

IN THE HIGH COURT AT CALCUTTA
(CIVIL APPELLATE JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

S.A. 60 of 2021
CAN 1/2021
CAN 2/2023

State of West Bengal & Ors.
-VS-
Achinta Roy @ Achinta Kumar Roy Ghatak Choudhury

For the Appellants : Mr. Pantu Deb Roy, Ld. A.G.P.Adv.
Mr. Pannalal Bandopadhyay
Mr. Subrata Guha Biswas

For the Respondents. : Mr. Rwitendra Banerjee, Adv.
Mr. Shibasis Chatterjee
Mr. Sandip Kundu
Mr. Devdutta Pathak

Hearing concluded on : 11th December, 2023

Judgement on : 12th December, 2023

Siddhartha Roy Chowdhury, J :

1. This Second Appeal challenges the judgement and decree passed by learned District Judge, Murshidabad in Title Appeal No. 21 of 2019 reversing thereby the judgement and decree passed by the learned Civil Judge, Junior Division, 2nd Court, Berhampore, Murshidabad in Title Suit No. 261 of 2016.

2. Briefly stated Sri Achinta Roy @ Achinta Roy Ghatak Choudhury and his siblings have filed a suit stating *inter alia* that their mother Hasi Rani Roy

Ghatak Chowdhury, since deceased was in possession of the suit property. Her name was recorded in the Revenue Record of Right during the L.R. operation while R.S. R.O.R. was in the name of Azizur Rahaman Khan. Subsequent to the final publication of the revenue R.O.R. under the W.B.L.R. Act, one Hiru Hossain raised objection and a proceeding under Section 51A of the W.B. L.R. Act was initiated but contention of Hiru Hossain was not accepted by the competent authority.

3. The Land Acquisition Department also filed an objection under Section 51B of the W.B.L.R. Act but the said proceeding was dismissed being dropped.

4. Hasi Rani Roy Ghatak Chowdhury, died in the year 1987 leaving behind the plaintiffs as her legal heirs and successors who have been possessing the suit property by effecting, addition, alteration and renovation of building constructed by their mother Hasi Rani Roy Ghatak Chowdhury, and also by inducting some tenants in the building. The status of the plaintiffs has been acknowledged by the State by accepting rent.

5. It is adverted that the plaintiffs have been possessing the property for more than thirty years. All on a sudden the defendant no. 2 issued a notice on 10.5.1999 depicting the State of West Bengal as the owner of the property. An explanation was sought for from the plaintiff as to why action would not be taken against for unauthorized occupation of the public land.

6. Being threatened by the defendants, that the plaintiffs would be dispossessed from the property, they file the suit for declaration of the title and for further declaration that the notice dated 10.5.1999 is illegal, arbitrary, whimsical and for the permanent injunction amongst other reliefs.

7. During pendency of the suit on 02.5.2000 the defendants dispossessed the plaintiffs with the help of large contingent of police and government personnel. The defendants contested the suit by filing written statement denying all material averments made in the plaint. It is the specific case of the defendants that the suit is not maintainable being barred by law as laid down under Section 8A of the West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962 and the Civil Court lacks jurisdiction to decide or to deal with any question which under the statute is exclusively vested with the jurisdiction of the Collector.

8. It is the specific case of the defendant that Azizur Rahaman Khan was the original owner of the suit property and he was a Central Government employee. R.S. R-O-R was duly prepared acknowledging the possession of Azizur Rahaman Khan over the suit property. The said land was subsequently requisitioned by the State Government vide Requisition Case No. 117/1950 dated 06.10.1950 and possession of the said land was taken by the S.D.O. Lalbagh on 27.2.1950 other it was given to Mr. Radhika Mohan Roy Ghatak Chowdhury a clerk of S.D.O. Lalbagh as a tenant at a monthly rental of Rs.10/-.

9. After the death of Radhika Mohan Roy Ghatak Chowdhury his wife Hasirani Roy Ghatak Chowdhury, and her son used to occupy the property though illegally, defying the request of the defendant to deliver the possession of the property. The defendant no. 2 thereafter initiated the proceeding for eviction of the unlawful occupation under the West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962.

10. It is further contended that the plaintiffs have no right or authority to occupy the suit land as the property is requisitioned by the State Government from Azizur Rahaman Khan.

11. The question of adverse possession by the plaintiff does not arise. After the death of Radhika Mohan Roy Ghatak Chowdhury his heirs illegally recorded their names for L.R. settlement by making false representation to the Tahasilder. When the matter was brought to the knowledge of the State of West Bengal a proceeding was initiated to correct the record.

