
(1955) 06 CAL CK 0008

In the Calcutta High Court

Case No : Civil Revision Case No's. 271 to 273 of 1955

Bhowanipur Land Development Concerns, Ltd.

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 14-06-1955

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : 59 CWN 1089

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : Binayak Nath Banerjee in Civil Revision Case No. 273 of 1955 and Chandra Nath Mookerjee in Civil Revision Cases Nos. 271, 272 and 273 of 1955, for the Appellant; Nirmal Chandra Chakravarty, Government Pleader and Smriti Kumar Roy Choudhury, for the Respondent

Judgement

Sinha, J.—These three applications involve a short point of law and have been heard together. The petitioners in these three cases are occupancy raiyats (Raiyat Sthitiban) and their holdings are situated in village Debipur Gurguria, J. L., No. 163 under Police Station Jaynagar, within one of the temporarily settled estates, being lot No. 119, in Pargana Sunderban within Touzi No. 3016 of the Collectorate of 24-Parganas. It is unnecessary to go into the detailed facts of the case. It is sufficient for our purposes to set out some admitted facts which have a direct bearing on the point at issue. The record-of-rights in respect of village Debipur Gurguria where these lands are situated, was finally published in 1933, under the provisions of Chapter X of the Bengal Tenancy Act, 1885, (Act VIII of 1885). It was then revised and finally published in 1943. In the year 1946, settlement operation for preparation of record-of-rights in respect of the said village Debipur Gurguria under the provisions of Chapter X of the Bengal Tenancy Act, 1885, was again started. It is a matter of dispute as to what stage the settlement operation reached, but it is admitted that the final publication was not made u/s 103A(2) of the Bengal Tenancy Act, 1885. This is the position when the West Bengal Estates Acquisition Act, 1953. (Act I of 1954) (hereinafter referred

to as "the Act") came into operation. Thereafter, an order has been passed, purporting to be an order u/s 39(1) (b) of the said Act. It has been published by the Deputy Secretary, Land and Land Revenue Department by order of the Governor of the State of West Bengal in the Calcutta Gazette dated the 5th August, 1954, (Part I pages 2616-7). The relevant part of the order is as follows :

24-Parganas--No. 10880 L. Ref. --20th July, 1954 . In exercise of the power conferred by Clause (b) of Sub-section (1) of Section 39 of the West Bengal Estates Acquisition Act, 1953. (West Bengal Act I of 1954) read with the Rule 26 of the West Bengal Estates Acquisition Rules. 1954, the Governor is pleased, for carrying out the purposes of the said Act, to make this order directing that the record-of-rights prepared and finally published under Chapter X of the Bengal Tenancy Act, 1885. (VIII of 1885). in respect of the District of 24-Parganas, be revised by a Revenue Officer in accordance with the provisions of Chapter V of the said Act and the Rules made in this behalf by the State Government.....

The rest of the notification consists of the particulars to be recorded under sub-section (3) of the said section.

2. In order to discover the defect in this notification, it is necessary to refer to section 39(1) (b) and (4) of the Act which are set out below.

39--Preparation of record-of rights. 1. Subject to the provisions of sub-section (4), the State Government may, for carrying out the purposes of this Act, make an order directing--

(b) that the record-of rights prepared and finally published under Chapter X of the Bengal Tenancy Act, 1885, (VIII of 1885), in respect of any district, or part of a district be revised, by a Revenue Officer in accordance with the provisions of this Chapter and such rules as may be made in this behalf by the State Government.

(4) Where any proceedings in respect of the preparation of record-of rights have been commenced under Chapter X of the Bengal Tenancy Act. 1885, before this Act comes into force and such record-of-rights has not been finally published before such date, any further proceedings required for the completion and final publication of such record-of-rights shall be undertaken in accordance with such rules as may be prescribed. Such record-of-rights shall thereupon be deemed to have been duly prepared and finally published under this Chapter.

