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Court : Kolkata

Decided On : Sep-10-1971

Reported in : AIR1972Cal455,76CWN149

Judge : Anil Kumar Sen, J.

Acts : West Bengal Estates Acquisition Act, 1954 - Section 44(2) and 44(3); ;
[Constitution of India](#) - Article 226; ;Tenancy Law

Appeal No. : Civil Rule No. 6658(W) of 1968

Appellant : Ramesh Ch. Sood

Respondent : A.S.O. Sub-division, Ranaghat and ors.

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

Advocate for Pet/Ap. : S.N. Ghorai, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Anil Kumar Sen, J.

1. In this Rule the petitioner is challenging an order dated August 2, 1968 passed in a proceeding initiated suo motu under Section 44(2a) of the West Bengal

Estates' Acquisition Act, 1953 (hereinafter referred to as the said Act).

2. There is no dispute that the disputed land appertaining the several khatians stands recorded in the name of the present petitioner in the finally published record-of-rights. A proceeding under Section 5-A of the said Act was unsuccessfully initiated in or about June, 1968, but as the transfers had taken place long prior to May 5, 1953, such proceeding was dropped. But immediately thereafter a suo motu proceeding under Section 44(2a) was instituted by the Assistant Settlement Officer and a notice dated July 17, 1968 was issued on the petitioner. This notice however discloses no ground for exercise of powers under Section 44(2a) but only reads as a notice fixing a date of hearing. It recites that whereas an application has been filed under Section 44(2a) and whereas the said application has been fixed for hearing on July 22, 1968, therefore the petitioner is directed to appear to show cause if any. The petitioner appeared and he was called upon to support the entries in his favour. He produced certain documents of purchase of some of the disputed plots from different persons all effected in the year 1947 and 1952. The Assistant Settlement Officer however came to the conclusion that such purchases were made benami by the father of the petitioner in petitioner's name. On such finding he directed deletion of the name of the petitioner in respect of the disputed plots and instead thereof directed such land to be recorded in the name of petitioner's father. This was the order which was passed on August 2, 1968 and which is the subject-matter of challenge in this Rule.

3. Mr. Gorai appearing in support of this Rule has raised two points in support of his contention that the impugned order is wholly without jurisdiction. In the first place. Mr. Gorai contends that if the proceeding was initiated on any application as indicated by the notice, then it is clearly barred by limitation as prescribed by the Act; if on the other hand, the proceeding was initiated suo motu the notice falls short in not disclosing any ground or reason why such a proceeding was initiated and it does not indicate why or in what manner the finally published record-of-rights need any revision. Secondly Mr. Gorai contended that the Assistant Settlement Officer had no jurisdiction in law to enter into the question of title in the manner done by him.

4. The Rule is being contested by the respondents who have filed an affidavit-in-opposition and Mr. P. K. Sengupta is appearing to support the order.
5. In my view both the contentions raised by Mr. Gorai are of great substance. It is not disputed that if initiated on an application the proceeding is barred by limitation prescribed by the Act. The respondents themselves in their affidavit therefore claim the proceeding to be one initiated suo motu. Unfortunately the notice discloses no ground why such a proceeding is being initiated. Nor does it indicate why or in what manner the finally published record needs revision. Except describing the notice as a notice of a proceeding under Section 44(2a) there is nothing in the notice to indicate that it is a proceeding for revision of finally published record-of-rights. This Court has repeatedly held following the decision of the Supreme Court in the case of *Swastik Oil Mills v. H. B. Munshi*, : [1968]2SCR492 that no proceeding under Section 44(2a) can competently be initiated except by disclosing some grounds for exercise of such suo motu powers. It is but a part of the principles of natural justice that a man must be told as to why or in what manner or for what reason the records standing in his favour are to be revised. Or in other words, he must know the case which he is to meet in the proceeding. A proceeding which is initiated in breach of this minimum requirement is not in accordance with law. At the hearing my attention has been drawn to an ex parte order recorded on July 13, 1968 which led to the initiation of the proceeding. This order indicates that the Assistant Settlement Officer formed an opinion that the son (the petitioner) had been inducted only as a benamdar in order to retain more land than what is allowable for retention by the father and it was therefore necessary to enquire into the right, title and possession of the lands recorded in the name of the son. In my view if the proceeding was initiated only to adjudicate the title of the petitioner vis-a-vis the father to find out whether son is the real owner or merely the benamdar for the father or not it was not within the jurisdiction of the Assistant Settlement Officer to hold any such adjudication. On the other hand, if it was initiated to make a roving enquiry and call upon the petitioner to support the entry which on final publication stands in his name it was also beyond the jurisdiction of the Assistant Settlement Officer. Of course, it would be within his jurisdiction to be prima facie satisfied that the land never belonged to the petitioner or was not in his possession and the entry as it stands is erroneous so that it

should be corrected. But in the present case the proceeding was not initiated on any such prima facie decision. For these reasons I must accept the first contention of Mr. Gorai that the proceeding was not lawfully initiated.

