(2009) 02 CAL CK 0034

Calcutta High Court

Case No: W.P.L.R.T. No. 631 of 2007

Gora Chand Singha Roy and Others		APPELLANT
	Vs	
State of West Bengal and Others		RESPONDENT

Date of Decision: Feb. 20, 2009

Acts Referred:

- General Clauses Act, 1897 - Section 3(42)
- West Bengal Estates Acquisition Act, 1953 - Section 14, 44(2A), 5, 6, 6(1)

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

Bench: Division Bench

Advocate: Ashok Kumar Banerjee, Shyamal Sanyal and Dakshina Ranjan Hore, for the Appellant; Gita Mukherjee, for the Respondent

Final Decision: Dismissed

Judgement

Kalyan Jyoti Sengupta, J.

The Judgment of the Court was delivered by:

1. By this application the judgment and order of the learned West Bengal Land Reforms and Tenancy Tribunal (hereinafter referred to as the said Tribunal) dated 16th May, 2007 is assailed. The said Tribunal has dismissed the petitioners'' original writ petition being C.R. No. 12890 of 1982 which was on being transferred by operation of law, to the Tribunal, renumbered the matter as being T.A. No. 69 of 2002. All the present applicants are sons and daughters of one Late Bhootnath Singha Ray since deceased (herein after mentioned as the said deceased) the said Bhootnath Singha Ray and his sons and daughters are governed by the Mitakhsara School of Hindu Law.

2. The original writ petition was filed by the said deceased and his sons, challenging the order of the Revenue Officer whereby a large portion of the land was declared to

have been vested as being excess to the ceiling limit under the West Bengal Estate Acquisition Act (hereinafter referred to as the said Act). During pendency of the said transferred writ petition, before the learned Tribunal, the deceased died intestate leaving him surviving his heirs and heiresses namely Anita Singha Ray being the sole widow, Gopal, Utpal, Ujjal, sons, and Minati, Shyamali, Pronati, Purabi, Putul, Kumkum all being daughters. The said deceased, Gorachand, Nandalal, Dulal, Anil Sushi I and Sunil are all sons of Late Panchanan Singha Ray. It is stated that in or about 1951 there has been an amicable partition of the properties held by the joint Hindu family headed by Panchanan being the father, amongst himself and his three sons. After partition the aforesaid persons were possessing and/or enjoying the said property separately and therefore, in the records of rights their names were accordingly mutated separately. Under the rule of succession of the Mitakshara School of Hindu Law the sons and grand sons acquired their interest by birth. Thereafter in or about 1968 a title suit was filed by the aforesaid co-percener and/or shareholders of the properties and said title suit being 17 of 1960 was disposed of by filing a consent decree dated 11th March, 1961 by which the earlier separation and partition was recorded. There has been partition long before commencement of the said Act. Despite the aforesaid fact Revenue Officer of the Settlement Circle Camp Jangipara initiated a big rayat proceeding being No. 6 of 1966 u/s 6(1) of the said Act only in the name of Panchanan Singha Ray. The Revenue Officer proceeded with the said big rayat case basing on the quantum of land held by Panchanan Singha Ray on 14th April, 1956, actual date of vesting. The Revenue Officer totally ignored the aforesaid factum of partition. The order of vesting dated 11th May, 1962 was passed ex parte declaring a sizeable quantum of land as vested to the State as the same was found to be excess to the ceiling limit as on 14th April, 1956. The said decision thereafter was challenged subsequently by filing a writ petition being Civil Rule No. 8454(W) of 1976 by his sons Bhootnath, Gorachand, Nandalal. By order dated 8th April, 1980 His Lordship the Hon''ble Mr. Justice G.N. Ray (as his Lordship then was) was pleased to take note that the parties are governed by the Mitakshara School of Hindu Law. As such initiation of the proceedings against father of the petitioner namely Panchanan was erroneous and the same should have been initiated against the members of the co-percener also. As such Revenue Officer was given liberty to initiate a fresh big rayat proceedings against the petitioners and their father to decide the question of ceiling of land to be retained by the member of the co-percener in accordance with law. Further liberty was given that after disposal of the big rayat proceedings the Revenue Officer would be entitled to dispose of the land in accordance with law. Pursuant to the aforesaid judgment and order the Revenue Officer concerned initiated a fresh big rayat proceeding against the said Panchanan and his sons. During hearing of this matter before the Revenue Officer various documents were placed including consent decree passed in Title Suit No. 17 of 1960. It appears from the records the Revenue Officer recognised the said family is a co-percenary joint Hindu family governed by Mitakshara School of Hindu Law and as such Panchanan along with his other sons Dulal, Anil, Sunil, Sushil

