
(1979) 04 CAL CK 0001
In the Calcutta High Court
Case No : C.R. No. 3049 of 1976

Habu Mondal

APPELLANT

Vs

Collector, Bankura and Others

RESPONDENT

Date of Decision : 10-04-1979

Acts Referred:

West Bengal Restoration Of Alienated Land Act, 1973 — Section 4, 4(1), 4(1)(a), 4(1)(b)

Citation : 83 CWN 728

Hon'ble Judges : P.K. Banerjee, J

Bench : Single Bench

Advocate : B.B. Giri, for the Appellant; Samaresh Banerjee, for the Respondent

Judgement

Pradyot Kumar Banerjee, J.—This Rule is directed against an order passed by the Appellate Authority under the West Bengal Restoration of Alienated Land Act, 1973. The Appellate Authority affirmed the order passed by this Special Officer. The facts arising out of this case are that there was a Kobala for Rs. 2000/- which was executed and registered on 27th April, 1970. By the said document the petitioner purchased 27 decimals of land for Rs. 2000/-. From the recital of the document it appears that the opposite party no. 3 executed the said Kobala in order to pay of debts incurred for the marriage ceremony of his daughter. Since the date of aforesaid conveyance the petitioner was in the possession of the land and enjoying the usufructs thereof. It appears that the opposite party no. 3 filed an application before the opposite party no. 2, Special Officer, under the Act, hereinbefore stated, for reconveyance of the land therein. In the said application the opposite party no. 3 stated that on the date of conveyance he had only 7 bighas of land which was sold for poverty and there was no agreement for reconveyance either oral or in writing in the said deed of conveyance. The Special Officer directed the opposite party no. 3 to pay Rs. 2400/- to the petitioner within 4 years in eight equal instalments. Being aggrieved by the said order the petitioner preferred an appeal before the Appellate Authority which was also rejected on 26th July, 1976. This present application was therefore made by the

petitioner. Mr. Giri on behalf of the petitioner contended that as the transfer was made for the purpose of paying off debts incurred due to the marriage of the daughter, the application under the West Bengal Restoration of Alienated Land Act is not maintainable. Further it is argued by Mr. Giri that u/s 4 of the West Bengal Restoration of Alienated Land Act the condition precedent for the exercise of power is that (a) the transferor was not holding more than 2 hectares of land in the aggregate at the time of sale and then if such transfer is made after the expiry of the year 1967 being in distress or in need of money for the maintenance of himself and his family or for meeting the cost of his cultivation or (b) such transfer is made after the expiry of the year 1967 with an agreement written or oral for reconveyance of the land transferred to the transferor. Mr. Giri contended that both the elements (a) and (b) u/s 4 (1) (a) and 4 (1) (b) of the Act must be present before the order under the West Bengal Restoration of Alienated Land Act is made. It will appear from Section 4 of the Act that the order can be made if the Special Officer is satisfied on fact which comes either in section 4(1) (a) or 4(1) (b) of the Act. It is not necessary, in my opinion, to have both the elements in section 4(1) (a) and (b) to be present before the order for restoration is made. Mr. Giri referred to the judgment reported in 1977(1) C.L.J. 23 (Kanailal Chattapadhyaya vs. Satyendra Nath Mazumdar) stating therein according to him that (a) and (b) must be read together. In my opinion, the learned Judge has not said that. This was never argued before the Hon"ble Judge that clauses (a) and (b) of section 4(1) must be read conjunctively. In my opinion, in either of the cases, under clause (a) or (b) if the Special Officer is satisfied that the transferor was not holding more than 2 hectares of land in aggregate and that the transfer was made after the expiry of the year 1967 and within 5 years from the date of such transfer or that within 2 years from the date of the commencement of the Act the Special Officer will have jurisdiction for restoration of such land to him.

2. Next question urged by Mr. Giri is that the payment of debts incurred due to the marriage of the daughter does not come within the mischief of section 4 (1) (a) at all or on the other hand it cannot be said that such transfer was made in distress or in need of money for maintenance of himself and his family or for meeting the cost of cultivation. It has been held by this Court in the case reported in Sadhan Ch. Koley and Others Vs. Dulal Bibi and Others, that the distress covers construction of houses for residence of the transferor and her children. It has been held in the case reported in 1976 (2) C.L.J. 118 Chittaranjan v. West Bengal that the distress means an economic distress. It appears that the words "maintenance of himself and the members of the family" of the transferor may bring in even the economic distress, inasmuch as, it is the duty of the father to give in marriage of his daughter. In so far as that is concerned, in my opinion, this also comes within the mischief of the words "being in distress or in need of money for the maintenance of himself and his family".

3. In my opinion Mr. Banerjee on behalf of the opposite party no. 3 is right when he says that it is the bounden duty of the father to give in marriage of his

daughter and if he has incurred debt for that purpose it must Come within the words "being in distress" and also "in need of money for the maintenance of himself and his family". Moreover in the facts of this case it appears that the Lower Tribunals on the evidence adduced before them came to the finding that the transferor has less than 2 hectares of land and that he was in distress and in need of money for the maintenance of his family.

Apart from the marriage, the evidence was adduced that he was in economic distress when the transfer was made.

4. The word "maintenance" has not been defined anywhere in the Act. But it appears to me that the words "maintenance of himself and his family" will include the expenses incurred for the marriage of the unmarried daughter. In the West Bengal Land Reforms Act unmarried daughter is a member of the family. The word "maintenance" has been defined in the "Hindu Adoption and Maintenance Act, 1956" where it has been specifically included the reasonable expenses for the marriage of the unmarried daughter. In view of the reasons it must be held that the expenses incurred for the marriage of the unmarried daughter of the raiyat will come within the meaning of "maintenance of himself and the members of the family" as contained in section 4(1) (a) of the West Bengal Restoration of Alienated Land Act. Mr. Giri referred to the decision reported in 1977 (1) C.L.J. 23 (Kanailal Chattapadhyaya v. Satyendra Nath Mazumdar) in support of his contention that clauses (a) and (b) of section 4(1) of the Act must be read together. In my opinion the Hon"ble Judge was only considering the scope of section 4(1)(b) of the Act because in the said case there was an agreement for reconveyance. Therefore, in my opinion, it cannot be said that the case reported in 1977(1) C.L.J. 23 supports Mr. Giri's contention that section 4(1) (a) and (b) of the Act should be read together.

In the circumstances, therefore, both the points urged by Mr. Giri fail. The Rule is, therefore, discharged. There will be no order as to costs.