
(1960) 03 CAL CK 0027

In the Calcutta High Court

Case No : Civil Revision Case No. 2150 of 1957

Kalipada Mandal and Others

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 14-03-1960

Acts Referred:

West Bengal Estates Acquisition Act, 1953 — Section 39, 44, 44(1), 44(3), 45

Citation : 64 CWN 561

Hon'ble Judges : G.K. Mitter, J

Bench : Single Bench

Advocate : S.N. Ghorai and Sipra Gayen, for the Appellant; N.C. Chakravarty .
D.N. Bose C.N. Laik, Hari Nath Mukharjee and P.C. Barooah, for the Respondent

Judgement

G.K. Mitter, J.—This is an application under Art. 226 of the Constitution originally filed by one Sanatan Mondal against several respondents including the State of West Bengal, K.M. Certificate Officer. 24-Parganas (Sadar), the Revenue Officer, Taki Circle, B. Mukherjee, Tribunal under sec. 44(3) of the W.B. Estates Acquisition Act, Sankar Das Banerjee, Receiver of the Trust Estate of late Tarapada Ghosh, Purna Chandra Sardar, Kali Charan Majhi, Ram Chandra Sardar, Haripada Sardar, Kalipada Sardar, Behari Sardar, Satish Sardar and a number of other persons, for the issue of a Writ in the nature of Certiorari calling upon the opposite parties to show cause why the orders dated 27.9.55 and 1.7.57 complained of in the petition should not be quashed and for other ancillary reliefs. During the pendency of the application Sanatan Mondal the original petitioner, died and his heirs and legal representatives, six in number, were brought on the record in his place.

2. According to the petition, the petitioner Sanatan Mondal had taken settlement of about 400 bighas of char lands of Touzi No. 2986 under the jurisdiction of Police Station Sandeshkhali. Dist. 24-Parganas, from one Bimal Chandra Ghosh who was then the sole surviving Trustee of the Estate of the late Tarapada Ghosh. The petitioner had paid a total sum of Rs. 12,960/- by way of selami for

the settlement and was put duly in possession of the said char lands. He had been asked to pay rent to the State of West Bengal after the coming into force of the West Bengal Estates Acquisition Act Since the date of the settlement he claims to have been in possession of the char lands through various under-rayats and also cultivating a part of the same in khas. In the year 1954 during the preparation of the draft record-of-rights he and his under-raiyats claimed to have satisfied the Revenue Officer as to their respective possessions, and accordingly the lands were recorded in the khas possession of the petitioner as a raiyat under the State of West Bengal. The petitioner states that in May, 1955, the respondent No. 7, one Purna Chandra Sarkar, surreptitiously filed a petition of objection before the Revenue Officer under sec. 44(1) of the West Bengal Estates Acquisition Act, 1953 and got the same registered as Objection Case No. 5 in respect of several plots of land on the alleged grounds that he along with respondent No. 8 and the petitioner Sanatan Mondal had taken a joint settlement of the demised lands from the Trustee Receiver and that respondents Nos. 7 and 8 were co-sharers of the petitioner. No notice of this objection was served on the petitioner and the matter was decided ex-parte behind his back. The petitioner preferred objection on his own behalf nor had he participated at the hearing of the objection petition filed by the respondent No. 7. On coming to know of this the petitioner made several representations challenging the validity of the objection but without giving a hearing the Revenue Officer falsely recorded that he had heard the objection on the 27th of September, 1955. In the petition there is an attempt to show that the Revenue Officer had proceeded illegally with regard to other plots and the objections thereto and it is complained that the Assistant Settlement Officer passed ex-parte orders without hearing the petitioner and without having satisfied himself that the notices as required by the law were properly served on the petitioner. The petitioner preferred an appeal before the Appellate Officer praying for revision and publication of the draft record-of-rights made by the Revenue Officer. This appeal too was dismissed. The substantial complaint of the petitioner in this case is that the order dated 27th of September, 1955 passed by the Settlement Officer and the order dated 1st July, 1957 passed by the Tribunal of Appeal are arbitrary and invalid, that there has been no proper hearing given to the petitioner before the preparation of the final record-of-rights and as such, these orders should be set aside and quashed and the Settlement Officer and the Tribunal should be directed to rehear the petitioner in the matter of the objection filed by him.

