
(2016) 01 CAL CK 0022
In the Calcutta High Court

Case No : R.V.W. 85 of 2013 and C.A.N. 4690 of 2013 in S.A. 271 of 1984

Sirajul Islam and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 21-01-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Constitution of India, 1950 — Article 226
West Bengal Estates Acquisition Act, 1953 — Section 10, Section 10(2), Section 4,
Section 5, Section 57(B), Section 57(B)(2), Section 57B, Sec

Citation : (2016) 2 CalHCN 164 : (2016) 1 CalLJ 569 : (2016) 1 CalLT 612

Hon'ble Judges : Ashis Kumar Chakraborty, J.

Bench : Single Bench

Advocate : Bhaskar Ghosh and Tanmoy Mukherjee, for the Appellant; Ram Mohan Pal, for the Respondent

Final Decision : Allowed

Judgement

Ashis Kumar Chakraborty, J.—1. This application, at the instance of the appellants in the second appeal is for review of the judgment and decree dated February 13, 2013 passed by a learned Single Judge of this Court, who has since retired, thereby partly allowing the second appeal of the appellants against the judgment and decree passed by the lower appellate Court dismissing their suit.

2. From the judgment sought to be reviewed by the appellants-applicants, it appears that two points of law were urged by the parties to the second appeal before this Court. First, whether an intermediary can retain possession of any land vested in the State under Section 5 of the Act by filing Form-"B" appended to the West Bengal Estates Acquisition Rules, even after issuance of notice under Section 10(2) of the Act. The second point was, whether in view of the provisions contained in Sections 57(B)(2) of the Estate Acquisition Act, 1953, hereinafter called as "the Act", an intermediary can maintain a suit, before the Civil Court, claiming declaration of title and decree for permanent injunction in respect of lands sought to be retained by him under Section 6 of the Act. The brief facts

giving rise to this review application are as follows.

3. Various lands including the suit lands, described in schedule "Ka", "Kha" and "Ga" of the plaint filed in the suit belonged to the appellants applicants, which stood vested in the State under Sections 4 and 5 of the Act. In exercise of their right under Section 6 of the Act of 1953, the appellants-applicants sought to retain the suit lands and on July 08, 1968 they filed the relevant Form-"B" as prescribed under Rule 4A of the West Bengal Estates Acquisition Rules before the Revenue Officer. Without any decision on the said Form-"B" filed by the appellants-applicants, on May 25, 1971 the Collector issued a notice, under Section 10(2) of the Act, for taking over possession of the suit lands of the appellants-applicants. After receipt of the said notice, on May 18, 1971 the appellants- applicants filed another Form-"B" to retain the suit lands and once again without deciding the said application, the State-respondent sought to take possession of the suit lands on July 11, 1971. Thus, the appellants-applicants filed a suit being Title Suit No. 224 of 1971, before the learned 1st Court of Munsif at Arambag claiming, inter alia, a declaration that they have the right, title and interest and possession of the suit lands mentioned in the Form-"B", being schedule "Ka", "Kha" and "Ga" of the suit and a decree for permanent injunction restraining the defendant from disturbing their peaceful possession of the suit lands. The said suit was contested by the defendant State of West Bengal. The defendant State of West Bengal resisted the said suit on the grounds, that it was barred by Section 57(B)(2) of the Act and that after issuance of the notice under Section 10(2) of the Act, the plaintiffs had no right to retain any of their lands already vested in the State and possession of all the lands sought to be retained by the plaintiffs was already taken over by them. After considering all material evidence and the decision of this Court in the case of Ramkrishna Mullick & Ors. Vs. State of West Bengal & Ors. reported in , 1975(1) CLJ 154, the learned trial Court held that Section 57(B)(2) was no bar for the Civil Court to entertain the suit filed by the plaintiffs involving the question of title of the suit lands, that the defendant State of West Bengal had not taken over possession of the lands sought to be retained by the plaintiffs and that even after issuance of the notice under Section 10(2) of the Act by the defendant State of West Bengal, the plaintiffs could file Form- "B" to retain their lands under Section 6 of the Act. By the judgment dated March 21, 1979, the learned trial Court decreed the Title Suit No. 221 of 1971 by declaring that the plaintiffs have right, title and interest and possession of the suit lands as per share mentioned in the Form - "B" minus Plot Nos. 778, 784, 774, Khatian No. 194. Against the said judgment and decree passed by the learned trial Judge the defendant State of West Bengal filed an appeal, being Title Appeal No. 215 of 1979, before the Court of the learned Sub-Judge, 1st Court of Hooghly. However, by the judgment dated January 31, 1983, the learned lower appellate Court reversed the judgment and decree passed by the learned trial Court and dismissed the title suit. The learned lower appellate Court, held that the suit filed by the appellants-applicants was barred by Section 57B(2) of the Act. Against

