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**(1989) 08 CAL CK 0060**  
**In the Calcutta High Court**  
**Case No : C.O. No. 103 (W) of 1988**

Ajoy Kumar Sarkar

APPELLANT

Vs

State and Others

RESPONDENT

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**Date of Decision :** 18-08-1989

**Acts Referred:**

West Bengal Estates Acquisition Act, 1953 — Section 44(2), 44(2a), 44(3)

**Citation :** (1990) 1 CALLT 1

**Hon'ble Judges :** Samir Kumar Mookherjee, J

**Bench :** Single Bench

**Advocate :** Santimoy Panda and Mr. N.K. Das, for the Appellant; B.R. Patranabis for Respondent Nos. 1 to 5, Mr. S. Nag for Respondent Nos. 6 to 8, Mr. C.K. Maity for Respondent No. 9 and Mr. M.M. Saha for Respondent Nos. 10 to 12, for the Respondent

**Final Decision :** Dismissed

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## Judgement

S.K. Mookherjee, J.—The present writ petition is directed against two proceedings and two orders passed by the Revenue Officer, respondent No. 2, -One, dated 3.12.87 in a proceeding (suo motu Case No. 124/87) u/s 44(2a) of the West Bengal Estates Acquisition Act (herein- after referred to as the "said Act") and the other in a Big Raiyat Case (No.164), dated 4.12.87.

2. The present writ petitioner and his wife, respondent No.8, purchased the involved lands from one Bikash Chandra Dhara, respondent No.7, by two registered sale deeds on 1st September, 1982. By a deed of gift executed on 2nd February, 1983 respondent No.8 gifted her purchased property in favour of the writ petitioner. At the time of purchase, the lands stood recorded in the name of the vendor Bikash Chandra Dhara in the finally published records of rights, which were published on 19th July, 1957. Bikash claims to have acquired ownership of the said lands by purchase from one Jagadish Chandra Guria on 12th November, 1953 by registered deed of sale. One Bhagyadhar Bera and eighteen others appeared to have made an application bringing it to the notice of the Revenue

Officer concerned that the lands involved were the lands of Suresh Chandra Dhara, father of respondent No.7, who was a big raiyat. On the basis of such application, the disputed proceeding u/s 44(2a) of the said Act had been initiated suo moto by the Revenue Officer. The said proceeding culminated with the impugned order whereby the record of rights were directed to be corrected by incorporating the name of Suresh Chandra Dhara as recorded owner of the said property and since Suresh Chandra Dhara had already retained lands as a big raiyat, the involved lands were directed to vest in the consequential big raiyat proceeding by the other order.

3. Before dealing with the contentions raised on behalf of the petitioner, I would refer to two points raised on behalf of the respondents, more or less, by way of preliminary objections. The first of such point is that the petitioner, being a post-vesting transferee, is not a necessary party and has no locus standi to maintain the present writ application. In the instant case, I find that in spite of the petitioner being a post-vesting transferee, he was served with a notice and has been made to suffer adverse orders. It cannot, therefore, be said that he has no right to challenge the propriety of orders, which prejudicially affect him. The authorities cited in support of this contention by the respondents are distinguishable on facts. The other point is about the effect of existence of an alternative remedy by way of appeal u/s 44(3) of the said Act which the petitioner is alleged to have already taken recourse to. It transpires from the materials supplied that such appeal was filed on 20th of January, 1988 whereas the present writ application was filed on 7th January 1988 and secondly, the subject matters of challenge in the present writ application are two orders—one passed in the suo moto revisional proceeding and the other in the big raiyat case disposed of on the basis of the results in the said suo moto proceeding. The remedy by way of appeal could not be comprehensive enough so as to grant relief to the petitioner with regard to both the adverse orders and as such it cannot operate as a bar in the instant case.

4. Now I proceed to deal with points urged on behalf of the petitioner.

5. The first point which has been raised by way of challenging the validity of the aforesaid orders and the proceedings is that since, admittedly, the revisional proceeding had been initiated on the basis of an application, though by some outsiders, the same cannot be treated as a suo moto proceeding to avoid the bar of limitation of nine months imposed by the statutory provisions. Section 44(2a) of the said Act envisages two procedures, distinct in nature, for revision of the finally published records of rights, namely, one on an application for which the period of limitation is nine months and another on the motion of the Revenue Officer himself for which the period of limitation, at the relevant time, was thirty years. Upon a reading of the different provisions of the said Act and the Rules framed thereunder, it can be seen that proceedings for the final publications of the records of rights, there are different stages, as provided in schedule "B" to the West Bengal Estates Acquisition Rules creating different forums for submission of

