

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Md. Shabbar Rashidi

SA No. 55 of 2018

I.A. NO: CAN 2 of 2017 (Old NO: CAN 2475 of 2017)

Sri Sanatan Hazra & Ors.

Versus

Sri Sankar Narayan Mal

For the Appellants : Mr. Shyamal Chakraborty, Adv.

: Ms. Anjana Das, Adv.

: Mr. Bikramjit Mandal, Adv.

For the Respondent : Mr. Gopal Chandra Ghosh, Adv.

: Mr. Bhakti Prasad Das, Adv.

Hearing concluded on : September 09, 2023

Judgment on : October 18, 2023

Md. Shabbar Rashidi, J.

1. By filing the instant appeal, the appellant has assailed the judgment and decree dated August 28, 2006 passed by learned Civil Judge (Senior Division), Tamaluk

in **Title Appeal No. 34 of 2003** arising out of judgment and decree dated May 13, 2003 passed by learned First Civil Judge (Junior Division), Tamluk in **Title Suit No. 157 of 1999**.

2. It was the case of the plaintiff/appellant that the suit properties were under occupation of one Patit Paban Hazra. The said Patit Paban Hazra was a landless person and was in possession of the suit properties from before 1975. The said land, being in occupation of the said Patit Paban Hazra, vested into the State in terms of the provisions of West Bengal Acquisition Of Homestead Land for Agricultural Labourers, Artisans and Fishermen Act, 1975.
3. Upon such vesting, the suit properties were settled in favour of Patit Paban Hazra by the competent authorities under the said Act of 1975. During such possession of the suit properties, Patit Paban Hazra died. The plaintiffs/appellants being legal heirs of Patit Paban Hazra inherited the suit properties and have possessed the same to the knowledge of all concerned.

4. The suit properties appertained to RS plot No. 323 measuring 64 decimals. In the LR settlement, 5 decimals out of the said 64 decimals in plot No. 323, upon vesting under the Act of 1975, were recorded in the name of the legal heirs of Patit Paban Hazra under LR Plot No. 323/3494. The remaining 59 decimals therein were recorded as original LR plot No. 323.
5. It was further case of the plaintiff/appellant that the predecessor-in-interest of the plaintiff had residential house in the aforesaid 5 decimals. On the death of the predecessor-in-interest, the 'chitebera' construction over the said plot was demolished, for which, the plaintiff/appellants constructed a new house in the land which has been acquired by them by virtue of purchase, gift and exchange. It was further stated that though, there was no structure standing on the property but the plaintiffs/appellants have been in possession of 15 decimals in the plot by growing crops thereon. Besides, the plaintiffs also had residential house, tank and trees over the non-suited plot No. 323.

6. It was further case of the plaintiff/appellants that in order to grab the suit property, the defendants/respondents stacked bricks, sands etc. over the suit property. When the plaintiffs/ appellants raised objection, the respondents/defendants denied the title of the plaintiffs over the suit properties on September 18, 1989. They also gave out to construct a residential house over the suit properties having no manner, right, title and interest over it.

7. On the other hand, the respondent/defendants came up with a case that Plot No. 323 measuring 64 decimals was recorded in the name of Gobind Bar and Amar Bar in the Cadestral Survey Record of Rights (CSROR). In the RS ROR, the aforesaid 64 decimals came to be recorded under RS khatian No. 217 and 218 in the name of Anudhwaj Bar and others. In RS khatian No. 218, the name of Patit Paban Hazra, the predecessor of the plaintiff /appellant, was also recorded as permissive possessor. It was the contention of the defendant/respondent that upon notice of such wrong

entry in the RS record of rights, Patit Paban Hazra executed a 'Nadabi' deed on September 29, 1989 in favour of the defendant/ respondent.

8. It was further case of the respondent/defendant that Nakul Bar, while possessing properties appertained in RS Khatian No. 218, died leaving behind four sons and two daughters and a son and a daughter of his predeceased daughter. The aforesaid successors of Nakul Bar executed a sale deed on September 19, 1989 in favour of the respondent/defendants in respect of $7\frac{1}{4}$ decimals of land in plot No. 323. The defendants also purchased $7\frac{1}{4}$ decimals in the aforesaid plot No. 323 by a sale deed dated September 19, 1989 executed by Sasibhuswan Bar and two others. The respondent/defendant further purchased $5\frac{1}{4}$ decimals in the suit plot by dint of registered sale deed dated September 19, 1989 executed by the legal heirs of Gobind Mal. The respondent/defendants also purchased $7\frac{1}{4}$ decimals in the suit plot by registered sale deed dated September 19, 1989 from Mahadev and Sahadev.

