
Smt. Kanan Singha Sarkar and Others Vs State of West Bengal and Others

W.P.L.R.T. No. 289 of 2006

Court: Calcutta High Court

Date of Decision: April 21, 2009

Acts Referred:

Constitution of India, 1950 " Article 226#Cooch Behar (Assimilation of Laws) Act, 1950 " Section 3#West Bengal Estates Acquisition Act, 1953 " Section 1(2), 3, 4, 47, 5#West Bengal Land Reforms Act, 1955 " Section 59, 59(6)

Citation: (2009) 04 CAL CK 0007

Hon'ble Judges: Prasenjit Mandal, J; Ashim Kumar Banerjee, J

Bench: Division Bench

Advocate: Subhash Kumar Banerjee and Avijit Mukherjee, for the Appellant; Indrajit Sen and Sitaram Samanta for the State Md. Abdul Alim, for the Respondent

Final Decision: Dismissed

Judgement

Prasenjit Mandal, J.

The Judgment of the Court was delivered by:

1. This is an application against the judgment and order dated March 16, 2006 passed by the learned West Bengal Land Reforms and Tenancy

Tribunal in O.A. No. 4016 of 2001 whereby the learned Tribunal dismissed the said application.

2. The predecessor-in-interest of the applicants possessed huge quantum of lands of different descriptions and in between 05.05.1953 and

15.04.1955 he sold agricultural and nonagricultural lands to different persons by different deeds of conveyance in the district of Cooch Behar

which was governed by the Cooch Behar Tenancy Act, 1910. The West Bengal Estates Acquisition Act, 1953 (henceforth shall be called as the

said Act) came into force on 12.02.1954 but this Act did not repeal the said Cooch Behar Tenancy Act, 1910 and as such the Act of 1910

governed the District of Cooch Behar in the matter of lands till 01.11.1965 when the Section 59(6) of the West Bengal Land Reforms Act, 1955

came into force. The Cooch Behar Tenancy Act, 1910 was expressly repealed by that Section. The Settlement Officer, Cooch Behar started two

proceedings u/s 5A of the said Act with regard to the transfers made by the predecessor-in-interest of the applicants and passed orders holding

that the said transfers were not bona fide and then passed the order of vesting. Two writ applications were moved challenging the said order of

vesting and the Hon"ble Division Bench by a common judgment dated 23.04.1974 quashed the orders and directed the Revenue Authorities to

start fresh proceedings in terms of Section 5A (3) (ii) read with Section 6(1) of the said Act after giving opportunities of hearing to the petitioners.

Then in 1983, the Revenue Authorities started Big-Raiyat proceedings bearing No. 499 of 1983 u/s 6 read with Section 47 of the said Act in utter

violation of the solemn order of the Hon"ble High Court, Calcutta and passed an identical order of vesting. The said order of vesting was

challenged by another writ application bearing C.O. No. 1097(W) of 1986 and the Hon"ble Justice Paritosh Kumar Mukherjee (as His Lordship

then was) directed the authorities to consider the return to be filed by the applicants in terms of Section 6(6) of the said Act. The Hon"ble Court

also directed that the parties should maintain status quo in respect of the lands mentioned therein. The applicants submitted B-Form but the said B-

Form was not considered by the Revenue Authorities. So another application bearing W.P. No. 25970(W) of 1997 was moved before the

Hon"ble Justice G.R. Bhattacharjee (as His Lordship then was) and by an order dated 07.01.1998 the learned Single Judge directed the D.L. &

L.R.O., Cooch Behar to consider the B-Form of the applicants by passing a speaking order after giving an opportunity of hearing to the applicants

and such other person or persons as may be considered necessary by him within a specified period along with a direction to maintain status quo in

respect of the possession of the concerned lands till the disposal of the case. Thereafter, the D.L. & L.R.O., Cooch Behar initiated a proceeding

but none of the transferees was served with any notice of the said proceedings, though it was mandatory to issue notice upon the transferees. The

said D.L. & L.R.O., Cooch Behar passed an order holding that the transfers made by the predecessor-in-interest of the applicants were on total

lands measuring 179.79 acres including 8 acres of non-agricultural lands under Mouja Deochari and Balaghat District- Cooch Behar in between

