



**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Chief Justice Sujoy Paul

and

The Hon'ble Justice Hiranmay Bhattacharyya

W.P.A. (P)/318/2025

PRASENJIT BHAKAT GUPTA @

PRASENJIT PRASAD GUPTA (BHAKAT)

VS.

THE STATE OF WEST BENGAL AND ORS.

With

C.P.A.N./192/2024

PAKUAHAT SOCIAL WELFARE SOCIETY AND ORS.

VS.

NITIN SINGHANIA, THE DIST. MAGISTRATE, MALDA AND ORS.

With

R.V.W./129/2024

ZARINA RESHMA AND ORS.

VS.

STATE OF WEST BENGAL AND ORS.

With

W.P.A. (P)/263/2021

PAKUAHAT SOCIAL WELFARE SO. AND ORS.

VS.

THE STATE OF WEST BENGAL AND ORS.

IA NO: CAN/2/2023

CAN/3/2023

CAN/4/2024

CAN/5/2024

CAN/6/2024

CAN/7/2024

CAN/8/2025

With

W.P.A. (P)/265/2024

RIYAJUDDIN SARKAR AND ORS.

VS.

THE STATE OF WEST BENGAL AND ORS.

IA NO: CAN/1/2025

CAN/2/2026

With

W.P.A. (P)/312/2024



BIBHAS CHANDRA KAR AND ORS.
VS.
THE STATE OF WEST BENGAL AND ORS.
With
W.P.A. (P)/498/2024
CHITTARANJAN KARMAKAR AND ORS.
VS.
THE STATE OF WEST BENGAL AND ORS.
With
W.P.A. (P)/51/2024
ASHOKANANDA HAZRA
VS
THE STATE OF WEST BENGAL AND ORS.
With
IA NO: CAN/1/2024
CAN/2/2025
With
W.P.A. (P)/73/2025
SAHAJAHAN ALI & ORS.
VS.
THE STATE OF WEST BENGAL AND ORS.
With
W.P.A. (P)/ 540/ 2025
ASHOK KUMAR BARMAN AND ORS.
VS.
THE STATE OF WEST BENGAL & ORS.

For the petitioner in WPA(P) 318/2025 : Mr. Brajesh Jha
Mr. Neal Chakraborty
Mr. P. Upadhyay

For the Applicant/petitioner
In RVW 129/2024, WPA(P) 498/2024 : Mr. Saptanshu Basu, Sr. Adv.
Mr. Partha Pratim Roy
Mr. Dyutiman Banerjee
Mr. Samrat Chakraborty
Mr. Saikat Gayen

For the Applicant in
CAN 1 of 2024 in WPA (P) 51/2024 : Mr. Pramit Bag
Ms. Mayuri Ghosh
Ms. Samarpita Mukherjee

For the Petitioners in
CPAN 192 of 2024,
W.P.A. (P) 263 of 2021 : Mr. Sarowar Jahan



For the Pvt. Respondent in
RVW 129 of 2024

Mr. Amit Bikram Mahata
Mr. Aditya Bikram Mahata

: Mr. Sarowar Jahan
Mr. Amit Bikram Mahata
Mr. Aditya Bikram Mahata

For the applicant in CAN 2 of 2024,
CAN 3 of 2024 in WPA(P) 263/2021

: Mr. Biswaranjan Bhakat
Mr. Anup Dasgupta

For the petitioners
in WPA(P) 265/2024

: Mr. Saktinath Mukherjee, Sr. Adv.
Mr. Uday Narayan Betal
Mr. Bhaskar Hutait

For the Petitioners
in WPA(P) 51/2024

: Mr. Haradhan Bandopadhyay
Mr. Subhadip Biswas
Mr. Ratul Das

For the petitioner
in WPA(P) 312/2024

: Mr. B. N. Ray
Ms. Shetparna Ray

For Respondent No.19
in WPA(P) 318 of 2025

: Mr. Arindam Chandra
Mr. Atish Ghosh
Ms. Neha Gupta

For the WBSEDCL
in WPA(P) 318/2025

: Ms. Susmita Chatterjee

For the State
in WPA(P) 540/2025

: Mr. Amal Kr. Sen, Ld. A.A.G.
Mr. Lal Mohan Basu

For the State in RVW 129 of 2024
W.P.A. (P) 263 of 2021,
W.P.A. (P) 265 of 2024

: Mr. Kishore Dutta, Ld. A.G.
Sk. Md. Galib, Sr, Govt. Adv.

