(2006) 07 CAL CK 0056

Calcutta High Court

Case No: F.M.A. 2343 of 2004

Bhubaneswari Devi (Chakraborty)		APPELLANT
	Vs	
State of West Bengal		RESPONDENT

Date of Decision: July 12, 2006

Acts Referred:

- Constitution of India, 1950 - Article 226
- West Bengal Land Reforms Act, 1955 - Section 14T(3), 14T(3A), 14T(7), 54, 54(4)

Citation: (2008) 1 ILR (Cal) 88

Hon'ble Judges: Prasenjit Mondal, J; P.K. Samanta, J

Bench: Division Bench

Advocate: Gouri Shankar De and Rudranil De, for the Appellant;

Final Decision: Allowed

Judgement

P.K. Samanta, J.
None appears on behalf of the State Respondents.

2. In this appeal the order of dismissal of the writ petition dated 22.12.1997 has been challenged. The writ Petitioners/Appellants in their writ petition challenged the order dated 22.07.1997 passed by the Collector u/s 54 of the West Bengal Land Reforms Act in affirming the order passed by the Revenue Officer upon review u/s 14T(3A) of the West Bengal Land Reforms Act, 1955. The learned Trial Court summarily dismissed the writ petition by observing that the questions involved in the writ petition were related to the facts and as such, the same cannot be gone into in exercise of jurisdiction under Article 226 of the Constitution of India. On the face of the order as passed by the Revenue Officer upon review u/s 14T(3A) of the said Act as also the order passed by the Collector, the appellate authority in affirming the said order, it appears that there involves a question of law as to whether such a suo motu review proceeding by the Revenue Officer concerned in exercise of the power

u/s 14T(3A) of the said Act was maintainable or not, had not been gone into by the learned Trial Judge.

3. For the purpose of dealing with the said question, some facts of this case are necessary which are stated briefly hereunder.

4. One Tarapad Chakraborty was a raiyat having some lands in the District of Purulia within the jurisdiction of the concerned Revenue Officer. After the enforcement of Chapter IIB of the West Bengal Land Reforms Act, 1955, the concerned Revenue Officer initiated proceeding for determination of the ceiling of the lands to be retained by him under the provisions of the said Act. The proceeding was thus registered as Case No. 70 of 1980 u/s 14T(3A) of the said Act. The said proceeding was finally disposed of by an order dated 11.04.1983 thereby vesting 4.90 acres of land in the State on the basis of nine members in the family of the said raiyat. It was held that the family of the said raiyat comprised of himself, his wife, three unmarried daughters and four sons. Long after the disposal of the said proceeding, the Revenue Officer concerned suo motu reopened the aforesaid case for review in exercise of his power u/s 14T(3A) of the said Act on 24.9.1985 that is after a lapse of more than two years. In such a suo motu review proceeding, the Revenue Officer concerned came to the finding that the youngest son of the said raiyat, one of the four sons, was born 3.4.1973 i.e. long after 15th February, 1971 which is the relevant date for the purpose of determination of the ceiling of lands to be retained on the basis of the family members of the raiyat existing on the said date. In coming to such a conclusion the Revenue Officer concerned ignored the admit card issued by the West Bengal Board of Secondary Education to the youngest son of the raiyat for appearing in Madhyamik Examination wherein the date of birth of the said son of the raiyat was recorded as on 23.10.1970. The said Revenue Officer further disbelieved the fact that one daughter of the said raiyat was given in marriage on 30.4.1973 as the raiyat could not produce any other evidence to prove such marriage on the said date except for the marriage reception card. Accordingly revised the said order by further directing vesting of 1.73 acres of lands from the lands allowed to be retained in a case No. 70 of 1980 u/s 14T(3) of the said Act.

5. We are of the view that the mere marriage reception card is not a cogent evidence to hold conclusively that the marriage was solemnized on the date as appeared from the said marriage reception card. The raiyat ought to have produced some other corroborative evidence to prove his daughter''s marriage on the said date. But curiously enough, even assuming that the marriage of the daughter of the raiyat was not proved to be solemnized on 30.4.1973 as alleged^ by the raiyat, then also it cannot be said in the absence of any other materials and/or evidence that the said daughter was given in marriage much before 15th February, 1971 so as to say that on the relevant date she was not a family member of the raiyat. Furthermore and most interestingly the Revenue Officer held that even if the said daughter of the raiyat is taken to be accepted as given in marriage on 30.4.1973, then for the

purpose of determination of ceiling of lands to be retained by the raiyat, the relevant date for such determination should be deferred and fixed on 1.5.1974 so as to exclude the daughter from the family of the raiyat after her marriage on 30.4.1973. This is a preposterous idea, which cannot have any sanction under the provisions of the West Bengal Land Reforms Act, 1955.

