

19.9. 2025
item No.4
n.b.
ct. no. 24

WPA 12987 of 2022

**Sk. Rownaquzzaman & Anr.
Vs.
State of West Bengal & Ors.**

Mr. Dipak Kumar Mukherjee
Mr. Rajib Mukherjee,
Ms. Shreyasi Bhaduri
..... for the petitioner.

Mr. Dhiraj Kr. Trivedi,
Mr. Sushil Kr. Mishra,
..... for the Union of India.

Mr. Jayanta Samanta,
Ms. Paromita Malakar(Dutta),
.... For the State respondent.

The instant writ petition has been preferred against an order dated 21.12.2021 passed by Mr. Vivekananda Sur, learned Additional District Judge, 1st Court Murshidabad at Berhampore in Settlement Appeal No.2 of 1981 arising against the order no.17 dated 12.9.1980 passed by the Assistant Settlement Officer specially empowered under Section 44(2a) of the West Bengal Estates Acquisition Act, 1953 in suo motu proceeding no.199/1980.

It appears that the instant settlement appeal was preferred before the learned Additional District Judge, 1st Court, Murshidabad at Berhampore in pursuance to the provision of Sub-section (3) of Section 44 of West Bengal Estates Acquisition Act, 1953. The appeal was pending since 1980.

Learned appellate court vide impugned judgment has dismissed the settlement appeal with a cost of Rs.5,000/-.

It is the contention of the petitioner that the appeal pending before the appellate court and order passed thereunder is without jurisdiction in terms of change of law i.e. in terms of promulgation of West Bengal Land Reforms and Tenancy Tribunal Act, 1997(hereinafter referred to said Act, 1997). It is the sole contention of the petitioner that the said Act, 1997 was got the assent of the Governor on December 12, 1997. The “specified act” was defined under sub-section(r) Section 2 of the said Act 1997. Specific tribunal was formed by the said Act, 1997 to decide the issues and appeals setting aside out of the “specified Act”. The jurisdiction of the Tribunal was mentioned in Section 6 of the said act.

Learned counsel for the petitioner further submits that the order passed by the learned appellate Court is without jurisdiction, accordingly, the same is required to be set aside.

Mr. Jayanta Samanta, learned counsel appearing on behalf of the State submits that after promulgation of West Bengal Land Reforms Tenancy Tribunal Act, 1997. The proceeding pending before the learned Additional District Judge should have been transferred. However,

this matter was not transferred, so necessary order may be passed.

Mr. Dhiraj Kr. Trivedi, learned counsel appearing on behalf of the respondent no.6 submits that the subject property in question stood recorded in the name of Khan Bahadur Sk. Abdullah, who is stated to have migrated to East Pakistan prior to the date of vesting. In this regard, notification no.12.2.64-E.Pty dated 10.9.1965 issued under Rule 133-V of the defence of India Rules 1962, and the subsequent provisions of the Enemy Property Act, 1968(as amended by the 2017 Validation Act) may be relevant.

He further submits that the factual matrix appears to support the conclusion that the property in question falls within the category of vested enemy property, and any correction of record of rights in the name of the said Pakistani national would be consistent with such statutory framework. He submits that according to the provisions of Section 18 of the said Act 1962, the remedy of the petitioner lies before the concerned authority i.e. Joint Secretary(FFR Division), Ministry of Home Affairs. He submits that the instant proceeding before this Court or before the Tribunal is not at all maintainable.

In support of his contention Mr. Trivedi has placed on record a written instruction of the department as well as copy Enemy Property Act, 1968.

Learned advocate appearing on behalf of the petitioner submits that property is question is not enemy property. The owner of the property nemely, Hazi S. Nakibuddin is India national, so the property cannot be said to the enemy property.

Having heard learned counsel for the parties and considering the entire facts and circumstances of the case, it appears that admittedly the instant appeal was preferred before the learned Additional District Judge under Sub-section(3) of Section 44 of the West Bengal Estates Acquisition Act, 1953 for better appreciation of the legal aspects. Section 44 of the West Bengal Estates Acquisition Act, 1953 be set out hereunder:

S. 44. Draft and final Publication of the record of rights. –(1) *When a record-of-rights has been prepared or revised, the Revenue Officer shall publish a draft of the record so prepared or revised in the prescribed manner and for the prescribed period and shall receive and consider any objections which may be made to any entry therein or to any omission therefrom during the period of such publication:*

Provided that no order passed under section 5A shall be liable to be reopened in pursuance of an objection made under this sub-section.

(2) When all such objections have been considered and disposed of according to such rules as the State Government may make in this behalf, the Revenue Officer shall finally frame the record and cause such record to be finally published in the prescribed manner and make a certificate stating the fact of such final publication and the date thereof and shall date and subscribe the same under his name and official designation.

(2a1) Separate publication of different parts of draft or final records may be made under sub-section (1) or sub-section(2)

(2a) An officer specially empowered by the State Government may, on application within nine months, or of his own motion with [sixty years], from the date of final publication of the record-of-rights or from the date of coming into force of the West Bengal Estates Acquisition(Second Amendment) Ordinance, 1957(West

Ben.Ord.X of 1957), whichever is later, revise an entry in the record finally published in accordance with the provisions of sub-section(2) after giving the persons interested an opportunity of being heard and after recording reasons therefor:

Provided that nothing in the foregoing paragraph shall be deemed to empower such officer to modify or cancel any order passed under section 5A, while revising any entry:

Provided further that no such officer shall entertain any application under this sub-section or shall of his own motion take steps to revise any entry, if an appeal against an order passed by a Revenue Officer on any objection made under sub-section(1), has been filed before the commencement of the West Bengal Estates Acquisition (Second Amendment) Ordinance, 1957, before a tribunal appointed for the purpose of this section, and, notwithstanding anything in this section, any such appeal may continue and be heard and disposed of as if the West Bengal Estates Acquisition (Second Amendment) Ordinance, 1957, had not been promulgated.