12. It is further contended by the defendant that following due process of law under the West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962 an order of eviction was obtained by the State which was never challenged by the plaintiffs.

13. Pursuant to such order the defendants had taken possession. The defendant prayed for dismissal of the suit.

14. After considering the pleadings of the parties, learned Trial Court framed the following issues and additional issues:-

Additional issue no. 1. Whether the suit is barred under Section 8A of the West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962?

Is the suit maintainable in its present form and in law?

1. Have the plaintiffs any cause of action of right to sue?
2. Whether the plaintiffs are entitled to the decree of declaration regarding their title in respect of the suit property and permanent injunction as prayed for?
3. What other reliefs, if any, are the plaintiffs entitled to?

Additional issue no. 1. Whether the suit is barred under Section 8A of the west Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962?

Additional issue no. 2. Whether the suit is bad for defect of parties?

Additional issue no. 3. Whether the notice dated 10.05.1999 issued by SDM, Lalbag is illegal?

Additional issue no. 4. Whether the plaintiffs are entitled to get mandatory injunction?

15. Taking into consideration the testimony of witnesses who adduced evidence on behalf of the plaintiffs as well as documentary evidence, learned Trial Court was pleased to dismiss the suit. The defendants, however, neither examined any witness nor produced any document in course of trial.

16) The plaintiffs challenged the judgement of learned Trial Court in Title Appeal No. 21 of 2019, and got the judgement reversed.

17) Assailing the judgment passed by learned District Judge, Murshidabad. Mr. Pantu Deb Roy, learned Additional Government Pleader submits that learned District Judge, Murshidabad failed to appreciate the fact that the subject matter of the lis is beyond the jurisdiction of any civil court in view of Section 8A of the Public Land (Eviction of Unauthorised Occupants) Act, 1962.

18) It is further submitted by Mr. Deb Roy that the plaintiffs upon receipt of notice given under the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962 appeared before the competent authority, the Sub-Divisional Magistrate, Lalbagh but instead of preferring statutory appeal challenging the order, the plaintiffs filed the civil suit and invited the civil court to exercise jurisdiction in the breach of the law as laid down under the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962.

19) Therefore, having accepted the status of an unauthorised occupant as decided by the Sub-Divisional Magistrate, Lalbagh, the plaintiffs could not have approached the civil court to challenge the legality and validity of the notice issued on 10th May, 1990.

20) It is adverted by Mr. Deb Roy, the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962 is a special statute. The provision of Civil Procedure Code cannot override this Special Act.

21) Mr. Deb Roy further submits that the judgment passed by learned First Appellate Court is a nullity inasmuch as learned first appellate Court was bereft of jurisdiction to entertain the suit. Therefore, the judgment and order should not be allowed to remain in force.

22) Refuting such contention, Mr. Banerjee, learned counsel for the plaintiffs submits that by issuing the notice the defendants since threatened the plaintiffs to evict them from their property, the plaintiffs rightly approached the civil court for appropriate relief.

23) It is further contended by Mr. Banerjee that admittedly one, Hiru Hossain was the man who raised objection when the name of the mother of the plaintiffs got mutated in the record of right during L.R. statement. His objection registered under Section 51A of the West Bengal Land Reforms Act however, was not decided in the affirmative. Exhibit-9 is the order passed by the competent authority dismissing the objection. After the disposal of the said objection under Section 51A of the WBLR Act, 1955 by Hiru Hossain on 20.12.1991, the Land Acquisition Department also took out an objection under Section 51B of the W.B.L.R. Act but in vain. Subsequent thereto, at the behest of Hiru Hossain again the notice dated 10th May, 1991 was issued.

24) This would show that the entire proceeding initiated under the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962 is attended with mala fide.

25) It is further submitted by Mr. Banerjee drawing my attention to Rule 59 of West Bengal Land and Land Reforms Manual, 1991 that while considering an application for mutation by any Rayat the competent authority has the obligation to consider the physical possession of the applicants in respect of the property, examine the registered transfer deeds and when mutation has been claimed on the ground of inheritance, the Officer concerned shall collect necessary evidence in support of inheritance. The Revenue Inspector shall have to verify whether the property is vested or not and submit a report to B.L. & L.R.O., who thereafter is supposed to take the call and to dispose of the application in terms of Section 50 of the W.B.L.R. Act, 1955.

26) According to Mr. Banerjee, Exhibit -1, the R.O.R. was issued by the State and there is every reason to presume that while mutating the name of Smt. Hansi Rani Roy Ghatak Choudhury, the original owner of the property, Revenue Inspector had performed his duty in accordance with law and rules made thereunder particularly when there is no evidence to indicate the contrary.

