

(2005) 05 CAL CK 0053
In the Calcutta High Court
Case No : S.A. No. 727 of 1991

Ramandas Chaki and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 02-05-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11, 80
Specific Relief Act, 1963 — Section 34
West Bengal Estates Acquisition (Second Amendment) Act, 1973 — Section 57B(2)
West Bengal Estates Acquisition Act, 1953 — Section 10(2), 52, 53, 54, 56
West Bengal Estates Acquisition Rules, 1954 — Rule 4, 4A

Citation : AIR 2005 Cal 312

Hon'ble Judges : Arun Kumar Mitra, J

Bench : Single Bench

Advocate : Bidyut Banerjee and Anit Kumar Rakshit, for the Appellant; Soumen Dasgupta and Sridhar Panja, for the Respondent

Judgement

Arun Kumar Mitra, J.—This appeal comes out of a suit for declaration and injunction. The plaintiffs preferred this appeal being aggrieved by and dissatisfied with the judgment and decree dated 17th February, 1997 passed by the learned Assistant District Judge 1st Court. Krishnanagar, Nadia in Title Appeal No. 142 of (sic) 1986 reversing the judgment and decree passed by the learned Munsif, 1st Court, Ranaghat in Title suit No. 4 of 1979 on 26th May 1986.

2. The case made out by the plaintiffs in the plaint is inter alia as follows :-

Khitish Chandra Chaki, predecessor in interest of the plaintiffs was the owner of the suit property. Said Khitish Chandra Chaki had got less than 25 acres of agricultural land. By B. R. Case No. 34 of 1968, Revenue Officer passed an order that 2364 acres of land of Khitish Chandra Chaki to be vested in the State of West Bengal. BR case No. 14 of 1968 is illegal, invalid and without any jurisdiction. Khitish Chandra Chaki and the plaintiffs filed Title Suit No. 162 of .1969. The defendant are claiming the suit property to be vested in the State of West Bengal and are also making attempt to distribute the suit property to

others. Notice u/s 80 of the CPC was duly served upon the State of West Bengal but without any fruitful result. Hence the suit being Title Suit No. 4 of 1969 was filed.

3. The defendants have contested the suit by filing written statement contending inter alia that the suit is not maintainable in its present form. The suit is barred by Section 34 of the Specific Relief Act and the suit is also bad for want of a notice u/s 80 of the CPC and the suit is also barred by Section 57B of the Estate Acquisition Act. The defendants denied all the allegations of the plaintiffs. Khitish Chandra Chaki was asked to file "H" form in the B.R. Case as he had more land than the ceiling limit but he did not file the same. All the lands of Khitish Chandra Chaki were vested in the State of West Bengal and the suit property has been taken possession of by the State of West Bengal and at present, also it is under the possession of State. Defendant prays for dismissal of the suit with costs.

4. On the above pleadings the following issues were framed :

- 1) Is the suit maintainable in its present form ?
- 2) Is the suit land vested in the State of West Bengal ?
- 3) Have the plaintiffs any right, title, interest and possession over the suit land ?
- 4) Is notice u/s 80 of the CPC served ? If so, is the same legal, valid and sufficient ?
- 5) Are the plaintiffs, entitled to a decree as prayed for ?
- 6) To what other reliefs, if any, are the plaintiffs entitled ?

5. The learned trial Judge decreed the suit on contest but without any costs. It was declared that the plaintiffs have right, title and interest in the suit property. The defendants are restrained from disturbing plaintiffs' possession in the suit property.

6. Title Appeal No. 142 of 1986 was allowed by the appellate Court below on contest with costs against the contesting respondents. The judgment and decree accordingly passed by the learned trial judge was set aside and the suit was dismissed on contest.

7. Hence this second appeal.

8. Before hearing the second appeal this Court is to find out as to whether there is a substantial question of law involved in this second appeal.

9. On perusal of the records of the case, the judgments and decrees passed by both the Courts below and the evidence on record this Court formulated the following substantial questions of law on which the learned counsel for the parties are to argue :

- 1) Whether though the present suit properties were not included in Title Suit No.

162 of 1969 and the trial Court came to a specific finding on that the appellate Court below was justified in holding that the present suit is redundant in view of the fact that plaintiffs already got a decree,

2} Whether the appellate Courts finding that the present suit is not maintainable is justified. Though the properties involved in the present suit and those involved in the earlier Title Suit No. 162 of 1969 are different.

