

(1993) 09 CAL CK 0005
In the Calcutta High Court
Case No : F.M.A.T. No. 2234 of 1993

Sri Probhat Kumar Das and Another APPELLANT
Vs
The State of West Bengal and Others RESPONDENT

Date of Decision : 27-09-1993

Acts Referred:

Constitution of India, 1950 — Article 226
West Bengal Land Reforms Act, 1955 — Section 14L, 14M, 14S, 14T(10), 14T(3)

Citation : (1994) 1 CALLT 235 : 98 CWN 102

Hon'ble Judges : Suhas Chandra Sen, J;Arun Kumar Dutta, J

Bench : Division Bench

Advocate : Abhijit Banerjee and Ashim Mukherjee, for the Appellant; Tapas Mukherjee and Amitabha Goswami, for the Respondent

Final Decision : Dismissed

Judgement

Arun Kumar Dutta, J.—The Appeal has been heard with the consent of the learned Advocates for the contending parties. It is directed against the order dated 16.7.93 passed by Tarun Chatterjee, J. in writ application in the matter of case No. BIR/3/92 under Sections 57 & 14T of the West Bengal Land Reforms Act issued by the Revenue Officer, and in the matter of Probhat Kumar Das v. The State of West Bengal and Ors. (not numbered as yet).

2. The short point involved in this Appeal is whether in a proceeding before a Revenue Officer under Sections 14T(3) and 14S of the West Bengal Land Reforms Act (hereinafter shortened into Act) for re-determination of the question of ceiling limit of a Raiyat after his death u/s 14M it is open to his heirs and legal representatives to contend that they have inherited the land belonging to the holder, and that the surplus land should be determined on the footing that each of them is an independent Raiyat in his or her own right, and that the requisite notice therefore is required to be issued upon them independently and separately, instead of issuing the same upon them jointly as heirs of the deceased Raiyat. The facts giving rise to the aforesaid question arise in the

following circumstances :

3. Krishna Chandra Das was the holder of land (Raiyat) at Mouza-Bilkuli, J.L. No. 2, within P.S. Bhadraswar, and at Bilkuli, Mouza-Nawpara,, J.L. No. 19, within P.S. Singur. A B.R. proceeding under Sections 14T/14S of the Act was started against him on 20.10.84, being Case No. 13/BDR/84 of 1984, even though he is stated to have died intestate on 26.11.1983. One Samir Kumar Ray had appeared on behalf of the said Big Raiyat (hereinafter referred to as B.R.) in the said case from time to time. On 24.1.85, Pashupati Das, one of the sons of late Krishna Chandra, had filed the petition before the Officer/Authority concerned (hereinafter referred to as Officer) stating that it was not possible for the heirs of the B.R., Krishna Chandra, to furnish Return in Form 7A unless his heirs are served with notices separately. Notices were thereupon directed to be issued upon his heirs. On Notices being served upon them, his another son Probhat Das had appeared before the Officer (on behalf of the B.R.), and submitted Return in Form 7A on 7.10.85. Upon perusal of the same and upon local enquiry, the Officer had dropped the aforesaid proceedings by order dated 16.11.1985 holding that the said B.R. Krishna Chandra held, on 15.2,1971, the date of commencement of the provisions of Chapter IIB of the Act, 14.73 acres of land in non-irrigated area, though he was entitled to retain 17.30 acres of agricultural land (in non-irrigated area). He held lands below the ceiling limit and the proceedings was accordingly dropped.

4. Despite the dropping of the aforesaid proceedings on the said findings, the Petitioners-Appellants, the two sons of the said Krishna Chandra, had again been served with a Notice, being Memo No. 3016(4)S/92 dated 15.10.92, wherefrom they came to learn that a case, being No. BIR/3/92, under Sections 14T(3) and 14S of the Act, has been initiated against the said late Krishna Chandra Das on the ground that the Record-of-Rights indicate that he was holding land more than the prescribed ceiling. They had been served with another Notice dated 14.6.1993 calling upon them to appear before the Revenue Officer concerned on 28.6.93, which was fixed again on 19.7.93. The Petitioners had thereupon moved the relevant Writ Application on 16.7.93 challenging the aforesaid two Notices dated 15.10.92 and 14.3.93 respectively, which was disposed of by Tarun Chatterjee, J. by the impugned order dated 16.7.93 in terms of the directions contained therein.

5. Being aggrieved by the said order, the Petitioners have preferred the instant Appeal, along with an application for stay of operation of the said order, on the grounds made out therein.

6. It had been submitted on behalf of the Appellants that since the earlier B.R. proceedings, being No. 23/BDR/84 of 1984, against the said Krishna Chandra Das, stated to be a Big Raiyat, had been dropped by order dated 16.11.1985 on the finding that he held lands, on 15.2.1971, below the ceiling limit, a subsequent proceedings for re-determination of the question of ceiling limit would be incompetent. In order to consider the said submission, let us turn to

the relevant provisions of the Statute.

