

(2023) 10 CAL CK 0045
In the Calcutta High Court
Case No : W.P.L.R.T. No. 58 Of 2023

Jitendra Investment Private Limited

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 12-10-2023

Acts Referred:

Constitution Of India, 1950 — Article 32, 226, 227, 323A, 323A(2)(d), 323B, 323B(3) (d)
West Bengal Land Reforms Rules, 1965 — Rule 6B
West Bengal Estates Acquisition Rules, 1954 — Rule 4
West Bengal Estates Acquisition Act, 1953 — Section 4, 5, 5(1)(b), 6, 6(1), 6(1)(b), 6(1)(c), 6(1)(f), 6(1)(g), 6(3), 52, 57
West Bengal Land Reforms Act, 1955 — Section 4(1)
West Bengal Non-agricultural Tenancy Act, 1949 — Section 23, 24

Citation : (2023) 10 CAL CK 0045

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

Bench : Division Bench

Advocate : Mainak Bose, Jai Surana, Md. T.M. Siddiqui, Soumitra Bandyopadhyay, Supratim Dhar, Aniruddha Sen

Final Decision : Dismissed

Judgement

Md. Shabbar Rashidi, J

1. The Writ Petition is in assailment of an order dated January 19, 2023 passed by the West Bengal Land Reforms and Tenancy Tribunal in O.A. No. 573 of 2020 (LRTT). By the impugned order, the learned Tribunal directed the Block Land and Land Reforms Officer (BL & LRO), Srirampur, to dispose of the representation filed by the writ petitioners on June 17, 2019 within six months.

2. The relevant facts giving rise to the present litigation, in a nutshell is that the lands involved herein measuring 28.66 acres, appertaining to Mouza – Konnagar, J.L. NO. 007 situated within Uttarpara Police Station, Hooghly, previously belonged to M/s Durga Cotton Spinning and Weaving Mills Limited which comprised of factory, sheds, buildings, staff quarters and other structures.

3. The aforesaid company M/s Durga Cotton Spinning and Weaving Mills Limited went into liquidation under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985. In the winding up proceeding the assets of the company including the aforesaid lands were sold in auction. The writ petitioner company purchased the aforesaid lands by dint of a registered deed of indenture dated June 07, 2007, executed by the Official Liquidator in terms of a direction in this regard by the Hon'ble High Court.

4. During the pendency of the liquidation proceeding, on March 1, 2006, the Sub-Divisional Land and Land Reforms Officer (SDL & LRO), Srirampur issued a notice under Section 6(3) read with Section 57 of the West Bengal Estates Acquisition Act, 1953, directing the writ petitioner to appear before the authorities with a map of the Mill/Factory showing the up-to-date position, schedule of the land and other documentary evidence. The said notice was challenged by the petitioner in a writ petition which was disposed of by an order dated September 15, 2008 recording that the issue raised by the petitioner would be guided by the decision of the Hon'ble Supreme Court in the case of Ratnagiri Engineering Private Limited and Central Glass Industries, then pending. However, the SDL & LRO, Srirampur, was directed not to take any steps in terms of the notice dated March 1, 2006.

5. It was further case of the petitioners that the respondent authorities were not justified in issuing the notice dated March 1, 2006 as the petitioner company was not an intermediary in respect of the lands involved in the proceeding and therefore, the provisions of the West Bengal Estates Acquisition Act, 1953 was not applicable to such lands. In fact, the authorities were not sure as to deal with the said lands in terms of the Act of 1953 or in accordance with West Bengal Land Reforms Act, 1955. The entries in the record of rights were made by the authorities without affording the petitioner any opportunity of hearing.

6. It was also contended on behalf of the petitioner that no notice under Section 4 of the Act of 1953 was ever issued and no order of retention was made in respect of the land in question. The respondents altered the entries in the Record of Rights quite arbitrarily and in complete violation of the fundamental principles of natural justice. The aforesaid lands fell within the ceiling limit of the petitioner and as such, the authorities had no reason to invoke the provisions of Section 6(3) of the Act of 1953.

