

(1981) 09 CAL CK 0020
In the Calcutta High Court
Case No : C. R. No. 3317 (W) of 1977

Hriday Krishna Patra and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 03-09-1981

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

West Bengal Land Reforms Act, 1955 — Section 14(3a), 14K(c), 14L, 14M, 14M(3)

Citation : 86 CWN 154

Hon'ble Judges : M.N. Roy, J

Bench : Single Bench

Advocate : Samar Kumar Ghosh, for the Appellant;

Judgement

M.N. Roy, J.—Even though this Rule, which was obtained on 12th July 1977, was made ready as regards service on 20th March 1979, there has not either been any appearance entered on behalf of the Respondents or any affidavit-in-opposition filed by them. At the time of the issue of the Rule, no interim order was granted, but, pursuant to the liberty 3s granted, prayer for necessary interim order having been made, on 5th August 1977, an interim order or injunction was issued. At that time also nobody opposed the prayers. It has been stated by the petitioners that one Gopal Patra, who died in 1972, had considerable landed properties and on 10th August 1976, he was called upon to appear before the Revenue Officer, Barasat Settlement "C" Camp, Respondent No. 5, by a notice dated 9th August 1976, for hearing of Case No. 47 (M) 72, in respect of the Return in Form No. 7A, which was filed on 5th August (March ?) 1972 u/s 14T (1) of the West Bengal Land Reforms Act, 1955 (hereinafter referred to as the said Act). The Return as aforesaid, was filed by Gopal Patra, while alive and accordingly, on receipt of the notice after his death, the heirs of Gopal Patra, since deceased, appealed in the proceedings. The petitioners have stated that thereafter, and on receipt of the intimation about the death of Gopal Patra, they were impleaded as parties in the concerned proceedings and therein, they had represented that the lands as held, were within the ceiling limit as

prescribed under the said Act, considering the extent and the number of the members of the family. It has been stated that the extent of the number of the members of the family ps claimed was also certified by the Anchal Prodhan and on the basis of the same and also on other evidence as adduced, the said Respondent No. 5 was pleased to pass an order on 25th March 1976, holding that no land belonging to the petitioners, would vest.

2. Thereafter, on 19th July 1976, the said Respondent No. 5 reopened the case, according to the petitioners, by way of review and an order u/s 151 of the CPC was passed. Such order has been claimed to be inappropriate, without jurisdiction, void, irregular and bad. It was also claimed that the said Revenue officer, Respondent No. 5. was not the prescribed authority to act or exercise powers u/s 151 as mentioned above.

3. Apart from the above, it was claimed by the petitioners that the petitioner No. 8, Smt. Kalidassi Patra, was an unmarried daughter, at the time of filing the concerned return under. Form 7A in 1972 and was given in marriage thereafter, and she having been unfortunately deserted by her husband, was actually residing at the house of her father, but such fact has not at all been considered in the inquiry as held, which was also claimed to be fictitious and to have been held behind the back of the petitioners or without any opportunities to them. These apart, the orders have also been claimed to be malafide and without jurisdiction, as in view of the facts, amongst others, that the Revenue Officer concerned, had no jurisdiction u/s 151 of the Code of Civil Procedure.

4. Chapter II-B of the said Act, containing section 14J to 14D, was first inserted by the West Bengal Land Reforms (Amendment) Act. 1971. There after, such amending Act was replaced by the West-Bengal Land Reforms (Amendment) Act, 1972 (W. B. Act XII of 1972). Such amendment was in-(sic) with effect from 15th February 1971, with some modifications in section 14M(3) and by addition of a proviso to section 14T, apart from adding sub-section (2A) to section 14Q. The return in Form 7A was filed on 5th March 1972, Shri Gopal Patra was alive then, and died on 3th April 1972. By an order dated 25th March 1976, i.e. after Gopal's death and even on recording that fact, it was ordered that no land of the Raiyat will vest to the State Such order was passed, considering the members of the family as seven and in terms of section 14M of the said Act In fact, the family of the Raiyat. considering the members of the family was found to be entitled to a ceiling of 2075 acres. Such determination was sought to be responded on 19th July. 1976. the following manner :-

Whereas it has come to my notice that 7A Case No. 47(M) of P.S. Mina-khan, District 24-Parganas, decided by me on 25.3.76 on the basis of the family members shown by the raiyat. Gopal Patra, son of Meghoram Patra duly Certified by Anchal Prodhan in connection with above 7A return sub-mitted by the above raiyat is not correct and complete.

