
(2004) 01 CAL CK 0039
In the Calcutta High Court
Case No : S.A. No. 765 of 1979

Sm. Kamala Rani Mitra and Others

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 15-01-2004

Acts Referred:

West Bengal Estates Acquisition Act, 1953 — Section 6(5)

Citation : (2004) 1 CALLT 445

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : Ram Prakash Banerjee, for the Appellant;

Judgement

Amitava Lala, J.—From the judgment and order passed by the Court of first instance as well as the Court of Appeal, if find that both the Courts have rigidly followed filing of the "B" Form return prescribed under the West Bengal Estates Acquisition Act, 1953 when it seems that the same is nothing but material irregularity. As there was no procedure for formulation of points of hearing the Second Appeal and as there is no (embargo upon the Court to formulate it even at the time of hearing, I find the Ground Nos. 7 and 8 of the Memorandum of Appeal seem to be appropriate points for hearing the Second Appeal, and finally pass the order. The Ground Nos. 7 and 8 are set out herein:

"7. For the even assuming but not admitting that no proper return was filed by the vendor of the plaintiffs, all the lands belonging to him cannot be directed to vest in the State of West Bengal but the State must allow the party to retain the lands which are permissible to be retained.

8. For that in any event no land can under the law be directed to vest in the State without initiating a regular proceeding and the entire approach of the learned District Judge in deciding the case was wrong and illegal".

2. Law says that as per Section 6(5) of the West Bengal Estates Acquisition Act, 1953 intermediary shall exercise his choice for retention of land under Sub-

section (1) within such time and in such a 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 prescribed in Clauses (c), (d) and (j) of the sub-section.

3. The moot point of decision is that "B" Form was submitted to the compensation officer of the authority concerned in the place and instead of revenue of settlement officer. Both the Courts held that such filing is as good as non-filing. Therefore, the plaintiffs are not entitled to any relief in respect of filing of "B" form, even to the extent of question of wrong submission. The learned Judge of the first Appellate Court held that no presumption can be drawn in respect of such production and the compensation officer is not bound to return the land to the person concerned or to the appropriate authority to regularise the same.

4. According to me the authority does not necessarily mean a post but the authority as a whole. If the submission is recorded, in that case non-production which is germane for the purpose of the due consideration cannot be substantiated. It can at best be said non-production with the authority concerned is mere regularity which can be cured. But one cannot be nonsuited. Even both the Courts overlooked the scope and ambit of Section 6(5) of the West Bengal Estates Acquisition Act, 1953, wherein law says that if the option is not exercised, the hearing will be given upon person or persons by the revenue officer and after giving opportunity of being heard, allow to retain so much of lands as do not exceed the limits. There is no whisper in either of the judgments of both Court in respect of such exercise of power by the State. Therefore, it appears to me that both the Courts proceeded in a wrong premises, and as a result wherein, observed perverse finding.

5. Having so, I do not find any reason not to hold such question is substantial question of law and pass any affirmative order in favour of the appellants herein. Therefore, this Second Appeal succeeds on that score and accordingly disposed of. The judgment and order of both the Courts below stand set aside. Interim order, if any stands confirmed. No order is passed as to costs. Therefore there will be a decree in favour of the plaintiffs/ appellants. Decree will be drawn up expeditiously as possible preferably by 20th February, 2004. Lower Court records will be returned soon thereafter preferably by 27th February, 2004.