

(2015) 05 TP CK 0017

In the Tripura High Court

Case No : Regular Second Appeal No. 47 of 2008

Bithika Bose (Sarkar)

APPELLANT

Vs

The State of Tripura and Others

RESPONDENT

Date of Decision : 08-05-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 80

Evidence Act, 1872 — Section 35

Land Acquisition Act, 1894 — Section 30, 54

Citation : (2015) 05 TP CK 0017

Hon'ble Judges : S. Talapatra, J

Bench : Single Bench

Advocate : D.K. Biswas, for the Appellant; P. Datta, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S. Talapatra, J.—This is an appeal under Section 100 of the CPC from the judgment and decree dated 10.06.2008 delivered in Title Appeal No. 10 of 2004 by the Additional District Judge, Court No. 3, West Tripura, Agartala.

2. While admitting this appeal, by the order dated 01.09.2008, the following substantial questions of law were formulated:

"(i) Whether the judgments of the courts below including the judgment of the learned appellate court is or is not in gross violation of the statutory provisions relating to creation of survey plot number in deciding the lis in the suit?

(ii) Whether the judgments of the courts below are perverse to the findings rendered by the Gauhati High Court in its Judgment dated 22.09.1999 passed in MA(F) No. 25 of 1983 and MA(F) No. 10 of 1983?"

3. The essential facts required for appreciating the said substantial questions of law are introduced at the outset.

The suit, being Title Suit No. 51 of 2003 under Section 11(4) of the Tripura Land Revenue and Land Reforms Act, 1960, the TLR and LR Act, in short, was instituted by the appellant being aggrieved by the order dated 15.03.2003 delivered in Revision Case No. 5/Rev/Memb/TSTT/2000, by the Revenue Commissioner, Govt. of Tripura. By the said order, the revision challenging the order dated 16.07.1998 passed by the Collector in Revenue Case No. 45 of 1990 under Section 11(3) of the TLR and LR Act was dismissed. The Collector thereby rejected the prayer for correction of the records, as the land measuring 3.15 acres, being part of C.S. Plot No. 9434(P) appertaining to old jote No. 9, was recorded in the name of the Government in pursuance to the common judgment and order dated 01.01.1976 delivered in Revision Case Nos. 46, 47, 48, 49, 50 and 52 of 1974 under Section 95 of the TLR and LR Act. Against the said order dated 16.07.1998 passed by the Collector, the appellant filed the said revision under Section 95 of the TLR and LR Act to the Government, being the Revision Case No. 5/Rev/Memb/TSTT/2000.

4. Out of the vast land pertaining to the jotes, being the jote Nos. 4 and 9, measuring 7 drone 12 gandas, being competed and contiguous to each other, in 23 survey plots, of which a big tract of land was acquired for the ONGC and the possession was taken over on 23.03.1993. According to the appellant, only a part of the plot No. 9434 remained outside acquisition. Out of an area of 4.72 acre comprised in the plot No. 9434, after acquisition an area of land measuring 3.15 acre was left, which has been identified as plot No. 9434(P) in the description of the suit land.

5. In the year 1974, the Director of Settlement and Land Records had initiated numerous Revision cases involving those jotes. Finally, by a common judgment and order dated 01.01.1976, as stated, it has been held that the entire Kayemi Taluk No. 169, part of which admittedly is C.S. Plot No. 9434 as a whole was vested in the Government. Accordingly, the authority concerned was directed to correct the record of rights. The said order dated 01.01.1976 had been challenged in the Gauhati High Court, but the High Court declined to exercise its jurisdiction. Finally, by filing Special Leave Petition, being SLP(C) 10110/1984 (Exbt. A series) the said action was sought to be challenged. But when leave was sought to withdraw that petition, the apex court had observed as under:

"The Special Leave Petition is permitted to be withdrawn on the plaintiffs as the plaintiff-petitioner want to file a suit for title to the property. When such a suit is filed, we are of the view that all aspects can be properly examined. Mr. Sanjoy Parekh says that it could be necessary to give notice under Section 80 of the Code of Civil Procedure as a condition precedent to the institution of the suit. Status quo as existing to day under our Order shall continue for four months to enable the petitioner to give notice and institute the suit in Proper Court. Status quo Order shall mean that the petitioner's possession was shall not be interfered with and petitioner shall not eliminate the property in any manner."

