
(1964) 09 CAL CK 0010

In the Calcutta High Court

Case No : Civil Revn. No's. 533 to 535 (W) of 1962

Surendra Nath Sinha Roy

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 28-09-1964

Acts Referred:

Constitution of India, 1950 — Article 226, 31B

West Bengal Estates Acquisition Act, 1953 — Section 2(1), 20(2), 5A

Citation : AIR 1965 Cal 539

Hon'ble Judges : D. Basu, J

Bench : Single Bench

Advocate : S.K. Das, Dipti Kana Bose and B.C. Roy, for the Appellant; B.C. Datta, Addl. Govt. Pleader and S.C. Bose, for the Respondent

Final Decision : Dismissed

Judgement

D. Basu, J.—These are three petitions under Article 226 between the same parties, involving common points, which have been heard together.

2. The Petitioner's case is that he and his uncle Ganesh (Respondent No. 5) owned lands in East Pakistan, which were exchanged with the properties of one Jahiruddin, situated in Jalpaiguri in West Bengal, in May, 1950 and the parties took possession of the respective lands since then including the disputed lands which were acquired by the Petitioner by that exchange. The deed of exchange, however, was executed by Jahiruddin in favour of Ganesh alone and Jahiruddin also executed an amuktarnama in favour of Ganesh, about the same time. In March, 1952, Ganesh executed a deed in favour of the Petitioner declaring that whatever interest Ganesh had acquired in the disputed lands would vest in the Petitioner.

3. The Petitioner states that by reason of the fact that the deed of exchange stood in the name of Ganesh alone, the Revenue Officer recorded the disputed lands in the name of Ganesh. In July, 1960, a notice u/s 5A of the West Bengal Estates Acquisition Act (hereafter referred to as "the Act"), which is at Ann. A to

the petition was served on the petitioner as transferee. Overruling the contention of the petitioner, the Revenue Officer held the transactions in favour of the petitioner by Ganesh not to be bona fide and annulled the same by his order at Ann. B. The petitioner's appeal to the Special Judge having been dismissed (Ann. C), this petition has been brought, challenging the order of the Special Judge on the ground that it is vitiated by want of jurisdiction, error of law patent on the face of the record and other grounds which will be dealt with by me in their proper places. The Revenue Officers--Respondents 3 and 4--oppose this petition.

4. I. It is not disputed that the registered deed of exchange which comprises the disputed lands stands in favour of Ganesh alone. Ganesh executed unregistered pattas in favour of the petitioner in the year 1952. The transaction of lease purported to be effected by these pattas has been annulled by the Special Judge u/s 5A. Now, Sub-section (1) of Section 5A enables the State Government or its delegate to cancel a transfer only where it has been made between two dates specified therein, namely, the 5th May, 1958 and the 14th April, 1955.

5. The Revenue Officer and the Special Judge have held that though the unregistered pattas bear a date anterior to the statutory date, the transfer was in fact effected after the statutory date, in order to defeat the Act and to enable the transferor to retain more land than what was allowed by the statute. In coming to this conclusion, the Special Judge relied upon the following circumstances:---

(a) If the leases had taken place in 1952 as the unregistered pattas purport to show, there was a reason why the Settlement authorities who held field inquiry in the early part of 1955 did not find the petitioner in possession of the disputed lands.

(b) Even though tenancy in respect of agricultural lands might be created by unregistered instrument the unregistered pattas are ex facie sham transactions, since though they profess to be pattas, no rent is recited therein. Bearing in mind that the petitioner is a nephew of the transferor and the documents are unregistered, it was highly probable that they were ante-dated, in order to defeat the statute, particularly inasmuch as the rent receipts and other unregistered papers produced to support the pattas could not be identified with the disputed lands.

6. These are findings of fact which are conclusive and it has been rightly contended on behalf of the respondents that this finding cannot be reopened under Article 226. particularly when the finding of the Special Judge could be challenged by taking a statutory appeal to this Court under Sub-section (2) of Section 20 of the Act: vide N.T. Veluswami Thevar Vs. G. Raja Nainar and Others, ; Thansingh Nathmal and Others Vs. A. Mazid, Superintendent of Taxes, .