3. As I have said above, the notification and order that has been passed, has been passed u/s 39(1) (b). It is obvious that this is a mistake, and the appropriate proceeding to be taken under the circumstances, is under sub-section (4) of section 39. It is an admitted fact that before the Act came into force, proceedings had been taken for the preparation of the record-of-rights under Chapter X of the Bengal Tenancy Act, 1885, but the record-of-rights has not yet been finally published. It is, therefore, incumbent upon the State to proceed to complete such record-of-rights. If the order contained in the

notification mentioned above be literally carried out, then it might mean a revision of the final record-of-rights which had been prepared in 1943. That obviously is not the intention. The learned Government Pleader appearing on behalf of the State has not supported the position that the appropriate order should be u/s 39(1) (b), and conceded that the appropriate procedure would be to proceed under sub-section (4). He has however, argued that for the purpose of proceeding under sub-section (4) of section 39 it is unnecessary to make a specific order or publish it in any notification. He says that the Notification No. 11166 L. Ref. dated the 23rd July 1954, which has been set out in paragraph 8 of the petition has rectified the position. Before I examine that notification I might mention that the Revenue Officers have already proceeded to take steps in pursuance of the Government Notification. The petitioners in these cases have all objected to the procedure which is being actually adopted by them. These objections have been rejected and the reasons for such rejection are contained in Annexure "B" to the petition. It is plain from this annexure that the Officers themselves do not consider that they are acting in pursuance of any order u/s 39(1) (b), but they are acting under sub-section (4) of section 39 and the settlement officer justifies the steps that are being taken towards the final publication of the record-of-rights, in terms of sub-section (4). Coming back to the Notification, dated the 23rd July, 1954, it is plain that it has not rectified the defect in the Notification dated the 20th July, 1954, because it also contemplates the "revision" of the final record-of-rights as mentioned in the Notification, dated the 20th July, 1954. It is obvious therefore that these two notifications taken together contemplate a revision of an existing record-of-rights which has been finally published, whereas the correct procedure under the circumstances is to proceed under sub-section (4) of section 39 and to complete the 1946 record-of-rights and finally publish it. The respondents have therefore taken a completely erroneous step. The result of this defect in the notifications is that the State has empowered the revenue authorities to proceed u/s 39(1) (b), but that they are in fact proceedings under sub-section (4) of section 39, which they have no right to do. The obvious course therefore for Government is to pass appropriate orders so that the matter might proceed under sub-section (4) of section 39 and the revenue officers should be appropriately authorised to do so. Their present actions are not justified by the orders made.

4. The next point that has been agitated before me is as to what steps should be taken under sub-section (4) of section 39. According to Mr. Banerjee, appearing on behalf of the petitioners, all steps have been already completed, excepting the final publication, and therefore nothing remains to be done except the final publication of record-of-rights in the Official Gazette. On the other hand, the learned Government Pleader argues that this is a temporarily settled estate and the steps that are being taken are the appropriate steps to be taken in the circumstances. Upon this point, I am not called upon to give my opinion. It is quite sufficient for my purposes to say that the notifications published are erroneous and to stop any action implementing them. It will therefore be open to

the respondents to proceed in the appropriate manner and to take up the implementation of sub-section (4) of section 39, as may be warranted by law. I say nothing as to the stage at which the settlement proceedings should be resumed for the purposes of publishing the final record-of-rights as is contemplated under subsection (4) of section 39. The learned Government Pleader has also drawn my attention to section 44 and he says that the petitioners might have appealed to the Tribunal mentioned therein. It appears from section 44 that the pre-condition is that the record-of-rights has been prepared or revised. The position here is that a dispute has arisen as to whether it is a case of preparation or revision. In other words, whereas the State has ordered a revision, what it really intended to do and what it must do under the law, is the final preparation of it. Under the circumstances, I think that this is an appropriate case to be dealt with under Article 226 of the Constitution. As a matter of fact, unless the appropriate proceeding is taken now, immense complications will ensue in future, and the acquisition of the lands will be held up for an indeterminate time. It is therefore for the benefit every-body concerned that the matter should be rectified at the earliest stage possible.

5. The result is that these Rules are made absolute and writs in the nature of mandamus are issued directing the respondents not to take steps for the implementation of the notification-mentioned in paragraphs 7 and 8 of the petitions, so far as the petitioners are concerned. They are also restrained from doing so. There would also issue writs in the nature of certiorari setting aside the decisions of the Settlement Officer, 24-Parganas, which are annexed to the petitions, rejecting the objections of the petitioners. This order will not in any way prevent the State Government from taking further steps for acquisition of lands, or for continuing the settlement operation. as they may be entitled to, according to law.

6. There will be no order as to costs. In order to expedite matters and regard being had to the importance of the case, I direct that a copy of this order be furnished to Mr. Smriti Kumar Roy Chowdhury, who appears on" behalf of the State Government, as quickly as it can be prepared.