

(2008) 08 CAL CK 0015**Calcutta High Court****Case No:** W.P.L.R.T. No. 392 of 2003

Sujash Kumar Ghosh and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: Aug. 7, 2008**Acts Referred:**

- West Bengal Estates Acquisition Act, 1953 - Section 4, 5, 57, 5A, 5A(3)

Hon'ble Judges: Prasenjit Mandal, J; Kalyan Jyoti Sengupta, J**Bench:** Division Bench**Advocate:** D.P. Mukherjee, Smritikana Mukherjee, Debjit Mukherjee, Bhagwat Chowdhury, for the Appellant; A.N. Banerjee, Ziaul Islam, for the Respondent**Final Decision:** Allowed**Judgement**

Kalyan Jyoti Sengupta, J.

The Judgment of the Court was delivered by:

1. I have had the benefit of reading draft judgment of my learned Brother. I agree with the findings and conclusion arrived at by His Lordship. While agreeing I thought it fit to add few words of my own. The main issue in this matter, is as to whether transfer of land measuring about 12.24 acres by two registered deeds bearing Nos. 3741 and 3742 dated 6th March, 1959 by the predecessor-in-interest of the applicant viz, late Ishan Chandra Ghosh can be taken into consideration for the purpose of redetermination of quantum of land to be retained vesting u/s 6 of the West Bengal Estates Acquisition Act, 1953. It is claimed that the aforesaid plot of land originally situated within the territory of Bihar and the aforesaid plots of land along with other land were transferred under the provisions of West Bengal Transferred Territories (Assimilation of Laws) Act, 1958 (hereinafter referred to as the Act, 1958). By the Act, 1958 provisions of the corresponding land laws were not made applicable immediately after commencement of the said Act. But by virtue of sub-section (3) of section 3 of the 1958 Act related Bihar Acts as mentioned in

Schedule II of the said Act were allowed to be operating with necessary adaptations and modifications either by way of repeal or amendment as the said Government may think fit from time to time before expiration of one week from the date of notification of Official Gazette in respect of any such law for facilitating the application thereof in relation to West Bengal. Thus, it is clear that on the date of transfer by virtue of 1958 Act the West Bengal Estates Acquisition Act, 1953 (hereinafter referred to as the said Act, 1953) was not made applicable. Subsequently, by virtue of Chapter VIII of the 1953 Act which was inserted in 1953 Act by West Bengal Estates Acquisition (Second Amendment) Act, 1963, the provisions of section 6 of the aforesaid Act was made applicable by way of repealing of the corresponding Bihar land laws. Said Ishan, since deceased, duly submitted returns in Form-B during his lifetime to the authority concerned in the Big rayat case, of 25 acres of agricultural land. Thereafter it was detected that there has been transfer by the aforesaid two deeds before the Big rayat case was initiated. Now, fresh proceedings was sought to be initiated for reopening his case. Thus, an enquiry was made as to whether the aforesaid transfer was bona fide or not which was found to be in affirmative. As such, the Revenue Officer concerned asked heirs and legal representatives of Ishan to surrender the aforesaid quantum of land out of the retained land and also asked to exercise option about which of the 12.24 acres out of retained land would be surrendered. Despite notice no response was received by the officer concerned and the officer applied his own judgment and discretion and passed necessary orders. This Hon'ble Court directed the authority concerned as recorded by my learned Brother to consider the question of applicability of 1953 Act in respect of these plots of land transferred from Bihar territory to West Bengal under the 1958 Act. From the order sheet we find there has been no attempt to decide the question. Before the learned Tribunal above contention was raised though noted by the learned Tribunal it did not decide the aspect of the matter as to when sections 60 and 61 of Act 1953 would be made applicable in connection with this present transfer.

