
(1975) 09 CAL CK 0003
In the Calcutta High Court

Lakshmi Narayan Roy and Others

APPELLANT

Vs

Land Reforms Officer and Others

RESPONDENT

Date of Decision : 18-09-1975

Acts Referred:

West Bengal Estates Acquisition Act, 1953 — Section 10, 10(1), 10(2), 10(5), 4

Citation : 80 CWN 42

Hon'ble Judges : S.K. Mukherjee, J;M.N. Roy, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This appeal is directed against the judgment and order dated July 27, 1972 made in Civil Rule No. 798 (W) of 1972 by Salil Kumar Datta J. By the said determination the learned Judge has been pleased to discharge the Rule without any order as to costs and with certain directions regarding the appropriation by the State Government of the amount deposited by the appellant petitioner in case he was in possession of the lands in question.

2. The appellant contended that at the date of vesting of raiyati holdings in the State of West Bengal under the West Bengal Estates Acquisition Act, 1953, he held certain agricultural, non-agricultural and homestead lands apart from tanks. He contended that at the relevant time and during the pendency and operation of the Rule, certain returns under the said Act were duly filed by him. But in spite of such filing of returns he was served with notices and orders purporting to be made and issued u/s 10(2) of the said Act and rule 7(1) of the Rules framed thereunder, by the Respondent No. 2, the Sub-divisional Land Reforms Officer, Sadar, Suri, Birbhum. It has been alleged that before issuing them, the respondents never issued any notice giving the petitioner an opportunity of choosing his lands for the purpose of retention in terms of section 6(5) of the Act. The appellant contended that the inclusion of the lands in the said notices was made arbitrarily, improperly and without regard to the provisions of the said Act and the Rules framed thereunder so that the ultimate effect of the said

notices was to deprive him of his right to retain agricultural, non-agricultural and homestead lands apart from tanks u/s 6(1) of the Act. It has further been alleged that verbal representations were made by the appellant but thereafter no action has been taken from him nor was he given due opportunity of filing a Return in Form "B".

3. The appellant has alleged that sometimes in the last week of May 1967, he received informations that his lands would be settled with other people and on receipt of such informations he went to Respondent No. 1, the Land Reforms Officer, Sainthia, Mahammad Bazar Circle and applied for certified copies of the order sheet in the connected Case No. 152 of 1966 which was mentioned in the notices u/s 10(2) of the Act. It has also been alleged that instead of supplying the copies of the order sheet, the copies of the notices u/s 10(2) of the Act were supplied to the appellant. He has stated that on his insistence an on fresh application being made on June 2, 1967, a copy of the order sheet was supplied to him and from there it appears that the respondents purported to proceed on an alleged statement of surplus surrendered khas lands supplied by the Revisional Settlement Department amounting to 169.98 acres. The appellant has asserted that he has not got so much of surplus lands and further-more he never surrendered the said lands and in fact no notice or hearing was given to him before determining which lands would be retained by him and which lands would be considered as vested in the State. He has further alleged that the action was illegal inasmuch as lands belonging to strangers and not to him have been considered as lands belonging to him. The action has also been challenged as being void, as non-agricultural lands have been treated as agricultural lands, as a result whereof only a small fraction of the permissible ceiling of non-agricultural lands has been treated as having been retained by him at the choice of the respondents without having allowed him to exercise his choice duly. The impugned notices u/s 10(2) will be found in Annexure "B" to the petition. The appellant has alleged that he had no surplus lands at any point of time and furthermore he has never surrendered them and in fact such a question of surrender would not arise in the facts of the present case. The appellant has further contended that no notice of hearing was given to him for determining and deciding his choice for lands to be retained, although he was entitled to retain lands within the different prescribed ceilings on notices u/s 6(5) being served. The appellant has also contended that action in treating the lands as vested in the Government was unauthorized, void, illegal and irregular. The appellant made a representation that he was in possession of the lands and on such representation an interim order was granted in the Rule to the effect that during the pendency of the same, the appellant would deposit, presumably as mesne profits a sum of Rs. 1,700/- every year. Such deposit was required to be made from 1970 and the appellant was required to deposit a further sum of Rs. 5,100/- on or by December 30, 1969 on account of arrears of mesne profits. The admitted position in this case that such deposits, as directed, have been made on November 8, 1967 on an application of the Respondents for vacating the

