
(2013) 1 CHN 70

Calcutta High Court

Case No: W.P.L.R.T. No. 44 of 2009

Sibani Giri

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: June 23, 2010

Acts Referred:

Constitution of India, 1950 " Article 226#Criminal Procedure Code, 1973 (CrPC) " Section 125#West Bengal Land Reforms Act, 1955 " Section 16(4), 17, 17(1)(b), 2(2), 21D

Citation: (2013) 1 CHN 70

Hon'ble Judges: Pratap Kumar Ray, J; Harish Tandon, J

Bench: Division Bench

Advocate: Biswajit Sahu, for the Appellant; Shyama Prasad Purkait for Private Respondent No. 4 and Ashok Sarkar and Subrata Banerjee for State, for the Respondent

Final Decision: Allowed

Judgement

Pratap Kumar Ray, J.

Heard the learned Advocates appearing for the parties. Assailing the order dated 17th December, 2008 passed by

West Bengal Land Reforms and Tenancy Tribunal, in O.A. No. 3725 of 2005 (LRTT), this writ application under Article 226 of the Constitution

of India has been filed.

2. The impugned order reads such:

The instant O.A. No. 3527 of 2005 is directed against order date 29.06.05 passed by the ADM and DL & LRO at Alipore Dist. 24 Parganas

(South) in LR. Appeal No. 71 of 2001 affirming the order date 21.07.08 passed by the Revenue Officer, Sagar in Bhag Chas case No. 126 of

1998 u/s 21D read with section 17 of the WBLR Act adjudging the respondent No. 4 namely Smt. Bhagabati Bar, as the bargadar in respect of

1.53 acres of land appertaining to plot No. 1772 in mouza Sapkhali hereafter referred to as the subject land.

Fact of the case:

The subject plot i.e. plot No. 1772 measuring 1.53 acres of mouza Sapkhali and other plot No. 2129/2567 measuring 18 acres of mouza

Kachuberia originally belonged to Gobardhan Dingal, Sristidhar Dingal and Bipin Behari Dingal under whom one Girish Ch. Bar and after his

death, his son Beni Madhab Bar was the recorded bargadar in respect of the aforesaid two plots of land. However, said Beni Madhab Bar

purchased both the suit plots by the registered deed No. 3368 date 14.05.97. The respondent No. 3 i.e. BL & LRO, Chaktuldubi, P.S. Sagar

issued a notice for hearing in respect of an application filed by the respondent No. 4 (Smt. Bhagabati Bar) for recording her name as bargadar in

respect of the subject plot. It appears that Beni Madhab Bar who was the recorded owner and also the husband of respondent No. 4. Bhagabati

Bar though purchased the subject land by the registered dt. 14.05.97, against sold the subject land being dag No. 1772 measuring 1.53 decimals

of mouza Sapkhali on the same day of purchase to the applicant herein namely Smt. Sibani Giri by deed No. 3369 of 1997 said to be in order to

meet his loan and to purchase some other land in mouza Kachuberia and said to have purchased the land in the name of his son and son's wife

near his dwelling house. The applicant received the notice date 18.07.98 for hearing in case No. 1267Barga/98 on the basis of the application of

the respondent No. 4 u/s 21D of the WBLR Act.

It is stated that in the said proceeding No. 126/Barga/98 hearing of which was made on 21.07.98, the recorded bargadar Beni Madhab Bar was

not a party and said Beni Madhab Bar made a representation date 10.07.98 before the said respondent No. 2 laying his claim as a recorded

bargadar of the subject land and his afterwards purchase of the same and again sale of the same to the favour of the applicant for the latter"s

purchase of other land near his dwelling house in the name of his relatives.

The applicant appeared in the said hearing and submitted that Beni Madhab Bar was the recorded bargadar of both subject plot No. 1772 and

other plot No. 2129/2567 measuring 1.53 dec. and 18 dec. respectively and remained in cultivating possession by delivery of share thereof.

However, said Beni Madhab Bar ceased to be bargadar when he purchased the aforesaid plot of land and as such respondent No. 4 i.e. wife of

said Beni Madhab Bar cannot be the bargadar in the subject land. Furthermore, Beni Madhab Bar after purchased sold the subject plot No. 1772

measuring 1.53 dec. of mouza Sapkhali to the applicant when there was to be no bargadar.

