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**(1976) 09 CAL CK 0026**

**Calcutta High Court**

**Case No:** None

Kanailal Chattapadhyia

APPELLANT

Vs

Satyendra Nath Mazumdar

RESPONDENT

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**Date of Decision:** Sept. 4, 1976

**Acts Referred:**

- Constitution of India, 1950 - Article 227

**Hon'ble Judges:** Chittatosh Mookerjee, J

**Bench:** Single Bench

**Advocate:** Syma Prasanna Roy Chaudhury, for the Appellant; Bhabesh Chandra Mitter and Miss Aruna Mukherjee, for the Respondent

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### **Judgement**

Mr. Justice Chittatosh Mookerjee

1. The petitioner in this application under Article 227 of the Constitution has challenged the validity and the legality of an order of the Sub-Divisional Officer, Ranaghat, acting as the appellate authority u/s 7 of the West Bengal Restoration of Alienated Land Act, 1973. The said authority allowed an appeal preferred by the present opposite party against the order of dismissal of his application for restoration u/s 4 of the said Act made by the Special Officer under the above Act for Chakdah and Haringhata. On 15th January, 1969, Satyendra Nath Mozumdar, opposite party in this Rule executed a Sale Deed conveying, 60 decimals of land out of Plot No.664, Khatian No.1141 in Mouza Mollabelia in favour of the present petitioner for a consideration of Rs.2500/-. On the same date the said vendor and the vendee executed an agreement for re-conveyance. On 5th May, 1973 the West Bengal Restoration of Alienated Land Act came into force. On 21st March, 1974, the present opposite party made an application u/s 4 of the said Act before the Special Officer, Chakdah-Haringhata, interalia, alleging that on account of distress, for maintenance of his family and for marriage expenses of his daughter he had sold the aforesaid property on 15th January, 1969 to the opposite party. He prayed for an order of restoration of the said lands alienated by him by the said kobala. The

present opposite party opposed the said application.

2. The Special Officer, Chakdah-Haringhata, by his order dated 16th October, 1974 rejected the prayer of the petitioner for restoration. The Special Officer inter alia held that transferor had violated the terms and conditions of the said agreement for reconveyance as the time mentioned in the agreement for re-conveyance had expired. The transferor, who is opposite party in this Rule, being, aggrieved preferred an appeal under West Bengal Restoration of Alienated Land Act against rejection of his application for restoration passed by the Special Officer. As already stated, the Sub-Divisional Officer, Ranaghat acting as the appellate authority by his order dated 18th July, 1975 allowed the said appeal and set aside the order of the Special Officer. He directed that the land be restored and called for report from J.L.R.O., Haringhata, under sub-section (4) of section 4 of the Act in order to award compensation.

3. Mr. Roy Chowdhury for the petitioner has made three-fold submission before me. In the first place, he submitted that the appeal of the transferee opposite party before the Sub-Divisional Officer, Ranaghat was not maintainable in law. According to Mr. Roy Chowdhury Section 7 of the Act provides for an appeal only against an order passed u/s 4(4) of the Act for restoration of the land transferred to the transferor; but in the instant case the Special Officer having rejected the restoration application of the transferor in effect had declined to pass any order u/s 4(4) of the Act and therefore an appeal against the said order was incompetent.

4. Having given my anxious consideration to the arguments of Mr. Roy Chowdhury, I am unable to accept the same. Proviso to Section 7 of the West Bengal Restoration of Alienated Land Act lays down that any person who is dissatisfied with any order made under sub-section (4) of Section 4 may, within thirty days from the date of such order, apply in the prescribed manner to the Collector and the decision of the Collector upon such appeal shall be final. The proviso to Section 4 does not prescribe that only an order allowing prayer for restoration under sub-section (4) of Section 4 would be appealable. Therefore, the analogy drawn by Mr. Roy Chowdhury with the provisions of Order 43, Rule 1, Clauses (d), (k) and (l) of the CPC does not hold good inasmuch as the language used in these clauses is entirely different. The expression "any order" in the context Section 7 means every order made u/s 4(4) would be appealable. Therefore, I overrule the contention of Mr. Roy Chowdhury that an order rejecting an application for restoration is not an order under-section (4). A perusal of Section 4 would indicate that after an application is received, the Special Officer under sub-section (2) of Section 4 is required to cause a notice to be served on the transferee about the said restoration application. Sub-section (3) enjoins hearing of the case by the Special Officer including reception of such evidence as may be adduced by the transferor and the transferee. Sub-section (4) of Section 4 provides for passing of final order upon consideration of the evidence and after hearing the parties. In my view, an order either allowing an application or rejecting