interim order of injunction granted at the time of the issue of the Rule on June 5, 1967. In fact no affidavit-in-opposition has been filed in the Rule Pre-an-affidavit-in-opposition and reply thereto have been filed by the practices in the application for vacating the interim order by the Respondents and such affidavits, on the prayer for the learned Advocate for the Respondents were taken into consideration by the learned Judge in making his determination. In the said application it has been stated the appellant had filed a "B" form on September 7, 1956 viz., after the amending Act, whereby Raiyati and under-raiyati lands have been brought within the provisions of the same. It has further been alleged that the said "B" form was filed pursuant to the notice issued by the Revenue Officer concerned u/s 6(5) of the Act in Big Raiyat Case No. 14 of 1958-59 and as the form of the notice was not in order so a second notice was issued for making corrections by June 15, 1959. It has also been alleged that thereafter the case was fixed for hearing and disposal on February 8, 1960 when the appellant did not appear and thereafter on February 8, 1960, he filed an application for time. Such prayer was allowed and the next date was fixed in the presence of one Nil Kanta Sinha. But even in spite of due notice, the appellant again failed to appear on the appointed date of hearing and as such the order was passed in his absence accepting thereby the return as filed and consequently Khanda Khatians were opened in respect of the retained plots and the details of surrendered and retained lands were direct to be in separate sheets in the said proceeding. In those circumstances it has been contended that the appellant was not entitled to take the objection that the provisions of section 6(5) of the Act were not complied with. It has also been alleged that such circumstances possession of the lands was taken, in pursuance of hr order of the Collector dated May 9, 1967 which would be amply corroborated by the connected certificate of possession.

4. In his affidavit, the appellant has stated that the Respondents did not act upon the returns and in the notices u/s 10(2) tank fisheries and other lands were also included unauthorisedly. He further denied any connection with the said Nil Kanta Sinha and disputed his authority to represent him. It appears that during the course of the hearing of the Rule after obtaining inspection of the Rule after obtaining inspection of the records, another affidavit was filed by the appellant alleging that the records of the connected case were illegally corrected subsequently by antedating orders and as such all the orders made in the said case should be quashed. It was further reiterated in the said affidavit that the appellant was entitled to an opportunity of retaining at least the non-agricultural lands upto the ceiling and homestead lands apart from other non-ceiling lands. The appellant further maintained that the lands shown, disclosed and described in the said affidavit were duly included in his "B" form and furthermore he was never given any opportunity of choosing the lands upto the prescribed ceiling.

5. The appellant, during the course of the hearing before the learned Judge contended that the connected proceeding appear to have been started in 1956, the case was numbered as B.R. Case No. 14 of 1958-59 and the number of the case could not be so if the case was initiated in 1956. The learned Judge did not

accept such contentions and held that perhaps the said discrepancy was due to some clerical error.

6. It was argued before her learned Judge that the notice in question was not only not in proper form but the same was not clear and intelligible. That apart it was further contended that the records in the instant case were manufactured and antedated and the appellant petitioner was not given the appropriate opportunity to exercise his choice and since no opportunity was given to him u/s 6(5) of the Act, the entire proceedings was void. It was also urged that even assuming the return was filed by the appellant petitioner in September, 1956 the same was before incorporation of Rule 4A of the rules which was inserted on January 21, 1958 and under the said Rule time was given upto April 30, 1958 for making the selection about the retention.

