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Court : Kolkata

Decided On : May-07-1971

Reported in : AIR1971Cal400

Judge : Anil Kumar Sen, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Section 11; ;[West Bengal Estates Acquisition Act, 1953](#) - Section 5A

Appeal No. : Civil Rule No. 741 (w) of 1967

Appellant : Benode Behari Mandal and ors.

Respondent : The State of West Bengal and ors.

Advocate for Def. : P.K. Sen Gupta, Adv.

Advocate for Pet/Ap. : Ganendra Mohon Roy, Adv.

Disposition : Application allowed

Judgement :

ORDER

Anil Kumar Sen, J.

1. This Rule, issued on a writ petition, raises a simple question as to whether an earlier decision rendered by a competent authority in a proceeding under Section

5A of the [West Bengal Estates Acquisition Act, 1953](#) (hereinafter referred to as the said Act) in respect of a particular transfer of a particular land constitutes a bar in law for a same proceeding by the same authority in respect of the same transfer and over the same land.

2. It is not disputed that by a registered deed of Nirupan Patra (a deed of family settlement) dated October 9, 1953 but registered on February 1, 1954 certain lands were transferred by one Fakir in favour of his three sons the present petitioners. The Revenue Officer of Sarenga duly authorised under Section 5A of the said Act, started several proceedings in respect of several plots of land covered by the said deed under Section 5A of the said Act on the basis that the aforesaid transfer is liable to be declared not bona fide. Notice of the said proceedings having been served on Fakir and the present petitioners, they contested the said proceedings. All the proceedings were heard together as the only question involved was as to whether the transfer by Fakir in favour of his sons dated October 9, 1953 was bona fide or not.

2A. After a contested adjudication the Revenue Officer came to the conclusion that as the disputed transfer was a bona fide deed of family settlement; it did not come within the mischief of the provision of Section 5A of the said Act. To quote his finding in part:

'Examined the parties, the deed and the relevant records. It transpires that the transfer in question was made with the bona fide intention to settle disputes among the sons. The deed is a registered Arpannama with a bona fide intention and as such it is not a gift and does not constitute a transfer as contemplated under Section 5A of the Estates Acquisition Act. Hence ordered that the cases be struck out.'

3. This decision was rendered on March 13, 1959 and it is apparent that the Revenue Officer was basing his decision on the provision of Section 5A(7)(iii). It would not be necessary for me to consider whether this particular decision of the Revenue Officer was correct or not in law but it appears to me that there was no appeal against the said decision under Section 5A(6) and the proceeding was finally disposed of on such decision.

4. It is also not disputed now before me that long after eight years a Special Revenue Officer respondent No. 2 similarly authorised under Section 5A of the said Act has again started a fresh proceeding under Section 5A for adjudicating whether the aforesaid transfer dated October 9, 1953 by Fakir in favour of his sons, the present petitioners, in respect of the same lands is bona fide or not. The initial order by which the Revenue Officer assumed jurisdiction and initiated the proceedings is the subject-matter of challenge in this Writ petition.

5. The only point raised in the Writ petition and canvassed before me by Mr. Roy appearing in support of this Rule is that the entire proceeding is beyond the jurisdiction of the respondent No. 2 as it was not open to him to start a fresh adjudication under Section 5A of the said Act which must be deemed to be barred by the earlier decision dated March 13, 1959. It appears that the respondent No. 2, the Special Revenue Officer was conscious of such a possible objection and even in the ex parte order whereby he initiated the proceeding he considered such an issue. He, however, came to the conclusion that as in the earlier proceeding the Revenue Officer concerned had not completed the enquiry it cannot be said that he had passed any final order which alone could invoke the principle of res judicata. Accordingly, he came to the conclusion that he would have still the jurisdiction to readjudicate notwithstanding the earlier decision by his predecessor in office above referred to. It is the correctness and the legality of this decision and the competency of the proceedings which are the subject-matter of challenge by the petitioners.

6. The Rule is being contested by the State. Mr. P. K. Sen Gupta appears on behalf of the respondents to support the order. Facts are, however, not in dispute. Mr. Sen Gupta had tried to support the view taken by the Revenue Officer to the effect that in the facts and circumstances the earlier decision would be no bar to the fresh adjudication.

7. In my view the Special Revenue Officer, respondent No. 2 was in error on the face of the records in holding that the earlier proceedings under the same provision were incomplete and that there was no final order passed therein. He took this view only because in his opinion a proceeding under Section 5A of the

said Act must necessarily end with an order declaring a transfer either bona fide or not bona fide. He further took the view that in the earlier decision there being no declaration that the transfer was bona fide the order was not a final order. I am unable to accept this view of the respondent No. 2. in the first place reading the order dated March 13, 1959 passed in the earlier proceedings I am fully satisfied that rightly or wrongly the Revenue Officer had come to a conclusion that the transfer was bona fide. The order must always be read in its substance and reading the order as a whole if one comes to the conclusion that there is a positive decision that the transfer is bona fide it cannot be said that there is no such decision only because in the ordering portion thereof there is no such declaration. in the second place the Special Revenue! Officer was obviously in error in thinking that a proceeding under Section 5A of the said Act must necessarily end either with a declaration that the transfer is bona fide or it is not. The Special Revenue Officer was overlooking that there are other limitations too in the Section itself. The Section limits itself to transfers effected between May 5, 1953 and the date of vesting, apart from the limitation imposed by the statutory definition of transfer for the purpose of the Section. Therefore, in my view, it would also be necessary for a competent authority while adjudicating a proceeding under Section 5A of the said Act to adjudicate and decide whether the transfer really comes within the mischief of the Section itself. That was exactly what was done in the present case. Even if I assume for a moment that such conclusion was reached erroneously still in my view the decision is binding on the parties unless set aside in an appeal under Section 5A(6) of the said Act. The Statute does not permit successive proceedings on the same transfer and in respect of the same land by the same authority or its successor in office. An issue raised in such proceedings should not be allowed to be reagitated only because the successor in office of the competent authority chooses to dislike or disagree with the view taken by his predecessor. It would not be necessary for me to enter into the wider issue as to whether the actual principle of res judicata as embodied in Section 11 of the Code of Civil Procedure would apply to such an adjudication or not because I am strongly of the opinion that the second adjudication is barred at least on the principle which prevents a case being twice litigated. It is now well recognised that a decision once rendered by a competent authority on a matter in issue between the parties after full enquiry

could not be permitted to be reagitated. Such principle is of general application and is well supported by the legal maxim interest jrei publicae utsit finis litium. Reference may be made to the decision of the Supreme Court in the case of Burn & Co. v. Their Employees, : (1957)ILLJ226SC . It should be noted that application of such principle in proceeding under Section 5A of the said Act is also acknowledged by this Court in the case of Ambujaksha v. The State, ILR (1966) 1 Cal 495.

8. In this view I must accept the contention of Mr. Roy that the respondent No. 2 had no jurisdiction to start a fresh proceeding under Section 5A in view of the earlier decision dated March 13, 1959.

9. On the conclusion as above this application succeeds, the Rule is made absolute. The impugned orders are set aside and the proceeding initiated afresh under Section 5A of the [West Bengal Estates Acquisition Act, 1953](#) by respondent No. 2 is hereby quashed.

10. Let a Writ of certiorari do issue accordingly.

11. There will be no order for costs,