

17-A. CORRECTION OF RECORD-OF-RIGHTS AS PER COURT'S ORDER

Asok Gupta

Director of Land Records and Surveys,
West Bengal

Kindly refer to the discussions regarding Directorate memo. No. 302/4124/C/66 dt. 2.8.73 in the last Settlement Officers' Conference. You expressed your difficulties as the L.R.'s opinion referred to in that letter was not consistent with a subsequent decision by the High Court.

The matter has since been thrashed out. In this connection I would refer to Directorate memo no. 588/7589-96/C/76 dt. 16.7.76 addressed to all Settlement Officers (a copy thereof and the extracts from its enclosures annexed for ready reference).

This has finally settled the matter and there should be no difficulty in calculating compensation where some transfers were found to be not bonafide after an enquiry u/s. 5A of the W.B.E.A. Act.

However, if the ex-intermediary has accepted payment or submitted verified statement in respect of C.A. Roll, prepared not taking into account interests effected by the 5A proceedings, further payment in respect of the left out interests may be withheld u/s. 25(3A) of the W.B.E.A. Act in appropriate cases.

The letter handed over by you in the conference is also returned.

Asok Gupta.

Shri P. Bandyopadhyay, WBCS,
Settlement Officer,
Malda, West Dinajpur,

Momo No. 302/758/C/66 Dated 19.07.1980/01.08.1980

Copy forwarded alongwith a copy of the enclosures to :
Shri D.C. Sarkar, WBCS,
Settlement Officer,
Haora-Hugli-Nadia for information and necessary action.

Asok Gupta
Director of Land Records and Surveys, W.B.

Memo No. 588/7589-96/C/76 dt. 16.7.76 of DLR&S, W.B.

To
All S.O.

The attention of all Settlement Officers is drawn to this office No. 302/1806/C/66 dated 13th April, 1967 with which was enclosed a copy of the opinion of the then L.R. on the subject compensation payable to lands vested consequential to an order declaring a transfer as not bonafide under section 5A. The L.R. had opined that no compensation was payable to the transferor who had transferred lands by sale if the lands vested on the transfer been declared not bonafide.

2. The question of the legality of this decision was raised by this directorate and the matter has been under correspondence with the Government since then. Meanwhile requests for an early decisions in the matter have been received from all Settlement Officers on this issue.

3. The matter was placed before the present L.R. and the Advocate General. The L.R. and the Advocate General have both recorded the opinion in Boards file no. 21/76 Misc. (Comp) that under the law compensation cannot be denied to a person whose lands have vested as a consequence to an order declaring transfer as not bonafide.

4. All S.Os are directed to follow the above principle which supersedes the earlier decision conveyed by memo no. 302/1806/C/76 Dt. 13th April, 1976

B.K. Sarkar

Director of Land Records and Surveys,
West Bengal

An extracts from the Board's file no. 21/76-Misc.(Comp.)

Once the transfer has been found to be not bonafide and has been cancelled under section 5A of the Act, compensation payable in respect of the land affected by the said transfer is required to be computed as if, the transfer was never effected. The transferor intermediary will in no case be entitled to retain the land affected by the transfer but he may get compensation therefore under the Act.

N.C. Chowdhury 15.6.76

Denial of compensation pursuant to an order under sec. 5A of the Act, that the transfer in question is not a bonafide one, requires statutory backing. If such opinion has to be given effect to then something will have to be imported into the sec 45A which is not there and the same will run counter to established canons of interpretation of status. There is no whisper in that section that in such eventuality the transferor will even loss a farthing of the compensation for the land purported to be transferred by him.

B.N. Maitra 19.6.76

I also agree with the L.R.'s opinion dated 19.6.76

Gouri Nath Mitter 22.6.76

Copy of the L.&L.U.R.Deptt. G.O. No. 1300(18)-C.R./Misc. 26/80(pt) dated 12.2.81

It has been observed that Advocates of petitioners in writ petitions challenging any of the proceedings under the provisions of the Acts administered by this Deptt. sometimes write to the Govt. or officials of different levels to intimate some actions to be taken or to be stayed on the ground that such orders have been passed by the Hon'ble High Court. Ordinarily such letters are received before copies of the judgement/orders are received from the Hon'ble Court or from the State Advocate. The actions urged upon were sometimes found to be contrary to or not directed by the orders/judgement passed by the Hon'ble Court.

2. The Govt. are advised to say that before implementation of the requests of Advocates of petitioners in such cases, the text of the actual order/judgement may be ascertained by contacting the State Advocate concerned or from the office of Legal Remembrancer, with intimation to this department. The recipients of such letters from Advocates of the petitioners may immediately write back requesting such Advocates to let them (the officers) know the text of the order/judgement so that the order/judgement can be appropriately complied with or obeyed. Such letters should be dispatched by Registered Post with A/D or on personal service on the Advocates themselves, where ever possible.

