

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
(Appellate Side)

F.M.A 300 of 1995

Sri Sambhu Charan Ghosh Mallick

Vs.

State of West Bengal & Ors.

Before: The Hon'ble Justice Arijit Banerjee

&

The Hon'ble Justice Apurba Sinha Ray

For the Appellants : Mr. Saktinath Mukherjee, Sr. Adv.
Mr. Bidyut Baran Biswas, Adv.
Mr. Saibal Acharya, Adv.
Mr. Ranjit Rath, Adv.
Mr. Alok Chakraborty, Adv.

For the State : Mr. Tapan Kumar Mukherjee Adv.
Mrs. Saheli Mukherjee, Adv.

Heard On : 14.09.2022, 28.09.2022, 11.11.2022,
28.11.2022 & 29.11.2022

CAV On : 29.11.2022

Judgment On : 20.12.2022

Arijit Banerjee, J.:

1. This is an appeal against a judgment and order dated December 2, 1987 passed by a learned Single Judge in Civil Rule No. 6536(W) of 1978.

2. The predecessor-in-interest of the appellant owned and possessed 23.80 acres of agricultural land and 13.34 acres of non-agricultural land in the State of West Bengal.

3. A notice was issued by the Junior Land Reforms Officer, Habra, to the predecessor-in-interest of the appellant, under Section 10(2) of the West Bengal Estates Acquisition Act. Sections 10(1) & (2) of the said Act are set out hereunder:-

“(1) Upon the publication of any notification under Section 4, the Collector shall take charge of estates and interests of intermediaries which vest in the State under Section 5.

(2) For the purpose as aforesaid, the Collector may, by a written order served in the prescribed manner, require any intermediary or any person in possession (khas or symbolical) of any such estate or of any such interest, to give up such possession by a date to be specified in the order (which shall not be earlier than sixty days from the date of service of the order) and to deliver by that date any documents, registers, records and collection papers connected with the management of such estate or of such interest which are in his custody and to furnish a statement in the prescribed form in respect of such estate or such interest.”

4. The predecessor-in-interest of the appellant challenged the notice by filing Civil Rule No. 2124 (W) of 1968. The said writ petition was disposed of

by a judgment and order dated July 18, 1972, the relevant portion whereof is set out hereunder:-

“The main point in the Rule is whether the lands in respect of which the impugned order under Section 10(2) has been made are vested lands or not. In case the petitioner was entitled to retain them, and in fact had exercised his option in this behalf, the Junior Land Reforms Officer acting as Collector under Section 10(2) of the Act cannot call upon the petitioner to deliver possession of the lands mentioned in the said order. Even if no option was exercised in respect of such of the lands of the petitioner as came within the category of clauses (c) and (d) of sub-section (1) of Section 6 the respondents are bound to give further opportunities to the petitioner to exercise his option even if they did not filed any return in due time. The State has not filed any affidavit in the instant case. Therefore, the materials on record are not sufficient to determine whether the lands included in the impugned order under section 10(2) were liable to vest in the State. Accordingly, I have decided to dispose of the rule in the following manner.

The petitioner would be at liberty to make representation to the respondent no. 4 or his successor in office within two months from this day regarding his right to retain the lands included in the notice under section 10(2) in terms of Section 6(1) read with Section 6(5) of the West Bengal Estates Acquisition Act.

Thereupon, the respondent no. 4 will decide whether the lands in respect of which order under Section 10(2) was made were retainable by the petitioner and whether he should be allowed to retain the same. Further, the said Authority shall determine whether the lands in question have vested in the State or not. In case it is found that the lands have not vested in the State and the petitioner is entitled to retain them, the respondents will not give any further effect to the order under Section 10(2). On the other hand, if the said Authority finds that the lands have vested in the State and the petitioner, was not entitled to retain them, the order under Section 10(2) shall be given effect to in accordance with law. I do not decide whether the lands have vested in the State or not. Therefore, after the determination by the respondent no. 4 both parties will be entitled to proceed in accordance with law.”

5. Pursuant to the aforesaid order, the Junior Land Reforms Officer, Habara-II passed an order dated July 31, 1975, the material portion whereof is set out hereunder:-

“So the agricultural lands as shown and claimed by the petitioners measuring 16.72 acres including 10(2) notice lands in annexure ‘B’ as well as the transferred agricultural lands measuring 7.08 acres shown above and mentioned in the 10(2) notice are retainable under section 6(1) of the EX Act and cannot be vested lands.