7. Of course, the finding of fact may be quashed by this Court under Article 226, if it is without jurisdiction or tainted with an error of law patent on the face of the record. The argument of Mr. Das on behalf of the petitioner on the instant point

is that the State Government or its delegate can interfere only where the impugned transfer, on its face, bears a date which is subsequent to the statutory date, and has no jurisdiction to inquire whether the instrument in question was ante-dated. This identical contention was made in C. R. No. 1135-6 (W) of 1961 (Cal) Sushil Kumar Rahut v. State of West Bengal but has been rejected by me. I need not, accordingly, give elaborate reasons to explain why Mr. Das's contention is not acceptable.

8. Suffice it to say that the object of Section 5A of the Act being to prevent sham transactions and collusive devices from defeating the object of the Act, Section 5A would be meaningless unless the Inquiring Authority has also the jurisdiction to determine whether an alleged transaction has been ante-dated, for, ante-dating is one of the devices to give a sham transaction a colour of reality and to take away the disputed transfer from the purview of Section 5A. The words "prima facie reasons for believing that such transfer was not bona fide" in Sub-section (1) are wide enough to give the Inquiring Officer jurisdiction to probe into the bona fides of the impugned transaction from all its aspects and the question whether it has been ante-dated is certainly included in that jurisdiction.

9. This point urged on behalf of the petitioner must, accordingly, fail.

10. II. The next point urged by Mr. Das is that there has, in fact, been no "transfer" as between Ganesh and the petitioner by the unregistered pattas or otherwise, since the petitioner was the owner of the disputed lands by virtue of the exchange which took place in 1950. The Revenue Officers did not accept this contention in view of the fact that the deed of exchange was in favour of Ganesh alone and that the pattas in question in favour of the petitioner were not executed until after two years,--assuming that the pattas bear genuine dates. Apart from that it appears from the Revisional Settlement Records that in those proceedings, the petitioner did not assert title by ownership but only as lessees. The petitioner, of course, produced certain papers before the Revenue Officers to show that the petitioner also owned lands in Pakistan apart from his uncle. The Special Judge held that these collateral documents could not prove the title of the petitioner to the disputed lands by virtue of the exchange referred to.

11. This raises a question of title which cannot be investigated in the instant proceeding. The remedy of the petitioner lies in a suit, if maintainable, for declaration of his title to the disputed lands by exchange, by impleading Ganesh, the State of West Bengal and other interested parties and asking for appropriate relief, so that the State may not be entitled to proceed u/s 5A on the footing that Ganesh was the owner of the disputed lands and that Ganesh has sought to retain the lands, in fraud of the statute, by sham transfers made in favour of the petitioner. This plea must also fail, accordingly.

12. III. The ground that the lands being khas mahal lands, the Act is not applicable to them, was not taken before the Revenue Officers and has not been pressed before me.

13. IV. The other ground taken in the petition is that the status of the transferor Ganesh being that of a raiyat, was not an "intermediary" as defined in the Act, and that the provisions of Ch. VI of the Act, according to which the raiyats were to be deemed to be intermediaries did not come into force at the time when the transfers in question were made. But it appears from the records of the Revisional Settlement produced by the respondents that the interest of Jahiruddin was that of a "madhyasatwadhikari jote", i.e., of a tenure-holder and that Ganesh acquired that interest by the exchange. The interest of the petitioner was shown as that of a raiyat under Ganesh's jote. Ganesh was, therefore an intermediate as defined in Section 2(i) of the Act and not a raiyat. Section 5A would, therefore, be attracted to any transfer made by Ganesh. There is no substance in this contention either.

14. V. The grounds taken to challenge the constitutionality of the Act also cannot stand since this Act has since been included in the Ninth Schedule of the Constitution (by the Constitution (Seventeenth Amendment) Act), and, by reason of Article 31B, this inclusion saves the Act from any attack on the ground of unconstitutionality with retrospective effect.

15. In the result, these applications must be dismissed. Let the Rules be discharged, but without any order as to costs.

16. On the prayer of the learned Advocate on behalf of the petitioner let operation of this order be stayed till the expiry of three weeks after the vacation.