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Calcutta High Court

Case No: W.P.L.R.T. No. 803 of 2007

Samarendra Nath Das and Others		APPELLANT
	Vs	
State of West Bengal and Others		RESPONDENT

Date of Decision: Dec. 3, 2008

Acts Referred:

- West Bengal Land Reforms Act, 1955 - Section 14K(c), 14M, 14P, 14S, 14T

Citation: 114 CWN 11

Hon'ble Judges: Prasenjit Mandal, J; Kalyan Jyoti Sengupta, J

Bench: Division Bench

Advocate: Santimoy Panda, Snehasis Jana and Santimoy Bhattacharya, for the Appellant; A.N. Banerjee and Ziaul Islam, for the Respondent

Final Decision: Dismissed

Judgement

Kalyan Jyoti Sengupta, J.

The petitioner in the above application has assailed impugned judgment and order of the learned West Bengal Land Reforms and Tenancy Tribunal dated 21st June, 2007. The judgment and order of the learned Tribunal which is under challenge has upheld the order of the Revenue Officer as well as the Appellate Authority appointed u/s 54 of the West Bengal Land Reforms Act, 1955 (hereinafter referred to as the said Act) while dismissing the petitioner''s application being O.A. No. 861 of 2007. Before we note the grounds of challenge presented before us by the aforesaid application we record the short history of the case. One Dhirendra Nath Das, being the predecessor-in-interest of the present applicant, since deceased, held 88.6 acres of land in aggregate of various descriptions as per records of rights maintained by the State. The nature of some portion of land held and possessed by the said Dhirendra Nath Das is tanks and ponds etc. and it is claimed the same were governed by non-Agricultural Tenancy Act, 1949. In or about 2000 the State Government u/s 14T(3) of the said Act had initiated a proceedings and considering

all the factual aspects disposed of the said case holding that there has been no excess land held by the said Dhirendra Nath Das, since deceased. Thereafter, in or about 2001 the Revenue Officer, suo motu, thought upon discovery of the fact that all lands have not been properly taken into consideration previously to reopen the case by initiating fresh proceedings being case No. 421SDLLRO(GMP)/2001. By this proceedings it was decided and held by the Revenue Officer by order dated 9th April, 2001 that the raiyat was holding excess land of 63.83 acres and he was allowed to retain 17.30 acres of land. Thus, an application was filed in the Tribunal being O.A. No. 2067 of 2001 and the learned Tribunal found that said fresh proceeding was not a proceeding u/s 14T(3A) of the said Act. Further, size of family was not properly decided and the transfer of land was also hit by Sections 14P and 14U of the said Act. All these points were not kept in mind besides there being other infirmities and illegalities. Therefore, the said decision was set aside and the learned Tribunal directed that both the proceedings of the years, 2000 and 2001 to be assigned to a competent Revenue Officer for taking a decision determining ceiling area of the land on compliance of the procedure viz. issuing notice showing the names of all legal heirs'' having right, and exact quantum of land held by the raiyat as on 15th February, 1971. The learned Tribunal while determining as above directed to consider Sections 14P and 14U of the said Act to ascertain size of family as on 15th February, 1971. The said judgment and order was challenged in this Court filing an application being W.P.L.R.T. No. 289 of 2002 in this Hon''ble Court. The said application filed in this Court was dismissed. However, the Revenue Officer concerned was directed to initiate fresh proceedings in terms of the direction of the learned Tribunal read with the order passed in the aforesaid W.P. L.R.T. No. 289 of 2002.

2. In terms of the aforesaid directions the Revenue Officer decided the matter afresh and held that there has been an aggregate amount of 88.60 acres of land held by the said Das, since deceased. The Revenue Officer found that the family comprised of five members as per Section 14K(c) of the said Act. In course of hearing after examining the provisions of the law in his own way he found that there has been an excess area of 71.30 acres of land under the provision of Section 14S of the said Act and thereby allowed to retain 17.30 acres of land as per Section 14M of the said Act. The applicant, thereafter challenged the said order of the Revenue Officer by filing O.A. No. 2750 of 2006 but the learned Tribunal did not entertain such challenge at the first instance observing that there has been no exhaustion of alternative remedy viz. the provision of appeal under the statute. So, the applicant was allowed to prefer appeal. The said judgment and order of the learned Tribunal was also challenged in this Court by filing another application being W.P.L.R.T. 662 of 2006 which was disposed of by an order dated 30th November, 2006 by the Division Bench of this Court holding inter alia that the Tribunal had passed just and correct order. Thus, the applicant preferred appeal ultimately to the Appellate Authority u/s 54 of the said Act being No. 45 of 2006. The Appellate Authority after hearing the

parties decided and disposed of the same by an order dated 27th February, 2007 upholding the order of the Revenue Officer. Having been unsuccessful before the Appellate Authority the applicant approached the learned Tribunal with the application on which the impugned judgment and order was passed.

