

(1973) 07 CAL CK 0003
In the Calcutta High Court
Case No : Civil Rule 709 (W) of 1973

Jugal Kishore Singri

APPELLANT

Vs

Bhagchas Officer, Raipur and Another

RESPONDENT

Date of Decision : 02-07-1973

Acts Referred:

West Bengal Land Reforms Act, 1955 — Section 17, 18, 18(2), 19B, 21

Citation : 77 CWN 940

Hon'ble Judges : A.K. Sen, J

Bench : Single Bench

Advocate : M.M. Saha, for the Appellant; Tarun Chatterjee, for the Respondent

Judgement

A.K. Sen, J.—An interesting question of law as to the scope of adjudication u/s 19B of the West Bengal Land Reforms Act, 1955 arises for decision in this Writ petition. Respondent No. 2 made an application before respondent No. 1, the Bhagchas Officer, Raipur, an officer specially empowered u/s 19B, inter alia, for an order of restoration of possession to plot No, 197 Khatian No. 281 Mouza Khailamwa P.S. Raipur District Bankura on an allegation that when he was cultivating the said plot as a bargadar under the petitioner, such cultivation was wrongly terminated by the petitioner. On such application a proceeding u/s 19B of the said Act was initiated and notice thereof was served on the petitioner. The petitioner appeared and filed a written statement denying any relationship of jotedar and bargadar between him and the respondent No. 2. On such an objection being taken the petitioner further claimed that Respondent No. 2's application should be dismissed because the Bhagchas Officer has no jurisdiction to decide such a dispute so raised by him. At this stage the Bhagchas Officer not having dismissed the application on such objection the petitioner moved this Court with the above Writ petition and obtained a Rule. The same objection has also been raised in this Writ petition and the question that has strongly been agitated is as to whether the Bhagchas Officer has got any authority to go into the dispute as raised on the objection of the petitioner. The Rule is being

contested by the respondent No. 2. Facts stated hereinbefore are not in dispute though the said respondent in his turn strongly claims that he is a bargadar under the petitioner.

2. Mr. Saha, appearing in support of this Rule has contended that in a proceeding u/s 19B of the said Act the relationship having been denied the Bhagchas Officer has got no jurisdiction to decide an issue as to whether the applicant is or is not a bargadar. Mr. Saha has strongly relied on the provisions of sections 17 and 18 and particularly on the absence of any provision like section 18(2) and section 19B, to support this contention. Reference has also been made to the provisions of section 21 which bars the jurisdiction of the Civil Court only in respect of matters provided for by sections 17 and 18 and not by section 19B. According to Mr. Saha section 19B confers a limited jurisdiction; it is only on the existence as a fact of wrongful termination of cultivation by a bargadar that the Bhagchas Officer acquires the jurisdiction to make an order contemplated by section 19B. Mr. Saha contends that whether the claimant was or was not a bargadar is a part of the jurisdictional fact and when the jurisdiction of the Bhagchas Officer is dependent on the pre-existence of the jurisdictional fact he himself is not entitled to decide such an issue. According to Mr. Saha whereas in section 18 the legislature intended to confer such jurisdiction to decide the jurisdictional fact, it made specific provision in section 18(2) but that was not the intent of the legislature when it enacted section 19B.

3. Mr. Chatterjee in contesting this Rule has on the other hand contended that on a true construction of section 19B, this Court should hold that the entire thing including an issue as to whether there had been a wrongful termination of cultivation by a bargadar has been left to the Bhagchas Officer for adjudication. According to him the issue raised on the objection filed by the petitioner is a part of the subject-matter of adjudication in the proceeding u/s 19B and as such is required to be decided by the Bhagchas Officer. Mr. Chatterjee submits that it will not be fair construction of section 19B to interpret it to confer any limited jurisdiction as suggested by Mr. Saha.

4. In my opinion, the point as raised may be considered from two aspects. Even if it be conceded for a moment that the jurisdiction to adjudicate contemplated by section 19B is limited on the existence of the fact that there had been a wrongful termination of cultivation of land by a bargadar at the instance of his settlor (jotedar), yet it would not be correct to suggest that the Bhagchas Officer cannot at all go into the issue or decide whether such jurisdictional facts exist in a particular case or not. Obviously Mr. Saha draws inspiration from the observations of Lord Esher M. R. in (1) Reg. v. The Commissioner of Income Tax (1888) 21 Q.B.D. 313. It is no doubt true that the Master of the Rolls pointed out that there may be two types of cases (1) where the legislature entrusts a tribunal with jurisdiction including the jurisdiction to determine whether the preliminary state of facts on which the exercise of jurisdiction depends, exists and (2) where the legislature confers jurisdiction on such a tribunal to proceed in

