

**(2023) 09 CAL CK 0059**  
**In the Calcutta High Court**  
**Case No : W.P.L.R.T No. 42 Of 2019**

Booster Merchandise Pvt. Ltd. & Ors. APPELLANT  
Vs  
State Of West Bengal And Ors. RESPONDENT

**Date of Decision :** 18-09-2023

**Acts Referred:**

West Bengal Estates Acquisition Rules, 1954 — Rule 4, 4A  
West Bengal Estate Acquisition Act, 1953 — Section 4, 6(2), 6(5), 10, 10(2), 57B(3)

**Citation :** (2023) 09 CAL CK 0059

**Hon'ble Judges :** Debangsu Basak, J;Md. Shabbar Rashidi, J

**Bench :** Division Bench

**Advocate :** Saktinath Mukherjee, Debayan Bera, Debasree Dhamali, Shubrojoyti Mookherjee, S. N. Mookherjee, Md. T.M. Siddiqui, S. Adak

**Final Decision :** Dismissed

## **Judgement**

Debangsu Basak, J

1. The petitioners have assailed the order dated December 7, 2018 passed by the West Bengal Land Reforms and Tenancy Tribunal in OA 1315 of 2017 (LRTT).
2. By the impugned order Tribunal has negated the challenge lodged by the petitioner against the order dated February 22, 2017 passed by the appellate authority in Appeal Case No. 118 of 2016 which upheld the order passed by the Revenue Officer in Misc. Case No. 4 of 2015 under Section 57 B (3) of the West Bengal Estate Acquisition Act, 1953.
3. Learned Senior Advocate appearing for the petitioners has submitted that, the original owner of plot No. 146 measuring 0.21 acres was one Abhoy Pada Pal. Abhoy Pada Pal, since deceased, had retained various plots, including Plot No. 146 by filing a Form B on August 2, 1955. He has referred to the record of rights of Abhoy Pada Pal in this regard.
4. Learned Senior Advocate appearing for the petitioners has submitted that, on May 13, 1961, Abhoy Pada Pal since deceased, had sold his entire 13.79 acres of

land including Plot No. 146 to the Gunins. Abhoy Pada Pal had died in 1964.

5. Learned Senior Advocate appearing for the petitioners has submitted that, on March 27, 1985, in BR Case No. 43 of 1985 initiated under Section 6 (5) of the Act of 1953, Abhoy Pada Pal, since deceased, was allowed to retain up to the ceiling limit. Such retention order had included Plot No. 146. He has contended that, on December 16, 1991, the heirs of Abhoy Pada Pal, since deceased had challenged the order of vesting wherein the High Court had passed an order dated December 16, 1991. He has referred to the order of the High Court dated December 16, 1991 and contended that, the High Court directed the original Form B filed by Abhoy Pada Pal since deceased to be taken into consideration and disposed of.

6. Learned Senior Advocate appearing for the petitioners has submitted that, on April 22, 1992, the vesting proceedings was re-opened by the concerned Block Land and Land Reforms Officer (BLLRO). The concerned BLLRO had allowed the heirs of Abhoy Pada Pal, since deceased, to revise Form B which was contrary to Form B already submitted by Abhoy Pada Pal, since deceased, and such an activity was contrary to the order of High Court. The concerned BLLRO had had accepted the revises fresh option where, the Plot No. 146 was not shown to be retained and was therefore allowed to be vested with the State.

7. Learned Senior Advocate appearing for the petitioners has contended that the petitioners had purchased the land from the Gunins in the year 2009. The petitioners had thereafter filed an appeal under Section 57 B (3) of the Act of 1953 challenging the correctness of the order of vesting. Such application had been rejected on December 5, 2014. On appeal, the appellate authority, had remanded the matter for fresh consideration by an order dated August 17, 2015 strictly in accordance with the From B filed by Abhoy Pada Pal, since deceased. He has pointed out that on remand the application of the petitioner was rejected and that such order of rejection was affirmed on appeal. The petitioners had moved the Tribunal by way of OA 1315 of 2018 in which the impugned order was passed.

