
(1971) 09 CAL CK 0018
In the Calcutta High Court
Case No : Civil Rules 6061-64 (W) of 1965

Mojammal Mondal

APPELLANT

Vs

Special Revenue Officer and Others

RESPONDENT

Date of Decision : 17-09-1971

Acts Referred:

Specific Relief Act, 1963 — Section 13(1)(b), 6
Transfer of Property Act, 1882 — Section 55(2)
West Bengal Estates Acquisition Act, 1953 — Section 10(2), 4, 5, 6, 6(5)

Citation : 78 CWN 281

Hon'ble Judges : A.K. Sen, J

Bench : Single Bench

Advocate : Saktinath Mukherjee, Sibdas Ghosal and Satyajit Banerjee, for the Appellant; Sachindra Ch. Das Gupta and Bimal Kumar Dutta, for the Respondent

Judgement

A.K. Sen, J.—These four Rules involve a common question of law and as such have been heard together. Material facts are not in dispute. The respondent No. 7 Samsuzzuha Mondal, who happens to be the father of some of the petitioners was a raiyat who became an intermediary for the purposes of the West Bengal Estates Acquisition Act on the enforcement of Chapter 7 of the said Act. He was holding khas lands both agricultural and non-agricultural more than the ceiling prescribed by the Act. Long after the vesting of his interest in the State the said respondent No. 7 in the year 1965 effected transfers of particular plots of khas lands in favour of the different petitioners in these four Rules. A proceeding u/s 6 of the said Act was initiated by the Assistant Settlement Officer against the said respondent No. " 7 and by due notice he was called upon to submit appropriate returns and option exercising his choice as prescribed by section 6(5) of the said Act. The said respondent No. 7 submitted his returns and also exercised his choice but the lands earlier transferred to the present petitioners were excluded from such returns and it is claimed by the petitioners that the said respondent No. 7 brought it to the notice of the Assistant Settlement Officer that such lands had already been transferred to the petitioners. On such returns the Assistant.

Settlement Officer by an order dated April 3, 1968, directed vesting of all the lands of the respondent No. 7 excluding those set out in his option but including those transferred in favour of the petitioners and he further directed possession of such vested lands to be taken u/s 10(2) of the said Act. Being aggrieved by this order the transferee petitioners have come up to this Court with these Writ petitions on which the above Rules have been issued.

2. Mr. Mukherjee appearing in support of this Rule has raised only one point viz., the Assistant Settlement Officer could not have disposed of the proceeding u/s 6 without impleading the transferees as parties and giving them due notice of the proceeding.

3. The Rule is being contested by the respondents who have filed affidavits-in-opposition and the Learned Government Pleader is appearing to contest these rules. According to Mr. Dasgupta the Learned Government Pleader, the present petitioners being admittedly transferees from an intermediary after the vesting they are not necessary parties to the proceeding u/s 6 and there was no legal obligation on the Assistant Settlement Officer to issue any notice on such transferees.

4. There can be no doubt that on the appropriate notification u/s 4 of the said Act all estates and the rights of every raiyat intermediary including the respondent No. 7 in such estate vested in the State free from ail encumbrances. That is the combined effect of sections 4 and 5. Section G, however, notwithstanding such vesting entitles the raiyat intermediary to retain certain lands and subject to such conditions as specified therein. On the scheme of section 6 while some of the lands specified in some of the clauses are subjected to no restriction, others are subjected to restrictions as provided therein. Under clauses (c) and (d) non-agricultural and agricultural lands in khas possession can be retained subject to the ceiling of 15 acres and 25 acres respectively (on the provisions of the Statute at the material time), Section 6 (5) authorises the intermediary to exercise his choice for retention of lands under sub-section 1 and imposes an obligation on the appropriate authority to allow the intermediary to retain so much of the lands as do not exceed limit as specified in clauses (c) and (d).

