
(2001) 01 CAL CK 0017
In the Calcutta High Court
Case No : C.O. No. 10717 (W) of 1992

Badal Chandra Jana

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 24-01-2001

Acts Referred:

Bengal Wakf Act, 1934 — Section 112, 112(3), 46A

Citation : (2001) 2 ILR (Cal) 350

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : J.N. Maity and Monoranjan Jana, for the Appellant; Z. Alam, for Wakf Board, Sharda Parmer, for the Respondent

Final Decision : Dismissed

Judgement

Amitava Lala, J.—By this writ petition, the petitioners wanted to obtain a Writ in the nature of Mandamus, Prohibition, Certiorari and other orders in respect of the relief?s including quashing the impugned notices under Annexures- "H", T, and "K" to the writ petition and also other incidental prayers arising out of certain immovable properties including the determination of the rayati rights of the Petitioners. In fact, the Petitioners challenged the notice of the concerned Block Land & Land Reforms Officer under Annexure- "K" to the writ petition by which the Block Land & Land Reforms Officer called upon the Petitioners to place their case by confronting with the final determination of the Commissioner of Wakfs, West Bengal dated November 25, 1991.

2. Learned Counsel appearing for the Respondents raised a preliminary objection by saying that stage of the notice is no more existence in view of hearing and final order being passed which has not been challenged before this Court. To that, Mr. Maity, learned senior Counsel in support of this writ Petitioners contended that until and unless a copy of the order is obtained, there is no scope to challenge such order or orders.

3. Firstly, good, bad or indifferent no challenge has been thrown as regards finalisation of the issue on the basis of the order passed by the Block Land & Land Reforms Officer. Secondly on the other hand, the Petitioners under this writ petition challenged certain notices of the Commissioner of Wakfs, West Bengal, under Annexures- "H" and T basically taking the point that the Commissioner of Wakfs, West Bengal, has no authority to issue such notices since the property does not belong to the Wakfs at all. Therefore, according to them, notice of the Block Land & Land Reforms Officer based on such notices and result of proceeding before the Commissioner of Wakfs, West Bengal has to be declared bad irrespective any result based on such notice and proceeding.

4. Mr. Maity, learned senior Counsel appearing on behalf of the Petitioners has made two fold submissions in this respect. One is that when by virtue of The West Bengal Estates Acquisition Act, 1953, the right of the intermediary, if any, has been extinguished the Petitioners being the holders of the Agricultural Land become direct tenant under the State. Other point is that the property is not at all the property of the Wakfs since the same was not formed on the basis of the appropriate sanction of the Mohammedan Law. To that extent, he has drawn my attention to Sections 186 and 187 of the Mohammedan Law which prescribe that a Wakf Deed has to be registered for the purpose of existence of a Wakf.

5. It has been opposed by the Learned Counsel appearing on behalf of the Respondent No. 9 by saying that as per Section 186 of the Mohammedan Law the Wakf by immemorial user for a religious purpose can also be construed as Wakf. No matter whether the same has been registered or not. According to him, the interpretation u/s 188 of the Mohammedan Law, the "immemorial user" has been defined separately by separating such purpose from the registration which gives definitely separate identity to that extent for using of the Wakfs property.

6. Basically, the Petitioners have proceeded with certain records of right and according to them, such records of right expressly or impliedly have shown that they are the occupiers of the lands as tenants. Since the right of intermediary has been extinguished by the operation of law, they have become the tenants under the State. But it is to be remembered that the records of right cannot give the title of a property. The title will come out from the document or from an interpretation of a court. Such court, obviously, means civil court or any appropriate forum in connection thereto but not the writ court.

7. In the instant case, it has been pointed out by the Learned Counsel for the Respondents that their case is a Sale Deed was executed in between the original owner or in favour of the Petitioners which speaks (sic), (permanent settlement) which is not less than the Sale Deed. Since neither the Mutwali nor anybody else without the appropriate permission of Wakf can do so, the title cannot pass in favour of the Petitioners in the manner as proposed. In any event, Mr. Maity, learned senior Counsel appearing in support of the Petitioners contended before this Court that such (sic), (permanent settlement) as prescribed under the Sale Deed cannot be construed as a sale at all. Such permanent settlement cannot be

converted into a sale to destroy the right of the Petitioners which, in fact, accrued by the operation of law as raiyat.

8. In any event, the document being the title deed may or may not be a Sale deed but such declaration, in any event, cannot be made by the Writ Court. In such circumstances if this Court declares the rayati right ignoring any declaration in respect of the title, it will be as good as putting the cart before the horse and the jurisdiction of the writ court cannot be used in the manner as proposed.