3. Mr. S. Panda, learned Senior Advocate; appearing in support of the present applicant, while highlighting the facts of the case and also drawing our attention to the grounds factually and legally made out therein, submits that all the authorities, right from concerned Revenue Officer to the learned Tribunal had gone wrong both on fact and in law while re-determining ceiling limit. He submits that the Division Bench of this Court has already struck down Section 14T(3) of the said Act. On an appeal being preferred before the Hon''ble Supreme Court and interim order of status quo having been passed there was no occasion for initiating suo motu proceedings. The order of status quo means that the judgment of Division Bench striking down the said Section is not reversed nor order of striking down being operative nor struck down provision is restored. Therefore, all these authorities should have held that no suo motu proceedings should have been initiated to take any step for vesting. He argues, assuming Section 14T(3) of the said Act is still in operation in the field in view of the Supreme Court judgment and order of status quo, that the Revenue Officer concerned should not have reopened the issue as there has been factually no discovery of new land. On earlier occasion the same Revenue Officer has found that there has been no excess land and so the proceedings should not have been initiated u/s 14T(3A) of the said Act. He further submits that factually on earlier occasion the number of members of the family was six while subsequently it was found to be five. This fact finding on the face of it is erroneous. Moreover, long before commencement of Section 3A of the said Act the land in the nature of non-agricultural was transferred in the year, 1972 bona fide to the third parties and quantum of such portion of the land, therefore, could not be said to be vested and could not be taken into consideration. He has also drawn reference to the provisions of the West Bengal Estate Acquisition Act and drawn our attention to the definition of "land" mentioned therein that the nature of the land which has been taken into consideration is not agricultural rather non-agricultural tenancy right and the same could not be governed under the said Act. All the aforesaid legal infirmities have been totally overlooked by all the authorities, therefore, judgment and order of the learned Tribunal should be reversed. Naturally, the order of the Revenue Officer and the Appellate Authority should also be set aside and quashed and earlier determination of ceiling limit should be restored.

4. Mr. A. Banerjee, learned Advocate appearing for the State, submits that considering all the aspects both on fact and in law, with the reasons, the learned Tribunal has upheld the determination of ceiling limit and quantum of the land being vested to the State, therefore, there was no warrant for this Court to upset all the findings based on sound reasoning. He urges that the judgment and order of

the Division Bench of this Court striking down Section 14T(3) has been stayed by the Hon''ble Supreme Court and order of status quo has already been passed as interim measure. Moreover, in another case the Supreme Court has set aside the judgment and order of another Division Bench of this Court which was rendered relying on the decision of the earlier Division Bench judgment and allowed the State of West Bengal to apply the provision of Chapter IIB. He submits further that by virtue of sub Section (3A) of Section 14T Revenue Officer has been empowered of his own motion to revise order under sub Section (3) and determine the extent of excess land which is to vest in the State u/s 14S. The aforesaid provision has been incorporated by the West Bengal Land Reforms (Amendment) Act, 1976 read with amendment of 1978. Thus, the question of discovery of new land is wholly misplaced. According to him, the determination of extent of land of vesting in the State under sub Section (3) of Section 14T is not final and conclusive and the same can be always revised under sub-Section 3A. It is incorrect to contend that the subsequent action of the Revenue Officer for revising earlier order of vesting and determination of vesting is without jurisdiction. He further submits that this question cannot be allowed to be agitated and reopened as the same has already been dealt with by necessary implication by the earlier judgment and order of the learned Tribunal which was upheld by the Division Bench of this Court. Hence, those questions are hit by the principle of constructive res judicata if not express one.

5. The Revenue Officer has decided afresh in terms of the order and direction of the learned Tribunal and direction dated 9th October, 2001 which was upheld by the Division Bench of this Court dated 22nd March, 2005. The same judgment and order of the learned Tribunal dated 9th October, 2001 has expressly directed that the Revenue Officer concerned shall initiate a fresh proceeding u/s 14T(3) of the said Act within one month to determine the ceiling area of the raiyat after issuing notices to the heirs of the deceased and to determine the exact extent of land held by the raiyat as on 15th February, 1971 stating the basis thereof and applying the provisions of Sections 14P and 14U of the said Act. It will appear from the order of the Revenue Officer concerned that he has categorically decided the size of the family as on 15th February, 1971 and had taken note of the fact of attaining majority of the sons and the land being held by him separately thereafter he has found that the members of the family were five instead of six which was held earlier. These fact findings are based on evidence and fact and there has been no serious challenge against the aforesaid fact finding before the appellate authority or before the learned Tribunal. Hence, this application be dismissed.