the said judgment and decree of dismissal of the suit passed by the learned lower appellate Court, the appellants-applicants filed the second appeal before this Court, the same was admitted for deciding the following substantial question of law.

"Whether the learned lower appellate Court substantially erred in law by declaring that the suit was barred under Section 57(B) of the West Bengal Estate Acquisition Act, without applying the correct legal test."

4. By the judgment dated February 13, 2013, that is, the judgment under review this Court disposed of the second appeal. After considering the decision of this Court, in the cases of Gour Gopal Mitra vs. State of West Bengal reported in , 67 CWN 12 and State of West Bengal and Ors. vs. Arun Kumar Basu & Ors. reported in , (1993) 2 Cal LT 56 and Mohan Lal Gupta vs. Achhulal Saha & Ors. reported in , 75 C.W.N. 228 by the said judgment, this Court held that in the instant case since after receipt of the notice under Section 10(2) of the Act of 1953 the appellants-applicants did not file any written objection and they filed Form-"B" again on May 18, 1971 the said decisions of this Court have no bearing on the case. This Court held as follows:

"In those cases it was held by this Court that though a time limit, that is, 30th April, 1958 was prescribed in the Act for exercising the choice of retention of lands by the intermediaries by filing B-Form, the said limit was not final and that the intermediaries can retain their lands by filing B-Forms even after over of said prescribed date before taking possession by the State, but said propositions of law should not be stretched too far to hold that whenever State will give notice under Section 10(2) of the Act, even after receipt of B-Forms from the intermediary, the act of State for taking possession of the lands will be nullified only because the intermediary has again filed a B-Form before the date of said taking of possession by the State. On the other hand, if the above propositions of law as laid down by those referred case laws are tried to be applied at the time of filing of subsequent B-Forms by the intermediary then the very object of the Act of 1953 would be nullified as the intermediaries will go on filing one B-Form after another whenever they receive any notice from the State for vesting of their excess land. As such, the filing of B-Forms again by the plaintiffs on 18th May, 1971 has no bearing in the case."

5. This Court further held that the learned lower appellate Court rightly held that the plaintiffs were not entitled to challenge the action of the defendant-State regarding taking possession as per law before the Civil Court and that the plaintiffs should have moved the prescribed forum under the Act of 1953. This Court, however, held that when the defendant - State admitted some of the suit properties as retained land of the plaintiffs, the learned lower appellate Court was wrong in dismissing the suit altogether treating the entire suit being barred under Section 57(B)(2) of the Act. Thus, this Court allowed the appeal in part by passing a decree for declaration of title in favour of the plaintiffs appellants relating to suit plot Nos. 832 and 1008 under Khatian No. 272, suit Plot Nos.

785, 778, 774 and 772 under Khatian No. 194 being "Kha" schedule property and by passing a decree for permanent injunction restraining the defendant-State from interfering with peaceful possession of the plaintiffs appellants in those suits plots.

6. Mr. Ghosh, learned Senior Counsel appearing for the appellants-applicants strenuously contended that the above judgment passed by this Court, in so far as the same rejected the claim of the appellants to retain the lands mentioned in the Form-"B" on May 11, 1971 after receipt of the notice under Section 10(2) of the Act and held that the plaintiffs' appellants' suit was barred by Section 57(B) of the Act is ex-facie contrary to the decisions of this Court, as also the decision the Supreme Court which were placed before this Court, at the time of hearing of the second appeal and is vitiated by error apparent on the face of the record and this Court should review the said judgment.

