

(2011) 05 CAL CK 0021

Calcutta High Court

Case No: W.P.L.R.T. No. 073 of 2007

Saira Bibi

APPELLANT

Vs

State

RESPONDENT

Date of Decision: May 17, 2011**Acts Referred:**

- West Bengal Estates Acquisition Act, 1953 - Section 10, 2, 2(4), 39(1), 44(3)
- West Bengal Land Reforms and Tenancy Tribunal Act, 1977 - Section 14X
- West Bengal Land Reforms and Tenancy Tribunal Act, 1997 - Section 5

Citation: (2011) 5 CHN 508**Hon'ble Judges:** Pratap Kumar Ray, J; Abdul Ghani, J**Bench:** Division Bench**Advocate:** Dilip Kumar Samanta, Ashis Kumar Pal, B.P. Samanta, for the Appellant; Gita Mukherjee, for the Respondent

Judgement

Pratap Kumar Ray, J.

Heard learned Advocates appearing for the parties. Let paper books as filed today be kept with the record. This case has a chequered history. A Title Suit being No. 186 of 1990 filed in the Court of Assistant District Judge, 1st Court, Midnapore being a suit for declaration, injunction and partition of schedule property, wherein a preliminary decree on 24th May, 1995, declaring the plaintiffs right title and interest over the property to the extent of 7/32nd share in respect of the suit property was passed. Said preliminary decree, due to amicable settlement in between the parties, was declared in final form and a final decree was passed by accepting compromise petition on 13th May, 1999, filed in the said suit, by the Court of Civil Judge (Senior Division), Midnapore. On that basis, the present writ petitioner filed an application praying for revision of record of rights prepared under the West Bengal Estates Acquisition Act, 1953.

2. An original application being No. O.A. 2932 of 2002 (LRTT) was moved before the West Bengal Land Reforms and Tenancy Tribunal who by the order dated 3rd October, 2002 passed an order directing the concerned Revenue Officer to dispose of the application on considering the judgement and decree of the Civil Court passed in the said title suit. The order passed by the learned Tribunal below in the earlier original application aforesaid reads such:-

3.10.2002 - The learned Counsel for the applicant is present and files affidavit of service which be kept with the records. The Government representative is present.

We have heard both sides and perused the records.

The applicant's grievance is that though she filed an application for correction of the ROR in her favour the application has not yet been considered by the Block Land and Land Reforms Officer, Kharagpur-II. The learned Counsel for the applicant refers to the judgement and decree in Title Suit No. 186 of 1990. However, we find that the State of West Bengal was not present during the hearing of the suit. Moreover, the jurisdiction of the Civil Court in certain matters, like vesting of land in the State, correction of ROR etc. has been ousted u/s 57B (1 & 2) of the West Bengal Estates Acquisition Act.

In the circumstances we dispose of this application by directing the B.L. & L.R.O., Kharagpur-II, Dist- Midnapore, to treat this application as a representation before him from the applicant for correction of ROR u/s 50 of the West Bengal Land Reforms Act and dispose it of within three months from the date of communication of this order after giving an opportunity of being heard to the applicant and other interested persons strictly in accordance with law.

5. Despite the said order, Revenue Officer did not consider the issue, save and except issuance of a notice fixing hearing date on 18th January, 2006, where writ petitioner appeared. In view of pendency of the situation, the writ petitioner filed this writ application affirming the same on 31st July, 2007, assailing the order of the learned Tribunal dated 3rd October, 2002 whereby and whereunder the learned Tribunal below directed the concerned Revenue Officer only to consider the issue. It is the grievance raised by the writ petitioner in the writ application that once there is a declaration of title in a partition suit, the question of legal embargo of the Civil Court as has been observed by learned Tribunal below in the order impugned referring section 57B (1 & 2) of the West Bengal Estates Acquisition Act, 1953, had no applicability. It is the contention of the writ petitioner that civil suit was filed not assailing any order of vesting or for any order to correct the record of rights, but it was filed to ascertain the title of the property on the basis of law of inheritance applicable in the filed and, as such, the Civil Court had the jurisdiction to decide the suit which was nothing but a suit for declaration of title and partition. It is further contended that even if any recording is made in the record of rights by one brother of the writ petitioner about his title and right over the property in question, the legal

right of writ petitioner as per law of inheritance claiming right, title and interest over the property would not vanish. It is the categorical submission that provision of vesting, cannot disturb or wipe out the right accrued in terms of the law of inheritance of the property. There is no doubt of said legal proposition. A Division Bench of this Court (Coram - Pratap Kumar Ray and Mrinal Kanti Sinha, JJ.) in the case delivered the judgement by applying the said principle of law.

