
(2011) 07 CAL CK 0107
In the Calcutta High Court
Case No : W.P.L.R.T. No. 127 of 2011

Del Bahar Purkait

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 19-07-2011

Acts Referred:

West Bengal Land Reforms Act, 1955 — Section 49, 49(1), 49(2)

West Bengal Land Reforms and Tenancy Tribunal Act, 1997 — Section 10, 4(13), 4(2), 4(3), 6

Citation : (2011) 5 CHN 57

Hon'ble Judges : Pratap Kumar Ray, J;Md. Abdul Ghani, J

Bench : Division Bench

Advocate : Satyajit Mondal, Suranjan Mondal, Jayati Basu Roy, Chandi Charan De, Sk. Md. Galib for the State, for the Appellant;Sanjay Ghosh, Hiranmoy Paik for the respondent Nos. 6 to 12, for the Respondent

Final Decision : Allowed

Judgement

Pratap Kumar Ray, J.—A judgement has been delivered by Special Bench comprising of Three Judges of the Hon"ble High Court at Calcutta in W.P. No. 331 of 2009 on 14th July, 2011 by passing the following order:- On consideration of the entire materials on record, we, therefore, hold that unless the following defects in the Act are removed in the light of our observations, the Act as presently structured is unconstitutional for the reasons stated earlier. However, the Act may be made operational by making suitable amendments, as indicated below:

A) Section 4(2)(b) of the Act should be deleted and should be substituted by a new provision for constitution of Selection Committee broadly on the following lines:

(a) Chief Justice of High Court or his nominee- as Chairperson (with a right of casting vote);

- (b) A senior Judge of the High Court-as Member;
- (c) Secretary in the Ministry of Finance-as Member; and
- (d) Secretary in any of the Ministries-as Member,

B) In section 4(3)(c)(i) of the Act, the phrase "Joint Secretary" should be deleted and substituted by "Secretary or Additional Secretary" and the phrase "a specified Act" mentioned therein should be deleted and substituted by "all the specified Acts".

C) In section 4(3)(c) (ii) of the Act, the phrase "Joint Secretary" should be deleted and substituted by "Secretary or Additional Secretary" and the phrase "a specified Act" mentioned therein should be deleted and substituted by "all specified Acts."

D) The last proviso to section 4(13) of the Act should be deleted and instead thereof, suitable proviso should be incorporate by giving power of constitution of the larger Bench of the Tribunal to the Chairman of the same in case of difference of opinions between two or more benches with further stipulation that in such larger Bench, the number of Administrative Member must be less than that of Judicial Member.

The writ-application is, thus, disposed of in terms of our present order.

Though in the judgement there is no indication that the judgement will have prospective effect by applying the doctrine of prospective overruling and, as such, the judgement delivered will have a retrospective effect in view of the decision passed by the Apex Court in the case P.V. George and Others Vs. State of Kerala and Others, The doctrine of prospective overruling is a feature of American Jurisprudence and is an exception to the normal principle of law about effect of a judgement which normally is retrospective. The said doctrine has been applied by the Apex Court for the first time in the case I.C. Golak Nath and Others Vs. State of Punjab and Another, .

2. Despite such legal position about effect of said judgement as quoted above, this writ application could be considered for our adjudication, which has been filed assailing the order passed by West Bengal Land Reforms and Tenancy Tribunal applying the de facto and de jure doctrine. The principle has been illustrated by the Apex Court in several cases by holding, inter alia, that even if the appointment of a Judge or a Presiding Officer or any Adjudicatory Forum stand cancelled or set aside, the decision or judgement pronounced shall not be illegal on that score, but merit of the said judgement could be decided by Court. The Three Judges Bench of the Apex Court in the case Gokaraju Rangaraju Vs. State of Andhra Pradesh, held to this effect "a Judge, de facto, is one who is not mere intruder or usufruct but one who held office under colour of lawful authority, even though his appointment is defective and may later be found to be so. Whatever be the defect of his title to the office, judgements pronounced by him and acts done by him when he was clothed with the power and function of

the office, albeit unlawfully, have the same efficacy as judgement pronounced and acts done by a Judge de jure. Such is a de facto doctrine born of necessity and public policy to prevent needless confusion and needless mischief."

3. The Apex Court in the said case considered the views of different High Courts as well as the English Court, namely, the case *Pulin Behari vs. King Emperor*, reported in 16 CWN 1105; *Emedisetti Ram Krishnaiah vs. State of Andhra Pradesh*, reported in AIR 1967 Andhra Pradesh 193; *P.S. Menon Vs. State of Kerala and Others*, *Milward vs. Thatcher*, reported in 100 E.R. 45; *Sadding vs. Lorant*, reported in 10 E.R. 165 (H.L.); *Re: James (an insolvent)*, reported in 1977(1) A.E.R. 364 (C.A.); *State of Connecticut vs. Carroll*, reported in 1871(38) Conn.449; *Re: Albridge*, reported in 1893(15) N.Z.L.R. 361 and *Notion vs. Sheby County*, reported in 30 L.Ed. 178.

