(2006) 10 CAL CK 0005

Calcutta High Court

Case No: W.P.L.R.T. No''s. 288 and 348 of 2005

Falakata Industries Ltd. and Another		APPELLANT
	Vs	
State of West Bengal and Others Darjeeling Dooars Plantations (Tea) Pvt. Limited and Another Vs Collector and Others		RESPONDENT

Date of Decision: Oct. 6, 2006

Acts Referred:

- Bengal Tenancy Act, 1885 - Section 101(2), 3(11)
- Bengal, North- Western Provinces, Agra and Assam Civil Courts Act, 1887 - Section 38, 38(2)
- Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981 - Section 2A, 54, 55
- Constitution of India, 1950 - Article 226, 254(2), 300A
- Government (Crown) Grants Act, 1895 - Section 2, 3
- Limitation Act, 1963 - Section 14
- West Bengal Estates Acquisition Act, 1953 - Section 4, 5, 5A, 6, 6(1)
- West Bengal Estates Acquisition Rules, 1954 - Rule 4
- West Bengal Land Reforms (Third Amendment) Act, 1981 - Section 2(10), 4
- West Bengal Land Reforms Act, 1955 - Section 14M, 14V, 14Z, 14Z(2), 2(1)
- West Bengal Land Reforms and Tenancy Tribunal Act, 1997 - Section 10, 10(2), 2, 7

Citation: (2007) 2 CHN 142

Hon'ble Judges: Maharaj Sinha, J; Dilip Kumar Seth, J

Bench: Division Bench

Advocate: Sakti Nath Mukherjee, Jahar Lal De, S. Basu, Soumik Mukherjee, D.K. Jain and Ashoke Bhowmick, in W.P.L.R.T. No. 348 of 2005, Sakti Nath Mukherjee, Dilip Kumar Dhar, A. Dhar and Sudhangshu Sil, in W.P.L.R.T. No. 288 of 2005 and Sakti Nath Mukherjee, Tapas Kumar Mukherjee and Sachasis Jana, in W.P.L.R.T. No. 180 of 2002, for the Appellant;Indrajit Sen and Sitaram Bhowmick, in W.P.L.R.T. No. 348 of 2005, Soumen Dasgupta and Ziaul Islam for Respondent Nos. 7 to 9 in W.P.L.R.T. No. 348 of 2005 and

Judgement

Dilip Kumar Seth , J.

These three writ petitions were heard analogously since all these three writ petitions involve certain common principles of law. Though the facts are different, though the questions that arise out of these common principles are different, yet there are certain communions of identity within the question to be answered. Therefore, though we have heard the common principles together in respect of the three writ petitions, but in effect we have heard the three writ petitions simultaneously one after the other.

1.1. The learned Counsel for the respective parties had also addressed the Court accordingly. We, therefore, propose to dispose of these three matters by a common judgment dealing with the common principles in the judgment in Falakata Industries Ltd. and Anr. W.P.L.R.T. No. 348 of 2005. But we have dealt with the three cases on the basis of the respective facts involving different questions of law applicable to such respective facts, emanating from the common principles of law, separately one after the other with reference to the common principles dealt with in Falakata Industries Ltd. as hereafter.

W.P.L.R.T. No. 348 of 2005

Falakata Industries Ltd. and Anr.

Prelude:

2. Very interesting points have been raised in course of hearing of this writ petition arising out of a decision by the West Bengal Land Reforms and Tenancy Tribunal dismissing the application made before it on the ground of limitation in a judgment consisting of 56 pages. The question of limitation was not addressed by Mr. Mukherjee on the ground that on the face of the record, it appears that there was no limitation at all that the order which was challenged before the Land Tribunal was not within the jurisdiction of the Land Tribunal and the application made before it was due to wrong advice and on account of a decision of this Court where initially the matter was sought to be moved through a writ petition, but the points could not be raised before the learned Single Judge to impress upon him that this case was outside the jurisdiction of the learned Tribunal and could have been decided by this Court. In any event the same question which was involved in the said writ petition having been directed by an order passed in the said writ petition to be agitated before the Land Tribunal and the same having been taken to the Land Tribunal, even assuming that the Land Tribunal had jurisdiction, then also the writ petitioner was entitled to the benefit of Section 14 of the Limitation Act, since the application whereof had not been excluded in a proceeding initiated before it. Mr. Mukherjee

contended that the writ petition stands on its own strength and the action under challenge pertains to an action under the Transfer of Property Act (TP Act) and not under any of the provisions of the specified Acts within the meaning of Section 2(r) of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 (1997 Act).

2.1. Mr. Soumen Dasgupta, learned Counsel appearing on behalf of the Panchayat, to whom the land was sought to be handed over for the purpose of construction of a Bus Terminus, took a preliminary objection as to the hearing of this writ petition before this Bench comprising of one of us (Hon''ble D.K. Seth, J.) having occasion to deal with the matter at one stage, namely in disposing of the second writ petition. Admittedly, the second writ petition was dealt with by one of us (Hon''ble D.K. Seth, J.) sitting singly, holding that the dispute could not be entertained in the writ petition before this Court without being routed through the Land Reforms and Tenancy Tribunal in view of Sections 6 and 7 of the 1997 Act due to which the jurisdiction of this Court ceased and that too before a Division Bench by reason of the decision in L. Chandra Kumar Vs. Union of India and others, .

Preliminary objection:

3. This preliminary objection does not seem to be of any substance in view of the provisions contained in Section 38 of the Bengal, Agra and Assam Civil Courts Act, 1887 (1887 Act). Section 38(2) of the 1887 Act prohibits the Presiding Officer of an Appellate Civil Court from dealing with an appeal against an order passed by himself in another capacity. Mr. Dasgupta confined his objection only on this point with regard to hearing of the matter by "this Bench".

3.1. The order against which the present writ petition has been filed was not an order dealt with by one of us (Hon''ble D.K. Seth, J.). This writ petition is not arising out of an order passed in the second writ petition by one of us (Hon''ble D.K. Seth, J.) sitting singly. The said order passed by one of us sitting singly is not the subject-matter to be decided by this Court as an appellate authority. On the other hand, this Court is exercising original jurisdiction under Article 226 of the Constitution of India, though in the Division Bench as was exercised by (Hon''ble D.K. Seth, J.) sitting singly. That apart in the second writ petition, this Court held that the said writ petition was not maintainable under Article 226 before this Court in view of cessation of jurisdiction by reason of Sections 6 and 7 of the 1997 Act and did not deal with the merits of the said writ petition. After the said decision, the matter was dealt with by the learned Land Tribunal. Now, the order passed in that matter by the learned Land Tribunal is under challenge before this Court in its original jurisdiction under Article 226 of the Constitution of India and that too in respect of a different cause of action that arose on 29th August, 2000, i.e. during the pendency of the second writ petition, disclosed only on 7th October, 2002. Therefore, the prohibition prescribed u/s 38(2) of the 1887 Act can, by no stretch of imagination, be invoked in the present case.

Facts:

4. So far as the question in relation to the limitation, the merit and jurisdiction etc. are concerned, the same can be addressed only on the basis of the appreciation of the fact as we are called upon to answer. Therefore, we may deal with the facts before we attempt to answer the questions raised in this case, in brief, as are material for the purpose of deciding the present case.

4.1. With effect from 1st of January 1948 the Government of India granted lease in respect of the land in question to the appellant/writ petitioner for establishing a rice mill for a period of 30 years, with an option for renewal of the lease for another term of 30 years on same terms and conditions. After expiry of the said lease, the Collector of Jalpaiguri renewed the said lease with effect from 1st of January 1978 for a period of 30 years. Since the renewal, the appellant/writ petitioner continued to pay the lease rent since accepted by the Government regularly. On the ground that the possession of the writ petitioners were being interfered with by the respondents, Writ Petition No. 4898 (W) of 2000 (first writ petition) was moved by the writ petitioners. This writ petition was disposed of by an order dated 10th March 2000 (pp. 83-85 of the petition) "by directing the respondents not to interfere with the possession of the petitioner of the demised land until such time proper steps are taken by the Government either in terms of the lease or otherwise as are available to the Government to repossess the land or any part thereof. The learned Single Judge in the said order was pleased to clarify "by this observation I have not directed that the Government has unfettered right to take over possession and, accordingly, it shall be open to the petitioner to seek appropriate redressal if it is aggrieved by any action on the part of the Government in the matter of taking over or repossessing the land, in question".

4.2. This order being violated, a contempt petition was filed. In the said contempt petition by an order dated 10th July 2000 (pp. 91-92 of the petition) the learned Single Judge was pleased to discharge the said rule, but with a direction to the effect that "until such time the land is not acquired by the Panchayat or until such time the land is represented by the Government and the lease subsists, the police authorities are directed to see that apart from the petitioners or the persons permitted by them no one trespasses into the land in question".

4.3. This order was communicated to the respondents. The respondent authorities issued letters dated 27th June, 2000, 25th July, 2000, 7th August, 2000 and 16th August 2000 (pp. 95,100,103 and 123 of the petition). All these letters were replied by the learned Advocate for the lessee/writ petitioner by his letters dated 3rd July 2000, 8th August, 2000 and 9th August, 2000. In the mean time, another writ petition being WP No. 1421.W. 9W) of 2000 (second writ petition) moved by the petitioner was dismissed by one of us (Hon''ble D.K. Seth, J.) as referred to above on 18th of September, 2000 on the ground that the matter was not maintainable under Article 226 and should be moved before the learned Land Reforms and Tenancy

Tribunal. The review application filed against the order dated 18th September 2000 was disposed of by one of us (Hon''ble D.K. Seth, J.) by confirming the order dated 18th September 2000. Against the said order, an appeal was filed and the same was pending.