9. By such transactions, the defendant/respondent acquired right, title and interest over 27 decimals of land in the suit plot No. 323. Out of such lands, a deed of exchange was executed by and between the defendant and plaintiff No. 3, 4 and 5, through which, the plaintiffs got $1\frac{5}{16}$ decimals in the suit plot. The defendant also sold out $8\frac{11}{16}$ decimal therein by a registered deed of sale dated September 28, 1989 in favour of the aforesaid Patit Paban Hazra. Accordingly, the defendant remained in ownership in respect of 17 decimals in the suit plot No. 323 under Khatian No. 218 and possessed the same by residing thereon and growing crops on a portion thereof. The name of the defendant/respondent was duly recorded under LR Khatian No. 1626 in respect of the said 17 decimals in suit plot No. 323.

10. The defendant/respondent also submitted that there was no existence of plot No. 323/3494. The plaintiff/appellants, in collusion with the settlement authorities, managed to get 5 decimals in the suit plot recorded under plot No. 323/3494 which is erroneous. It

was also contended that no land acquisition proceeding was ever started against the defendants nor they received any notice of such proceeding. The plaintiffs cannot claim any portion in the suit plot under the provisions of the West Bengal Acquisition of Homestead Land for Agricultural Labourers, Artisans and Fishermen Act, 1975. It was submitted that Patit Paban Hazra used to own properties in Plot No.325 which ultimately, devolved upon the plaintiffs and the same was duly recorded in the RSROR.

11. On the basis of pleadings, put in by the respective parties, the learned Trial Court framed as many as eight issues for adjudication of the suit, that's to say:

1. Is the suit maintainable in its present form and prayer?
2. Is the suit barred by limitation?
3. Is the suit bad for defect of parties?
4. Is the suit barred u/s 34 of the Specific Relief Act?

5. Have the plaintiffs any right, title, interest in and possession over the suit property?
6. Have the plaintiffs inherited the suit property?
7. Are the plaintiffs entitled to get a decree as prayed for?
8. To what other relief or reliefs, if any, the plaintiffs entitled to get.

12. Upon trial of the suit and on consideration of the evidence adduced on behalf of the parties, the learned Trial Court decided that the suit land was the property acquired under the provisions of West Bengal Acquisition of Homestead Land for Agricultural Labourers, Artisans and Fishermen Act, 1975 and upon such acquisition, the same was settled with the predecessor-in-interest of the plaintiff. Accordingly, by a judgment dated May 13, 2003 the suit being Title Suit No. 157 of 1999 was decreed in favour of the plaintiff/appellants.

13. The defendant/respondent carried an appeal against the judgment and order passed by the Trial Court. By a judgment and decree passed in such appeal

being Title Appeal No. 34 of 2003 i.e. the judgment and decree impugned herein, learned First Appellate Court allowed the appeal setting aside the judgment and decree passed by the Trial Court. It was held in the impugned judgment that the plaintiff/appellants failed to establish title over the suit properties based on the acquisition thereof under the provisions of the said Act of 1975 and its settlement in favour of their predecessor.

14. It was submitted by learned advocate for the appellant that the suit properties were vested under the provisions of the said Act of 1975 and settled with their predecessor as occupier thereof by the competent authority. Such vesting of the land was never challenged. The said land was accordingly recorded in the name of the occupier in the RSROR. Such recording was not challenged before the appropriate authority. The defendant/respondent never moved for correction of the record of rights.

15. It was also contended that the purchasers of the defendant/respondents actively participated in the

vesting proceeding and as such, the respondents cannot raise any objection against the declaration of title of the appellant/plaintiff over the suit properties.

16. Learned advocate for the appellant also submitted that the learned First Appellate Court failed to appreciate that the land in question vesting in terms of Section 4 of the said Act of 1975 and issuance of appropriate document of conferment of title in terms of Rule 8 of West Bengal Acquisition of Homestead Land for Agricultural Labourers, Artisans and Fishermen Rules, 1976 was not mandatory. Non-issuance of a formal document under Rule 8, would not vitiate the scheme of the said Act of 1975. Such point was also not raised by the respondent/defendant ever, in their written statement or in the memorandum of appeal or even at the time of hearing before learned first appellate court.

17. Learned advocate for the appellant further contended that the defendant/respondent never challenged the vesting or filed any suit or proceeding for declaration of title and recovery of possession thereof.

18. Learned advocate for the appellant also contended that learned First Appellate Court was not justified in discarding the testimony of the documents produced on behalf of the appellant/plaintiff in support of his title i.e. Exhibit 4A, exhibit 4B and exhibit 4.
19. Learned advocate for the appellant also submitted that the provisions of Section 4 of the said Act of 1975 presupposes possession of the occupier over the vested land therefore, the provisions of Section 34 of the Specific Relief Act, 1963 has no manner of application in the facts and circumstances of the case.
20. Learned advocate for the appellants relied upon the case reported in **2004 (1) Calcutta Law Journal 81 (Shri Narendra Nath Roy alias Narendra Kumar Roy alias Narendra Narayan Roy Vs State of West Bengal)** in support of the proposition that the respondents/defendants could have approached the tribunal, had they any grievance against the acquisition and vesting of the suit property under the provisions of the said Act of 1975.