an application u/s 4 comes within the ambit of sub-section (4) of Section 4 of the Act. I cannot accept the extreme argument of Mr. Roy Chowdhury that in case the Special Officer is not satisfied that the requirements of Section 4(1) have been fulfilled he may not pass any order at all or in case he has passed an order rejecting the application he does so in the exercise of his general power or inherent power as Mr. Roy Chowdhury puts it. The whole proceeding u/s 4 is a quasi-judicial one and the Special Officer is required to pass a reasoned order under sub-section (4) as to whether an order for restoration should be made or not. In other words, he decides whether the power conferred upon him by Section 4 should be exercised or not. The power of the Special Officer to pass an order u/s 4 includes a power either to allow or to reject. The Special Officer is a persona designata. Therefore, no question of exercise of inherent powers in the matter of rejection of the restoration application could possibly arise. In the above view, an order of rejection as well as an order allowing an application would be appealable. The view taken in this case finds some support from the decision in (1) Rayarappan v. Madhavi Amma, AIR 1950 SC 140 which held that an order removing a Receiver is an order under Order 40, Rule 1 and, as such, appealable under Order 43, Rule 1(s) of the Code of Civil Procedure. Mahajan J., who delivered the judgment in the said case held:-

If order 4, Rule 1, CPC is read along with Section 16 of the General Clauses Act, 1897, then it follows by necessary implication that the order of removal falls within the ambit of that rule and once that decision is reached, it becomes expressly appealable under the provisions of Order 43, Rule 1(s) which makes all the orders made under Order 40, Rule 1 appealable.

Therefore, by the same analogy, I would hold that Section 4(4) of the West Bengal Restoration of Alienated Land Act, by necessary implication confers jurisdiction upon the Special Officer, also to pass an order rejecting a restoration application, if he is not satisfied that the conditions of Section 4(1) or such of them as may apply, have been fulfilled by the applicant.

5. I may proceed to examine the next submission of Mr. Roy Chowdhury that in the instant case one of the witnesses of the applicant had stated that the transaction between the parties amounted to a mortgage. Mr. Roy Chowdhury was right in his submission that only a transaction by way of a sale comes within the ambit of the West Bengal Restoration of Alienated Land Act, 1973. But I cannot permit Mr. Roy Chowdhury to urge in this Court for the first time that in the instant case transaction cannot be termed as a sale coming within the scope of the above Act. The applicant, who is the opposite party, claims that the transfer was by way of sale with an agreement for reconveyance. The petitioner before me did not deny that there was a sale deed in his favour together with an agreement for reconveyance on 15th January, 1969, but claimed that the period of time specified in the agreement for reconveyance had expired and the order for restoration could no longer be made. No ground was also taken either before the Special officer or before the Appellate

Authority that the transaction was not a sale. In the above view, I hold that there is substance in the second point raised by Mr. Roy Chowdhury. The third submission made by Mr. Roy Chowdhury is that the present case was not covered by Clause (b) of Section 4(1) of the Act. Clause (b) stipulates two conditions. - (1) the transfer in question had been made after the expiry of the year 1961 and (2) there was an agreement, written or oral, for reconveyance of the land transferred, to the transferor. Mr. Roy Chowdhury tried to contend that the agreement for reconveyance contemplated under Clause (b) of Section 4(1) means a valid and enforceable agreement. He drew my attention to the recital in the agreement for reconveyance dated 15th January, 1969 and submitted that time was the essence of the said contract and the last date for tendering consideration money by the transferor was 14th January, 1973. The West Bengal Restoration of Alienated Land Act came into force on 5th May, 1973 after the agreement had expired, according to Mr. Roy Chowdhury. Therefore, the transferor did not fulfill the requirements of Clause (b) Section 4(1) of the Act for obtaining a restoration order from the Special Officer.

