Dayabati Mondal Vs State of West Bengal

Court: Calcutta High Court

Date of Decision: Nov. 10, 1989

Acts Referred: Bengal Tenancy Act, 1885 â€" Section 26
Civil Procedure Code, 1908 (CPC) â€" Section 80
West Bengal Estates Acquisition Act, 1953 â€" Section 10(2), 44(2), 52, 6(1), 6(5)
West Bengal Estates Acquisition Rules, 1954 â€" Rule 4(3), 4A

Citation: (1994) 2 ILR (Cal) 501

Hon'ble Judges: Abani Mohan Sinha, J

Bench: Single Bench

Advocate: Nirmal Chandra Chaudhuri, for the Appellant; None, for the Respondent

Final Decision: Allowed

Judgement

Abani Mohan Sinha, J.
This is a, Second Appeal directed against the judgment and order passed by the learned District Judge, Burdwan,

in Title Appeal No. 81 of 1972. The learned District Judge by his judgment in appeal affirmed the decision of the trial Court which dismissed the

suit of the Plaintiffs being Title Suit No. 214 of 1969 in the Court of the Munsif, Kalna. The point for determination in this appeal is whether a big

raiyat could retain a particular piece of land which he had not opted to retain or whether retention could be allowed even though option is not

exercised, when such land and the land under retention taken together do not exceed the ceiling limit prescribed under the West Bengal Estates

Acquisition Act, 1953.

2. The relevant facts for the purpose of determination of the points at issue are as follows:

The suit land covered by Dag No. 3566, Khalian No. 266 of Mouza Baghasan belonged to Defendants Nos. 2 and 3 who are big raiyats. The

Plaintiffs purchased such plot of land measuring 19 acres in area by two registered kobalas dated July 16, 1957 and August 6, 1957. They entered

into possession of such land after their purchase. It was represented by their vendor that this land was retained by them and in case such land be

found to have been vested in the. State, they would surrender other lands retained by them and would retain the suit land for the benefit of the

purchasers. In spite of such representations, it was found later by the Plaintiffs that the suit land was shown in the R.S. record as vested land. So

they preferred an objection u/s 44(2a) of the West Bengal Estates Acquisition Act. The Revenue Officer found the possession of the Plaintiff in the

suit land but recorded the same as beaini or in illegal possession on the basis of registered kobalas of the year 1957. The State of West Bengal, it

is stated, in spite of all these facts threatened to dispossess the Plaintiffs and issued notice u/s 10(2) of the said Act. So the Plaintiffs were obliged

to bring the suit against the State of West Bengal after service of notice u/s 80 of the Code of Civil Procedure.

3. The State of West Bengal contested the suit by filing written statement. Their only defence is that the vendors of the Plaintiffs, namely the

Defendants Nos. 2 and 3 were big raiyats and big raiyats proceedings were started against them. Those proceedings were disposed of on the

basis of "B" Form return submitted by them. It is alleged that the suit land was not shown as retained land of the vendors. According to the State

of West Bengal, the suit is not maintainable as the Plaintiffs could not acquire right, title and interest in the land vested in the Stale. The learned

Munsif accepted the defence case and dismissed the suit. Being aggrieved by such judgment and decree of dismissal the Plaintiffs moved in appeal

before the learned District Judge.

4. On examining the judgments of the trial Court as well as of the Court in First Appeal, I find that there was no consideration of the decision of

our High Court which was placed before the trial Court and in the Court of First Appeal. It is not disputed by the State of West Bengal that the

vendors/Defendants Nos. 2 and 3 were allowed to retain 24.55 acres and 23.43 acres of land respectively. It is contended by the learned

Advocate Mr. N.C. Chaudhuri appearing for the Plaintiffs-Appellants that even if the suit land measuring 19 acres of land were added to the land

retained by the vendors of the Plaintiffs in half and half shares that is 9-1/2 cents each, it will not exceed the ceiling limit of 25 acres prescribed

under the Act. This was the consistent argument in the successive Courts which was not at all considered by I hose Courts. It is further contended

that the trial Courts and the Court of First Appeal did not consider certain material facts which are very relevant for the purpose of decision of the

point at issue. The sale in favour of the Plaintiffs took place in 1957. The big raiyat proceedings against the vendors of the Plaintiffs were started on

