

(1964) 06 CAL CK 0005

In the Calcutta High Court

Case No : A.F.O.O. No. 203 of 1958 (Mandamus) with F.M.A. No's. 128 to 140, 152 to 159, 161, 163, 164, 170 to 173, 178 to 184, 204, 223, 225 to 228, 229, 230, 231, 232, 256, 265, 266, 267, 268, 277 and 311 of 1958

Bhutnath Das and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 04-06-1964

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 245, 31, 31A
West Bengal Estates Acquisition (Amendment) Act, 1955 — Section 49, 52
West Bengal Estates Acquisition Act, 1953 — Section 16(1)
West Bengal Estates Acquisition Rules, 1954 — Rule 15

Citation : AIR 1964 Cal 552 : 68 CWN 1124

Hon'ble Judges : R.S. Bachawat, J;A.K. Mukherjea, J

Bench : Division Bench

Advocate : B.K. Panda and R.C. Banerji, in Nos. 203, 204, 223, 225 to 228, 230, 232 and 311, S.K. Das and B.B. Haldar, in Nos. 128 to 140, P. Pal and S.K. Mukherji, in Nos. 152 and 153, S.K. Das and D.N. Bose, in Nos. 154 to 159, 161, 163, 164, 170 to 173 and 178 to 184, B.K. Panda, in Nos. 229 and 231, B.B. Haldar, in Nos. 256, 265, 266, 267, 268 and 277, for the Appellant; H.C. Sen, (In No. 203), B.B. Mitter, (In Nos. 159, 178 and 204), N.C. Chakravarty and N.C. Das Gupta, (In Nos. 156, 228 and 232), A.K. Mukherjea, (In Nos. 230 and 311), N.C. Sen, (In Nos. 184, 223 and 225), B.C. Dutt, A.G.P. (In Nos. 136, 138, 139, 152, 179 and 226), S.K. Bagchi, (In No. 227), H.N. Sen, (In No. 128), U.C. Mallick, (In Nos. 129, 181, 229 and 267), R.B. Bakshi, (In No. 130), B.N. Bhattacharjee, (In Nos. 131, 133 and 155), R.K. Banerjee and S.C. Bose, (In Nos. 132 and 164), N.C. Chakravarty and S.C. Bose, (In No. 134), S.C. Dutt and S.C. Bose, (In Nos. 135, 172 and 183), B.N. Dutt, (In No. 137), S.K. Bagchi and S.C. Bose, (In Nos. 140 and 182), R.B. Rakshit, (In No. 153), M.L. Ganguly, (In No. 154), A.B. Bhattacharjee, (In No. 157), R.N. Chowdhury, (In No. 158), C.C. Ganguly, (In Nos. 161 and 170), B.C. Bannerjee, (In No. 163), H.C. Dhar and S.C. Bose, (In No. 171), N.C. Das Gupta, (In No. 173), R.B. Bakshi and S.C. Bose, (In No. 180), Hemendra Ch. Sen and S.K. Ray Choudhury, (In Nos. 231 and 266), N.C. Chakravarty and N.C. Sen, (In No. 256), Bijan Behari Mitter, (In No. 268) and Rajendra Bhusan Bakshi and Nani Gopal Das, (In Nos. 265 and 277), for the Respondent

Judgement

R.S. Bachawat, J.—The appellants in all these cases seek orders-from the Court in its writ jurisdiction commanding the respondents not to take possession of their; raiyati holdings. The common question in all these appeals is whether the raiyati holdings of the appellants vested in the State Government on the issue of the notification u/s 4 read with Section 52 of the West Bengal Estate Acquisition Act 1953. Before the issue of the notification the appellants held diverse lands as raiyats. Some of the appellants allege that the lands held by them are occupancy raiyati lands and that they themselves cultivate a major portion of the lands with the help of the servants and hired labourers and other portions of the lands are cultivated by bargadars. The validity of the West Bengal Estate Acquisition Act 1953 and of the rules made thereunder are challenged on various grounds. The arguments before us have proceeded on the footing that the grounds set out in the petitions in the Court below of the appellants in F. M. A. 203 of 1958 and in F. M. A. 128 of 1958 were the model grounds for the challenge of the Act and the rules. Some of the appellants have also sought to urge several new grounds not taken in the Court below. In this judgment I will notice only those grounds which have been canvassed before us. Other grounds raised in the petitions in the Court below and not noticed in this judgment have not been pressed before us.

