

(1975) 03 CAL CK 0022

Calcutta High Court

Case No: Appeal from Original Order No. 654 of 1974

State of West Bengal

APPELLANT

Vs

Pijus Kanti Roy

RESPONDENT

Date of Decision: March 10, 1975

Acts Referred:

- Constitution of India, 1950 - Article 226
- West Bengal Estates Acquisition Act, 1953 - Section 39(1), 4, 44, 44(2a)

Citation: 79 CWN 556

Hon'ble Judges: Sankar Prasad Mitra, C.J; Salil Kumar Datta, J

Bench: Division Bench

Advocate: Manindra Chandra Chakraborty, for the Appellant; Bimal Kumar Dutta, for the Respondent

Final Decision: Allowed

Judgement

1. This is an appeal against an order dated May 2, 1974 by Anil Kumar Sen, J whereby the connected writ petition, being C.R. 83(W) of 1970 and other applications heard analogously were made absolute. By the order under appeal the order of the Revenue Officer, Balurghat Settlement Office, dated January 9, 1970 revising the record-of-rights under s. 44(2a) was set aside and liberty was given to the Revenue Officer to implead the subsequent purchaser and thereafter to proceed in accordance with law. The view taken by the learned Judge was that under the provisions of s. 44(2a) notice of the initiation of the proceeding thereunder is to be given to all persons interested and it was held that subsequent purchasers of lands of khatians from the recorded owners are persons interested and accordingly they are entitled to an opportunity of being heard.

2. Facts in this case are as follows : The lands are situate in the district of West Dinajpur and there is no dispute that the record-of-rights were finally published in the said district between 1957 and 1958. In the said finally published

record-of-rights one Amalendu Sarkar (respondent no.5) got his name recorded as the raiyat in the newly opened Khatian no.200 in his name, under his father's employer Kshetra Mohan Das who, it was alleged, was a big raiyat, on basis of hukumnama and rent receipts. Thereafter on May 22, 1962 the petitioner purchased the land of plot of 337 of the said Khatian 200, Mouja Amrul bari, district West Dinajpur from Amalendu Sarkar by a registered conveyance. Rent in respect of the said holding thereafter was being deposited in the name of Amalendu Sarkar marfat the petitioner. On December 30, 1969 suo motu proceedings were started by the Revenue Officer under s 44(2a) and there is no dispute that no notice of this proceeding was given to the petitioner though notice was served on Amalendu Sarkar. The entry in the record-of-rights recording Amalendu Sarkar as holding the land as raiyat sthitiban in respect of the said Khatian was cancelled on the finding that no hukumnama or rent receipts were in existence nor possession was ever with him and in attestation proceeding only Kshetra Mohun Das's name was recorded. The petitioner moved this court by an application under Article 226 of the Constitution challenging the legal validity of the said order canceling the Khatian contending, inter alia that in the said proceeding before the final order was passed notice should have been issued on the petitioner as required by law as he was an interested person.

3. This application was opposed by the State and an affidavit-in-opposition was filed on behalf of the State disputing the allegations and contentions made by the petitioner. The learned Judge, as already stated, held that a subsequent purchaser is a person interested and the Revenue Officer is under a statutory obligation to implead all parties interested. It was further held that as subsequent purchasers are persons interested and the petitioner not having been given an opportunity of being heard the proceeding was not held in accordance with law. The Rule accordingly was made absolute as already indicated. In this appeal the propriety of this order has been challenged by the State of West Bengal and its concerned officers.

4. Mr. Manindra Chandra Chakraborty learned Advocate appearing for the appellant submitted that the petitioner was not entitled to any notice as he was not a person interested as contemplated under s. 44(2a). It was submitted that accordingly the proceeding cannot be held to be not in accordance with law for non issue of any notice on the petitioner. Mr. Bimal Kumar Datta Learned Advocate appearing for the petitioner-respondent submitted that as there was no legal bar on a person to acquire land under a holding which is transferable the petitioner by his purchase by registered conveyance must be held to have interest in the land to entitle him to receive notice of such proceeding as a person interested. He further submitted that unless this interpretation is accepted it will cause great hardship to the subsequent purchasers where there is no legal bar on prohibition in respect of such transfers.

