

(1956) 12 CAL CK 0019
In the Calcutta High Court
Case No : Civil Revision Case No. 1339 of 1953

Purna Chandra Das

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 06-12-1956

Acts Referred:

Bengal Survey Act, 1875 — Section 58
Constitution of India, 1950 — Article 220, 226, 227

Citation : 61 CWN 301

Hon'ble Judges : Bose, J

Bench : Single Bench

Advocate : Sarat Chandra Janah, Arun Kumar Janah and Sastri Charan Roy, for the Appellant; J. Majumdar, Additional Government Pleader and Somendra Chandra Bose for Opposite Parties Nos. 1 and 2, Binayak Nath Banerjee and Bankim Chandra Roy (2) for Opposite Party No. 3, for the Respondent

Judgement

Bose, J.—This is an application under Article 226 of the Constitution for a Writ in the nature of Mandamus or for a Writ of Certiorari for quashing an order dated the 24th April. 1953 passed by the learned Member of the Board of Revenue and for directing the opposite parties to forbear from giving effect to the said order. The case of the petitioner is that he is the owner of premises marked "A" in the map which is annexed to the petition and the opposite party No. 3 is the owner of the premises, marked "B" in the said map. The tank and its hank shown with green border in the said map belonged to one Akshay Saha A portion of this area was acquired sometime in 1921 by the Government under the provisions of the Land Acquisition Act under a declaration dated the 29th August, 1923 from the said Akshay Saha for the purpose of the Amta High School Hostel but it appears that it was never used for the said purpose. The portion so acquired by the Government was numbered as Touzi No. 1056 of the Howrah Collectorate. This Touzi No. 1056 along with another plot of land which is registered as Touzi No. 900 of the Howrah Collectorate were settled in farming lease for 15 years on and from 1st April, 1935 in favour of the opposite party No. 3. The said lease expired

on 1st April, 1950. The petitioner purchased the interest of Akshay Saha by a registered conveyance on the 8th October 1941 and since then he has been in possession of the same. It appears that as a result of the acquisition a portion of the tank and a portion of the eastern bank of the said tank became included in the said Touzi No 1056. The case of the petitioner is that the said tank which is at the back of the house of the petitioner and is used by the female members of the petitioners family for bathing and taking water for domestic purpose is absolutely needed for the purpose of the petitioner and his family. Accordingly the petitioner applied to the Collector for getting a lease of the said Touzi No. 1056 and the petitioner put forward before the Collector the reasons why the lease should be granted in his favour. The opposite party No. 3 also applied for getting settlement of the said Touzi No. 1056 but his application was refused by the learned Collector on the ground (a) that the opposite party No. 3 had wrongfully got his interest recorded as a raiyat in respect of Touzi No. 900 although he had no such-right and (b) that he had violated the express terms of the lease by erecting pucca structures on portions at least of Touzi No. 900. The learned Collector directed a settlement of Touzi No. 1056 in favour of the petitioner and the settlement was for a term of 30 years. The opposite party No 3 preferred an appeal before the Commissioner, Burdwan Division, against this order of the learned Collector directing settlement in favour of the petitioner. This order was made on the 14th September 1951. The Commissioner by his order dated the 21st January 1952 affirmed the settlement made by the learned Collector in favour of the petitioner. Against that said order of the Commissioner the opposite party No. 3 moved the Board of Revenue West Bengal, and the case before the Board of Revenue was numbered as Case No. 19 of, 1952. It appears that the learned Member of the Board of Revenue by his order and judgment dated the 24th April, 1953 set aside the orders of the Commissioner and the Collector. The complaint of the petitioner is that the learned Member of the Board of Revenue had no power of revision and the general power of superintendence which he has does not vest him with any jurisdiction to supersede the order passed by the Collector as confirmed by the Commissioner.