7. The learned Judge by his judgment and on consideration of the arguments, refused to accept the contentions of the appellant petitioner that the records were manufactured or antedated and he further held that such records were duly prepared and maintained in the usual course of official business. He further held that since the appellant petitioner has already made his choice and the order on the "B" form was passed by the appropriate authority on notice to him, such order cannot be assailed on the ground that no opportunity was given to the appellant petitioner u/s 6(5) of the Act. Apart from this it has also been found by the learned Judge that the Revenue Officer concerned gave all opportunities to the petitioner in terms of the requirements of law in the matter and in respect of the "B" form filed by the appellant petitioner and there was no illegality or any irregularity in the facts of the instant case in having the impugned order passed ex parte. The findings in respect of the said ex parte order as to be a bonafide one or passed in a bonafide manner has been arrived at by the learned Judge on consideration of the facts in spite of the contentions of the appellant petitioner that Nilkanta had no authority at the relevant time. In our opinion the findings arrived at by the learned Judge are not liable to be set aside or upset on the grounds as were urged before us, particulars whereof have been recorded in this judgment. But the difficulty has been created by other arguments which Mr. Mukherjee, appearing for the appellant has advanced for the first time in this appeal. Mr. Dhar appearing for the respondents objected to such arguments being advanced for the first time in the appellate stage. We feel that since the said arguments are based on interpretation of statutes and the Rules framed thereunder we ought to consider them even at the appellate stage.

8. The appellant has raised a short but interesting and substantial point of law on the question of the effect of incorporation of Rule 4A of the West Bengal Estates Acquisition Rules and what would be its effect on the choice already exercise by the appellant u/s 6(5) of the Act initially before the incorporation of the said Rules. The provisions regarding the manner of exercise of choice and the limit with which such choice is to be exercised initially is contained in section 6(5) of the Act which came into force on January 8, 1958, by section 4(1) of the

amending Act 35 of 1957. It is an admitted fact that the appellant petitioner had filed a "B" form on September 7, 1956 i.e. on the basis of the provisions of section 6(5) of the Act. Thereafter, Rule 4(A) of the Rules has been inserted on or about January 21, 1958 by notification No. 1030 L which lays down the procedure for choice of land which an intermediary is entitled to retain u/s 6. It has been argued by the appellant that u/s 6(5) which deals with the question of choice for retention a limited right has been ensured and a perusal of the said provisions along with clauses (c), (d) and (j) of sub-section 1 of section 6 of the Act would indicate that such choice of retention was required to be made in respect of ceiling lands only. It has also been argued that it would appear from the said provisions that such choice was really in the nature of selection by the intermediary of the particular plots upto the prescribed ceiling when he had land, the total area whereof was in excess of such ceiling. It has also been contended that section 6(5) further provides that in default on the part of an intermediary in the matter of exercise of such choice for the retention, the prescribed authority will choose for the intermediary lands upto the prescribed limits under clauses (c), (d) and (j) of section 6(1) of the Act and the legislature did not provide u/s 6(5) of the Act, a choice either to retain or not to retain but it provided for a different kind of choice viz., a choice of the particular plots for the purpose of retention upto the ceiling. The appellant has further argued that with the introduction of Rule 4A there has been a change of concept of choice and it is no longer "a choice for retention". By the insertion of the said Rule it becomes a choice either to retain or not to retain any land at all and the question of adding up the intermediary and Raiyati lands is envisaged or contemplated and in view of the changes a choice before rule 4A is no choice in the eye of law or in accordance with section 6(5). It has been argued by Mr. Mukherjee that the choice after the insertion of Rule 4A is no longer confined to ceiling lands only or lands covered by clauses (c), (d) and (j) of section 6(1) of the Act. He has, argued that now the intermediary seems to be under an obligation to exercise his choice in respect of all lands be it ceiling or non-ceiling land, and when he has exercised his "choice of retention" in respect of ceiling under Rule 4A, he also selects a particular plot or exercises his "choice of retention" u/s 6(5) of the Act. He has further argued that when an intermediary exercises his choice under Rule 4A, he exercises a comprehensive choice as indicated by the explanation to the said Rule because now he is required to exercise his choice for lands upto the ceiling not only from the plots which he held as an intermediary proper but also from lands which the question of choice in respect of the latter category of lands arose after the introduction of Chapter VI of the Act in April, 1956. Chapter VI of the Act which deals with the acquisition of interest of raiyats and under-raiyats, came into force in all the districts of West Bengal with effect from April 10, 1956 vide notification No. 6804 L dated April 9, 1956. Mr. Mukherjee also contended that the said Rule 4A introduced a return in the prescribed form (B form) and lays down the time limit upto April 30, 1958 within which such choice is to be exercised. Thus he contended that with the introduction of rule 4A there is a change in the substantive as well as procedural provisions of law. He argued that

