

(1965) 02 CAL CK 0028
In the Calcutta High Court
Case No : C.R. No. 931, 932 and 933 of 1961

Umasashi Chaudhuri and Bholadassi Chaudhuri
Vs
The State of West Bengal

APPELLANT
RESPONDENT

Date of Decision : 24-02-1965

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 227, 31, 31A
Stamp Act, 1899 — Section 2(24)
West Bengal Estates Acquisition Act, 1953 — Section 2, 4, 4(2), 49, 52

Citation : (1966) 1 ILR (Cal) 183

Hon'ble Judges : Gupta, J; Chatterjee, J

Bench : Division Bench

Advocate : Panchanan Choudhuri and Nirmal Chandra Chaudhuri, for the Appellant; N.C. Chakravarty, for the Respondent

Judgement

Gupta, J.—These three Rules arise out of a proceeding u/s 5A of the West Bengal Estates Acquisition Act. 1953.

2. By three registered deeds - dated February 15, 1954, purported to be deeds of settlement, one Benoy Krishna Samanta transferred certain agricultural lands in the district of Burdwan, including homesteads and tanks, to his two daughters, Umasashi Chaudhuri and Bholadassi Chaudhuri. The former got 8.89 acres, and the latter 7.19 acres. These transfers were enquired into by an Assistant Settlement Officer empowered under Sub-section (4) of the aforesaid Section 5A. He found that the alleged Deeds of Settlement were really Deeds of Gift and held the transfers to be not bona fide which consequently stood cancelled under Sub-section (2) of the said section. Appeals preferred by the transferees under Sub-section (6) of the section against the orders passed by the Assistant Settlement Officer were also dismissed except for one minor modification that the transfers, so far as the homesteads were concerned, were saved and declared to be unaffected by the order of cancellation. Dissatisfied with the orders of the Appellate authority dismissing the appeals, the transferees moved this Court under Article 227 of the Constitution, giving rise to the instant Rules; Umasashi

Chaudhuri is the Petitioner in Civil Rules No. 931 and 932 of 1961 and Bhola Dasi Chaudhuri is the Petitioner in Civil Rule No. 933 of 1961.

3. Mr. Panchanan Chaudhuri, learned Advocate for the Petitioners, raised several questions about the scope and applicability of Section 5A of the West Bengal Estates Acquisition Act. These questions are, however, no longer res integra; a Division Bench of this Court has already considered these questions elaborately and answered them in two separate but concurring judgments in the case of *Ambujakshya Banerjee v. The State of West Bengal* Civil Rule No. 189 of 1962 (unreported). The first and, as it appeared, the main, argument of Mr. Chaudhuri for the Petitioners was that the Assistant Settlement Officer was vested with only limited powers for holding an enquiry u/s 5A and had no jurisdiction to construe the impugned documents as Deeds of Gift when the documents themselves were styled as Deeds of Settlement. The next step in the argument on this point was that if the transaction was a settlement, and not a gift, there was no transfer within the meaning of that term as defined in Sub-section (7)(iii) of Section 5A which includes only transfer by sale, mortgage, lease, exchange or gift. In support of his argument Mr. Chaudhuri relied on the definition of "settlement" in Section 2(24) of the Indian Stamp Act. All these arguments were considered in the decision of the Division Bench referred to above. P.B. Mukharji, J., presiding over the Bench, held on this point as follows:

The Stamp Act cannot be of any great assistance to the Petitioner on the true meaning and interpretation of the word "transfer". Whether a transfer is a settlement or gift is to be determined with reference to the substance of the transaction in question. No doubt different rates under the Stamp Act are indicated for gifts and deeds of settlement ; but they, in our view, are not decisive in determining the real question and nature of transfer. The Court is never concluded by the apparent tenor or description of the instrument or by the stamp put on it but is always free to decide this point according to the real nature and substance of the transfer involved... It is to be emphasised that the stamp duty is really and fundamentally a duty on the instrument and not on the transaction itself.

4. We respectfully agree with these observations. The proceedings u/s 5A are quasi-judicial proceedings and the authorities conducting an enquiry under that section perform quasi-judicial functions. It is certainly within their jurisdiction to examine a document, to read between the lines and look beneath the surface to find out its real nature, otherwise the very purpose for which these tribunals have been set up would be frustrated. We have ourselves examined the terms of the deeds in question; there cannot be any manner of doubt that the so-called "settlements" are in reality gifts by the father to his daughters.

