
(1986) 01 CAL CK 0015
In the Calcutta High Court
Case No : C.R. No. 210 (KW) of 1978

Banamati Mandal

APPELLANT

Vs

O.C. Sonarpore P. S.

RESPONDENT

Date of Decision : 14-01-1986

Acts Referred:

West Bengal Land Reforms Act, 1955 — Section 49

Citation : 90 CWN 732

Hon'ble Judges : S.R. Ray, J

Bench : Single Bench

Advocate : B.C. Mandal, for the Appellant; Diptikana Basu for Respondents Nos. 1 to 5 and 7, for the Respondent

Judgement

S.R. Ray, J.—This Rule at the instance of the writ petitioners is directed against the issuance of three notices, which are annexures A, B and C to the petition issued respectively by the J.L.R.O. Sonarpore and the O/C. Sonarpore Police Station. By the first notice dated January 5 1978 (annexure A) the petitioners were informed that on the complaint of Bhutnath Mandal (respondent no. 8) there would be an on-the-spot enquiry regarding plot no.1119 of khatian no.9 of mouza Tihuria on January 10 1978 and the petitioners were directed to be present with all relevant papers and witnesses. By the second notice dated January 22, 1978 (annexure B) Nirmal Mandal, the father of the writ petitioners was directed to see the O.C. Sonarpore Police Station on the day following, i.e. January 23, 1978 for a discussion over his land dispute with Bhutnath Mandal. By the third and the last notice dated January 26, 1978 (annexure C) the O.C. Sonarpore Police Station directed the village Chdwdikar Bhutnath Rang to go to Nirmal Mandal, the father of the petitioners and ask him to deliver the paddy to Bhutnath Mandal as per direction of the J.L.R.O. The Chowkidar was further directed to caution Nirmal Mandal that in default of delivery of the paddy a case will be started against him. According to the petitioners, the disputed land measuring .33 acres and appertaining to plot no.1119 of khatian no.9 of mouza Tihuria, Police Station Sonarpore in the District of 24-Parganas originally

belonged to late Audacity Mandal, the father of the respondent no. 8 Bhutnath, from whom they purchased the same by a registered kobala dated September 23, 1974 for a consideration of Rs.2,000/- and since then they are in actual physical possession of the land by growing paddy thereon. Their names were duly mutated in the rent roll and they are also paying rents to the State of West Bengal.

2. The respondent no. 8 Bhutnath on December 5, 1976 having illegally taken away the harvested paddy from the disputed land grown by the petitioners, they instituted a suit for damages against him, being Money Suit No. 34 of 1976 in the 2nd Court of the Munsif at Baruipore, which is still subjoined.

3. That in 1384 B.S. also the petitioners cultivated the land with their own plough and cattle and harvested the paddy grown by them.

4. Thereafter, in pursuance of the notice (annexure" A) the petitioners attended the enquiry with all relevant papers. The J.L.R.O. submitted the report of his enquiry to the Block Level Advisory Committee, Sonarpore Development Block. The said Advisory Committee consisting of the B.D.O., J.L.R.O., O/C. Sonar pore Police Station, the local M.L.A. and some members of the local political party i.e., C.P.I.(M).

5. Subsequently, on receipt of the notice (annexure B)

the petitioners saw the O.C. Sonarpore Police Station on January 23, 1978, who without giving any hearing to the petitioners directed them to deliver 1-1/2 maunds of paddy to the respondent no. 8, Bhutnath.

6. This was followed by annexure C the direction to the Chowkidar to which reference has already been made.

7. The petitioners on February 6, 1978 made a written representation to the Block Development Officer, Sonarpore stating all the relevant facts and requesting him not to implement the order of delivery of paddy to Bhutnath. The said representation is annexure "D" to the present writ petition.

8. However, on February 8, 1978 some Constables from Sonarpore Police Station went to the house of the petitioners and threatened them with dire consequences if the paddy was not delivered to the respondent no.8 as directed.

9. Having failed to get relief in any quarter the petitioners invoked the writ jurisdiction of this Court and obtained a rule with interim stay.

10. The case of the contesting respondents, namely, the respondents nos. 1 to 5 and 7 in their affidavit-in-opposition sworn by the respondent no.2, the J.L.R.O. is that the report of the enquiry held by him was placed before the Block Level Advisory Committee duly constituted and the said Committee decided that since the respondent no.8 was a cultivating peasant in respect of the disputed land and since Nirmal Mandal, the father of the petitioners, who purchased the said land, forcibly cultivated it in 1384 B.S. he should give 1-1/2 maunds of paddy to the

respondent no.8 (vide paragraph 7 of the affidavit-in-opposition)

11. In paragraph 11 of the affidavit, it has been stated that "on enquiry it was found that the respondent no. 8 had all along been a cultivator of the disputed land".

12. Mr. Mandal, the learned Advocate, appearing on behalf of the petitioners seriously challenged the aforesaid actions of the respondents as well as of the Advisory Committee as without any authority or jurisdiction and, in my view, rightly.

13. To start with, if the Block Level Land Advisory Committee is not a statutory body, as categorically admitted in paragraph 9 of the affidavit-in-opposition, one may very legitimately question under what authority this Committee took upon itself the responsibility to decide a question regarding possession which only a competent Court can decide on proper evidence. Strangely the Committee failed to appreciate that the net outcome of their whole exercise was to deprive the lawful owners of the property which they acquired from its rightful owner for a valuable consideration.

