

(1976) 02 CAL CK 0032
In the Calcutta High Court
Case No : Civil Rule No. 4298 (W) of 1971

Ashoke Kumar Majumder and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 09-02-1976

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

West Bengal Estates Acquisition Act, 1953 — Section 10(2), 44, 44(2a), 53, 57

Citation : 80 CWN 388

Hon'ble Judges : M.N. Roy, J

Bench : Single Bench

Advocate : Malay Kumar Bose, Tarun Sankar Bose and Tapan Kumar Banerjee, for the Appellant; Rupendra Nath Mitra for the Respondents Nos. 1-5 and Amal Kumar Basu for the Respondent Nos. 10, 11(a) and 11(b), for the Respondent

Judgement

M.N. Roy, J.—This Rule is directed against proceedings initiated and orders passed u/s 44(2a) of the West Bengal Estates Acquisition Act, 1953. The petitioners have alleged that on the date of vesting, their predecessor-in-interest Shri Hitendranath Majumder, who died intestate on 29th May 1983, had about 29.89 acres of agricultural land, 79 acres of non-agricultural lands and 1.69 acres of bastu. These facts the petitioners have further stated, would be apparent from the finally published record of rights. They have further contended that after the final publication of the record of-rights, it transpired that 6 plots of lands in Khatian No. 186, at present renumbered as 416, measuring more or less 5.27 acres, were wrongly recorded in the name of the said Shri Hitendranath Majumder, since deceased. The said lands were not in actual possession of the said Shri Majumder and they were transferred in 1358 B.S. to one Shri Makhanlal Haider by a registered Amalnama and in fact the said Shri Haider was in possession of those lands or. payment of rent @ Rs. 36/- per year to the said Shri Majumder.

2. In view of the aforesaid fact of wrong recording, the said Shri Halder, on 29th January, 1958 filed an application u/s 44(2a) of the Act, being case No. 40 of

1958, for necessary correction of the records. It is also an admitted fact that on or about 8th June 1959, the Revenue Officer concerned, on consideration of the relevant records, was pleased to pass an order correcting the Record of Rights of Khatian No. 416 in the said proceedings u/s 44(2a) and thus inserted the name of the said Shri Haider in place of their predecessor-in-interest. The petitioners have alleged that prior to the said recording, their predecessor-in-interest, the said Shri Majumder, since deceased, duly filed a return in form "B" along with an application to the Revenue Officer regarding the said wrong entries in the Record of Rights in respect of the six plot of lands in Khatian No. 416. It appears that thereafter the authorities concerned had allowed retention of the lands as prayed for.

3. But the petitioners have alleged that even after the said retention, a Big Raiyat proceeding being case No. 60 of 1963, u/s 6 of the Act was initiated against the said Shri Majumder and in that case, the Revenue Officer concerned, duly considered the "B" form which was filed and by reclassification of lands increased the quantum of agricultural land and allowed him to retain 25 acres of agricultural land and 57 acres of Bastu and the balance of 60 acres of agricultural land, 46 acres of non-agricultural land and 5 acres of Bastu, were directed to be vested in the State. The petitioners have alleged that although such reclassification was irregular, illegal, void and improper, yet their predecessor-in-interest did not object to the same and as such, thereafter Khanda Khatians were opened and the State Government duly accepted rents from him.

4. Thereafter, after the death of the said predecessor-in-interest, the said Makhanlal Halder, whose particulars have been mentioned hereinbefore, being in financial hardship, sold the said 5.27 acres of land to the petitioner No. 1 for valuable consideration, by a registered deed dated 6th August 1963. Thereafter, by a registered deed of gift dated 11th November 1964, the petitioner No. 1 transferred about 1.65 acres of land to Shri Ram Krishna Ashram and by two other registered deed of gifts of the same date, he further transferred 66 acres of lands each to their family priests.

