

22. PROVISION OF ENQUIRY UNDER SECTION 5A OF WBEA ACT, 1953

FROM BOARD OF REVENUE FILE NO.1866/56-E.A.

Subject.– The West Bengal Estates Acquisition Act, 1953 (West Bengal Act I of 1954) – Section 5A – Benami transfer – Whether the word “person” used in Section 5A (7) (i) includes merely the transferor or the transferee as well – Whether it includes also a Deity to whom a property has been dedicated.

Legal Remembrancer’s opinion

“Person” cannot mean both transferor and transferee in respect of any particular transaction. The whole object is to prevent benami transactions. The test is – who actually benefits by the transaction. The word “person” has to be understood from that point of view.

Every Debottar will not be mala fide. It will have to be seen whether under the colour of a Debottar, substantial benefits are reserved for himself by the transferor. If so, it will be mala fide. In such a case, “person” will mean the transferor alone and not the Idol. There may be a case where a Debottar may be created, the result of which is that the Idol acquires a considerable quantity of land. Under section 6, the Idol may retain all khas lands. In such a case, the “person” will mean the Idol and it will have to be seen whether the object of the transfer is merely to enable the Idol to retain more land than it could otherwise have retained.

FROM BOARD OF REVENUE FILE NO.88/57-L.R.C.

Subject.– The West Bengal Estates Acquisition Act, 1953 (West Bengal Act I of 1954) – Section 5A – Mala fide transfer – Whether a partition made after the 5th May 1953 is a transfer within the meaning of Section 5A.

Legal Remembrancer’s opinion

A simple partition is not a transfer within the meaning of Section 5A.

FROM COMMERCE AND INDUSTRIES DEPARTMENT FILE NO. 4T-11/61

Subject.– The West Bengal Estates Acquisition Act, 1953 (West Bengal Act I of 1954) – Section 5A – Malafide transfer – Whether a transfer made with retrospective effect from before the date of vesting by a deed executed after such date, is hit by Section 5A.

Legal Remembrancer’s opinion

The Kobala, dated the 23rd September 1954, appears to be hit by Section 5A of the West Bengal Estates Acquisition Act, 1953.

The sale takes effect from the date of execution of the Kobala. It cannot have any retrospective effect by a mere recital to that effect in the Kobala.

FROM BOARD OF REVENUE FILE NO.

Subject.– The West Bengal Estates Acquisition Act, 1953 (West Bengal Act I of 1954) – Section 5A – Benami transfer – Whether the transfer of some interest in any estate or tenure comes within the purview of Section 5A which mentions only transfer of land.

Legal Remembrancer's opinion

Section 2(f) does not define an estate or tenure. Section 2(p) says that expressions used in the Act and not otherwise defined have, in relation to the areas to which the Bengal Tenancy Act, 1885 applies, the same meaning as in that Act. Section 3(4) of the Bengal Tenancy Act, 1885 defines an estate to mean land included under one entry in any of the general registers of revenue – paying lands and revenue-free lands, and lands not entered in any register. All this will make it clear that a transfer of some interest in any estate or tenure is really a transfer of lands comprised in the estate or tenure.

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**GOVERNMENT OF WEST BENGAL
OFFICE OF THE DIRECTOR OF LAND RECORDS & SURVEYS
WEST BENGAL.**

Memo.No.184/2100-2107/C/68.

Dated, Alipore, March, 30, 1970.

To
The Settlement Officer,
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The question whether a title suit between transferor and transferee ending in a decree confirming the title of the transferee with a permanent injunction restraining the State from interfering with the possession of the transferee would effectively bar an enquiry u/s. 5A of the W.B.E.A. Act and the consequences thereof such as vesting of the lands came up in connection with a 5A case in the district of Midnapore.

2. In this case the transferor transferred 93 acres of land to his son, grandson, wife, daughter-in-law, etc. within the prohibited period by a registered deed. There was a 5A case and the transferees were declared not bonafide. The Special Judge hearing the appeal ordered a rehearing of the case. During the pendency of the remand case the transferees filed a title suit before a Munsif and the case ended in a decree in favour of the transferees with a permanent injunction on the State against interference with the possession of the transferees. Attempts at setting the order aside by a review petition to the trial court and appeal to the District Judge failed on technical grounds such as limitations.

