
(1970) 09 CAL CK 0010
In the Calcutta High Court
Case No : Civil Rule No. 3826 of 1969

Amulya Kumar Maity and Others

APPELLANT

Vs

Assistant Settlement Officer and Revenue Officer, Taki, Dist.
24-Pargarias

RESPONDENT

Date of Decision : 28-09-1970

Acts Referred:

Constitution of India, 1950 — Article 227

West Bengal Estates Acquisition Act, 1953 — Section 5A, 5A(5)

Citation : 75 CWN 950

Hon'ble Judges : Jnanadhir Sarma Sarkar, J

Bench : Single Bench

Advocate : Mrinmoy Bagchi, for the Appellant;

Judgement

Jnanadhir Sarma Sarkar, J.—On the application of the petitioners a Rule was issued on 6.10.69 under Article 227 of the Constitution calling upon the opposite parties to show cause why the order complained of dated 14.8.69 passed in case No. 590 U/S. 5A of the West Bengal Estates Acquisition Act, 1953 should not be quashed or set, aside. The case of the petitioners is that on 8.6.67 the petitioners Nos. 1, 2 and 3 purchased portions of plot No. 704 appertaining to R. S. Khatian No. 458 and the petitioners Nos. 4, 5 and 6 purchased portions) of lands recorded in khatian No. 435 between 20.6.62 and 26.6.62 and that they had been in possession of the same since their purchase from Prohlad Chandra Das, opposite party No. 3, who took settlement from Sm. Maheswari Dasi, opposite party No. 4 on 22.12.53. It is alleged that on 5.8.69 a proceeding u/s 5A of the Estates Acquisition Act was started in respect of the lands of revision khatian No. 435 and 458 and also in respect of other lands and the Assistant Settlement Officer after service of notice on Prohlad Chandra Das only that the transfer of opposite party No. 4 in favour of opposite party No. 3 was not bonafide and the transfer in favour of Prohlad Chandra Das stands cancelled from the date it was made or purported to have been made.

2. The Rule is not opposed though notice was served on all the opposite parties and none turns up on behalf of the opposite parties at the time of hearing. Mr. Bagchi, appearing for the petitioners has kindly taken me through the record and made submissions. It appears from the copy of the order of the Assistant Settlement Officer that the notice of the proceeding u/s 5A of the Estates Acquisition Act was served only on opposite party Nos. 3 and 4. No notice was served on the petitioners. But the petitioners purchased the properties from the recorded owner opposite party No. 3 two years or more before the date of the proceedings. u/s 5A(5) of the Estates Acquisition Act no order shall be passed on an enquiry held under that Section except after giving the transferor and the transferee an opportunity of being heard. Under Sub-Section 5A(7) (iv) of the Estates Acquisition Act transferor and transferee include the successor in interest of the transferor or the transferee. In the instant case the original transferor opposite party No. 3 had already transferred his entire interest in the two khatians mentioned above to the petitioners. But the petitioners were not made parties and were not served with notices in terms of sub-section 5A(5) (1) of the Estates Acquisition Act read with subsection 5A (7) (4) of the Act. This service of notice is mandatory and the petitioners were greatly prejudiced as they were not given an opportunity to be heard and to explain that the transfer in their favour cannot in any case be questioned even if opposite party No. 3 was a benamder of opposite party No. 4. The petitioners, however, challenged the finding that the transaction of transfer in favour of opposite party No. 3 was not bonafide. At any rate, the proceeding u/s 5A of the Estates Acquisition Act cannot be allowed without service of notice on the petitioners who are transferees from the original transferor.

3. The order that was passed is a composite one in respect of the khatians Nos. 435 and 458 but with regard to the other khatians the transfers" were found to be bonafide and there was not appeal against that order by either side. Accordingly that matter cannot be re-opened in this application under Article 227 of the Constitution.

4. Accordingly,; the Rule is made absolute only with regard to the order relating to khatians Nos. 435 and 458 and that portion of the order is set aside and the case is sent back to Assistant Settlement Officer to proceed on with the case in accordance with law. With regard to the other portion of the order against which no application was made under Article 227 of the Constitution no order need be passed in this application under Article 227 of the Constitution. In the circumstances, I order no costs of this proceeding. Let the records be sent back to the proper authority without delay so that the Assistant Settlement Officer, if so advised, may proceed with the proceeding u/s 5A of the West Bengal Estates Acquisition Act in respect of these two R. S. Khatians Nos. 435 and 458 after service of notice on the petitioners.