6. Section 4(1) provides for restoration of and not for reconveyance. The Legislature enacted the Act to provide for restoration of land alienated under the circumstances mentioned in Clauses (a) and (b) of Section 4(1) of the Act. Clause (b) is attracted in case a transfer was made before the expiry of the year 1967 together with an agreement, written or oral, for reconveyance of the lands transferred. The Special Officer in dealing with an application for restoration has to satisfy himself that these two condition precedents existed for bringing a case within the ambit of Section 4(1)(b) of the Act. The Special Officer u/s 4 is not required to further consider whether the said agreement for reconveyance was still alive or enforceable or not. As I have already observed, the restoration is made in the exercise of the statutory power conferred by the above Act and not by way of specific performance of the agreement for reconveyance. Section 4(1)(b) only requires that there was a transaction by way of sale after the expiry of the year 1967 accompanied by an agreement for reconveyance. Therefore, the Special Officer is only to satisfy himself that there was both a sale and an agreement for reconveyance. Once these two conditions are fulfilled a person u/s 4(1) may apply for restoration and the Special Officer after following the provisions laid down in sub-Sections (2), (3) and (4) of Section 4 may either order for restoration or reject the restoration application as the case maybe. In the above view, I hold that the restoration application was maintainable before the Special Officer.

7. Mr. Roy Chowdhury has drawn my attention to the fact that this Rule was issued on September 8, 1975 whereas the Appellate Authority passed his final order on 23rd October, 1975. In my view, the said order dated 23rd October, 1975, cannot be sustained and the same should be set aside. I propose to quash the subsequent proceedings in the exercise of my suo moto powers of superintendence under Article 227 of the Constitution. In the first place, even if the stay order of this Court

granted on September 8, 1975 was not communicated before passing of the final order by the Appellate Authority, after the said stay order is subsequently brought to its notice, the said Authority is bound to set aside and recall all orders which he might have made in spite of the granting of the said stay order. In this connection see observations of the Supreme Court in (2) [Mulraj Vs. Murti Raghonathji Maharaj, .](#) Further in this case, the Appellate Authority held that the transferor was entitled to a restoration order which was refused by the Special Officer. In the facts of this case, the Appellate Authority instead of directing the J.L.R.O. to submit a report regarding the compensation payable to the transferee in terms of Section 4, Sub-Sec. (4) in order to enable him to decide the matter of compensation, it ought to have remitted the matter to the Special Officer for determination of the compensation, if any, payable. In my view such remit is consequential and incidental to the powers conferred upon the Appellate Authority. The provisions of the present Act to appeal are not self-contained and exhaustive. The Appellate Authority in order to effectually discharge its duties, must be deemed to possess a power to direct the Special Officer to pass consequential orders in terms of Sec. 4(4) of the Act. An express provision for remand is not required to be conferred upon the Appellate Authority in order to authorize issue of a direction upon the Special Officer to determine the compensation, if any, payable to the transferee. It may be also pointed out that Section 7 does not expressly provide that the Appellate Authority would be entitled to receive evidence. Therefore, it would be in consonance with justice to direct that the order of the Appellate Authority for the report from the J.L.R.O. should be quashed and the matter should be remitted to the Special Officer now for the determination of the compensation in terms of Section 4(4) in accordance with law.

I, accordingly, dispose of the Rule in the following terms:-

I uphold the order of the Appellate Authority setting aside the order of the Special Officer rejecting the restoration application of opposite party u/s 4(4) of the Act; but, I set aside the order of the Appellate Authority so far as it called for the report from the Junior Land Reforms Officer. Instead I direct that the matter be now sent to the Special Officer, Chakdah-Haringhata for determination in accordance with law of the compensation, if any, payable to the transferee in respect of the transfer in question.

8.Let the records go down expeditiously. There will be no order as to costs.