
(2005) 01 CAL CK 0021
In the Calcutta High Court
Case No : W.P.L.R.T. No. 544 of 2004

Sri Ranjit Kumar Bagchi

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 18-01-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Companies Act, 1913 — Section 202
Companies Act, 1956 — Section 483
Criminal Procedure Code, 1973 (CrPC) — Section 372, 374, 375, 376
Income Tax Act, 1961 — Section 243
West Bengal Land Reforms Act, 1955 — Section 14H, 14N, 14O, 14T, 17
West Bengal Panchayat (Gram Panchayat Administration) Rules, 1981 — Rule 19
West Bengal Panchayat Act, 1973 — Section 23

Citation : (2005) 2 CALLT 306 : (2005) 2 CALLT 134 : (2005) 4 CHN 396

Hon'ble Judges : Sailendra Prasad Talukdar, J;Aloke Chakrabarti, J

Bench : Division Bench

Advocate : Ashok Kumar Banerjee, Aniruddha Chatterjee and Mahendra Prasad Gupta, for the Appellant; Rabilal Moita, G.P., A.N. Banerjee and Ziaul Islam, for the Respondent

Final Decision : Dismissed

Judgement

Aloke Chakrabarti, J.—Petitioner purchased certain plots of lands within the District of Howrah by several deeds in respect of which, name of petitioner has been mutated. Petitioner prayed for conversion of lands from Sali To Factory. All requisites were supplied in support of such prayer as indicated by the concerned authorities. When said prayer for conversion was refused, petitioner approached the West Bengal Land Reforms and Tenancy Tribunal in O.A. No. 3502 of 2003. Said original application was disposed of by the impugned order on the ground that order passed by the concerned authority refusing conversion is appealable u/s 54 of the West Bengal Land Reforms Act and therefore, liberty was granted to the petitioner to prefer appeal against the order impugned.

Heard Mr. Ashok Banerjee, learned counsel for the petitioner and Mr. Rabilal

Maitra, learned Government pleader.

2. Main contention of Mr. Banerjee, learned counsel appearing for petitioner is that Section 54 of the West Bengal Land Reforms Act only provides for procedure or manner of preferring appeal naming forum only and it itself is not a provision providing for appeal against any particular order or orders. It is argued that said argument was considered in two earlier writ petitions by two learned single Judges but was not accepted and said judgments were in the case of Bidya Bhusan Mahapatra v. State of West Bengal reported in 1977(1) CLJ 387 and Narayan Chandra Kundu v. State of West Bengal reported in 1982(1982 CLJ 61.

3. It has been argued by Mr Banerjee that consideration in aforesaid judgments of said law as contained in Section 54 were not in proper perspective. It is stated that several provisions of different statutes providing for appeal when considered, it is found that each provision providing for appeal mentions the order against which such appeal is available and such factor is absent in Section 54. As regards Section 96 of the CPC though the learned Judge in the case of Bidya Bhusan Mahapatra (supra) recorded that language therein is nearly similar to the language of Section 54, but in fact a comparison of two sections shows that there is a vital difference as regards mentioning of order against which such appeal is provided.

4. It is further contended by Mr. Banerjee that said Section 54 only provides for manner of preferring appeal is not only apparent from language of section itself but is also recognised accordingly by Legislature. When Sections 4(2C) and 4-B(3) were incorporated by amendment in West Bengal Land Reforms Act said sections mention the order which can be challenged in an appeal and for the purpose of manner of preferring appeal the provision of Section 54 was adopted.

5. Mr. Banerjee, referred to several sections of different statutes providing appeals in support of his case regarding said distinguishing feature in Section 54 under consideration. Reference was also made to Section 4(2-C), 4-A(3), 4-B(3), 14-O, 19-B(2), 23-B(2), 49(4) and 51-A(5) for substantiating his argument. Reference was also made to the judgment in the case of Rama Shankar Vs. Official Liquidator, Jwala Bank Ltd., and Smt. Ganga Bai Vs. Vijay Kumar and Others, .

