

16. CORRECTION OF FINALLY PUBLISHED R-O-Rs UNDER WBEA ACT

From the booklet “General instruction on vesting of ceiling surplus land under the WBEA Act and WBLR Act.” Issued by the DLRS on 9.7.1984.

2.1 **REVIEW OF 44(2A) CASES** – S. 44(2a) of the WBEA Act has been an instrument of vesting by un-covering wrong recording of land to frustrate the provisions of S.6 of the Act. But, in some cases, it has been the other way round. Cases are known where the Revenue Officer has erroneously, by a proceeding u/s.44(2a), recorded land, actually belonging to a single individual, in the names of several individuals. This has resulted in divesting or non-vesting of lands. Such cases should be reviewed.

2.1.1 Normally, the principle of resjudicata applies when a case has already been decided u/s. 44(2a) and the matter cannot be re-opened. But this principle will not be a bar to re-opening under certain circumstances, i.e. –

- I) Where there has been an error apparent in the face of the records.
- II) Mistake in procedure.
- III) Non-notice to relevant material parties, e.g., the JLRO representing the Collector, bargadars, co-sharers, etc.
- IV) Absence of jurisdiction of the Revenue Officer.

2.2 **RE-OPENING OF CASES UNDER SECTION 44(2a) WHEN SECTION 44(2a) DID NOT LEGALLY EXIST.**

Section 44(2a) was originally enacted providing inter alia for re-opening of finally published records within 9 years of the date of coming into force of the West Bengal Estates Acquisition (2nd Amendment) Ordinance, 1957 (i.e. 4.11.1957) or within 9 years from the date of publication of the record-of-rights, whichever was later. The period of 9 years has since been periodically extended from time to time, in particular, by the West Bengal Estates Acquisition (Amendment) Act, 1967 the period of 9 years was extended to 12 years. However, there was some delay in obtaining President's assent to this particular amendment. From the Special Bench Case of the Hon'ble High Court reported in 1977(1) C.L.J. at page 1, it is seen that notwithstanding the passing of the Act by the State Legislature in 1967, the provisions of this amendment of 1967 were not enforceable in law until it received the assent of the President of India and the assent of the President is deemed to have been received on 3.11.69. Therefore, 44(2a) cases decided by their officers during the period when Section 44(2a) was not in operation, [i.e. between 5.11.1966 and 2.11.1969, unless the relevant record-of-rights were finally published after 4.11.1957, in which case the admissible period will be 9 years from the actual date of final publication.] suffered from lack of jurisdiction. If it is found that some such cases were mistakenly decided to the detriment of the Government's interest, such cases should be re-opened. It should be specifically stated in the order sheet that the relevant order of the Revenue Officer was **non est** on grounds of lack of jurisdiction as section 44(2a) was not in force at the relevant time in the aforesaid business.

2.3 **HOW TO IDENTIFY WRONGLY DECIDED 44(2a) CASES** - No general instructions can be given. It will be wise to scrutinise all cases where a piece of property previously recorded in the name of one individual was recorded in the names of several individuals as a result of a decision in 44(2a) proceedings. Some officers are known to have taken a wrong view of the law in some cases, which resulted in non-vesting, or divesting. During scrutiny, particular attention may be given to cases decided by such officers.

2.4 **STARTING FRESH 44(2a) CASES** – There may be wrong recordings in finally published records under the WBEA Act, which will have the effect of non-vesting or divesting. For example, a piece of agricultural land may have been recorded as tank fishery. Land belonging to a particular individual may have been recorded in the names of several individuals. Lands belonging to a person alive on the date of vesting may have been recorded in the name of his legal heirs. The records should be re-framed by having proceeding u/s. 44(2a). Some actual examples though not exhaustive would suffice to illustrate this point.

