

(2003) 09 CAL CK 0063

Calcutta High Court

Case No: W.P.L.R.T. No. 387 of 2003

Basana Roy

APPELLANT

Vs

The State of West Bengal and
Others

RESPONDENT

Date of Decision: Sept. 26, 2003

Acts Referred:

- Transfer of Property Act, 1882 - Section 107
- West Bengal Estates Acquisition Act, 1953 - Section 44(2)

Citation: (2004) 1 CALLT 591

Hon'ble Judges: Sailendra Prasad Talukdar, J; Ashok Kumar Ganguly, J

Bench: Division Bench

Advocate: D.N. Chatterjee and A. Boral, for the Appellant; Nirmal Kumar Manna and Kamal Krishna Manna for the Respondent Nos. 6 to 8 and H.K. Basu, for the Respondent

Final Decision: Dismissed

Judgement

S.P. Talukdar, J.

The present writ application u/s 226 of the Constitution of India is directed against the Judgment and order dated 2nd May, 2003 passed by the West Bengal Land Reforms and Tenancy Tribunal, hereinafter referred to "as the Tribunal", in O.A. No. 2908 of 2002.

2. Grievances of the writ petitioner may briefly be stated as follows:

The petitioner purchased land in 1984 situated in Mouza-Purba Khamar Simulia, P.S. Hanskhali in the District-Nadia being R.S. Khatian Nos. 1421, R.S. Dag Nos. 650, 651, 652, 655 comprising of an area of 1.77 acres out of 2.86 acres from the recorded owners Sri Ashim Kumar Sarkar and others, being the heirs of the recorded owner Nihar Ranjan Sarkar, through a Registered Sale Kobala. After such purchase, the petitioner got possession of the land and started paying rent to the Government and the Government accepted the same. Petitioner, applied for correction of

Records of Rights and the concerned authority duly corrected the Record of Right. Bhagaban Chandra Biswas and Suprakash Biswas, who were owners of the plot in question and also other properties in Mouza-Simulia were big raiyat. Being intermediary, their right, title and interest were vested to the State and they settled the Tank and/or Land in question in favour of one Nihar Ranjan Sarkar on 28.7.1954. On the basis of the said documents, Nihar Ranjan Sarkar recorded his name in the R.S. Record of Right. After the death of said Nihar Ranjan Sarkar his heirs i.e., the vendors of the petitioner duly applied for correction of Records of Rights in respect of the Tank/Land in question and the concerned authority duly recorded the names of the heirs of the deceased Nihar Ranjan Sarkar in the L.R. Records of Rights. Respondents Nos. 6 to 8 never prayed for initiation of 44(2a) proceeding for correction of Record of Right but they prayed for the same after 37 years from the date of correction of Record of Right in the name of Nihar Ranjan Sarkar on the ground that settlement of pond in question with Nihar Ranjan Sarkar had expired in 1971. The settlement authority initiated the proceeding for correction in 1998 i.e., long after 25 years of the final publication of the Record of Right. The petitioner is enjoying and possessing the Land/Tank in question since the date of her purchase and is still in possession. The respondent Nos. 6 to 8 who are the heirs of Bhagaban Chandra Biswas made an application on 16.1.1998 before the BLLRO, Hanskhali with a prayer for correction of Record of Right. The said respondent Nos. 6 to 8 moved a writ application before the Hon"ble High Court being W.P. No. 5014(W) of 1998 but the petitioner was not made a party in that matter. The Hon"ble Justice N.K. Mitra, as His Lordship then was, by order dated 16.7.98 directed the concerned authority to consider the writ application as a representation and dispose of the same. As per the said direction the BLLRO disposed of the representation and rejected the same on the ground that any proceeding u/s 44(2a) of the WBEA Act was impossible after 35 years from the date of final publication. It was also held that the person whose name was recorded became direct tenant under the State, BLLRO also held that the at K.B. Stage modified Khatian was prepared deleting "Ijara Dakhal". Against the order of BLLRO, respondent Nos. 6 to 8 moved another writ application being W.P. No. 6614(W) of 1999 and the same was admitted on 21.4.1999. During pendency of the said writ petition, they preferred an appeal being L.R. Appeal No. 22 of 1999. The Appellate Authority disposed of the same by order passed on 26.12.2000 and while setting aside the order passed by BLLRO, direction was given for correction of Record of Right In the names of respondent Nos. 6 to 8. The petitioner filed an application before the Tribunal being O.A. No. 571 of 2001 and the Tribunal by order dated 31.7.2001 directed that BLLRO should initiate a fresh proceeding u/s 44(2a) without approval from any authority and hear out all parties and dispose the same in accordance with law within a period of four months. Thereafter, BLLRO initiated a proceeding u/s 44(2a) of the WBEA Act and after hearing all parties on 8.5.2002 it was disposed of with the observation that R.S. Record of Right was prepared properly and the proceeding u/s 44(2a) of the WBEA Act was dropped.

