

(1950) 02 GAU CK 0002
In the Gauhati High Court
Case No : First Appeal No. 2A of 1948

Lalit Kumar

APPELLANT

Vs

Bhagaban Ch. Sarma and Others

RESPONDENT

Date of Decision : 21-02-1950

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 3
Defence of India Act, 1935 — Section 19
Defence of India Rules, 1962 — Rule 66, 72, 75A, 76A
Government of India Act, 1935 — Section 220(3), 299(2)
Land Acquisition Act, 1894 — Section 23(1)
Specific Relief Act, 1963 — Section 42

Citation : AIR 1950 Guw 133

Hon'ble Judges : T.V. Thadani, C.J.; Ram Labhaya, J

Bench : Division Bench

Advocate : J.N. Borah, for the Appellant; S.K. Ghose, B.B. Das, K.K. Sarma and K. Goswami, for the Respondent

Judgement

Thadani, C.J.—This is a First Appeal from the judgment and decree of the learned Special Subordinate Judge, A. V. D., dated 8th January 1948, by which he decreed the plaintiff's suit for a declaration that the defendants had not acquired occupancy right in the lands in suit, and that the plaintiffs alone were entitled to the compensation awarded for the acquisition of the lands, with no order as to costs.

2. Twenty-three plaintiffs brought the present suit against 121 defendants for a declaration that the defendants had not acquired any occupancy rights in the lands described in schedule Kha, and that they alone were entitled to compensation for the acquisition of the lands.

3. The facts material to the appeal are these: The lands in suit are situated in the village of Garpandu Kumarpara in mouza Ramcharani. Periodic patta N. K. No. 10 comprises an area of 22 bighas 3 kathas 16 lessas; periodic patta N. K. No. 6, an area of 23B-2K 9L; periodic patta N. K. No. 14, an area of 45B.2K-9D; periodic

patta N. K. NO. 18, an area of 23B. 1K. 17L; periodic patta N. K, NO. 17, an area of 23B-1K-1L; N. K, patta No. 19 an area of 23B-3K-11L; N. K. patta No. 3 comprises an area of 45B-2K-9L; and N. K. patta No. 4, an area of 25B. 0K-17L.

4. Out of patta No. 10 comprising an area of 22B-3K-16L, the area acquired was 8B-1K.10L; the compensation for this area acquired was assessed at Rs. 2076. Out of patta NO. 6 comprising an area of 23B-2K. 9L, an area of 5B-0K.-7D was acquired; the compensation for this area being assessed at Rs. 1272-8; out of patta No. 14 comprising an area of 45B-2K-9L, an area of 5B-0K-3D was acquired, the compensation for this area being assessed at Rs. 1257-4; from patta No. 18 comprising an area of 23B-1K-17D, an area of 2B 0K-11L was acquired, the compensation for this being assessed at Rs. 626-8; from patta No. 17 comprising an area of 23B-1K-1D, an area of 2B-0K-1L was acquired, the compensation being assessed at Rs.: 302-8; from patta No. 19 comprising an area of 28B-11L, an area of 2B-3K-9D was acquired, the compensation being assessed at Rs. 672-8; from patta No. 3 comprising an area of 45B-2K-9L, an area of 3B-1K 15L was acquired, the compensation being assessed at Rs. 837-8; out of patta NO. 4 comprising an area of 28B-0K-17L, an area of 1B-3K-5L was acquired, the compensation being assessed at Rs. 530. The total compensation for the area acquired amounts to Rs. 7477.

5. Patta NO. 10, at the date of the requisition, stood in the name of plaintiffs 1, 2, 3 and pro forma defendants 101 to 114, patta No. 6 stood in the names of plaintiffs 4 to 6, and pro forma defendants 95 to 100; patta No. 14 stood in the names of plaintiffs 10 to 20; patta No. 18 stood in the names of plaintiff 7 and pro forma defendants 95 and 115 to 118; patta No. 17 stood in the Barnes of plaintiff 8 and pro forma defendants 117 and 118; patta No. 19 stood in the names of plaintiffs 9 and proforma defendants 95, 117 and 118; patta NO. 3 stood in the names of plaintiffs 21, 22 and pro forma defendants 119 and 120; patta NO. 4 stood in the names of plaintiff 23 and pro forma defendant 121.

