

(2002) 09 CAL CK 0045
In the Calcutta High Court

Case No : Full Bench Reference No. 1 of 1984 with F.M.A. No. 471 of 1978

Atul Chandra Mahato and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 11-09-2002

Acts Referred:

Land Acquisition Act, 1894 — Section 10

West Bengal Estates Acquisition Act, 1953 — Section 39(1), 4(1), 44(2), 44(3), 47

West Bengal Estates Acquisition Rules, 1954 — Rule 26, 6

Citation : AIR 2003 Cal 73 : (2003) 1 CALLT 114

Hon'ble Judges : Tarun Chatterjee, J;Asit Kumar Bisi, J;Arun Kumar Mitra, J

Bench : Full Bench

Advocate : Bhaskar Ghosh, Bimal Kumar Chatterjee and Amarta Ghosh, for the Appellant;Balai Lal Sahoo, Sourav Prasanna Mukherjee and S.P. Roy for Respondent Nos. 4 to 8, Rabi Lal Moitra, A.N. Banerjee and Zialul Islam, for the Respondent

Judgement

A.K. Bisi, J.—In F.M.A. No. 471 of 1978 a Division Bench of this Court has recommended to the Hon''ble Chief Justice to constitute a Full Bench of 5 Judges for deciding the following question:

"Whether or not, a transferee after the date of vesting under the West Bengal Estates Acquisition Act, is entitled to a notice for a proceeding u/s 44(2a) of the said Act."

2. However, the Hon''ble Chief Justice has constituted this Special Bench of three Judges. After the constitution of this Bench we wanted to send the reference back to the Hon''ble Chief Justice for constituting a Full Bench of 5 Judges. At the time of hearing, the learned counsel for the parties submitted before us that this Special Bench as constituted by the Hon''ble Chief Justice can dispose of the matter by answering the same as the Division Bench by mistake instead of sending the aforesaid question to be answered by a Special Bench has recommended a Full Bench of 5 Judges when there was a difference of opinion

between two Division Benches of this Court. Such being the stand taken by the parties, we decided to answer the question posed by the Division Bench in its order dated 15th of February, 1984 passed in FMA No. 471 of 1978.

3. Before we proceed to take up the question for decision, we may briefly state the facts arising out of FMA No. 471 of 1978, which was preferred by the appellants/petitioners.

4. The said appeal arose out of the judgment passed on a writ petition made by the appellants/petitioners before this Court inter alia challenging the ex parte order dated April 30, 1973 passed in a suo motu proceeding u/s 44(2a) of the West Bengal Estates Acquisition Act, 1953 (in short "the Act") in case No. 7404. According to the appellants/petitioners, they purchased the lands in question from one Kishori Mohan Bandopadhyay sometime on 20th February, 1973 and after the purchase, they owned and possessed the said lands. Prior to the said transfer the said Kishori Mohan had been in Khas possession of the said lands. Further case of the appellants/petitioners is that the lands originally belonged to one Gostha Khatua and after his demise the properties were owned and possessed by his widow Smt. Monorama Khatua who transferred the lands in question to Kishori Mohan. As alleged by the appellants/petitioners, the respondent Nos. 4 to 8 made an application before the Revenue Officer for correcting the entries in the finally published record of rights in respect of the said lands claiming themselves to be bargadars under the said Monorama and sought their names to be recorded as bargadars in the finally published revisional record of rights. Thereafter the concerned Revenue Officer initiated suo motu proceeding u/s 44(2a) of the Act. In the said proceeding neither the appellants/petitioners nor their vendor had been impleaded but the notice was served on Smt. Monorama Khatua and on the basis of her concession the said suo motu proceeding was concluded and the entries in the record of rights were corrected and the names of respondent Nos. 4 to 8 were recorded as bargadars. The appellants/petitioners came to know about such adjudication which was made ex parte whereupon they made an application for review of the said order of the Revenue Officer and after hearing the appellants/petitioners and the objectors namely respondent Nos. 4 to 8 the order was cancelled and the earlier entries in the said records of rights were restored. Against the said order of review the respondent Nos. 4 to 8 preferred an appeal u/s 44(3) of the Act before the learned tribunal and the appeal was disposed of by the tribunal inter alia on a finding that the Revenue Officer had no jurisdiction to review his order. Subsequently, the appellants/petitioners preferred an appeal u/s 44(3) of the Act against the original order of adjudication passed in the said suo motu proceeding but the said appeal was not entertained as being time barred.

