(1980) 09 CAL CK 0005

In the Calcutta High Court

Case No : Civil Order No. 6105 (W) of 1980

Muktiar Hossain and Others APPELLANT

Vs

State of West Bengal and Others RESPONDENT

Date of Decision : 12-09-1980

Acts Referred:

West Bengal Land Reforms Act, 1955 — Section 50, 50(e), 51

Citation : 85 CWN 69

Hon'ble Judges : G.N. Roy, J

Bench : Single Bench

Advocate : Ahsoke Maity, for the Appellant;Mukti Maitra and Gita Gupta for the State, for the Respondent

Judgement

G.N. Roy, J.—In this writ petition the purported correction of the record of rights u/s 50(e) of the West Bengal Land Reforms Act by incorporating the name of the bargadar is under challenge. It appears that the Junior Land Reforms Officer, Uluberia-I, exercising, his powers as Revenue Officer passed an order on an application made by one Krishnapada Dolui that the said Dolui was the bonafide bargadar for the lands in question and u/s 50(e) of the West Bengal Land Reforms Act, his name should be entered in column 23 of the concerned khatian. The petitioners contend that under the provisions of Section 50(e), a Revenue Officer especially empowered by the State Government shall maintain upto date in the prescribed manner the village record of rights by incorporating therein the changes on account of -- a) mutation of names as a result of transfer or inheritance ;

b) partition, exchange, or consolidation of lands comprised in holding, or establishment of Co-operative Farming Societies ;

c) new settlement of lands or of holdings;

d) variation of revenue ;

e) alteration in the mode of cultivation, for example, by a bargadar ;

f) such other cases as necessitate, a change in the record of rights.

The prescribed manner referred to in section 50 of the West Bengal Land Reforms Act has been provided for in Rule 21 of the West Bengal Land Reforms Rules and it appears from sub-rule (1) of Rule 21 that whatever change is required to be made in the record of rights on account of any of the causes mentioned in clauses (a) to (f) of section 50 of the Act, the matter should be brought to the notice of the Revenue Officer especially empowered by the State Government for maintaining upto date the village record Of rights and all papers containing the original orders passed in mutation and other cases or authenticated copies of such orders shall be made available to him. On receipt of the original orders or authenticated copies thereof, the Revenue Officer shall make necessary corrections in the record of rights and shall subscribe his signature to such-correction noting the authority, under which the corrections have been made. After the corrections have been made, the Revenue Officer shall inform the parties concerned and if necessary the Settlement Department of the changes made in the record of rights. Sub-rule (2) of Rule 21 provides that notwithstanding the provisions of sub-rule (1) the Revenne Officer may on his own motion incorporate in the village record of rights any change on account of alteration in the mode of cultivation, for example, by a bargadar mentioned in clause (e) of section 50 after making such enquiry including on the spot enquiry and inspection as he may deem fit and after giving the parties interested an opportunity of being heard. After the change has been incorporated the Revenue Officer shall inform the parties concerned and if necessary the Settlement Department of such change in the record of rights and shall grant to such bargadar a certificate in form 8 B.

2. Learned Counsel for the petitioners contends that sub-rule (2) of rule 21 was added by a notification dated September 19, 1978, published in the Calcutta Gazette (Extra-Ordinary) dated September 29, 1978 but the said sub-rule (2) was later on substituted by a notification dated June 11, 1979. As the old sub-rule (2) has since been substituted, it is not necessary to refer to the old sub-rule (2) and in the instant case the order u/s 50(e) having been passed after June 11, 1979, namely, after the date when the substituted new sub-rule (2) of rule 21 has come into force, it is necessary to refer to the existing sub-rule 2. Learned Counsel for the petitioners contends that on a reference to Rule 21 (2) and Section 50 it will be apparent that the Revenue Officer especially empowered u/s 50 is not required to decide on his own anything relating to clauses (a) to (f) of Section 50. For the purpose of maintaining an upto date village record of rights concerning clauses (a) to (f) of Section 50, he is to rely on original orders passed in mutation and other cases or authenticated copies of such orders if such orders are made available to him. The said Officer u/s 50 (e) is only to effect changes in terms of the original orders or the authenticated copies of such orders produced before him. Sub-Rule (2) of Rule 21, however empowers the Revenue Officer to effect change on account of alteration in the mode of cultivation by a bargadar as mentioned in clause (e) of Section 50 after making such enquiry