For the State in WPA(P) 265 of 2024

: Mr. Jahar Lal De, Ld. AGP
Mr. Rudranil De

For the State
in W.P.A. (P) 312 of 2024,
W.P.A. (P) 498 of 2024

: Sk. Md. Galib, Sr. Govt. Adv.
Ms. Sujata Mukherjee
Abu Siddiqui Mallick

For the State
in WPA(P) 73/2025

: Mr. Sk. Md. Galib
Mr. Manish Biswas



For the Applicants in
W.P.A. (P) 540 of 2025

: Mr. Arunava Maity
Ms. Pujali Das Gupta

For the Pvt. Respondent Nos.6 to 10
in W.P.A. (P) 540 of 2025

: Mr. Sarwar Jahan
Mr. A. B. Mahata

For the Applicants in CAN 1 of 2025
in WPA (P) 265 of 2024

: Mr. Jaydip Kar
Mr. Dyutiman Banerjee
Mr. Debjit Dutta

Reserved on

: 21.01.2026

Judgment on

: 27.02.2026

Hiranmay Bhattacharyya, J.:-

1. A Public Interest Litigation being WPA (P) 263 of 2021 was filed by Pakuahat Social Welfare Society and others praying for a direction upon the respondent authorities to make a proper enquiry with regard to illegal transfer of the “Hat” and to take appropriate action against the illegal transfer of government properties.
2. Pakuahat is a Hat situated at Mirjapur under Bamangola Police Station in the district of Malda. It was alleged in the said Public Interest Litigation (for short “PIL”) that in the year 1980, the lands of the Hat were transferred by the recorded owners though the lands of the said Hat stood vested to the State free from all encumbrances.
3. The said PIL was disposed of by an order dated 18.04.2023 by passing directions upon various authorities. The operative portion of the said order is extracted hereinafter-

“3. In the light of the above, the writ petition stands disposed of with the following directions.



4. *The competent authority under the 1953 Act or any other related enactments shall make and commence enquiry into the matter and issue notice to all such purchasers of lands which are recorded as vested lands in the revenue records. After affording an opportunity to those purchasers, enquiry should be conducted and appropriate orders be passed on merits and in accordance with law. The Sub-Registrar, Malda is restrained from accepting any deed of conveyance or any other document concerning the properties which have been accepted for registration or any document in respect of such lands which have been classified as 'Hat' or any other classification of vested land and list of such properties with the Dag Number shall be intimated by the concerned Block Land and Land Reforms Officer to the Sub-Registrar, Malda and the Block Land and Land Reforms Officer shall also simultaneously communicate the details of the purchasers of such lands which are illegally transferred to the competent authority of the local body who shall conduct an inspection of those properties and if any construction is found to have been put up on those properties without obtaining building plan approval, the building shall be sealed and action be initiated by issuing notice for demolition of those buildings. The entire exercise shall be completed by the concerned authorities within a period of three months from the date of receipt of the server copy of this order. The District Magistrate, Malda is directed to oversee and monitor the progress of the matter in terms of the directions issued above and if there is any deviation, the matter will be viewed seriously.*

5. *Needless to say that if the classification of the land is a 'Hat' and it is a vested land even assuming that there is an approved building plan granted, the construction itself is illegal and, therefore, action should be initiated against those buildings as well.*

6. *This order shall be communicated to the Inspector General of Registration, who in turn shall issue Circular to all the District Registrars as well not to accept any document for registration in respect of lands which have been classified as 'Hat' and the District Registrar concerned shall intimate the concerned Sub-Registrars who are functioning within their jurisdiction to scrupulously follow the above direction.*

7. *With the above directions, the writ petition stands disposed of. Consequently, the connected application also stands disposed of."*

4. It was held that lands classified as "Hat" in the revenue records cannot be transferred on account of its classification, more particularly, in the light of provisions of the West Bengal Estates Acquisition Act, 1953 and in particular, Sections 4 to 6 and any such deed of conveyance which has been



accepted for registration by the Sub-Registrar cannot confer any title on the purchasers of those areas.