2.4.1. **Tank Fishery and Orchard** – Whenever a big chunk of land has been recorded as tank fishery or orchard, it is useful to have field enquiry about the actual use of the land as on the date of enquiry and also on the date of vesting. It is found in many cases that the land is used only seasonally or not at all for tank fishery. Sometimes again the fishery came into being after the date of vesting by illegal inundation of cultivable land by the ingress of water, tampering with irrigation bandhs. Such cases clearly call for proceedings u/s. 44(2a) to correct the classification.

2.4.2. Many water areas have been recorded as “.....” though the facts do not warrant such a recording. If such recorded plots constitute a substantial area, the matter should be re-opened u/s.44(2a) to find out the correct classification. If the water area was not used systematically for the cultivation of fish at the time of vesting, it should come within the ceiling law on re-classification.

2.4.3 If the beel is for most of the year connected to a river or other perennial source of water, it should be deemed to be a part of the river and thus the land should be considered as belonging to Government ab initio. Such land should come to the Collector’s khatian by a suitable proceeding u/s.44(2a).

2.4.4 Similarly, if a substantial chunk of land has been recorded as Orchard, it will be worthwhile to enquire about its actual status at the time of vesting. Sometimes, due to a mistaken notion, banana plantations have been classified as Orchards. They are actually agricultural land. A piece of land does not qualify as an Orchard simply because it contains small number of fruit bearing trees. Its main produce should be fruits and it should be primarily used for cultivation of fruits. If the facts indicate otherwise, the classification should be changed u/s.44(2a).

2.4.5 **Temporary lease** – Some lands are found to have been settled by temporary lease by Govt. in favour of individuals. Sometimes, such lease terminated before the date of vesting, but erroneously the lease was recorded as such. Such cases should be reopened u/s. 44(2a) to correct the records as the lands would automatically revert to Govt. and vest on expiry of lease.

2.4.6 **Expiry of lease** – For many of the jalkars in which lease has been subsisting beyond the date of vesting, khatians have been prepared in the name of lessee with remarks without showing area against the plots. JLRO should be asked not to receive rent for such khatians unless fresh lease had been executed with the lessee, such khatians shall be eliminated by proceeding u/s.47 of the WBEA Act. In many cases, such khatians have been assigned wrongly with area. In such cases, the receiving of rent by the JLRO will entitle the lessee, whose term had expired long back, a protection of holding over under Transfer of Property Act. It is therefore necessary to write to the JLRO for not receiving rent from the lessee and thereafter to bring the land to Collector’s khatian by drawing up proceeding u/s.50 or 51 of the WBLR Act as part of up-dating of records. Such transfer of land to Collector’s khatian shall be equivalent to a case of fresh vesting.

2.4.7 **Land transfers and tenancies created** – Some times land transfers were purportedly made and tenancies were purportedly created just before 5.5.1953 or just after the date of vesting to defeat the provision of S.5A. In such cases especially pertaining to big raiyats, the rule 6(1) statements lying with the touzi section of the Collector or the master copy of ‘B’ form lying with the settlement department should be consulted to find out whether such alleged transfers or tenancies do not feature in either of the documents. In such cases, it is clear that the record should be corrected, nullifying the changes due to such alleged transfer or creation of tenancies.

The disposed of bhag chas cases under the now repealed West Bengal Bargadar's Act could be also a source of valuable information. Often, persons have claimed in these cases ownership of land which they have disowned in the 'B' form or in the 6(5) proceedings.

2.4.8 **Date of death** – It has been observed in many cases that the khatians show the landlord to have been present during attestation, but the property has been recorded in the name of his legal heirs, due to wrong information about the date of death. Thus, wherever a substantial chunk of property has been recorded as divided between the legal heirs of the erstwhile owner, attested khatians should be scrutinised carefully to check this point. Wherever the owner is found to have been alive on the date of vesting, the records should be corrected u/s.44(2a).

2.4.9 Sometimes, it is ever seen that a person ostensibly dead on the date of vesting has subsequently transferred or purchased some land by a registered deed as per local information. The information about his death before the date of vesting was obviously wrong. Such cases should be reopened by proceedings u/s.44(2a).

