

Special 01 of 2025
(CNR- WBHG01-000013-2025)

Order no. 10
03.09.2025

Instant case record is placed before me for passing the necessary order in pursuance of one petition for further investigation dated 20.05.2025 under Sec.193 of BNSS filed by the defacto complainant Bandana Kisku.

The learned Advocate arguing for the defacto complainant submitted that without due and proper investigation, I.O. has submitted Final Report as Mistake of Facts and opined to discharge the sole accused Firdous Khan. From the Deed no. 3627 of 1992 it would reveal that father of the complainant late Haradhan Kisku was the owner of the alleged property. There is no any record in the name of the accused. By inducing the complainant, he has taken the physical custody of the said original deed and thereafter, took forcible possession of this property. It is stated by the witnesses during investigation that Haradhan Kisku intended to sell this property to the father of this accused Nijam Ali Khan and he received Rs. 22,000/- as advance from him. Witnesses also stated that after his demise, his legal heirs Bandana Murmu, Bani Murmu and Radharani Murmu intended to sell this property to the accused Firdous Khan in the year 2022 and had received Rs. 45,000/- from his as an advance.

The learned Advocate further argued that in view of the provision laid down under Section 14C of the West Bengal Land Reforms Act, 1955, no transfer of land could be done without the prior permission of the appropriate authority. Sec. 3(1)(f)(g) of Schedule Castes & Schedule Tribes (Prevention of Atrocities) Act, 1989 also makes such transfer and forcible dispossession punishable in law. Evidence of the complainant during investigation, would be enough to submit chargesheet in the case. The I.O. has failed to understand the offence alleged by the complainant lady and submitted FRT in a casual manner. He drew my attention to the provisions laid down under the WBLR Act and the Special Act. So, further investigation is required as prayed for.

The learned Special P.P. Hooghly arguing the matter submitted that the defacto complainant with her sister and mother were forcibly dispossessed from their property by the accused person without due process of law which they inherited from her father. Therefore, the I.O. should have proceeded on the allegations under Sec.3(1)(f)(g) & Sec.3(va) of the SC & ST Act in which the FIR was started. Both transfer and dispossession is barred under this Special Act. Further investigation be allowed therefore.

The learned Advocate for the accused person submitted that the I.O. of the case as rightly closed the investigation by submitting FRT in the case as mistake of facts. The case is purely of civil in nature. Pursuant to the advance money received by the defacto complainant, Bani Murmu and Radhakrishna Kisku and vide the Deed no. 3672/1992, they delivered the possession in the favour of the accused. Question of taking forcible possession of the alleged property does not arise.

The said legal heirs of Haradhan Kisku voluntarily delivered possession of the alleged property in favour of the accused Firdous Khan after taking earnest money of Rs.45,000/-. No criminal case against this accused comes into being. During investigation also nothing has come against the accused person to foist him in the Penal sections of law, in which FIR was started. If the petition for further investigation as asked before by the defacto complainant does not sustain in law and in facts. The aforesaid petition is misconceived and harassing and so, it should be rejected on the face of it. The learned advocate for the accused person also agitated before me that the argument placed by the side of the defacto complainant and the learned Special P.P, Hooghly, cannot be maintained. He closed his submission by arguing that this learned court may be pleased to discharge the accused Firdous Khan from this case and apportion proper justice.

Now let me discuss the matter and disposed of the same. Admittedly, Haradhan Kisku was the owner of the property measuring 33 decimals of Dag no.1318 of J/L no.46 and Khatian no.451. It is not in dispute that after his demise, his wife and two daughter including the defacto complainant Bandana Kisku being the legal heirs inherited the same.

This has been alleged by the complainant that the accused Firdous Khan took forcible possession of this property from them. The accused took the original deed no.3627/1992 (Agreement for Sale) in his custody. The said legal heirs tried to sell out this property to the accused person and received advance amount of Rs.45,000/- from him.

Section 3(1)(f)(g) and section 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities Act),1989 indicates a clear bar in a situation when a member of SC and ST community cannot be wrongfully dispossessed from his land, which he is possessing and enjoying by cultivation or otherwise without that person's consent and against his will. Admittedly, the defacto complainant Bandana Kisku and her family members belong to ST community. In this regard, I have consulted the CD of the case and the seizure list dated 15.01.2025 and the zimmanana thereof on the same date. If any such act is committed by the accused, it is

punishable under this Special Act. The defacto complainant and her family member being so unlawfully dispossessed for their own property, are entitled to get protection under the Special Act.

Section 14C of the WBLR Act also invites a clear bar in transferring the land of the member of a Scheduled Tribe being raiyat of the said plot of land, without prior permission in writing from the appropriate authority concerned.

Therefore, if I see through the evidence collected by the I.O and examined them, I do find that submitting FRT by him as mistake of facts, being the case purely of civil in nature, is grossly a misdirected conclusion by him. The I.O ought to have proceeded in light of the allegation made out in the FIR and the provisions laid down u/s 3(1)(f)(g) & section 3(2)(va) of the Act. I find sufficient merits in the petition for further investigation filed by the defacto complainant. I also find strength in the submission of the Ld. Special P.P, Hooghly who seconded the contention of the defacto complainant through her learned Advocate on record.

By this order, necessary direction for further investigation need be allowed in the facts and circumstances of the case and the evidence so far collected by the I.O in his CD.

Hence, it is

ORDERED

that the petition for further investigation dated 20.05.2025 filed by the defacto complainant Bandana Kisku is hereby **allowed** on contest.

The I.O of the case being DSP (HQ), Hooghly Rural Police District is hereby directed to proceed for further investigation of the case and submit his final report to this learned court by **25.11.2025**.

Let a copy of this order be sent to the I.O concerned for information and compliance.

Dictated & corrected by me

Sd/-
Special Judge,
1st Court. Chinsurah

Sd/-
Special Judge,
1st Court, Chinsurah.
J.O Code no.WB00753

