
(2008) 05 CAL CK 0054
In the Calcutta High Court
Case No : S.A. 1425 of 1972

Gour Gopal Dutta and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 09-05-2008

Acts Referred:

West Bengal Estates Acquisition Act, 1953 — Section 10(2), 6(1), 6(5)

Citation : (2008) 05 CAL CK 0054

Hon'ble Judges : Kalidas Mukherjee, J

Bench : Single Bench

Advocate : Bhaskar Ghose and Anadi Banerjee, for the Appellant; Lina Majumdar, for the Respondent

Final Decision : Allowed

Judgement

Kalidas Mukherjee, J.—This appeal has been preferred by the plaintiffs/appellants assailing the judgment and decree passed by learned subordinate Judge, Third Court, Midnapore in Title Appeal No. 196 of 1971 setting aside the judgment and decree passed by learned Munsif, Third Court, Tamluk in T.S. No. 23 of 1970.

2. The case of the plaintiffs/appellants, in short, is that the suit properties along with other properties belonged to Sristidhar Kar. While in possession of the suit properties, he died leaving three daughters Kamini, Khiroda and Niroda, each inheriting equal share in the property left by Sristidhar. In the D.S.R.O.R. the properties under Khatian No. 13 & 14 were recorded in the names of three daughters of Sristidhar, but, the properties under Khatian No. 33 were wrongly recorded in the name of Kiranbala who was not at all interested in the suit property. Khiroda died in 1934 leaving the daughter Subhasini. Kamini died leaving daughter Kironbala, Niroda died leaving two sons Bhudeb Dutta and Mukunda Dutta. Thus the properties left by Sristidhar were inherited by Mukunda Dutta i.e. the plaintiffs? father and Bhudeb Dutta each having equal share therein. The plaintiffs? father died before the passing of the Hindu Succession Act and the plaintiffs inherited the properties. Bhudeb Dutta died unmarried on

20.3.1969. The plaintiffs thus inherited the properties left by Bhudeb Dutta. The plaintiffs and Bhudeb Dutta retained the suit properties along with other properties by submitting "B" Form. Bhudeb Dutta was not conversant with the matters relating to the properties and the plaintiffs were minors at that time. Because of the inadvertence of the clerk, the suit property was not mentioned in the "B" Form and the same has been recorded as "vested". Subsequently, on 20.8.1969 the plaintiffs submitted revised "B" form and on 21.8.1969 the settlement "B" Camp received the same. The plaintiffs are not the big riyats. The properties were recorded in intermediary rights. The plaintiffs are in possession of the suit properties. Because of the wrong recording in the R.S.R.O.R. the J.L.R.O. served notice upon the plaintiffs for taking necessary action treating the suit properties as vested to the State. The defendant State of West Bengal did not take possession u/s 10(2) of the West Bengal Estate Acquisition Act. Under such circumstances, the plaintiffs instituted the suit before the learned Trial Court for declaration of title and permanent injunction. The defendant/respondent State of West Bengal filed written statement contending, inter alia, that the plaintiffs never filed any objection for correction of the R.S.R.O.R. at any stage of the R.S. operation. Bhudeb Dutta did not retain the suit land and the same vested to the State. The R.S.R.O.R. was correctly prepared showing the suit land as "vested".

3. The learned Trial Court has decreed the suit holding that the plaintiffs are in possession of the suit lands and the defendant State has not taken possession of the same within 60 days of the service of notice u/s 10(2) of the West Bengal Estates Acquisition Act. It has further been held by the learned Trial Court that the plaintiffs were within their rights to retain the suit property by filing revised "B" Form.

4. The learned First Appellate Court reversing the judgment and decree of the learned Trial Court held that the suit lands having not been retained by the intermediary vested to the State and option once exercised, was final and there was no provision in the West Bengal Estates Acquisition Act for exercising option more than once. The learned First Appellate Court further held that the alleged omission to mention the suit plots in the "B" Form by the clerk was not proved as the concerned clerk was not examined.

5. The substantial question of law has been formulated in this appeal as hereunder:

Whether an intermediary claiming to be in possession of the suit property and denying the taking over possession by the State u/s 10(2) of West Bengal Estates Acquisition Act can retain the suit property by filing a fresh/revised "B" form.

6. It is the case of the plaintiffs that they are the heirs of original owner Sristidhar. Earlier, the choice of retention was exercised by Bhudeb and the mother of the plaintiffs. It is the further contention of the plaintiffs that they

were minors at that time and Bhudeb was not conversant with the matters relating to the property and, as such, the suit plots were not mentioned through mistake in the "B" Form submitted earlier. It is the contention of the plaintiffs that on 20.8.1969 the plaintiffs subsequently submitted the revised "B" Form retaining the suit lands.

7. It is the contention of the State of West Bengal that the suit lands having not been retained by the intermediary vested to the State and the R.S.R.O.R. was duly prepared showing the suit lands as "vested".

8. In the decision reported in *Gour Gopal Mitra and Another Vs. State of West Bengal and Others*, . at page 16 it has been held by the Hon"ble Court as follows:

...I construe that part of Section 6(5) of the Act to mean in this context, that the right of the intermediary to retain does not become extinct even after the prescribed period has passed by. To give effect to that part of the statute, therefore, it must follow that the intermediary can go to the Revenue Officer claiming an opportunity of being heard and to allow him to retain so much of the lands as do not exceed the statutory limits of Section 6(1)(c), (d) and (j). In other words it will mean this that so long as the intermediary has not delivered possession to the Collector u/s 10(2) of the Act he has the right to claim retention.

In the decision reported in 80 CWN 42 *Lakshmi Narayan Roy and Ors. v. Land Reforms Officer and Ors.* at page 53 it has been observed by the Hon"ble Court as follows:

It is also an admitted fact that the appellant has not yet parted with the possession of the lands required to be vested and since he has not yet parted with such possession, on the authority of the case of *Gour Gopal Mitra v. State of West Bengal* (supra), he can also claim to have a right to file a fresh return in Form "B" by altering, reviewing or by adding or amending the ?b? form which was initially filed.

9. The papers relating to the proceedings u/s 10(2) of the West Bengal Estates Acquisition Act have been marked Exhibit - E. It appears therefrom that notice u/s 10(2) was allegedly served upon the plaintiffs and the plaintiffs have denied the same. But it is clear therefrom that the State has not taken possession of the suit lands. Undisputedly, therefore, the plaintiffs are in possession of the suit lands. From the ratio of the decisions discussed above, it is clear that the intermediary is at liberty to retain the suit lands, if, he is in possession of the same. In the instant case, the plaintiffs are in possession of the suit lands and, therefore, they are entitled to retain the same. It is not the case of the defendant State of West Bengal that the plaintiffs are big riyats having lands in excess of the ceiling limit prescribed under the West Bengal Estates Acquisition Act. The filing of the revised "B" Form is permissible, as laid down in the decision reported in 80 CWN 42 (Supra). Such being the position, the plaintiffs having retained the suit lands in the revised "B" Form [Exhibit ? 4 to 4(e)] have the

right, title and interest in the suit property and the defendants/respondents are restrained from creating any disturbance in the possession of the plaintiffs in the suit lands or interfering with the suit property. The judgment and decree under Appeal are set aside. The suit is decreed and the appeal is allowed. In the circumstances of the case there will be no order as to costs.

10. Let a copy of this order along with the L.C.R. be sent to the learned Court below immediately.

11. Urgent Xerox certified copy, if applied for, be handed over to the parties as early as possible.