
(1985) 08 CAL CK 0016

Calcutta High Court

Case No: Civil Rule No. 4890 (W) of 1977

Sukumar Adhikary and
Others

APPELLANT

Vs

State of West Bengal
and Another

RESPONDENT

Date of Decision: Aug. 5, 1985

Acts Referred:

- West Bengal Estates Acquisition Act, 1953 - Section 5

Citation: AIR 1986 Cal 261

Hon'ble Judges: Mukul Gopal Mukherji, J

Bench: Single Bench

Advocate: M.N. Ghose and Sk.Tabarak Ali, for the Appellant; Debaprasad Mukherjee, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Mukul Gopal Mukherji, J.

The dispute centres around a plot of land in dag No. 1382 of mouza Rajarampur within Police Station Sutahata, The respondents Nos. 3 and 4 were admittedly big raiyats. They did not retain the disputed lands in the return they submitted before the Estates Acquisition Authorities. One Saday Kumar Mondal purchased the said plot by two different registered kobalas dated 17th April, 1966 believing on the representation of the respondents Nos. 3 and 4 that the names of the alleged vendors were shown in the finally published record of rights and they did retain the said lands and were otherwise authorised and competent to effect the sale. Saday Kumar Mondal in his turn paid rent to the State Government which are Annexures A1 and A2 to the writ application. By different kobal as dated 5th May 1968 and 1st June 1968 Saday Kumar Mondal sold the said land to the petitioners for a valuable consideration and since then the petitioners are in continuous possession of the disputed plots by raising crops and paying rents to the State

Government up to 1382 B.S. Some of the rent receipts are annexures B1 and B2 to the writ application. The petitioners came to know thereafter that the lands were treated as vested lands and that they would be settled with others. The petitioners on enquiry came to know that on November 17, 1979 pursuant to the order passed in Big Raiyat Case bearing No. 746 of 1969 the disputed plots vested in the State.

2. It seems obvious that in so far as the present petitioners are concerned they have been cheated by the respondents vendors. The petitioners contend that they are bona fide purchasers of value without any notice about any defect in title of the respondents Nos. 3 and 4. The petitioners contend that big raiyat proceedings were continued without any due notice to the petitioners or their immediate vendors. Saday Kumar Mondal purchased the lands on 17th April, 1966 and in even on May/June, 1968, Saday Kumar Mondal also sold the lands to the petitioners (sic). On perusal of the big raiyat proceeding in Big Raiyat Case No. 746/1969 I find that the said proceeding was started on 14-8-69 and ended on 26-11-69.

3. Mr. Manindra Nath Ghose appearing on behalf of the petitioners submits inter alia that the decisions of this Hon^{ble} Court reported in (1977) 2 CLJ 246, Provash Chandra Mondal v. State of West Bengal and (1980) 2 CLJ 1, Pachu Molla v. State of West Bengal and as also in an unreported judgment in C.O. 9788 (W)1983. Rakhal Chandra Kamila v. J.L.R.O.. Chandipur, decided by the Hon^{ble} Mr. Justice Chandan Kumar Banerjee on 12th March, 1984, it was uniformly held that when the State Government mutated the name of the petitioner as a tenant and accepted rents from him as such tenant, the State Government could not treat the said lands as vested and settle the said lands to others. Even if the right of vendor of the petitioner had vested in the State. still the subsequent purchaser i.e. the petitioner could not be affected by the said order of vesting because of the subsequent acts and conduct of the State Government with respect to the petitioner. The State Government must be held to have recognized the tenancy right of the petitioner in respect of the land in question.

4. In the present case however the only distinguishing feature is that I do not find anywhere in the record that the names of the petitioners stood mutated as raiyats under the State Government but still then the fact remains that the petitioners paid rents to the State Government up to 1382 B.S. It is beyond my comprehension as to how bereft mutation, could the State Government accept rents or revenue from the present petitioners. I proceed on the assumption that without prejudice to the rights and contention of all the parties affected, the rents were accepted by the State and in that view of the matter I cannot persuade myself to hold that there is any valid title subsisting in favour of the petitioners. On facts however the present case is distinguishable from the three decisions cited by Mr. Ghose inasmuch as in so far as the present petitioners are concerned, there is no averment to the effect that the names of the petitioners were however mutated in the records of the State Government and it is only after the said mutation that the State Government started accepting revenue from the petitioners. In any view of the matter, the State Government did not accept any rent beyond 1382 B.S. It has

to be borne in mind that the person accepting the rent or revenue on behalf of the State, must be a person competent to settle the lands in favour of the petitioners as otherwise the said acceptance of rent per se, does not confer any title to the petitioners nor is the State precluded or estopped from contending otherwise.

5. A contrary view has however been held by this Court in the decision reported in (1979) 1 CLJ 557, Monoranjan Belthoria v. Dy. Commr. of Purulia wherein it was held inter alia that a post vesting transferee of a raiyat who was deemed to be intermediary was not entitled to retain the lands unless and until the original vendor retained the same and acceptance of revenue or rent by the State Government did not create any tenancy in favour of the purported transferee under the State of West Bengal. When before retaining any particular lands as intermediary sells the same lands, transfer is not binding on the State. In the decision reported in (1975) 79 CWN 556, State of West Bengal v. Pijush Kanti Roy, in respect of a post vesting transferee who used to pay rent in respect of the disputed plots, it was held inter alia that the said transferee was not entitled to any notice for the purpose of correction of record of rights. On the same analogy, I hold that the petitioners were not entitled to any notice prior to the order of vesting affecting the lands involved in the case, more so when there was nothing on record to show mutation in their favour.

6. The petitioners are therefore not entitled to the reliefs prayed for but in the facts and circumstances of the present case I would direct the respondents to consider the application of the petitioners, if made, for settlement of the said lands in their favour, in preference to others, provided of course each of the petitioners does satisfy the criterion laid down for such settlement, as contained in

Memo No. 25881(5) CE dated 31-1-70.

25/70

7. The rule is disposed of accordingly. There will be no order as to costs.

8. Let there be an order of status quo as on today for a period of three months, within which time the respondents are directed to consider and dispose of the representations of the petitioners.