05.05.1953 and 15.04.1955. Those lands were dealt with as retained lands of the applicants u/s 5A of the said Act. The applicants were allowed

to retain 1/3rd of the total.70 acres of land each as homestead. The net result was that the applicants were not allowed to retain any agricultural

and non-agricultural land. The applicants challenged the said order of vesting in the O.A. No. 4016 of 2001 and then the learned Tribunal

dismissed the said application ex parte. Being aggrieved by that order of dismissal the applicants filed an application under Article 226 of the

Constitution of India and the Hon"ble Division Bench remanded the matter to the learned Tribunal by the order dated 02.04.2003. Thereafter, the

learned Tribunal passed the impugned judgment and order dated March 16, 2006 dismissing the O.A. No. 4016 of 2001. Being aggrieved by the

said judgment and order, this application was preferred by the applicants.

3. The facts as narrated above by the applicants are rather admitted. Now the questions of law are involved in this application. Mr. Banerjee,

learned Advocate for the applicants, contends that the learned Tribunal exceeded its limit in deciding the case in view of the order of remand

passed by the Hon"ble Division Bench. The learned Tribunal was obliged to determine the matters within its limits as per directions of the Hon"ble

Division Bench and it was expected that the learned Tribunal would not exceed its jurisdiction. He also contends that the learned Tribunal

committed wrong in deciding whether the West Bengal Estates Acquisition Act, 1953 was extended or applied in the District of Cooch Behar

before 1965 when the Cooch Behar Tenancy Act, 1910 was repealed. After remand the learned Tribunal was under an obligation to decide

whether an enquiry u/s 5A of the said Act in respect of certain transfers made in the aforesaid period from 05.05.1953 to 15.04.1955 could be

held when the Act of 1910 was in operation in the district of Cooch Behar and to see if such transfers would come within the mischief period as

laid down in Section 5A of the said Act; because the said Act came into force in the District of Cooch Behar only on 01.11.1965 and the Cooch

Behar Tenancy Act, 1910 was very much in force at that time of transfers.

4. He also contends that the D.L. & L.R.O., Cooch Behar did not issue any notice at all upon the transferees which is mandatory as per Section

5(A)(5) of the said Act. He contends that the Division Bench remanded the matter to the learned Tribunal on a limited matter as stated above. But

the learned Tribunal made several findings which were beyond his jurisdiction. The State of West Bengal did not prefer any appeal against the

judgment of remand passed by the Hon"ble Division Bench and so the judgment reached its finality and the learned Tribunal had no jurisdiction to

reopen the issues which had already been decided. The judgment and order impugned suffers by the principle of res judicata. So the judgment and

order passed by the learned Tribunal cannot be sustained.

5. On the other hand, Mr. Sitaram Samanta, learned Advocate for the respondent, submits that the enquiry u/s 5A of the said Act could be held as

the said Act of 1953 was very much applicable in the district of Cooch Behar at that time. The petitioners were found to have sold more lands than

they were entitled to retain u/s 6(1) of the said Act during the mischief period and so the application was rightly dismissed by the learned Tribunal.

6. Upon hearing the rival contentions of the learned Advocates of both the sides and on perusal of the materials on record, we are of the view in

order to appreciate the lis between the parties and to come to a definite conclusion the order dated 02.04.2003 of the Division Bench in

W.P.L.R.T. No. 1315 of 2002 is very much relevant and so the relevant portion of the said judgment is quoted below:-

In this background, the question would be whether any enquiry as proposed in Section 5A can be held in respect of certain transfers which were

admittedly made prior to repeal of Cooch Behar Tenancy Act, 1910 when such Act was in operation in the District of Cooch Behar? In our

considered opinion, this important aspect of the matter should be looked into by the learned Tribunal as it disposed of the matter through the

impugned order ex parte without hearing the petitioner. This is more so, in view of the fact, that while disposing of the aforesaid question, certain

factual aspects of the matter, may have to be looked into. In this background, we are of the opinion that this is a fit case where the matter should

be sent back on remand to the learned Tribunal below for consideration of the above question and the other related questions raised by the

petitioner through the application after hearing both sides. Accordingly, the Writ Application is allowed and the impugned order is hereby set aside.