5. Thereafter the appellants/petitioners moved a writ application before this Court assailing the adjudication of the Revenue Officer and a rule being C.R. 5574(W) of 1974 was issued by this Court. The Rule was discharged on the ground that as the tribunal was not inclined to condone the delay u/s 5 of the

Limitation Act there was no question to think that the Tribunal had come to the conclusion not warranted in the relevant evidence available before the tribunal. It was the contention of the appellants/petitioners that being subsequent purchaser after the date of vesting of the disputed land they were entitled to get a notice of the said suo motu proceeding and the ex parte adjudication made in such proceeding without serving any notice on them was illegal. As noted herein earlier, the question arose for determination as to whether the appellants/petitioners were entitled to get a notice of the proceeding u/s 44(2a) of the Act or not. The Division Bench in F.M.A. No. 47 of 1978, while referring the matter to the Hon"ble Chief Justice for constituting a larger Bench, observed as follows:

"We are inclined to hold that the appellants/petitioners having purchased the disputed properties after the date of vesting are vitally interested in any adjudication u/s 44(2a) of the West Bengal Estates Acquisition Act relating to the said lands. But in view of the Division Bench decision made in Pijus Kanti Roy's case this appeal cannot be disposed of by deciding the said question."

6. In view of the above, the Hon"ble Chief Justice has constituted this larger Bench and accordingly this matter was heard by us in presence of the learned counsel for the parties and the question that has been referred to us is being answered in the manner indicated hereinafter.

7. In the case of State of West Bengal v. Pijus Kanti Roy reported in 79 CWN 556 at page 560 (para 10) the Division Bench comprising S.P. Mitra, C.J. and S.K. Datta, J. (as their Lordships then were) held as follows:

"In exercising jurisdiction under Sub-section (2a) of Section 44, the Officer especially empowered is to take into consideration the state of affairs as existing on the date of vesting which is the point of time relevant for the purpose. "Persons interested" who are entitled to notice of proceeding under the said sub-section accordingly must be the persons who were interested in the land or tenancy at the material point of time i.e. date of vesting and the said Officer is not required under the relevant provisions to take into consideration any transfer of property subsequent to the relevant date. Accordingly the subsequent purchasers claiming to be purchasers of the interest of the persons interested on the material date In respect of the land or tenancy in dispute, are thus not entitled to any notice, as they are not interested on the relevant date."

8. Under Sub-section (2a) of Section 44 of the Act as amended up to date an officer specially empowered by the State Government may, on application within 9 months, or of his own motion within fifty years from the date of final publication of the records of rights or from the date of coming into force of the West Bengal Estates Acquisition (second amendment) Ordinance, 1957, whichever is later, revise an entry in the record finally published in accordance with the provisions of Sub-section (2) after giving the persons interested an opportunity of being heard and after recording reasons therefore. It Is to be noted in this context that the time limit for taking action suo motu by the Officer

pecially empowered was extended to different periods by different amending Acts and at present the time limit is a period of fifty years as amended by Section 2 of the West Bengal Estates Acquisition (Amendment) Act, 1997.

9. Now the question to be decided in the instant reference case is whether a transferee after the date of vesting under the Act can come within the category of "persons interested" as envisaged under Sub-section (2a) of Section 44 of the Act. If a transferee after the date of vesting under the Act can be treated as a person interested within the meaning of Sub-section (2a) of Section 44 of the Act, he is entitled to a notice for a proceeding under the said provision of the Act. As noted hereinbefore, in *State of West Bengal v. Pijus Kantt Roy* (supra), the Division Bench held that the persons interested who were entitled to notice of the proceeding under the said sub-section must be the persons who were interested in the land or tenancy on the date of vesting and the subsequent purchasers claiming to be purchasers of the interest of the persons interested on the date of vesting in respect of the land or tenancy in dispute would not be entitled to any notice of the proceeding under the said sub-section. In other words as per decision of the Division Bench made in the said case of *State of West Bengal v. Pijus Kantt Roy* (supra) a transferee after the date of vesting under the Act is not entitled to a notice for a proceeding u/s 44(2a) of the Act.

