(1980) 04 CAL CK 0007

In the Calcutta High Court

In Re: Motahara Bibi Alias Khatun

Date of Decision : 28-04-1980

Acts Referred:
West Bengal Estates Acquisition Act, 1953 — Section 14(3), 44(1), 44(2), 44(2a), 57

Citation : 84 CWN 630

Hon'ble Judges : G.N. Ray, J

Bench : Single Bench

Advocate : Mukti Maitra and S. Banerjee, for the Appellant;Sukiran Biswas, for the Respondent

Final Decision : Dismissed

Judgement

G.N. Ray, J.—This Writ Petition is directed against intiation of a suo motu proceedings u/s 44 (2a) of the West Bengal Estates Acquisition Act for revising the finally published Revisional Record of Rights relating to Khatian No. 405 of Mouza Barua within P.S. Beldanga, District Murshidabad. For the initiation of the said proceeding, a notice u/s 57 read with Section 44 (2a) of the West Bengal Estates Acquisition Act was issued to the petitioner and with the said notice a copy of the order sheet of the proceeding was '' also served. As the order sheet containing the reasons for initiating the said suo motu proceeding has been served upon the petitioner, it is to be seen as to whether from the order sheet a case for initiation of a suo motu proceeding is prima facie made out or not. Mrs. Moitra, learned Counsel appearing for the petitioner contended in the first place that when after completion of the stages for preparation of the draft record of rights, a finally published revisional record of rights was prepared u/s 44 (2), there was no occasion to start any suo motu proceeding u/s 44 (2a). She submitted that a draft record was prepared u/s 44 (1) and ultimately on the basis of the said Draft Record of Eight, the finally published Revisional Record of Rights u/s 44 (2) was prepared. If the State Government or the Revenue Authorities were aggrieved by any adjudication made u/s 44 (1) of the West Bengal Estates Acquisition Act leading to final preparation of the record of rights, the State Government could have challenged the adjudication u/s 44 (1) in the appropriate proceeding but not having done so, the Revenue Officer was not empowered to challenge the correctness of the said record of rights in a proceeding u/s 44 (2a) of the West Bengal Estates Acquisition Act. For the said contention, Mrs. Moitra referred to a decision of this Court made in the case of Biswanath Mandal v. State of West Bengal reported in 78 C.W.N at page 277. Amaresh Roy, J. held in the said decision that a record of rights was finally published after an objection had been considered and disposed of u/s 44 (1) of the West Bengal Estates Acquisition Act, 1963. No appeal was preferred against the decision of the Revenue Officer but after the final publication of the record of rights, a suo motu proceeding u/s 44 (2a) was initiated and in the aforesaid circumstances it was held by His Lordship that the Officer had no jurisdiction to initiate the proceeding u/s 44 (2a) suo motu. It has not been stated in the instant writ petition that any objection was filed against the draft record of rights u/s 44 (1) of the West Bengal Estates Acquisition Act and such objection was disposed of in favour of the petitioner. Accordingly, the facts concerning the decision made in the case of Biswanath Mondal are clearly distinguishable.

2. Mrs. Moitra, however, contend ed that whenever a record of rights is finally made and finally published, it must be presumed that different stages for the preparation of the Record of Rights were gone into including the stage for deciding any objection to be made u/s 44 (1). Accordingly, whenever a Record of Rights is finally prepared and published there is no occasion for the Revenue Officer to start any suo motu proceeding. I am, however, unable to accept the said contention of Mrs. Moitra. Section 44 (2a) has been placed after Section 44 (2) and it has been enacted for the specific purpose of revising the record of rights finally framed and finally published u/s 44 (2) of the West Bengal Estates Acquisition Act. If it is held that once the record of rights is finally published comprising various stages of the preparation of the record of rights no further revision, suo moto or otherwise, u/s 44 (2a) is permissible, then the very section 44 (2a) becomes nugatory and in my view the specific purpose of Section 44 (2a) is to enable the Revenue authorities to revise the finally published record of rights on the basis of either an objection made by a party within a specified time or suo moto by the Revenue authorities also within the specified time under the said provisions of Section 44 (2a). It is true that a suo moto power to revise finally published record of rights should be exercised with all care and caution and the Revenue authorities should not be permitted to initiate a suo motu proceeding arbitrarily and or for making a roving enquiry but from the order sheet of the proceeding in question, it appears that the Revenue Authority was prima facie of the view that the petitioner in whose name the finally published record of rights standi is not a legal heir of Hazi Sk. Sarafudd in. Such record of rights was prepared without any valid instrument of transfer or evidence. Mrs. Moitra very strongly contended that the Revenue Officer was not a Civil Court and he was not competent to decide the question of title in preparing and|or revising the record of rights. The record of rights according to Mrs. Moitra is a document showing the possession of the person recorded in respect of the land in question having only a forward presumption. For the said contention, Mrs.

Moitra referred to a decision of this Court made in the case of Braja Mohan Sarkar v. State of West Bengal reported in 79 C.W.N, 1033. It was held by B. C. Roy, J. in the said decision that in a proceeding u/s 44 (2a) of the Estates Acquisition Act, 1953, the only question to be decided is whether the person in whose name the land is recorded was in possession at the date of vesting and in deciding that question the Revenue Officer can incidentally go into the question of title, the basis of such possession but it is not within his jurisdiction to decide the question of title or the validity of a particular document directly in such proceeding. The Revenue Officer is also not entitled to go into the question of the motive behind a particular document.