Whereas it is necessary to ascertain the correct family members of the raiyat

aforesaid on 15.2.71. The case is reviewed by me Jhananda Roy where as I have invested u/s 57 of the W.B.L.R. Act. I am re-opening the proceeding for review under sec-(sic)151 C.P.C.

5. It is true that at the time of such reopening or review u/s 151 of the Code of Civil Procedure, i.e. in 1976, the members of the family, by the death of Gopal Patra, was diminished to six in place of seven.

6. Oft the set of facts, Mr. Ghosh, appearing in support of the Rule, claimed and contended that not only the review as was sought to be made in terms of or under the provisions of section 151 of the Code of Civil Procedure, was improper, irregular, without jurisdiction and void, but so also the determinations in the matter of grant of ceiling, as made, was illegal Chapter II-B, provides for a fixation of ceiling on agricultural holding of a Raiyat on the basis of members of his family and for matters ancillary thereto and the sections containing in the said chapter, as would appear from the heading, deals with "Ceiling on holdings". In fact, various ceiling limits have been prescribed by section 14M, according to size of the families and it is abundantly clear that no Raiyat can now hold lands in excess of the area prescribed by section 14M. The definition of family as contained in section 14K(c) should be observed to be more realistic than the definition of the terms in similar laws, for imposition of ceiling on agricultural holdings, enacted in other States and in fact such has been the views expressed in the case of Sasanka Sekhar Maity and Others Vs. Union of India (UOI) and Others, , which has also observed the said Chapter II- B as intra vires. In terms of the daterminations of the Supreme Court the definition as in section 14K(c) is much wider and far more generous and humane because it takes into consideration the existence of widow and divorced daughter. It has also been observed in that case that the legislature, on a correct perspective, has enlarged the definition of a family to the maximum possible extent.

7. In support of his submissions that the Revenue officer concerned, in the instant case, had no power of review or any power u/s 151 of the Code of Civil Procedure, Mr. Ghosh not only referred to the language of the said section, which uses the terms "Court", but also relied on the determinations in the case of Satya-narayan Banerjee -Vs- Charge Officer and A.S.O., Birbhum 1974 C. H N 127. In that case, a point arose, whether Administrative Tribunal has inherent power of review and if Assistant Settlement officer concerned, was invested with the powers of review under Order XLVI Rule 1 of the Code of Civil Procedure. Order XLVII admittedly given rights to any person, who is aggrieved by a decree or order or by a decision of any court and section 151, is the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of Court. In the decision as cited above, it has been observed that Order XLVII Rule 1 of the Code of Civil Procedure, does not authorise a suo moto proceeding for review, as was proposed by the Assistant Settlement officer concerned, not do the real grounds for which review furnished any sanction or authority for a proceeding as instituted, in that case was present.

It should be noted that it has been observed in the determinations of the Supreme Court in the case of *State of West Bengal v. Indira Debi*, (1977) 3 SCC 559 affirming the Calcutta view that section 151 does not confer any additional jurisdiction on the Court and such section recompiles the inherent power of Courts of record and civil Courts and as such it was observed that it is obvious that reference to section 151, cannot be source of power as far as notice u/s 57 of the West Bengal Estates Acquisition Act, 1954. It has also been observed that the said section 151 does not confer any additional jurisdiction on the Court and in so far as the Courts of record and Civil Courts are concerned, they have inherent power which is recognised by section 151.

