

(1990) 12 CAL CK 0019
In the Calcutta High Court
Case No : C.R. No. 5625 (W) of 1978

Rathindra Nath Adhikari

APPELLANT

Vs

State of West Bengal and others

RESPONDENT

Date of Decision : 07-12-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 15(2), Order 6 Rule 15(3), 115
Constitution of India, 1950 — Article 226, 227
Court Fees Act, 1870 — Article 11
Government of India Act, 1915 — Section 107
High Courts Act, 1861 — Section 15, 9
West Bengal Land Reforms Act, 1955 — Section 8, 9(1), 9(6)

Citation : AIR 1991 Cal 409

Hon'ble Judges : Mahitosh Majumdar, J

Bench : Single Bench

Advocate : Mr. Ashoka Banerjee, for the Appellant; Mr. Ashoke Kumar Ganguly, for the Respondent

Judgement

1. This writ application is directed against the order dated June 12, 1978 passed by the Additional District Judge, 3rd Court, Burdwan in Misc. Appeal No. 126/11 of 1977 reversing the order dated August 21, 1977 of Shri D. K. Chakraborty, Subordinate Judge, Burdwan in Misc. Case No. 56 of 1975.

2. The facts of the case are in brief as follows:

3. The petitioner is owner and in khas possession of Plot Nos. 1263 and 1264, Mouza : Hargram, P. S. Bhatat, Dist. Burdwan. The petitioner is an occupancy tenant, Mouza : Hargram. One Kanaklata Ghosh, since deceased was the owner of 3.7 1/2 acres of land having a Jama of 13.4/3 paise in Mouza : Hargram, P. S. Bhatat, Dist. Burdwan. The said Kanaklata Ghosh by a registered deed of sale sold the aforesaid land to one Kanai Chandra Samanta, Respondent No. 4 herein on June 27, 1975 for a consideration of Rs. 6,000/- Shri Kanai Chandra Samanta is a purchaser whereas the petitioner is owner and in khas possession of plots Nos. 1263 and 1264 contiguous to plots Nos. 1265 and 1270 is also contiguous to

west plot No. 1265. The petitioner became owner of plots No. 1263, 1264 and 1270 on the basis of Nirupan Patra dated March 15, 1974 executed by one Uma Sundar Ghosh the paternal grand-father of the petitioner. The transfer of land by Kanaklata Ghosh in favour of respondent No. 4 was not within the knowledge of the petitioner. The petitioner came to know of the said transfer after obtaining the certified copy on 8th day of September, 1978. Immediately thereafter, the petitioner filed an application under Ss. 8 and 9 of the West Bengal Land Rules Act before the Subordinate Judge, Burdwan. The appropriate authority and the petitioner then deposited Rs. 6,000/- as consideration money and Rs. 600/- being the legal compensation thereon for pre-empting the interest transferred to the respondent No. 4. The Respondent No. 4 then filed written objection contending inter alia-

(a) the petitioner is not the owner of any land contiguous to any of the lands transferred to respondent No. 4,

(b) On payment of Rs.25,000/- the petitioner purchased the land from Kanaklata Ghosh but due to ill advice of the seller and also due to delay in purchasing the requisite stamp paper of Rs. 25,000/- mentioned in the deed only Rs. 7,000/- being the consideration money. Of course, on enquiry the Collector assessed the valuation of the land property at Rs.25,000/- and on February 13, 1976 realised the deficit stamp of Rs. 1,212/-

(c) the deposit of consideration money and the compensation money were deficient;

(d) after spending about Rs. 5,000/- the respondent No. 4 developed the said property;

The Subordinate Judge, Burdwan allowed the said Misc. Case No. 56 of 1975 and passed the order to the effect that right, title and interest in 3.47 1/2 acres of land as described in the Schedule of the petition purchased from Kanaklata Ghosh under Registered Sale Deed dated June 26, 1975 by the respondent No. 4 do vest in the petitioner with effect from August 2, 1977 and the Respondent No. 4 and the Respondent No. 4 was accorded liberty to withdraw the amount of Rs. 6,000/- deposited by the petitioner. Against the said order of the Subordinate Judge, Burdwan and Misc. Case No. 56 of 1977, the Respondent No. 4 preferred an appeal being No. 126 of 1977 before the District Judge, Burdwan in the said appeal was allowed by an order dated June 13, 1977 and the Additional District Judge of Burdwan reversed the order passed on 2nd August, 1977.

