
(1983) 09 CAL CK 0027
In the Calcutta High Court
Case No : A.F.A.D. No. 193 of 1970

Sasadhar Samanta

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 12-09-1983

Acts Referred:

West Bengal Estates Acquisition Act, 1953 — Section 10(2)

Citation : AIR 1985 Cal 166

Hon'ble Judges : Jyotirmoyee Nag, J

Bench : Single Bench

Advocate : R.N. Das, Shib and Majumdar, for the Appellant;

Final Decision : Allowed

Judgement

Jyotirmoyee Nag, J.—This appeal arises from the judgment and decree passed by the Court of the learned Additional Subordinate Judge, Burdwan in Title Appeal No. 9 of 1968 affirming the judgment and decree of the learned Munsif passed in Title Suit No. 114 of 1967. The reliefs sought for by the plaintiff-appellant is in respect of the lands described in Schedule A(1), B, B(1), C and C(1). The plaintiff seeks for declaration that the plaintiff-appellant is entitled to retain the lands described in the said Schedules of the plaint and for permanent injunction restraining the defendant-respondent, State of West Bengal from interfering with the plaintiff-appellant's peaceful possession of the same. In the plaint, there is an alternative prayer for declaration of the plaintiffs right to retain and for permanent injunction in respect of plot Nos. 373 and 349 under Khatian No. 510 and plot Nos. 349 and 370 under khatian No. 511 and an area of 21 cents of plot No. 353 under khatian No. 511 of Schedule A(1). In case it is adjudged that the plaintiff is not entitled to retain plot No. 1110 under khatian No. 513 of Schedule A, the plaintiff's case is that he is an old man with defective eye-sight and on account of the same, his lands were not shown in the proper column of the Returns. He filed for retaining his lands and through mistake, plot No. 1110 which is agricultural land and which the plaintiff has returned, were shown in the

column of non-agricultural land in the Return. Plot No. 1449 is a tank fishery by excavation and amalgamation with plot No. 1448 which was Doba and both these plots were used for Pisciculture and the same has been wrongly recorded as Shall lands in the R. S. Records. In the big Raiyat Case started against the plaintiff, lands of Schedule B(1) and some of the tanks of Schedule C and C(1) have been wrongly treated as agricultural lands and the lands of Schedule A(2) and B(1) have been wrongly treated as wasted and hence notice has been issued on the plaintiff u/s 10(2) of the West Bengal Estates Acquisition Act. The plaintiff is entitled to retain the land of A, A(1), B, B(1) which are within the prescribed schedule and the tank fisheries of Schedules C and C(1). The defence of the respondents is that the allegation contained in the plaint are that plot No. 1449 was converted into a tank fishery by excavation and amalgamation with plot No. 1448 and that plot No. 1449 has been wrongly recorded as Shali lands, are not correct. According to the finally published R. S. records, the plaintiff-appellant was found to possess 30.12 acres of agricultural lands, 1.42 acres of non-agricultural lands and 34 cents as homestead and he was given his choice of retention and it was found that 5.12 acres of agricultural lands were in excess of the ceiling and hence these lands have duly vested in the State. That the classification made in the R. S. record is correct; the plot No. 1449 which has been recorded as Shali land is actually agricultural land. It is also the case of the defendant-respondent that plots Nos. 1224, 1441, 373, 349, 1110, 1806, 1429 have been taken possession of by the State. Hence, the plaintiff has no case at all.

2. The learned lower appellate Court on a consideration of all facts and circumstances, affirmed the findings of the learned Munsif and dismissed the appeal of the plaintiff. The relief granted by the trial Court was only part of the relief prayed for by the plaintiff-appellant It was as follows :-- "Plaintiff-appellant was declared to be entitled to retain all plots of Schedule A except plot No. 2148, plot No. 1224 of Schedule A(1), plots Nos. 373 and 349 of khatian No. 510. Plot No. 349, 370 and an area of. 21 cents of plot No. 331 of khatian No. 511 of Schedule A(2), all plots of Schedule B, plot No. 1441 of Schedule B(1), all plots of Schedule C and plot No. 1449 of Schedule C(1).

3. The plaintiff has offered to surrender plot Nos. 373 and 379 of khatian No. 510 of Mouza Hatgobindapur and an area of 21 cents of plot No. 331 of khatian No. 511 of die same Mouza described in Schedule A(2), if it is found that he is not entitled to retain C. S. plot No. 1110 of Schedule A(1), but this plea was rejected by the learned lower appellate Court on the ground that, all these latter plots measured 2.52 acres vide Ext. D, Return and moreover, in the notice u/s 80 he did not mention anything about surrender of these plots in lieu of plot No. 1110 of Schedule A(1). The plaintiff again prayed for surrendering plot No. 2148 of Mouza Hatgobindapur Schedule A of the plaint in lieu of C. S. plot No. 1449, Schedule C(1). The learned Judge also rejected the plaintiff's plea of retention of this plot on the ground that Ext. 5 shows that, it is a Shall land and the evidence adduced by him to prove that it is not so, was also rejected by the learned Judge.

4. The learned Advocate for the appellant has cited several cases namely, those reported in (1963) 67 Cal WN 12, (1966) 70 Cal WN 652 paragraphs 38 to 41 Subodh Kumar Mitra and Another Vs. The Revenue Officer and Others, to prove that retention may be allowed even after the period prescribed by law provided the lands have not been possessed by the State. In this connection both the Courts below have found that though the plea taken by the respondent was that the lands have vested in the State and they have not taken delivery of the same on behalf of the State, the plaintiff/appellant is still in possession of the same. On the basis of these findings and also on the basis of the principles laid down in the above mentioned cases, I allow this appeal without costs and decree the suit in respect of the entire lands described in the Schedules to the plaint after setting aside the decree of the lower appellate court. The suit is decreed without cost. The respondent State of West Bengal is permanently injuncted from interfering with the entire suit lands.