

(1983) 04 CAL CK 0006
In the Calcutta High Court

Sambhunhth Pal

APPELLANT

Vs

State Of West Bengal and Others

RESPONDENT

Date of Decision : 04-04-1983

Acts Referred:

West Bengal Estates Acquisition Act, 1953 — Section 5(A)

West Bengal Land Reforms Act, 1955 — Section 14(3), 14K, 14K(1), 14K(3), 14K(a)

Citation : 86 CWN 695

Hon'ble Judges : Chittatosh Mookerjee, J

Bench : Single Bench

Advocate : P.B. Saha and S. Biswas, for the Appellant; M. Gupta, for the Respondent

Judgement

Chittatcsh Mookerjee, J.—Being aggrieved by the order of the Additional District Magistrate (L.R.), Midnapore dismissing his appeal preferred against an order of the Revenue Officer, Garhbeta u/s 14T(3) of the West Bengal Land Reforms Act, 1955, the petitioner filed this Writ Application. Notices have been served upon the respondents and they have appeared to oppose the Application. Two principal questions arise for determination. While conducting a proceeding u/s 14T of the West Bengal Land Reforms Act, 1955, whether the Revenue Officer has any jurisdiction to decide the bonafides of a transfer made before 7th August, 1969. In other words, can the Revenue Officer lawfully determine whether a transfer made by a raiyat on 7th August 1969 or on and earlier date was a benami transaction and also can he enquire as to whether a land purchased from a third party prior to 7th August, 1969 in the name of his son was really made on behalf of the raiyat himself. Second point is when another person has a life interest in a plot of land and the raiyat has a vested remainder therein, whether for the purposes of section 14S and 14T of the West Bengal Land Reforms Act, 1955, the raiyat, who has only vested remainder, can be considered as owning the said land which is in possession of a holder of life estate.

2. The petitioner has alleged that by two registered deeds respectively dated

29th September, 1950 and 2nd August, 1950 he had gifted life estate in favour of his brother's widow, Lichu Bala, in respect of 82 decimals and 95 decimals of land. After Lichu Bala's death, the said properties are to revert back to the petitioner. On 7th August, 1969 Lichu Bala was alive, and she is still alive. According to the petitioner Lichu Bara continues to be in possession of the properties gifted to her for life and during R. S. operations the said land had been recorded in her name.

3. On 7th August, 1964 the petitioner by a registered deed had gifted away about 8.98 acres of agricultural land to his four sons, Sachi, Sarasi, Bansi and Tapan. Each brother thereby obtained 2.24 acres of land. On the said date of the execution of the said deed, all the donees were minors. Sachi, who was born on 8th April, 1947 had attained majority before 15th February, 1971. Before 7th August, 1969 Sachi, the eldest son of the petitioner, by registered kobalas had purchased in his own name 3.83 acres of land from third party vendors. On 15th February, 1971 the West Bengal Land Reforms (Amendment) Act 1571 came into force. On the said date according to the petitioner, his family consisted of ten persons, i.e. 10 personal Sachi, the eldest son of the petitioner had attained majority before 7th August, 1969 and he was holding about 6.07 acres of land. He was not a member of the petitioner's family within the meaning of section 14K clause (c) of the West. Bengal Land Reforms Act. The petitioner had alleged that he owned about 14.74 acres of non-irrigated land. But the Revenue Officer has held that the petitioner's lands were irrigated lands. I do not purpose to decide this question because I have decided to remit the case for fresh adjudication. The petitioner would be at liberty to raise the said question at the time of the re-hearing of the matter.

