

(1977) 02 CAL CK 0018
In the Calcutta High Court
Case No : C.R. No. 954 of 1972

State of West Bengal

APPELLANT

Vs

Sm. Jyotsna Bhowmik and Others

RESPONDENT

Date of Decision : 08-02-1977

Acts Referred:

Constitution of India, 1950 — Article 227

West Bengal Estates Acquisition Act, 1953 — Section 44(2)

Citation : AIR 1977 Cal 158 : 81 CWN 514 : (1977) 2 ILR (Cal) 1

Hon'ble Judges : Salil Kumar Datta, J;G.N. Ray, J

Bench : Division Bench

Advocate : P.K. Sen Gupta and S.N. Dutta, for the Appellant; Sk. Tabarak Ali, for the Respondent

Judgement

Salil Kumar Datta, J.—This Rule is directed against an appellate order passed by the Tribunal u/s 44(3) of the West Bengal Estates Acquisition Act whereby the order of the learned R. O. u/s 44(2a) of the said Act of Jadavpur C Camp 3 in Case No. 3 of 1970 was set aside.

2. The facts in brief are as follows:--On 6-8-1970, the Revenue Officer concerned started a suo motu proceeding u/s 44(2a) giving rise to Case No. III of 1970. It was stated in the order initiating the proceeding that whereas it had been brought to his notice that the finally published khatian No. 147 of Mouza Debipurgurguria P. S. Joynagar had not been properly recorded, he directed the Peshkar to put up the relevant papers for his examination on 10-8-1970. On the said date the Revenue Officer recorded as follows:--

"Examined the R. O. Rs. and connected papers and records. I am satisfied that there is prima facie case for starting formal proceeding suo motu u/s 44(2a) of the West Bengal Estates Acquisition Act, 1953 for revision of R. O. Rs. in respect of the khatians concerned."

Thereafter notices were issued and at the hearing some bargadars in respect of

the lands were examined. It was held by the Revenue Officer that a total area of 64.92 acres of land was recorded in the name of Bankim Chandra Bhowmick at a rental of Rs. 168-6-0, During the R. S. operation in respect of the said khatian 12 as 16 gds. share was recorded in the name of (1) Jyotsna Bhowmick, (2) Bijali Bhowmick, (3) Sabyasachi Bhowmick and (4) Chandan Bhowmick each with 3as 4 gds share and the remaining 3as 4gds share were recorded in the name of Bankim Chandra Bhowmick. It was further found that the above 12as 16 gandas were recorded in the names of the said persons who were the two wives of the two sons of Bankim and two of his grandsons. According to the opposite party Deba Prosad Bhowmick, son of Bankim, appeared and stated that his father was the owner of the above lands who executed a registered deed of settlement on 16-10-1952 and by that deed out of the total lands, about 52 acres were given to the two wives of his two sons and his two grandsons and the remaining 3as 4gds share continued to remain with Bankim. Bankim died on 12th April, 1953 before the date of vesting and as a result of vesting this remaining 3 annas 4 gandas were recorded in the name of his sons. The Revenue Officer examined the deed of settlement and found that the intention for the execution of the deed was not properly described therein and in order to evade payment of agricultural Income Tax he might have purported to create this settlement in favour of the family members. The Revenue Officer further recorded that there was evidence on record to prove that the settlor Bankim was in possession of the land till his death which according to him, happened only a few years ago. On the evidence of the bargadars who deposed at the hearing, it was found that all the receipts given to them were in the name of Deba Prosad Bhowmick and others and only from 1375 BS, the names of Jyotsna and others were noted as "malik". The Revenue Officer was of opinion that the beneficiaries under the deed of settlement were not in possession of the land otherwise their names would have been disclosed in the receipts and from the very recitals the deed of settlement appear to be a sham transaction being motivated. Further no satisfactory evidence was adduced to prove the genuineness of the deed of settlement which was found not to have been acted upon. Accordingly by the order dated 29-9-1970 he corrected the record of rights holding the deed of settlement to be a void document and directed that the khatian was to be recorded in favour of the four sons of Bankim each with 4 annas share. The names of the beneficiaries under the deed of settlement were directed to be struck off from khatian No. 147 and the Khanda khatian No. 415 in the name of Jyotsna was treated as cancelled and also was directed to be in ija Khatian of 147. There were further consequential orders recording that as the sons of Bankim were found to possess lands in excess of the ceiling and they did not exercise their right to retain the lands in B Form, the lands were directed to be vested.

3-4. An appeal was taken by Jyotsna and others to the Tribunal and the said Tribunal by its order dated the 16th September, 1971 allowed the appeal holding that the finding of the R. O. A. S. O. that the lands were inherited by the sons of Bankim overlooking the registered deed of settlement was beyond the scope of

an enquiry u/s 44(2a). The appeal, as already stated, was allowed on contest and the decision of the R. O. A. S. O. was set aside. The State has moved against this appellate order under Article 227 of the Constitution on which the present Rule has been issued.

5. During the pendency of the Rule in this Court, there has been far-reaching changes in law by way of amendment to the Constitution. By the Constitution (Forty Second Amendment) Act, 1976 which received the assent of the President on 18-12-1976 there has been substantial amendments to Article 227 of the Constitution. The amendments brought out by Section 40 are as follows:--

40. In Article 227 of the Constitution--(a) for Clause (1), the following clause shall be substituted, namely:--

"(1) Every High Court shall have superintendence over all courts subject to its appellate jurisdiction.";

(b) after Clause (4), the following clause shall be inserted, namely:--

(5) Nothing in this article shall be construed as giving to a High Court any jurisdiction to question any judgment of any inferior court which is not otherwise subject to appeal or revision."