September 14, 1967. It is not also disputed that the vendors of the Plaintiffs delivered possession of the land sold to the Plaintiffs. The decision in

the proceeding u/s 44(2a) of the West Bengal Estates Acquisition Act clearly indicates that the Plaintiffs were found in possession of the land in

dispute before the starling of big raiyat proceedings. It is the contention of the State of West Bengal before the Courts below that the vendors did

not retain possession, of the land in suit and as such, it should be taken that such land had vested in the State. The decision in the case of Gour

Gopal Mitra and Another Vs. State of West Bengal and Others, lays down that

under Section 6(5) of the West Bengal Estates Acquisition Act, 1953, the intermediary has a right and an opportunity even after the prescribed

time limit has passed, to make a claim for retention of lands u/s 6(1)(c), (d) and (j) thereof, so long as he has not parted with the possession of his

lands and the prima facie authority to which the intermediary can make such claim is the Revenue Officer.

So it is not correct, as has been observed by the Courts below", that it is obligatory or mandatory on the part of the intermediary to retain the

possession of land by submitting "B" Form in terms of Rule 4A read with Sub-section (5) of Section 6 of the W.B. Estates Acquisition Act before

April 30, 1958. According to the principles laid down in the decision quoted above, an intermediary could make a claim for retention of the land

even after the prescribed time limit provided he has not parted with the possession of his land. In the same judgment it has been observed (1) that

Sub-section (5) of Section 6 of the Act makes it clear that if no choice is exercised by the intermediary during the prescribed period, even then the

Revenue Officer shall allow him to retain so much of the lands as do not exceed the statutory limits after giving him an opportunity of being heard. It

has been further observed that it is clear from the language that even after the time for exercising the choice has expired the statute gives the

intermediary both opportunity and occasion to claim retention permitted by the Act and there is an obligation and statutory duty cast upon the

Revenue Officer to give the intermediary the opportunity of being heard and allow him to retain.

5. In my view, as the intermediary can retain under the provisions of Section 6 of the West Bengal Estates Acquisition Act by exercising his choice

or option, it is also the duty of the competent authority, namely, the Revenue Officer or other authorised officers to determine the ceiling limit and

determine the quantum of land which the intermediary would be allowed to retain in his possession by exercising his choice or option. If the

quantum of land in the possession of intermediary does not reach the ceiling limit, no question of determination of such limit would arise. Sub-

section (5) of Section 6 of the Act also cast a duty on the Revenue Officer to give a hearing to the intermediary or affected person before

determining the ceiling limit and before expropriating any land of the intermediary as being beyond the ceiling limit. In the present case, I find that, at

the time of transfer, the intermediary gave notice u/s 26(c) of the Bengal Tenancy Act to the State which has stepped into the shoes of the erstwhile

landlord after the promulgamation of the West Bengal Estates Acquisition Act. This notice was given in terms of Rule 4, Sub-rule (3)(i) of the Act.

So the State had clear notice of the transfer by the intermediary. The State was apprised of the actual state of affairs again when the judgment u/s

44(2a) of the Act proceedings was passed against the State and in favour of the Plaintiffs. Rule 4A of the West Bengal Estates Acquisition Rules,

1954 and its proviso clearly lay down that if the area of land held by a raiyat or under raiyat deemed to be an intermediary u/s 52 of the Act does

not exceed the limit laid down under Clause (c) or Clause (d) of Sub-section (1) of Section 6, he shall not be required to exercise such choice.

This aspect of the law was not considered by the Court of appeal and so the decision that the vendors of the Plaintiffs had lost all their rights

because of non-retention of such land and could not validly transfer the suit land in favour of the Plaintiffs should be taken as erroneous. It is not

disputed that the vendors had land below the ceiling limit and it was determined by the Revenue Officer that the quantum of land retained by them

was in fact below the ceiling limit. So the transfer of the suit land which measures 19 acres even if added to the ceiling limits of 24.55 and 23.43

acres as belonging to the Defendants Nos. 2 and 3 respectively in half and half share, that is, 9-1/2 cents each, it would not exceed the ceiling limit.