4. In the background of the facts and circumstances in the instant case, Mr. Ashoke Kumar Banerjee appearing on behalf of the writ petitioner claimed and contended that the order impugned in the writ petition cannot be sustained inasmuch as the Appellate Court committed incurable infirmity by mis-directing himself to follow the judgment not relevant in the instant case and admittedly, prior to the pre-emption petition filed by the petitioner, the instrument was registered and subsequently it was found by the Collector that there was

deficiency in the Court-fee Stamp so furnished. The writ petitioner contends that the order passed by the Appellate Authority was without the appreciation of the correct proposition of law. Mr. Ashoke Ganguly appearing on behalf of the Opposite Party No. 4 raised preliminary objections to the maintainability of the writ petition. Mr. Ganguly further contended and claimed that the writ petition is maintainable for the reasons -- the order impugned in the writ petition sought to be revised under Art. 226 of the Constitution can only be revised under Art. 227 of the Constitution of India or under S. 115 of the Code of Civil Procedure. Mr. Ganguly further claimed that the District Judge does not act as a persona designata and is a Court. The challenge of the writ petitioner for revising the order impugned in the writ application cannot but fail on the ground that exercise of powers by the Subordinate Judge and the Additional District Judge, Third Court of Burdwan do not come within the meaning of persona designata. In support of his contention Mr, Ganguly referred to the decision of this Court in the case of Paresh Nath Mondal Vs. Bijan Behari Mondal and Others, Apart from that Mr. Ganguly further claimed that the functions of the Munsif and the District Judge in terms of, the provisions of the Statute are judicial in nature and their functions do come within the purview of Constitution in terms of Art. 227. Mr. Ganguly also claimed and contended that for the sake of argument, if it is found that the Munsif and the District Judge are Tribunal in terms of the provisions of Art. 227 of the Constitution even then the application under Art. 226 of the Constitution of India is not maintainable. Mr. Ganguly also referred to the following decisions:

(i) Madhai Mondal Vs. Pran Krishna Biswas and Others,

(ii) Haripada Dutta Vs. Ananta Mandal,

(iii) Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others,

In the first case - Madhai Mondal v. Pran Krishna Mondal the Supreme Court held-

"Under Art. 227 of the Constitution of India Bhagchas Conciliation Board and Appellate Officers are Tribunals and High Court has power of superintendence over them".

In the second case - Haripard Dutta v. Ananta Monadal - the Supreme Court observed-

"Under Art. 227 every High Court has power of superintendence over all judicial and quasi judicial bodies within its territorial limits in respect of both judicial and administrative matters."

In the case of Nagendra Nath Bora v. Commissioner of Hills Divn., the Supreme Court held -

"The powers of judicial interference under Art. 227 with orders of judicial or quasi judicial nature are not greater than the power under Art. 226. Under Art. 226 of

the Constitution, the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Art. 227 the power of interference is limited to seeing that the Tribunal functions within the limits of its authority."

5. Further contention of Mr. Ganguly is that the word Tribunal" is wider than the Court and all courts are Tribunal but all Tribunals are not Courts. It is also urged on behalf of the-Opposite Party No. 4 that Arts. 226 and 227 of the Constitution of India are not intended for: identical situation. The remedy by way of Certiorari is not open for quashing the impugned orders. Article 227 of the Constitution bears an interference which is limited to see that the Tribunal functions within the limits of its power and authority.

6. Let us now examine the contentious dispute in the light of the decisions, cited above and as also the provisions of the statute. Before embarking upon the preliminary objections thus raised by Mr. Ganguly it will be appropriate for this Court to trace the Legislative history of Art. 227 of the Constitution of India.

"The superintending jurisdiction of the High Court conferred by this Article has its origin, so far as the conception is concerned, in the King's Bench in England which that Court enjoyed over all inferior Tribunals in the realm. When the Supreme Courts were established in India in the three Presidency Towns, they were invested with the same powers of superintendence as were exercised by the Court of the King's Bench in England. Under S. 9 of the Indian High Courts Act, 1861, known as the Charter Act, which abolished the Supreme Courts and empowered the establishment of High Courts, it was provided that the High Courts to be established "shall have and exercise all jurisdiction and every power and authority whatsoever in any manner vested in any of the Courts in the same Presidency abolished under the Act. "Thus, the High Courts in the Presidency Towns inherited the superintending jurisdiction of the old Supreme Courts. In addition to this, S. 15 of the Indian High Courts Act, 1861, expressly enacted that "each of the High Courts established under this Act shall have superintendence over all Courts, which may be subject to its Appellate jurisdiction". The full text of the section is given below:

"Each of the High Courts established under this Act shall have superintendence over all Courts which may be subject to its appellate jurisdiction, and shall have power to call for returns, and to direct the transfer of any suit or appeal from any such Court to any other Court of equal or superior jurisdiction, and shall have power to make and issue General Rules for regulating the practice and proceedings of such Courts, and also to prescribe forms for every proceeding of the said Courts for which it shall think necessary that a form be provided, and also for keeping all Books, Entries, and Accounts to be kept by the Officers, and also to settle Tables of Fees to be allowed to the Sheriff Attorneys, and all Clerks and Officers" of Courts, and from time to time to alter any such Rule or Form or Table; and the Rules so made, and the Forms so framed, and the Tables so settled, shall be used and observed in the said Courts, provided that such

General Rules and Forms and Tables be not inconsistent with the provisions of any law in force, and shall before they are issued have received the sanction, in the Presidency of Fort William, of the Governor-General, and in Madras or Bombay of the Governor in Council of the respective Presidencies."

