
(2009) 02 CAL CK 0079

In the Calcutta High Court

Case No : W.P.L.R.T. No. 927 of 2002 with W.P.L.R.T. No. 926 of 2002 with
W.P.L.R.T. No. 793 of 2003 with W.P.L.R.T. No. 794 of 2003

Sakti Ranjan Maity

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 10-02-2009

Acts Referred:

Evidence Act, 1872 — Section 32, 90

West Bengal Land Reforms Act, 1955 — Section 14(T), 14M, 14T(10), 14T(3), 14T(5)

Citation : 113 CWN 479

Hon'ble Judges : Prasenjit Mandal, J; Kalyan Jyoti Sengupta, J

Bench : Division Bench

Advocate : S.B. Bhunia and Ms. Usha Maity in W.P.L.R.T. 927 of 2002, Mr. Ashok Maity and Mr. Sakya Maity in W.P.L.R.T. 926 of 2002, W.P.L.R.T. 793 of 2003 and W.P.L.R.T. 794 of 2003, for the Appellant; Manjari Gupta and Ms. Runu Mukherjee for State Respondents, for the Respondent

Final Decision : Allowed

Judgement

Kalyan Jyoti Sengupta, J.—All those matters are concerned with common judgment and order passed by the West Bengal Land Reforms and Tenancy Tribunal (hereinafter referred to as the learned Tribunal) dated 4th March, 2002 which disposed of two transfer applications being T.A.No. 81 of 2000 and T.A. No. 94 of 2002. Both these transfer application heard and disposed of by the learned Tribunal, were originally two separate writ petitions filed in this Court being W.P. No. 29433 (W) of 1997 and W.P. No. 1473W) of 1998. These two writ petitions were filed when the learned Tribunal was not set up, and consequent upon setting up of the said Tribunal by the appropriate Act both the writ petitions stood transferred by operation of law. The first writ petitions being WP No. 29433 (W) of 1997 was filed by one Ajit Kumar Maity, since deceased whereas the second one was filed by Sri. Sakti Ranjan Maity, applicant before us. During pendency of the first writ petition Ajit died intestate and as such Sakti was substituted in his place and stead in his application. In both the matters above

along with other two matters, WPLRT 793 of 2003 and WPLRT 794 of 2003, are having origin of the same interlinking fact. Other two matters were filed by the transferees of some of the disputed plots of lands.

2. Fact is very short in this case as have been more or less admitted by the State respondents and also borne out by the records, and we set out briefly hereunder:

One Satish Chandra Maity was original holder of land measuring about 109.43 acres of land. By registered deed of gift (Nirupam Patra) dated 14th March 1947 the said Satish, since deceased, during his life time he transferred significant quantity out of above quantity unto and in favour of seven deities viz. Sree Sree Laxmi Janardan Jew Thakur, Sree Saraswati, Sree Sree Hari Jew, Sree Sree Maharudra Jew, Sree Sree Laxmi Thakurani, Sree Sree Joydurga Thakurani, Sree Sree Sitala Thakurani Jew, said Ranjan Maity (grandson), Smt. Durgesh Nandini and Smt. Bhabhesh Nandini Maity being the granddaughters. In terms of the registered deed of gift Sakti got from his grandfather Satish, 22.48 acres of land. In or about December 1979 while correcting records of right suo motu proceeding being case No.546 of 1998 u/s 44(2)(a) of West Bengal Estate Acquisition Act, 1954 (hereinafter referred to as the 1954 Act) was initiated by the concerned Revenue Officer. By order dated 24th December 1979 it was held that the transferred land was not in khas possession of Sakti but was in possession of Satish hence Sakti's name was not recorded. Sakti thereafter filed return showing 21.47 acres of land in respect of case u/s 14(T) of the West Bengal Land Reforms Act, 1955 (hereinafter referred to as the 1955 Act) said Act. While considering the said return filed u/s 14(T) of the 1955 Act it was decided that Sakti was to retain 8.65 acres of land and the balance quantity of 12.82 acres of land was to vest in the state treating him to be a single-member family. Thereafter one Bhagbat Chandra Bera & Ors. challenged the said order of vesting by filing a writ petition being WP No. 2923 (W) of 1979. By an order dated 21st August, 1979 this Hon'ble Court quashed order of vesting and also granted liberty to the Revenue Officer to decide the matter afresh in accordance with law. Sakti also filed a writ petition in the year 1980 challenging suo motu case started in 1978 and order of vesting passed therein and the same was registered as C.R.No. 1715(W) of 1980. This writ petition was disposed of by the Hon'ble Mr. Justice Mukul Gopal Mukherjee (as His Lordship then was) by an order dated 4th June 1986 whereby and whereunder His Lordship upon hearing the learned lawyer for State was pleased to set aside the said suo motu case No. 546/48 of 1979 observing Sakti having derived his titles by virtue of registered deed of gift dated 14th March 1947 and further noting prior proceedings u/s 44(2)(a) of 1954 Act which culminated in conclusive order in his favour. It was also noted that entire land so acquired by and under the said deed of gift, was sold out to third party. By this judgment His Lordship was pleased to direct to carry out direction given in earlier judgment dated 21st August 1979 in C.R.No. 2923 (W) of 1979. Sakti having found correction of records of right not being done in terms of order of Justice Mukherjee dated 4th June 1986 filed writ petition being Civil Order No. 15582(W) of 1989 for remedy and this writ petition was disposed