7. He further placed the provisions contained in Section 57B of the Act before this Court and submitted that it is the well settled principle of law that a Revenue Officer, exercising of power under the Act, does not have the jurisdiction to decide title in respect of any land or property and Section 57(B) of the Act does not exclude jurisdiction of the Civil Courts to decide questions of title. He urged that from the judgment of this Court it is apparent that during the course of hearing the second appeal before this Court, the appellants relied on various decisions of this Court, including the Division Bench decision in the case of Tarak Chandra Dholey vs Satyanarayan Singh and Ors. reported in , 1975(2) CLJ 246 and the Single Bench decisions of this Court in the cases of Ram Barai Shaw vs. Bibabati Basak and Ors. reported in 1975 (1) CLJ 382 and in all the said cases, this Court held that Section 57B of the Act does not take away the jurisdiction of the Civil Court to entertain a suit for declaration of title in respect of any land. According to Mr. Ghosh, in view of the above decisions of this Court which were placed before this Court by the appellants at the time of hearing the second appeal, the judgment of this Court in the second appeal upholding the finding of the learned lower appellate Court that the plaintiffs were not entitled to challenge the action of the defendant State before the Civil Court is also vitiated by error apparent on the face of the record.

8. Mr. Ghosh further placed the provisions contained in Sections 4, 5, 6 and 10 of the Act, and Mohanlal Gupta (supra) before this Court. According to him, the finding of this Court in the judgment under review that the decisions of this Court in the case of Gour Gopal (supra) and Arun Kumar Basu (supra) cannot be applied in the instant case, on the ground that if the above propositions of law as laid down in the said decisions are tried to be applied at the time of filing of subsequent B-Forms by the intermediary then the very object of the Act of 1953 would be nullified, as the intermediaries will go on filing one Form-"B" after another whenever they receive a notice from the State for vesting of their excess land is also ex-facie contrary to the decision of this Court in the said cases Gour Gopal (supra) and Arun Kumar Basu (supra) which have been approved by the

Supreme Court in the case of West Bengal Government Employees (Food and Supplies) Cooperative Housing Societies and Ors. vs. Smt. Sulekha Pal (De) and Ors. reported in , (2003) 9 SCC 253.

9. In support of the contention of the appellants-applicants that when a judgment passed by a Court is vitiated by an error apparent on the face of the record an application for review of the said judgment under Order XLVII of the Code of Civil Procedure, 1908, is well maintainable, Mr. Ghosh relied on a decision of the learned Single Judge of this Court in the case of Tinkari Sen vs. Dulal Chandra Das reported in , AIR 1967 Cal 518, a decision of a learned Single Judge of the Karnataka High Court in the case of Mrs. Mallika and Ors. vs. Mr. Chandrappa and Ors. reported in , ILR 2007 KAR 3216, as also the decisions of the Supreme Court in the cases of M.M. Thomas vs. State of Kerala and Anr. reported in , (2000) 1 SCC 666 (paras 14 and 17) and Amarjit Kaur vs. Harbhajan Singh reported in , (2003) 10 SCC 228 (para-10).

10. However, Mr. Pal appearing for the defendant respondent, State of West Bengal strenuously urged that the instant review application filed by the appellants-applicants is not maintainable. According to him, if the appellants in the second appeal are aggrieved with any finding of the said judgment and decree passed by this Court in the second appeal, their remedy lies to challenge the same by filing a special leave petition and the appellants cannot maintain the instant review application. In support of his contention, Mr. Pal relied on the decision of a learned Single Judge of this Court in the case of Chandmall Chopra and Anr. vs. State of West Bengal reported in , AIR 1986 Cal 111 and the decisions of the Supreme Court in the cases of Devaraju Pillai vs. Sellayya Pillai reported in , AIR 1987 SC 1160, Avinash Hansraj Gajbhiye vs. Official Liquidator, M/s. V. Pharma (P) Ltd. reported in , AIR 2006 SC 1317, Haridas Das vs. Smt. Usha Rani Banik & Ors. reported in , AIR 2006 SC 1634, State of West Bengal and Ors. vs. Kamal Sengupta and Anr. reported in , (2008) 8 SCC 612 and Dr. Subramanian Swamy vs. State of Tamil Nadu and Ors. reported in , (2014) 5 SCC 75. According to Mr. Pal, the decision of the Supreme Court in the case of M.M. Thomas cited on behalf of the appellants applicants is an authority for exercise of power of review by a High Court under Article 226 of the Constitution of India and as such the said decision has no application in this case.