6. Mr. Banerjee, further made a contention that after introduction of second proviso in Section 4-B of the West Bengal Land Reforms Act, 1955 by 3rd Amendment of 1986 published in the Calcutta Gazette Extra Ordinary dated 12th May, 1989, provision of Section 4-C of the said Act is attracted in the facts and circumstances of the case and issuance of an order permitting conversion is a matter of mere formality on the face of permission granted by Panchayat u/s 23 of the West Bengal Panchayat Act, 1973 and Rule 19 of the West Bengal Panchayat (Gram Panchayat Administration) Rules, 1981 allowing the petitioner to change the nature of lands for setting up industry and also grant of no objection certificate by the pollution control board. In this connection, reference

was made to the judgment in the case of *The Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another*, in support of contention as regards power of the writ Court in granting relief on the present writ petition itself.

7. Mr. Rabilal Maitra, learned Government pleader contended that Section 54 is a provision of appeal creating a forum of appeal against all orders passed by the collector and commissioner except the orders against which appeal have been provided specially by some other provisions. It is argued by Mr. Maitra that said question has been considered in detail by a learned Judge in deciding the case of *Bidya Bhusan Mahapatra (supra)* which has been followed in the case of *Narayan Chandra Kundu (supra)*. Mr. Maitra, referred to Section 9(6) and Section 19 of the West Bengal Land Reforms Act, as it originally stood, for showing that those are only two other provisions providing for a forum of appeal apart from Section 54.

8. Mr. Banerjee placed strong reliance on the expression "an appeal shall lie in the manner indicated below" in the opening of Section 54 for contending that this provision only provides for the manner in which an appeal has to be filed and it is argued that unlike other sections providing for a provision of appeal indicating the order against which such appeal lies, in this section no particular order is indicated against which an appeal is to lie. It is contended by Mr. Banerjee that other provisions of appeal as contained in said Act itself in Sections 4(2-C), 4(2A), 4-A(3), 4-B(3), 9(6), 14-H, 14-O, 19(1), 19-B(2), 23-B(2), 49(4) and 51-A(4) of the Act support the above view. Mr. Banerjee further relied on the language used in Section 96 of the Code of Civil Procedure, Section 372 of the Code of Criminal Procedure, 1973 read with Sections 374, 375 and 376. Reference was also made to Section 243 of the Income Tax Act, 1961, Section 483 of the Companies Act, 1956 and various other sections of different statutes in this connection.

10. We have considered the respective contentions of the parties and the judgments referred to by them. Only question requiring our consideration for deciding this matter, as argued by Mr. Banerjee, learned counsel for petitioner is whether Section 54 of the Act only lays down the forum for appeals against orders which have been made appealable by the provisions of different sections of the Act and that it does not confer itself any right of appeal. For convenient consideration of the matter the language of Section 54 as was used at the time of enforcement of the Act originally is absolutely relevant and the same is quoted hereinbelow:

"54. Appeals.--(1) Subject to any special provisions for appeal made in this Act or in any rules made under this Act, an appeal shall lie in the manner indicated below--

(a) to the Collector of the District, when the order is made by a Revenue Officer or revenue authority below the rank of Collector of a District.

(b) to the Commissioner of the Division, when the order is made by the Collector of a District within the Division;

(c) to the officer holding for the time being the office of a Member, Board of Revenue, when the order is made by the Commissioner of a Division:

Provided that where an order is confirmed on appeal no further appeal shall lie under this section."

11. It is true that various sections of different statutes referred to by the learned counsel for the petitioner clearly prescribed the order against which the appeal is provided in the said respective sections. It is also true that Sections 4(2-C) and Section 4-B(3) mention that an appeal shall lie from any order made under Sub-section 2-A and 2 thereof respectively in accordance with the provisions of Sections 54 and 55 of the Act. Relying on this as also on the language used in Section 54, it is argued on behalf of the petitioner that Section 54 of the Act does not provide for an appeal but it provides the manner in which an appeal provided in other sections of the Act, should be filed.

