

Present : Bristi Bardhan J.O. Code: WB01490

T.S. 290 of 2023

C.I.S. 290 of 2023

Order No. 03

**03.06.2024**

Today is fixed for ex-parte hearing.

Plaintiff files hazira.

Ld. Advocate for the **Plaintiff** submitted that the suit is running ex-parte against Defendant no.1 and 2 who are recorded as Bargadars in LR ROR in respect of the suit property. Therefore, the Plaintiff has filed a petition under **Section 21(3)** of **The West Bengal Land Reforms Act, 1955** for reference to concerned BL & LRO.

As this case involves an issue of bargadar this court is bound to make a reference to concerned BL & LRO for report under Section 21(3) of The West Bengal Land Reforms Act, 1955. Hence, this court suo moto make reference to concern BL & LRO for filing his report under Section 21(3) of WBLR Act

This Court is of the opinion that the **Section 21(3)** of The West Bengal Land Reforms Act, 1955 provides that *“if any question as to whether a person is or not a bargadar arises in the course of any [suit, case, appeal or other] proceedings before any civil or criminal Court, the Court shall refer it to the officer or the authority mentioned in sub section (1) of section 18 [for decision and such Court shall dispose of the suit, case, appeal or other proceedings in accordance with the decision communicated to it by the officer or authority mentioned in sub section (1) of section 18 to whom the question was referred]”*.

So, statutes itself very clear that whenever any question as to whether a person is or not a *bargadar* arises in the course of any proceedings before any Civil Court, the Court shall refer it to the appropriate authority. Regard being had to the use of the expression **“shall”** in section 21(3) there is no doubt that the reference by civil or criminal court is mandatory if the question before it arises as to whether a party to such proceeding is a bargadar or that he is not a bargadar, then Sec.21(3) would be clearly attracted and the court has to refer the question of such matter to the officer or authority mentioned in sec.18(1). The plaintiff submitted that as per section 15(2) of WBLR Act provides that the right of cultivation of land by a bargadar shall be heritable but not transferable. So in view of section 15(2) of WBLR Act, right of bargadarship cannot be transferred. Here the defendant no. 1 is alleging that he has acquired the right of bargadarship by virtue of transfer. Any transfer of the right of bargadarship is illegal in the eyes of law. The court cannot help a person whose right to relief is based on an illegal act. So this petition should be rejected. But this court is of

the view that if any question regarding determination of barga arises in a suit, a civil court is not competent to decide the issue. Civil court has no discretion in such a case.

Thus, in the light of aforesaid discussion let the matter be sent to the prescribed authority of B.L. & L.R.O., Sutahata-I for the determination of *barga* right of Defendant no.1 and 2 over the suit property.

The B.L. & L.R.O., Sutahata-I is hereby directed to take up the matter immediately and to dispose of the matter within two months from the date of communication of this order as per provision of section 21(3) & (4) of W.B.L.R. Act.

Dealing Assistant-1 is directed to do the needful.

**SCHEDULE OF PROPERTRY**

DISTRICT : Purba Medinipur,

MOUZA : Bethkundu,

Block : Sutahata,

KHATIAN NO. : 196,

J.L. NO. : 164,

DAG NO. :103, measuring 35 decimals of land.

Let a copy of this order be sent to B.L. & L.R.O., Sutahata-I for perusal and taking necessary action.

To **19.09.2024** for Report.

D & C by me,

Sd/-

Civil Judge (Jr. Divn),

Haldia

Sd/-

Civil Judge (Jr. Divn),

Haldia