2. Mr. D.P. Mukherjee, learned Advocate appearing for the applicant, contends that the officer concerned had no jurisdiction as the said 1953 Act has no application in respect of the transfer which was effected in 1959. He further contends that it will appear that the 1953 Act was made applicable by virtue of inserting Chapter VIII on and from 1st March, 1964. Hence, the quantum of the transferred land cannot be said to be held by his clients on the date of starting Big rayat case or at any subsequent stage. In other words, the said quantum of land cannot be taken into consideration for the purpose of deciding the ceiling limit. He contends that this identical point came up for consideration before this Court in respect of the land situated in the District of Purulia which stood transferred by the 1958 Act. In the case of Harendra Nath Singh vs. State of West Bengal & Ors., reported in 1998(1) CLJ 433, it was held that the said 1953 Act would be applicable on and from the issue of notification u/s 60 i.e. to say from 1st March, 1964.

3. Learned Counsel for the State respondent submits that in view of the provision of Chapter VIII sections 60 and 61 of 1953 Act the entire Chapter is made applicable with retrospective effect from 1954. Therefore, this transfer of land that took place in 1959 has to be taken into consideration. The aforesaid transfer of land was detected late and since it was found as bona fide one the transfer cannot be held to be illegal but it has to be deemed to be part of the retained land of 25 acres. Learned Tribunal, therefore, has not decided wrongly, nor the Revenue Officer concerned for the State did.

4. The respective contentions of the learned Counsels for both the parties have been examined by us. It is admitted position that transfer of this quantum of land of 12.24 acres was effected in 1959 by the said deed Nos. 3741-3742 dated 6th March, 1959. Therefore, it is legally said that Harendra could be the holder of the aforesaid land. Subsequently, he submitted returns in Form-B excluding this quantum of land for retaining 25 acres of agricultural land. While it is true that if there is any concealment in the returns about any transfer the Revenue Officer can reopen the same and this cannot be a res judicata when there is suppression of relevant facts as to transfer vis-a-vis holding of the land. There are instances where with a view to escape applicability of the 1953 Act purported and mala fide transfers were made and this sort of transfer can be and could be enquired into u/s 5A of the Act. Here it was found that the transfer is bona fide but the question is whether by virtue of Chapter VIII of the Act the transfer taking place in 1959 could be taken into consideration afresh or not. In our considered view this chapter has no retrospective effect as it is introduced on 1st March 1964. Sub-section (2) of section 61 by its proviso has specifically mentioned that no intermediary shall be allowed to retain any land other than in excess of what is permitted under the provision section 6 or any other provision of this Act. Thus the authority has to see what was the quantum of land held by intermediary as on 1st March, 1964. In this case Ishan could not be said to be holder of the aforesaid quantum of land on 1st March, 1964 as the transfer had taken place in March, 1959. The aforesaid Act has no manner of application as it was introduced later viz. after five years of transfer. Our view is also supported by the aforesaid decision [1998(1) CLJ 433] cited by Mr. Mukherjee. Nothing has been placed before us to establish that this land had vested in the State Government under the provisions of Bihar Land Reforms Act, 1950 prior to the date of issue of notification. Thus, we are unable to accept the contention of Mr. Banerjee that by virtue of insertion of Chapter VIII the said Act will have retrospective effect not from the date when the same came into force. This Chapter has been introduced by insertion and it has been made specifically clear from which date it would be made applicable. Hence, this contention is repelled. However, since there is no clear cut evidence before us whether the portion of land is transferred from erstwhile Bihar or not we think that it has to be enquired into.

5. We, therefore, direct the Revenue Officer to find out whether this transferred portion of land was originally situated within the territory of Bihar and it has been

brought within the territory of West Bengal by virtue of 1953 Act or not. If it is so, this order and order of learned Tribunal will stand set aside.

Prasenjit Mandal, J.

6. This application is directed against the order dated 12.11.2002 passed by the learned Tribunal in T.A. No. 476 of 2002 arising out of T.A.476 of 2002 which was originally filed in this Court being C.O. No. 3991(w) of 1985. By the judgment and order impugned, the learned Tribunal has observed that the Revenue Officer had acted in accordance with law and that there is no merit in the writ petition. Hence it was dismissed.

