

Basudev Mondal and ors. Vs. State of West Bengal and ors.

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Court : Kolkata

Decided On : Sep-09-2004

Reported in : 2005(4)CHN184

Judge : Alope Chakrabarti and ;Aniruddha Bose, JJ.

Acts : [West Bengal Estates Acquisition Act, 1953](#) - Sections 5A, 5A(2), 44(2), 44(3), 45, 57 and 57A

Appeal No. : W.P.L.R.T. No. 173 of 2001

Appellant : Basudev Mondal and ors.

Respondent : State of West Bengal and ors.

Advocate for Def. : H.K. Basu and ;Soma Roy Chowdhury, Advs.

Advocate for Pet/Ap. : Santimoy Panda and ;Lalit Mohan Mahato, Advs.

Disposition : Petition allowed

Judgement :

Alope Chakrabarti, J.

1. Sometime in the year 1941 one Kachimuddin Gharami purchased about 344.55 acres of lands recorded in R.S.Khatian No. 176 of Mouza Sonakhali, J.L. No. 134, P.S. Canning out of L S. Khatian No. 220 from one Abdul Gani by a registered

deed of sale dated 10th July, 1941. Out of the said lands, said Kachimuddin transferred about 73.48 acres in favour of eight persons by executing eight unregistered Amalnamas between 1355 B. S. and 1356 B.S. and since then the transferees were and are possessing the land on payment of rent regularly to their said landlord against receipts.

2. Kachimuddin Gharami again transferred his entire properties including the properties settled as aforesaid in favour of five sons by executing a registered deed of family settlement on 7th September, 1954.

3. Md. Elahi Bux son of Late Kachimuddin Gharami also purchased 33.20 acres of land by registered deed of sale on 5th May, 1943 from one Jelapjan Bibi who transferred about 11.23 acres of land in favour of Abdul Gani Naskar and Amud Ali Gharami in the year 1356 B.S. by executing Amalnama in their favour against rents.

4. A proceeding under Section 5A of the [West Bengal Estates Acquisition Act, 1953](#) was initiated in the year 1956 against the said Kachimuddin Gharami for holding an enquiry against his said transfers in favour of his five sons and in the final order under Section 5A(2) the proceeding by said Kachimuddin Gharami was declared as not bona fide and as such stood cancelled.

5. Yunus Ali Gharami and seven others who were holding Amalnamas issued by the said Kachimuddin Gharami made application for correction of the entries in the records-of-rights and for recording their names as tenants in view of the Amalnamas granted to them.

6. Revenue Officer recorded the said Amalnama holders as tenants under the said Kachimuddin Gharami and Elahi Bux Gharami and new khatians were opened accordingly.

7. In the year 1966 a proceeding under Section 44(2a) of the West Bengal Estates Acquisition Act was initiated in respect of the aforesaid lands by another Revenue Officer for ascertaining the correctness of the said records-of-rights in respect of the predecessor-in-interest of the present petitioners and by order dated June 13,

1966 the said Revenue Officer held that the tenancies were created long before the period under Section 5A of the said Act.

8. The Revenue Officer again initiated another suo moto proceeding under Section 44(2a) and served notices to that effect in respect of the self-same lands. Said notice was challenged by the petitioners in writ jurisdiction of this Court which was finally disposed of by a learned Single Judge who quashed the said notice challenged in the writ petition. It was further held that so long as the said order under Section 44(2a) dated 13th June, 1966 remains in force, the respondents were precluded from starting a second enquiry under the said provisions in respect of the same subject-matter particularly when no appeal was preferred against the said order under Section 44(2a).

9. Petitioners purchased the said lands in the year 1975-1976 in Mouza Sonakhali, R.S.Khatian Nos. 623 to 630 from the said eight Amalnama holders for value by registered deeds of sale.

10. The Revenue Officer initiated a further proceeding under Section 44(2a) suo moto read with Sections 57 and 57A of the West Bengal Estates Acquisition Act and notices were served upon the petitioners for holding further enquiry.