3. All concerned may be instructed accordingly.

Sd/- Illegible
Dy. Secy, to the Govt. of West Bengal

Draft letter

Sir,

I have your letter no. dated To enable me to comply fully with the order of the Court, Kindly send me a certified copy containing the full text of the order with a copy of the plaint urgently.

Yours faithfully,
H.O. or C.O.

Government of West Bengal
Office of the Director of Land Records & Survey, West Bengal
35, Gopal Nagar Road, Alipore, Calcutta-700027

Memo No. 21/431/CS/81,

Dated, Alipore, the 10.4.1981

To
The Settlement Officer,
Haora-Hugli-Nadia.

Subject : C.R. No. 1018(W)/70, Shibnarayan Ghosal -Vs- State.

Reference : His memo. No. 480/808/Cell/70 dated Hugli 27.1.81 and 489/2020/Cell/70 dated 14.3.81.

It appears that affidavit in opposition has been sworn and filed on behalf of respondent no. 3 by Shri Shorosimohan Kumar, R.O. on 16.1.81. The said affidavit does not cover the Settlement Officer, Haora-Hugli-Nadia, who is the respondent no. 2 and also the State Govt. respondent no. 1. Even if there is no specific allegation against those two respondents still the affidavit in opposition requires to be affirmed on their behalf also by any officer subordinate to them authoritatively. In the instant case the respondent no. 3 should have sworn the affidavit in opposition on behalf of respondents nos. 1 & 2 also together with his own affirmation of statement.

It is requested that in future the affidavit in opposition should be sworn by the R.O. covering other officers of the Settlement wing as well as the State Government. All concerned may please be instructed accordingly.

S.K. Mukherjee
for Director of Land Records and Surveys
West Bengal

Memorandum No. 21/432-38/CS/81

dated Alipore, the 10.4.1981

Copy forwarded to the Settlement Officer, for information and necessary action.

S.K. Mukherjee
for Director of Land Records and Surveys
West Bengal

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Government of West Bengal
Office of the Director of Land Records & Surveys, West Bengal
35, Gopal Nagar Road, Alipore, Calcutta -700027

Memo No. 93/891-98/CS/81

Dated Alipore, the 17th June, 1981.

To
Shri B. Mahapatra, I.A.S. Settlement Officer,
Coochbehar, Jalpaiguri, Darjeeling at Cooch Behar.

It has come to the notice of this office that in some cases specific orders of the High Court are not being carried out by our officers for no valid reason. In such cases, pre-occupation with other works is not a valid excuse. In any case, such orders are most frequently of the nature of giving a re-hearing in a particular proceedings by a certain date. Government loses nothing by carrying out such orders and those are also not difficult to carry out. On the other hand failure to do so due to carelessness exposes officers to the risk of contempt of court charges. This has happened more than once in the recent past. In one particular case, an officer was actually fined for such lapse. Another officer is facing charges of contempt in several cases for such inattention.

He is requested to impress upon all concerned the need for reading orders of courts carefully and acting on them. If the orders appears to be against the interest of the Government and there appears to be good reasons for an appeal, reference to that effect with full facts should be made to the Directorate through proper channel without any delay and the instructions of the Directorate should be sought. In other cases there should be prompt compliance with order of the High Court.

Ashok Gupta
Director of Land Records and Surveys,
West Bengal

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Government of West Bengal
Office of the Director of Land Records and Surveys, West Bengal

Memo No. 454/982-89/CS/81

Dated Alipore, the 12th August, 1981

To

The Settlement Officer,
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The numerous Civil Rules and Civil Suits, in which either this office or the Settlement Officers are made respondents, cannot be dealt with effectively from the small cell in the Directorate. It was, therefore decided in the past that the Settlement Officers should themselves be responsible for defence in such cases. Where the undersigned is a respondent, the defence will, of course, have to be organized in consultation with his office. Even in other cases, and specially in important cases, the Civil Suit Cell of this office will be available for consultation and advice. When there are some steps to be taken which are too urgent to be taken from a distant, the Civil Suit Cell of this Directorate should extend their help.

In all important matters, the undersigned should be kept informed of the developments in the case.

Recently it has come to the notice of the undersigned that some inconvenient procedure are being followed by some of the operations.

