Maharaj Kumar Somendra Chandra Nandy Vs State of West Bengal and Others

Court: Calcutta High Court

Date of Decision: July 16, 2010

Acts Referred: West Bengal Estates Acquisition Act, 1953 â€" Section 6(1)(i)
West Bengal Land Reforms Act, 1955 â€" Section 14(M), 14(T), 14M, 14M(5), 14M(6)

Hon'ble Judges: Pratap Kumar Ray, J; Mrinal Kanti Sinha, J

Bench: Division Bench

Advocate: Alok Banerjee, Mr. Chandi Charan De and Mr. Uttam Kumar Mondal, for the Appellant; D.N. Batabyal and Mr. Sujit Chowdhury for the Added Respondent, Mr. Fazlul Haque and Mr. Ziaul Islam for the State, for the Respondent

Final Decision: Allowed

Judgement

Pratap Kumar Ray, J.
Heard the learned Advocates appearing for the parties.

2. Having regard to the submission of the learned advocate appearing for the State respondent that though three writ petitioners are being heard

analogously, but the factual matrix of the respective petitions are not identical. Considering such, writ applications to be heard one after another on

merit. Earlier orders stand modified.

3. Today W.P.L.R.T. 581 of 2003 is taken up for hearing. The other two writ application to be heard on the next date, as and when this Bench

will sit.

4. Assailing the order dated 5th May, 2003, passed in O.A. No. 4207 of 2002 by West Bengal Land Reforms and Tenancy Tribunal, this writ

application, W. P. L. R. T. 581 of 2003, has been filed.

5. The impugned order passed in Original Application reads such:

O.A. No. 4207 of 2002

This application is directed against the order dated 13 8.2002 passed by the District Land Reforms Officer, Murshidabad and the Appellate

Authority u/s 54 of the W.B.L.R. Act in Misc. Appeal case No.100 of 2001 affirming the order of the Revenue Officer that the subject debattar is

of private nature.

Proceeding No.1/92/VC/DLLRO was taken u/s 14T(6) of the Act to enquire into the question whether the debattar with Laksmi Narayan Jew as

the deity and the applicant as the sebait is of public nature or private nature. The Revenue Officer found that the deity is purely a family deity

installed inside the building owned by the sebait and that the members of the public have no access to the building even, not to speak of the deity.

The R. O. also found on scrutiny of the audited accounts before him by the learned advocate appearing for the sebait that although the sebait had

sold out by several deeds of 1974 huge land the sale proceeds did not feature in the accounts. The R.O. held that the sebait had appropriated the

sale proceeds for his personal use. Upon such findings he decided that the debattar is of private nature.

Appeal was preferred against the order of the R.O. By the impugned order the District Land & Land Reforms Officer, Murshidabad and the

Appellate Authority concurred with the finding of the R.O. and upheld his decision.

It has been argued on behalf of the applicant that this is an absolute debattar and it was so held by the authority u/s 6(1)(i) of the West Bengal

Estates Acquisation Act, and hence this debattar cannot be said to be of private nature.

The contention is misconceived. The only requirement to extend the benefit u/s 6(1)(i) of the E. A. Act was that the debattar was held exclusively

for religious or charitable purpose or both. The Scheme of the W.B.L.R. Act with regard to debattar land is different, it envisages only absolute

debattar, but for determination of ceiling area it has prescribed different criterion. If on enquiry u/s 14T(6) a debattar is found to be of public nature

then the ceiling area will be determined u/s 14M(6). And if it is of private nature then the provision of section 14M(5) will apply. It is, therefore, of

little consequence that this is an absolute debattar. Accordingly to the scheme of the L.R. Act to determine whether a debatter is of exclusively

religious or charitable or both in character is not enough. It has also to be determined whether the debattar is of public or private nature, and on the

nature of the debattar would depend which provisions of section 14M will apply to the debattar land. There W48 no such scheme wider the

W.B.E.A. Act and hence the decision under that Act has nothing to do with the decision under the provisions of Chapter IIB of the L.R. Act

enjoying overriding effect by reason of section 14(T) over the provisions contained in other Acts.

