(1962) 09 CAL CK 0015

In the Calcutta High Court

Case No : Civil Revision No. 857 of 1962

Gadadhar Jana and Another APPELLANT

Vs

The State of West Bengal and Others RESPONDENT

Date of Decision : 14-09-1962

Acts Referred:

West Bengal Estates Acquisition Act, 1953 — Section 5A, 5A(2), 5A(6)

Citation : 67 CWN 719

Hon'ble Judges : Laik, J

Bench : Single Bench

Advocate : Mukti Prasanna Mukherjee, for the Appellant;Nani Gopal Das for the State of West Bengal Respondent No. 1 and Hrisikesh Samanta and Harendra Nath Haldar for the Respondent No. 2, for the Respondent

Judgement

Laik, J.—This Rule, obtained on behalf of the bargadars, raises a short but interesting question, namely, whether the petitioners as bargadars are necessary parties in a proceeding started u/s 5A of the West Bengal Estates Acquisition Act, 1953 (hereinafter called the Act) and the West Bengal Estates Acquisition Rules, 1954 (hereinafter called the Rules). It is necessary to settle the matter of procedure that has got to be followed by the Estates Acquisition Tribunals in such matters. The facts are simple.

2. On April 11, 1955 there was a deed of gift of certain lands by one Jogendra Nath Kanji in favour of Sohora Jogendra Junior M.E. School (hereinafter called the School). The date of the gift is within the prohibited period as mentioned in section 5A of the Act (i.e., between May 5, 1953 and the date of vesting, though it was not admitted. It appears that on the initiation of the proceeding u/s 5A of the Act a notice was issued by the Revenue Officer with a direction to serve a copy of the order on the transferor Jogendra and the transferee Satish, Who is the Secretary of the School. The order states the alleged fact of transfer exceeding 25 acres of agricultural land by the so-called intermediary within the prohibited period, the object being to increase the compensation and lastly about

the reasons for believing that the transfer was not bonafide and the prima facie opinion formed on the same. These are the typical orders passed in most cases, which are printed, the blanks only being filled up to suit particular cases. There was a further direction in the order to issue notices on the said two persons fixing a date of hearing. They were also directed to appear with their witnesses and the evidence in proof of the fact that the aforesaid transfer was bonafide. On August 28, 1960 as neither the transferee Satish nor the transferor Jogen appeared, the Revenue Officer directed notices to be served again on the said Secretary of the School, Satish and also on Jogen and this time also on "other concerned parties" to appear on August 30, 1960 which raised the complications. In pursuance of the said order it appeals from the order sheet that notices were served on the Bargadars petitioners who appeared and the Revenue Officer ultimately held that the transfer was not bonafide. Consequently an order was passed that the properties sought to be transferred would vest in the State Government. Against the said order, an appeal was taken on behalf of the School under the provisions of section 5A(6) of the Act in which the State of West Bengal was impleaded as the sole respondent. The learned Special Judge, Appellate Tribunal, allowed the appeal. The deed of gift being held genuine, and for consideraration, was declared bonafide by the learned Judge. Against the said order of the Appellate Tribunal, two bargadars, namely, Gadadhar Jana and Phani Bhangi, petitioners herein, moved this Court and obtained the instant Rule.

3. Mr. Mukti Prosanna Mukherjee in support of the Rule contended, firstly, that his clients, the bargadars are necessary parties in the proceeding started u/s 5A of the Act being persons interested in or affected by the transfer both u/s 5A of the Act and Rule 3A of the Rules. Secondly, he contended that as the petitioners were treated as parties both by the Revenue Officer and the transferee, the petitioners should also have been made parties before the Appellate Tribunal. Thirdly, he contended that if his clients are held to be parties to such a proceeding, then the order of the Appellate Tribunal passed in their absence, on the face of it, is bad and not binding on the petitioners and is fit to be set aside. In any event, he prayed lastly for a re-hearing of the matter before the Appellate Tribunal.