27) It is further submitted by Mr. Banerjee that during cross-examination, PW-1, Achinta Roy @ Ahhinta Kumar Roy Ghatak Choudhury stated that in the year 1962 his mother acquired the property by auction purchase from the Government, though he expressed his ignorance as to how the State acquired the property. According to Mr. Banerjee the

statement of PW-1 further indicates that the property was acquired through auction purchase by the predecessor-in-interest of the plaintiffs.

28) Mr. Banerjee further submits that plaintiffs have lost the said certificate issued in favour of their mother but Exhibit-4 is sufficient to demonstrate the factum of auction sale conducted by the State. The notice was issued to the owner, Ajijur Rahaman Khan as the gentleman failed to pay taxes to the State.

29) It is submitted by Mr. Banerjee that by way of pre-ponderance of probability there is every reason to presume that the plaintiffs' mother Smt. Hansi Rani Roy Ghatak Choudhury acquired the property from the State through auction purchase and during her lifetime she was possessing the property after mutating her name by paying rates and taxes. On the contrary, no evidence, either oral or documentary was given by the State to rebut the presumption that tilts in favour of the plaintiffs. Therefore, learned District Judge, Murshidabad had every reason to pass the impugned judgment. To buttress his point Mr. Banerjee places his reliance on the judgment of the Co-ordinate Bench of this court reported in AIR 1967, Cal 10 wherein it is held:-

“12.The presumption of accuracy is a rule of evidence. So far as the Evidence Act is concerned Section 4 and Section 114 of the Evidence Act deal with presumption. There are also other sections with which we need not be troubled in this appeal. Presumptions may be of fact or of law or may be of mixed fact and law. Here it is a presumption of law which means only this that law creates an artificial presumption permitting the court to draw the inference whenever the requisite facts as stated in the law are present. But it is at best a presumption and no more. The

presumption of accuracy of the entry in the record of rights does not create or extinguish title but only raises a presumption which again is not conclusive and can be rebutted by evidence. The presumption of law in favour of the accuracy of the entry in the record of rights follows from the fact that such record is prepared after due publicity and notification and upon hearing objectors and interested parties. The entry in the record of rights made after such a procedure, therefore, is presumed to be correct until the contrary is proved by evidence”.

30) Mr. Banerjee further places his reliance on a judgment of the Hon’ble Division Bench of this court in Panchanan Singh versus State of West Bengal reported in 1977(1) CLJ 353.

31) Mr. Deb Roy adverted that the civil court does not have the jurisdiction to decide the issue in view of the statutory mandate as laid down under Section 8A of the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962 which says:-

“8A. Bar to jurisdiction of civil court.-No civil court shall have jurisdiction to decide or deal with any question which is by or under this Act required to be decided or dealt with under the provisions of this Act”.

32) When by issuing notice dated 10th May, 1991 the State machinery sent chilling message to the occupants of the property that they are unauthorised occupants to be evicted from the property, the plaintiffs can always approach the Civil Court and Civil Court can exercise such jurisdiction under Section 9 of the Code of Civil Procedure to decide the question of title. Division Bench of this Court in Panchanan Singh vs- State of West Bengal and others held:-

“4. It is contended by Mr. Shyama Charan Mitter (Mr. Shyama Prasana Roy Choudhury appearing with him), learned Advocate appearing on behalf of the petitioner, that the application filed by the opposite parties before the competent authority is not maintainable because there is a bona fide dispute between the parties with regard to the disputed land and that it cannot be said in the facts and circumstances of the case that the land is in unauthorised occupation of the petitioner. That being so, the application ought to have been rejected by the competent authority and the appeal ought to have been allowed by the Commissioner, Presidency Division. Mr. Mitter refers to Section 4 of the West Bengal Public Land (Eviction of Unauthorised Occupants) (Amendment) Act, 1963.

Section 4 reads as follows:-

“(1) If, after considering the cause, if any, shown by any person in pursuance of a notice issued under Section 3 and any evidence adduced in support thereof, and any evidence which may be adduced by the owner and after making such further inquiry, if any, as he deems necessary,-

(a) The Collector is satisfied that no bonafide dispute regarding title to the public land exists and that the public land is in unauthorised occupation, he shall make an order of eviction directing all persons in such unauthorised occupation to vacate the public land and deliver possession thereof to the owner within such time as may be specified in the order; or

(b) The Collector is satisfied that any person concerned is not in unauthorised occupation of the public land or is of opinion that a bonafide dispute regarding title to the public land exists, he shall

the custodian of the records informed the plaintiffs that the record was not available. Law cannot ask litigant to prove something which is impossible.

