
(1996) 09 CAL CK 0030
In the Calcutta High Court

Biswanath Kumar

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 17-09-1996

Acts Referred:

Constitution of India, 1950 — Article 300A, 45A, 48A, 51A
West Bengal Land Reforms Act, 1955 — Section 2, 4B, 4C, 4D

Citation : (1997) 2 ILR (Cal) 75

Hon'ble Judges : Altamas Kabir, J

Bench : Single Bench

Advocate : Kamal Krishna Chakraborti, C.O. No. 16493 W of 1995 and Rtimdulal Manna, Ashoke Kr. Jha and Susanta Mukherjee, C.O. No. 23W of 1996 and Others connected matters, for the Appellant; Subodh Ukil, Pradyut Kr. Dutta, Chhabi Das (Roy), Keka Roy Chowdhury, Aloke Sen, Rina Basu, Jhumur Chakraborty, Dilip Dasgupta, Subrata Mukhopadhyay, Anubtia Mukherjee, Mira Sarkar and Sipra Chanda for State, for the Respondent

Judgement

Altamas Kabir, J.—These two matters have been heard along with several other matters as they all involve the same questions of law and the facts are more or less similar.

2. The common case of Petitioners in all these matters. is that they are the owners of orchards, comprised mostly of mango trees, in the districts of Malda and Murshidabad. According to the Petitioners, some of the mango and other trees in their orchards have become old and have lost their optimum fruit-bearing capacity and. are no longer economically profitable. It is the Petitioner's case that such unproductive trees are required to be replaced by new trees with higher fruit-yielding capacity.

3. According to the Petitioners, when they began to cut down the trees which were no longer capable of yielding a profitable harvest, they- were told by employees belonging to the office of the Respondents to stop cutting the trees without the prior permission of the appropriate authority.

4. Being prevented from felling the trees in question, the Petitioners have filed those writ applications, inter alia, for a direction upon the Respondents, their subordinates and agents, not to cause any obstruction to the Petitioners in felling and removing their unproductive trees and for a further direction on the concerned Respondents to issue necessary permits for removing the felled trees.

5. Arguments on behalf of the writ Petitioners were advanced by Shri Kamal Krishna Chakraborti and Shri Ramdulal Manna, it was their common submission that there is no legal bar to a person cutting down old and unproductive trees and replacing them with new plants which would greatly Increase the production of the fruit in questions mostly mangoes, as far as these writ Petitioners are concerned.

6. It was urged that in the process of felling old trees and replacing them with new plants, there was no change in the character or nature and user of the land. The orchards would remain an orchards and would not be put to any other use. It was submitted that the provisions of Sections 4B and/or 4C of the West Bengal Land Reforms Act, 1955, would not, therefore, be attracted to the facts of these cases as no change of user of the lands was involved.

7. It was also contended that since the trees in question comprised orchards, the provisions of the Indian Forests Act, 1927, would also not be applicable in the instant cases, and there was, therefore, no legal justification for the action taken by the Respondents in preventing the Petitioners from cutting down and removing old and unproductive trees from their respective orchards and gardens and replacing them with new plants of better variety and yield.

8. Appearing for the State and the State Respondents in all the matters, the learned Government Pleader urged that even if there was no express legal bar to the cutting down of trees, an implied bar was engrained in the provisions of Sections 4B and 4C of the West Bengal Land Reforms Act, 1955, hereinafter referred to as the "1955 Act".

9. The learned Government Pleader submitted that Section 4B of the 1955 Act provides for maintenance and preservation of land and a prohibition has been imposed on the raiyat holding any land from changing its character or from converting the same for any purpose other than the purpose for which it was settled or previously held, except with the previous order in writing of the Collector u/s 4C.

10. The learned Government Pleader pointed out that the first proviso to s. 4B of the 1955 Act permits a raiyat to plant and grow trees on his lands which were within the prescribed ceiling limit and were not being cultivated by a Bargadar. The Government Pleader urged that the reverse implication of such a provision would be that the raiyat would not be entitled to cut down trees, except with prior permission, as provided for in Section 4C.

11. The learned Government Pleader submitted further that in many cases, only

in order to make quick and easy money, many orchard owners were felling their fruit-bearing trees and selling them for timber, which being utilised for furniture-making and other woodwork, gave quick and lucrative returns, in the process, however, the lands were being converted into barren areas, giving rise to ecological Imbalances.