a case where a certain state of facts exists or is shown to exist. Though in the former the tribunal acquires the jurisdiction to determine the jurisdictional facts and such determination on the provisions of the statute may be conclusive even if erroneous, yet it is not correct to suggest that in the latter the tribunal cannot at all go into the issue and see that the jurisdictional facts exist. It is but inherent that even where the jurisdiction conferred is limited, the tribunal must have the authority to see for itself whether circumstances exist to confer it the power to exercise such jurisdiction though its decision on the issue may not be conclusive. There is nothing in the observations relied on by Mr. Saha which could support an extreme proposition to the effect that as soon as a dispute with respect to the jurisdictional facts is raised the tribunal loses all jurisdiction including the jurisdiction to see whether the jurisdictional facts exist or not. Viewed from this aspect there is no reason why the Bhagchas Officer should have dismissed the application merely on the petitioner's denial that respondent No. 2 is not his bargadar. Equally it is difficult to accept a suggestion that simply because such an issue has been raised by the petitioner this Court should quash the proceeding forthwith. Decision of the Supreme Court in the case of (2) Smt. Munni Devi and Another Vs. Gokal Chand and Others, does not militate against this view. In this case the Supreme Court merely laid down that the decision of the tribunal on the jurisdictional facts is not conclusive but this decision is no authority for the view contended for by Mr. Saha viz. the tribunal is totally incompetent to decide or see for itself as to whether the jurisdictional facts exist or not.

5. That apart, in my opinion, there is great substance in the contention of Mr. Chatterjee to the effect that section 19B has left the entire thing including an issue as raised on the objection of the petitioner for adjudication to the Bhagchas Officer. The legislature never intended to limit his jurisdiction on the existence of any particular fact as suggested by Mr. Saha which could not be adjudicated upon by him. Section 19B is in following terms: 19B?(1) If a person owning any land terminates or causes to be terminated the cultivation of the land by a bargadar in contravention of the provisions of this Act, then any officer specially empowered by the State Government in this behalf, shall, on an application by such bargadar, by order direct?

(a) in a case where such land has not been cultivated, or has been cultivated by the owner or by any person on his behalf other than a bargadar, that the land be immediately restored to the applicant and further that forty percent of any produce of the land shall be forfeited to the State Government and the remaining sixty percent of such crops shall be retained by the applicant,

(b) in a case where such land has been cultivated by a new bargadar engaged by the owner, that the land be restored at the end of the cultivation season to the applicant and further that the new bargadar shall retain fifty percent of the crops harvested before restoration and make over the remaining fifty percent of such crops to the applicant.

(2) An appeal shall lie to the Collector against any order made under subsection (1).

(3) For purposes of sub-section (2), Collector shall include an Additional Collector, a Deputy Collector; a Sub-Collector, a Sub-Deputy Collector, or any officer specially empowered by the State Government in this behalf.

This provision is explicit enough to indicate that whether there has been any wrongful termination of cultivation by a bargadar or not is a part of the dispute to be gone into and decided in the adjudication. Making an order for restoration of possession may be dependent on a finding that there had been a wrongful termination of such cultivation but his jurisdiction to adjudicate is not dependent on the pre-existence of such termination. A dispute as to whether the claimant is a bargadar or not being incidental to the issue as to whether there has been a wrongful termination of cultivation by a bargadar, naturally becomes a part of the subject-matter of adjudication by such an officer. The section envisages a dispute over a wrongful termination of cultivation which when established would entitle the bargadar to certain reliefs. Right is conferred on the bargadar to seek such relief naturally on establishing the case which would entitle him to the relief. The proof of such case would depend upon proof of (1) pre-existing relationship of jotedar and bargadar, (2) termination of his cultivation of the land, and (3) such termination being in contravention of the provisions of the Act. If this case be made out on an application, certainly the Bhagchas Officer can entertain the application and adjudicate the dispute. It is no doubt true that unlike section 18(2) there is no specific provision to that effect in section 19B. In my opinion, absence of a similar provision does not necessarily lead to the conclusion that any of the issues involved in an application u/s 19B cannot be gone into by the officers specially empowered. Section 18(2) might have been incorporated as abundant caution but absence of a similar provision in section 19B does not lead to the conclusion suggested by Mr. Saha. To adopt the construction suggested by Mr. Saha, would, in my opinion, render the provision unworkable inasmuch as in that event in every case the settler would render the proceeding incompetent by denying the relationship and raising a dispute on that account. So far as section 21 is concerned it makes no difference that section 19B is not specified therein. The legislature in its wisdom might have thought it fit not to oust the jurisdiction of a Civil Court in respect of matters covered by section 19B, but I am unable to follow, how that by itself, can support the contention of Mr. Saha. The view taken by me finds support from the decision of Banerjee J. in the case of Mritunjoy Pramanik and Others Vs. Sub-Divisional Officer, Tamluk and Others, .

On the conclusions as above I find no merit in the only point raised by Mr. Saha in support of this Rule.

This application accordingly fails.

The Rule is discharged.

There will be no order for costs.

Let the operation of this order remain stayed for a fortnight.