

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Raja Basu Chowdhury

FAT 270 of 2020
with
IA No.: CAN 1 of 2020
with
IA No.: CAN 2 of 2020

Atithi Ranjan Samanta
versus
Smt. Bangalata Samanta & Ors.

For the Appellant : *Mr. Tanmoy Mukherjee,*
Mr. Bibekananda Tripathy,
Mr. Souvik Das,
Mr. Rudranil Das.

For the State : *Mr. Anirban Ray, Ld. G.P.,*
Mr. Santanu Kumar Mitra,
Mr. Subhabrata Das.

For the Respondent
Nos.1 to 8 : *Mr. Salil Kumar Maiti,*
Mr. Arijit Pradhan.

Hearing is concluded on : *23rd February, 2023.*

Judgment On : **16th March, 2023.**

Tapabrata Chakraborty, J.

1. The instant first appeal has been preferred challenging the judgment and order dated 2nd March, 2020 passed by the learned District Judge, Purba Medinipur in the Estate Acquisition Appeal No. 2 of 2012. The subject matter of challenge in the said Estate Acquisition Appeal was an order dated 11th May, 1960 passed by the Assistant Settlement Officer in a proceeding under Section 44(2a) of the West Bengal Estate Acquisition Act, 1953 (in short, 1953 Act). As we have invited the learned advocate appearing for the appellant to advance his argument on the merits of the appeal, the delay in preferring the appeal is condoned and the application being CAN 2 of 2020 is disposed of.

2. The learned District Judge deciding the Estate Acquisition Appeal was acting as a Tribunal under section 44 (3) being appointed by the State Government under Section 55 (2) of the 1953 Act *vide* notification Dated 27th March, 2012.

3. The issue which arises for consideration is as to whether the present appeal is maintainable before this Court in as much as the Tribunal (hereinafter referred to as the Land Tribunal) established under the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 (in short, the 1997 Act) would be having jurisdiction under Section 6 of the 1997 Act to decide the appeal since the order impugned in the appeal is an order passed by an authority as defined in the 1997 Act.

4. According to Mr. Mukherjee, the learned advocate appearing for the appellant, the Tribunal constituted under section 55 (2) of the 1953 Act is not an authority for the purposes of the 1953 Act, as would be explicit from the provisions of section 53 of the 1953 Act and as such the order passed by the Tribunal is not an order passed by an authority under a specified act, as defined under section 2(r) of the 1997 Act.

5. He argues that the learned District Judge is not a *persona designata* but is a Court to whom power of adjudication has been entrusted under the 1953 Act. The Tribunal is thus a judicial authority adjudicating the rights of the parties and its order is not amenable to the jurisdiction of the Land Tribunal constituted under 1997 Act.

6. He submits that the legislature has consciously omitted an order passed by the Tribunal constituted under section 55 (2) of the 1953 Act from the provisions of Section 6 of the 1997 Act. The obvious intention of the legislature was to confer judicial power of adjudication upon the said Tribunal. The judicial powers thus conferred upon the said Tribunal cannot be subject to a further scrutiny by a Land Tribunal constituted under the 1997 Act.

7. He argues that Mines Tribunal constituted under Section 36 of the 1953 Act is also not an authority under Section 53 of the 1953 Act and as such an order passed by the said Tribunal has been specifically brought under the purview of Section 6 of the 1997 Act. Had it been the intent of the legislature to bring an order passed by a Tribunal constituted under the 1953 Act under the

purview of the 1997 Act, such an order would have been certainly incorporated in Section 6 of the 1997 Act.

8. Mr. Ray learned Government Pleader appearing for the State respondents, assisted by Mr. Mitra, learned advocate argues that prior to amendment of Section 6 (a) of the 1997 Act, the said sub section read as '*an order in original by an authority under a specified Act*' and as such in Section 6(c) order passed by the Mines Tribunal was included since such order was not '*an order in original*'. However, the said provision is now otiose in view the amendment of Section 6 (a) which now reads as '*any order made by an authority under a specified Act*'.