3) Whether in view of the specific provisions contained in Section 6, Sub-section (5) of the West Bengal Estates Acquisition Act, 1953 the authority is competent to pass an order of vesting in respect of the entire properties of Khitish Chandra Chaki notwithstanding the fact that no option of retention was submitted.

4) Whether the appellate Court below was right in holding that the present suit is not maintainable when the appellate Court below did not hold that the suit is barred by res judicata reversing the finding of the trial Court.

5) Whether in the present suit State can raise the question of liquidity and validity of the B.R. Case No. 34 of 1968 when in the earlier suit being Title Suit No. 162 of 1969 was held that the said B.R. Case was illegal and invalid and when the said position in the earlier suit of 1969 was not appealed against by the State.

6) Whether without taking recourse to any proceeding u/s 10(2) of the West Bengal Estates Acquisition Act, 1953 the State can disturb the possession of the present plaintiffs" in respect of the properties involved in the present suit."

10. The learned counsel for the appellants submitted that though Bamandas Chaki and Debidas Chaki earlier filed a declaratory suit being Title Suit No. 162 of 1969 but the said suit schedule of properties was different. Naturally, the appellate Court below can't say that this suit is redundant.

11. The learned counsel further submits that in that suit of 1969 the learned Munsif found that said Bamandas Chaki and Debidas Chaki held lands much below ceiling limit". Consequently, the B.R. Case No. 34 of 1968 was found to be illegal and since that suit contained other lands and the present suit has been filed involving different lands, question of res judicata does not arise and the appellate Court below is wrong.

12. The learned counsel for the appellant relied on a decision reported in 1975 (2) Cal LJ 246 (Tarak Chandra Dholey v. Satyanarain Singh). The learned counsel submitted that in this judgment delivered by the Hon'ble Division Bench of this High Court it has been observed that Section 57B(2) of the West Bengal Estates Acquisition (2nd Amendment) Act 1973 does not create a bar in filing a declaratory suit. The learned counsel relied on the observations made in this judgment in its paragraphs 18 to 23 which are quoted hereinbelow :

" 18. A suit for establishment of title and other ancillary reliefs against a private person cannot be said to be covered by Section 57B(2)(a). In the present case

we are not concerned with suits brought against the State challenging vesting orders or adjudication proceedings u/s 5-A etc."

"19. The clause (c) of Section 57-B takes away Civil Courts jurisdiction to entertain any suit or application when (i) the same concerns any land or any estate or any right in such estate, (ii) the subject-matter of a particular suit has been already enquired into or decided or can be decided by the State Government or any authority under any of the provisions of the West Bengal Estates Acquisition Act.

"20. Thus, the object of clause (c) of Sub-section (2) is to exclude the Civil Courts" jurisdiction in respect of the matters which come within the ambit of the enquiries provided for in the different parts of the West Bengal Estates Act. The Chapter VI of the West Bengal Estates Acquisition Act contains supplemental and miscellaneous provisions relating to such enquiries. Section 53 mentions the authorities for the purposes of the Act. u/s 54 the State Government may delegate powers except its rule making powers. The said Section empowers the State Government to appoint Special Judge and Tribunals. Section 55-A extends the Indian Limitation Act to appeals or applications under the Act. Section 56 confers power to compel production of statements and documents and to enforce attendance of witnesses in the proceedings under the Act. The State Government u/s 57-A may invest any authority referred to in Section 53 with all or any of the powers of a Civil Court under the Code of Civil Procedure, 1908. We understand the State Government has already issued a notification No. 340L Reg. dated 9th June 1958 conferring all the power of Civil Court under the CPC upon all Settlement Officers, (2) all assistant Settlement Officers (3) all compensation officers (4) all revenue officers. Section 58 contains indemnity provisions for protection of actions taken under the Act etc."

"21. Obviously, Section 57-B(2)(c) covers the different kinds of enquires and proceedings which may be conducted by the authorities mentioned u/s 53. In this connection, we may give some illustrations of such enquiries contemplated under the Act. (a) enquiries u/s 5-A regarding bona fide of transafers including consequential proceedings, (b) proceeding"s u/s 6 regarding retention of lands by intermediaries including raiyats etc. (c) assessment and payment of compensation under Chapter III of the Act, (d) proceedings under Chapter IV relating to mines and minerals in particular relating to preparation and publication of the Compensation Assessment Roll, reference to Mines Tribunal, appeals against orders of the tribunal, etc. (e) preparation and revision of Records of Rights including disposal of objections and appeals. The clause (c) bars the Court"s jurisdiction only in respect of the field now covered by these enquiries. We may note that clause (b) of Section 57-B(2) covers questions relating to retention u/s 6."