4. The petitioner who claimed that the land owned by him and his family was below the ceiling area did not submit any return u/s 14S of the West Bengal Land Reforms Act, 1955 The Revenue Officer, Centralised Cams Garhbeta himself started Case No. 36 of 1980 u/s 14T(3) of the West Bengal Land Reforms Act inter-alia by taking into consideration the area of land held by Sachi, major son of the petitioner and the land held by Lichu Bala and holding that the petitioner and his family owned land in excess of the proscribed ceiling. On 17th July, 1980 the Revenue Officer rejected the prayer made on behalf of the petitioner for adjournment and exparte disposed of the case. The Revenue Officer purported to rely upon a local enquiry report and held that the petitioner was in possession of 12.45 acres of land gifted by him in favour of his sons, including Sachi, in the year 1964. The Revenue Officer held the gifts made in favour of the petitioner's sons including Sachi, were mere paper transactions. Hence the Revenue Officer took the said lands into account and found that on 15th July, 1971 the petitioner's family consisted of eight persons including his eldest son, Sachi, The Revenue Officer hold that the petitioner was entitled to retain 16 06 acres of irrigated agricultural lands as per Annexing "B" to the order sheet and excess 5.09 acres of land would vest as per Annexure "C" to the order sheet of the case.

5. The petitioner, being aggrieved thereby preferred Revenue Appeal No. 114-L.R. of 1980-81. On 16th December, 1982 the Additional District Magistrate (L. R.), Midnapore dismissed the said appeal. Thereafter, the petitioner has the instant Writ Application which has been, heard as a contested one.

6. The heading of Chapter-IIB of the West Bengal Land Reforms Act, 1955 is "ceiling on holdings". In other words the said Chapter contains provisions relating to the extent of land which a raiyat shall be entitled to own (vide section 14K(a) of the Act). On and from the date of commencement of the provisions of the said Chapter (i.e. 15th of February 1971) no raiyat is entitled to own in the aggregate land in excess of the ceiling area applicable to him (vide section 14L of the Act). On the commencement of the provisions of Chapter-IIB and any land owned by a raiyat in excess of the ceiling area, applicable to him, shall according to section 14S(1) of the Act vest in the State, from all encumbrances. Every raiyat owning land in excess of the ceiling area has a duty u/s 14T(I) of the Act. to furnish return, in the prescribed form, of lands which he proposes to retain within the ceiling area applicable to him and also the land which is in the excess of the ceiling area. The Revenue Officer may determine, u/s 14T(3) of the Act, the extent of land which is to vest in the State either on the receipt of such a return or on his own motion. The Revenue Officer under sub-section (3A.) of section 14T has been given power to revise an order passed u/s 14T(3) and to determine afresh the extent of land which is to vest in the State.

7. Chapter-IIB of the West Bengal Land Reforms Act 1955 does not contain any express provision conferring authority or jurisdiction upon the Revenue Officer to determine whether a raiyat is the real owner of any agricultural land which stands in the name of his adult son or any other person. Thus there is no express provision in the West Bengal Land Reforms Act for an enquiry to determine whether any transfer made prior to 7th of August, 1969 was a bonafide and real or fictitious, sham or Benami. It may be noted that the State Government, u/s 5(A) of the West Bengal Estates Acquisition Act, 1953 was empowered to hold enquiry for finding whether transfer of any land made by an Intermediary between 5th of May, 1953 and the date of vesting under the said Act was not bonafide. If after enquiry u/s 5(A) of the West Bengal Estates Acquisition Act 1953 a transfer was found not bonafide, such transfer stood cancelled without affecting any right which the transferor or the transferee may otherwise have against each other. No provision similar to section 5(A) of the West Bengal Estates Acquisition Act, 1953 has been inserted in Chapter-IIB of the West Bengal Land Reforms Act, 1956. Therefore, it is necessary to decide whether in determining the extent of the land which may vest in the State u/s 14S of the West Bengal Land Reforms Act, 1955 the Revenue Office has been given by implication power to decide questions of Benami ownership and also about the bonafide of any transfer of agricultural land made on 7th August 1969 or on any prior date.

8. Having given my anxious consideration to the matter, I hold, that, while

considering a return u/s 14T of the West Bengal Land Reforms Act, the Revenue Officer has not been impliedly empowered to decide questions of Benami.

