
(2012) 03 CAL CK 0035
In the Calcutta High Court
Case No : W.P.L.R.T. 218 of 2011

Mohammad Ali

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 14-03-2012

Acts Referred:

Citation : (2012) 3 CALLT 673 : (2012) 2 CALLT 120 : (2012) 3 CHN 110

Hon'ble Judges : Pranab Kumar Chattopadhyay, J;Ashoke Kumar Dasadhikari, J

Bench : Division Bench

Advocate : Amitava Ghosh and Mr. Navojit Mukherjee, for the Appellant;N. C. Mondal, Ms. Anita Khattri, S. Maity and Mr. Sankar Sarkar for the Respondent Nos. 7 and 12, Mr. Amal Kr. Das and Mr. N. Ghosh Dastidar for the State, for the Respondent

Final Decision : Allowed

Judgement

Pranab Kumar Chattopadhyay, J.—The petitioner herein has assailed the judgment and order dated 3rd August, 2011 passed by the West Bengal Land Reforms and Tenancy Tribunal in O.A. No. 622 of 2007 whereby the said learned Tribunal dismissed the aforesaid application filed by the petitioner herein. The factual background leading to filing of this application are as follows :-

The subject land originally belonged to Zamindar Kalicharan Nag Chowdhury, who settled the said land in favour of one Anukul Chandra Dutta. Thereafter, said Anukul Chandra Dutta settled the land by a registered deed of Kabuliyat being No. 3981 of 1939 in favour of Mustakim Mallick, Goljer Mallick, Khater Mallick and Abuhakkar Mallick. The mother of the petitioner Mst. Tachirannessa Bibi purchased the said land from the aforesaid Mustakim Mallick and others by a registered deed being No. 8772 dated 16th July, 1962. The mother of the petitioner after purchasing the said land by the aforesaid registered deed was in possession of the same and after the death of Mst. Tachirannessa Bibi present petitioner being the only legal heir inherited the property and is possessing the same. It is the specific case of the petitioner that the names of the vendors of his

mother namely, Mustakim Mallick and others, who got the land through a registered deed of Kabuliyat being No. 3981 of 1939, were not recorded in the RS record of rights in Column No. 13 as raiyat during the RS settlement operation and by mistake the names were recorded in Column No. 23 that is in the remarks Column as permissive possessor and the name of the Zamindar Kalicharan Nag Chowdhury was also recorded therein. In the year 1966, mother of the petitioner came to know that due to the aforesaid erroneous recording in the RS record of rights aforesaid land had vested to the State.

2. The mother of the petitioner came to learn that Mustakim Mallick and his brothers were not present at the time of revisional settlement operation and accordingly, the entries had been made erroneously by recording the land in question in the names of Mustakim Mallick and others as permissive possessor under the Zamindar Kalicharan Nag Chowdhury ignoring the fact that the said Zamindar settled the said land in favour of Anukul Chandra Dutta who thereafter, settled the said land in favour of Mustakim Mallick and his brothers in 1939.

3. According to the mother of the petitioner the land should have been recorded in the names of Mustakim Mallick and others during the revisional settlement in Column No. 13 of the RS record of rights as raiyat instead of recording the same under the Zamindar as permissive possessor who had no nexus and/or relation with Mustakim Mallick and others at any point of time since Mustakim Mallick and others got the land from one Anukul Chandra Dutta by a registered deed of Kabuliyat in the year 1939 and the original Zamindar Kalicharan Nag Chowdhury transferred the land in favour of said Anukul Chandra Dutta before 1939.

4. In the aforesaid circumstances, mother of the petitioner filed a Civil Suit being Title Suit No. 122 of 1966 against the Zamindar Kalicharan Nag Chowdhury and others including the State of West Bengal for declaration of title, confirmation of possession and permanent injunction.

5. After hearing the parties, the learned Munsif decreed the suit in favour of the plaintiff namely, the mother of the petitioner. The defendants including the State of West Bengal did not prefer any appeal from the said judgment and decree passed by the learned Munsif and the Junior Land Reforms Officer, Basirhat in compliance with the above order of the learned Munsif, initiated Misc. Case being No. 3/69 and directed the concerned Tahasilder to realise the rent from the mother of the petitioner herein. Accordingly, Tahasilder of the area realised land revenue for the land from the mother of the petitioner by issuing rent receipt being BR/R 187404.

6. The mother of the petitioner thereafter filed an application before the Settlement Officer, 24 Parganas, 35, Gopal Nagar Road, Calcutta - 27, praying for correction of erroneous Record of Right on the basis of the registered deed and in terms of the order of the learned Munsif passed in Title Suit No. 122 of 1966. The said application was duly received by the Settlement Officer but the record of rights was not corrected.