It is alleged that the respondent No. 2 recorded the name of the respondent No. 4 as bargadar without considering the representation made by her

husband namely Beni Madhab Bar and also without considering the submissions of the applicant. It is further alleged that the order recording the

name of the respondent No. 4 as bargadar is without any reason and observation when respondent No. 4 was inducted as a bargadar.

Being aggrieved by and dissatisfied with the barga recording of the name of the respondent No. 4, the applicant herein preferred LR appeal No.

71 of 2001 before the ADM and DL & LRO, South 24 Parganas but the said authority dismissed the appeal on 21.07.08 though the respondent

No. 4 made the application u/s 21D of the WBLR Act without any reason and basis whatsoever. Moreover, the owner of the land having not been

heard in that proceeding, there was violation of the principle of natural justice. Furthermore, it is alleged, there was no any receipt showing delivery

of bhag produce unto the owner for which the order recording the name of the respondent No. 4 as bargadar cannot stand. Moreover, for non 3

impleading Beni Madhab Bar in the barga proceeding, the said proceeding suffered from non-joinder of necessary parties.

It has also been stated that respondent no. iv filed an application for maintenance u/s 125 Cr.PC. in case no. M 65 of 1998 against her husband

Beni Madhab Bar in which the respondent no. iv sworn an affidavit alleging the she was forcibly driven away from her matrimonial house for which

she compelled to live with her brother. But in the application before the Bhag Chas Officer, said respondent No. 4 stated that her husband left

residential house and went anonymity in whereabouts leaving her in the lull not to be looked after by him. It is further stated that she caught hold of

the last straw and began to maintain herself by cultivating the subject plot with the help of her son since 1998 which was formerly cultivated by her

husband. It is alleged that these contradictory statements in two different proceedings should not have end any credence in the proceeding. It is

also alleged that the authority concerned should not have assumed any jurisdiction to declare the transfer as bad. These were the grounds amongst

others for assailing the impugned order.

In the aforesaid circumstances, the applicant prayed for setting aside the order date 29.06.05 passed by the Appellate Authority in LR Appeal No.

71 of 2001 which affirmed the order date 21.07.98 passed by the Revenue Officer, Sagar dist. South 24 Parganas in barga case No. 126 of 1998

and for injunction against the respondent or their agents from disturbing the peaceful possession of the subject plot and for interim relief thereto.

The matter was admitted for hearing after condonation of delay and with the direction for service and for the authorities concerned to produce the relevant record.

The respondent no. iv bargadar made appearance but ultimately no affidavit in opposition was filed. The relevant records being the proceedings

were urged to have been annexed with the application which was argued to be sufficient to dispose of the matter without waiting further for the

relevant records from the authorities concerned. That was how the hearing of the matter was concluded and posted for delivery of order.

The main submission on behalf of the applicant was that undisputedly Beni Madhab Bar was the recorded bargadar in the subject plot being No.

1772 measuring 1.53 dec. of mouza Sapkhali and other plot being No. 2629/2569 measuring 18 dec. but subsequently he purchased the said land

by registered deed No. 3368 date 14.05.97, it was the further submission with such purchase the barga right of purchaser merged into with the

right of his ownership by purchase and there cannot remain any barga right of the purchaser and no question of inheritance of barga right of said

Beni Madhab Bar. The next limb of submission was that on the same date Beni Madhab Bar sold the subject land including other land to the

applicant by registered deed No. 3369 of 1997 and the applicant thereby became the owner of the subject land including that other land without

any vestiges of barga rights. The submission was that the owner of the land was not made a party in that proceeding and that there was violation of

the principle of natural justice. It was also contended that the erstwhile bargadar, being the husband of the respondent No. 4 submitted a

representation disclaiming his barga right any more with the purchase of the subject land including other land by the registered deed date 14.05.97,

It was also the highlight in the submission that the inconsistent defences taken by the respondent no. iv in the proceeding u/s 125 Cr.PC and

bhag chas proceeding should have belied the case of the respondent No. 4.