4.4. On 3rd December, 2001, in a suit being Title Suit No. 4 of 2000 in the Civil Court, Alipurduar, by the lessee/writ petitioner, an order was passed restraining the private bus owners from bringing their buses on the leasehold land till the disposal of the suit. On 7th of October, 2002, for the first time, the respondents disclosed that an order of eviction was passed against the lessee Avrit petitioner on 29th August, 2000. It may be noted that while the order dated 18th September, 2000 was passed in the second writ petition, this fact of eviction was not disclosed before the learned Single Judge (Hon''ble D.K. Seth, J.) and it was kept under the sleeves till 7th October, 2002. Even before this disclosure on 6th August, 2002, the respondents executed a deed of lease in respect of the said land in favour of Savapati, Falakata Panchayat Samity.

4.5. OA No. 153 of 2003 was filed before the Land Reforms and Tenancy Tribunal on 8th January, 2003 against the said order of eviction. By an order dated 9ht January, 2003 passed in the said O.A. the learned Tribunal was pleased to direct the respondents to maintain status quo and not to give effect to the order of eviction passed on 29th August, 2000 until further orders. Thereafter, on an application for appointment of receiver, the learned Tribunal was pleased to pass an order on 28th March, 2003 directing the District Land and Land Reforms Officer to take step for ensuring that the nature and character of the land was maintained and that no encroachment took place and, in case of any encroachment, to remove the same, if necessary, with Police help. On 17th February, 2003, the respondents served an application for vacating the order dated 9th January, 2003. On 19th November, 2003 and 16th December, 2003, the learned Advocate for the writ petitioner requested the local administrator to comply with the orders of the learned Tribunal. But in the later part of December, 2003, the Pradhan, Falakata Panchayat Samity and the Sabhapati, Falakata Panchayat Samity demolished the boundary wall by Bulldozers and started construction of Pucca road and bus terminus. Some proceedings were initiated on the basis of an application for contempt filed before the learned Tribunal, which is not necessary for our present purpose.

4.6. Ultimately, by an order dated 16th May, 2005, the learned Tribunal was pleased to dismiss the O.A. No. 153 of 2003 holding the same to be not maintainable being barred by limitation. It is this order against which the present writ petition has been filed.

4.7. It appears that the above order dated 29th August, 2000 was passed in terms of the conditions contained in Clauses 12 and 18 contained in the deed of lease. This, however, was sought to be supported by the respondents being an action within the provisions of Section 49 of the Land Reforms Act, 1955 read with Section 52B

thereof.

Government Grants Act: Whether applies:

5. However, Mr. Soumen Dasgupta, learned Senior Counsel, appearing on behalf of the Panchayat Samity, initially took a stand that the land is governed by the Government Grants Act, 1895 (1895 Act). Mr. Dasgupta contended by reason of Sections 2 and 3 of the 1895 Act, the provisions of the Transfer of Property Act, 1882 shall not be applicable in respect of grants under the 1895 Act and that all provisions, restrictions, conditions and limitations contained in any such grant or transfer as aforesaid shall be valid and take effect according to their tenor, any rule of law, statute or enactment of the Legislature on the contrary notwithstanding. Relying on Section 3 of (1895 Act), he contended that the provisions of the West Bengal Estates Acquisition Act, 1953 or the West Bengal Land Reforms Act, 1955 would not be applicable in respect of the said grant and it would be governed only by the terms and conditions of the deed of lease under which the writ petitioner/lessee was ordered to be evicted.

5.1. This proposition seems to be fallacious. The phrase "any rule of law, statute or enactment of the Legislature to the contrary notwithstanding" in Section 3 of the 1895 Act related to the legislations existing. The legislation by a legislature is a plenary jurisdiction. It is not controlled by any enactment. Therefore, Section 3 of the 1895 Act cannot have the effect of prohibiting the legislature from legislating any law contrary thereto. The inconsistency, however, in the present context can be decided on the basis of the overriding effect provided in the Estates Acquisition Act and the Land Reforms Act, namely in Section 3 of the respective Acts. These two legislations having been related to the land, subject-matter of List II of the Seventh Schedule to the Constitution of India, being the exclusive jurisdiction of the State legislature having received the assent of the President shall prevail within West Bengal notwithstanding any Central legislation in conflict therewith by reason of Article 254(2) of the Constitution of India.

5.2. The Court confronted Mr. Dasgupta with the proposition that if his contention is to be accepted, in that event, the provisions of the West Bengal Estates Acquisition Act, 1953 (WBEA Act) and West Bengal Land Reforms Act, 1955 (WBLR Act) could not be given effect to in respect of lands held under the ''Sanads'', the Government Grants by the then Zaminders, the intermediaries, who would be entitled to hold the said land according to the tenor of the provisions, restrictions, conditions and limitations contained in such "Sanads"/grants. When it was pointed out to Mr. Dasgupta that such a proposition is preposterous, in his wisdom, however, Mr. Dasgupta, instead of answering the said question confronted to him, submitted that he would not press the said point.

5.3. That the enactment of the West Bengal Non-Agricultural Tenancy Act, 1949 (1949, Act) and its 1974 Amendment, the WBEA Act the WBLR Act and its 1981

Amendment were well within the legislative competence of the State Legislature and covered by the legislative field being Entry 18 List II and that such enactment will prevail over Government (Crown) Grants Act, 1895 (1895 Act) was held in the decision in Azizus Subhan Vs. Union of India (UOI) and Others, . That the right of the lessee had assumed different characteristics/complexion is supported by the fact of legislative amendments. In spite of several amendments subsequent to Azizus Subhan Vs. Union of India (UOI) and Others, of the WBEA Act did not exclude grants under the Government (Crown) Grants Act from the operation of the WBEA Act. These enactments indicate the legislative approval of judicial pronouncement, as was held in Renuka Pachal Vs. Sm. Chapa Guha Neogi and Others, . Admittedly, the Estates Acquisition Act was amended by amending Act XXI of 1969, second Amendment Act XXXIII of 1973; Act XXI of 1977, Act XXXVI of 1977 and Act XX of 1997 and the WBLR Act was amended in 1981. Similarly, the pther Acts, as mentioned above, equally prevail over the 1895 Act.

5.4. Mr. Dasgupta relied upon the decision in Hajee S.V.M. Mohamed Jamaludeen Bros. and Co. Vs. Govt. of T.N., to contend that a grant includes a licence. But this decision dealt with the Government Grants Act, 1895 without any reference to provisions similar to the WBEA Act and WBLR Act and the 1949 Act in the context in which we are supposed to answer the question. Therefore, this decision also does not help Mr. Dasgupta.

The order dated 29th August, 2000: Grounds of Eviction:

6. The deed of lease provided in Clause 12 that "The lessee shall not use nor permit any other person to use the demised land or any part thereof for a purpose other than that for which it is leased or in a manner which renders it unfit for use for the purpose of the tenancy" (page 76 of the petition). Whereas Clause 18 provides: "On breach or non-observance of any of the foregoing convenants, terms or conditions rendering the demised land unfit for use for the purpose of the tenancy, the lessee shall be liable to ejectment in accordance with the provisions of the law for the time being in force but without prejudice to any other right or remedy of the lessor that may have accrued hereunder".

6.1. It appears from the order dated 29th August, 2000 that the lessee/writ petitioner was evicted on account of breach of these grounds. Mr. Mukherjee contended that the lessee could not be evicted on this ground even assuming that there was breach of Clause 12. Inasmuch as simple breach of conditions contained in Clause 12 would not attract the mischief of Clause 18 unless such breach renders the demised land unfit for use for the purpose of the tenancy. According to him, only a godown of the rice mill was let out by the lessee to the Jute Corporation of India. Neither the whole premises nor the land was let out, This cannot render the demised land unfit for use for the purpose of tenancy. Inasmuch as the rice mill still can be operated. Therefore, according to him, Clause 18 could not come into play.

6.2. It seems that there are substance in the contention of Mr. Mukherjee. Admittedly, it is only when the breach of the conditions in Clause 12 renders the demised land unfit for use for the purpose of tenancy, the provisions contained in Clause 18 could be applied and not otherwise. In any event, we need not elaborate this point in view of the main point being the sheet anchor of Mr. Mukherjee''s contention, which we now propose to deal with.

The lease vis-a-vis the Non-Agricultural Tenancy Act:

7. The West Bengal Non-Agricultural Tenancy Act, 1949 (1949 Act) recognized a non-agricultural tenancy on certain conditions conferring particular rights within the scope and ambit of the said Act. The land held under the lease for the purpose of rice mill, according to Mr. Mukherjee, created a non-agricultural tenancy within the meaning of Non-Agricultrual Tenant defined in Section 2(5) of the 1949 Act. Since the lease was not over 12 years, therefore, u/s 8 of the 1949 Act, the lessee was entitled to successive renewal thereof. However, - this 1949 Act did not receive the assent of the President, as such inconsistency between the 1895 Act and the 1949 Act may pose a question as to whether this lease was a Government grant and would be effective notwithstanding the 1949 Act in view of the provisions contained in Article 254(2) of the Constitution of India specifying that in case of conflict, unless assented by President, between the State Act and the Central Act, the Central Act will prevail. However, we need not go into this question for the reasons noted hereafter.

