(1986) 08 CAL CK 0005

Calcutta High Court

Case No: C. R. No. 2276 of 1976

Satish Chandra Halder	APPELLANT
Vs	
Revenue Officer and Others	RESPONDENT

Date of Decision: Aug. 31, 1986

Acts Referred:

- Constitution of India, 1950 - Article 227
- Evidence Act, 1872 - Section 145

Citation: 91 CWN 693

Hon'ble Judges: Satish Chandra, C.J; Susanta Chatterjee, J

Bench: Division Bench

Advocate: Amitava Choudhury, for the Appellant;

Judgement

Susanta Chatterji, J.

The Civil Rule arises out of an application under Article 227 of the Constitution of India. The petitioners have alleged, inter alia, that after necessary enquiries by the Junior Land Reforms Officer, Berhampur Circle and on recommendations made by him, plot no. 2103 appertaining to Khatian No. 731, Mouza Kodia, Berhampur District Murshidabad measuring 1.10 acres was allotted to them u/s 49 of the West Bengal Land Reforms Act, 1959. It has further been alleged that after the grant of the Patta dated 02.9.1975, rents were accepted and the receipts were granted. By a Memo No. 2640(2) L.R. dated 15th May, 1976 issued by the Senior Land Reforms Officer, Sadar Berhampur, the petitioners were asked to show cause as to why the allotments in favour of them should not be annulled. for mis-representations of facts at the time of making an application for settlement. Pursuant to the said notice, an enquiry was held and by the impugned order dt. 13.7.1975, passed by the Revenue Officer/Sub-Divisional Officer, Sadar, Berhampur, Murshidabad in Case No. 30/XII of 1976-77, the settlement made in favour of the petitioners/allottees was annulled, and there was a direction for distribution of the disputed land amongst other absolutely land-less-men of the locality. Being aggrieved by the said order, the

petitioners have since come up. It has been held in the order challenged before us that a statement was made by the allottees on 21.2.1976 before one member of L.R. Committee that they were not in possession of the land, in question, before the settlement, whereas they claimed to be in possession at the time of grant of the settlement. On the basis of such admission made by the petitioners, it was found that the allottees committed the acts of mis-representation of facts and the settlement so granted was liable to be annulled by invoking the provisions of Section 49(2) of West Bengal Land Reforms Act. It has been argued before us that there are material irregularities on the part of the authority concerned in exercising the jurisdiction to pass the impugned order. It is submitted that Section 49(1) of the West Bengal Land Reforms Act as amended upto date provides, inter alia, that "notwithstanding anything contained elsewhere in this act or in any other law for the time being in force, settlement of any land which is at the disposal of the State Government, shall be made without any premium being charged for it, in such manner as may be prescribed, with persons who are residents of the locality where the land is situate and who together with other members of their family own no land or less than 0.4047 Hectare of land, one half of the land cultivated by them as Bargadars being taken into account for the purpose of calculating the aggregate of such land, and subject to the following conditions, viz., -
(a) that, in the case of agricultural land, such person intends to bring the land, under personal cultivation,

(b) that, in the case of homestead land, such person having no homestead of his own, intends to construct a dwelling house thereon, and,

(c) such other terms and conditions as may be prescribed.....

2. In view of such Provisions, there is nothing to indicate that the condition of remaining in possession of the land in question, at the time of settlement, is a necessary factor. At the time of distribution of land u/s 49(1) of the said Act, the point of remaining in possession of the property, is obviously unnecessary and it is, not a necessary consideration at all.