7. The applicants have claimed that they are the heirs of late Ishan Chandra Ghosh who was an intermediary. Accordingly, late Ishan Chandra Ghosh submitted return in Form-B exercising his option to retain lands u/s 6(1) of the West Bengal Estates Acquisition Act, 1953 (henceforth shall be called the said Act, 1953). He was allowed to retain 25 acres of agricultural land as opted by him and his excess land vested in the State. Subsequently, it was found that the intermediary had transferred 12.24 acres of agricultural land by two registered deeds bearing Nos. 3741 and 3742 dated 06.03.1959 to different persons and an enquiry was held "in respect of such transfers of land u/s 5A of the said Act, 1953 in case No. 382 of 1972. Sujash Kumar Ghosh participated in the hearing of the said case representing all the heirs of late Ishan Chandra Ghosh. The Revenue Officer found that transfer of 12.24 acres of agricultural land had not been made to the bona fide purchasers u/s 5A(3) of the said Act. Accordingly, a notice was issued upon the heirs of the intermediary to submit fresh return in Form-B mentioning particulars of lands aggregating to 12.24 acres for surrender. Sujash @ Kanai prayed for two months" time which was rejected by the Revenue Officer and then the Revenue Officer declared 12.24 acres of land of the intermediary having vested according to his judgment. The applicants challenged the order of vesting in C.O. No. 109(W) of 1973 which was disposed of on 18.05.1977 holding that the Revenue Authority did not act properly in rejecting the prayer of adjournment by Sujash @ Kanai. Accordingly, the Revenue Officer was directed to make fresh determination of the vested land according to the provisions of the said Act. When the Revenue Officer issued a notice asking the heirs of the intermediary to file a fresh return in Form-B, the applicants filed another application before the Hon"ble High Court challenging the said notice on the ground that they were not required to submit a fresh return as their predecessor-in-interest had already submitted return in Form-B for retention of 25 acres of agricultural land and so the Revenue Officer had no authority to ask for submission of a fresh return. The Hon"ble High Court directed the Revenue Officer to complete the proceedings within a period of six weeks. Accordingly, the Revenue Officer issued a fresh notice upon the heirs of the intermediary to exercise option for surrendering of 12.24 acres of land which they are bound to surrender for vesting. Thereafter the Revenue Officer passed the order of vesting in respect of 12.24 acres of land. By the said C.O.

No. 3991(W) of 1985 this last order was challenged and the same was subsequently transferred to the learned Tribunal.

8. After hearing submissions of the learned Advocates of both the sides and on perusal of the materials on record, we find that the challenge of the applicants concern notice issued u/s 57 of the said Act being case No. 17, the case u/s 5A(3)(ii) of the said Act and consequently the impugned order of the learned Tribunal. The property involved in the two registered deeds relates to land transferred from Bihar to West Bengal as per provisions of the Bihar and West Bengal (Transfer of Territories) Act, 1956 effective from 01.11.1956. Admittedly, late Ishan Chandra Ghosh was an intermediary as per provisions of the said Act, 1953 and he held lands beyond the ceiling limit. Admittedly he submitted return in Form-B thereby retaining 25 acres of agricultural land and surrendering the excess land. Admittedly, he sold 12.24 acres of land to Smt. Bhagabati Devi and others by two registered sale deeds bearing Nos. 3741 and 3742 on 06.03.1959. The West Bengal Transferred Territories (Assimilation of Laws) Act, 1958 became effective with effect from 01.07.1959 in respect of the lands transferred from the State of Bihar to the State of West Bengal as per section 3 of The Bihar and West Bengal (Transfer of Territories) Act, 1956. By virtue of section 4 of the said Act, the appropriate Government was empowered to adopt or modify any law relating to land matters. Thereafter by virtue of section 60 of the said Act, 1953, the provisions of the said Act, 1953 have come into force on such date in respect of the lands of the territories transferred from Bihar to West Bengal as the State Government may by notification in the Official Gazette appoint. The State Government issued notification declaring that with effect from the 1st day of Baisakh of the Bengali year 1371 corresponding to 14.04.1964, all lands held by raiyats and under raiyats and the rights of every raiyat and under raiyat in such lands situated in Islampur sub-division in the District of West Dinajpur forming part of the transferred territories shall vest in the State free from all encumbrances. In accordance with section 61 of the said Act, 1953 on the issue of a notification u/s 60, the Bihar Land Reforms Act, 1950 shall stand repealed and the provisions of the said Act, 1953 shall mutatis mutandis apply in respect of such transferred territories. The legislative competence of the State Government in making application of the provisions of the said Act, 1953 on such transferred territories was upheld in the case of Sri Debi Mata and Others Vs. The State of West Bengal and Others, . After the decision of upholding such legislation, the position is that the West Bengal Estates Acquisition Act, 1953 shall be effective in respect of all lands of the transferred territories with effect from 01.03.1964.