8. In support of his submissions as mentioned above and more particularly on the question of review, Mr. Ghose further referred to the determinations in the case of *Jagadish Chandra Chowdhury vs. State of West Bengal*, 83 CWN 785 In that case, while dealing with section 14T of the said Act, it has been held that notice by the Revenue officer for review of the earlier order passed in 7A Form return, was without jurisdiction.

9. Mr. Ghose claimed, in supplementing his submissions, on other grounds that even if review in the instant case, is found to be due and proper, but the, determination as was made by considering the member of the family as six which was shown in the return as seven and that too in view of the sub sequent death of Gopal Patra, was improper and without jurisdiction. The relevant facts have been stated hereinbefore and from there, Mr. Ghosh claimed that as the return in question was filed on 5th March 1972 and Chapter II-B came into operation with effect from 15th February 1971 and Gopal Patra was alive on those dates, but he died thereafter on 8th April 1972, so the determination as was initially made on 25th March 1976, even after Gopal's death could not have been reopened, in the manner as was sought to be done and such re opening was void, irregular bad and without jurisdiction as the relevant and effective date so far the application of Chapter II-B and the sections as incorporated therein should be from 15th February 1971. He claimed that when on the date of coming into force of Chapter II-B. Gopal was alive and that was also the position when the return was filed, so even on the subsequent death of Gopal, the authorities concerned were not authorised to consider Gopal's claim in the family ceiling, extinguished.

10. In support of his submissions other than those on section 151 as indicated here in before, Mr. Ghose relied firstly, on the determinations in the case of *State Vs. District Judge and Others*, , a case under the U.P. Imposition of Ceiling of Land Holdings Act 1960 and where., on constructions of sections 5, 9 and 10 of that statute, it has been observed that in the matter of determination of ceiling area, the relevant date would be the date of enforcement of the Act and any subsequent addition to the family of a tenure-holder, will have to be disregarded. On application of the principles as mentioned above, in the subsequent case of *The State of U.P. and Another Vs. Dhan Singh and Others*, , to which reference

was made by Mr, Ghose secondly the same view has been expressed Reference was made thirdly, by Mr. Ghose to the determinations in the case of Balakrishna Kurup Vs. State of Kerala and Another, . In this case, the determination of Ceiling area with reference to a family under the Kerala Land Reforms Act, 1964, was in issue and it has been observed that a family cannot claim that a child born after 1-1-1970 (a date notified u/s 83) but conceived at that time is a member of the family so as to increase the ceiling area under Kerala Land Reforms Act. A family is defined in that Act as constituted by the husband, wife and unmarried minor children: "Minor" is defined in section 2 (36A) to mean a person who has not attained the age of 18 years. Age is reckoned only from birth. To say that a child not yet born is of the age below 18 is inappropriate. An unborn child, therefore, cannot be reckoned for the purpose of calculating the number of members of the family. The contention that if an unborn is left out of reckoning it will suffer harm is not accepted, because provisions of section 82(2) and (3) are not intended to confer rights on any particular member of the family nor to divest ownership from one member and vest it in another member of the family. Ceiling has to be determined in terms of extent to be held by an individual is determined on the basis of owning or holding of property by an artificial unit. It is in the calculation of that extent that the membership of the family is relevant. It does not mean that once a person becomes a member of a family he would get the right to property which otherwise, he has not. The right of no person inter se is affected by this determination. Hence it cannot be said that an unborn child would be losing some right to property when it is born if it is left out of account. It would obtain any right to the property on birth that. would continue to be so irrespective of any determination for the purpose of ceiling. Whatever that be, on the plain language of the term "family" as defined in the Act there is no reason to style a child conceived but not born as an "unmarried". In view of the determinations as mentioned above, it was claimed that if, because of new accretion by birth after the appointed date, this new born baby cannot claim a share in the ceiling, so on the death after the appointed date, the family ceiling as once determined, during the life time of the deceased, cannot be taken away or done away with, as mentioned above, since the ceiling area was that of the family. It was specifically contended, if on birth after the appointed date and determination of ceiling area, no extra ceiling is admissible, on death also, ceiling area, once determined after the appointed date, cannot be given a go by and the family in question, cannot be divested of the area, which was determined duly, on consideration of the deceased as a member of the concerned family.