5. The petitioners have alleged further that the petitioner No. 1 held and possessed a plot of land measuring more or less 2.47 acres in Khatian. No. 911 and the said land was transferred to him by his father long before the date of vesting and since then he is in exclusive and uninterrupted possession and enjoyment of the same, on payment of rents and his name has also been duly recorded in the finally published Record-of-Rights. It has been alleged that as the said petitioner No. 1 was in need of money, so he duly transferred the said land by a Registered deed of sale for valuable consideration, and after such transfer, the transferee Respondent Nos. 10-12 got their names mutated in the register on payment of rent. It further appears that the predecessor-in-interest of the petitioner viz., the said Shri Majumder, since deceased, in 1963 i.e. prior to his death, also transferred a substantial portion of his retained lands to petitioner Nos. 1-4, by four Registered deed of gifts and since then they possessed and

enjoyed the said lands separately on due payment of rents, and other dues including Panchayat tax etc. The petitioners have alleged that they are in separate mess from before the death of the said Shri Majumder.

6. In or about August 1970, the petitioners were served with notices u/s 44(2a) of the West Bengal Estates Acquisition Act, 1953 informing them there by that the Revenue Officer, Respondent No. 2, had initiated a proceeding under the said section read with section 151 of the Code of Civil Procedure, for correction of the record-of-rights in respect of Khatian No. 581 of Mouza Chapala Khop and in fact on or about 12th September 1970, the said Respondent No. 2, made an order correcting the record-of-rights in respect of the said Khatian in question. The petitioners have alleged that the said order to be bad, void, irregular and without jurisdiction, in view of the facts as stated hereinbefore and in fact they have challenged the very basis of such initiation and the validity of the same. The petitioners have also alleged that in the meantime the said Respondent No. 2 has also reopened the said B.R. case No. 30 of 1962, u/s 8 of the Act, without any notice to them. The petitioners have also challenged the basis, bonafide, legality and jurisdiction of the said action and the initiation of the said proceedings.

7. It has been alleged by the petitioners that in the meantime a purported list of vested lands had already been sent to the Junior Land Reforms Officer concerned, viz. Respondent No. 4, for the purpose of taking possession and in fact the said Officer, without serving a notice u/s 10(2) of the Act, had already taken steps to take possession of the lands in question, alleging the date of possession as 18th June 1971, though actually the petitioners were duly in possession of the lands in question along with Respondent Nos. 10-12. The petitioners have further alleged that the Respondent No. 4 also took necessary steps to distribute those lands and such steps were taken or completed in haste so as to disentitle the petitioners to move any appropriate forum for the purpose of protecting their interest. In that view of the matter, the petitioners have submitted that the entire proceedings to be a mala fide one or illegal and in colourable use of powers.

8. In this proceeding, Mr. Basu appearing for the petitioners has submitted that since Hitendra Nath Majumder died in or about 1963, so admittedly the connected proceedings were started on service of notice on a dead person. He further submitted that the second initiation of section 44(2a) proceeding was also unauthorised and furthermore, the entire proceeding was unauthorised inasmuch as the Officer concerned in the instant case, under the provisions of the said Act, had or has no power of review u/s 151 of the Code of Civil Procedure. These apart, Mr. Basu also submitted that the revival of the earlier order, on the facts as mentioned here in before, was unjustified and unauthorised, apart from being irregular and furthermore the findings of the Officer concerned and thereafter the Tribunal on benami was also beyond their competence, power and jurisdiction. Finally Mr. Basu argued that no notice u/s 10(2) of the Act having admittedly been duly served on the petitioners, the

entire proceeding was vitiated.

9. The Respondents in their affidavit in opposition dated 15th November, 1971, have disputed the above submissions of Mr. Basil on facts and they have further submitted that the Revenue Officer concerned started the sue motu proceeding u/s 44(2a) read with section 151 of the Code of Civil Procedure, in respect of Khatian No. 581 of Mouza Chapala Khop, J.L. No 124, in order to revise the judgment in case No. 40 u/s 44(2a) of the Act, as in his opinion the said judgment was erroneous and furthermore the action taken was in conformity with the provisions of the said Act. They have further contended that since Khatian No. 581 was opened in favour of Makhanlal Haider in pursuance of the order passed in case No. 40 u/s 44(2a) of the Act, and there were prima facie reasons for believing that such act was erroneous, so the Revenue Officer especially empowered under that section corrected the same for ends of justice and equity. They have also contended that whatever steps have been taken, were for the sake of justice and equity and in fact the Revenue Officer concerned, in due and proper exercise of his power and jurisdiction, has directed to vest the lands which the petitioners had kept exceeding the ceiling limit after giving due notice and hence the petitioners have failed to prove any prima facie case for maintaining the application.