7. The petitioner also made out a case that there was no order for retention of the subject lands at the initial stage, there can be no revision of something which does not exist. In support of such proposition, the learned advocate for the petitioner relied upon (2009) 4 Supreme Court Cases 453 (State of West Bengal Vs Ratnagiri Emgineering Private Limited & anr.)

8. Relying upon AIR 1967 SC 940 (Shibkumar Nandy Vs Prabartak Sangha & Others) and (2018) SCC OnLine Cal 16852 (Adyama Complx Privated Limited & Anr. Vs State of West Bengal & Ors.), it was contended that the disputed lands contained structures and buildings and therefore, it was not liable to be dealt

with in terms of the provisions of the Act of 1953. Our attention was drawn to the Record of Rights showing the name of the predecessor-in-interest of the writ petitioner was recorded as non-agricultural tenant in respect of the subject lands under Nalini Nath Mitra and Bankim Chandra Chattopadhyay. The applicability of Section 6 (3) of the Act of 1953 was subsequently recorded in the ROR in 2019.

9. It was further contended that M/s Durga Cotton Spinning and Weaving Mills Limited held the land in question comprising of mill as non-agricultural tenant under Nalini Nath Mitra and Bankim Chandra Chattopadhyay, the intermediaries which was recorded as such in the ROR. As a tenant, in terms of the West Bengal Non-agricultural Tenancy Act, 1949, his rights over the said lands were absolute and transferable. Therefore, the petitioners acquired a valid right and title over the said lands upon its purchase in an auction sale. In support of such contention learned advocate for the petitioner has relied upon 2017 SCC OnLine Cal 5043 (Juhi Finalese (P) Ltd. & Anr. Vs The State of West Bengal & Ors).

10. The petitioner made several representations before the respondent No. 2 for correction of Record of Rights, last of which was submitted on June 17, 2019 but the same was not paid any heed to. For the aforesaid reasons the petitioner approached the West Bengal Land Reforms and Tenancy Tribunal in O.A. 573 of 2020, challenging the recordings in the Record of Rights upon resumption of a portion of the aforementioned lands.

11. The instant writ petition as well as O.A. No. 573 of 2020 was contested by the respondents who pleaded their case by way of an affidavit-in-opposition.

12. It was the specific case of the respondents that lands measuring 28.66 acres including the subject lands situated at Mouza- Konnagr under J.L. No. 7, comprising Spinning and Weaving mill was held by Shree Durga Cotton Spinning and Weaving Mills Limited on the date of vesting under the Act of 1953. The said company was operational on such date.

13. In the district of Hooghly, a notification under Section 4 of the Act of 1953 regarding vesting of the intermediary estate and interest was issued and published on August 16, 1954 followed by a notification dated April 10, 1956 in respect of vesting of the estate held by raiyats and under-raiyats in such district.

14. The lands held by M/s. Shree Durga Cotton Spinning and Weaving Mills Limited stood vested, free from all encumbrances, with effect from the date of publication of such notice. However, the said M/s Shree Durga Cotton Spinning and Weaving Mills Limited being operative on the date of notification, was allowed to retain possession of the land comprised in mill and ancillary purposes in terms of the provisions of Section 6 (1) (g) of the Act of 1953 subject also to the provisions of Section 6 (3) of the said Act. It was specifically submitted that for such retention by operation of law, the aforesaid lands could never be considered as assets of the M/s Shree Durga Cotton Spinning and Weaving Mills Limited, capable of being sold in liquidation proceeding. For such reason 'Khanda Khatian' was opened concerning such lands.

15. It was also contended on behalf of the respondents that the lands in terms of the explanation attached to Section 4 (1) of the Land Reforms Act, inserted through the West Bengal Land Reforms (Amendment) Act, 2005, the said M/s Shree Durga Cotton Spinning and Weaving Mills Limited was not a raiyat and as such, had no transferable rights over the lands involved herein. The sale of the aforesaid lands in the liquidation proceeding, holding the lands an asset of M/s Shree Durga Cotton Spinning and Weaving Mills Limited was not at all justified.