5. The next point urged by Mr. Chaudhuri was that the provisions of Section 5A did not apply to raiyati lands. His argument, as summarised in the petitions on which the instant Rules have been issued, is as follows:

The vesting referred to in Section 5A is a vesting made u/s 4 on the 1st, of Baisakh, 1362 B.S. and the raiyati lands have not vested in the State on or before the 1st. of Baisakh, 1362 B.S. and notification regarding vesting of raiyati lands directed vesting of raiyati lands from 1st. Baisakh, 1363 B.S. and this could not be done u/s 4 of the Act. Whatever effect the vesting of raiyati lands on the 1st of Baisakh, 1363 may have, it cannot be a vesting u/s 4 and the Vesting contemplated u/s 5A being a vesting u/s 4, the vesting on 1st of Baisakh, 1363 B.S. cannot come within the meaning of vesting as contemplated by Section 5A.

This aspect of the matter was also considered in the case of Ambujakshya Banerjee v. The State of West Bengal, referred to above in considering a larger question raised in that case that the raiyati lands have not at all vested in the State. P.B. Mukharji, J., in his judgment in the aforesaid case held as follows:

It has been contended before us by Mr. Dutt on behalf of the Petitioners that the raiyati lands are not vested in the Government by this Act. In support of this argument reliance was placed on Section 4 of the Act which only mentioned "All estates and the rights of every intermediary in such estates". Such estate is the only estate which shall be vested in the State free from all encumbrances. Therefore, it was argued that the definition of intermediary u/s 2(i) did not include a raiyat or an under-raiyat. To advance this argument it was contended that that was the reason why subsequent introduction of Sections 49, 52 and in fact the whole of Chapter 6 had to be made specially providing for acquisition of interests of raiyat and under-raiyat.

... The argument was further developed by Mr. Dutt on behalf of the Petitioners by this submission that the raiyati lands, in any event, have not vested in the State by this Act, because Notification u/s 4 cannot be given in respect of raiyati lands after the expiry of the date of vesting, i.e. the 1st Baisakh, 1362 B.S. If this argument of Mr. Dutt is to be accepted, then the whole of Chapter VI would really become absolutely useless and nugatory because when the amendment itself was introduced in the shape of Sections 49 and 52, the date for such Notification had already expired. The Notification u/s 4 of the Act and the Notification u/s 49 of the Act are entirely different kinds and types of Notifications. Notification u/s 4 is for vesting estates and the rights of intermediaries in the State. The Notification 49 is a Notification by which the provisions of Chapter VI of the West Bengal Estates Acquisition Act can be brought into operation in a district or part of a district and for which it expressly provides for the possibility of different dates for different districts.

His Lordship then referring to the terms of Section 4(2) and Section 52 of the Act continued:

Therefore, the Notification u/s 4 becomes applicable mutatis mutandis to raiyats by reason of the express provisions of Section 52 of the Act which must always be deemed to have been there. If the date 1st Baisakh, 1362 B.S. in Section 4(2) of the Act could not be changed then the whole Section 52 would be inapplicable

and will be dead letter.

His Lordship then quoted an extract from an earlier decision of his own, Haranath Ghosh v. The State of West Bengal (1962) 67 C.W.N. 129.

The words "mutatis mutandis" following the word "modifications" make it abundantly clear as to the modification intended u/s 52 of the Act. In other words, the word "modifications" in Section 52 of the Act means contextual adaptation of these Chapters of the Act to the case of raiyats and under-raiyats and not amendment of the substantive provisions and effects of those chapters. The contextual adaptation is only intended to make these chapters applicable to the case of raiyats and under-raiyats.

His Lordship concluded that "the date 1st. Baisakh, 1362 B.S. could be changed u/s 52 read with Section 49 of the Act... We again respectfully agree.

6. In the petitions in the instant cases grounds have been taken, challenging the constitutional validity of Section 5A, though these were not pressed before us. In any event; that question also was considered by their Lordships in the aforesaid decision and it was held that Section 5A does not violate either Article 14 or Article 19(1)(f) or Article 31 of the Constitution and, further, that the section is protected by Article 31A of the Constitution.

7. Another point sought to be argued by Mr. Chaudhuri was that under Sub-section (7) of Section 5A a transfer made in favour of a child of the transferor would not be bona fide, but according to Mr. Chaudhuri, the word "child" implies a minor and, as such, a transfer to an adult son or daughter, as in the present case, would not come within the mischief of the section. We do not think that such an interpretation of the word "child" is warranted either as a matter of language or by anything in the context: on the other hand such interpretation would largely frustrate the purpose for which Section 5A was enacted.

8. Mr. Chaudhuri also sought to raise certain question of fact which cannot be gone into under Article 227 of the Constitution.

9. In the result, the Rules are discharged but without any order as to costs.

Chatterjee, J.

10. I agree.