10. There is no dispute that sub-section (2a) of section 44 has been inserted with retrospective effect in the West Bengal Act of XXV of 1957 and the game provides a new remedy by way of a revision of an entry in the finally published record-of-rights. It has been held in the case of Must. Hasnear Khatun Vs. Revenue Officer, Midnapore and Others, , where the Officer concerned issued the notice u/s 44 (2a) because he was of the opinion that the record-of-rights finally published, was incorrectly made and he was prima facie satisfied and issued the notice, there was sufficient grounds for invoking the power and for that to issue necessary notice u/s 57 read with section 44(2a) of the Act. In that case, it has also been held that suo motu power given u/s 44(2a) of the Act is not an arbitrary power in view of the fact that the statute itself gives the clue as to how such power is to be used and exercised, apart from the limitation for the use of such power and also provides for a right of appeal against the order passed. The word "revise", in section 44(2a) in that case has been meant to be used in whatever sense and means to "re-examine" the finally published record-of-rights or "amend" any entry in that finally published record-of-rights and as such, there cannot be any objection, if the especially empowered Officer re-examines an entry in the finally published record-of-rights. There" is of course no doubt that the said sub-section speaks of revision either on an application by the aggrieved person or in a proceeding started suo motu. Where such proceeding is initiated on an application, it is required that the application must make out a prima facie case for revision. But when the very same thing is authorised by the statute in a suo motu proceeding. it would be proper to construe that such suo motu proceeding must also be in a case where a prima facie case for revision is made out. There is also no doubt that in either of the cases, the person interested must

have an opportunity of being heard. The said fact implies that such interested person must be apprised of the case for revision and the grounds there for. As has been observed in the case of Muktipada Ghosh and Others Vs. The State of West Bengal and Others, , it is true that at that stage it is not necessary for the authority concerned to consider whether the grounds or the reasons are sufficient for effecting the revision or not, as, such consideration must await the final adjudication; but at the same time if the power is invoked on a barren notice disclosing neither a case nor a ground whatsoever, it would be an arbitrary act on the part of the authority. From a reference to the Annexures to this proceeding, it appears that notices in the instant case were and are so barren that they would certainly come within the determination of the case of Mukti Pada Ghose vs. State of West Bengal (supra). Apart from this, there is also no denial of the fact that notice in question was served on a dead person and furthermore no pro per notice was ever served on all the persons interested. In that view of the matter also, the proceeding should be declared to be void.

11. It further appears from Annexure "D" i.e. certified copies of the judgment and order sheet of Case No. 36 of 1970, that proceedings were sought to be initiated u/s 44(2a) of the Act read with section 151 of the Code of Civil Procedure. Under sub-section 2 of section 44 of the Act, a Tribunal is appointed for deciding appeals against orders passed in revision under sub-section (2a) of the said section and shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908. Thus, where the facts and circumstances of a particular case would attract any provision of the Code, the Tribunal would have jurisdiction to act according to such provisions. A Tribunal, as has been held in the case of Sudhakar Mukherjee Vs. Gofur Sheikh and Others, , is a Court of Appeal, apart from section 151 of the Code, has power to grant a temporary injunction for the ends of justice by the exercise of its inherent power. But, where the Tribunal has failed to exercise a judicial discretion and has acted illegally in exercise of jurisdiction in granting a temporary injunction the order is liable to be set aside. The findings as mentioned hereinbefore appear to be obiter having regard to the fact that it has been held in the cast of Sm. Indira Debi and Another Vs. State of West Bengal and Others, that the exercise of inherent jurisdiction by the Tribunal was illegal. In that case an authority, u/s 53 of the Act, wanted to rectify certain alleged interpolation in certain record-of rights and wanted to perform that, in exercise of the inherent powers under the CPC and in fact for that purpose, the aid of section 151 of the CPC was invoked. It has been held that a quasi judicial Tribunal could not claim or exercise an inherent power of a Civil Court, unless a statute confers all the powers of Civil Court on such a Tribunal. It has also been held that such a Tribunal could not be equated to a Civil Court, except on authority of law, and unless therefore, a statute confers upon such quasi judicial Tribunal, all the powers of a Civil Court either expressly or by implication, the inherent powers of Civil Court could not be exercised by such Tribunal. When in a case of this nature the statute has clearly provided for revision of the record-of-rights for any reasons whatsoever, even after final publication of such records, I

