(1984) 02 CAL CK 0020

Calcutta High Court

Case No: S.A. No. 1012 of 1972

Krittibus Bhattacharya and Ors		APPELLANT
	Vs	
State of West Bengal and Others		RESPONDENT

Date of Decision: Feb. 10, 1984

Acts Referred:

- Evidence Act, 1872 - Section 67, 68
- West Bengal Estates Acquisition Act, 1953 - Section 10(2), 10(2), 10(3), 15(5), 15A

Citation: 88 CWN 485

Hon'ble Judges: Ajit Kumar Sengupta, J

Bench: Single Bench

Advocate: Ashoke Kumar Sengupta, for the Appellant;

Final Decision: Allowed

Judgement

A.K. Sengupta, J.

This appeal is by the plaintiffs against the judgment and decree dated 10th September, 1971 passed by the learned Subordinate Judge, 2nd Court Midnapore reversing the judgment and decree of the learned Munsif. The suit was instituted by one Gagan Chandra Bhattacharya who having died, the present appeal has been preferred by the heirs and legal representatives of the deceased. The plaintiff was a big raiyat. He filed ''B'' form to retain lands including the lands in dispute in the suit. When the Compensation Assessment Roll was published in respect of the lands including the lands in dispute, the plaintiff realized that due to inadvertence, the character of the lands as shown in ''B'' form submitted by him was wrong. It has been alleged that because of the said wrong description of the character of land, the land in dispute had been shown as vested and the compensation was determined on that basis. As soon as the said mistake was detected by him on perusal of the Compensation Assessment Roll, the plaintiff filed before the Compensation Officer an objection in writing on 27th June, 1966 u/s 15 A of the West Bengal Estates Acquisition Act, 1953. Along with the said objection, the plaintiff also filed an

amended ''B'' form dated 27th June, 1966. By the order dated 16th June, 1967, in B.R. Case No. 107, the Revenue Officer held that inasmuch as the possession of all the lands for which the ''B'' form was furnished on 27th June, 1966, had already been taken over u/s 10(2) of the said Act by the J.L.R. O., the plaintiff was not allowed to retain any more land. He directed that the plaintiff shall be entitled to retain 23.41 acres of agricultural land, 2.43 acres of non-agricultural land and 40 acre of homestead land. He held that 6.38 acres of agricultural land and 08 acre of non-agricultural land vested in the State. It is the case of the plaintiff that he was entitled to retain 1.59 acre of agricultural land and 18 decimal of non-agricultural land as described in the Schedule to the plaint and as claimed and shown by him in the amended ''B'' form submitted on 2.7th June, 1966. According to the plain tiff the said land could never have been vested in the State. Apart from the State of West Bengal, there are other defendants to the said suit being defendant Nos. 2 to 6 who were made parties inasmuch as it was alleged that they had obtained licenses in respect of the land in dispute in the suit from the State.

2. The 1st defendant, State of West Bengal, contested the suit and filed written statement denying all material gations contained in the plaint. It 1 been alleged that in the said B.R. C by the order dated 3rd January, 1960, the plaintiff was allowed to retain 22.931/2 acres of agricultural land, 2.40 acres of non-agricultural land and 43 acre of homestead land. Ultimately the plaintiff was allowed to retain land by the order dated 16th June, 1967 as mentioned earlier. The learned Munsif on appreciation of the evidence tendered before him came to the finding that State of West Bengal failed to prove that the possession of the land in dispute was taken by the Government or by the alleged licensees. He further came to the finding that the said B.R. case was disposed of without any consideration of the plaintiff''s case. On the facts and in the circumstances of the case, he held that the plaintiff was entitled to retain 1.59 acre of agricultural land and 18 decimal of non-agricultural land as claimed by him in the suit which are within the prescribed ceiling. He also held that the plaintiff had right, title and interest and possession of the suit land. According to him, the suit is maintainable and the plaintiff was entitled to decree as prayed for. He, therefore, decreed the suit declaring the title of the plaintiff in the land in dispute. It was also declared that the land in dispute had not vested in the State and the defendants were therefore permanently "restrained from disturbing the plaintiff''s possession in the land in question.

