



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 6106 OF 2017**

**M/s DARVELL INVESTMENT AND
LEASING (INDIA) PVT. LTD. AND OTHERS ... Appellant(s)**

VERSUS

**THE STATE OF WEST BENGAL
AND OTHERS ... Respondent(s)**

J U D G M E N T

RAJESH BINDAL, J.

1. The judgment¹ of the Division Bench of High Court² is under challenge in the present appeal. Vide aforesaid judgment, the order³ passed by the Single Judge was upheld.

¹ Judgment dated 30.03.2015 passed in MAT No. 2117 of 2014

² High Court at Calcutta.

³ Order dated 25.11.2014 passed in W.P. No. 12426(W) of 2014.

2. The issue in the present appeal pertains to cancellation of caste certificate issued to respondent No. 15.

SET OF FACTS

3. Late-Ramanand Baraik sold 2.11 acres of land vide registered sale deeds dated 30.08.1983 to one Sanjay Gupta and two others. It was mutated in the name of the purchasers. Between 1980 and 1983, late-Ramanand Baraik sold more than ten acres of land to different persons. He was working as a driver with the Corporation⁴. He was appointed as such on 01.01.1973 and was terminated from service w.e.f. 30.11.1987. As per the record with his employer, he belonged to general category. Ramanand passed away in the year 1991.

4. On an application filed by respondent No. 15 son of late Ramanand Baraik, the concerned SDO⁵ on 23.04.1993 issued a Caste Certificate of Scheduled Tribe in his favour showing him to be belonging to 'Chik Baraik'.

5. On 08.02.2000, respondent No. 15 purchased 0.07 acres of land for the purpose of construction of a dwelling house for a total sale consideration of ₹93,950/-. It is claimed that the aforesaid land was sold

⁴ The North Bengal State Transport Corporation, Cooch Behar

⁵ The Sub Divisional Officer

by respondent No. 15 on 01.03.2000. At that stage, he claimed himself to be belonging to general category and no permission as such was taken for sale of the land under Sections 14B and 14C of the 1955 Act⁶. Seventeen years after registration of the sale deeds by late Ramanand Baraik in favour of Sanjay Gupta and others on 30.08.1983 and about ten years after his death, a complaint was filed by Bishwanath Roy and another person claiming that the aforesaid land had been sold in violation of Section 14B and 14 C of the 1955 Act. Notices were issued to the complainant as well as Sanjay Gupta on 29.06.2000 on the subject 'Alienation of S/T land'.

6. There are affidavits sworn by respondent No. 15 dated 06.07.2000 and 02.08.2000 stating that he belongs to general caste which is 'Tanti'. He further specifically stated that he does not belong to Scheduled Tribes community and that there is no bar for selling his land. Subsequent thereto, on 07.02.2001, respondents No. 15 and 16 sold land to one Zainul Abdin. It is stated in the aforesaid sale-deed that 0.26 acres of land was purchased by late Ramanand Baraik, which was inherited by them being the only legal heir, after the death of Ramanand Baraik in the year 1991. Out of that, they sold 0.07 acres of land in favour of one Parmeshwar Rao Nalla and one Zainul Abdin. At

⁶ The West Bengal Land Reforms Act, 1955

that stage, no permission was taken for sale of the land under Sections 14B and 14C the 1955 Act, even though it is claimed that respondent No. 15 had been issued a certificate of his belonging to S.T. Category on 23.04.1993.

6.1 The District Land and Land Reforms Officer, Darjeeling vide memo dated 21.05.2001 informed the Block Land & Land Reforms Officer, with reference to his memo No. 816 dated 29.08.2000, on the subject 'Alienation of S/T land' that the complaint filed by Bishwanath Roy was dismissed. It referred to the affidavit submitted by respondent No. 15.

7. On 22.01.2004, respondents No. 15 to 18 filed an application under Section 14E of the 1955 Act challenging the sale deeds dated 30.08.1983 executed in favour of Sanjay Gupta and others by his late father. This was despite the fact that earlier similar complaint filed by Bishwanath challenging the aforesaid sale deed had already been dismissed.