9. It is common knowledge that many of the enquiries held u/s 5(A) of the West Bengal Estates Acquisition Act 1953 became subject-matter of protracted litigation resulting in delay in effecting land reforms. Instead of providing for similar enquiry into bonafides of transfers made prior to the date of commencement of Chapter-IIB of the West Bengal Land Reforms Act, 1955, the legislature has inserted section 14P in the said Act as a device to prevent avoidance of changes brought about by Chapter-IIB of the Act. Therefore, regardless of their bonafide, all partitions effected or transfers of agricultural lands made after 7th August, 1969 are to be ignored by the State. Further, Chapter-IIB of the West Bengal Land Reforms Act, 1955 has treated the "family" as defined in clause (c) of section 14K of the Act as the unit for the purpose of determination of the ceiling area of land retainable by a raiyat. (vide observations in paragraphs 46 to 49 of the Supreme Court decision in the case of Sasanka Sekhar Maity and Others Vs. Union of India (UOI) and Others,). Thus, even in case after 7th August, 1969 a raiyat had bonafide transferred his lands by sale, gift or otherwise or had made partition of his lands, said transferred lands would be taken into account as if the lands had not been transferred or partitioned.

10. While determining the total area of land which a raiyat shall be entitled to hold u/s 14T of the Act, the Revenue Officer would take into consideration not only the lands owned by the raiyat himself but also the lands held by all persons who are members of the raiyat's family as defined in section 14K(3) of the West Bengal Land Reforms Act and also the Lands which he might have transferred after 7th August, 1969. The "family" as defined in section 14K(c) of the West Bengal Land Reforms Act, 1956 is deemed to consist of:

- i) himself, his wife, minor sons, unmarried daughter, if any,
- ii) his unmarried adult son, if any who does not hold any land as a raiyat,
- iii) his unmarried adult son, if any where neither such adult son nor the wife nor any minor son or unmarried daughter of such adult son holds any land as a raiyat,
- iv) pre-deceased son's widow subject to similar qualifications as in the case of married adult son,
- v) minor grand-son or unmarried grand daughter of any of his pre-deceased son who do not hold any land as raiyat.

An adult son who holds any land as a raiyat, according to above definition of "family", shall not be deemed to be a member of the family of a raiyat. An adult son holding land would be entitled to retain his own lands up to the prescribed ceiling. In case it is held that the Revenue Officer has jurisdiction to decide the bonafide of transfers made prior to 7th August, 1969, then the Revenue Officer

would have, in effect, power to alter or add to the provisions of sections 14K(1) and 14P of the Act. But both of them are deeming provisions and it would not be legitimate to further extend their scope beyond what is warranted by the actual words used in sections 14K(c) and 14P of the Act.

11. Unless proved to the contrary, title to an agricultural land passes in favour of the transferee upon execution of the deed of transfer which is registered in accordance with section 5 of the West Bengal Land Reforms Act 1955. Similarly there is a presumption of correctness of entries contained in a finally published Record of Right. The burden of proving that the apparent state of affairs is not real is upon the person who alleges that the transferee mentioned in a transfer deed is a Benamdar of someone else. Similarly, one who challenges the correctness of a record has to rebut presumption of correctness attaching to the said Record.

12. No doubt, the Revenue Officer u/s 14S read with Section 14T of the West Bengal Land Reforms Act is required to determine the total area of agricultural land "held" or "owned" by a raiyat. The Revenue Officer has to generally proceed on the basis of the entries in the finally published records, registered deeds, and decisions of court binding upon the state which might be produced before him. He has not been vested with power to adjudicate, complicated questions of title and to undertake enquiries into bonafides of transfers made on 7th August, 1969 or earlier. Section 67 of the West Bengal Land Reforms Act has conferred upon him only some and not all the powers of civil court.

13. There is no provision for filing "pleading" (i. e., plaint and written statement) in a proceeding u/s 14T of the West Bengal Land Reforms Act. In such a proceeding, there is also no provision for hearing any person other than the raiyat whose ceiling area would be determined. The West Bengal Land Reforms Act, 1956 or the Rules do not lay down that a transferee from a raiyat shall be given notice of a proceeding u/s 14T of the Act or that he would be given opportunity of hearing before the Revenue Officer. If the implied power of the Revenue Officer to decide the bonafide of a transfer is conceded then the officer might decide behind the back of the person in whose name a property stands.