"22. If we closely examine these provisions relating to the different classes of enquiries under the Act, we would find that no machinery provides for adjudication of disputes between private individuals relating to title and ancillary

questions thereto. The enquiries under the Act all relate to or are connected with the questions of acquisition and vesting rights of intermediaries and certain other persons, including right of retention, assessment and payment of compensation and supplemental and miscellaneous provisions. When a particular suit does not in substance come within the scope of any of these matters, Civil Courts jurisdiction to entertain suits of civil nature still remains unaffected."

"23. Recently, P.K. Banerjee, J. in *Ramkrishna Mullick v. State of West Bengal* 1975 (1) Cal LJ 154 has elaborately discussed the scope and effect of Section 57-B of the West Bengal Estates Acquisition Act. Banerjee, J. in our view, rightly pointed out that in each case the Court should adjudicate whether the suit before it comes within the mischief of Section 57-B(2) in case it is found that the suit comes within the ambit of the said provision, then the Court might pronounce that the suit should abate, otherwise the Court should proceed to try the suit in accordance with law."

13. Thereafter, the learned counsel relied on another decision reported in 1975 Cal LJ 326 (*Lakshmi Narayan Roy v. Land Reforms Officer*) the learned counsel relying on this judgment submitted that the State can't vest the entire land of the plaintiff/appellant even if B form is not submitted within stipulated time. The learned counsel specifically relied on the observations made in paragraph 10 of this judgment which is quoted hereinbelow.

"10. The admitted position in the instant case which also appears from the records produced at the time of the hearing of the appeal the appellant had filed his return in form "B" for retention of lands prior to January 21, 1958 i.e. the date when Rule 4-A was inserted by Notification No, 1030L. Ref dated January 21, 1958. The said Rule lays down that every intermediary entitled to retain possession of lands u/s 6(1) of the Act shall, if chooses to retain any such land, make his choice by furnishing to the Settlement Officer or to the Revenue Officer authorised by the Settlement Officer in his behalf, before the expiry of the 30th day of April, 1958, a statement in writing in Form "B" appended to Schedule B to the Rules or in a form substantially similar thereto and in the manner indicated therein provided that if the area of land held by a raiyat or an under raiyat who is deemed to be an intermediary u/s 52 does not exceed the limit laid down u/s 6(1) (c) or (d), he shall not be required to exercise such choice and in computing the area of lands by a raiyat or an under raiyat in his khas possession, and lands retained by him as an intermediary u/s 6(1)(e) or (d) prior to the operation of Section 52 shall be included. There is also no dispute that the word, "prescribed" means prescribed by the Rules, made under the Act So after the mode is prescribed by the Rules the appellant who had filed his choice earlier, can claim a further right which opportunity Rule 4-A gives him to revise his return so filed or to file a fresh return in the prescribed form or manner. The return which was filed by the appellant prior to the prescription of the mode was certainly not unauthorised but the subsequent incorporation of the Rule and the Form gives him a further right, and opportunity to amend, elect or alter his

choice and to file a return in the prescribed manner or form within the time prescribed in the Rule Mr. Dhar's submissions relying on the" words, "or in a form substantially similar thereto" would mean that if substantial compliance with the form has been made then no further opportunity to file a fresh or further return in the form as prescribed subsequently is to be given. In our view, this argument has little substance having regard to the opening words of Rule 4-A and more so, because unless the manner, method or form is prescribed there can be no question of substantial compliance with the same. We are further of the view that as January 21, 1958 is the date of the said Rule coming into operation, the Rule must be regarded as prospective and not retrospective. Thus, when the manner, method and the form have been prescribed prospectively, the appellant can also claim an opportunity to file a return, re electing thereby his choice in the mode prescribed by the Rule. The language of Section 6(5) is in the following terms :

"An intermediary shall exercise his choice for retention of land under Sub-section (1) within such time and in such manner as may be prescribed. If no choice is exercised by him during the prescribed period, the Revenue Officer shall, after giving him an opportunity of being heard, allow him to retain so much of the lands as do not exceed the limits specified in clauses (c), (d) and (j) of that Sub-section :

Provided that nothing in this Sub-section shall require an intermediary to exercise the choice if he has already done so before the date of coming into force of the West Bengal Estates Acquisition (Second Amendment) Act, 1957."