2.4.10 **Paper Transfers** – Sometimes, paper transfers not really acted upon have been reflected in the records. These cases can be identified only from local information. Wherever such local information is available, enquiry should be made in the field to find the actual possession on the date of vesting. Information from bargadars and local peasants' organisations and panchayets would be helpful in isolating such cases. Such records are to be corrected u/s.44(2a).

2.5 **WRITING OF ORDER SHEET** – The manner of starting an order-sheet in a suo motu proceedings u/s.44(2a) or a review proceedings under the same section is very important. In fact, the following observations would apply to any proceedings whatsoever which is started otherwise than on a petition. What the courts have criticised as "Fishing" or "Reving" enquiries should be avoided. In other words, instead of a generalised statement that such proceedings appears to be necessary, there should be a detailed and factual order containing the reasons which persuade the Revenue Officer to believe prima facie that the records have been wrongly framed or some decisions have been wrongly given. The copies of the detailed order should be served on the parties along with the notice and it should be clearly mentioned in the notice in a conspicuous manner that a copy of the order has been enclosed. Failing this, the order may be struck down as bad in law by courts.

Summary of Steps to be taken

Review of cases u/s. 44(2a) of the WBEA Act & Starting of New cases under the same Section:

1. Names of original owners substituted during Attestation:

- A. Pick-up all decided 44(2a) cases where the names of legal heirs of the original recorded tenant have been substituted during attestation on the ground that the original owner had died before the date of vesting.
- B. Examine whose name was entered in the landlord and tenant column of the khatian (whether it was the name of the person allegedly dead before the date of vesting).
- C. Examine whether the name of the original owner featured as possessor in the khasra.
- D. Examine whether there is any record of the original owner making any transfer of land by register deed after the date of vesting.
- E. Enquire locally whether the original owner was paying Union Board taxes at the time of vesting.
- F. Enquire locally whether the original owner had participated in any Civil or Criminal case as witness or accused or defendant or plaintiff or respondent.
- G. Supplement all this by local enquiry among bargadars and elderly neighbours.
- H. Start a review of the proceedings on receipt of any of the above relevant information on the ground that new facts has been discovered. Before doing so, examine whether other grounds for reopening are present, e.g. procedural error, non-notice to relevant material parties (like JLRO & bargadars etc), and absence of jurisdiction of the revenue officers due to reasons given in paragraph 2.2.

2. Tank Fishery :

- A. Scrutinise records prepared under the WBEA Act to find out whether a big chunk of land was recorded either as tank fishery or Orchard.
- B. Make local enquiry into the above cases.
- C. In respect of tank fishery, find out by local enquiry whether the fishery was seasonal, that is, whether the alleged tank fishery was used for the cultivation of crops for a part of the year.
- D. Enquire whether the tank fishery was created after the date of vesting by inundation of cultivable land.
- E. Where substantial water areas have been recorded as 'Beel Machh Chash', find out by local enquiry if the water area was used systematically for cultivation of fish at the time of vesting.

If the answer to point E is in the negative or the reply to points C or D is positive, as found on enquiry, the classification should be changed by reopening of 44(2a) proceedings in a manner described in point no. 1 H or by a fresh 44(2a) case if no case was started before.

3. Orchard :

- A. If a substantial chunk of land has been recorded as Orchard the matter should be verified by actual local enquiry to find out the position at the time of vesting. The points for enquiry are:
 - (a) Whether the Orchard was really used as such at the time of vesting.
 - (b) Whether the Orchard contained banana plantation only. A banana plantation is not an Orchard. It should be re-classified as agricultural land.
 - (c) Whether the major part of the land contained fruit-bearing trees on the date of vesting.
- B. If on enquiry the facts so warrant, open a fresh proceedings u/s.44(2a) or review a proceedings already started in the manner shown in paragraph 1H.