4. Same view echoed by the Apex Court in a Constitution Bench judgement in the case *B.R. Kapur vs. State of Tamil Nadu*, reported in 2001 (7) SCC 231, wherein appointment of a Chief Minister was quashed, but action taken by Chief Minister and Council of Ministers was declared as valid.

5. The said de facto principle has been applied by the Apex Court in the case *The State of Haryana Vs. The Haryana Cooperative Transport Ltd. and Others*, where it is held "acts of officers de facto cannot be questioned for lack of legal authority except by some direct proceeding". The legal maxim that acts of officers de facto, cannot be allowed to be questioned collaterally, relied upon.

6. Having regard the said principle as discussed, we are of the view that the order impugned in the writ application could be decided under the anvil of judicial review by us sitting in the writ jurisdiction and the judgement dated 14th July, 2011 passed in W.P. No. 331 of 2009 though has not identified its force applying prospective overruling principle and, as such, effect could be considered as retrospective, the writ application is maintainable to test the legality and validity of the impugned order applying the "principle of de facto and de jure doctrine" as discussed above.

7. Now the main matter is taken up for hearing.

8. Heard learned Advocates appearing for the parties.

9. The impugned order dated 14th March, 2011 reads such:-

14.03.11. Learned Counsel on behalf of the applicant is present.

Learned Government Representative is present.

Learned Counsel on behalf of the private respondent Nos. 8 and 10 is also present.

The application dated 19.07.2010 under sections 6 and 10 of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997, filed by the applicant praying for the cancelling the notice (vide Annexure "D" to "G" to the original application) is

taken up for hearing on the point of admission.

Perused the instant application.

Heard the learned Counsel for the applicant as well as learned Government Representative.

Learned Government Representative submitted before this Tribunal the instant application should be rejected summarily as the B.L. & L.R.O, concerned is/was competent enough to issue notice in question.

Before passing this order we carefully perused the materials on record. On perusal of the same we are of the view that the B.L. & L.R.O, Kulpi, District -- South 24 Parganas is/was competent enough to issue the notice in question. As a result of it, the instant original application is rejected summarily.

O.A. No. 1722/2010 (LRTT) is, thus, disposed of....

10. The original application was moved assailing the notice issued by Block Land and Land Reforms Officer, Kulpi, District 24-Parganas (South) asking the writ petitioner to appear in hearing with reference to the application seeking annulment of settlement of land classified as "khal" by entertaining the application of villagers as filed before the said officer. The question of jurisdiction to issue notice by the concerned B.L. & L.R.O. was the subject matter of challenge in the original application. Learned Tribunal below held that the concerned officer has the jurisdiction. It appears from section 49 of the West Bengal Land Reforms Act, 1955 that under sub-section (2) of said section the Revenue Officer may entertain any application seeking cancellation of settlement of agricultural land or homestead land as the case may be. Section 49(2) reads such:-

49. Principles of distribution of lands.....

(2) If an Revenue Officer, on his own motion or an application made to him in that behalf, after hearing the person with whom the land was settled and in the case of any subsequent transfer, the transferee as also the person who is, for the time being in actual occupation of such land and after making such enquiry as may be prescribed, is satisfied that settlement of such land [was made by mistake or obtained under any provision of this section by practice of fraud, misrepresentation, coercion or otherwise] or that a transfer of any land has been made in contravention of the provisions of sub-section (1A), he may, by order in writing, annul the settlement or both the settlement and the transfer, as may be deemed necessary.]

11. Clause 209 of West Bengal Land & Land Reforms Manual, 1991, has vested power of Revenue Officer to deal with the cases u/s 49(2) of the West Bengal Land Reforms Act, 1955 to the Sub-Divisional Officers. Clause 209 reads such:

209. Preliminaries.-- (i) Under sub-section (2) of section 49 of the West Bengal Land Reforms Act, 1955, a Revenue Officer appointed for the purpose may annul

any settlement made u/s 49(1) of the Act in the following cases:

(a) If the land settled has been transferred in contravention of the provisions of section 49(1) of the Act on and after 10th July, 1975; and

(b) If the settlement has been made by mistake or obtained by fraud, misrepresentation, coercion or otherwise.

(ii) The Revenue Officer may start an annulment case suo motu or on application.

(iii) S.D.O. to act as R.O.- The Sub-divisional Officer has been appointed as Revenue Officer for the purpose of section 49(2).

12. In view of position of law, B.L. & L.R.O. concerned accordingly had no jurisdiction to entertain the application filed by villagers.

13. The order of learned Tribunal below is not legally sustainable in view of legal position as discussed. The impugned order, as such, is set aside and quashed.

14. The villagers/respondents, however, would be at liberty to move the Sub-Divisional Officer concerned seeking cancellation of settlement of land classified as "khal" and is used as recorded canal to provide irrigation and drainage facilities in the concerned area. In the event such an application is filed, Sub-Divisional Officer will dispose of the matter on hearing the parties within one month from the date of filing such application.

15. The writ application is allowed. Let xerox certified copy of this order, if applied for, be given to the learned Advocates appearing for the parties expeditiously.

Md. Abdul Ghani, J.

I agree.