It has been observed in some cases that officers or even dealing assistants from some operations come to the Directorate Civil Suit Cell with incomplete papers and without any forwarding letter for help and advice. It has been also found that they do not always come properly equipped. In a case where an affidavit was to be affirmed on 6.8.81 a dealing assistant of the Civil Suit Cell of an operation, who had come to Calcutta, reported the fact to the Civil Suit Cell of the Directorate. He had not even come prepared with court fee stamps and contingent funds. Not only no officer competent to affirm the affidavit had come from the operation, even the dealing assistant had not brought any letter of authority authorizing any Directorate Officer to affirm the Affidavit on behalf of the respondents. To save the case, an officer attached to the Civil Suit Cell of the Directorate, did the needful and affirmed the affidavit within one day in anticipation of the letter of authority.

In another case, a dealing assistant came to this office with a letter from a Settlement Officer. The Settlement Officer was advised in writing to file an appeal and the dealing assistant was advised that the officer deputed from the operation should contact the Civil Suit Cell for further advice on important matters before filing the appeal. It is understood that steps have since been taken towards the filing of the appeal in consultation with the Government but the Officer concerned did not come to the Dte. and report the matter to it. On another occasion an Officer deputed from an operation could not for some reasons affirm the affidavit-in-opposition. Rather than consulting the Dte. about his difficulties he went back and wrote direct to the LRC about his problems.

Thus, two types of mistakes are being noticed in the conduct of Civil Rules and Civil Suits by the Operation. The Directorate is being burdened with clerical work and also out door work that properly belong to Operations. On the other hand, the Dte. is not being put in a position where it can advise the operations in respect of important cases.

He is requested to ensure that such lapses do not occur in future.

Asok Gupta
Director of Land Records and Surveys,
West Bengal

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CIRCULAR

It has been found that our camps are often intimated about directions or interim directions of the High Court through letters of advocates for the petitioners. Sometimes, only one of the respondents is notified by the advocate. Very often communication from an advocate for the petitioners is received at the field level camp only.

2. The orders of the Hon'ble High Court, as far as can be ascertained from the letter of the advocates, are given effect to by the camps to the best of their judgement. These orders are either injunction restraining some government officials from proceeding in a certain manner or directions to take certain steps including hearing some petitions according to a certain procedure and/or within a certain date laid down in the order.

3. In many cases, the letters from the learned advocates for the petitioners are not completely unambiguous. The purport of the orders of the Hon'ble High Court is not clear. In any case, when the orders are paraphrased by an advocate and not quoted verbatim, there is always a risk of imperfect reproduction of the order. Thus, inspite of best intentions on the part of all concerned, there is a risk of the orders or interim orders being carried out imperfectly or even of action being taken contrary to the letter of the orders. Besides, in case of orders of ad-interim injunctions, there is a possibility of our officers restrain themselves from taking legitimate action which are not expressly forbidden by the order. This comes from the general nature of the wording and occasional ambiguity of the letters from some of the advocates.

4. Some of the letters again cannot be understood clearly without reference to the plaints, writ petitions copies of which are not supplied by the learned advocates. Here also there is a risk of non-compliance or imperfect compliance of the orders of the Hon'ble High Court or of forbearing from proceeding with the duties of the Revenue Officers though they are actually not restrained in that respect by the relevant orders of the High Court.

5. Therefore, as soon as such a communication from an advocate is received, the Revenue Officer will write to the Advocate concerned requesting him to send a certified true copy of full text of the order and a copy of the plaint, writ petition. A model draft is appended with the circular, but it may obviously have to be modified according to the circumstances of each case.

6. Advocates are officers of the Court. A communication from an advocate purporting to inform us of the orders of a court should ordinarily be respected. But we have no means of ascertaining that a letter purported to have been signed by an advocate is really signed by an advocate. There may be cases of fraud and forgery also. Therefore, the above pre-cautions are all the more necessary.

7. In some rare cases, court orders are also communicated by the petitioners. I have seen at least one such case during my inspections. Petitioners are not officers of the Court. It should be explained to the petitioner that no action on his petition is possible unless he can produce a certified copy of the orders of the Hon'ble High Court along with a copy of the plaint/writ petition.

8. While writing to the advocate, in the manner indicated in the foregoing paragraphs, a letter should also go to the superior office requesting them to inform whether they have received any copy of the order in this connection authenticated by the Hon'ble High Court or any certified copy. The L.R's office may be contacted by the office of the settlement operation in cases of doubt and urgency.