16. It was the further case of the respondents that the Sub-Divisional Land & Land Reforms Officer (SDL & LRO), Srirampur, issued a notice of reconnaissance survey upon M/s Shree Durga Cotton Spinning and Weaving Mills Limited on March 1, 2006 under the provisions of Section 6 (3) of the Act of 1953 as the mill was not operational. The notice was challenged and by an order dated September 15, 2008, passed in C.A. 172 of 2006, the High Court directed the SDL & LRO, Srirampur, not to take any steps in pursuance of such notice until disposal of the matter pending before the Hon'ble Supreme Court. The notice under challenge was directed to abide by the decision of the Hon'ble Supreme Court on the subject.

17. The respondents further submitted that Section 6(3) of the West Bengal Estates Acquisition Act, 1953 was amended in the year 2009 incorporating certain amendments to the effect that the power of resumption of land under the said Section was available to the State at any time when the mill, factory or workshop ceases to utilize the land for the purpose, it was allowed to be retained.

18. It is the contention on behalf of the State that the petitioners being transferees from the original retainer i.e. M/s Shree Durga Cotton Spinning and Weaving Mills Limited, the petitioners are deemed to hold the land in question as lessee directly under the State with effect from the date of transfer. However, the petitioners are entitled to regularize the lease in terms of the provisions of Rule 6B of the West Bengal Land Reforms Rules, 1965. The petitioner cannot be held to hold the subject land as non agricultural tenant.

19. It was further contended that in compliance of the order of the learned tribunal, the BL & LRO disposed of the representation of the petitioner by its order dated July 17, 2023. The petitioner could have carried an appeal against such order before the appellate authority as well as the West Bengal Land Reforms and Tenancy Tribunal. The petitioners having approached the writ court would cost at last two forums to the State. In support of such contention, learned advocate for the State relied upon (1997) 3 Supreme Court Cases 261 (L. Chandra Kumar Vs. Union of India) and (2005) 10 Supreme Court Cases 110 (State of West Bengal Vs. Ashish Kr. Roy).

20. As noted, the writ petitioner purchased the subject lands from its erstwhile holder i.e. M/s Shree Durga Cotton Spinning and Weaving Mills Limited which was sold in auction in a liquidation proceeding. It is the claim of the petitioner that the said M/s Shree Durga Cotton Spinning and Weaving Mills Limited were

holding the lands as non-agricultural tenant. Such right was heritable and transferable. When the said company went into liquidation, the subject lands were sold as assets of M/s Shree Durga Cotton Spinning and Weaving Mills Limited. The petitioner purchased the said lands in the aforesaid liquidation proceeding as such, acquired a valid right and title over the same as a tenant under the State.

21. On the contrary, the State came up with a case, that the land in question, were held by the said M/s Shree Durga Cotton Spinning and Weaving Mills Limited at the time of vesting. With the promulgation of the West Bengal Estates Acquisition Act, 1953, such lands vested into State by operation of law. However, since the subject lands comprised of factory held by M/s Shree Durga Cotton Spinning and Weaving Mills Limited, it was entitled to continue to occupy the same in terms of the provision of Section 6 (1)(g) of the Act of 1953 subject, of course, to the provisions of Section 6 (3) of the said Act.

22. It is not denied that M/s Shree Durga Cotton Spinning and Weaving Mills Limited were having a factory on the subject lands which was operative as on the date of vesting. The records placed before us goes to show that the said M/s Shree Durga Cotton Spinning and Weaving Mills Limited was not an intermediary in respect of the lands in question.

23. The Act of 1953 was brought into operation with a view not only to eliminate the intermediaries but at the same time, the interest of raiyats and under-raiyats also vested into estate from the date of notification. For brevity of convenience, it would be appropriate to refer to the Section 4 and 5 of the Act which is as follows:

4. (1) The State Government may from time to time by notification declare that with effect from the date mentioned in the notification , all estates. And the rights of every intermediary in each such estate situated in any district or part of a district specified in the notification , shall vest in the state free from all encumbrances.

(2) The date mentioned in every such notification shall be the commencement of an agricultural year; and the notification shall be issued so as to ensure that the whole area to which this Act extends vests in the state on or before the 1st day of Baisakh of the Bengali year 1362.