The case is sent back on remand to the learned Tribunal below for hearing the application and for the disposal in accordance with law after hearing

both parties. We made no order as to cost.

7. Admittedly, the predecessor-in-interest of the applicants was a big raiyat and he sold huge quantum of lands in between 05.05.1953 and

15.04.1955 to different persons by execution of separate deeds of conveyance in the District of Cooch Behar. Initially, two proceedings were

started u/s 5A of the said Act as to the validity of the said transfers and the result of the proceedings was that those transfers were not bona fide

and so orders of vesting were passed. The applicants challenged the said orders of vesting in C.R. No. 325(W) of 1967 and C.R. No. 2529 (W)

of 1967 which were disposed of by a common judgment dated 23.04.1974 passed by the Hon"ble Division Bench quashing the order of vesting

and giving a direction to the Revenue Authorities to start fresh proceedings in terms of Section 5A(3)(ii) read with Section 6(1) of the said Act

after giving opportunities of hearing to the applicants. For convenience, the relevant portion of the said orders dated 23.04.1974 is quoted below:-

Accordingly we quash the impugned orders in both the Rules purporting to deduct the transferred lands from the petitioner's land or the orders

purporting to vest the retained lands of the petitioner in the other Rules. The matter will now go back to the authorities concerned who will start

separate fresh proceedings for calculating the land in terms of Clause (ii) of such section (3) of Section 5A read with section 6(1) of the Estate

Acquisition Act and will decide the entire matter after giving an opportunity of hearing to all the petitioners. The authorities will serve notice within

three months from to-day upon the petitioners concerned for hearing of the matter, permit the petitioners to submit their statement in writing and

also to adduce evidence within such time as may be fixed by the authorities concerned and then decide the entire matter in accordance with law

and in the light of the observations made above. We make it clear that so far as the other points raised before us are concerned we express no

opinion and all of them are left open. We also make it clear that if by the result of the decision that may be taken by authorities concerned the

petitioner would still feel aggrieved, they may come before this Court with fresh Writ application if they are so advised.

8. The Settlement Authorities started proceedings accordingly in 1983 u/s 6 of the said Act in B.R. Proceeding Nos.499 of 1983, 500 of 1983

and 501 of 1983 which were disposed of by the Revenue Authorities by observing that those lands stood transferred, vested in the State. The

applicants challenged the said order by filing a writ application bearing C.O. No. 1097(W) of 1985 and the Hon"ble Justice Paritosh Kr.

Mukherjee (as His Lordship then was) passed orders. The relevant portion of which is quoted below:-

The concerned Revenue Officer shall consider the return to be filed on behalf of the writ petitioners in term of section 6(5) of the West Bengal

Estates Acquisition Act, 1953. Petitioners will submit returns within a period of six weeks from this date and order of vesting will be passed within

two months thereafter, after giving notice to the writ petitioners.

The interim order granted by this Court will, however, continue upto two weeks after the passing of the order of vesting by the concerned Revenue

Officer.

The writ petition is thus disposed of.

There will be no order for costs.

9. Thereafter the applicants submitted fresh B Form in 1998 but no action was taken by the Revenue Authorities over submission of such B Forms

and so the applicants filed another writ application bearing W.P. No. 25970(W) of 1997. The Hon"ble Justice G.R. Bhattacharjee (as His

Lordship then was) passed an order dated 07.01.1998 giving certain directions upon the D.L. & L.R.O., Cooch Behar to consider the B Form

submitted by the applicants. The relevant portion of the said order is quoted below:-

The respondent No. 2, D.L. & L.R.O, Cooch Behar is directed to consider the B Form of the petitioner(s) as mentioned in being Annexure "E"

to the writ petition and dispose of the same in accordance with law by passing a speaking order after giving an opportunity of hearing to the writ

petitioners and such other person or persons as may be considered necessary by him within a period of ten weeks from the date of communication

of this order.

10. Then the D.L. & L.R.O., Cooch Behar passed orders dated 22.11.2001 in the proceeding nos. District Cooch Behar No. 1 of 1999, No. 3

of 1999 and No. 4 of 1999. Those three proceedings were taken up analogously by the D.L. & L.R.O., Cooch Behar for hearing and order. The

relevant portion of the orders dated 22.11.2001 is quoted below:-

That the three petitioners had transferred 179.79 - 8.00=171.79 acres of agricultural land and 8.00 acres of non-agricultural land in mouza

Deochari and Balaghat within the period from 05.05.1953 to 15.04.1955.

