(2000) 12 CAL CK 0031

In the Calcutta High Court

Case No : Civil Revisional Jurisdiction W.B.L.R.T. No. 706 of 2000

Monindra Nath Das — APPELLANT

Vs

State and Others — RESPONDENT

Date of Decision : 05-12-2000

Acts Referred:
West Bengal Land Reforms Act, 1955 — Section 14T(3), 14T(5), 14T(8), 14T(9), 54

Citation : (2001) 1 CALLT 471

Hon'ble Judges : Satyabrata Sinha, J;Pratap Kumar Ray, J

Bench : Division Bench

Advocate : Mr. Ramapati Roy, for the Appellant; Mr. H.K. Basu and Ms. Soma Roychowdhury, for the Respondent

Judgement

P.K. Ray, J.—Insert writ application is directed challenging the order dated 23rd June, 2000 passed by West Bengal Land Reforms and Tenancy Tribunal, whereby and whereunder direction was given to the Block Land and Land Reforms Officer to hold enquiry u/s 14T(5) of the West Bengal Land Reforms Act, 1955, hereinafter referred to as said Act, in the manner laid down in the said provision and dispose of in accordance with law. It was further directed by the impugned order that on conclusion of the enquiry u/s 14T(5) of the said Act, the proceeding u/s 14T(3) of the said Act would be decided and concluded.

2, This writ application has been filed with the following prayers :-

"A. A writ of and/or in the nature of Mandamus, commanding the Respondents, their men, agents and subordinates why the order dated 23.6.2000 in O.A. No. 691 of 2000 (LRTT) passed by Hon''ble Mr. K.L. Mukhopadhaya, Administrative Member and Hon''ble Mr. K.J. Majumder, Judicial Member, concerning the portion "The concerned Block Land and Land Reforms Officer is directed to hold an enquiry u/s 14T(5) of the act in the manner laid down in the provisions and dispose it of in accordance with law. He will be at liberty to draw up proceeding u/ s 14T(3) of the Act after the conclusion of the enquiry u/s 14T(5) of the Act" should not be quashed, cancelled and set aside:

B. A declaration that the provisions of Chapter IIB of the West Bengal Land Reforms (2nd, Amendment) Act came into force in 15th February, 1971 and the provisions of section 14T(5) of the said Act can not go beyond the date of the Act i.e. from February 1971 even if assuming without admitting that the said provisions has given retrospective operation and as such the section 14T(5) of the Act can not have any retrospective operation;

C. A writ of and/or in the nature of Certiorari, calling upon the Respondents to transmit and certify the records of the proceedings to this Hon''ble Court so that the conscionable justice may be done;

D. Rule Nisi in terms of prayers A to C as above;

E. Costs of the petition and incidental to this petition;

F. Any other appropriate writ or writs, order of orders direction or directions;

G. An interim order of injunction restraining the Respondents, their men, agents and subordinates from proceeding any further with enquiry proceeding u/s 14T(5) of the West Bengal Land Reforms Act pursuant to the order passed in O.A. No. 691 of 2000 (LRTT) by the learned Tribunal, and further restraining the Respondents, their men, agents and subordinates from disturbing in any manner with the peaceful possession of the petitioners in respect of the lands, till the disposal of the Rule."

3. The fact leading to the writ application is as follows :-

The writ petitioner''s father Dharani Dharan Das since deceased by registered Nirupan Patra gifted his lands to his three sons, sometime in the year 1963 and the writ petitioners in pursuance of such registered documents got their names mutated in the record of rights as prepared under the West Bengal Land Reforms Act. The petitioners are enjoying the property since date of execution of the said registered deed. Dharani Dharan Das breathed last in the year 1976. A proceeding being case No. 13/97 u/s 14T(3) read with Rule 14 of the West Bengal Land Reforms Rules, hereinafter referred to as said rule was initiated in the name of Dharani Dharan Das and some lands were vested. Since certified copy was not available of the said order, writ petitioners got the same in terms of the order and direction passed by the Hon''ble Court in WP No. 15153 (W) of 1999 being the order of Prabir Kr. Samanta, J.

4. An appeal was preferred before the District Land Reforms Officer u/s 54 of the said Act challenging the order of vesting on the ground that u/s 14T of the said Act, said Nirupan Patra could not be called in question by the B.L. & L.R.O. and/ or the Revenue Officer in deciding the ceiling area of deceased Dharant Dharan Das. Prayer of stay of the impugned order of vesting was made but the same was refused by the Appellate Authority. Challenging such the petitioners moved the learned Land Reforms and Tenancy Tribunal in O.A. No. 174/1999.

5. The learned Tribunal by the order dated 17th February, 2000 directed the

Appellate Authority to dispose of the appeal upon granting the stay of the order of vesting.

6. The Appellate Authority disposed of the appeal by the order dated 10th March, 2000 remitting the matter back to the Revenue Officer for fresh enquiry and decision upon holding field enquiry and on taking evidence from the cultivators etc. Challenging this order of the Appellate Authority, the writ petitioner moved the Land Reforms and Tenancy Tribunal wherein a case was registered as O.A. No. 691/2000 (LRTT) and the same was disposed of by the impugned order dated 23rd June, 2000 of the writ application.