(3) Every such notification shall be published in the first instance, in at least two issues of each of two newspapers (one of which must be in the Bengal Language) circulating in West Bengal and also by affixing at each police-station and sub-registry office within the district or part of the district, specified in the notification and by beat of drums and in any other manner, if any , as may be prescribed.

(4) When the State Government is satisfied that the notification has been published in the first instance as required under sub-section (3), it shall issue the notification in the Official Gazette

(5) The publication of the notification in the Official Gazette shall be conclusive evidence that all requirements relating to publication in the first instance as mentioned in subsection (3) have been complied with and also of the due publication of the notification and of notice to all persons affected by the notification.

1(6) Notwithstanding anything contained in the foregoing sub-sections , an intermediary may, at any time before the 15th day of February, 1955, apply to the State Government to have all his estates, tenures, under-tenures and other rights as intermediary, to be vested in the state and the State Government may, after considering the facts and circumstances of the case, if it thinks fit, make an order granting the application. Upon the order being made, all such estates, tenures, under –tenures and rights of the intermediary, shall vest in the State Government on and from the date of the order, free from all encumbrances (other than the rights of subordinate intermediaries, if any) and the provisions of this Act, except the foregoing sub-sections and clauses (a) (b) of section 5, shall with necessary modifications ,apply as if , in relation to such estates, tenures, under –tenures and rights of the intermediary ,references to the publication of a notification under section 4 or to the date of vesting were references to the order granting the application or to the date of such order, and references to the vesting under section 5 were references to the vesting under this sub-section . The State Government shall have also power to make such other orders for giving effect to the provisions of this sub-section as it deems necessary.

5. (1) upon the due publication of a notification under section 4, on and from the date of vesting---

(a) the estates and the rights of intermediaries in the estates, to which the declaration applies, shall vest in the state free from all encumbrances; in particular and without prejudice to the generality of the provisions of this clause, every one of the following rights which may be owned by an intermediary shall vest in the State, namely:-

(i) rights in sub-soil, including rights in mines and minerals ,

(ii) rights in hats, bazaars, ferries, 3 * fisheries, tools and other sairati interests;

(aa)

(b).;

(b) 4 (subject to the provisions of sub-section (3) of section 6, every nonagricultural tenant holding any land) under an intermediary, and until the provisions of Chapter VI are given effect to, every raiyat holding any land under an intermediary], shall hold the same directly under the State, as if the State had been the intermediary, and on the same terms and conditions as immediately before the date of vesting:

Provided that if any non-agricultural tenant pays rent wholly king or partly in

kind and partly in cash, then, notwithstanding anything contained in the foregoing clause, he shall pay such rent as a Revenue Officer specially empowered by the State Government in this behalf may determine in the prescribed manner and in accordance with the principle laid down in clause (ii) of section 42:

Provided further that any person aggrieved by an order passed by the revenue Officer determining rent under the first proviso may appeal

24. Materials placed before us shows that the aforesaid M/s Shree Durga Cotton Spinning and Weaving Mills Limited was recorded as non-agricultural tenant in respect of the subject lands under Nalini Nath Mitra and Bankim Chandra Chattopadhyay intermediaries, in the Revisional Settlement Record of Rights (RSROR).

25. A notification under Section 4 of the Act of 1953 regarding vesting of the intermediary estate and interest was issued and published on August 16, 1954 followed by a notification under Section 52 of the said Act dated April 10, 1956 in respect of vesting of the estate held by raiyats and under-raiyats for the district of Hooghly. With such notifications, the interest of said Nalini Nath Mitra and Bankim Chandra Chattopadhyay vested into State free from all encumbrances. Since, at the relevant point of time, the lands in question were held by M/s Shree Durga Cotton Spinning and Weaving Mills Limited, running a factory thereon, in terms of Section 5 (1) (b) (b) of the Act 1953, [as substituted by s. 3(1) of the West Bengal Estates Acquisition (Amendment) Act, 1957 (West Ben. Act IV of 1957)] started holding the aforesaid lands directly under the State as if State was the intermediary, on the same terms and conditions as immediately before the date of vesting and that too, was subject to the provisions of Section 6 (3) of the Act.