Examining of "B" form for Agricultural lands.

It appears that the three petitioners had opted to retain one-third of 74.99 acres agricultural land for each. That is, in total, they three had opted to

retain 74.99 acres of Agricultural land. But it was seen that the three Petitioners jointly transferred 171.79 acres of agricultural land in mouza

Deochari and Balaghat within the period from 05.05.1953 to 15.04.1955 and the transferred lands were retained by the transferees. As per

provision of Section 5A(3)(ii) of the WBEA Act, 1953, these transferred land would be taken into account in calculating the lands which may be

retained by the transferors as if such land had never been transferred and were retained by the transferors or chosen by them for retention. As per

section 6(1) of the WBEA Act the three petitioners may retain maximum $25.00 \times 3 = 75.00$ acres of agricultural land. But they had already

transferred 171.79 acres of agricultural land within the restricted period.

Hence, no agricultural land is allowed to retain by the three intermediary petitioners.

Examining of "B" Form for Non-agricultural lands.

In the same style of agricultural land, the three intermediary-petitioners had submitted option to retain one-third of 17.41 acres of non-agricultural

land for each.

(1) It was early mentioned in schedule "A" that three petitioners had transferred 8.00 acres of non-agricultural land in mouza Deochari. This

transfer was made within the period from 05.05.1953 to 15.04.1955 and the transferred lands were retained by the transferees. As per Section

5A(3)(ii) an equal quantum of land would be deducted from the options of non agricultural land submitted by the intermediary-petitioners, that is

8.00 acres of non-agricultural land would be deducted from the total claim of three petitioners for retention of non-agricultural land.

(2) the following area was already shown in the option for agricultural land. So, these would be deducted from the option for retaining non-

agricultural land.

Mouza Plot No. Area in acre

Deochari 7404 0.42

7399 0.34

In the same mouza plot No. 7808 with area 0.29 acres was doubly entered in the option submitted by the three intermediary-petitioners.

Hence, $0.42 + 0.34 + 0.29 = 1.05$ acres of area is liable to be deducted from the option for non-agricultural land of the

petitioners.

(3) The following non-agricultural lands has been declared as bona fide transfer of the three intermediaries.

5A Plot Non-agricultural

case No. with No. land

date of involved in acre

order.

51 7566,7525, 0.03

dt.14.6.60 & other 25 plots

60 7135to 0.18

dt.14.6.60 7137

Mouza-Balaghat

19(A)/60 855, 0.52

856

32/60 1068,1077 0.21

Total 0.94

(Deochari + Balaghat)

As per Section 5A of WBEA Act an equal quantum of land is liable to be deducted from the option.

(4) The following lands were incorporated in the options of non-agricultural land but they are bona fide 5A transfer in respect of agricultural land.

Mouza Plot No. Area in acre

Deochari 7741 0.23

7968 0.12

Total 0.35

These are to be deducted from the options.

(5) The following lands though shown in the options of "B" Form as non-agricultural land but found to be other than non-agricultural land. So those

are liable to be deducted from the options of the three petitioners.

Mouza - Deochari.

Plot No. Area in Acres

7496 0.12

7808 0.29

7807 0.10

7856 0.20

8040 0.10

8029 0.13

8018 0.04

8015 0.04

988 0.27

1022 0.15

7804 0.32

7273 0.25

7301 0.08

7300 0.19

7740 0.29

8033 1.12

8031 0.01

8035 0.17

8034 0.16

8032 0.04

6553 0.08

6561 0.16

4477 0.20

6496 0.06

6615 0.21

4.78

Mouza - Shoegerkuthi.

Plot No. Area in Acres

1152 2.76

982 0.27

1106 0.42

3.45

Mouza - Balarampur.

Plot No. Area in Acres

7761 0.09

Total = 4.78 + 3.45 + 0.09 = 8.32 acres. Addition from (1) to (5) gives 8.00 + 1.05 + 0.94 + 0.35 + 8.32 = 18.66 acres.

