

A

STATE OF WEST BENGAL AND OTHERS

v.

ASHIT NATH DAS AND OTHERS

JANUARY 27, 1988

B

[G.L. OZA AND B.C. RAY, JJ.]

C *West Bengal Estates Acquisition Act, 1953: Sections 6(5), 44(2a) and 47—Revenue Officers order questioned in appeal before the Addl. District Judge/Competent Authority—Private party obtaining opinion of Advocate General and moving application for decision in terms of such opinion—District Judge rejecting plea and fixing the appeal for hearing—High Court under Article 227 quashing the proceedings—Supreme Court—Under Article 136 held decision of High Court without jurisdiction—Quashed Lower appellate court directed to dispose of appeal.*

D

*Practice and Procedure—Written opinion of Advocate General—Application to Court by private party that appeal be disposed of in accordance with opinion—District Judge. Rejecting application—Whether valid.*

E

As a result of the order passed by the High Court, proceedings under s. 44(2a) of the West Bengal Estates Acquisition Act, 1953 were re-opened by the Special Revenue Officer and final orders were passed on 9.2.1982.

F

The 1st respondent preferred an appeal against this order before the 9th Additional District Judge, the competent authority to hear an appeal. On 1.12.83 the 1st respondent obtained an opinion of the Advocate General regarding the aforesaid proceedings, and filed that opinion with an application.

G

The Additional District Judge passed an order on 25.2.86 rejecting the prayer of the 1st respondent that the appeal be disposed of in accordance with the opinion of the Advocate General, but observed that the opinion of the Advocate General could only be looked into as the ground of appeal on behalf of the 1st respondent. The date of hearing of the appeal was fixed on 19.4.86 to suit the convenience of the Advocates of the parties.

H

A petition under Art. 227 was filed in the High Court against the

aforesaid order by the 1st respondent. The High Court treated this petition as a revision application challenging the order passed by the Additional District Judge on 25.2.86, and held that the Additional District Judge should have disposed of the appeal in accordance with the opinion of the Advocate General, and quashed the proceedings under Section 44(2a) as well as the appeal that was pending hearing before the Additional District Judge.

Allowing the Appeal by the State this Court,

HELD: 1. The High Court lost sight of the fact that the only grievance against the order of the 9th Additional District Judge was that he refused to decide the appeal in accordance with the opinion of the Advocate General and that he did not give an early date of hearing. The question about the *suo moto* proceedings under s. 44(2a) and the validity of the Amendment Act, 1969 and its effect were not considered by the appellate authority and in fact the appeal was still pending before the 9th Additional District Judge which was yet to be heard and disposed of. [823G-H]

2. The High Court after examining the legal aspect without having been raised before it decided the matter so that neither appeal remains nor any proceedings remain and in doing so the High Court went on without there being proper grounds before it and without giving an opportunity to the appellant-State of West Bengal, to have their say in this matter. [824A-B]

3. The order passed by the High Court dated 20.5.87 is, therefore, completely without jurisdiction and on matters which were not before it and also without giving adequate opportunity of hearing and, therefore, deserves to be quashed, and is quashed. [824B-C]

4. The appeal that was filed by the 1st respondent before the 9th Additional District Judge was pending when the High Court passed the impugned order, revives. It could not be said that the appeal is disposed of as observed by the High Court. It is directed that the appeal which was pending before the 9th Additional District Judge shall be heard by the Additional District Judge in accordance with law. [824C-D]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 280 of 1988.

From the Judgment and Order dated 20.5.1987 of the Calcutta

A High Court in Civil Order No. 1344 of 1987.

Somnath Chatterjee and Rathin Dass for the Appellants.

B S.N. Kacker, Badar Durrez Ahmed and Parijat Sinha for the Respondents.

The Judgment of the Court was delivered by

OZA, J. Leave granted.

