

(2001) 10 CAL CK 0004

Calcutta High Court

Case No: WPLRT No. 27 of 2001

Sabita Mukherjee and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: Oct. 8, 2001

Acts Referred:

- West Bengal Estates Acquisition Act, 1953 - Section 57B, 57B(2), 57B(2)(a), 57B(2)(c), 6
- West Bengal Land Reforms Act, 1955 - Section 3

Citation: 107 CWN 642

Hon'ble Judges: Altamas Kabir, J; Alok Kumar Basu, J

Bench: Division Bench

Advocate: Dhruba Mukherjee, for the Appellant; Manjuri Gupta and Ila Chatterjee, for the Respondent

Judgement

Altamas Kabir, J.

This writ application is directed against the judgment and order dated 11th December, 2000, passed by the West Bengal Land Reforms and Tenancy Tribunal in Original Application No. 414 of 2000 (LRTT), dismissing the petitioners' application for a direction upon the respondents concerned to correct the relevant Records-of-Rights in terms of the judgment and decree passed by the District Judge, Birbhum, in Title Appeal No. 8 of 1972, reversing the judgment and decree passed by the learned Munsif, 2nd Court, Rampurhat, in Tide Suit No. 157/71 (T. S. 144 of 1969). The learned Tribunal upon applying the provisions of Section 57B (2) (a) of the West Bengal Estate Acquisition Act, 1953 and upon further interpretation of the reliefs actually prayed for by the plaintiff in the aforesaid suit, inter alia, came to a finding that the plaintiffs suit, although styled as a Title Suit was, in actuality, a suit for declaration that he was a tenant under his father and uncle. The learned Tribunal also observed that Section 57B(2)(c) had excluded the jurisdiction of the civil courts to entertain a suit for such declaration, no matter how the suit had been styled, because the genuineness of the tenancy and whether it was a collusive

transaction to evade the ceiling provision was to be decided by the authorities under the Act. According to the learned Tribunal, by deciding the said question, the learned District Judge acted without jurisdiction and the judgment delivered in Title Appeal was, therefore, a nullity in the eye of law.

2. Appearing in support of the application. Mr. Dhruva Mukherjee, learned counsel submitted that in fact, the order of the learned Tribunal was without jurisdiction, inasmuch as, being a creature of statute, the powers of the Tribunal would have to be exercised in accordance with the powers as vested in the Tribunal under the statute. According to Mr. Mukherjee, there is no provision in the West Bengal Land Reforms and Tenancy Tribunal Act, 1997, which empowers the West Bengal Land Reforms and Tenancy Tribunal to nullify and/or in effect overrule a judgment and decree of a civil court.

3. Mr. Mukherjee submitted that the opening words of Section 6 of the aforesaid Act indicate that the learned Tribunal could deal with matters relating to events which had taken place after the said Act came into force. Mr. Mukherjee urged that since the judgment of the civil court was long prior to the commencement of the 1997 Act, the learned Tribunal exceeded its jurisdiction in sitting in appeal over the judgment of the civil court.

4. On behalf of the State and the State respondents, it was urged by Mrs. Manjuri Gupta, learned Advocate, that the provisions of Section 6 (d) of the aforesaid Act, as it initially stood might not have vested the Tribunal with authority to declare the judgment of a civil court to be a nullity, but following the amendment of clause (d) of Section 6 by the West Bengal Land Reforms and Tenancy Tribunal (Amendment) Act, 2001. the learned Tribunal was vested with such authority by the amended provisions which reads as follows:

"3. Amendment of Section 6.-In Section 6 of the principal Act-

(1) In clause (a), for the words "an order in original", the words "any order" shall be substituted; and

(2) for clause (d), the following clause shall be substituted:

(d) applications relating to matters under any provision of a specified Act or matters relating to any constitutional validity of any act under the provision of a specified Act."

5. Mrs. Gupta urged that the suit which had been filed by the petitioner was in effect a suit for correction of the entries in the relevant Records -of-Right which was squarely barred u/s 57B(2) of the West Bengal Estate Acquisition Act, 1953, and the learned Tribunal had quite correctly applied the aforesaid provisions in holding that the suit was incompetent and that the learned District Judge had acted without jurisdiction in decreeing the suit by entering into a domain in respect of which the jurisdiction of the civil court has been ousted. Mrs. Gupta also referred to Section 3

of the West Bengal Land Reforms Act, 1955 which provides that the provision of the said Act is to have an overriding effect in respect of anything to the contrary in any other law for the time being in force or any custom or usage or any contract, express or implied.

6. Mrs. Gupta urged that no interference was called for with the judgment and order of the learned Tribunal and the writ application was liable to be dismissed.

7. We have carefully considered the submissions made on behalf of the respective parties and we are unable to agree with the submissions made by Mrs. Gupta, having regard to the fact, that, in our view, the provisions of Section 57B of the West Bengal Estates Acquisition Act, 1953. cannot be applied to the facts of this case. Whatever might be the manner in which the suit filed by the petitioner was sought to be interpreted, from the manner in which the suit has been framed, it is clear that It is one for declaration of title simplicitor and for permanent injunction. It was not a suit which comes within any of the prohibited areas indicated in Section 57B(2) of the aforesaid Act. What might follow as a consequence of such declaration, does not, in our view, attract the bar of Section 57B(2) of the aforesaid Act. Moreover, the main contestant in the suit was the State of West Bengal, and, although, the suit was dismissed by the learned Munsif, the same was decreed by the Appeal Court against the contesting respondent, viz. The State of West Bengal. We have no ambiguity in our minds that the judgment of the civil court will prevail unless subsequently other provisions of either the West Bengal Estates Acquisition Act, 1953. or the West Bengal Land Reforms Act, 1955, come into play. In our view, the judgment and decree of the civil court is taken under the said two Acts or any other Act for that matter.

8. The learned Tribunal, in our view, misconstrued the application of Section 57B of the 1953 Act in concluding that the learned District Judge had exceeded his jurisdiction in decreeing the suit. In our view, such a finding of the learned Tribunal was incorrect. It was not for the Tribunal to look into validity of the judgment and decree of the civil court in the light of Section 57B(2) of the 1953 Act and the entire exercise was, in our view, entirely misguided.

9. Furthermore, in our view, the amended provisions of Clause (d) of Section 6 of the West Bengal Land Reforms and Tenancy Tribunal (Amendment) Act. 2001. as set-out hereinabove, do not clothe the Tribunal with power or jurisdiction to nullify the effects of a decree passed by the civil court in a properly constituted suit, or when the State is one of the contesting parties and the decree is passed on contest against the State.

10. We have, therefore, no hesitation in setting aside the judgment and order of the learned Tribunal and we, accordingly, allow the writ application and direct the Revenue Officer concerned to take steps to correct the entries in the relevant Records-of-Right pursuant to the judgment and decree passed by the learned

District Judge, Birbhum, on 19th January, 1973 -in Title Appeal No. 8 of 1972, within one month from the date of communication of this order. We have to make it clear that this, will not prevent the concerned authorities from thereafter taking any steps if they are so entitled under the provisions relating to ceiling under either the West Bengal Estates Acquisition Act, 1953 or under the West Bengal Land Reforms Act, 1955.

11. The view taken by us finds support on an unreported Bench decision of this court in the case of Abdur Rakib Sk. & Anr. vs. State of West Bengal & Anr., in WPLRT 858 of 2000.

12. The writ application is disposed of. There will be no order as to costs. If an urgent xerox certified copy of this order is applied for, the same is to be supplied to the applicant expeditiously, subject to compliance with all the required formalities.

Alok Kumar Basu, J.

I agree.