6. The appellant has asserted that meanwhile the appellant's husband died.

Having regard to the leave as granted by the apex court, the appellant filed a petition under Section 11(3) of the TLR and LR Act for correction of records, meaning, by deleting the name of the Government, the name of the legal heirs of Kali Sankar Sarkar be recorded as the rayat. The said prayer was rejected and the revision filed under Section 95 of the TLR and LR Act, had also been dismissed by the Government. Thereafter, the present suit has been instituted by the appellant herein.

7. It appears from the record that, reference under Section 30 of the Land Acquisition Act was made in respect of the land acquired for the ONGC, which included the part of the plot No. 9434, shown as khas land. The said reference was registered as Misc.(L.A) 49/1974 and by the order dated 31.03.1989 the L.A. Judge held that Kali Sankar Sarkar was the rayat in possession of the land, acquired from plot No. 9434. The State had challenged that order dated 31.03.1989 by filing an appeal in the Gauhati High Court. The said appeal was also dismissed by forming the decision that the land acquired is not khas land, but the jote land of Kali Sankar Sarkar. In another reference being Misc. (L.A.) 227/1992, for enhancement of the market rate, the Land Acquisition Judge, by the judgment and order dated 23.04.1993 has enhanced the rate of compensation. The L.A. Collector challenged the said order by filing an appeal. Thus the title of Kali Sankar Sarkar on the acquired land was once again challenged on the basis of the judgment delivered by the defendant No. 2 on 01.01.1976.

8. By the judgment dated 07.01.2000, the Gauhati High Court has clearly held that, vesting by operation of law did not in any manner affect the right and title of the acquired land on the date of acquisition. The said observation has been made having referred to the judgment dated 01.01.1976 which was passed after the notification for acquisition of land was issued. The relevant part of the said judgment may be reproduced for purpose of reference. In M.A.(F) No. 10 of 1983, by the judgment dated 22.09.1999 delivered in Bithika Basu (Sarkar) Vs. State of Tripura and Others, (2000) 1 GLT 76 , it has been held that :

"So the finding of the DSLR has not the effect of extinguishing the appellant's title/interest in the land under the acquisition."

The said decision is clearly distinguishable. The status as regards the title before the common order dated 01.01.1976 cannot be the same after the order dated 01.01.1976.

9. Mr. D.K. Biswas, learned counsel appearing for the appellant, has strenuously contended that in view of the observation that Kali Sankar Sarkar became the tenant within the meaning of clause (d) of Section 135 of the TLR and LR Act, he was entitled to get the compensation and the L.A. Judge was not justified in rejecting his claim. The left over land under the C.S. plot No. 9434 cannot be treated differently for the same analogy. Mr. Biswas, learned counsel has also contended that both the courts below committed serious error in this regard.

While dismissing the suit, it has been observed by the trial court as under:

"In order to ascertain this issue in appreciation of evidence on record I find that the PW.-1 deposed in his chief that the matters of right, title and interest of the plaintiff relating to the acquired part of the C.S. plot No. 9434 was decided by the L.A. Judge in favour of the plaintiff vide judgment, dated 31/03/1989 passed in Misc. (L.A.) 49 OF 1974 and the decision was also affirmed by the Hon''ble High Court in F.A. 23/1993. But I find the copy of the Judgment passed by the L.A. Judge is not produced by the plaintiff in this case. The decision of the Hon''ble High Court made in F.A. 23 as stated by the PW.-1 is also not submitted in this case. The copy of the Judgment reported In GLT 2000(1) on 76 submitted by the plaintiff in this case relates to M.A.(F) No. 10 of 1983 and M.A.(F) No. 25 of 1983.

On perusal of the Judgment dated 22/09/1999 passed by the Hon''ble Gauhati High Court, Agartala Bench, Agartala in M.A.(F) 10/1983 I find that the appeal was preferred u/S. 54 of the Land Acquisition Act by the plaintiff against the judgment and decree, dated 31/03/1983 passed by the L.A. Judge in reference the petition made u/S. 30 of the L.A. Act whereas the P.W.-1 clearly stated in his examination-in-chief that the L.A. Judge decided the matter in favour of the plaintiff vide judgment/order dated 31/03/1989 in Misc. (LA) 49/1974 and the High Court affirmed the decision in F.A.23 of 1993.

On perusal of the judgment, passed by the Hon''ble Gauhati High Court in M.A. (F) 10/1983 I find no scope to ascertain whether the acquired part of the present C.S. plot No. 9434 was the subject-matter of the appeal."

