
(2008) 08 CAL CK 0012

Calcutta High Court

Case No: W.P.L.R.T. No. 53 of 2008

Kashinath Kundu and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: Aug. 6, 2008

Acts Referred:

- West Bengal Estates Acquisition Act, 1953 - Section 5B

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

Bench: Division Bench

Advocate: P.P. Mukherjee and Mintu Kumar Goswami, for the Appellant; A.N. Banerjee and Ziaul Islam, for the Respondent

Judgement

The Judgment of the Court was as follows:

1. The grievance of the applicants before the learned Tribunal was that despite having lawfully purchased lands bearing C.S. Plot Nos. 11, 12, 13 and 52 measuring 4.90 acres under Khatian No. 88 of Mouza Mallikghari, P.S. Haroa, District 24-Parganas (North), the applicants' names were not mutated.
2. The applicants got this property by way of inheritance from their mother viz. one Jyotsnamoyee Kundu, who purchased this property from one Ajit Sarkar by registered Kobala No. 4949 dated 19th September, 1966. The said Ajit Sarkar purchased this land in connection with Rent Suit No. 741 of 1955. The Court allowed the said sale in a rent auction case and by this process, the said Ajit Sarkar became the owner in respect of the said land and thereafter he sold the land to the mother of the present applicants. The names of the applicants were not mutated because it was thought that the sale is void and contrary to Section 5B of the West Bengal Estates Acquisition Act, 1953 (hereinafter referred to as the said Act). The learned Tribunal has also maintained the same view and no relief was granted.
3. The only point for consideration, in our view, is that whether the sale held by the Court in rent suit and the consequential purchase thereof, is governed by Section 5B

of the said Act or not.

4. Mr. P.P. Mukherjee, learned Counsel appearing for the applicants submits that the provisions of Section 5B of the said Act is no longer applicable in this case and res integra and this has been decided and settled by a Full Bench decision of this Court, rendered in the case of [The State of West Bengal Vs. Sailendra Kumar Sen](#), . He has drawn our attention to Paragraph-37 of the said judgment which runs as follows:-

We accordingly hold that

(ii) Section 5B does not operate as a bar to the execution of decree for arrears of rent as money decree against raiyati or under-raiyati interest and Section 168-A(1) is impliedly repealed by vesting of the interest of intermediaries (which include raiyats and under-raiyats) in the State.

5. That apart, we are tempted to quote the aforesaid Section 5B of the said Act :-

Section 5B:

On and from the 1st day of June, 1954, no estate tenure or under-tenure shall be liable to be sold under the Bengal Land Revenue Sales Act, 1859 (XI of 1859) or the Cooch Behar Revenue Sales Act, 1897 (Cooch Behar Act V of 1897) or the Bengal Patni Taluks Regulation, 1819 (Bengal Regulation VIII of 1819) or the Bengal Tenancy Act, 1885 (VIII of 1885) as the case may be, and any sale which took place on or after that day under any of those Acts or that Regulation shall be deemed to have been void and of no effect:

Provided that where by reason of the foregoing provision to this section any estate, tenure or under-tenure is not sold, or where such sale is void and of no effect, the arrears for which the estate, tenure or under-tenure would have been sold or were sold, shall, notwithstanding anything to the contrary in any other law, bear simple interest at the rate of ten per centum per annum from the date on which they become or became payable or from which the sale is deemed to have been void and of no effect, as the case may be, up to the date immediately preceding the date of vesting of such estate, tenure or under-tenure.

6. It is, thus, clear that the sale held in connection with the aforesaid Act is held to be void and of no effect. But this case is not covered by the aforesaid section at all. Accordingly, we are unable to accept the contention of Mr. Banerjee that scope and sweep of Section 5B is wider to cover all sale of lands after commencement of the Act, more particularly, Section 5B.

7. Consequently, we hold that the judgment and order of the learned Tribunal is not sustainable. Obviously, the applicants being the heirs of Jyotsnamoyee Kundu are entitled to get their names mutated in the record of rights. We, therefore, set aside the judgment and order of the learned Tribunal. We direct the Revenue Officer concerned to take steps for effecting mutation and correcting record of rights in the

name of the applicants, provided of course, necessary documents viz. title deeds and other related documents are produced before him. Before this mutation exercise is done, the private respondents are to be notified and are to be heard, as far as their objection is concerned. This shall be completed within a period of three months from the date of communication of this order.

8. This application is, thus, disposed of. There will be no order as to costs. Urgent xerox certified copy of this order, if applied for, be supplied to the applicants.