The tests to be applied to decide whether a debattar is of public or private nature, have been laid down by the Supreme Court in two landmark

decisions in Deoki Nandan Vs. Murlidhar, and Radhakanta Dev v. The Commissioner of Hindu Religious Endowments Orissa (AIR 1981 SC

198) in the former case the Supreme Court observed that a deity through a justice person capable a holding properties cannot be said to be the

beneficiary of an endowment in all cases. It is only in an ideal sense that the idol is the owner of the endowned properties and it only can have

beneficial interest in the endowment. In the latter case it has been observed that under the Hindu Law it is not only permissible but also very

common to have private endowments which through are meant for charitable purposes yet the dominant intention of the founder; is to install a

family deity in the temple and worship the same in order to effectuate the spiritual benefit to the family of the founder and his desendants and to

perpetuate the memory of the founder. In such cases, the property does not vest in the God but in the beneficiaries, who have installed the deity.

One of the tests laid down in the above decisions is the place where the idol is installed. If it is installed inside the house of the sebait where the

members of the public have no right to access, then the idol is the family idol. The members of the public have nothing to do with the worship of

this idol. In the instant case, the idol stands installed inside he palace known as, ''Rajbari'' owned by the sebait and the members of the public have

full right to get into this palace to worship the idol. Hence, it is out and out a family idol of the Nandys. Another test laid down by the Supreme

Court is that while in a public debattar the beneficiaries are not definite, the beneficiary of a private debattar is definite. In the instant case the only

beneficiary is the sebait who appropriate the sale proceeds by transferring lands belonging to the deity. He and his family are the only beneficiaries

of the property standing in the name of the deity. This is nothing but a device to keep property in the ""benami"" of the deity.

We find no reason to interfere with the concurrent finding. The Revenue Officer has correctly decided the question u/s 14T(6) of the Act and the

Appellate Authority has rightly affirmed his finding. The order of the Appellate Authority is hereby affirmed.

The application is dismissed.

6. The said Original Application arose out of challenge of the order dated 13th August, 2002, passed by District Land and Land Reforms Officer,

Murshidabad in an appeal u/s 54 of West Bengal Land Reforms Act, 1955, registered as Miscellaneous Appeal Case No. 100 of 2001, who

affirmed the order of the concerned Revenue Officer dated 14th October, 1992. By the order dated 14th October, 1992, the concerned Revenue

Officer on holding an enquiry held that the debattar property of Sri Sri Lakshmi Narayan Jew Deb Thakur was the private debattar, as such the

sebaits were not entitled to have any relief so far as exclusion of the debattar property from the respective ceiling limit of holding the land u/s 14(M)

of the said Act. An appeal was preferred against that order by the present writ petitoners. Appellate authority confirmed the decision. It appears

from the order that the appellate authority in the said Appeal Case No.100 of 2001, further held an enquiry through the officers of L.R. department

on 21st June, 2002, and report of the said enquiry was relied upon by him to dismiss the appeal and thereby to confirm the order of the Revenue

Officer concerned, appealed against. Assailing the order of the appellate authority as aforesaid, the Original Application No. 4207 of 2002 was

filed. Learned Tribunal below on the basis of the records came to the finding that the order impugned was justified and dismissed the original

application.

7. In the writ application the writ petitioners have been taken a categorical point by filing a supplementary affidavit to add the additional ground to

this effect that the concerned Revenue Officer and also the appellate authority who held respective enquiry to ascertain the true nature and

character of the debattar property neither served any notice before holding enquiry to the writ petitioners nor served enquiry report as filed by

them. The grounds of the said supplementary affidavit before this Court was not controverted by the State respondent by filing any counter affidavit

despite the direction passed by this Court by the order dated 14th May, 2010.

8. Order dated 14th May, 2010, passed by this Court reads such:

Heard the learned advocates appearing for the parties.

Learned Advocates appearing for the respondents are not opposing these applications for taking additional grounds.

These applications, being CAN. 3510 of 2010, CAN. 3509 of 2010 and CAN. 3511 of 2010, are allowed.

Let additional grounds be incorporated in the claim writ application.

Let complied copy of the writ application be filed by incorporating those grounds and copy be served to all the respondents.

Learned Advocate for the State respondent prays for adjournment to file opposition answering the new grounds as taken.

Let affidavit-in-opposition to the complied copy of the writ application, be filed by one week after the Summer Vacation and the reply thereto, if

any, be filed by one week thereafter.

The matter will appear in the list two weeks after the Summer Vacation for final disposal.

Let informal Paper Book be filed on that date:

Heard the matter in part.

