

SUPREME COURT OF INDIA

Ashim Ranjan Das

Vs.

Shibu Bodhak

C.A.No.3932 of 2009

(J. Chelameswar and Sanjay Kishan Kaul, JJ.,)

05.04.2018

JUDGMENT

Sanjay Kishan Kaul, J.,

1. One Krishna Pada Supai (for short 'KPS') was holder and in possession of land under an ex-intermediary Kali Charan Pramanick. The land is stated to have been duly recorded in the name of KPS in the Records of Rights of Mauza Jogatipota, P.S. Sonarpur, being R.S. Khatian No.15 of Mauza Jagatipota, West Bengal. In the year 1962, 14.89 acres of land held by KPS was transferred to two persons - Jitendra Lal Paul (8.26 acres) and Golap Bala Saha Mondal (6.63 acres). The origination of the dispute is the proceedings suo moto initiated by the concerned Revenue Officer under Section 44(2a) of the West Bengal Estate Acquisition Act, 1953 (hereinafter referred to the 'Acquisition Act'). In order to appreciate the nature of proceedings, it is necessary to give a small overview of the Acquisition Act. The preamble to the Acquisition Act states as under:

“An Act to provide for the State acquisition of estates, of rights of intermediaries therein and of certain rights of raiyats and under-raiyats and of the rights of certain other persons in lands comprised in estates.”

2. Section 2(i) of the Acquisition Act defines “intermediary” and reads as under:

“S. 2. Definitions. -

(i) "intermediary" means a proprietor, tenure-holder, under-tenure-holder or any other intermediary above a raiyat or a non-agricultural tenant and includes a service tenure-holder and, in relation to mines and minerals, includes a lessee and a sub-lessee;”

3. Chapter II of the Acquisition Act provides for “Acquisition of estates and of the rights of intermediaries therein”. The relevant provision is as under:

“S. 4. Notification vesting estates and rights of intermediaries. - (1) The State Government may from time to time by notification declare that with effect from the date mentioned in the notification, all estates and the rights of every intermediary in each such estate situated in any district or part of a district specified in the notification, shall vest in the State free from all in cumbrances.”

“S. 5. Effect of notification. - (1) Upon the due publication of a notification under section 5, on and from the date of vesting -

(c) (Subject to the provisions of sub-section (3) of section 6, every non-agricultural tenant holding any land) under an intermediary, and until the provisions of Chapter VI are given effect to, every raiyat holding any land under an intermediary, shall hold the same directly under the State, as if the State had been the intermediary, and on the same terms and conditions as immediately before the date of vesting:

Provided that if any non-agricultural tenant pays rent wholly in kind or partly in kind and partly in cash, then, notwithstanding anything contained in the foregoing clause, he shall pay such rent as a Revenue Officer specially empowered by the State Government in this behalf may determine in the prescribed manner and in accordance with the principle laid down in clause (ii) of section 42:

Provided further that any person aggrieved by an order passed by the Revenue Officer determining rent under the first proviso may appeal to such authority and within such time as may be prescribed;”

“S. 6. - Right of intermediary to retain certain lands:- (1) Notwithstanding anything contained in sections 4 and 5, an intermediary shall, except in the cases mentioned in the proviso to sub-section (2) but subject to the other provisions of that sub-section, be entitled to retain with effect from the date of vesting —

(a) land comprised in homesteads;

(b) land comprised in or appertaining to buildings and structures owned by the intermediary or by any person, not being a tenant holding under him by leave or license;

Explanation. - For the purposes of this clause 'tenant' shall not include a thika tenant as defined in the Calcutta thika Tenancy act, 1949 (W.B. Act II of 1949);

(c) non-agricultural land in his khas possession including land held under him by any person, not being a tenant, by leave or license, not exceeding fifteen acres in area, and excluding any land retained under clause (a): Provided that the total area of land retained by an intermediary under clauses (a) and

(c) shall not exceed twenty acres, as may be chosen by him:

Provided further that if the land retained by an intermediary under clause (c) or any part thereof is not utilised for a period of five consecutive years from the date of vesting, for a gainful or productive purpose, the land or the part thereof may be resumed by the State Government subject to payment of compensation determined in accordance with the principles laid down in sections 23 and 24 of the land Acquisition Act, 1894 (I of 1894);

(d) agricultural land in his khas possession, not exceeding twenty-five acres in area , as may be chosen by him:

Provided that in such portions of the district of Darjeeling as may be declared by notification by the State Government to be hilly portions, an intermediary shall be entitled to retain all agricultural land in his khas possession , or any part thereof as may be chosen by him;

(e) tank fisheries;

(2) An intermediary who is entitled to retain possession of any land under sub-section (1) shall be deemed to hold such land directly under the State from the date of vesting as a tenant, subject to such terms and conditions as may be prescribed and subject to payment of such rent as may be determined under the provisions of this Act and as entered in the record-of-rights finally published under Chapter V except that no rent shall be payable for land referred to in clause (h) or (i) :

Provided that if any tank fishery or any land comprised in a tea-garden, orchard, mill, factory or workshop was held immediately before the date of vesting under a lease, such lease shall be deemed to have been given by the state Government on the same terms and conditions as immediately before such date subject to such modification therein as the State Government may think fit to make.”