5. After the judgment under review was passed, the Secretary, Department of Land & Land Reforms & Refugee Relief and Rehabilitation Government of West Bengal issued a Memo being no. 3278(23)-IS/269/23 dated 14.08.2023 directing all the District Land & Land Reforms Officers to trace out erroneous recording in respect of plots classified as hats/bazaars in RS Record of Rights, which were vested in the State by operation of law since 1955 and are still recorded with intermediary status in the RS Record of Rights and subsequently LR record has been framed by incorporating those plots in private raiyati Khatians, and to take immediate measures to rectify the concerned LR Record of Rights by restoring the said plots bearing recorded classifications as Hat/bazaar, in favour of Collector on behalf of the State of West Bengal by invoking the provisions of Section 51A(4) *suo motu* of West Bengal Land Reforms Act, 1955.
6. The said Memo was followed by issuance of notices under Sections 51A(4) and 57 of the West Bengal Land Reforms Act.
7. A Memorandum of Review being RVW No. 129 of 2024 has been presented to review the order dated 18.04.2023 passed in WPA(P) 263 of 2021. Several PILs have also been filed by persons whose rights and interest are alleged to have been affected by the consequential action taken by the respondent authorities taking aid of the observations made in the judgment under review.
8. Mr. Mukherjee, learned Senior Advocate appearing for the petitioner in WPA(P) 265 of 2024 contended that holding hat, or bazaar or mela is only a mode of use by the owner of his land. In support of such contention he placed reliance upon a decision of the Hon'ble Supreme Court of India in the case of **State of Bihar vs. Rameshwar Pratap Narain Singh**¹. He contended that the effect of publication of notification under Section 4 of the West

¹ AIR 1961 (SC) 1649



Bengal Estate Acquisition Act, 1953 (for short “W.B.E.A. Act”) is that on and from the date of vesting, the estates and the rights of the intermediaries in the estates shall vest in the State free from all incumbrances and the rights in hats, bazar, ferries, fisheries, tolls and other sairati interests shall vest in the State. Such vesting, according to Mr. Mukherjee, is subject to the right of the intermediary to retain certain lands. Mr. Mukherjee contended that if the land is allowed to be retained under Section 6 of the West Bengal Estate Acquisition Act, 1953 (for short “WBEA Act”) the rights in hats, bazaars, could not have vested as it is only mode of use of the property by the owner of the land.

9. Mr. Partha Pratim Roy, learned advocates for the review applicant submitted that a land classified as “Hat” is a non-agricultural land. In support of such contention, he placed reliance upon a Government Order No. 1 dated November 21, 1973, issued by the Government of West Bengal, Office of the Settlement Officer, 24 Parganas. He placed reliance upon a decision of a Learned Single Judge in the case of **Pradyut Kumar Singha vs. State of West Bengal and others**² in support of his contention that an intermediary can retain land classified as “Hat”. Mr. Roy contended that non-agricultural land did not vest under W.B.E.A. Act and in support of such contention he placed reliance upon the decision of the co-ordinate bench in the case of **Adyama Complex Pvt. Ltd. & Anohter vs. State of West Bengal & Others**³.
10. Mr. Haradhan Banerjee, learned advocate for the petitioner in WPA (P) 51 of 2024 contended that an application under Article 226 of the Constitution of India is maintainable seeking review of an order to correct grave and palpable errors and in support of such contention he placed reliance upon a

² 84 CWN 467

³ (2019) 2 CLJ 582



decision of the Hon'ble Supreme Court in the case of **Shivdev Singh & Others vs. State of Punjab & Others**⁴.