3. It appears that the petitioner had filed a suit in the Court of the 9th Subordinate Judge of 24-Parganas at Alipur being Title Suit No. 106 of 1957 wherein he was the plaintiff, the defendants being ten persons including Bankim Sardar, Behari Sardar, Purna Chandra Sardar, Haripada Sardar, and Paran Chandra Mandal. It appears from a copy of the plaint filed in this suit that the plaintiff had asserted his title as a raiyat from the Trustee of the Trust Estate of Tarapada Ghosh with regard to a number of plots. He prayed for declaration of his title and for an injunction restraining the defendants, their servants and

agents from trespassing upon the lands under his khas cultivation. The plaint also contains a prayer for adjudication of damages to the extent of Rs. 5,250/- on the allegation that the paddy grown on some of his lands was wrongfully harvested by the defendants. The Settlement operations have also been referred to in this (sic)

4. On behalf of the respondents a preliminary point was raised that as the petitioner has already filed a suit for declaration of his title with regard to these lands, this application under Art. 226 ought not to be allowed to be proceeded with because the Title Suit will give complete relief to the petitioner. As against this it was contended by the learned Counsel for the petitioners that the suit had been filed without proper appreciation of the law on the subject and was incompetent under the provisions of sec. 46 of the West Bengal Estates Acquisition Act and the only remedy available to the petitioners would be a re-hearing by the Settlement Officer and the Tribunal, giving due weight to the evidence adduced.

5. Sec. 46 has undergone changes from time to time and now reads as follows:--

46. Bar to jurisdiction of Civil Court in respect of certain matters--Where an order has been made under sub-section (1) of section 39 directing the preparation or revision of record-of rights, no Civil Court shall entertain any suit or application for the determination of any rent or determination of the status of any tenant or the incidents of any tenancy to which the record-of-rights relate and if any suit or application, in which any of the aforesaid matters is in issue, is pending before a Civil Court on the date of such order, it shall be stayed, and it shall, on the expiry of the period prescribed for an appeal under sub-section, as the case may be, on the disposal of such appeal, abate so far as it relates to any of the aforesaid matters.

Explanation--In this section suit includes an appeal

6. A plain reading of sec. 46 certainly shows that a suit in which the determination of rent or the determination of the status of any tenant or the incidents of any tenancy to which the record-of-rights relates is or are involved would be barred under this section. But the suit in this case does not relate to the determination of the rent or the incidents of the tenancy or even the status of the tenant but prays for adjudication of title as against the persons who are alleged to be in wrongful occupation of parcels of property taken settlement of by the former petitioner Sanatan Mondal from the sole surviving Trustee of the Trust Estate.

7. My attention has been drawn to sec. 44 of the Act which, in my view, goes to show that entries in the record-of-rights finally published are presumed to be correct unless they are proved by evidence to be incorrect. Because the record-of-rights has been finally published, it cannot be said that the same is sacrosanct and cannot be modified or varied in any way. Sub-sec. (1) of sec. 44 lays down that when a record-of-rights has been prepared or revised the Revenue Officer

must publish a draft of the record so prepared or revised in the prescribed manner and shall receive and consider any objections which may be made to any entry therein or to any omission therefrom during the period of such publication. Under sub-sec. 2, after the hearing of all such objections, the Revenue Officer must finally frame the record and cause such record to be finally published in the prescribed manner. Sub-sec. 2(a) which was introduced into the Act by an amendment in 1957 shows that an officer specially empowered by the State Government may, on application or of his own motion, within nine months from the date of the final publication of the record-of-rights or from the date of coming into force of the West Bengal Estates Acquisition (Second Amendment) Ordinance, 1957, whichever is later, revise an entry in the record finally published in accordance with the provisions of sub-section (2) after giving the persons interested an opportunity of being heard and after recording reasons therefor.