7.1. Admittedly, the lease continued till 31th December, 1978. The lessee held under a lease under the State. By reason of the amendment brought about in 1974 in the 1949 Act, even through the lessee could not be treated as a non-agricultural tenant previously, by now on account of the 1974 Amendment brought about in the statute, the lessee became a non-agricultural tenant and entitled, to the perpetual renewal thereof. At the same time, Section 3A inserted in the WBLR Act through the West Bengal Land Reforms (Third Amendment) Act, 1981 (1981 Amendment) and the change of definition of land in Section 2(7) effective from 9th September 1980 included the right of the lessee. On account of repeal of the 1949 Act by reason of Section 63 of the 1981 Amendment, and by reason of the effect of Section 4 as amended by the 1981 Amendment of the WBLR Act the status of the lessee/writ petitioner stood transformed into that of a raiyat holding the land under the State with heritable and transferable right. As soon the right of the lessee/writ petitioner became that of a raiyat with transferable and heritable right, he cannot be evicted even on the basis of the terms of Clauses 12 and 18 respectively on the deed of lease effective from 1st of January, 1979 on the basis of execution thereof on 9th of September, 1980, the day with effect from which the 1981 Act became enforceable and effective.

7.2. Strenuous argument has been made by Mr. Mukherjee to contend that the status of the lessee/writ petitioner on the basis of the lease effective from 1st

January, 1948 was that of a non-agricultural tenant within the meaning of the 1949 Act and as such he was entitled to retain the same within the meaning of Section 6(1)(c) of the WBEA Act provided it did not exceed the ceiling. Admittedly, the quantum of land held by the lessee in the present case was within the ceiling u/s 6(1)(c) of the WBEA Act. By reason of Sections 4 and 5 of the WBEA Act all estates and rights of every intermediary stood vested in the State with effect from 15ht of April, 1955. By reason of Section 5 of the WBEA Act, in consequences of such vesting the non-agricultural tenants were to be treated as holding the non-agricultural tenancy directly under the State.

7.3. However, Mr. Dasgupta sought to contend that the lessee/writ petitioner had been holding the land under the State directly and when the land was held by the State, it remained vested with the State and there was no question of vesting of the same land to the State again under the WBEA Act.

7.4. This point, as advanced by Mr. Dasgupta, seems to be of no consequence. Inasmuch as it is not the land, which vested in consequences of Section 4 on the promulgation of the WBEA Act. It is the interest of the intermediary, which stood vested in the State and such intermediaries were allowed to retain such part of the vested land within the ceiling provided therein. However, the lessee having held the land directly under the State, he was not an intermediary but by reason of enforcement of Chapter VI, the interest of intermediary or that of a raiyat or an under-raiyat or the person holding the land directly also stood vested in the State. Therefore, the lessee having held the non-agricultural land under the State, it is not the interest of the State but that of the lessee which stood vested and in consequence whereof it was entitled to retain the same u/s 6(1)(c) of the WBEA Act and such retention was not controlled by the terms of the lease after Chapter VI was enforced with effect from 10th of April, 1956. By operation of Section 6(2) of the WBEA Act, an intermediary irrespective of his prevesting status became a tenant under the State from the date of vesting in respect of lands retained by him u/s 6(1) of the WBEA Act. The provisions of the WBLR Act were admittedly transitional of temporary which acquired the permanency by reason of the reforms brought about under the provisions of the WBLR Act. As soon the 1949 Act was repealed and the definition of land in Section 2(7) was amended to include all kinds of land under the sun and Section 3A was inserted in the WBLR Act to encompass the non-agricultural land within its fold, by reason of Section 4, as amended thereby, the lessee became a raiyat in respect of the said land with heritable and transferable right and thus he cannot be evicted on account of violation of Clause 12 read with Clause 18 of the terms of the lease.

Land Reforms and Tenancy Tribunal: Jurisdiction: Whether attracted:

8. In this case, the question that we are to deal with is not only confined within the eviction of the lessee/writ petitioner but on the question of termination of the lease and taking over possession thereof and execution of a lease or settlement in favour

of the Panchayat Samity. This ha9 since been purported to be made under the provisions of the WBLR Act, which definitely is an action, which comes within the purview of the 1997 Act.

8.1. Mr. Mukherjee contended that the eviction of the lessee being grounded on Clauses 12 and 18 respectively of the terms of the lease is an action within the provisions of the TP Act. Therefore, the learned Tribunal could not have assumed jurisdiction. The order passed by the learned Tribunal though without jurisdiction can only be challenged in the manner provided for challenging a decision passed by the learned Tribunal in respect of a matter coming within its jurisdiction. He relied on the decision in Akshaya Kumar Mandal Vs. Binod Kumar Sinha, to contend that the decision of the learned Tribunal is a judgment of fact. Whether it is within or without jurisdiction is immaterial so long it stands. It can be set aside only by the mode applicable for setting aside such decision and not otherwise. Therefore, this writ petition can very well be maintained before the Division Bench.

8.2. Even if it is contended that the order of the learned Tribunal is without jurisdiction and, therefore, the writ petition is not maintainable, even then the writ petitioner has right to invoke Article 226 since it is an order, in fact, which can be challenged under Article 226 by reason of the decision in L. Chandra Kumar (supra). If there is a judgment, on fact, though the said judgment may not be legal, yet the remedy is the remedy by which a judgment can be challenged as was held in Akshaya Kumar Mandal Vs. Binod Kumar Sinha, . That apart, Mr. Mukherjee contended that if there is violation of natural justice, even alternative remedy would not be a bar and the same can be challenged under Article 226 if the proceeding is without jurisdiction, even though there is an alternative remedy as was held in A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, . The question of alternative remedy being available would not exclude the jurisdiction under Article 226, as was held in Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar, (Three-Judges Bench). This principle has since been followed in Whirlpool Corporation v. Registrar of Trade Marks 1988 (8) SCC 1 (paras 14 to 20).

8.3. In this case, as pointed out above, the case is not confined only to the order of eviction, but it includes other actions as indicated in paragraph 8 above. That apart, the stand taken by the State is that the action is based on the provisions contained in Section 49 of the WBLR Act. At the same time, the setting of the land in favour of the Panchayat Samity was also done in exercise of the jurisdiction conferred upon the Collector u/s 49 of the WBLR Act. At the same time, the lessee/writ petitioner is also claiming his right under the provisions of the WBLR Act. The moment the question relates to any of the provisions contained in the specified Act, the jurisdiction of the Land Reforms and Tenancy Tribunal is attracted. This was so held by one of us (Hon''ble D.K. Seth, J.) in the second writ petition in this very case where the question related to the status of the lessee discernible under the provisions of

the WBLR Act. Thus, there is no scope of making any alternative submission that the matter is governed only by the TP Act and the 1949 Act. Even if these two provisions in two statutes may be involved even then the applicability of the provisions of WBEA Act and WBLR Act cannot be ruled out. In fact, the right that is being now claimed is a right emanating from the provisions contained in the WBEA Act read with WBLR Act. Therefore, the jurisdiction of the learned Tenancy Tribunal is very much attracted in this case.

8.4. The contention that the Land Tribunal had no jurisdiction is wholly inappropriate and misplaced in the facts and circumstances of the case when the right of the lessee/writ petitioner, which is sought to be asserted before the learned Tribunal emanated from the provisions of the WBEA Act and the WBLR Act being the specified Acts.

Question of limitation:

9. The question of limitation on which the learned Tribunal had proceeded seems to be in a direction, which can be rightly characterized as wrong direction. Inasmuch as from the facts disclosed, it appears that when the decision in Writ Petition No. 14211 (W) of 2000 (second writ petition) was rendered on 18th of September, 2000 by the learned Single Judge, it was not disclosed that the lessee was evicted by an order dated 29th of August, 2000. This was not communicated to the lessee until 7th of October, 2002. The respondents have not disputed the same. Neither there is any material to show that the lessee had at any point of time notice or knowledge of this order. After having learnt about the order of eviction on 7th October, 2002, the same was challenged in January, 2003. This cannot be said to be beyond limitation for the purpose of moving an application before the learned Tribunal challenging the same. That apart, this was challenged in a review application since dismissed on 6th of July 2001 against which an appeal is pending enabling the lessee to invoke Section 14 of the Limitation Act. The finding that the OA No. 153 of 2003 was barred by limitation by the learned Tribunal, in our view, seems to be perverse.

9.1. Section 10(2) of the 1997 Act empowers the learned Tribunal to condone delay in filing the application, if it is satisfied with the cause shown. Such cause may be a cause, which might have prevented the applicant to make the application earlier. It might be such reasonable grounds which may weigh with the learned Tribunal for its satisfaction.

9.2. Inasmuch as from the records, it does not appear that any proceeding for eviction was initiated against the lessee/writ petitioner. On the other hand, the correspondences as disclosed show that the orders of this Court passed in the first writ petition and those passed on the contempt proceeding were communicated to the respondents; and the respondents had been asking the writ petitioner to appear before the authority in relation to the letters addressed by the Advocate on behalf of the lessee/writ petitioner. Nowhere it was disclosed that the proceeding was a

proceeding for eviction of the lessee. It does not appear that there was any notice upon the lessee too show cause as to why his lease should not be terminated and he should not be evicted in view of the alleged breach of the conditions contained in Clause 12 and those in Clause 18 of the deed of lease respectively. Since there was no such notice and there was no such proceedings, there was no necessity for the lessee/writ petitioner to appear before the authority when each such letter issued by the authority was being replied by the Advocate on behalf of the lessee/writ petitioner. In such circumstances, there seems to be no reason even to presume constructive notice on the part of the lessee. The limitation, therefore, is to be counted from the notice and knowledge of the lessee apart from the benefit, which the lessee can claim u/s 14 of the Limitation Act as discussed above.