Gorachand, Nandalal were recognized as co-perceners but the Revenue Officer held that there has been no separation and partition amongst the co-perceners, therefore Panchanan was held to be a single member family and as per law the maximum quantum of land to a single member family was allowed. The other co-perceners'' interest was not recognised and practically earlier order of vesting was retained. Challenging the aforesaid order of fresh proceedings passed in the big rayat proceeding the said writ petition was filed.

3. Mr. Ashok Banerjee, learned Senior Advocate appearing in support of this application submits that the learned Tribunal has gone wrong legally not setting aside the order of the Revenue Officer. A fresh suo motu proceeding initiated by Revenue Officer in terms of the order and direction of this Court without understanding the scope, purport of the order dated 8th April, 1980 passed in the writ petition (Civil Rule No. 8454(W) of 1976). Justice G.N. Ray (as His Lordship then was) has specifically observed that the big rayat case could be initiated against the petitioners therein and also decision on of the question of ceiling of the land to be retained by the co-perceners in accordance with law could be rendered. It is admitted position that the family was governed by Mitakshara School of Hindu Law. The Revenue Officer failed to take notice as the predecessor-in-interest of the petitioner Nos.1, 2, 3, 4, 5 and 6, Panchanan and his another son Bhootnath all were co-perceners of the joint Hindu family. The Revenue Officer has failed to appreciate the fact that long before commencement of the West Bengal Estate Acquisition Act, 1954, all the lands were partitioned and divided amongst themselves and they have been enjoying respective plots of land allotted by themselves mutually and this fact was duly brought to the notice of the Revenue Department by paying rates and taxes separately. The aforesaid factum of earlier partition has also been recorded and/or ratified by the compromise decree passed in Title Suit No. 17 of 1960. It is settled position of law under the Rule of Succession of Mitakshara School of Hindu Law the moment a child is born he gets his share in the ancestral joint property the relevant provision of the Estate Acquisition Act does not speak of separate enjoyment and partition it only stipulates interest in the estate. Therefore, while deciding the quantum of excess land Revenue Officer has proceeded in wrong footing in the eye of law. The learned Tribunal has totally wrong in relying on the judgment of this Court reported in Arun Kumar Bhakat and Others Vs. State of West Bengal and Others, . According to him, therefore, the Division Bench judgment of this Court has not discussed or decided the issue involved as to whether the provisions of Section 6(1) of the said Act can be made applicable in case where there has been partition. Even assuming the ratio of the said decision is applicable in this case, still then, as factum of partition has been established by the evidence, the Revenue Officer as well as the learned Tribunal should have held that each and every co-percener is entitled to their respective shares and in the process there cannot be vesting of any quantum of land.