3. Being aggrieved by the said judgment and decree, State of West Bengal preferred an appeal before the learned Subordinate Judge. The learned Subordinate Judge was of the view that there is no provision in the West Bengal Estates Acquisition Act, 1953 for filing second ''B'' option form. He held that it was not open to the plaintiff to file a second ''B'' option form by agitating that the character of some of the properties'' was not correctly described in the first ''B'' option form. According to him, Section 15A of the said Act provides for preferring objection the compensation Assessment Roll prepared u/s 15 (5) and it does not enable the big raiyat to file the

second ''B'' option form. According to him, the plaintiff misread the scope of Section 15A of the said Act. He further held that after preferring an objection u/s 15A, it was open to him to prefer an appeal u/s 20 of the said Act. In any case, rejection of the second ''B'' option form by the Revenue Officer did not afford to the plaintiff a cause of action to file the present suit against the State of West Bengal. He, therefore, held that the plaintiff has no cause of action against the defendant, State of West Bengal.

4. Further, the learned Subordinate Judge held that as soon as the plaintiff submitted first option form exercising his option to retain land of his choice and the Revenue Officer duly scrutinised the said ''B'' option form allowing the plaintiff to retain land excluding the land in dispute in the suit, valid title to the lands passed to the State with the vesting of the same and as such the plaintiff did not have any valid right, title or interest in the same. Thus he held that the plaintiff is not entitled to get any decree for declaration of the title in respect of the suit property.

5. The learned Subordinate Judge was of the view that it was immaterial whether the retention of property would or would not exceed the ceiling limit of either land. The Collector, according to him, was lawfully entitled to take over the possession of the same. Although the learned Munsif disbelieved the witness produced by the State in support of the contention that the suit property was taken possession u/s 10 (2) of the said Act, the learned Subordinate Judge believed the testimony of the defence witness on the question of possession and held that defence case appeared more convincing that the possession of the suit property was already taken over by the Collector on behalf of the defendant, State of West Bengal. He, therefore, held that the plaintiff has, no right to claim decree for relief by way of permanent injunction against the State. He therefore allowed the appeal and set aside the judgment and decree of the learned Munsif.

6. Mr. Ashoke Kumar Sen Gupta, learned Advocate appearing for the plaintiff, has contended that the findings of the learned subordinate Judge are incorrect and contrary to the evidence on record. He also submitted that the conclusion drawn by the learned Subordinate Judge is contrary to the provisions of law and he misunderstood the scope and effect of the relevant provisions of the West Bengal Estates Acquisition Act, 1953. No one has appeared on behalf of the State. I have considered the submissions of Mr. Sen Gupta. I have also gone through the evidence on record

7. The learned Subordinate Judge is not correct in holding that the plaintiff had the remedy by way of appeal u/s 20 of the West Bengal Estates Acquisition Act, 1953 against the order passed u/s 15A of the said Act. Section 15A empowers the Compensation Officer to entertain objection on matters provided in Section 15A. In a proceeding, pursuant to such objection, an intermediary cannot contend that he was entitled to retain more lands within the ceiling u/s 6 (1) of the said Act because of mistaken description of the lands shown in the ''B'' form. There is no mistake in the Compensation Assessment Roll which is prepared on the basis of finally

published record of rights. He cannot revise any entry in the finally published record of rights. It is from the Compensation Assessment Roll the incorrect description of the character of the lands and consequent entitlement to retain more lands under a particular category came to the knowledge of the plaintiff. Unless the amendment in the ''B'' form is allowed and entry in record of rights is corrected, the compensation officer cannot entertain any objection of the intermediary that he is entitled to retain more lands within the statutory limits. In this case the grievance of the plaintiff was in respect of ''B'' form and not in respect of Compensation Assessment Roll as such. He, therefore, cannot prefer an appeal u/s 20.