10. Mr. Bhaskar Ghosh, the learned advocate for the appellants/ petitioners has submitted that the entire scheme and purpose of the Act is not only to provide for the State Acquisition of estates as mentioned in the preamble of the Act but also to provide for compensation for the vested land under chapter-III of the Act and to prepare and maintain the record of rights and revise and correct or modify the same in order to represent the existing state of affairs incorporating all changes which occurred in any tenancy since the last preparation of the draft or finally published record of rights due to inheritance, succession, transfer or otherwise as per the procedure contained in Schedule B appended to the West Bengal Estates Acquisition Rules (hereinafter referred to as the Rules).

11. u/s 39(1) of the Act the State Government may, for carrying out the purposes of the Act, direct:- (a) preparation of the record of rights, or (b) revision of the record of rights prepared and finally published under Chapter X of the Bengal Tenancy Act, 1885 in respect of any District, or part of a District. Mr. Ghosh the learned advocate for the appellants/ petitioners has drawn our attention to different provisions of the Act and the Rules. He has referred to Section 44(1) of the Act which provides detailed procedure for publication of draft of the record prepared or revised in the prescribed manner and receipt and consideration of any objection to any entry therein by the Revenue Officer. Section 4(2) of the Act prescribes procedure for final publication of the record of rights.

12. Section 44(2a) of the Act, as already referred to, empowers the Officer concerned to revise any entry in the record finally published on an application or suo motu within the prescribed period referred to therein after giving the persons

interested an opportunity of being heard.

13. Section 47 of the Act lays down provision for modification of the finally published record of rights.

14. Mr Ghosh has drawn our attention to the aforesaid sections of the Act and the relevant Rules particularly Rule 25 which deals with the procedure of preparing or revising a record of rights in the manner described in Schedule B appended to the Rules. He has argued that the relevant provisions of the Act and the Rules clearly indicate that the words "persons interested" as used in Section 44(2a) of the Act include the persons who acquired interest in the land either due to inheritance, succession, transfer or otherwise and in any proceeding under the said sub-section such person is to be given an opportunity of being heard. He has further argued that a person who has acquired interest in respect of any retained land from any intermediary or a raiyat will be vitally affected if any proceeding is taken and order is passed under the Act in absence of such person and such person will not be in a position to show that his predecessors In interest had valid title to convey.

15. Mr. Balai Lal Sahoo, the learned advocate appearing for private respondent Nos. 4 to 8 has opposed the contentions raised by Mr. Ghosh on behalf of the appellants/petitioners and submitted that the whole purpose of the Act was for acquisition of estates and vesting of rights of intermediaries in the State on and from the date of vesting and as such preparation and revision of record of rights are to be carried out keeping in view of the said purpose of the Act. He has further argued that the provision of Section 44(2a) of the Act cannot go beyond the scope of the Act and the Rules. He has drawn our attention to preamble of the Act and also to Section 4(1) which provides for issuance of notification relating to vesting of estates and rights of intermediaries in the State free from all encumbrances. He has further drawn our attention to Section 5 of the Act which, deals with the effect of notification. It is contention that the whole purpose of the Act is the purpose of acquisition of estates and rights of intermediaries by issuance of notification on and from the date of vesting and that being so, the date of vesting is the relevant date of judging the rights of the parties under the Act. He has referred to the decision in the case of Collector of 24-Parganas v. Life Insurance Corporation of India reported in Collector of 24-Parganas Vs. Life Insurance Corpn. of India, wherein at page 167 (para 2) a Division Bench of this Court held that the record of rights which was prepared under the Act was for carrying out the purposes of the Act and the purposes of the Act, primarily, at least had reference to the date of vesting which was the relevant date for Judging the rights of the parties under the Act. Mr. Sahoo has submitted that the Division Bench correctly laid down the law in State of West Bengal v. Pijus Kanti Roy (supra) wherein it had been held that the subsequent purchasers after the date of vesting would not be entitled to any notice of a proceeding u/s 44(2a) of the Act.