12. The learned Government Pleader then referred to the pre-amended provisions of Section 4B of the 1955 Act, which had provided for maintenance and preservation only of orchards. The learned Government Pleader urged that with the amendment of the definition of "land" by the Amending Act of 1981, the provisions of s. 4B were also amended to provide for maintenance and preservation of land, which included orchards within its ambit.

13. The learned Government Pleader than urged that apart from the legalities of the matter, there was also a social responsibility on all citizens to protect the environment as it affects us all. The learned Government Pleader urged that because of thoughtless and wanton destruction of natural resources and bounties provided by nature, the environment had been adversely affected to such an extent that the ecological balance has been seriously disturbed all over the world, giving rise to serious concern and thought amongst the community of nations to check and control such destruction and erosion of the environment and to try and restore the natural balance which has been disturbed.

14. The learned Government Pleader urged that in India The Environment (Protection) Act was enacted in 1986 to provide for the protection and improvement of the environment and for matters connected therewith and that the expression "environment" had been defined in Section 2(a) thereof to include water, air and land and the inter-relationship which exists between water, air and land and land and human beings, other living creatures, plants, micro-organisms and property. He also referred to the provisions of Article 51A of the Constitution and urged that under sub-Article (g) a fundamental duty had been cast on all citizens of India to protect and improve the natural environment, including forests.

15. The learned Government Pleader contended that even in the absence of any law to prevent felling of trees, the Government was entitled to take administrative action to prevent damage to the environment on account of felling of trees, which resulted in disturbance of the air system and the ecological balance. It was urged that a Committee had been appointed by the State Government to study the effects of widespread felling of fruit-bearing trees in orchards located in Murshidabad and Malda and other places in West Bengal and from the report of the Committee, which has been extensively extracted in the Affidavit-in-opposition affirmed on behalf of the State, it will be seen that there are various adverse consequences of indiscriminate felling of such trees.

16. Relying on the report of the said Committee, the learned Government Pleader submitted that in areas like Murshidabad and Malda, where there-was

hardly any forest cover, the trees in the different orchards supplemented such inadequacy by preventing soil erosion, by protection of the top-soil, which is essential for maintaining the productivity of the soil and also for maintaining the level of oxygen in the atmosphere. He also urged that trees attract monsoon clouds, and the presence of trees is, therefore, essential to ensure sufficient monsoonal rains. Moreover, the price of mangoes have been greatly affected as the production has plummeted as a result of indiscriminate felling of fruit-bearing trees.

17. The learned Government Pleader contended that in cases of this nature, the grievance of an individual should not be allowed to prevail over the interests of the public at large in the context of protection of the environment and the provisions of The Environment Act, 1986 and Article 51A of the Constitution.

18. It was urged that one of the objects for indiscriminate felling of trees was also conversion of user of the lands comprising the orchards for residential purposes and/or construction of commercial complexes.

19. The learned Government Pleader submitted that in many cases it was not even the owner of the orchards, but agents of timber merchants, who were filing writ petitions and obtaining orders permitting the felling of trees without taking recourse to the provisions of Section 4C of the 1955 Act, which provides for checks against indiscriminate felling of trees.

20. The learned Government Pleader referred to the decision of the Hon'ble Supreme Court in the case of Rural Litigation and Entitlement Kendra and Others Vs. State of Uttar Pradesh and Others, wherein while considering the ecological disturbance caused by the exploitation of lime-stone deposits in and around the Hussoorie Hills, the Hon'ble Supreme Court expressed concern over the disturbance of the ecological balance and damage to the environment and observed that preservation of the environment and keeping the ecological balance unaffected is a social obligation and a task both for the Government and every citizen, in view of the fundamental duty imposed on every citizen under Article 51A of the Constitution.

21. The learned Government Pleader urged that it was not possible for the Court to decide as to whether a particular trees had lost its productivity as a result of old age or otherwise. Accordingly, the Petitioners and others similarly placed could be directed to apply to the Collector u/s 4C of the 1955 Act, and after a proper enquiry, necessary orders could be passed on such applications, keeping in mind the factors relating to preservation of the environment and maintenance of the ecological balance.

