IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

W.P.L.R.T. 67 of 2021

Ardhendu Bikash De & ors.
VS.
State of West Bengal & ors.

For the Writ Petitioners	:	Mr. Sudeep Sanyal, Mr. Sukanta Das, Mr. Chandrachur Lahiri
For the State	:	Mr. Chandi Charan De, Sr. Advocate Mr. Soumitra Bandyopadhyay, Mr. Anirban Sarkar

Hearing concluded on : 19.06.2023

Judgement on : 19.06.2023

DEBANGSU BASAK, J.:-

1. An order dated March 12, 2021 passed in O.A. No.1477 of 2008 by the West Bengal Land Reforms and Tenancy Tribunal, is under challenge in the present writ petition.

2. Learned advocate appearing for the writ petitioners submits that, the father of the writ petitioners executed a deed of settlement on December 30, 1965. At that material point of time, Section 14T of the West Bengal Land Reforms Act, 1955 was not in the statute book. Consequently, the Revenue Officer could not open the issue as to whether, the deed of settlement dated December 30, 1965 was benami or not purporting to act under Section 14T(5) of the Act of 1955. According to him, the time period under the Act of 1955, to look into an issue of benami is prescribed under Section 14P of the Act of 1955. The deed of settlement was executed prior to the date prescribed under Section 14P of the Act of 1955. The Revenue Officer was without jurisdiction in purporting to open an issue of benami in respect of a deed of settlement falling outside the purview of Section 14P.

3. Learned advocate appearing for the writ petitioners submits that, the issue of irrigated and non-irrigated area, is also beyond the competence of the Revenue Officer in the facts and circumstances of the present case.

4. Learned advocate appearing for the writ petitioners relies upon the **(1979) 1 CHN 401 (Braja Mohan Choudhury vs. Revenue Officer & ors.)** in support of the contention submits that, the time period specified under Section 14P of the Act of 1955 is specific and cannot be enlarged.

5. Relying upon **(1980) 4 SCC 716 (Sasanka Sekhar Maity & ors. vs. Union of India & ors.)** learned advocate appearing for the writ petitioners submits that, time limit prescribed under the Act of 1955 are valid.

6. Learned Additional Government Pleader appearing on behalf of the State draws attention of the Court to the provisions of Section 14T (5), (8) and (9) of the Act of 1955. He contends that, by virtue of sub-section (8) of Section 14T of the Act of 1955, the provisions of sub-section (5), (6) and (7) of Section 14T of the Act of 1955 is with retrospective effect from May 5, 1953. Therefore, according to him, the Revenue Officer was correct in invoking Section 14T(5) of the Act of 1955 in determining whether deed of settlement in question was a benami or not.

7. The materials made available on record establishes that the Revenue Officer, invoked Section 14T(5) of the Act of 1955 in order to determine whether a deed of settlement executed by the predecessor-in-interest of the writ petitioners in favour of the writ petitioners on December 30, 1962 was a benami transaction or not. Revenue Officer took evidence with regard thereto. Revenue Officer considered the composition of the family of the settlor at the time of the execution of the deed of settlement. The Revenue Officer found that there was only one adult in the family of the settlor at the material point of time. Revenue Officer from the evidence of witnesses recorded found that, the immovable property was cultivated by the settlor for the benefit of all the family members even subsequent to the execution of the deed of settlement. The Revenue Officer, therefore, arrived at the conclusion that, the deed of settlement dated December 30, 1965 was a benami and was executed in order to overcome the restrictions of ceiling and holding prescribed by the Act of 1955. An appeal was carried from the order of the Revenue Officer to the concerned District

Land and Land Reforms Officer. The appellate authority returned a concurrent finding as that of the Revenue Officer.

