
(1971) 04 CAL CK 0011

In the Calcutta High Court

Case No : Civil Revn. Case No"s. 37 and 424 of 1971

Haji Mahabub Hossain and Others

APPELLANT

Vs

Biswanath Nandy and Another

RESPONDENT

Date of Decision : 20-04-1971

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2, 151
West Bengal Land Reforms Act, 1955 — Section 57

Citation : AIR 1971 Cal 381 : 75 CWN 597

Hon'ble Judges : R.N. Dutt, J;A.K. De, J

Bench : Division Bench

Advocate : Arun Kumar Janah, for the Appellant; B.C. Mitter and Aruna Mukherjee for Opposite Party No. 1, for the Respondent

Final Decision : Allowed

Judgement

R.N. Dutt, J.—These two Rules are taken up together as the same question is involved in both the cases. One Touhid Ahmed Khan, Mutwali of Khan Saheb Abdul Ajij Khan Wakf Estate, was the owner of Hot No. 815 of mouza Bagbari with an area of 18.75 acres. On January 24, 1969, he sold 3.25 acres out of the plot on its south to Biswanath Nandy. Then on August 21, 1970, the petitioners in both the cases took lease of 11.32 acres out of the plot on the southern side and again on August 25, 1970, took lease of the other 4.18 acres of the plot from the said Touhid Ahmed Khan. Subsequently, Biswanath Nandy, who is opposite party No. 1 in both these cases, filed two applications u/s 8 of the West Bengal Land Reforms Act, 1956, before a Revenue Officer for pre-emption of these transfers in favour of the petitioners -- pre-emption cases Nos. 92/70 and 97/70. Opposite party No. 1 further prayed for an order of ad interim injunction restraining the petitioners from manufacturing bricks, constructing kiln and/or erecting chimney on the lands of which pre-emption was sought and also from changing the character of the lands. The Revenue Officer on September 29, 1970, granted an ad interim injunctions against the petitioners as prayed for. Subsequently, on November 16, 1970, opposite party No. 1 filed applications in

both the cases alleging that the petitioners had violated the ad interim order of injunction issued by the Revenue Officer. The petitioners were thereupon directed by the Revenue Officer to show cause why necessary action should not be taken against them under Order 39, Rule 2 (3) of the Code of Civil Procedure. The petitioners have thereafter obtained these Rules against these orders of the Revenue Officer.

2. Mr. Janah, who appears for the petitioners before us, first contends that the lands concerned are bagan lands and not agricultural lands and so. Section 8 of the West Bengal Land Reforms Act is not attracted and the applications before the Revenue Officer were incompetent. A decision on this question will depend on ascertainment of certain questions of fact, namely, whether the lands are bagan lands or agricultural lands and so on. We do not, therefore, think that at this stage without further materials we are in a position to consider this objection. This question is, therefore, left open.

3. Mr. Janah then argues that the Revenue Officer has no jurisdiction to issue an order of injunction either u/s 151 or under Order 39 of the Code. Mr. Mitter, who appears for the opposite party No. 1 before us, on the other hand, contends that the Revenue Officer is competent to make an order of injunction. Under the West Bengal Land Reforms Act the Revenue Officer has been given certain powers to decide the question of pre-emption under Sections 8, 9 and 10 of the Act. The Revenue Officer has been given the powers as Revenue Officer. He is not designated as a Court there. Section 57 of the Act states that the Revenue Officer shall in dealing with proceedings under the Act exercise the powers of a civil court under the CPC for the purposes of enforcing the attendance of witnesses and the production of records or documents or in enforcing or executing the orders including an order for restoration of possession as if such orders were decrees of a civil court. Section 57 does not in terms confer on the Revenue Officer the powers u/s 151 or Order 39 of the Code. Opposite party No. 1, however, made the applications for ad interim injunction u/s 151 and Order 39 of the Code and, as we have said, the Revenue Officer directed the petitioners to show cause why action should not be taken against them under Order 39, Rule 2 (3) of the Code. Clearly, therefore, the Revenue Officer purported to act u/s 151 and/or Order 39 of the Code.

Mr. Mitter submits that Section 57 of the West Bengal Land Reforms Act is not exhaustive but just illustrative. But when we read the terms of Section 57 as a whole, it does not appear that Section 57 was meant to be just illustrative and not exhaustive. The Revenue Officer was not designated, as we have said, as a court nor was he given all the powers of a civil court. He was given only specified powers of the CPC for dealing with proceedings before him under the West Bengal Land Reforms Act, namely, for the purposes of enforcing the attendance of witnesses and the production of records and documents or in enforcing or executing orders as if such orders were decrees of a civil court. This Section 57 also makes it clear that the Revenue Officer was not a civil court because, if the