C This appeal has been filed aggrieved by the judgment of the High Court of Calcutta dated 20th May 1987 wherein the learned Judge allowed a petition under Article 227 and quashed *suo moto* proceedings under Sec. 44(2a) of the West Bengal Estates Acquisition Act, 1953 ('Act' for short) and also the appeal which was pending before the lower appellate court under the Act. The proceedings under Article 227 reached the High Court rather in an interesting situation. *Suo moto* proceedings in 1968 were started by the Revenue Officer Tollygunj under Sec. 44(2a) of the Act. There were also proceedings under Sec. 6 clause 5 read with Sec. 47 of the same Act started by Revenue Officer and the case was registered as Case No. 22 of 1968.

E A suit filed in 1969 between parties to which the State of West Bengal was not a party ended in a compromise decree on 6.8.70 and a decree in terms of compromise was drawn up. It was title suit No. 67 of 1969. After the final orders were passed by the Revenue Officer in Case No. 22 of 1968 wherein the respondent Ashit Nath Das did not participate and against these final orders a petition was filed in the High Court of Calcutta where rule was issued and by orders of the High Court dated 1.4.81 the rule was made absolute quashing the orders in the said revenue case directing the settlement officer to issue proper notice to Ashit Nath Das as he claimed to be an interested party and dispose of the matter after giving him opportunity of hearing. As a result of this order passed by the High Court on 22.1.82 the proceedings under Sec. 44(2a) of the Act was re-opened according to the orders passed by the High Court and on 9.2.82 final orders were passed in these proceedings by the special revenue officer. Against this Order Ashit Nath Das preferred an appeal before the 9th Additional District Judge, Alipore who is the competent authority to hear an appeal under this Act which was registered as EA Appeal No. 2 of 1982. On 1.12.83 it appears that Ashit Nath Das obtained an opinion

of the Advocate General of West Bengal regarding the aforesaid proceedings pending in Appeal No. 2 of 1982 before the 9th Additional District Judge, Alipore and filed that opinion with an application in the Court of Additional District Judge. The Additional District Judge passed an order on 25.2.86 rejecting the prayer of the respondent by saying that the opinion of the Advocate General could only be looked into as the ground of appeal on behalf of the appellant and the prayer of the appellant before the Additional District Judge the present respondent that the appeal be disposed of in accordance with the opinion of the Advocate General was rejected. It is interesting to note that such a strange prayer was made and the learned Additional District Judge by his order rejected that prayer. The relevant part of the order reads as under:

"It is his case that after the order of the R.O. now impugned in this appeal, his client had made a reference of the matter to the Adv. General, Govt. of West Bengal and sought for his opinion. It is alleged that the Adv. General had given his opinion that the order of the R.O. was wrong on the basis of this the appellants now want that the appeal should be disposed of as per opinion of the Adv. General because all relevant papers were submitted to him and copy of his opinion and the copy of the petition and copies of the papers were handed over to the State lawyer."

As the learned Judge observed that it could only be considered as a ground. The date of hearing of the appeal was fixed on 19.4.86 to suit the convenience of the advocates of parties.

It is against this order that a petition under Art. 227 was filed before the High Court. Learned counsel appearing for the appellants read through the petition which was filed before the High Court to contend that in fact there was nothing in the order of the Additional District Judge which could be said to be an order against the respondent of which a grievance could be made in a petition under Art. 227. As regards the date of hearing the learned Additional District Judge had observed in his order that to suit the convenience of advocates appearing in the case 19.4.86 is fixed as the date of hearing. Learned counsel for the appellants referred to us paragraph No. 14 of the petition under Art. 227 in which a ground was specifically raised saying.

"It was further contended that the Advocate General had

A given his opinion that the order of the Revenue officer was wrong and as such on the basis of the said opinion the petitioner wanted that the appeal should be disposed of as per opinion of the Advocate General."

B A grievance also was made in this petition that the learned Additional District Judge refused to look into the opinion of the Advocate General except as a ground of appeal on behalf of the appellants. In the grounds in this petition under Art. 227 one ground urged was that the learned Additional District Judge should have disposed of the appeal in accordance with the opinion of the Advocate General and that should have fixed an early date for the hearing of the appeal and it is significant that nothing on the merits or the validity of the proceedings under Sec. 44(2a) of the Act were challenged in this petition under Art. 227.

The manner in which the petition was entertained in the High Court and the impugned order was passed also is rather interesting.