9. He submits that the 1997 Act is a piece of legislation post the 1953 Act and the West Bengal Land Reforms Act, 1955 (in short, 1955 Act). Section 3 of the 1997 Act *inter alia* provides that the provisions of the said Act shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force. The object of the 1997 Act was to set up a Land Reforms and Tenancy Tribunal in pursuance of Article 323B of the Constitution of India for the adjudication and trial by such Tribunal of all disputes arising out of, land reforms or tenancy in land and other matters under specified Act and for matters connected therewith or incidental thereto. Section 10 of the 1997 Act provides that subject to the provisions of Section 6 and other provisions of the Act, a person aggrieved by any order passed by an authority or any action taken either by any authority or by the State

Government may prefer an appeal to the Land Tribunal. A composite reading of such object and the provisions of the 1997 Act does not lead to any conclusion that an order passed by a Tribunal constituted under Section 55(2) of the 1953 Act would not be amenable to the jurisdiction of the Land Tribunal. The term 'authority' defined under the 1997 Act is expansive and imbibe within itself not only the officer but the authority or the functionary discharging duties under the 1953 Act. Section 6(a) has to be read with the definition of an 'authority' under Section 2(b) of the 1997 Act. The provisions need to be considered together and not in isolation. A particular clause cannot be taken up and highlighted.

10. Mr. Ray argues that the purpose of a text is a normative concept. It is a legal construction of the provision which is material. The purpose of the legislation needs to be determined upon a composite reading of the contents of the Act. The Court by interpretative process needs to remove the anomaly, if any, arising out of inapt drafting. The provisions of Section 53 are illustrative in nature and not exhaustive. In support of the arguments advanced reliance has been placed upon judgments delivered in the case of *Bishnu Pada Dutta vs. Joydev Datta*, reported in 1974 CWN 682 and in the case of *Tarapada Mahato and others vs. the State of West Bengal and others*, reported in *AirOnline 2022 Cal 296*.

11. In reply, Mr. Mukherjee submits that while delivering the judgment in the case of *Tarapada Mahato (Supra)*, the Court did not take into

consideration the provisions of section 6 of the 1997 Act. As per Section 6(c) an appeal against an order of the Mines Tribunal appointed under section 36 of the 1953 Act is maintainable before the Land Tribunal but in section 6 of the 1997 Act there is no mention about any order passed by a Tribunal appointed under section 55(2) of the 1953 Act. The Court did not consider the fact of non-inclusion of an order passed by an authority under section 55(2) of the 1953 Act in Section 6 of the 1997 Act. The said issue was neither argued nor considered by the Court and the issue has passed *sub silentio*.

12. Mr. Mukherjee argues that there is a clear cut distinction between an authority under Section 44 (2a) of the 1953 Act and an authority constituted under Section 53 of the 1953 Act. Order passed by the former comes within the purview of Section 6 of the 1997 Act but an order passed by the latter is clearly excluded from the provisions of Section 6 of the 1997 Act.

13. Heard the learned advocates appearing for the respective parties and considered the materials on record.

14. The definition of 'authority' under the 1997 Act runs as follows:

'Authority means an officer or authority or functionary exercising powers or discharging functions as such under a specified Act.'

15. The 1953 Act is a 'specified act' under 1997 Act, as would be explicit from the definition of 'specified act' under section 2(r) of the 1997 Act.

16. Section 55 (2) of the 1953 Act runs as follows :

‘S. 55. Appointment of special Judges and Tribunals.- (1).....

(2) The State Government may appoint one or more tribunals for the purpose of section 44. Such Tribunal shall be composed of a single member who shall be a person who is or has been a District Judge or an Additional District Judge and shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (Act V of 1908).’

17. Section 53 of the 1953 Act is under Chapter VII – ‘*Supplemental and Miscellaneous*’.

Section 53(1) of the 1953 Act runs as follows:

‘(1) There shall be the following authorities for the purposes of this Act, namely :

(a) The Board of Revenue;

(b) Director of Land Records and Surveys;

(c) Settlement Officers;

(d) Assistant Settlement Officers;

(e) Compensation Officers;

(f) Revenue Officers;

(ff) Officers appointed by the State Government for the purposes of sub-clause (iv) of clause (a) of sub-section (1) of section 16;

(g) Mining Experts for the purposes of section 32, 33 or 34.’

18. Section 44 (3) of the 1953 Act reads as follows :

‘S. 44. Draft and final publication of the record-of rights.—(1)..

