

(1962) 07 CAL CK 0004
In the Calcutta High Court
Case No : Civil Revision Case No. 4054 of 1960

Gour Gopal Mitra and Another	Vs	APPELLANT
State of West Bengal and Others		RESPONDENT

Date of Decision : 31-07-1962

Acts Referred:

Constitution of India, 1950 — Article 226
West Bengal Estates Acquisition Act, 1953 — Section 10, 10(2), 10(5), 2(d), 2(p)

Citation : 67 CWN 12

Hon'ble Judges : P.B. Mukherji, J

Bench : Single Bench

Advocate : P.K. Banerjee, for the Appellant; Susil Kumar Biswas, for the Respondent

Final Decision : Dismissed

Judgement

P.B. Mukherji, J.—This is an application under Article 226 of the Constitution. The petitioners claimed to retain certain lands within the permissible limits u/s 6 of the West Bengal Estates Acquisition Act. The petitioners never claimed this right to retain at any stage prior to the date of making this application under Article 226 of the Constitution and making a demand for justice before the Collector. The petitioners obtained this Rule on the 22nd September, 1960 and the ground of the Rule was limited to ground (c) of the petition which is as follows :

For that in any case no notice u/s 10(2) of the Estates Acquisition Act can be served without reference u/s 20(5) of the West Bengal Estates Acquisition Act read with section 6(5) of the West Bengal Estates Acquisition Ordinance 1960.

2. In the Rule the petitioners also got an ad interim order for injunction restraining the Government from taking delivery of possession of the lands in Khatian in notices u/s 10(2) of the Act and crops thereon pending the hearing of the Rule.

3. This Rule raises a short but an interesting and important point of law. The

main question here is whether any notice u/s 10(2) of the Act can be given where there is a claim for retention having regard to the express language of section 10(5). In this case the Collector gave notices u/s 10(2) of the Act on the 12th July, 1960 on the petitioners to deliver up possession of the land in Khatian Nos. 215, 910, 1113, 1657, 2036, 2211, 2196 and 911/1 of Mouza Dewa, J.L. No. 31, police Station Paraldia, District Murshidabad where the petitioners are recorded as Raiyati tenants in the record-of-rights.

4. The determination of this question depends on the interpretation of certain relevant sections of the Act and the Rules made thereunder. The Scheme of the Act is that upon the due publication of a notification u/s 4 of the Act, on and from the date of vesting, the rights of intermediaries in the estates, to which the declaration applies, shall vest in the State free from all incumbrances. Although the title vests in the state the intermediaries are given a limited right to retain some property specified in the section with effect from the date of vesting. These rights are enumerated in section 6 of the Act. The material expression is ".....an intermediary shall. * * * be entitled to retain etc."

5. This is a right of retention. In other words it is a right of keeping the possession. While section 6 lays down the right of the intermediary to retain and state what can be retained, it also prescribes a procedure of achieving and exercising this right to retain. That is provided in section 6(5) of the Act which is material for determining the question before me. It reads as follows :-

An intermediary shall exercise his choice for retention of land under sub-section (1) within such time and in such manner as be prescribed. If no choice is exercised by him during the prescribed period, the Revenue Officer shall, after giving him an opportunity of being heard, allow him to retain so much of the lands as do not exceed the limits specified in clauses (c), (d) and (j) of the sub-section;

Provided that nothing in this sub-section shall require an intermediary to exercise the choice if he has already done so before the date of coming into force of the West Bengal Estates Acquisition (Second Amendment) Act, 1957.

6. A perusal of this sub-section (5) of section 6 of the Act makes the following points clear. In the first place it casts an obligation on the intermediary to exercise his choice of retention. The words used are "An intermediary shall exercise his choice". This statutory obligation to exercise the choice has to be exercised within such time and in such manner as may be prescribed. The manner and time prescribed appear in Rule 4A of the West Bengal Estates Acquisition Rules. The time limit within which to exercise this choice is expressly stated in Rule 4A to be the 30th day of April, 1958. The petitioners here did not exercise the choice within that express time limit of the 30th day of April, 1958. The manner under Rule 4A of making this choice is in Form B appended to Schedule B of the West Bengal Estates Acquisition Rules. The petitioners observed neither the manner nor the procedure under such Rule to exercise their

choice of retention.

7. The next part of sub-section (5) of section 6 of the Act makes it clear that if no choice is exercised by the intermediary during the prescribed period even then the Revenue Officer shall allow him to retain so much of the lands as do not exceed the statutory limits after giving him an opportunity of being heard. It seems to me clear from this language that even after the time for exercising the choice has expired the statute gives the intermediary both opportunity and occasion to claim retention permitted by the Act and there is an obligation and statutory duty cast upon the Revenue Officer to give the intermediary the opportunity of being heard and allow him to retain. No Rules have been framed, however, as to how an intermediary is to proceed when the prescribed time limit of the 30th April, 1958 has expired. But whether rules are made or not, effect must have to be given to the statutory provision u/s 6(5) of the Act which expressly provides for the case where no choice is exercised by the intermediary during the prescribed period.

