
(2025) 11 CAL CK 1829
In the Calcutta High Court, Appellate Side
Case No : CRR 1810 Of 2006

Naba Kumar Dutta

APPELLANT

Vs

State Of West Bengal & Anr

RESPONDENT

Date of Decision : 11-11-2025

Acts Referred:

Code of Criminal Procedure, 1973 — Section 397, 401, 468
West Bengal Land Reforms Act, 1958 — Section 4, 5
Probation of Offenders Act, 1958 — Section 3

Citation : (2025) 11 CAL CK 1829

Hon'ble Judges : Chaitali Chatterjee Das, J

Bench : Single Bench

Advocate : Sajid Haider, Anwar Hossain, Sreyashee Biswas

Final Decision : Allowed

Judgement

Chaitali Chatterjee Das, J

1. This is an application under Section 397 and 401 of the Code of Criminal Procedure, 1973, challenging the Judgement and order of conviction passed under Section 4 (D)(i) of W.B.L.R Act of 1958 against the present petitioners affirming the judgement and order of conviction whereby the petitioners have been sentenced to suffer S.I for six months each and fine of ₹ 500 each in default to suffer S.I. for one month passed by the learned Judicial Magistrate, 3rd Court, Bishnupur by the judgement and order dated 27 September 2005 in complaint case no. 32 of 1996.

2. The case of the prosecution in short is that a complaint was lodged by Debashish Garai, the owner of the adjacent land of the petitioners alleging that the petitioners were excavating a pond over plot no. 1409 of Mouza.-Dongalon district Bankura, which was originally recorded as Bastu land. On the basis of the same, a proceeding was initiated and an enquiry made and the present petitioners were found to have violated the provisions of Section 4(C) of the W.B.L.R Act and accordingly after obtaining necessary instruction from the

collector of Bankura, the complaint was lodged in the Court of Learned S.D.J.M, Bishnupur by the S.D.L.R.O, Bishnupur against both the petitioners.

3. The prosecution examined five witnesses and the Learned Court after hearing the Learned Advocates of both the prosecution as well as the defence counsel passed the order of conviction by virtue of judgement and order dated 27th September, 2005.

4. Being aggrieved thereby an appeal was preferred before the learned Additional Session, Judge, 1st Track court, Bankura, where the said appeal was dismissed vide the judgement and order dated 21st April, 2006. Against the said order passed by the Learned Appellate Court, this revisional application has been filed on the ground inter alia that the learned Court did not consider that the case was filed on 15.2.1996, that is after three years from the date of the alleged offence, under Section 468 Cr.Pc, which is a bar to take cognizance after lapse of the period of limitation. That apart the Learned Court further failed to consider that the plot no. 1409 was not properly determined by R.O that is P.W.3.

5. The learned Amicus Curaie as appointed by this Court argued that the complaint was lodged by the person being the adjacent plot owner in the year 1993 to B.L & R.O and the enquiry took place and on 29th of March 1993, the second complaint was lodged and ultimately the S.D.L & L.R.O lodged the complaint in the year 1996 and thereby there was a delay of three years in initiating the proceeding which is hit by Section 468 Cr.Pc . It is further argued that the P.W.2 claimed to be the owner of adjacent plot alleged that accused dig out a pond over a Bastu land. However, the status of the said person claiming to be the owner of adjacent plot has never been ascertained. The evidence further revealed an inimical relationship between the complainant and the present petitioners because of their different political ideologies. Furthermore they had prior dispute over land and P.W.1 and P.W.4 are interested witnesses, and for that reason, their evidence cannot be the basis for passing any order of conviction. On the other hand, the learned prosecution argued that no permission was obtained while changing the nature and character of the Bastu land and enquiry was made on the basis of the complaint lodged by the adjacent land owners. Not only that the said land owner appeared before the Court and adduced evidence. The prosecution has proved the case by adducing five witnesses and the allegation of excavation of land was never denied by the petitioner and thereby it is proved that there was violation of Section 4(c) of the Act. That apart both the Learned Trial Court as well as Appellate Court arrived at the same conclusion and this revisional Court now has a very limited power to interfere unless it is proved that the judgements passed by both the Learned Courts were perverse.