22. Replying to the submissions of the learned Government Pleader, Mr. Ramdulal Manna pointed out from the Supplementary Affidavit filed on behalf of the Petitioner in Civil Order No. 23 (W) of 1996, that the Egra No. 1 Panchayat Samity was inviting bids for a large number of trees within its jurisdiction without any objection from the State Government or its authorities, which dispelled the

learned Government Pleader's submissions regarding disturbance of the ecological balance on account of felling of trees.

23. Mr. Hanna concluded his submissions by urging that in view of the provisions of Article 300A of the Constitution, no restriction could be imposed on the Petitioners from cutting down the unproductive mango and other trees and replacing them with more productive and high-yielding varieties.

24. I have given my serious and anxious consideration to the issue involved in these writ applications and the submissions made in respect thereof as it affects the world community at large. I am, however, unable to accept the learned Government Pleader's submissions as to the applicability of the provisions of Section 4B of the 1955 Act to these cases.

25. For better appreciation of the submissions of the respective parties, the provisions of Section 4B are reproduced hereinbelow:

4B. Maintenance and preservation of land - Every raiyat holding any land shall maintain and preserve such land in such manner that its area is not diminished or its character is not changed or the land is not converted for any purpose other than the purpose for which it was settled or previously held except with the previous orders in writing of the Collector u/s 4C:

Provided that any raiyat may plant and grow trees on any land held by him within the ceiling area applicable to him and to his family without any previous order u/s 4C, if such land is not cultivated by bargadar.

Provided further that without prejudice to the provisions of Chapter IIB of the Act the provisions of this section shall not apply to the diminution in area or the change of character of any land or the conversion of any land for any purpose other than the purpose for which it was settled or previously held, if such diminution or change of character or conversion was made in accordance with the provisions of any law for the time being in force.

26. Section 4B of the 1955 Act imposes a prohibition to change of user, area or character of all lands held by a raiyat, except with the previous order in writing of the Collector u/s 4C. In these cases, none of the said factors are involved, despite the submissions of the learned Government Pleader that by cutting down the trees from their orchards, the Petitioners were intent upon changing the character and mode of user of the lands comprising the orchards, for purposes of construction of residential or commercial complexes.

27. In my view, in such an eventuality, sufficient checks and balance have been provided for in Sections 4C and 4B of the 1955 Act to act as deterrent in cases where the prohibitions imposed u/s 4B of the said Act are violated.

28. Anticipated change of the character and user of the lands comprising such orchards, cannot, in my view, be a ground for objecting to the felling of the trees belonging to the Petitioners in the absence of any law prohibiting them from

doing so. The interpretation sought to be given by the learned Government Pleader to the first proviso to Section 4B of the 1955 Act, is also unacceptable. Merely because it has been indicated therein that a raiyat may plant and grow trees on any land held by him within the ceiling area applicable to him and his family without any previous order u/s 4C, if such land is not cultivated by a bargadar, is no reason to assume that it was the intention that a previous order u/s 4C would be required for felling such trees.

29. The aforesaid proviso is supplemental to and not in derogation of the provisions of Section 4B of the 1955 Act and must be read in the context of the said Provisions, which prohibit the change in the area, user and character of the land in question. So long as the area, user and character of the land is not changed, the provisions of s. 4B, as also the proviso thereto, would not be attracted in a given case.

30. Then again, merely by cutting down old and unproductive trees and replacing them with new high-yielding plants, it cannot be said that the nature and character, as also user of the lands, was being changed, so as to attract the provisions of Sections 4B, 4C and 4D of the 1955 Act, since basically there is no change in the nature, character and user of the said lands. What is a garden or an orchard, continues in effect to be a garden or an orchard.

31. In cases, where the owners of the lands and/or the trees situated thereon do not themselves approach the Court, a greater amount of vigilance will have to be exercised, but that in itself cannot be a ground for objecting to the owner of a garden/orchard or other land from felling the trees standing thereon with the intention of bettering the yield of the fruit crops in question.

32. What, however, is of some consequence and relevance is the question of preservation of the environment and maintenance of the ecological equilibrium, which is a duty cast upon every citizen of India by virtue of the provisions of Article 51A(g) of the Constitution which provides as follows:

51 A. It shall be the duty of every citizen of India

...

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have, compassion for living creatures.