8. The writ petitioners approached Tribunal by way of O.A. No.1477 of 2008 which was dismissed by the impugned order.

9. Section 14T (5), (7), (8) and (9) are relevant for the purpose of the present proceedings. They are as follows:

> ***"14T (5)-*** *The Revenue Officer, on his own motion or upon any information, may after giving the persons interested an opportunity of being heard, enquire and decide any question of benami in relation to any land and any question of title incidental thereto or any interest therein or any matter of transaction made, on being satisfied that such enquiry and decision are necessary for the purpose of preparation, correction or revision of record-of rights and all matters incidental or consequential thereto or detection and vesting of surplus land over the ceiling area.*
>
> ***(7)*** *Any person aggrieved by any order made under sub-section (3), (3A),*

(5) or (6) may prefer an appeal under Section 54.

(8) *Notwithstanding anything contained in this Act or in the West Bengal Estates Acquisition Act, 1953 (West Bengal Act I of 1954) or in any other law for the time being in force or in any agreement, custom or usage or in any decree, judgment, decision or award of any court, tribunal or authority, the provisions of sub-sections (5), (6) and (7) shall operate with retrospective effect from the 5th day of May, 1953.*

(9) *Sub-sections (5), (6), (&) and (8) of this section shall be deemed to have always been inserted in the West Bengal Estates Acquisition Act, 1953 (West Bengal Act 1 of 1954). Any officer specially empowered in this behalf under the provision of the West Bengal Estates Acquisition Act, 1953 or under the provisions of this Act, may, in exercise of the powers conferred by sub-sections (5) to (8), reopen and decide afresh any proceeding, case or*

> *dispute in relation to determination of total land held by an intermediary or a raiyat or an under-raiyat at any point of time or may determine the quantum of land such intermediary, raiyat or under-raiyat was or is entitled to retain and also may determine the extent of land which is to vest in the State or which shall remain vested in the State and shall take possession of such land in accordance with the provisions of section 14SS. Notwithstanding any judgment, decision or award of any court, tribunal or authority to the contrary, the rule of res judicata shall not apply to such cases of reopening and fresh determination.***”**

10. Section 14P of the Act of 1955 is also relevant. Section 14P of the Act of 1955 is as follows:-

> ***“14P. Land transferred after the 7th day of August, 1969 to be taken into account in determining the ceiling area. –*** *(1) In determining the ceiling area, any land transferred by sale, gift or otherwise or partitioned,*

by a raiyat after the 7th day of August, 1969 but before the date of publication of the West Bengal Land Reforms (Amendment) Act, 1971 in the Official Gazette, shall be taken into account as if such land had not been transferred or partitioned, as the case may be:

Provided that provisions of sub-section (1) shall not apply to transfer or partition of land to which provisions of section 3A apply.

(1a) In determining the ceiling area, any land to which the provisions of section 3A of this Act apply and which was transferred or partitioned after the 7th day of August, 1969, but before the 9th day of September, 1980, shall be taken into account as if such land had not been transferred or partitioned, as the case may be.

(2) The provisions of sub-section (1a) shall not apply to a bona fide transfer or partition of any land as aforesaid, and the partition shall lie on the transferor or the person in whose

name the land stood recorded before the partition, as the case may be.

(3) For the purposes of sub-section (2), the transfer of any land in favour of one or more of the following relatives of the transferor shall be presumed to be not bona fide-

(a) wife, or
(b) husband, or
(c) child or,
(d) grandchild, or
(e) parent, or
(f) grandparent, or
(g) brother, or
(h) sister, or
(i) brother's son or daughter, or
(j) sister's son or daughter, or
(k) daughter's husband, or
(l) son's wife, or
(m) wife's brother or sister, or
(n) brother's wife."

11. The constitutional validity of the various provisions of the Act of 1955 introduced by the Amendment Act of 1972 including provisions relating under Section 14P and 14D were assailed before the Hon'ble Supreme Court and was decided

upon in **Sasanka Sekhar Maity & ors. (supra)**. There the Supreme Court upheld the constitutional validity of such legislation.

12. In **Braja Mohan Choudhury (supra)** the coordinate Bench, in the facts of that case found that the transfer was made long before August 7, 1969 which is the commencement date of the enquiry under Section 14P of the Act of 1955 and therefore, found such section not to be attracted.

