

(1981) 01 CAL CK 0018
In the Calcutta High Court
Case No : C.R. No. 2368 (W) of 1974

Debabrata Tripathy and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 05-01-1981

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

West Bengal Estates Acquisition Act, 1953 — Section 44, 44(3)

Citation : AIR 1981 Cal 114 : 85 CWN 411

Hon'ble Judges : G.N. Roy, J

Bench : Single Bench

Advocate : Saktinath Mukherjee and Bhaskar Ghose, for the Appellant; Sadhan Gupta, Addl. Advocate-General and Samir Kumar Banerjee, for the Respondent

Final Decision : Allowed

Judgement

G.N. Roy, J.—In this Rule the initiation of a suo motu proceeding u/s 44(2a) of the West Bengal Estates Acquisition Act being Case No 50 of 1980 and the notices issued by the Revenue Officer, Settlement Thana Camp Cahityanapur in connection with the aforesaid suo motu proceedings are under challenge. The petitioners contend that they (petitioners) are governed by the Mitakshara School of Hindu law and (the petitioners and)/or their predecessors-in-interest have always followed their personal law. It is contended by the petitioners that the names of the petitioners were recorded in the Revisional Record of Rights finally framed and published under the West Bengal Estates Acquisition Act on the basis that the family was governed by the Mitakshara School of Hindu law and the respective shares of the petitioners were noted in the Revisional Record of Rights. It further appears that previously proceedings u/s 44(2a) were initiated suo motu by the competent Revenue Officer, being Cases Nos. 1407, 1406, 1409 to 1412. In the said 44 (2a) suo motu proceedings, the Revenue Officer had accepted the contention of the petitioners that the family was governed by the Mitakshara School of Hindu law and, as such there was no necessity of revising the record of rights in respect of the lands in question

excepting the lands referred to in Schedule "E". It was held that so far as the Schedule "E" lands were concerned, the said lands being personal lands of some of the coparceners, there was no occasion to record the names of all the petitioners and, accordingly, the finally published record of rights relating to "E" Schedule lands should be revised incorporating the names of the real owners. The petitioners thereafter preferred appeals u/s 44(3) of the West Bengal Estates Acquisition Act, being Estates Acquisition Appeals Nos. 306 to 311 of 1971. The said appeals were heard by the learned District Judge, Midnapore being the Tribunal appointed by the State Government u/s 44(3). It appears that the learned Tribunal allowed the said appeals and held that adjudication in respect of "E" schedule properties in holding the same as personal properties of some of the coparceners was not properly made and as such the Revenue Officer should decide such question afresh in the light of the observations made in the said judgment. It may be noted in this connection that even before the appellate tribunal, no dispute was raised to the effect that parties were not governed by the Mitakshara School of law. After the aforesaid judgment made by the Appellate Tribunal, the Revenue Officer re-heard the matter and in respect of "E" Schedule properties, the Revenue Officer came to the finding that the said properties were also not the self-acquired properties of some of the coparceners and as such the Revisional Record of Rights incorporating the names of all the coparceners was quite correct and there was no necessity of revising the entries of the finally published record of rights relating to the said "E" Schedule properties. The petitioners contend that thereafter by initiating the impugned suo moto proceeding u/s 44(2a), the subsequent Revenue Officer purported to reopen the said adjudication made u/s 44(2a) since modified and/or upheld by the Appellate Tribunal u/s 44(3). It is contended by the petitioners that the Revenue Officer is illegally and without jurisdiction, trying to start the impugned proceeding u/s 44(2a) of the Estates Acquisition Act being Case No. 50 of 1979 solely for the purpose of reviewing the said adjudications made earlier by competent authorities. The petitioners contend that such initiation u/s 44(2a) for the purpose of reviewing the earlier decisions being completely illegal and without jurisdiction, the initiation of such proceeding and the notices issued in connection thereof should be quashed and the Revenue Officer should be prohibited from proceeding any further in respect of the said 44 (2a) suo motu proceeding.

2. Mr. Saktinath Mukherjee, the learned Counsel appearing for the petitioner contended that the power u/s 44(2a) is to revise an entry or entries relating to the finally published record of rights. Such power of revision may be exercised either on an application made by an aggrieved party within a prescribed time or suo motu by the Revenue Officer within the specified time. Mr. Mukherjee contended that suo motu power to revise an entry or entries of the finally published record of rights can be exercised in appropriate circumstances. But the said power cannot be exercised for the purpose of reviewing a decision already made by a competent Revenue Officer over the self-same matter. Mr. Mukherjee

