
(1970) 08 CAL CK 0010
In the Calcutta High Court
Case No : Civil Rule No. 3890 (F) of 1969

Mohanlal Gupta

APPELLANT

Vs

Achhulal Saha

RESPONDENT

Date of Decision : 07-08-1970

Acts Referred:

Estates Acquisition Rules — Rule 7, 7(1), 7(2)

West Bengal Estates Acquisition Act, 1953 — Section 10, 10(2), 10(3)

Citation : 75 CWN 228 : (1971) 1 ILR (Cal) 201

Hon'ble Judges : Bagchi, J; Amaresh Roy, J

Bench : Division Bench

Advocate : Sudhansu Bhusan Sen and Archana Roy, for the Appellant;
Bisxvanath Mallick, for the Respondent

Final Decision : Dismissed

Judgement

1. This Rule was issued upon an application made in connection with F.A. No. 403 of 1968 which is pending in this Court. That appeal is directed against a decree dismissing a partition suit not on the merits but on a ground of maintainability for not obeying a condition that was imposed by an order of the Court.

2. The partition suit was instituted by the present Petitioner Mohanlal Gupta, a minor represented by his guardian mother Smt. Bachhia Debi, claiming partition of immovable properties which were described in Schedules A and B of the plaint. Schedule A comprised about 62.49 acres of land and Schedule B comprised about 30.42 acres of land. The Plaintiff claimed 1/20th share in Schedule A lands and 1/5th share in Schedule B lands as a coparcener of a joint family governed by Mitakshara school of Hindu Law. He pleaded that there was a previous amicable partition whereby the Defendant No. 1, Achhulal Shah, who is the father of the Plaintiff, and his four sons including the Plaintiff were jointly possessing a portion of the land mentioned in Schedule A of the plaint, but in the finally published Revisional Record of Rights those lands have been entered in the name of the Defendant No. 1 Achhulal Shah alone. In that partition suit along

with other Defendants the State of West Bengal was joined as party Defendant.

3. That partition suit having been dismissed on the ground of maintainability of the suit the Petitioner has preferred an appeal in this Court being FA. No. 403 of 1968. It was filed on November 21, 1966. During the pendency of the appeal the present petition was filed on September 29, 1969 alleging that on behalf of the Defendant No. 13 in the suit is the State of West Bengal the Junior Land Reforms Officer of Harishchandrapur in the district of Malda and other officers of the State have been making preparations to take over possession of the entire land in suit as vested land. The overt acts alleged were that the officers of the State Government were about to oust the Petitioner and his co-sharers from possession of the suit land by settling those lands with third parties. The Petitioner has, therefore, prayed that the opposite party No. 13, the State of West Bengal, be restrained by an injunction from taking possession of the suit lands described in Schedules A and B of the plaint and from settling those lands with any third party. The Petitioner has also prayed for such other or further order or orders as this Court may deem fit and proper.

4. Opposite party No. 13, State of West Bengal, has opposed this Rule.

5. At the hearing of the Rule an affidavit-in opposition, sworn to by Sri Bimalendu Majumdar describing himself as "an L.D. Assistant of Malda Collectorate", was filed on June 3, 1970. In that affidavit-in-opposition it was stated that the disputed lands had vested in the State on April 14, 1956, by dint of the provisions of the West Bengal Estates Acquisition Act, 1953, and that possession of the lands was duly taken u/s 10(2) of that Act. No particular date on which, nor the manner in which, possession of those lands was said to have been taken were at all mentioned in the said affidavit-in-opposition sworn to by Sri Bimalendu Majumdar; but it was stated therein that the said vested lands have not yet been leased out to anybody by the State. As that affidavit-in-opposition contained statements which the deponent was not competent to swear as true to his knowledge as was done, and no disclosure of or reference to any official record as source of information of the deponent was at all made, we considered that affidavit to be utterly useless. The language in which material portions in that affidavit-in-opposition have been drawn up does not conform to the requirements of the Rules of this High Court for drawing up affidavits. For those defects that appeared loudly in that document, we were unable either to refer to it or rely on the statements in that affidavit-in-opposition. In those circumstances, we gave the State of West Bengal an opportunity to file further affidavit on their behalf if they wanted to do so and we adjourned the hearing of the Rule for one month.

6. In their affidavit-in-opposition sworn to by Sri Ardhendu Kumar Roy, Junior Land Reforms Officer of Harishchandrapur, L.R. Circle in the district of Malda, has been filed on behalf of the State of West Bengal. To that the Petitioner has filed an affidavit-in-reply. In the affidavit-in-opposition sworn to by Sri Ardhendu Kumar Roy on July 15, 1970, it has been stated that possession of the said

vested lands was duly taken, some on January 15, 1965, and others on May 3, 1965- The other disputed lands are the retained lands of the said Achhulal Shah. The deponent further states that the said vested lands have not yet been leased out to anybody by the State. In support of that statement annexures marked "X" collectively were appended to that affidavit-in opposition. Those documents annexed are headed "Certificates- of Possession". Mr. Mallick, the learned Advocate for the State of West Bengal, however, made reference to those documents as part of the proceedings appearing in the original file of the Collectorate of Malda and laid particular emphasis on the orders u/s 10(2) of the Estates Acquisition Act in that file. The learned Advocate for the State produced the original file before us and properly gave inspection of the documents he was relying on to the learned Advocate for the Petitioner Mr. Sudhansu Bhusan Sen.