21. On the other hand, learned advocate for the respondent/defendant submitted that the suit as framed was not maintainable in so far as the plaintiff did not seek recovery of possession. For the aforesaid reason, the suit was barred by the provisions of Section 34 of the Specific Relief Act.

22. It was also contended by learned advocate for the respondent that exhibit B produced on their behalf, spoke of devolution of the suit property but it is silent as to the factum of acquisition of such land under the provisions of the said Act of 1975.

23. In consideration of the materials placed on before this Court, the appeal was admitted for the adjudication of the following points of law involved herein, that's to say: -

(a) Whether the learned Court of appeal below committed substantial error of law in reversing the judgment and decree passed by the learned Trial Judge by totally misreading the scope of exhibit 4A and exhibit 4B?

(b) Whether the learned Court of appeal below committed substantial error of law in not deciding whether Rule 8 of the West Bengal Acquisition of Homestead Land for Agricultural Labourers, Artisans and Fishermen Rules, 1976 is mandatory or not?

24. As noted above, the plaintiff claimed to have acquired right and title in the suit land through his predecessor-in-interest Patit Paban Hazra who, in turn, received the same on settlement under Section 4 of the Act of 1975. The appellant banked upon exhibit 4A and exhibit 4B to establish his right and title over the suit land. The learned Trial Court decreed the suit of the plaintiffs affirming their title over the suit property on the basis of the documents produced on behalf of the plaintiffs, more specifically exhibit 4A i.e. certified copy of the order sheet in proceeding No.1 of 1982 under Section 4 of the Act of 1975 and exhibit 4B i.e. certified copy of LR ROR. Besides, the appellants/plaintiffs also relied upon the notice issued upon the respondents or their

predecessors in such proceeding (exhibit 4) and certified copy of RS ROR. The learned Trial Court relied upon such documents and consciously negated the prayer of the respondents for expunging such documents holding that such documents were duly issued by a public officer and could not be discarded. On the basis of such documents, the learned Trial Court went on to hold that the predecessor-in-interest of the plaintiffs acquired the suit land in terms of the provisions of Section 4 of the Act of 1975 which ultimately devolved upon the appellants/plaintiffs and decreed the suit in their favour.

25. In the impugned judgment, however, the learned First Appellate Court, although, did not question the admissibility of exhibit 4 and 4A but went on to hold that the aforesaid document was devoid of a document of conferment of title in terms of Rule 8 of the West Bengal Acquisition of Homestead Land for Agricultural Labourers, Artisans and Fishermen Rules, 1976 and as such, no title to the suit lands passed on to the said Patit Paban Hazra under the West Bengal Acquisition of

Homestead Land for Agricultural Labourers, Artisans and Fishermen Act, 1975 which could devolve upon the appellants. Consequently, the learned first appellate court, by the impugned judgment and decree overturned the judgment and decree passed by the learned Trial Court.

26. So far as the admissibility of exhibit 4A and exhibit 4B is concerned, the two documents surely falls in the category of 'public document' as defined under Section 74 of the Indian Evidence Act, 1872, a certified copy of which could legally be issued under Section 76 and proved in terms of Section 77 of the said Act. There appears nothing wrong with the admissibility of exhibit 4A and exhibit 4B.

27. As regards the acquisition of the subject land, it was held in the impugned judgment that since, a document of conferment of title was not issued in favour of the occupier, in terms of Rule 8 of Rules of 1976, by mere operation of the provisions of Section 4 of the Act of 1975 title in such land cannot pass on to the occupier. The

learned First Appellate Court held exhibit 4A not to be a valid document of title.

28. In order to adjudicate the points of law as framed for determination of the instant appeal, it would be apposite to refer to the provisions of Section 4 of Act of 1975, and Rule 8 of the Rules of 1976 which lays down that,

Section 4 of Act of 1975

4. *Where an occupier has been in possession of any land on the 26th day of June, 1975 then—*

(a) if the land in his possession does not exceed .0334 hectare, such land, and

(b) if the land in his possession exceeds .0334 hectare, so much of such land as does not exceed .0334 hectare,

shall stand acquired by the State Government and shall thereupon stand transferred to and vest absolutely in favour of such occupier.

29. The scheme of Section 4 of the Act of 1975 suggests that where the occupier is found in occupation of land on the particular day of 26th day of June, 1975, the specific area subject to a maximum of .0334 hectare, shall stand acquired by the State Government. Not only that, upon such acquisition by the State, the same shall stand transferred to and absolutely vest in favour of the occupier.