3. A reference was then made to the Government for deciding whether a decree in title suit in this case and the like cases would operate as a bar to proceedings u/s. 5A and vesting of the lands as a legal consequences of section 5A. The Directorate view was as follows: -

(a) The very basis of a proceedings U/s. 5A is a transfer. A decree confirming a transfer therefore makes the basis all the stronger and does not take away the scope of Section 5A.

(b) The consequential actions of Section 5A will come into effect notwithstanding a transfer whether confirmed by a decree or not for the purpose of the W.B.E.A. Act. In fact Section 5A is an independent proceedings.

(c) The injunction order does not effect the scope of Section 5A. It merely restrains the State from ignoring the transfer or to hold that the transfer did not take place. It will not be open to the State to hold in any such cases that the transfer did not take place and that the land remained with the transferor. The injunction does not operate against an interference into the possession if such interference is warranted by certain other statutes. For example, such injunction will not prevent the State from taking possession under the various Land Acquisition Acts or through sale under Public Demand Recovery Act or any of the penal section of W.B. Land Reforms Act such as 6 or section 39 (b).

4. This reference to the Government was dealt with in Board's file No.599/68 S &S. In the departmental note the question for the L.R. was passed as follows :-

“Whether the learned Munsif’s order takes away the State’s right to vest the transferred lands u/s. 5A. If the answer is in the negative, there is no point in moving the Hon’ble High Court”.

5. The Joint L.R. observed that the proceedings u/s. 5A could be continued in spite of the ex-parte decree and the L.R. agreed with this view and answered the question in the negative. A copy of the notes of the Board’s file was sent to all Settlement Officers by this office no.184/1383(7)/C/68 dated 21.2.1970.

6. There are many similar cases in other districts and references have been received from the Settlement Officers on separate cases. There have even been cases of such title suits instituted by a transferee ending with a decree in his favour– the suit having been filed after an order u/s. 5A. has been upheld by the Special Judge. The L.R.’s opinion now settles the issue and it is now clear that Section 5A will operate in spite of decrees confirming transfer with injunction orders on the State. An injunction order or a decree will, however, operate barring the enquiry u/s. 5A in the following circumstances.

- i) Where there is a specific order injuncting against any proceedings u/s. 5A such an order should be taken up to higher courts for redress.
- ii) Where the decree confirms the transfer as having taken place on a date before 5.5.53. In such a case it would not be open to Revenue Courts to initiate enquiry u/s. 5A even if there is ample evidence to show that the transfer took place after 5.5.53 and before the date of vesting.

D. Bandyopadhyay,
Director of Land Records and Surveys,
West Bengal

Encl : 7 extra copies.

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Government of West Bengal
Directorate of Land Records and Surveys,
West Bengal,
35, Gopalnagar Road, Alipore, Calcutta – 27.

Memo. No.182/2399-2406/C/63.

dated, Alipore, the 21.6.1972.

To
The Settlement Officer,

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Subject : Re-opening of decision of Enquiry Officer and/or decision of Appellate Authority in 5A cases.

Since the issue of the Directorate instructions vide no.182/1163-1170/C/63 dated 14.2.68, further materials stated hereinunder are available on the question of re-opening of decision either of the Enquiry Officer or of the Appellate Authority in 5A cases:-

1. Legal Remembrancer’s opinion communicated to all Settlement Officers vide no.182/966-973/C/63 dated 19.2.69.

2. Division Bench Judgement in C.R. 4658 of 1960 : Haripada Mondal VS State in which it is held that in a case where the Collector is not a party, the Collector may ask for re-opening the question and decision of the Enquiry Officer is not binding upon the State Government (Judgement by Mr. P. B. Mukherjee and Mr. Laik J.J.).

3. Decision of the Tribunal in the Application U/s. 151 C.P.C. for review of the Appellate Decision in E.A. Appeal no.4 of 1959 U/s. 5A in which the Learned Judge held “in my view of the law an enquiry made about the Bonafide or Malafide of a transfer is not resjudicata between the citizen and the State. When a fresh enquiry can be made I will not entertain the petition U/s. 151 C.P.C. to review an old judgement.”