12. For consideration of the above contentions, we took into consideration the fact that the Act when originally stood before any amendment, there were in total three sections providing for appeal namely Section 9, Section 19 and Section 54. Sub-section 6 of Section 9 provided for an appeal against an order of a Munsif to a District Judge. In Section 19 as it originally framed, also appeal was provided against order made u/s 17 or Section 18. As against this, Section 54 does not mention any particular order under a particular provision of law against which appeal will lie u/s 54. But while considering the Act in its entirety when it was originally passed by the Legislature and before any amendment was incorporated, we find that Section 9 was provided for an appeal against any order passed by a Munsif to a District Judge and this was contained in Chapter II of the Act. Similarly, Section 19 provided for appeal under Chapter III of the Act relating to barga cultivation. It seems all other orders provided in the Act were made appealable u/s 54 and that is why language used in said Section 54 is that "Subject to any special provisions for appeal made in this Act or in any rules made under this Act, an appeal shall lie in the manner indicated below--(a) to a Collector when order is made by a Revenue Officer or Revenue authority below the rank of a Collector; (b) to the Commissioner of the Division, when the order is made by the Collector of a District within the Division." It appears that before, in Section 54 all orders passed by the revenue officers or revenue authorities and orders passed by the Collector of the District were made appealable respectively to the Collector or the Commissioner of the Division, as the case may be. This aspect was also considered by legislature itself in framing the language of Section 55 for providing limitation for such appeals when it used the expression ".....period of limitation for an appeal u/s 54."

13. The proviso to Section 54 (as it was originally framed) makes the position further clear providing that ".....no further appeal shall lie under this section".

The legislative intent is thus further clear that one appeal lies u/s 54.

14. If the contention of the petitioner is accepted, there would have been no requirement of incorporating Section 55 of the Act providing for limitation as both Section 9 and Section 19 provided for limitation for appeals under those two sections. Moreover, the forum provided in Section 54 is different from the forum u/s 9(5) or the forum u/s 19(1). It is also worth noticing the fact that Section 9 and 19 having made complete provisions for appeal mentioning order appealable, appellate authority and limitation, there was no question of framing Section 54 providing for appeal against any orders under the Act except 9 and 19 being special provisions for appeals and also for limitation in Section 55 "for an appeal u/s 54....."

15. The Contention of the petitioner relying on various other sections of the Act was considered by us. At the outset we record that said other sections inserted subsequently in this Act by subsequent amendments cannot indicate legislative intention existing when the original Act was enacted much prior to those amendments. Moreover, the serious consequence of any contrary interpretation as noticed in the judgment in case of Bidya Bhusan Mahapatra (supra) making final order u/s 14-T non-appealable while interim order u/s 14-N is appealable is also respectfully accepted by this Court.

16. Learned counsel for the petitioner further relied on the judgment in the case of Rama Shankar (supra) decided by a Division Bench of Allahabad High Court wherein the meaning of the expression "manner and condition" was given. In fact the word "manner" used in Section 202 of the Companies Act, 1913 was held to refer to the procedure to be followed in the matter of institution and hearing of the appeal. Same expression "manner" has been used in Section 54 and the petitioner contended that same meant the procedure to be followed in the appeal provided under other Sections of the Act. We are unable to accept the said contention as in Section 54 appeals maintainable under sections of the Act were not mentioned and on the contrary the expression used was "appeal shall lie in the manner indicated below" indicating clearly that all orders passed by the authorities mentioned in the section are appealable. Therefore, judgment in the case of Rama Shankar (supra) does not help the petitioner.

17. The only contention of the petitioner relying on second proviso of Section 4-B is not acceptable to us as order passed under any statutory provision cannot be held to be mere formality and on such finding no interpretation of law can be made by a Court, of law. The judgment In the case of K.S. Jagannathan is not found applicable in this case.

In view of the above findings the contentions of the petitioner are not found acceptable.

With the above findings, the writ petition fails and is hereby dismissed.

Sailendra Prasad Talukdar, J.

18. I agree.