

Form No. J.(2)
Item No.13
Court No. 1
KS

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 26.02.2026

DELIVERED ON: 26.02.2026

**CORAM:
THE HON'BLE CHIEF JUSTICE SUJOY PAUL
AND
THE HON'BLE JUSTICE PARTHA SARATHI SEN**

**M.A.T. 2165 of 2025
With
I.A. No. CAN 1 of 2026**

**Sk. Sariful
Vs.
The State of West Bengal & Ors.**

Appearance:-

**Mr. Lutful Haque
Mr. Gazi Farukh Hossain
Mr. Rakib Hossain Khan
Ms. Tahanima Khatun**

.....For the Appellant

**Mr. Vivekananda Bose, Ld. Jr. S.C.
Mr. Tirthankar Dey**

.....For the State

**Mr. Santimoy Bhattacharyya
Mr. Ziaul Haque
Mr. H. K. Mahata**

.....For the Respondent Nos.11 to 15

JUDGMENT (ORAL):

PER, PARTHA SARATHI SEN, J.:-

1. In this appeal, the order dated 27.08.2025, as passed by the learned Single Bench in W.P.A. 19326 of 2025 is assailed.

2. By the impugned order, learned Trial Court declined to grant relief to the prayers made in the said writ petition.
3. At the time of hearing, learned counsel appearing on behalf of the writ petitioner/appellant, at the very outset, draws our attention to the copy of the writ petition, as has been annexed with the application being, CAN 1 of 2026.
4. It is argued that after the death of the original Bargadar, Ainal Haque Shaikh in respect of the land in question, the writ petitioner/appellant being his son and the widow of the said Bargadar and his two daughters, particulars of whom has been given in page no.39 of the said application being, I.A. No. CAN 1 of 2026, inherited the right of Bargadarship in accordance with the provision of Section 15 of the West Bengal Land Reforms Act, 1955 (hereinafter referred to as "the said Act", in short).
5. It is further submitted that there is no inter se dispute between the legal heirs of the deceased Bargadar and the present writ petitioner being the son of the original Bargadar, Late Ainal Haque Shaikh, approached the appropriate authority under Section 15A of the said Act for mutating his name in respect of the suit plot of land, which was, however, declined by the said authority.
6. It is further submitted that challenging the order of refusal to effect mutation in the name of the writ petitioner in terms of the provision of Section 15A of the said Act, the writ petitioner/appellant approached the appellate authority and the said appellate authority by its order dated 22.04.2022, while allowing the

said appeal, set aside the order of the appropriate authority, as passed under Section 15A of the said Act with a further direction to hear the writ petitioner's/appellant's application for mutation under Section 15A of the said Act afresh.

7. It is submitted that even after remand, the said appropriate authority did not take any action in terms of Section 15A of the said Act and finding no other alternative, the present writ petitioner/appellant approached the West Bengal Land Reforms & Tenancy Tribunal for a direction upon the said authority on account of his inaction within the meaning of Section 6 of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997.
8. It is submitted that the said Tribunal after considering the entire matter by its order dated 02.07.2025 directed the said authority i.e. B.L. & L.R.O., Chanditala – I, Hooghly to conclude the proceeding under Section 15A within a specified period of time.
9. It is argued that though before the learned Single Bench a case has been made out on behalf of the writ petitioner that the writ petitioner/appellant, being the legal heir of the original Bargadar is prevented by the private respondents being the Raiyats of the land in cultivating such land, the learned Single Bench declined to grant relief to the writ petitioner/appellant only on the score that the time limit, as fixed by the West Bengal Land Reforms and Tenancy Tribunal, is not over.

