(2009) 05 CAL CK 0032

In the Calcutta High Court

Case No : Writ Petition No. 27444 (W) of 2007, C.A.N. No. 3552 of 2008

Dilip Kumar Roy and Others APPELLANT

Vs

State of West Bengal and Others RESPONDENT

Date of Decision : 15-05-2009

Acts Referred:

West Bengal Estates Acquisition Act, 1953 — Section 5A, 6, 6(1)
West Bengal Land Reforms Act, 1955 — Section 51A(1), 57

Citation : (2009) 05 CAL CK 0032

Hon'ble Judges : Indira Banerjee, J

Bench : Single Bench

Advocate : M.M. Mallick and Jamuna Saha, for the Appellant;A.N. Banerjee and Ziaul Islam, for the Respondent

Final Decision : Dismissed

Judgement

Prasenjit Mandal, J.

The Judgment of the Court was delivered by:

1. This application is at the instance of the applicants before the learned Tribunal and is directed against the judgment and order dated 15.10.2007 passed by the learned State Administrative Tribunal in O.A. No. 29 of 2004 (LRTT) whereby the learned Tribunal disposed of the said application.

2. The short question involved in the case is that whether the Revenue Officer is empowered to issue a notice u/s 57 of the West Bengal Land Reforms Act while dealing with any proceeding under the said Act.

3. One Sureswari Roy got life estate held to the extent of 12.46 acres of land from one Prodyut Kumar Roy, father of the applicants. The said P.K. Roy was a big raiyat and he did not retain the subject land u/s 6(1) of the West Bengal Estates Acquisition Act, 1953 by filing B-Form. The heirs of Sureswari Roy got the said subject land by way of a Will which was probated afterwards. The revenue authority held an enquiry about certain transfers of lands u/s 5A of the West

Bengal Estates Acquisition Act and held that those transfers were not bona fide. In that proceeding the subject land was not taken into consideration. In order to correct the Collector''s khatian of the subject land, the Revenue Officer issued the said notice u/s 57 of the West Bengal Land Reforms Act. On getting the notice u/s 57 of the West Bengal Land Reforms Act, the applicants approached the learned Tribunal which disposed of the said application giving liberty to the applicants to raise all the disputes before the Revenue Officer. Being aggrieved, this application has been filed by the applicants.

4. The learned Advocate, Mr. M.M. Mallick, for the applicants contended that admittedly Prodyut Kumar Roy was a big raiyat and he transferred certain lands in favour of his sons, that is, applicants during the mischief period and those transfers were held to be not bona fide. Accordingly, the proceedings u/s 6(1) of the West Bengal Estates Acquisition Act were disposed of. He contended that the subject land transferred by P.K. Roy in favour of his wife, Sureswari Roy, by life estate could not be taken into consideration as the land of the big raiyat. After coming into force of the Hindu Succession Act, Sureswari Roy became the full owner of the subject land and so she was free to dispose of the subject land by Will and it was so done rightly. The learned Advocate also contended that probate was obtained in respect of the Will by the applicants and as such the L. R. record was rightly prepared in the names of the applicants. So there is nothing wrong. In such circumstances, notice could not be issued. So the subject land could not be the land of the big raiyat and as such the notice u/s 57 of the West Bengal Land Reforms Act, 1955 was wrong. So it should be quashed. He contended that the learned Tribunal failed to appreciate the fact. He also contended that the report of the B.L. & L.R.O. dated 21.08.2007 appearing as annexure P-4 could not be supported. Such report is bad, mala fide, untrue, incorrect and full of confusing words and so this report could not be taken into consideration at all in support of the notice. Thus, he contended that the judgment and order of the learned Tribunal should be set aside.

5. On the other hand, Mr. Banerjee, learned Advocate for the State, contended that the subject land had already been vested in the State, not being retained by the big raiyat. The R. S. record of rights had been rightly prepared accordingly. In the B.R. proceedings, the subject land could not be taken into consideration because at that time, the probate case in respect of the subject land was pending and so the subject land was kept outside the purview of the said B.R. proceedings against the big raiyat, Prodyut Kumar Roy. He also contended that as the subject land had already been vested in the State, notice was issued simply to make record in the Collector''s khatian and as such the notice upon the interested persons, that is, upon the applicants was issued and there was nothing wrong in the said notice.

6. Upon due consideration of the rival submissions of the learned Advocates of both the sides and on perusal of the materials on record, we find that admittedly Prodyut Kumar Roy was a big raiyat. Admittedly, he transferred certain lands in

favour of his sons, that is, applicants during the mischief period and it was observed that those transfers were not bona fide. The B.R. proceedings u/s 6 of the West Bengal Estates Acquisition Act were held and the subject land was excluded in the B.R. proceeding as there was court case in respect of such subject land.