7. It is submitted by the teamed Advocate of the petitioners as follows :--

(a) Since Nirupan Patra was of the year 1963, the Revenue Officer has no jurisdiction to decide the question whether the said Nirupan Patra was benami or not, in pursuance of the power of vested to him u/s 14T(5) of the said Act, as no retrospective effect has been given to the said provision. Hence the order is not legally sustainable.

(b) That the Revenue Officer has no jurisdiction to decide the question whether Nirupan Patra was benami or not u/s 14T(5) of the said Act as no retrospective effect can be given on the benami transaction due to the legal position under said Act. Bonafide of such transaction cannot be questioned when such transaction was back dated as no retrospective effect can be given to the Act.

(c) That u/s 14P of the West Bengal Land Reforms Act, when all the transactions after 7th August 1969 has been declared to be the date to determine the celling area, any enquiry relating to the transaction prior to 7th August, 1969 whether benarni or not u/s 14T(5) of the said Act is not permissible as both are being contradictory to each other.

8. That the learned Advocate of the State-respondents had opposed the matter on referring the several provisions of the West Bengal Land Reforms Act and submitted that the Revenue Officer has the jurisdiction to decide the question retrospectively and the impugned order in the writ petition is legal and Justified.

Upon consideration of all the material facts and submissions made by the learned Advocates, the following decisions are reached by me :-

(a) So far as the submission under (a) and (c) above of the learned Advocate of the writ petitioners that no retrospective effect can be given u/s 14T(5) of the said Act, it is observed that learned Advocate did not notice the specific provision namely 14T(8) and (9) of the said Act which as follows :-

"Section 14T. Duty of raiyat to furnish return.-

(8) Notwithstanding anything contained In this Act or in the West Bengal Estate Acquisition Act, 1953 (West Bengal Act I of 1954) or in any other law for the time being in force or in any agreement, custom or usage or in any decree, judgment, decision or award of any Court, tribunal or authority, the provisions of sub-

sections (5), (6) and (7) shall operate with retrospective effect from the 5th day of May, 1953.

(9) Sub-sections (5), (6), (7) and (8) of this section shall be deemed to have always been inserted in the West Bengal Estates Acquisition Act, 1953 (West Bengal Act 1 of 1954). Any officer specially empowered in this behalf under the provision of the West Bengal Estate Acquisition Act, 1953 or under the provisions of this Act, may, In exercise of the powers conferred by sub-sections (5) to (8). re-open and decide afresh any proceeding, case or dispute In relation to determination of total land held by an intermediary or a raiyat or an under-raiyat at any point of time or may determine the quantum of land such Intermediary, raiyat or under-raiyat was or Is entitled to retain and also may determine the extent of land which is to vest in the State or which shall remain vested In the State and shall take possession of such land In accordance with the provisions of section 14SS. Notwithstanding any judgment, decision or award of any Court, tribunal or authority to the contrary the rule of res judicator shall not apply to such cases of reopening and fresh determination."

9. In view of the aforesaid clear provision In the statute the submission of the learned Advocate is not legally tenable and accordingly rejected.

10. Beside such the question as to whether retrospective effect can be given so far as the enquiry u/s 14T(5) of said Act is concerned the matter was at length agitated assailing the vires of the section 14T(5) (8) and (9) of the said Act and on considering the matter at length the two judgments has been pronounced by the Hon''ble Division Bench of this Court namely in case Sri Bibhuti Bhusan Bankura and Ors. v. State of West Bengal, reported in 1994(1) CLJ 353 and in the Judgment Goutam Shantilal Shah Vs. State of West Bengal, : (1996)2 CAL LT 437 (HC) : 1996(2) CHN 212 . In the Judgment of Paschim. Banga Bhumijibi Krishak Samiti (supra), one of us (S.B. Sinha, J.) was Presiding Judge wherein it was held that the provision of section 14T(8) and 14T(9) of the West Bengal Land Reforms Act are not invalid and retrospective operation of the provisions is not ultra vires to the Constitution of India.

11. In the judgment reported in 1994(1) CLJ 353 (supra), section 14T(5) of West Bengal Land Reforms Act, 1955 qua the Benami Transaction (Prohibition) Act, 1988 came up for decision when it was assailed on the ground of repugnancy under Article 254 of Constitution of India. Further in the said Judgment the provisions 14T(5) of the said Act was assailed on the ground that Revenue Officer has no power to decide the question as the same would nothing but review of the earlier actions in the Big Raiyat Case and/or proceeding. All the contentions were nullified by the said Division Bench judgment holding, infer alia, there was no repugnancy and provision of section 14T(5) of the West Bengal Land Reforms Act is not ultra vires to the Constitution of India and the Revenue Officer has the jurisdiction to initiate the proceeding. In deciding this issue the Division Bench at length considered all the judgments on retrospective effect of the statute and on consideration of all the aspects of the matter held accordingly.

12. Hence, contention of the learned Advocate for the petitioner in the instant case to that extent since covered by the two Division Bench Judgments of this Court and which are binding to the co-ordinate Division Bench, there is no merit in the submission.