16. Mr. Rabi Lal Moitra the learned Government Pleader appearing for the State

respondents has supported the above noted contentions made by Mr. Sahoo and submitted that the transferee after the date of vesting was not entitled to a notice of any proceeding u/s 44(2a) of the Act. The submissions made by Mr. Moitra are more or less identical with the submissions made by Mr. Sahoo. Mr. Moitra has referred to the decision of the Supreme Court in the case of State of West Bengal Vs. Atul Krishna Shaw and Another, and another decision of the Supreme Court in the case of State of West Bengal and others Vs. Suburban Agriculture Dairy and Fisheries Pvt. Ltd. and another, in support of his contentions with regard to the purpose and object of the Act. He has further argued that the post-vesting transferee cannot acquire a legal right since by operation of Section 4 or Section 5 of the Act the right, title and interest of the intermediaries vested in the state and subsequent transferees after the date of vesting cannot derive any valid title from their vendors.

17. After hearing the learned advocates for the parties and considering the relevant provisions of the Act and the Rules we find that the contentions raised by Mr. Ghosh on behalf of the appellants/petitioners are of considerable force. None of the two decisions of the Supreme Court reported in State of West Bengal Vs. Atul Krishna Shaw and Another, and State of West Bengal and others Vs. Suburban Agriculture Dairy and Fisheries Pvt. Ltd. and another, as cited by Mr. Moitra on behalf of the State respondents renders any assistance to the respondents since the aforesaid two decisions of the Supreme Court in no way relate to the point of law involved in the instant reference case. True, the record of rights must have reference to the state of things as it existed on the date of vesting as enunciated by the Division Bench of this Court in the case of Collector 24-Parganas (supra) cited by Mr. Sahoo. But the said decision does not relate to a case dealing with the question as to whether a post-vesting transferee is a "person interested" within the meaning of Section 44(2a) of the Act and the observations made in the aforesaid decision do not at all indicate that the sole purpose of the Act is to judge the rights of the parties under the Act only on the date of vesting and not beyond that. As per Rule 6 of Schedule "B" relating to attestation a proclamation shall be published before the attestation begins. It provides inter alia as follows:

"A proclamation shall also be published before attestation begins in the village giving due notice to the landlords and tenants and calling on them to appear before the Revenue Officer on the date fixed, with relevant documents in support of their title and possession. The proclamation shall also specify that all persons who have derived or lost interest in any khatian should invariably be present at the time of attestation and that all changes which occurred in any tenancy since the last preparation of the draft or finally published record of rights due to

(a) inheritance, succession, transfer or otherwise:

(b) Amalgamation or subdivision of tenancies:

(c) surrender or abandonment or tenancies:

(d) new settlement: or

(e) any other reasons

shall be brought to the notice of the Revenue Officer. As each person appears before him the Revenue Officer shall examine his khatian, read out all the entries, make corrections where required, and see that the khaitan is complete in all particulars. Disputes regarding the ownership of land, or the ownership of any interest in land, shall be decided by the Revenue Officer in a summary manner and on the basis of present possession or possession during the agricultural year preceding the year in which the date of vesting u/s 4 of the Act falls where notification under that section has been issued."

18. The above Rule makes it manifestly clear that the proclamation must specify that all persons who have derived or lost interest in any khatian should invariably be present at the time of attestation and that all changes which occurred in any tenancy since the last preparation of the draft or finally published record of rights due to inheritance, succession, transfer or otherwise or other reasons as already indicated must be brought to the notice of the Revenue Officer. We respectfully point out that the Division Bench which decided the case of *State of West Bengal v. Pijus Kanti Roy* (supra) did not take into consideration all the relevant provisions of the Rules relating to preparation of the records under Chapter-V of the Act and appendix "B" of the said Rules. This aspect of the matter had clearly been pointed out by the Division Bench comprising Chitotosh Mookerjee, J. and Bankim Chandra Roy, J. (as their Lordships then were) in the case of *Monoranjan Belthoria and Anr. v. Deputy Commissioner of Purulia and Ors.*, reported in 1979(1) CLJ 557 at page 564 (para 11). The Division Bench further observed as follows:

