(2015) 08 SC CK 0038

In the Supreme Court Of India

Case No : C.A. No. 6070 of 2014 (Arising out of SLP(C) No. 23910 of 2014)

Block Land and Land Reforms Officer — APPELLANT

Vs

Aga Md. Samim and Others — RESPONDENT

Date of Decision : 11-08-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 23, 24
West Bengal Estates Acquisition Act, 1953 — Section 10(2), 4, 5, 6(1), 6(5)

Citation : (2015) 9 SCALE 218

Hon'ble Judges : Ranjan Gogoi, J;N.V. Ramana, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Leave granted. The case has a chequered history but only what is essential for the purpose of the present appeal is being set out herein below.

2. The Respondents in the appeal were intermediary tenure holders who challenged an order under Section 10(2) of the West Bengal Estates Acquisition Act, 1953 (for short "the Act") before the High Court of Calcutta in a writ petition. The writ petition was dismissed. In appeal, the High Court by order dated 10.07.1990 issued the following operative directions:

"After considering the respective contentions of the Learned Counsels appearing for the parties it appears to us that in the instant case the raiyat made a default in not exercising option but since the lands in question have not yet been taken possession and have not yet been settled with any other person, in the facts of the case, we do not think that the raiyat should be deprived of the opportunity of retaining lands by exercising a choice even at this stage. In our view, in the facts of this case the decision made in the Gour Mitra''s case applies. We therefore direct that let the operation of the notice under Section 10(2) be kept in abeyance for a period of four weeks from today. The Appellant is directed to exercise his option by filing return in Form-B before the competent authority within four weeks from today. If such option is exercise within four weeks from today, the decision on notice under Section 10(2) should be kept pending until the consideration of "B" Form return is made. The competent authority will consider the question of retaining lands in accordance with law by giving opportunity of being heard to the Appellant and thereafter allow him to retain such land as may be lawfully retained under the provisions of the West Bengal Estates Acquisition Act.

Thereafter, in accordance with the decision to be made in the matter of retention of the lands by the Appellant-raiyat, the question of taking possession under Section 10(2) will be determined by the appropriate authority. It is, however, made clear that if within four weeks from today the Appellant raiyat fails and neglects to submit his choice of retention by filing a return in B-Form before the appropriate authority the Respondents will be at liberty to proceed with the notice under Section 10(2) without giving the raiyat any further opportunity to retained lands.

The appeal is accordingly disposed of."

3. Pursuant to the aforesaid directions of the High Court, the Revenue Officer, by an order dated 15th of January, 2001, allowed the Respondents to retain the area of land specifically mentioned in the said order. It appears that certain Municipal Councillors filed a representation to the District Land and Land Reforms Officer (DLLRO) which was taken as an appeal and the order of the Revenue Officer dated 15.01.2001 was set aside on the ground that the intermediary i.e. Respondents were not in possession of the land. This was on 26.02.2003. The intermediary-respondents filed an appeal before the learned Tribunal which came to be disposed of on 18.05.2011, inter alia, holding that the Municipal Councillors had no right to file the appeal. The said appeal was disposed of by the learned Tribunal directing the Revenue officer to implement the order of the High Court dated 10.07.1990, details of which have been extracted above.

4. On 15th of February, 2012, the Revenue Officer passed an order holding that the Respondents were not in khas possession and in fact the original intermediary one Aurangazeb had accepted the compensation and therefore, Respondents were not entitled for any relief as per the returns filed in Form-B. There are certain other adverse findings insofar as intermediaries-respondents are concerned, including the finding that all the legal heirs of the original intermediaries had not filed the Form-B. Specifically it was held that the Form-B was submitted only by one Peary Begum wife of Aurangazeb who had died during the meantime. The other legal heirs of Aurangazeb had not filed any return but had lodged their claim as legal heirs of Peary Begum who alone having filed the Form-B return was entitled only to 1/8th share of the land held by the deceased tenure holder-Aurangazeb.

5. The above adverse findings were not challenged by the Respondents but instead they filed a contempt petition before the learned Tribunal for non implementation of the order dated 18.05.2011. The said contempt petition was

disposed of by the learned Tribunal on 14.08.2013 directing that the initial order of the Revenue Officer dated 15.01.2001 allowing retention by the intermediaries should be given effect to. Aggrieved, the State acting through Block Land and Land Reforms Officer (For short ''BLLRO'') moved the High Court by way of a writ petition, which was dismissed, giving rise to the present appeal.

6. We have heard the Learned Counsels for the parties. We have considered the provisions of the West Bengal Estates Acquisition Act, 1953. As certain provisions of the Act would require specific consideration, we consider it proper to extract the said provisions below:

"6. Right of intermediary to retain certain lands.