The section requires that an intermediary should exercise his choice for retention of land u/s 6(1) within such time and such manner as may be prescribed also supports the view which we have taken vis., the appellant in the instant case can claim an Opportunity of filing a fresh return in accordance with law, the mode and the manner as prescribed subsequently."

15. The learned counsel submitted that following the ratio of this judgment in case of non-filing of return in "B" form, the Revenue Officer should have called the petitioner for hearing and could have vested the land beyond the ceiling limit.

16. The learned counsel relied on a. decision reported in 2001 (1) CHN 468 : (2001 AIHC 3541) (Kalipada Tribedi v. State of West Bengal). The learned counsel relied on the observations made in paragraphs 12, 13 and 14 of this judgment and relying on the ratio of this judgment the learned counsel submitted that Section 34 of the Specific Relief Act does not stand as a bar to a suit for declaration and injunction.

17. Concludingly, the learned counsel submitted that the appeal should be allowed and the lower appellate Court's order should be set aside.

18. The learned counsel for the respondents submitted that the self-same person Bamandas Chaki filed a suit for declaration and injunction earlier and got a

decree for declaration and injunction and in view of the said judgment the present suit is not maintainable and is redundant.

19. The learned counsel submitted that the learned appellate Court below rightly held that the defendants are in possession and the big raiyat case is valid one and the Revenue Officer in the said big raiyat case found the lands of the plaintiffs having beyond the ceiling limit, stood vested.

20. The learned counsel for the State/ respondents Mr. Dasgupta submitted that earlier suit being a suit for declaration and in (he earlier suit declaration was granted. The same relief cannot be asked by the plaintiffs/appellants and the second suit on the self same cause of action is a bar and the principle of res judicata comes into play.

21. The learned counsel submitted that instant appeal should be dismissed with cost.

Decision :

22. Heard the learned counsel for the parties. In the year 1969 a Title Suit was filed being Title "Suit No. 162 of 1969 which was decreed on 18th February, 1971. In the said suit Bamandas Chaki, Debidas Chaki Muktidass Chaki, Shanti alias Shaktidas Chaki, Bhaktidas Chaki and Kshitish Chandra Chaki were the plaintiffs and the State of West Bengal was the defendants/ respondents. In that suit the plaintiffs therein in Bamandas Chaki prayed for declaration that "A" Schedule land belongs to the plaintiff Nos. 1 to 5 and "B" schedule land belongs; to the plaintiff No. 6. In the said suit the plaintiffs also prayed for injunction. The said suit was decreed on contest and no appeal was preferred by the State of West Bengal. Here, in this suit i.e. Title Suit No. 4 of 1979 Bamandas Chaki are the plaintiffs and the State of West Bengal are the defendants but the lands schedule in this suit are different from the earlier suit and as such the suit is not barred either u/s 34 of the Specific Relief Act or u/s 11 of the CPC insofar as the vesting of the lands of the plaintiffs/appellants, Section 6(5) of the West Bengal Estates Acquisition Act. is relevant which is quoted hereinbelow :-

"An intermediary shall exercise his choice for retention of land under Sub-section (1) within such time and in such manner as may be prescribed. If no choice is exercised by him during the prescribed period, the Revenue Officer shall, after giving him an opportunity of being heard, allow him to retain so much of the lands as do not exceed the limits specified in clauses (c), (d) and (i) of that sub-section :

Provided that nothing in this sub-section shall require an intermediary to exercise the choice if he has already done so before the date of coming into force of the West Bengal Estates Acquisition (Second Amendment) Act, 1957,"

23. The provisions of Section 6(5) and the provisions of Rule 4 of the West Bengal Estates Acquisition Act clearly indicate that the State cannot declare any land to be vested which is within the ceiling limit. Revenue Officer can call the

land holder, give him a hearing and/or option to retain the land up to the ceiling limit and Revenue Officer can vest the land beyond the ceiling limit of his own choice if the land holder on call even if does not turn around. Such being the position, the entire suit is barred by res judicata, nor the suit is barred u/s 34 of the Specific Relief Act. In my view the appellate Court below misconstrued the ratio of the provisions of statute and/ misconstrued the ratio of the judgment cited before him.

24. I, therefore, set aside the judgment and decree passed by the lower appellate Court and confirm the judgment and decree passed by the learned Iri;ti Judge,

25. Let a decree be drawn by accordingly.

26. In the circumstances the patties are to bear their respecting costs.

27. Let the lower Court records be sent down to the Courts below forthwith.

28. Urgent xerox certified copy, if ap plied for, be handed over to the parties as expeditiously as possible.