11. From the judgment of this Court itself it is evident that the relief claimed in the suit filed by the appellants-applicants was for declaration of title and injunction in respect of the suit lands and although the learned lower appellate Court dismissed the entire suit on the ground being barred by Section 57(B)(2) of the Act, this Court while partly allowing the appeal held that the plaintiffs' appellants' claim for declaration of title and injunction, for the lands admittedly retained by them was maintainable. However, at the same time, this Court also held that the plaintiffs' appellants' suit for declaration of title and injunction in respect of lands sought to be retained by the said Form-B was barred by Section 57B(2) of the Act. Since, the decision on the substantial question of law framed

in the second appeal involved the scope and effect Section 57(B)(2) of the Act, the relevant portion of the said Section, as placed by Mr. Ghosh before this Court, is reproduced below.

"57B. Bar to jurisdiction of civil Court in respect of certain matters-

(1)

(2) No Civil Court shall entertain any suit or application concerning any land or any estate, or any right in such estate, if it relates to-

(a) alteration of any entry in the record-of rights finally published, revised, made, corrected or modified under any of the provisions of Chapter V,

(b) a dispute involving determination of the question, either expressly or by implication, whether a raiyat or an intermediary, is or is not entitled to retain under the provisions of this Act such land or estate or right in such estate, as the case may be, or

(c) any matter which under any of the provisions of this Act is to be, or has already been, enquired into, decided, dealt with or determined by the State Government or any authority specified therein,

And any such suit or application which is pending before a Civil Court immediately before the commencement of the West Bengal Estates Acquisition (Second Amendment) Act, 1973 (West Ben. Act XXXIII of 1973), shall abate so far as it relates to all or any of the matters referred to in clause (a), clause (b) or clause (c).

(3) Any dispute referred to in clause (b) of sub-section (2) may be decided by a Revenue Officer not below the rank of an Assistant Settlement Officer, specially empowered by the State Government in this behalf, who shall dispose of the same in such manner as may be prescribed:

Provided that in deciding a dispute under this sub-section the Revenue Officer shall not re-open any matter which has already been enquired into, investigated, determined or decided by the State Government or any authority under any of the provisions of this Act.

(4) Any person aggrieved by a decision of the Revenue Officer made under sub-section (3) may appeal to the prescribed authority not below the rank of a Settlement Officer, within such time, in such manner and subject to payment of such fees as may be prescribed.

(5) A decision made by the Appellate Authority under sub-section (4) shall be final.

Explanation - in this section-

(i) suit includes an appeal, and

(ii) an authority includes an authority to hear an appeal."

12. In the case of Ramkrishna Mullick vs. State of West Bengal and Ors. reported in , 1975(1) CLJ 154, Prodyot Kumar Banerjee, J. (as, His Lordship then was) while upholding the vires of the said Section 57B of the Act held that if, that the alteration in the record of rights is made without jurisdiction or in excess of power or without giving an opportunity of being heard, the Civil Court's jurisdiction cannot be ousted, the Civil Court can still entertain the suit. The Court further held that if for instance, the dispute involved, is determination of the question about the right of retention, this has been disposed of and was found that the determination is not a real determination, but a self-style one the suit will certainly lie (paragraph 35). Even in the case of Ram Barai Shaw (supra), Murari Mohon Dutt, J. (as His Lordship then was) after considering all the provisions contained in Section 57B of the Act, held that the said Section does not exclude the jurisdiction of Civil Courts to decide questions of title. Further, in paragraph 14 of the decision in the case of Tarak Chandra (supra), Chittatosh Mukherjee, J. (as His Lordship then was) speaking for the Division Bench of this Court held that:

"When the West Bengal Estates Acquisition Act and Rules do not provide for detailed adjudication of title, it cannot be said that the jurisdiction of the Civil Courts to entertain suits relating to title in respect of lands has been totally ousted. A suit in which the right to property is contested, is a suit of a civil nature. The West Bengal Estates Acquisition Act in general and Section 57B thereof in particular does not either expressly or even impliedly bar the jurisdiction of Civil Courts to try such suits, merely because the correctness of entry or entries in a Record of Rights might incidentally be one of the issues in suits."