7. The learned advocate of the petitioner further submitted that the Junior Land Reforms Officer - II illegally issued pattas in favour of the private respondents defying the order of permanent injunction and in violation of the decree passed by the competent Civil Court in Title Suit No. 122 of 1966. The petitioner thereafter submitted a representation before the S.D.O., Basirhat for cancelling the order of the Junior Land Reforms Officer-II. Said S.D.O. however, did not pass any order upon considering the representation of the petition. Therefore, the petitioner herein filed the application before the learned Tribunal alleging inaction on the part of the S.D.O., Basirhat since the said S.D.O. upon considering the representation did not cancel the pattas which were illegally issued in favour of the respondent nos. 7 to 12 in violation of the order passed by the competent Civil Court in Title Suit No. 122 of 1966. The learned Tribunal further came to a conclusion that the judgment and decree of the learned Munsif dated 30th January, 1967 passed in Title Suit No. 122 of 1966 are without jurisdiction. The said learned Tribunal also held that the vesting of the lands in question in the State was total and complete and the petitioner or his mother did not acquire any Title.

8. The learned Tribunal while coming to the aforesaid conclusion did not consider that the Zamindar Kalicharan Nag Chowdhury settled the land in favour of Anukul Chandra Dutta and thereafter said Anukul Chandra Dutta settled the land by a registered Kabuliyat in the year 1939 in favour of Mustakin Mallick and others from whom the mother of the petitioner purchased the land. Zamindar Kalicharan Nag Chowdhury had no occasion to grant permissive possession to the Mallicks since the said Zamindar transferred the land in favour of Anukul Chandra Dutta who thereafter settled the land in favour of Mallicks in the year 1939.

9. In the aforesaid circumstances, the names of Mustakin Mallick and others could not be mentioned in the record of rights as permissive possessor under the Zamindar instead of recording their names as raiyat. The erroneous and/or incorrect entries in the record of rights in respect of the lands in question could not and cannot infringe the rights of the mother of the petitioner or even the petitioner herein to retain the said lands as lawful owner since the mother of the petitioner purchased the said land from the Mallicks who were raiyat in respect of the said lands although during revisional settlement aforesaid land has not been recorded erroneously in the names of the Mallicks.

10. The mother of the petitioner had no other alternative but to file a Civil Suit for declaration of title, confirmation of possession and also for grant of permanent injunction. The mother of the petitioner therefore, filed the Civil Suit being No. 122 of 1966 before the competent Civil Court against the Zamindar Kalicharan Nag Chowdhury and others including the State of West Bengal. The son of Anukul Chandra Dutta was also made a party in the said Civil Suit.

11. The State of West Bengal being the Defendant No. 3 in the said Civil Suit contested the suit by filing a written statement. The learned Munsif upon considering the material and evidence on record including the objections raised

on behalf of the State decreed the suit in favour of the plaintiff namely, the mother of the petitioner. The specific findings of the learned Munsif while passing the decree in favour of the mother of the petitioner are quoted hereunder :-

Thus, I find that the entries in revisional record of rights in respect of the suit land are erroneous. The names of Mustakin Mullick and his others ought to have been recorded on the basis of Ext. 1. I hold that the Anukul Chandra Dutta took patni settlement of the touji no. 633/4 of the collectorate of the district of 24-parganas from the defendant no. 1 who was then owner of that. I hold further that by Ext. 1 Mustakin Mallick and his brothers took settlement of the suit land which Anukul Chandra Dutta held then in khas possession. I do hold that on the basis of Ext. 1, the predecessors in interest of the plaintiff had title and possession in the suit land. I further hold that by Ext. 6, the plaintiff has acquired good right and title of the suit land and she possesses the same. Thus, these issues are decided in favour of the plaintiff.

12. The aforesaid clear findings of the learned Munsif became final and binding since no appeal was preferred by the State of West Bengal. The Junior Land Reforms Officer concerned should have corrected the record of rights in respect of the land in question upon taking specific note of the aforesaid decree passed by the competent Civil Court in Title Suit No. 122 of 1966. Since the Junior Land Reforms Officer concerned failed and neglected to discharge his due duties and responsibilities, a representation was submitted before the S.D.O., Basirhat for taking appropriate decision in the matter. Unfortunately, S.D.O., Basirhat upon considering the aforesaid representation of the petitioner did not cancel the pattas in respect of the land in question which were issued illegally in favour of the private respondents in clear violation of the decree passed by the competent Civil Court. The Junior Land Reforms Officer also did not take note of the fact that the Tehsildar of the area realised the land revenue from the mother of the petitioner in respect of the lands in question in view of the decree passed by the Civil Court in Title Suit No. 122 of 1966.