14. Most unfortunately, the J.L.R.O. embarked into an enquiry regarding possession of the disputed land on an application filed by the respondent no.8 Bhutnath, though it is not clear under which provision of law he did it. Mrs. Basu the learned Advocate representing the respondents nos.1 to 5 and 7 could not also enlighten me on the point. It is further not easy to understand what statutory obligation the J.L.R.O. had to place the report of his enquiry before the Land Advisory Committee, which is not a statutory body. And then again, the strangest part of the show is that the said Committee without any authority whatsoever usurped the functions of the judiciary and held that the respondent no. 8 was actually in possession of the disputed land and the petitioners, the lawful owners having forcibly cultivated the same in the year 1384 B.S. should deliver 1-1/2 maunds of paddy to the said respondent no.8.

15. Incidentally, it may be mentioned here that it is only sub-rule 3(a) of Rule 20A of the West Bengal Land Reforms Rules which has attempted to give some recognition to the Land Reforms Advisory Committee but that is only as regards to the settlement of lands at the disposal of the State Government u/s 49 of the West Bengal Land Reforms Act. Sub-rule 3(a) of Rule 20A of the Rules provide that for the purpose of such settlement the Government authorities in their discretion may consider the recommendations of the Committee. Besides this, neither the statute nor the Rules vest the Advisory Committees with any other authority far less to speak, the authority of a Court of law. Unfortunately, however, these Advisory Committees, which basically are political bodies, seem to be least concerned about any statutory authority being vested in. them and that too in spite of repeated reminders by this Court.

16. In Nihar Bala Giri v. State of West Bengal, 1980 (1) C.H.N. 4 77 it was held in no uncertain terms that the Advisory Committees, which had no statutory

recognition, were incompetent to decide whether a person was a bargadar or not. Similarly, in *Gostha Behari Das and Ors. v. J.L.R.O.* 1981(1) C.H.N. 243 it was held after due consideration of the implications of sub-rule (3a) of Rule 20A of the West Bengal Land Reforms Rules that such Committees had no right authority, jurisdiction and competence to deliberate on the recording of barraters.

17. These observations of the highest Court in the State, however, seems to have had no salutary effect whatsoever on these Advisory Committees which appear to be of the impression that they are inherently the repositories of all powers irrespective of whether any power is vested in them by the statute or not.

18. In the instant case the J.L.R.O. who is also a member of the Advisory Committee, received an application from the respondent no.8, a person without any legal status so far the disputed land is concerned, since his father the real owner of the land had already sold it to the petitioners and decided to hold an enquiry regarding possession. He found that in 1384 B.S. the petitioners had cultivated the land, but according to the Advisory Committee, the petitioners did it by force by ousting the respondent no.8 and, accordingly, directed the petitioners to deliver 1-1/2 maunds of paddy to him. While doing so, the Committee never cared to consider under what right the respondent no.8 was in possession of the land if at all he was in possession. Assuming that he possessed the land at any time, it must have been as an intruder or a rank trespasser and the petitioners were quite within their rights to throw him out and cultivate their own land. It is a fantastic proposition that rightful owners in possession of their own land would have to pay compensation to a rank trespasser. But the Advisory Committee at Sonarpore had its own method of working it only under such a fantastic order but threatened the petitioners through the local police authorities that in default of delivery of the paddy as directed, a case would be started against them. One has to believe that such things do really happen.

19. It is apparently clear that such high-handed actions of the Advisory Committee at the instance of the respondent no.8, a man without any color of title, did not at least emanate from a spirit of doing justice. It need not be emphasized that it was very much to the knowledge of the respondent no.8 that he had absolutely no chance of success in a court of law and that is why he took recourse to this unusual procedure knowing that the Advisory Committee had no obligation to follow the course of law and justice and if duly motivated, any absurd thing could be achieved by their grace.

20. Strangely enough, the respondent no.8 who is vitally interested in the result of this litigation, has very discreetly kept himself away and here we find the State authorities fighting for him and trying to justify an action which has no legal or statutory backing.

21. As already stated that this Court since fairly a long time has been crying its voice hoarse trying to remind all concerned that the Advisory Committee set up at the Block Level under orders of the Board of Revenue, are not statutory bodies

and have no right to traverse beyond the very very limited scope of sub-rule (3a) of Rule 20A of the West Bengal Land Reforms Rules. But all these reminders seem to have been in vain. To the contrary these Committees have traveled from power to power and the instant case provides an example how they are now trying to encroach upon the civil rights of the people usurping thereby the functions of a court of law and that too through the machineries of the State agencies including the police. If not so, it is difficult to appreciate how the Sonarpore police could threaten the petitioners to start a case against them in default of delivery of the paddy to Bhutnath Mandal (vide annexure C to the writ petition).

22. Be that as it may, there can be no scope for doubt that the whole of the impugned actions taken against the petitioners through the J.L.R.O. the respondent no.2, are absolutely without jurisdiction and the impugned notices (annexures A, B and C) are without any authority and prima facie bad in law. The said notices are, accordingly, cancelled as prayed for and the respondents are prohibited from interfering with the possession of the petitioners in respect of the land in dispute. The writ petition is, accordingly, allowed on contest against the contesting respondents and the exparte against the rest and the Rule is disposed of.

No order is, however, made for costs.