
(1971) 02 CAL CK 0007

In the Calcutta High Court

Case No : Civil Revn. No's. 7709 (w) to 7713 (w) of 1968

Muktipada Ghosh and Others

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 11-02-1971

Acts Referred:

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

Citation : AIR 1971 Cal 451

Hon'ble Judges : Anil Kumar Sen, J

Bench : Single Bench

Advocate : Amulya Kr. Mukherjee, for the Appellant; Suproakash Banerjee, for the Respondent

Final Decision : Allowed

Judgement

Anil Kumar Sen, J.—These five rules which were issued on five petitions under Article 226(1) of the Constitution are heard together as they involve common questions of law. Facts are all same or similar. The first petitioner in each of these cases is the son of the second petitioner and the second petitioner is the same person in all these cases.

2. The petitioners in these rules are challenging notices dated October 24, 1968 purported to have been issued in a proceeding started suo motu by the Revenue Officer u/s 44(2a) of the West Bengal Estates Acquisition Act (hereinafter referred to as the said Act) and the proceedings started thereon. Notices are the same in all the five cases except as to the number of the proceedings and plots involved.

3. The petitioners' case in each of these rules shortly is that the petitioner No. 1 is the owner of the land set out in paragraph 5 of the petition and that his name had been duly recorded in the finally published record of rights accordingly. That on October 24, 1968 a notice purported to be one u/s 57 read with Section 44(2a) of the said Act was issued by the Revenue Officer; the notice does neither

disclose unambiguously the purpose nor does it assign any reason or ground whatsoever. Petitioners in each of the cases were served with such a notice. Being aggrieved by such notice and the proceedings initiated thereon they have moved this Court with the above writ petition and are seeking to have those notices as also the proceedings based thereon quashed by this Court.

4. The fact that the disputed plots are recorded in the name of the first petitioner in each of these cases in finally published record of rights having the necessary presumption of correctness has not been disputed by the respondents. The respondents also do not dispute that the impugned notice was issued on terms as set out in annexure A to the petition. This notice recites that for recording correct interests in the present revisional settlement for the purpose of preparing compensation rolls in respect of the zamindari and intermediary interests, it is necessary that "interested persons should produce the necessary papers, documents or statement of their interests and whereas the petitioners are persons who appear to be interested in the plots set out in the notice itself therefore they are called upon to produce on October 31, 1968 either personally or through an authorised agent a written statement of their interest together with necessary papers; the notice thereafter sets out the different plots and at the top it is described as a notice u/s 57 read with Section 44(2a) of the said Act.

5. The only question raised in all these rules by Mr. Mukherjee appearing on behalf of the petitioners is as to whether such a notice can be said to be a valid notice in law entitling the Revenue Officer to initiate a proceedings u/s 44(2a) of the said Act. According to Mr. Mukherjee, such a notice is not in accordance with law inasmuch as apart from the fact that such a notice does not indicate that a proceeding for revision of the entries in the settlement records is sought to be made by the Revenue Officer, it does not disclose any ground or reason whatsoever or even the nature of revision or alteration which is to be effected by the Revenue Officer in the proposed proceedings and the person to be affected gets no opportunity to know the case that he is to meet in such proceedings. This being the position Mr. Mukherjee contends that there can be no valid proceedings u/s 44(2a) of the said Act based on such a notice.

6. As pointed out hereinbefore the respondents do not dispute that the proceeding was initiated on a notice as afore- said. In the affidavit-in-opposition they have disclosed the order of the Revenue Officer dated October 22, 1968 on the basis whereof the aforesaid notice was issued. This order recites that whereas the disputed plots are found to be recorded in the name of the first petitioner in the finally published khatians and

"the reference to the basis on which these khatians have been opened are not clear, require examination for the purpose of preparation of compensation assessment rolls and also for the purpose of revision or rectification as may be necessary for the ends of justice; and whereas on examination of record of rights and connected papers, I am satisfied that there is a prima facie case for starting formal proceeding suo motu u/s 44(2a) of the West Bengal Estates Acquisition

Act, 1953, it is ordered that notices u/s 57 stating the fact be issued to the parties and J.L.R.O. concerned that the case will be heard at the Central Squad, Suri at Sunrise Building, Suri at 11 A.M. on 31-10-68".