2. To appreciate the arguments advanced before us it is necessary to remember the following. chronology of events. On the 18th June, 1951 Article 31A was introduced in the Constitution by the Constitution (First Amendment) Act 1951 with retrospective effect. On the 12th "February 1954 the West Bengal Estate Acquisition Act 1953 (Act 1 of 1954) was passed. On the issue of the notification u/s 4 of the Act, all estates and the rights of intermediaries therein vested in the State free of incumbrances with effect from the 15th April, 1955. By Section 2(i) intermediary means a proprietor, tenure-holder, under-tenure-holder or other intermediary above a raiyat or a non-agricultural tenant. By Section 2(f) "estate" or "tenure" includes part of any estate or part of a tenure. Estate is not otherwise defined in the Act but having regard to Section 2(p) of the Act, the expression "estate"" has the same meaning as in the Bengal Tenancy Act 1885 (Act VIII of 1885). By Section 3(4) of the Bengal Tenancy Act 1885 "estate" means

"land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands, prepared and maintained under the law for the time being in force by the Collector of a district, and includes Government Khas Mahals and revenue-free lands not entered in any register."

By Section 3(11) of the Bengal Tenancy Act 1885 "proprietor" means "a|person owning, whether in trust or for his own benefit, an estate or a part of an estate." Section 4 of that Act provides that for the purposes of that Act there would be following classes of tenants namely (i) tenure-holders including under-tenure-

holders (2) raiyats and (3) under-raiyats that is to say, tenants holding whehter immediately or medately, under-raiyats. Section 5 of that Act gives the meaning of the words "tenure-holder" and "raiyat". On the 27th April 1955. Articles 31(2) and 31A of the Constitution were amended by the Constitution (Fourth Amendment Act) 1955 with retrospective effect. The relevant (portion of Article 31A now reads thus:

"31-A. (1) Notwithstanding anything contained in Article 13, no law providing for-

(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights * * * * shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14, Article 19 or Article 31 :

Provided that where such law is a law made by the Legislature of a State, the provisions of "this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.

(2) In this article,--

(a) the expression "estate" shall, in relation to any -local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area, and shall also include any jagir, inam or muafi of other similar grant and in the States of Madras and Kerala any janmam right;

(b) the expression "rights", in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor; tenure-"holder, raiyat, under-raiyat or other intermediary and any rights or privileges in respect of land revenue.

In view of the amended Article 31A(2)(b), laws providing for the acquisition by the State of any rights vesting in a raiyat or under-raiyat came within the protection of Article 31A with retros-pective effect as from the 26th January 1950. Accordingly the State-Legislature passed the West Bengal Estates Acquisition (Amendment) Act 1955 (West Bengal Act XXXV of 1955) amending the heading of Chapter VI of the parent Act and Sections 49 and 52 thereof and repealing Sections 50 and 51 with retrospective effect. Chapter VI bears the new heading "acquisition of interests of raiyats and under-raiyats." The provisions of Chapter VI came into force in all the districts of West Bengal on the 10th April 1956 by virtue of the notification dated the 9th April, 1956 issued u/s 49. Section 52, omitting the proviso which is not material for this case, reads thus:

""On the issue of a notification u/s 49 the provisions of Chapters II, III, V and VII shall, with such modifications as may be necessary, apply mutatis mutandis to raiyats and under-raiyats as if such raiyats and under-raiyats were intermediaries and the land held by them were estates and. a person holding under a raiyat or an under-raiyat were a raiyat for the purposes of Clauses (c) and (d) of Section 5 :"

By notification dated the 10th April 1956 issued u/s 4(1) read with Section 52 all lands held by raiyats and under-raiyats and rights of every raiyat and under-raiyat therein situated in the different districts of West Bengal vested in the State free from all incumbrances with effect from the 14th April, 1956.