This quantum is liable to be deducted from the total of the options of non-agricultural land submitted by the three petitioners.

The three petitioners altogether submitted options for retaining non-agricultural land amounting to 17.41 acres. But deductible amount has become

18.66 acres which is more than the quantum they opted.

Hence, no non-agricultural land is allowed to retain by the three intermediary petitioners.

Examining of "B" form in respect of Homestead land.

The three intermediary petitioners submitted option to retain homestead land a one-third of 7.63 acres of land for each. That is they all in total

submitted option to retain 7.63 acres of homestead land.

while scrutinising the options for Homestead land it was found that the following plots were doubly entered.

Mouza Plot No. Area in acre

Deochari 7330 0.50

7307 0.13 0.63

This quantum is liable to be deducted from the total options of the petitioners submitted for retention of Homestead land.

The following lands had been shown in the options as homestead land but they were used as other than homestead purpose. So those are liable to

be deducted from the options of the petitioners.

Mouza -

Deochari.

Plot No. Area in Acres

7392 0.10

7146 0.23

7284 0.07

7302 0.29

7339 0.11

7349 0.04

7355 0.03

7346 0.04

7391 0.08

7342 0.04

7147 0.06

7148 0.12

7362 0.48

7306 0.24

7307 0.13

7308 0.47

7309 0.10

7310 0.19

7361 0.17

7348 0.08

7313 0.57

7318 0.19

7347 0.14

7312 0.51

7316 0.25

7317 0.24

7332 0.23

7333 0.01

7334 0.01

7335 0.04

7341 0.04

7343 0.04

7336 0.07

7338 0.06

7753 0.05

8008 0.03

5024 0.07

5022 0.12

5023 0.03

7070 0.05

5.82

Mouza Plot No. Area in acre

AndaranFulbari 22412 0.31

Balarampur 4740 0.16

Shoegerkuthi 1395 0.01 0.48

Total land= 5.82 + 0.48 = 6.30

acres.

Hence, (1) + (2) = 0.63 + 6.30 = 6.93 acres of land is liable to be deducted from the options for Homestead land.

The three petitioners opted to retain 7.63 acres of land in total. So, they are entitled to retain

7.63 - 6.93 = 0.70 acres of homestead land.

The three petitioners are allowed to retain one-third of the below mentioned homestead land for each of them.

Mouza Plot No. Area in acre

Deochari 7330 0.50

7331 0.03

7345 0.01

7311 0.02

7344 0.07

Andaran 22331 0.07

Fulbari 0.70 acres

HENCE ORDERED that the three intermediary petitioners are allowed to retain one-third of the above mentioned 0.70 acres of homestead land

for each of them and no agricultural and non-agricultural land is allowed for retention.

The cases are thus disposed of.

Copy of this order be supplied to the B.L. & L.R.O., Tufanganj-I for information and taking necessary action.

11. The applicants filed an application bearing O.A. No. 4016 of 2001 (LRTT) before the learned West Bengal Land Reforms and Tenancy

Tribunal against the order dated 22.11.2001 of the D.L. & L.R.O., Cooch Behar and then the learned Tribunal dismissed the application ex parte.

It was set aside by the Hon"ble Division Bench in W.P.L.R.T. No. 1315 of 2002 giving directions to hear afresh on remand as indicated earlier.

Thereafter the impugned order was passed dismissing the said O.A. No. 4016 of 2001 (LRTT). Thus, from the early stage of the matter, we find

that the Revenue Authorities took steps u/s 5A of the said Act against the applicants and such process continued as the applicants filed writ

applications again and again but ultimately the Hon"ble Division Bench directed to hear the application afresh on the ground as indicated earlier.