6. Be that as it may, we are more concerned with the jurisdiction and/or the authority of the Revenue Officer concerned to reopen the determination made in a proceeding u/s 14T(3A) of the said Act after a lapse of more than two years when such determination reached its finality. It is not in dispute that Section 14T(3A) empowers the Revenue Officer and/or the Settlement Officer to exercise his suo motu power to revise any determination made by him for the purpose of fixing the ceiling of lands to be retained by a raiyat as on 15.2.1971, the date on which Chapter MB of the said Act came into force. Before introduction of the provisions of Section 14T(3A) in the said Act, the Revenue Officer concerned had no statutory power to revise its own determination. Initially by an amendment such power of revision was conferred both upon the raiyat by making an application as also upon the Revenue Officer concerned suo motu. Subsequently, by an amendment of the year 1978, power to revise any determination made by the Revenue Officer concerned at the instance of the raiyat by making an application was taken away but the suo motu power to revise such determination by the Revenue Officer concerned was retained. The said provision u/s 14T(3A) of the said Act however did not prescribe any limitation whatsoever for exercising such suo motu power to review by the Revenue Officer concerned.

7. In such context the question came up consideration before this Court as to whether the Revenue Officer has the unlimited power to exercise the suo motu power of review at any point of time as may be desired. In the Case of Satish Chandra Barman v. State of West Bengal and Ors.1981(2) CLJ 451 the single Bench of this Court held that if such suo motu power is not circumscribed by any period of limitation, the use of such power and jurisdiction, may create great prejudice and hardship to matter or cases, which have reached or would reach finality, and that even through there was no period of limitation prescribed for the exercise of suo motu power u/s 14T(3) of the said Act, the Revenue Officer concerned cannot claim to have an unlimited power or power without any period of limitation for exercising his suo motu power and such power must be exercised within a time as specified and in the absence of such specification before a finality is arrived at, of the lis or dispute or such power of review should be resorted to within such period of limitation as mentioned above, to be reckoned from the date of obtaining the necessary information, requiring a review. The aforesaid judgment was further considered by another Single Bench of this Court in the case of Anil Baran Nandi v. State of West Bengal 1992(2) CHN 32 approving the said judgment. It was further held therein that a lis or dispute regarding the question as to the determination of ceiling limits for retention of lands by a raiyat as per the provisions of Sub-section (3)

of Section 14T of the West Bengal Land Reforms Act, 1955 reaches its finality when the period for preferring an appeal as provided in Sub-section (7) of Section 14T read with Sections 54 and 55 of the aforesaid Act against the determination of such ceiling limits by the Revenue Officer concerned expires where no such appeal is preferred, and in a case where an appeal preferred, the moment the appeal is ultimately decided as per Sub-section (4) of Section 54 of the Act. As such the Revenue Officer concerned u/s 14T(3A) can suo motu revise an order passed u/s 14T(3) of the said Act determining the ceiling limits of lands, a raiyat is entitled to retain under the Act, either within 30 days from the date of such determination or before the date of disposal of the appeal if preferred against such determination but not otherwise or not beyond such period. We are in complete agreement with the said decisions of this Court as the reasonings given in the said cases and more particularly in the case of Satish Chandra Barman Supra are absolutely logical.

8. In this regard, it may also be stated that in this particular case, the grounds upon which the order was reviewed were also not germane for exercising the power of review. Whether the youngest son was born after 15.2.1971 or not, was a question of fact decided on merits by the earlier order. If such decision was wrong on the materials before it, then the authority concerned should have preferred an appeal against the same. Fresh determination in exercise of suo motu power of review u/s 14T(3A) may be possible on the happenings of events subsequent to the disposal of the proceeding u/s 14T(3) but certainly not on discovery of new evidence on the facts upon which the case was finally decided. Otherwise there will be no end of the matter or the case.

9. In the present case, the determination under 14T(3) of the said Act was made by an order dated 11.04.1983. No appeal was preferred either by the raiyat or by the State against such determination by invoking the provisions of Section 54 of the said Act. Thus the lis came to an end and the determination so made by the Revenue Officer concerned reached its finality after expiry of 30 days from the date of such determination by the Revenue Officer concerned. The Revenue Officer reopened such determination for the purpose of suo motu review in exercise of its power u/s 14T(3A) of the Said Act after a lapse of more than two years i.e. sometime in the year 1985. Thus on the face of the said suo motu proceeding and in view of the aforesaid reported decisions, the same was clearly barred by limitation. The Revenue Officer concerned was not authorized to reopen the determination as made by him on 11.4.1983 after expiry of the period of thirty days from the date of such determination and as such the said suo motu proceeding u/s 14T(3A) was not maintainable. Accordingly the determination so made by him in review proceeding as also the order of affirmation made of such determination by the appellate authority dated 22.7.1997 are also no sustainable. Both the orders as passed by the Revenue Officer in exercise of its power u/s 14T(3A) of the said Act and the order dated 22.7.1997 passed by the Appellate Authority affirming the said order of the Revenue Officer are thus set aside. Consequently, the order passed by the writ Court

is also set aside. The appeal is thus allowed.

10. However, there will be no order as to costs.

11. if urgent xerox certified copy of this order is applied for by the parties, the same should be given expeditiously.