(3) Any person aggrieved by an order passed in revision under subsection (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.

(3a) The certificate of final publication referred to a sub-section(2), or in the absence of such certificate, a certificate signed by the Collector of any district in which the area to which the record-of-rights relates is wholly or partly situate, stating that a record-of-rights has been finally published on a specified date, shall be conclusive proof of such publication and of the date thereof.

(3b) The State Government may, by notification, declare with regard to any specified area, that a record-of-rights has been finally published for every village included in such area and such notification shall be conclusive proof of such publication.

(3c) In any suit or other proceeding in which a record-of-rights prepared and published under this Chapter, or a duly certified copy thereof or extract therefrom, is produced, such record-of-rights shall be presumed to have been finally published unless such publication is expressly denied.

(4) Every entry in the record-of-rights finally published under sub-section(2) including an entry revised under sub-section(2a), made under section 42A or corrected under section 45 or Section 45A shall, subject to any modification by an order on appeal under sub-section (3), be presumed to be correct.”

On plain perusal of the provision of West Bengal Estates Acquisition Act, 1953, it appears that the appeal

was correctly preferred before the learned Additional District Judge in the year 1980 against an order passed by the concerned Assistant Settlement Officer dated 12.9.1980 suo motu proceeding being case 198 of 1980. During the filing of the instant appeal before the learned Additional District Judge, presented by the concerned government of West Bengal, the appeal was very well maintainable. However, the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 was promulgated on 12.12.1997. In Section 2(r) “specified act” as defined as follows:

- (r) *“specified Act” means-*
- (i) *the West Bengal Estate Acquisition Act, 1953; or*
- (ii) *the West Bengal Land Reforms Act, 1955; or*
- (iia) *the West Bengal Restoration of Alienated Land Act, 1973; or*
- (iii) *(.....)*
- (iv) *the West Bengal Acquisition of Homestead Land for Agricultural Labourers, Artisans and Fisherman Act, 1975; or*
- (v) *(.....)*
- (vi) *the West Bengal Premises Tenancy Act, 1997(only against final order of the Controller);*
- (vii) *the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001;”*

From the definition of said “specified Act”, it appears that the West Bengal Estates Acquisition Act 1953 and the West Bengal Land Reforms Act, 1955 has been placed under the “specified Act”. The specific Tribunal was established under chapter 2 of the West Bengal Land Reforms Tenancy Tribunal Act. Section 6 of the said Act 1997, has provided jurisdictional power and

authority of the Tribunal in Section 6 of sub-section (a), which has been enumerated as follows:

“6. Jurisdiction, power and authority of Tribunal.- Subject to the other provisions of this Act, the Tribunal shall, with effect from such date as may be appointed by the State Government by notification in this behalf, exercise jurisdiction, power and authority in relation to-

- (a) (any order) made by an Authority under a specified Act;*
- (b)*
- (c)*
- (d)*
- (e)*

According to the provision of Section 6(a) of the said Act 1997, it appears that any order made by an authority under a “specified act” shall lie or transfer to the tribunal. Consequently, it appears that during the pendency of the impugned appeal before the learned Additional District Judge/appellate authority under the WBEA Act had lost its jurisdiction to entertain the appeal. However, such appeal was not transferred to the learned Tribunal(may be due to ignorance of law). It appears that as the learned Additional District Judge erstwhile, appellate authority has lost its jurisdiction after promulgation of West Bengal Land Reforms Tenancy Tribunal, 1997. All order/judgment passed by the learned Additional District Judge(erstwhile appellate authority) after December 12, 1997 appears to be without jurisdiction.

Under the same, it appears to me that the impugned orders/Judgment passed by the Additional

District Judge appears to be illegal without jurisdiction. Thus, the same is hereby set aside.

I make it clear that all orders passed by the Additional District Judge in the settlement appeal after date December 12, 1997 are actually non-est and without jurisdiction in the eye of law.

At this juncture, I fee it prudent to pass an appropriate order, so that the Additional District Judge can transmit the entire record of appeal to the office of West Bengal Land Reforms Tribunal within eight weeks from the date of receiving of this order.

The concerned Tribunal shall proceed with this matter since date of December 12, 1997 and shall pass necessary order/orders according to law.

I further observed that the respondent no.6 custodian of enemy property of India has raised point of maintainability of the instant proceeding, as well as the proceeding by the concerned Assistant Settlement Officer or the appeal thereunder. Thereafter, respondent no.6 be given an opportunity to raise the point of maintainability before the Learned Tribunal.

As the maintainability point has been raised by the respondent no.6(the custodian of enemy property of Indis), learned Tribunal shall decide the issue of maintainability first and shall pass necessary order according to law. Learned Tribunal shall serve the

notice upon all concerned parties before hearing the point of maintainability.

Under the above observation, the instant writ petition is disposed of.

A copy of this order be served upon the learned Additional District Judge, first Court, Murshidabad at Berhampore through learned Judge, Murshidabad.

Office is directed to communicate the order as early as possible.

I make it clear that this Court have not gone into the merit of this matter, the Learned Tribunal shall deal with the matter in accordance with law without being influenced by any observation of this Court.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)