12. The Cooch Behar Tenancy Act, 1910 was very much in force when all such steps were taken u/s 5A of the said Act. The Cooch Behar

(Assimilation of Estate Laws) Act, 1950 was passed (effective from 07.12.1950). The Sub-Section 3 of Section 3 of the said Assimilation Act

lays down that notwithstanding anything contained in sub-Sections (1) and (2) the Cooch Behar Acts specified in Schedule I as in force in Cooch

Behar immediately before the appointed day shall continue to be in force therein after the said date subject to the adaptations specified in that

schedule, and the state laws specified in Schedule II shall not extend to, or come into force in Cooch Behar:-

Provided that the State Government may, by notification in the official gazette, appoint a date on which any of the Acts specified in Schedule I shall

cease to be in force and any of the Acts specified in Schedule II shall extend to, or come into force in, Cooch Behar. The entry No. 6 of the

Schedule I of the Assimilation Act lays down the Cooch Behar Act. Therefore, the Cooch Behar Act remained in force in the district of Cooch

Behar even after merger with India. Thereafter West Bengal Estates Acquisition Act came into force on 12.02.1954 when the Cooch Behar

Tenancy Act, 1910 was very much in force in the District of Cooch Behar. The provisions of the Cooch Behar Assimilation Act of 1950 had no

scope to mention the provisions of the said Act of 1953 being enacted later on. But when the said Act was enacted and came into force with

immediate effect from 12.02.1954, the said Act of 1953, we hold, applies to the District of Cooch Behar also because there is an overriding effect

in Section 3 of the said Act of 1953. For convenience, we are quoting the Section 3 of the said Act:-

S. 3. Act to override other laws, etc.- The provisions of this Act shall have effect notwithstanding anything to the contrary contained in any other

law or in any contract express or implied or in any instrument and notwithstanding any usage or custom to the contrary:

Provided that nothing in this Act shall apply to any land held by a Corporation, not being a local authority or a company, established by or under

any law for the time being in force:

Provided further that nothing in this Act shall affect any land possession of which was taken by the State Government before the date mentioned in

the notification issued u/s 4, in furtherance of any proposal for acquiring such land, whether any formal proceedings for such acquisition were

started or not, and proceedings for acquisition of such land may be continued or commenced as if this Act had not been passed.

13. So Section 3 having the overriding effect over other Acts will govern the matter involved in the case. This is also clear from the provisions of

non-obstante Clause of Sections 4, 5 and 6 of the said Act of 1953 to make ways for the applicability of the provisions of the said Act of 1953 in

spite of other Acts. If there is any repugnancy between the Cooch Behar Tenancy Act, 1910 and the said Act of 1953 with regard to the status of

the applicants in respect of the lands and the vesting of the estate in terms of the notification of Section 4 of the said Act, the said Act of 1953 shall

prevail. Above all, Section 1(2) of the said Act lays down that the Act extends to the whole of West Bengal except the areas described in

Schedule I of the Calcutta Municipal Act, 1951, as deemed to have been amended u/s 594 of that Act. There is no indication that the said Act will

not be applicable in the district of Cooch Behar. On the other hand, Section 6 (3D) of the said Act lays down that Cooch Behar Tenancy Act,

1910 shall not apply. For convenience, it is quoted below:

(3D) Except as otherwise specifically provided in this Act or in the rules made there under, the provisions of the Bengal Tenancy Act, 1885 (VII

of 1885) or the Cooch Behar Tenancy Act, 1910 (Cooch Behar Act V of 1910) shall not apply in the case of any land referred to in sub-section

(2).

14. It is worthy of noting here that in all the proceedings relating to vesting of land since 1958 up to date, the Section 5A of the said Act came into

consideration all along and the applicants did not challenge the applicability of the said Section 5A of the said Act at any time contending that the

said Act, 1953 would not be applicable in the District of Cooch Behar where the Cooch Behar Tenancy Act, 1910 was in force. It is true that the

Cooch Behar Tenancy Act, 1910 was repealed in toto with effect from 01.11.1965 by Section 59 of the West Bengal Land Reforms Act, 1956

as mentioned earlier. In spite of having in force of the Cooch Behar Tenancy Act, 1910, for the reasons discussed earlier we hold that the West

Bengal Estates Acquisition Act, 1953 was even operative in the District of Cooch Behar and so the proceedings were rightly taken against the

petitioners u/s 5A of the said Act since 1958.

