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(1975) 02 CAL CK 0019

In the Calcutta High Court

Case No : Civil Rules No. 568 (W) of 1971

Namita Roy Chowdhury APPELLANT

Vs

State of West Bengal RESPONDENT

Date of Decision : 06-02-1975

Acts Referred:

West Bengal Estates Acquisition Act, 1953 — Section 44(1), 44(2), 44(3), 45, 6(1)

Citation : (1975) 1 ILR (Cal) 714

Hon'ble Judges : Chittatosh Mookerjee, J

Bench : Single Bench

Advocate : Hari Prasanna Mukherjee and J.N. Baksi, for the Appellant;Sakti Prasad Mukherjee, for the Respondent

Judgement

Chittatosh Mookerjee, J.—The Petitioners being aggrieved by the order of the Tribunal dismissing their appeal u/s 44(3) of the West Bengal Estates Acquisition Act and affirming the order u/s 44(2a) of the Act passed by the Revenue Officer, Settlement ''C'' Camp, Taki, obtained the present Rule. The Revenue Officer had drawn up a suo motu proceeding u/s 44(2a) of the Act for revising classification of the plots in question which had been recorded as tank fisheries in the finally published R.S. records. It appears that in the R.S. records, as originally prepared, the said plots were not classified as tank fisheries but they were recorded as beelan, garhlayek patit, bandh, path etc. Another Revenue Officer purporting to act u/s 45 of the West Bengal Estates Acquisition Act had purported to change the previous classification of the first four groups of plots mentioned in the, order u/s 44(3) and described them as gheri machh chash. Similarly, his classification of the plots mentioned in the fifth category in the order u/s 44(3) were changed u/s 44(1).

2. The Respondents in preparing the R.S. records in question and making revision thereafter u/s 44(2a) were required to classify the plots with reference to their nature as on the collate vesting.

3. The principal question in the impugned proceeding u/s 44(2a) was whether or

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not, at the material date, i.e. the date of vesting, the plots in question or any of them were tank fisheries within the meaning of the explanation to Clause (e) of Sub-section (1) of Section 6 of the West Bengal Estates Acquisition Act. The Revenue Officer in his impugned order u/s 44(2a) came to the conclusion that none of the plots could be considered as tank fishery and therefore, they should not be described as gheri machh chash.

4. Mr. Mukherjee, learned Advocate for the Petitioners, had raised a preliminary objection to the maintainability of the suo motu proceeding u/s 44(2a) on the ground that a Revenue Officer u/s 44(2a) cannot sit on judgment upon the correctness or otherwise of an order u/s 44(2a) made by another Revenue Officer. Mr. Mukherjee, accordingly, contended that the Revenue Officer u/s 44(2a) was not competent to revise the entries in the relevant records made in pursuance of an order u/s 45 of the Act. I am unable to sustain the said preliminary objection.

5. The original records of the above proceeding u/s 45 were placed before me by the Respondents. I find that the said order u/s 45 was made upon an application filed by Jagabandhu Roy Choudhury, predecessor-in-interest of the present Petitioners. In the said application Jagabandhu himself was made the sole opposite party and the State of West Bengal or any of its officers were not impleaded. Secondly, the Revenue Officer, who passed the order u/s 45, did not state that he was correcting any error in the record of rights which had been made owing to bona fide mistake. Mr. Sakti Prasad Mukherjee, learned Advocate for the Respondents, drew my attention to the recent decision of the Division Bench in the case of Ganges Manufacturing Co. Ltd. v. State of West Bengal (1970) 76 C.W.N. 389 and contended that when the Revenue Officer in the previous case u/s 45 did not say that he was satisfied that the correction of the classification of the plots was necessary for removing any bona fide mistake, the said order u/s 45 was of no effect. Mr. Mukherjee also rightly contended that when the Respondents were not parties to the (sic) u/s 45 the said order was not binding upon them. Section 44(2a) authorises officers empowered to revise entries in records finally published in accordance with the provisions of Sub-section (2) after giving persons interested an opportunity of being heard and after recording reasons therefor. Therefore, I hold that the Revenue Officer, in the instant case, had jurisdiction to initiate proceeding u/s 44(2a) in respect of the plots in question.

6. It may be also noted that the Revenue Officer, who had passed the order u/s 44(1) in respect of the remaining plots, did not record any reason for altering the classification of the plots into gheri machh chash. However, it is not for me to consider at this state whether the said order u/s 44(1) passed in connection with a return in Form ''B'', submitted by the predecessor-in-interest of the Petitioners was right or not. It would be sufficient to say that such orders u/s 44(1) was subject to further revision u/s 44(2a).

7. I sustain the last submission made on behalf of the Petitioners that there has

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not been a proper disposal of the appeal by the Tribunal u/s 44(3) of the Act. The Tribunal in disposing of the appeal did not frame the points for decision. I do not also see that the Tribunal made even any attempt to consider the facts and circumstances of the present case in order to record its independent finding about the nature of these plots at the time of vesting. The Officer u/s 44(2a) passed a lengthy order dealing with various facts and circumstances. Therefore, the Tribunal ought to have independently considered the same for the purpose of testing correctness or otherwise of the conclusion reached by the Revenue Officer u/s 44(2a). The judgment of the Tribunal u/s 44(3), to say the least, was perfunctory. Sitting in writ jurisdiction it is not for me to weigh the evidence or to record any finding about the user of the plots in question on the date of vesting, i.e. whether or not these plots formed part of a tank fishery at the material date. Therefore, I have decided to quash the order of the Tribunal u/s 44(3) and to remit the matter to the Tribunal for a fresh consideration of the appeal of the Petitioners. I make it clear, although I am setting aside the order u/s 44(3), it should not be understood that I am in any way disagreeing with the findings and observations contained in the order u/s 44(2a). In fact, I have not examined the correctness or other wise of the order u/s 44(2a) for the reason that the (sic) authority has not yet properly considered the appeal of the Petitioners. Therefore, after remand the Tribunal would be at liberty to dispose of the appeal on merits.

8. I, accordingly, make the Rule absolute in part. Let a writ of certiorari issue quashing the order of the Tribunal dated December 9, 1973, annex. ''E'' to the petition. Let also a writ of mandamus issue commanding the Tribunal to dispose of the appeal of the Petitioners against the order u/s 44(2a) in Case No. 67 of 1968 in accordance with law.

9. There will be no order as to costs.

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