7. From those documents in the file produced before us on behalf of the State and by examining those with the assistance of the learned Advocates of both sides it appears that in respect of lands of Khatian No. 193 and Khatian No. 185 of mouza Bejpura notices u/s 10(2) of the Estates Acquisition Act were issued on September 5, 1964, in respect of the lands of Khatians Nos. 84, 176 and 196 notices u/s 10(2) of the Estates Acquisition Act were issued on June 12, 1964. All those orders were made on a printed sheet which is not the form "3" prescribed under Rule 7(1) of the Rules framed under the West Bengal Estates Acquisition Act. Rule 7 is in these terms:

7(1). The order of the Collector and the statement referred to in Sub-section (2) of Section 10 shall be in Form No. 3 appended to these rules or in a form substantially similar thereto.

(2) The order may be served (a) by delivering the same to the intermediary or to the person to whom it is directed or to the authorised agent of such intermediary or person, or on failure of such service by delivering a copy of the order to an adult member of the family of such intermediary or such person or by affixing such copy on some conspicuous part of the premises in which such intermediary or person resides or is known to have last resided ; or (b) by affixing a copy of the order on a conspicuous part of any kutchari of the intermediary or (c) by sending by registered post to such intermediary or person at his ordinary place of residence or at the place where he may be known to reside.

The form prescribed under Rule 7(1) correctly says in the second paragraph "To give up possession of which estates and interests which are in your possession" and that form on the reverse includes a form of statement as well. Curiously enough, the printed sheet that has been used for making the order u/s 10(2) of the Estates Acquisition Act by the Collector of Malda in the instances before us says in the material part "To give up possession on...day of....? What is more noticeable is that the reverse of that document is all blank and thereby the material portion of Form No. 3 prescribed by Rule 7(2) has been completely obliterated. Yet that is the order on the authority of which the lands are Said to have been taken possession of. There are other very material deviations from the

requirements in the form because in the document that has been produced before us on its face a schedule has been introduced. Who-ever has created the printed document which has been produced by the learned Advocate for the State before us has not only not made the order in Form No. 3 appended to the Rules but also has used a form which is not substantially similar thereto. For that reason the order u/s 10(2) of the Estates Acquisition Act has not been in our view properly or legally made in this case.

8. Not only so, the manner of service of notice u/s 10(2) of the Estates Acquisition Act is clearly prescribed in Rule 7 which we have quoted above. In each of the instances we are concerned with the service report as appended to on the back of the printed sheet on which the order has been purported to be made show that there was not only no attempt even to adhere to the necessities insisted upon for proper service, but also there was no attempt made to deliver the order to the intermediary and without even stating whether the intermediary on whom the order was to -be served was found present or not it was purported to have been served on a person said to be his son. There was, therefore, no proper service of any order of the Collector made u/s 10(2) of the Estates Acquisition Act. However that may be, damages of service in each Instance is within a few days from the date of the purported order of the Collector. There is nothing to show that there was any attempt to take possession on the particular date mentioned by the Collector in his order. But the documents headed "Certificate of Possession" which are signed either by Tahsildar or by A min say that possession was taken of the lands either on January 15, 1965, or on May 3, 1965. -We looked in vain in the Rules and the forms prescribed therein for tracing the existence of that "Certificate of Possession", but we failed and the learned Advocates for both sides have assured us that there is no such form prescribed under the Rules. It is some one's creation which is neither authorised nor legal and has no value at all to assist the State of West Bengal in supporting their case stated in their affidavit-in-opposition. We need not, therefore, proceed to closely examine that printed form. Yet we cannot omit to mention one very curious incongruity that appears in it. In printing nota bene in the form it appears as follows:

NB. This Certificate should be signed by at least 4 local respectable witnesses such as M.L.A., P.U.B."s, school teachers etc, But in print appears under the heading "Signature and Designation of the witnesses 1, 2 and 3". The form shows that it was printed in a local press at Malda.

9. For all these reasons we must hold that the order u/s 10(2) of the Estates Acquisition Act has not been properly made, nor any such order has been properly served on, the person who was directed to deliver possession and there is complete absence of any material to show the particular manner or the particular acts by which possession is said to have been taken of the lands by the State of West Bengal. Even on the materials produced the requirements of Section 10(2) or Section 10(3) of the Act have not been complied with.

Therefore, the State of West Bengal is not entitled to get into possession of the land as contended in their behalf. We hold they have not done so in fact.

10. On behalf of the Petitioner it has been stated in the petition that he has continued to remain in possession. In the affidavit-in-reply the Petitioner has mentioned that he and his co-sharers have sown paddy in most of the lands while the others were awaiting cultivation by them. These assertions have not been specifically denied in any of the affidavits-in-opposition filed on behalf of the State of West Bengal. All that has been stated in that affidavit-in-opposition is that on a certain date in 1965, i.e. 9 years after the date of vesting under the Estates Acquisition Act, possession was taken without any intimation to the persons concerned and even when 5 years have elapsed thereafter the State has not settled those lands with anybody else. No particular act of possession exercised on behalf of the State has been alleged even. "We hold, therefore, for the purpose of this Rule that the lands have remained in possession of the Petitioner and his co-sharers and those have not been taken possession of by the State of West Bengal.

11. Though it has been stated on behalf of the State of West Bengal that the lands have not been settled with any third party the definite allegation that officers of the State of West Bengal _ were making preparations for disturbing the possession of the Petitioner by proceeding to settle those lands with the third party has not been denied. As we have stated above the partition suit was not decided on merits and was dismissed only on the preliminary ground of maintainability. An appeal against that dismissal of the suit is pending in this Court. In the circumstances the status quo ante should not be allowed to be disturbed.

12. We, therefore, grant the prayer for injunction. The State of West Bengal is restrained from doing any act to disturb the possession of the Petitioner in the suit lands till the final disposal of the appeal pending in this Court.

13. The Rule is thus made absolute with costs hearing fee being assessed, at three gold mohurs.

14. The learned senior Government Pleader is present in Court today. Let a copy of this order be sent to the office of the senior Government Pleader.