
(2004) 11 CAL CK 0011

In the Calcutta High Court

Case No : F.M.A. No. 138 of 1989 and C.R. No. 2021 (W) of 1978

Altaf Hossain

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 30-11-2004

Acts Referred:

West Bengal Estates Acquisition Act, 1953 — Section 44, 6(1)

Citation : (2005) 4 CHN 534 : 108 CWN 489

Hon'ble Judges : Asok Kumar Ganguly, J;Alok Kumar Basu, J

Bench : Division Bench

Advocate : J. Islam, for the Appellant; Ziaul Islam, for the Respondent

Final Decision : Allowed

Judgement

1. The present appeal is directed against the order of the learned Single Judge dated 13th January, 1988 passed in connection with Civil Rule No. 2021 (W) of 1978.
2. The brief facts of the case leading to the filing of the present appeal may be stated in this way.
3. The writ petitioner acquired valid right, title and interest in the disputed land by virtue of a transfer deed dated 14th February, 1968 from one Karunamoy Ballav, who in his turn acquired interest over the said property by virtue of the sale deed dated 18th January, 1958 from the original owner Dharani Dhar Dutta and Nalini Bala Dasi, who were alleged to be the big rayats under the definition of the West Bengal Estates Acquisition Act. It is the specific case of the writ petitioner that after acquisition of title the petitioner got possession over the same and the local tahsildar duly mutated his name in respect of the said land and also accepted rent from the petitioner and granted valid rent receipt.
4. The grievance of the petitioner had been that in the year 1972 the Government of West Bengal initiated a big raiyat proceeding against Dharani Dhar Dutta and others whereby the land already purchased by the petitioners

were alleged to be vested following to the said big raiyat proceeding and it is further disclosed by the State Government that the said land in question has been allotted in favour of respondent No. 7. The petitioner contends that he has been all along in the physical possession of the land and the respondent No. 7 never acquired any interest by the alleged allotment since once the petitioner has been recognised as a direct tenant under the State through acceptance of rent, the subsequent big raiyat proceeding or any post-vesting does not affect the right, title and interest of the petitioner in the suit land. The learned Single Judge, however, did not find favour with the submission of the writ petitioner and accordingly the learned Judge held that no notice as claimed by the petitioner was required to be served as the petitioner was a post-vesting transferee and on this ground the writ petition was dismissed.

5. Appearing before us the learned Advocate for the appellant/petitioner submits that admittedly there is no affidavit from the side of the State of West Bengal to controvert the factual aspect of the case and naturally only the legal aspect of the matter was re-examined by the Court in order to sustain or reject the order of the learned Single Judge as reflected in the impugned order.

6. The learned Advocate for the petitioner contends that it has been held all along by different judgments of this Court and also by the Hon'ble Supreme Court that even if there is any transfer subsequent to vesting if the alleged transferee can satisfy that he was in physical possession before the vesting proceeding was started, he is entitled to have a notice before he is thrown out of possession on the ground of vesting of the land in question. Learned Advocate in order to substantiate his contention has referred to first of all the decision of the Apex Court as reported in Gurcharan Singh and Others Vs. Prithi Singh and Others, which was again reflected in the decision of this High Court reported in 1977 CriLJ 240 and Mathuralal Vs. Bhanwarlal and Another, .

7. The learned Advocate representing the State of West Bengal contends that there is nothing wrong in the impugned order since the petitioner, being a post-vesting transferee, is not entitled to have any notice and the only question for consideration before the authority was whether the original owner had excess land which was liable to be vested after promulgation of the Estates Acquisition Act. The learned Advocate contends that in this case although the transfer was made in the year 1956, as claimed by the petitioner, the vesting of the land was in fact completed much prior to the date though formal proceeding was started in 1972. The learned Advocate submits that it has been held in a decision of this High Court as reported in State Vs. Ismail Sher Gojri and Others, that a person acquiring interest in the land which was the subject-matter of vesting subsequently is not entitled to have any notice.

8. Having regard to the submission of the learned Advocates of both sides and after due consideration of the decisions cited from the Bar we find that the legal position may be summed up in this way that although generally in a proceeding started u/s 44 or u/s 6(1), a subsequent transferee is not entitled to a notice

because the lis is between the State and the intermediary. It has been held by different decision to uphold the question of equity and fairplay that if it is within the knowledge of the authority concerned that a person is already in possession of the land which is the subject-matter of big raiyat proceeding and which land is liable to be vested according to the State, such person is entitled to a notice to lodge his claim before the authority concerned being the transferee on good consideration.

9. In view of this legal proposition we are of the view that the learned Judge was not justified in rejecting the writ petition solely on the ground that in a case of post-vesting the petitioner was not entitled to have any notice.

10. It is available from the materials which have not been controverted by the State-Opposite Party that the petitioner was in physical possession and rent was accepted from him which prima facie indicates that the State authority accepted the petitioner as a direct tenant after the post-vesting scheme and this enables the petitioner to retain the land even if that land may exceed the ceiling of the intermediary.

11. With this observation we are inclined to allow the appeal and set aside the order of the learned Single Judge, however, without any order as to costs.

12. Let xerox certified copy of this judgment, if applied for, be given to the learned Counsel for the parties.