13. In the said case, the Division Bench approved the decisions of the learned Single Judges of this Court in the case of Ramkrishna Mullick (supra) and Ram Behari Shaw (supra) already mentioned above. Thus, in view of the above decisions of this Court, which were placed before this Court during the hearing of the second appeal and recorded in the judgment under review, there could not be any doubt as was held by the learned trial Judge in the present case, that the suit filed by the applicants appellants, claiming declaration of title in respect of the suit lands was well maintainable. Even, by the judgment under review, this Court held that the plaintiffs' appellants' claim for declaration of title and permanent injunction in respect of "kha" schedule land was maintainable and relief was granted to the plaintiffs appellants in respect of the said "Kha" schedule land. Thus, I find force in the submissions of Mr. Ghosh that the finding of this Court in the judgment dated February 13, 2013 that the lower appellate Court rightly held that the plaintiffs were not entitled to challenge the action of the defendant State regarding taking possession before the Court and the plaintiffs should have moved the prescribed Forum under the Act of 1953 is contrary to the earlier decisions of this Court not only passed by two coordinate

Benches but also of the Division Bench of this Court.

14. In the instant case, the second question that fell for consideration before this Court in the second appeal was whether an intermediary even after receipt of a notice under Section 10(2) of the Act can file a return in Form-"B" before the Revenue Officer to retain his land as permitted under Section 6 of the Act. The determination of the said question, which also arise in this review application, involves interpretation of certain relevant Sections of the Act and the Rules framed thereunder. As per the scheme of the Act of 1953 upon the due publication of a notification under Section 4 of the Act, on and from the date of vesting, the rights of intermediaries in the estates, to which the declaration applies, shall vest in the State free from all encumbrances. Although the title of the estate vests in the State, but Section 6(1) of the Act confers a limited a right upon the intermediary to retain some property specified in the said Section with effect from the date of vesting. This right of retention is a right of an intermediary to keep the possession under the State. Section 6(5) of the Act prescribing the procedure of exercising the right of retention by an intermediary, which reads as follows:

(5) An intermediary shall exercise his choice for retention of land under sub-section (1) within such time and in such manner as may be prescribed. If no choice is exercised by him during the prescribed period, the Revenue Officer shall, after giving him an opportunity of being heard, allow him to retain so much of the lands as do not exceed the limits specified in clauses (c), (d) and (j) of that sub-section:

Provided that nothing in this sub-section shall require an intermediary to exercise the choice if he has already done so before the date of coming into force of the West Bengal Estates Acquisition (Second Amendment) Act, 1957.

15. From a bare reading of Section 6(5) of the Act, it is evident that it is the obligation of the intermediary to exercise his choice of retention within such time and in such a manner as may be prescribed. Now, Rule 4-A of the West Bengal Estate Acquisition Rules provides the time limit to be April 30, 1958 being the time limit for exercising of right of retention by an intermediary by filing Form-B appended to the Schedule of the said Rules. At the same time, sub-section (5) of Section 6 of the Act in clear and unambiguous term provides that if no choice is exercised by the intermediary during the prescribed period, even then the Revenue Officer shall allow him to retain so much of the lands as do not exceed the statutory limits after giving an opportunity of being heard.

16. Now, Section 10 of the Act provides the manner and mode in which the Collector shall take charge of the estate and interest of the intermediaries which vested in the State under Section 5 of the Act. As per sub-section (2) of Section 10 of the Act, the Collector may, by a written order require an intermediary or any person in possession of any such estate to give up possession by a date to be specified in the order, which shall not be earlier than sixty days from the date

of service of the order. It is now necessary to consider sub-section (5) of Section 10 of the Act which reads as follows:-

"Nothing in this section shall authorise the Collector to take khas possession of any estate or of any right of an intermediary therein, which may be retained under section."