9. After submission of return in Form-B subsequently, when it was detected that the said intermediary had transferred 12.24 acres of agricultural land by two registered deed bearing Nos. 3741 and 3742 dated 06.03.1959 to different persons, the Revenue Officer started proceedings u/s 5A of the said Act, 1953 in case No. 382 of 1972. The Revenue Officer observed that such transfer was bona fide u/s 5A(3) of the said Act. Accordingly, the Revenue Officer issued a notice upon the heirs of the

intermediary that is the applicants to surrender the lands to the extent of 12.24 acres of land for the purpose of vesting. The applicants moved the Hon'ble High Court against notice and ultimately the Hon'ble High Court directed the Revenue Officer to complete the proceedings within six weeks. Thereafter the Revenue Officer passed orders of vesting in respect of 12.24 acres of land.

10. In the backdrop above facts and situations, we find that the intermediary had sold 12.24 acres of land belonging to the transferred territories from Bihar to West Bengal and such transfer had been effected on 06.03.1959 that is before the date when the West Bengal Transferred Territories (Assimilation of Laws) Act, 1958 came into force on 01.07.1959. Subsequent to such Assimilation Act, the West Bengal Estate Acquisition Act, 1953 had been made effective in all the area of the territories transferred from Bihar to West Bengal with effect from 01.03.1964 meaning thereby vesting of such lands to the State with effect from the date mentioned in the Notification, The transfer of such land having taken place before coming into force of the Assimilation Act, 1958 and subsequently the said Act, 1953 effective from 01.03.1964, We are of the view that such transferred land should not be taken into consideration for the purpose of determining the ceiling limit of the intermediary u/s 6(1) of the said Act, 1953 at all.

11. According1y, we are of the view that the Revenue Officer was not within its authority to ask for the applicants to submit fresh return in Form-B indicating as if the land measuring 12.24 acres of land had been retained by the intermediary. Consequently, issuance of a notice dated 05.02.1985 by the Revenue Officer upon the applicants stating that on the basis of the direction of the Hon'ble High Court whether 12.24 acres of land had been vested unless a fresh return in Form-B is filed, is not legal, valid and proper if this land in question is transferred from Bihar to this State since there is no clear cut evidence before us whether the portion of the land is transferred from erstwhile Bihar or not, it has to be enquired into. We, therefore, direct the Revenue Officer to find out whether this land in question was originally situated within the territory of Bihar and it has been brought within the territory of West Bengal by virtue of 1953 Act or not. If it is so, the order of the learned Tribunal will stand set aside and so also notice dated 5th February, 1985 issued by the Revenue Officer u/s 6(1) read with section 5 of the West Bengal Estates Acquisition Act, 1953.

12. Considering the circumstances, there will be order as to costs.

13. Urgent Xerox certified copy of this order, if applied for, be made available to the learned Advocate for the parties on their usual undertakings.