including on the spot enquiry and inspection as he may deem fit and after giving the parties an opportunity of being heard. The learned Counsel contends that it is thus quite apparent that under sub-rule (2) of Rule 21, the Revenue Officer himself can initiate a suo motu proceeding only for the limited purpose of recording barga cultivation under clause (e) of Section 50 and if such a suo motu proceeding initiated by him then after holding such enquiry including spot enquiry and after giving reasonable opportunity to the affected parties, he may decide as to whether there has been any change in the mode of cultivation, and if such finding is made by him he will also change the record of rights by incorporating the said mode of cultivation in the record of rights. Learned Counsel for the petitioners contends that only under sub-rule (2) of Rule 21, the Revenue Officer has been given an independent power to cause an enquiry on his own initiative and to come to a finding as to whether any change in the mode of cultivation has been made but such power is to be exercised by him suo motu and not for adjudicating an application made by a party. He submits that it will appear from the impugned order being annexure ''D'' to the writ petition that one Krishnapada Dolui made an application for recording barga in his favour and on the basis of such application the Revenue Officer purported to exercise his powers u/s 50 (e) but such exercise of power for adjudicating an application made by a party is contrary to the provision of sub-rule (2) of Rule 21. In the aforesaid circumstances, learned Counsel contends that the recording of barga by holding a spot enquiry in accordance with sub-rule (2) of Rule 21 is wholly illegal and without jurisdiction because such proceeding was not started suo motu by the Revenue Officer but he entertained an application made by the petitioner for recording barga. Mrs. Maitra, learned Counsel appearing for the State, however, contends that u/s 50, no revision of record of rights is permissible but the Revenue Officer is only to implement the effect of some orders passed by different authorities in the village record of rights if such orders are made available to him. She submits that when an enquiry was held by the Revenue Officer and pursuant to the finding made in such enquiry it was found that the cultivation was done by a bargadar, it must be held that such enquiry was held not u/s 50 but u/s 51 of the West Bengal Land Reforms Act and on the basis of the finding made u/s 50, the Revenue Officer only incorporated the change u/s 50 (e) in the record of rights noting the mode of cultivation by a bargadar in my view, the aforesaid submission of Mrs. Maitra is wholly misconceived. It has not been stated anywhere in the order that any application for recording barga was made before the competent Revenue Officer empowered u/s 51 and in exercise of such power u/s 51, such Revenue Officer had caused an enquiry and had come to a finding that there was a bargadar in respect of the disputed land and such order passed by such authority u/s 51 was made available to the Revenue Officer empowered u/s 50 (e) and the said Revenue Officer only incorporated the order made available to him. I am also not inclined to accept the contention of Mrs. Maitra that u/s 50 revision of record of rights is not permissible in any case. A reference to section 50 and Rule 21 will make it clear that the authority u/s 50 will have to make necessary corrections in the record of rights and after making such corrections, the said authority shall have to inform the parties concerned and if necessary the settlement department of changes made in the record of rights. Whenever any change is effected in the finally published record of rights, there is no manner of doubt that a revision of the record of rights takes place. It will however appear that excepting in the case of starting a suo motu proceeding under sub-rule (2) of Rule 21 for recording the mode of cultivation in terms of clause (e) of section 50, the Revenue Officer u/s 50 is not authorised to make any independent finding by causing enquries but he is required I the record of rights simply on the basis of the orders passed by other competent authorities in appropriate proceedings when such orders are made available to him. Sub-rule (2) of Rule 21 makes it abundantly clear that in respect of the mode of cultivation by a bargadar under clause (e) of Section 50, the Revenue Officer himself has a power to start a suo motu proceeding for revising the record of rights relating to mode of cultivation and he has been empowered to hold a spot enquiry including other enquires and after giving the parties affected reasonable opportunities of being heard, he has been vested with the authority to decide the mode of cultivation and to revise the existing record of rights in that regard. As in the instant case, the Revenue Officer purported to exercise jurisdiction u/s 50(e) of the Land Reforms Act for adjudicating the application made before him by the alleged bargadar and as in entertaining such application, the Revenue Officer himself intended to decide the mode of cultivation by causing enquiry, the said action on the part of the Revenue Officer is absolutely without jurisdiction and contrary to the provisions of sub-rule (2) of Rule 21 read with Section 50 of the West Bengal Land Reforms Act. In that view of the matter, the impugned order being annexure ''D'' to the writ petition and also the enquiry report on the basis of a direction issued by such Revenue Officer exercising power u/s 50(e) as contained in annexure (c) to the writ petition are quashed.

4. The writ petition being Civil Order No. 6105 (w) of 1980 is disposed of accordingly. There will be no order as to costs. This order, however, will not preclude the Revenue Authorities to start appropriate proceeding for recording barga cultivation in accordance with the provisions of the Land Reforms Act. Re : Civil Order No. 6106(W) of 1980.

Civil Order No. 6106(W) of 1980 was also heard analogously with the instant writ petition because the facts and circumstances are similar and on the same resionings this writ petition is also disposed of on similar terms and the impugned annexures are quashed.

There will be no order as the costs in this writ petition also.