7. The Revenue Officer issued notice u/s 57 of the West Bengal Land Reforms Act, 1955 for the purpose of making correction in the Collector''s khatian only. Before making such correction, the Revenue Officer issued notice upon the persons interested. For convenience, to determine the scope of issue of notice, Section 57 of the said Act is quoted below:-

"57. Powers of officers dealing with proceedings under this Act.-Subject to the provisions of this Act and any rules made there under, any officer in dealing with proceedings under this Act shall exercise the powers of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), for the purpose of:-

(a) summoning and enforcing the attendance of any person and examining him on oath as a witness,

(b) requiring the discovery and production of any document or record,

(c) receiving evidence on affidavits,

(d) requisitioning any public record or copy thereof from any Court or office,

(e) issuing commission for the examination of witnesses or documents,

(f) enforcing or executing orders including an order for restoration of possession as if such orders were decrees of a Civil Court, and

(g) remanding any case or proceedings to the officer from whose decree the appeal is preferred, and such officer shall record the substance of the evidence, if any, taken by him."

8. Thus, we find that the said notice was not issued for the purpose of vesting but for the purpose of recording therein or making any omission from the khatian u/s 51A(1) of the West Bengal Land Reforms Act. The Revenue Officer is within its competence to consider any objection if any, under the said Section of the said Act. He has jurisdiction to do so and in exercise of that power, he is vested with the powers of a civil court with regard to certain matters indicated in the Section. We do not find any illegality in issuing the notice upon the interested persons.

9. The learned Advocate for the applicants submitted that when the subject land was transferred as life estate by the big raiyat in favour of his wife, after coming into force of the Hindu Succession Act, the same could not be taken into consideration as the land of Prodyut Kumar Roy at all. In support of his contention, he relied upon the decision reported in Basudev Mondal and Others Vs. State of West Bengal and Others, The learned Advocate for the applicants

also submitted that according to such decision the settled thing could not be made unsettled. So the Revenue Officer had no authority to unsettle the decisions taken earlier.

10. With due respect to the learned Advocate for the applicants, we hold, that this decision is not applicable in the instant application because in that case Amalnama was granted in favour of third parties and they possessed the lands under the Amalnama but in the instant case the big raiyat transferred 12.46 acres of land in favour of his wife by way of life estate as claimed. As the copy of the deed was not filed, it is not clear to us whether it was registered one or not or when the deed was actually executed, that is, whether within the mischief period or not. We also find from the version of the applicants that their mother executed a Will in favour of three sons in respect of such 12.46 acres of land and such sons became the owner of the land by virtue of the Will. The net result is that the sons of the big raiyat got the property by an indirect way. What could not be done directly could not also be done indirectly. The big raiyat adopted such a course only to make camouflage in the matter in order to possess 12.46 acres of land more in addition to lands u/s 6(1) of the West Bengal Estates Acquisition Act. So the said decision is not applicable in the instant case.

11. As discussed earlier, the subject land had already been vested, the question of correction of the Collector''s khatian was required and that was why the notice was issued upon the persons interested in the matter. The notice u/s 57 was a mere notice issued by the Revenue Officer to take certain steps as indicated earlier. Such notice was not the final decision over the matter indicated; but only for the purpose indicated in the notice appended to the application as annexure ''G''. The Revenue Officer was to take further steps pursuant to that notice and the applicants had the opportunity to place their defence stand before the Revenue officer. For that reason it could not be said that the Revenue Officer was without authority or jurisdiction. The learned Tribunal gave opportunity to the applicants to raise all the disputes before the Revenue Officer. Therefore, we are of the view that there is no scope of interference with the notice under challenge.

12. Accordingly, we are of the view that the learned Tribunal passed the judgment and order rightly. This application is meritless and it should be dismissed.

13. Accordingly, this application is dismissed.

14. Considering the circumstances, there will be no order as to costs.

15. We also hereby record that in order to come to a definite finding we have made above observations. So also the learned Tribunal. But the matter under challenge is the mere notice u/s 57 of the West Bengal Land Reforms Act. So the concerned Revenue Officer is at liberty to take an independent decision instead of being swayed by the observations made by us and / or the learned Tribunal.

Urgent xerox certified copy of this order, if applied for, be made available to the learned Advocate for the parties on their usual undertakings.

Ashim Kumar Banerjee, J.