15. In view of the above proposition of law there is no doubt that the applicants were considered as intermediaries in respect of the lands in

question all along. Ultimately, in compliance with orders passed by the learned Single Judge in W.P. No. 25970(W) of 1997 the D.L. & L.R.O.,

Cooch Behar came to a finding in the proceeding nos.1 of 1999, 3 of 1999 and 4 of 1999 to the effect that the three petitioners had transferred

total 179.79 acres of land in Mouja Deochari and Balaghat within the District of Cooch Behar in the mischief period from 05.05.1953 to

15.04.1955. Out of such lands 8 acres of land were non-agricultural land. Earlier enquiry revealed that those transfers were genuine and so

Khanda Khatians were prepared in the names of the different transferees. The findings that the transfers of lands during the mischief period were

bona fide, were not challenged by the applicants by filing an appeal and so the Hon"ble Division Bench did not interfere with such findings. It was

also the case of the applicants that those transfers were bona fide (vide judgment and order dated 23.04.1974 of the Hon"ble Division Bench in

C.R. No. 325(W) of 1967 and 2529(W) of 1967 at page No. 41 of the application). Such findings have reached its finality. The applicants are,

therefore, bound by such findings and admission. Therefore, such huge quantum of lands transferred during the mischief period were considered as

retained by the transferors as per provision of Section 5(A)(3)(ii) of the said Act of 1953. In calculating the total lands that might be retained by the

transferors that is the applicants as per Section 6(1) of the said Act the three applicants were entitled to retain maximum $25.00 \times 3 = 75.00$ acres

of agricultural land. But they had already transferred 171.79 acres of agricultural land within the restricted period. So the intermediaries were not

allowed to retain any land under the category of agricultural lands. The D.L. & L.R.O., Cooch Behar also found that the three petitioners

submitted B Form for retaining non-agricultural land totaling to 17.41 acres of land but after taking into consideration of certain other lands which

were actually in the category of nonagricultural lands but described in other ways, the total lands to be deducted as transferred non-agricultural

lands appeared to be 18.66 acres of land, which were more than the quantum of lands they opted to retain. So the intermediaries were not allowed

to retain any non-agricultural lands at all save the three petitioners were allowed to retain 1/3rd of 70 acres of land each under Mouja - Deochari

and Andaram Pulbari as homestead as discussed earlier.

16. As regards service of notice upon the applicants, other person if necessary and the transferees, we find from the orders dated 14.01.1999 and

25.02.1999 appearing at page nos.57 and 58 of the application, notice upon all the applicants were duly served. Moreover, one Mr. Naresh Ch.

Das, learned Advocate, represented all the applicants before the D.L. & L.R.O., Cooch Behar (vide order dated 22.11.2001 appearing at page

73). So there is no defect in the matter of service of notice upon the applicants. Notice had also been served upon the concerned Revenue Officer.

As regards service of notice upon the transferees, the scope of hearing before the D.L. & L.R.O., Cooch Behar had become on a narrow campus

to consider the B Form submitted by the applicants. As observed earlier, transferees had been treated as bona fide purchasers all along. That is

why, there was no direction to serve notice upon the transferees at all. Thus, we find that the D.L. & L.R.O. had complied with the directions

contained in the orders dated 07.01.2008 passed in W.P. No. 25970(W) of 1997. Therefore, we are of the view that service of notice upon the

transferees was not a must after remand.

17. Mr. Banerjee argued much on res judicata and referred to a number of decisions of the Apex Court such as Hope Plantations Ltd. Vs. Taluk

Land Board, Peermade and Another, , Rafique Bibi (D) by Lrs. Vs. Sayed Waliuddin (D) by Lrs. and Others, , Bhanu Kumar Jain Vs. Archana

Kumar and Another, , Ishwar Dutt Vs. Land Acquisition Collector and Another, & Dadu Dayalu Mahasabha, Jaipur (Trust) Vs. Mahant Ram

Niwas and Another, . He contended that the learned Tribunal exceeded his jurisdiction in deciding the merits of the application in view of the order

of remand passed by the Hon"ble Division Bench. He also contended that the Hon"ble Division Bench remanded the matter after framing the

question to be determined and the learned Tribunal should have determined the same within its limits. The State did not prefer any appeal against

the order of the Hon"ble Division Bench. So the learned Tribunal had no jurisdiction to reopen the issues which had

already been decided in the said judgment of the Hon"ble Division Bench. He also contended that the findings of the learned Tribunal should have

been held whether an enquiry u/s 5A could be held in respect of transfers made prior to repeal of the Cooch Behar Tenancy Act, 1910 when such

Act was in operation in the district of Cooch Behar. Thus, he submitted that the findings of the learned Tribunal were hit by the principles of res

judicata. Mr. Samanta, however, did not make any submission on res judicata.