objections regarding the correctness of the records of rights by different cross-sections of persons interested in the lands concerned, which include landlords, tenants and persons, who have derived or lost interest in at Khatian. After completion of all stages, including the attestation at draft publication of such records and disposal of objections made in course thereof, the Revenue Officer finally publishes the records of rights in conformity with Section 44(2) of the said Act and Rule 30 of the aforesaid Rules. The first type of procedure creates a forum and lays down the method for revision at the instance of a party having or claiming to have present interest in the concerned lands, who had opportunity of placing his materials at different stages provided for by Schedule "B" to the Rules for revision of finally published records of rights. Such revision must, of necessity, be founded on some omission or overlooking on the part of such a party and a shorter period for bringing such omission and overlooking on an application is well-justified. The second type of procedure is intended to meet situations, which arise due to mainly, fraudulent suppression of materials which, if known, at the time of final publication of the records of right would have led to different entries. Since the source of such information cannot be the interested party himself, the acquisition of knowledge requisite for revising the finally published records of rights becomes, more or less fortuitous or a matter of chance and a longer period has been, according provided for such a revision. If the source for such revision is restrict to the personal knowledge of the Revenue Officer, the desired purpose will be totally frustrated. The knowledge, therefore, necessarily must be allow to be acquired through different and sundry sources. Any information may bring relevant facts within his knowledge to the notice of the Revenue Officer by application or otherwise. Viewed from such an angle, the impugned suo moto proceeding initiated on the basis of an application of outsiders cannot be said to be not maintainable or invalid or not in the nature of suo moto proceeding nor does it get barred by limitation being beyond the period of nine months. In this connection, I would also like to keep on record that a point raised, about the invalidity of the amending Act 20 of 1982, whereby the period of limitation has been extended to thirty years, for absence of assent of the President, is without any substance as a reference to the concerned Gazette would, at once, make it clear the President's assent had been obtained on 4th of November, 1982 (vide Calcutta Gazette, Extraordinary, dated 4th November, 1982). The fir point, therefore, must be answered against the petitioner.

6. The second point, which is an offshoot of the first one, raised in the connection, is that the Revenue Officer had no jurisdiction to enter into the question of benami as the law on such a point is well-settled that the Revenue Officer cannot decide question of title, except in a summary manner. In the instant case, it is found from the impugned orders that the Revenue Officer merely relied on admissions made in the deeds of transfer by Suresh Chandra Dhara and Bikash Chandra Dhara to the effect that the disputed lands were the benami lands of Suresh Chandra Dhara. It did not require any investigation. The jurisdiction to dispose of questions of title in a summary manner by the Revenue

Officer has not, therefore, been exceeded in the instant case. The decisions cited on behalf of the petitioner are distinguishable in view of the special facts of this case as noted earlier.

7. The only other point urged on behalf of the petitioner to the effect that simultaneous initiation and disposal of a proceeding u/s 44(2a) of the said Act and one for vesting of the land are unsustainable does not also have any merit as the decision in the case of Jamini Kanta Bhuinya vs. State of West Bengal and Others, reported in 1980(2) CLJ 9 is distinguishable in view of the factual findings of the Revenue Officer in the instant case about minority of Bikash Chandra Dhara on the date of acquisition of the property, admission of benami in the deeds of transfer and Suresh Chandra Dhara being a big raiyat which are unimpeachable and, in fact, have also not been challenged before this Court. In view of the said distinctive facts, which on their face render inferential conclusions therefrom foregone and inevitable, dispense with the need of further effective adjudication. It would but be an empty formality to declare the big raiyat proceeding, in the instant case, void and illegal and the writ to be issued for the purpose cannot but be ultimately infructuous.

8. Since all the points urged on behalf of the writ petitioner fail, the application must fail also and is dismissed as such.

9. There will be no order as to costs.

10. Before parting with the case finally, I am constrained to mention a disquieting feature of this case and as a Judge I would have felt happy if it did not exist. I have already noted earlier the abortive and misconceived argument made on behalf of the petitioner about the invalidity of the West Bengal Estates Acquisition Amendment Act, 1982 on the ground of absence of assent of the President of India. A reckless averment on oath in the writ petition coupled with attempted reliance on the Special Bench decision of this Court confused me which was worst confounded in absence of a contradiction even by the State Respondents. Had I not called for the relevant Gazette, I would have been guilty of delivering a wrong decision. A man of law, be he a Judge or a lawyer, entrusted with the responsibility of vindicating justice cannot afford to be remises or perfunctory. I would not say anything more lest I am misunderstood but I do hope that such instances would not recur.