In view of the aforesaid opinion and decisions, it is decided that (a) in the 5A proceeding which was not appealed against in the Tribunal, an Enquiry Officer U/s. 5A may re-open the 5A proceeding if the Collector or interested person who is a material party in the proceeding but not impleaded, prays for such re-opening, (b) Special Judge, Tribunal may be moved to review its decision in the Appeals in which the 'interested persons' were not impleaded as such judgement may not be resjudicata so far as the interested party is concerned.

Enquiry Officer, 5A may re-open the case only when the Special Tribunal allows re-opening as in the case of E.A. Appeal 4 of 1959 referred to above.

B.K. Sarkar,
Director of Land Records and Surveys,
West Bengal.

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.

2.6 **NEW CASES U/S. 5A** - Records should be thoroughly searched for detecting cases U/s. 5A which did not come to notice earlier. Some cases may be detected on local information also. There are some transfers which may not at first sight appear to come within the purview of this section but will come so after closer scrutiny. Some land-owners tried to defeat the provisions of S. 5A by ostensibly transferring lands to non-related persons and then having such land retransferred to near relations after some years. In one known case, there has been another transfer in between to make the matter more complicated. The intermediate transfers obviously should not have been recorded as they were never acted upon. If the last transfer was within the mischief period of S. 5A, appropriate steps should be taken under that section. If the last transfer was after the date of vesting, it obviously should not have affected the position of records on the date of vesting and the records should be restored to the original owner U/s. 44(2a).

2.7 **REOPENING OF DECIDED OR DROPPED CASES U/S. 5A** - These cases would fall into four categories :-

(a) Cases dropped without any decision or with the decision that the provisions of S. 5A were not attracted.

(b) Cases wrongly decided due to various reasons.

(c) Cases wrongly decided/dropped and reopened, where courts subsequently declared that such reopening was not lawful.

(d) Where an order by a Civil Court was considered to have stood in the way of deciding a case U/s. 5A.

2.7.1 Many wrongly decided 5A cases were reopened in the years 1967-70. Such reviews were challenged in courts and in many cases the courts decided that such review was not permissible in law. The principle of resjudicata was often invoked. The law has now been well settled by various authoritative court rulings and it can now be said that review is possible if the circumstances so warrant. This includes reviews which were struck down by courts on the basis of the old interpretation of the law. Such cases also can be reopened now.

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2.7.3 **Re-opening of dropped proceeding u/s. 5A -**

Regarding proceedings which were dropped without any formal finding U/s. 5A, on the ground that the section did not apply at all, there are several judicial pronouncements which will make it clear that reopening is quite in order. To quote from Division Bench Judgement in C.R. No.1347(W) 1972 (A.C. Gupta & A.C. Dev. J.J.) :-

“Therefore, if a dispute is raised in an enquiry u/s. 5A as to whether the transfer was made within the mischief period mentioned in the section, the tribunal (i.e. the officer, authorised for the purpose) has to determine the fact and if it finds that the transfer was not made within the aforesaid period, it ceases to have jurisdiction to enquire if the transfer was bonafide or not.....

Such an order made in the course of an enquiry u/s. 5A.....
In our opinion, the words ‘any order passed u/s. 5A’ occurring in the first proviso to Sec.44(2a) indicate an order passed after a concluded enquiry u/s. 5A, finding a case of transfer as bonafide nor not bonafide”.

2.7.4. The implications are that where the Revenue officer wrongly found that provisions of S. 5A were not attracted in a particular case, the enquiry made by him is no enquiry u/s. 5A in the eye of law and therefore, the principle of resjudicata is not attracted if another enquiry U/s. 5A is started on the same facts.

2.7.5. **Res Judicata.** Thus, the invocation of the principle of res judicata in the judgement passed by A. K. Sen, J. in Benod Behari Mondal & Others. Versus State (AIR 1971 – Cal 400) in respect of proceedings u/s. 5A should be read with the Division Bench Judgement cited above and understood correctly. As said earlier, the principle of res judicata is not involved in reopening of dropped or un-concluded cases. This position has been confirmed by other Court Rulings also.

