

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Pranab Kumar Chattopadhyay
And
The Hon'ble Justice Ashoke Kumar Dasadhikari

W.P.L.R.T 141 OF 2010

Subhas Chandra Banik & Ors.
Versus
State of West Bengal & Ors.

For the Petitioners :

Mr. Saktinath Mukherjee
Mr. Santimoy Panda
Mr. Tapas Kr. Sil

For the State/Respondents:

Mr. Indrajit Sen
Mr. Sitaram Samanta

Heard On:

20.12.2010, 9.3.2011, 30.3.2011

Judgment On:

19.05.2011

PRANAB KUMAR CHATTOPADHYAY, J.

This writ petition has been filed assailing the judgment and order dated 9th August, 2010 passed by the West Bengal Land Reforms and Tenancy Tribunal

in O.A. No. 548 of 2008 whereby the said learned Tribunal dismissed the application on merits.

The relevant facts which are necessary to decide the issues raised in this writ petition are stated as under :

By a registered Deed of Sale dated 27.07.2001 Sri Sukdeb Pal and others, (hereinafter referred to as the “ Pal Brothers”) transferred the land altogether measuring .380 acres in L.R. Plot No. 2702 and 2701 under L.R. Khatian No. 1642/7 in Mouza Sadhanpur, P.S. Burdwan, District. Burdwan.

The predecessors of the said Pal Brothers by registered Deed of Arpannama dated 22.12.1923 dedicated the properties described in the said Deed of Arpannama in favour of the family deity “ Salagram Sila” (Sri Sri Narayan Jew) duly consecrated and installed in their dwelling house, namely, “ Pal Building” at B.B. Ghosh Road, Burdwan. The Arpannama interalia provided for secular use of only 1/4th part of the income and usufruct of the dedicated property. Over a dispute about the collection from and management of the dedicated property a Suit being T.S. No. 274 of 1949 was filed by Sri Bishnu Pada Pal which was subsequently renumbered as Title Suit No. 197 of 1950 and ultimately disposed of by a Compromise Decree passed on 23.05.1951. Under the said Compromise Decree each brother and after his demise heirs became entitled to carry on Seva Puja for a period of three months every year. The ‘Ka’ Schedule property was to

be partitioned by metes and bounds and debuttar funds were to be distributed among the four brothers. It was further provided that each of the brothers would have absolute title and possession. According to the terms of the Compromise Decree debottar was adjudged as “ Partial” and accordingly the property in question was declared to be subject to charge for Seva Puja and heritable as well as transferable.

The land involved in this Writ application appertained to a building which was about 100 years old and occupied by different tenants. The total annual income was Rs. 53,000/- after deducting the collection charge and the taxes payable for the property. There was acute difficulty in performing the Seva Puja. There was also substantial outstanding dues towards charges and Seva Puja.

The Municipal authorities by several notices had been asking the said Pal Brothers to demolish the building and were holding out threats about penal measures.

In the circumstances the Pal Brothers by holding a meeting on 15.07.2001 decided to sell the property in the maximum available market price and pursuant to the said resolution the property involved was sold to the petitioners at a total consideration of Rs.18 lakh by a Registered Deed dated 27th July, 2001.

On the application of the petitioners, the Local Municipal Authorities mutated their names in relation to the purchased property.

The Block Land and Land Reforms Officer, Sadar, Upon a similar application made by the petitioners rejected their prayer for mutation by an order dated 12th June, 2007 in Mutation Case No. 26 of 2002.

The BLLRO disputed the legality of the Compromise Decree and relied upon the recitals in the Arpannama particularly about the bar in respect of the transfer. The BLLRO only directed the recording of the names of the petitioners under column 16.

The Appellate Authority under Section 54 of the L.R. Act, while deciding the appeal preferred by the petitioners against the order of the BLLRO, again went into the question of title and after considering the Deed of Arpannama as also the Compromise Decree in Title Suit No. 197 of 1950 held as follows:-

“ So, from the discussions as set-forth herein above it is crystal clear that the properties have been fully dedicated to the deity. Thus, such absolute being the nature of dedication and the shebait having been restrained from making any sort of alienation thereof and from use and occupation of such debuttar property other than the cause of seva puja of the deity and protection and maintenance of the said Debuttar

Estate, and as in the deed of dedication there appears nothing to show that any beneficial interest was reserved or intended to be reserved in favour of any other than the deity, the title of the absolute debuttar property has not been transferred by the registered Deed No. 6867 of 2001 in question.