26. Therefore, upon publication of the notification, the aforesaid M/s Shree Durga Cotton Spinning and Weaving Mills Limited may, at best, be held to hold the land as non-agricultural tenant under the State of West Bengal and its right to hold the lands was surely subject to the provisions of Section 6 (3) of the Act of 1953.

27. Rule 4 of the West Bengal Estates Acquisition Rules, 1954 has set forth the terms and conditions of holding lands retained by an intermediary under Section 6 (1) of the Act of 1953. The said Rule lays down hence:

4. Any land retained by an intermediary under the provisions of sub-Section (1) of Section 6 shall, subject to the provisions of the Act, be held by him from the date of vesting on the terms and conditions specified below:

Terms and conditions above referred to

(A) Land comprised in a tea garden:

.....

(B) Land not comprised in a tea garden:

1.

2. If the land held by the intermediary be non-agricultural land then-

(i). He shall hold it as a tenant under the West Bengal Non-Agricultural Tenancy Act, 1949 holding non-agricultural land for not less than twelve years without any lease in writing.

(ii).

28. Therefore, in view of the aforesaid rule, the predecessor-in-interest of the writ petitioner, though not an intermediary, could, at best, be held as holding the lands in question as a lessee for not less than twelve years. In that view of the facts interest in such lands, as retainer, of M/s Shree Durga Cotton Spinning and Weaving Mills Limited could not have been considered as assets of the said company and was not liable to be transferred or sold in auction in the liquidation proceeding.

29. Moreover, the claim laid by the writ petitioner is self contradictory as well. The petitioner has staked a claim that his predecessor-in-interest was a non-agricultural tenant under the original intermediaries. Their right as such, was duly recorded under the RSROR. Admittedly, the predecessor-in-interest of the writ petitioner was not an intermediary rather, it was holding the subject lands under the intermediaries Nalini Nath Mitra and Bankim Chandra Chattopadhyay.

30. Section 6 of the Act of 1953 is the exception to the general rule of vesting. The relevant portion thereof is reproduced hereinbelow:

6. (1) Notwithstanding anything contained in sections 4 and 5, an intermediary shall, except in the cases mentioned in the proviso to sub-section (2) but subject to the other provision of that sub-section, be entitled to retain with effect from the date of vesting—

(a) land comprised in homesteads;

(b) land comprised in or appertaining to buildings and structures owned by the intermediary or by any person, not being a tenant, holding under him by leave or license; Explanation. – For the purposes of this clause 'tenant' shall not include a thika tenant as defined in the Calcutta thika Tenancy act, 1949;

(c) non-agricultural land in his khas possession 3 [including land held under him by any person, not being a tenant, by leave or license], not exceeding fifteen acres in area, and excluding any land retained under clause (a):

Provided that the total area of land retained by an intermediary under clauses

(a) and (c) shall not exceed twenty acres, as may be chosen by him: Provided further that if the land retained by an intermediary under clause (c) or any part thereof is not utilised for a period of five consecutive years from the date of vesting, for a gainful or productive purpose, the land or the part thereof may be resumed by the State Government subject to payment of compensation

determined in accordance with the principles laid down in sections 23 and 24 of the land Acquisition Act, 1894;

(d).....

.....

2. An intermediary who is entitled to retain possession of any land under sub-section

(1) shall be deemed to hold such land directly under the State from the date of vesting as a tenant, subject to such terms and conditions as may be prescribed and subject to payment of such rent as may be determined under the provisions of this Act and as entered in the record-of-rights finally published under Chapter V except that no rent shall be payable for land referred to in clause (h) or (i) :

Provided that if any tank fishery or any land comprised in a tea-garden, orchard, mill, factory or workshop was held immediately before the date of vesting under a lease, such lease shall be deemed to have been given by the state Government on the same terms and conditions as immediately before such date subject to such modification therein as the State Government may think fit to make.