4. Leases :

- A. Scrutinise all recording of leases issued by Government in favour of individuals.
- B. If the lease terminated before the date of vesting but features in the R-O-Rs, start a 44(2a) case to correct the records and to transfer the interest to the khatian of Government.
- C. If the lease extended beyond the date of vesting, and there is a mention in the records of write to the JLRO not to receive rent for such khatians unless fresh lease has been executed.
- D. If it is ascertained from the JLRO that the lease has not been extended and rent is not being received, eliminate the interest during modification and transfer the land to the khatian of the collector.
- E. The khatians discussed in the above paragraph should be prepared without area. Find out if mistakenly some of them have been prepared with area. Write to the JLRO requesting him not to receive rent from the lease and transfer the land to collector's khatian u/s. 50 of the WBLR Act.

5. Creation of Tenancies in doubtful period :

- A. Scan the records to find out if tenancies were purportedly created or transfers purportedly made just before 5.5.1953 or just after the date of vesting, particularly by big raiyats.
- B. In such cases, scrutinise the Rule 6(1) statement lying with the touzi section of the collector. The A.I. Tax return should also be examined to find out the extent of land belonging to the big raiyat.
- C. Also scrutinise the master copy of 'B' form lying with Settlement department.
- D. Find out if the alleged transfer or tenancy features in the above documents.
- E. Also scrutinise disposed of Bhag Chash cases, if any, under the erstwhile W.B. Bargadars Act for the said purpose. It is to be found out if the big raiyat claimed ownership of the land in such Bhag Chash cases.

F. If it is found on scrutiny that the big raiyat claimed the land as his in either of the above documents though not in the 'B' form or 6(5) proceedings, if any, records should be corrected to cancel such transfers or tenancies u/s. 44(2a).

6. Paper transfer :

There may be local information that a transfer in the WBEA Act records was really a paper transfer and not acted upon. If the transfer is made by big raiyat, a 44(2a) proceedings should be started and the land transferred to the khatian of the land-owner.

7. If after correction of records by a 44(2a) case, it is found that the person had ceiling excess land on the date of vesting, proceeding u/s. 6(5) should be opened to vest the excess land.

8. ORDERS :

- A. In a proceedings u/s.44(2a) or a review proceedings under the same section, the first order should be a speaking order, giving details of reasons for the enquiry.
- B. Copies of detailed order should be served on the parties along with the notice.
- C. It should be conspicuously mentioned in the notice that a copy of the order has been enclosed.

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PART III – Acts of the West Bengal Legislature

GOVERNMENT OF WEST BENGAL

LAW DEPARTMENT

Legislative

NOTIFICATION

No.1420-L – 2nd November, 2007, - The following Act of the West Bengal Legislature, having been assented to by the President of India, is hereby published for general information:-

West Bengal Act XVIII of 2007

THE WEST BENGAL ESTATES ACQUISITION (AMENDMENT) ACT, 2007.

[Passed by the West Bengal Legislature]

[Assent of the President of India was first published in the Kolkata Gazette, Extraordinary, of the 2nd November, 2007]

An Act to amend the West Bengal Estates Acquisition Act, 1953.

WHEREAS it is expedient to amend the West Bengal Estates Acquisition act, 1953, for the purpose and in the manner hereinafter appearing;

West Beng. Act 1 of 1954

It is hereby enacted in the Fifty-eighth Year of the Republic of India, by the Legislature of West Bengal, as follows:-

1. (1) This Act may be called the West Bengal Estates Acquisition (Amendment) Act, 2007.

Short title and commencement

(2) It shall come into force at once.

2. In sub-section (2a) of section 44 of the West Bengal Estates Acquisition Act, 1953, for the words "fifty years", the words "sixty years", shall be substituted.

Amendment of section 44 of West Ben Act 1 of 1954

By order of the Governor,
S.K. CHAKRABARTI,
Pr. Secy. to the Govt. of West Bengal,
Law Department.

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