5. Section 44 of this Act contains provisions regarding draft and final publication of the record-of-rights. Under Rule 25 for preparing or revising a record-of-rights the

procedure contained in Rules of Schedule "B" is to be observed. There are different stages in the preparation of draft record and during attestation of each village, all charges which occurred in the tenancy since last preparation of draft or finally published record-of-rights due to inheritance, succession, transfer, surrender or abandonment or new settlement or the like, shall be brought to the notice of the Revenue Officer. The disputes regarding ownership of land or ownership of any interest in land shall be decided by the Revenue Officer in a summary manner on the basis of present possession or possession during the agricultural year preceding the year in which the date of vesting under s. 4 of the Act falls where notification under the section has been issued. Under sub-sec (1) of s. 44, the draft of the record so prepared or revised shall be published in manner provided in r. 30 on such publication the Revenue Officer shall receive and consider any objections which may be made to any entry. Sub-sec. (2) enjoins the Revenue Officer to consider and dispose of the objections according to the provision of r. 17(2) and thereafter the Revenue Officer shall finally frame the record-of-rights and cause such record to be finally published.

6. Section 44 by sub-sec. (3) as it originally stood provided an appeal against an order passed by the Revenue Officer on any objection made under sub-sec. (1) to a Tribunal constituted for the purpose of this section. Under sub-sec. (4), each entry in the record-of-rights finally published under sub-sec. (2) subject to modification by an order on appeal under sub-sec. (3) be presumed to be correct and by amendment of West Bengal Act IV of 1957, "until it is proved by evidence to be incorrect."

7. Sub-sec, (2a) was inserted with retrospective effect by the West Bengal Estates Acquisition (Second Amendment) Act, 1957 but the time limit for taking action suo motu by the officer specially empowered was extended with retrospective effect from nine months to different periods by different amending Acts, and at present the time limit is a period of eighteen years by West Bengal Estates Acquisition (Amendment) Act, 1973, extending the period till November 3, 1975. The objects and reasons of this piece of legislation are stated to be as follows:

It was considered essential that this power of suo-moto revision of record-of-rights should be retained till the special drive undertaken for detection of lands held clandestinely by the big landowners in violation of the provisions of the said Act came to a close and the preparation of all pending compensation assessment rolls was completed.

8. It may be mentioned that in consequence of the insertion of sub-sec. (2a), sub-sec. (3) was also amended by providing the appeal against the order passed in revision under sub-sec. (2a) in place of the order passed under sub-sec. (2). By West Bengal Act XXI of 1973, the words "until it is proved by evidence to be incorrect" in sub-sec. (4) of s. 44, inserted by West Bengal Act IV of 1957, was again omitted.

9. Under sub-sec. (2a) of s. (44), the officer specially empowered by the State Government may of his own motion within the period of time fixed by statute, fifteen years in respect of the case before us, revise an entry in the record finally published in accordance with provisions of sub-sec. (2) after giving the persons interested an opportunity of being heard and after recording reasons therefor. There are two provisos in this sub-section which are not relevant for our purpose. The record-of-rights prepared under s. 39(1) is for the purpose of the Act. It was held in [Collector of 24-Parganas Vs. Life Insurance Corpn. of India](#), as follows: -

... the purpose of the Act, primarily, at least have reference to the date of vesting, which is the relevant date for judging the rights of the parties under the Act. The records, therefore, must have reference to the state of things as it exists at the said date of vesting.

10. In exercising jurisdiction under sub-sec. (2a), s. 44, the officer specially empowered is to take into consideration the state of affairs as existing on the date of vesting which is the point of time relevant for the purpose. "Persons interested" who are entitled to notice of proceeding under the said sub-section accordingly must be the persons who were interested in the land or tenancy at the material point of time i.e. date of vesting and the said office is not required under the relevant provisions to take into consideration any transfer of property subsequent to the relevant date. Accordingly the subsequent purchaser claiming to be purchaser of the interest of the persons interested on the material date in respect of the land or tenancy in dispute is thus not entitled to any notice, as he is not person interested on the relevant date.

11. If the contention that all subsequent purchasers are to be deemed as persons interested for the purpose of the sub-sec. (2a) of s. 44 is accepted, it may not be possible for the officer specially empowered to complete any proceeding initiated by him under the said sub-section. As to the question of hardship being caused on subsequent purchasers is to be remembered that a purchaser is to be deemed to have purchased the property or acquired interest therein with the knowledge that the finally record-of-rights in respect of the said land is subject to revision within the statutory period.

12. The appeal accordingly is allowed and the judgment and order under appeal are set aside and the Rule is discharged. There will be no order for costs. All interim orders, if any, are vacated.

13. The petitioner will be at liberty to take proceedings in appropriate forum to establish his right, if any, and we express no opinion on the same.

Sankar Prasad Mitra, C.J.

14. I agree.