
(1958) 04 CAL CK 0036
In the Calcutta High Court
Case No : Civil Revision No. 2729 of 1955

Bhutnath Garai

APPELLANT

Vs

Divisional Forest Officer, Midnapore and Others

RESPONDENT

Date of Decision : 23-04-1958

Acts Referred:

West Bengal Estates Acquisition (Second Amendment) Act, 1957 — Section 3

Citation : 62 CWN 610

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : Tarak Nath Ray, for the Appellant; N.C. Chakrabarty and S.K. Rai Chaudhury, for the Respondent

Judgement

Sinha, J.—The facts in this case are shortly as follows:

The petitioner alleges that by a Bengali document dated the 2nd January, 1953 he has taken a lease of the trees of the forest in Moujas Jorakeudi and Gopalbandh in the district of Midnapore from the owner Nalini Nath Mitra. The document is not registered, and further is unstamped. No official translation has been annexed to the petition. In fact, the original document was only produced at the hearing. It appears from a perusal of the document that what was agreed upon is that for a certain consideration the petitioner was granted the right to enter into a certain forest area and to cut timber therein within a specified period. It was stipulated that upon the expiry of that period there will be no further right to enter the forest. As is well-known, the cutting of forests in that area is regulated by the West Bengal Private Forests Act of 1948. Under that Act, a working plan has to be made out and sanctioned and no cutting is allowed except in accordance with the working plan. According to the particular working plan with which we are concerned in this case, the cutting had to be done within a particular period, namely, from the 15th September in a particular year up to 31st March of the following year. Between the 31st March and 15th September, no felling is allowed. After the execution of the agreement, some time on or

about the 3rd March, 1955 the petitioner wrote a letter to the Conservator of Forest with a prayer for permitting him to fell and cut the trees of the forest according to the working plan. On the 23rd March, 1955 a reply was received to the effect that the request involved a deviation in the original working plan and such an application could only be made by the owner. On the 26th March 1955 the owner, Nalini Nath Mitra, him self applied. On the 29th March, 1955 the Conservator of Forests replied stating that it was then too late, because the period of cutting expired on the 31st March. On the 23rd May, 1955 the petitioner again requested the Conservator of Forests for permission. The reason for doing so was that it was apprehended that in June 1955 the Estates Acquisition Act might come into operation and the forests would vest in Government. The petitioner wanted to cut as much wood as is possible before that event took place. This request was however refused and rightly refused because under the working plan no cutting could be allowed during the closed season. As a matter of fact, on the 4th June, 1955 the Conservator of Forests definitely refused to sanction any cutting. This application was made on the 31st August 1955 and is directed against all the orders of refusal mentioned above, which prevented the petitioner from cutting the wood and removing the same.

The first objection to this application is that the request had been rightly refused in terms of the West Bengal Private Forests Act. It is true that the petitioner wished to cut the wood and take the same away before the Estates Acquisition Act came into operation but that was against the terms of the working plan. It is stated that the trees are not 10 years old and are not in a position to be cut. Cutting could only recommence from September and this application was made even before that date arrived. The application, therefore, on this ground is premature. But quite apart from this, there is a more fundamental ground and that is the very thing that the petitioner was afraid of, namely, the coming into operation of the West Bengal Estates Acquisition Act. Under the West Bengal Estates Acquisition Act, all the estates of intermediaries including forests had vested in the State. It is however argued that the petitioner had not purchased an interest in land but had purchased the wood, and in accordance with the principles laid down by me in *Ajit Kumar Bagchi Vs. State of West Bengal and Others*, the petitioner's right was not affected by the Estates Acquisition Act and he could not be prevented from implementing his agreement to cut wood and take it away. There is great doubt as to whether the agreement in this case can be interpreted in the same manner as in *Ajit Bagchi's* case (1) (*supra*). In that case, it was distinctly mentioned in the agreement that he sale was of the wood, whereas here, only a right is given to enter the forests to cut wood and to take it away. It. is extremely doubtful whether the title in the uncovered wood had passed by the agreement. The learned Government pleader has pointed out that in any event this has become academics because of the passing of the West Bengal Estates Acquisition (Second Amendment) Act, 1957 being West Bengal Act XXV of 1957. This is a State Act which came into operation on the 8th January, 1958. Section 3 thereof is as follows:

In section 5 of the said Act.