14. The word "Benami" is used to denote two classes of transactions which differ from each other in their legal character and incidents. In one sense, it signifies a transaction which is real. Such a sale is genuine but the purchaser is a Benamdar of another person. The Benami is also occassonally used to refer to a sham transaction, as for example, when A purports to execute a deed of transfer without intending that his title should cease or pass to the ostensible transferee. In the former class of transactions the enquiry is made to find out who paid the consideration for the transfer. In the latter class of cases when the question is whether the transfer is genuine or sham, the point for decision would be not who paid the consideration but whether any consideration was paid (See Meenakshi Mills, Madurai Vs. The Commissioner of Income Tax, Madras, , Thakur Bhim Singh (Dead) by Lrs and Another Vs. Thakur Kan Singh, .

15. An adjudication of the question of Benami may involve complicated questions of law and fact and a decision thereon may have serious civil consequence not only for the raiyat whose ceiling area is being determined but also for others who may not be heard by the Revenue Officer. I am not prepared to hold that the Revenue Officer is authorised to adjudicate such question of title and possession without there being any prescribed procedure for doing so. G.N. Roy, J. in *Kutubuddin Ahmed v. State of West Bengal* 1981 (1) Calcutta High Court Notes 154 at page 260 (Paragraph 8) has inter-alia, held that under Chapter-IIB of the West Bengal Land Reforms Act the Revenue Officer cannot usurp the function of civil court and investigate complicated questions of title, e. g., whether a document was vitiated by fraud or misrepresentation whether it was never intended to be acted upon. According to the learned Judge where on the face of it the registered deed show that a transfer had been effected the Revenue Officer is to proceed on the basis of such title.

16. There is another aspect of the matter. Section 14X of the West Bengal Land Reforms Act deprives the jurisdiction of civil court to decide or deal with any question or to determine any matter which by or under Chapter IIB of the West Bengal Land Reforms Act, 1955 is required to be decided or dealt with or to be determined by the Revenue Officer or other authority specified therein and no orders passed and proceeding commenced under the provisions of Chapter-IIB can be called in question in civil court. Section 14X thus ousts the civil court's jurisdiction only in respect of the aforesaid matters. The question of Benami is ordinary matter of civil dispute. In the absence of a distinct or unequivocal enactment, the civil court's jurisdiction to entertain a suit on the question of Benami cannot be said to have been impliedly taken away, when there is no express mention in the West Bengal Land Reforms Act, the court ought to hold that the legislature has given no authority or jurisdiction to the Revenue Officer to determine questions of Benami in relation to transfers made before 7th August, 1969 and civil court's jurisdiction has not been barred thereby. A clear and unambiguous provision was necessary to alter the established principle of law relating to Benami transactions.

17. Craies on Statute Law in Part-I, chapter 7 (7th Edition) has pointed out that the said rule of construction by implication cannot be applied in the following cases and express and unambiguous language would be absolutely indispensable in statutes passed for the following purposes :

- a) act imposing a tax or charge,
- b) conferring right,
- c) imposing new obligations,
- d) taking away public or private rights,
- e) to alter a clear principle of law and,
- f) to add or to take away jurisdiction from the superior court.

In the instant case, in the absence of any clear and unambiguous language in the provisions contained in Chapter-IIB of the Act I am not prepared to hold that by implication the Revenue Officer has been given right to determine questions of Benami and bonafide in respect of transactions which took place prior to 7th August, 1969. If such implied power is recognised same would also have the effect of imposing by implication, new obligations upon the transferor and the transferee in respect of transactions effected prior to 7th August, 1969. The said provision would also affect private rights in respect of transfers and partitions made prior to 7th August, 1969. Accordingly, I am not prepared to accept the interpretation which would confer by implication jurisdiction upon the Revenue Officer to decide the above questions by taking away jurisdiction of courts.

