(2022) 09 CAL CK 0107

In the Calcutta High Court

Case No : Writ Petition (L.R.T) No. 139 Of 2019

Kajal Dutta Pramanik APPELLANT

Vs

State Of West Bengal & Ors. RESPONDENT

Date of Decision : 26-09-2022

Acts Referred:

West Bengal Estates Acquisition Act, 1953 — Section 5A, 6(1)(i), 16(1b)(vi), 17(1), 44(2A), 45A, 53, 57

Citation : (2022) 09 CAL CK 0107

Hon'ble Judges : Harish Tandon, J;Shampa Dutt (Paul), J

Bench : Division Bench

Advocate : Md. Younush Mondal, Aniruddha Tewari, Chandi Charan De, Haripada Maity, Anirban Sarkar

Final Decision : Allowed

Judgement

Harish Tandon, J

Admittedly, one Jyotish Dutta since deceased was an absolute owner of the subject land and the RS record-of-rights would corroborate the aforesaid act. He left behind himself surviving after his death six sons namely Satan Chandra Dutta, Trilochan Dutta, Satya Ranjan Dutta, Sarat Chandra Dutta, Mirtunjoy Dutta and Chittaranjan Dutta. Subsequently, on an application of one Gouri Bala Dutta since deceased who was the widow of Mirtunjoy Dutta, their record of right was published in her name showing her possession in respect of a subject land and an absolute owner thereof. Sometimes in the year 1959, the portion of the subject land was acquired by the Government of West Bengal and the compensation was paid to the said Gouri Bala Dutta as her name was recorded in the record of right as absolute owner and possession thereof. On 13.8.1960 one of the son of Jyotish Dutta namely Sarat Chandra Dutta raised an objection before the competent authority against the recording of the name of the Gouri Bala Dutta as absolute owner. The matter was taken out by the Revenue Officer and upon hearing was pleased to reject the said application; meaning thereby the record of right was not corrected. In the meantime, the Gouri Bala Dutta since deceased transferred some portion of the subject property in favour of her daughter namely Bharati Rani Dutta being the mother of the present petitioner. Subsequently, on 19.4.1984 the said Gouri Bala Dutta transferred 65 decimals of land in favour of the petitioner. The Title Suit no. 8 of 1990 was filed by one Nagendra Nath Dutta & Ors. before the Second Munsif, Rampurhat, Birbhum which was ultimately dismissed for default on 4.1.1996. However, after filing of the said suit one Khirod Mohan Dutta, son of Sarat Chandra Dutta moved a writ petition before this Court alleging the inaction on the part of the authority in not disposing of the representation filed by him before the authority which came to be disposed of by the High Court directing the authority to consider the said representation and disposed of the same in accordance with law. The order would reveal that the direction was passed upon the Block Land and Land Reform Officer to take a decision thereupon but ultimately the said representation was referred to the Revenue Officer who registered the proceeding for revision of the record of right under Section 44(2A) of the West Bengal Estates Acquisition Act, 1953 Although the objection was raised by the present writ petitioner when the said representation was considered as an application for revision of record of right under the aforesaid provision but ultimately the authority allowed the said application and deleted the name of the Gouri Bala Dutta as absolute owner of the subject land. Since the order was passed under Section 44(2A) of the said Act, the appeal was preferred by the said Gouri Bala Dutta which was eventually dismissed. Challenging the order of the Appellate Authority, the writ petition was filed before this Court in the year 1997 and by promulgation of the West Bengal Land Reforms and Tenancy Tribunal Act the same suit transferred to the Tribunal for consideration which was registered as TA no. 772 of 2002. By the impugned order the said application is dismissed by the Tribunal which is challenged in the instant writ petition. The first and foremost point which has been raised in the instant writ petition is that the authority cannot resort to a successive revision of the record-of-rights that too at the instance of the heirs of Sarat Chandra Dutta whose earlier application was dismissed by the authority. It would reveal from the record that the writ petition was filed by the heirs of the Sarat Chandra Dutta and the only grievance raised therein was non consideration of a representation which they make before the authority.

Section 44(2A) of the Act bestowed power upon an officer empowered by the State Government to revise an entry in the record finally published in accordance with the provision of sub-Section (2) thereof after giving the person interested, an opportunity of being heard and after recording reasons therefor. The period of limitation is also provided in the said provisions which would be evident therefrom as quoted below:

"Sub-section (2A) – Proceeding initiated before West Bengal Estates Acquisition (Amendment) Act, 1967 received assent of the President, validity. – On 27.3.1969, a proceeding under section 44(2A) of the Act was initiated, but on that date the relevant amendment to the said Act by the West Bengal Estates

Acquisition (Amendment) Act, 1967 was not a proper piece of legislation as it did not receive the assent of the President. Assent of the President was received on 3.11.1969. It has been held that the above Amending Act became effective from the date of the subsequent assent to the Amending Act. Therefore, the above Amending Act became effective with effect from 3.11.1969. Thus, when the suo motu proceeding was started on 27.3.1969, the above amendment not being in force, it was beyond the jurisdiction of the Revenue Officer concerned to initiate the proceeding. Thus, proceeding so initiated is illegal and must be quashed – Narayan Chandra Dutta V State of West Bengal 87 CWN 590."