section 6(5) of the Act remained to some extent ineffective and inoperative until the operation of rule 4A, because the time limit and the manner or exercise of choice as provided by section 6(5) was required to be prescribed and the same was not prescribed till the insertion of the said rule 4A. He supplemented his argument by submitting that since a mode has now been prescribed after the insertion of rule 4A, in spite of the fact that an intermediary has filed his return in form B in terms of section 6(5) of the Act, which prescribed no mode or method of filing of return, so after the incorporation of Rule 4A, the intermediary, who has already filed the return in the manner as mentioned hereinbefore, should be given a further opportunity of filing a fresh return in accordance with the law. Mr. Mukherjee also contended that notices u/s 10(2) of the Act in the instant case included plots which were covered by his statement submitted in September, 1956 and in any view of the matter the Collector had no jurisdiction to take over possession of such lands in view of the provisions of section 10(5) of the Act. He further submitted that even when a person exercises his choice by submitting a return either in form B or otherwise, it is open to him to rectify any mistake in such choice at the stage of delivery of possession. He referred to Form 3 as prescribed in respect of an order u/s 10(2) read with Rule 7 and submitted that the said form is a statutory one, so any non-compliance with the same would also be fatal. As the notices in the instant case were not in conformity with the said statutory Form, he relied on the Division Bench decision of this Court in the case of Mohan Lal Gupta v. Achhutilal Saha, reported in 75 C.W.N. 228, where the question and effect of non-compliance with the statutory form came up for consideration. In that case, orders were made on a printed sheet which was not in form "3" prescribed under Rule 7(1) of the Rules framed under the Act and Their Lordships, after construing the provisions of Rule 7, the contents of the form "3" and the manner in which the same was issued and used, the nature and character of the same and more particularly the deviations from the requirements of the Form, held that the order u/s 10(2) of the Act was not properly made. Mr. Mukherjee further contended that since the appellant has not parted with the possession of his lands, he can also make a claim for retention of lands u/s 6 (1), (c), (d) and (j) even after the prescribed time limit has passed, such right having derived from section 6(5) of the Act. In support of the said contentions Mr. Mukherjee relied on the case of Gour Gopal Mitra and Another Vs. State of West Bengal and Others, . In that case P. B. Mukherjee J. has observed after considering the scheme of the Act and the relevant provisions of the same that u/s 6(5) of the Act, the intermediary has a right and an opportunity even after the prescribed time limit has passed, to make a claim for retention of the lands u/s 6(1) (c), (d) and (j) thereof so long as he has not parted with the possession of his lands.

9. Mr. Dhar appearing for the respondents with Miss Chaturvedi submitted that in the instant case there was substantial compliance with the Rule 7 and Form 3 and as such the contentions as raised by Mr. Mukherjee are of no avail or substance. He further submitted that since service of notices u/s 10(2) has not