8. Mr. Banerjee, learned Advocate for the petitioners has contended that it is not necessary for the intermediary to make a claim after the prescribed period has passed. I am unable to accept his contention because the language used in the relevant part of section 6(5) of the Act as quoted above shows that the Revenue Officer shall "allow" the intermediary to retain. The question of "allowing" him to retain cannot arise unless he makes a claim or else there is no question of "allowing" him anything. How can the Revenue Officer know unless the intermediary makes a claim to retain. An intermediary may not make a claim to retain. In that event the title having vested in the State Government under sections 4 and 5, the Government can take possession of the entire estate. It is a right of the intermediary u/s 6 to retain some lands. It is in the nature of a choice as described in sub-section (5) of section 6 of the Act. If he does not exercise the choice there is nothing in law to prevent the Government from taking possession of the whole estate because the title vests in the Government. The proviso to section 6(5) of the Act implies that the intermediary is not required to exercise the choice after he had already done so before the date of coming into force of the Act and the word used there is significant and that is "require" an intermediary. Implicit, therefore, is a requirement and the intermediary is required to make a claim for retention.

9. Mr. Banerjee attempted for the petitioners to put forward the argument that the intermediaries' right u/s 6 is also protected and recognised u/s 10(5) of the Act. No doubt it is protected. Section 10 of the Act deals with the Collector's obligation to take charge of estate and interest of the intermediary which vests in the State u/s 5. With a view to enable the Collector to discharge his statutory obligation in this respect he is given certain powers. One of such powers is provided in sub-section (2) of section 10 of the Act stating that the Collector may, by a written order served in the prescribed manner, require an intermediary to give up possession by a date to be specified in the order and to deliver by that

date documents, registers, records etc., mentioned therein. It is this notice which the Collector has given to the petitioners in this case. To this the objection raised by Mr. Banerjee appearing for the petitioner is that section 10(5) provides :

Nothing in this section shall authorise the Collector to take Khas possession of any estate or of any right of an intermediary therein, which may be retained u/s 6.

10. That only means this that the power of the Collector to take possession or call for possession and delivery of the estate does not authorise him to take Khas possession of so much of the land as may be retained by the intermediary u/s 6. But this sub-section (5) of section 10 of the Act cannot apply to the case where the intermediary makes no claim to retain possession. It also means this that the intermediary should make a claim to retain possession within the specified limits imposed by the Act. I do not consider it possible to hold that because of section 10(5) of the Act a notice u/s 10(2) of the Act is bad or invalid. As I read the relevant subsection of section 10 and section G of the Act and other relevant sections it appears to me that it is not incumbent upon the Collector to issue any notice or upon the Revenue Officer to issue any notice to the intermediary to make a claim for retention. Therefore, because he does not give such notice it cannot be said that the notice of the Collector u/s 10(2), which is a statutory obligation on the Collector, is bad on that ground. The major contention, therefore, of the petitioner on which the Rule was issued and to which the Rule is limited must fail.

11. But this does not dispose of the question as to the limit of time within which an intermediary can make a claim for retention u/s 6 of the Act. A statute and the Rule should be read in a manner that their different parts may be reconciled and harmoniously construed without creating any conflict between themselves. In the light of that principle I draw the following conclusions about the interpretation of the relevant sections and Rules on this point. They are briefly speaking as follows :--

Under section 6(1) there is a right in the intermediary to retain certain lands as specified u/s 6(5). The intermediary shall exercise his choice of retention within the 30th April, 1958 in Form "B" as prescribed under Rule 4A of the West Bengal Estates Acquisition Rules. But even if the intermediary does not exercise his choice within the prescribed period and notwithstanding the word "shall" in the earlier part of Section 6(5), he still can claim his right to retain u/s 6 of the Act as is expressly provided in the latter portion of subsection (5) of section 6. 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. Once however the intermediary has lost possession to the Government no question of his any more "retaining" possession arises, for such a claim will be to "repossess" and not to "retain". This construction keeps alive the statutory right of the intermediary to retain u/s 6 only till he parts with possession u/s 10(2) of the Act. This construction is further supported by the period of notice u/s 10(2) of the Act. The notice that the Collector gives under this section for giving up possession must specify a date which shall not be earlier than sixty days from the date of the service of the order. Now that is the ultimate time limit. If he wants to claim retention or exercise his choice of retention the intermediary must do so within those sixty days. I am, therefore, of the view that it is open to the petitioner to claim retention in the facts of this case. The primary authority before whom the petitioners should make this claim for retention is obviously the Revenue Officer under the second part of section 6(5) of the Act.

