

(1988) 09 CAL CK 0024
In the Calcutta High Court

Sital Chandra Das and Others

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 07-09-1988

Acts Referred:

West Bengal Land Reforms Act, 1955 — Section 30, 50, 50A, 51, 51A

Citation : 93 CWN 700

Hon'ble Judges : S.K. Mookerjee, J

Bench : Single Bench

Advocate : P.B. Sahoo, Amal Kumar Ghoshal, Gautam Basu, Ananta Kumar Nanda, A.K. Nanda, A. K. Jana and B. C. Manna, for the Appellant; Sukiran Biswas, Debjani Sengupta, Gautam Som, S.R. Saha and Santanu Malkhandi, for the Respondent

Judgement

S.K. Mookerjee, J.—The above writ applications have been heard analogously as the nature of reliefs prayed for in the said applications are the same. Such relief is occasioned by either inaction or refusal of the respondents, the State Officers, to correct the records of rights in conformity with the judgments and decrees of civil courts the trial court or the appellate court, - standing in favour of the petitioners or their vendors. For consideration of the propriety of the rival contentions, sections 50, 51, 51A and 51B of the West Bengal Land Reforms act appear to be relevant. In a case where Chapter VIIA has act yet come into operation the prescribed authority in terms of Section 30 is empowered to make the correction making the entries in the records of rights conform to the civil court Judgment and decree and such specific authority is found in clause (f) of Section 50 of the Act. Where, however, there has been already a direction by the State Government that record of rights in respect of any district or part of a district be revised or prepared by a Revenue Officer in accordance with the provisions of Chapter VIIA and Rules as may be made by the State Government in this behalf, Section 50 would be unavailable. The different stages for preparation of records of rights such as Khanapuri Bhujarath, attestation, draft publication may coincide with the time when the right of the petitioners to get

the records corrected accrues and in" such cases following the prescribed rules and procedure such corrections should, be made at the appropriate stages. No doubt, where the Chapter VIIA has come into operation, in terms of Section 50A of the Act, Section 50 would not be operative upto the stage of final publication but a person, in whose favour civil court judgment and decree stand, is entitled to get a correction in between stages of preparation of the records of rights in terms of Section 51B of the said Act. Section 51B refers to all the stages before the final publication of the records of rights. After the stage of final publication, however, Section 51A(4) becomes operative and the officer concerned derives his authority to make the necessary correction in terms of sub-section (4) of the said Section. After completion of all the stages as provided in Chapter VIIA, Section. 50 again comes back into operation in terms of the last part of the said Section. From the aforesaid discussion it is amply clear that there can be no reason for not entertaining a prayer for correction of the records of rights in conformity with the civil court judgment and decree and disposing of the same within a reasonable time. It is not necessary to wait for making such correction till the subsequent stage. Elaborate provisions are there as indicated hereinabove to enable the officers duly authorised in conformity with the statutory provisions to exercise their powers of correction. It is to be noted that judgments and decrees on which reliance is placed by the persons asking for such correction are mostly passed in suits or appeals wherein the State of West Bengal has been impleaded as party and as such remain binding on it or its officers.

2. It has been urged before me on behalf of some of the petitioners that wrong entries in the finally published records of rights in terms of the provisions of the West Bengal Estates Acquisition Act often stand as bars resulting in refusal of the prayer for correction in spite of existence of the civil court judgment and decree in favour of the applicants for correction. It may be noted that the entries in the finally published records of rights under the West Bengal Estates Acquisition Act at best give rise to rebuttable presumption and where judgments of civil courts exist and are found to be inconsistent with such entries in the records of rights, such presumption should be deemed to have been rebutted and no difficulty should be felt in incorporating the correction in conformity with the civil court judgment and decree. In case of conflict between the judgment and decree of the trial Court and those of the appeal Court, the latter would prevail.

3. In connection with the aforesaid applications for writ on behalf of some of the petitioners again it has also been urged before me that this court should issue mandate directing the officers to correct the records of rights in conformity with the civil court judgment and decree in favour of the petitioners instead of directing a disposal of the representations made on behalf of the petitioners in accordance with law. Reliance has been placed for such purpose on a decision by one of the Judges of this Court in C. R. No. 394L(W) of 1980. The directions given in the said civil Rule by the learned judges were appropriate in the facts and circumstances of the case but that procedure"" possibly cannot be made applicable generally in all cases as apart from the parties involved in the civil

proceedings, objections may come from others having some interest in the lands covered by such judgments and decrees of the civil courts but not impleaded in the connected civil proceedings. Such others would in no way be bound by the pronouncement of the civil courts and as such it would not be proper for me to direct correction in accordance with the civil court judgment and decree in favour of the petitioners as that would render the objection of a third party unentertainable by preventing the statutory authority concerned to consider such objection also while making the correction. In such cases, the whole purpose of the Sections referred to above and of the legislature in maintaining an up-to-date, correct, record of rights would be frustrated. I, accordingly, direct that the respondents would consider and dispose of the representations made by the petitioners which are annexures to the writ petition in accordance with law and on merit and upon hearing the petitioners or any other person interested or likely to be affected by such disposal on the lines of my observations above and taking into consideration the effect of civil court judgment and decree preferably within three months from the date of communication of this, order to the concerned respondents. While on this point, I would like to clarify that cases of applicants, who have acquired ownership by purchase, once the authority concerned acquires prima facie satisfaction about genuineness and bonafides of their transactions, their claims should deserve same treatment as would have been meted out to their Vendors and they should be given benefits of civil court judgments and decrees standing in favour of their Vendors or Vendor's Predecessors-in-interest.

4. Let a writ of Mandamus issue. Till the disposal of such representations, the respondents would remain restrained from distributing or setting the lands covered by such representations.

There will be no order as to costs.