3. The said order was challenged by respondent Nos. 6 to 8 by filing an application before the learned Tribunal being O.A. No. 2908 of 2002. The learned Tribunal by its judgment and order dated 2nd May, 2003 disposed of the said application. Such judgment and order passed by the learned Tribunal has been assailed by the petitioner in the instant application. The petitioner has prayed for setting aside of the said judgment and order dated 2nd May, 2003.

4. This has been contested by the State of West Bengal and in the affidavit-in-opposition filed it has been stated that Sri Bhagaban Chandra Biswas and Smt. Suprova Biswas are the R.S. Recorded owners of the case land. They executed a patta in favour of Sri Nihar Ranjan Sarkar by which right of catching and rearing of fishes was given for a period of 11 years on 28.7.1954. During R.S. operation the said property was recorded in favour of the patta holder mentioning "Ijaradan" and "Mayadkal" and he was given raiyati status in respect of 1.77 acres of land. The successor of Late Nihar Ranjan Sarkar sold out the suit property by different Registered deeds to the writ petitioner. The suit property was recorded in the L.R. Khatian No. 739/1 of Smt. Basana Roy. Against such recording the successor of Late Bhagaban Chandra Biswas and Suprova Biswas moved the Hon"ble High Court by filing writ application being No. 5014(W) of 1998. The Hon"ble High Court disposed of the said application by issuing a direction upon BLLRO, Hanskhali to pass a reasoned order. After being dissatisfied, L.R. Appeal case No. 22/99 was filed by the petitioners wherein the Appellate Authority directed the Correction of the R.S. and L.R. Record of Right. In response to an application filed by the petitioner before the Tribunal, direction was given upon the BLLRO, Hanskhali to examine the correctness of the R.S. Records prepared in the name of Nihar Ranjan Sarkar u/s 44(2a) of the WBEA Act by initiating a fresh proceeding. The BLLRO, Hanskhali passed an order accordingly and dropped the proceeding u/s 44(2a). Being dissatisfied the petitioner moved before the Tribunal and by order dated 2nd May, 2003 the Tribunal directed correction of the erroneous Records of Rights as well as correction of L.R. Record in the name of Basana Roy. Accordingly, R.S. and L.R. Records were corrected by proceedings u/s 44(2a) of WBEA Act and u/s 51A(4) of WBLR Act respectively.

5. Respondent Nos. 6, 7 and 8 also contested the case by filing an affidavit-in-opposition wherein all the material allegations made by the writ petitioner have been denied. It is stated that one Bhagaban Chandra Biswas and Suprova Biswas, owners of the Tank under reference, granted licence for rearing and catching fishes for a period of 11 years commencing from 1361 B.S. (1954) in favour of Nihar Ranjan Sarkar by executing an unregistered Kabuliati. It is further stated that the right given in the Kabuliati was only for pisciculture and the alleged lease is nothing but licence. The writ petitioner filed an application being O.A. No. 571 of 2001 before the Tribunal and the same was disposed of with direction upon the BLLRO to correct the Record of Right u/s 44(2a) of the WBEA Act. In response to an application filed by the respondents being O.A. No. 2908 of 2002, the learned

Tribunal by order dated 2nd May, 2003 observed that Smt. Basana Roy purchased 1/2 of the subject land from the heirs of Nihar Ran] an Sarkar and by such purchase it cannot be said that there was transfer of any valid right, title and interest in her favour. Nihar Ranjan Sarkar merely acquired the right to rear and catch fish from 1361 B.S. to 1371 B.S. He never had any subsoil right and the tank fish in question did not vest in the State. It is emphatically added that Smt. Basana Roy had no right, title and interest over the tank which is the sub-matter of the writ application. It has been further stated that the direction of the Tribunal as given in the said judgment was duly carried out and complied with by the concerned authorities.

6. Learned counsel for the writ petitioner has referred to the Kabuliati dated 28.7.1954 in support of his contention that the original "Rayat" had leased the tank in favour of Nihar Sarkar i.e., predecessor of the vendor of the petitioner and possession was settled in 1954. The petitioner is the heir of patta holder and her name has been recorded in the L.R. Record of Right. The Tribunal could have no right to direct revision of Record of Right after cancelling the record in the name of the petitioner. It has been further contended on behalf of the writ petitioner that respondent Nos. 6 to 8 failed to make any prayer for initiation of the proceeding u/s 44(2a) of the WBEA Act within 25 years of the publication -of the Record of Right.

7. Learned counsel for the writ petitioner categorically stated that the original raiyat had leased the tank in favour of Nihar Ranjan Sarkar i.e. predecessor of the vendor of the petitioner and possession was delivered in 1954.