2. The opposite party No. 3 has affirmed an affidavit in opposition and in paragraph 6 thereof it is stated that the opposite party No. 3 did not himself construct any structure on Touzi No. 900 after he had obtained settlement of the same from the Government in April, 1935 but that the structures had been erected by the Managing Committee of the Amta High School long prior to the date of settlement of the land in favour of the opposite party No. 3 and the latter had by a conveyance dated the 26th March, 1935 purchased the structures from the Managing Committee of the School. In the circumstances it is contended by the opposite party No. 3 that the charge of violation of the terms of the lease levelled against him by the Collector and the Commissioner was not true and accordingly it had been rightly negated by the Board of Revenue by its judgment dated the 24th April, 1953.

3. The attention of the Court has been drawn to the lease granted in favour of

the opposite party No. 3 on the 1st April, 1935 and also to the terms of the conveyance dated the 26th March, 1935 by which the opposite party No, 3 purported to purchase the structures from the Managing Committee of the Amta High English School and it has been pointed out by Mr. Jana that as the terms of the lease make it quite clear that it was a farming lease it is absurd that there were structures already existing on the land and the opposite party No. 3 had purchased the structures from the Managing Committee at the time he took settlement of the land from the Government, because if the case of the opposite party No. 3 had been true, then the lease granted in his favour could not possibly have been described as a farming lease.

4. Mr. Jana has placed before the Court the judgment of the Member of the Board of Revenue and it is submitted by him that the Board of Revenue exceeded its jurisdiction in setting aside the finding of facts which have been arrived at by the Collector and by the Commissioner in the matter of granting a settlement of Touzi No. 1056 in favour of the petitioner. The learned Advocate has attacked the soundness of the reasons which have been given by the Member, Board of Revenue, in setting aside the settlement of Touzi No. 1056 in favour of the petitioner. The argument put forward by Mr. Jana is that it is only the Collector who had the power to make a settlement of the Touzi No. 1056 and consequently the order passed by the Board of Revenue in the exercise of its power of superintendence cancelling the settlement made by the Collector was without jurisdiction. In support, of this argument Mr. Jana has drawn the attention of the Court to paragraph 67 of the West Bengal Government Estates Manual 1953. The relevant portion where of is as follows:

"The initial settlement of all khas lands in Government estates is the duty of the Collector".

5. It is not necessary to set out the other portions of the said paragraph for the purpose of this Rule. The learned Advocate has also referred to paragraph 75 of the said Manual in which it is stated that "Collectors are empowered to confirm summary settlements in estates the revenue of which does not exceed Rs. 500|-. Commissioners are empowered to confirm settlements of estates with a revenue not exceeding Rs 10,000|-"The form of the agreement to be executed for the purpose of taking a farming lease as set out at pages 280 to 282 of the Bengal Survey and Settlement Manual has also been brought to the notice of the Court. From all these materials it is contended by Mr. Jana that the granting of a settlement of government khas lands is within the exclusive jurisdiction of the Collector and the Board of Revenue has no jurisdiction to interfere with or supersede any order of granting settlement made by the Collector. Mr. Jana has laid considerable stress on the notes which are appended to Chapter IV of the Bengal Practice and Procedure Manual 1934 published under the authority of the Government. The said note to which reference is made may be usefully set out hereunder:

"The fact that a superior authority is vested by any Act of the Legislature with

general powers of supervision and control over the proceedings and orders of the subordinate officers does not of itself confer upon a party to a case or proceedings any right of appeal to such superior authority, or any right to the exercise by such authority of revisional jurisdiction, in respect of orders passed by subordinate officers, though such officers may have come to a wrong conclusion by reason of error of law or error of fact. Powers of control and supervision are discretionary, and superior authorities exercising such powers are not ordinarily disposed to interfere except in the following classes of cases:--

- (1) where a subordinate officer has improperly refused to exercise a jurisdiction vested in him;
- (2) where such officer has acted without jurisdiction;
- (3) where such officer in the exercise of his jurisdiction has signally failed in his duty; or
- (4) generally where it is necessary for the purpose of preventing gross abuse or gross injustice."