Hence in consideration of the above, I find nothing to interfere with the order of the Revenue Officer.

Thus, the order of the Revenue Officer appealed against stands.”

The petitioners herein being aggrieved by the Judgment and Order dated 8.01.2008 passed by the Appellate Authority moved West Bengal Land Reforms and Tenancy Tribunal.

By the Judgment and Order dated 09.08.2010 the Tribunal was pleased to dismiss the appeal. The Tribunal referring to different clauses of the deed of Arpannama held that the Shebait of Sri Sri Narayan Jew were not entitled to transfer or alienate any portion of the debuttar property which was held to be absolute.

In respect of the Compromise Decree Debuttar to be partial and providing for partition, it was held that the Learned Munsif, Burdwan, had no jurisdiction and in view of the provision of Section 92 of the Code of Civil Procedure only the Learned District Judge was competent to entertain the said proceeding.

Mr. Saktinath Mukherjee, learned Senior Counsel representing the petitioners submitted that the property in question was a partial debuttar property and such private debuttar property is alienable. Referring to section 92 of the Code of Civil Procedure. Mr. Mukherjee submitted that the aforesaid provision applies only to public trusts of a charitable or religious nature and not to private trusts. Mr. Mukherjee relied on a Constitution Bench Judgment of the Supreme Court in the case of **Chairman Madappa Vs. Mahanthadevaru reported in 1966 SC 878** wherein Hon'ble Supreme Court in the Paragraph 10 observed:

“ 10. The main purpose of S.92(1) is to give protection to public trusts of a charitable or religious nature from being subjected to harassment by suits being filed against them. That is why it provides that suit under that section can only be filed either by the Advocate General or two or more persons having an interest in the trust with the consent in writing of the Advocate-General.”

Mr. Mukherjee also relied on another judgment of the Supreme Court in the case of **Vidyodaya Trust Vs. Mohan Prasad reported in (2008) 4 SCC 115.**

In any event the language of Section 92 itself leaves no room for doubt that the said provision has application only to public religious trusts and can have no application to private debuttar. Mr. Mukherjee also invited our attention to the impugned judgment of the learned Tribunal wherein a passing reference to Religious Endowment Act 1863 has been made. Mr. Mukherjee submitted that the aforesaid Act of 1863 applies only to public religious trusts.

The learned Tribunal and other authorities while rejecting the claim of the petitioner for mutation of the property in question sought to decide the title of the said property upon holding that the Judgment of the Division Bench in the case of **Sasanka Sekhar Maity Vs. Dulal Kumar Maity, reported in 2005 (3) CHN 259** is distinguishable.

Division Bench of this Court presided over by **Ashoke Kumar Ganguly, J.** (as His Lordship then was) has specifically held in the aforesaid case of **Sasanka Sekhar Maity (Supra)** as hereunder :

“59 *** **
 *** **
 *** **

It is well –known that under the provisions of section 50 of the Land Reforms Act mutation proceedings are initiated. First of all , mutation does not decide question title or any person’s right to property. * ****

*** **
 *** **”

Mr. Mukherjee submitted that the findings of the learned Tribunal as well as the appellate authority and the revenue officer concerned that an absolute debuttar is inalienable cannot be held to be correct. A private debuttar may be partial or absolute. A partial debuttar like the present one is not really a debuttar according to Mr.Mukherjee. Mr. Mukherjee referred to and relied on the **Tagore Law Lectures** delivered by Dr. Bijon Mukherjee on the **Hindu Law of Religious and Charitable Trusts** in support of his aforesaid argument. The relevant

extracts from the aforesaid **Tagore Law Lectures** cited by Mr. Saktinath Mukherjee are set out hereunder :

In a partial dedication the deity does not become a owner of the dedicated property, but is in the position of a charged holder in respect of the said. A charge is created on the property and there is an obligation on the holder to apply the income of the charged portion of the property for the religious purposes indicated by the settler. The property does not become extra commercium like debuttar property so called property, but is alienable subject to the charge and descend according to the ordinary rule of inheritance.