13. The respondent authorities therefore, had no scope to claim that the land in question vested to the State after promulgation of the West Bengal Estate Acquisition Act specifically when the land revenue was collected from the mother of the petitioner long after the West Bengal Estate Acquisition Act came into force.

14. The learned Tribunal was also not constituted when the mother of the petitioner purchased the land from the vendors namely, Mallicks who were actually raiyats in respect of the said lands after the promulgation of the West Bengal Estate Acquisition Act since the land in question was settled in favour of the Mallicks in the year 1939 by Shri Anukul Chandra Dutta in whose favour the Zamindar had originally settled the said land.

15. The West Bengal Land Reforms and Tenancy Tribunal had no scope and/or authority to decide the correctness of the judgment and decree passed by the

competent Civil Court in Title Suit No. 122 of 1966 as by the judicial review, the learned Tribunal could not upset the said decree which was passed by a competent Civil Court long before the Constitution of the aforesaid Tribunal.

16. In any event, even an erroneous order passed by a Court of Law will have a binding effect on the parties to the proceeding even though the same will not have any binding precedence in respect of any other matter in future.

17. The Hon'ble Supreme Court in the case of A.R. Antulay Vs. R.S. Nayak and Another, observed :-

126. A judgment, inter parties, is final and concludes the parties.

18. A judgment and order is set aside only in appeal or in a review or revision as the case may be. A judgment and decree cannot cease to exist in the eye of law unless the same is set aside by a competent court of law in an appropriate proceeding.

19. In the case of Janardan Reddy and Others Vs. The State of Hyderabad and Others, Fazl Ali, J. speaking for the Constitution Bench of the Hon'ble Supreme Court observed :

26. It is well settled that if a Ct. acts without jurisdiction, its decision can be challenged in the same way as it would have been challenged if it had acted with jurisdiction, i.e., an appeal would lie to the Ct. to which it would lie if its order was with jurisdiction.....

20. In the case of Shiv Chander Kapoor Vs. Amar Bose, , the Supreme Court considered the Wade's Administrative Law and observed as follows :

23. In Wade's Administrative Law, 6th Edn. at pp. 351-353, there is an illuminating discussion of this topic. It has been pointed out that "void" is meaningless in an absolute sense; and "unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders". In the words of Lord Diplock "the order would be presumed to be valid unless the presumption was rebutted in competent legal proceedings by a party entitled to sue.

21. In the case of A.R. Antulay Vs. R.S. Nayak and Another, (as His Lordship then was) at page 1577 held :-

125.....The authority to decide embodies a privilege to bind despite error, a privilege which is inherent in an indispensable to every judicial function. The characteristic attribute of a judicial act is that it binds whether it be right or it be wrong.

22. In the present case, Junior Land Reforms Officer, Basirhat - II had no authority and/or jurisdiction to grant pattas in favour of the private respondents ignoring the order of the permanent injunction granted by the competent Civil

Court in Title Suit No. 122 of 1966. The said Junior Land Reforms Officer was under an obligation and duty bound to take note of the decree passed by a competent Civil Court and had no authority to take any step to frustrate the judicial order.

23. The learned Tribunal also most surprisingly did not realise that the order passed by the competent Civil Court in Title Suit No. 122 of 1966 was final and binding in respect of the parties to the suit and since the State of West Bengal was admittedly a party in the said title suit, the concerned Junior Land and Land Reforms Officer could not refuse to correct the record of rights in respect of the land in question on the basis of the judgment and decree passed by the Civil Court in Title Suit No. 122 of 1966 upon cancelling the pattas which were illegally granted in favour of the private respondents in violation of the aforesaid decree passed by the Civil Court.

24. The learned Tribunal in our considered opinion, erroneously and illegally held that the judgment and decree of the learned Munsif in Title Suit No. 122 of 1966 are without jurisdiction. The learned Tribunal should have realised that it had no authority to decide the correctness of the said judgment and decree passed by a competent Civil Court specially when the said decree became final since no appeal was preferred before the competent Appellate Court challenging the validity and/or correctness of the said decree.

25. For the aforesaid reasons, the impugned judgment and order passed by the West Bengal Land Reforms and Tenancy Tribunal in O.A. No. 622 of 2007 cannot be sustained in the eye of law and the same is accordingly set aside.

26. The competent authorities namely, the respondent nos. 5 and 6 are directed to take necessary steps for correcting the record of rights in respect of the lands in question upon cancelling the illegal pattas granted earlier in favour of the respondent nos. 7 to 12 on the basis of the judgment and decree passed by the competent Civil Court in Title Suit No. 122 of 1966 without any further delay but positively within a period of 6 (six) weeks from the date of communication of this order.

27. This application thus stands allowed.

28. In the facts of the present case, there will be however no order as to costs. Let urgent Xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

Ashoke Kumar Dasadhikari, J.

I agree.