11. Petitioners appeared before the Revenue Officer in terms of the said notice and filed an application stating that in view of decision of the Hon'ble Court on the self-same matter the Revenue Officer has no jurisdiction to proceed with the said case and the proceeding is not maintainable and should be dropped. But the said application was rejected by holding that he had jurisdiction to proceed with the said proceeding. Challenging the said order dated 15th February, 1984 the petitioners along with others moved the writ jurisdiction of this Court in Civil Order No. 9526(W) of 1987. The said Civil Order was allowed by judgment and order dated 19th September, 1991 quashing the impugned proceeding and the orders made therein.

12. Thereafter, again the Block Land and Land Reforms Officer, Basanti initiated another proceeding on 23th May, 1994 and ultimately on 17th February, 1995 the Revenue Officer passed an order reviewing the earlier order passed under Section

44(2a) and Khatian Nos. 623 to 630 were merged with Khatian No. 200 of Sonakhali which is a vested Khatian and Khatian Nos 623 to 630 were cancelled. Challenging the said order again a writ petition was moved giving rise to C.O. No. 13750 (W) of 1996 which was ultimately transferred to the West Bengal Land Reforms and Tenancy Tribunal. Learned Tribunal by its order dated 19th May, 2000 asked the petitioners to avail of the remedy of appeal under Section 44(3).

13. Against the said order of the learned Tribunal dated 19th May, 2000 WPLRT No. 343 of 2000 was moved which quashed the order impugned in the proceeding and the matter was remitted to the Tribunal for consideration of the matter afresh.

14. Learned Tribunal by its order dated 31st January, 2000 upheld the decision of the Revenue Officer and dismissed the transferred application along with C.O. No. 13750(W) of 1996. Being aggrieved the present writ petition was filed.

15. On behalf of the petitioners contention has been made that by repeated judgments of writ jurisdiction fresh proceeding under Section 44(2a) was prevented and still then exercising the power under the said provisions impugned order was passed which has since been approved by the learned Tribunal and this has been done overlooking final judgment of this Court in writ jurisdiction making the legal position clear.

16. On behalf of petitioners Mr. Santimoy Panda, learned Counsel for the petitioners and Mr. H.K.Basu, learned Counsel for the respondents were heard at the time of final hearing of this writ petition when contentions have been made by respective parties relying on the scope of legal position in view of judgments passed from time to time by learned Single Judges of this Court in repeated writ proceedings against repeated attempts to initiate proceedings under Section 44(2a) on same facts.

17. On consideration of materials on record, we find that Case No. 78 of 1966 was initiated under Section 44(2a) and by order dated 13th June, 1966 the said case was decided with a direction that case was dropped and no correction of records-of-rights was considered necessary. This proceeding related to the lands of Kachimuddin Gharami, transferred by Amalnamas.

18. Proceeding under Section 5A of the [West Bengal Estates Acquisition Act, 1953](#) was in respect of the transfer of lands by said Kachimuddin Gharami in favour of his five sons and this proceeding was held not bona fide and stood cancelled. This proceeding has nothing to do with regard to creation of relationship by executing Amalnamas in favour of tenants.

19. Writ petition being C. R. No. 1368 (W) of 1979 was filed against the judgment and order dated 13th June, 1966 passed under Section 44(2a). This writ petition was decided finally by a learned Single Judge by order dated 15th July, 1983 holding that against the order dated 13th June, 1966 neither any appeal nor any review or any other proceeding was taken up and therefore, the respondents precluded from starting a second enquiry so long the first order under Section 44(2a) remains in force. But it was held therein that by the said judgment no observation was being made about correctness of maintainability of the said order under Section 44(2a) dated 13th June, 1966 and in the event any proceeding is started in respect of the said order the petitioners would be at liberty to contest the same. Notice impugned in the said proceeding was quashed.