3. The appellants contend that the West Bengal Estates Acquisition Act 1953 is violative of Article 14 of the Constitution because (a) there is no reasonable criterion for the classification of the different kinds of lands which may be retained u/s 6(1) of the Act^ (b) that Section 16 read with Rule 15 laying down a uniform rate of compensation for khas lands whether the khas lands are cultivated by the raiyat himself or by his bhagchasis is arbitrary and not based on proper classification and (c) that the assessment of compensation u/s 17 on the slab system is arbitrary and is based on no reasonable classification. The appellants also contend that the aforesaid Act is violative of Article 31 of the Constitution because (a) there is no public purpose behind the acquisition, (b) that on the true construction of the Act, the State Government is under no obligation to pay any compensation and (c) that the compensation provided for in the Act read with the rules is not adequate. Some of the appellants also contend that the Act and the rules infringe their fundamental rights under Article 19(1)(f). The respondents deny and dispute the appellants' contention that the Act is violative of Article 14 or 19(1)(f) or Article 31 of the Constitution. Moreover the respondents contend that the Act so far as it provides for the acquisition of the rights of raiyats and under-raiyats is protected by Article 31A of the Constitution and, by the express words of that article, cannot be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Article 14, Article 19 or 31. It appears to us that the last contention of the respondents must be accepted and it must be held that the Act in so far as it provides for the acquisition of the rights of the raiyats and under-raiyats are well protected by Article 31A of the Constitution and cannot be declared void on the ground that it is violative of Articles 14 19 and 31. It is not therefore necessary to embark on a consideration of the question whether as a matter of fact the Act is violative of Articles 14, 19 and 31.

4. On behalf of the appellants it is argued that Article 31A(1)(a) read with Article 31A(2)(b) protects the acquisition of the rights of raiyats and under-raiyats who are intermediaries, and that Article 31A does not protect the acquisition of the raiyati rights of the appellants who hold their lands as raiyats and actually cultivate them and below whom there are no other tenants. Now this contention must be rejected having regard to the decision of the Supreme Court in State of Bihar Vs. Rameshwar Pratap Narain Singh and Others, . The words "rai-yats" and "under-raiyats" must be given their ordinary meaning. They include all raiyats and under-raiyats whether or not they are intermediaries or middlemen between the proprietor and the tiller of the soil. Article 31A(2)(b) as it stood before the fourth amendment, in view of the words "or other intermediary" already appearing therein, was sufficiently broad to cover the acquisition of the rights of raiyats and under-raiyats who were intermediaries in the true sense and the only

reason for specifically including "raiyaats and under-raiyaats" in Article 31A(2)(b) by the Constitution (Fourth Amendment) Act 1955 was to extend the protection of the article to laws providing for the acquisition of the rights of all raiyaats and under-raiyaats whether or not they were intermediaries. In these circumstances the meaning of the words "raiyaats" and "under-raiyaats" in Article 31A(2)(b) is not coloured by the succeeding words "or other intermediary" and the words "raiyaat" and "under-raiyat" cannot receive an ejusdem generis construction. In *Atma Ram Vs. The State of Punjab and Others*, B. P. Sinha J., as he then was, pointed out that the expressions "estate" and "rights" in Article 31A have been used in their widest amplitude and should be given their fullest and widest effect.

5. On behalf of the appellants it is next argued that on the date of the notification dated the 10th April 1956 issued u/s 4 read with Section 52 "estates" had ceased to exist, and consequently the rights of the appellants in their lands could not be rights in estates within the meaning of Article 31A(2)(b), and the law providing for the acquisition of those rights was not protected by Article 31A. This contention must also be rejected having regard to the decision in *State of Bihar Vs. Rameshwar Pratap Narain Singh and Others*, . The amended Chapter VI and Sections 49 and 52 of the West Bengal Estates Acquisition Act 1953 came into force with retrospective effect as from the 12th February 1954 when the parent Act was passed. Now undoubtedly on the 12th February 1954, "estates" as defined in Section 3(4) of the Bengal Tenancy Act 1885 read with Section 2(p) of the West Bengal Estates Acquisition Act 1953 existed, the appellants' lands were included in those estates, their raiyati interest in those lands were rights in estates and Chapter VII of the Act provided for the acquisition of those rights. The acquisition was not immediate and was to take place on the issue of the notification u/s 49 and a further notification u/s 4 read with Section 52. But a law providing for the acquisition of any rights in any estate comes within the protection of Article 31A, though the acquisition under the law is not immediate, but is to take place in future on the issue of notifications by the State Government. Moreover even on the 10th April 1956 on which the notification u/s 4 read with Section 52 was issued and even thereafter, the general registers of revenue-paying lands and revenue-free lands contemplated by Section 3(4) of the Bengal Tenancy Act 1885 continued to be maintained under Part II of the Land Registration Act 1876 (Bengal Act VII of 1876). Consequently though the estates had vested in the State before the 10th April 1956, estates in the sense of lands included under one entry in those general registers continued to exist, and the appellants continued to have rights in those estates up to the 10th April 1956.