(a) in sub-clause (ii) of clause (a), the word "forests", shall be omitted and be deemed always to have been omitted; and

(b), after clause (a), the following clause shall be inserted and be deemed always to have been inserted, namely:

(aa) all lands in any estate comprised in a forest together with all rights to the trees therein or to the produce thereof and held by an intermediary or any other person shall, notwithstanding anything to the contrary contained in any judgment, decree or order of any court or Tribunal vest in the State....

2. It is argued that in view of this amendment no further rights in the petitioner could remain outstanding. It is clear that the amendment is quite drastic. Before interpreting this amendment we should look at the prevailing circumstances and the evil which it was intended to remedy. A dispute had been raised in a series of cases as to whether in the case of sales of timber standing in a forest, prior to the coming into operation of the Estates Acquisition Act, such timber vested in the Government, or whether the Government had a right to prevent such transferees from removing the same. In Ajit Bagchi's case (1) (supra), which of course turned upon the wordings of the particular agreement there in, I held that a prior sale of the "wood" standing in the forest passed the title thereto to the transferee and the Government could not prevent the transferee from removing the wood, for which he had made full payment. Now, the law has been made all-embracing and what vests in Government is not only the land but all the trees standing thereon or the produce of the trees held by the intermediaries or any other person. It is then argued that the words "any other person" should be read ejusdem generis and is applicable only to the kind of persons known as intermediaries. If this is correct, then of course the petitioner is not affected because he is not an intermediary in any sense of the term. However, the rule of ejusdem generis does not apply, and for the following reasons: Firstly, the rule of ejusdem generis can only apply where there exists a genus or category (See Maxwell on Interpretation of Statutes. 9th edition, page 337 Where there is a single instance given, one can not say that there is such a genus or category mentioned as would attract the rule of ejusdem generis. There are of course cases both for and against this proposition, and the learned Advocate on behalf of the petitioner has cited one case Williams v. Golding, (2) 1865 (1) CP. 69. There are numerous decided cases which lay down that a single instance would not be enough. But apart from this, there are other objections. As I have said, there must be a genus or category. The word "intermediary" means many things. It means an owner of the land and also a tenant. Therefore, it is obvious that it does not contain one genus or one category to which the disputed words may be said to belong. If the leading words introduce many genus or many categories, then the rule is not attracted, because it can not be said to which genus or category the disputed word belongs. The next objection is that in applying the principles of ejusdem gentries, it is permissible to take into consideration the

back ground and the circumstances in which the particular legislation came to be passed. (See Maxwell 9th edition p. 342 and the Supreme Court decision R.M.D. Chamarbaugwalla Vs. The Union of India (UOI), , paragraph 6). As I have said, the context in which this amendment was introduced is well-known and cannot be disputed. By the Estates Acquisition Act all the estates of intermediaries were being acquired. What is an estate and what is an intermediary were highly disputed questions. From time to time however the definitions have been enlarged. The matter came to a head in the ease of forests and the dispute was as to whether the wood in a forest which has been sold to outsiders before the Estates Acquisition Act came into operation vested in the State. There can be little doubt that this amendment was intended to ensure that it did.

3. The result is that by virtue of this amendment the petitioner's rights have gone and he can no longer take away the wood without the permission of the State. Whether he has rights against the State for damages or otherwise is a matter into which I need not enter, because that is not within the scope of this application.

4. The result is that this application must fail. The Rule is discharged. Interim order, if any, is vacated. There will be no order as to costs. I direct that a copy of the agreement be kept on the record.