

(1981) 02 CAL CK 0003
In the Calcutta High Court
Case No : C.R. 13309 (W) of 1976

Sri Sri Sridhar Jew and Others

APPELLANT

Vs

The State and Others

RESPONDENT

Date of Decision : 16-02-1981

Acts Referred:

West Bengal Land Reforms Act, 1955 — Section 14J, 14M(5), 14Q(3), 2(10), 6

Citation : 85 CWN 545

Hon'ble Judges : M.N. Roy, J

Bench : Single Bench

Advocate : Arun K. Motilal and Chandra Sekhar, for the Appellant; Sankar Mukherjee and Dipankar Chakraborty for Respondent Nos. 5 and 6, for the Respondent

Final Decision : Dismissed

Judgement

M.N. Roy, J.—This Rule with the corresponding interim order, initially for a limited period, was obtained on 17.11.76, against orders made u/s 14M (5) read with section 14Q(3) of the West Bengal Land Reforms Act, 1956 (hereinafter referred to as the said Act), and the appellate order dated October 27, 1976, which is in annexure-B. The four deities, Sree Sree Sridhar Jew, Sree Sree Iswaree Durga Mata, Sree Sree Iswaree Kali Mata and Sree Sree Gopal Jew are petitioners Nos. 1 to 4, along with their she baits, Sarbasree Kshetradas Mukherjee, Abhoydas Mukherjee and Sri Durgadas Mukherjee who are petitioner Nos. 5 to 7. It is the case of the petitioners, that by a registered indenture made and executed in the year 1941, by one Manik Lal Mukherjee, since deceased, the properties in issue in this case, were dedicated to the deities as mentioned hereinbefore, for their seva-puja and worship. It has also been stated that on such dedication, the properties in issue, have vested in the petitioner deities and that too exclusively. It has further been averred that that the indenture in question specifically provided that lands in issue, would be vested and dedicated to the deities concerned and, also to be enjoyed by them and usufructs thereof, including all

incomes and profits, to be also enjoyed by them. The fact that Respondent Nos. 5 to 7 are present shebait, is not in dispute. It is also not in dispute that the deed is one and no separate allotment or separate properties have been made, in respect of the deities or in their favour. It further appears from the statement of the petitioners that seva puja of the deities, are performed out of the usufructs of the properties in issue.

2. It appears that on or about November 26, 1975, the Revenue Officer, Settlement Project Chanditala, Respondent No. 4, initiated proceeding u/s 14M (5) read with section 14Q(3) of the said Act, against one Gopal Krishna Mukherjee, who incidentally was the predecessor-in-interest of the shebait Respondent Nos. 5 to 7. On the death of the said Gokul Krishna Mukherjee, petitioner No. 6 Sri Abhoydas Mukherjee, appeared in the proceeding and the petitioners have alleged that before the conclusion of the proceeding the officer concerned, had made up his mind, to treat the debuttar in question, as a personal property of the said Gokul Krishna Mukherjee. Admittedly, by order dated June 24, 1976, the officer as mentioned above, held the properties in issue, were to be treated as lands belonging to the said Gokul Krishna Mukherjee and ordered that lands measuring 11.03 acres, should vest in the State.

3. It has been stated by the petitioners that Gokul Krishna Mukherjee had personal lands amounting to 7.93 acres, which have been succeeded on his death, by those petitioners and such lands fall far short of the necessary ceiling, in terms of the said Act. Admittedly, an appeal was taken from the determinations as mentioned above and such appeal was rejected on October 27, 1976, by the order in annexure-B.

4. Mr. Matilal, appearing in support of the Rule contended that since the name of the deities were recorded duly and there was an absolute dedication of the properties in issue to them so, even if the dedication was by one deed, in terms of section 2(10), which defines Raiyat as persons or institution holding lands for purpose of agriculture and section 14M(5), which requires that the lands owned by a trust or endowment other than a public nature, shall be deemed to be lands owned by the beneficiaries under the trust or endowment and each such beneficiary shall be deemed to be a raiyat under the said Act to the extent of the share of his beneficial interest in the said trust or endowment, the deities in question, should be treated as holding the lands as tenants in common and that too, even if no specification of the properties in their favour or their respective shares have been made. In support of such submissions, reference was made by Mr. Motilal to the determinations in the case of Jagdish Chandra Shiha v. State of West Bengal 1980 (2) C.H.N. 264. That was determination under the provisions of West Bengal Estates Acquisition Act, 1953 and there, the circumstances in which an endowment is to be considered exclusively for religious and charitable purposes, have been made mentioned. Their Lordships, in the said determination, have also held that to find out whether there has been an absolute dedication, the nature of the debutter will have to be taken into