been disputed and there was substantial compliance as mentioned hereinbefore, no interference by this Court is warranted. He argued that the case of Mohan Lal Gupta v. Achhutlal Saha (supra) is distinguishable from the facts of the present case. From the records, Mr. Dhar sought to draw our attention to the fact that the notices in the instant case were served personally and that in spite of due opportunities having been given no objection was filed by the appellant and as such he cannot now turn round and contend that the notices are not in order. Mr. Dhar further argued that in the said reported case of Mohan Lal Gupta v. Achhutlal Saha (supra) there was no notice u/s 10(2) of the Act and the position is different in the present case. Mr. Dhar submitted that since section 6(5) prescribes no period, so the definition of "prescribed" has to be seen and looked into. He has of course agreed that "prescribed" would mean prescribed by the Rules. Mr. Dhar contended that the appellant in view of the admitted facts would not be entitled to, rather he is debarred from, making a fresh choice even after the insertion of Rules 4A and more particularly when u/s 6(5) of the Act, a time limit is contemplated. Mr. Dhar also submitted that since there was a Big Raiyat proceeding in the instant case and the said proceeding has not been challenged or at least the same has reached finality, no order should be made in this appeal which would militate against its finality, as any determination which would be made in favour of the appellant in the instant case now, would indirectly affect the determination as made in the said Big Raiyat proceeding, although the same has not been challenged. He submitted further that the conduct of the appellant is such that the contentions raised by him deserve no consideration by this Court at the appellate stage. On the question of choice as made by the appellant in the instant case, Mr. Dhar took us through the relevant statements in the petition wherefrom it appears that the choice in the instant case was exercised on September 7, 1956. He submitted that unless the choice is made, the settlement could not be made finally. Referring to Schedule "D" and Rule 7 of the Rules, Mr. Dhar submitted that prescribed manner is mentioned under the said provisions. He submitted that Rule 7(1) and Form No. 3 deals with notices for taking possession. He submitted that in the instant case section 10(1) has not been invoked and the words "Collector shall take charge" in the said section must be read, applied and understood for the purpose of section 10(2) also. He disputed that Form No. 3 and more particularly the reverse of the same has not been substantially complied with in the instant case. He wanted to argue that clause (iii) will not apply when choice has been made by filing "B" form.

10. The admitted position in the instant case, which also appear from the records produced at the time of the hearing of the appeal the appellant had filed his return in form "B" for retention of lands prior to January 21, 1958 i.e. the date when Rule 4A was inserted by Notification No. 1030 L. Ref dated January 21, 1958. The said Rule lays down that every intermediary entitled to retain possession of lands u/s 6(1) of the Act shall, if he chooses to retain any such land, make his choice by furnishing to the Settlement Officer or to the Revenue Officer authorized by the Settlement Officer in this behalf, before the expiry of

the 30th day of April, 1958, a statement in writing in form "B" appended to Schedule B to the Rules or in a form substantially similar thereto and in the manner indicated therein provided that if the area of land held by a raiyat or an under-raiyat who is deemed to be an intermediary u/s 52 does not exceed the limit laid down u/s 6(1) (c) or (d), he shall not be required to exercise such choice and in computing the area of lands by a raiyat or an under-raiyat in his khas possession, and lands retained by him as an intermediary u/s 6(1) (c) or (d) prior to the operation of section 52 shall be included. There is also no dispute that the word "prescribed" means prescribed by Rules made under the Act. So after the mode is prescribed by the Rules the appellant who had filed his choice earlier, can claim a further right which opportunity Rule 4A gives him to revise his return so field or to file a fresh return in the prescribed form or manner. The return which was filed by the appellant prior to the prescription of the mode was certainly not unauthorized by the subsequent incorporation of the Rule and the form gives him a further right and opportunity to amend; elect or to alter his choice and to file a return in the prescribed manner or form within the time prescribed in the Rule. Mr. Dhar's submissions relying on the words "or in a form substantially similar thereto" would mean that if substantial compliance with the form has been made then no further opportunity to file a fresh or further return in the form as prescribed subsequently is to be given. In our view, this argument has little substance is to be given. In our view, this argument has little substance having regard to the opening words of Rule 4A and the more so, because unless the manner, method or form is prescribed there can be no question of substantial compliance with the same. We are further of the view that as January 21, 1958 is the date of the said Rule coming into operation, the Rule must be regarded as prospective and not retrospective. Thus when the manner, method and the form has been prescribed prospectively, the appellant return, re-electing thereby his choice in the mode prescribed by the Rule. The language of section 6(5) is in the following terms:

An intermediary shall exercise his choice for retention of land under sub-section (1) within such time and in such manner as may be prescribed. If no choice is exercised by him during the prescribed period, the Revenue Officer shall, after giving him an opportunity of being heard, allow him to retain so much of the lands as do not exceed the limits specified in clauses (c), (d) and (j) of that sub-section:

Provided that nothing in this sub-section shall require an intermediary to exercise the choice if he has already done so before the date of coming into force of the West Bengal Estates Acquisition (Second Amendment) Act, 1957.

The section requires that an intermediary should exercise his choice for retention of land u/s 6(1) within such time and in such manner as may be prescribed also supports the view which we have taken viz., the appellant in the instant case can claim an opportunity of filing a fresh return in accordance with law, the mode and the manner as prescribed subsequently.

11. The next question which has to be considered is the validity of the notices u/s 10(2) of the Act as were served on the appellant by the authority concerned. Section 10(1) empowers the Collector to take charge of the estates and rights of the intermediaries vested in the State upon the publication of any Notification u/s 4, and section 10(2) for the said purpose lays down that the Collector may, by written order served in the prescribed manner, require any intermediary or any person in possession (khas or symbolical) of any such estate or of any such interest, to give up such possession by a date to be specified in the order (which shall not be earlier than 60 days from the date of service of the order) and to deliver by that date any documents, registers, records and collection papers connected with the management of such estate or of such interest which are in his custody and to furnish a statement in the prescribed form in respect of such estate or such interest. Section 10(5) provides that nothing in section 10 shall authorize the Collector to take khas possession of any estate or of any right of an intermediary therein which may be retained u/s 6 of the Act. Relevant Rule, made under the aforesaid sections is the Rule 7 which prescribes the mode of service of the order of the Collector u/s 10(2) and the form of statement referred to therein. Rule 7(1) states that the order of the Collector and the statement referred to in section 10(2) shall be in Form "3" appended to the said rules or in a form substantially similar thereto. The said Form "3" under Rule 7(1) is in the following terms:

To.....

(Name of the intermediary/person)

.....

(address)

Whereas Notification No....., dated theunder section 4 of the West Bengal Estates Acquisition Act, 1953 (West Bengal Act I of 1954), declaring that all estates and the rights of every intermediary in each such estates situated inshall vest in the State free from all encumbrances has been published at page(s)... Part....of the Calcutta Gazette of the.....; Now, therefore, for the pupose of takin, under sub-section (1) of section 10 of the said Act, the charge of the estates and interests of the intermediaries therein which have vested in the State u/s 5 of the said Act -

I do hereby require you -

- (i) to give up possession of such estates and interests which are in your possession;
- (ii) to deliver all documents, registers and collection papers connected with the management of such estates or of such interests which are in your custody;
- (iii) to furnish a statement in respect of such estates or such interest in the Form given on the reverse showing the particulars specified therein.

By the.....day of.....19.....

.....

(Signature) Collector

(Reverse)

Form of statement

Description and area of land which the intermediary would lie to retain under the provisions of the Act.

.....

(signature)

Intermediary

Address.....

The original notices u/s 10(2) were produce before us at the time of the hearing by Mr. Dhar. All the notices are in the same form and the particulars of a specimen copy of one such notice is reproduced hereunder :

ORDER u/s 10 (2) AND RULE 7(1) FOR TAKING DELIVERY OF POSSESSION

ORDER

To

Shri Laxmi Narayan Roy.....