So far non-agricultural lands are concerned the petitioner is entitled to retain 15.00 acres as per 6(1) of the EA Act. He has claimed possession of 13.34 acres which includes 5.06 acres as covered under 10(2) notice lands. And that they have been shown at the bottom of page 3 at page 4 of annexure 'C'. No transfer of non-agricultural lands has been made by the petitioners as appear from scrutiny of records so the non-agricultural lands as claimed by the petitioners are retainable lands by him as such these are not vested under the E.A Act.

Hence ordered that no further effect need be given to the notice u/s. 10(2) of the W.B.E.A. Act served upon the petitioner. Inform others concerned accordingly”.

6. About three years later, a notice was issued to the appellant under Section 6(5) of the West Bengal Estates Acquisition Act, 1953. Section 6(5) reads as follows:-

“(5) An intermediary shall exercise his choice for retention of land under sub-section (1) within such time and in such manner as may be prescribed. If no choice is exercised by him during the prescribed period, the Revenue Officer shall, after giving him an opportunity of being heard, allow him to retain so much of the lands as do not exceed the limits specified in clauses (c), (d) and (j) of that sub-section.

Provided that nothing in this sub-section shall require an intermediary to exercise the choice if he has already done so before the date of coming into force of the West Bengal Estates Acquisition, (2nd Amendment) 1957.”

7. The appellant challenged the said notice by filing the writ petition which was disposed of by a learned Single Judge by the order under appeal.

8. After noticing the order passed in the earlier writ petition, the learned Judge disposed of the present writ petition on the following terms:-

“The impugned notice was issued on 18.8.1978. By the said notice the petitioner was asked to file return in Form ‘B’. In the event no return is filed the concerned authorities will take it for granted that the petitioner did not intend to retain any land in his khas possession. The said notice is challenged on the ground that the petitioner was not required to file any return as was directed.

Since the notice was challenged without any determination thereof the application and the Rule can be disposed of by directing the petitioner to raise all exceptions as are raised in the writ petition in the form of representation within six weeks from date. In the event such representation is filed the concerned authorities shall deal with and dispose of the same in the manner indicated after giving the petitioner an opportunity of being heard and shall pass a reasoned order on merits. Such determination as has been directed shall be made within 6 months from date.

Status quo granted by this Court shall remain till two weeks from the date of determination of the matter.

The Rule is disposed.”

9. Being aggrieved the writ petitioner has come up by way of the present appeal.

10. Appearing on behalf of the appellant, Mr. Saktinath Mukherjee learned Senior Advocate, submitted that the learned Judge ought not to have referred the matter to the concerned authority. Instead, the impugned notice dated August 18, 1978, by which the appellant was called upon to file return in Form ‘B’, should have been quashed. The competent authority, pursuant to the order passed in the earlier writ petition, has come to a clear finding that the appellant did not hold excess land, whether agricultural or non-agricultural. The notice issued under Section 6(5) which was challenged before the learned Single Judge in the present round of litigation, was misconceived. The question of filing Form ‘B’ to exercise choice for retention of land would only arise when a person holds excess land. In this case, the JLRO has already arrived at a factual finding that the predecessor-in-interest of the appellant held land within the ceiling limits. Hence, the question of exercising choice for retention did not arise since the entire land could be retained by the predecessor-in-interest of the appellant.

11. In this connection Mr. Mukherjee referred to a Division Bench decision of this Court in the case of ***State of West Bengal and Ors. v. Star Iron Works Ltd. & Ors. Reported at AIR 2012 CAL 148*** in support of his

submission that Section 6(5) of the Estates Acquisition Act deals with “choice for retention” and not with the “right of retention”. It was held in that case that in respect of non-ceiling category of lands or ceiling category of lands held within the ceiling limit, there can be no question of choice for retention. The question of choice would arise only in the case of ceiling category lands held beyond the limits.

12. The Hon’ble Supreme Court by its order dated September 10, 2012, dismissed the special leave petition preferred by the State of West Bengal against the aforesaid Division Bench order of this Court. The relevant portion of the said order is reproduced hereunder:-

“This petition is directed against order dated 28.03.2012 of the Division Bench of the Calcutta High Court whereby the writ petition filed by the petitioners questioning, the direction issued by the West Bengal Land Reforms and Tenancy (for short, ‘the Tribunal’) for disposal of the respondents’ application for conversion of land was dismissed.

We have heard learned Counsel for the parties and carefully perused the record. We have also gone through the relevant provisions of the West Bengal Estates Acquisition Act, 1953 and the West Bengal Land Reforms Act, 1955.

In our view, the reasons assigned by the Tribunal for ordaining consideration of the respondents’ application were correct and the

High Court did not commit any error by refusing to interfere with the order of the Tribunal.”