10. It is apparent that co-relation of the status of the land as declared in the judgment passed in M.A.(F)10/1983 with the suit land could not be established by the plaintiff-appellant herein. By the impugned judgment dated 10.06.2008, passed by the Additional District Judge, West Tripura, Agartala, Court No. 3, the said view has been affirmed on observing that :

"In the present case it is not disputed that entire plot No. 9434 had an area of 4.72 acres and out of which land measuring 1.57 acres was acquired for setting up the ONGC Project in the year 1973 under the provision of the L.A. Act and only 3.15 acres remained outside the acquisition which is the subject matter of the present suit which was recorded as khas land under khatian No. 2086 in the name of the Govt. The case of the plaintiff-appellant is that on the date of acquisition the entire land including the suit land stood in the name of her husband Kali Sankar Sarkar, since deceased, and the acquired land was also taken over him under the provision of L.A. Act and that Director of Settlement and Land Records vide common judgment dated 1.1.76 declared the unacquired land as Govt. khas land under the provision of Section 135 of the TLR and LR Act and accordingly record of rights was corrected. It is the further case of the plaintiff-appellant that part of the land under C.S. plot No. 9434 was acquired and the Government demanded compensation for the said land, being Khas land

but ultimately the Hon'ble High Court in M.A.F.10/83 declared the said land belonged to Kali Sankar Sarkar and directed to pay the compensation amount to the said Kali Sankar Sarkar by setting aside the judgment and award of the L.A. Collector. It is the argument of the Ld. counsel for the appellant that as the Hon'ble High Court declared Kali Sankar Sarkar as the owner of part of C.S. plot No. 9434 in spite of vesting the operation of law, the remaining part of the plot cannot be otherwise declared other than the jote land of Kali Sankar Sarkar and if any order so passed that would amounts to disobedience of the Hon'ble High Court's verdict. Ld. Counsel also drew my attention to the Rule 63(2) of the TLR and LR Act in regard to preparation of bozarat. This argument made on behalf of the appellant though attractive but cannot be accepted as it is not tenable in law. Rule 63(2) of the TLR and LR Act is not help the appellant in any way as the said Rule does not debar the Revenue Officer to open khatian or record of rights in the name of different person in respect of land covered under the same plot. Sri Hari Sankar Sarkar has been examined as PW.1 but in his deposition he did not state a single word about possession of the plaintiff-appellant over the suit land and if she or her husband were in possession their name surely would have been recorded as possessor in the record of rights prepared in the name of Govt. It is true Record of rights is not a document of title. Entries made thereunder in terms of Section 35 of the Indian Evidence Act although are admissible as a relevant piece of evidence and although the same may also convey a presumption of correctness, unless and until it is rebutted. The plaintiff-appellant also failed to prove that Revenue Authority wrongly recorded the suit property in the name of the Govt. by adducing cogent evidence. I have also gone through the judgment passed in M.A.F.10/83 but I find no scope to ascertain whether the land under M.A.F.10/83 was part of present suit C.S. plot No. 9434 or not."

11. Finally it has been observed that the appellate court is in full agreement with the finding recorded by the trial court. Mr. P. Datta learned counsel appearing for the respondents has stated that the order dated 01.01.1976 has reached its finality and for that reason the suit has been structured on the said finding of the Gauhati High Court in M.A.(F) No. 10/1983. It is not in dispute that one Hem Chandra Sarkar created the lease on 08.10.1958, Exbt.10, in respect of the land measuring 19 drone 16 gandas and 7 kanis, appertaining to Dar Taluk No. 22 under Kayami Taluk No. 169 in Mouja Badharghat. The said Taluk was of Maha Rani Kanchan Prabha Debi. One Kali Sankar Sarkar was granted the permanent jote settlement over a land measuring 3(three) drone 12(twelve) kanis of tilla and lunga land in terms of Section 135(d) of the TLR and LR Act. From the records it cannot be gathered whether the settlement as granted to the predecessor of the appellant was on the said plot being plot No. 9434 or anywhere else.

12. Having regard to all these aspects as discussed, this court is of the view that the plaintiff-appellant herein has failed to establish that the permanent settlement, as granted to his predecessor or the land over which the permanent settlement was granted, attracted the said plot No. 9434 or part of it. Hence

there is no infirmity in the finding of the courts below.

13. In the result this appeal stands dismissed.

Prepare the decree accordingly. Send down the LCRs thereafter.