8. The appellants No. 1 and 2 purchased the land in dispute from Sanjay Gupta and others on 24.11.2004. Vide order dated 29.11.2004, the Revenue Officer empowered under Section 14E of the 1955 Act directed cancellation of three sale deeds dated 30.08.1983 in favour of Sanjay Gupta and others. A perusal of the order shows that

notice was also issued to them, though prior to that the land had been purchased by appellants No. 1 and 2 on 24.11.2004. The order was passed despite the fact that vide earlier order dated 21.05.2001, similar complaint had already been dismissed.

9. On 10.04.2005, the Director of appellants No. 1 and 2 wrote a letter to the SDO seeking enquiry into the caste certificate issued in favour of respondent No. 15. It was followed by another letter dated 12.05.2005.

10. Appellants No. 1 and 2 addressed a letter to the District Magistrate & District Collector, Darjeeling on 28.11.2006 for cancelling the caste certificate wrongly issued in favour of respondent No. 15 and also for restoration of the title of the property in their favour. It was followed by another letter dated 04.05.2007.

11. Having come to know that respondent No. 15 had executed number of sale deeds claiming himself to be belonging to general category and further that the caste certificate was obtained by him *inter alia* by playing fraud, the appellants No. 1 and 2 through their attorney filed an application for cancellation of the caste certificate issued in favour of respondent No. 15 on 29.03.2012 before S.D.O., Siliguri. The proceedings were initiated. The certificate issuing authority vide order dated 06.07.2012 cancelled the caste certificate issued in favour of

respondent No. 15. The order noticed that not only respondent No. 15 but even his father had sold land on number of occasions to different persons as general category. It also referred to the affidavits sworn by him that he does not belong to Scheduled Tribes category. When respondent No. 15 appeared before the authority, he clearly claimed that his caste certificate was lying with his advocate. However, later on he submitted that he lost the same for which no FIR was lodged. No material was produced on the basis of which such a certificate could be issued. Even in the office record, nothing was found which could justify issuance of caste certificate in favour of respondent No. 15.

12. On 26.07.2012, appellants No. 1 and 2 filed application for mutation of the land in their favour as the caste certificate issued in favour of respondent No. 15 already stood cancelled.

13. Aggrieved against the aforesaid order of cancellation of caste certificate dated 06.07.2012, respondent No. 15 filed appeal before the District Magistrate. The said appeal was dismissed by the Additional District Magistrate (Appellate Authority) vide order dated 14.01.2013. The order refers to the report from S.D.O., Siliguri that respondent No. 15 had failed to submit any supporting document to prove his claim of belonging to 'Chik Baraik' community; he had sworn two affidavits claiming himself to be belonging to general category; his

father late Ramanand Baraik, his brother and he himself had sold land to various persons claiming to be belonging to general category without seeking permission. Even his father late Ramanand Baraik was also not a Scheduled Tribe, hence his son could not be. Copy of the aforesaid order was forwarded by the Additional District Magistrate vide memo dated 21.01.2013 to the District Welfare Officer. The District Magistrate also directed the District Welfare Officer to lodge FIR against respondent No. 15 on the ground of committing fraud.

14. Vide letter dated 06.03.2013, Commissioner, Jalpaiguri Division wrote to the Commissioner of Police, Siliguri Police Commissionerate to advise respondent No. 15 to file appeal against the order dated 06.07.2012 cancelling his caste certificate. It was then respondent No. 15 filed appeal against the orders dated 06.07.2012 and 14.01.2013 before the Committee⁷.

15. The appellants filed Writ Petition⁸ challenging the memo dated 06.03.2013 addressed by the Commissioner, Jalpaiguri Division to the Commissioner of Police, Siliguri. The aforesaid writ petition was disposed of on 25.04.2013 noticing the stand of the State that communication dated 06.03.2013, which was impugned in the writ

⁷ State Level Scrutiny Committee

⁸ Writ Petition No. 10002 of 2013

petition, had been withdrawn by the Commissioner, Jalpaiguri Division on 18.04.2013. It was left open to the parties to avail their appropriate remedy.

16. Appellants No. 1 and 2 sold 1.76 acres of land in favour of appellants No. 3 and 4 on 17.09.2013. The land stood mutated in the names of the appellants.