Revenue Officer was meant to be a civil court, Section 57 would not have stated that the Revenue Officer in dealing with proceedings under this Act shall exercise the powers of a civil court under the provisions of the CPC for certain specified purposes. On the terms of Sections 8, 9, 10 and 57 of the Act we cannot hold either that the Revenue Officer is a civil court or that the Revenue Officer has all the powers of a civil court under the Code of Civil Procedure. Mr. Mitter refers to the decision in *M.N. Ghosal Vs. P.K. Banerjee and Others*, . There a Bench of this Court held that the Rent Controller under the West Bengal Premises Tenancy Act may issue injunction in exercise of his powers as a court u/s 151 of the Code of Civil Procedure. But the basis of this decision was Section 29(5) of the statute itself where it was specifically said that the Rent Controller in dealing with proceedings under that statute would be deemed to be a court for the exercise of powers u/s 151 of the Code of Civil Procedure. Obviously, therefore, this Court held that the Rent Controller could issue injunction u/s 151 of the Code. But here we have seen that the Revenue Officer has not been given such powers under the West Bengal Land Reforms Act. We may in this connection refer to the Bench decision in *Sm. Indira Debi and Another Vs. State of West Bengal and Others*, , where this Court has held that a quasi-judicial tribunal cannot claim or exercise the inherent powers of a civil court unless the statute has conferred all the powers of a civil court on such a tribunal either expressly or by implication. Here on the terms of the statute, as we have considered, it cannot be said that the inherent powers of a civil court u/s 151 of the CPC have been conferred on the Revenue Officer either, expressly or by implication.

Mr. Mitter then refers to a single Bench decision of this Court in *Sm. Durga Devi and Others Vs. Bhagwandas Jayswal*, . There a Thika Controller made an ex parte order on the basis of certain reports submitted by the court's officers. The persons against whom the order was made filed an application under Order 9, Rule 13 of the Code. Chatterjee, J. held that Order 9, Rule 13 of the Code is not attracted, but the controller has the inherent power to do justice or, in other words, to enquire into if he has made an order on the basis of some mistake committed by his officers and to remedy the same. Chatterjee, J. has not specifically said that the Thika Controller has the inherent powers of a civil court u/s 151 of the Code of Civil Procedure. What he has said is that the Thika Controller as a tribunal has the inherent power to correct its own mistakes. But no tribunal can be said to have jurisdiction to make an order of injunction because it has the inherent power to correct its own mistakes. When a tribunal corrects its own mistakes, it acts within its jurisdiction. But no new jurisdiction can be created for a tribunal on the basis of its inherent power to correct its own mistakes. Here in this case to hold that the Revenue Officer has the jurisdiction to issue an injunction will mean that the Revenue Officer will acquire a new jurisdiction not otherwise conferred on him under the statute which created it. Inherent power of a tribunal to correct its own mistakes cannot be the basis of such a jurisdiction.

Mr. Mitter lastly argues that a tribunal has inherent jurisdiction in any particular

case to act in such a way as may be necessary to enable it to do that justice for the administration of which it exists or, in other words, he means to say that unless the Revenue Officer is given the power to preserve the property, the order which he may ultimately make about pre-emption may become infructuous as the property may be damaged or wasted. He refers to the decision of Sir Ashutosh Mookerjee in *Chhayemunnessa Bibi v. Basirur Rahman* (1910) ILR 37 Cal 399, where the learned Judge said, "it is clear upon the authorities that a court has inherent power, in any particular case, to adopt such procedure as may be necessary to enable it to do that justice for the administration of which alone it exists," Here the learned Judge gives this inherent power to a "court", -- not to a tribunal. But even apart from that, what the learned Judge said was that the court had the inherent power to adopt such "procedure" as may be necessary which, in effect, means that the inherent power is limited to adoption of certain procedures at the hearing. But under the inherent power no new jurisdiction can be created. Thus we hold that the Revenue Officer as a tribunal has no inherent jurisdiction to make an order of injunction. True, during pendency of the preemption proceedings the character of the land sought to be pre-empted may in certain cases undergo some changes; but the remedy for that lies in an expeditious disposal of the proceedings. Whatever other rights or remedies the parties may have in appropriate proceedings in such cases, we hold that the Revenue Officer as a tribunal has no jurisdiction to make an order of injunction either u/s 151 or Order 39 of the CPC or otherwise.

4. In the result, the Rules are made absolute. The orders of ad interim injunction made by the Revenue Officer on September 29, 1970, in pre-emption case No. 92/70 and on November 10, 1970, in pre-emption case No. 97/70 are set aside and the ad interim injunctions are vacated. Since we find that the ad interim injunction was without jurisdiction, the subsequent orders made by the Revenue Officer directing the petitioners to show cause why action should not be taken against them under Order 39, Rule 2 (3) of the CPC and appointing Sri Prabir Kumar Choudhury, Advocate, as Commissioner for local inspection about the alleged violation are also set aside. The Revenue Officer will now proceed with the pre-emption proceedings in accordance with law after allowing reasonable time to the petitioners to file their objections.

5. We make no order as to costs of these Rules.

6. No order on the application for vacating the interim stay is in the circumstances necessary.

De, J.

7. I agree.