"In case revision is made of the Record-of-Rights previously published in Chapter X of the Bengal Tenancy Act, no fresh enquiry regarding the details indicated in Rule 6 would be necessary if they are found to be correct on the basis of present and actual possession or possession during the period stated above where notification of vesting u/s 6 of the Act has been issued. There is no reason why different standard should be applied at the stage of revision of records u/s 44(2a) to deny right of hearing to persons interested at the stage of revision u/s 44(2a) of the West Bengal Estates Acquisition Act."

19. Section 5A of the Act deals with restriction on certain transfers effected between 5th May, 1953 and the date of vesting. If after an enquiry u/s 5A of the Act the State Government finds that such transfer was not bona fide the same shall stand cancelled. As per proviso (i) of subsection (5) of Section 5A of the Act no order can be passed in any enquiry held under the said section except after giving the transferor and the transferee an opportunity of being heard. As per Clause (iv) of Sub-section (7) of Section 5A of the Act the transferor and the transferee include successors in interest of a transferor or a transferee. Since an order for cancellation of transfer as contemplated under Sub-section (2) of

Section 5A of the Act would affect the intermediary and the transferee to whom the former might have made a transfer between the 9th May, 1955 and the date of vesting, both are entitled to get opportunity of hearing in a proceeding u/s 5A of the Act.

20. Section 44(2a) of the Act has not defined the expression "persons interested" who shall be given opportunity of being heard before an entry in the finally published record of rights is revised. The record of rights prepared or revised under the Act contains the particulars mentioned in Rule 26. In the case of Monoranjan Belthoria (*supra*) at page 562-563 (para 8) the Division Bench of this Court pertinently observed as follows:

"It is undisputed that the record of rights prepared under the West Bengal Estates Acquisition Act contain entries not only in respect of proprietors, tenure-holders, raiyats and under-raiyats but also in respect of persons who are not intermediaries and whose interests on land are not liable to vest. In a given case a revision of the record of rights may also affect the later category of persons. Therefore, the expression "persons interested" appearing in Section 44(2a) obviously means persons who are interested in respect of any of the entries made in record of rights and which is proposed to be revised either suo motu or upon an application made within the prescribed time. These different entries inter alia record not only the name and status of the tenant but also the name of the landlord, rent payable, conditions and incidents appertaining to such rights like pasturage, forest rights, fishing rights etc., rights and obligations of tenant, special conditions and incidence, easement rights etc. Therefore, before altering any of these entries the Revenue Officer who exercises quasi-judicial powers is bound to hear the persons who would be affected by revision of the entry or entries concerned. The expression "persons interested" u/s 44(2a) clearly mean those whose interests would be affected by proposed revision. The expression "persons interested" appearing in Section 10 of the Land Acquisition Act by various judicial decisions has been interpreted to include those who are interested in the property. The Supreme Court in *Raj Lakshmi Dasi and Others Vs. Banamali Sen and Others*, , held that the mortgages were within the definition of the said phrase "persons interested" u/s 10 of the Land Acquisition Act. Similarly, the expression "persons interested" in Section 44(2a) of the West Bengal Estates Acquisition Act, in our view, should mean the person having been present interest so far as known to the Officer exercising his powers u/s 44(2a). We have already stated that the power u/s 44(2a) of the West Bengal Estates Acquisition Act is a quasi- judicial one. u/s 44(4) every entry in the records has a statutory presumption of correctness. Therefore, an entry made in the record of rights may affect claims and contentions relating to the property in question. We should avoid an interpretation of the expression "persons interested" which may result in shutting out the persons having present interest for a property from being heard at the stage of revision of the records and at the same time there would be a presumption of correctness of the said entries as against them."