17. Having come to know that the respondent No. 15 had approached the Committee raising grievance against cancellation of his caste certificate in his favour, appellants No.1 and 2 submitted a letter on 05.11.2013 giving detailed facts and also praying for an opportunity of hearing.

18. *Vide* order dated 23.12.2013, the Committee opined that the caste certificate issued in favour of respondent No. 15 was cancelled inappropriately. Hence, the order was revoked and the matter was remitted back for consideration afresh.

19. The aforesaid order was challenged by the appellants before the High Court by filing Writ Petition⁹. The writ petition was allowed vide order dated 28.01.2014. The order passed by the Committee was set aside. The Committee was directed to decide on

⁹ Writ Petition No. 133(W) of 2014

the point of jurisdiction first and then hear all the parties concerned before passing fresh order.

20. Vide order dated 28.3.2014, the Committee opined that it is always empowered to deal with appeal with reference to verification of the caste certificate issued in favour of respondent No. 15. The aforesaid order was challenged by the appellants by filing a Writ Petition which was dismissed vide order dated 25.11.2014. The order passed by the Single Bench was challenged by the appellants by filing Intra-Court Appeal. The High Court vide impugned judgment dismissed the appeal opining that the Committee has jurisdiction to enquire into the complaints of cancellation of illegal Caste Certificate.

ARGUMENTS

21. Dr. A. M. Singhvi, learned senior counsel appearing for the appellants while narrating the facts, as noticed above, submitted that the impugned judgment of the High Court is illegal, whereby it was held that the Committee had power to hear an appeal regarding cancellation of caste certificate. The amendment in Section 8A of the 1994 Act¹⁰, carried out vide notification dated 15.09.2017, cannot be said to be retrospective as the Legislature has not expressed that

¹⁰ West Bengal Scheduled Castes and Scheduled Tribes (Identification) Act, 1994

intention. Even the objects as mentioned in the Bills for carrying out the amendment do not suggest the same. He further submitted that the conduct of respondents No. 15 to 18 also needs to be examined by this Court to see their *bona fide*. Number of sale deeds had been executed by late Ramanand Baraik during his life time and thereafter by his sons-respondents No. 15 and 16 without seeking permission from the competent authority, in case the claim was that they belong to Scheduled Tribes community. The sale deeds were executed from the year 1983 onwards. It is only the sale deeds in question for which the issues are sought to be raised.

22. He further submitted that even as per the certificate issued by the Corporation, father of respondent No. 15 when entered into Government service as a driver of the Corporation, claiming himself to be belonging to general category. He never claimed that he was Scheduled Tribe. Once the father was not Scheduled Tribe, his legal heirs cannot possibly be. Even respondent No. 15 had sworn two affidavits dated 06.07.2000 and 02.08.2000 specifically stating that he belongs to General Category of 'Tanti' and does not belong to any Scheduled Tribe community. He even got the sale deed registered on 01.03.2000 without taking any permission. Further, one Bishwanath Roy made a complaint regarding the sale deeds in question, which was

dismissed on 29.08.2000. However, on enquiry and finding that respondent No. 15 had already sworn affidavits that he belongs to general category, the same was closed. Subsequent thereto, respondent No. 15 sought to re-open the issue. He could not even produce his original caste certificate when the proceedings were conducted by certificate issuing authority. No record was found even in the office. Once the family had been executing number of sale deeds claiming themselves to be of general category, the issue sought to be raised with reference to the sale deeds in question shows some oblique motive.

23. He further submitted that seeing the chequered history of the case, which is hanging fire for the last 19 years, the issue needs to be closed as respondent No. 15 does not deserve any relief. The matter should not be sent back to either of the authorities as respondent No. 15 is only bent upon to harass the appellants who have not been able to raise construction though the property was purchased more than 19 years ago. On other portions of land sold by respondent No. 15, construction has already been raised. It was further submitted that the idea of enactment of the protective legislation of seeking permission for sale of land belonging to Scheduled Castes/Scheduled Tribes is only to save their property so that they are not forced to sell the same.