8. Learned Senior Advocate for the petitioners has drawn the attention of the Court to Section 4 of the Act of 1953. He has contended that, all estates and rights of every intermediary, in such estate had vested with the State free from all encumbrances with effect from April 15, 1955 for intermediaries and with effect from April 14, 1956 for raiyats and under-raiyats. He has referred to Section 6 (2) of the Act of 1953 and contended that, an intermediary is one who is entitled to retain the land from the date of the scheme and shall be deemed to hold such land directly under the State.

9. Learned Senior Advocate appearing for the petitioners has contended that there is a distinction between vesting and retention. Vesting is universal with effect from April 15, 1955 or April 14, 1956 as the case may be, while retention is dependant upon the option which has been exercised by the intermediary.

He has also contended that, there is a distinction between a post vesting transferee and a post retention transferee. According to him, the plot in question had been retained by Abhoy Pada Pal, since deceased and therefore, he had acquired a right to transfer such land. Name of Abhoy Pada Pal, since deceased had been recorded in the concerned record of rights under Rule 4 of the West Bengal Estates Acquisition Rules. The predecessor in interest of the petitioners being a Gunins had been the post retention transferees which is completely different from post vesting transferees.

10. Learned Senior Advocate appearing for the petitioners has contended that, the Tribunal mis-construed and mis-understood the order of the High Court. The Tribunal had failed to appreciate that the fresh option filed by the heirs of Abhoy Pada Pal, since deceased, was illegal and that, after retaining land in 1955, Abhoy Pada Pal, since deceased, had transferred the retained land in 1961. After the death of Abhoy Pada Pal, since deceased, there was no scope to revise the retained land schedule by his legal heirs and that the authorities had erred in doing so. He has referred to the provisions of Section 57 B (3) and the proviso thereof under the Act of 1953 and contended that, the Revenue Officer was not justified in re-opening the issue which had been decided in 1992. The subsequent authorities had failed to appreciate that there was no ground for re-opening the issue of retention.

11. Learned Senior Advocate appearing for the petitioners has contended that, the Tribunal had wrongly applied the ratio of the decision of the High Court reported at 2017 Volume 4 CHN 190 (Rajbala Barik vs. State of West Bengal).

12. Learned Senior Advocate appearing for the petitioners has relied upon 1988 Volume 1 CHN 363 (Mr Nawsher Ali & Ors. vs. State of West Bengal) and contended that, a big Raiyat who had retained land by exercising his option in Form B and thereafter transferred such land to third party for valuable consideration cannot be allowed to exercise a fresh option subsequently after insertion of Rule 4 of the West Bengal Estate Acquisition Rules, showing the same as excess land.

13. Learned Advocate General appearing for the State has contended that, the parties are governed by the order dated August 17, 2015 passed by the appellate authority in LR Appeal 115 of 2015. He has referred to such order and contended that, the concerned BLLRO was directed by the appellate authority to dispose of the Form B submitted by Abhoy Pada Pal, since deceased, in 1955, afresh in accordance with the order of the High Court. The concerned BLLRO had been directed not to deviate from such Form B while preparing retention schedule afresh except for the eventualities as noted in such order. He has contended that, such order had noted three exceptions under which circumstances deviations from the original Form B could be made. Firstly, if the land, as has been shown in Form B, is in excess of the ceiling. Secondly, if the schedule of land in portions of Form B is not legible and thirdly, if the land in favour of retention had been acquired by Government and compensation to that

effect had been made.

