
(1974) 08 CAL CK 0017
In the Calcutta High Court
Case No : C.R. 2575 of 1973

Mt. Chabiran Bibi

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 27-08-1974

Acts Referred:

Constitution of India, 1950 — Article 226

West Bengal Estates Acquisition Act, 1953 — Section 39, 44(2)

Citation : AIR 1976 Cal 15

Hon'ble Judges : Samarendra Chandra Deb, J; Alak Chandra Gupta, J

Bench : Division Bench

Advocate : Nirendra Krishna Mitra, Robin Dutta and Uday Sankar Chatterjee, for the Appellant; S.C. Dasgupta and Tapan Sengupta, for the Respondent

Judgement

Gupta, J.—In this Rule which arises on application under Article 227 of the Constitution, the validity of a proceeding u/s 44(2a) of the West Bengal Estates Acquisition Act is in question. The proceeding was started on January 22, 1970 by an Assistant Settlement Officer apparently on his own motion. The time limit for initiating a proceeding u/s 44(2a) by an Officer of its own motion was at the relevant time 15 years from the date of final publication of the record-of-rights. West Bengal Estates Acquisition Act originally did not contain Section 44(2a). This provision was introduced in 1958 by West Bengal Estates Acquisition (2nd Amendment) Act, 1957 (West Bengal Act XXV of 1957) when the time limit for initiating a proceeding under the Act was six months. Thereafter this time limit was extended by different Acts amending the section. In the year 1963 the time for starting a suo motu (proceeding was extended upto nine years "by the West Bengal Estates Acquisition (Amendment) Act, 1963 (West Bengal Act XXII of 1963). Till then all the amending Acts extending the time limit had received the assent of the President. In 1967 "by the West Bengal Estates Acquisition Act (Amendment Act of 1967) (West Bengal Act IX of 1967) the time for starting a proceeding under the section by the officer of its own motion was extended upto 12 years. It appears that the amending Act of 1967 did not receive the assent of

the President. Thereafter time was again extended to 15 years by the West Bengal Estates Acquisition (Amendment) Act 1969 (West Bengal Act XXXI of 1969). This Amendment Act, however, received the assent of President. As stated already, the impugned proceeding was started when Section 44(2a) stood as amended by the Amendment Act of 1969.

2. The West Bengal Estates Acquisition Act was included in the Ninth Schedule and as such the provisions of the Act, as they stood on the date the Act was included in the schedule, enjoy immunity from attack on the ground that they are inconsistent with or take away or abridge any of the fundamental rights under Article 31-B of the Constitution. The amending Acts of 1967 and 1969 were passed after the parent Act was introduced in the Ninth Schedule.

3. On behalf of the petitioner Mr. Nirendra Krishna Mitra, learned advocate, contended that the Amendment Act of 1967 not having received the assent of the President was open to challenge on the ground that it abridged the rights conferred by Article 19 and Article 31 of the Constitution in view of the first proviso to Article 31A of the Constitution. He argued that though the Amendment Act of 1969 had received the assent of President, it was not possible to give effect to the provisions of the Amendment Act of 1969 as the earlier Act which it sought to amend, viz., Amendment Act of 1967, had not received the assent of the President and was void as it infringed the fundamental right to hold property. This argument was built on the first proviso to Article 31A, Article 31A so far as it is relevant for the present purpose is as follows:--

"(1) Notwithstanding anything contained in Article 13, no law providing for-

(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights or

(b) ** ** *

(c) ** ** *

(d) ** ** *

(e) ** ** *

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14, Article 19 or Article 31 :

Provided that where such law is a law made by the Legislature of a State, the provisions of this Article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent....."

4. Article 31-A(1) speaks of a law providing for the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights. The first proviso says that where such law is one made by the Legislature of a State, Article 31A would not apply unless such law had received

the assent of the President. Mr. Mitra contended that the Amendment Acts of 1967 and 1969 offended Article 19(1)(f) and Article 31 of the Constitution. This argument would be available only if Section 44(2a) could be called a law providing for the acquisition of any estate or of any rights therein or the extinguishment or modification of any such rights. Section 44(2a) is in Chapter V of the Act which includes Section 39 to Section 48. It appears from Section 39 that the record-of-rights is prepared for carrying out the purposes of the Act. The West Bengal Estates Acquisition Act is an Act providing for the acquisition of estates or the rights of intermediaries therein and of certain rights of raiyats and under raiyats and the rights of certain other persons in lands comprised in an estate. But it is obvious that when Section 39 speaks of record-of-rights being prepared for carrying out the purposes of the West Bengal Estates Acquisition Act it does not mean that the record of rights is prepared for the purpose of acquisition of the estates or of the rights of intermediaries, raiyats, under raiyats or other persons. The provisions for the acquisition of estates are contained in Section 4 of the Act. An order u/s 39 of the Act directing that a record-of-rights be prepared in respect of any district or part of a district is made only after the vesting of the estates. Preparation of record-of-rights follows vesting and reflects the position after vesting. This would appear from Rule 26 of the West Bengal Estates Acquisition Rules, 1954 which sets out the particulars to be recorded in the record-of-rights. The revision of an entry in the record-of-rights u/s 44(2a) is (permissible only to correct an existing error in the record so that the true position resulting from the acquisition of estates is reflected in the record-of-rights. We cannot therefore agree with Mr. Mitra that the preparation of record-of-rights is inextricably connected with or is integral part of the machinery of acquisition. Mr. Mitra also sought to argue that the notice initiating the proceeding was not valid. It appears, however, that the petitioner took part in the proceeding without any objection and never complained that the proceeding was not validly instituted. We cannot, therefore, allow Mr. Mitra to raise this objection at this stage.

5. The Rule is accordingly discharged but in the facts and circumstances of the case without any order as to costs.

6. We wish to record our appreciation of the very able manner in which Mr. Mitra presented the case for the petitioner.

Deb, J.

7. I agree.