13. In the facts of the present case, the Revenue Officer invoked section 14T(5)(9) of Act of 1955. As to whether or not, Section 14T(5) of the Act of 1955 read with sub-section (8) and (9) thereof, permitted the Revenue Officer, to enquire into the benefits of the transfer made by a raiyat even before Chapter IIB of the Act of 1955 came into force was kept open by the coordinate Bench in **Braja Mohan Choudhury (supra).** No other judicial pronouncement was drawn to the attention of this Court on such issue.

14. In the facts of the present case, as noted above, we are concerned with the invocation of jurisdiction under Section 14T(5) of the Act of 1955 to question the bona fides of a

transfer of an immovable property. The transfer in question is a deed of settlement dated December 30, 1962 made by the settlor in favour of his the then existing family members. The Revenue Officer, after invoking such provisions undertook the exercise of recording evidence on the issue of benami. In such record of evidence, the Revenue Officer enumerated all the heirs of the settlor, on the date of settlement, to be minor except only one person. The evidence adduced by witnesses in the proceeding before the Revenue Officer spoke about the land in question to be cultivated by the settlor for the benefit of the family. The Revenue Officer recorded that no rebuttal witness was forwarded by the side of the settlor or his family members. In such factual matrix, the Revenue Officer found that the deed of settlement to be a benami. The deed of settlement was found to be satisfying all the conditions of a benami.

15. The contention before us is that Section 14T(5) of the Act of 1955 should be read in conjunction with Section 14P of the Act, and the period of enquiry that a Revenue Officer can

make in terms of Section 14T(5) must be limited to the period specified under Section 14P of the Act of 1955.

16. Section 14P of the Act 1955 considers a period of time between August 7, 1969 till date of publication of the West Bengal Land Reforms (Amendment) Act, 1971 in the Official Gazette for the purpose of determining ceiling area, any land transferred by sale, gift or otherwise or partition by a raiyat.

17. Section 14T(5) of the Act of 1955 is without any prescription of time. Section 14P of the Act of 1955 deals with a land on a transfer of land within the time period specified therein. Section 14T(5) of the Act of 1955 however, empowers the Revenue Officer to embark upon an exercise to decide any question of benami in a relation to any land and any question of title incidental thereto.

18. Section 14T(5) of the Act of 1955 is not circumscribed by any time limit as of 14P. The nature of enquiry between Section 14P and 14T(5) are also different. Section 14T(5) deals with the question of benami in relation to an immovable property and the question of title with regard thereto.

19. Section 14T(5) is required to be read in conjunction with Section 14T(8) of the Act of 1955. Section 14T(8) contains a non obstante clause which specifies that notwithstanding anything contained in the Act of 1955 or the West Bengal Estate Acquisition Act, 1953 or in any other law for the time being in force or in any agreement, custom, or usage or any decree, judgment, decision or award of any court, tribunal or authority, the provisions of sub-section (5), (6) and (7) shall operate with retrospective effect from May 5, 1953.

20. Sub-section (9) of Section 14T makes sub-sections (5), (6), (7) and (8) of Section 14T deemed to be inserted in the provisions of the Act of 1953. It also provides various other eventualities.

21. Concentrating on Section 14T(5) and (8) we are of the view that Section 14T(5) is of retrospective operation from May 5, 1963. The coordinate Bench while deciding **Braja Mohan Choudhury (supra)** was without the benefit of Section 14T(8) of the Act of 1955. Section 14T(8) of the Act of 1955 was inserted by the West Bengal Act, 1981 dated March 24, 1986 way after the decision by the coordinate Bench. In any event,

the coordinate Bench kept the issue as to retrospective operation of Section 14T(5) open.

22. Factually, nothing is placed before us to suggest that finding of the Revenue Officer with regard to benami is incorrect. It is not established by the writ petitioners that the findings of the Revenue Officer regarding benami are perverse.

23. The empowerment of the Revenue Officer to undertake the exercise as done herein is available under Section 14T(5) of the Act of 1955.

24. In such circumstances, we find no ground to interfere with the impugned order.

25. **W.P.L.R.T. 67 of 2021** is **dismissed** without any order as to costs.

26. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Debangsu Basak, J.)

27. I agree.

(Md. Shabbar Rashidi, J.)

CHC