On the other hand, the submission the Id. Govt. Representative was that there was no dispute that Beni Madhab Bar, husband of the respondent

No. 4 was the recorded bargadar in the subject land and the other land. It was the case of the state that as per the application made by the

respondent No. 4 the bhag chas case No. 126 of 1998 was initiated u/s 21D of the WBLR Act and a notice was issued to the owner of the

subject land namely Smt. Sibani Giri the applicant herein and hearing was fixed on 10.07.98. It is submitted that after serving the notice the hearing

of the matter commenced in presence of both sides. The order date 21.07.98 was clearly indicative that the authority concerned considered the

peculiar circumstances under which the respondent No. 4 continued cultivation of the subject land with the help of her son and after proper

enquiry, her name was recorded as bargadar in the subject plot and against the said order the applicant Smt. Sibani Giri filed LR appeal No. 71 of

2001 and in that proceeding she was represented by her advocate and also the advocate on behalf of the respondent and upon giving hearing to

both the parties the appeal was dismissed by passing a reasoned order for which no interference was called for.

Decisions with reasons

Admittedly, Beni Madhab Bar, husband of Bhagabati Bar, respondent No. 4 herein was the recorded bargadar in subject plot No. 1772

measuring 1.53 dec. of mouza Sapkhali along with other plot. Said respondent No. 4 filed an application before the BL & LRO, Sagar for

recording her name as bargadar in the subject plot stating certain facts on the basis of which the bhag chas case No. 126 of 1998 u/s 21D of the

WBLR Act was initiated. On the basis of the application a notice was issued to the petitioner therein namely Bhagabati Bar and upon the opposite

party Smt. Sibani Giri and hearing was fixed on 10.07.98 as is evident from the copy of the notice annexed as P-3 to the application. The copy of

the application made by the respondent No. 4 for recording her name as bargadar in the subject plot has also been annexed to the application.

From the said application, the respondent No. 4 stated that her husband Beni Madhab Bar was a recorded bargadar in the subject land but her

husband being aged and ill since 1385 BS, she with her sons was cultivating the subject land on coming to know that her husband was in a mood

to abandon the cultivation to the favour of the owner of the land. It was further stated that in order to maintain herself and the members of the

family she obtained the consent of the owner of the land and began to cultivate the said land from 1385 BS to 1402 BS and there was cordial

relationship between them and the owner for which no dispute arose. In the year 1403 BS the owner of the land gained over her husband in that

subject land was sold out to the erstwhile recorded bargadar, Beni Madhab Bar by registered deed date 14.05.97 vide deed No. 3368. The

authority concerned has further observed in that impugned order that on the same date another deed was got executed being deed No. 3369 of

1997 in favour of the present applicant by the said Beni Madhab Bar. It is further observed in that impugned order that transactions were made

with a purport to deprive the wife of erstwhile bargadar namely respondent No. 4 herein to continue to cultivate the subject landing barga right. It

was the highlight in the impugned order that the prayer of the respondent No. 4 Bhagabati Bar was allowed and adjudged as bargadar, but upon

field enquiry and on spot verification, which revealed that she cultivated the subject land on delivery of bhag produce to the owner with the help of

her son. The question of abandonment of barga right of the erstwhile bargadar or commencement of the cultivation by the respondent No. 4 has no

any concept of continuity in that the right of cultivation that was enjoyed by the respondent No. 4 was on her own right and made a prayer for

recording her name as a bargadar u/s 21D of the WBLR Act, the question of drawing and logic of abandonment of barga cultivation by the

recorded bargadar did not arise. It is not the case of the applicant herein that with the execution of the deed of the year 1997 in favour of the

erstwhile recorded bargadar there was induction of any other persons as a bargadar of the subject plot. It is equally not a case of the applicant that

the subject land was under her personal cultivation. In her independent status the respondent No. 4 made an application and that application was

allowed and in that proceeding the applicant Sibani Giri received a notice and she was represented and heard also. The mere fact that the erstwhile

bargadar appeared before the proceeding and made representation against the prayer made by his own wife is found to be militative against his

own defence and supportive of case of the respondent No. 4 that she made the application in her own right and not legal heirs of husband of

erstwhile recorded bargadar. There was an observation in that impugned order that the transaction in question of the year 1997 was made with a

view to defeat the claim of the respondent No. 4 is found to be supplemented by the appearance of said Beni Madhab Bar before the proceeding

and filing a representation against the claim of his wife.

We have come across the relevant proceeding wherefrom it appears that independent enquiry was conducted on the spot and the respondent No.