11. The Learned Advocate General submits that Section 5 of the W.B.E.A. Act deals with the effect of notification under Section 4. He contended that in view of the provisions laid down under Section 5(1)(a)(ii), of the W.B.E.A. Act, the rights in hats and bazaars stood vested in the State free from all incumbrances. He contended that the expression "estate" used in Section 5 as well as other provisions of the W.B.E.A. Act shall have the same meaning as "estate" defined under the Bengal Tenancy Act, 1885 (for short "BT Act"). He contended that non-agricultural land is not immune from vesting under the W.B.E.A. Act as Section 6(1)(c) allows retention of non-agricultural lands. He concluded by submitting that hats, bazaars and other sairati interests stood vested in the State by operation of law and such rights could not have been retained under Section 6 of the West Bengal Estate Acquisition Act, by the intermediary.
12. Heard the learned advocates for the parties and perused the materials placed.
13. The W.B.E.A. Act came into force on 12th February, 1954. The said Act was enacted to provide for State acquisition of estates, of rights of intermediaries therein, and of certain rights of raiyats and under raiyats and of the rights of certain other persons in lands comprised in estates.
14. "Estate" or "tenure" has been defined in Section 2(e) of the W.B.E.A. Act to include part of an estate or part of a tenure.
15. Section 2(p) of the W.B.E.A. Act states that the expressions used in the W.B.E.A. Act and not otherwise defined have in relation to the areas to which the Bengal Tenancy Act applies, the same meaning as in that Act and in relation to other areas meaning as similar thereto as the existing law relating to land tenures applying to such areas, permits.

⁴ AIR 1963(SC) 1909



16. In order to understand the meaning of the expression “estate” used in W.B.E.A. Act, it would be beneficial to take aid of the definition of the word “estate” under Section 3(4) of the Bengal Tenancy Act (for short “BT Act”).
17. Section 3(4) of the B.T. Act defines “estate” to mean land included under one entry in any of the general registers of revenue paying lands and revenue free lands, prepared and maintained under the law for the time being in force by the Collector of a district and includes Government Khas Mahals and revenue free lands not entered in any register.
18. The expression “intermediary” has been defined in Section 2(i) of the W.B.E.A. Act to mean a proprietor, tenure holder or any other intermediary above a raiyat or a non-agricultural tenant and includes a service tenure holder and, in relation to mines and minerals, includes a lessee and a sub-lessee.
19. “Non-agricultural tenant” has been defined under Section 2(k) of the W.B.E.A. Act to mean a tenant of non-agricultural land who holds under a proprietor, a tenure holder, a service tenure holder or an under tenure holder.
20. It is thus clear from the definition of the term “intermediary” that the interest of a non-agricultural tenant will not vest in the State for an intermediary is a person above a non-agricultural tenant or raiyat.
21. Thus, a tenant of non-agricultural land irrespective of degree of tenancy is not an intermediary. The co-ordinate bench in **Adhyama Complex**⁵ (supra) reiterated the proposition of law laid down in **Asrurakah Dutta** vs. **Diptimay Pal**⁶ that a non-agricultural tenant is not an intermediary.
22. Section 4 of the W.B.E.A. Act lays down the manner and mode of issuance of notification and consequent vesting of all estates and the right of every intermediary in each such estate in the State free from all incumbrances.