4. Smt. Gita Mukherjee, learnep Advocate appearing for the State submits that both the Revenue Officer and the learned Tribunal have decided the issue correctly. Under the provisions of the aforesaid Act the Revenue Officer can reopen the question of ceiling of the land retrospectively as by operation of the said Act on stipulated date the excess land is deemed to have peen vested by virtue of Section 44(2A) of the said Act. Therefore, in this case irrespective of previous recording of the interest the big rayat case could be reopened. One Panchanan Singha Roy was found to be ''karta'' in the record of rights of his joint Hindu co-percenary property. Therefore, correction of record of rights done previously by the Revenue Officer under the provision of Section 44(2a) of the said Act is not correct under the provision of law. She submits that the hearing was given by the Revenue Officer to the petitioners and their representatives. They could not produce any document or evidence whatsoever, that the joint family before commencement of the Act disrupted or there has been any partition amongst themselves. She argued that it is now settled law unless there has been partition amongst the co-sharers the ''karta'' of the joint Hindu family is to be taken as a single member of the family and the ceiling limit has to be decided accordingly. According to her this legal position has been settled in the following decisions:-
(i) Fatechand Mahesri and Others Vs. State of West Bengal and Others,

(ii) Arun Kumar Bhakat and Others Vs. State of West Bengal and Others,

(iii) State of Maharashtra Vs. Narayan Rao Sham Rao Deshmukh and Others, ;

(iv) 1984 (2) Cal LJ 157.

5. After having heard the learned Counsels for the parties and having gone through the records in this case point for consideration is whether the learned Tribunal is justified in upholding the order of the Revenue Officer passed in a case pursuant to fresh suo motu Big Rayat case u/s 44(2a) of the said Act. In order to examine the validity and legality of the judgment and order of the learned Tribunal we have been able to summarise the points which are involved as follows:-

(1) Whether the co-percener in joint Hindu family governed by Mitakshara School of Hindu Law can be treated to be individual intermediary within the meaning of Section 6 of the said Act or not;

(2) Whether partition amongst the co-percener of the joint Hindu family governed by Mitakshara School of Hindu Law is a pre-condition to claim to be intermediary within the meaning of said Act or not?

(3) Whether a title suit filed and disposed of on compromise inter se the co-percener of a joint Hindu family after the date of vesting of the aforesaid act is having any legal force or not.

6. We have already summarised the argument of Mr. Banerjee in this case. According to him, it is the undivided interest as opposed to factual partition by physical allotment of share of co-percener is the factor to be reckoned in understanding the interest of intermediary within the meaning of Section 6 of the said Act. In support of his case he has cited a Supreme Court decision reported in AIR 1977 SC 333. We have gone through this judgment of the Supreme Court and we find that the matter involved in respect of the shares of co-percenary in case of a partition suit amongst themselves and this judgment is not authority on the point involved here. Here the question is whether interest of undivided share and/or interest of a co-percenary in a Hindu Undivided Family governed by Mitakshara School of Hindu Law can be treated to be intermediary or not.

7. In case of Fatechand Mahesri and Others Vs. State of West Bengal and Others, a Division Bench of this Court has repelled identical argument advanced here and held in Paragraph-26 as follows:-

"The title to the co-percenary property in one title and that is in the whole body of the co-perceners. No co-percener can claim Individual ownership in the co-percenary property. The title to the property belongs to the co-percenary consisting of the co-perceners. Excepting that each co-percener has an undivided interest in the property which is also fluctuating, and none of the co-perceners has any definite share in the co-percenary property. It is only when partition takes place that the shares of the co-perceners become defined and specific. So long partition does not takes place the co-perceners jointly own the property." While discussing in great details and considering of all the authorities on this subject. Their Lordships in Paragraph-30 conclusively observed the statement of law.

"In view of the aforesaid discussion, we hold that a joint Hindu family governed by the Mitakshara School of Hindu Law is person under the definition of the term ''person'' as given in Section 3(42) of the General Clauses Act and that a single co-percener out of the body co-perceners constituting the co-percenary cannot be held to be a person or co-sharer tenant. A co-percener is not an intermediary but it is the joint Hindu family constituting the co-percenary is the intermediary. The view which we take, namely, that a co-percener is not an intermediary finds support of a reference to some of the provisions of West Bengal Estates Acquisition Act."