The above section was repealed by S. 107 of the Government of India Act, 1915, when that Act was passed. This section read as follows:

"107. Powers of High Court with respect to subordinate Courts - Each of the High Courts has superintendence over all Courts for the time being subject to its appellate jurisdiction, and may do any of the following things, that is to say :

- (a) call for returns,
- (b) direct the transfer of any suit or appeal from any such court to any other Court of equal or superior jurisdiction;
- (c) make and issue general rules and prescribe forms for regulating the practice and proceedings of such Courts;
- (d) prescribe forms in which books, entries and accounts shall be kept by the officers of any such Courts;
- (e) settle tables of fees to be allowed to the sheriff, attorneys and all clerks and officers of Courts;

Provided that such rules, forms and tables shall not be inconsistent with the provisions of any law for the time being in force, and shall require the previous approval, in the case of the High Court of Calcutta, of the Governor General in Council, and in other cases of the Local Government,".

The above section was succeeded by S. 224 of the Government of India Act, 1935 which ran as follows:

224. Administrative functions of High Courts-- (1) Every High Court shall have superintendence over all Courts in India for the time being in force subject to its appellate jurisdiction and may do any of the following things, that is to say (a) call for returns, (b) make and issue general rules and prescribe forms for regulating the practices and proceedings of such Courts; (c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts; and (d) settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of Courts;

Provided that such rules, forms and tables shall not be inconsistent with the provision of any law for the time being in force, and shall require the approval of the Governor.

Nothing in this section shall be construed as giving to a High Court any jurisdiction to question any judgment of any inferior Court which is not otherwise subject to appeal or revision."

7. Article 227 of the Constitution of India as it stood prior to the amendment conforms to the provisions of the Charter Act and of the Government of India Act of 1915 and 1935. The basic distinction and differences involves the constitutional jurisdiction. Normally, the Court should adopt the fundamental approach towards the dispute of the present nature. Generally, when there is another remedy open to a party which is effective and adequate to meet the ends of justice in a case, the High Court will not use its extraordinary powers covered under Art. 226 of the Constitution of India. The power of revision is entirely a distinctive feature of the statute so also the power of superintendence which is now a matter of constitutional points. The condition of limitation restricts the revisional power of the High Court for which the power was exercised.

8. Thus u/s 115 of the Code of Civil Procedure, the High Court has revisional jurisdiction over the orders of the lower Court and further it is also necessary that such Court is subordinate to High Court. As regards the condition under which the revisional jurisdiction can be exercised, there must be a case decided by the subordinate Court. Further, it is a case in which no appeal lies to the High Court.

9. Now we have to deal with the fundamental aspects of the instant case which requires careful consideration. It is fit and proper to refer to a statutory provisions providing for the right of appeal and the procedure laid down for disposal for such an appeal. Section 9(1) of the West Bengal Land Reforms Act, it requires the disposal of an application under S. 8 of the said Act by the Munsif. Sub-section (6) of S. 9 reads thus:

"Any person aggrieved by an order of the Munsif under this Section may appeal to the District Judge having jurisdiction on the area in which the land is situated, within thirty days, from the date of such order and the District Judge shall send a copy of his order to the Munsif. The fees to be paid by the parties and the procedure to be followed by the District Judge shall be such as may be prescribed."

Rule 8 of the said Act lays down the procedure for appeals and the fees to be paid under sub-sec. (6) of S. 9. Rule 8 is quoted below:

"8(1). Every appeal under sub-section (6) of S. 9 shall be filed in the form of a Memorandum and shall be signed and verified by the appellant in the manner provided in sub-rules (2) and (3) of R. 15 of O. VI of Schedule 1 to the Civil Procedure Code, 1908. It shall be accompanied by an authenticated copy of the order appealed against and shall contain the following particulars, namely -

- (i) the name and address of the appellant;
- (ii) the name and address of the respondent;
- (iii) the location and particulars of the holding in respect of which orders were passed by the Revenue Officer; and

(iv) the grounds of appeal.

(2) The Court-fees payable on memorandum of appeal shall be such as are provided in sub-clause (ii) of Clause (a) of Article 11 of Schedule II to the Court-fees Act, 1870 and shall be collected in the same manner as laid down in that Act.

(3) On the filing of an appeal, the Appellate Officer, shall call for the records of the case from the officer or authority against whose order the appeal has been filed and after giving the appellant and the respondent an opportunity of being heard shall dispose of the appeal.