8. Section 4 of the West Bengal Estates Acquisition Act, 1953 provides for the vesting of estates and rights of the intermediaries. Section 6 of the said Act, however, provides that with effect from the date of vesting, an intermediary Is entitled to retain the lands as specified therein. Such option to retain is required to be expressed in a form known as ''B'' form. An intermediary is entitled, inter alia, to retain land comprising in homestead, non-agricultural land in khas possession of intermediary not exceeding 15 acres in area and agricultural land of 25 acres in area. However, the total area of homestead and non-agricultural land retained by an intermediary must not exceed 20 acres. Section 6 (5) provides that an intermediary shall exercise his choice for retention of land under subsection (1) of Section 6 within such time and in such manner as may be prescribed. Rule 4A of the Estates Acquisition Rules, 1954 which came into force with effect from 21st January, 1958 prescribes the procedure for choosing land Which an intermediary is entitled to retain u/s 6 of the Act. It has been provided in the said Rules that the Option was to be exercised in ''B'' form by 30th April, 1958. It is true that in the instant case, the plaintiff filed the first option form on or about 12th November, 1957. On the said option form the Revenue Officer passed an order on 3rd January, 1960 allowing the plaintiff to retain agricultural land (22.93$ acres), non-agricultural land (2.40 acres) and homestead land (43 acres). Section 6(5) also provides that if no choice is exercised by the intermediary within the prescribed period under the said Rules, the Revenue Officer shall, after giving him an opportunity of being heard, allow the intermediary to retain so much of the lands as do not exceed the prescribed limit inter alia, of non-agricultural and agricultural land in khas possession of the intermediary. The question is whether, the intermediary who has once submitted an option form, can amend the said form or file a further option form when admittedly he is within the ceiling limit. The learned Subordinate Judge held against the plaintiff on the ground that there is no scope for filing second ''B'' option form under any plea. The learned advocate on behalf of the appellants has contended that the. said conclusion of the learned Subordinate Judge is not correct and he has misunderstood the statutory language. He has relied on a decision of the Division Bench of this Court in Lakshmi Narayan Roy vs. Land Reforms Officer reported in 1975(2) C.L.J. 327, where it. has been held that even if the intermediary has exercised his option before the incorporation of Rule 4A, he is not debarred from

filing a fresh option after Rule 4A has come into force which has prescribed the manner, method and form of exercising the option.. He contends that the said principle should be applied here.

9. As stated earlier, in this case ''B'' form was furnished on 12th November, 1957. Under Rule 4A, the plaintiff had further right to amend the said form or submit a fresh form within 30th April, 1958. Admittedly, this was not done. It is not in dispute that the plaintiff by furnishing the second form did not want to retain land beyond the prescribed ceiling. It is from the Compensation Assessment Roll, the plaintiff became aware that there was a mistake in describing the character of the land. He therefore submitted another ''B'' form with a view to correct the mistake Occurred in the first ''B'' form. On a proper construction of Section 6(1) of the said Act and Rule 4A of the said Rules. I am unable to agree with the conclusion of the learned Subordinate Judge that there was no scope for submitting a second ''B'' option form under any plea. It cannot be the intention of the legislature that once a ''B'' form has been submitted by an intermediary, it cannot be altered or amended under any circumstances even though it may lead to hardship or injustice. The form once submitted cannot be treated as sacrosant. Mistake may creep in while filling the form and describing the nature or character of the land to be retained. It is not in dispute that the character of the land had not been correctly described in the earlier ''B'' form and the plaintiff wanted to amend the said ''B'' form. If an intermediary having furnished statement in writing in Form ''B'' discovers any omission or mistake in the said statement, he may furnish a revised Form ''B'' making necessary amendment. It will be unjust if a person having made a bonafide mistake in the option, form, is not allowed to amend the same, when he claims to retain the lands within the prescribed ceiling and particularly when there is no dispute that the character of the land had not been correctly shown earlier. The intermediary has a right to amend the Form ''B'' already submitted, by filing a fresh Form ''B'' within a reasonable time from the detection of the mistake or omission so long as he has not parted with the possession of the land. It is the duty of the Revenue Officer to consider the prayer of the intermediary for amendment of ''B'' form so long as such intermediary has not parted with the possession of the land in favour of the Government. If the Revenue Officer finds that the mistake is bonafide and the intermediary has not parted with the possession of the land, he must allow the intermediary to rectify the mistake and to retain so much of the lands as do not exceed the statutory limit. In this case the Revenue Officer did not reject the claim of the plaintiff for amendment of ''B'' form on the ground that second ''B'' form could not be furnished under the provisions of the Act. He rejected the prayer of the plaintiff solely on the ground that the lands in dispute already stood vested in the State and out of such vested land, the plaintiff could not retain any land. This again is not a correct reading of the provision of Section 6 of the said Act. u/s 6 an intermediary has the right to retain with effect from the date of vesting lands within the statutory limit. If amendment of ''B'' form is allowed by the Revenue Officer, it