The 1949 Act: The status of the lessee:

10. Admittedly, the lessee was holding under a lease for a period of 30 years effective from 1st of January, 1948 granted by the State of West Bengal. Admittedly, the land was leased for the purpose of mill or factory unconnected with agriculture or horticulture irrespective of whether it is used for any such purpose and does not come within the exclusions provided in Clauses (a) to (d) of Section 2(4) of the 1949 Act. A ''non-agricultural tenant'' defined in Section 2(5) of the 1949 Act means "a person holding non-agricultural land under another person liable to pay rent to such person, but does not include a person who holds any premises or part of any premises, situated on non-agricultural land and erected or owned by another person, and who is liable to pay rent for such premises or such part of the premises to such person". The premises'' has been explained to mean "any building, such as house, manufactory, warehouse, stable, shop or hut whether constructed of masonry, bricks, concrete, wood, mud, metal or any other material whatsoever and includes any land appertaining to such building".

10.1. The land leased squarely comes within Section 2(4) and is a non-agricultural land and that the lessee hold the said non-agricultural land and under another person to whom the lessee is liable to pay rent and land constructed mill or factory or godowns or warehouses on the said land. Section 3(1) of the 1949 Act describes the classes of non-agricultural tenant viz: (a) tenants and (b) under-tenants. The word ''tenant'' used in Section 3(1) has been defined in Section 3(2) to mean "a person who has acquired from a proprietor or a tenure holder a right to hold non-agricultural land". By reason of such definition the lessee could claim that the State/lessor was a proprietor under whom the lessee had acquired the right to hold the non-agricultural land. We need not dilate on the point in view of the amendment brought about in the 1949 Act through the West Bengal Non-Agricultural Tenancy (Amendment) Act, 1974 (1974 Act). No provision was incorporated in the 1974 Act with regard to the date on which it was supposed to come into force. Therefore, by reason of Section 6 contained in the Bengal General Clauses Act, 1899, it became effective from the date of its publication, namely, 26th March, 1974; in other words,

during the currency of the lease held by the lessee replacing the phrase "from a proprietor or a tenure holder a right to hold non-agricultural land" by the phrase "a right to hold non-agricultural land directly under the State". Therefore, after the 1974 Amendment, the definition of tenant defined in Section 3(2) read thus: ""tenant'' means a person who has acquired a right to hold non-agricultural land directly under the State for any of the purposes provided in this Act, and includes also the successors-in-interest of person who have acquired such a right". Section 4 prescribed the purpose for holding non-agricultural land by a tenant for (a) homestead or residential purposes; (b) manufacturing or business purposes; or (c) other purposes. u/s 5, a non-agricultural tenant shall be deemed to hold any non-agricultural land (b) for manufacturing or business purpose if such tenant is entitled, under the terms of any agreement between himself and the landlord, to use or is actually using such land for carrying on therein any commercial or industrial enterprise or any trade or business and (c) for other purposes, if such tenant is entitled, under the terms of any agreement between himself and the landlord, to use or is actually using such land for any purpose not connected with agriculture or horticulture other than the purposes specified in Clauses (a) and (b).

10.2. Thus, by reason of the amendment brought about in the 1949 Act by the 1974 Act, the right of the lessee to hold land under the State directly under the lease became a non-agricultural tenant within the meaning of Section 3 of the 1949 Act as a non-agricultural tenant as defined in Section 2(5). Admittedly, the State in this case is a landlord as defined in Section 2(3) defining landlord to mean "a person immediately under whom a non-agricultural tenant holds and includes the Government". Section 8 of the 1949 Act provides that:

8. Renewals of lease of tenancies held for not less than twelve years and succession to, and transfer of such tenancies.— (1) Notwithstanding anything contained in any other law for the time being in force or in any contract, where any non-agricultural land is held under a lease in writing for a term of not less than twelve years specified in such lease, the tenant holding such land shall, on the expiration of the period so specified, be entitled to the option of successive renewals of such lease on such fair and reasonable conditions as to rent as may be agreed upon between the landlord and such tenant:

Provided that no premium or salami shall be payable in respect of such renewal

**** **** ****

10.3. The right of perpetual renewal provided u/s 8(1) of the West Bengal Non-Agricultural Tenancy Act, 1949 was made applicable to non-agricultural tenancies held directly under the State Government by reason of amendment of Section 3(2) by the West Bengal Act VIII of 1974. Therefore, by exercise of option for renewal of a lease containing terms of renewal stand extended by the period opted for and that there is a distinction between a lease without option of renewal and a

lease with option of renewal as was held in Pravin Chandra Liladhar v. Madan Mohan Jaidka 1988(2) CLJ 135 (paras 7, 13, and 14), relying on the decision in Satadal Basini v. Lalit Mohan 68 CWN 1086. Thus, the lessee acquired the right of perpetual renewal by reason of Section 8 of the 1949 Act.

WBEA Act: Status of the lessee:

11. Before the 1974 Act, the words and expressions not defined in the 1949 Act and used in the Bengal Tenancy Act, 1885 (BT Act) or the TP Act have the same meanings as in those Acts. The proprietor mentioned in Section 3(2) of the 1949 Act prior to the 1974 Amendment as defined in Section 3(11) of the Bengal Tenancy Act, 1885 (BT Act) included the Government when it owns the estate by reason of Section 101(2) Explanation 1 of the said Act explaining as to when the Government is a proprietor. State''s paramount right as sovereign to receive revenue unites with the right to receive rent from the tenants on account of Explanation 1 to Section 101(2) expanding the term ''settlement of land revenue'' as used in Clause (d) includes a settlement of rent in an estate or tenure, which belongs to the Government.

11.1. Therefore, even under the 1949 Act by reason of Section 8, the lessee having held land for purposes unconnected with agriculture or horticulture under the Government was entitled to the benefit of Section 8. of the 1949 Act conferring benefit to a lessee holding land for a period over 12 years to the benefit of its renewal. This non-agricultural tenancy created in 1948 under the State existed when the WBEA Act came into force. As such his interest as non-agricultural tenant vested in the State after enforcement of Chapter VI of the WBEA Act with effect from 14th April, 1956 and was entitled to retain such land u/s 6(1)(b) or (c) as the case may be. Therefore, the lessee would be entitled to retain the said land on the terms prescribed under the West Bengal Estates Acquisition Rules, 1954 (WBEA Rules), which in Rule 4 provides that such land shall be held under a lease on the terms and conditions prescribed in Schedule "F" in Form 1. The lease, which had since been renewed with effect from 1st of January, 1978, is a lease in that form. The lease that was executed in 1948 also included the terms contained in Clauses 12 and 18 respectively, which are in consonance with Section 7 of the 1949 Act and Form 1 Schedule "F" of the 1954 Rules.

11.2. The provisions of the WBEA Act being transitional, the right emanated from WBEA Act was subject to the reforms to be brought about under the WBLR Act. However, there may be question of conflict in regard to this situation. Inasmuch as the provisions of the WBLR Act would not be applicable in respect of a non-agricultural tenancy governed by the 1949 Act until 1974 and then again with the amendment of the 1949 Act by the 1974 Amendment, the provisions of the WBLR Act was borrowed only to a limited extent for the purpose of the 1949 Act as discussed in the preceding paragraphs. In any event we need not dilate on this question because of the subsequent development and the changes brought about in the law governing the subject, on the strength whereof the present position is to

be adjudicated.

WBLR Act: Status of the lessee:

12. The 1981 Act repealed the 1949 Act and amended the definition of land in Section 2(7) of the WBLR Act to include non-agricultural land within the definition and thus brought within its fold, all lands held by non-agricultural tenants. By reason of Section 3A on the repeal of the 1949 Act, the interest of non-agricultural tenant vested in the State and the non-agricultural tenant became a raiyat in respect of the land so held by fiction created thereunder.

12.1. In order to appreciate the situation, we may beneficially quote Section 2(7), Section 3A and Section 4 as amended by 1981 Act:

2(7) ''Land'' means land of every description and includes tank, tank-fishery, fishery, homestead, or land used for the purpose of live-stock breeding, poultry farming, dairy or land comprised in tea garden, mill, factory, workshop, orchard, hat, bazaar, ferries, tolls or land having any other sairati interests and any other land together with all interests, and benefits arising out of land and things attached to the earth or permanently fastened to anything attached to earth.

***** ***** *****

3A. Rights of non-agricultural tenants and under-tenants in non-agricultural land to vest in the State.(1) The rights and interests of all non-agricultural tenants and under-tenants under the West Bengal Non-Agricultural Tenancy Act, 1949 (West Ben. Act XX of 1949) shall vest in the State free from all encumbrances, and the provisions of Sections 5 and 5A of the West Bengal Estates Acquisition Act, 1953 (West Ben. Act 1 of 1954) shall apply, with such modifications as may be necessary, mutatis mutandis to all such non-agricultural tenants and under-tenants as if such non-agricultural tenants and under-tenants were intermediaries and the land held by them were estates and a person holding under a non-agricultural tenant or under-tenant were a raiyat. Explanation.--Nothing in Sections 5 and 5A of the West Bengal Estates Acquisition Act, 1953 shall be construed to affect in any way the vesting of the rights and interests of a non-agricultural tenant or under-tenant under the West Bengal Non-Agricultural Tenancy Act, 1949 in the State under Sub-section (1) of this section.

(2) Notwithstanding anything contained in Sub-section (1), a non-agricultural tenant or under-tenant under the West Bengal Non-Agricultural Tenancy Act, 1949, holding in his khas possession any land to which the provisions of Sub-section (1) apply, shall, subject to the other provisions of this Act, be entitled to retain as a raiyat the said land which together with other lands, if any, held by him shall not exceed the ceiling area u/s 14M.

(3) Every intermediary,-

(a) whose land held in his khas possession has vested in the State under Sub-section (1), or

(b) Whose estates or interests, other than land held in his khas possession, have vested in the State under Sub-section (1).

shall be entitled to receive an amount to be determined in accordance with the provisions of Section 14V.