3. In the instant case, the petioner is admittedly not an heir of Hazi Sk. Sarafuddin under the Moharnmadai Law. Hazi Sk. Sarafuddin was the last recorded owner and according to the petitioner under a registered deed of gift, Anesha Begum the wife of Haji Sarafuddin Mondal got the said properties and the said Anesha Begum Who was maternal grandmother of the petitioner made an oral Heba in favour of the petitioner in respect of the lands sometimes in the year 1354 B. S. It is true that if on the face of a document of title, a person can claim title, the Revenue Officer is required to proceed on the basis of such document of title and the Revenue Officer may not be competent to decide as to whether such document of title was otherwise invalid or not for different reasons. But if no document of title can be shown justifying the title of a person whose name was recorded in the Revisional Record of Rights, then in a proceeding u/s 44 (2a), the Revenue Officer is competent to hold that there was no basis for recording the name of the said person as having title to the property. Whether there was an oral Heba in favour of the petitioner or whether such oral Heba was never made, is basically a question of fact and such question is not required to be decided in the instant writ petition because only a proceeding u/s 44 (2a) has been initiated and the petitioner will be entitled to place her case showing the basis of her title in the said proceeding and to lead evidences in support of her case. From the order sheet, it transpires that prima facie there was no document indicating the title of the petitioner and as such the Revenue Officer was prima facie of the view that the record of rights was prepared in the name of the petitioner without any basis about the title of the petitioner and as such the finally published record of rights required further revision u/s 44 (2a).

4. Mrs. Moitra next contended that the brother of the petitioner has instituted a Title Suit in the first Court of the learned Munsif at Berhampore being Title Suit No. 316 of 1979, inter alia, claiming title to the suit property. Mrs. Moitra contended that where such a title suit was pending between the brother and sister, no suo moto proceeding could be initiated by the Revenue Officer for revising the record of rights. In any event, the suo moto proceeding should have been stayed by the Revenue Officer pending the disposal of the said Civil suit ''where adjudication of the title between the parties will be made by a competent civil court. For this contention, Mrs. Moitra referred to a Bench decision of this Court made in the case of Jitendra Nath Rakshit vs. Sudhir Kumar Rakshit

reported in 65 C.W.N. 738. It appears from the said decision that between two rival claimants in respect of a certain plot of land, two title suits were instituted by both the parties and in view of the pendency of the said title suits between the parties, the Revenue Officer rejected an application made u/s 44 (2a) for revising the record of rights, and on an appeal made u/s 14(3) of the West Bengal Estates Acquisition Act, the learned District Judge also dismissed the appeal taking the view that when title suits over the disputed property had been filed by both the parties the authorities should await the decision made in the said title suits. It was held by the Division Bench in the said decision that in view of the pendency of the title suits filed by both the parties in respect of the disputed property, the question of the title and possession should be left to be finally decided in the said suits and it, was proper on the part of the Revenue Officer -and the District Judge (Appellate Tribunal) not to try and decide any question of title in a summary proceeding u/s 44 (2a) of the West Bengal Estates Acquisition Act. In my view, the said decision is also not applicable to the facts and circumstances of the case. Firstly, the sec. 44(2a) proceeding has not been initiated in the instant case on the basis of an application made by a rival claimant when a title suit between the rival claimants is pending. In the instant case, the brother of the petitioner is claiming title on the basis of an alleged oral heba and in the said Title Suit the State Government has not been impleaded. It may be noted that the State Govt, not being a party to a suit will not be bound by the adjudication made cither on contest or by compromise in the Title Suit if it can be successfully established that neither of the parties in the said suit had really got the property by the alleged oral heba. Where a proceeding u/s 44 (2a) is initiated on the basis of an application made by a party and the title of the property is in dispute between the two rival parties and the State Government has no objection if the name of the successful party is recorded in the record of rights, then it is only but proper as held by the Division Bench in the aforesaid decision that the Revenue authority should wait till the decision is made by the Civil Court. It should be noted that the record of rights is not a document of title as such but it is basically a document showing possession of the person recorded in the record of rights and such possession has only a forward presumption. But in the record of rights the nature of possession, namely, whether as a tenant or otherwise is got to be recorded and for the said purpose prima facie title is required to be gone into by the revenue and settlement authorities. The Revenue authorities has not yet made any adjudication on the basis of the contention made or to be made by the petitioner in the said suo moto proceeding. In this writ petition, a challenge has been thrown on the jurisdiction of the officer to initiate the suo moto proceeding, u/s 44 (2a) of the West Bengal Estates Acquisition Act and at this stage it is only to be seen as to whether such a proceeding has been lawfully initiated or not. Mrs. Moitra lastly contended that time to initiate suo moto proceeding has been extended from time to time by amending section 44 (2a) and by the last amendment such extension of time was made upto a period of 25 years from the date of final publication of the record of rights. Mrs. Moitra contended that the said amendment of Section 44

(2a) extending the period to start suo moto proceeding for a period upto 25 years from the date of the final publication of the revisional record of rights is ultravires the Constitution. In my view, it is not necessary to decide the said contention at this stage. On the face of the provision of Section 44 (2a) of the West Bengal Estates Acquisition Act as amended, the Revenue Officer is competent to initiate the instant suo moto proceeding and in the facts and circumstances of the case it does not appear to me that such initiation of suomoto proceeding was made arbitrarily or in colourable exercise of power. In my view, Mrs. Biswas, the learned Counsel for the State, is quite justified in contending that the instant writ petition is premature and no interference in writ jurisdiction is called for at this stage. The writ application is accordingly dismissed but I make no order as to costs.