(3) Any person aggrieved by an order passed in revision under sub-section (2a) may appeal in the prescribed manner to a Tribunal appointed for the purpose of this section, and within such period and on payment of such court-fees as may be prescribed.’

19. Under section 55 (2) of the 1953 Act the State Government appointed a Tribunal for the purpose of section 44. The said Tribunal is not a judicial authority appointed under the Bengal, Agra and Assam Civil Courts Act 1887 and does not decide the matter as a Court but as a functionary exercising powers of or discharging the functions as such under a specified act. The appointment made under Section 55(2) of the 1953 Act, is not subject to control of the High Court under Article 233 of the Constitution.

20. Judicial pronouncements on the subject are not on virgin ground. A long line of decisions of the Court has settled the approach to be adopted in such matters. There was initially a difference in opinion between two Hon’ble Judges of this Court. The said judgments were delivered in the cases of *Kashinath Mondal & Ors. –vs- Bani Ballav Biswas & Ors.*, reported in (2001) 2 CalLJ 319 and *Sk. Samsul Huda & Ors. –vs- Mosharaf Hussain & Ors.*, reported in (2002) 2 CHN 227 on the issue as to whether the ‘Munsif’ and ‘District Judge’ who decide the matter of preemption under sections 8 and 9 of the 1955 Act are the ‘authority’ under the 1997 Act. The issue was accordingly referred to a Larger Bench and the same was answered by a judgment delivered in the

case of *Pashupati Adhikary –vs- Pradyut Kumar @ Tarapada Adhikary*, reported in 2003(4) CHN 347 observing *inter alia* that the orders passed by the learned District Judge or Additional District Judge under section 9(6) of the 1955 Act will be amenable to revisional jurisdiction of the High Court under section 115 of the Constitution. Considering the said judgments, this Court in the case of *Seema Begum –vs- Marium Bibi*, reported in 2011(3) CHN 218 decided that the Land Tribunal under the 1997 Act had no jurisdiction to decide an appeal preferred against the order passed by the learned Civil Judge having jurisdiction in a suit for eviction. Lastly, in the case of *Tarapada Mahato (Supra)* it was decided that order passed by a Tribunal constituted under section 55(2) of the 1953 Act is amenable to be challenged before the Land Tribunal.

21. In the case of *Tarapada (Supra)* the Court observed that ‘*the ‘authority’ defined under the Act of 1997 is expansive and imbibe within itself not only the officer but the authority or the functionary discharging duties under the specified Act and, therefore the Tribunal constituted under Section 55 (2) of the Act of the 1953 satisfies the said definition and the order is amenable to be challenged before the Tribunal constituted under the Act of 1997.*’

22. It is thus no longer *res integra* that the learned District Judge, constituting the Tribunal, while entertaining and disposing of an appeal under section 44 (3) of the 1953 Act does not act in exercise of his normal jurisdiction as an ordinary Civil Court under the Code of Civil Procedure (in short, CPC).

23. The purposive interpretation is now a judicially recognized principle. The object underlying the statute is required to be given effect by applying the principles of purposive construction. Simply because a Tribunal constituted under Section 55(2) of the 1953 Act does not feature under any of the clauses in Section 53(1) of the said Act, it cannot be argued that the order of the said Tribunal would not be amenable to the jurisdiction of the land tribunal. It cannot be construed that an authority discharging functions under Section 44 of the said Act is not an authority for the purposes of the 1953 Act inasmuch as the said authority had been conferred the jurisdiction to deal with the issues pertaining to the 1953 Act. The purpose and legislative intention which surfaces from a combined reading of the provisions of the 1997 Act is that the Land Tribunal had been constituted to act as a Court of first instance in respect of disputes pertaining to land reforms or tenancy in land and other matters under specified Acts and orders passed by authorities, who are not judicial officers.

24. For the reasons discussed above, we are of the opinion that present appeal is not maintainable. The appeal being FAT 270 of 2020 and the application being CAN 1 of 2020 are, accordingly, dismissed.

25. There shall, however, be no order as to costs.

26. The dismissal of the present appeal shall not prevent the appellant from approaching the competent forum, if so advised and in accordance with law.

27. The appellant would be at liberty to take back the certified copy of the judgment and order impugned upon furnishing a photostat copy of the same.

28. Urgent Photostat copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Raja Basu Chowdhury, J.)

(Tapabrata Chakraborty, J.)