4 was found to be cultivating the subject land in her own right for which application was allowed. Furthermore, the present applicant also appeared

before the Appellate Authority in LR Appeal case No. 71 of 2001 and she was represented by her appointed lawyer and both the parties put their

submissions before the said authority and the Authority concerned was convinced that entire transaction i.e. execution of the transferred deed in

favour of the husband of respondent no. iv and execution of another from the respondent No. 4 to the favour of the petitioner who was none but

the daughter of the erstwhile owner was made with a view to defeat the claim of the respondent No. 4. The entire circumstances leading to the

cultivation of the subject land by the respondent No. 4 on her being deserted by her husband also bears imprint from the impugned order. To

reiterate, it bears to mention when the recorded bargadar left her in lull and finding no other alternative she caught hold of the last straw and started

cultivating the subject land, which was fortified on spot enquiry by the authority concerned. It is no case of the appellant that no bhag produce was

delivered to her and rather it is implicit from the case of the respondent No. 4 that bhag produce was delivered mutually.

Having considered these evidence and material on record including the proceeding and the case of the respective parties, we are constrained to

hold that the case of the applicant to dislodge the case of the respondent No. 4 is held to not to lie being devoid of merit. In another words, both

the concerned authorities conferred in their findings that the respondent No. 4 was in cultivating possession of the subject land and her name was

recorded to when the cultivation was left or obtained by her husband.

Accordingly, we have no reason to interfere with the order and O.A. No. 3728 of 2005 (LRTT) stands dismissed.

Let a plain copy of the order duly countersigned by the Principal Officer of the Tribunal be made over to the Ld. G.R. for communication to the

BLLRO concerned for information and Xerox certified copy of the order be made over to the applicant/s, if applied for, on payment of requisite

Court fees.

3. Challenge before the learned Tribunal was the order of the appellate authority passed u/s 54 of the West Bengal Land Reforms Act, 1955 in

appeal assailing the decision of the Revenue Officer concerned passed in Case No. 1267Barga/98 of Sag, which was a case for determination of

right of bargadar u/s 21B of West Bengal Land Reforms Act.

4. The impugned order of the Revenue Officer passed on 21st July, 1998 in the said proceeding reads such:

Both parties appeared and filed Haziran.

Heard them.

As it transpires, the recorded bargadar, Sri Benimadhab Bar, abandoned the barga cultivation of the said plot approximately 15 years back.

Virtually, he left his family in Sagar and shifted to some other place.

Since, the petitioner Smt. Bhagabati Bar resumed the barga cultivation with the help of his sons and has been doing the same till now, as per the

enquiry report. It is further revealed that only in the last year the recorded bargadar Sri Benimadhab Bar purchased the said landed property from

the then owners Sri Sristidhar Dingal and others and again disposed the same in favour of Smit. Sibari Giri (Daughter of the earlier owner) within a

span of two or three months.

In my opinion these ""series of transfers"" were accomplished with the motive to terminate the barga right of the present Barga cultivator Smt.

Bhagabati Bar, who is deserted by her husband.

In the context of the above it is ordered that the name of Smt. Bhagabati Bar w/o Benimadhab Bar of Sapkhali be recorded as a bargadar against

1.53 acres of land appertaining to plot No. 1772 of mouza Sapkhali.

5. The order dated 29th June, 2005 passed by the Appellate authority u/s 54 of the West Bengal Land Reforms Act which reads such:

The case is taken up today for hearing and disposal.

Appellant appeared through Ld. Advocate Sri Bhabhi Charan Mitra and filed hazira.

Respondent appeared through Ld. Advocate Sri Shyama Prosad Purkait and filed hazira.

Respondent B.L & L.R.O Sagar during hearing was absent.

Appellate and the Respondent Smt. Bhagabati Bar have submitted their written arguments respectively which are enclosed with the case records.

The instant appeal is admitted after hearing both the parties and condoning the delay.

Appellant stated through Ld. Advocate that the suit Plot No. 2129/2567 area.18 Acre, Mouza - Kachuberia, J.L. No. 6 and the Plot 1772 Area

1.53 Acre of Mouza - Sapkhali, J.L. No. 5, originally belonged to Gobardhan Dingal, Sristidhar Dingal and Bipin Behari Dingal. Appellant

admitted that Benimadhab Bar S/o. Girish Ch. Bar was the recorded Bargadar on the Plots 1772 Area 1.53 Acre of Mouza - Sapkhali and the

Plot No. 2129/2567 Area. 18 Acre of Mouza - Kachuberia for long time.