Mr. Saktinath Mukherjee further submitted that in the instant case there is a binding decree namely the Compromise Decree in Title Suit No. 197 of 1950 wherein it has been specifically declared that debuttar is a partial. Mr. Mukherjee submitted that the aforesaid decree is binding upon the parties and was not open to the authorities including the Tribunal to go behind the said compromise decree in a mutation proceeding. Mr. Mukherjee also submitted that even an absolute debuttar is alienable subject to the conditions that it should be for the benefit of the deity or for legal necessity. Referring to the Tagore Law Lectures relating to administration of debuttar by Dr. Bijon Mukherjee, Mr. Saktinath Mukherjee further submitted that a Shebait's alienation without even any legal necessity may hold good so long as he hold office. Relevant extracts from Dr. Mukherjee's Tagore Law Lectures on alienation of property are set out hereunder :

**“6.41.
Shebait's alienation without legal necessity may hold good so long as he holds office-----**

In the second place I would ask you to bear in mind that even though a particular alienation by the Shebait is not supported by legal necessity, still it would not be void altogether and my ensure so long as the Shebait is alive or hold his office. A Shebait, therefore, can even without any legal necessity create as estate or tenure commensurate with his term of office and between the grantor and the grantee such an estate would be valid, though it would not be binding on the succeeding Shebait”.

Mr. Mukherjee very strongly urged before us that even there is a total bar in respect of the alienation of debuttar property, the same is void and inoperative. Mr. Mukherjee relied on a judgment of the Patna High Court in the case of **Ramchandraji Maharaj vs. Lalji Singh reported in AIR 1959 Patna 305** in this regard. Considering the principles enunciated into Section 10 of the Transfer of Property Act, Patna High Court in the aforesaid case of **Ramchandraji Maharaj (Supra)** specifically held that the condition in the deed of dedication imposing limitation on the Shebait’s power of disposal is manifestly void. The relevant extracts from the aforesaid decision of the Patna High Court in the case of **Ramchandraji Maharaj (Supra)** are set out hereunder :

“(7) *** *** *** *** *** *** ***
*** *** *** *** *** *** ***

On the principles enunciated in this section the condition in the deed of dedication imposing limitation on the shebait’s power of disposal is manifestly void.

*** *** *** *** *** *** ***
*** *** *** *** *** *** ***”

Mr. Mukherjee, finally submitted that in the present case, the proceeding is one for mutation of the names of the transferee under registered deed of conveyance and in such proceeding the question of title cannot be gone into and

even on the basis of the findings of the authorities, the transfer of the property in question was legal and valid. Mr. Mukherjee submitted that the names of the petitioners have not been recorded illegally and without any justification. Mr. Mukherjee referred to and relied on a decision of the Division Bench of this Court in the case of **K.G. Patel & Co. Vs. Smt. Chandra Devi Bothra & Ors. reported in 1997 (1) CHN 156.**

There cannot be any doubt that mutation of property in revenue records does not create or extinguish title nor the same has any presumptive value. In the case of **Amulya Ratan Ghorai Vs. Secretary of Sri Sri Ram Krishna Paramahansa Sevak Sangha & Anr.. reported in 1989 (1) CLJ 447** held :

“20. No doubt, an entry in the record-of-rights does not create any title in favour of any person as raising a presumption is not creating a title nor does it extinguish a right either”.

Mr. Indrajit Sen, learned Senior Counsel representing the state respondents however submitted that the Shebait sold the property in question in the year 2001 although nothing has been disclosed afterwards as to how the amount received out of the sale proceed has been used for the improvement of the property carrying on the worship of the idol.