(4) The provisions of this section shall not apply to any land to which the provisions of the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981, apply.

(5) This section shall be deemed to have come into force on and from the 9th day of September, 1980.

4. Rights of raiyat in respect of land.--(1) Subject to the other provisions of this Act, a raiyat shall on and after the commencement of this Act be the owner of his plot of land and the plot of land shall be heritable and transferable.

(2) Nothing in Sub-section (1) shall entitle a raiyat to sub-soil rights.

(2A) No raiyat shall,-

(a) quarry sand, or permit any person to quarry sand, from his plot of land, or

(b) dig or use, or permit any person to dig or use, earth or clay of his plot of land for the manufacture of bricks or tiles, for any purpose, other than his own use, except with the previous permission in writing of the State Government and in accordance with such terms and conditions and on payment of such fees as may be prescribed.

(2B) If any raiyat commits a breach of the provisions of Sub-section (2A) the prescribed authority may, after giving in the prescribed manner an opportunity to the raiyat to show cause against the action proposed to be taken, impose upon him a fine not exceeding two thousand rupees, and where the breach is a continuing one, a further fine not exceeding two hundred rupees for each day during which the breach continues. Such fine, if not duly paid, shall be recoverable as a public demand.

(2C) An appeal shall lie from any order made under Sub-section (2A), in accordance with the provisions of Sections 54 and 55.

(3) Omitted by the West Bengal Land Reforms (Amendment) Act, 1971 (President''s Act III of 1971) and thereafter by the West Bengal Land Reforms (Amendment) Act, 1972 (Act XII of 1972) with retrospective effect from February 12, 1971.

(4) Notwithstanding anything in Sub-section (1), the plot of land of a raiyat, excluding his homestead, shall vest in the State free from all encumbrances under an order of the prescribed authority made in the prescribed manner after such enquiry as it thinks fit and after giving the raiyat an opportunity to show cause

against the action proposed to be taken if-

(a) he has without any reasonable cause used the land comprised in the plot of land or a substantial part thereof for any purpose other than that for which it was held by him or settled by the State or directly incidental thereto;

(b) he has without any reasonable cause ceased to keep the land or any substantial part thereof under personal cultivation or has failed to utilise the land consistently "with the original purpose of the tenancy or for any purpose directly incidental thereto for a period of three consecutive years or more except when such land is under a usufructuary mortgage mentioned in Section 7:

(c) he has without any reasonable cause failed to bring the land comprised in the plot of land or any substantial part thereof under personal cultivation or has failed to utilise the land consistently with the original purpose of the tenancy or for any purpose directly incidental thereto within three consecutive years of the date on which this Act comes into force or of the date on which he came into possession of such land, whichever is later;

(d) he has let out the whole or any part of the plot of land: Provided that nothing in this sub-section shall prevent the raiyat from cultivating any part of his plot of land by a bargadar.

(5) On the plot of land of a raiyat being vested in the State under subsection (4), his ownership therein shall cease and the rights of the lessee, if any, shall terminate and the raiyat shall be entuled to receive and amount to be determined u/s 141.

12.2. Section 2(7) defining land as amended by the 1981 Act includes all kinds of land and Section 2(10) defining raiyat as amended by the 1981 Act includes a person or institution holding land for any purpose whatsoever. This brings the lessee in the fold of a raiyat by reason of the vesting of the interest with effect from 9th of September, 1980 on the insertion of Section 3A in the WBLR Act. By operation of Section 4 of the WBLR Act, the right of the lessee as raiyat has transformed into a heritable and transferable one.

12.3. Mr. Dasgupta relied on Delhi Development Authority Vs. Durga Chand Kaushish, to contend that a renewal is a grant of a fresh lease. Therefore, as soon the lease was renewed in 9th September, 1980 after the 1981 Amendment became effective, the lease having prospective effect was a fresh lease and as such no right can be asserted by the lessee on the strength thereof except what is available within the terms of the lease and the lessee cannot assert its right on the strength of any amendment in the WBLR Act or under the 1949 Act. But this decision does not seem to apply in the facts and circumstances of the case. Inasmuch as in the said case, the lease was renewed pursuant to an option for renewal contained in the deed on the same terms and conditions where it was sought to be contended that the rent fixed in the earlier lease cannot be enhanced at the time of the renewal of the lease. In

this context, it was held that this renewal was a fresh lease where the rent received could be revised or enhanced. This decision had no occasion to deal with the question with reference to the provision contained in the 1949 Act or the WBEA Act or the WBLR Act or the impact of the respective amendment of the said Acts, as the case may be. Therefore, reliance on this decision does not help Mr. Dasgupta to drive his point home.

12.4. The decision in Kalicharan Shah and Ors. v. State of West Bengal and Ors. 2002(1) CHN 30 by one of us (Hon''ble D.K. Seth, J.) also does not help Mr. Dasgupta in the present context where the question involved in the said decision was completely different. There it was held that the Government had to settle lands in terms of Section 49 of the WBLR Act even if it relates to non-agricultural tenancy in view of the change in definition of land under the Land Reforms Act. The proposition is not in dispute, but in the facts and circumstances of the case this ratio has nothing to do with the purpose, which we are supposed to look at and answer.

Whether the lessee could be evicted:

13. The deprivation of possession of a property can only be done in due course of law on account of the protection provided under Article 300A of the Constitution of India. A person cannot be evicted simply by force as was held in Lallu Yeshwant Singh v. Rao Jagdish Singh and Ors. AIR 1968 SC 620; State of West Bengal and Others Vs. Vishnunarayan and Associates (P) Ltd. and Another, .

13.1. After the 1974 Amendment of the 1949 Act, the lessee can be evicted only under the provisions contemplated in Section 8 Sub-section (3) thereof on account of the user of the land in a manner rendering it unfit for use for the purpose of tenancy. As soon as the 1981 Amendment of the WBLR Act became effective, the lessee''s right having been transformed into that pf a raiyat, it can be evicted only under the provisions of Section 14Z of that Act. Once by reason of Section 3A read with Section 4 of the WBLR Act, the lessee becomes a raiyat with heritable and transferable right in the land, it cannot be evicted from the lands held within the ceiling contemplated u/s 14M thereof.

13.2. The lease having been granted under the WBEA Act read with Rule 4 of the WBEA Rules, it would be governed by the terms and conditions contained in the said lease as provided in Rule 4 of the WBEA Rules read with Schedule "F" Form I thereof. These terms of the lease would be effective in respect of the excess land beyond the ceiling prescribed u/s 14M of the WBLR Act. These terms of the agreement being covenants arising out of a contract, though statutory, cannot override or take away the right accrued by operation of law under the provisions of Sections 3A and 4 of the WBLR Act. The terms of the lease are supposed to yield to the legal status acquired by the lessee in respect of the land within the ceiling. This is more so because of Section 3 of the WBLR Act having an overriding effect over Section 3 of the WBEA Act, which stands eclipsed to the extent it is inconsistent with the

provisions contained in the WBLR Act. The lessee would be bound by the other terms and conditions contained in the said lease, but, however, subject to his right culminated into that of a raiyat within the scope and ambit of the WBLR Act and the land not being at the disposal of the State, Section 52B also cannot be attracted. Similarly, u/s 14Z of the WBLR Act, the lessee can be evicted only from the land in excess of the ceiling prescribed u/s 14M thereof. In such circumstances, the lessee cannot be evicted on the ground contemplated u/s 14Z of the WBLR Act or WBEA Act or on any other ground so long the land is not in excess of the ceiling prescribed in the Act.

Conclusion:

14. Since the land was not in excess of the ceiling, the lessee is entitled to retain the same. As such there was no question of vesting. If the land is not vested, in that event, the land is not within the disposal of the State. If the land is not within the disposal of the State, the same cannot be distributed. In such a case Section 49 or 52B has no manner of application. As such the purported settlement of the land in favour of the Panchayat Samity is of no consequence and the deed of lease executed in favour of the Panchayat Samity is to be declared void, ineffective and of no consequence and would not affect the right-title-interest of the lessee/writ petitioner how a raiyat. The purported eviction cannot be sustained in view of the fact that the right, title, interest of the lessee/writ petitioner since transformed into that of a raiyat with heritable and transferable right from which he cannot be evicted on the strength of Clauses 12 and 18 of the deed of lease after the 1974 Amendment of the 1949 Act and the repeal of the 1949 Act along with the amendment in the definition of land and insertion of Section 3A read with Section 4 as amended by the 1981 Amendment Act.

Order:

15. In these circumstances, the writ petition succeeds. The order dated 29th of August, 2000 of the learned Tribunal is hereby quashed. Let a Writ of Certiorari be issued accordingly.

15.1. The deed of lease executed in respect of the said land in favour of the Panchayat Samity on 6th August, 2002 is hereby declared to be void, ineffective, without jurisdiction and of no consequence and shall not affect the right, title, interest of the lessee/writ petitioner in any manner whatsoever and the Panchayat Samity did not acquire any right title interest therein and cannot possess the said land and is liable to restore the land to the petitioners forthwith. Let a Writ of Mandamus do issue accordingly.

15.2. It is declared that the lessee is a raiyat in terms of Section 3A read with Section 4 of the WBLR Act and is not liable to eviction except in accordance with the provisions contained therein viz.: Section 14Z(2) of the . WBLR Act and that too only in respect of land allowed to be retained in excess of the ceiling to which Section

52B has no manner of application. Let a Writ of Mandamus do issue accordingly.

W.P.L.R.T. No. 288 of 2005

Darjeeling Dooars Plantations (Tea)

Pvt. Limited and Anr.