20. Notice was directed to be issued on 27th January, 1984 in respect of a proceeding initiated under Section 57A of the Act for review of order dated June 13th 1966 and by final order dated 27th January, 1984, order dated 13th June, 1966 was cancelled holding that order under Section 5A cannot be modified under Section 44(2a) or Section 45.

21. Challenging the aforesaid order dated 27th January, 1984 writ petition was filed whereupon Civil Order No. 9526 (W) of 1987 was initiated. This proceeding was decided by a learned Single Judge on 19th September, 1991, whereby the writ petition was allowed upon holding that result in Section 5A proceeding in respect of the transfer in favour of sons of the Bux rival cannot bind the settlees in settlement by Amalnamas which took place much before the period under Section 5A and on such finding the order on review was quashed both on merit as also on the ground of inordinate delay. A purported proceeding was initiated by Block Land and Land Reforms Officer on 23rd May, 1994 purporting to comply with the order of the Hon'ble High Court passed in C.O. No. 9526 (W) of 1987. But on perusal of

the judgment of the learned Single Judge deciding Civil Order No. 9526 (W) of 1987 it appears that it does not show that any proceeding was directed to be initiated in the said judgment. There was no occasion for the said authority to initiate a proceeding in purported compliance of the order of the High Court. The Misc. Case No. 7 of 1994 being the said proceeding was decided by final order dated 10th February, 1995 holding that no Amalnamas was issued by Kachimuddin Gharami in favour of the recorded tenants of Khatian Nos. 623 to 630 in the 1355 B.S. and there was ample scope to believe that Kachimuddin Gharami holding lands ranch above the ceiling transferred the suit land in favour of recorded tenants after introduction of WBEA Act and before the date of vesting to evade the ceiling provision. It was directed that as no order had yet been issued against the order of Section 5A proceeding, it would stand and Khatian Nos. 623-630 would be merged in Khatian No. 200 which is a vested Khatian and Khatian Nos. 623-630 will be cancelled.

22. When this order was challenged before learned Tribunal the proceeding was disposed of directing the petitioners to prefer appeal under Section 44(3). This order when was challenged before the Division Bench of this Court in WPLRT No. 343 of 2000, by the order dated 21st June, 2000, the matter was remanded back to Tribunal to consider whether the order was ex facia without jurisdiction Tribunal decided the transfer application No. 382 of 2000 accordingly and dismissed the same upholding the order of the Revenue Officer in Misc. Case No. 7 of 1994 and this order of the learned Tribunal is under challenge.

23. Considering the aforesaid, we find that initiation of the Misc. Case No. 7 of 1994 itself was wrongful as it was a purported, compliance of a direction of the learned Single Judge in C.O. No. 9526 (W) of 1987 though no such direction was given by the said judgment.

24. Moreover, while considering the orders passed in Misc. Case No. 7 of 1994 it does not appear that Block Land and Land Reforms Officer exercised power under any statutory provision. Admittedly, enquiry under Section 44(2a) and the decision thereof dated 13th June, 1966 has been held to have reached a finality. Challenge to the same in a review proceeding has been held to be barred by

inordinate delay apart from merit by the learned Single Judge in C.O. No. 9526 (W) of 1987. Therefore in such factual background, there was no power vested in Block Land and Land Reforms Officers in reopening the issues already settled. Order of the learned Tribunal impugned having not considered the aforesaid aspects, is liable to be set aside. It appears that neither the Block Land and Land Reforms Officer nor the learned Tribunal took note of the fact that the order under Section 5A holding the transfer to be not bona fide and as such cancelled, was relating to transfer by Big raiyat in favour of his five sons and that proceeding had nothing to do with interest created long before the mischief period of Section 5A in favour of tenants by Amalnamas which was the subject-matter of consideration in Section 44(2a).

25. In above view of the matter, the impugned order cannot stand and is . hereby quashed proceeding initiated by Block Land and Land Reforms Officer in the said proceeding is also quashed. The writ petition is thus allowed.

Aniruddha Bose, J.

26. I agree.

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