30. Rule 8 of the West Bengal Acquisition of Homestead Land for Agricultural Labourers, Artisans and Fishermen Rules, 1976 reads, thus”

8. Conferment of title of land.-The Collector shall confirm the title of the Land which has vested in an occupier under section 4, by a document in favour of that occupier in the form appended below :-

31. In order to decode the cumulative impact of the two provisions, an unadorned reading of the provisions of Section 4 of the Act of 1975 adequately suggests that the moment an occupier as defined under Section 2 (f) of the

Act is found in possession of a land within the meaning of Section 2 (e) of the said Act, on the particular date, the specific area of such land shall stand acquired by the State Government and at the same time such land shall stand vested absolutely, into the occupier. Such acquisition or vesting shall operate automatic by operation of law. The provisions of Section 4, does not require or provide for any specific act to be done on the part of either the State or the occupier, to effectuate such acquisition or vesting.

32. At the same time, the words used in Rule 8 of the Rules of 1976 to the effect ***“The Collector shall confirm the title of the Land which has vested in an occupier under section 4.....”*** contemplates confirmation of title by the Collector by means of a document in this regard, of a land which has already been vested in the occupier. The aforesaid provision sufficiently establishes that the title of the land has already vested into the occupier by operation of Section 4 of the Act of 1975. If that be so, the title of an occupier over a land vested in him under

the provisions of the Act of 1975 cannot be faulted for non-issuance of a document confirming title of the occupier thereof. The language used in Rule 8 is quite explicit to indicate that a document of confirmation of title by the Collector contemplated under such Rule is not a sine qua non for conferment of title in a property which has already been vested in the occupier under Section 4 of the Act.

33. Furthermore, exhibit 4A goes to show that a proceeding under Section 4 of the Act of 1975 was initiated at the behest of the appellants/plaintiffs. The respondents/defendants have made out a case that no notice in the proceeding was served upon them. However, from the purport of exhibit 4A, it is evident from order dated January 03, 1983, in the proceeding under Section 4 of the Act of 1975 that notice of the proceeding was duly served upon the respondents. Besides that, order dated January 13, 1983 goes to establish that the hearing in the proceeding was effected in presence of both the parties and recording of 0.05 acres in the suit

plot in favour of the petitioner in the proceeding i.e. the occupier Patit Paban Hazra in the record of rights, was materialized subsequent to mutual consent of the parties followed by a joint petition filed by both the parties.

34. In such view of the facts, besides the operation of Section 4 of the Act of 1975, the respondents/defendants are stopped from denying the title of the predecessor of the appellants/plaintiffs and in turn, that of the appellants/plaintiffs.

35. The deed of relinquishment/'Nadabi' (exhibit B) is also of no assistance for the respondents. In terms of the provisions of Section 12 of the Act of 1975, an occupier is protected from being evicted or dispossessed from the land vested in him under Section 4 of the Act, notwithstanding any judgment, decree or order of any Court for such eviction or dispossession. In fact, an occupier of a land vested in him under Section 4 of the Act of 1975, is debarred from transferring such land, in accordance with the provisions of Section 10 of the said Act, except by a simple mortgage in favour of scheduled

bank, cooperative land mortgage bank or a corporation owned by Central or State Government and that too, for the development of such land. Therefore, Exhibit B cannot operate to vitiate the title of the predecessor of the appellants/plaintiffs over the suit land which is vested in him in terms of Section 4 of the Act. Besides that, in terms of the provisions of Section 11 of the Act of 1975, a person, who evicts an occupier, unlawfully from the land vested in such occupier under Section 4 of the Act, is liable to criminal liability as well.

36. The ratio laid down in the case of **Shri Narendra Nath Roy (Supra)** has no manner of applicability in the facts and circumstances of the instant appeal.

37. Therefore, in the light of discussions made hereinbefore, I am of the view that the learned First Appellate Court completely misunderstood the scope of Section 4 of the Act of 1975 as well as Rule 8 of the Rules of 1976 in discarding the impact of exhibit 4A and exhibit 4B and thereby committed substantial error in reversing the judgment and decree passed by the learned Trial

Court in T. S. No. 157 of 1999. The points of law framed vide order dated March 21, 2007 are decided accordingly.

38. Consequently, the impugned judgment and decree dated August 28, 2006 passed by learned Civil Judge (Senior Division), Tamluk in Title Appeal No. 34 of 2003 is set aside.

39. Accordingly, the instant appeal being S.A. 55 of 2018 is allowed without any order as to costs. The judgment and decree of the Learned Trial Court shall stand restored. Connected applications, if any, shall stand disposed.

40. L. C. R. along with a copy of the judgment be sent to the appropriate Court at an early date.

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

[MD. SHABBAR RASHIDI, J.]