The challenge:

16. The demand for salami in consideration of the renewal of the lease of tea garden in favour of the transferee stepping into the shoes of the original lessee in view of the amendment brought about in Schedule "F" Form-I under Rule 4 of the West Bengal Estates Acquisition Rules, 1954 (WBEA Rules) has been challenged in this writ petition after having been unsuccessful in the proceedings before the West Bengal Land Reforms and Tenancy Tribunal dismissing the OA No. 1301 of 2003.

Facts:

17. In order to appreciate the situation, we may now briefly refer to the facts of this case. The tea estate known as Zurantee Tea Estate (Zurantee) was leased out by the Government of West Bengal in favour of Chulsa Tea Company (Chulsa) being limited for a period of 30 years on 30th January, 1975. In the record-of-rights (pp. 29A to D) prepared under the West Bengal Estates Acquisition Act, 1953 (WBEA Act), the land was recorded to have been permitted to be retained u/s 6(3) of the WBEA Act. It appears that the original lease was granted on 1st of April, 1924 since expired on 31st of March, 1954 namely before the WBEA Act came into force.

17.1. In 1976, Chulsa sold Zurantee to Darjeeling Dooars Plantations (Tea) Limited (Darjeeling Dooars). By an order dated 25th August, 1976, the tea estate was mutated by the Deputy Collector, Jalpaiguri in favour of Darjeeling Dooars. In Company Petition No. 259 of 1990, this High Court allowed a scheme of amalgamation between the Darjeeling Dooars Plantations (Tea) Limited, the transferor and Karala Valley Tea Company Limited (Karala), the transferee. Under the said scheme, the name of the transferee Karala was changed as Darjeeling Dooars and all rights, title and interest of Darjeeling Dooars vested in it. Subsequently, by an order dated 28th of November, 1991 the Land Registration Collector, Jalpaiguri, allowed mutation of the name in respect of Zurantee in favour of Darjeeling Dooars.

17.2. On 1st of June, 1994, the Government of West Bengal issued a notification amending Schedule "F" of the WBEA Rules inserting Clauses 1A and 1B to be incorporated in the lease to be granted thereunder requiring payment of salami of Rs. 15,000/- per hectare of land leased out before further renewal of the lease in cases renewal is asked for by a transferee allowing the transferee to enjoy the balance period of the lease transferred. The Darjeeling Dooars applied for the renewal of lease of the Zurantee for a period of 30 years on 10th of March, 1998 and

a deed renewing the lease was executed on 12th of March, 1998 in favour of the Darjeeling Dooars in which for the first time the new clauses as amended with effect from l8t of June, 1994 were inserted. On 22nd March, 2002, the Collector, Jalpaiguri demanded a sum of Rs. 1,10,50,200/- as salami in respect of renewal of the said lease pursuant to the amended clause.

17.3. This was challenged by the Darjeeling Dooars before the learned Land Reforms and Tenancy Tribunal (learned Tribunal), which by an order dated 22nd July, 2002 remanded the matter to the Collector for passing a reasoned order after giving hearing to the. petitioner. By an order dated 29th November, 2002, the Collector held that the Darjeeling Dooars was liable to pay salami and directed the Darjeeling Dooars to deposit the same,

17.4. Challenging the said order the Darjeeling Dooars moved an application under Sections 6 and 10 of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 (1997 Act) before the learned Tribunal. By an order dated 5th May, 2003, the learned Tribunal was pleased to grant an order of stay of operation of the order passed by the Collector till the disposal of the application. By an order dated 22nd February, 2005, the said application was dismissed by the learned Tribunal by an order consisting of 43 pages followed by two separate concurring judgment consisting of 36 and 43 pages respectively, dismissing the said application and upholding the notification imposing salami on transfer of tea estate. It is these orders, which are the subject-matter of challenge before the Division Bench of this Court in this writ petition.

The question:

18. The moot question that requires an answer in the present case is as to whether the amendment of Schedule "F" of the WBEA Rules would be prospective or retrospective? In other words, whether these clauses should be deemed to have been incorporated in the continuing lease to which the transferee had stepped into by virtue of transfer making him liable and subject to the said conditions at the time of renewal? To be precise, by virtue of the amendment of the WBEA Rules could the terms of the unexpired lease be substituted for being applicable on renewal of the unexpired lease on its expiry.

The Argument:

19. Various points have been raised by Mr. Mukherjee with regard to the status of the lessee and characteristic of the lease on the basis of the legal situation arising out of the impact of the West Bengal Non-Agricultural Tenancy Act, 1949 (1949 Act) on account of its amendment incorporated in 1974, through the West Bengal Non-Agricultural Tenancy (Amendment) Act, 1974 (1974 Amendment) by including leases held by a lessee under the State directly and making him entitled to a perpetual/successive renewal u/s 8 of the 1949 Act where the lease is for a period exceeding 12 years, as a result or impact of the notification issued under the WBEA

Act u/s 4 and the consequences provided in Section 5 and the retention of the tea estate u/s 6(3) thereof. He also referred to the consequences that ensued with the amendment of the West Bengal Land Reforms Act, 1955 (WBLR Act) by the West Bengal Land Reforms (Third Amendment) Act, 1981 (1981 Amendment) effective from 9th of September, 1980, amending the definition of land in Section 2(7), which included tea estate and inserting Section 3A read with Section 4 thereof creating a raiyati interest in the land with transferable and heritable right and the inconsistencies and conflict in the situations emanating from the different provisions of the respective legislations.

The status of the Transferee: The inconsistency in law:

20. Admittedly, there are apparent inconsistencies in the different legislations. By reason of the 1974 Amendment in the 1949 Act, a lessee holding directly under the State in respect of a tea estate also became a non-agricultural tenant entitled to the right of perpetual/successive renewal on account of the lease being held for more than 12 years u/s 8 of the 1949 Act. This right accrued to the transferor in the year 1974. The transferor had transferred the lease with this right to the transferee, who become entitled to all the right, title and interest of the transferor that devolved upon the transferee by reason of the transfer from the transferor. By reason of Section 6(3) of the WBEA Act, the land was allowed to be retained in the tea estate, for which there was not ceiling, by the Government conferring the right of a raiyat upon the lessee.

20.1. Be that as it may, by reason of the repeal of the 1949 Act by the 1981 Amendment of the WBLR Act, amending the definition of land in Section 2(7) which included tea estate and insertion of Section 3A read with amended Section 4 of the WBLR Act, the status of Darjeeling Dooars transformed into that of a raiyat with transferable and heritable right in the light whereof the question of grant of lease is to be examined.

20.2. In fact, if by operation of law the lessee Darjeeling Dooars becomes a raiyat, within the scope of the amended Section 4 of the 1981 Amendment of the WBLR Act, then and in that event, there is no scope for renewal of the lease in terms of the WBEA Rules. Inasmuch as, WBEA Act was a transitional provision provided for in a temporary Act being a step towards reform of the land system in the State of West Bengal by abolition of the intermediary interest and creation of only one subject in respect of holding of lands directly under the State, namely the raiyat. All other interests in between the State and the actual holder of the land namely intermediaries, raiyats, under-raiyats were abolished. Therefore, as soon a person becomes a non-agricultural tenant holding under the State, he is entitled to perpetual renewal of the lease on the terms and conditions contained therein so far as those are not insistent with the provisions of the 1949 Act.

20.3. This 1974 Amendment of the 1949 Act conferred upon the non-agricultural tenants certain rights, which cannot be changed or modified, de hors the 1949 Act. This right was transformed into that of a raiyat within the meaning of WBLR Act by reason of the 1981 Amendment thereof repealing the 1949 Act, amending the definition of land to incorporate the tea estate within the definition thereof and through the insertion of Section 3A resulting into the consequence provided in Section 4 of the WBLR Act. Such a situation by reason of change in law creates an indivisible right unto the Darjeeling Dooars, the lessee, and clothed it with transferable and heritable right. Once the WBLR Act had come into force and the land has been reformed, the effect of the WBEA Act culminates into the right that has been reformed under the WBLR Act ending the transitional provision/right, creating a permanent right reforming the tenure system of the land in respect of that particular lessee. As such it is no more open to the State to go back on the question as to whether salami could at all be demanded even if the lease is renewed in favour of a transferee. The right being transferable and heritable, the State cannot demand salami for the purpose of renewal of a lease on transfer that emanates from the right acquired on transfer.

20.4. Though, however, Mr. Mukherjee had drawn our attention to these inconsistencies, but in his usual fairness he submitted that he has not challenged the validity or vires of the amendment of the Estates Acquisition Rules in relation to Schedule "F" and Form-I. We need not go into such question for the apparent reason that the provision of this Act has been saved within the protected umbrella of the 9th Schedule to the Constitution of India.

The confine:

21. In fact, inconsistencies in the law as discussed above are apparent. There are many other instances, which would come to the fore on a detailed examination of the respective provisions. Which we do not think that we should undertake in this case. We, therefore, confine our answer only to the question as formulated in paragraph 18 hereinbefore. Ignoring the consistencies, in this case, we shall examine the question, relying on WBEA Rules as amended in 1994 having regard to the status of the lease and the lessee.

Whether salami could be demanded in the present case:

22. In the present case, the transfer took place on 27th of August, 1990 when the lease granted in 1975 was operative. The fact remains that after the earlier lease expired on 31st March, 1954 and Chulsa was allowed to retain Zurantee u/s 6(3) of the WBEA Act after it came into force as is apparent from the record viz.: that no lease was granted for the period in between 1954 and 1975 (pp. 18 to 29). However, under the terms of the lease executed in 1975, the lease for a period of 30 years was made effective from March 25, 1968, which was supposed to expire on 24th of March, 1998 since renewed from the said date and/or on the date of renewal of

lease executed on 12th of March, 1998. This 1975 lease provided in Clause 16(a) (page 27) for renewal in the following terms:

16(a) That the lessee/lessees shall be entitled to the renewal of this lease for a further period of thirty years and to successive renewals for similar periods, subject to the rules and the terms and conditions of this lease and to such other terms and conditions as the State Government may, from time to time, consider it necessary to impose and include any such renewed lease or leases and subject further to such rent as may then be fixed, provided that such additional terms and conditions shall not be inconsistent with the law regulating such leases and shall not have retrospective effect.