21. We respectfully agree with the views expressed in the case of Monoranjan Belthoria (supra) as quoted hereinabove. If it is held that the expression "persons interested" means only those persons who had interested in the land or tenancy on the date of vesting and the said expression does not include subsequent purchasers after the date of vesting, that would be contrary to the principles of natural justice.

22. In our view, the intention of the Act and the Rules in the matter of preparation or revision of the records is to give opportunity to the persons interested including the subsequent purchasers who have acquired interest in the land or tenancy after the date of vesting. The expression "persons interested" is used in Section 44(2a) of the Act with intention to give opportunity of hearing to all interested persons. We may refer to Sub-section (3) of Section 44 which lays down that any person aggrieved by an order passed in revision under Sub-section (2a) may appeal in the prescribed manner to a tribunal appointed for the purpose of this section. Use of the expression "any person aggrieved" in Sub-section (3) of Section 44 is significant as well. It is preposterous to argue that a post vesting transferee purchases a property subject to the risk of revision of the record of rights in respect of such property and therefore, he should not be given an opportunity of hearing before such record is revised to his detriment.

23. For the reasons as aforesaid we are of the view that in a proceeding u/s 44(2a) of the Act opportunity must be afforded to a subsequent transferee after the date of vesting to vindicate his claim of ownership and possession and to establish what was the true state of things at the time of vesting. It may so happen that a post vesting transferee fails to prove in a proceeding that his predecessor in interest had valid title and possession in respect of the land in question at the relevant time. At the same time a post vesting transferee who has purchased the land retained by the intermediary within the prescribed ceiling after the date of vesting and acquired valid title and lawful possession in respect thereof can establish his claim in a proceeding u/s 44(2a) of the Act. If the said post-vesting transferee is deprived of opportunity of hearing in a proceeding u/s 44(2a) of the Act and debarred from making submissions to justify his claim over the property in such proceeding, it would be tantamount to violation of the redeeming principles of natural justice which are running like golden thread in the web of system of justice.

24. In Smt. Gunwant Kaur and Others Vs. Municipal Committee, Bhatinda and Others, , it was urged on behalf of the Municipal Committee, Bhatinda before the Supreme Court that the appellants purchased the land claimed by them after notification u/s 4 of the Land Acquisition Act was issued and they had no right to challenge the issue of the notification. In the said case at page 805 (para 17) the Supreme Court observed as follows:

"It was urged by Mr. Hazarnavis on behalf of the Municipal Committee. Bhatinda. that the three appellants were purchasers of the lands claimed by them after the notification u/s 4 was issued and they had no right to challenge the issue of the

notification. If, however, the notification u/s 4 was vague, the three appellants who are purchasers of the land had title thereto may challenge the validity of the notification. The appellants have spent in putting up substantial structures" considerably sums of money and we are unable to hold that merely because they had purchased the lands after the issue of the notification u/s 4 they are debarred from challenging the validity of the notification, or from contending that it did not apply to their lands."

25. In *Shantiniketan Society and Another Vs. State and Others*, the Division Bench of this Court held that the decision of this Court in the *State of West Bengal v. Pijus Kanti Roy* (supra) had not considered the vital aspect of the matter and in particular the interpretation of the words in "persons interested" could not be said to have laid down the law in absolute terms.

26. Having regard to the above principles of law and the relevant provisions of the Act and the Rules, we are clearly of the view that a transferee after the date of vesting under the West Bengal Estates Acquisition Act is entitled to a notice for a proceeding u/s 44(2a) of the said Act.

27. For the foregoing reasons we are unable to agree with the law laid down by the Division Bench in *State of West Bengal v. Pijus Kanti Roy* (supra). We express our agreement with the view of the Division Bench reflected in *Monoranjan Belthoria* (supra). The question referred to by the referring Division Bench of decision is, therefore, answered in the following manner;

"A transferee after the date of vesting under the Act is entitled to a notice of a proceeding u/s 44(2a) of the Act."

The reference case is accordingly disposed of. Let the matter be placed before the appropriate Division Bench for final disposal.

Xerox certified copy of this judgment, if applied for, be given to the learned advocates for the parties as expeditiously as possible.

T. Chatterjee, J.

28. I agree.

A.K. Mitra, J.

29. I agree.