17. Considering the scheme of the Act and the provisions contained in sub-section (5) of Section 6 and sub-sections (2) and (5) of Section 10 of the Act, in his celebrated decision in the case of Gour Gopal (supra) P.B. Mukherji, J. (as His Lordship then was) held as follows:

"Under Section 6(1) there is a right in the intermediary to retain certain lands as specified under Section 6(5). The intermediary shall exercise his choice of retention within the 30th April, 1958 in Form "B" as prescribed under Rule-4A of the West Bengal Estates Acquisition Rules. But even if the intermediary does not exercise his choice within the prescribed period and notwithstanding the word "shall" in the earlier part of Section 6(5), he still can claim his right to retain under Section 6 of the Act as is expressly provided in the latter portion of sub-section (5) of Section 6. I construe that part of Section 6(5) of the Act to mean in this context, that the right of the intermediary to retain does not become extinct even after the prescribed period has passed by. To give effect to that part of the statute, therefore, it must follow that the intermediary can go to the Revenue Officer claiming an opportunity of being heard and to allow him to retain so much of the lands as do not exceed the statutory limits of section 6(1)(c) (d) and (j). In other words it will mean this that so long as the intermediary has not delivered possession to the Collector under Section 10(2) of the Act he has the right to claim retention. Once, however, the intermediary has lost possession to the Government no question of his any more "retaining" possession arises, for such a claim will be to "repossess" and not to "retain". This construction keeps alive the statutory right of the intermediary to retain under section 6 only till he parts with possession under Section 10(2) of the Act. This construction is further supported by the period of notice under Section 10(2) of the Act. The notice that the Collector gives under this section for giving up possession must specify a date which shall not be earlier than sixty days from the date of the service of the order. Now that is the ultimate time limit. If he wants to claim retention or exercise his choice of retention the intermediary must do so within those sixty days."

18. In the case of Mohan Lal Gupta (supra), also relied upon by the appellant-applicant at the time of hearing of the appeal before this Court, the Division Bench of this Court held unless an order has been passed under Section 10(2) of the Act, after granting an opportunity to an intermediary to disclose the land which he intends to retain under Section, the State is not lawfully entitled to get into possession of the land and even if the State alleges to have got into possession of the land, they shall be deemed not to have done so in fact.

19. The above decisions in the case of Gour Gopal (supra) was not only approved by the Division Bench of this Court in the case of Lakshmi Roy vs. Land Reforms Officer & Ors. reported in , 80 CWN 42, the said decision was also approved by the Supreme Court in the case of Smt. Sulekha Pal (supra) cited on behalf of the applicants. In the said decision the Supreme Court also approved the decision of the Division Bench of this Court in the case of Mohan Lal Gupta (supra). In paragraphs 18 and 19 of the decision in case of Smt. Sulekha Pal (supra), the Supreme Court held as follows:

"18. The claims and contentions on behalf of the parties on either side have to be adjudged in the light of the above noticed principles laid down in interpreting the relevant provisions of the Act, particularly Sections 4, 5, 6 and 10, thereof. The governing principles and the scheme underlying the provisions of the Act as enunciated by the Calcutta High Court, in the earlier decisions noticed supra cannot be said to lay down any wrong or incorrect proposition of law or anything in derogation of the interpretation placed by this court as to the scope, extent and nature of vesting as well as the nature and character of rights safeguarded under Section 6 etc., for retention of the land and other properties by the intermediary and their successors-in-interest. On a careful reading of the above referred to decisions portions of which have been brought to our notice and extracted above with emphasis laid in support of the respective stand taken for the parties on either side, we are also of the view that the right of the intermediaries to retain certain lands and properties under Section 6 does not come to an end once and for all or said to become extinct, irretrievably after the prescribed date as envisaged in Section 6(5) read with Rule 4A of the Rules. Without leaving anything for anyone to surmise as an aftermath of such omission or lapse, the legislature itself stipulated as to what should happen thereafter also in the latter part of Sub-section (5) of Section 6 that if no choice is exercised under Section 6(1) by the intermediary during the prescribed period also obligating the Revenue Officer to give the intermediary an opportunity of being heard, allow him to retain so much of the lands as do not exceed the limits specified in clauses (c), (d) and (j) of sub-section (1) of Section 6 of the Act.