6. However, it appears that the State respondents in their affidavit-in-opposition has disclosed that already the Revenue Officer has decided the issue against the present writ petitioner by the order dated 10th September, 2007 during pendency of the writ application and writ petitioner was heard. It is the contention of the State respondents that the writ application accordingly became infructuous as the order of learned Tribunal below assailed in the writ application already has been implemented by the Revenue Officer by passing a reasoned decision, which may be against the writ petitioner and writ petitioner will have to take appropriate steps challenging the same. The order of the Revenue Officer as passed during pendency of the writ application is annexed in the affidavit-in-opposition being an order dated 10th September, 2007 passed in a proceeding Misc. Case No. 01/KGP-II of 2006, a proceeding u/s 57B of the West Bengal Estates Acquisition Act. The order of Revenue Officer reads such:-

10.09.2007- The case records is put up to-day for final hearing. On behalf of the petitioner, Saira Bibi herself and on behalf of the second party Sk. Hasimuddin S/o. Lt. Sk. Khurshed are present by filing their haziras. Heard the petitioner and examined the adduced papers. The petitioner's main contention is that she is one of the successors-in-interest of Lt. Khurshed Ali since deceased in 1951 and is entitled to 7/32nd share of the total land left by her father Lt. Khurshed Ali as per Mahammedan Law.

Verified the concerned R.S. R.O.Rs bearing Khatian Nos. 849, 883, 884, 885, 886 and 1249 of mouza Paparara J.L. No. 444 and the R.S. R.O. Rs bearing Khatian Nos. 90, 93, 98 and 81 of mouza Purnunia, J.L. No. 389. Verification of aforesaid R.S. R.O.Rs. reveals that the same has been framed and finally published in favour of Sk. Hasimuddin S/O. Lt. Khurshed Ali.

The matter as it appears is related to correct both the R.S. and R.O.Rs. according to the petitioner's claim. The petitioner has gotten decree for correction of R.O.Rs. in T.S. Case No. 186 of 1990 in the matter of Khairannessa Bibi vs. Sk. Hasimuddin & Ors. three.

But it attracts the provision of section 57B of W.B.E.A. Act which was inserted by section 5 of W.B.E.A. (Second Amendment) Act, 1973 and section 14X of the W.B.L.R. Act, 1955.

Section 57B of W.B.E.A. (Second Amendment) Act, 1973 provides that 1), When an order has been made under sub-section (1) of section 39 directing the preparation

of revision of a record of rights no Civil Court shall entertain any suit or application for the determination of rent or determination of the status of any tenant or the incidents of any tenancy to which record of rights relates and if any suit or application in which any of the aforesaid matters is in issue is pending before a Civil Court the date of such order it shall be stayed and it shall on the expiry of the period prescribed for an appeal under sub-section (3) of section 44 or when an appeal has been filed under that sub-section as the case may be, on the disposal for such appeal abate so far as it related to any of the aforesaid matters. 2) No Civil Court shall entertain any suit or application concerning any land or any estate or any right in such estate if it relates to (a) alteration of any entry in the record of rights finally published, revised made, corrected or modified under any of the provision of Chapter-V. (b) a dispute involving determination of the question either expressly or by implication, whether a raiyat or an intermediary is or is not entitled to retain under the provision of this Act such land or estate or right in such estate as the case may be or (c) any matter which under any of the provisions of this Act is to be or has already been enquired into, decided dealt with or determined by the State Government or any authority specified therein and any such suit or application which is pending before a Civil Court immediately before the commencement of the West Bengal Estates Acquisition (Second Amendment) Act, 1973 shall abate so far as it relates to all or any of the matters referred to in clause (a), clause (b) or clause (c) (3) Any dispute referred to in clause (b) of sub-section (2) may be decided by a Revenue Settlement Officer, specially empowered by the State Government in this behalf who shall dispose of the same in such manner as may be prescribed: Provided that in deciding a dispute under this sub-section the Revenue Officer shall not re-open any matter which is already been enquired into, investigated, determined or decided by the State Government or any authority under any of the provisions of this Act. (4) Any person aggrieved by a decision of the Revenue Officer made under sub-section (3) may appeal to the prescribed authority not below the rank of a Settlement Officer which in such time, in such manner and subject to payment of such fees as may be prescribed. (5) A decision made by the Appellate Authority under sub-section (4) shall be final.

In this respect order of abatement may cited. The Hon"ble High Court in a case of 80C W.N. 205 in the matter of Amritmoy Ghosh vs. State of West Bengal has been pleased to pass an order when Trial Court recoded that in view of section 57B of W.B.E.A. Act, the suit abates, the order being a final determination of the suit is vulnerable in appeal.

Again section 14X of the W.B.L.R. Act, 1955 provides that no Civil Court shall have jurisdiction to decide or deal with any question or to determine any matter which is by or under this Chapter required to be decided or dealt with or to be determined by the Revenue Officer or other authority specified therein and no orders passed or proceedings commenced under this provision of this Chapter shall be called in

question in any Civil Court.

