitioner, being a post-vesting transferee, has no *locus standi* to challenge the order of retention and/or vesting. The learned SSC of the State further relied on a decision of the Hon'ble Supreme Court in case of *Sankalchan Jayachandbhai Patel vs. Vithalbhai Patel &Ors.(1996)6 SCC 433* and relying on paragraph 7 of the report, he submitted mutation entries are only to enable the State to collect revenue from the person in possession and enjoyment of the property and the right, title and interest to the property should be established to be *de hors* the entries. Entries are only one of the modes of proof of enjoyment of the property. The mutation entries do not create any title or interest therein. The Learned SSC of the State supports the order passed by the learned tribunal impugned in the present writ petition.

17. Heard learned counsel for the parties and considered the materials on record and the decisions cited by the respective parties as well.

18. It appears that Bijoy Krishna Pal received the entire 'Ga' Scheduled Property including the said plot of land in a suit for partition being TS 79 of 1951 being decreed on compromise. The said suit was filed amongst the four brothers of Pal family including Bijoy Krishna Pal. The 'Ga' Schedule Properties measured about 2.71 acres of land. Subsequently, out of 2.71 acres, 0.68 acres of land was identified as vested land in Dag no.437 and remaining 2.02 acres of land was carved out as Khanda Khatian no.641. The entire 2.71 acres of

land was sold by Bijoy Krishna Pal to one Mohanlal Dutta. Mohanlal Dutta sold the said 2.02 acres of land to various purchasers which included one Satya Ranjan Dutta who purchased 0.33 acres. Satya Ranjan Dutta sold 10 cottahs of land out of 0.33 acres to Kartik and Sunil Basu in 1976. Kartik and Sunil Basu subsequently sold 0.008 acres to one Snigdha Dey in 1980 and Snigdha Dey sold 0.05 acres i.e., 5 cottahs of land being present plot of land in favour of the writ petitioner in December,2002. The name of Snigdha Dey was mutated in the record of rights and she paid land revenue. It is clear from the 'Ga' Schedule Property of the compromise decree that 2.71 acres of land was allotted in favour of Bijoy Krishna Pal and the same included plot no.4283. The land being 0.68 acres in Khatian no.437 was included in the list of vested land. Learned SSC of the State produced record relating to BR Case no.41 of 1985, wherefrom it appears that the said proceeding was initiated under Section 6(5) of the 1953 Act. It further appears that the said proceeding was drawn up *de novo* in order to ascertain from the raiyat the quantum of land he possesses categorized throughout West Bengal and the lands which he wants to retain in his khas possession.

19. It further appears that notices were issued to the legal heirs of the raiyat in the said proceeding meant for the purpose of reconstruction, to submit their option in form B in order to retain lands in Khas possession up to the ceiling

limit. Since none turned up despite notice, the proceeding was decided e*x parte* and in the order containing the different schedules, Schedule C was made for the purpose of lands vested in terms of statute. It further appears that in Schedule B meant for retained lands, the details of Khanda Khatian no. 2641 carved out from Khatian no.437 is recorded. In the said list, it also appears from the list of vested land in Schedule C, that 0.68 acres have been recorded in Khatian no.437 as vested.

20. On a query of this Court during hearing with regard to the power of the State Government regarding the statutory power to reopen the proceeding after final publication of the record of rights, the learned SSC of the State submitted that State has power under Section 44(2a) of the 1953 Act to reopen the proceeding or determine the entire process of vesting afresh.

21. According to the scheme of 1953 Act, the notification with regard to vesting of estates and the rights of the intermediaries take place in terms of Sections 4 and 5 of the 1953 Act. Section 6(1) enshrines the different circumstances relating to retention of land. Section 6(5) of the 1953 Act gives the intermediary the power to exercise his choice for retention of land under Section 6(1) as aforesaid within the time prescribed, and in case no choice is exercised by him within such time, the revenue officer shall, after giving him

an opportunity of being heard, allow him to retain so much of the lands as do not exceed the ceiling limits.