2.7.6. **Ante-dated documents –**

Antedated documents can be investigated U/s. 5A (Surendera Nath Vs. State, AIR 1965 Cal. 539). Section 5A created a special liability and that provided for a special and particular remedy and suit will not ordinarily lie to challenge the order; the Civil Court will have jurisdiction only in those cases where the statutory Tribunal has violated the provisions of the Special Act or violated the principles of judicial procedure (Hiralal Beyer Vs. State, ILR 1908-2 Cal. 202). Thus, a judgement passed in a Civil Court becomes infructuous for the limited purpose of S.5A but the proviso to sub-section (2) of that Section 5A protects the other effects of the judgement and decree in so far as these relate to the rights and interests which the transferor and the transferee may have against each other. A bargadar is a necessary party in a 5A proceeding under the amended Rule 3A of the E.A. Rules. The transferor and the transferee shall have an opportunity of being heard & the Enquiry Officer is bound to record evidence (Bibhuti Bhusan Versus State, 69 CWN 1008). The general expression ‘Gift’ covers a dedication to a Hindu deity and gift for religious purposes. (Champa Bibi Versus Banchiram, AIR 1963 Cal. 551).

2.8. **SUMMARY – CASES FIT FOR RE-OPENING.**

We now revert to the types of cases categorized at paragraph 2.7. :-

(a) Cases dropped without any decision or with the decision that the provisions of S. 5A were not attracted – These cases should all be scrutinized and reopened where necessary. In doing so, adequate attention should be given to the fact that the Revenue Officer might have been misled by antedated transfers or creation of tenancies.

(b) Cases wrongly decided due to various reasons – As explained in the course of discussion of reopening of 44(2a) cases the principle of res judicata will not apply even in a decided case where there are procedural irregularity, non-joinder of parties, error apparent or discovery of new facts not agitated during the original enquiry. For example, if a bargadar was not noticed during an enquiry U/s. 5A or the JLRO on behalf of the Collector was not noticed, that is sufficient reason for reopening that case. Similarly, discovery of documents demonstrating the existence of a relevant fact not previously known is also a sufficient ground.

(c) Cases wrongly decided and reopened, where courts subsequently declared that such reopening was not lawful – These cases may again be reopened citing the decision in the case of Indira Devi.

(d) Where an order by a Civil Court was considered to have stood in the way of deciding a case U/s. 5A- As explained earlier, the decision of a Civil Court will affect the actual rights of the transferer and the transferee in other respects, but as far as S. 5A is concerned, the decision is entirely with the statutory Tribunal, that is, the specially empowered Revenue Officer. Any decision by a Civil Court regarding a question of title or possession will have no bearing on the decision of the Revenue Officer, unless the decision also impinges on the actual date of a particular transfer.

2.9 **MODEL JUDGEMENT /ORDER SHEET. -**

It is to be remembered that whenever a case is reopened, the order-sheet has to be clear and explicit about the reasons for reopening and a copy of the first order has to be issued to the parties concerned along with the notice. Unless this precaution is observed, the order may be struck down by Courts as an instance of a 'fishing' or 'roving' enquiry. Some model judgements and orders used in the 24-Parganas Operations are inclosed as an example of how these orders should be written (Annexures I, II & III).

Summary of steps to be taken

II. **CASES UNDER SECTION 5A**

1. **New Cases: -**

A. Records should be thoroughly searched for detecting of 5A cases which did not come to notice earlier. Records may be searched on local information also.

B. In a suspected case, there may be a claim of transfers. It should be found out by scrutiny of records and local enquiry if the last transaction in the chain of transfer involved a near relation.

C. If the last transfer is within the mischief period of Section 5A an enquiry under that section should be started.

D. If the last transfer is after the date of vesting, records should be restored to the original owner U/s. 44(2a).

2. **Re-opening of decided or dropped 5A cases**

A. The cases would fall into 5 (five) categories.

(a) Cases dropped without any decision or with the decision that provision of S. 5A were not attracted.

(b) Cases wrongly decided due to various reasons.

(c) Cases wrongly decided/dropped and reopened where courts subsequently declared that such reopening was not lawful.

(d) Where an order by a Civil Court was considered to have stood in the way of deciding a case u/s. 5A.

(e) Cases entered in the registered but not started at all.

B. All such cases should be indentified by a scrutiny of records and registers.

C. Cases dropped without any decision or with the decision that provisions of section 5A were not attracted should be re-opened in appropriate cases after recording that the Revenue Officer might have been previously misled by ante dated transfers or creation of tenancies.

