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Date : 24/08/2025

Dibakar Mondal Vs State of West Bengal and Others

Court: Calcutta High Court

Date of Decision: Nov. 23, 2006

Acts Referred: West Bengal Estates Acquisition Act, 1953 â€" Section 44
West Bengal Land Reforms Act, 1955 â€" Section 14T, 14T(3), 14T(3A), 14T(7), 54

Citation: (2007) 1 CHN 218

Hon'ble Judges: Tapen Sen, J; Prabir Kumar Samanta, J

Bench: Division Bench

Advocate: Uttiya Ray, for the Appellant;Indrajit Sen and Sitaram Samanta, for the Respondent

Final Decision: Allowed

Judgement

Prabir Kumar Samanta, J.
This writ petition is directed against an order dated 22nd March, 2006 passed by the West Bengal Land

Reforms and Tenancy Tribunal upholding the authority of the Revenue Officer for issuing the notice for review of the proceeding for determination

of the ceiling of lands to be retained by the writ petitioner which was finally disposed of earlier by the Revenue Officer itself.

2. Briefly stated the facts of the case as pleaded are that the petitioner is the owner and possessor of 6.84 acres of agricultural land including

homestead situated at Mouza-Baropalasan and Dihipalasan under P.S. Memari in the District of Burdwan. His wife is also the owner and

possessor of 4.67 acress of land. All such lands are duly recorded in the R.S. record-of-rights in the names of the petitioner and his wife. For the

purpose of retention of lands, the family of the petitioner comprised of four members on the relevant date, such as the petitioner, his wife and his

two unmarried daughters. Two other adult sons who are the owners and possessor of their respective lands as being separate raiyats are not

included as the family members of the writ petitioner for the purpose of retention of lands under Chapter IIB of the West Bengal Land Reforms

Act, 1955.

3. Pursuant to the relevant provisions of Chapter IIB of the said Act, a proceeding being 7A case No. 59 of 1976 u/s 14T(3) of the said Act was

initiated by the concerned Revenue Officer for the purpose of determination of the ceiling of lands to be retained by him. The petitioner appeared in

the said proceeding and filed a return of his lands under Form 7A. The concerned Revenue Officer on the basis thereof made a local enquiry and

ultimately by his order dated 29th November, 1976 dropped the proceeding, by holding that on local enquiry it was found that the raiyat''s family

consisted of four members including the raiyats and the raiyat did not come within the purview of Section 14T of the West Bengal Land Reforms

Act.

4. Long thereafter the Revenue Officer by his Memo No. 613 dated 23rd July, 1980 issued a notice for reopening of the said proceeding. In the

said notice it was only stated that at the time of final disposal of the said proceeding for determination of the ceiling of lands to be retained by the

writ petitioner, the lands held by the petitioner''s family and the number of his family members were not properly determined.

5. The said notice was challenged by the writ petitioner before the West Bengal Land Reforms and Tenancy Tribunal. The Tribunal upon contested

hearing held that the reasons assigned by the Revenue Officer in his aforesaid notice dated 23rd July, 1980 were cogent and reasonable. The

Tribunal further relying upon the Division Bench decision of this Court reported in West Bengal Calcutta Law Times 1994 (1) H.C. 235 Pravat

Kumar Das v. State of West Bengal which held that a subsequent proceeding for re-determination of the question of ceiling limit of a raiyat by a

Revenue Officer is quite competent, observed that there was no mistake by the Revenue Officer in issuing the said notice in exercise of suo moto

power of review u/s 14T(3A) of the West Bengal Land Reforms Act, 1955 for re-determination of the ceiling lands to be retained by the

petitioner. This order is under challenge in this writ petition.

6.1 am unable to agree with the view expressed by the Tribunal that the reasons assigned by the Revenue Officer in the said notice dated 23rd

July, 1980 were cogent and reasonable as stated earlier. It is only stated therein that the determination of the land and the number of family

members of the writ petitioner raiyat were not properly made in the aforesaid earlier proceeding. The said notice has not disclosed as to why and

in what manner the lands of the writ petitioner and the number of his family members had not been properly determined. The said notice also has

not disclosed as to the reasons for which the Revenue Officer formed the opinion that the lands held by the writ petitioner and the number of his

family members had not been properly determined. No indication has also been given in the said notice as to the lands belonging to the writ

petitioner which were not taken into consideration and/or the particular family relations of the petitioner who were not included in his family

members, at the time of disposal of the earlier proceeding by the Revenue Officer. The said notice, no doubt has been issued purportedly u/s

14T(3A) of the said Act. Upon reading of the same it appears on its face to be one for making a roving enquiry. Although in relation to a

proceeding u/s 44(2a) of the West Bengal Estates Acquisition Act, 1953 which similarly empowered the Revenue Officer to exercise suo moto

power of review for initiating a proceeding for revising and/or correcting the finally published record-of-rights, yet the principle enunciated in the

decision reported in Ramesh Ch. Sood Vs. A.S.O. Sub-Division, Ranaghat and Others, is apt and applied in full force in this case. It has been held

therein that it is but a part of the principle of natural justice that a raiyat must be told as to why or in what manner or for what reason the records

standing in his favour are to be revised or in other words he must know the case which he is to meet in the proceeding. The notice impugned in this

case before the Tribunal is absolutely vague as to which of the lands, if there be any, were not taken into consideration for forming the earlier

opinion by the Revenue Officer that the lands held by the writ petitioner raiyat did not exceed the ceiling limit prescribed by the Act as also reasons

for which those lands have been treated as the lands belonging to the family members of the raiyat. Similarly, the said notice also has not disclosed

the particular persons who have been treated as the family members of the raiyat. In the absence of such particulars it will not be possible for the

petitioner raiyat to take a proper defence in the said proceeding. The impugned notice, therefore, squarely falls within the kind of a notice meant for

making a roving enquiry on the issues raised therein. On such ground the impugned notice must fail.