Section 14T(3) of the Act runs as follows :

"The Revenue Officer may, on receipt of a return submitted under subsection (1) or sub-section (2), or on his own motion, determine the extend of land which is to vest in the State u/s 14S and take possession of such lands."

But in terms of Section 14T(3A) of the Act :

"The Revenue Officer may of his own motion and after giving the raiyat an opportunity of being heard, revise an order made under sub-section (3) and determine afresh the extent of land which is to vest in the State u/s 14S and take possession of such land."

Sub-section (10) of Section 14T of the Act as well provides as follows :

"Notwithstanding any return submitted by a raiyat under sub-section (1) or sub-section (2) and notwithstanding any order passed by the Revenue Officer under sub-section (3) or sub-section (3A) in respect of the land owned by him, the State Government may at any time by a notification in the Official Gazette, ask every raiyat owning land in excess of the ceiling area u/s 14M to furnish to the Revenue Officer, in such form as may be prescribed and within such time as may be specified in the notification, a return containing the full description of the land which he proposes to retain within the ceiling area applicable to him u/s 14M and a full description of the land which is in excess of the ceiling area and such other particulars as may be prescribed."

7. The aforesaid relevant provisions of the Act being, what they are, there could clearly be no mistaking that a subsequent proceeding for re- determination of the question of ceiling limit of a Raiyat by a Revenue Officer is quite competent. The submission made on behalf of the Appellants to the contrary does not seem to us to be acceptable.

8. Let us now turn to the moot point urged on behalf of the Appellants as to whether it is open to them to contend that they have inherited the lands belonging to the holder Krishna Chandra, and that the surplus lands should be determined on the footing that each of them is an independent Raiyat in his or her own right; and that the requisite notice therefore is required to be issued upon them independently and separately, instead of issuing the same upon them jointly as heirs of the deceased Raiyat Krishna Chandra, the way the Revenue Officer concerned did. To that we would at once note with a minute of dissent that having regard to the relevant provisions of the Statute, the relevant date for consideration of the ceiling area, taking into consideration the number of family members of a Raiyat, is February 15, 1971, i.e. the date of commencement of Chapter IIB of the Act (hereinafter stated to be appointed day). The Act has to be considered in accordance with its scheme and object which is equitable distribution of land in the hands of those who held land in excess of the ceiling limit on the said appointed day. In order to achieve the said object the legislature

appears to have enacted Section 14L and 14M declaring that no person could hold land in excess of the ceiling area on or after the date of enforcement of Chapter IIB of the Act. A careful reading of the relevant provisions of the Act would clearly indicate that the determination of the extent of surplus land of a Raiyat has to be made as on the aforesaid specified date. Should a person be found to be in possession of land in excess of the ceiling area on or after the aforesaid date, he incurs the liability to surrender any surplus land as on that day itself, even though the actual extent of such surplus land might be determined on a subsequent date. The provisions of the Act would clearly indicate that the liability to surrender surplus land would not in any way come to an end by reason of the death of a Raiyat before the actual extent of surplus land is determined u/s 14S of the Act. The liability to surrender the surplus land would date back to the appointed day. The surplus land of a Raiyat in excess of the ceiling limit has got to be determined as on the appointed day even though he may die before the actual extent of surplus land is determined according to law so that the purpose, scheme and object of the Statute might not be frustrated.

9. Upon consideration of the relevant provisions of the Act, gauged in the background of its scheme and object, there could, therefore, be no running away from the inescapable conclusion that in a subsequent proceeding for re-determination of the question of ceiling limit of a Raiyat, the surplus land is liable to be determined with reference to his holding on the date of commencement of Chapter IIB of the Act, and it is not open to his heirs and legal representatives to contend that they have inherited the land belonging to him (Raiyat), and that the surplus land should be determined on the footing that each of them is an independent Raiyat in his or her own right. The liability to surrender surplus land does not in any way come to an end by reason of the death of a Raiyat before the actual extent of surplus land is determined. As already indicated above, the liability to surrender the surplus land dates back to the appointed day in case of a Raiyat who held land in excess of the ceiling limit on the appointed day. The person on whom is holding devolves on his death will be liable to surrender the surplus land as on the appointed day, because the liability attached to the holding of the deceased would not come to an end on his death. The heirs of a deceased Raiyat cannot clearly, therefore, be permitted to contend to the contrary and allowed to get more land by way of inheritance than what they would have got if the death of the Raiyat had taken place after determination of the ceiling limit and vesting of land in excess of ceiling area u/s 14S of the Act.