3. It has been argued that while the question of possession at the time of distribution of the land is not a criterion to be considered, there cannot be any mis-representation of facts on the said score. Secondly, it is urged that on the basis of the settlement, it has been found to be an admission on the part of the petitioners that there is a mis-representation of facts to invoke the Provisions of Sub-section (2) of Section 49 of the said Act which lays down that a Revenue Officer, on his own motion or upon an application made to him, may annul the settlement in the event it is found that the settlement of such land was made by mistake or obtained under any Provision of the said Section by practice to fraud, mis-representations at the time of obtaining the settlement, a Revenue Officer has the jurisdiction to annul settlement irrespective of the terms and conditions as

contained in the Patta at the time of settlement. The entire consideration is whether such a document dated 21.2.1976 was admissible in evidence or not. While the purpose of Section 145 of the Indian Evidence Act is to throw doubt on the veracity of the witness by contradicting him with a previous statement which does not become substantive evidence u/s 17 and 21 of the Act but admissions duly proved are the substantive evidence by themselves whether the party making it appeared as witness or not or confronted with the same though they are not conclusive proof of the matter admitted. Such admission could be used against a party making it when the admissions are duly proved long before the trial of the case and there is neither any explanation of the admission nor a denial of the facts. The dispute has been settled in Bharat Singh and Another Vs. Bhagirathi, . It has been held that the purpose of contradicting the witness u/s 145 of the Evidence Act is very much different from the purpose of proving the admission. Admission is substantive evidence of the fact admitted while a previous statement used to contradict a witness, does not become substantive evidence. This proposition of law has also been accepted in a subsequent decision of Bishwanath Prasad and Others Vs. Dwarka Prasad and Others, . It has also been considered in a later decision of Sita Ram Bhau Patil Vs. Ramchandra Nago Patil (Dead) by Lrs. and Another, . The ratio of such decisions is that an admission is relevant and it has to be proved before it becomes evidence. The Provisions in the Evidence Act that ''admission is not conclusive proof are to be considered in regard to two features of evidence. First, what weight is to be attached to an admission? In order to attach weight it has to be found out whether the admission is clear, unambiguous and is a relevant piece of evidence.

4. Second, even if the admission is proved in accordance with the Provisions of the Evidence Act and if it is to be used against the party who has made it, is a sound that if a witness is under cross-examination on oath, he should be given an opportunity if the documents are to be used against him, to tender his explanation and to clear up the point of ambiguity or dispute. This is a general salutary and intelligible Rule. Therefore, a mere proof of admission, alter the person whose admission it is alleged to be has concluded his evidence, will be of no avail and cannot be utilised against him. Following such principles of law, we find that the alleged document dated 21.6.1976 containing an admission has neither been proved nor the same is admissible in evidence, nor the same is also substantive evidence. If the same cannot be considered to be an admissible evidence and/or take as a substantive evidence, there is nothing on record to show that the petitioners/allottees have done and/or caused to have done any act amounting to mis-representations of facts.

5. Having considered the submissions made on behalf of the petitioners, we find that the settlement was made u/s 49(1) of West Bengal Land Reforms Act irrespective of consideration of remaining in possession of the disputed land. We also find that by the impugned order the annulment of the settlement was effected

by erroneously appreciating a piece of inadmissible evidence, and an evidence which cannot be utilised against the petitioners. In a recent case of In Re: Jain Shudh Vanaspati Ltd. and Another and Jain Exports Pvt. Ltd. and Anr, it has been held that, the impugned enquiry u/s 49(2) of the West Bengal Land Reforms Act is quasi-judicial and the person whose settlement is proposed to be cancelled u/s 49(2) of the Act, has to be given a reasonable opportunity of hearing and unless the person proceeded against u/s 49(2) is informed of the grounds on which the settlement in his favour was proposed to be annulled, he cannot effectively contest the proceeding. The allegations have got to be proved in accordance with the law and the evidence had got to be considered in accordance with the provisions of Indian Evidence Act. Regard being to the materials on record and the submissions made in support of the case of the petitioners, we find that there is material irregularity on the part of the Revenue Officer in exercising the jurisdiction to annual the settlement made in favour of the petitioners/allottees by the impugned order.

We, therefore, set aside the impugned order. The Rule is made absolute. There will be no order as to costs.

Satish Chandra, C.J.

I agree.