18. In this respect, we have considered the facts of the case and the decisions referred to above. It is true that the principles of res judicata applies

to different stage of the same proceedings. Once an order made in the course of a proceeding becomes final, it would be binding at the subsequent

stage of the proceeding (vide Bhanu Kumar Jain Vs. Archana Kumar and Another,). In order to comply with the directions of the Hon"ble

Division Bench the learned Tribunal made discussion on factual aspects of the case and the different provisions of the said Act but ultimately the

learned Tribunal considered and decided the question framed by the Hon"ble Division Bench. Though the applicability of Section 5A(3)(ii) of the

said Act came into consideration in several stages of the litigations between the parties, the question so framed for decision by the Hon"ble Division

Bench was not at all a matter of consideration at any time. Above all, the question so framed is a pure question of law. In such a situation

according to decision reported in Dadu Dayalu Mahasabha, Jaipur (Trust) Vs. Mahant Ram Niwas and Another, the principle of issue of estoppel

will have no role to play. We are of the view that the proceeding is not barred by the principles of res judicata.

19. Mr. Banerjee also contended the effect of "consideration" and he referred to the decisions reported in A.P.S.R.T.C. and Others Vs. G.

Srinivas Reddy and Others, & Employees State Insurance Corporation Vs. All India I.T.D.C. Employees Union and Others, . In this respect,

upon due consideration of the record, we find that the District authority had duly considered the B Form submitted by the applicants in the light of

the observations made by the Hon"ble Court and the provisions of the said Act. The District authority passed a reasoned order in support of his

findings as stated above. The meaning of the word ""consider"" has been elaborately discussed in paragraph nos.14, 15, 16, 17, 18 and 20 in the

decision A.P.S.R.T.C. and Others Vs. G. Srinivas Reddy and Others, and this decision was relied in Employees State Insurance Corporation Vs.

All India I.T.D.C. Employees Union and Others, in paragraph 13. By the word ""to consider"" the authority is required to apply its mind to the facts

and circumstances of the case and then to take a decision thereon in accordance with law. This does not mean that after due consideration the

authority would allow the application. The concerned authority has every right to reject the same again upon due consideration. In the instant case,

we find that the District authority had duly considered the directions of the learned Single Judge. The learned Tribunal had also considered the

question formulated by the Hon"ble Division Bench and then came to a definite finding on the question so framed.

20. Therefore, we are of the view that an enquiry u/s 5A of the said Act can be held in respect of transfers made between 05.05.1953 to

15.04.1955, that is, prior to repeal of the Cooch Behar Tenancy Act, 1910, which was very much in force in between 05.05.1953 to 15.04.1955

in the district of Cooch Behar. The learned Tribunal duly considered this question and also the other relevant questions raised by the applicants and

then passed a reasoned order. We are, therefore, of the view that the order dated 22.11.2001 passed by the D.L. & L.R.O., Cooch Behar in

case nos.1/1999, 3/1999 and 4/1999 was in compliance with the orders dated 07.01.1998 passed by the learned Single Judge in W.P. No.

25970(W) of 1997 and that there is no infirmity in the order of the District authority. So we are also of the view that the applicants cannot be

allowed to retain lands as mentioned in B Form submitted by them. Accordingly, we are of the view that the District authority came to a right

conclusion that after sale of the huge quantum of lands, the submission of B Form became meaningless.

21. Therefore, we hold that there is nothing to interfere with the order dated March 16, 2006 passed by the learned Tribunal in O.A. No. 4016 of

2001(LRTT).

22. Accordingly, the application fails to succeed. It is, therefore, dismissed.

23. Interim order of status quo is hereby vacated.

24. Considering the circumstances, there will be no order as to costs.

25. Urgent xerox certified copy of this order, if applied for, be made available to the learned Advocate for the parties on their usual undertakings.

Later:

Stay of operation of this judgment and order as prayed for is considered and rejected.

Ashim Kumar Banerjee, J.