of by the Hon''ble Justice Nirendra Krishna Mitra (as His Lordship then was) dated 7th December 1989 with direction to correct record of right on the basis of the judgment and order of Justice Mukherje dated 4th June 1986. Even then nothing was done so Justice Mitra was pleased to give further direction on 21st March 1997 in contempt proceeding (Civil Rule No. 14245 (W) of 1993) to correct record of rights within four weeks from the date of communication of the order. Thereafter Sakti received two notices, one issued from District Land and Land Reforms Officer, Tamluk another one issued on 1st September 1997 by Block Land and Land Reforms Officer, Patashpur-I intending to carry out the said orders. At the same time in or about September 1997 a notice issued by Revenue Officer of the same Block was served upon Ajit, father of Sakti intending to hold hearing a case initiated under sections 14 T(5), 14T (9), 14 T(3) and section 7A of 1955 Act. After hearing Revenue Officer passed the impugned order on 15th September 1997 and 22nd September 1997. Thereafter both the father and the son challenged the said two orders by filing two separate writ petitions as mentioned above.

3. Mr. Swadesh Ranjan Bhunia, learned senior advocate while highlighting the facts, submits that, the impugned judgment and order of the learned Tribunal is not sustainable as the same has been passed, without considering the case made out by his client in the writ petition. The learned Tribunal has accepted the order of the Revenue Officer blindly. No attempt has been made to deal with point raised in the writ petitions filed by his client, which stood transferred subsequently, therefore, his real grievance against the order of the Revenue Officer which was challenged in the writ petition is not adverted to. His contention is that in the name of correction of records the Revenue Officer has declared an ancient document of 1947 to be a forged one simply on surmise and conjecture and without any iota of evidence. The Deed of Gift executed by his client's late grand father one Satish Chandra Maity dated 14th March 1947 was acted upon and the records of right were corrected accordingly as such there was no scope to discard this document.

4. He contends that this Deed of Gift has been accepted to be a valid and genuine one by this Hon''ble Court on two earlier occasions, one on 31st August 1979 when by an order the Hon''ble Mr. Justice Bimal Chandra Basak (as His Lordship then was) in the writ petition (Civil Rule No. 2923 (W) of 1979) filed by one Bhagabat Chandra Bera & Ors. By this order, ex parte order of vesting passed against his client was set aside and thereby Mr. Justice Basak has impliedly accepted the validity of the transfer made by his client in favour of the purchaser. His client acquired the said portion of land by virtue of the said Deed of Gift. Subsequently Hon''ble Mr. Justice Mukul Gopal Mukherjee (as His Lordship then was) by an order dated 14th June 1986 passed in another writ petition (Civil Rule No. 1715 (W) of 1980) filed by his client held that his client has acquired title by registered deed of gift dated 14th March 1947. By this order taking note of provision u/s 44 (2a) of 1954 Act, order of vesting of the land was set aside as the same was not applicable. It was further held that transfer made

