

(1958) 04 CAL CK 0001

In the Calcutta High Court

Case No : Civil Revision Cases No's. 1895 and 1896 of 1957

Ramnuggar Cane and Sugar Co., Ltd.

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 28-04-1958

Acts Referred:

Constitution of India, 1950 — Article 227

West Bengal Estates Acquisition Act, 1953 — Section 3, 39, 40, 41, 42

Citation : 64 CWN 760

Hon'ble Judges : Law, J; Das Gupta, J

Bench : Division Bench

Advocate : Chandra Narayan Laik and Ajit Kumar Mukherjee, for the Appellant; Nirmal Chandra Chakravarty, for the Respondent

Judgement

Das Gupta, J.—In pursuance of an order made by the State Government directing that a record of rights be prepared in respect of the District of Nadia, the Revenue Officer concerned prepared what he considered a complete record of rights and then the draft record as prepared by him was published on the 2nd July, 1955. The draft record as published did not contain determination of rent payable by the present petitioner, an intermediary within the meaning of the Act who was entitled to retain possession of any land under the provisions of section 6(1) of the West Bengal Estates Acquisition Act, 1953. After the preparation of the draft record, however, the learned Revenue Officer proceeded to determine the rent in compliance with the provisions of section 42 of the Act and in that connection he called upon the petitioner by notice to be present at his camp with all documents and papers for the purpose of the determination. The petitioner made its representation and after hearing the representation, the Revenue Officer assessed the rent at a figure which he thought proper. Aggrieved by this assessment, the petitioner preferred two appeals to the Tribunal purporting to be an act in the exercise of the right given by section 44(3) of the Act. The Tribunal has held that the appeals do not lie. The petitioner now asks for this court's interference with the order of assessment as made by the Revenue Officer. His

first ground is that the Tribunal is wrong in thinking that no appeal lies. Secondly, it is contended that, in any case the Revenue Officer acted without jurisdiction in determining rent after the publication of the draft record.

2. As regards the first point, we are clearly of opinion that the Tribunal is right. Section 44(3) gives a right of appeal only against an order made on an objection under sub-section (1) of that section. Objection under that sub-section can be made to any entry made in the draft record or to any omission therefrom. Whatever representation the petitioner made during the process of determination of rent u/s 42 could not by any stretch of imagination be held to amount to objections within the meaning of sub-section (1) of section 44 of the Act to any entry made in the draft record or to any omission therefrom. Consequently the assessment made by the Revenue Officer, can not be said to be on any objection under sub-section (1) of section 44. The Tribunal is right in holding that no appeal lies.

3. There remains for consideration the contention that the Revenue Officer had no jurisdiction to determine the rent after publication of the draft record. After the provisions in section 39 that the State Government may direct that a record of rights be prepared or revised, sections 40, 41 and 42 contain provisions as regards the determination of rents payable by different categories of tenants. The provisions of section 40 are with regard to determination of rent for raiyats paying rent in kind or rent payable partly in cash and partly in kind. Section 41 contains provisions as regards raiyats or under-tenants holding land free of rent. Section 42 contains provisions with regard to determination of rent payable by an intermediary in respect of the land retained by him. After these sections, comes section 43 which lays down that "all rents determined under this Chapter shall be deemed to have been correctly determined and to be fair and equitable for the purpose of this Act." Then comes section 44 which provides that when a record of rights has been prepared or revised as aforesaid, the Revenue Officer shall publish a draft of the record so prepared and consider any objection which may be made to any entry made in the draft record or to any omission therefrom. Without anything more, the ways these sections appear in the Act are sufficient to convince anybody that the intention of the Legislature was that the determination of all rents whether u/s 40 or u/s 41 or section 42 should take place before the record of rights can be said to have been prepared or revised and it is only after all such rents have been determined that a Revenue Officer shall publish a draft of the record. The Act does not contain any provision as regards any determination of the rent after the publication of the draft record of rights for the simple reason that the draft record of rights is expected and intended to contain the necessary determination of rent. Assurance is made doubly sure when we look at the rules, the rules made by the Governor in exercise of the powers conferred by section 59 of the Act. The relevant portion of Schedule B is in these words:

When an order has been made under sub-section (1) of section 3(sic) directing

that a record of rights be prepared or revised by a Revenue Officer in respect of the lands of any district or part thereof, the record of rights shall be prepared or revised by the following processes, namely: --

- (i) Traverse survey;
- (ii) Cadastral survey;
- (iii) Preliminary record writing (or Khanapuri);
- (iv) Local explanation (or Bujharat);
- (v) Attestation including determination of rents of tenancies under sections 40, 41 and 42;
- (vi) Publication of the draft record of rights;
- (vii) Disposal of objections under sub-section (1) of section 44;
- (viii) Preparation and publication of the final record-of-rights under sub-section (2) of section 44

Provided that any of the steps referred to in items (i) to (v) may be omitted or amalgamated with another with the previous permission of the State Government.

4. In my opinion the reasonable conclusion from the words used in this Rule is that the determination of rents either u/s 40 or 41 or 42 has to be made before the draft record of rights is published. Neither the Act nor the rules made thereunder confer any jurisdiction on the Revenue Officer to determine rents under any of these sections 40, 41 and 42 after the draft record has been published.

5. We are bound, therefore, to hold that the determination of rent payable by the present petitioner in respect of the land retained in his possession under sub-section (1) of section 6 of the Act has been without jurisdiction. The necessary consequence of this action without jurisdiction has been that the appeal which the petitioner would have had under the provisions of section 44(3) is not open to him. We think it necessary in the interest of justice that we should in the exercise of our powers of superintendence under Article 227 of the Constitution, interfere with this illegal action of the Revenue Officer, who is undoubtedly a tribunal within the meaning of Article 227 of the Constitution.

6. I would, therefore, make these Rules absolute in part and direct that the determination of rent as made by the Revenue officer in respect of the lands held by the present petitioner under sub-section (1) of section 6 be held to be invalid. The petitioner will get his costs in these Rules. The hearing fee is assessed at three gold mohurs. There will be one set of hearing fee for the two Rules.

Law, J.

I agree.