⁵ (2019) 2 CLJ 582

⁶ (1966-67) 71 CWN 1079



23. Section 4 of the W.B.E.A. Act empowered the State Government to declare by notification that all estates and the rights of every intermediary in each such estate shall vest in the State free from all incumbrances with effect from the date mentioned in the notification.
24. The effect of the notification under Section 4 has been clarified in Section 5. Section 5(1)(a) states that upon the due publication of a notification under Section 4, on and from the date of vesting, the estates and the rights of intermediaries in the estates to which the declaration applies, shall vest in the State free from incumbrances and every one of the rights mentioned under clauses (i) and (ii) which may be owned by an intermediary shall vest in the State. Rights under clauses (i) and (ii) are as follows-
- (i) rights in subsoil, including rights in mines and minerals,
 - (ii) rights in hats, bazars, ferries, fisheries, tolls and other sairati interests.
25. By operation of Section 5(1)(a), the estates and the rights of the intermediaries therein stood vested in the State free from all incumbrances and the rights in sub-soil including rights in mines and minerals and rights in hats, bazaars, ferries, fisheries, tolls and other sairati interests owned by an intermediary stood vested vest in the State.
26. However, the interest of non-agricultural tenant did not vest by operation of Sections 4 and 5 of W.B.E.A. Act.
27. Right of intermediary to retain certain lands has been preserved by Section 6 of the W.B.E.A. Act. Section 6 states that notwithstanding anything contained in Section 4 and 5, an intermediary shall, except in the cases mentioned in proviso to sub-section (2), but subject to the other provisions of that sub-section, be entitled to retain from the date of vesting different categories of land with or without any ceiling.
28. Section 2(h) of the E.A. Act defines “incumbrance” to mean “in relation to estates and rights of intermediaries therein does not include the rights of a raiyat or of an under raiyat or of a non-agricultural tenant but shall except



in the case of land allowed to be retained by an intermediary under the provisions of Section 6, include all rights or interests of whatever nature, belonging to intermediaries or other persons which relate to lands comprised in estates or to the produce thereof.”

29. Going by the definition of “incumbrance”, the rights of a raiyat or of an under raiyat or of a non-agricultural tenant are exempted from the operation of Section 4 and 5.
30. From a conjoint reading of Sections 4 and 5 it follows that the pre-existing right, title and interest of intermediaries in the lands situated in an estate stood extinguished with effect from the notified date and stood vested in the State free from all incumbrances. The non-obstante clause appearing in Section 6(1) excluded from the operation of Section 4 and 5, certain types of land and allowed the intermediaries to retain lands of different categories with or without ceiling limits subject to the provisions laid down under Section 6(2).
31. Sub-section (2) of Section 6 of W.B.E.A. Act states that an intermediary who is entitled to retain possession of any land under sub-section (1) shall be deemed to hold such land directly under the State from the date of vesting as a tenant.
32. Sub-section (5) of Section 6 casts an obligation upon an intermediary to exercise his choice for retention of land under Sub-section (1) within such time and in such manner as may be prescribed.
33. Thus, after vesting under Section 4 of the E.A. Act, an intermediary can exercise his right to retain possession of any lands under sub-section (1) subject to prescribed ceiling limit, if any.
34. Rule 4(B)(2) of the West Bengal Estate Acquisition Rules, 1954 (for short “E.A. Rules”) states that if the land held by the intermediary be non-agricultural land, then he shall hold it as a tenant under the West Bengal



Non-agricultural Tenancy Act, 1949 (for short “NAT Act”) holding non-agricultural land for not less than 12 years without any lease in writing.

35. Rule 4(B)(3) of E.A. Rules states that if the land held by the intermediary be agricultural land, then he shall hold it *mutatis mutandis* on the terms and conditions under the BT Act.
36. Thus, the status of the intermediary who is entitled to retain possession of any land under Section 6(1) would be that of a statutory tenant governed under the provisions of the NAT Act or BT Act depending upon the nature of the land held by the intermediary.
37. Section 8 of NAT Act provides for renewals of lease of tenancies held for not less than twelve years and succession to, and transfer of, such tenancies. A non-agricultural tenancy is, however, transferable in view of Section 8(4)(ii) of NAT Act.
38. Turning back to the facts of the case on hand, this Court finds that the plots of land which were the subject matter of PIL was recorded as “Hat”. It was alleged in the PIL that in the year 1980, lands of Pakuahat were transferred by recorded owners though the lands of the Hat stood vested to the State.
39. The judgment under review took note of the fact which was highlighted at the time of hearing that in the revenue records, the classification of the land remain altered and going by such classification, it was held that transfers cannot be effected and the deed of conveyance could not have been accepted for registration. Sections 4 to 6 of W.B.E.A. Act were referred to in the judgment under review in support of the finding that the lands cannot be transferred on account of its classification.
40. From the report filed by the concerned Sub Divisional Land & Land Reforms Officer dated 12.01.2019 in PIL it appears that all the plots were allowed to be retained in favour of the intermediaries and/or big raiyats as per the provisions of Section 6 of W.B.E.A. Act and the erstwhile intermediaries were treated as Non-Agricultural tenants.