6. It may be pointed out that this note as appears from the foot note appended to that note was the opinion of the Legal Remembrancer given with particular reference to section 58 of the Bengal Survey Act (Act V of 1875). A perusal of the judgment of the Board of Revenue makes it clear as to how the Member himself treated the proceeding which was brought before him by the opposite party No. 3 in respect of the allotment of Touzi No. 1056. The learned Member made the following observation in course of his judgment:

Petitioner has come to the Board with a prayer to exercise its right of general supervision and control over the revenue officers of this State and this is not a formal petition for revision of a statutory order against which such a petition lies". It is pointed out by Mr. Jana that the Member himself was fully conscious of the limitation on his power but unfortunately he in the exercise of his powers of superintendence interfered with the order of the Collector as affirmed by the Commissioner and wrongly cancelled the settlement which has been made in favour of the petitioner.

Mr. Binayak Nath Banerjee, the learned Advocate of the opposite party No. 3, has submitted that the Rules which are embodied in the different Manuals which have been referred to by Mr. Jana contained some executive or departmental instructions for the guidance of the officers of the department and as they were not made under any rule-making power conferred by any Statute, they have no statutory force which the Court in exercise of its powers under Article 220 of the Constitution can enforce. Mr. Banerjee has placed reliance on an unreported decision of Sinha, J., in the case of Kartic Chandra Bera v. J C. Majumdar and others (1) being Civil Revision No. 882 of 1953, judgment dated the 14th July, 1955. Reference is also made by Mr. Banerjee to the Survey and Settlement Manual, Chapter I, Rules 1 and 2 for the purpose of showing that they contain

merely executive instructions. On this point the attention of the Court has also been drawn by the learned Advocate appearing for the respondents Nos. 1 and 2 to the case reported in 42 C.W.N. 996 at pages 1002 to 1003 [Brojesh Charan Sen and others v. The Secretary of State for India in Council and others (2)] and also to the cases reported in 46 C.W.N 73 at 77-78[Bibi Sakina Khatoon v. Khiron Chandra Manna and others (3)]³ and in Manindranath Dinda Vs. Panchanon Mondal and Others, [Manindra Nath Dinda v. Ponchanan Mondal and others (4)]. Mr. Banerjee has also placed reliance on the Bengal Land Revenue Regulations 1793 being Regulation II of 1793 and the attention of the Court is particularly drawn to the following rules embodied in the said Regulation.

Rule 4. The Collectors are to correspond with the Board of Revenue, and to conform to all instructions with which they have been furnished by that Board, and that are or may not be altered or revoked by this or any other Regulation, and also to all instructions which the Board of Revenue may hereafter transmit to them.

Rule 7. The duties prescribed in the following section are to be performed by the Collectors, under the superintendence of the Board of Revenue.

Rule 8. (Fourth Clause). To make the future settlement of khas or farmed estates, agreeably to the regulations and instructions which they may receive for that purpose.

Rule 36. The Board of Revenue are empowered to issue orders to their subordinate officers for making the settlement of lands that are or may be khas in conformity to the regulations and any special instructions which may be prescribed to them by the Provincial Government.

Rule 39. It is to be observed as a general principle that the settlement of lands that are or may be khas is to be made by the Collectors under the regulations and the instructions of the Board of Revenue.

7. Mr. Banerjee has argued with reference to these rules that it is abundantly clear from these rules that in the matter of granting settlement of government khas lands, the Board of Revenue is vested with a power of superintendence over the Collectors and other officers subordinate to him. There can be no doubt that there is a good deal of force in this argument. The Bengal Regulation No. II of 1793 has undoubtedly statutory force and by virtue of the Rules to which reference has just been made, the power of superintendence of the Member of the Board of Revenue in matters of settlement of lands is undoubtedly established I am therefore satisfied that the Member, Board of Revenue, had the jurisdiction to pass the order of the 24th April, 1953. It may be that the reasons which he has set out for the purpose of setting aside the settlement of Touzi No. 1056 in favour of the petitioner were not cogent reasons but as he had absolute jurisdiction to deal with the matter, the fact that he has come to an erroneous conclusion will not justify this Court in interfering under Article 226 of the Constitution. If it could be said that in making that order he had committed any