5. Therefore, Section 6(5) only provides the machinery for exercise of choice as given to the intermediaries whose estate and rights therein have vested and the proceeding initiated is only to determine such choice The question now to be decided is how far transferees subsequent to the vesting are parties necessary to such a proceeding. Mr. Mukherjee first contends that on the scheme of Chapter 2 and particularly the provisions of sections 4, 5 and 6 the vesting of the interest of an intermediary is not absolute. Or in other words, according to him what the intermediary had been made entitled to retain is excluded from vesting and consequently the vesting is to that extent limited. Based on this contention Mr. Mukherjee submits that vesting not being absolute transferees from such intermediaries themselves also became intermediaries by the transfer and as

such are required to be made parties to a proceeding u/s 6(5). This contention of Mr. Mukherjee, however, is not acceptable to me. In my reading of the statute section 5 does not limit the vesting as provided by section 4 in the sense that it derogates from the absolute character of vesting as is explicit on the provisions of sections 4 and 5. In my reading, section 6. reads as a proviso which provides that notwithstanding the absolute vesting certain other consequences follow -- consequences being the statute itself entitling the erstwhile intermediary to retain certain lands but in a totally different character and with different incidence as provided by section 6 itself. So the intermediary respondent No. 7 retained no interest as an intermediary in any part of the estate after the vesting and conveyed no such interest in favour of any of the petitioners by the transfers effected in their favour. Mr. Mukherjee placed strong reliance on the definition of encumbrance and intermediary in pointing out that rights belonging to the intermediaries in respect of the lands allowed to be retained u/s 6 is excluded from the definition of encumbrance. But in my view this definition instead of supporting the contention of Mr. Mukherjee goes against him because u/s 4 the estate vests free from all encumbrances and on the definition of encumbrance but for the specific exclusion the rights of the intermediaries themselves should have been annulled as encumbrance; therefore, such rights relating to lands retainable u/s 6 are excluded from the operation of annulment as encumbrance. As a matter of fact, inspite of such contention as above Mr. Mukherjee could not support the position in law that on the facts as in the present case both the respondent No. 7 and all his transferees could simultaneously exercise choice of retention u/s 6(5) which would normally follow if his contention be accepted. In this view the contention of Mr. Mukherjee that vesting under the statute is not absolute cannot be accepted. I am of the opinion that the view that I have taken is well supported by the decision of the Supreme Court in the case of Shivashankar Prasad Shah and Others Vs. Baikunth Nath Singh and Others, . Mr. Mukherjee has next contended that even if it be accepted that there was absolute vesting of ail the rights of the intermediary, with merely a right conferred upon him to exercise a choice u/s 6, it was still necessary for the Assistant Settlement Officer to implead transferees as parties to the proceedings u/s 6 and give them appropriate notice there of According to Mr. Mukherjee the petitioners, as transferees from the intermediary might have got imperfect title by the transfer but the transferor had a legal obligation of the nature of covenant for title. Strong reliance is placed by Mr. Mukherjee on section 55(2) of the Transfer of Property Act and section 13(1)(b) of the Specific Relief Act, 1963. Relying on these provisions Mr. Mukherjee contends that the transferees can legally enforce the transferor to perfect title earlier imperfectly conveyed to them by enforcing him to exercise his choice to retain in respect of the lands transferred. But in my view whatever be the legal obligation of the transferor to the transferee petitioners, the Assistant Settlement Officer is not the forum in which such obligations can be enforced by the transferees against the transferor. In my view if the transferees were to rely on such rights of their own they should have them enforced before a civil court by appropriate proceedings for

enforcement of such rights. Section 6 has conferred a right on the intermediary to exercise his choice and the prescribed authority can only proceed on the choice exercised by the intermediary. Such authority is neither intended nor authorised to adjudicate other civil rights between the transferor and the transferees. Therefore, in my view even if the transferee petitioners have any right legally enforceable against the transferor until there is an appropriate decree enforcing such right, the transferees have no locus standi to be added as parties to the proceeding u/s 6(5) of the said Act.

On the conclusions as above the only point raised in support of these Rules must fail and the Rules are discharged.

There will be no order for costs.