
(1976) 05 CAL CK 0026
In the Calcutta High Court
Case No : F.A. No. 857 of 1964

Burn and Company Ltd.

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 20-05-1976

Acts Referred:

Evidence Act, 1872 — Section 114, 115
Land Acquisition Act, 1894 — Section 17(1)
West Bengal Estates Acquisition Act, 1953 — Section 5

Citation : AIR 1976 Cal 389

Hon'ble Judges : R. Bhattacharya, J;Janah, J

Bench : Division Bench

Advocate : P.N. Mitter and Madan Mohan Ghose, for the Appellant; Bhabanath Dutta and Biren Ghose, for the Respondent

Final Decision : Allowed

Judgement

R. Bhattacharya, J.—This is an appeal against the judgment and "Nil" award passed by the Land Acquisition Judge, Asansol, in L. A. Case No. 35 of 1963 started by a reference u/s 18 of the Land Acquisition Act sent by the Collector on the application of the claimant Messrs. Burn and Company Limited challenging the order of the Collector refusing to pass any award for compensation in connection with a land acquisition proceeding. The claimant is the appellant before us.

2. The relevant facts of this case are simple. A proceeding was started under the Land Acquisition Act for acquisition of land in C. S. Plot No. 2 (Part) in Mouza Birbhanpur, P. S. Faridpur, District Burdwan for the development of industries in Durgapur area. The land in question was taken lease of by the claimant, hereinafter referred to as the Company, on diverse dates, from different co-owners of the land for a period of 999 years. During the pendency of the proceeding, the West Bengal Act XXV of 1957 came into operation in respect of forest land which was to be vested in the State. Retrospective effect was given

by an amendment which came into force with effect from January 8, 1956. The Land Acquisition Collector took possession of the land on October 6, 1958, u/s 17(1) of the Land Acquisition Act. The Company preferred a claim for compensation claiming title and possession in the land in question and it was stated in its application that the land sought to be acquired was valuable and that the price of the land would be Rupees 3,000/- per bigha. Admittedly during the revisional settlement operation, the land was shown as jungle land. The Collector, while considering the claim preferred by the Company, was of the view that as the acquired land being a forest land had vested in the State by virtue of the amendment of the West Bengal Estates Acquisition Act, the petitioner was not entitled to any compensation under the Land Acquisition Act and hence he passed a "Nil" award. At the instance of the Company the matter was referred to the Land Acquisition Judge u/s 18 of the Land Acquisition Act. The learned Judge on hearing the parties was of the view that the award passed by the Collector was correct and that as the land was a forest land and as it had vested in the State, the claimant was not entitled to any compensation. Against that decision the present appeal has been preferred,

3. We have heard Mr. Mitter, the learned Advocate appearing on behalf of the claimant Company and Mr. Dutt for the State of West Bengal. Mr. Mitter urged several points. His first contention was that the State having accepted that the claimant had title to the land acquired and having taken possession of the land u/s 17(1) of the Land Acquisition Act, cannot have any reason to say that the claimant had no interest in the land and that it is not entitled to get any compensation. The point of Mr. Mitter in this respect is that the State took possession of the land u/s 17(1) either as arable land or waste land and this possession was taken after the amendment of the West Bengal Estates Acquisition Act had come into force. The State, therefore, cannot turn round and say that the land is a forest land. Another point has been taken by Mr. Mitter, namely, that after the amendment of the West Bengal Estates Acquisition Act, the Government ought to have issued fresh notification u/s 4 of the West Bengal Estates Acquisition Act for the purpose of vesting and unless that notification was issued the forest land could not have vested in the State even if it is assumed that the land acquired is a forest land.

4. Let us now deal with the first question raised by Mr. Mitter. In this case although there is the petition of the claimant, for a reference u/s 18 of the Land Acquisition Act, 1894, the State did not file any objection before the court in the proceeding under the reference. However, it appears that the Court allowed the State to examine witnesses. The witness on behalf of the State was a Land Acquisition Surveyor, He was produced before the Court to say that the land in question was a forest land. During cross-examination he stated that he had surveyed the acquired portion of Plot No. 2 but he did not produce the materials collected during his survey. He wanted to say that the details as to the nature of the land would be found in his report. The witness did not assign any reason whatsoever why he withheld that report on the basis of which he gave evidence.