13. Mr. Mukherjee also referred to Rule 4A of the West Bengal Estates Acquisition Rules, 1954 which deals with procedure for choosing land which an intermediary is entitled to retain under Section 6 of the Act. The relevant portion of Rule 4A reads as follows:-

“[4A. (1) Every intermediary entitled to retain possession of lands under sub-section (1) of Section 6 shall, if he chooses to retain any such land, make his choice by furnishing to the Settlement Officer or to the Revenue Officer authorised by the Settlement Officer in this behalf, before the expiry of the 30th day of April, 1958, a statement in writing in Form B appended to Schedule B appended to these rules or in a form substantially similar thereto and in the manner indicated therein:

Provided that if the area of land held by a raiyat or an under-raiyat who is deemed to be an intermediary under Section 52 does not exceed the limit laid down under clause (c) or clause (d) of sub-section (1) of section 6, he shall not be required to exercise such choice.”

14. Mr. Mukherjee also referred to the decision of the Hon’ble Supreme Court in the case of ***State of West Bengal and Ors. v. Ratnagiri Engg. Pvt. Ltd. & Ors. etc. Reported at (2009) 4 SCC 453***. In particular he referred to paragraph 11 of the reported judgement which reads as follows:-

“11. A perusal of Section 6 of the 1953 Act discloses that there is a difference between sub-clauses (a) to (e) of Section 6(1) on the one hand, and sub-clauses (f) and (g) of Section 6(1) on the other. While in the case of lands which can be retained under sub-Clauses (a) to (e) of Section 6(1), the retention is automatic from the date of vesting and no order of any authority need be passed for that purpose, in the case of sub-clauses (f) and (g) of Section 6(1) the retention after the date of vesting is not automatic, but it is only when the State Government passes an order under Section 6(3) of the 1953 Act. In other words, after the date of vesting the lands mentioned in sub-clauses (f) and (g) of Section 6(1) cannot be retained by the intermediary unless and until an order is passed by the State Government under Section 6(3) of the 1953 Act.”

15. Learned Senior Counsel further submitted that in the Judgment and order impugned in this appeal, there is no reference at all to the order of the JLRO holding that the predecessor-in-interest of the appellant did not possess excess land. Once a competent authority has arrived at a finding on that issue, the principles of *res judicata* should apply and a further proceeding or exercise on the same issue should be held to be barred. The finding of the JLRO has not been challenged by anybody before any competent forum. In this connection Mr. Mukherjee relied on a decision of this Court in the case of ***Debabrata Tripathy & Ors. v. State of West Bengal & Ors. Reported at (1981) 1 CHN 125.***

16. Appearing for the State, Mr. Tapan Kumar Mukherjee, learned Additional Government Pleader, drew our attention to Ground I of the Memorandum of Appeal filed by the appellant and submitted that the appellant has merely asked for extension of time to make representation regarding the appellant's right to retain the lands in question. There is really no challenge to the order impugned.

17. Learned Counsel then argued that irrespective of the quantum of land one holds, after coming into effect of the West Bengal Estates Acquisition Act, 1953, a competent person has to ascertain how much land and of what nature, that person holds. In the present case, by the order impugned, the concerned authority was directed to do exactly this. There is no reason to interfere with such direction.

18. He then submitted that the decision in the case of ***Ratnagiri Engg. Pvt. Ltd. (supra)*** has no manner of application to the facts of the instant case. In that case the Hon'ble Supreme Court interpreted Section 6(3) of the 1953 Act. In the present case, the notice impugned before the learned Single Judge was issued under Section 6(5) of the Act.

19. Mr. Mukherjee finally submitted that it is pertinent to note that the 1953 Act underwent amendment by the West Bengal Estate Acquisition (Amendment) Act, 2009. Learned Counsel placed Sections 2 and 3 of the amending Act which read as follows:-

“2. Explanation to sub-section (3) of Section 6 of the West Bengal Estates Acquisition Act, 1953 (hereinafter referred to as the

principal Act), shall be renumbered as Explanation I to that sub-section and to Explanation I so renumbered, the following Explanation shall be, and shall be deemed always to have been, added, namely:-

“Explanation II.- For the removal of doubts, it is hereby declared that the expression “revise any order” mentioned in the proviso to this sub-section, shall, notwithstanding anything contained in any law for the time being in force or in any agreement or in any decree, judgment, decision, award of any Court, tribunal or other authority, include revision of an order of retention made under this sub-section, at any time after such order of retention so made, if the intermediary or the lessee, as the case may be, fails to use or ceases to use the whole or any part of the land for the purpose for which it has been retained i.e. for tea-garden, mill, factory or workshop, as the case may be, by him, so as to resume such land as being surplus to his requirement, by the State Government in the manner laid down in this proviso.”