6. Heard the submission of both the Learned Advocates. The case was initiated on the basis of the complaint lodged by S.D.L & L.R.O alleging that the accused persons have changed the nature and character of the land in plot no. 1409 as described above and it has been changed from bastu to pond without having any

permission from the prescribed authority. The evidence of P.W.2 Debdas Garai disclosed his possession on the plot no. 1390, 1408 and 1409 is adjacent to plot number 1390. His deposition further reveals the petitioners dig out a pond on the plot no. 1408 and 1409 and thereby caused damage to his house made up with mud. He raised protest over the act of accused persons, but went in vain and lastly he compelled to lodge the complaint to S.D.L. & L.R.O on 29.3.1994. He also lodged complaint before the B.L & L.R.O and a notice was issued by said authority to the accused persons, despite that they did not stop digging of pond. In his cross-examination, he stated about a settlement by the accused persons. He purchased some portion of land in plot no. 1408 & 1409 (eastern side).

7. P.W.1 Gangaram Bhattacharya stated that he filed a case in the capacity of S. D.L. & L.R.O, and he identified the signatures on complaint. He stated that required permission was obtained from D.L & L.R.O and collector, and accordingly he submitted all the relevant papers at the time of filing of the complaint. The complaint was lodged on the basis of the report of R.I. & B.L & L.R.O, Indas .

8. The said R.I deposed as P.W.3 who held the enquiry pursuant to the order of B.L & L.R.O Indas . He also ascertained the nature of the disputed plot no. 1409 and found the nature as Bastu and the accused persons failed to produce any document to this witness .This witness during cross examination stated that the land was identified by map and with the help of Amin.P.W.4 Rabindra Nath Bagdi deposed that he possessed the plot no. 1406 of Dongabon Mouza and one Naba Kumar Dutta and Tapan Kumar Dutta, where excavation of pond was in the plot no. 1408 and 1409. His testimony manifests a political rivalry between the accused and the de-facto complainant and litigations are pending between them. However, he denied that he is deposing due to animosity.

9. In this case, P.W.5, Birendra Nath Pal deposed that there is a Dooba in plot no. 1408 and 1409 and he knows nothing about any incident. His cross examination was declined. The Learned Trial Court in view of the above nature of the evidences was of the view that the enquiry was conducted by P.W.3 on 3.9.1993, and it proved that the work of excavation was going on. It was also reported that the adjacent house may be affected for that work and the learned court did not find any abnormality regarding report of the enquiry. That apart, the Learned Court also considered the order sheet which revealed that the D.L & L.R.O and collector authorised the S.D.L. & L.R.O to file the case against the accused persons. It was also observed that the case was filed on 15 February 1996, that is within three years from the alleged date of offence and arrived at the conclusion that the period was covered as per Section 468 Cr.Pc. as it was filed within time.

10. The Learned Court also enquired about the ownership of the plot by the accused persons and it was found that the accused persons physically possessed the land and the supporting record of rights was filed at the time of institution of the case. Moreover, the defence did not raise any question about their ownership of the disputed plots. Accordingly held that the disputed plot of land belongs to

accused persons at the time of the incident. The other point raised that the plot no. 1409 was not properly determined by R.O but P.W.3 in his deposition said about presence of Amin at the spot and the Learned Court did not find any abnormality to reject the version of R.O who deposed as P.W.3. Accordingly passed the order of conviction holding the petitioner as guilty for violation of Section 4(D) (i) of W.B.L.R Act.

11. Before the learned Appellate Court the stand taken that the complainant had no authority to file the complaint against the present petitioners/convicts and thereby the order of conviction and sentence are liable to be set aside. The Learned Appellate Court discussed the provision of Section 4C of the Act whereby the procedure is mentioned regarding required permission. This provision empowers the collector on receipt of an application filed by a raiyat , may upon enquiry by order in writing, either reject the application or direct such change, conversion or alteration as the case may be on any terms and conditions. Sub Section 5 of that Section denotes that if the collector is satisfied that any land is being converted for any purpose, other than the purpose for which it was settled or was being previously held or attempts are being made to effect alteration in the mode of use of such land or change of the area or character of such land, he may by order to restrain the raiyat from such Act. It was also observed that the proceeding was originally initiated under Section 4C of W.B.L.R act by the Revenue Officer against the present petitioners, Indus on the basis of the\ complaint of Debdash Garai and others regarding violation of provision of 4C of W. B.L.R Act and on enquiry, the R.O found the allegations as correct.