The non-production or rather the withholding of that report must go against his evidence and also against the case of the State. The witness on the side of the claimant, however, denied in his general statement that the land acquired was forest. He, however, admitted that there were certain trees on the land. In this connection the conduct on the part of the State should be considered. During the pendency of the Land Acquisition proceedings, as we have already indicated, the amendment of the West Bengal Estates Acquisition Act came into force. According to the amendment, forest lands were to vest in the State. The Act came into force on January 8, 1958 and on October 6, 1958, about ten months later, the Collector took possession of the land u/s 17(1) of the Land Acquisition Act. The Sub-section (1) of Section 17 of the Act says that in case of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may on the expiration of 15 days from the publication of the notice mentioned in Section 9(1), take possession of any waste or arable land needed for any public purpose or for a Company and such land shall thereupon vest absolutely in the Government free from all encumbrances. In the present case, therefore, in spite of the amendment of the West Bengal Estates Acquisition Act allowing forest land to vest in the State, the Collector took possession of the land of the claimant and such possession was taken certainly because it was either waste or arable land. The Company submitted to this notification u/s 17(1) and raised no objection. This conduct shows without any ambiguity that the land which was taken possession of was not forest land. An attempt was made by Mr. Dutt, the learned Advocate appearing on behalf of the State to suggest that forest land was waste land. In this connection the decision of the Supreme Court in the case of Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others, may be conveniently referred to. There the definitions of "arable land" and "waste land" were given. The following relevant passage may be quoted from the judgment:

"According to the Oxford Dictionary "arable land" is "land which is capable of being ploughed or fit for tillage". In the context of Section 17(1) of the Act the expression must be construed to mean lands which are mainly used for ploughing or for raising crops and, therefore, the land acquired in this case is not arable land. Similarly the expression "waste land" will also not apply to forest land. According to the Oxford Dictionary the expression "waste" is denned as follows: Waste -- from Latin vastus -- waste, desert, unoccupied, uncultivated, incapable of cultivation or habitation; producing little or no vegetation; barren, desert. The expression "waste" land as contrasted to arable land would, therefore, mean land which is unfit for cultivation or habitation, desolate and barren land with little or no vegetation thereon."

In the present case, therefore, the contention of Mr. Dutt that forest land would be waste land is unacceptable. The evidence shows that on the land acquired there were several Sal trees and the said land was not useless. We cannot say that the disputed land u/s 17(1) of the Land Acquisition Act was taken possession of by the Collector on the ground of its being piece of a waste land.

There can be no doubt that the land acquired was arable land and that it is capable of being ploughed. In this connection the non-production of the Surveyor's report becomes significant. After having taken some advantage by taking possession of the acquired land u/s 17(1) on the ground that the land was either arable or waste land, the State cannot turn round and say that the land is forest land. Forest land is a quite different type of land which the State could not have taken possession of u/s 17(1) of the Land Acquisition Act. By its action the State is estopped equitably from challenging the character of the land acquired and also from saying that it is a forest land. We cannot accept the contention of Mr. Dutt in this respect. We have no manner of doubt in holding that the evidence of the surveyor is an afterthought and that after taking of possession u/s 17(1) there is nothing further for the State but to pay compensation to the claimant for the land acquired, according to law. With the taking of possession u/s 17(1), the land acquired has already vested in the State. In this view of the matter, we must hold that the learned Judge below as also the Collector were wrong in holding that the land acquired was a forest land. It should have been held that it was arable land for which the claimant was entitled to get compensation.

5. In view of the decision on the first point urged by Mr. Mitter, I do not think it necessary to deal with the question of notification u/s 4 of the West Bengal Estates Acquisition Act.

6. In view of the finding as indicated above the appeal must succeed and the "Nil" award of the Land Acquisition Judge must be set aside and the matter should be considered afresh by the learned Judge below for assessing the compensation for the land acquired payable to the claimant according to law. For this purpose the learned Judge below should give opportunity to the parties to adduce additional evidence, if they so like regarding the valuation of the land.

