

(1996) 06 CAL CK 0035

Calcutta High Court

Case No: Civil Order No"s. 1058-64 of 1987

Santi Mahanti

APPELLANT

Vs

Ghaniram Mahata

RESPONDENT

Date of Decision: June 20, 1996

Acts Referred:

- Constitution of India, 1950 - Article 227
- West Bengal Land Reforms Act, 1955 - Section 50
- West Bengal Land Reforms Rules, 1965 - Rule 21

Citation: (1997) 2 ILR (Cal) 1

Hon'ble Judges: Basudeva Panigrahi, J

Bench: Single Bench

Advocate: Gouri Sankar De, for the Appellant; Bhaktipada Ghosh, for the Respondent

Final Decision: Allowed

Judgement

Basudeva Panigrahi, J.

All these applications filed under Article 227 of the Constitution of India arise from the appellate Court's order passed by the Collector, Land Revenue, affirming the orders passed by the Revenue Officer, Arsha Land Revenue Circle. The private opposite parties filed an application u/s 50(e) of the West Bengal Land Reforms Act for effecting necessary corrections in the record of right by entering their names as bargadars over the disputed property. It is claimed by the Applicant that the property in question has all along been in her cultivating possession and she has been undertaking agricultural work through her labourers. In the final record of right her name also stands recorded whereunder it has been shown to have been under her possession. It is stated by the Applicant that some of her agents keeping a greedy eye over the property with a purpose to snatch the disputed land mischievously filed applications before the Bhag Chas Officer firstly claiming to be a bargadar u/s 50(e) of the West Bengal Land Reforms Act, 1955. It is further stated

that the private opposite parties are her close relation who could not have claimed her bargadari right over the disputed plot. The opposite party No. 2 illegally recorded the name of the private opposite parties as bargadars over the disputed property. Being aggrieved by the said order the Petitioner filed appeal before the Respondent/opposite party No. 3 but the appellate Court also without considering the plea of the Applicant had illegally affirmed the orders of Bhag Chas Officer. Therefore, the Applicant being aggrieved by the orders passed by both the authorities, has preferred this case.

2. Mr. Dey, learned Advocate appearing for the Petitioner, has argued in support of the application that in this case the private opposite parties have utterly failed to establish that they are bargadars in respect of the disputed plots. It was, further, strenuously urged that the private opposite parties had not led any evidence showing the payment of bhag or rent to the Applicant at any time. The Revenue Officer as well as the appellate authority, without considering those aspects in their proper perspective have illegally passed an order upholding them as the bargadars in respect of the disputed plots. In course of submission he also highlighted that in this case the Revenue Officer should not have invoked his power u/s 50(e) of the West Bengal Land Reforms Act in as much as it was not a suo motu proceeding which was initiated only on an application filed by the private opposite parties. It is further contended that though an explanation to Rule 21 of the West Bengal Land Reforms Act was appended after a Bench decision of this Court the import of such explanation was subsequently considered by a Bench decision of this Court and it was held to be invalid. Therefore, the jurisdiction which was invoked by the Revenue Officer u/s 50(e) was seriously challenged. Laying emphasis on the decision reported in the case of Kazi Arsedar Rahaman v. State of West Bengal & Ors. 1994 C.L.J. 426, Mr. Dey has argued that the Revenue Officer as well as the appellate authority went to wrong in considering the application filed by the opposite parties who had claimed as bargadars by filing an application to that effect.

3. Mr. Ghosh, learned Advocate appearing for the opposite parties, has contended that in an application filed under Article 227 of the Constitution of India this Court should exercise its jurisdiction sparingly and only in exceptional circumstance. Even there may be some error regarding the facts of the case, but while deciding the case under Article 227 of the Constitution such question need not be again scrutinised by this Court or the evidence adduced by the parties need not be appraised. In the instant case the authorities below after seriously considering the submissions of both parties having already held the private opposite parties as bargadars it would not be open to this Court to fetter the order passed thereto.

4. While deciding the claim of a bargadar it should be borne in mind that the person who claims as bargadar should prove that he has been cultivating the land on condition of delivering of share or produce of the land to the owner or on condition receiving share or produce of such land from the owner. Mere possession by a

person who claims as bargadar is not sufficient to confer such right unless he proves that he was paying his produce to the owner or receiving the produce from the owner. Keeping the aforesaid element in mind let me now examine how far the opposite parties have proved in this case for claiming as bargadars. From the impugned order passed by the Revenue Officer it appears that he has not examined this aspect but only in a criptic order held that the boundary witnesses have stated that the private opposite parties have been cultivating the land in favour of the land owner. I am afraid that such statement of the boundary owners will not be sufficient to hold that those opposite parties are the bargadars. From the impugned order it further transpires that the Petitioner had also claimed to have cultivated the land through the hired labourers. In the above context it was necessary for the Revenue Officer to examine the case of the respective parties in an elaborate manner so as to find out if the claim of the private opposite parties was true. The appellate authority in its order also had not examined the merits of the contention raised by the Petitioner. In the appellate Court's order, if further transpires that though the private opposite parties had claimed to have delivered the share to the land-lady since the latter was an old woman who could not have undertaken the cultivation work. The aforesaid reason appears to be illogical so as to deprive the true owner of the land from having cultivated the same through hired labourer. Merely the land-lady has become old that does not deprive her from cultivating the disputed property through her labourer.