But in the case in hand as the facts suggest, predecessor-in-interest of respondents No. 15 and 16 was owning huge property which he sold from time to time.

24. On the other hand, learned counsel for respondents No. 15 to 18 submitted that there is no error in the order passed by the High Court. Considering the amendment carried out vide Act No. XXXV of 2017¹¹ in the 1994 Act, the Committee has power to examine the issue, even in the case of cancellation of caste certificate. The amendment carried out is retrospective as it is clarificatory in nature. Even if the caste certificate in the case in hand was cancelled prior to the notification of the amendment in Section 8A of the 1994 Act, the issue can still be examined by the Committee. Now it has power to deal with the same. Even otherwise, respondents No. 15 to 18 could not be left remediless. If they could not challenge the cancellation of caste certificate before the Committee or any other authority, they could certainly avail their remedy by filing a writ petition. He further submitted that presently respondents No. 15 to 18 are carrying on minimal work and are hardly able to make their both ends meet.

¹¹ The West Bengal Scheduled Castes and Scheduled Tribes (Identification) (Amendment) Act, 2017

25. Heard learned counsel for the parties and perused the relevant referred record.

26. The primary issue in the case in hand is with reference to caste certificate issued to the respondent No. 15. A certificate was issued in his favour on 23.04.1993 declaring him as belonging to 'Chik Baraik', a Scheduled Tribe. It is inter-related with the sale transactions of the land. In case, respondent No. 15 belongs to Scheduled Tribe community, permission is required for selling the land. In case, he is not, no permission is required. In the case in hand, the sale deed which is subject matter of dispute was executed by late Ramanand Baraik, father of respondent No. 15 in favour of Sanjay Gupta and two others on 30.08.1983.

27. To appreciate the arguments of learned counsel for the parties, we deem it appropriate to extract the details of various sale deeds executed by late Ramanand Baraik, father of respondent No. 15. These are detailed out in paragraph No. 8 of the memo dated 03.04.2013 issued by District Magistrate. The same are extracted below:

Sl. No.	Regd. Deed No.	Name of the Vendor	Name of the Purchaser	Mouza	Plot No.	Area (Acre)
1.	I-167 Dt. 28.03.80	Ramnandan Baraik	Roshan Lal Agarwal	Daknikata	209 to 220 (R.S)	0.66
2.	I-168 Dt. 28.03.80	Ramnandan Baraik	Tara Devi Agarwal	Daknikata	209 to 220	1.00
3.	I-169 Dt. 28.03.80	Ramnandan Baraik	Banwari Lal Agarwal	Daknikata	209 to 220	0.33
4.	I-170 Dt. 28.03.80	Ramnandan Baraik	Binay Kumar Sharma	Daknikata	209 to 220	0.66
5.	I-171 Dt. 28.03.80	Ramnandan Baraik	Susila Devi Agarwal	Daknikata	209 to 220	0.66
6.	I-481 Dt. 30.08.83	Ramnandan Baraik	Sanjay Gupta	Daknikata	465, 466	0.70
7.	I-482 Dt. 30.08.83	Ramnandan Baraik	Anjay Gupta	Daknikata	465, 466	0.70
8.	I-483 Dt. 30.08.83	Ramnandan Baraik	Ashish Gupta	Daknikata	465, 466	0.71

28. At the time of hearing, it remained undisputed that the only sale deed dated 30.08.1983 executed by late Ramanand Baraik in favour of Sanjay Gupta and two others is subject matter of dispute as on the same ground other sale transactions entered into by late Ramanand Baraik are not in question in any other case.

29. The fact remains that the sale deeds in question were executed by late Ramanand Baraik. He was engaged as a driver by the Corporation on 01.01.1973. His services were terminated w.e.f. 30.11.1987. As per the record with his employer, he belonged to general category. A certificate to that extent issued by the Corporation

has been annexed showing that late Ramanand Baraik was from general category as per the record of the Corporation. Meaning thereby, till his termination from service on 30.11.1987, he never claimed even with his employer that he belonged to any reserved category, especially Scheduled Tribe, as is sought to be claimed by respondent No. 15.