It is learned on hearing that the suit land was not recorded in the name of petitioner's father in R.S. R.O.Rs. concerned. The suit land was recorded in the name of Sk. Hasimuddin S/O. Lt. Khurshed Ali the brother of the petitioner in concerned R.S. R.O.Rs. The petitioner got ample time to correct the R.S. R.O. Rs. of concerned land. The suit land was vested to the State of West Bengal. The petitioner's sister filed the T.S. case being No. 186 of 1990 and got decree in favour of her. But it attracts the provision of section 57B of W.B.E.A. Act, 1973 and section 14X of the W.B.L.R. Act, 1955.

In the light of aforesaid observations it may be stated that the concerned R.S. R.O. Rs. framed and published u/s 44(4) of the W.B.E.A. Act in the name of Sk. Hasimuddin S/o. Lt. Khurshed Ali of Benageria is made correctly.

Hence no benefit is awarded to the petitioner considering above facts. Thus the case is disposed of.

7. In view of the judgement passed in the case of [L. Chandra Kumar Vs. Union of India and others](#), a judgement of Constitution Bench, wherein the Apex Court held that the Tribunals will continue to act as the only Courts of first instance in respect of areas of law for which they have been constituted and litigant should approach first to the Tribunals assailing the order passed by the concerned authority in respect of areas of law for which Tribunal was constituted, we are of the view that the order of the Revenue Officer as passed during pendency of the writ application cannot be the subject matter of challenge of the present writ application, for our judicial review, to pass appropriate order irrespective of favourable legal point of the writ petitioner on law of inheritance, as has been urged. The view of L. Chandra Kumar (supra) has been re-echoed by the Apex Court subsequently in the case of [Rajeev Kumar and Another Vs. Hemraj Singh Chauhan and Others](#), , while dealing with the issue about filing of a fresh writ application by some one who was not a party before the Administrative Tribunal assailing the order of Tribunal in writ application. It is a settled legal position now that all matters arising out of particular field of law for which different Tribunals were constituted should be decided as a Court of first instance. It appears that during pendency of writ application the impugned order of the writ application has already been implemented and a new order has been passed on 10th September, 2007 by the concerned Revenue Officer which is an order under the specified Act of West Bengal Land Reforms and Tenancy Tribunal Act, 1997 and as per provision of said West Bengal Land Reforms and Tenancy Tribunal Act, 1997, any order passed by any officer under the specified Act is assailable before the West Bengal Land Reforms and Tenancy Tribunal. Hence, the order which created a fresh cause of action being the order dated 10th September, 2007, is assailable before the West Bengal Land Reforms and Tenancy Tribunal, a Court of first instance, having regard to the legal position settled in L. Chandra Kumar (supra), though the Revenue Officer has initiated a proceeding wrongly by

identifying the proceeding u/s 57B of the West Bengal Estates Acquisition Act, 1953. On bare reading of the said provision, it appears that the Revenue Officer was wrong to identify the proceeding under said section. Section 57B is a section ousting the jurisdiction of Civil Court in respect of certain matters. Section 57B of said Act reads such:-

S. 57B. Bar to jurisdiction of Civil Court in respect of certain matters.-- (1) Where an order has been made under sub-section (1) of section 39 directing the preparation of revision of a record-of-rights, no Civil Court shall entertain any suit or application for the determination of rent or determination of the status of any tenant or the incidents of any tenancy to which the record-of-rights relates, and if any suit or application, in which any of the aforesaid matters is in issue, is pending before the Civil Court on the date of such order, it shall be stayed, and it shall, on the expiry of the period prescribed for an appeal under subsection (3) of section 44 or when an appeal has been filed under that subsection, as the case may be, on the disposal of such appeal, abate so far as it relates to any of the aforesaid matters.

(2) No Civil Court shall entertain any suit or application concerning any land or any estate, or any right in such estate, if it relates to-

(a) alteration or any entry in the record-of-rights finally published, revised, made, corrected or modified under any of the provisions of Chapter V.

(b) a dispute involving determination of the question, either expressly or by implication, whether a raiyat or an intermediary, is or is not entitled to retain under the provisions of his Act such land or estate or right in such estate, as the case may be, or

(c) any matter which under any of the provisions of this-Act is to be, or had already been, enquired into, decided, dealt with or determined by the State Government of any authority specified therein, and any such suit or application which is pending before a Civil Court, immediately before the commencement of the West Bengal Estates Acquisition (Second Amendment) Act, 1973 (West Ben. Act 33 of 1973), shall abate so far as it relates to all or any of the matters referred to in clause (a), clause (b) or clause (c).