(4) The process fee of Rs. 3/- per party on whom a notice is to be served shall be paid along with the Memorandum of appeal."

Anil Kumar Sen, J. while speaking for the Court in a case of Paresh Nath Mondal v. Bijan Behari Mondal (supra) held in the manner following:

"..... Section 9(6) of the West Bengal Land Reforms Act when it speaks of the District Judge it really means the Court of the District Judge or the principal Civil Court of the District. It has been further held -- that both the Bengal, Agra and Assam Civil Courts Act and the Civil Procedure Codes are applicable to proceedings contemplated by that provision before the District Judge. Having regard to the statutory provisions we are not inclined to differ from the view so expressed which is otherwise binding on us. This negates the first objection raised by Mr. De to the effect that learned District Judge in entering an appeal under S. 9(6) of the Act as a persona designata and as such none but he alone would hear and dispose of the appeal."

Further, in the decision of this Court in the case Samarandra Jana v. Basanta Kumar Shit (1978(1) CLJ at p. 299), it has also been held that the Munsif while disposing an application under S. 9(1) of the said Act does not act as persona designata in the matter but as a Court. Similarly, under S. 9(6) of the said Act the District Judge does not act as persona designata. The Division Bench in Paresh Nath Mondal's case observed that both Bengal, Agra and Assam Civil Courts Acts and the CPC are applicable to proceedings contemplated by that provisions before the District Judge, and found the revision is maintainable.

10. Nature of power conferred under Art. 227 of the Constitution of India should not be viewed as being merely redundant so far the judicial control and power over the Subordinate courts is concerned. While in a certiorari proceeding under Art. 226 of the Constitution of India, the High Court can only annul the decision of the Tribunal, it can, under Art. 227 of the Constitution, do that, and also issue further directions in the matter. In like manner though Art. 226 cannot be invoked for obtaining an interlocutory order of stay, the High Court may well direct such a stay in exercise of its power under Art. 227. A perusal of Note 3 will show how they are various matters in which the High Court can only act under Art. 227 of the Constitution and not under Art. 226 of the Constitution of India. The power under the two Articles being entirely distinct and different, in

disposing of an application under Art. 227 of the Constitution, the High Court is not in any way controlled by the provisions under Art. 226 of the Constitution. Hence the procedure that may be prescribed for application under Art. 226 is not applicable to applications under Art. 227. For the same reason the dismissal of a petition under Art. 226 will not operate as a bar to the maintainability of an application under this Article. While Art. 226 is self-restrictive there are no restrictions indicated in Art. 227 itself, and the restrictions, if any, are self-imposed. As seen in Note 3, the general superintendence which the High Court has over all Courts and Tribunals; is a duty to keep them within the bonds of their authority and to see that they do what their duty requires and that they do it in a legal manner. It is not open to the High Court acting under Art. 227 to sit as a Court of appeal and review findings of fact by re-appreciating oral and documentary evidence, and the High Court would be justified in interfering under Art. 227 of the Constitution only in cases where substantial injustice has been done by reason of the decision of the Court or Tribunal below being vitiated by a defect of jurisdiction, violation of the principles of natural justice, total absence of evidence or error of law apparent on the face of the record. In this sense the powers of superintendence under this Article are not greater than those under Art. 226 and practically, the principles that would apply in deciding whether a writ of certiorari could issue under Art. 226 will also apply in deciding whether under Art. 227, an order the correctness of which is impugned, can be set aside. Hence, where errors cannot be said to be errors of law apparent on the face of the record, but are errors which a court sitting as a Court of appeal only could have-examined and, if necessary, corrected, interference in exercise of powers under Art. 226 of the constitution is not justified, it is not the function of High Court either under Art. 226 or under Art. 227 to scrutinise in great detail the orders passed by the statutory authorities to correct mere errors of law or fact. In common with Art. 226 the exercise of power under Art. 227 is also discretionary, depending as it does on the facts and circumstances of each case as to whether the power of superintendence would itself include the power to issue writs of certiorari etc. for which specific provision is now made under Art. 226 of the Constitution.

11. It is, therefore, too late to take... aspects as to whether in a case of present nature, the jurisdiction of the High Court under Art. 226 of the Constitution should be invoked or whether the jurisdiction under Art. 227 of the Constitution should be invoked. The statutory provision as referred to in the case of Paresh Nath Mondal makes it clear that the District Judge is a Court and the order itself is revisable.

12. In view of the discussions made here-inabove, the writ petition, in my view, cannot be sustained and the preliminary objection raised by Mr. Ganguly is upheld. The writ petition is dismissed. This order will not further prevent the writ petitioner from moving this Court under Art. 227 of the Constitution of India.

13. No order as to costs.

14. Petition dismissed.