5. Mr. De has indicated that the applications had been filed by the private opposite parties u/s 50(e) of the West Bengal Land Reforms Act. In such eventualities the Revenue Officer should not have invoked his power to effect necessary correction in the record of right. Section 50(e) does not authorise such officer to assume power for effecting necessary correction in the record of right on an application filed by the private opposite parties.

6. Mr. Ghosh has, however, seriously contended that after the explanation added to Rule 21 of West Bengal Land Reforms Rules the Revenue Officer can act upon an application filed by a private party claiming to be a bargadar. Therefore, in the aforementioned circumstances it should not be argued by Mr. De that the Revenue Officer has committed an illegality merely on account of exercise of powers u/s 50(e) filed by the private opposite parties.

7. While considering the rival contentions of the parties it is necessary to quote Section 50(e):

The prescribed authority shall maintain up-to-date in the prescribed manner the village record-of-rights by incorporating therein the changes on account of-

(a) ...

(b) ...

(c)

(d) ...

(e) alteration in the mode of cultivation, for example, by a bargadar.

8. On a careful reading of the provision it leaves no ambiguity that a duty is cast by the prescribed officer to maintain record of rights up-to-date by incorporating therein the changes on account of alteration in the mode of cultivation, for example, by a bargadar. The ambit and scheme of Section 50(e) was considered by a Bench decision of this Court, reported in the case of Muktiar Hussain Jamadar and Ors. v. State of West Bengal and Ors. 1981 (1) C.W.N. 16. This Court had held that except for starting suo moto proceeding under Sub-rule 2 for recording the mode of cultivation in terms of Clause (e) of Section 50 the Revenue Officer u/s 50 was not empowered to make any independent finding and he was required to revise the record of right on the basis of the orders passed by other competent authorities. While exercising such power it is nevertheless true that the Revenue Officer was empowered to start a suo moto proceeding for revising the record of right relating to the mode of cultivation, he was not entitled to do so on the basis of an application filed by any individual. The contention of Mr. Ghosh regarding the explanation attached to Sub-rule 2 of Rule 21 may deserves consideration. Whether by such explanation can power be conferred upon the Revenue Officer even to take up enquiry with regard to the interest of a bargadar on an application filed by an individual be examined ? In the principal provision no such power was conferred on the Revenue Officer to embark upon an enquiry relating to the bargadari interest upon an application filed by an individual. Therefore, in that context if the power was not conferred in the principal provision can the legislature confer such power by adding an explanation ? This matter was considered by a Bench decision of this Court in Kazi Arsedar Rahaman v. State of West Bengal and Ors. (Supra). This Court has held:

Thus, from a conspectus of the authorities referred to above, it is manifest that the object of an Explanation to a statutory provision is -

(a) to explain the meaning and intendment of the Act itself,

(b) where there is any obsecurity or vagueness in the main enactment to clarify the same so as to make it consistent with the dominant object which it seems to subserve,

(c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,

(d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the

enactment, and

(e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at nought the working of an Act by becoming an hindrance in the interpretation of the same.

9. While deciding the aforementioned case Mr. Altamas Kabir, J. had considered with reference to a decision of the case of [S. Sundaram Pillai and Others Vs. R. Pattabiraman and Others](#),

10. From the above observation of the Hon'ble Supreme Court it becomes amply clear that the object of an explanation, is inter alia, to clarify vagueness or obscurity in the formation of the enactment so as to make it inconformity with the main object which it would subserve but it can not, in any way, interfere with or change the enactment or part thereof. It can help or assist the Court in interpreting the true purport and meaning of the enactment. In the case of Kazi Arsedar Rahaman v. State of West Bengal (Supra) it was held that the explanation was invalid and inoperative if it renders the main provision.

11. From the ratio of the judgment it becomes patent that the authorities could not have invoked their powers u/s 50(e) of the West Bengal Land Reforms Act upon an application filed by an individual. Mr. Ghosh next contended that this Court while exercising its power under Article 227 of the Constitution of India should not disturb the finding of fact reached by the prescribed authorities. In the instant case as discussed above, the prescribed authorities had not considered the legal import of the word "bargadaf and also necessary element for claiming such right obviously this Court could exercise its right on an application under Article 227 of the Constitution of India. Moreover, the question of jurisdiction itself was raised by the Petitioner that the authorities lacked their jurisdiction u/s 50(e) since they could not have embarked upon an enquiry upon an application submitted by an individual claiming bargad-dari right. In that event this Court can entertain an application under Article 227 of Constitution to examine the competency of jurisdiction of the authorities. Mr. Dey has filed a decision reported in the case of [N.M. Engineer and Others Vs. Narendra Singh Viridi and Another](#), The Apex Court in the aforementioned case has set out guidelines where the jurisdiction under Article 227 could be invoked. If any question raised by a party with reference to a question of law such point could be decided on an application under Article 227 of the Constitution of India. Considering the case from any angle I find that the Revenue Officer as well as the appellate authorities had acted illegally in entertaining the application filed by the private opposite parties u/s 50(e) of the West Bengal Land Reforms Act claiming bargadari right. It is submitted by Mr. Ghosh that in case the application filed by the private opposite parties is held to be not maintainable, their right claiming bargadari interest should not be taken away by such observation and they may be permitted to agitate the same issue by filing an appropriate application before the prescribed authority. I have not examined the claim of the opposite parties with

regard to their bargadari interest on merits except going into the validity of the order passed by the prescribed authorities and also the appellate authority.

12. Accordingly, both the orders are hereby quashed. In the result, the application succeeds but in the circumstances without any costs.