by his client to the third parties was held to be valid. Therefore, the said suo motu case being No. 546/48 of 1979 started under the provision of the 1954 Act was set aside and the judgment and order of the Hon"ble Justice Basak was also accepted by the judgment and order. Thereafter another writ petition (Civil Order No. 15582 (W) of 1989) was filed by his client praying for appropriate direction upon the Revenue Officer for correction of records of rights pursuant to the aforesaid judgment and order dated 4th June 1986 passed by His Lordship Mr. Justice Mukherjee. Therefore, it is clear that the said Deed of Gift has been conclusively held to be valid by this Hon"ble Court. As such the Revenue officer had no jurisdiction to nullify the aforesaid conclusive judgment and order. According to him non-acceptance of the said deed of gift of his client on the ground of alleged forgery is nothing but unsettling the settled issue.

5. He further contends, in the name of correction of records of rights the Revenue Officer has wrongfully and illegally tagged the quantum of land individually held by his client's father with those of held by his client by virtue of Deed of Gift. It was absolutely without jurisdiction of the Revenue Officer to decide the question of existence of "debtor" created by the said Deed of Gift dated 14th March 1947. It is inconceivable how a document of 1947 which is more than 30 years old could be said to be a forged one particularly when this Court has accepted the same to be a genuine and valid one.

6. Accordingly the order of vesting, as well as declaration of the "debtor", being non-existent and the order of the Revenue Officer is null and void and the same should be set aside.

7. Mr. Ashoke Maity learned senior advocate appearing for the purchasers applicants supports argument of Mr. Bhunia and he submits that the Revenue Officer has deliberately passed the said impugned order in order to nullify the judgment and order of Justice Basak whereby and whereunder the proceedings u/s 44(2a) the 1954 Act of the order of vesting was quashed. According to him the Revenue Officer has totally ignored the findings of Hon"ble Mr. Justice Mukherjee as well as Hon"ble Mr. Justice N.K. Mitra and refused to carry out and/or implement the said two judgments and orders, rather in a circuitous way tried to render conclusive and binding judgment and order nugatory.

8. Mrs. Manjori Gupta with Mr. Ansu Nath Banerjee learned advocates appearing for the State submits that the fact findings arrived at by the Revenue Officer basing on evidence cannot be interfered with in the writ jurisdiction, therefore, the learned Tribunal has rightly upheld the same. She submits that the learned Tribunal has considered all the aspects of the matter on fact and no impropriety and/or illegality could be found in the order. This Court in exercise of its jurisdiction under Articles 226 and 227 should not interfere with the same. They thereafter submit that if the order of Justice Basak dated 21st August 1979 is read carefully it would appear that since earlier order of vesting under 1954 Act was passed ex parte the same was set aside at the instance of the purchaser. At the same time His Lordship was pleased to give liberty to the Government and/or

its officer to take any step in accordance with law and the principle of natural justice. Thereafter the Revenue officer while correcting records of right in terms of judgment and order of Justice Mukherjee read with order of Justice N.K. Mitra initiated proceedings for correction of records of rights and had given ample opportunity to the petitioner for production of document etc.

9. After having gone through the evidence and everything it was found by the Revenue Officer that the said deed of gift could not be executed as at that point of time the petitioner Ajit Kumar Maity was not even born, then how the land could be gifted to him. Obviously, it is a manufactured document. He further contends that the Revenue Officer has wide authority to go into the question of existence of validity and legality of any document and also to enquire into whether there has been any "debutter" being in existence or not. He found on enquiry that there is no existence of deity nor "debutter". The plea of "debutter" and existence of deity is absolutely a ploy to retain vast quantity of land. When it was found that entire quantity of the land held by his grand father, Satish, was inherited by his father Ajit the size of family of his father was taken into consideration by the Revenue Officer. At that point of time Ajit's son Sakti was minor and his two daughters have not been married. Taking into consideration of the number of members of family of Ajit and also the nature of land, maximum quantity of land was allowed to be retained viz. 17.30 acres of non-irrigated land and remaining 32.51 acres of land was declared to have been vested. In course of hearing representatives of the petitioner Ajit duly appeared and he was given chance to exercise option for retaining the portion of the land. In spite of the chance being given nothing was done naturally this matter proceeded in the way, it was deemed to be legally fit.