3. The amendment made in the principal Act by Section 2 shall be deemed to have been made with effect from the date of commencement of the principal Act and accordingly, anything done or any action taken or purported to have been taken or done under the principal Act on or after its commencement and before the commencement of this Act, shall, notwithstanding anything contrary contained in any judgment, decree or order of any Court,

tribunal or other authority, be deemed to be, and to have always been, for all purpose, as validity and effectively taken or done as if the said amendment had been in force at all material time.”

Learned Counsel submitted that the effect of the above amendment should be considered.

20. We have considered the rival contentions of the parties.

21. As regards the first objection raised by learned Advocate for the State, the same is completely meritless.

22. The appellant has clearly challenged the propriety and/or legality of the judgment and order under appeal in the 2nd and 3rd grounds of the Memorandum of Appeal.

23. As regards the second submission of Mr. Tapan Mukherjee, a competent officer in the administration being the Junior Land Reforms Officer, pursuant to the order dated July 18, 1972 passed by a learned Single Judge in Civil Rule No. 2124(W) of 1968, by his order dated July 31, 1975 has determined that the entire land held by the appellant - both agricultural and non-agricultural – are within the ceiling prescribed in the Act and hence they have not vested under the 1953 Act. Accordingly the notice under Section 10(2) of the Act was abandoned. Such factual finding of the Junior Land Reforms Officer has never been called in question before any competent forum. Hence, the point urged by learned Counsel for the State, with great respect, has no merit.

24. We are also unable to accept the submission made by learned Counsel for the State in connection with the Hon'ble Supreme court's decision in the case of ***Ratnagiri (supra)***. Learned Senior Counsel for the appellant rightly relied on the observations of the Hon'ble Supreme Court at paragraph 10 of the reported judgment in support of his submission that in respect of the entirety of lands described in sub-clauses (a) and (b) and Section 6(1) of the Act and land described in sub-clauses (c) and (d) of Section 6(1) if they are within the ceiling limits mentioned in such sub-clauses, the retention is automatic from the date of vesting and no order of any authority need be passed for that purpose. The obvious corollary of this is if a person like the appellant is found to be holding agricultural land not exceeding 25 acres and non-agricultural land not exceeding 20 acres, he is automatically allowed to retain such lands. In such a case, there can be no question of such person filing Form 'B', as contemplated in Section 6(5) of the 1953 Act.

25. The amendment to the 1953 Act by the 2009 amending Act pointed out by learned Advocate for the State, does not have any material bearing on the issue involved in this case. Hence we refrain from further dilating on such amendment.

26. We are of the firm view that the notice issued under Section 6(5) of the Act to the appellant was mis-conceived. The appellant's predecessor-in-interest challenged a notice issued under Section 10(2) of the Act which has been extracted above, resulting in an order of a learned Single Judge. Pursuant to such order a competent officer in the administration undertook an exercise and returned a clear finding that the lands held by the appellant

- both in the agricultural and non-agricultural categories – are within the ceiling limits and as such have not vested under the 1953 Act. Such finding has attained finality not having been questioned before any forum. In that factual background, there could be no reason or justification for the concerned authorities to issue a notice under Section 6(5) of the Act to the appellant. The appellant could not be required to choose which portion of the land he would like to retain. Such a question would have arisen had the appellant held land in excess of the prescribed ceilings in the agricultural and non-agricultural categories. Such is not the case. Since the appellant held land within the prescribed ceiling limit, he was entitled to retain the entire land. The notice under Section 6(5) of the Act was a result of complete non application of mind.

27. We are also in respectful agreement with the view of the learned Judge in the case of **Shri Debabrata Tripathy (supra)**, that the principle of *res judicata* is a sound principle of jurisprudence and the said principle has been made applicable not only in the adjudication made by the Civil Courts but also in the adjudication made by quasi-judicial tribunals and administrative bodies. In the present case, in view of the unchallenged finding of the Junior Land Reforms Officer that the appellant does not hold excess land, the learned Single Judge was not justified in directing such exercise to be held again. The learned Judge should have simply quashed the notice under Section 6(5) of the Act which we hereby do. The impugned judgment and order is accordingly set aside.

28. The appeal is accordingly disposed of. There will be no order as to costs.

29. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(ARIJIT BANERJEE, J.)

I agree.

(Apurba Sinha Ray, J.)