6. We have heard the learned Counsels and considered their argument advanced before us and we have gone through the impugned judgment and order of the Revenue Officer, Appellate Authority as well as the learned Tribunal. Two points in this matter really emerge for our decision:

(i) Whether the Revenue Officer should have decided the extent of vacant land under. Section 14T(3A) of the said Act for vesting notwithstanding dispute regarding constitutional validity is pending before the Hon''ble Supreme Court wherein the order of status quo has been granted.

(ii) Whether the Revenue Officer has lawfully determined the extent of vacant land for the purpose of vesting under the provision of Section 14T(3) read with Section 3A of the said Act.

7. It is an admitted position that the SLP has been pending against the judgment and order passed by this Court in case of Piush Kanti Chowdhury and order of status quo has been passed by the Hon''ble Supreme Court in that matter. The Division Bench of this Court has held that the said provision ultra vires constitutional provision as there is no provision for payment of compensation. Subsequently, there were other matters in which this Court namely the Division Bench also followed earlier decision of the Division Bench and appropriate orders were passed. The State of West Bengal individually has also preferred appeal before the Supreme Court and the order of status quo has been granted. According to us, the judgment of this Court holding the aforesaid Section being ultra vires has not been reversed and therefore, it cannot be said that by the order of status quo, Section 14T(3A), has been restored. Order of status quo, in our view, is whatever situation is prevailing on the date of passing of that order meaning thereby on the date of the order neither the said judgment and order of the Division Bench is operative nor the said provision of Section 14T(3A) of the said Act.

8. In our view, in this matter the said suo motu proceeding u/s 14T(3) read with Section 3A of the said Act is not illegal nor contrary to the decision of the Supreme Court as the Revenue Officer had no option but to carry out the judgment and order of the learned Tribunal passed earlier in O.A. No. 2067 of 2001 dated 9th October, 2001. In the said judgment of the learned Tribunal it has been specifically directed that the matter should be reheard in order to determine the ceiling area of the raiyat and also the exact extent of land held by the raiyat applying the provision of Sections 14P and 14U for the purpose of determining the size of the family of the raiyat as on 15th February, 1971. The above judgment and order of the learned Tribunal was accepted and affirmed by this Court by the judgment and order dated 22nd March, 2005.

9. The aforesaid judgment and order of this Court was not challenged before the appropriate forum. Hence, the judicial and quasi judicial discipline do not permit to flout the direction of the learned Tribunal. We, therefore, hold that the Revenue Officer had rightly proceeded. However the legality and validity of the said decision for its implementation will be dealt with later.

10. At the present moment we shall be dealing with the point raised by the appellant. We are unable to accept the contention of Mr. Panda, that since the

extent of land held by and size of the family, of the predecessor-in-interest of the applicant viz. Dhirendra Nath Das were previously determined by the same Revenue Officer, it was not open for the Revenue Officer subsequently to determine the same again. Apart from the direction given by the learned Tribunal as observed by us here-in-above, sub Section 3(A) of Section 14T of the said Act makes it clear that the Revenue Officer can reopen notwithstanding earlier determination made u/s 14T(3). Therefore, Mr. Panda''s aforesaid contention is overruled as the same is hit by the principle of constructive res judicata, if not express one as the learned Tribunal, by necessary implication, has been pleased to observe that it is open for re-determination u/s 14T sub-section 3(A).