41. Thus, it is evident that the erstwhile intermediaries were allowed to retain possession of the plots in question under Section 6(1) and they were deemed to be non-agricultural tenants. If that be so, whether they had a right to transfer such lands after being allowed to retain is a relevant point to be considered before arriving at any finding that the transfers could not have been made by the recorded owners.
42. The uniform stand of the review applicants and the writ petitioners as well as the applicants, who have approached this Court praying for modification, variation and clarification of the order dated 18.04.2023, is that holding a hat or bazaar is only a mode of use of the land and upon being allowed to retain the land under Section 6(1), the right of the erstwhile intermediary in hats, bazaars etc. would be immune from vesting. This Court shall now deal with the decisions relied upon in support of the said contention.
43. The validity of the Bihar Land Reforms Amendment Act was in issue in **Rameshwar Pratap Narain Singh**⁷ (supra). The Government of the State of Bihar issued notifications under Section 3 of the Bihar Land Reforms Act declaring that the estates or tenures of proprietors or tenure-holders specified in the notifications had vested to the State. Revenue authorities started interfering with the rights of those ex-proprietors and ex-tenure-holders to hold melas on lands of which they were thereafter in occupation as occupancy raiyats under the State and started settling rights to realise tolls from such Melas on behalf of the State Government.
44. The Hon'ble Supreme Court held that holding a hat or bazaar or mela is only a mode of use by the owner of his land. An owner of a land can use it for the purpose of having a concourse of people-buyers and sellers. Right to hold mela was considered as an interest in land. The right of the proprietor of an estate to hold a mela on his own land is a right in the estate being appurtenant to his ownership of the land. In the light of the aforesaid observations, the Hon'ble Supreme Court held that the ex-intermediaries

⁷ AIR 1961 (SC) 1649



have not and the State has the right to hold melas on the Bakasht lands of which they have become occupancy rights.

45. In **Prodyut Kumar Singha**⁸, the non-agricultural lands in question were permanently settled by the then owners viz Debutter estates of Sri Sri Iswar Muralidhar Jew Thakur by a registered deed of lease in favour of the predecessors-in-interest of the petitioners therein and in terms of the said lease, weekly cattle and vegetable markets and for hats as also daily markets were held by the lessees on the said land and they collected tolls and fees from the persons using the said markets. Lessees submitted returns in prescribed B-Forms.
46. The Assistant Settlement officer held that subsequent to the publication of a Notification under Section 4, all the rights of both the lessors and lessees stood vested in the State of West Bengal free from all encumbrances.
47. The Hon'ble Single Judge, in the said reported case noted that the following facts are admitted-
- (a) The land in dispute is not agricultural land and described in the records as "Hat Khola" and "Bazar";
 - (b) The petitioners are the lessees under a registered deed and
 - (c) The petitioners are in actual possession of the lands exclusively.
48. After noting as recorded *supra*, the order of the Settlement Officer holding that all the rights of lessor and lessee stood vested was set aside and a mandamus was issued directing the respondent authorities from giving any or further effect to the notice calling upon the public not to pay tolls and fees in respect of the said hat and market to persons other than the Government.
49. Section 6(1) (c) of the W.B.E.A. Act enables an intermediary to retain with effect from the date of vesting non-agricultural land in his khas possession

⁸ 84 CWN 467



including land held under him by any person, not being a tenant by leave or license not exceeding 15 acres in area excluding the land retained which is comprised in homestead.