(1) Notwithstanding anything contained in Sections 4 and 5, an intermediary shall, except in the cases mentioned in the proviso to Sub-section (2) but subject to the other provisions of that Sub-section, be entitled to retain with effect from the date of vesting-

(a) land comprised in homesteads;

(b) land comprised in or appertaining to buildings and structures [owned by the intermediary or by any person, not being a tenant, holding under him by leave or license];

Explanation. - For the purposes of this clause ''tenant'' shall not include a thika tenant as defined in the Calcutta Thika Tenancy Act, 1949;

(c) non-agricultural land in his khas possession [including land held under him by any person, not being a tenant, by leave or license], not exceeding fifteen acres in area, and excluding any land retained under Clause (a):

Provided that the total area of land retained by an intermediary under Clauses (a) and (c) shall not exceed twenty acres, as may be chosen by him:

Provided further that if the land retained by an intermediary under clause

(c) or any part thereof is not utilised for a period of five consecutive years from the date of vesting, for a gainful or productive purpose, the land or the part thereof may be resumed by the State Government subject to payment of compensation determined in accordance with the principles laid down in Sections 23 and 24 of the land Acquisition Act, 1894;

(d) agricultural land in his khas possession, not exceeding twenty-five acres in area, as may be chosen by him:

Provided that in such portions of the district of Darjeeling as may be declared by notification by the State Government to be hilly portions, an intermediary shall be entitled to retain all agricultural land in His khas possession, or any part thereof as may be chosen by him;

6(e) to (L) xxxx

6(5). An intermediary shall exercise his choice for retention of land under Sub-section (1) within such time and in such manner as may be prescribed. If no choice is exercised by him during the prescribed period, the Revenue Officer shall, after giving him an opportunity of being heard, allow him to retain so much of the lands as do not exceed the limits specified in Clauses (c), (d) and (j) of that Sub-section:

Provided that nothing in this Sub-section shall require an intermediary to exercise the choice if he has already done so before the date of coming into force of the West Bengal Estates Acquisition (Second Amendment) Act, 1957.

10. Collector to take charge of estates and rights of intermediaries vested in the State.--(1) ****

(2) For the purpose as aforesaid, the Collector may, by a written order served in the prescribed manner, require any intermediary or any person in possession (khas or symbolical) of any such estate or of any such interest, to give up such possession by a date to be specified in the order (which shall not be earlier than sixty days from the date of service of the order) and to deliver by that date any documents, registers, records and collection paper connected with the management of such estate or of such interest which are in his custody and to furnish a statement in the prescribed form in respect of such estate or such interest."

7. From the provisions of Section 6(1)(a) to (L) of the Act quoted above, it is clear that an intermediary is allowed to retain land to the extent mentioned in the said provision for which he has to exercise option in accordance with the provisions of Section 6(5) of the Act. Form-8 is the prescribed Form in which the said option is to be exercised. If the option is not exercised within the time stipulated, the provisions of Section 10(2) would get attracted. Section 10(2) contemplates a notice for surrender of the land. In the present case such a notice was issued to the intermediaries-respondents which was challenged before the High Court in the writ petition ordered in the year 1990, the operative part of which has been extracted. The High Court, in the extracted part of the order, took note of the fact that the Respondents were in possession of the land and, therefore, they should be given another opportunity to file their option in Form-B which was required to be done within four weeks failing which the notice to surrender the land was to take effect. The High Court further directed that in case the intermediary files Form-B application, the same was to be considered by the Revenue Officer.

8. There is a slight inconsistency in the order of the High Court inasmuch as in one place the High Court had mentioned that the intermediaries were in possession whereas in the same paragraph of the order, the Revenue Officer was directed to consider the Form-B application on merits, if filed by the intermediaries. There is no manner of doubt that under the Act, after filing of the Form-B by an intermediary an adjudicatory process is involved on the basis of

which the entitlement of the intermediary for retention is to be decided.

9. Though the Revenue Officer in the order dated 15.01.2001 had allowed the retention of land there was no finding that the intermediaries were in possession. In fact, the said omission on the part of the Revenue Officer i.e. specific finding with regard to the possession of the intermediaries, was noticed in the subsequent orders, details of which have been mentioned above. Eventually, in the order dated 15.02.2012 of the Revenue Officer, the matter was reconsidered and an adverse finding was recorded against the intermediaries insofar as possession is concerned. The said adverse finding of the Revenue Officer recorded in the order dated 15th of February, 2012 has not been challenged by the Respondents-intermediaries.

10. In a situation where, under the Act, the intermediary can be allowed to retain land only on their being in possession of the said land, and findings to the contrary have been recorded in the order dated 15th February, 2012 of the Revenue Officer, we cannot hold that the intermediaries were entitled to any relief in law. The emphasis placed on behalf of the intermediaries with regard to the orders passed from time to time for due implementation of the High Court''s order dated 10.07.1990 also does not assist them inasmuch as the High Court in its order had specifically directed that the claim of the intermediaries for retention as per Form-B is to be considered by the Revenue officer in accordance with law. The adverse findings in the order dated 15.02.2012 of the Revenue Officer, details whereof have been noticed, remains unassailed. In the above facts, we have to hold that the High Court was not correct in dismissing the writ petition filed against the order of the learned Tribunal dated 14.08.2013. Consequently, we allow this appeal set aside the order of the High Court and restore the order dated 15th of February 2012 filed by the concerned Revenue Officer.