7. In the result, the appeal is allowed. The judgment and "Nil" award of the Land Acquisition Judge below is hereby set aside and the case is sent back to the Land Acquisition Judge to dispose of the matter as indicated above according to law. Let the records be sent down to the learned District Judge., Burdwan for transmitting the same to the Land Acquisition Judge having competent jurisdiction for disposal. We, however, pass no order as to costs in this appeal.

Janah, J.

8. I agree with my Lord that this appeal should be allowed. But I wish to add a few words of my own.

9. In the present case the appellant before us took lease of the disputed land for 999 years from the different co-sharers for the purpose of constructing a factory for refractories and ceramic works before the West Bengal Estates Acquisition Act came into force. It appears that in the present case there was a preliminary notification u/s 4 of the Land Acquisition Act on January 12, 1955. The notification u/s 4 was thereafter made on November 12, 1956 and the

declaration u/s 6 was published on May 10, 1957. The Collector took possession of the disputed land on 6th October, 1958, upon the footing that the disputed land was waste or arable land. In the award that was ultimately made no compensation was allowed for the acquisition of the disputed land on the ground that the disputed land being forest land had vested in the State under the West Bengal Estates Acquisition Act as amended by Amending Act XXV of 1957 which came into force with retrospective effect from January 8, 1958. My learned brother in his judgment has come to the conclusion that the disputed land could not be treated as "forest" and the respondents were not entitled to make a "nil award" on the basis that the disputed land was "forest". I agree with the said finding. But even assuming that the "disputed land was "forest" the question still arises whether the said land could have vested in the State at the time when the Land Acquisition proceeding was started or at any time during the pendency of the said proceeding. The relevant portion of Section 5 of the West Bengal Estates Acquisition Act prior to its amendment by Act XXV of 1957 stood as follows:--

"Upon the due publication of a notification u/s 4, on or from the date of vesting -

(a) the estates and the rights of intermediaries in the estates, to which the declaration applies, shall vest in the State free from all encumbrances; in particular and without prejudice to the generality of the provisions of this clause, every one of the following rights which may be owned by an intermediary shall vest in the State, namely:

(i)

(ii) rights in huts, bazars, ferries, forest, fisheries and others sairaiti interests,

(b)"

By the Amending Act XXV of 1957 the word "forest" was omitted from Sub-clause (ii) of Clause (a) of Section 5 and Sub-clause (aa) was inserted after Clause (a). Clause (aa) reads as follows:

"(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."

10. The notification u/s 4 as originally made for vesting of the intermediary interest is dated August 16, 1954. Subsequently another notification was made on April 10, 1956, by which raiyati interests also vested in the State. The Amending Act XXV of 1957 came into force on January 8, 1958, with retrospective effect. But the petitioner in the present case is neither an intermediary nor a raiyat. The petitioner's lease is one for non-agricultural purpose and it must, therefore, be held to be a non-agricultural tenant. The petitioner's interest, therefore, could not have vested in the State under the Estates Acquisition Act.

11. Mr. Mitra appearing in support of the appeal relied on the decision in Katras Jharia Coal Co. Ltd. Vs. State of West Bengal and Others, and also on the decision in Ukhara Forests and Fisheries Ltd. Vs. The Sub-Divisional Land Reforms Officer, Asansol and Others, , and contended that unless there was a fresh notification u/s 4 in respect of forest land the petitioner's interest could not have vested in the State merely because retrospective effect was given to Act XXV of 1957. He also referred to the decision in Raja Bahadur Giriwar Prasad Narain Singh Vs. Dukhu Lal Das and Others, in support of his contention. On the basis of these decisions it was contended on behalf of the appellant that the notifications u/s 4 of the Act published in 1954 and 1956 could not apply to forest land which was included in Section 5(i)(aa) of the Act by the Amending Act XXV of 1957. In any view it must be held that the disputed land belonging to the petitioner could not, and did not vest in the State under the West Bengal Estates Acquisition Act. That being so the petitioner is entitled to compensation for the acquisition of the disputed land under the Land Acquisition Act.