4. So far as the first point is concerned, I am unable to hold that the bargadars are the persons who are either necessary or proper parties in a proceeding started u/s 5A of the Act and Rule 3A of the Rules. Mr. Mukherjee drew my attention to sub-rule (2) of Rule 3A and argued that besides the transferor and the transferee, there is a specific provision for service of the notice on "such other party as may be found to be interested in the transfer" and, accordingly, the bargadars according !to him are such parties, who must be taken to be interested in the transfer. Between the words "to be interested in" and the words "the transfer" the words "or affected by" were added by the amendment of sub-rule (2) of Rule 3A; in other words, such other parties who might be found to be interested in or affected by the transfer are required to be served with notice. I fail to see how a bargadar is interested in or affected by a transfer. A bargadar

might have some interest in cultivation and produce of the land of the owner, whoever he might be, but by no stretch of imagination can he be said to have any interest in or to be affected by the transfer of the land, presumably from the owner to some other person. There is another salutary principle which should be remembered i.e., whether or not any relief can be given to the bargadars or any order can be passed against them in a proceeding u/s 5A of the Act. If the answer is no, which is obviously the answer, they are neither necessary nor proper parties.

5. It might be that the mortgagees or lessees of the transferred property might be brought in the class of "other party" (though I reserve my opinion on the same being not necessary to decide) but surely not the bargadars, who do neither gain nor loose in the case of transfer by the owner to a third person. The right of the bargadars as laid down in the Bargadars Act or in the Land Reforms Act is not in any way affected by such transfer. Moreover, proviso to section 5A(2) speaks of only transferor and transferee. The penal consequences provided in section 5A of the Act are also either of the transferor or of the transferee and not of any other person including the bargadar. Again, if we turn to proviso (i) of sub-section (5) of section 5A of the Act we would find that no order should be passed in an inquiry u/s 5A unless an opportunity was given to the transferor and the transferee. The bargadars are not named there and hence they are not even proper parties. This view finds support in a Bench decision of this Court, Tara Prasanna Choudhury and Others Vs. Adwaita Charan Samanta and Another laying down the principle of necessary and proper parties in a proceeding u/s 37A of the Bengal Agricultural Debtors'' Act, 1936. The cause of action, again, so to speak, is not against the bargadars, who should be impleaded. It is not also a case of relaxation of the rule that the party must have direct or present interest, as laid down in Razia Begum Vs. Sahebzadi Anwar Begum and Others, .

6. Furthermore, if we consider Rule 3B read with Rule 9(e) of the Rules, where the procedure for disposal of appeals under sub-section (2) of section 11 and sub-section (6) of section 5A of the Act are laid down, there is a provision of service of notice of the appeal on the Collector and not on any other person. In my view the bargadars do not come in either as necessary or proper parties to the proceeding u/s 5A of the Act or to the appeal at the appellate stage u/s 5A of the Act or at any other stage and obviously any question as between the bargadars on the one hand and the transferor or the transferee on the other, is outside the purview of section 5A of the Act and the Rules. It would be better for oneself to be reminded that the practice of adding unnecessary parties stands self-condemned.

7. On the second point it appears from the records that on the basis of some statements being filed by the petitioners, Mr. Mukherjee wanted to argue that his clients filed them on the footing that they were parties in the proceeding and also in pursuance of the order of the Revenue Officer and after the notices being served on them. On closer scrutiny it appears that they are nothing but the

statements of the petitioners as witnesses only and not as those of the parties to the proceeding. The records do not support the contention that the Revenue Officer or the transferee treated the petitioners as parties to the proceedings. As a matter of fact, the bargadars have supported the case of the transferee by delivery of the bhag produce to the transferee after the date of transfer. Mr. Mukherjee''s argument therefore breaks and the second contention also fails. The last contention based on the second, therefore, does not fall to be considered. In view of the above finding, a re-hearing of the matter before the Appellate Tribunal, does not arise. Mr. Das appearing for the State did not support Mr. Mukherjee either. There is thus no merit in this application and the Rule is, therefore, discharged. There will be no order as to costs.