11. The submissions of Mr. Ghose, on the analogy, as sought to be established, in view of the circumstances as disclosed in the cases as mentioned hereinbefore, may not hold good always and in all cases or in ail circumstances. As mentioned above. Chapter 11-B provides for a fixation of ceiling on agricultural holdings of a Raiyat on the basis of the number of the members of the family as specified, which may also be called to be a family ceiling. Thus, if on the date or When the said chapter came into operation i. e. 15th February 1971 or thereafter, such a

family ceiling was duly received by the family of the Raiyat, any death occurring subsequent thereto, would not, in my view, in ordinary circumstances, entitle the authorities concerned, to reopen or review the proceedings as completed. But, if it can be established that the death in question, occurred prior to the date of enforcement of the provisions and the Return in question was filed by considering such dead person as a member of the family viz the ceiling was granted or obtained on wrong premises or a declaration, which was fictitious, the authorities concerned, subject to the limitations under the said Act, may reopen the matter. Here in the case, the Revenue officer concerned, reopened the case on 19th July 1976 and that too after the determination of ceiling, taking the member of the family as seven, as Gopal Patra was found to be alive at the time of filing the Return, was made on 25th March 1976. It should be noted that Gopal had died on 8th April 1972 i.e. after the coming into force of Chapter-II-B, after filing the Return on 5th March 1972 and before the first and initial determination of ceiling was made on 25th March 1976. Mr. Ghosh claimed that the disposal of the Return in Form 7A as filed or the determination of the same, would not be the relevant date for the purpose of determination of ceiling area according to the existing members of the family, as the authorities concerned may in that or many cases, would take a long time to determine the ceiling area and during which time or the pendency of the determination of the Return as filed, members of the family may be as such, on the basis of the cases as cited at the Bar, he claimed that the effective date of determination of ceiling area, on consideration of the members of the family, should be 15th February 1971, when Chapter 11-B, was put into operation. It should also be noted that in this case there was no legal evidence that Gopal was not alive on the date when Chapter 11-B. came into operation or on the date when he had filed his Return.

12. The expression family has been defined in section 14K(c) and terms family has been explained in clause (a) to explanation to section 23B, The "family" in relation to Raiyat shall be deemed to consist of himself, his wife, minor sons and unmarried daughters. If any, such definition or extension of family also corresponds to the Kerala Act, which was in issue in the case of Bel Krishna Kurup Vs. State of Kerala (Supra), where it has been observed that a child conceived on the date of commencement of the Act but born after, would not be a member of the family. The Allahabad High Court judgements as mentioned hereinbefore, do also subscribe to the same view. It should also be noted that actual physical possession of the land is not necessary to constitute a person as a Raiyat. Chapter 11-B provides for the entitlement of the maximum area to land, which is known as ceiling area, and to be owned by a Raiyat. The family of a Raiyat shall not consist of persons other than those mentioned in section 14K(c) and u/s 14L, no Raiyat shall be entitled to hold any land in excess of the ceiling area as applicable to him u/s 14M. Such position would be relevant, not only on the date of the commencement of the provisions of chapter II-B, but also in future and the terms of section 14L make it categorically clear that the Raiyat shall not be entitled to own more lands at any time, after the commencement of

the said Chapter and accordingly the ceiling area shall be reduced in case of decrease of the members of the family. In the case of *Sm Indira Devi vs. State of West Bengal* MR 1967 Cal 469, which decision has been affirmed in the case of *The State of West Bengal vs. Indira Debi* (supra), the validity of a proceedings, initiated under inherent powers, by authority invested with powers of Civil Court and if such authority can exercise all powers of Civil Court, including inherent powers, was considered and construed and it has been observed that Inherent powers are subject to some limitations as those on inherent power of Civil Court and as there are specific provision for rectification of grounds u/s 44(2) (a), recourse to inherent power, for rectification of records, as were taken u/s 57 and other provisions of the Estate Acquisition Act, 1953 were held to be unjustified. In that case, it has been specifically observed that unless statute confers upon judicial Tribunal all powers of a Civil Court, inherent powers cannot be used by them.