Undeniably the proceeding was not initiated as a suo moto proceeding for which the larger period of limitation has been provided rather by virtue of an order of the High Court. The representation was directed to be considered which may be construed as an application and not a mere information given to the authority for suo moto proceedings. Admittedly, the earlier application filed by the predecessor in interest of the writ petitioner i.e. Khirod Mohan Dutta filed the identical application raising objection on the entry made in the record-of-rights but the said application was dismissed by the competent authority. Our endeavour has failed to find out any provision in the said Act which permits a successive review to be made to an order passed earlier by the said competent authority. The reliance can be placed upon a judgment of this Court in case of Mahammad Salem Jan Mia vs. State of West Bengal reported in (1976) 2 CLJ 19 wherein it is held that Section 44(2A) of the Act does not contemplate successive enquiries in respect of the same subject matter nor the Revenue Officer can assume a jurisdiction not vested on him by law by revising previous order of another Revenue Officer passed in a proceeding initiated under the aforesaid provision of law in the following:

"5. As already observed, a second enquiry under section 44 (2a) in not permissible in law. The opposite parties cannot rely upon provisions of Section 45 A to justify the second enquiry impugned in this Rule. The said section empowers the authorities to effect corrections consequential upon the passing of an order under section 5(A) or on amendment of the Act or the Rules. In the instant case admittedly there had been no enquiry under Section 5(A). There had been also no amendment of the law affecting the right of a religious and charitable institution, to retain, under section 6(1)(i) of the act, lands dedicated exclusively for religious and charitable purposes. Section 17(1) proviso at the relevant time also remain unaltered. Amendment made in section 16(1b) (vi) which deal with computation of gross and net incomes for the purpose of preparation of the assessment rolls have no relevance in the instant case. Therefore, the conditions precedent for assumption of jurisdiction under section 45A were not present in the instant case.

6. I may further observe that the order impugned in the Rule cannot be treated as on order for review of the previous orders passed in Case No. 7 of 1964. It is true that the State Government by Notification under section 57A of the West

Bengal Estates Acquisition Act had invested the authorities, mentioned in Section 53 of the Act, with all the powers of Civil Court (vide Notification No. 340L Reg. dated June 9, 1958). But then, in the instant case the Revenue Officer did not act in accordance with the provisions of Order 47 of the Code of Civil Procedure. There was no application for review before the Revenue Officer and the Revenue Officer did not himself also state that he was reviewing the earlier order. In the present circumstances, a suo moto initiation of review proceeding was also not contemplated."

The law as expounded hereinabove clearly exposes that a successive enquiry cannot be made under Section 44(2A) of the Act nor the revenue officer is vested with the powers to review the previous order passed by the same authority at an earlier point of time. It is to be borne in mind that every litigation must reach to its finality. Authority cannot usurp the powers not conferred in the statute and do something which is not contemplated therein. Apart from the same, the predecessor in interest of the objector raised the similar objection in seeking the revision of the record of right allegedly made and the moment the said application is dismissed the successors who derived right, title and interest in respect of a subject matter are bound by the consequence that follows from the rejection of an application filed by the predecessor in interest. The successor upon whom the devolution of interest has taken place are bound by the Act of the predecessor and cannot claim an independent right. The moment they stepped into the shoes of the predecessor they are bound to admit all the action of the predecessor and the consequences that would follow therefrom. Though the power to initiate suo moto proceeding is conferred upon the authority under the aforesaid provision which cannot be misused or attempted to whittle down the legislative intent behind the incorporation thereof. Though it was a stand of the parties, the representation was made but aimed to revise the alleged erroneous record-of-rights and the power of the authority would eminent from the statutory provision and, therefore, the period of limitation provided for initiation of the proceeding on such representation/application applies with full rigor and force. The said representation since the light of the day nearly after 35 years from the date of the rejection of an earlier application filed by the predecessor and, therefore, the authority ought to have considered whether such proceeding is barred by limitation or not. In view of the law enunciated in Mahammad Salem Jan Mia (Supra) the successive enquiry is impermissible and apart from the same, the period of limitation assumes an important role in this regard and the authority ought to have dismissed the said application on that score as well. We have noticed from the order of the original authority as well as the appellate authority that the said proceeding was initiated in terms of the order of the High Court and, therefore, it is to be decided on merit. The High Court did not confer the jurisdiction nor can pass an order overriding the effect of the statutory provision. What was intended in the said order was to consider the representation in accordance with law which by no stretch of imagination we construed to have confer the jurisdiction upon the authority or ignore the provision of law for the simple reason that the authority derive its jurisdiction and powers under a statute and cannot regal out of the clutches of the statutory provision. We thus find that the order impugned cannot be sustained and is hereby set aside as a consequence thereof. The order of the Revenue Officer as well as the appellate authority are also set aside. The application filed by the heirs of the Sarat Chandra Dutta is liable to be dismissed and is accordingly dismissed. the authority is directed to restore the entry made in the record of right if already made on the basis of the impugned orders. The Writ petition is allowed.

No Order as to costs.

Urgent photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree.