error of law which was apparent on the face of the record, then it might be that by reason of the principle enunciated" in the case of *Rex v. Northumberland Compensation Appeal Tribunal* (5) [(1952) 1 All Eng. Rep. 122] it could be said that a Writ of Certiorari would lie to quash such an order inasmuch as it was a "speaking order" provided of course that it could be held that the Member, Board of Revenue, while making that order was exercising judicial or quasi-judicial functions. But it may be pointed out that it is not at all free from doubt whether in dealing with these questions of settlements of lands the Collectors or the Board of Revenue were exercising judicial or quasi-judicial functions.

8. Mr. Majumdar, the learned Advocate for the respondents Nos. 1 and 2, has raised a further point to the effect that as the Government was the owner of these khas lands and that these lands were the private property of the Government, or in other words, as the Government was the landlord and had made the settlement a landlord, no Writ could issue against the Government who was really in the position of a private party. Mr. Majumdar has placed reliance on a decision of Mr. Justice Sinha reported in *Dhirendra Kumar Vs. State of West Bengal and Another*, where the learned Judge has pointed out that if the Government is the owner of a land and agree to grant a lease in respect of such land, the Government is not amenable to any Writ which may be issued under Article 226 of the Constitution. Reliance has also been placed on the decisions of the Supreme Court reported in *P.D. Shamdasani Vs. Central Bank of India Ltd.*, and in [*Shrimati Vidya Verma, through next Friend R.V.S. Mani Vs. Dr. Shiv Narain Verma*, . *Vidya Verma v. Shiv Narain* (8) in support of this proposition. It appears to me that this contention of Mr. Majumdar is not without substance.

9. Mr. Banerjee has also pointed out that although the petition seeks the issue of a Writ of Mandamus, there is no pleading of demand of justice and refusal as is required before the Court can issue a Writ of Mandamus against any particular party. It is not seriously disputed by Mr. Jana that the petitioner did demand any justice from the Member, Board of Revenue, after the order of the 24th April, 1953 had been passed by, him. Therefore, there cannot be any question that the petition does suffer from the defect as pointed out by Mr. Banerjee.

10. It has also been argued by Mr. Majumdar that the petitioner has no legal right for which he can approach this Court for interference under Article 226 of the Constitution. It is pointed out that the Government was the owner of the land and it had a discretion to grant settlement in respect thereof in favour of such party as it liked. As the petitioner cannot claim any absolute right to get settlement of government khas lands from the Collector, he has no such right which he can enforce with the aid of Article 226 of the Constitution. Mr. Jana on the other hand has submitted that the fact remains that the petitioner did succeed in obtaining settlement of the land from the Collector and therefore he had acquired a right to remain in possession of and to exercise his rights as lessee in respect of such land. According to Mr. Jana, this was a sufficient and substantial interest which justifies the petitioner in coming to this Court and

asking for relief under Article 226 of the Constitution. It is true that the petitioner had originally no right to obtain a settlement of the khas lands but having acquired some right in the government land by virtue of the settlement made in favour of the petitioner by the order of the Collector which was affirmed by the Commissioner, he had in my view a sufficient interest for the protection of which he could have sought the interference of this Court under Article 226 of the Constitution. It is difficult to follow however why the petitioner did not have recourse to Article 227 of the Constitution although the said Article appears to be wider in scope than Article 226 of the Constitution in several respects. However that is a matter which does not arise for consideration in this case and I therefore refrain from dealing further with this point. In view however of my findings on the other points, this petition must fail. The Rule is accordingly discharged. The petitioner will pay the costs of the opposite party No. 3, hearing fee being assessed at two gold mohurs.