19. The right of the Collector to take charge of the estate and rights therein of intermediaries, which vest in the State under Section 5 are dealt with under Section 10 of the Act. While Sub-section (2) of Section 10 lays down the procedure to be followed and stipulates the manner and method in which the possession has to be taken, Sub-section (5) declares in clear and unmistakable terms that nothing in the said Section shall authorize the Collector to take khas possession of any estate or of any right of an intermediary therein which may be retained under Section 6 and the embargo is not merely with reference to those properties already chosen to be retained as envisaged under Sub-sections (1) and (5) of Section 6. Before taking possession, sub-section (2) of Section 10 mandates the Collector to serve a written order in the prescribed manner requiring the intermediary or any other person in khas or symbolic possession, by the date to be specified in the order which shall not be earlier than sixty days

from the date of its service, to give up such possession and all documents, registers, records and collection papers connected with the management of such estate/interest. Rule 7 of the Rules prescribes the statutory form (No. 3) of order/notice and provides that the order of the Collector and the statement shall be in the said form or in a form substantially similar thereto. The Collector has to by his order essentially call upon the intermediary/person concerned, among other things, to furnish a statement in the format prescribed, as part of Form No. 3 itself and particularly in clause 5(iii)(c) of the statement to disclose the description and area of land which the intermediary would like to retain under the provision of the Act. This, in our view, inevitably postulates and leads only to the inescapable conclusion that even before the Collector actually takes khas possession of the estate and rights of an intermediary therein, the intermediary will have not only an opportunity but a right to choose the lands which he could retain as provided for under Sub-section (1) of Section 6 of the Act. That such understanding and construction of the relevant provision alone would be proper and necessary to be adopted gets reinforced from Sub-section (6) of Section 10 which stipulates that if after vesting takes place under Section 5 and the intermediary or any other person possesses any land which was in the khas possession of the intermediary before vesting, but which the intermediary has not retained or cannot retain under Section 6, then whether possession of such land has been taken by the collector in pursuance of Sub-section (2) or not the intermediary or such other person shall be liable for the period for which he is in possession of such land to make payments determined in the manner enumerated therein."

20. Thus, it is evident that the finding of this Court in the judgment disposing of the second appeal that the plaintiffs appellants had no right to exercise their right to retain the suit lands by filing Form-"B" after receipt of the notice under Section 10(2) of the Act is contrary to the aforementioned decisions not only of this Court but also the decision of the Supreme Court, which is the law of the land.

21. Mr. Pal relied on paragraph 9 of the decision of a learned Single Judge of this Court in the case of Chandmall Chopra (*supra*) where the petitioner sought for review of the judgment of the Court by challenging the correctness of the decision of the learned Single Judge and there was no question of error apparent involved and as such the learned Single Judge rejected the review application. Thus, the said decision has no application in this review application on the ground of correction of error apparent on the face of the record.

22. In the case of Devaraju Pillai (*supra*) cited Mr. Pal, the Supreme Court held that if a party is aggrieved by the judgment of the learned Single Judge sitting in the second appeal, with regard to construction of a document that it was a will and not family settlement, the appropriate remedy for the party is to file an appeal against the judgment. In the case of Avinash Hansraj (*supra*), the Supreme Court upheld the decision of the Division Bench of the Bombay High

Court rejecting the application for review of its judgment on the basis of certain additional materials when the applicant failed to prove that after the exercise of due diligence the said documents were not within his knowledge or could not be produced by him at the time when the original order was passed. In the case of Haridas Das (*supra*), the Supreme Court set aside a judgment passed by a learned Single Judge of the Gauhati High Court reviewing the earlier judgment passed in the second appeal, on the ground that in exercise of jurisdiction under Order XLVII Rule 1 of the Code, it is not permissible for an erroneous decision to be reheard and corrected. The Supreme Court held that a review is by no means, an appeal in disguise whereby an erroneous decision is reheard and corrected. Thus, when in the present case, the ground of review urged by the appellants applicants under Order XLVII Rule 1 of the Code is error apparent on the face of the record, none of the said decisions of the Supreme Court cited by Mr. Pal has any application in the instant case.