50. From a bare reading of Section 6(1)(c) of W.B.E.A. Act it follows that an intermediary shall be entitled to retain non-agricultural land in his khas possession including land held under him by way of leave or license subject to ceiling limit. However, an intermediary shall not be entitled to retain non-agricultural land held under him by any person as a tenant. Thus if a non-agricultural land is in possession of non-agricultural tenant, the erstwhile intermediary could not have retained such land under Section 6(1).
51. Land is classified as agricultural or non-agricultural according to its mode of use. The lands which is the subject matter of PIL is classified as “Hat”.
52. If on the date of vesting the non-agricultural land was used as “Hat” and by virtue of operation of Section 5(1)(a)(ii) , such estate stood vested in the State, free from incumbrances, whether upon such land being allowed to be retained under Section 6 of the W.B.E.A. Act, the erstwhile intermediaries could exercise their rights in hats and bazaars after the date of vesting is to be delved upon at the appropriate stage.
53. The larger issue would be whether a proceeding could have been initiated by the revenue authorities to modify, vary and/or set aside the order allowing retention of lands in question at this point of time and that too on the basis of the materials placed at the time of hearing of the PIL.
54. It is the stand of the State that the lands classified as “hats” could not be retained by the erstwhile intermediaries under Section 6 of the W.B.E.A. Act.
55. On a bare reading of the judgment under review, it appears to this Court that going only by the classification of lands as “Hats” in the record of rights, and perhaps being swayed by the language of Section 5(1)(ii) it was held that the lands in question stood vested in the State and, therefore, not transferable. No argument appears to have been advanced by the respective



parties. on the issue of vesting of lands comprised in hats, qua the right of retention under Section 6(1) and whether such lands are transferable or not.

56. Now the question arises whether sufficient grounds have been made out to review the judgment and order dated 18.04.2023.
57. The decision of the Hon'ble Supreme Court in the case of **Board of Control for Cricket in India and another vs. Netaji Cricket Club and others**⁹ was pressed into service by Mr. Saptansu Basu, learned Senior Advocate for the review applicants to highlight the scope of review.
58. In **BCCI**¹⁰ it was held that an application for review would be maintainable not only upon discovery of new and important piece of evidence or when there exists an error apparent on the face of the record, but also if the same is necessitated on account of some mistake or for any other substantial cause. Mistake on the part of the Court may also call for a review of the order. An application for review may be necessitated by way of invoking the doctrine "*Actus curiae neminem gravabit*". It was further held that if the Court finds that the error pointed out in the review petitions was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in a miscarriage of justice nothing would preclude the Court from rectifying the error.
59. Five Hon'ble Judges of the Federal Court in the case of **Hari Sankar Pal vs. Ananth Nath Mitter**¹¹ held that a decision erroneous in law is certainly no ground for ordering review. If the Court has decided a point and decided it erroneously, the error could not be one apparent on the face of the record or even analogous to it. When, however, the Court disposes of a case without advertent to or applying its mind to a provision of law which gives it

⁹ (2005) 4 SCC 741

¹⁰ (2005) 4 SCC 741

¹¹ 1949 SCC Online FC 4



jurisdiction to act in a particular way, that may amount to an error analogous to one apparent on the face of the record sufficient to bring it within the purview of Order 47 Rule 1 of the Code of Civil Procedure.

60. The aforesaid proposition of law has been reiterated by the Hon'ble Supreme Court in **Shri Ram Sahu (Dead) through Legal representatives and others vs. Vinod Kumar Rawat and others**¹².
61. From the aforesaid discussion it follows that non-application of mind or non-consideration of relevant provisions of law amounts to an error apparent on the face of the record enabling the Court to exercise the power of review.
62. The judgment under review was passed going only by the classification of that lands as "Hats" in the record of rights and it was held that such lands stood vested upon the State and, therefore, not transferable.
63. This Court, therefore, feels that such conclusion requires a reconsideration as it appears to this Court that the effect of the right of retention under Section 6 of the W.B.E.A. Act, and the applicability of the decisions operating in the field were not considered while passing the judgment under review. That apart, the erstwhile intermediaries were allowed to retain the lands in question and were deemed to be non-agricultural tenants and the effect of such order was also not considered. As observed hereinbefore that the tenancies governed under NAT Act are transferable, and the provisions of NAT Act also does not appear to have been taken into consideration while passing the judgment under review.
64. This Court accordingly holds that there is an error apparent on the face of the record and sufficient grounds have been made out to review the judgment and order dated 18.04.2023.