next contended that as a matter of fact, the decision passed by the Revenue Officer in respect of all other properties excepting "E" Schedule properties, had merged in the decision made by the Appellate Tribunal as stated hereinbefore. So far as Schedule "E" properties are concerned, Mr. Mukherjee contended, that the Appellate Tribunal had set aside the adjudication made by the Revenue Officer and had directed the Revenue Officer to decide the case afresh concerning the said "E" Schedule properties. He submitted that the Revenue Officer accepted the contention of the petitioners that the parties were governed by the Mitakshara School of Hindu law. He further contended that even before the Appellate Tribunal the fact that family was governed by the Mitakshara School of Hindu law was not disputed and the only point of dispute was whether "E" Schedule properties were personal properties of some of the coparceners or whether the said properties were also the ancestral properties of the coparceners who were governed by the Mitakshara School of Hindu law. Mr. Mukherjee contended that the Appellate Tribunal having accepted the contention of the petitioners that the Revenue Officer did not properly decide the facts and circumstances relating to "E" Schedule properties set aside the decision of the Revenue Officer concerning the said "E" Schedule properties and directed the Revenue Officer to decide afresh as to whether or not the said "E" Schedule properties were self-acquired of some of the coparceners. Mr. Mukherjee contended that in view of the said adjudication made by the Appellate Tribunal upholding the finding that the petitioners were governed by the Mitakshara School of Hindu law, there could not be any further occasion for the successor Revenue Officer to take a contrary view that the family was not governed by the Mitakshara School of Hindu law, Mr. Mukherjee in this connection relied on the decision of the Supreme Court made in the case of Gojer Bros. (Pvt.) Ltd. Vs. Shri Ratan Lal Singh, and contended that merger was not a creature of CPC but it is a well accepted principle of jurisprudence. He contended that whenever an order had been tested by the Appellate Authority and the Appellate Authority had disposed the appeal on merits, the adjudication made by the trial authority would completely merge in the Appellate Order. Mr. Mukherjee contended that in the facts and circumstances of the case, there was no manner of doubt that the earlier adjudication made by the Revenue Officer in the said 44 (2a) proceedings had merged in the adjudication made by the Appellate Tribunal on the question of personal law of the parties and after the appellate order, the Revenue Officer had only carried out the direction of the Appellate Tribunal to make a finding as to the manner of acquisition of the "E" Schedule properties. The learned Counsel for the petitioners also referred to another decision of the Supreme Court made in the case of Smt. Ujjam Bai Vs. State of Uttar Pradesh, . It was held by the Supreme Court in the said decision that jurisdiction means authority to decide and whenever a judicial or quasi-judicial Tribunal is empowered or required to enquire into a question of law or fact for the purpose of giving a decision on it, its findings thereon cannot be impeached collaterally or on an application for certiorari. It was also held that where a quasi judicial authority has jurisdiction to decide a matter, it does not lose its jurisdiction by coming to a wrong conclusion,

whether it is wrong in law or in fact. The Supreme Court further held that the characteristic attribute of a judicial act or decision is that it binds whether it be right or wrong. An error of law or fact committed by a judicial or quasi-judicial body cannot, in general, be impeached otherwise than on appeal unless the erroneous determination relates to a matter on which the jurisdiction of that body depends. The Supreme Court further held that the said principles govern not only the finding of inferior courts *stricto sensu* but also the findings of administrative bodies which are held to be acting in a judicial capacity. Such bodies are deemed to have been invested with power to err within the limits of their jurisdiction; and provided that they keep within those limits, their decisions must be accepted as valid unless set aside on appeal. After reviewing a number of decisions, the Supreme Court held in the said case that the doctrine of *res judicata* has been applied to such decisions.

3. The learned Counsel for the petitioners also referred to a decision of this Court made in the case of *Benode Behari Mandal and Others Vs. The State of West Bengal and Others*, . In the said decision, initiation of a subsequent proceeding u/s 5A of the West Bengal Estates Acquisition Act by a successor Revenue Officer was considered by this Court and it was held that the Estates Acquisition Act did not permit successive proceedings only because the successor Revenue Officer was of the view that the earlier adjudication was erroneous. It was held that Section 5A of the Estates Acquisition Act empowered the competent Revenue Officer to adjudicate and to decide whether the transfer in question had really come within the mischief of Section 5A of the Act and if an adjudication in that regard had already been done by a competent Revenue Officer, the same issue could not be allowed to be re-agitated only because the successor in office chose to dislike or disagree with the view taken by the predecessor. It was submitted by the learned Counsel for the petitioners that in the instant case, a competent Revenue Officer came to the finding that the petitioners were governed by the Mitakshara School of Hindu law and as such they were coparceners having interest in the property. The said adjudication was further tested by the appellate tribunal and was also upheld by the appellate Tribunal. The successor Revenue Officer thereafter had been trying to reopen the matter and review the correctness of the said adjudication. It was contended by Mr. Mukherjee that the purported 44 (2a) suo motu proceeding was not initiated on any *prima facie* finding about any other error or errors relating to an entry or entries in the finally published revisional record of rights but the said purported suo motu proceeding was sought to be initiated by the successor Revenue Officer solely on the ground that recording the names of the petitioners on the footing that they were coparceners was not correct and as such the records should be revised. Mr. Mukherjee contended that in the aforesaid facts and circumstances, it must be held that the said proceeding initiated by the successor Revenue Officer was absolutely illegal and without jurisdiction and the Rule should be made absolute.