18. I accordingly conclude that neither the Revenue Officer nor the Additional District Magistrate, who acted as the appellate authority, had jurisdiction to decide whether the deed of gift made by the petitioner in favour of his elder son. Sachi, was acted upon or not. The said decisions were also vitiated by other errors of jurisdiction. Both the Revenue Officer and the Additional District Magistrate purported to rely upon the report of an enquiry by another officer. The said enquiry was held behind the back of the petitioner and the petitioner had no opportunity to challenge the correctness of the said report. The authorities committed jurisdictional error by placing the burden of proof upon the petitioner to establish that gift made by him the year 1964 in favour of his elder son. Sachi, was not a paper transaction. Neither the Revenue Officer nor the Additional District Magistrate recorded any finding regarding purchases made by Sachi by registered kobalas from third parties. At the same time, said land purchased by Sachi from third parties were taken into consideration for determining the ceiling area of the lands of the petitioner. The petitioner's eldest son, Sachi, in whose name the lands in question stood, was not given any notice or opportunity of hearing either by the Revenue Officer or by the Additional District Magistrate.

19. In calculating the ceiling area of land of the petitioner, the Revenue Officer committed jurisdictional error in taking into consideration the lands which were held by Lichu Bala as a life estate holder. Sub-section (1) of section 14S of the West Bengal Land Reforms Act has, inter-alia, provided that any land owned by a raiyat in excess of the ceiling area applicable to him shall vest in the State. Sub-section (1) of section 14T of the Act uses the expression "every raiyat owning land in excess of the ceiling area shall furnish to the Revenue Officer a return". A raiyat is the owner of his holding according to section 4(1) of the West Bengal Land Reforms Act. The expression "own" and "ownership" do not only mean absolute or full ownership having right to possess right to alienate and indeterminate in duration and residuary in character (vide Salmond on jurisprudence 12th Edn. Chapter-VIII). But these expressions "own" and "ownership" also refer to fragmentation of ownership by way of co-ownership and also ownership which is split between several persons on the temporal plain. When a life estate is carved out of full ownership, then in the wider sense the person having the life estate who is vested in possession and the remainder man

vested not in possession but in interest, both may be considered as owners of the land in question. The West Bengal Land Reforms Act in relation to the ownership puts greater emphasis on possession than on dominium, i. e., the absolute right to a thing. Therefore, for the purpose of calculating the ceiling area a person who has life estate at the date of the commencement of the said Chapter-IIB of the West Bengal Land Reforms Act ought to be considered as owning the land and the other person who has vested remainder not having any present possession cannot be treated as the owner of the land which is being enjoyed by a person having life interest therein. During his lifetime person having life estate has a right to exclude from possession others including the person upon whom the property may ultimately devolve on the termination of the life estate. When the holder of the life estate would die, the vested remainder man would acquire full ownership vested in both possession and interest, and all the provisions of Chapter-IIB of the Act relating to ceiling on holding shall apply to such land. Any other view would cause serious hardship and anomaly. In a given case the life tenant may own less than the ceiling area whereas the person who has the vested remainder may own other lands in excess of the ceiling area. If the land which is treated as the land of a vested remainder man, then the latter might surrender the land and thereby the interest of the life tenant would also vest. For the foregoing reasons, I conclude that so long as Lichu Bala remains alive and continues to be a life tenant of the lands gifted to her the said lands cannot be lawfully taken into account for calculating the ceiling area applicable to the petitioner.

20. I accordingly propose to set aside the orders passed both by the Revenue Officer and the Additional District Magistrate and to remit the case for fresh disposal by the Revenue Officer in accordance with law. After remand, in determining the ceiling area, the Revenue Officer will exclude lands owned by Sachi and also the lands in respect of which Lichu Bala has life estate. If the petitioner contends that his lands are unirrigated Lands, said question would be decided according to law before the Revenue Officer determines the extent of the land which the petitioner is entitled to retain and the extent of land, if any, which is to vest in the State. I accordingly allow this application and quash the orders u/s 14(3) of the West Bengal Land Reforms Act passed by the Revenue Officer and also the appellate order of the Additional District Magistrate (L. R.), Midnapore in Rev. appeal No. 114-L. R. of 1980/81. I command the Revenue Officer to again hear and dispose of in accordance with law the aforesaid proceeding u/s 14T of the West Bengal Land Reforms Act. I make it clear that I am leaving open the question whether the petitioner is the real owner and his son Sachi, is his Benamdar in respect of the lands which stand in the name of the latter. The said question if necessary may be hereinafter adjudicated in any other suit or proceeding according to law.