31. Therefore, in view of the aforesaid provisions of law, as has been noted, M/s Shree Durga Cotton Spinning and Weaving Mills Limited, not being an intermediary, was not competent to retain lands in terms of the provisions of clause (b) or sub-section (c) sub-section (1) of Section 6 of the Act of 1953. The intermediaries i.e. Nalini Nath Mitra and Bankim Chandra Chattopadhyay could have retained the lands comprised in building and structures. The aforesaid intermediaries, however, could have retained the subject land as non-agricultural lands, had the same been in their khas possession or if M/s Shree Durga Cotton Spinning and Weaving Mills Limited was holding the same under the intermediaries not as a tenant but under leave or license subject to a maximum of fifteen acres. Even if it is considered that the subject land was retained under the provisions of Section 6 (1) (b) of the Act of 1953, the intermediary could have retained a maximum of twenty acres.

32. Nothing has been placed on record to establish that the aforesaid intermediaries exercised their option to retain lands under Section 6 (1) of the Act and were allowed to retain such lands. The intermediaries were not entitled to retain 28.66 acres of lands under the provisions of Section 6 (1) of the Act of 1953.

33. On the contrary, the noting in RSROR do suggest that the land in question were dealt under the provisions of Section 6 (1) (g) of the Act of 1953. There appears a specific note on such record of rights that enquiry under Section 6 (3) of the Act was pending.

34. Besides that, as claimed, a non-agricultural tenant for the purpose of Non-Agricultural Tenancy Act, 1949 has been defined in Section 3 of the said Act as:

3. (1) There shall be, for the purposes of this Act, the following classes of non-agricultural tenants, namely:-

(a) tenants, and

(b) under-tenants.

(2) "Tenant" means a person who has acquired a right to hold nonagricultural land directly under the State] for any of the purposes provided in this Act, and includes also [the successors in interest of persons who have acquired such a right.

(3) "Under-tenant"

35. As noted above, the predecessor-in-interest of the petitioner was holding the subject lands under the intermediaries Nalini Nath Mitra and Bankim Chandra Chattopadhyay at the time of vesting and not under the State. In the facts and circumstances of the case, as noted above, M/s Shree Durga Cotton Spinning and Weaving Mills Limited was deemed lessee in respect of such lands. Such facts is emboldened by the proviso attached to Section 6 (2) of the Act which provides that if any tank fishery or any land comprised in a tea-garden, orchard, mill, factory or workshop was held immediately before the date of vesting under a lease, such lease shall be deemed to have been given by the state Government on the same terms and conditions as immediately before such date subject to such modification therein as the State Government may think fit to make. At no stretch of imagination, the aforesaid M/s Shree Durga Cotton Spinning and Weaving Mills Limited can be considered as Non-Agricultural tenant in respect of the subject lands.

36. In such view of the matter, the powers of the State Government is in no way impeded in making an enquiry and pass appropriate orders under Section 6 (3) of the Act of 1953. In the case of Ratnagiri Engineering Private Limited (Supra), the Hon'ble Supreme Court has upheld such power of the State to pass an order under Section 6 of the Act. It was laid down that,

"10. A perusal of Section 6 of the 1953 Act discloses that there is a difference between clauses (a) to (e) of Section 6(1) on the one hand, and clauses (f) and (g) of Section 6(1) on the other. While in the case of lands which can be retained under clauses (a) to (e) of Section 6(1) the retention is automatic from the date of vesting and no order of any authority need be passed for that purpose, in the case of clauses (f) and (g) of Section 6(1) the retention after the date of vesting is not automatic, but it is only when the State Government passes an order under Section 6(3) of the 1953 Act. In other words, after the date of vesting the lands mentioned in clauses (f) and (g) of Section 6(1) cannot be retained by the intermediary unless and until an order is passed by the State Government under Section 6(3) of the 1953 Act. Also, unlike lands mentioned in clauses (a) and (b) of Section 6(1) which can be retained after the date of vesting irrespective of the area, in the case of lands mentioned in clauses (f) and (g) only so much of the

said land can be retained which in the opinion of the State Government is required for the tea garden, mill, factory or workshop.”

37. The Hon’ble Court further held, in the said decision, thus:

“28. While we agree with the submission, we are of the view, which we have already expressed above that unless and until there is an order under the main part of Section 6(3) of the 1953 Act, the intermediary or lessee cannot retain the land under Section 6(1)(g) of the 1953 Act. This is because unlike clauses (a) to (e) of Section 6(1) of the 1953 Act in which retention is automatic, there is no automatic retention in cases covered by clauses (f) and (g) of Section 6(1) of the 1953 Act and the retention can validly be done only when there is an order by the State Government under Section 6(3) of the 1953 Act. However, in such cases i.e. where there is no order of the State Government under Section 6(3) the State Government should not straightaway resume or take possession of the land, but may issue notices to the persons in possession of the land to show cause how they are in possession of the land.