22.1. These terms of renewal are clear and unambiguous and these are terms exactly, which is provided in Schedule "F" Form-I of the WBEA Rules. In terms of the conditions contained in Clause 16(a), the State Government/lessor was entitled to incorporate additional terms and conditions consistent with the law regulating the lease with prospective effect in the renewed lease. This lease was granted in terms of Rule 4 of the WBEA Rules in terms of Schedule "F" in Form-I. The State is entitled only to incorporate additional conditions in the renewed lease with prospective effect. Therefore, the amendment, if any, incorporated in Schedule "F" by reason of the amendment effective from 1st of June, 1994 would not be effective in respect of unexpired period of the lease to which the Darjeeling Dooars had stepped into. Therefore, under Clause 16(a) read with Schedule "F", Darjeeling Dooars was entitled to renewal of the lease on the same terms and conditions. The amendment brought about could not be given retrospective effect to affect the right of the lessee/transferee stepping into the shoes of the transferor-lessee to obtain further renewal of the lease for further period of 30 years and to successive renewals for similar periods. The only liberty the State Government had under the said clause is that it can impose and include in the said renewed lease additional terms and conditions not inconsistent with Rule 4 Schedule "F" and Form-I of the WBEA Rules without retrospective effect.

22.2. Therefore, the amendment brought about in Schedule "F" could be incorporated in the renewed lease and was so rightly incorporated in the 1998 lease. As such the conditions so incorporated became part of the renewed lease and would govern the terms and conditions of the renewed lease and that too prospectively. These additional terms and conditions incorporated in the renewed lease became effective after the lease was renewed, namely when the right to renew the lease was exercised and upon such exercise the right came to an end and the renewal of the lease being a fresh lease, these terms cannot operate to affect a situation prior to the renewal of the lease. In terms of these additional conditions, the salami is payable in consideration of the renewal after the expiry of the renewed lease containing the terms. A term, which was not in existence in the lease sought to be renewed within the scope of Clause 16(a), could not govern the right of the lessee to

obtain renewal of the right or the State to impose conditions for renewal on the basis of Clause 16(a) of the 1975 lease, as was held in Delhi Development Authority Vs. Durga Chand Kaushish, .

22.3. The terms of the renewal have to be found from the conditions contained in the lease itself. It cannot be imported from outside. If it has the effect of abridging the rights conferred by the lease affecting the lessee, the same cannot be accepted. A renewal of the lease is really a grant of a fresh lease. The word ''renewal'' only denotes the existence of a prior lease providing for a renewal as of right. The terms contained in the lease cannot co-exist with additional terms, which are incorporated in the renewed lease to make a person liable to comply with the additional terms incorporated in the renewed lease for the purpose of obtaining the renewal of the erstwhile lease available on the terms contained in the existing lease. The additional condition becomes effective only on the renewal of the lease, but not before thereto. If such a proposition is to be accepted on adopted, in that event, it would lead to absurdity and shall be contrary to all accepted legal proposition governing rights under the lease. There cannot be any uncertainty in the convenants. A convenant cannot be substituted unilaterally during the terms of the lease. The changed covenant becomes effective only in respect of the renewed lease but cannot form a consideration for the renewal of the existing lease without this convenant.

22.4. The amendment also does not provide that the amended clauses would have retrospective operation. In any event, the terms of the lease cannot be substituted even by legislation. No vested right, particularly, in respect of fiscal or revenue matters already accrued could be taken away through legislation; neither any legislation in that respect could be retrospective in operation.

Conclusion:

23. In these circumstances, the additional terms contained in the renewed lease would be effective at the time of renewal of the renewed lease entitling the State of demand salami in terms of Clause 1B from the transferee if there is any transfer. However, salami can be demanded by the State under Clause 1A upon determination of the lease from the person to whom the fresh lease is granted after the 1994 Amendment of the WBEA Rules even if Clause 1A was not incorporated in the lease determined.

23.1. In these circumstances, the Government is not entitled to demand salami in terms of Clauses 1A or 1B incorporated in the renewed lease as a consideration for the 1998 renewal from the Darjeeling Dooars. Such a demand is inconsistent with the law regulating such lease and cannot be retrospective in effect.

Order:

24. In the result, the appeal succeeds. The order of the learned Tribunal and that of the DLLRO dated 29th November, 2003 (page 83) being Annexure ''P-10'' and the demand made by the Government through its letter dated 22nd March, 2002 are hereby quashed.

24.1. It is hereby declared that the Darjeeling Dooars is entitled to the renewal of the lease in terms of Clause 16(a) of the erstwhile (1975) lease without the additional clauses of the (1998) renewed lease i. e. without being substituted in the 1975 lease and the amendment of Rule 4 Schedule "F'' Form-I does not substitute the terms of the unexpired lease nor does it affect the right of renewal contemplated in the terms of the erstwhile lease.

24.2. It is declared further that the additional terms being Clauses 1A and 1B incorporated in the 1998 lease are prospective in operation and shall govern the renewal of the lease on its expiry.

W.P.L.R.T. No. 180 of 2002

Calcutta Mineral Supply Co. Pvt. Ltd. and Ors.

The background:

25. In this case, the writ petitioner held land measuring about 4.54 acres comprised in a factory or mill together with structures since before the West Bengal Estates Acquisition Act, 1953 (WBEA Act) came into force. By reason of provisions as discussed in the decision in Falakata Industries Ltd. (supra), the land held by the writ petitioner was retainable either u/s 6(1)(b) and/or u/s 6(1)(c) and the land being held less than the ceiling retainable under the said head, the provisions of Section 6(2) and (3) of the WBEA Act cannot be made applicable. By reason of the amendment of the West Bengal Non-Agricultural Tenancy Act, 1949 (1949 Act) by the West Bengal Non-Agricultural Tenancy (Amendment) Act, 1974 (1974 Amendment), this land held by the writ petitioner under a lease from the State directly became a non-agricultural tenant. By reason of the period of lease exceeding 12 years, he was entitled to perpetual renewal in terms of Section 8 of the 1949 Act. With the promulgation of West Bengal Land Reforms (Third Amendment) Act, 1981 (1981 Amendment) amending the West Bengal Land Reforms Act (WBLR Act) effective from 9th September, 1980, the 1949 Act having been repealed and the definition of the land in Section 2(7) of the WBLR Act being amended including land comprising of mill and factory within the definition and insertion of Section 3A therein resulting into the consequences provided in Section 4 thereof, the writ petitioner became raiyat with heritable and transferable right.

25.1. In such a situation can the State Government, in exercise of the power under the provisions of the WBEA Act, terminate the lease on the ground that the purpose for which the lease was granted has since been changed? This is exactly what the State Government attempted to do.

Facts:

26. In order to appreciate the situation, we may briefly refer to the facts. As on the date of vesting under the West Bengal Estates Acquisition Act the company held 4.54 acres of land comprised in factory. As a result of notification u/s 4 and effects thereof u/s 5 of the WBEA Act all the land comprised in factory vested in the State. However, by reason of Section 6(1)(g) read with Section 6(3) of that Act the company was allowed to retain all the lands comprised in factory because in the opinion of the State Government the company required all the land for the purpose of the factory.

26.1. It came to the notice of the State Government in 1996 that the company had alienated almost half the land and no land was being used for the purpose of the factory, which remained closed since 1993. In exercise of the power conferred on it by the proviso to Section 6(3) of the Act the State Government by the order dated 2nd April, 1996 revised the order and resumed 3.76 acres of land as surplus to the requirement of the factory. The company challenged that order in C.O. No. 20148(W) of 1996. The writ petition, on being transmitted to the learned Tribunal, was dismissed by the learned Tribunal by an order dated 12th September, 2000 passed in OA No. 449 of 1999. The applicant preferred an application under Article 226 of the Constitution of India against the order of the Tribunal before the Division Bench of the High Court in WPLRT No. 902 of 2000. The Division Bench was pleased to hold that the order dated 2nd April, 1996 passed by the State Government was not a speaking order and was pleased to set aside the order passed by the Tribunal as also by the State Government with a direction to the State to consider the matter afresh. In compliance of the direction of the Division Bench the Special Secretary passed the impugned Order No. 3171-L, dated 19th July, 2001 on behalf of the State Government. An application before the learned Tribunal challenging the said order was filed by the writ petitioners being OA No. 23 7 of 2001. The learned Tribunal by an order dated 18th January, 2002 was pleased to dismiss the said OA No. 2317 of 2001. It is against this under the present writ petition being WPLRT No. 180 of 2002 has been filed.

WBEA Act: Whether can apply:

27. Admittedly, in the provisions of Sections 6(2) and (3) WBEA Act related to a temporary Act governing transitional situation in contemplation of the reform of the lands since taken over by the West Bengal Land Reforms Act (WBLR Act) and as such the provisions of the WBEA Act can no more be exercised for taking over possession of the land except through the provisions contained in Section 14Z of the WBLR Act. The right of the appellant having been transformed into that of a raiyat with transferable and heritable right by operation of the 1981 Amendment of the WBLR Act, the provisions of the WBEA Act can no more apply and the entire right is to be governed only under the provisions of the WBLR Act, namely u/s 3A read with Section 4 and can be terminated only under the. provision of Section 14Z thereof.