During life time of Benimadhab Bar his wife Smt. Bhagabati Bar W/o. Benimadhab filed a petition on 17/6/97 before the Revenue Officer to

record her name as Bargadar on the suit plots 1772 of Mouza - Sapkhali and the Plots 2129/2567 of Mouza - Kachuberia, Ld. R.O. issued

notice on 10/7/97 for hearing and disposal but it is still pending.

Thirdly appellant stated that the suit Plots 1772 and 2129/2567 were sold to the Recorded Bargadar Benimadhab Bar by the owners on 14/5/97

vide Deed No. 3368. Benimadhab Bar the recorded Bargadar transferred the Plot 1772 of Mouza - Sapkhali, Area 1.53 Acre to the Appellant

Smt. Shibani Giri on 14/5/97 vide Deed No. 3369 and delivered possession to the Appellant Sibani Giri.

Fourthly appellant submitted that during life time of Benimadhab Bar his wife Smt. Bhagabati Bar filed an application to record her name as

Bargadar on the Plot 1772 of Mouza - Sapkhali, J.L. No. 5, before the B.L. & L.R.O. Sagar. B.L. & L.R.O. Sagar being the Case No.

126/Barga/1998 disposed of on 21/7/98 and recorded the name of Smt. Bhagabati Bar wife of Benimadhab as Bargadar since 1385 B.S. But

Benimadhab Bar was the recorded Bargadar of the said land.

Therefore the order passed by Ld. R.O. Sagar may be set aside and the appeal may be allowed.

Respondent Smt. Bhagabati Bar submitted through her Ld. Advocate that Late Benimadhab Bar, the husband of the Respondent was the bargadar

under Gobardhan Dingal, Sristidhar Dingal and Bipin Behari Dingal. Thereafter the said Benimadhab Bar during his life time left his family member

and shifted to elsewhere without knowledge of the present Respondent but the Respondent continued to cultivate the suit lands with the help of her

sons and tendered share of the produced to the owners in regular way. After cultivating the suit land in such a way more than 15 years the present

Respondent filed an application before the B.L. & L.R.O. to record her name as a Bargadar in the suit plot in place of her husband simply because

she was actually cultivating the land as Bargadar and Benimadhab Bar left the family member without information to his family long back. The

Respondent Smt. Bhagabati Bar filed the Second application to record her name as Bargadar in respect of the Plot 1772 Area 1.53 Acre of

Mouza - Sapkhali only because her elder son was cultivating the Plot No. 2129/2567 Area.18 Acre of Mouza - Kachuberia J.L. No. 6, Ld. B.L.

& L.R.O. after hearing both the parties, recorded the name of Smt. Bhagabati Bar W/o Benimadhab Bar as Bargadar on the Plot 1772 Area 1.53

Acres of Mouza - Sapkhali in place of Benimadhab Bar.

After that the owners of the land Gobardhan Dingal & Ors in collusion with Sri Benimadhab Bar, the husband of the Respondent transferred the

Plot 1772 of Sapkhali-Mouza and the Plot 2129/2567 of Mouza- Kachuberia to Sri Benimadhab Bar on 14/06/97 vide Deed No. 3368 and on

the same day 14/5/97 in the Deed No. 3369, the said Benimadhab Bar transferred the Plot 1772 of Mouza - Sapkhali Area 1.53 Acres to Smt.

Sibani Giri the daughter of the owner of the land. This transfer of the land made by the Owner to Sri Benimadhab Bar and Sri Benimadhab Bar to

the daughter of the owner on the same day, was a paper transaction to delete the name of Bargadar from the suit land.

Therefore the recording the name of Bargadar, Smt. Bhagabati Bar w/o. Benimadhab Bar by Ld. R.O. in the Case No. 126/98 of Sagar B.R. &

L.R.O on 21/7/98 was right as per L.R. Act. Therefore the appeal may be rejected.