30. The sale deeds were sought to be challenged by respondents No. 15 and 16 by moving an application dated 22.01.2004 before Revenue Officer, Daknikata through Block Land & Land Reforms Officer, Matigara. It was claimed that they belonged to Scheduled Tribe community and the sale transaction was in violation of Sections 14B and 14C of the 1955 Act. Notice was issued to the vendees-Sanjay Gupta and others. Revenue Officer, vide order dated 29.11.2004, declared the sale deeds as null and void. The order was impugned by the appellants No. 1 and 2 before the learned Civil Judge (Junior Division), Siliguri under Section 14H of the 1955 Act because in the meanwhile vide sale deeds dated 24.11.2004, Sanjay Gupta sold the land to appellants No. 1 and 2. Vide order dated 16.03.2005, the Civil Judge dismissed the application. The order was further challenged in revision before District Judge, Darjeeling who also dismissed the same vide order dated 23.02.2006.

31. Attorney of appellants No. 1 and 2 filed an application dated 29.03.2012 before SDO, Siliguri for cancellation of Caste Certificate issued in favour of respondent No. 15. He was granted number of opportunities to submit his original Tribal Certificate and personally appear along with documentary evidence. Initially, his stand was that the caste certificate is lying with his Advocate, hence, he may be granted some time to produce the same. Thereafter, the stand taken was that his original caste certificate has been lost. However, undisputedly no complaint or FIR was lodged. The fact remained that he was not able to produce any material or the original caste certificate in his favour. The aforesaid application for cancellation of the caste certificate was disposed of *inter alia* with the observation that no supporting documents were found in the record, on the basis of which caste certificate was issued in favour of respondent No. 15; father of respondent No. 15, namely, Ramanand Baraik was serving as a Driver in the Corporation as general category employee; respondent No. 15 had sworn two affidavits dated 06.07.2000 before Notary Public, Siliguri and 02.08.2000 before Executive Magistrate, Siliguri stating that he belonged to general caste community and not Scheduled Tribe. The signatures on the receipt register supply copy of the Caste

Certificate issued to respondent No. 15 and on the affidavits were found to be identical.

32. Respondent No. 15 sold the property vide sale deed No. I/1039/2000 dated 01.03.2000 as a person belonging to general category and subsequently, respondents No. 15 and 16 sold another inherited property vide sale deed No. I/575/2001 dated 07.02.2001. No permission was sought while executing the aforesaid sale deeds. Late Ramanand Baraik, father of respondent No. 15 had sold more than ten acres of land between 1980 and 1983 claiming himself to be of general category. A complaint was filed regarding sale of the land in question, however, the same was closed by District Land and Land Revenue Officer vide order memo dated 21.05.2001 holding that respondent No. 15 and his family members are non-Tribal.

33. In view of the aforesaid facts, SDO, Siliguri cancelled the caste certificate issued in favour of respondent No. 15 on 06.07.2012. The aforesaid order was challenged by respondent No. 15 by filing appeal before the District Magistrate (Appellate Authority). The order of cancellation of caste certificate was confirmed by the Appellate Authority vide order dated 14.01.2013. Thereafter, respondent No. 15 moved an application before the Committee. Vide order dated 23.12.2013, the Committee set aside the order dated 06.07.2012 passed

by the SDO cancelling the Caste Certificate issued in favour of respondent No. 15. The Committee directed the Director, Cultural Research Institute to conduct an enquiry and to verify the caste status of respondent No. 15. On receipt of the report dated 18.04.2013, the Committee was of the view that respondent No. 15 belongs to 'Chik Baraik' of Scheduled Tribe community. Even the Committee observed that the original caste certificate issued to respondent No. 15 was not produced before SDO. Finally, the Committee opined that cancellation of caste certificate was inappropriate, hence, the order was set aside and the matter was remitted back to the SDO concerned for passing fresh order in the light of the observations made by the Committee.

34. Aggrieved against the aforesaid order, the appellants filed Writ Petition in the High Court raising the issue of jurisdiction of the Committee to entertain the application filed by respondent No. 15. Various other grounds were also raised including that the Committee consisted of many members, however, the Chairman himself had issued the order. The Single Bench of the High Court finding merit in the submissions made by appellants No. 1 and 2 set aside the order of the Committee and remitted the matter back for fresh consideration leaving it open to them to raise the issue regarding jurisdiction of the Committee.