22. In the instant case, the decree of the civil court crystallized the rights of the parties to the suit, including Bijoy Krishna Pal so far his share in the suit properties is concerned. Such share, including the entire process of vesting and retention as an intermediary, stood finalized in BR case no. 4 of 1967 in terms of the aforesaid statutory scheme of 1953 Act. Therefore, the entire process stood completed and finalized in terms of BR case no. 4 of 1967. Subsequently, transfers took place right from Bijoy Krishna Pal up to the present writ petitioner with regard to different sizes of land in respect of Khanda Khatian no.2641 which is distinctly different from Khatian no.437 recording the extent of vested land of Bijoy Krishna Pal as 0.68 acres. This final position would be found in subsequent actions of recording the names of subsequent purchasers time to time up to the vendor of the present writ petitioner in the records of rights.

23. The problem started with the initiation of BR case no.41 of 1985 under Section 6(5) of the 1953 Act. Section 6(5) of the 1953 Act could be invoked only in case an intermediary did not exercise his choice of retention of land within the ceiling limit and within the prescribed time. In such a case, the opportunity had to be given and thereafter, the revenue officer would allow

him to retain so much of land within the ceiling limit. Such a situation could not be perceived of in any manner whatsoever in 1985, much after the final publication of record of rights.

24. The learned tribunal recorded the factual aspects of the matter in detail but did not raise any question as to how the BR case no.41 of 1985 could be initiated under Section 6(1) of the 1953 Act. The Tribunal recorded the factual details as well as the ratio of the decisions cited before it but despite recording the statutory scheme of vesting enshrined in Sections 4,5 and 6 of the 1953 Act, the tribunal did not question the justification and legal sanctity behind the initiation of the subsequent proceeding *de novo*. The tribunal further recorded that the land of Bijoy Krishna Pal vested in the State in BR case no.41 of 1985 retrospectively, and he did not exercise the option to retain the land within the permissible ceiling limit. The tribunal recorded reasons that since Bijoy Krishna Pal did not present his claim at the time of disposal of BR case no.41 of 1985 whereas his other brothers retained their shares, the order passed in BR case no.41 of 1985 was correct. The tribunal further recorded reasons that since Bijoy did not approach any forum to question the finally published RS record of rights and since he never brought to the notice of the revenue officer with regard to the rights growing from the decree of compromise, his claim cannot be accepted at this stage. Accordingly, the

tribunal held that Bijoy was owner of only 66 decimals of land out of 2.71 acres. The tribunal further recorded that since Misc.Case no.10 of 2009 was initiated upon notice to the writ petitioner and her vendor, the said proceeding was correct. All the authorities, including the tribunal proceeded on the basis that the present vesting and retention of the land belonging to the intermediary was decided in BR Case no.41 of 1985 with retrospective effect.

25. It has been submitted that the powers to start the proceeding *de novo* and determine the choice of land for retention by the intermediary could be exercised by the revenue officer under Section 44(2a) of the 1953 Act. Section 44 (2a) of 1953 Act reads as under:

"(2a) *An officer specially empowered by the State Government may, on application within nine months, or of his own motion within sixty years from the date of final publication of the record-of-rights or from the date of coming into force of the West Bengal Estates Acquisition (Second Amendment) Ordinance, 1957 (West Ben. Ord. X of 1957). whichever is later,* ***revise an entry in the record*** *finally published in accordance with the provisions of sub-section (2) after giving the persons interested an opportunity of being heard and after recording reasons therefor:*

Provided that nothing in the foregoing paragraph shall be deemed to empower such officer to modify or cancel any order passed under section. 5A, while revising any entry:

Provided further that no such officer shall entertain any application under this sub-section or shall of his own motion take steps to revise any entry, if an appeal against an order passed by a Revenue Officer on any objection made

under sub-section (1), has been filed before the commencement of the West Bengal Estates Acquisition (Second Amendment) Ordinance, 1957, before a Tribunal appointed for the purpose of this section, and, notwithstanding anything in this section, any such appeal may continue and be heard and disposed of as if the West Bengal Estates Acquisition (Second Amendment) Ordinance, 1957, had not been promulgated."