11. Now the point remains whether the Revenue Officer has decided the matter in terms of the direction of the learned Tribunal earlier or not in applying the appropriate provision of law. We have carefully gone through the order of the Revenue Officer and it appears to us that he has meticulously decided the extent of land mouza-wise held by Dhirendra Nath Das as on 15th February, 1971. He found that a total area of 88.60 acres of land of various descriptions spreading over different mouza''s was held by Mr. Das. He found that as on 15th February, 1971 size of the family of the said Dhirendra Nath Das was five as two of his daughters were married prior to 15th February, 1971 and one was remaining spinster. One of the two sons of said Dhirendra Nath Das attained majority as on 15th February, 1971 and was holding independently a considerable quantum of land. Therefore, he was excluded from the family. There is no material evidence to rebut the aforesaid findings either before the Appellate Authority or before Appellate Tribunal. In absence of any evidence we are unable to interfere with the aforesaid fact finding as regards size of the family. The Revenue Officer had, taken note of the transfer of large quantum of land prior to 1980 in favour of several persons. After taking note of the definition of land under the provision of Section 2(7) of the said Act 1981 published in Calcutta Gazette dated 24th March, 1986 with retrospective effect from 7th August, 1979 he has decided the matter. We have read carefully he amended definition of land in West Bengal Land Reforms Act and we think that the Revenue Officer has correctly applied the aforesaid provision. It is no one''s case that the retrospective operation of the definition of the aforesaid portion of the said Act cannot be applicable in this case or the same is unconstitutional. It is well-settled principle of law that when the Legislature expressly makes any provision of law for retrospective operation the Court of law has no jurisdiction to deflect the intention of the Legislature. Having regard to the size of the family being five in numbers the Revenue Officer held that the raiyat was entitled to retain 17.30 acres of land in the non-irrigated area.

12. Mr. Panda says that the nature and character of the large quantum of land is fond to be the tank which is undoubtedly non-agricultural land and therefore, while determining quantum of land the Revenue Officer ought to have borne in mind that provision of the said Act has no application by virtue of Section 3A of the said Act.

Under this Section event of vesting is governed by the West Bengal Estate Acquisition Act, 1954. To our mind there is fallacy in the argument of Mr. Panda for Section 3A of the West Bengal Land Reforms Act applies in case of the right, title, interest of all non-agricultural tenants under the West Bengal non-Agricultural Tenancy Act, 1949. The provision of Sections 5 and 5A of the WBE Act have been made applicable for restriction, prohibition consequent upon vesting of the said tenancy right. Needless to say that there is basic difference between vesting of above tenancy right and that of interest and ownership of a raiyat and for this reason two separate provisions of vesting viz. under Sections 3A and 14S of the said Act have been provided. The Revenue Officer as well as the Appellate Authority after having gone through the records found that nature and interest of the Said Dhirendra Nath Das is that of a raiyat and not that of a non-agricultural tenant. We think that the provision of Section 3A of the said Act has no manner of application. Besides, the amended definition of Section 2 sub Section (7) as rightly and correctly been noted by the Revenue Officer and Appellate Authority, is having wide amplitude which includes tank unlike the definition given in the said Section 2(7) of the said Act prior to the amendment of 1980. The said amended definition has been given a retrospective operation. We, therefore, set out the definition of land as amended :

"Land" means land of every description and includes tank, tank-fishery, fishery, homestead, or land used for the purpose of livestock, breeding, poultry farming, dairy or land comprised in tea garden, mill, factory, workshop, orchard, hat, bazaar, ferries, tolls or land having any other sairati interests and any other land together with all interests, and benefits arising out of land and things attached to the earth or permanently fastened to anything attached to earth.

13. Thus, the nature of the tank has also been brought within the purview of the aforesaid provision, and provision of the said Act has overriding effect upon all the Acts as far as definition is concerned. We, therefore, hold that the Revenue Officer following the direction of the learned Tribunal as given earlier has taken into consideration the quantum of the land transferred prior to 1980 and while deciding the question of retention vis-a-vis vesting transferred land has been selected by applying the correct provision of law.

14. We are thus unable to accept the contention of Mr. Panda that the learned Tribunal or the Appellate Authority has wrongly upheld the decision of the Revenue Officer.

15. We, therefore, hold that the decision determining the extent of land held by Dhirendra Nath Das on 15th February, 1971 and size of the family and quantum of vesting and retention of land is correctly done.

16. But we think that the learned Tribunal and the Appellate Authority have not decided whether the aforesaid determination regarding vesting and retention of the

land should be implemented or not in view of the Supreme Court judgment and order. We are of the view that the respondent authority cannot do anything now except keeping the aforesaid matters stayed in view of the order of status quo passed by the Hon''ble Supreme Court. We, therefore, direct the respondent authorities not to take any step or further steps with regard to vesting of the alleged excess land in favour of any person in any manner whatsoever maintaining status quo. In the event, the Supreme Court upsets the judgment of the Division Bench of this Court then it would be open for the respondents to take steps in accordance with the law for settling excess land as determined. In the event, the SLP filed by the State is dismissed then the decision taken by the Revenue Officer will stand automatically quashed and set aside. We, thus, dispose of the matter with the aforesaid findings and direction.

Prasenjit Mandal, J.

17. I agree.