10. It would be pertinent to recall in this context that the principle applicable to the determination of the surplus land under the land reform laws in the hands of persons holding land on the date on which the ceiling is imposed had been explained by the Supreme Court in *Raghunath Laxman Wani and Others Vs. The State of Maharashtra and Others*, as follows :-

"The scheme of the Act seems to be to determine the ceiling area of each person (including a family) with reference to the appointed day. The policy of the Act

appears to be that on and after the appointed day no person in the State should be permitted to hold any land in excess of the ceiling area as determined under the Act and that ceiling area would be that which is determined as on the appointed day."

11. The principle enunciated in the aforesaid decision had been followed by the Supreme Court in *Bhikoba Shankar Dhumal (Dead) by Lrs. and Others Vs. Mohan Lal Punchand Tathed and Others*, wherein it had been held that the surplus land in the case of a person who held land in excess of the ceiling area on the appointed day had to be determined as on the appointed day even though such person might have died before the actual extent of surplus land was determined and notified. It was further held that the persons on whom his holding devolved on his death would be liable to surrender the surplus land as on the appointed day because the liability attached to the holding of the deceased would not come to an end on his death. The Supreme Court had also echoed the same view in the *Lalji Singh Vs. State of Uttar Pradesh*, while dealing with analogous provisions of Maharashtra Agricultural Lands (Ceiling on Holdings) Act (27 of 1961). The Supreme Court had also taken the same view in the decision in *State of U.P. Vs. Civil Judge, Nainital and Others*, while dealing with, amongst other provisions, Section 5 of the U.P. Imposition of Ceiling on Land Holdings Act (1960), as amended in 1972, which is similar to the provisions of Section 14L of the West Bengal Land Reforms Act, clearly observing therein that although the aforesaid decisions have been rendered in cases arising under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, the principle set out therein applies to all cases where there is an imposition of ceiling on lands held by land holders by land ceiling laws with effect from a specified date. That being so, the plea of the Writ Petitioners-Appellants is clearly liable to be outright overruled.

Realising the difficulty somewhat tardily, the learned Advocate for the Petitioners-Appellants sadly sought to submit that it was incompetent for the Revenue Officer concerned to issue notice under Sections 14T(3) and 14S for determination of the question of ceiling limit of the Raiyat Krishna Chandra Das which had already been decided on 16.11.1985 in the earlier B.R. Case, being Case No. 23/BDR/84 of 1984. But to that we note that the facts and circumstances of the matter would at once make clear that the said notice had been issued by the Revenue Officer concerned for re-determination of the aforesaid question in terms of Section 14T(3A) of the Act. The fact that the relevant notice appears to have been issued u/s 14T(3) of the Act appears to be merely a technical irregularity, if at all, which is not likely to vitiate the proceedings in any way. The said submission as well pales into insignificance in view of the discussions above.

12. It would also seem significant and observable to note in this context that the earlier B.R. proceedings, being Case No. 23/BDR/84 of 1984, had been started against the aforesaid Raiyat Krishna Chandra Das on 20.10. 1984 after his death on 26.11.1983. His two sons Pashupati and Probhat had appeared before the

Officer on his behalf and had as well submitted Return in Form 7A on 7.10.85 on his behalf, and had as well participated in the said proceedings on behalf of his aforesaid deceased father Krishna Chandra, and had also allowed the same to be disposed of on 16.11.1985. No such plea, as sought to be taken before us, had been taken by any of them in the said proceedings. It does not, therefore, seem to lie in their mouth to now contend that they have inherited the land belonging to their father, and that the surplus land should be determined on the footing that each of them is an independent Raiyat in his or her own right, and that requisite notices therefore are required to be issued upon them independently and separately.

13. Upon the premises above, the point posed be accordingly answered. There seems little substance in this Appeal as such. There is little point to quash the impugned notices and interfere with the impugned order dated 16.7.93 passed by the Court below.

The Appeal fails and is dismissed, in the result. We, however, feel that in the interest of justice the Appellants and the other legal heirs and representatives of the deceased Krishna Chandra Das, if any, should be given an opportunity of raising any other contention before the Revenue Officer concerned, which might be available to them while determining the extent of surplus land in his (Krishna Chandra's) hand on the relevant day, i.e. 15.2.1971, the date of commencement of Chapter IIB of the Act, if so sought for by them.

14. The Appellants are allowed time till two months from this date to submit Return/s before the Revenue Officers concerned who shall dispose of the same within one month thereof after giving the Appellants and all parties concerned all reasonable opportunity of being heard by passing a reasoned order. Till then the parties concerned shall preserve status-quo in respect of possession of the disputed property.

In the facts and circumstances of the matter, we direct the parties to bear the respective costs.

The department is directed to supply xerox copies of this order to the Advocates appearing for parties on usual charges and on an undertaking to apply for and obtain certified copy of this order.

S.C. Sen, J.

I agree.