A question arose in course of hearing as to whether the amendment is prospective or has to be considered as having a retrospective effect so as affect pending proceedings- Mr. P. K. Sen Gupta, learned Government Pleader submitted that the amendment brought to Article 227 of the Constitution u/s 40 is prospective in absence of any express provision or clear intention to indicate that it is to be deemed as retrospective. It has been laid down in Maxwell's Interpretation of Statutes, 12th Edition, page 220 as follows:--

"In general, when the substantive law is altered during the pendency of an action, the rights of the parties are decided according to the law as it existed when the action was begun, unless the new statute shows a clear intention to vary such rights."

Section 6 of the General Clauses Act, 1897 also preserves the previous operation of any enactment so repealed as also a right accrued thereunder unless a different intention appears in the new enactment repealing earlier provisions. We may mention here as has been pointed out by Mr. Sen Gupta that there has been substantial changes in respect of Article 226 also u/s 38 of the said Act. These changes have been made retrospective as will appear from the provisions of Section 58 (1) of the Constitution (Forty-second Amendment) Act, 1976 Section 58 provides as follows:

Section 58-- (1) Notwithstanding anything contained in the Constitution, every petition made under Article 226 of the Constitution before the appointed day and pending before any High Court immediately before that day (such petition being referred to in this section as a pending petition) and any interim order (whether

by way of injunction or stay or in any other manner) made on, or in any proceedings relating to, such petition before that day shall be dealt with in accordance with the provisions of Article 226 as substituted by Section 38.

(2) In particular and without prejudice to the generality of the provisions of Sub-section (1) every pending petition before a High Court which would not have been admitted by the High Court under the provisions of Article 226 as substituted by Section 38 if such petition had been made after the appointed day, shall abate and any interim order (whether by way of injunction or stay or in any other manner) made on, or in any proceedings relating to, such petition shall stand vacated....."

It may also be remembered that when any retrospective effect was intended to be given to any provisions of the Constitution, the Constitution Amendment Acts expressly provided for such retroactive operation. Reference may be made to Articles 19(2) and 31-A(1) for purpose of illustration as also to other statutes. There is no express provision making the amendment to Article 227 retrospective and we do not find any provision whereby it can be held that by implication the provisions of the section of the said Articles have been made retrospective. In this view of the matter, we are of the opinion that the amendment to Article 227 are not retrospective and will not affect the proceedings pending in this Court on 1st February, 1977 when the amendment was brought into effect. The right to move the High Court against orders of Tribunals under Article 227 is a substantive right and can only be taken away by express provision of the new statute or by a clear intention to vary such rights which is not the case here.

6. We shall now consider the case on merits. It appears from a perusal of the order sheet of the Revenue Officer that on examination of the connected papers and records he was satisfied that there was a prima facie case for starting a suo motu proceeding u/s 44(2a). The records of the case were produced before us and as far as we can see therefrom there were no materials on record to indicate that there was a prima facie case for starting a formal proceeding. We therefore do not find that there was any ground for satisfaction of the Revenue Officer to initiate proceedings u/s 44(2a).

7. It will be seen that the evidence of the bargadars influenced the decision of the Revenue Officer to a great extent. The bargadars stated that they delivered the landlord's share of crop to the Manager of Bankim Chandra Bhowmick. That has led the Revenue Officer to conclude that there was no actual possession taken of the lands by the beneficiaries and the deed of settlement was not acted upon. The mere fact that the landlord's share of crops was being received by the Manager does not by itself indicate that the lands were not in possession of the land settlers under the deed. We may refer in this connection to the decision in Kanakarathanammal Vs. V.S. Loganatha Mudaliar and Another, in which the Court observed that the rent was paid by the tenant and accepted by the appellant's father. It was held that would be consistent with what ordinarily happens in such matters in an undivided Hindu family. If the property belongs to the wife and the

husband manages the property on her behalf, it would be idle to contend that the management by the husband of the properties is inconsistent with the title of this wife to the said proper-ties. The court further observed that what has been said about the management of the properties would be equally true about the actual possession of the properties, because even if the wife was the owner of the properties, possession may continue with the husband as a matter of convenience. We are accordingly of opinion that the bargadars evidence is not sufficient for holding that the properties were in possession of the original settlor or his heirs and that the document was not acted upon. It may further be noted that the deed of settlement was of October 16, 1952 long before the date even provided u/s 5-A and it could not be said that the settlement was a sham transaction to defeat the provisions of the Act without sufficient evidence,

8. It will further be seen that the Revenue Officer was of the view that Bankim retained possession of the land for years till his death only a few years ago. The judgment of the Revenue Officer is of 1970 and as we have already seen, it is now the admitted position that Bankim died on 12th April, 1953. The learned Revenue Officer therefore was under the impression that Bankim was alive long after the settlement till few years before the passing of the order and that he was in possession thereof" during the period which had thus no factual basis. For all these reasons we are unable to sustain the order of the Revenue Officer. The Rule accordingly fails and is discharged. There will be no order as to costs.

G.N. Ray, J.

9. I agree.