29. In response to the show-cause notice the said person will be entitled to demonstrate that he is entitled to retain the land under clauses (a) to (e) of Section 6(1), and if he claims the benefit of those provisions his case will be considered after giving an opportunity of personal hearing and be decided by a speaking order. The said person to whom the show-cause notice is issued will also be entitled to make a representation claiming the benefit of clauses (f) or (g) of Section 6(1) and if he makes such a representation the same shall be decided by the authority concerned after giving an opportunity of personal hearing to him and by a speaking order.”

38. In the instant case, by issuing the notice impugned, the State has sought to exercise its powers conferred under Section 6 (3) of the Act of 1953 in its main part and not under the provision thereto. In the light of the ratio laid down by the Hon’ble Supreme Court, there appears no restriction upon the State from exercising such powers.

39. The ratio laid down in the case of Shibsankar Nandy (Supra) was rendered in a completely different perspective in relation to applicability of Section 23 and 24 of the Act of 1949. In the said case, the 1st respondent therein, acquired specific rights in certain lands on long term lease on the basis of a registered deed of lease. He was considered to be a non-agricultural tenant. However, in the facts of the present case, the petitioners are not able to exhibit anything to establish their independent status in respect of the lands in question. They were holding the lands under the intermediaries at the relevant time.

40. For similar reasons, the ratio in the case of Adyama Complex Pvt. Ltd. (Supra) cannot be applied in the facts of the present case. In the said case, the petitioners (Bengal Jute Mills and in turn, Adyama Complex Pvt. Ltd.) were purchasers of specific rights in the subject lands and such rights were considered, by the coordinate bench, to be akin to non-agricultural tenancy

manifestly at variance with the rights of an intermediary. In the instant case, however, nothing appears to have been brought on record to set up the specific rights of M/s Shree Durga Cotton Spinning and Weaving Mills Limited subsisting on the date of vesting. There are materials to suggest that such company was simply holding the subject lands under the intermediaries Nalini Nath Mitra and Bankim Chandra Chattopadhyay. They could be considered as deemed lessee under the intermediaries and after coming into force of the Act of 1953, by operation of law, it was deemed to be a lessee under the State.

41. By the impugned order, the learned Tribunal directed the Block Land and Land Reforms Officer (BL & LRO), Srirampur, to dispose of the representation filed by the writ petitioners on June 17, 2019 within a specified time. In pursuance of the impugned order as well as order passed by this court on June 08, 2023, the BL & LRO concerned has disposed of the representation of the petitioner in a particular way.

42. It was the contention of the State that the writ petitioner, if aggrieved by such order, may chose to carry an appeal therefrom. The petitioner may also approach the tribunal in this regard, as a court of first instance. Any deliberation on the outcome of such representation of the petitioner, at this stage, would cost the State two forums. For such proposition, the State has relied upon the cases of L Chandra Kumar (Supra) and Ashish Kr. Roy (Supra).

43. In L Chandra Kumar (Supra) the Hon'ble Supreme Court noted that,

"99. In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated."

44. The decision taken by the concerned BL & LRO in respect of the representation made on behalf of the petitioner has not been placed before us for consideration. Therefore, the ratio laid down in the aforementioned case is not attracted in the case. The ratio laid down in the case of Ashish Kr. Roy (Supra) has no manner of application in the facts and circumstances of the present case.

45. In the light of the discussions made hereinabove, we find no reason to interfere with the impugned order. The impugned order dated January 19, 2023 passed by the West Bengal Land Reforms and Tenancy Tribunal in O.A. No. 573 of 2020 (LRTT) is affirmed.

46. Consequently, the writ petition being WPLRT 58 of 2023 is hereby dismissed without any order as to costs and thus, disposed of.

47. Connected applications, if any, shall also stand disposed of accordingly.

48. Urgent photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

49. I agree.