13. So far as the submission under Point No. (b) of the learned Advocate, that section 14T(5) of said Act is in contradiction with section 14P of the , said Act, the following is decided :-

Section 14T(5) reads as follows :-

"Section 14T. Duty of raiyat to furnish return.-

(1) .....

(5) The Revenue Officer, on his own motion or upon any information, may, after giving the persons interested an opportunity of being heard, enquire and decide any question of benaml in relation to any land and any question of title incidental thereto or any interest therein or any matter of transaction made, on being satisfied that such enquiry and decision are necessary for the purpose of preparation, correction or revision of record-of-rights and all matters incidental or consequential thereto or detection and vesting or surplus land over the ceiling area."

14. Section 14P of the said Act as follows :-

"14P. Land transferred after the 7th day of August, 1969 to be taken into account in determining the ceiling area.--(1) In determining the ceiling area, any land transferred by sale, gift or otherwise to partitioned, by a raiyat after the 7th day of August, 1969 but before the date of publication of the West Bengal Land Reforms (Amendment) Act, 1971 in the Official Gazette, shall be taken into account as if such land had not been transferred or partitioned, as the case may be :

Provided that provisions of sub-section (1) shall not apply to transfer or partition of land to which provisions of section 3A apply.

(1a) In determining the ceiling area, any land to which the provisions of section 3A of this Act apply and which was transferred or partitioned after the 7th day of August, 1969, but before the 9th day of September, 1980, shall be taken into account as If such land had not been transferred or partitioned, as the case may be.

(2) The provisions of sub-section (1a) shall not apply to a bona fide transfer or partition of any land as aforesaid, and the partition shall He on the transferor or the person in whose name the land stood recorded before the partition, as the case may be.

(3) For the purposes of sub-section (2), the transfer of any land in favour of one or more of the following relatives of the transferor shall be presumed to be not

bona fide-

(a) wife, or

(b) husband, or

(c) child, or

(d) grandchild, or

(e) parent, or

(f) grandparent, or

(g) brother,

h) sister, or

(i) brother''s son or daughter, or

(j) sister''s son or daughter, or (k) daughter''s husband, or

(l) son''s wife, or (m) wife''s brother or sister, or (n) brother''s wife."

15. On mere reading of the said two proceedings it is found that there is no contradiction to each other. Section 14P provides that all the transactions after 7th August, 1969 either made mala fide or bona fide whatsoever, it may be considered within the ceiling limit of the transferee for determination of lands has to be retained by him u/s 14M of the West Bengal Land Reforms Act.

16. Whereas section 14T(5) incorporated by amendment of the West Bengal Land Reforms Act, 1955 by West Bengal Act 35 of 1986 upon giving a retrospective effect by section 14T(8) of the said Act provides, inter alia, that the Revenue Officer would enquire and decide any question of benami in relation to any land even the question referring the title incidental thereto or any interest therein or any matter of transactions made for reaching to a decision as would be necessary for the purpose of correction, revision and/ or preparation of records of the rights and all matters incidental or consequential thereto.

17. Hence the section 14P has made a clear embargo on any transaction after 7th August, 1969, whereas the transaction of 7th August, 1969 till 5th May, 1953 has been kept for enquiry and decision only in respect of the finding as to whether such transactions are benami namely to avoid the ceiling limit and/or to avoid any land legislations which has a special object by Revenue Officer u/s 14T(5) of the said Act read with section 14T(8) of said Act.

18. It is clear that section 14T(5) of said Act has given a retrospective effect u/s 14T(8) of said Act. Furthermore, u/s 14T(8) of said Act, the said provisions have been incorporated or included in the West Bengal Estate Acquisition Act. 1953 for determination of only issue as to whether the raiyat to avoid the land ceiling has made some transaction which is benami transaction.

19. Section 14T(5) of the West Bengal Land Reforms Act relates to enquiry regarding benami transfer for illegal purposes for evading and/or dividing the celling provisions of chapter 11B of the said Act.

20. Hence the contention of the learned Advocate fails. Besides the answer aforesaid I am of the view that writ petitioners has not assailed the vires of section 14T(5), (8) and (9) of the said Act, irrespective of the decision reached by two Division Bench of this Court as referred to above, declaring the aforesaid sections are intra vires of the Constitution of India. The point on said issue cannot be agitated for the first time before this Court. Furthermore, there Is no materials and/or grounds in the pleadings to that effect distinguishing said two judgments of Division Benches (supra). Be that as it may, since the point of ultra vires Is already decided, the question is answered accordingly.

21. In view of the aforesaid reasons I am of the view that the Impugned order in the writ application cannot be said as a perverse and/or illegal for Judicial review of the same in the writ Jurisdiction.

The concerned Revenue Officer accordingly is directed to proceed with the matter in terms of the order dated 23rd June, 2000 of the learned Tribunal below. Hence the writ application is dismissed accordingly, but In the facts and circumstances of this case there will be no order as to cost.

S.B. Sinha, J.-- I agree.

22. Application dismissed