33. A similar responsibility has also been cast upon the State under Article 48A of the Constitution, which provides as follows:

48A. The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

34. Both the aforesaid provisions were inserted in the Constitution by the Constitution (42nd Amendment) Act, 1976, after the United Nations Conference on the Human Environment was held at Stockholm in June, 1972. As indicated hereinbefore, even The Environment (Protection) Act, 1986, was enacted as a

fallout of the said conference.

35. There is no doubt that a social responsibility has been cast on all citizens to protect and preserve the environment and wanton destruction of natural resources have in certain cases given rise to disturbance of the ecological pattern, causing concern to many. The problem, which has assumed serious proportions all over the world, has caused the nations of the world to put their heads together to combat the headlong plunge being taken by human beings towards self-destruction by destroying the environment and thereby disturbing the fragile ecological balance of nature. Apart from holding international conferences and identifying areas of mutual agreement and cooperation in combating the menace, individual nations, including India, have taken recourse to legislation, such as The Environment (Protection) Act, 1986, to prevent further damage to the environment and disturbance of the ecological equilibrium. "

36. That trees are a part of and linked to the three life-support systems 1) Air 2) Water and 3 Land, is admitted by all. Trees purify the air by discharge of oxygen and prevent soil erosion and also protect the top-soil from being washed away. If any of the said life-support systems are disturbed, it could have calamitous results.

37. Keeping in mind the above factors relating to the environment and the ecological balance and in the absence of any express legislation to cover the situation, certain safeguards may be introduced in line with Articles 45A and 51A(g) of the Constitution so that the citizens at large are not adversely affected by the action of individuals.

38. I, accordingly, dispose of these applications by directing that in all cases where a raiyat intends to cut down fruit-bearing trees in an orchard or garden with the intention of replacing them with new plants, such felling shall be commenced on notice to the Collector of the district. Such notice is to be served by the raiyat upon the Collector at least fifteen days before commencement of felling operations. The notice shall indicate the number of trees to be cut down and shall identify such trees and shall also contain an undertaking to replace the old or unproductive trees with new saplings, within two weeks of the felling of such trees.

39. It is, however, made clear that the raiyat will not be entitled to cut down all the trees in the orchard or garden at a time, but shall be entitled once every two years to cut down and replace the old, uneconomic and/ or unproductive tree or trees in the ratio of 1:10. That is, for every ten trees, the Petitioner will be permitted to cut down one tree and to replace the same by new saplings within the time indicated above. Where the orchard or garden is comprised of less than ten trees, the ratio will be reduced-to 1:5 trees. In no case will the raiyat change the nature of. user and character of the land as a result of such felling, without taking recourse to the provisions of Section 4B of the 1955 Act.

40. Upon receipt of such notice, the Collector will be entitled within the said

period of fifteen days to inspect or cause inspection of the trees to be felled in order to ensure that such a felling is not being done in contravention of the aforesaid directions and the contents of the notice, and to also ensure that the trees that are cut down are, thereafter, replaced with new saplings within the stipulated period and are duly looked after, protected and cared for. If the raiyat fails to replace the trees which have been felled, within the period stipulated, or if he neglects to look after and protect the saplings after they are planted and they are allowed to wither away, the Collector will be entitled to apply the provisions of Section 4B of the 1955 Act and to take steps against the defaulting raiyat in accordance with the provisions of Sections 4C and 4D thereof or under any other relevant provision of law and to also ensure that such default is rectified forthwith by the defaulting raiyat.

41. The concerned Divisional Forest Officer is directed to issue necessary transit pass to the raiyat for removal of the logs and/or trees that are felled.

42. This order will not, however, apply where for the purpose of improving the condition of the orchard/ garden and the quality of the trees therein, it is necessary to cull and remove certain trees without providing for their replacement. In such cases, a separate notice is to be given by the raiyat to the Collector in this behalf identifying the trees to be so removed, at least fifteen days before such culling operations are commenced, and the Collector shall upon such notice be entitled to inspect or cause inspection of the said trees within fifteen days of receipt of such notice and after such inspection regarding the genuineness of the case, the raiyat will be entitled to cut down and remove the said trees. If no inspection is held within the aforesaid period, the raiyat will be entitled to cut down and remove the trees in question after expiry of the said period.