9. Mr. Maity, learned senior Counsel for the Petitioners, further submits before this Court that since the Petitioners are the occupiers of the lands for about 40 years, they have a right of adverse possession. If it is so, then from the submission of Mr. Maity himself it appears that such question has to be decided by an appropriate Civil Court and not by the Writ Court. In any event, the Writ Court has no authority to form an opinion as regards right of adverse possession too.

10. Further, submission which has been made by the Learned Counsel for the Respondents in respect of the jurisdiction of the Commissioner of Wakfs, West Bengal which has been opposed by Mr. Maity, this requires certain clarification by this Court. Mr. Maity, learned senior Counsel for the Petitioners has rightly pointed out that by virtue of The Wakfs Act, 1995 (The Indian Parliament Act 43 of 1995) being the Central Act has now come into force prevailing over the previous existing Act. In respect of any Wakf property. The Bengal Wakfs Act, 1934 cannot have any existence in view of Section 112 of the same. A portion has been incorporated u/s 112(3) of the said Act which says in exercise of the powers conferred by or under this Act as if this Act was in force on the day on which such things were done or action was taken.

11. There is nothing in giving any implied retrospective effect about the application. in this respect, respect. According to him, there is a provision for formation of a Tribunal under the new Act which has not been formed as yet. On the other hand, the said Act specified that the Civil Court has no jurisdiction in respect of this matter. As per Chapter-IV of the Bengal Wakfs Act, 1934, until and unless a Wakf is properly created by way of enrolment application, no question including the question whether a particular property is a Wakf property or not can be decided by the Commissioner of Wakfs, West Bengal.

12. The Learned Counsel for the Respondents contended before this Court that u/s 46A of the Bengal Wakfs Act, 1934 no question as to whether a particular property is a Wakf property or not and whether the Wakf is other than Wakfs-al-al-aulad or out, it can be decided by the Commissioner of Wakfs, West Bengal, itself unless the removal revocation or modification by the competent authority shall be final.

According to Mr. Maity, since there is a bar in respect of the Civil Court jurisdiction not only in respect of such new Act but also the West Bengal Land & Land Reforms Act which is now the comprehensive Act in respect of the land-in

question in all respect, the writ jurisdiction is the proper jurisdiction for the purpose of invocation in respect of determination of the right of the Petitioners in this respect.

13. According to me, so far as The West Bengal Land & Land Reforms Act alone is concerned, I do not want to say anything more but to accept Mr. Maity's submission. If there is a case in respect of the record of rights simpliciter or in the nature thereof which is not involving the title at all, the same definitely can be decided by the Writ Court by invoking the jurisdiction of the same. But if there is any controversy as to the title, in such a case the writ jurisdiction cannot be invoked as proposed by Mr. Maity in this respect.

14. According to me, the records of right cannot govern the title but the title can govern the records of right. As a result whereof the same cannot be decided by the writ court being a fact finding Court. Therefore, when there is no formation of Tribunal but it has to be decided by the Tribunal instead and place of the same, the existence of Civil Court cannot be a bar more particularly when the Petitioners' case is that the property is not at all Wakf property and cannot go before the Commissioner of Wakfs or the Tribunal to decide the issue in respect of Wakf property.

15. Last but not the least that the Petitioners have invoked the jurisdiction of Commissioner of Wakfs, West Bengal, by making several applications which ultimately resulted to a decision against them. The notice as issued by the Block Land and Land Reforms Officer is the outcome of such decision. Even thereafter proceeding was initiated there and final order was passed. Therefore, the notices either by the Commissioner of Wakfs or by the Block Land & Land Reforms Officer cannot be challenged in this writ jurisdiction. These have reached finality. Even thereafter suggestion of the Respondents to go before the Civil Court to get declaration of title has to be counted as fair suggestion as regards life of the controversy as such accepted by this Court.

16. Accordingly, the writ petition is dismissed. There will be no order as to costs.

17. However, this order will not prevent the Petitioners from invoking the appropriate jurisdiction of the Court in this respect as early as possible. The parties shall abide by the result of such proceedings. If such question which has been agitated before this Court, be reinitiated before any of the proceedings, the same will not be hit by the principle of res judicata or analogous thereto or by the law of limitation.

18. Let urgent Xeroxed certified copy of this order, if applied for, be given to the learned Advocates for the parties within 7 days from the date of submitting the requisites.