6. The cases relied on by the appellants may now be noticed. In *Purushothaman Nambudiri Vs. The State of Kerala*, , the Supreme Court held that Pandaravaka Verumpattam lands and Puravaki lands in Cochin cannot be regarded as local equivalents of estates within the meaning of Article 31A(1)(a). In *Karimbil Kunhikoman Vs. State of Kerala*, , the Supreme Court held that lands held by ryotwari pattadars in South Canara district were not estates within the meaning of Article 31A(2)(a). These cases are entirely distinguishable. Beyond dispute,

the lands included under one entry in a general register of revenue-paying lands and revenue-free lands kept and maintained under the Bengal Land Registration Act 1876 were all estates within the meaning of Article 31A(2)(b), the appellants' lands were included in such estates and their rayati interest in those lands were rights in estates.

7. On behalf of the appellants it is next urged that the retrospective operation of Section 52 is not protected by Article 31A. There is no substance in this contention. Article 31A came into force on the 27th April 1955 with retrospective effect as from the 26th January 1950. The West Bengal Estates Acquisition Act 1953 (Act I of 1954) having been reserved for the consideration of the President received his assent and the assent was published in the Calcutta gazette on February 12, 1954. The West Bengal Estates Acquisition Amendment Act 1955 (West Bengal Act XXXV of 1955) also having been reserved for the consideration of the President received his assent, and the assent was published in the Calcutta gazette extraordinary on the 25th November 1955. The new Section 52 introduced by the amending Act came into force with retrospective effect as from the 12th February 1954. Having regard to the retrospective operation of Article 31A, a law passed on the 21st February 1954 providing for the acquisition of the rights of raiyats and under-raiyats must be considered to enjoy the protection of Article 31A. Having regard to the retrospective operation of Section 52, as it now stands, the parent Act must be considered to have included in it on the 21st February 1954 Section 52 as it now stands. Both the parent Act I of 1954 and the amending Act XXXV of 1955 having received the assent of the President satisfy the conditions of the proviso of Article 31A(i).

8. We have therefore come to the conclusion, that the West Bengal Estate Acquisition Act 1953 enjoys the protection of Article 31A.

9. On behalf of the appellants it is next contended that Section 52 is vague inasmuch as it does not specifically mention [the modifications with which Chapters II, III, V and VII would have to be applied to raiyats and under-raiyats. There is no substance in this contention. Chapters II, III, V and VII of the Act apply to intermediaries as defined in Section 2(i) of the Act. Raiyats and under-raiyats were not intermediaries within the meaning of Section 2(1) and consequently Chapters II, III, V and VII did not apply to them. The object of Section 52 is to apply the provisions of those chapters to raiyats and under-raiyats mutatis mutandis with such modification as may be necessary on the issue of a notification u/s 49 as if the raiyats and under-raiyats were intermediaries and the land held by them were estates and a person holding under a raiyat or under-raiyat were a raiyat for the purposes of Clauses (c) and (d) of Section 5. The expression "mutatis mutandis" means with the necessary changes in points of detail. Section 52 uses a familiar drafting device and to save repetitions provide that certain chapters of the Act would apply to raiyats and under-raiyats with the necessary modifications and changes to . the case of raiyats and under-raiyats. The necessary changes and modifications are indicated