10. It is thus submitted that appropriate relief/reliefs may be granted to the present appellant/writ petitioner by setting aside the impugned order.
11. Such prayer is, however, vehemently opposed by the learned counsel for the private respondents.
12. Drawing attention to Section 19B of the said Act, it is argued that the said Act provides an alternative remedy, in the event, a Bargadar complains regarding termination of cultivation at the instance of the Raiyats and/or his men and agents.
13. It is submitted that despite availability of the statutory remedy, the writ petitioner/appellant ought not to have approached the Writ Court.
14. We have meticulously gone through the entire materials on record, as placed before this Court. We have given our due consideration over the submissions made on behalf of the learned counsels for the contending parties.
15. For effective adjudication of the instant appeal, as pending before us, we, at the very outset, propose to look some of the provisions of the said Act.
16. Section 15 of the said Act reads as under:-

***“15. Certain safeguards for [plot of land] cultivated by bargadars.-** (1) The provisions of clauses (b) and (c) of sub-section (4) of section 4 shall not apply to the plot of land of a raiyat or any part of it which is cultivated by a bargadar so long as cultivation by a bargadar continues.*

(2) The right of cultivation of land by a bargadar shall, subject to the provisions of this Chapter, be heritable and shall not be transferable.

(3) The provisions of this Chapter shall not apply to any person not belonging to a Scheduled Tribe claiming to be a bargadar under a raiyat belonging to a Scheduled Tribe.]”

17. Section 15A of the said Act reads as under:-

“15A. Continuation of right of cultivation on bargadar's death.—(1) Notwithstanding anything contained in any law for the time being in force or in any contract to the contrary, where a bargadar, cultivating any land, dies at a time when cultivation of such land by the bargadar was continuing, the cultivation of such land may be continued by the lawful heir of the bargadar or where there are more than one lawful heir, by such lawful heir of the bargadar as all the lawful heirs of the bargadar may determine within the prescribed period :

Provided that where the lawful heirs of the bargadar omit or fail to make a determination as required by this sub-section, the officer or authority appointed under sub-section (1) of section 18 may nominate one of the lawful heirs of the bargadar, who is in position to cultivate the land personally, to continue the cultivation thereof.

(2) The lawful heir of the bargadar who is determined or nominated for the cultivation of the land shall cultivate the land subject to such terms and conditions as may be prescribed.

(3)Where —

(a) no lawful heir of the bargadar is in a position to cultivate the land personally, or

(b) the lawful heirs of the bargadar fail to determine, within the prescribed period, the heir by whom the cultivation of the land will be continued and the officer or authority appointed under sub-section (1) of section 18 also omits or fails to nominate, within the prescribed period, any lawful heir of the deceased bargadar for the continuation of the cultivation of the land, or

(c) the person determined or nominated under sub-section (1) omits or fails to take any steps, within the prescribed period, for the continuation of the cultivation of the land, cultivation of the land may be continued by such person, whether an heir of the deceased bargadar or not, as may be nominated by the person whose land was cultivated by the deceased bargadar.”

18. Section 19B of the said Act reads as under:-

“19B. Restoration of land to bargadar. - (1) If a person owning any land terminates or causes to be terminated the cultivation of the land by a bargadar in contravention of the provisions of this Act, then any officer specially empowered by the State Government in this behalf, shall, on an application by such bargadar, by order direct —

(a) in a case where such land has not been cultivated, or has been cultivated by the owner or by any person on his behalf other than a bargadar, that the land be immediately restored to the applicant and further that forty per cent of any produce of the land shall be forfeited to the State Government and the remaining sixty per cent of such crops shall be retained by the applicant;

(b) in a case where such land has been cultivated by a person other than the bargadar engaged by the owner that the land be restored at the end of the cultivation season to the applicant and further that the person other than the bargadar shall retain twenty-five per cent of the crops harvested before restoration and make over the remaining seventy-five per cent of such crops to the applicant:

Provided that nothing in this section shall apply to termination of cultivation by a bargadar if the termination occurred before the 4th day of August, 1970, namely, the date with effect from which the West Bengal Land Reforms (Amendment) Act, 1969 ceased to be in force:

Provided further that an application under sub-section (1) shall be made within two years from the date of termination of cultivation by the bargadar or two years from the date of commencement of the West Bengal Land Reforms (Amendment) Act, 1980 whichever is later:

Provided also that if there is more than one applicant, the bargadar who has cultivated the land for the longest period shall be considered to be the rightful bargadar for the purpose of restoration in exclusion of other bargadars:

Provided also that after any application under sub-section (1) has been disposed of with the order of restoration of cultivation by a bargadar, the question shall not be reopened on any other application.