27.1. In respect of the same right of a raiyat, two provisions cannot operate, particularly, when the WBEA Act was a temporary/transitional statute governing the vesting of the rights of the intermediary and deemed intermediaries and a creation of a relationship between the State and the holder of the land directly permitting retention of the land as provided in Section 6, and was meant for and aimed at vesting and retention of land subject to the contemplated reforms to be brought about permanently under the WBLR Act, due to which the provisions of the WBEA Act are supposed to yield to the provisions of the WBLR Act in case of conflict on account of the former being a transitional provision subject to the culmination and crystallization of the right under the latter. The WBEA Act was a prelude and the first step towards reforms of the land tenure system aimed at abolition of intermediary rights in any form in between the State and the actual holder of the land. Therefore, the provisions of the WBEA Act cannot be resorted to for the purpose of interfering with the right of a raiyat in exercise of the power conferred under the provisions of Section 6(3) of the WBEA Act on the ground envisaged therein simply because the mill ox factory has suspended its works.

27.2. The field of operation of the WBEA Act, which is related to the date of vesting and particularly the provision of retention thereof and after retention the consequences travel to the field governed by the WBLR Act, a field different from that where the WBEA Act operates. In other words, the field operated under the WBEA Act is the primary step for abolition of intermediary rights, a field, which is then taken over by the WBLR, Act for the purpose of reform of the land tenure system. As such once the retention is allowed and the WBLR Act takes over the field, the WBEA Act cannot operate in conflict or inconsistent with the WBLR Act particularly in respect of the rights emanating from the provisions of the WBLR Act. Once Section 14Z was incorporated in WBLR Act, it is only the provisions in Section 14Z would operate and govern the right of a raiyat and WBEA Act cannot encroach upon the same. Both the Acts provide in Section 3 respectively an overriding effect. The WBLR Act being subsequent in order of enactment, its overriding effect would override that of the WBEA Act. The overriding effect contained in WBEA Act never postulated that it would override any Act legislated subsequently. Admittedly, the overriding effect contained in Section 3 of the WBEA Act does not affect the legislative competence of the legislature in enacting WBLR Act with overriding effect. If it does not affect the plenary jurisdiction of the legislature, then the subsequent enactment containing overriding effect would override the existing provision contained in the WBEA Act.

27.3. This was sought to be objected to by Mr. Pulak Ranjan Mondal, learned Advocate, appearing on behalf of the State. He was confronted with a question by the Court that in that event how could the ceiling contained in Section 14M of the WBLR Act providing for family ceiling of a lesser quantum than provided in WBEA Act and that too in respect of different categories of land could be given effect to. Mr. Mondal, however, did not answer the question.

27.4. The fact remains that the successive amendments of the WBLR Act enacting a law operating in the same field namely the land in West Bengal under the same entry of List II inconsistent with the provisions of the WBEA Act is a legislative approval of the overriding effect of the WBLR Act over the provisions of the WBEA Act. In other words, the overriding effect of Section 3 of the WBLR Act eclipse the overriding effect provided in Section 3 of the WBEA Act to the extent the provision of the WBLR Act contemplates. Inasmuch as the WBEA Act provides for individual ceiling of different quantum of various categories of land coming under different heads as provided in Section 6(1) of that Act. Whereas the definition of land in WBLR Act after 1981 Amendment includes all categories of land without making any distinction in respect of the different heads contemplated in WBEA Act and brings within the fold all lands under the sun directly in conflict and inconsistent with the scheme of the WBEA Act and then providing family ceiling instead of individual ceiling and that too of a far lesser quantum. Both the Acts operate in the same field. Unless Section 3 of WBLR Act overrides the provisions contained in WBEA Act, the effect of WBLR Act could never be given.

27.5. When two different Acts operate on the same field, the Act enacted subsequently would prevail over the former in order of time unless the context otherwise provides and that too depending on the characteristics of the two enactments. In such a situation the aim and object of the respective enactments would be the determining factor to ascertain the characteristics of the two enactments. Having regard to the present case, the field on which the WBEA Act operated was the stepping-stone for bringing about reforms in the land tenure system. Its aim and object was to abolish the rights of Zamindars, the intermediaries, and introduce a direct land tenure system between the State and the subject without any intermediaries in between. All the provisions therein were aimed at achieving this object subject to the reforms to be undertaken thereafter. Since the land tenure system had undergone a change, the reforms of the system became imminent. Therefore, WBEA Act was followed by the WBLR Act under which the land tenure system was to be reformed. The latter enactment is of a permanent nature enacted with the aims and objects of bringing about the reforms in the entire system, which was achieved with the enactment of WBEA Act. Therefore, Section 3 and all the provisions of WBEA Act are subject to and supposed to yield to the provisions of WBLR Act in case of any inconsistency in between the two enactments; and in case of inconsistency or conflict or repugnancy between WBEA Act and WBLR Act, the provisions of WBLR Act would prevail.

27.6. That apart, Mr. Mukherjee had pointed out, and rightly, that there cannot be any two kinds of rights of a raiyat flowing from the same character of the land namely that if the land is held since before the WBEA Act came into effect and is allowed to be retained by a person u/s 6(1) of the WBEA Act becoming a raiyat within the meaning of Section 3A read with Section 4 and Section 2(7) of the WBLR Act defining land to include the kind of land involved in this case by reason of the 1981.

Amendment of the WBLR Act, cannot stand differently in respect of a raiyat acquiring right in respect of similar character of land after the WBEA Act came into operation when in both cases the land held is much below the ceiling provided under the WBEA Act to the extent that the former will be subject to Section 6(3) of the WBEA Act and the latter will not.

27.7. In our view, such a proposition is wholly unintelligible and has no rational basis. There cannot be any two kinds of effects in respect of the same character of the land and same character of the raiyat one who possessed a transitional possession contemplated under the WBEA Act and acquires a confirmed right under the WBLR Act and one who acquires a confirmed right under the WBLR Act without undergoing the transitional possession or having acquired the land from and intermediary permitted to retain the land u/s 6(1) of the WBEA Act by transfer.

27.8. Section 6(3) of the WBEA Act cannot be read out of the context and scheme of the WBEA Act independent of Section 6(1) of that Act. It has to be read harmoniously in consonance with the whole Section 6. A synchronized and harmonious reading of Section 6 read in consonance with the provision for reform contained in WBLR Act, particularly, Section 14Z of the WBLR Act, the inescapable conclusion would be that Section 6(3) of the WBEA Act contemplates of land in excess of ceiling provided in Sections 6(1)(b) and (c) under which category these lands could also be retained but subject to Section 6(1)(g) allowing additional area as allowed u/s 6(3) thereof. The provision of Section 6(3) cannot be read to empower the State to deny the ceiling available to the raiyat entitled to retain the land which can be brought into the scope of any one alternative head as contemplated under such head, now subject to the ceiling provided in Section 14M of the WBLR Act with effect from 9th September, 1980.

Conclusion:

28. Once the WBLR Act becomes effective and a person becomes a raiyat within the meaning of Section 4 thereof, he cannot have dual characteristic, one under the WBEA Act and the other under the WBLR Act. It is not at the convenience or whims of the State that it will resort to the provisions of the one or the other Act according to its own convenience. The law is governed by the statute. There is no scope of arbitrariness or whims or caprice in the exercise of power or discretion, left with the State to treat a raiyat in a manner that suits the State according to its own convenience. It is only Section 14Z, which governs the field and to which the State can resort to. The whole exercise of the power under the WBEA Act in this case is wholly without jurisdiction and the exercise can no more encroach upon the field governed by Section 14Z of the WBLR Act.

28.1. In this case, admittedly, the writ petitioner held land comprised in mill and factory measuring about 4.54 acres, which is well within the ceiling both under the WBEA Act and WBLR Act. Therefore, retention of the land u/s 6(1) could not be

subjected to Section 6(3) of the WBEA Act, which applies in respect of land held in excess of the ceiling. Similarly, Section 14Z(2) of the WBLR Act applies to land held by a raiyat in excess of the ceiling. Once the writ petitioner became a raiyat by virtue of operation of Section 3A read with Section 4 along with the amendment of the definition of land in Section 2(7) of the WBLR Act with heritable and transferable right in respect of land held by him within the ceiling, there is no scope for application of Section 14Z(2) of that Act.

Order:

29. Therefore, the order passed by the Deputy Secretary/Special Secretary on 20th of July, 2001 (pp. 65-78) upholding the notice and the notice dated 10th of August, 2001 (pp. 76-77) issued by the Sub-Divisional Land and Land Reforms Officer, Barrackpore, for enquiry and possession pursuant thereto and the order dated 18th January, 2001 passed by the learned Tribunal affirming the order passed by the Deputy Secretary being subject-matter of this writ petition cannot be sustained and are hereby quashed. Let a writ of certiorari do issue accordingly.

29.1. In these circumstances, it is hereby declared that the whole exercise of the power under the WBEA Act in this case is wholly without jurisdiction. In the facts and circumstances of this case, in exercise of such power, the authorities can no more encroach upon the field governed by Section 14Z of the WBLR Act.

29.2. It is further declared that the writ petition having held land well within the ceiling has acquired title of a raiyat with hereitable and transferable right and cannot be subjected to Section 14Z or Section 52B of the WBLR Act on account of the land held being well within the ceiling. Let writ of mandamus do issue accordingly.

29.3. These three writ petitions succeed and are thus disposed of respectively as above.

29.4. There will, however, be no order as to costs in all these three writ petitions.

29.5. Urgent xerox certified copy of these orders, if applied for, be given to the parties expeditiously.

Maharaj Sinha, J.

30. I agree.