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(1971) 07 CAL CK 0018

In the Calcutta High Court

Case No : Civil Revn. Case No. 1709 of 1969

Binoy Kumar Saha and Another — APPELLANT

Vs

The Revenue Officer, Malda and Others — RESPONDENT

Date of Decision : 30-07-1971

Acts Referred:
West Bengal Estates Acquisition Act, 1953 — Section 2

Citation : AIR 1972 Cal 458 : 76 CWN 367

Hon'ble Judges : R.N. Dutt, J

Bench : Single Bench

Advocate : Sudhangshu Bhusan Sen and Archana Roy, for the Appellant; Chandidas Roy Chowdhury and Amal Kumar Basu Chowdhury for Opposite Parties Nos. 1 to 4, for the Respondent

Judgement

R.N. Dutt, J.—This Rule is against an order of a Revenue Officer u/s 47 of the West Bengal Estates Acquisition Act directing plots Nos. 215 and 218 of mouza Ghansahar amongst other plots to be recorded as vested in the State.

2. One Bimal Krishna Sanyal, opposite party No. 5, was the owner of these two plots. He was an intermediary within the meaning of the Act. He exercised option u/s 6(5) of the Act, submitted a ''B'' Form statement and he retained plots Nos. 215 and 218. Plott No. 215 has been recorded as a tank with an area of 3.71 acres and plot No. 218 has been recorded as the bank of the tank with an area of 10.37 acres. Some time in 1963 opposite party No. 5 sold these two plots to the petitioners. Some time in 1969 the Revenue Officer started the instant proceeding u/s 47 of the Act but no notice was served on the Petitioners and the instant order was made by the Revenue Officer on May 2, 1969 in the absence of the petitioners. Subsequently, the petitioners filed an application but since the matter had already been disposed of no action was taken thereon. Thereafter the petitioners obtained this Rule,

3. I have said that plot No. 215 is the tank and plot No. 218 is the bank of the tank. These are not agricultural lands. Obviously, opposite party No. 5 retained

these as tank fishery. Mr. Roy Chowdhury who appears for the State submits that the settlement records shows that the water of the tank was used for irrigation purpose and so. these two plots should be held to be agricultural lands within the meaning of the Act This argument cannot be accepted. Agricultural land means land ordinarily used for the purposes of agriculture and horticulture and including such land, notwithstanding that it may be lying fallow for the time being. The tank is obviously not used for purposes of agriculture or horticulture. This may be used for pisciculture; the water may be used for drinking purpose or other purposes and even for irrigation purposes, but that does not make it an agricultural land. The intermediary, who was the owner of these two plots, retained it and included it in the ''B'' Form statement submitted by him and thereafter he sold it to the petitioners. So. there is no justification for the Revenue Officer for directing that these two plots should be recorded as vested in the State.

4. In the result, the Rule is made absolute. The order of the Revenue Officer directing plots Nos. 215 and 218 of mouza Ghansahar to be recorded as vested in the State is set aside.

No order is made as to costs.

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