14. Learned Advocate General appearing for the State has contended that, the order dated August 17, 2015 passed in LR Appeal 115 of 2015 was at the instance of the petitioners. None of the parties to the proceedings had assailed such order. Thereafter, Form B filed by Abhoy Pada Pal, since deceased, in the year 1955 had been taken into consideration in accordance with the order of the High Court by the concerned BLLRO. Portions of the subject Form B had been found to be illegible. Legible portion of Form B did not contain Plot No. 146 as one that had been retained. The legible portion of land that had been retained by Abhoy Pada Pal, since deceased as appearing of such Form B did not add up to the ceiling limit of land permitted to be retained. Consequently, the concerned BLLRO had allowed the heirs of Abhoy Pada Pal, since deceased, to make a choice for retention, which they did. The heirs of Abhoy Pada Pal had chosen not to retain Plot No. 146 as it was not found in the original Form B in respect of the plots specified to be retained.

15. Learned Advocate General appearing for the State has relied upon Rajabala Barik (*supra*) and contended that, the issue as to whether any post vesting transferee can exercise the right of retention in terms of Section 6(5) of the West Bengal Estate Acquisition Act, 1953 read with Rule 4 A of the West Bengal Estate Acquisition Rule, 1954 was answered by holding that, a post vesting transferee cannot come within the ambit of the expression of intermediary.

16. Learned Advocate General appearing for the State has relied upon 1975 Volume 2 Calcutta Law Journal 326 (Lakshmi Narayan Roy vs. Land Reform Officer & Ors.) and contended that, in the facts of the present case, the Form B filed by Abhoy Pada Pal, since deceased, was prior to January 21, 1958 that is the date on when Rule 4 A came into being. Since Form B had been filed by Abhoy Pada Pal, since deceased, prior to January 21, 1958, it also gave him a right to file a form subsequent to the insertion of Rule 4 A.

17. One Naba Krishna Pal, since deceased, was the owner of large area of immovable properties. On his death, a suit for partition had been filed by his four son being Title Suit No. 79, 1951 which was decreed by way of a compromise. Under the decree of compromise Abhoy Pada Pal, since deceased, had received an area measuring 13.79 acres including Plot No. 146 which is the subject matter of the present writ petition.

18. On August 2, 1955, Abhoy Pada Pal, since deceased, had submitted Form B. Rule 4 A had been inserted to the Rules of 1955 with effect from January 21, 1958.

19. By virtue of the Act of 1953, interest of raiyats and under raiyats vested in the State with effect from April 14, 1956 Abhoy Pada Pal, since deceased, was intermediary and interest of such intermediary in excess of the ceiling limit vested with the State, by operation of law. On April 14, 1955.

20. Abhoy Pada Pal, since deceased had sold his entire share measuring 13.79 acres including Plot No. 146 by a registered Deed of Conveyance on May 13, 1961 to the Gunins.

21. Abhoy Pada Pal had expired in 1964. Subsequent to his death a big raiyat proceeding being B. R. No. 43 of 1985 was instituted under Section 6 (5) of the Act of 1953.

22. The heirs and legal representative of Abhoy Pada Pal, since deceased had challenged the notice under Section 10 (2) of the Act of 1953 before the High Court in a writ petition being CO 16949 (W) of 1985. By an order dated December 16, 1991, the High Court had restrained the authorities from proceeding with the vesting proceedings without disposing of the return in Form B filed in 1955. The authorities has been directed to dispose of the proceedings after hearing the heirs and legal representatives of Abhoy Pada Pal, since deceased.

23. In compliance with the order of the High Court dated December 16, 1991 B.R proceeding No. 43 of 1985 under Section 6 (5) of the Act of 1985 had been reopened. Final order dated April 22, 1992 had been passed in such B.R proceedings cancelling the schedule B and C lands and directing proportion of new schedule D as land retained or deemed to be retained by the intermediary as on the date of vesting.

24. In terms of the order passed in the B.R Proceeding No. 43 of 1985, the Revenue Officer and Collector had taken possession of the vested land on August 5, 2002 under Section 10 of the Act of 1953.