in the body of the section. Though, as a matter of fact raiyats and under-raiyats are not intermediaries as defined in, Section 2(i) and the land held by them are not estates and though persons holding under them are not raiyats, Chapters II, III, V and VII are to be adapted and applied to the case of raiyats and under-raiyats with modifications and changes as if raiyats and under-raiyats were intermediaries and the lands held by them were estates and persons holding under them were raiyats for the purposes of Section 5(c) and 5(d). The making of the necessary adaptations may give rise to difficult problems, see *Prahlad Chandra Dey v. Gobinda Chandra Dey*, 67 Cal WN 452, but for this reason it cannot be said that the Act is ultra vires or uncertain -- see *Haranath Ghosh v. State of West Bengal*, 67 Cal WN 129, at pp. 135-6.

10. On behalf of the appellants it is next contended that their raiyati-holdings did not come within the purview of Section 52 because they are tillers of the soil and not middlemen. We are unable to accept this argument. The words "rai-yats" and "under-raiyats" in Section 52 must be given their ordinary meaning. Section 52 on its true construction applies to all raiyats and under-raiyats including those who are tillers of the soil and not middlemen.

11. The appellants in all the appeals are raiyats. None of them is a person holding under a raiyat or an under-raiyat, and consequently it is not necessary to consider the true effect and meaning of the clause

"as if..... a person holding under a raiyat or under-raiyat were a raiyat for the purposes of Clauses (c) and (d) of Section 5."

12. On behalf of some of the appellants Mr. Das contended that the provision in Section 16(1)(a)(ii) that the gross income of an intermediary in respect of khas lands not retained by him shall be taken to be the annual income of the land determined in the prescribed manner is an unauthorised delegation of legislative power to the rule making authorities and that consequently Section 16(1)(a)(ii) and Rule 15 of the West Bengal Estates Acquisition Rules are ultra vires. The point is concluded by the judgment of a Division Bench of this Court in *A. F. O. O. Nos. 273-275, 277, 278, 285, 283 of 1955 and No. 83 of 1956 (Nirmalyaniva Sasmal v. State of West Bengal, unreported, and decided on the 18th September 1958 (Cal))*, and for the reasons given in that judgment this contention must be rejected. Mr. Das also argued that Section 16(1)(a)(ii) read with Rule 15 is a fraud on the Constitution and is a colourable exercise of the legislative power because the fixation of the annual income of the khas land at one-third value of the annual produce under Rule 15(a) has no relation to the real state of things and under the guise of providing for compensation the legislature has in reality provided for confiscation. This contention is also concluded by the aforesaid unreported judgment of the Division Bench and for the reasons given thereunder must be rejected. Some points were left open in the above unreported judgment in *F.M.A. 278 of 1955, and F.M.A. 285 of 1955 and P.M.A. 283 of 1955*, but those points are not pressed in these appeals. In the above unreported judgment in *F.M.A. 83 of 1956*, the Division Bench after noticing an argument attacking the

validity of Section 16(i)(a)(i) left the point open reserving the appellant's right to file a fresh application under Article 226 on proper materials. The point as to the validity of Section 16(i)(a)(i) and Rules 14 and 15-A of the West Bengal Estates Acquisition Rules is not taken in the petitions in the instant case. It is not alleged in these petitions that the appellants have below them tenants whose rent is payable in kind. On the contrary the contention of the appellants is that they are tillers of the soil and that there are no tenants below them. For the purpose of giving relief to the appellants, it not therefore necessary to embark on the question of the validity of Section 16(i)(a)(i) and the relevant rules. For these reasons, the contention as to the validity of Section 16(i)(a)(i) and the relevant rules cannot be raised in these appeals. In the circumstances of these cases, we do not think it right or proper to give the appellants liberty to file fresh applications raising those questions. We must mention-that the point as to the validity of Sections 16(i)(a)(i) and of 16(i)(a)(ii) and the relevant rules was taken before us by Mr, Das alone. Mr. Panda, who represented many of the appellants, expressly abandoned those points and stated that he did not desire to argue them.

13. We pass the following order: The appeals be and are hereby dismissed. There-will be no order as to costs.

Arun K. Mukherjea, J.

14. I agree.