¹² (2021) 13 SCC 1



65. Ordinarily, this Court could have stopped at this stage by recalling the judgment under review and for hearing the matter afresh on merits instead of proceeding further.
66. However, the judgment under review had far reaching effects and the learned Counsels for the State fairly submitted that the judgment under review became the foundation for issuance of the Notification and Memo dated 14.08.2023 and the consequential action taken by the revenue authorities. Thus, apart from recalling the judgment under review this Court feels that consequential orders are also to be passed.
67. Pursuant to the judgment under review a proceeding being Misc./DL LRO (MLD)/ Law/2023/01, stated to be in compliance with the order under review dated 18.04.2023, was initiated. The said proceeding was disposed of by directing modification of the record of rights and the concerned BL & LRO was directed to take over possession of the plots in question.
68. Though the lands of Pakuahat was the subject matter of PIL but the judgment under review forms the foundation of issuance of the Memo dated 14.08.2023 whereby direction was passed for tracing out erroneous recording in the R.S. record of rights of plots bearing classification as Hats/ bazaars in the State of West Bengal and a Model order sheet was also prepared for such purpose.
69. Thus, the judgment under review has wider ramifications affecting the rights of persons who were not parties to the PIL.
70. Several writs petitions have been filed by such third parties, whose rights were sought to be interfered with pursuant to certain observations made in the judgment under review, praying for modification, variation and clarification of the order dated 18.04.2023.
71. Petitioner in WPA (P) 540 of 2023 has prayed for setting aside the Memo dated 14.08.2023 and the Model Order Sheet as well as for variation,



modification and clarification of the order dated 18.04.2023 passed in WPA (P) 263 of 2021.

72. As to whether a writ petition is maintainable to exercise the power of review, the Hon'ble Supreme Court in **Shivdev Singh**¹³, observed that there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. It was held that an application under Article 226 of the Constitution of India at the instance of persons who were not parties to the previous proceedings but their interests were sought to be affected by the decision taken in the previous proceeding is maintainable for exercising the power of review by the High Court.
73. By applying the ratio of the decision in the case of **Shivdev Singh** (supra), this Court accordingly holds that the writ petitions filed seeking modification, variation and clarification of the order dated 18.04.2023 is maintainable as the writ petitioners therein were not parties in WPA (P) 263 of 2021 and their interests were sought to be affected by the said order.
74. For all the reasons as aforesaid, the application for review stands allowed. The order dated 18.04.2023 passed in WPA (P) 263 of 2021 is recalled and the said writ petition stands restored to its original file and number and the same shall be re-heard on merits. Consequently all steps taken by the authorities pursuant to the judgment under review are liable to be set aside and quashed.
75. Accordingly, all notifications, memos, draft order sheet etc. issued by the respondent authorities and all consequential steps taken by the revenue authorities as well as the registration authorities including initiation of proceedings, order(s) passed therein are set aside and quashed thereby restoring the status quo that prevailed immediately prior to the passing of the judgment under review.

¹³ AIR 1963(SC) 1909



76. All writ petitions except WPA(P) 263 of 2021 stand disposed of. Applications for addition of party in WPA(P) 263 of 2021 and for clarification, modification etc. of the judgment under review also stand disposed of. Contempt application(s) alleging violation of the judgment under review also stand disposed of.
77. Before parting, this Court makes it clear that all observations made hereinbefore are only for the purpose of supporting the ultimate conclusions while granting the review.
78. It is, however, made clear that if the law permits, the competent authority under the 1953 Act or any other related enactments shall be free to take steps afresh in accordance with law and while doing so shall not take the aid of the observations made in the judgment under review or any observations made in this order.
79. The learned advocates for the State are directed to communicate this order to the authorities of the Land & Land Reforms Department of the Government of West Bengal and the Inspector General of Registration through proper channel for their information and necessary action.
80. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

I agree.

(Sujoy Paul, C.J.)

(Hiranmay Bhattacharyya, J.)