

(1974) 07 CAL CK 0025

Calcutta High Court

Case No: C.R. No. 1347 of 1972

Santosh Kumar Sarkar and
Others

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: July 7, 1974

Acts Referred:

- West Bengal Estates Acquisition Act, 1953 - Section 44(2a), 44(3), 47, 5, 5A

Citation: 78 CWN 980

Hon'ble Judges: S.C. Deb, J; A.C. Gupta, J

Bench: Division Bench

Advocate: Chandra Nath Mukherjee and Gouranga Sundar Chatterjee, for the Appellant; Pranab Kumar Ganguly, for the Respondent

Judgement

Gupta, J

1. This Rule is directed against an order passed by the appellate authority u/s 44(3) of the West Bengal Estates Acquisition Act affirming an order of the Assistant Settlement Officer made u/s 44(2a) of the Act. The Assistant Settlement Officer by his order dated April 16, 1971 revised the record of rights by recording certain lands in Mouza Dakshin Akhratola under Police Station Sandeshkhali in the District of 24 Parganas as the lands of the petitioners overruling their objection that they had settled the lands with tenants in the year 1357 B.S. The tenants with whom the lands were alleged to have been settled are the wives of two of the petitioners. The appellate authority also disbelieved the story of settlement and affirmed the order of the Assistant Settlement Officer. In this Rule the petitioners question the propriety of the order revising the record of rights in respect of the lands in question. On behalf of the petitioners it was contended that the order u/s 44(2a) was without jurisdiction in view of the first proviso to the section which says that an officer revising on entry in the record of rights u/s 44(2a) is not empowered to

cancel or modify "any order passed u/s 5A" of the Act. This contention is based on the following facts : In respect of the same lands an enquiry u/s 5A was started in or about the year 1959 on the assumption that the lands had been transferred within the period mentioned in section 5A, that is between May 5, 1953 and the date of vesting. The transfer alleged was the settlement pleaded by the petitioners in this case. It appears from the order dated January 15, 1960 passed by the Officer making the enquiry u/s 5A that he found that the transfer was made before May 5, 1953, in 1357 B.S. Having found this the Officer concluded his order by saying, "these transfers are considered to be bona fide under Rule 5(3) of the E.A. Act". This was followed by a proceeding u/s 47 of the West Bengal Estates Acquisition Act in which the Revenue Officer referring to the order passed in the enquiry u/s 5A observed that as it was found that the transfer was made prior to May 5, 1953 the declaration contained in the order that the transfer was bona fide was uncalled for and that it should have been held that the transfer did not come under the provisions of section 5A. On this view the Revenue Officer dropped the proceeding u/s 47 of the Act.

2. The question that arises for decision is whether on these facts the first proviso to section 44(2a) is attracted, in other words, whether an order recorded in the course of an enquiry u/s 5A that the transfer in question is outside the scope of the section can be called an order "under section 5A" as contemplated in the first proviso to section 44(2a).

3. Section 5A empowers the State Government to enquire into any case of transfer of land by an intermediary made between May 5, 1953 and the date of vesting. Sub-section (1) of section 5A indicates that the enquiry must be proceeded by the formation of an opinion by the State Government that prima facie the transfer was not bona fide. Formation of such an opinion necessarily implies a finding that the transfer was made within the period stated in section 5A(1). This finding, however, is also prima facie and tentative as the opinion is. The enquiry u/s 5A, as sub-sections (2) and (3) of the section make it clear, is directed to find out whether the transfer was or was not bona fide. In making this enquiry the State Government or the Officer to whom it may delegate its powers under sub-section (4) of section 5A obviously exercises quasi-judicial powers. The jurisdiction to enquire depends upon a condition precedent, namely, formation of an opinion by the State Government, and the fact that the transfer was made between May 5, 1953 and the date of vesting. Unless the transfer was made within the period stated in section 5A(1), neither the State Government nor any of its Officers acquires the jurisdiction to make the enquiry. The Supreme Court in the case of [Smt. Ujjam Bai Vs. State of Uttar Pradesh](#), quotes with approval the following passage from Halsbury's Laws of England, Third Edition, Volume 11, page 59, on an aspect of the jurisdiction exercised by an inferior tribunal : "The jurisdiction of an inferior tribunal may depend upon the fulfilment of some condition precedent (such as notice) or upon the existence of some particular fact. Such a fact is collateral to the actual matter

which the inferior tribunal has to try and the determination whether it exists or not is logically and temporarily prior to the determination of the actual question which the interior tribunal has to try. The inferior tribunal must itself decide as to the collateral fact : "when, at the inception of an enquiry by a tribunal of limited jurisdiction, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether it will act or not, and for that purpose to arrive at some decision on whether it has jurisdiction or not".

4. Therefore if a dispute is raised in an enquiry u/s 5 as to whether the transfer was made within the period mentioned in the section the tribunal has to determine the fact and if it finds that the transfer was not made within the aforesaid period, it ceases to have jurisdiction to enquire if the transfer was bona fide or not.

5. Section 44(2a) provides that an Officer especially empowered for the purpose may revise an entry in the record of rights after giving the persons interested an opportunity of being heard. The first proviso to the section states that while revising an entry such officer shall not have the power to modify or cancel "any order passed u/s 5A". The jurisdiction of the tribunal to enquire into a case of transfer u/s 5A depends upon the finding on the collateral issue as to the point of time when the transfer was made. A finding that the transfer was made before May 5, 1953 must necessarily be followed by an order dropping the enquiry because the tribunal would then have no jurisdiction to enquire whether the transfer was bona fide or not. Such an order made in the course of an enquiry u/s 5A, in our opinion, cannot be called an order "under section 5A" as contemplated in the first proviso to section 44(2a). It seems to us that the intention of the legislature in enacting the proviso was to leave undisturbed the consequences following from an order passed under sub-section (2) of section 5A holding a transfer be not bona fide or under sub-section (3) of the section holding a transfer as bona fide. In our opinion, the words "any order passed u/s 5A" occurring in the first proviso to section 44(2a) indicate an order passed after a concluded enquiry u/s 5A finding a case of transfer as bona fide or not bona fide.

6. On behalf of the petitioners reliance was placed on a decision of A.K. Sen, J. in [Benode Behari Mandal and Others Vs. The State of West Bengal and Others](#). In this case A.K. Sen, J. held that section 5A does not permit successive proceedings on the same transfer and in respect of the same land by the same authority or its successor in office and observed that the second adjudication would be barred on the principle which prevents a case being twice litigated. We do not think that this decision is relevant on the question as to what the words "any order passed u/s 5A" occurring in the first proviso to section 44(2a) really mean. Whether or not a second enquiry u/s 5A is permissible is not a question that arises for consideration in the case before us. That being so, we do not think that the decision in Benode Behari v. State of West Bengal (supra) helps the petitioners. The learned Advocate" for the petitioners also raised a question of defect of parties which he submitted affected

the validity of the proceeding u/s 44(2a). It does not appear that this point was taken before the appellate authority and as such the petitioners cannot be permitted to raise this contention at this stage.

For the reasons stated above, this Rule fails and is discharged, but in the circumstances of the case without any order as to costs.

On the prayer of the learned Advocate for the petitioners operation of this order is stayed for a period of six weeks.

Deb, J.

I agree.