(3) Any dispute referred to in clause (b) of sub-section (2) may be decided by a Revenue Officer not below the rank of an Assistant Settlement Officer, specially empowered by the State Government in this behalf, who shall dispose of the same in such manner as may be prescribed:

Provided that in deciding a dispute under this sub-section, the Revenue Officer shall not re-open any matter which has already been enquired into, investigated, determined or decided by the State Government or any authority under any of the provisions of this Act.

(4) Any person aggrieved by a decision of the Revenue Officer made under sub-section (3) may appeal to the prescribed authority not below the rank of a Settlement Officer, within such time, in such manner and subject to payment of such fees as may be prescribed.

(5) A decision made by the Appellate Authority under sub-section (4) shall be final...

8. In the instant case, it appears that petitioner made a prayer for correction of record of rights on the basis of the judgement and decree of Civil Court aforesaid declaring her title over the concerned property by applying the law of inheritance. Hence, the petitioner's prayer was u/s 44 (2a) of the West Bengal Estates Acquisition Act, 1953 praying for revision of record of rights to correct the entry of revisional settlement record of rights where the property was recorded in the name of brother only, namely, Sk. Hasimuddin. Hence, the order dated 10th September, 2007 was passed by the concerned Revenue Officer exercising power u/s 44 (2a) of the said Act. Under sub-section (3) of section 44, an appeal will lie to the concerned Tribunal, appointed for the purpose of that section. Section 44 (2a) and 44(3) reads such:-

(2a) An officer specially empowered by the State Government may, on application within nine months, or of his own motion within fifty years, from the date of final publication of the record of rights or from the date of coming into force of the West Bengal Estates Acquisition (Second Amendment) Ordinance, 1957 (West Ben. Ord. 10 of 1957), whichever is later, revise an entry in the record finally published in accordance with the provisions of sub-section (2) after giving the persons interested an opportunity of being heard and after recording reasons thereof:

Provided that nothing in the foregoing paragraph shall be deemed to empower such officer to modify or cancel any order passed u/s 5A, while revising any entry: Provided further that no such officer shall entertain any application under this sub-section or shall of his own motion take steps to revise any entry, if any appeal against an order passed by a Revenue Officer on any objection made under sub-section (1), has been filed before the commencement of the West Bengal Estates Acquisition (Second Amendment) Ordinance, 1957, before a Tribunal appointed for the purpose of this section, and, notwithstanding anything in this section, any such appeal may continue and be heard and disposed of as if the West Bengal Estates Acquisition (Second Amendment) Ordinance, 1957, had not been promulgated.

(3) Any person aggrieved by an order passed in revision under sub-section (2a) may appeal in the prescribed manner to a Tribunal appointed for the purpose of this section, and within such period and on payment of such Court-fees as may be prescribed.

9. Under the West Bengal Land Reforms and Tenancy Tribunal Act, 1997, West Bengal Estates Acquisition Act, 1953 identified u/s 2(4), a specified Act. u/s 6 of the said Act that is said Tribunal Act, the Tribunal has the jurisdiction and authority in

relation to any order made by an authority under a specified Act, to decide the legality and validity of the said order. u/s 10 of the said Tribunal Act, the application assailing the order passed u/s 44(2a) of West Bengal Estates Acquisition Act, 1953 is assailable to the Tribunal set up under the West Bengal Land Reforms and Tenancy Tribunal Act, 1997. It appears that there is a limitation under sub-section (2) of section 10 of said Tenancy Tribunal Act to file any application assailing the order. Since in the instant case, the order dated 10th September, 2007 was passed by the Revenue Officer during pendency of the writ application, we are granting liberty to the writ petitioner to assail the order dated 10th September, 2007 by filing appropriate application before the learned Tribunal constituted under the said West Bengal Land Reforms and Tenancy Tribunal Act, 1997 by filing an application praying condonation of delay asserting the grounds of pendency of the matter in the High Court at Calcutta. In the event of filing such an application, Tribunal will condone the delay in view of pendency of the matter in the High Court at Calcutta.

10. Having regard to such, the writ application is disposed of by granting liberty to the writ petitioner to assail the said order dated 10th September, 2007 passed by the concerned Revenue Officer before the West Bengal Land Reforms and Tenancy Tribunal, in proper form along with certified copy of the said order dated 10th September, 2007 within a month from the date of delivery of the certified copy by the Revenue Officer and in view of pendency of the matter before us, learned Tribunal is directed to condone the delay with reference to the application as to be filed seeking such condonation of delay in filing the application before the learned Tribunal and Tribunal will decide the matter on merit particularly taking note of legal right to claim the title over the property under the law of inheritance and the impact thereof and other points as to be urged.

11. The writ application accordingly stands disposed of with the aforesaid findings and observations.

12. Let urgent xerox certified copy of this order, if applied for, be given to the learned Advocates appearing for the parties expeditiously.

Md. Abdul Ghani, J.

I agree.