26. It is evident from the aforesaid statutory provision that the concerned officer had power to revise any entry in the record finally published in accordance with the provisions of 44(2a) of the 1953 Act after giving the persons interested an opportunity of being heard and after recording reasons therefor. It further reveals that the said officer could not modify or cancel any order passed under Section 5A while revising such entry.

27. Therefore, the officer empowered under Section 44(2a) of 1953 Act could only revise an entry in the finally published record of rights in a certain manner. Such power was not extended to the extent to reopen a proceeding or initiate a proceeding *de novo* by the said officer. The power to revise an entry is distinctly different from determination so far the choice of retention is concerned. Power to determine the choice of retention is found in Section 14T(3) of the West Bengal Land Reforms Act,1955('the 1955 Act' for short).Section 14T(3) of the 1953 Act reads as follows:

"14(T)(3)The Revenue Officer may, on receipt of a return submitted under sub-section (1) or sub-section (2), or on his own motion, ***determine the extent***

of land *which is to vest in the State under section 14S and take possession of such lands:*

Provided that where a raiyat has exercised his choice of retention of land within the ceiling area in such a way that portions of more than one plot are to vest in the State, the Revenue Officer may disregard the choice exercised by the raiyat and may, after giving the raiyat an opportunity of being heard, ***determine*** *the plot or, where necessary, plots of land proposed to be retained by the raiyat from which an area equal to the area of the portions of the plots shown in the return to be in excess of the ceiling area, is to vest in the State and take possession of such land.*

Provided further that in the case of mortgage by a raiyat by deposit of title deeds under clause (c) of sub-section (1) of section 7, such raiyat shall first retain the land comprised in his plot of land and mortgaged by him within the ceiling area and where the total area of any land comprised in his plot of land and mortgaged by him exceeds the ceiling area, such portion of the land so mortgaged as is in excess of the ceiling area, together with any other land owned by him but not so mortgaged, shall vest in the State free from all encumbrances."

28. The law is settled by this time that where a power is given to do certain thing in a certain way, the thing must be done in that way or not at all and other methods of performance are necessarily forbidden. It is also trite law that a natural person has the capacity to do all lawful things unless his capacity has been curtailed by some rule of law. It is equally a fundamental principle that in a case of statutory authority, it is just the other way. The authority has no

power to do anything unless those powers are conferred on it by the statute which creates it.

29. A plain reading of section of Section 14T(3) of the 1955 Act reveals that the power to determine the extent of retained land under Section 14T(3) of 1955 Act is much wider than the power to revise entry in a restricted manner as provided under Section 44(2a) of the 1953 Act. Therefore, the concerned officer had no power to initiate the proceeding *de novo*, ask for submission of form B and then pass fresh order with regard to retained land and vested land of the intermediaries in BR case no.41 of 1985 long after final publication of the record of rights. The power to determine cannot be read into the power to revise entries and power to revise cannot be extended or stretched to such an extent upto the level of power to determine which is much wider. The power to revise the entries, as it appears from the section itself, is a restrictive power and had it not been so, the power would have been unfettered and no end could be reached with regard to finality of the record of rights. As such, the entire exercise right from initiation of the proceeding and passing *ex parte* final order in BR case no.41 of 1985 was patently without jurisdiction.

30. Consequently, the corrections and/or the rectifications in the record of rights in consonance of the orders passed in BR case no.41 of 1985 are all erroneous, incorrect and void *ab initio*.