consideration and so also, the character of the same. In my view, there cannot be any doubt or dispute about the same. Mr. Motilal also argued that since a family of natural persons do not militate against or in respect of deities of their holdings, so, in terms of the determinations in the case of Bhudan Singh and Another Vs. Nabi Bux and Another, , the determination in this case, was improper. That was a case under the U. P. Zamindari Abolition and Land Reforms Act, 1950 and section 9 thereof or the effect of the same, was construed. On such construction, in the facts of that case, it has been observed that though in fact the vesting of the estates and the deemed settlement of some rights in respect of certain classes of lands or buildings included in the state take place simultaneously in law the two must be treated as different transactions. First there is a vesting of the estates in the State absolutely and free of all encumbrances. Then follows the deemed settlement by the State of some rights with the persons mentioned in sections 6 and 9. Therefore, in law it would not be correct to say that what vested in the State are only those interests not coming within sections 6 or 9., apart from observing that the word "held" in section 9 means lawfully held. It is true that according to the dictionary meaning the word "held" can mean either a lawful holding or even a holding without any semblance of a right such as holding by a trespasser. It is true that the legislature could have used the words "lawfully held" in place of the word "held" in section 9 but one of the dictionary, meanings given to the word "held" is "lawfully held". The word "held" is technically understood to mean to possess by legal title Therefore by interpreting the word "held" as "lawfully held." Court would not be adding any word to the section.

5. Mr. Sankar Mukherjee, appearing for the Respondents, placed the deed in question and on reliance to the terms of the same claimed that since there was no specification of the lands to be held by the concerned deities, so the intention of the maker, as appearing from the concerned deed, must be looked into and such intention was that the deities would hold the lands jointly. He further submitted that for non-specification of the respective holdings or shares of the concerned deities or the lands out of the usufructs whereof, their sevapuja will have to be conducted, the provisions under which, the steps were taken, should be deemed to be the and proper. He also submitted that the Division Bench decision as mentioned hereinbefore which was under the provisions of West Bengal Estates Acquisition Act, 1953 would have no application in the present proceeding, in view of the provisions of section 14J, which lays down that provisions of chapter II B, would override the other provisions of law. The provisions in chapter II B have, now been found to be intransigent in the determination in 1980(4) S. C.C. 716. In fact because of such determinations, Mr. Matilal has not argued on the question of ultravires nature of the provisions in chapter II B and as such, the actions as taken u/s 14M (5), in my view, were also proper.

6. There is no doubt that in the deed itself there is no specification of the separate holding or shares of the deities and it further appears from the account

as filed with the petition, that separate shares, enjoyment or holding of the deities, have not been mentioned by the shebait or such facts have in fact been established. Mr. Das, who assisted Mr. Matilal wanted to contend" that if a shebait has misappropriated, for any in action on his, part, proceeding may be taken against him for misfeasance or malfeasance but because he has filed an account, that will not entitle this Court, to hold contrary to the intention, which will appear from the deed itself. There is no appropriate evidence in this case that there has been mis-statement made by the shebait. At least, if Mr. Das's arguments are correct then the deities in question were also entitled to proceed against such shebait, but they have not done so. Such being the position, and since I find no the basis of the dedication and more particularly when, no definite specification of the holdings or the shares in the properties have been mentioned, the deities in the instant case were appropriately held to be one unit and not four units as darning. In fact considering the character of the dedication, the deities in my view would be entitled to one unit, particularly when, as mentioned above, there is no evidence of separate enjoyment and possession of the properties or the usufructs from them. The above being the position, the Rule is discharged. There will be no order as to costs. As prayed for by Mr. Das, I have it on record that the order will not prejudice the petitioners in exercising their choice.