13. In terms of section, 14S, lands in excess of ceiling area, owned by a Raiyat, shall vest in the State free from any incumbrances on the commencement of Chapter II-B i. e. 15th February 1972. The provisions for vesting under the West Bengal Estates Acquisition Act, 1953 and the said Act, cannot be equated, as the same right. Under the former Act, all estates, vested in the State with the right to the intermediary to retain certain lands in terms of or u/s 6 of that Act, but under the said Act, the lands in excess of the ceiling area only, shall vest in the State. Section 14T (3A) of the said Act, which has subsequently been replaced by section 14T(3a) originally authorised the authorities concerned, to determine afresh, the extent of land which is to vest in the State u/s 14S and to take possession of such land. Such power u/s 14T(3A) could have been put to action by the Revenue officer, either of his own motion or on application and such power u/s 14T(3a) is to be exercised exclusively by the Revenue officer concerned. He is of course required to make the determination afresh, with opportunities to the Raiyat. On receipt of a return in Form 7A, the Revenue officer, as mentioned above has to determine the extent of land which is "n vest in the State u/s 14S. Such power is preserved by section 147 (3a). In terms of the determinations in the case of *Jagadish Chandra Chowdhury and Others Vs. State of West Bengal and Others*, , once the Revenue officer makes a determination under subsection (3) as to the lands to vest on scrutiny of" Form 7A, which is also the case in this proceedings, he cannot review his order. But the subsequent incorporation of section 14T(3a), has made such determination as mentioned above, ineffective. If such subsequent incorporation of section 14 (3a) was not there, then following the determinations in the case of *State of West Bengal Vs. Indira Debi* (supra), there could not have been any power of review u/s 151 of the Code of Civil Procedure. But because of such incorporation of section 14T(3a), it cannot now be said that the officer concerned in the instant case, who was discharging quasi judicial functions had or has no power u/s 151 of the Code of Civil Procedure. Such body, which made, the determination even though was not a Court but had or has all the trappings of a Court. So, the arguments of Mr. Ghosh on section

151, particulars whereof have been mentioned hereinbefore, fail. On the submissions on the other question as indicated hereinbefore, we shall have to find out first, what should be the relevant date, for consideration of ceiling area. in a matter like this. The relevant date for consideration of the ceiling reaa, taking into consideration, the members of the family of the Raiyat, should in my view, be 15th February 1971 i.e. when Chapter II-B was made operative and when the Return from 7A was filed and when due determinations of the same was made, the subsequent determinations, on reopening, in this case was improper and unauthorised and the more so when the ceiling area in this case as mentioned was once determined, taking it for granted that Gopal Patra was alive on the relevant date and more particularly when, there has been no legal evidence, establishing a fact, contrary to the above. It is an admitted fact that on] the appointed or effective date, so also on the date of filing the Return in Form 7A, Gopal Patra was alive, If there was evidence that Gopal was dead either on the appointed date or on the date of filing the Return in Form 7A, when the Revenue officer, would have been acting within his jurisdiction, competence and power in reopening the case of determining the same afresh, for ends of justice or for due determination. Since, such evidence was absent or lacking in this proceedings, so the initiation as was made, in my view, was neither proper, nor legal or with jurisdiction and justification. Such being the position, the submissions of Mr. Ghosh on the aspect as mentioned above, should succeed and as such, the Rule should be made absolute on that ground.

The Rule is thus made absolute. There will be no order for costs