9. The advocate for the petitioners should be given reasonable time, say one month, to produce certified copies. By that time, the text of the court order, duly authenticated by the court, may also reach camp. It is also possible that a communication from some superior office giving the exact text of the order may be received. In any case, there should be a reasonable period of waiting before taking any irreversible action which may be contrary to the orders of the High Court. In other words, all action should ordinarily be kept in abeyance for a reasonable period, say one month, after the receipt of a communication from an advocate purporting to inform the camp of a court order. But at the same time watch and vigil should be maintained to see that natural actions are not stalled by collusive or fraudulent letters. Such cases should invariably be cleared by the superior officers without delay.

10. If there is no reply within a reasonable period, the Revenue Officer will, of course be free to take action according to law. There may be cases which are not covered by the above circular. There may be also particular circumstances in some cases which would necessitate action on a different line. In all such cases, the Civil Suit Cell of the Charge Office or the Settlement Office should be consulted.

Asok Gupta

Director of Land Records & Surveys, West Bengal

Memo No.512/1223-30/CS/70

Dated, Alipore 23.10.1981

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Government of West Bengal
Office of the Director of Land Records & Surveys, West Bengal
C.S. Branch

Memo No. 489/1339/CS/81

Dated: Alipore the 11th December, 1981

Instances have come to notice where some of the Settlement/Charge/Camp Officers have not kept the copies of writ petitions in Civil Rules after filing affidavits-in-opposition or after otherwise parting with the original while conducting cases. This poses serious problems for the future. At times, it becomes necessary to affirm a supplementary affidavit to strengthen the submissions of the State Government. Sometimes, affidavits-in-opposition, duly affirmed, are somehow or other not submitted before the court and it becomes necessary to file and submit another affidavit. Even after a decision in the case, it is often necessary to consult a copy of the writ petition to read the order of the Court correctly and to implement it. This applies to some interim orders as well. This is so, as the orders, specially interim orders, after make references to paragraphs in the plaints.

For all these reasons, no copy of a writ petition should be parted with without keeping a copy thereof in the office. If a single copy is received, as is often the case, another copy should be made out for record promptly.

All sub-ordinate officers may please be instructed accordingly.

Asok Gupta
Director of Land Records & Surveys, West Bengal

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Government of West Bengal
Office of the Director of Land Records & Surveys, West Bengal
35, Gopalnagar Road, Alipore, Calcutta - 700027

Memo No. 512/1376/CS/79

Dated, Alipur, the 18th December, 1981

To
The Settlement Officer,
Haora-Hugli-Nadia

Sub. : Engagement of Advocates to represent State Government in respect of cases involving Land Matters in the High Court, Calcutta.

Ref. : His No. 3(297)/11474/1(3)/H/75 dated 16.10.81

A reference is invited to his above mentioned communication for engagement of State lawyers.

For quick assignment of our cases to the Advocates on State panel it is advisable to contact the office of the learned Addl. Advocate General in place of Legal Remembrancer, West Bengal direct. A copy of such communication may be repeated to Ld. Legal Remembrancer, West Bengal, for information particularly where C.R. Nos. have been assigned already. This Office may also be kept informed.

Regarding matters involving issues other than land, viz. service matters etc. such communication should invariably be made to learned Legal Remembrancer, West Bengal, instead, under intimation to this Office.

This procedure may be followed in future for facility of work.

K.P. Sandilya
For Director of Land Records and Surveys,
West Bengal

Memo no. 512/1377-83/CS/79,

dated 18.12.81

Copy to Settlement Officer,for favour of information.

N. Ghosh 17.12.81
For Director of Land Records and Surveys,
West Bengal

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Government of West Bengal
Directorate of Land Records & Surveys, West Bengal

CIRCULAR

No. 97/1216/C/81

Dated Alipur, the 31st March, 1982

It has come to the notice of the undersigned that, apart from directions given by the various courts, in many other cases also, the Revenue Officers divest land under Section 14T(3a) of the West Bengal Land Reforms Act, 1955 without prior concurrence of the Settlement Officers concerned.

Henceforth, it should be ensured that the Revenue Officers invariably obtain prior permission, in writing, from the Settlement Officers concerned before any land is divested under section 14T(3a) of the West Bengal Land Reforms Act, 1955.

Settlement Officers will please enforce this direction strictly except in those cases where there are specific directives from the Courts to divest; even in those cases, a decision will have to be taken whether an appeal should be preferred against the order of the Court. Before issuing such permission for divesting, the Settlement Officers will please ascertain, among other things, whether the land in question is under the possession of a Patta Holder. In that case, no permission should be given without hearing the Patta Holder, in question.