In paragraph 4 of the affidavit-in-opposition it has further been pleaded by the respondents that the Revenue Officer was of the opinion that it was the second petitioner, namely, the father, who had the records prepared in favour of his son, the first petitioner, but the record bore no reference to any document supporting such recording in favour of the son and as such he came to a conclusion that the records required examination for the purpose of preparation of compensation assessment rolls as might be necessary for the ends of justice; accordingly the proceeding was initiated and the notice was issued. It should however be noted that the actual notice served on the petitioners was not drawn up consistently with the order dated October 22, 1968 nor a copy thereof was served on the petitioners; as a matter of fact the notice was issued in a form which was meant for purposes other than those for initiating a proceeding u/s 44(2a). Further the ground or the case as made out by the respondents in paragraph 4 of the present affidavit is again not to be found either in the order or in the notice. The affidavit-in-opposition goes on further to state that it was not necessary for the Revenue Officer to set out any reason for starting a suo motu proceeding u/s 44(2a) and as such the notice of the proceeding cannot be challenged in the manner proposed by the petitioners.

7. Mr. Dasgupta, the learned Government Pleader, appearing on behalf of the respondents in his argument supports the latter stand taken in the affidavit-in-opposition. According to Mr. Dasgupta reason if any for revising the records is to be furnished in the final order; the proceeding now initiated is only to see and determine whether the records require to be revised or not.

8. Giving anxious consideration to the submissions made by the learned Government Pleader, I have come to the conclusion that it is not possible to accept such a stand taken by the respondents. u/s 44 as it now stands after the amendment, the final publication is made as soon as objections preferred to the draft are disposed of by the Revenue Officer. The right of appeal at that stage has been taken away and in lieu thereof Section 44(2a) had been inserted. This sub-section provides that an officer specially empowered by the State Government may either on an application by any aggrieved party or of his own motion revise an entry in the record finally published after giving the persons interested an opportunity of being heard and after recording reasons therefore. It is true that Mr. Dasgupta has laid much stress on the terms of this sub-section to contend that when the sub-section itself enjoins that the revision should be made after recording reasons, the intention of the legislature was that the reasons should be set out in the final order and need not be set out in the notice initiating the proceedings. Such a contention, in my view, is not well conceived inasmuch as such an intention does not flow from the proper construction of the sub-section. The subsection contemplates revision either on an application by a

person aggrieved or in a proceeding started suo motu. Where the proceeding is started on an application it is needless to say that the application must make out a prima facie case for revision. When the very same thing is authorised by the statute in a proceeding suo motu it would, in my view, be proper to construe that such suo motu proceeding must also be in a case where a prima facie case for revision is made out. Further the Sub-section goes on to lay down that in either of the cases the persons interested must have an opportunity of being heard. This necessarily implies that the person interested must be apprised of the case for revision and the grounds therefore. Unless a person is made to know the case either of the applicant or of the Revenue Officer initiating a proceeding suo motu which he is to meet, a person is not supposed to get any opportunity of being heard. To give a barren notice to a party only to appear in a proceeding u/s 44(2a) would be useless formality and would certainly not afford the person any opportunity of being heard. Therefore on the true construction of the sub-section in the notice initiating the proceeding the authority must make out a prima facie case for revision of the record or any part thereof and some material facts and/or grounds for the same must also be set out therein. It is true that at that stage it is not necessary for the authority concerned to consider whether the grounds or the reasons are sufficient for effecting the revision or not as such consideration must await the final adjudication; but at the same time if the power is invoked on a barren notice disclosing neither a case nor any ground whatsoever it would be an arbitrary act on the part of the authority. The view that I have taken finds support from the decision of the Supreme Court in the case of Swastik Oil Mills Ltd. Vs. H.B. Munshi, Deputy Commissioner of Sales Tax, Bombay, and an unreported decision of the Supreme Court in the case of Jaswant Singh Saluja and Another Vs. Chief Settlement Commissioner and Another, . In the latter case the Supreme Court went to the length of laying down that furnishing ground in such notices is part of the requirement under the principles of natural justice, while in the earlier decision it was observed by the Supreme Court

"the proceedings for revision, if started suo motu, must not, of course, be based on a mere conjecture and there should be some ground for invoking the revisional powers. Once those powers are invoked, the actual interference must be based on sufficient grounds....".