23. Now, in paragraph 22 of the decision of the Supreme Court in the case of Kamal Sengupta (*supra*) cited by Mr. Pal it was held that the words "mistake or error apparent" by its very connotation signifies an error which is per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. Further, in the case of Dr. Subramanian Swamy(*supra*) the Supreme Court held that an erroneous decision cannot be ground for the Court to undertake review, as the first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and in absence of any said error, finality attached to the judgments/order cannot be disturbed. Thus, if a decision of a Court suffers from any error apparent on the face of the judgment, an application is maintainable before the Court, for review of its earlier decision. Further, in the case of Tinkari Sur (*supra*) cited on behalf of the appellant applicant, a learned Single Judge of this Court held that a judgment of a Court, overlooking clear legal position established by binding authority is a judgment vitiated by error of law apparent on the face of the record and such judgment ought to be rectified by way of exercise of power of review under Order XLVII Rule 1 of the Code. I am in respectful agreement of the decision of the learned Single Judge of the Karnataka High Court that a judgment of a Court overlooking the decision of a superior Court constitutes a good ground for review of the judgment. Even in the case of Rajender Singh vs. Lt. Governor, Andaman & Nicobar Islands & Ors reported in , AIR 2006 SC 75, the Supreme Court held that the power of review under Order XLVII Rule 1 of the Code by a Court involves the power to correct all errors, to prevent miscarriage of justice and the Courts should not hesitate to review its own earlier decision when there exists an error on the face of the record and the interest of justice so demands in appropriate cases. I, however, find substance in the contention of Mr. Pal that the ratio of the decision of the Supreme Court in the case of M.M. Thomas (*supra*), is applicable while a Writ Court exercises the power to review its judgment and the decision of the Supreme Court in the said case cannot be applied in the present

case.

24. In the present case, it is evident that the judgment of this Court sought to be reviewed by the appellants applicants rejecting the right of the appellants applicants to file Form-"B" to retain their lands under Section 6(5), even after receipt of the notice issued by the Collector under Section 10(2) of the Act is ex-facie contrary to the decisions of this Court in the cases of Gour Gopal (supra), Arun Kumar Basu (supra) as also the decision of the Supreme Court in the case of Smt. Sulekha Pal (supra) declaring the law of the land. Similarly, the decision of this Court in the judgment disposing of the second appeal upholding the impugned judgment of the learned lower appellate Court that the suit filed by the appellants applicants claiming declaration of the title in respect of the suit lands mentioned in the Form-"B" is barred by Section 57B(2) is also contrary to the decisions of the learned Single Judges in the cases of Ramkrishna Mullick (supra) and Ram Behari Shaw (supra) as also Division Bench decision of this Court in the case of Tarak Chandra (supra) respectively.

25. Thus, the judgment of this Court dated February 13, 2013, in so far as the same held, that after issuance of a notice under Section 10(2) of the Act by the Collector the appellants plaintiffs had no right to file any application by way of Form-"B" to retain the suit lands and that the plaintiff's suit for declaration of permanent injunction with regard to the suit lands covered by the Form-"B" filed on May 18, 1971 was barred by Section 57B of the Act is vitiated by error apparent on the face of the record and there cannot be any doubt that if the said judgment is not rectified by this Court the same shall result in miscarriage of justice.

26. For all the foregoing reasons, the review application filed by the appellants applicants is well maintainable, the same is admitted and stands allowed. Consequently, the judgment dated February 13, 2013 passed by this Court in the second appeal, being S.A. No. 271 of 1984 stands modified to the effect that the entire second appeal stands allowed, the judgment and decree passed by the learned lower appellate Court in Title Appeal No. 215 of 1979 stands set aside in entirety and the judgment and decree dated March 21, 1979 passed by the learned trial Judge, in Title Suit No. 224 of 1971 stands restored.

27. However, there shall be no order as to costs.

28. Urgent certified photostat copy of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

29. Let, the decree drawn up be expeditiously.