T.K. Ghosh
Director of Land Records and Surveys,
West Bengal

Memorandum No. 97/1217-24/C/81

Dated, Alipur, the 31.03.1982

Copy forwarded to :-

1. The Settlement Officer,for information and necessary action.
- 2.

T.K. Ghosh
Director of Land Records and Surveys,
West Bengal

Government of West Bengal
Office of the Board of Revenue, West Bengal
Section-I, GE Branch

To

1. The Addl. Dist. Magistrate (LR)
The Addl. Dy. Commissioner (LR)
2. The Settlement Officer,

Sub. : Entertaining appeals against 14T cases under the W.B. L.R. Act by Lower Civil Courts in acting beyond jurisdiction.

It has come to the notice of the Board that lower civil courts are entertaining a fairly large number of appeals against section 14T cases under the W.B. L.R. Act. It is evident that the lower Civil Courts are usurping jurisdiction where it does not exist and are issuing injunction, orders as well as decisions against vesting under the W.B.L.R. Act bypassing the built-in-provisions specifying the jurisdiction for such appeals in the Act.

2. Board wants to impress that such virtual maligning of W.B.L.R. Act should be vigorously contested by the Collectors both at the stage of admission and during hearing. The Settlement Officers should also submit their statements through the Collectors and be concomitant to associate themselves as one of opposite parties, if necessary, and whenever possible.

3. In the written statement to be filed before the lower civil courts the Collectors should emphatically mention the provisions of section 14X of the W.B.L.R. Act barring jurisdiction of the Civil Courts in trying such suits. This point should be argued vigorously at the time of hearing.

A.K. Chakraborty
Special Officer & (Ex-Officio) Secretary
Board of Revenue, West Bengal.

**Government of West Bengal
Land and Land Reforms Department
Civil Rule Branch**

No. 22040(24)-C.R/Misc. 54/82,

dated the 13th October, 1982.

To
The Director of Land Records and Surveys, West Bengal,
35, Gopalnagar Road, Alipore, Calcutta-700027.

Sub. : Notice served by Advocates of parties direct on the Officers in regard to land matters

It has been brought to the Notice of Government that the Advocates of parties are in some cases serving notices sometimes with copies of Writ petitions direct on the officers of the Settlement Wing and the Management Wing, instead of in the office of the Ld. Additional Advocate General or the Government Pleader, High Court, conveying their intention to move the Hon'ble High Court in the matter and in such cases no one usually appears on behalf of the State or on behalf of the concerned officers resulting in issuance of ex-parte order adverse to the interest of the State Government.

In order that such writ petitions can be opposed at the time these are moved in the Hon'ble High Court, it is necessary that the Officers concerned on receipt of such notices should contact the Office of the Ld. Additional Advocate General with all relevant records and papers including the writ petition, if any received, within 24 hours thereof. This course of action may help the administration in avoiding interim orders in quite a number of cases in which important measures connected with land reforms or requisition or acquisition of land for important public purposes might otherwise be stalled for a long time.

If, however, it is not found possible to contact the office of the Ld. Addl. Advocate General within 24 hours the officers concerned should immediately apprise him by radiogram message or otherwise about the receipt of the notice and the writ petition stating in brief the nature and contents thereof, and contact the Ld. Addl. Advocate General with all the available records and papers as early as possible.

An intimation about the action taken should also be sent to this Department forthwith.

All concerned may be instructed accordingly.

The Settlement Officers are being informed direct.

Sd/- Illegible
Deputy Secretary to the Govt. of West Bengal

Memo No. 22040/1(8) CR

Dated Cal. 13.10.82

Copy forwarded to the Settlement Officer, for information and necessary action.

Sd/- Illegible
Deputy Secy. to the Govt. of West Bengal.

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**Government of West Bengal
Office of the Director of Land Records & Surveys
and Joint Land Reforms Commissioner, West Bengal
35, Gopal Nagar Road, Alipore, Calcutta - 700027**

Memo No. 34/912-29/C/2000

Dated 20.02.2001

To
The District Land & Land Reforms Officer,

Sub. : Disposal of land vested by operation of law under the W.B.E.A. Act.

In terms of the Dte.Memo. No. 81/2645/C/93 dated 11.4.94 and Memo No.34/2915-32/C/2000 dt. 31.5.2000. the District Land & Land Reforms Officers were empowered to dispose of all divesting cases upto 1 acre considering merit of each and every case.

2. Now after careful consideration of the matter it has been decided that henceforth the D.L.&L.R.O. would be at liberty to divest the cases where the total land involved, as per R.S. Record within 5 (five) acres only.

3. This Order will supercede the previous dte. circular Nos. 81/2645/C/93 dt. 11.4.94 and 34/2915-32/C/2000 dt. 31.5.2000

S. Suresh Kumar
Director of Land Records & Surveys
and Joint Land Reforms Commissioner,
West Bengal

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<http://wbllroa.in>