12. On careful perusal of the observation of the Learned Appellate Court it is found that no title deed regarding the plot of land in favour of the appellants could be produced, and during evidence it was disclosed that the said plot of land originally belong to Govardhan Das and Hemangini Devi, with respective share of 2/3rd and 1/3rd and the same was purchased by Naba Kumar Das and others. The R.S. Record of rights which were filed revealed the names of Govardhan Das and Hemangini Devi and also it could be found that the said land was a Bastu land. The accused persons did not deny about the possession of the said plot of land of 1409.

13. From the above facts and circumstances, it is clear that no documents could be found to establish that the present appellants are the raiyat of the said plot of land or they are in lawful possession of the said plot of land. The record of right also disclosed the names of different persons as has been observed by the learned Appellate Court. Section 4D of W.B.L.R Act 1955 deals with the prescribed punishment for violation of the provision of Section 4C of the Act. Section 4C of the West Bengal land Reforms Act, 1955 outlines the process for obtaining permission for a change in the area, character or use of a land. The application process is that when a raiyat wishing to change the area, or character or utilisation of their land must submit an application to the collector of the concerned district and on receiving such application, the collector is to hold

enquiry into the matter and after hearing the affected parties, collector issues in writing either accepting or rejecting the application.

14. In the instant case admittedly no such application in respect of the disputed plot was pending for disposal. P.W.1, Gangaram Bhattacharya, filed the case in the capacity of S. D.L. & L.R.O, and he found that required permission was obtained from D.L & L.R.O and collector and he lodged the complaint on the basis of the report of R.L & B.L & L. R.O. The said R.I. held the enquiry and consulted the record and ascertained that the nature of plot no. 1409 Bastu. In course of enquiry he demanded from the accused persons necessary documents regarding permission which they failed to provide. Section 4D of the West Bengal Land Reforms Act, 1955, penalises, such offences, which changes, conversions or altered the lands area, character, or mode of use without authorisation under Section 4C or in violation of a collectors order. Therefore, certainly it applies to the person who violates an order of the collector regarding use of land and it is immaterial that the person is either the owner or the raiyat but the important factor is whether any violation of Section 4C of the Act of 1955 has taken place or not.

15. The evidence of P.W.5 Virendra Pal may not of much importance since he did not say anything about any incident, but his statement that there is Doba in the plot no. 1408 and 1409 definitely support the case of the complainant that the nature of land of the disputed plot no. 1408 and 1409 has been changed and the other evidence clearly established that no prior permission was obtained before such alteration of the character of the land. The ground taken before this Court that no prosecution can lie in terms of Section 4 (c) of the Act of 1955 if any proceeding has been initiated under Section 4 (4) of the said Act and this point was also raised before the Learned Appellate Court where the Learned Court specifically observed that no iota of material or evidence were found to establish that any proceeding was initiated under Section 4 (4) of the Act of 1955.

16. Therefore on careful perusal of the entire facts and circumstances of the case and after assessing the observations made by the Learned Trial Court as well as the Appellate Court, this Court do not find any reason to interfere with the judgement and order passed by the Learned Court. In view of the above, this criminal revision application has got no merit and is liable to be dismissed.

17. It is now to be seen that the complaint was lodged in the year 1993 and the order of conviction was passed in the year 2005, the judgement of Learned Appellate Court was delivered on 21st April, 2006 against which this Revisional Application was filed in the year 2006 and it was dismissed for default and was restored later on and since thereafter the matter was pending for disposal. In the meantime 19 years have passed. That apart no other criminal antecedents can be found or reported against the appellants and therefore this court is of the view that it is a fit case where Section 3 of the Probation of Offenders Act, 1958 to be applied.

18. Therefore instead of sending the appellant to the correctional home he is directed to file two sureties each to the tune of Rs. 5000/- along with his personal bond before the District Probationer Officer concerned with an undertaking to the effect that he shall maintain peace and good behaviour during the period of 6 months from this date and such bonds is to be filed within a period of 2 months from the date of this judgement.

19. It is made clear in case of breach of any of the above conditions, the appellants shall be taken into custody and shall have to undergo sentence awarded to them.

20. Accordingly this Criminal Appeal stands allowed partly with the above direction .Accordingly all other connected applications if any stands disposed of.

21. The T.C.R along with a copy of this judgement be sent to the concerned court for intimation and taking necessary action.

22. Urgent certified copy if applied by any of the parties to be supplied subject to observance of all formalities.