(Name of intermediary)

WHEREAS Notification No. 12524 L. Ref. dated the 16th August, 1954 u/s 4 of the West Bengal Estates Acquisition Act, 1958 (West Bengal Act 1 of 1954), declaring that with effect from 1st Baisakh, 1362 B.S. all estates and rights of every intermediary in each such estate situated in the district of BIRBHUM shall vest in the STATE free from all encumbrances has been published at page 3540 of the Calcutta Gazette of the 11th, November, 1954.

WHEREAS Notification No. 6842, L. Ref. dated 10th April, 1956, u/s 4, read with section 52 of the West Bengal Estates Acquisition Act, 1953 (West Bengal Act I of 1954) declaring that with effect from 1st Baisakh 1363 B.S. all lands held by Raiyats and under-Raiyats and the rights of every Raiyat and under-Raiyats and the rights of every Raiyat and under-Raiyats therein situated in the district of BIRBHUM shall vest in the state free from all encumbrances has been published at page 765 of the Calcutta Gazette extra-ordinary of the 13th April, 1956.

Now therefore, I do hereby require you u/s 10(2) of the said Act -

To give up possession on the 10.12.66 day of -----(Bengali month) of the Bengali Year 13 of the interest in your possession as specified in the schedule

below to the officer duly empowered in his behalf.

Illegible

(Signature) COLLECTOR

Seal of Collector U/s. 10(2) of the W.B.E.A. Act (Act 1 of 1954) O.S. D.L.R.O.
Sadar, Birbhum, Suri

SCHEDULE

A full description of all interests is given in this schedule.

A perusal of the notices will show that they are certainly not in accordance with or in conformity with the statutory form as prescribed under Rule 7(1) of the said Rules. In fact, the provisions under which the power in the instant case has been exercised has not been mentioned in the impugned notices and furthermore there has been no compliance with the clause (iii) of the said form or clause 5 (c) in the reverse of the same. Clause (iii) in the Form under Rule 7(1) requires the Collector concerned to give an opportunity to the intermediary to furnish a statement in respect of such estates or such interests in the form given on the reverse showing the particulars specified therein amongst others as to the description of the lands under clause 5(c) which the intermediary would like to retain under the provisions of the Act. This part it appears is conspicuously absent in the present notices which were served on the appellant. By the said notices, in exercise of power u/s 10(2) of the Act the intermediary was only asked to give up possession of the lands and/or interests in the same in respect of the lands in the schedule on or by 10th December, 1966. Thus admittedly the notices in the instant case were not in the statutory form in which the notice u/s 10(2) of the Act were required to be served on the appellant and furthermore they were not in conformity or in substantial compliance with the statutory form. On the basis of such defective notices the authorities concerned had neither jurisdiction nor can they claim to have any power under the law to deprive the appellant of his lands. The determinations made in *Mohan Lal Gupta v. Achhutlal Saha* (supra) thus support the contentions of the appellant and fits in with the facts of the present case and as such it must be held that on the basis of such irregular notices possession of the appellant's lands could not be taken over by the Collector concerned.

It is also an admitted fact that the appellant has not yet parted with the possession of the lands required to be vested and since he has not yet parted with such possession, on the authority of the case of *Gour Gopal Mitra v. State of West Bengal* (supra), he can also claim to have a right to file a fresh return in Form "B" by altering, reviewing or by adding or amending the "B" form which was initially filed.

In the view we have taken the points urged by Mr. Mukherjee ought to succeed

and as such the appeal is allowed. There will, however, be no order as to costs.

We further make it clear that this order will not preclude the respondents from proceeding in accordance with law in the matter of asking for choice from the appellant or in the matter of issuing fresh notices u/s 10(2) of the Act in accordance with the law after complying with the requisite formalities required by the said Act and the Rules framed thereunder. We also make it clear that the Big Raiyat proceeding initiated on the basis of the notices u/s 10(2) of the Act cannot now proceed except in terms of the leave granted by us. The authorities concerned will have full right, power and authority to proceed against the appellant in future, in accordance with law.

S. K. Mukherjee, J. : I agree.