(emphasis supplied)

4. The effect of the aforesaid provisions, thus, is that once the process is followed, the rights of intermediary is to vest in the State, free from all encumbrances and the exceptions are provided in Section 6(1).

5. In a nutshell, the Act provides for vesting of the land of the intermediary as per process with the State Government but an intermediary is entitled to retain possession of any land from the date of vesting the lands falling under the exceptions enumerated in clauses (a) to (e) of sub-section (1) of Section 6 of the Acquisition Act as a tenant of the State.

6. Insofar as invocation of power under Section 44 (2a) by the Revenue officer is concerned, the relevant provisions are reproduced as under:

“Section 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.”

(2a) An officer specially empowered by the State Government may, on application within nine months, or of his own motion within [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 subsection (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 subsection 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.”

7. The Revenue Officer, thus, sought to exercise power under Section 44(2a) of the Acquisition Act suo moto on 7.4.1969. Thereafter he cancelled the tenancy rights of both Jitendra Lal Paul and Golap Bala Saha Mondal vide order dated 12.5.1969. This order was assailed in a WP being Civil Rule No.2915 (W) of 1969 by Golap Bala Saha Mondal alone. The learned single Judge of the Calcutta High Court set aside the order dated 12.5.1969 vide order dated 1.6.1973. The rationale for doing so is two-fold - though Golap Bala Saha Mondal was in possession of land on payment of rent to the State Government and her name had been mutated on purchase in the year 1962, the proceedings under Section 44(2a) were

held without notice to her. Secondly, the Revenue Officer was held to have no jurisdiction to go into the question as to whether the recorded owner is the benamidar for any other person.

8. On the other hand, on the demise of Jitendra Lal Paul, the land vested with his widow, Kusumbala Paul, who sold it to Mr. Rathindra Chandra Hore. The appellant, Ashim Ranjan Das, purchased the said land measuring 8.26 acres in 1987 from Mr. Rathindra Chandra Hore, which was originally held by late Jitendra Lal Paul.

9. It appears that since only Golap Bala Saha Mondal had filed the earlier writ petition, the State Government took steps qua the land of Jitendra Lal Paul on the premise that the land vested in the State Government and executed Deeds of Ryoti Settlement with regards to the land in favour of respondents No. 1 and 2 herein. The first two respondents before us are therefore the patta holders of the land through registered pattas of July, 1980. That is how the title came to respondent Nos.1 & 2, before the sale to the Appellant.

10. In the year 1990, the heirs of Jitendra Lal Paul, i.e., Kusumbala Paul and others filed a writ petition, being C.O. No.8958 (W) of 1990, on the ground that the land cannot be treated to be vested in the State Government. In the said proceedings, Ashim Ranjan Das, the appellant herein, was also joined as Petitioner No. 8. Respondents No. 1 and 2 herein were joined as respondents No. 10 and 13 respectively. In terms of the order dated 17.7.1997, the writ petition was allowed predicated on the earlier order passed on 1.6.1973 by the High Court in terms whereof the process undertaken by the respondent-authorities under Section 44(2a) of the Acquisition Act had been set aside.

11. The respondents No. 1 and 2 before us, did not take any steps to challenge the said order of 17.7.97, till 1998 when the Appellant before us filed a writ petition, being WP No.4327 (W) of 1998, with a prayer to mutate his name in the records, in respect of the lands purchased from Mr. Rathindra Chandra Hore. This writ petition was transferred to the Tribunal constituted under The West Bengal Land Reforms and Tenancy Tribunal Act, 1997 (hereinafter referred to as the 'WB Land Reforms & Tenancy Act') and renumbered as Transferred Application No. 401 of 2000 (LRTT). Section 4 of the WB Land Reforms & Tenancy Act deals with the establishment of the Tribunal, Section 9 with the transfer of case records from the High Court while Section 11 provides for an appeal to the Division Bench of the High Court.

12. The Tribunal in terms of the order dated 19.9.2000 directed the Block Land and Land Reforms Officer to restore all the land in the name of KPS. The endeavour to seek recall of this order by the State Government was unsuccessful vide order dated 22.3.2001. Consequently, the Block Land and Land Reforms Officer forwarded the annulment proposal to the Sub-Divisional Officer ('SDO') for taking necessary action in terms of the order passed by the Tribunal. The SDO in turn issued notice to the patta holders for hearing.