12. It has been contended by Mr. Biswas appearing for the State that while the notice u/s 10(2) has been given by the Collector he cannot entertain a claim for possession u/s 6. for that is a claim which can only be disposed of by the Revenue Officer. This raises an interesting side issue as to how far the Collector is a Revenue Officer and what are the respective ambits of power between the Collector and the Revenue Officer.

13. This point, however, is no material. Whether the relief should be sought before the Collector or the Revenue Officer by making the claim for retention is a small point for practical purposes because the petitioner can make this claim in answer to the notice u/s 10(2) of the Act by stating that he has already made an application to the Revenue Officer claiming retention u/s 6 of the Act. I have no doubt that in such a case both the Collector and the Revenue Officer will deal with the petitioner's claim for retention according to the law. It will not be, therefore, necessary to discuss in detail the position of the Collector and the Revenue Officer in this respect. The Collector is defined by section 2(d) of the West Bengal Estates Acquisition Act to mean the Collector of a district or any other officer appointed by the State Government to discharge any of the functions of the Collector under this Act. The expression "Revenue Officer" is not defined by the West Bengal Estates Acquisition Act. But having regard to section 2(p) of the West Bengal Estates Acquisition Act, which provides that expressions used in this Act and not otherwise defined have in relation to the areas to which the Bengal Tenancy Act, 1885 applies, the same meaning as in that Act and in relation to other area meaning as similar thereto as the existing law relating to land tenures applying to such areas, permits. This expression "Revenue Officer" must be taken in the light of the definition contained in the Bengal Tenancy Act. u/s 3(14) of the Bengal Tenancy Act "Revenue Officer" includes any officer whom the Local Government may appoint by name or by virtue of his office, to discharge any of the functions of a Revenue Officer under that provision. Section 53 of the West Bengal Estates Acquisition Act sets out the list of authorities for

the purposes of that Act. The Revenue Officer is included in that list of authorities after the Board of Revenue, Director of Land Records and Surveys, Settlement Officers, Assistant Settlement Officers, and Compensation Officers. Then again section 54 of the West Bengal Estates Acquisition Act dealing with the delegation of powers by the State Government and powers and duties of the authorities lays down that the State Government may, by notification in the official Gazette, delegate any of the powers under this Act, except the power of making rules u/s 59 not only to the Board of Revenue and the Commissioner of a Division but also to the Collector subject to such reservations, if any, as may be specified in the notification. This means, that the Collector has the competence to be an authority to exercise powers under this Act under delegation from the State Government. Historically and otherwise the Collector is essentially a Revenue Officer in spite of the fact that in modern times he has many other functions added to him and some of the older judicial functions as Revenue Officer have been shed. In the well-known Work of Field's Regulations of the Bengal Code at pages 71 and 72 in Article 74 and 75 Collector was said to be practically in charge of managing the whole business of revenue. That view also "finds support from the Tagore Lectures of Sarada Charan Mitra on the Land Laws of Bengal, Bihar and Orissa, Second Edition, at pages 58 and 134. That also deals with the Collector as the pivotal machinery for public demand recovery for revenue. It will be unnecessary to pursue this matter to determine how far the Collector is or is not a Revenue Officer in the West Bengal Estates Acquisition Act because, as I have said before, it is immaterial in the present case as the intermediary can approach either or both and preferably both the Collector in answer to notice u/s 10(2) and the Revenue Officer under the latter half of section 6(5) of the Act.

14. Finally, Mr. Biswas, learned Advocate appearing for the State has drawn my attention to the fact that an intermediary can object and correct the entry in the record-of-rights under sections 44, 45 and 45A of the Act. It is not for this Court to advise what steps the intermediary should take according to law. Certainly if rights such as are there in sections 44, 45 and 45A of the West Bengal Estates Acquisition Act are still open to the intermediary, the intermediary may avail of them. But even then the entry in the record-of-rights raises at best a presumption which can always be rebutted on proper and cogent facts. It is enough for the purposes of this application to say that u/s 6(5) of the Act, the intermediary has still a right and an opportunity even after the prescribed time limit has passed, to make a claim for retention of lands u/s 6(1) (c), (d) and (j) thereof, so long as he has not parted with the possession of his lands and the prima facie authority to which the intermediary can make such claim is the Revenue Officer.

15. With these observations this Rule must be discharged and the petition is dismissed. Ad interim injunction is vacated. There will be no order as to costs.