8. Learned counsel, Mr. Nirmal Kumar Manna, appearing for respondent Nos. 6 to 8 has at the very outset drawn our attention to Section 6(e) of the West Bengal Estates Acquisition Act, 1953. Our attention has been drawn to the explanation to Section 6(e) of the said Act which is set out as follows;

"Explanation.--"tank fishery" means a reservoir of place for the storage of water, whether formed naturally or by excavation or by construction of embankments, which is being used for pisciculture or for fishing, together with the sub-soil and the banks of such reservoir or place, except such portion of the banks as are included in a homestead or in a garden or orchard and includes any right of pisciculture or fishing in such reservoir or place;"

9. It has been categorically asserted that the period of correction of Record of Right u/s 44(2a) of the WBEA Act, 1953 has been extended to 50 years vide amendment made in 1997 (West Bengal Act 20 of 1997). It has been pointed out that neither sub-soil nor the embankments of the tank were the subject matter of the document which has been sought" to be relied upon by the writ petitioner. In this context, our attention has been drawn to the decision in the case of [The State of West Bengal Vs. Shebait of Iswar Sri Saradia Thakurani and Others](#), . It has been further contended that a mere right to rear and catch fish in a tank cannot be leased, for. such a right constitutes a licence. Drawing our attention to the decision in the case of [Ahindra](#)

[Nath Mukhopadhyaya and Others Vs. Manmatha Nath Kurmi and Others](#), it has been submitted that the Kabuliati is an unilateral document and it is inoperative as a lease u/s 107 of the Transfer of Property Act. Mr. Manna has further referred to the decision in the case of [State of West Bengal and others Vs. Suburban Agriculture Dairy and Fisheries Pvt. Ltd. and another](#), wherein it has been held that "from the scheme of the Act it would appear that the intermediary of the lessee gets no absolute right in the tank fisheries which were already divested but to remain in khas possession and to enjoy the usufruct thereof i.e. for pisciculture of fishing without any interest or sub-soil rights and subject to such terms and conditions and subject to payment of rent as prescribed under the Act, but not as owner thereof." In support of his stand that R.S. Record is no document of title but is a document of possession with rebuttable presumption, reference has been made to the decision as reported in AIR 1987 SC 8171.

10. Learned counsel for the State of West Bengal has categorically pointed out that there was no lease on the basis of which the petitioner could derive any support in regard to her claim.

11. Having regard to the submission made by the learned counsel for the parties, we also find it difficult to appreciate the grievances as ventilated on behalf of the writ petitioner. As pointed out earlier, the period of correction of Record of Right has since been extended to 50 years. It follows from the decisions, as referred to earlier, that a right to rear and catch fish in a tank constitutes a licence. Learned counsel Mr. Manna was quite justified in submitting that neither sub-soil nor the embankments of the tank were the subject matter of the document on which the writ petitioner has placed strong reliance.

12. Be that as it may, after due consideration of all facts and materials, learned Tribunal while passing the impugned order gave the following direction:

"In exercise of the powers conferred on this Tribunal u/s 10(6) of the Tribunal Act we direct BLLRO, Hanskhali to correct the erroneous R.S. Record of Rights u/s 44(2a) of the E.A. Act suo moto, by recording the said 2.86 acres of land as the khas land of the owners-Bhagaban Chandra Biswas and Suprava Biswas with a nothing in the column meant for remarks about the right to rear and catch fish from. 1361 BS to 1371, BS by scoring through the khatians prepared in favour of Nihar Ranjan Sarkar within 15 days from the date of communication of this order without waiting for approval from any authority. The correction in the LR Record of Rights consequent on the correction of the RS Record of Rights should be taken up thereafter--under Section 51(4) of the LR Act."

13. It is clear from the impugned order of the learned Tribunal that learned Tribunal was not convinced about the claim of right of the present writ petitioner and in the background of material on record, quite rightly so. The present writ petitioner who was private respondent No. 10 before the learned Tribunal purchased half of the

subject land from the heirs of Nihar Ranjan but the said Nihar Ranjan never acquired any transferable right in the land so purchased by the writ petitioner. Learned Tribunal was perfectly justified in holding that Nihar Ranjan acquired the right to rear and catch fish from 1361 D.S. to 1371 B.S.

14. Considering all such facts circumstances, we find it difficult to appreciate the grievances as ventilated on behalf of the writ petitioner. In our opinion, the impugned order does not suffer from any such impropriety or illegality which calls for or justifies any interference by this Court. Accordingly, the writ application fails and be dismissed. Impugned order dated 2nd May, 2003 passed by the learned Tribunal in O.A. No. 2908 of 2002 stands affirmed.

There is no order as to costs.

Xerox certified copy, if applied for, be supplied to the parties on payment of requisite fees.

A.K. Ganguly, J.

15. I agree.