6. The second contention of Mr. Gorai is of equal importance. The impugned order indicates that the Assistant Settlement Officer straightway went in to adjudicate the title. Upon his findings documents so far produced indicated that many of these plots were purchased between 1947 and 1952 from third parties by registered deeds in the name of the petitioner. The rent receipts prior to vesting were not produced but the rent receipts for the subsequent period were produced to show payment of rent in respect of most of these plots by the petitioner. The Assistant Settlement Officer however found that when these plots were purchased at a time when the petitioner was minor and when the petitioner was living in the same mess with his father these plots must have been purchased by the father in the benami of his son. Unfortunately not only the records but also the documents so far disclosed stand in the name of the petitioner. None of the parties including the State for over ten years disputed the title of the petitioner. The question is whether the Assistant Settlement Officer had any authority to question the title and then decide it in the manner done by him. In my considered opinion he is not entitled to do so. In doing so he would be usurping the function of the ordinary Civil Court. The powers conferred by Section 44(2a) must be adjudged in the light of the provisions of Sections 39 to 43 and Rule 26 of the rules framed under the Act. None of these provisions in any manner indicate that either the Revenue Officer or the Assistant Settlement Officer is given any authority to launch an adjudication purely on title. On the other hand. Rule 6 of Schedule B to the rules clearly indicates that the question of title can be gone into only in a summary manner and when any dispute is raised as to title the Revenue Officer must proceed on the basis of possession. These rules read in the light of the statutory provisions clearly indicate that the legislature never intended to transfer a part of the Civil Court's jurisdiction to these settlement authorities in adjudicating pure issues of title. Whether the ostensible owner is the real owner or benamdar is a disputed question both of law and facts and involve consideration of various materials which can in my view never properly be adjudicated by either a Revenue Officer or an Assistant Settlement Officer and in a proceeding either under Section 44 or

44(2a). It is for this reason that the rules have indicated that even where any such dispute as to title is raised the Settlement Officer or the Revenue Officer must proceed on the basis of possession and leave the parties to have their title adjudicated in a Civil Court

7. The Assistant Settlement Officer having thus decided the title against the petitioner had gone over to consider possession. In so doing he relied on an enquiry report by a Revenue Officer. Such report again on the statement of the Enquiring Officer is based upon an impression gathered by him on examination of local witnesses that it was the father who was possessing the lands. Such witnesses were not examined in this proceeding. Where the father and son live together as in the present case normally it would be difficult to distinguish who is actually in possession and possession must naturally follow the title. In any event witnesses were not examined in the proceeding but witnesses were examined by a Revenue Officer who carried the impression to the Assistant Settlement Officer and the Assistant Settlement Officer on such impression held against the petitioner. No doubt the Assistant Settlement Officer also relied on the entries as in the Khasra khatian as also certain B Form returns filed by the father. The Khasra khatian however is one which was prepared before attestation and in the absence of any evidence that the final entry as made after attestation suffers any particular error, the Khasra khatian cannot override the final publication. Nor does any error or irregularity in the returns submitted by the father affect the petitioner's title or the records standing in his name. In any event reading the order as a whole I have no manner of doubt that the Assistant Settlement Officer has passed the final order substantially on his findings on the title which he had gone into without any jurisdiction. In this view the second point raised by Mr. Gorai must also succeed.

8. An objection was taken that the impugned order being appealable under Section 44(3) this Court should not in exercise of its writ jurisdiction set aside such an order when no appeal was preferred under the statute. In my view when on the findings made hereinbefore the proceeding is beyond the jurisdiction of the Assistant Settlement Officer and is also violative of the ordinary principles of natural justice petitioner's not preferring an appeal under Section 44(3) would not debar this Court from interfering in this jurisdiction.

9. On the conclusions as above this application succeeds. The impugned order is hereby set aside. The Rule is made absolute.

10. Let a Writ in the nature of Certiorari do issue quashing the aforesaid proceeding and the final order passed therein.

11. I further direct that the security deposited by the petitioner with the Collector of Nadia should now be refunded after adjustment of his dues to the State. There will be no order as to costs.

12. Nothing said in this order will prevent the respondents from taking any steps that they may be entitled to take in accordance with law.

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