7. The other important aspect of the matter is as to the competence of the Revenue Officer to issue such notice in exercise of its suo moto power

of review u/s 14T(3A) of the said Act after a lapse of more than three years. The Division Bench decision of this Court in the case of Pravat

Kumar Das (supra) upon which reliance has been placed by the Tribunal has not dealt with the said question. The said decision has proceeded on

the language used in the said Section 14T(3A) and has held that the aforesaid relevant provisions of the Act being, what they are, there could

clearly be no mistaken that a subsequent proceeding for re-determination of the question of ceiling limit, of a raiyat by a Revenue Officer, is quite

competent. The said decision has not been rendered by deciding the issue as to whether the Revenue Officer has an unlimited power for exercising

his suo moto power of review u/s 14T(3A) of the said Act after a lapse of any length of time.

8. Being fully aware that the newly substituted provisions of Sub-section (3A) has not provided any period of limitation for revising an order under

Sub-section (3) of Section 14T or elsewhere in the West Bengal Land Reforms Act, 1955, this Court is the decision reported in 1992 (II) CHN

32 Anil Baran Nandi v. State of W.B. has held that the powers u/s 14T(3A) must be used reasonably or with reasonable or due care and that to

by a reasonable man, and exercise of such power, should not also trench upon the powers of the authority concerned, which powers are expressly

reserved by the Act or the rules for the authorities and should not ignore the limitation inherent in the exercise of those powers. It has been similarly

held in the decision reported 1981 (2) CLJ 45l Sudhir Chandra Burman v. State that if no limitation is prescribed or laid down for the use and

exercise of the suo moto power of review, there may be cases, where such power may not be exercised duly reasonably or with reasonable care,

as a result whereof even when a matter would reach finality, such finality may be sought to be interfered with or the power of review as sought to

be resorted to or given effects to and acted upon, may clash with the same. At the same time it has been observed that it is true that following the

sequence of events as under the said Act, the authority concerned would have the right and jurisdiction to determine afresh in some given and

appropriate cases. But if such power is not circumscribed by any period of limitation, the use of the power and the exercise of jurisdiction may

create great prejudice and hardship to the matters or cases which have reached or would reach finality. On the question as to when a matter

reaches its finality, this Court in the aforesaid case of Anil Baran Nandy (supra) has held that the final order is an order, in which there is a final

adjudication by a Court or Tribunal, upon the rights of the parties who appeared before it. Therefore, unless there is any determination of any right

there is no Judgment or final order. A final order is that order which finally puts an end to the proceeding so far as it relates to the declaration

asked for. It has been further held that a Us or dispute regarding the question as to the determination of ceiling limits for retention of lands by a

raiyat as per the provisions of Sub-section (3) of Section 14T of the West Bengal Land Reforms Act, 1955 reaches its finality, when the period for

preferring an appeal as provided in Sub-section (7) of Section 14T read with Sections 54 and 55 of the aforesaid Act, against the determination of

such limits by the Revenue Officer concerned expires, where no such appeal is preferred and where such an appeal is preferred, the moment the

appeal is ultimately decided as per the provisions of Sub-section (4) of Section 54 of the Act. Thereafter in no uncertain terms it has been held

therein that the Revenue Officer concerned can suo moto revise an order passed u/s 14T(3) determining the ceiling limit of the lands of a raiyat

certified to retain under the Act, either within thirty days from the date of such determination or before the date of disposal of the appeal if

preferred against such determination, but not otherwise or not beyond such period.

9. Although both the aforesaid decisions have been rendered by the Single Bench, I am of the view that these two decisions more aptly apply in the

case in hand and particularly when the aforesaid Division Bench decision of this Court in the case of Pravat Kumar Das (supra) has not dealt with

the question and to the time limit by which such suo moto power u/s 14T(3A) of the said Act could be exercised by the Revenue Officer even

though no period of limitation has been prescribed therein.

10. In this regard it is also worthwhile to note that in the said notice no facts and circumstances have been disclosed for which such suo moto

power of review and/or revision could not be exercised earlier or for the justification for exercising such power after lapse of more than three years

from when the finality was reached on the issue as to the ceiling limit of the lands to be retained by the petitioner raiyat.

11. On the reasoning as above I am unable to sustain the Judgment and order passed by the West Bengal Land Reforms and Tenancy Tribunal.

The same is therefore, set aside. Consequently, the impugned notice issued by the Revenue Officer concerned under memo No. 613 dated 23rd

July, 1980 is also set aside.

12. The writ petition is thus allowed.

Tapen Sen, J.

13. I agree.