Mr. Indrajit Sen, learned standing counsel representing the State respondents submitted that the sale of the property in favour of the petitioners is bad in law since the Shebait cannot do anything contrary to the deed of dedication. Mr. Sen further submitted that the Shebait cannot make anything

harmful to the debuttar estate nor can they alienate the said debuttar at any point of time by way of gift, sale and mortgage or by any sought of settlement. Mr. Sen also submitted that the sale proceeds in the instant case has not been used for the development of the temple or in connection with the seba puja of the idol and therefore, Shebaita had no right to sell out the debuttar property.

Mr. Sen very strongly urged before this Court that the concerned Revenue Officer under the provisions of Section 14 T (6) of the Land Reforms Act 1955 on his own motion or upon any information may, after giving the persons interested an opportunity of being heard, enquire and decide any question as to whether any trust, endowment or institution is of public or private in nature or of exclusively religious or charitable in character or both, and any question of title incidental thereto in order to determine the extent of land which is to vest in the State under Section 14S by examining the document if any. There is no dispute about the power of Revenue Officer under Section 14T(6). But in the instant case the Revenue Officer did not initiate any proceeding under Section 14T(6). The petitioners herein prayed for mutation of the property in question and in such proceeding the Revenue Officer is not entitled to decide the title of the property in question.

Division Bench of this Court in the case of **Sasanka Sekhar Maity (Supra)** specifically held that mutation does not decide the question of title or the right of any person to the property. Therefore, in a mutation proceeding the

Revenue Officer or any other authority had no right to decide the title of the property in question.

In view of the clear pronouncement of the Division Bench of this Court in the case of **Sasanka Sekhar Maity (Supra)**, question of title cannot be considered in the mutation proceeding. In the instant case, the Revenue Officer, Appellate Authority and even the Learned Tribunal erroneously decided the title of the property in relation to a mutation proceeding upon holding that the aforesaid judgment of the Division Bench is distinguishable which we do not approve.

In terms of the compromise decree, debuttar was declared as “Partial” and accordingly the said property is transferable.

Dr. Bijon Mukherjee in the Tagore Law Lectures specifically stated that in a partial dedication the deity does not become the owner of the dedicated property, but is in the position of a charge-holder in respect of the same and the said property is alienable subject to the charge and descends according to the ordinary rules of inheritance. The paragraphs quoted hereinbefore from the Tagore Law Lectures of Dr. Bijon Mukherjee clearly suggests that the property in question in the instant case is alienable and therefore the Shebaitis had rightly transferred the property to the petitioners by executing the deed of sale.

However, the aforesaid issues are not at all relevant in a mutation proceeding as the question of title cannot be gone into in a mutation proceeding. The Revenue Officer and the Appellate Authority therefore committed serious error in rejecting the prayer for mutation of the property made by the petitioners herein. Learned Tribunal also failed to decide the issues raised by the petitioners herein strictly in accordance with law and wrongfully affirmed the decision of the Revenue Officer which was subsequently approved by the appellate authority.

For the reasons discussed hereinbefore, the order passed by the Revenue Officer in mutation case No. 26 of 2002 and the subsequent order passed by the District Land and Land Reforms Officer, Burdwan on 8th January 2008 in appeal case No. 65 of 2007 as well as the impugned judgment and order passed by the learned Tribunal on 9th August 2010 in O.A. No. 548 of 2008 cannot be sustained.

Therefore, the aforesaid order dated 12th June 2007 passed by the Revenue Office in mutation case No. 26 of 2002 and the order dated 8th January 2008 passed by the District Land and Land Reforms Officer, Burdwan in appeal case No. 65 of 2007 stand quashed and the impugned judgment and order dated 9th August 2010 passed by the West Bengal Land Reforms and Tenancy Tribunal in O.A. No. 548 of 2008 is set aside. The Revenue Officer concerned is directed to mutate the property in question in favour of the petitioners on the basis of their application without any further delay, but positively within a period of 4 weeks

from the date of communication of this order upon taking note of our aforesaid observations and findings.

With the aforesaid observations and directions this petition stands allowed.

In the facts of the present case, there will be, however, no order as to costs.

Urgent xerox certified copy of this judgment, if applied for, be given to the learned Advocates of the parties on usual undertaking.

Pranab Kumar Chattopadhyay, J.

Ashoke Kumar Dasadhikari, J.

I agree.

Ashoke Kumar Dasadhikari, J.