8. The petitioner's Counsel submitted that as the period of time mentioned in sub-sec. (2a) has already expired, his client could not take resort to that sub-section for any relief. Under sub-sec. 3 of sec. 44 any person aggrieved by an order passed in revision under sub-section (2a) may appeal in the prescribed manner to a Tribunal appointed for the purpose and within such period and on payment of such court fees as may be prescribed. Under sub-section (3a) of the section the certificate of final publication referred to in sub-section (2) or in the absence of such certificate, a certificate, signed by the Collector of any district in which the area to which the record-of-rights relates is wholly or partly situate, stating that a record-of-rights has been finally published on a specified date, shall be conclusive proof of such publication and of the date thereof. Under sub-section (3c), in any suit or other proceeding in which a record-of-rights prepared and published under this Chapter, or a duly certified copy thereof or extract therefrom, is produced, such record-of-rights shall be presumed to have been finally published unless such publication is expressly denied.

9. Sub-section 4 of sec. 44 runs as follows:--

Every entry in the record-of-rights finally published under sub-section (2) including an entry revised under sub-section (2a) or corrected u/s 45 or section 45A shall, subject to any modification by an order on appeal under sub-section (3), be presumed to be correct until it is proved by evidence to be incorrect.

10. It was argued by Counsel for the petitioners that notwithstanding the last-mentioned sub-section, sec. 46 must be given effect to barring the entertainment of any suit and in support of this he relied on a judgment of a Division Bench of this Court in the case of *Dhirendra Nath Bose & ors. v. Sushil Kumar Safui and ors.*, (1) 63 C.W.N. p. 521. In that case both section 46 and sec. 44 as they stood before the amendments mentioned above were considered and Das Gupta, J. came to the conclusion that "the provisions of section 46 apply to all suits where any of the questions mentioned above has to be determined for a proper decision of the suit."

11. At the date when the judgment was given, sub-section (4) of sec. 44 did not contain the expression "until it is proved by evidence to be incorrect." Sec. 46 also was differently worded to what it is now. Sec. 46 then read as follows :--

Where an order has been made under sub-section (1) of section 39 directing the preparation or revision of a record-of-rights, no Civil Court shall, until after the final publication of the record-of-rights under sub-section (2) of section 44, entertain any suit or application for the determination of rent or determination of the status of any tenant or the incidents of any tenancy to which the record-of-rights relates, and if any such suit or application is pending before a Civil Court on the date of such order it shall be stayed:

Provided that in computing the period of limitation prescribed by any law for the time being in force for any suit or application the time during which such suit or application cannot be entertained or remains stayed under the provisions of this Act shall be excluded.

Explanation--In this section suit includes an appeal.

12. It will be noticed that the bar of sec. 46 operated only until the final publication of the record-of-rights and it clearly showed that a suit would be maintainable in certain circumstances. However that may be, I have got to go by the sections as they now stand and I cannot take the view that the petitioner would be without any remedy if his grievances against the orders of the 27th of September, 1955 and the 1st of July 1957 were not set right by a direction on the Revenue Officers to prepare the record of rights after giving him a full opportunity of meeting the objection which had been preferred against him.

13. A litigant cannot ask for an order under Art. 226 as of right. It is after all a matter of discretion with the Courts and when the question is one which relates to the adjudication of title which can best be determined in a suit in which all the necessary parties are impleaded and after evidence is formally recorded, it cannot be said that the petitioner ought to be given relief in an application under Art. 226. The petitioner fully realised the position and without waiting for a decision of this Court filed a suit for declaration of his title and for an injunction restraining some of the respondents from trespassing on his land. In view of all this, I do not think it right to go into the relative merits of the cases of the petitioner and of the respondents to this application as I think that the proper forum for the adjudication of the said disputes would be a Civil Court. The Rule is accordingly discharged without any order as to costs excepting that the Receiver will be entitled to retain his costs out of the estate.