10. After considering the pleading and the submission made by the learned counsel appearing for the parties it appears to us that entire controversy in this matter involved, is validity and legality of the registered deed of gift dated 14th March, 1997. Upon careful perusal of the impugned judgment and order of the learned Tribunal dated 4th March, 2002 we find that the learned Tribunal has not decided the question raised by the applicant before us, as has been rightly urged by Mr. Bhunia. The learned Tribunal has blindly accepted the order of the Revenue Officer dated 15th September, 1997 and 22nd September, 1997 in the proceedings initiated under sections 14T(5) read with 14T(3) and 14T(10) of the 1955 Act as being sacrosanct. No reason has been given as to why the challenge made by the applicant was not acceptable by the learned Tribunal. To put it slightly different way no reason has been given in real sense, as to why the findings and decisions of the Revenue Officer as mentioned above are valid and acceptable. To understand clearly the portion of the learned Tribunal's findings is as follows:

"We have considered the points made in the applications. However, we are unable to find any cogent ground for interfering with the orders of the Revenue Officer in case No. 92/97. In the circumstances we do not find any merit in the

application and hence dismiss the application."

11. At the first instance we thought we would send back the matter for rendering fresh decisions with reasons by the learned Tribunal itself. But having regard to the fact that the controversy and dispute is as old as of more than a decade we, therefore, thought it fit to decide the same by ourselves as all the materials are available before us. Therefore, we examine propriety, legality and validity of the findings and order of the Revenue Officer dated 10th September, 1997. It appears to us that the Revenue Officer concerned has held the deed of gift dated 14th March, 1947 being a forged one. It seem to us such declaration of forgery is based on his finding, that no cogent evidence was produced before him that Sakti was born prior to the said deed of gift in 1947. On careful and close reading of the findings of the Revenue Officer we find the same is based on surmise and conjecture. He has neither believed the horoscope nor the ration cards. Even he disbelieved the age mentioned in the electoral rolls. According to him, he was born in 1953 so his age was 44 on the date of fact finding. On what basis he came to his conclusion is not explained legally. It transpired to be patently contradictory finding if declaration of forgery of 1947 document is read on the one hand, and findings of non-functioning of debutter or of private debutter taking note of contents of trust deed on the other. This apparent inconsistency makes his entire fact finding is absurd and irrational. We are of the view that he ought not to have undertaken such exercise for the following reasons:

12. By the judgment and order dated 4th June, 1986 passed by His Lordship the Hon'ble, Mr. Justice Mukul Gopal Mukherjee (as His Lordship then was) (Civil Rule No. 1715 (W) of 1980) while quashing suo motu case u/s 44(2A) of the 1954 Act held that the registered Deed of Gift dated 14th March 1947 is a valid one. The said deed was executed beyond the mischief period as mentioned in the 1954 Act. The said judgment and order was passed in presence of the learned lawyer for the State and the same was not appealed against. By the said judgment and order Justice Mukherjee was pleased to direct to rectify the records following the judgment dated 21st August, 1947 in W.P. No. 2923(W) of 2007 which was passed in favour of the some of the purchasers who acquired the same from Sakti and, who in his turn admittedly acquired under the said registered Deed of Gift. When correction of records of rights was not made, Sakti had filed a writ petition being C.O. No. 15582(W) 1979. The said writ petition was disposed of upon hearing both the learned counsels including the State directing the State respondents concerned to rectify the records of rights on the basis of the judgment of the Hon'ble Mr. Justice Mukul Gopal Mukherjee within a certain time. By the said order it was made clear till such corrections were incorporated the respondent were restrained from taking any step or interfering in any way with the possession of the disputed land. The said order was not carried out as such contempt application was filed and the same was disposed of by Justice Mitra (as His Lordship then was) directing to rectify records of rights in terms of the aforesaid two orders. Thus it is no longer open for the Revenue Officer as rightly pointed out by Mr. Bhunia and Mr. Maity to make any

declaration with regard to the said deed of gift other than what has been found by this Hon''ble Court.