D On 18.4.86 it appears that this petition was presented and orders were passed. The presence of the counsel of both the parties is mentioned, thereafter it is stated that further proceedings before the appellate tribunal be stayed and it is further stated that Advocate General is also directed to appear on Friday next (25.4.86) at the first sitting of the Court. Apparently from this what appears is that after asking the Advocate General to remain present the learned Judge kept the matter to be taken up on 25.4.86. It appears that thereafter the case did not appear in the list for hearing as is apparent from the order dated 18.4.86 when rule was not issued and the matter was kept on 25.4.86. It is alleged that this was contested by the State Govt. but neither the parties were called upon to file affidavits nor any rule was issued and subsequently on 13.6.86 this case was shown in the list of the Hon'ble Judge for judgment but on 13.6.86 the judgment was not delivered and thereafter the case appeared in the list on 20.5.87 for judgment and on this date the judgment was delivered although the file had no number as it appears that rule was not issued and the petition was not even numbered and it is this impugned judgment which is challenged by the State of West Bengal in this appeal in special leave.

In this order the learned Judge has treated this petition under Art. 227 as a revisional application of the petitioner challenging the order passed by Additional District Judge on 25.2.86 which has been referred to above.

The learned Judge has reproduced the contention advanced by the counsel for the respondents that the appellate court i.e. 9th Additional District Judge should have disposed of the appeal in accordance with the opinion of the Advocate General and about this contention the learned Judge of the High Court has made the following observation in his impugned judgment:

"It is most regretable to note the stand taken by the State in the matter in disregarding the written opinion given by no less person than the Advocate General of West Bengal showing such scant respect or no respect at all to such opinion and I hudder to think that if such disrespect is shown to the opinion of the Advocate General of West Bengal what should be the position of the Advocate General before the court and also to the State Government".

However the learned Judge did not agree that the Additional District Judge should have decided in accordance with the opinion of the Advocate General and we are happy that the 9th Additional District Judge, Alipore did not accede to such a prayer but after the above quoted observation the learned Judge has decided matters which were not raised before the High Court in the petition under Art. 227. No ground about the validity of 44(2a) proceedings on the basis of Amending Act not getting the assent of President was raised. When the case was fixed for 25th April Friday next directing the Advocate General to remain present, there-after it was never heard and it only ultimately resulted in the impugned order.

It is not contended even by the learned counsel for the respondents that any additional grounds were urged in the petition under Art. 227 inviting the Court to consider the matter as to the effect of the Amendment Act, 1969 not receiving the assent of the President and the subsequent Amendment Act receiving the assent of the President and the effect thereto. Unfortunately the learned Judge of the High Court lost sight of the fact that the only grievance against the order of the Additional District Judge was that he refused to decide the appeal in accordance with the opinion of the Advocate General and that he did not give an early date of hearing. This question about the *suo moto* proceedings under Sec. 44(2a) and the validity of the Amendment Act and its effect were neither considered by the appellate authority and in fact the appeal was still pending before the 9th Additional District Judge which was yet to be heard and disposed of but it appears that the

- A learned Judge of the High Court after examining these legal aspects without having been raised before it decided the matter so that neither appeal remains nor any proceedings remain and in doing so the learned Judge went on without their being proper grounds before it and without giving an opportunity to the present appellant State of West Bengal to have their say in the matter. Under these circumstances it is apparent that the order passed by the learned Judge of the High Court dated 20.5.87 is completely without jurisdiction and on matters which were not before it and also without giving adequate opportunity of hearing and therefore the order deserves to be quashed and is quashed. Apparently therefore the appeal filed by the respondent before the 9th Additional District Judge which was pending when the learned Judge of the High Court passed the impugned order revives and it could not be said that the appeal is disposed of as observed by the learned Judge of the High Court. Consequently it is directed that the appeal which was pending before the 9th Additional District Judge Alipore shall be heard by the learned Additional District Judge in accordance with law. The learned Additional District Judge while hearing and disposing of the appeal shall not be bound or obsessed by any observation made by the learned Judge in the impugned order. In the circumstances of the case parties are directed to bear their own costs.
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N.V.K.

Appeal allowed.