43. This order will not also affect the right of a raiyat to apply for conversion u/s 4B of the 1955 Act, and if any such application is made it is to be treated on its own merits.

44. The directions contained in this judgment will be supplemental to the provisions of The Environment (Protection) Act, 1986, The Indian Forest Act, 1927, The West Bengal Land Reforms Act, 1955, and other enactments relevant to the facts at issue in these cases.

45. The State Government is directed to see that these directions are widely publicised so as to bring them to the notice of the public at large.

46. There will be no order as to costs.

47. This order will also govern and dispose of the following matters, namely,

C.O. No. 11319 (W) of 1993,

C.O. No. 2492 (W) of 1994,

C.O. No. 16056 (W) of 1995,

C.O. No. 16956 (W) of 1995,
C.O. No. 18679 (W) of 1995,
C.O. No. 18696 (W) of 1995,
C.O. No. 18670 (W) of 1995,
C.O. No. 18678 (W) of 1995,
C.O. No. 18721 (W) of 1995,
C.O. No. 18722 (W) of 1995,
C.O. No. 18868 (W) of 1995,
C.O. No. 18870 (W) of 1995,
C.O. No. 18872 (W) of 1995,
C.O. No. 19374 (W) of 1995,
C.O. No. 19375 (W) of 1995,
C.O. No. 19377 (W) of 1995,
C.O. No. 19385 (W) of 1995,
C.O. No. 19391 (W) of 1995,
C.O. No. 19484 (W) of 1995,
C.O. Nos. 23 to 28 (W) of 1996,
C.O. Nos. 30 to 34 (W) of 1996,
C.O. Nos. 36 to 40 (W) of 1996,
C.O. Nos. 5580 (W) of 1996,
C.O. Nos. 6969 to 6995 of 1996,
C.O. No. 7387 (W) of 1996, and
C.O. No. 7587 (W) of 1996.

48. Let a plain copy of this judgment duly countersigned by the Assistant Registrar (Court), be made available to the learned advocate for the Petitioners for communication and implementation.

49. It appears that while disposing of these several matters on September 17, 1996, CO. No. 16956 (W) of 1995 and CO. No. 18670 (W) of 1995 have been wrongly included in the order. Let the said order of September 17, 1996 be amended to exclude from its operation the said two matters.

50. It also appears that CO. No. 18679 (W) of 1995 has been mentioned in the order. Let one of the entries be deleted.

51. Furthermore, it appears that three other matters viz. CO. No. 9094 (W) of 1996, CO. No. 1091 (W) of 1995 and CO. No. 18705 (W) of 1995, have not been included in the said order. Since the said matters are covered by the said order of September 17, 1996, let the same be included within the scope of the said order.

52. Thus, the order dated September 17, 1996 will also govern and dispose of the following matters, viz.:

C.O. No. 11319 (W) of 1993,

C.O. No. .12492 (W) of 1994

C.O. No. 16056 (W) of 1995

C.O. No. 18679 (W) of 1995

C.O. No. 18696 (W) of 1995

C.O. No. 18721 (W) of .1995

C.O. No. 18722 (W) of 1995

C.O. No. 18868 (W) of 1995,

C.O. No. 18870 (W) of 1995,

G.O. No. 18872 (W) of 1995,

C.O. No. 19374 (W) of 1995,

C.O. No. 19375 (W) of 1995,

C.O. No. 19377 (W) of 1995,

C.O. No. 19385 (W) of 1995,

C.O. No. 19391 (W) of 1995,

C.O. No. 19484 (W) of 1995,

C.O. Nos 23 to 28 (W) of 1996,

C.O. Nos. 30 to 34 (W) of 1996,

C.O. Nos. 36 to 40 (W) of 1996,

C.O. No. 5580 (W) of 1996,

C.O. Nos. 6969 to 6995 (W) of 1996,

C.O. No 7387 (W) of 1996,

C.O. No. 7587 (W) of 1996,

C.O. No. 9094 (W) of 1996,

C.O. No. 20911 (W) of 1995,

C.O. No. 18705 (W) of 1995,

53. it is also submitted by the Learned Government Pleader that the names of two of the Learned Advocates appearing for the State have not been mentioned in the aforesaid order viz. Mrs. Anumbha Mukberjee and Mr. Subrata Mukherjee. Let their names be included in the said order.