D. Wrongly decided cases can be reopened. It should be reopened where there is procedural irregularity, non-joinder of parties, error apparent or discovery of new facts not agitated during original enquiry. The reasons should be clearly recorded so that principle of res judicata cannot be invoked.

E. Where Courts declared the reopening of a 5A case as not lawful, these cases should be reopened citing the decision in the case of Indira Devi as discussed in paragraph No.2.7.2.

F. Where an order by a Civil Court was considered to have stood in the way of deciding a case U/s. 5A, the case should be reopened as the decision of a Civil Court will affect the actual rights of the transferor and the transferee in other respects but will have no bearing on a proceedings in Section 5A,. This should be clearly recorded in the order-sheet.

G. The reasons for starting or reviewing a 5A enquiry should be clearly recorded as in the case of a 44(2a) proceedings and a copy of the first order should be served on the parties in the same manner.

Annexure – I

A model judgement under Section 5A of the W.B.E.A. Act (The case of an antedated transfer.)

The facts of the case are as follows –

This proceeding was initiated on the prima facie ground that ‘A’ as an intermediary having in his khas possession an area of agricultural lands which exceeded the ceiling limit, transferred a total of 38.00 acres of these lands between 5.5.1953 and the date of vesting of raiyati estates i.e. 14.4.1956 by creating several tenancies in favour of his servants and close relatives. He created these tenancies not by registered deeds of transfer, but by several Dakhilas (rent-receipts) which he deliberately antedated in order to bring these transfers out of the mischief of Section 5A of the Estates Acquisition Act. Therefore, a presumption arose that the transfers were not bonafide within the meaning of Section 5A and this proceeding was started.

Notice were issued to all the interested parties including the bargadars on the disputed lands and there was a prolonged hearing spreading over several days and 7 witnesses on all sides were examined.

The issues in this case are formed as follows :-

- 1) Do the transfers under enquiry come under the purview of Section 5A ?
- 2) Are the transfers bonafide or not bonafide ?

Issue No. (1).

On consultation of the finally published record of rights (and the Big Raiyat case of ‘A’ – if there had been a Big Raiyat proceeding in his name) it appears that ‘A’ had in his khas possession a total area of 79 acres of agricultural lands and 9.00 acres of non-agricultural lands during the period between 5.5.1953 and the date of vesting including the area transferred by him which is the subject matter in this enquiry. Therefore one of the conditions requiring an enquiry under section 5A is present. Next question is whether the transfers were effected on a date between 5.5.1953 and the date of vesting or not. A prima facie case had been made that the dakhilas dated 13th Pous, 1356 B.S. were all antedated. The Ld. Advocate appearing for the transferees raised an objection pointing out that this Court had no jurisdiction to go into the question whether a document was antedated or not. This objection is ruled out. The Hon’ble High Court in Surendra Nath – Versus – State, A.I.R. 1965 Cal. 539, has held that the Revenue Officer has, in hearing a case under Section 5A, the jurisdiction to enquire and find out whether a document, bearing a date anterior to the statutory date, was in fact effected after the statutory date i.e. after 5.5.1953 or not. His Lordship further held that the object of Section 5A being to prevent sham transactions and collusive devices for defeating the object of the Act. Section 5A would be meaningless unless the Inquiring Authority has also the jurisdiction to determine whether an alleged transaction has been antedated or not, for, antedating is one of the devices to give sham transactions a colour of reality and to take away the disputed transfer from the perview of Section 5A.

