
(1988) 06 CAL CK 0002
In the Calcutta High Court
Case No : C.R. No. 4076 (W) of 1980

Jitendra Nath Raptan and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 03-06-1988

Acts Referred:

West Bengal Estates Acquisition Act, 1953 — Section 5A, 5A(3)(ii), 6(1)
West Bengal Land Reforms Act, 1955 — Section 5

Citation : (1988) 2 CALLT 196

Hon'ble Judges : Paritosh Kumar Mukherjee, J

Bench : Single Bench

Advocate : Gopal Chandra Mukherjee, for the Appellant;

Judgement

Paritosh Kumar Mukherjee, J.—The order passed by the Revenue officer and the Assistant Settlement Officer dated February 2/13, 1980 after remand of this case from this Court has been challenged for the second time in the instant writ petition.

2. By the said order the Revenue Officer after narrating the short history of this case in brief came to the conclusion that the suit land originally belonged to ex-intermediary, Sourendra, Sovendra, Somendra and Subhas Majumdar, all sons of Surendra Mohan Majumdar, who held and possessed land in excess of the ceiling as per provision of Section 6 (1) of the West Bengal Estates acquisition Act, 1953, on the date of coming into force of the said Act. It further appears from the order-sheet that each of them transferred 6.18 acres of agricultural land and some few areas of on agricultural land within the prohibited period for which a proceeding u/s 5A of the West Bengal Estates Acquisition Act has been started and after a proper enquiry under the said Sec- con it was found that the transfer was bona fide and the consequential action was taken.

3. It appears-that the Revenue Officer committed one fundamental mistake that after noting down that the transfer was bona fide in a proceeding u/s 5A, the Revenue Officer should not have concluded his finding that the land should have

been treated to be vested in view of the provision of Section 5A (3) (ii) of the said Act as the area of land retained by the transferor by exercising B Form have been deducted and vested to the State. It is the case of the present writ petitioner that the petitioner, being subsequent purchaser of the suit land for valuable consideration and their names being mutated duly in terms of the provision of the Land Reforms Act, the suit land cannot be treated as vested land.

4. In this writ petition certified copies of the unreported judgment, dated June 21, 1974 in C.R. No. 2488(W) of 1970 delivered by Anil Kumar Sen, J. (as His Lordship then was) has been annexed together with another judgment delivered by Chittatosh Mukherjee (as His Lordship then was), dated 16th August, 1979 in C.R. No. 7699(W) of 1979 wherein this Court had taken the similar view in the case of Mustt. Lutfanessa v. State of West Bengal & ors. and Radharani Saha vs. State of West Bengal & ors. and directed the respondents not to give any effect to the Order of vesting in any manner of the suit land of the petitioner.

5. Mr. Gopal Chandra Mukherjee, learned Advocate appearing on behalf of the petitioner, had also placed reliance on another Single Bench judgment of this Court in the case of Panchu Molla v. J.L.R.O. & ors., reported in 1981(1) H.C.N. 1, where G. N. Ray, J. had taken the view that names of the subsequent transferee having been mutated, the subsequent purchaser cannot be evicted from the land by treating the land as "vested land".

6. The said view has been followed in several cases by me by interpreting the word "mutation" that it is incumbent upon the Revenue Officer to give a notice in case of passing the order of vesting of the land of the transferor as the transferee has informed about the transfer to the prescribed authority by giving notice u/s 26 (c) of the Bengal Tenancy Act of 1885 as well as the provisions of Section 5 of the West Bengal Land Reforms Act which deals with compulsory registration of transfer together with relevant provisions of Rule 3 of the West Bengal Land Reforms (Transfer of Holding) Rules, 1965 which deals with detailed provisions for giving notice to the prescribed authority about such transfer in terms of Rule 3 of the aforesaid Rules. Accordingly, this Court has already held that by reason of non-service of notice in such proceeding of vesting to the subsequent transferee, the Order of vesting cannot be sustained in law.

7. That being the accepted legal position, the petitioners suit land cannot be treated as vested land in law by the respondents and the respondents are duty bound to acknowledge the petitioners as tenants as the petitioners names have been subsequently mutated duly in the register.

8. There is no opposition to the main writ petition although the Rule has been issued as far back on April 24, 1980 and it has been made ready as regards service on 12th August, 1983. Accordingly, in my opinion, this Rule should be made absolute.

9. Let a Writ in the nature of Mandamus issue commanding the respondents and each one of them not to treat the land as "vested land" in terms of the impugned

Order, dated February 2, 1982 and the respondents are further directed to accept the refit from the writ petitioners in respect of the suit land in accordance with law.

10. The Rule is made absolute.

11. There will be no order for costs. Rule made absolute.