On the construction of this particular provision of the West Bengal Estates Acquisition Act I had myself taken the same view in an earlier decision of mine in the case of Benoyendra Kumar Bera v. Revenue Officer, (C. R. No. 2809 (W) of 1969 disposed of on 16-9-1970) and the same view has also been expressed by my learned brother A. K. Sinha, J. In his decision dated 29-1-1971 in Civil Rule No. 714 (W) of 1969 in the case of Manmatha Naskar v. Revenue Officer, Jadavpur.

9. Judged on the aforesaid basis there is no other alternative but to hold that the impugned notice does not fulfil the requirement of law and no valid proceedings u/s 44(2a) can be initiated by the Revenue Officer on the basis thereof. The

terms of the notice have been set out hereinbefore. This notice does not set out any reason or ground whatsoever. It is still worse inasmuch as it does not read as notice for revision of the records or any part thereof. All this is due to the fact that the Revenue Officer was acting carelessly in picking up a printed notice form really meant for production of documents u/s 57 and not for initiating a proceeding for correction of the records. The facts disclosed in the affidavit-in-opposition would not help the respondents inasmuch as the petitioners had no notice thereof at the relevant time. Further the Revenue Officer is always found to be changing his grounds; the notice is not in consonance with the order which again does not incorporate the case as made out in paragraph 4 of the affidavit-in-opposition. If the grounds pleaded in paragraph 4 of the affidavit-in-opposition are the real grounds on which the Revenue Officer wanted to revise the entries nothing pre-vented the Revenue Officer to come in a straightforward manner and issue a notice upon the petitioners that for such reasons the record should be revised.

10. Further the order disclosed in the affidavit-in-opposition which is the basis of the notice clearly betrays how the Revenue Officer was proceeding on a misconception of law. In the first part of the order he recites that the basis of the record is not clear. Then the Revenue Officer goes on to say that he is satisfied that there is a prima facie case for starting a proceeding suo motu u/s 44(2a) without however disclosing what is the nature of the case. Next he goes on to say that the proceeding is being initiated for examining the records for the purpose of preparation of compensation assessment rolls and also for the purpose of revision or rectification as may be necessary. Though it is open to a Revenue Officer to remove a particular obscurity or error from the records in exercise of powers u/s 44(2a), the said provision was never meant to authorise any roving enquiry just for satisfying the Revenue Officer that the records are well founded and it requires no alteration. A person in whose favour the record stands has no legal obligation to support or justify the entry. It is for the Revenue Officer to first find a prima facie case for revision or alteration and then finally decide it after giving the persons in whose favour the records stand an opportunity to meet such a case. In this case the order does not make out any such prima facie case. Moreover, it is difficult to understand how and why the Revenue Officer should amalgamate the two independent proceedings of preparing compensation assessment rolls and revising the records u/s 44(2a). This being the position I am unable to uphold the validity and legality of the impugned notice u/s 44(2a) as also the proceeding initiated thereon; they are, in my view, not in accordance with law and as such liable to be set aside.

11. These applications therefore succeed and the rules are made absolute. The impugned notices dated October 24, 1968 u/s 57 read with Section 44(2a) of the West Bengal Estates Acquisition Act in each of these cases are set aside. The respondents however will be at liberty to initiate any fresh proceeding under the said provision in accordance with law if that is not otherwise barred. Let writs in the nature of certiorari do issue in each of these cases quashing and setting

aside the aforesaid impugned notices and the proceedings based thereon but subject to the liberty giving the respondents to proceed afresh in accordance with law. Let a writ in the nature of mandamus also do issue commanding the respondents not to give any effect to or any further effect to impugned notices but subject to the same liberty as above. There will be no order for costs in these rules.