25. The writ petitioners herein had purchased Plot No. 146 from the Gunins on February 27, 2009. Thereafter, an application for modification/setting aside of the B.R proceedings being B.R 42, and 43 of 1985 had been filed. Such application had been rejected on December 5, 2014. An appeal had been filed which was disposed of by an order dated August 17, 2015 by directing the concerned BLLRO to dispose of the Form B submitted by the Abhoy Pada Pal, since deceased in 1955 afresh, in accordance with the order passed by the High Court in CO 16949 (W) of 1995. The relevant portion of the order dated August 17, 2015 is as follows :-

"..... Hence it is ordered that BLLRO, ATM shall dispose of the Form B submitted by Abhoy Pada Pal in 1955 afresh in accordance with the order of Hon'be High Court in C.O. No. 16949 (w) of 1985. BLLRO shall not deviate from Form B while preparing Retention Shedule afresh except in the following cases:-

1. If the land shown in Form B is in excess of ceiling.
2. If the schedule of land in portions of Form B is not legible.
3. If the land involved was acquired by govt and compensation to that effect has been made, such land should be incorporated in the retention schedule

irrespective of the fact that such land was incorporated in the Form B submitted or not. Such information shall be collected from LA Deptt.”

26. The concerned BLLRO had rejected the proceedings under Section 57 B (3) of the Act of 1953 on May 30, 2016. Appeal preferred against such order had been dismissed on February 22, 2017. The writ petitioners had thereafter approached the Tribunal which resulted in the impugned order.

27. Abhoy Pada Pal, since deceased, had filed a Form B in 1955 which had been directed to be worked upon by the order dated August 17, 2015 subject to the three exceptions. One of the exceptions that has been specified is that, if Form B was found illegible, then the description of the retained land can be reworked.

28. On re-working of Form B in terms of the order dated August 17, 2015, the concerned BLLRO had found certain portions of Form B filed by the Abhoy Pada Pal, since deceased to be illegible. He had returned a finding that Plot No. 146 could not be found in Form B to be specified in the portion as retained by Abhoy Pada Pal, since deceased. This finding had been concurred with by the appellate authority as well as by the impugned order of the Tribunal.

29. In course of hearing, our attention had been drawn to the certified copy of Form B in course of the hearing of the present writ petition. We had also invited learned advocate for the respective parties to draw our attention to the portions of the certified copy of the Form B where, Plot No. 146 has been specified. On behalf of the writ petitioners, our attention had been drawn to portions of Form B where it was claimed that Plot No. 146 was written as one of the retained plots by Abhoy Pada Pal, since deceased. However, on perusal of the certified copy of Form B as had been produced before us, we are unable to return a conclusive finding that such Form B contains Plot No. 146 in the portion of land retained by Abhoy Pada Pal, since deceased. In fact, nothing has been placed before us to establish that Plot No. 146 was actually retained by Abhoy Pada Pal.

30. Rajabala Barik (supra) has held that, the meaning and merit of the term “intermediary” used under the provision of the Act of 1953 cannot be extended to cover a post vesting transferee. It has held that, the vesting and the right of retention are two different concepts altogether, operating simultaneously. In the facts of the present case, as post vesting transferees, the writ petitioners have no right to undertake an exercise of retention. In any event, the writ petitioners are bound by the order dated August 17, 2015 which had been passed at their instance.

31. Mr Nawsher Ali & Ors. (supra) has considered the issue as to whether a big raiyat who had retained some land by exercising his Form B and thereafter transferred such land to the third party can be allowed to exercise a fresh option subsequently after the insertion of Rule 4 A of the West Bengal Estates Acquisition Rule. It has answered such issue in the negative by holding that the land transferred by the big raiyat should be deemed to have been retained by him. In the facts of the present case, Abhoy Pada Pal, since deceased, as the big

raiya has been found not to have retained Plot No. 146.

32. The writ petitioners have claimed their title in respect of Plot No. 146 through Abhoy Pada Pal, since deceased. Since Abhoy Pada Pal, since deceased, did not retain Plot No. 146 no right, title and interest had accrued in favour of any of the writ petitioners in respect of such land. Such land had stood vested with the State by operation of law.

33. In such circumstances, we find no reason to interfere with impugned order.

34. W.P.L.R.T 42 of 2019 is dismissed without any order as to costs.

35. I agree.