35. Thereafter, *vide* order dated 02.01.2014, the Committee decided that it had jurisdiction to entertain the application filed by respondent No. 15. The order was communicated to the parties *vide* letter dated 28.03.2014.

36. The aforesaid order dated 02.01.2014, as communicated to the parties *vide* memo dated 28.3.2014, was challenged by the appellants before the High Court. Single Bench of the High Court, *vide* order dated 25.11.2014 found merit in the arguments raised on behalf of respondent No. 15 and opined that the Committee had the jurisdiction to entertain the issue regarding his social status.

37. The aforesaid order passed by the Single Bench was challenged by the appellants by filing appeal. The Division Bench, *vide* impugned order dated 30.03.2015 had upheld the order passed by the Single Judge holding that the Committee had jurisdiction to enquire into the complaints of illegal cancellation of Caste Certificate.

38. As far as the argument regarding jurisdiction of the Committee is concerned, in our opinion, the issue is not required to be gone into in detail at this stage, as the High Court opined that the Committee had jurisdiction to entertain even the issue regarding cancellation of the Caste Certificate in terms of Section 8A of the 1994 Act. Though it has not specifically been mentioned in the Section,

however, vide amendment carried out in the 1994 Act w.e.f. 15.09.2017, clause (c) in Section 8A was substituted to include even the cases regarding cancellation of caste certificate. The only issue required to be considered may be as to whether this amendment should be considered to be retrospective or retroactive. However, the fact remains that it being a procedural law and the matter being still pending before the Committee to be decided on merits after it had opined that the Committee had jurisdiction to deal with even the cases of caste certificate, it could very well be examined by the Committee at this stage. In the view of that matter, it should have been sent back to the Committee only.

39. However, we do not deem it appropriate to follow that route considering the conduct of the private respondents. The fact which remained undisputed even at the time of hearing is that late father of respondent No. 15 who was in service of the Corporation, never claimed himself to be a person belonging to Scheduled Tribe community. During his life time, he had sold about ten acres of land between 1980 and 1983 including the sale deed in question executed in favour of Sanjay Gupta and two others. None of those sale transactions have been challenged by him during his life time or by respondents No. 15 and 16, after his death claiming that the father

belonged to Scheduled Tribe community. In fact, there was no certificate issued to that extent in his favour. It was the father who had executed the sale deeds. It also came on record that respondent No. 15 had executed the sale deeds I-1039 dated 01.03.2000 and I-575 dated 07.02.2001. Those were also executed without seeking any permission from any authority. There is no challenge to that. Earlier to that, a complaint was filed for cancellation of the sale deed in question which was closed by the District Magistrate, *vide* order dated 29.08.2000 holding that respondent No. 15 did not belong to Scheduled Tribe community, as was even the status mentioned in two affidavits dated 06.07.2000 and 02.08.2000 sworn by him before Notary Public and Executive Magistrate, respectively.

40. There is nothing produced on record to show that late Ramanand Baraik, father of respondent No. 15 was ever issued any certificate showing him belonging to Scheduled Tribe community. The sale deeds in question were registered on 30.08.1983. It shows that on the basis of a certificate, which was issued subsequently in favour of respondent No. 15, he sought to challenge one of the various sale deeds executed by his late father Ramanand Baraik during his life time. Even at the time of death of late Ramanand Baraik, father of respondent No. 15, in the year 1991, respondent No. 15 was more than 18 years of

age. The sale deeds in question in isolation were sought to be challenged only in the year 2004, even though the certificate of Scheduled Tribe community was issued in favour of respondent No. 15 in the year 1993.

41. Considering the aforesaid facts, in our opinion, the present appeal deserves to be allowed. Ordered accordingly. The judgment dated 30.03.2015 passed by the High Court is set aside. It will be an exercise in futility to remit the matter back to any authority for examination as we do not find any merit in the claim of respondent No. 15.

.....J
(VIKRAM NATH)

.....J
(RAJESH BINDAL)

New Delhi
December 08, 2023.