

(1976) 06 CAL CK 0022

Calcutta High Court

Case No: Civil Revision No. 1550 of 1970

Mahammad Salem Jan Mia

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: June 16, 1976

Acts Referred:

- Constitution of India, 1950 - Article 227
- West Bengal Estates Acquisition Act, 1953 - Section 16(1), 17(1), 44(2), 45A, 53
- West Bengal Estates Acquisition Rules, 1954 - Rule 15D

Citation: (1976) 2 ILR (Cal) 7

Hon'ble Judges: Chittatosh Mookerjee, J

Bench: Single Bench

Advocate: S.B. Sen and Nimai Chandra Kumar, for the Appellant; S.N. Kar, For Respondents Nos. 1- 4, for the Respondent

Judgement

Chittatosh Mookerjee, J.

The Petitioner, who was the Mutwalli of Hakimannessa Wakf Estate situated at Chalsapara, dist. Malda, has obtained this Rule under Article 227 of the Constitution against an order of the Revenue Officer, Makdampur Settlement Camp No. 1, English Bazar, in exercise of his powers u/s 6(1)(i) read with Section 45A of the West Bengal, Estates Acquisition Act, 1953 and Rule 15D of the Estates Acquisition Rules. The Revenue Officer, by his said order, has purported to revise an earlier order u/s 6(1)(i) read with Section 44(2a) of the Act in respect of the selfsame wakf estate.

2. In my view, the learned Revenue Officer, in the instant case, has clearly acted in excess of his jurisdiction. It is settled law now that Section 44(2a) of the West Bengal Estates Acquisition Act, 1953, does not contemplate successive enquiries in respect of the same subject-matter. In this connection see the case of Biswanath Mandal v. State of West Bengal (1973) 78 C.W.N. 277. In the instant case, the Revenue Officer concerned has clearly assumed a jurisdiction not vested in him by law by revising

the previous order of another Revenue Officer passed in case No. 7 of 1964 u/s 44(2a) of the West Bengal Estates Acquisition Act. In the said previous case the Revenue Officer had ordered that the wakf estate in question be adjudged as an institution established exclusively for religious and charitable purposes within the meaning of Section 6(1)(i) and that the same would be subject to the benefits of the proviso to Sub-section (1) of Section 17 of the Act. He had, accordingly, order that necessary entries be made in the relevant khatians relating to the wakf properties.

3. The Revenue Officer, in the order impugned in the Rule, was fully aware of the said previous enquiry. But it was not open to him to brush aside the legal consequences of the order passed in the said case No. 7 of 1964 by observing that a fresh enquiry was required under the amended section and the Rule. Another reason given in the matter was that the previous enquiries were done "without consideration of the implication of the amendment". The Revenue Officer, however, did not indicate which particular amendment of the law authorised him to hold a second enquiry.

4. The points of law raised in the present case were previously considered by me in my order in Kamaleswar Chowdhury v. State of West Bengal and Ors. Civil Revision No. 1549 of 1970 Dated July 11, 1975. In the said case, I held a similar second enquiry to be without jurisdiction. In my view, the said reasoning's equally apply to the instant case also.

5. As already observed, a second enquiry u/s 44(2a)(i) is not permissible in law. The Respondents cannot rely upon provisions of Section 45A to justify the second enquiry impugned in this Rule. The said section empowers the authorities to effect amendments consequential upon passing of an order u/s 55A or on amendment of the Act or the Rules. In the instant case, admittedly there had been no enquiry u/s 55A. There had been also no amendment of the law affecting the right of a religious institution, to retain, u/s 6(1)(i) of the Act, lands dedicated exclusively for religious and charitable purposes. Section 17(1) proviso at the relevant time also remained unaltered. Amendments made in Section 16(1)(b)(vi) which deals with computation of gross and net incomes for the purpose of preparation of the assessment roll have no relevance in the instant case. Therefore, the conditions precedent for assumption of jurisdiction u/s 45A were not present in the instant case.

6. I may, further, observe that the order impugned in the Rule cannot be treated as an order for review of the previous orders passed in case No. 7 of 1964. It is true that the State Government by notification u/s 57A of the West Bengal Estates Acquisition Act had invested the authorities, mentioned in Section 53 of the Act, with all the powers of civil Court (vide Notification No. 3401. Reg. dated June 9, 1958). But then, in the instant case, the Revenue Officer did not act in accordance with the provisions of Order 47 of the Code of Civil Procedure. There was no application for review before the Revenue Officer and the Revenue Officer did not himself also state that he was reviewing the earlier order. In the present circumstances, a suo motu

initiation of review proceeding was also not contemplated.

7. In the above view, I make this Rule absolute and quash the orders dated February 4, 19 and 25, 1970, passed by the Revenue Officer, Sadar Settlement Camp No. 1, Mukdampur, Malda, in case No. 7/1 of 1970 and all consequential orders passed on the basis of the same. This order is, however, without prejudice to the rights and contentions of the parties in any other proceeding according to law.

8. There will be no order as to costs.