8. Thereafter, Their Lordships after having analysed the scope and purport of Sections 5, 6 and 14 of the said Act in Paragraph-31 held that as the co-percener cannot be said to have a defined share in the co-percenary property he cannot be treated separately for the purpose of assessment of compensation under sub-section (3) or in other words a co-percener cannot be held to be an intermediary. This judgment according to us is on the point in this case above. We did not find any reason to differ with the aforesaid views taken by Their Lordships which is a one of the piece of a great research work on this subject. Thereafter, another Division Bench in the case of Brahama Deo Prosad Bhakat & Ors. vs. E.S.O.

etc. & Ors., reported in 1984(2) CLJ 157 accepting this view taken in case of Fatehchand Maheswari (supra), came to same legal conclusion that a co-percenary without partition or interest of a co-percener in an undivided family cannot be treated to be an intermediary. It is also observed considering a large number of decision on the subject until and unless there has been partition no individual co-percener claim the status of intermediary. It is also observed in this case that post vesting partition amongst the co-percener of joint Hindu family governed by Mitakshara School of Hindu Law is of no effect. Thereafter, another Division Bench judgment rendered in case of Arun Kumar Bhakat and Others Vs. State of West Bengal and Others, relying on the earlier two Division Bench judgment has taken the same view. We find there is glaring identity of the fact between this case with reported ones as discussed above.

9. In the case of State of Maharashtra Vs. Narayan Rao Sham Rao Deshmukh and Others, in Paragraph-11 it is held as statement of law that even though, therefore, ordinarily a person may be a member of a Hindu joint family for the purpose of Land Ceiling Act, he would not be held to be a member if he holds land separately.

10. Thus, it is clear that in order to have the separate status of intermediary within the meaning of Section 6 of the said Act it has to be established that before commencement of the said Act, the joint Hindu family governed by the aforesaid school of law has been separated and there has been true partition in all sense. Once partition is effected each co-percener will be treated as an intermediary and not otherwise nor will get benefit of ceiling limit of the aforesaid Act as such.

11. In this case, it is sought to be contended that the partition had taken place in 1951 amongst themselves mutually. In support of this claim apart from producing tax receipts in individual names it was stated there has been unregistered deed made on non-judicial stamp in 1953. Consent decree post-vesting Title Suit No. 17 of 1960 regarding partition of the shares, and a decree dated 30th March, 1964 in Title Suit No. 1 06 of 1963.

12. It appears from the order of the Revenue Officer that he did not consider the aforesaid documents in the correct perspective or at all even there has been no discussion as to the implication of the consent decree passed in T. S. No. 17 of 1960 or decree dated 30th March, 1965 in the title suit. There has been no discussion as to the implication of rent paid by and receipt granted to the co-percener individually. The learned Tribunal also has not, though recorded everything, made any attempt to deal with the aforesaid decree. It seems to us both the learned Tribunal and the Revenue Officer have not examined the judgment and order of Justice G. N. Ray (as His Lordship then was) as stated above. His Lordship was pleased to give liberty to initiate a fresh big rayat proceeding against the petitioners and their father and decide the question of ceiling of land to be retained by the members of the co-percenery in accordance with law. According to us the Revenue Officer has not read the judgment and order of Justice Ray carefully as it appears he

has initiated the proceeding of the father of the petitioners'' alone without taking into consideration of observation made by His Lordship. We could have resolved the matter finally but the documents as indicated namely unregistered deed, and pleadings of the respective suits and also the decree dated 30th March, 1965 have not been placed before us.

13. We, therefore, hold that both the orders are not sustainable on fact as the matter needs reconsideration. We set aside accordingly and remand the matter back to the learned Tribunal for taking fresh decision giving the petitioners opportunity for production of documents and other evidences if any. Taking note of the aforesaid principle of law the matter should be dealt with. If it is found that there had been partition factually before the 1954 Act came into force obviously all the co-perceners will be treated individual rayats and ceiling of land will obviously be determined accordingly. Thus, the application is disposed of.

14. This shall be done within a period of 4 moths from the date of communication of this order.

15. There will be no order as to cost.

Prasenjit Mandai, J.