13. Shibu Bodhak and Tapan Malik respondents No.1 and 2 herein respectively, filed an application in the High Court of Calcutta registered as W.P.L.R.T. No.1045/2001, being an appeal filed u/s 11 of the WB Land Reforms & Tenancy Act and also invoking Article 226 of

the Constitution of India, inter alia praying for issuance of a writ in the nature of mandamus, commanding the respondents to set aside the order dated 19.9.2000 and 22.3.2001 passed by the Tribunal in Appeal No.401/2000, which was transferred from the High Court, and also directing the respondents to set aside the action of the appropriate authority under The West Bengal Land Reforms Act, 1955 (hereinafter referred to as the 'WB Land Reforms Act') which had issued a notice dated 17.4.01 for the cancellation of patta. Mr. Shibu Bodhak and Tapan Malik challenged the order of the Tribunal directing the authorities to cancel the pattas of patta holders inter alia on the ground of absence of opportunity of being heard.

14. We may notice here that the WB Land Reforms Act was enacted with the objective as set out in the Preamble, which reads as under:

“An Act to reform the law relating to land tenure consequent on the vesting of all estates and of certain rights therein [and also to consolidate the law relating to land reforms] in the State.”

The WB Land Reforms Act sought to vest the rights in the land in the raiyat (a person or an institution holding land for any purpose whatsoever).

15. This was opposed by the appellant before us on the ground that since the vesting in the State Government had been set aside by the High Court on 1.6.1973 albeit at the behest of Golap Bala Saha Mondal, the grant of pattas by the State Government was void ab initio including in respect of the present first two respondents in July, 1980. We may add here that the rights of the appellant are derived from Jitendra Lal Paul for which the writ petition was filed only in the year 1990. It appears that in the interregnum period the land was transferred to respondent Nos.1 & 2. It was also contended by the appellant that the first two respondents could not complain or make a grievance for not being made parties in Appeal No.401/2000 since the issue of the proceedings under Section 44(2a) of the Acquisition Act already stood resolved and had attained finality.

16. The aforesaid appeal filed by respondent Nos.1 & 2 was, however, allowed vide impugned order dated 7.5.2004, noticing that respondent Nos.1 & 2 herein were the patta holders in respect of the land and were not heard by the Tribunal before directing the cancellation of the pattas given to them. They had continued in possession since 1980 and it is only on issuance of notice by the appropriate authority in April, 2001 that they came to know of the cancellation of the patta. The writ petition filed, which was transferred to the Tribunal only made a prayer for mutation of the land in the name of the appellant for which patta was held by respondent Nos.1 & 2 and they were not parties. It was further opined that the Tribunal having already reached a finding and issuing directions to the authorities for mutation of the plots in favour of the appellant, the hearing to be given by the Block Land and Reforms Officer would be of no consequence. The order dated 19.9.2000 of the Tribunal was, thus, set aside as also all proceedings thereto. However, no observations were made on the merit of the controversy and this setting aside was necessitated on account of violation of principles of natural justice. The Tribunal was directed to give a chance to the first two

respondents herein to file their affidavits and thereafter pass an order on the merits of the controversy raised by the appellant.

17. The appellant is aggrieved by this remitting of the matter to the Appellate Tribunal. We may also note that this appeal was filed originally in the year 2004 and 14 years have elapsed since then.

18. We believe the endeavour of the appellant through the present proceedings has proved to be a fruitless exercise as by now the matter on being remanded would have been adjudicated, after giving opportunities to the first two respondents. The case has had a chequered factual history. No doubt the proceedings initiated under Section 44(2a) of the Acquisition Act in 1969 were set at naught by the order of the High Court dated 1.6.1973, but then only Golap Bala Saha Mondal had initiated the process while no such process was initiated by Jitendra Lal Paul. After the proceedings of the Revenue Officer were set aside on 1.6.1973, it appears that action was taken qua the land of Jitendra Lal Paul and that is how respondent Nos.1 & 2 have registered pattas issued by the State authorities in July, 1980 and claim to be in possession. The appellant purchased the same land in 1987 and possibly at the behest of the heirs of Jitendra Lal Paul, woke up to file the writ petition in the year 1990. The appellant and the respondents herein, were made a party in those proceedings. Predicated on the reasoning of the order dated 1.6.1973, this petition succeeded by the order dated 17.7.1997. It is thereafter that the appellant filed the writ petition, which was transferred to the Tribunal without impleading respondent Nos.1 & 2 as parties in whom the land vested, rightly or wrongly. In such a situation the first two respondents, at least, have a right to be heard and that is what has weighed with the High Court while setting at naught the directions of the Tribunal dated 19.9.2000 and subsequent proceedings thereto, vide order in appeal dated 7.5.2004.

19. We are, thus, of the view that there is no merit in the appeal, which is dismissed leaving the parties to bear their own costs.