13. Those apart there are records to show the Government acted upon mutating the names of the purchasers who acquired right from Sakti being the donee in terms of the said deed. Original deed was produced before us and we have looked into the same and found this was a more than 30 years old document. It is too much to think that the deed could be manufactured in the year 1947 in contemplation to defeat prohibitory prohibition of the future legislation in 1954 or 1955 and it is absurd to suggest that a deed could be manufactured in 1947 in anticipation of birth of male child and of being named Sakti. If we are to accept the findings of the Revenue Officer it would amount to act of belief of something what is stranger than fiction. We simply find that there was no evidence to hold that Sakti was not born in 1946 or he was born in 1953. We are of the view that he has legally committed wrong shifting the burden upon a person to prove his exact date of birth inspite of production of an ancient document of forty years old wherein factum of a person''s birth and his name are mentioned. In this connection we think that provisions of sub-section 6 of section 32 of the Indian Evidence Act which is reproduced below is apposite.

"32. Cases in which statement of relevant fact by person who is dead or cannot be found etc. is relevant

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6. or is made in will or deed relating to family affairs; - When the statement relates to the existence of any relationship [by blood, marriage or adoption] between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised."

14. In this connection section 90 of the Evidence Act is also very helpful which says as follows:

"90. Presumption as to documents thirty years old. - Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person''s handwriting, and, in the case of a document executed or attested, that it was duly executed and attested

by the person by whom it purports to be executed and attested.

15. Thus on conjoint reading of both the aforesaid two sections we think that the Revenue Officer should have asked to shift the burden of proof on the state that Sakti was not born prior to the execution of the aforesaid deed. We conclusively hold that in view of the findings of binding character of the learned two Judges of this Court successively as observed by us above we reiterate the said Deed of Gift of 1947 is valid and genuine. Accordingly, we set aside the finding of the Revenue Officer to that extent also.

16. We observe further that instead of correcting records of right in terms of the judgment and order passed earlier by the learned single Judge of this Court the Revenue Officer has upset findings and also nullified the orders passed by this Court. It was only the task of the Revenue Officer to implement two orders first accepting the Deed of Gift of 1947 being valid one and being executed long before the commencement of the said 1955 Act. Naturally all transfers and exchanges of the property on attaining majority by Sakti is lawful and valid one.

17. The Revenue Officer had no business to club the quantum land held by Sakti with those of his father, Ajit. They ought to have been treated separately. The Revenue Officer has also exceeded jurisdiction while purporting to correct records of right on the question of existence of the deity. Accordingly, the learned Tribunal has overlooked entire aspect of the suit, and mechanically and rather blindly accepted the said findings of the Revenue Officer. It is true that the fact finding of the Revenue Officer is not ordinarily brushed aside unless they appear to be perverse or irrational on the face of records and accompanying unimpeachable documents. We are satisfied that pre-condition for invoking jurisdiction in exercise of power of judicial review are satisfied. It appears from the affidavit in opposition that consequent upon vesting order the land has been settled in favour of the third parties by distributing "pattas". We, therefore, set aside the impugned order of the Revenue Officer and also the judgment and order of the Tribunal. We now direct the Revenue Officer to initiate the proceedings for cancellation of "pattas" upon serving notice to the "patta holders" and/or otherwise recipient of the plot of land, of course this has to be done upon serving notice and giving hearing to all of them. We, however, make it clear it that the Revenue Officer will implement the judgment and order of Justice Mukul Gopal Mukherjee and Justice Mitra as mentioned above accepting the Deed of Gift being valid and lawful one and thereafter shall take into consideration of the quantum of land separately held by his father Ajit and thereafter fresh determination of ceiling exercise shall be undertaken. As far as the enquiry relating to nature of endowment to the deities is concerned the same may be undertaken under the provisions of sub-section (5) of section 14M of Act, 1955 strictly, upon serving notice and giving hearing to the persons concerned.

18. Thus this application is allowed with the aforesaid order and direction as above. Entire exercise of correcting records of rights and cancellation of "patta" are to be done within a period of three months from the date of communication

of this order. After cancellation of "patta" if any person is required to be dispossessed by the Revenue Officer the same be done with administrative help for restoring back possession to respective persons including purchasers. In view of the aforesaid order subsequent order passed by the learned Tribunal is also set aside.

Prasenjit Mandal, J.

19. I agree.