Explanation.—For determining the "longest period" the total period of cultivation may not be continuous, but while computing the "longest period" of cultivation, the period or periods of cultivation since the 4th day of August, 1970 (which may or may not be continuous) shall only be taken into account.

(1A) If the produce forfeited under clause (a) of sub-section (1) cannot be recovered from the owner of the land or the person cultivating the land on his behalf other than a bargadar or if the share of produce receivable by the bargadar under clause (b) of sub-section (1) cannot be recovered from any person other than the bargadar, money value of the share of produce so forfeited under clause (a) or share of produce so receivable under clause (b) shall be recovered by the prescribed authority under sub-section (1) as a "public demand" under the Bengal Public Demands Recovery Act, 1913 (Bengal Act III of 1913), on a written requisition sent by such prescribed authority to the Certificate Officer.

(2) An appeal against any order made under sub-section (1) shall lie to the Collector who shall be superior in rank to the officer from whose order the appeal is preferred.

(3)"

19. Keeping in mind, the aforementioned statutory provisions of the said Act, it thus appears to us that learned counsel for the appellant/writ petitioner is perfectly justified in saying that the right of Bargadarship is heritable. Some materials have been placed before this Court that after the death of the original Bargadar, the writ petitioner/appellant, his mother and his two sisters having inherited such right.
20. Admittedly, some more materials have been placed before this Court that a proceeding for mutation under Section 15A of the said Act is still pending before the jurisdictional B.L. & L.R.O. despite an order has been passed by the West Bengal Land Reforms & Tenancy Tribunal for coming to a logical conclusion of the same within a specified period of time.

21. At this juncture, if we once again look to the averments made in the writ petition, it appears to us that it is the main grievance of the writ petitioner/appellant that he being the legal heir of the original Bargadar was forcibly prevented by the private respondents being the Raiyats to cultivate the land, where his right of Bargadarship exists.
22. On being asked by this Court, learned counsel appearing on behalf of the appellant/writ petitioner concedes that there is an alternative suitable statutory remedy available to the writ petitioner under Section 19B of the said Act.
23. However, learned counsel appearing on behalf of the writ petitioner/appellant could not satisfy us as to what prevented him to approach the appropriate forum under Section 19B of the said Act for availing alternative suitable statutory remedy.
24. No plausible reason could be assigned on behalf of the appellant/writ petitioner as to why this Court will exercise its high prerogative writ jurisdiction under Article 226 of the Constitution of India despite availability of the statutory remedy under Section 19B of the said Act.
25. In view of the discussion made hereinabove, we, thus, find no reason to entertain the instant appeal basically on the ground of availability of statutory remedy and in absence of any cogent explanation on behalf of the appellant/writ petitioner for not availing such alternative statutory remedy.
26. With the aforementioned observation, this instant appeal is dismissed.

27. With the disposal of this instant appeal, pending interlocutory application being, I.A. No. CAN 1 of 2026 is also dismissed.
28. Before parting with, it is, however, made clear that in the event, the present petitioner/appellant approaches the appropriate authority under Section 19B of the West Bengal Land Reforms Act, 1955, our observation while disposing the instant appeal will not come in the way and the said authority is also at liberty to dispose of the said application, in accordance with law.
29. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

I Agree.

(SUJOY PAUL, CJ.)

(PARTHA SARATHI SEN, J.)