Let us now proceed to examine whether the transfers were effected on a date between 5.5.1953 and the date of vesting or not. The dakhilas produced by the transferees show that the tenancies under investigation were created in 1356 B.S. and the transferees continued to pay rent to the landlord upto the 1361 B.S. The intermediary, who is alleged to have written out the dakhilas and created the tenancies, did not appear during the hearing, but his eldest son appeared on his behalf and he deposed that the dakhilas were written in the land of his father and that the tenancies were genuine and not sham transactions. But, when an original B option form was produced before the witness and he was asked whether the B Form was signed by his father or not, he hesitating for a while, admitted that was the signature of his father. But this signature of the intermediary on the B form submitted by him in the year 1366 B.S. was absolutely dissimilar with that in the dakhilas. The witness could not satisfactorily explain the reason of this dissimilarity. On the otherhand, 'B' who is now a bargadar in one of the transferred plots of land and was a gomasta (employee) of the intermediary before the date of vesting has deposed that the dakhilas were written by him under the instruction of the intermediary sometime in the year 1361 B.S. and these were antedated. Two other bargadars in the transferred lands and also a cultivator of a piece of land adjoining to these lands have also deposed that the persons in whose names the tenancies were created were not the actual tenants; they never cultivated the lands and the produce of the lands were also never taken by them. They further deposed that one of the so called tenants were the mahindar (agricultural labourer on permanent pay) and he was never seen to have carried the produce of the land after harvesting to his own residence; on the otherhand, the said mahindar carried the crops to the gola of his employer, the intermediary – transferor. These three witnesses also deposed that the other two so called tenants were the nephews of the intermediary by his sister, who were never interested in land or cultivation; one of them was an iron merchant and the other was a doctor, both having their residences at the towns.

From all these accounts and the deposition of the witnesses I am left to no doubt that the dakhilas in question were antedated and dates mentioned in these dakhilas are false. It is also clear that the transfers were in facts made in between 5.5.1953 and the date of vesting and that this stratagem was resorted to by the transferor for the obvious purpose i.e. to bring out these transfers out of the mischief of Section 5A.

I am, therefore, satisfied that the transfers in question clearly come under the perview of Section 5A.

Issue No. (ii)

Now, we are to see and decide whether or not the transfers were bonafide.

We have noted that in all three tenancies were created. One in favour of a mahindar and the other in favour of two nephews (sister's sons). Sister's sons are within the prohibited relationship as laid down under Section 5A(7)(ii) and the onus of proving that the transfers were genuine and bonafide lay on the parties in the transfer. The two nephews never appeared during the hearing but were represented by their lawyer Ld. Advocate appearing for these transferees produced two witnesses who deposed that the lands in questions were in possession of the nephews and that the tenancies were genuine. They also deposed that the tenancies were created sometime in 1356 B.S. and 1357 B.S. On cross-examination, however, it became clear that the two witnesses were the poor or marginal cultivators of the village and they also work as the day labourers in the lands of the intermediary – transferor. They admitted further that they were very much obliged to the intermediary as he provides them with loans in both cash and grain during the lean seasons. These witnesses, on cross-examination, failed to state the approximate age of the two nephews and how and through whom they cultivated their lands. On being pressed hard, they lastly admitted that the lands were actually under the cultivation of the intermediary-cultivator. All these facts leave nobody in doubt that these witnesses were tutored, but not efficiently. I must hold that onus on the part of the two nephews has not been satisfactorily discharged and the statutory presumption that the transfers to these sister's sons were not bonafide remains un rebutted.

Let us now turn to the mahindar. There is a bargadar in the land recorded in favour of this man and he deposed that he was a bargadar under the mahindar and delivered the share of the produce to him regularly. The mahindar also produced several levy notices on him from which it appears that he delivered some quantity of paddy to the government. An area of 12.00 acres of lands was recorded in his possession and he must be considered a middle peasant by the present standard and he must be getting enough return from the lands to make both ends meet. To ascertain the facts, however, I paid a visit incognito to the village and saw the things for myself. I found the house where the mahindar and his family lived was no better than a hovel and his wife and children were almost in semistarvation level. On reply to my question, the wife and children of the mahindar said that they had no land for cultivation and they are to depend for their subsistence entirely on the wage earned by the mahindar from his employer, the intermediary – transferor.

The aforesaid facts go to show clearly that the mahindar and also the two nephews were the benamdars of the transferors who created these sham and fictitious tenancies to evade the ceiling provisions as under Section 6(1) of the Estates Acquisition Act.

The Ld. Advocate, at one point of his argument, stressed that as a Revenue officer, this court had no jurisdiction to go into the question of benami. One may go by whatever name one likes – whether it should be called a fictitious tenancy or a benami tenancy, makes no difference for the purpose of this enquiry, though the fact remains that the Hon'ble high Court in the Division Bench Judgement in Abujakshya-vs-State (I.L.R. 1966-I. Cal 495) has held that benami transfers can be enquired into under Section 5A.