Heard both the parties. Perused and examined the documents submitted before me. It appears that Benimadhab Bar s/o. Girish Ch. Bar was the

recorded Bargadar on the plot 1772 Area 1.53 Acre of Mouza - Sapkhali J.L. No. 5 and the Plot 2129/2567 Area 0.18 Acre of Mouza -

Kachuberia, J.L. No. 6 since 1360 B.S. After few years Benimadhab Bar left his family at Sagar and he shifted to some other places. After his

departure from his family, his wife Smt. Bhagabati Bar was cultivating the suit plots with the help of her sons as Bargadar and she delivered the

share of the produce to the owners of the land i.e. Gobardhan Dingal & Ors in regularly. So she filed application for recording her name as

Bargadar on the suit plot in place of her husband Benimadhab Bar. During this period, the owner of the land, i.e. Gobardhan Dingal and Ors. in

collusion with her husband Benimadhab Bar transferred suit plot to Benimadhab Bar on 14/5/97 being Deed No. 3868 and on the same day

Benimadhab Bar transferred the said plot to Smt. Shibani Giri the daughter of the land owner being the Deed No. 3869 dated 14/5/97 to create a

camouflage to delete the name of Bargadar from the suit plot. But there is no such provision in the L.R. Act, 1955 in such a way.

Hence considering all these, it is ordered that the order passed by Ld. Revenue Officer in the Case No. 126/98 of Sagar on 21/7/98 is correct and

in accordance with law.

Therefore the appeal case is disallowed and thus disposed of. Inform B.L. & L.R.O. Sagar accordingly.

6. The factual matrix of the case as are admitted, are to this effect:

In respect of the concerned land which became the subject matter of litigation, writ petitioner's husband was a recorded bargadar. He purchased

the property from the recorded owner, that is raiyat, by registered deed of sale in the year 1997. In the same year he sold the property to the

daughter of the erstwhile owner, Sibani, the writ petitioner of this application. The respondent No. 4, widow of the recorded bargadar, having

regard to the sale of the property to the new owner, the writ petitioner, Sibani, filed an application before the Revenue Officer concerned

contending, inter alia, that during the lifetime of her husband and during existence of husband's right as bargadar, she cultivated the land and

delivered bhag produce to the erstwhile owner, that is, Sibani's father and subsequently in connivance with the husband to make the land free from

any barga cultivation, sold out the property to her husband and thereafter it was sold to Sibani, daughter of the erstwhile owner. It was further

contended that her right as bargadar should be recorded in the record of rights.

7. Prior to filing of this application, she filed another application u/s 16(4) of the West Bengal Land Reforms Act against Sibani which was

registered as case No. 18 of 1998 in the office of the B L & LRO cum Bhag Chas Officer, Sagar, South 24 Parganas on the grievance that Sibani

refused to accept the bhag crop despite the communication made to accept the same by sending a registered letter. Prior to filing of application u/s

16(4) of the West Bengal Land Reforms Act against Sibani, another application was filed u/s 16(4) of the said Act, registered as Case No. 54 of

1997, against Sibani's father who was the erstwhile owner of the property. Prior to disposal of those applications, the application praying for

recording her name as bargadar was considered by the Revenue Officer and the order dated 21st July, 1998 was passed in the said proceeding. It

appears that there is no adjudication made in the said order which is already quoted, by the concerned Revenue Officer that Smt. Bhagabati Bar

was cultivating the land on consent or permission of Sibani on the condition of delivering the bhag crop.

8. Learned Advocate for the respondent No. 4, however, submits before us that as respondent No. 4 for the long period was cultivating the land

to maintain the livelihood, more particularly during the period when her husband's name was recorded as bargadar, continuation of cultivation

despite purchase of the property by the new owner Sibani, would not change her status as a bargadar in respect of the concerned land under

Sibani also. This submission of the learned Advocate, in our considered view, is not legally sustainable in view of the legal position. There is no

doubt that Sibani's husband was a recorded bargadar and even if we assume that during existence of such right of husband, the wife, Bhagabati,

cultivated the land; still then under the law it will be presumed that the cultivation was done as an agent of husband and not as a bargadar with

independent right. Section 17 sub-section 1 second explanation will support this legal position wherein it is provided that cultivation of land by a

bargadar ""personally"" means cultivation of the land with the help of the members of the family.

9. Section 17(1)(b) and second explanation read such:

17(1)(b) that the land is not cultivated by the bargadar personally:

Explanation. - For purposes of clause (b), a bargadar who cultivates the land with the help of members of his family shall be deemed to cultivate it

personally.