4. The learned Additional Advocate General appearing for the State respondent, however, contended that the principle of *res judicata* was dictated by public

policy, namely, that a litigation must end and a party should not be vexed over an issue already decided by a competent authority but he submitted that the Estates Acquisition Act was concerned with a greater public purpose, namely, a legislation for land reforms through vesting of estates and distribution of surplus lands to landless persons. He submitted that the principle of res judicata was evolved in the context of private litigation. But the provisions of the Estates Acquisition Act having been enacted for more fundamental public purpose, the principles of res judicata should not be strictly enforced in such beneficial legislation, otherwise the very purpose of the beneficial legislation would be defeated. He submitted that the principle of res judicata was singularly inappropriate in a welfare legislation. In this connection, the learned Additional Advocate General referred to a decision of the Supreme Court made in the case of Management Shahdara (Delhi) Saharanpur Light Railway Co. Ltd. Vs. S.S. Railway Workers' Union, . In the said decision, the Industrial Employment (Standing Orders) Act was taken into consideration by the Supreme Court. The question of applying the principles of res judicata in a beneficial legislation was also considered. It was held by the majority decision in the said case that the Industrial Employment (Standing Orders) Act is a beneficent piece of legislation and therefore unless compelled by any words in it, the Court would not be justified in importing in Section 10 of the said Act through inference only, a restriction to the right conferred by it on account of supposed danger of multiplicity of applications. The policy of Section 10, according to the majority decision, is clear that a modification should not be allowed within six months from the date when the Standing Orders or the last modification thereof came into operation. The object of time limit was that the Standing Orders or their modifications should be allowed to work for sufficiently long time to see whether they work properly or not. It was also held that even that time limit is not rigid because a modification even before six months is permissible if there is an agreement between the parties. Bhargava, J. dissenting with the majority decision, however, held that when an application u/s 10(2) of the Act is made, the certifying officer can modify Standing Orders already certified only if the request is not made on the basis of the same material which existed at the earlier stage when the Standing Orders were certified. An interpretation which will completely do away with the finality of the orders made u/s 6 of the Act by an appellate authority cannot be accepted. In the said decision various other decisions made by different courts including the Supreme Court were reviewed and it was held by the Supreme Court that it was doubtful whether principle analogous to res judicata can properly be applied to such proceedings.

5. After considering the respective submissions made by the learned Counsel appearing for the parties, it appears to me that it cannot be held that principles of res judicata cannot be applied simply because a legislation is a beneficial legislation. In my view, the principle of res judicata is a sound principle of jurisprudence and the said principle has been made applicable not only in the adjudication made by the Civil Courts but also in the adjudication made by the

quasi judicial tribunals and administrative bodies. In my view, the Supreme Court in the said decision of Management Shahdara (Delhi) Saharanpur Light Railway Co. Ltd. Vs. S.S. Railway Workers" Union, has only highlighted that in some special circumstances relating to industrial disputes, strict enforcement of the principle u/s 11 may not be justified. In the instant case, it appears that suo motu revision of the finally published record of rights was intended only on the ground that the petitioners were not coparceners and as such they had no title to the property and hence the recording of their names as tenants was incorrect. Accordingly, the tribunal intended to revise the record of rights by deciding as to whether or not the petitioners were governed by the Mitakshara School of Hindu law and whether or not the property in question was ancestral property. The said questions were gone into by the tribunal having jurisdiction in the matter and on consideration of the facts and circumstances of the case it was held that the petitioners were governed by the Mitakshara School of Hindu law and the properties were ancestral properties and as such all the coparceners had right, title and interest in the property. In my view, in the said appeals preferred u/s 44(3) of the Estates Acquisition Act, the said question as to whether the petitioners were governed by the Mitakshara School of Hindu law or not was germane and the appellate tribunal disposed of the appeals on the footing that the petitioners were governed by the Mitakshara school of Hindu law. It is nobody"s case that there had been any change of circumstances and/or discovery of any new facts. In the aforesaid circumstances, the correctness of the adjudication made by a competent Revenue Officer cannot be questioned and/or reviewed by the subsequent Revenue Officer. In my view. Mr. Mukherjee is justified in contending that the Revenue Officer has no authority to review and/or revise a decision made by his predecessor in office on the self same issue. In the aforesaid circumstances, the initiation of the said suo motu proceeding u/s 44(2a) of the West Bengal Estates Acquisition Act being Case No. 50 of 1979 and the issue of the notice by the Revenue Officer in connection with the said proceeding as contained in Annexure "D" to the writ petition are illegal and without jurisdiction and the same are quashed.

6. The Rule is, therefore, made absolute but I make no order as to costs.

7. Let the operation of this order remain stayed for a period of four weeks from today as prayed for by the learned Additional Advocate General.