(1987) 11 CAL CK 0007

In the Calcutta High Court

Case No : C. R. No. 7156 (W) of 1980

Gobinda Lall Chatterjee APPELLANT

Vs

State of West Bengal and Others RESPONDENT

Date of Decision : 09-11-1987

Acts Referred:
West Bengal Estates Acquisition Act, 1953 — Section 6(1)

Citation : (1987) 11 CAL CK 0007

Hon'ble Judges : Paritosh Kumar Mukherjee, J

Bench : Single Bench

Advocate : Mihir Kumar Roy and Mr. Supriya Chatterjee, for the Appellant;

Judgement

Paritosh Kumar Mukherjee, J.—This writ petition can be decided by deciding a short question of law as to whether under the existing provisions of the West Bengal Estates Acquisition Act, 1953 (Act I of 1954), as the Act stood on March 2, 1980, a Revenue Officer could review the order passed by the earlier Revenue Officer having concurrent jurisdiction.

2. This Rule has been issued by the Hon''ble Mr. Justice G. N. Ray on July 14, 1980 but no interim order was granted and this Rule has become ready as regards service on March 19, 1986, but no one is appearing on behalf of the State respondents and no affidavit-in-opposition has been filed in the said behalf.

3. It appears from the Order Book that on July 8, 1986, the Hon''ble Mr. Justice Bhagabati Prasad Banerjee fixed the hearing of the Rule one week hence. Thereafter, the Rule was directed to appear in my list by my earlier order dated July 24, 1987, and is being heard today, when there is no appearance on behalf of the State.

4. Mr. Mihir Kumar Roy, learned Advocate appearing on behalf of the writ petitioner has drawn my attention to the chequered career of this case, in particular, he has drawn my attention to the orders including the order No. 2 dated April 6, 1957 to order No. 6 dated December 3, 1962, in the earlier

proceedings u/s 6(1) of the West Bengal Estates Acquisition Act passed by the Assistant Settlement Officer and the Revenue Officer, Balurghat in the district of West Dinajpur, and he also has drawn my attention to the order of Sri R. K. Sharma, Additional District Judge, West Dinajpur, (Special Judge) (later on, a Judge of this Hon''ble Court) dated July 30, 1964, whereby the said order of the Assistant Settlement Officer was set aside and the matter was remanded back for rehearing, in accordance with. law. Mr. Roy submitted that the successor, Revenue Officer, even after remand had committed some mistake for which another appeal had to be preferred by the writ petitioner.

5. Lastly, Mr. Roy has drawn my attention to the Order No, 14 dated March 2, 1980, in the case, u/s 6(1) of the West Bengal Estates Acquisition Act, 1953, whereby the earlier case No. 82/57 (Review) 1980 was sought to be reopened and by order No. 15 dated March 24, 1980, the following order was passed on review: -

On verification of the F.Pd. R.O.R.S. and "B" forms, as well as order of S.L. No. 3 of this proceeding it is found that the following schedule of agri-lands marked "A" was owned by Shri Gobinda Lal Chatterjee s/o Surendra of U/Khanpur as his retained lands u/s 6 of the K.A, Act. The amount of lands was held by him 22.75 acre''s instead of 19.63 which was allowed to him for retention as per decision of case Nos. 6 and 7 (enrecord) u/s 5A of the E.A. Act of Mouza Mahala J.L. No. 206 P.S. Balurghat as well as the decision of E.A. appeals Nos. 24, 25/66 and 27/69."

6. It appeared further, the Revenue Officer after giving the land schedule of 22.75 acres of land, decided to review the case for correction of record of right for the quantum of lands retained by the raiyat''s area and/or quantum of land of 22.75 acres of land retained by the raiyat in place of 19.63 and after reviewing the same, the Revenue Officer purported to vest 3.12 acres of excess land to the State as per schedule "B" of the said order. The said Revenue Officer further reviewed the said order and reviewed the earlier decision, as follows :

On scrutiny of this 6(1) proceeding, F.Pd. R.O,R.S., and the decision of E.A. appeal. Nos. 24, 25 of 1966 and 27 of 1969, it is found that 6.17 decimals of land are to be deducted from his prescribed ceiling as R.S. order of case Nos. 6 & 7 (on record) u/s 5A of the E.A. Act of Mouza Mahala 206 P.S. Balurghat. But he was allowed to retain only 22.75 acres of land as agri. at first (Sec. order of Slr. No. 3 of this proceeding) subsequently he was allowed to retain 2.25 acres of land to touch his ceiling. Provision out of 6.17 acres of land declared as bona fide and as such 3.92 acres of land have duly been deducted from Plot No. 145 of Mouza, Mahala, 206 P.S. Blg. vide order of Sl. No. 5 of this proceeding. As a result, his retained land should be accounted for 18.83 acres but the Ld. R.O. of the said remand proceeding erroneously shown 19.83 acres while the intermediary actually given 18.83 acres of land."

and the Revenue Officer, ultimately purported to vest 6.17 acres of agricultural land of the writ petitioner. After drawing my attention to the aforesaid order and after referring to the single Bench decision of this Court reported in Satyanarayan Banerjee and Others Vs. Charge Officer and A.S.O. Birbhum and Others, , he submitted that in view of Indira Devi''s case referred to therein, as the Revenue Officers are the creatures of the Statute, they have no power to review and reopen the finding of the earlier Revenue Officer.

7. Alternatively, he submitted even assuming for sake of argument, though not admitting, the Revenue Officer has such "inherent power of review", in any event, the Revenue Officer cannot exercise such power twice and the successor Revenue Officer having the concurrent jurisdiction cannot exercise such power of review for the purpose of vesting of the land, as that would have the effect of reopening of the finding and/or sitting over judgment in the earlier review which can only be exercised by a superior authority and not by the Officer having concurrent jurisdiction.

8. I find there is much force in the contention of Mr. Roy and because of the case reported hereinbefore, Mr. Roy gets inspiration from the said case and in my view, even assuming that the successor Revenue Officers have got the power to review, such power of review should be exercised pari materia with that of the CPC and not for purpose of vesting the excess land, like the superior officer and which can only be done by the officer of the "higher rank".

9. As there is no return to the Rule, I am to accept the said contention and make the Rule absolute and set aside the impugned orders dated March 2, 1980 and March 24, 1980, whereby 3.12 acres of land has been vested and order dated May 30, 1980, whereby 6.17 acres of land was purported to be vested by the said Revenue Officer, Balurghat.

10. Let a writ in the nature of certiorari issue accordingly. The Rule is made absolute. There will be no order as to costs.