10. Hence till the property was purchased by the recorded bargadar, cultivation of the land, even if any by Bhagabati, was nothing but a cultivation

by her husband personally as a bargadar and no independent right accrued to Bhagabati due to such cultivation of the land. As soon as

Bhagabati's husband, Benimadhab, purchased the said property by registered sale deed, his legal status from bargadar elevated to the status of

raiyyat and at that very moment the right of Benimadhab as bargadar extinguished and the land became free from any encumbrances including the

barga right. Benimadhab sold the property, may be immediately, may be with a purpose, may be with the connivance with erstwhile owner, but

that will not help the respondent to claim barga right. When the writ petitioner purchased the property from the husband of Bhagabati, the

respondent No. 4, Sibani, became raiyyat and Bhagabati was to prove that she was allowed to cultivate the land on the condition of delivering a

share of produce to claim her right as bargadar u/s 2(2) of the West Bengal Land Reforms Act.

11. Bargadar has been defined under the said Act, which reads such:

2(2) ""bargadar"" means a person who under the system generally known as adhi, barga or bhag cultivates the land of another person on condition

of delivering a share of the produce of such land to that person; [and includes a person who under the system generally known as kisani [or by any

other description] cultivates the land of another person on condition of receiving a share of the produce of such land from that person;]

[but does not include a person who is related to the owner of the land as--

- (a) wife, or
- (b) husband, or
- (c) child, or
- (d) grandchild, or
- (e) parent, or
- (f) grandparent, or
- (g) brother, or
- (h) sister, or

(i) brother's son or brother's daughter, or

(j) sister's son or sister's daughter, or

(k) daughter's husband, or

(1) son's wife, or

(m) wife's brother or wife's sister, or

[(ma) husband's brother, or]

(n) brother's wife,], and

[Explanation.-- A bargadar shall continue to be a bargadar until cultivation by him is lawfully terminated under this Act;]

12. Mere cultivation of the land by anybody without any condition of delivering a share of the produce of such land to the person concerned who is

legally entitled to receive such share of crop, either orally or in writing, ipso facto, will not vest any right to the cultivator of the land as bargadar in

terms of section 2(2) of the said Act.

13. It appears from the order of the Revenue Officer as quoted above that the Revenue Officer did not address said issue to adjudicate the right of

respondent No. 4 as bargadar under the raiyat, Sibani, a new purchaser of the property.

14. Having regard to such, we are of the considered opinion that the impugned order of the Revenue Officer assailed before the appellate authority

and thereafter before the Tribunal are not legally sustainable. The condition precedent of recording of the name of any person as bargadar is the

identification of any right by adjudicating the issue that a person is a bargadar under the law which means that there must be adjudication of the

point that the bargadar was engaged by the owner/raiyat or the person competent to grant such permission to cultivate on the condition of

delivering a share of the produce of such land. The Revenue Officer came to his finding that respondent No. 4 became the bargadar only on the

logic that from field enquiry the fact revealed that respondent No. 4 was cultivating the land. Mere cultivation of the land by the respondent No. 4,

as already discussed, will not vest her any right as bargadar and it requires an adjudication in that way as already discussed. In the order there is no

whisper about such adjudication.

15. Considering that, the order dated 21st July, 1998 passed by the Revenue Officer is set aside and quashed. The appellate authority also did not

address the issue in that angle and similar is the situation of the order passed by the learned Tribunal below.

16. Considering that, orders of the appellate authority and the learned Tribunal below both stand set aside and quashed.

17. The matter is remanded back to the Revenue Officer to pass a reasoned order by disposing of the pending applications u/s 16(4) of the West

Bengal Land Reforms Act as filed by the respondent No. 4, Bhagabati, against the erstwhile owner, Gobardhan Dingal and others, and another

one against Sibani Giri, the present writ petitioner, which has already been discussed in our order. Those applications filed u/s 16(4) of the said Act

have been annexed at page 151 and 159 respectively. Along with those applications, the application u/s 21D of the said Act annexed at page 39

also to be disposed of. Such adjudication to be made on hearing the respective parties and on giving proper opportunity of hearing. A reasoned

decision to be communicated to the respective parties by the concerned Revenue Officer. Such adjudication to be made within six months from

this date.

18. Having regard to our judgment, the recording of record of rights as made in favour of Bhagabati Bar showing her as bargadar in respect of the

concerned property also stands quashed and set aside.

19. The writ application is allowed to that extent. Urgent xerox certified copy of this order, if applied for, be given.

Harish Tandon, J.

I agree.