
(2008) 12 CAL CK 0095
In the Calcutta High Court
Case No : W.P.L.R.T. 33 of 2008

Sambhunath Ghosh and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 19-12-2008

Acts Referred:

West Bengal Land Reforms and Tenancy Tribunal Act, 1997 — Section 19A(2A)

Citation : 113 CWN 372

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

Bench : Division Bench

Advocate : Saptangshu Basu, Ms. Ananya Das and Mr. Aveek Chakraborty, for the Appellant; Pradot Kumar Dutta, Debabrata Roy and Mr. Amar Mitra for Respondent No. 7, Mr. Durgadas Roy and Ms. Husn Ara Begum for State, for the Respondent

Judgement

1. This application is against a judgment and order of the learned Tribunal dated 4th December 2007. Right from the Bhag Chas Officer, appointed under the West Bengal Land Reforms Act, the appellate authority and lastly learned Tribunal, all the forums have decided that the respondent No. 7 herein is a bargadar and accordingly he has been recorded as such.

2. Mr. Basu's client is the owner of the plot of land who purchased the land on 23rd December 2002, as it appears apparently going by the records. Admittedly, the application for recording of bargadar has been made immediately after purchase of the said land. It appears from the records, pursuant to the said application, barga recording case was initiated, being 22 of 2002. It appears from the order sheet that the said application for recording for barga was taken up for hearing for the first time on 26th December 2002; subsequent to the date of purchase.

3. Bhag Chas Officer in his own way, recording evidence and hearing all the parties, found that the respondent No. 7 had been cultivating the land in question and his name was recorded as bargadar. The appellate authority

affirmed the same which has been re-affirmed by the learned Tribunal.

4. Now the question is whether the recording of bargadar, done by the Bhag Chas Officer, as affirmed by the appellate authority and reaffirmed by learned Tribunal, is in accordance with law; based on evidence or not.

5. Mr. Basu, while questioning all the orders, submits that respondent No. 7 was never a bargadar. He has been set up, immediately after the purchase, by the vendor and this will be borne out by the fact that the vendor had come forward to depose and to say that he accepted the share produce but he never granted any receipt under mutual understanding. Moreover, he submits that the report of the field enquiry is a worse piece of evidence and it could not be relied upon. He summarized his argument saying that there is no acceptable evidence, so to say, to record bargadar. He further submits that in order to get recorded as bargadar, firstly; one has to have cogent evidence to establish that he is cultivating the land by himself or another person, except the persons mentioned in the said section; secondly, he has to prove that he has shared crops with the landlord; thirdly, in case of refusal to accept share of crops by the landlord notwithstanding tender; he has deposited the same with Block Land and Land Reforms Officer.

6. Mr. Basu has also drawn our attention to section 19A (2A) of the West Bengal Land Reforms & Tenancy Tribunal Rules, 1997 and contends that in the facts and circumstances of the case, refusal to grant receipt in a case of this nature, invites penal action and unless it is done, the entire thing is a nullity.

7. Mr. Dutta, ably assisted by Mr. Roy, appearing for respondent No. 7, submits that his client has been cultivating the land for a long time but upon good understanding his client never asked for any receipt from the erstwhile owner; viz., vendor of the land. He submits that the vendor had come forward and deposed before the Bhag Chas Officer to prove this fact. Besides, field enquiry report also supports his client's case. Under such circumstances, he contends that when all the three authorities have concurrently found that lawful and correct recording of bargadar has been done, this Court, in exercise of power of judicial review, cannot entertain this matter.

8. We have carefully gone through the papers placed before us and we have heard the learned Counsels extensively and after giving our considerable thought in the matter, we feel that all the orders impugned are not sustainable in the eye of law for the reasons as stated herein under:

9. Going by the recording of the Bhag Chas Officer, appellate authority and learned Tribunal, it appears that essential evidence, to establish the right of barga, has not been recorded. It is difficult to believe the testimony of the erstwhile land owner who has lost interest and particularly, in the context of legal provision, that no receipt was demanded or issued upon good faith and understanding. The law requires that receipt must be issued having received the share crops and in case of refusal to issue there appears to be penal consequences. When a particular provision of law is followed by penal

consequences in case of infraction, the same must be interpreted and Understood as being mandatory to the highest extent and infraction thereof can neither be encouraged nor should be accepted. Admittedly, there is no receipt. Mr. Basu's client denies that at any point time any cultivation was done by Mr. Dutta's client.

10. We agree with the submission of Mr. Basu that field enquiry is a worse piece of evidence, rather we add that it is to some degree of hear-say evidence. It is true, in a proceedings before the Bhag Chas Officer, strict proof may not be applicable but that does not mean that essential fact has to be proved by derivative evidence. We think, bargadar, in order to establish his right, must prove the following:

(1) that he himself is cultivating the land from his own sources;

(2) that he shares crops with the land owner, in accordance with law, with the proportion provided in the Act and such factum of sharing of crops must be established by documentary evidence; namely receipt;

(3) that in case of refusal to accept the share crops by the land owner, he must deposit the same with the land owner with the concerned Block Land and Land Reforms Officer and obtain a receipt;

(4) that in case of refusal to grant receipt against tendering of share crops, the bargadar has to lodge complaint before the appropriate Magistrate u/s 19A (2A) of the West Bengal Land Reforms & Tenancy Tribunal Rules, 1997.

11. Lodging of such complaint, prima facie, establishes the fact of refusal to grant receipt. Sub-section (2A) of the West Bengal Land Reforms & Tenancy Tribunal Rules, 1997 provides that refusal to grant receipt is punishable offence and the same is cognizable also. Therefore, one can very well understand the importance of issuance of receipts.

12. Field enquiry report simpliciter is not evidence; it may have some corroborative value but not substantive one.

13. Mr. Basu contends that the falsity of the case writ large on the face of it. It may be or may not be correct but we are not here to adjudge falsity of the case at the present moment. Mr. Basu says this is not a fit case for re-trial. He says, going by the record, it would be inappropriate; rather, it would be unkindness of the Court, so far his client is concerned, if the case is sent back.

14. Judicial discipline and propriety of the Court do not permit to relegate ourselves to the position of Bhag Chas Officer. It shall be done by him afresh since fact and law are involved in this matter.

15. We, therefore, set aside the barga recording and direct the concerned Block Land and Land Reforms Officer to hear afresh, following above observation. In case of lack of any of the aforesaid ingredients, he shall pass appropriate order, which we need not spell out right now. We believe he has complete

understanding how to follow judicial pronouncement.

16. Status quo, as of today, with regard to arrangement of cultivation, shall be maintained till disposal of the matter.

17. The application is disposed of.

Urgent Xerox certified copy, if applied for, be supplied to the parties on priority basis.

Application disposed of.