In summing up, I must hold that the transfers were made by the intermediary with the object of increasing the land which he might retain under the law. It is, therefore, ordered that these transfers be treated as not bonafide.

R. O. / A. S. O.

Annexure – II

A model order sheet for a proceeding of an enquiry under Section 5A. (Dropped out Cases)

Whereas it appears from the order sheet (and the judgement, if any) of the case no.....under Section 5A of the W.B. Estates Acquisition Act, 1953, of mouza....., J.L. No....., P.S.....Dt.....that an enquiry under Section 5A was initiated in the matter of a transfer ofacres of agricultural land made by, S/o..... of.....in favour of..... but the said enquiry was dropped on the ground that though the deed of transfer dated.....was executed and/or registered within the mischief period under Section 5A the actual transfer had taken place and delivery of possession had been made to the transferee on the basis of unregistered documents prior to 5.5.1953 and that the transfer was, therefore, bonafide; and

Whereas , it now appears from the materials and evidence so far collected that there are prima facie reasons to believe that the unregistered document (or the dakhila), which led the Revenue Officer in the aforesaid 5A case to conclude that the actual transfer took place prior to 5.5.1953, was a manufactured, bogus and antedated document and that the transferee never came into the possession of the disputed lands (or, in case of delivery of possession having been made the transferee came into the possession of the disputed lands not before 5.5.1953) and also that the transfer took place exactly on the date of execution of the registered deed as aforesaid; and,

Whereas, in the circumstances as aforesaid the finding and order of the Revenue Officer in the aforementioned case that the transfer was bonafide is to be treated to be infructuous and of no effect in terms of the provisions of Section 5A and is not to be considered an order passed under the said section, and,

Whereas, the Hon'ble High Court in a Division Bench judgement in a similar case (Hon'ble Mr. Justice A. C. Gupta and Hon'ble Mr. Justice S.C. Dev in the Civil Rule No.1847 of 1972) has held that the Revenue Officer in such circumstances as aforesaid has the complete jurisdiction to initiate a fresh enquiry under Section 5A into the same transfer, and,

Whereas, I have prima facie reasons to believe that the transfer in question as mentioned at the outset was not bonafide.

It is, therefore, ordered that a fresh enquiry shall be held under Section 5A into the aforesaid transfer.

Issue notices to the transferor (or his heirs or successors-in-interest), the transferee (or his heirs or successors-in-interest) and other material parties including the bargadars fixingat.....for hearing. A copy of this order sheet be annexed with the notice.

Revenue Officer
Assistant Settlement Officer.

Annexure - III

A model order sheet for review of an order passed under Section 5A in which the transfer had been declared bonafide.

Proceeding under Section 57A of the W.B. Estates Acquisition Act read with Section 151 of Civil Procedure Code.

1. Whereas this has been brought to my notice that there were the following prima-facie errors in the order passed in this proceeding on.....declaring the transfer as bonafide –

(i) The Junior Land Reforms Officer of the area was not impleaded in this proceeding and given a notice though he ought to have been given an opportunity of hearing on behalf of the Collector.

(ii) There were two bargadars on the transferred lands who also were not made parties in this proceeding in accordance with Rule 3A of the Estates Acquisition Rules.

(iii) On subsequent evidence and materials (there should be a local enquiry report, deposition of witnesses or other documentary evidences to support this ground) it prima facie reveals that this is a case of benami transfer.

(iv) It has also prima-facie revealed from subsequent evidence that the Sebaitis of the deity, who is the transferee in this case, does not perform any seva pujah and the Debottar was fake and fictitious. And

Whereas the aforesaid errors have vitiated the ex-parte order dated..... and have been the prima-facie cause of material injustice to the State.

I, in exercise of my powers conferred upon me under Section 57A of the West Bengal Estates Acquisition Act, read with Sec. 151 of Civil Procedure Code, order that the order passed on shall be reviewed and a fresh hearing shall be undertaken in the matter.

Issue notices to the materially interested parties under Section 57 and 57A of the E.A. Act fixing..... at.....for hearing , for a decision whether a review is necessary or not. A copy of this order be enclosed with notice.

Revenue Officer,
Assistant Settlement officer.