will relate back to the date of filing of the first ''B'' form and as such the intermediary will be entitled to retain'' lands from the date of vesting. Even where the possession has been taken by the State of the lands other than the retained lands, and the lands are settled with the licensees an intermediary may still exercise his right to amend the ''B'' form depending on the terms of settlement made with the licensees.

10. It is, therefore, necessary to determine whether in this case the intermediary parted with the possession of the lands in dispute. The learned Munsif had found that the intermediary did not part with the possession in pursuance of notice u/s 10(2) of the West Bengal Estates Acquisition Act, 1953. It has been contended by Mr. Sen Gupta that the learned Munsif had disbelieved the only defence witness who gave evidence in support of the defence case that the possession of the suit property was taken by the State u/s 10(2) of the said Act. The person who signed the notice u/s 10(2) of the Act did not come to depose before the Court. A clerk of Patashpur J.L.R.O: Officer gave evidence in support of the defence case. He categorically stated in cross-examination that he never went to the suit land. He was never present when the possession of the suit land was taken. He"" also stated that he was not present when the writs of taking delivery of possession of the suit land were filled up. No other witness on behalf of the defendant gave any evidence with regard to the execution of the writs of taking delivery of possession of the suit land. The learned Munsif, on the evidence before him, held that the State had failed to prove the possession of the suit land and by the alleged licensees.

11. The learned Subordinate Judge held : "To prove the authenticity of these documents on behalf of the defdt. State of West Bengal as examined here one Rameswar Misra as D.W. 1. On oath he claims that he is a clerk of Patashpur J. L R.O. office and that possession of the suit property was already taken over. But the learned Munsif declines to put any faith on his veracity on the ground that admittedly this D.W. 1 was not present at the time of taking of delivery of possession. I fail to understand how that can be a ground for disbelieving this D.W. 1 as evidently it was not his duty to accompany the process server or the tahsilder to the suit land concerned at the time of taking of delivery of possession. He has proved that he found in the service return of all these documents which were produced from his own office. His duty ended with the proving that all these were genuine office papers of Patashpur J.L.R.O. office. I have no ground to believe that his official acts were not duly performed as evident from the connected endorsement. It should be noted in this connection that the plaintiffs have not been able to examine any boundary man in support of their stand that they have got subsisting possession in the suit property. On their behalf are examined one Tarun Chandra Samanta (P.W. 2) one Hemanta Kumar Ghosh (P.W. 3) and one Radhanath Manna (P.W.4). In their examination in chief all these 3 P. Ws. have sweepingly stated that the defdt. never possessed the suit property and that all of them worked on the suit land under the plaintiff. Thus if their claim was at all true that they worked on the suit land under the plff. then they are no more disinterested

witnesses. Secondly the plff. as P.W. 5 never corroborates their claims that these 3 P. Ws. ever worked upon the suit land under the plffs In short giving my due consideration to both sides of the shield on the question of possession I must say that defence case appears more convincing that the possession of the suit property was already taken over by the Collector for the defdt., State of West Bengal."