31. There is no confusion with regard to the settled principles of law laid down by the Hon'ble Supreme Court in the cited decisions by the learned senior counsel for the writ petitioner reported in *State of Rajasthan (supra)*[1] and *KS Jagannathan(supra)*[2]. It is true that one additional or different fact may make the world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper. It is also settled law that the High Courts in India exercising jurisdiction under Article 226 of the Constitution of India have the power to issue writ of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing such discretion has been conferred. It is also settled that in order to prevent injustice in a proper case, the court may itself pass an order or give directions which the Government or the public authority should have passed or given having properly and lawfully exercised its discretion. However, in the factual matrix of the case at hand, these settled principles

[1] *State of Rajasthan vs. Ganeshi Lal AIR 2008 SC 690*
[2] *Comptroller and Auditor General of India vs. K.S Jagannathan AIR 1987 SC 57*

would be mere reiterations and repetitions of the rudimentary principles. The decisions cited by the learned senior counsel for the writ petitioners are not that pertinent so far as the factual matrix of the case is concerned.

32. The decision of the Hon'ble Supreme Court reported in *West Bengal Employees (Food and Supplies)Coop. Housing Society (supra)*[3] as relied on by the learned SSC of the State deals with a different factual matrix distinct from the factual context of the case at hand. The question of right of an intermediary to retain land after getting an opportunity of hearing has been provided within the mechanism of Section 6 of the 1953 Act and such mechanism is not in dispute. The issue standing for decision in the present case, whether the powers should be invoked by the concerned parties by invoking Section 6 of the 1953 Act in exercise of powers under Section 44 (2a) of the 1953 Act is the question and such question has been negated by us hereinabove. The said decision, being factually different, is not relevant for the disposal of the present case. The next decision cited by the learned SCC of the State in *Rajbala Barik (supra)*[4] declares that the post-vesting transferee has no right, title and interest over the land in question and such post-vesting transferee has no *locus standi* to challenge the order of retention and/or

[3] *West Bengal Government Employees (Food and Supplies) Cooperation Housing Societies Ltd. &Ors. Vs. Sulekha Pal (Dey) & Ors. (2003)9 SCC 253*
[4] *Rajbala Barik vs. State of West Bengal (2017) 4 CHN 190*

vesting. Such a proposition of law is well-settled. However, since we have already discussed above that the writ petitioner would not be a post-vesting transferee, such a decision would be of no avail to the State respondents. The next decision cited by the learned SSC of the State in the case of *Sankalchanbhai Patel(supra)*[5] declares that mutation entries are only for the purpose of collection of revenue by the State and such entry does not confer any right, title and interest in the property. Such principle is also well-settled by this time but also of no avail in the facts and circumstances of the present case at hand.

33. Resultantly, the entire exercise of Misc. Case no.10 of 2009 initiated and decided by the concerned BL&LRO is also without jurisdiction as it follows the BR Case No.41 of 1985, without any basis and void *ab initio*. Accordingly, the said entire proceeding including the order passed are all quashed and set aside. Thus, the finding of the learned tribunal which overlooked the statutory scheme of the 1953 Act and failed to consider the acts done by the revenue officer completely *de hors* the said statutory scheme, is also contrary to the materials on record as well as contrary to law. Therefore, the judgement and order impugned passed by the West Bengal Land Reforms and Tenancy Tribunal in OA 2115 of 2012 (LRTT) passed on

[5] *Sankalchan Jayachandbhai Patel vs. Vithalbhai Patel &Ors.(1996)6 SCC 433*

August 08,2014 challenged in the present writ petition, is also quashed and set aside.

34. Thus, WPLRT 260 of 2014 is allowed.

35. The respondents are directed to grant mutation in favour of the writ petitioner in respect of the said plot of land purchased by her within a period of 8 weeks from the date of communication of this order upon compliance of the formalities, if any.

36. No order as to costs.

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

I Agree. **(SANDIP KUMAR DE, J.)**

(SABYASACHI BHATTACHARYYA, J.)