38) Under such circumstances, Exhibit-4 the notice under the Public Demand Recovery Act is sufficient to demonstrate that the suit property was put to auction sale.

39) Exhibit-1, L.R. Record of Right though is not a document of title, but the procedure of mutation as laid down under Rule 59 of the West Bengal Land Reforms Manual 1991 is sufficient to draw the presumption that at the time of mutating the name of Rayat, Smt. Hansi Rani Roy Ghatak Choudhury the Revenue Inspector as well as B.L. and B.L.R.O. after their objective satisfaction discharged their duty and name of the predecessor-in-interest of the plaintiffs was mutated and recorded as Rayat. Rule 59 of WBLR Manual 1991 envisages:-.

“West Bengal Land and Land Reforms Manual, 1991.

“59. Enquiry and verification.- (i) *In respect of every application for mutation, the R.I. will start a case and hold an enquiry with previous notice to the petitioner praying for mutation.*

(ii) During such enquiry, the R.I. should-

(a) Verify physical possession of the applicant;

(b) Examine the registered transfer-deeds ; and

(c) Where mutation has been claimed on ground of inheritance, collect necessary evidence in support of such inheritance from the locality.

(iii) The R.I. will verify if the plot in respect of which mutation has been prayed is vested or if it is a patta land. Such verification should also include examination of the copy of the R.O.R. available with him.

If such copy is not available with him, he will collect necessary information from the Office of the B.L.L.R.O.

(iv) The R.I. will submit the report to the B.L.L.R.O”.

40) Section 114 of illustration (e) says that court shall presume the official and acts have been performed regularly unless, like all other presumption it is rebutted. As I have already pointed out the State fails to produce any evidence either oral or documentary to rebut the presumption of correctness Exhibit-1.

41) Assuming the contention of the State to be correct that the property was requisitioned and thereafter it was given to the husband of Smt. Hansi Rani Roy Ghatak Choudhury, an employee of the State Government, then the State should have taken step to release the property in favour of the original owner, Ajijur Rahman Khan in absence of any decision to acquire the property under the Land Acquisition Act.

42) In Civil Revision No. before this court being CO 1332 of 2001, the Co-ordinate bench of this court placed on record:-

1. “The following facts are not in dispute:-

- a) Smt. Hansi Rani Roy Ghaak Choudhury purchased the property in question in auction sale in a Certificate proceeding initiated under the Public Demand Recovery Act.
- b) That she was in possession of the property in question after her purchase from the auction sale.
- c) That her name was duly mutated in the record of rights.
- d) That no document has been produced before the courts below in support of the defence claim that the certificate sale by which

Smt. Hansi Rani Roy Ghatak Chowdhury became the owner of the property in question was set aside in a subsequent proceeding”.

43) In CO No. 1174 of 2010 between the parties Hon’ble Co-ordinate Bench observed that :-

“There is no denial that the petitioner plaintiffs traced their title to the suit property through their mother Hasi Rani Roy Ghatak Choudhury, the defendant State took a plea that said auction purchase was later on cancelled but no document to that effect was also produced during hearing”.

44) The State, however, did not challenge either of the two orders which unerringly supports the case of the plaintiffs. There is reason to presume from the conduct of the State that auction purchase took place and Smt. Hansi Rani Roy Ghatak Choudhury acquired the property through auction purchase, otherwise question of cancellation of the auction purchase would not have arisen.

45) In this conspectus I do not find any reason to interfere with the judgment impugned.

46) Admittedly during pendency of the proceeding before the learned court below the defendant -State evicted the plaintiffs from the suit property which was out and out an illegal act. The defendants are directed to restore the possession of the suit property in favour of the plaintiffs within 90 days from the date, failing which the plaintiffs will be at liberty to put decree in execution, if the same has not been initiated already.

47) State is supposed to protect the citizens and respect their right of property which is being considered as constitutional right.

48) Therefore, the State has incurred the obligation to pay damages for unlawful possession of the property effect from 1.5.2000 till the possession is restored.

49) Since learned first appellate Court has imposed cost of Rs. 2,00,000/- State shall pay such cost within 90 days from date in default State shall have to shoulder the obligation to pay damages to the plaintiffs to be assessed by the District Magistrate, Murshidabad as indicated herein above within six months from date.

50) Thus the appeal is disposed of along with application, if any.

51) Interim order, if any, stands vacated.

52) Let a copy of this judgment along with lower court records be sent down to the learned Trial Court forthwith.

53) Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)