12. The learned Subordinate Judge did not take into consideration the evidence of Rameswar Misra, a clerk in the office of the J.L.K. O., Patashpur, the lone witness for the defendant, State of West Bengal, in proper perspective nor did he appreciate what the witness said in his deposition. In his examination-in-chief Misra said that the returns regarding taking over possession of the lands in pursuance of notices u/s 10(2) of the said Act, were filled up by Debendra Maity, Surendra Dindya and Ashutosh Maity, who are Tashilders. From the said returns (Ext. A series) it appears that the Tashilders were allegedly authorised to take possession u/s 10(3) and they recorded the said fact in the said returns filled up by them. The said returns in original were tendered by the said Rameswar Misra who further said that he was not present when the alleged possession was taken by the Tashilders nor was he present when the said returns were filled up by them. He also stated that the possession of the suit lands was taken by the defendant No. 5, Narayan Chandra Ghini, one of the alleged licensees.. The defendant No. 5 was not examined by the State. None of the attesting witnesses who alleged to have witnessed taking over possession by the Tashilders had been examined. The alleged licensees who were made parties to the suit, who could have deposed about their alleged possession, were not examined. The learned Subordinate Judge misdirected himself in law when he said that the defence witness proved that those returns of Tashilders were genuine office papers. In this case original of the public document was sought to be tendered in evidence and as such it must have been proved in the manner required by law as any other document required to be proved under Sections 67 and 68 of the Indian Evidence Act, 1872. This has not been done. The defendant thus failed to prove that the possession was taken by the State or by the defendant No. 5.

13. The learned Subordinate Judge brushed aside the evidence of the witnesses of the plaintiff, Tarun Chandra Samanta (P.W. 2), Hemanta Kumar Ghosh (P.W. 3) and Radhanath Manna (P.W. 4) who in their examination-in-chief as well as in cross examination categorically stated that the defendants never obtained possession of the lands in dispute. They also stated that they worked under the plaintiff. Their testimony was believed by the learned Munsif who enjoyed the advantage of observing the manner in which they gave their testimony. Furthermore, the plaintiff''s son (P.W. 5) stated in his examination-in-chief that the defendant no. 1 never took possession of the suit lands and defendant Nos. 2 to 6 never possessed the suit lands. He was not cross-examined on the question of possession. In cross-examination he was only asked about vesting of the lands and the witness (P.W. 5) said that it was not a fact that the suit lands had vested in the State. Vesting and possession are two distinct issues. It is now well settled that failure to put the

important and crucial part of the case to the witnesses, must be held against the defendant. This principle has been succinctly laid down in A.E.G. Carapiet Vs. A.Y. Derderian, in the following terms :-

Wherever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross-examination, it must follow that he believed that the testimony given could not be disputed at all. It is wrong to think that this is merely a technical rule of evidence. It is a rule of essential justice.

14. In that view of the matter the learned Subordinate Judge should not have rejected the oral testimony of the witnesses of the plaintiff. The grounds for such rejection are not sustainable in law or on fact.

15. Mr. Sengupta has relied on a decision of the Supreme Court in Madhusudan Das Vs. Smt. Narayanibai (Deceased) by Lrs. and Others, , in support of his contention that the Appellate Court should have permitted the finding of fact rendered by the Trial Court to prevail. The Supreme Court has held thus :

In an appeal against the trial court decree, when the appellate court considers an issue turning on oral evidence, it must bear in mind that it does not enjoy the advantage which the trial court had in having the witnesses before it and observing the manner in which they gave their testimony. When there is a conflict of oral evidence in any matter in issue and its resolution turned upon the credibility of the witnesses, the general rule is that appellate court should permit the findings of the fact rendered by the trial court to prevail unless it clearly appears that some special feature about the evidence of a particular witness has escaped the notice of the trial court or there is a sufficient balance of improbability to displace its opinions to where the credibility lies.

16. The learned Subordinate Judge should have permitted the findings of the fact rendered by the trial court on the question of possession to prevail. He has failed to show that appraisal of the evidence by the trial court suffered from any material irregularity or on a misreading of evidence. On the contrary the learned Subordinate Judge failed to give any cogent reason for disbelieving the witnesses for the plaintiff. The learned Subordinate Judge misread the evidence. On the facts and in the circumstances of the case, I am of the opinion that the learned Munsif came to a correct finding with regard to the possession of the suit property. In the result, the appeal is allowed. The judgment and decree of the learned Subordinate Judge are set aside and the Judgment and Decree of the learned Munsif are restored. There will, however, be no order as to costs.