The relevant grounds of the supplementary affidavit are to this effect:

7. In the facts and circumstances of the case your petitioner intends to add the following grounds in the writ petition.

GROUNDS

i) Far that the officials of the Revenue Department before holding the enquiry on 21st, June, 2002 did not serve any notice upon the petitioner nor

the copy of the report was furnished to the petitioner;

ii) Although the learned Land Reforms Officer relied upon the ex parte enquiry report held on 21st June, 2002 by the officer of Revenue

Department but copy of the said report was not made available nor furnish to the petitioner in as much as the learned Tribunal also erred in

confirming the order of the learned Land & Land Reforms Officer;

iii) For that the learned Land & Land Reforms Officer erred in relying upon the enquiry held on 21st June, 2002 as the same was done ex parte

and being the back of the petitioner in as much as Revenue Department also did not furnish the copy of the report to the petitioner;

iv) For that the Revenue, Department did not serve any notice prior to any previous enquiry nor copy of the same was made available to the

petitioner in as much as the learned Land & Land Reforms Officer and the learned Tribunal also erred in relying upon the report of the enquiry held

earlier winch was done ex parte and without service any notice upon the petitioner;

v) For that the petitioner was not given reasonable opportunity of being heard;

vi) For that prior to the enquiry made on 21st June, 2002 the official of Revenue Department did not serve any notice on the petitioner nor asked

the petitioner to appear at the time of enquiry nor the copy of the enquiry report was served upon the petitioner nor any opportunity was given to

the petitioner to file any objection whatsoever against the purported report nor the same was also served upon the petitioner in course of hearing

before the learned Land & Land Reform Officer. Your petitioner states that the said enquiry was made ex parte and behind the back of the

petitioner and the learned Land & Land Reform Officer relying upon the said report which was made ex parte and behind the back of your

petitioner came to the conclusion that the Trust in question is private trust, not the public trust. Such action on the part of the respondents are in

violation of principles of natural justice and enquiry.

9. Having regard to the points as taken in the supplementary affidavit for which the Court granted leave and no opposition filed by the State

respondents, we are of the view that as the enquiry was done to ascertain the nature and character of the debattar property in the angle, whether it

is a private debattar or public debattar, behind the back of the writ petitioners and the said reports as were relied upon by the Revenue Officer and

the appellate authority respectively were not served upon the writ petitioners before final decision as taken by them asking to file appropriate

rejoinder of said report, the impugned orders of the Revenue Officer and the appellate authority which were the subject matter of the original

application, accordingly, was vitiated.

10. It is a settled legal position of law that if any administrative body or quasi judicial authority relies upon any enquiry report, that report must be

served to the person concerned who may be affected or may suffer civil consequences in the event such report is considered to pass any decision

by adjudicating lis. Long back in the year 1967 Supreme Court has decided the issue in the case State of Orissa Vs. Dr. (Miss) Binapani Dei and

Others, where in an issue of age dispute, behind the back of the employee an enquiry was held and the report of such enquiry though relied upon

but was not served to the writ petitioner. The Apex Court considered the issue as a direct breach of principle of natural justice. On applying the

aforesaid ratio decidendi of Binapani Debi (supra), we can decide the present writ application.

11. It is a basic principle of natural justice that a party should be given an opportunity of hearing in proper manner and in proper way which in the

instant case has been breached.

12. Considering that we are of the view that the impugned order of the Revenue Officer, the appellate authority, is not sustainable. Learned

Tribunal below did not consider that issue.

13. Having regard to the aforesaid legal position, the impugned order of the learned Tribunal below being the order dated 5th May, 2003, passed

in O.A. Case No. 4207 of 2002 and the orders namely, the order dated 14th October, 1992, passed by the Revenue Officer concerned and the

order dated 13th August, 1992, passed by the appellate authority u/s 54 of the West Bengal Land Reforms Act, 1955 in connection with Appeal

Case No.100 of 2001 stand set aside and quashed. The Revenue Officer concerned is directed to proceed de novo to identify the nature and

character of the debattar property in the angle whether it is a private or public debattar and thereby to determine the ceiling limit of the land as

could be retained by the writ petitoners concerned as well as the other sebaits. An opportunity of hearing should be given to all parties, if an

enquiry is made, the writ petitioners to be served with the notice of such enquiry requesting them to remain present at the time of enquiry and after

enquiry if any report is relied upon to reach the decision, copy of the same to be served requesting the writ petitioners to file any rejoinder thereof

and thereafter matter to be heard finally and appropriate decision to be passed in accordance with law.

14. The writ application, accordingly, is allowed.

Urgent xerox certified copy of this order, if applied for, be given.

Mrinal Kanti Sinha, J.

15. I agree.