The State having been posted with the notice of transfer and the actual State of affairs after the passing of the judgment in Section 44(2a)

proceedings should have determined the ceiling limit of the vendors of the Plaintiffs keeping in consideration the suit land which was transferred in

favour of the Plaintiffs.

6. In a writ proceeding of this Court in Tara Shankar Mondial v. State of West Bengal 1978 C.H.N. 1054 it was decided that the Revenue Officer

has no jurisdiction to direct the vesting of land of intermediary. Even if the intermediary does not appear before him or file a return in Form "B", still

the Revenue Officer cannot direct the vesting of all lands. Section 6(5) of the Act provides that the Revenue Officer shall after giving the

intermediary an opportunity of being heard, allow him to retain so much of land as do not exceed the prescribed ceiling limit u/s 6(1) of the Act.

Therefore, monretention of the land by an intermediary would not destroy his right to retain the land if it is within the ceiling limit. It is for the State

to determine the area of land and to ask the intermediary which land he wants to retain. The land beyond the ceiling limit can be ordered to be

vested in the State after determination of the ceiling limit.

7. The State was in the know of the actual state of affairs. In the present case the intermediary or Defendants Nos. 2 and 3 transferred the suit land

measuring 19 acres in favour of the Plaintiffs by two registered kobalas in the year 1957 for consideration and that they were found in possession

at the lime of attestation and preparation of record-of-rights. So it is for them to inquire whether how the Plaintiffs could be in possession of such

land and in what right. In such an inquiry if it was found that the land transferred to the Plaintiffs were in the possession of the intermediary till they

delivered possession to the Plaintiffs after the sale and if such land was within the ceiling limit, ii cannot be said that such land could not be validly

transferred by the ex-owner or the intermediary, namely Defendants Nos. 2 and 3.

8. In this connection 1 make comment on another aspect of the case. It is often found that the concerned departments of the Government dealing

with land do not act in co-ordination or with co-operation and they act and conduct in contradictory manner. If the Settlement Officer found the

possession of the Plaintiffs in the land on the basis of the registered kobalas of the year 1957, how another Revenue Officer could ignore such fact.

It is further strange that the Collection department of the State Government through is Tahasildar realised rents from the Plaintiffs and granted rent

receipts. Though such receipts are granted subject to the determination or legality or otherwise it is a valid acquaintance by the State of the money

received from the tenants. It has been decided in the case of Panchu Molla v. State of West Bengal 1980 (2) C.L.J. 1 that even assuming that right

of the vendor of the Petitioner had vested in the State of West Bengal, but because of its subsequent act, it cannot turn round and say that the land

has vested. It must be held that the State Government has recognised the tenancy right of the Petitioner in respect of the land in question. In the

present case, the Attestation Officer while disposing of the objection u/s 44(2a) of the Estates Acquisition Act found the possession of the Plaintiffs

in the suit land, the State received a notice of transfer under Rule 4, Sub-rule (3) of the West Bengal Estates Acquisition Rules, 1954 and on the

top of it they also received notice u/s 80 of he Code of Civil Procedure. In spite of all these they did not care to reconcile the anomaly or the

defects and only came forward to counsel the suit of the Plaintiffs brought by them. It is too late for the State to come and say that I he Plaintiffs

could not acquire any title when they purchased the suit land from the Defendants Nos. 2 and 3.

9. In the result, the appeal is allowed. The judgment and orders of the Courts below are set aside. The title of the Plaintiffs to the suit land is hereby

declared. It is also declared that the revisional record-of-rights in respect of the suit land contrary to the title and possession of the Plaintiffs is

erroneous. The Defendants are permanently injuncted from interfering with the possession of the Plaintiffs in the suit land.

10. There will be no order as to costs.