should hold that the Tribunal had no authority to exercise the inherent powers of Civil Court to rectify a mistake in the record-of-rights in complete disregard of the provisions of section 44(2a) of the Act.

12. Mr. Mitra, appearing for the Respondent Nos. 1-5 contended that section 151 of the CPC has application in the present case since by notification No. 340L Reg. dated 9th June 1958, the State Government has conferred all the powers of Civil Court under the CPC upon (1) all Settlement Officers, (2) all Assistant Settlement Officer, (3) all Compensation Officers and (4) all Revenue Officers. Although Mr. Mitra made a reference to the said notification, yet inspite of repeated opportunities being given to him he could not produce the same and in fact for the purpose of affording him the said opportunities to produce the said notification, the delivery of this judgment had to be deferred from 15th January, 1976. In support of his contentions Mr. Mitra of course relied on the case of Tarak Chand vs. Satayanarain Singh, 1975 (2) C.L.J. 246, where Chitiatosh Mukherjee J, speaking for the Court, has simply referred to a notification to the above effect. In that case, their Lordships were considering the question of the effect of incorporation of section 57B(2), as introduced by West Bengal Estates Acquisition (2nd Amendment) Act 1973, the subject matter of the said amendment and how far the same had succeeded in ousting the jurisdiction of Civil Courts. In the case of Indira Debi vs. State (supra), it was decided that unless statute confers upon quasi-judicial tribunals all powers of Civil Court, inherent powers cannot be used by them. In view of the above and more particularly in view of the absence of any evidence about the said notification or any provision showing that such Tribunals, as in the instant case, are clothed with the power of "Review" under the Act, I think I am bound by the said Bench decision of this Court in Indira Debi vs. State (supra) and the more so when the said determination is on the point of the Tribunals' power u/s 151 of the Code of Civil Procedure. I am further of the view that a power of review is not ordinarily inherent in any authority. The moment a right to decide is exercised, the authority becomes functus officio, except for the matter of grave clerical error, or mistake committed by it, for which the authority is responsible. There is, therefore, no inherent power to review apart from the statute except to correct its own mistake. No authority, as in the instant case, can ordinarily claim even by implication, a power to revise its own order. It is purely a question of statute, and in the absence of any specific provision clothing such authority, to review its own order, there cannot be a valid review of the order. I am also of the view that on the facts as disclosed, the present case would not also come under the exceptions as mentioned above.

13. Even apart from the above determination, in view of the fact that the lands in the instant case, were admittedly treated to be vested without adhering to the provisions of section 10(2) of the Act, the application should succeed, not only on that point but also on the points as indicated hereinbefore and as such, the Rule is made absolute. But there will be no order for costs. I further make it clear that this will not preclude or prejudice the respondents from proceeding afresh, in the matter of initiating proceeding u/s 44(2a) of the Act, in accordance with law or to

have the lands in question vested by virtue of the powers conferred under the Act itself, after giving due notice to the petitioners, if such right is available to the Respondents and is not otherwise barred. Let appropriate writs be issued directing the respondents not to act on the basis of the impugned proceeding or to give any effect or further effect to them or from acting on the basis of the orders passed therein.