6. The lands described in Schedule Kha were requisitioned by the Government of India under its Notification No. 182/41/67, dated 6th May 42. In due course, notices were issued for evicting the plaintiffs and the defendants who were then in occupation of the busti lands. In due course, the plaintiffs and the defendants handed over possession of the lands requisitioned to the Military authorities. Three years later on 25th May '45, the lands which had been previously requisitioned, were permanently acquired for the Railway Department under the Defence of India Act, and notices were duly served on the plaintiffs and the defendants on 25th May '45, by which the Government required the parties to submit within a month their claims for compensation for the houses, trees and crops standing; thereon.

7. The Land Acquisition Staff of Gauhati assessed the value and prepared lists showing the plaintiffs and the defendants as being entitled to compensation. The Land Acquisition Officer took the view that the defendants as occupancy tenants, were entitled to 7th of the amount assessed as compensation. The plaintiffs

objected to the setting apart of ?th share of the amount assessed for the benefit of the defendants, and contended that they were entitled to the whole amount. The Deputy Commissioner, Kamrup, passed an order requiring the plaintiffs within one month from 20th March '46 to file a suit for a declaration that the defendants were not entitled to get any share of the compensation assessed. In due course, the plaintiffs brought the present suit for a declaration.

8. In the plaint, the plaintiffs described the defendants as tenants-at-will. The defendants denied that they were tenants-at-will and contended that they had acquired occupancy rights they conceded that the distribution as proposed by the Deputy Commissioner was just and equitable.

9. On the pleadings, the trial Court framed the following issues : (1) Whether the suit is bad for multifariousness ? (2) Whether the defendants are tenants-at-will or are occupancy and permanent tenants ? (3). Whether the tenancy was determined as alleged and defendants lost that occupancy rights ? (4) Whether the defendants are entitled to any portion of the valuation made by the Acquisition Officer ? (5) Whether the suit is barred by waiver and acquiescence (6). Whether the plaintiffs have put proper court-fee ? (7) What relief or reliefs, if any, are the parties entitled to ?

10. At the trial, the plaintiffs contended that the defendants had already received compensation for the houses and crops and that the relationship between them and the defendants as landlords and tenants-at-will had terminated on the requisition of the property by Government in 1942. As a result of its findings on the issues framed, the trial Court decreed the plaintiffs' suit negating the right of the defendants to any share of the compensation assessed.

11. Mr. Borah for the appellants has contended that the suit, as framed, did not lie, that in any case, the suit was incompetent as the plaintiffs' rights and remedies were governed by Rule 75-A, Defence of India Rules, framed under the Defence of India Act, 1935, which is in these terms:

75A. Requisitioning of Property.--(1) If in the opinion of the Central Government or the Provincial Government, it is necessary or expedient so to do for securing the defence of British India, public safety, the maintenance of public order or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community, that Government may by order in writing requisition any property, moveable or immovable, and may make such further orders as appear to that Government to be necessary or expedient in connection with the requisitioning:

Provided that no property used for the purpose of religious worship and no such property as is referred to in Rule 66 or in Rule 72 shall be requisitioned under this rule.

(2) Where the Central Government or the Provincial Government has requisitioned any property under sub-r. (1), that Government may use or deal

with the property in such manner as may appear to it to be expedient, and may acquire it by serving on the owner thereof, or where the owner is not readily traceable or the ownership is in dispute, by publishing in the official Gazette, a notice stating that the Central or Provincial Government, as the case may be, has decided to acquire it in pursuance of this rule.

(3) Where a notice of acquisition is served on the owner of the property or published in the official Gazette under sub-r. (2), then at the beginning of the lay on which the notice is so served or published; the property shall vest in Government free from any mortgage, pledge, Hen or other similar encumbrance, and the period of the requisition thereof shall end. (4) Whenever in pursuance of sub-r. (1) or sub-r. (2), the Central Government or the Provincial Government requisitions or acquires any moveable property, the owner thereof shall be paid such compensation as that Government may determine:

Provided that, where immediately before the requisition, the property was, by virtue of a hire purchase agreement, in the possession of a person other than the owner, the amount determined by Government as the total compensation payable in respect of the requisition or acquisition shall be apportioned between that person and the owner in such manner as an arbitrator appointed by the Government in this behalf may decide to be just.

(5) The Central Government or the Provincial Government may, with a view to requisitioning any property under sub-r. (1) or determining the compensation payable under sub-r. (4), by order--

(a) require any person to furnish to such authority as may be specified in the order such information in his possession relating to the property as may be so specified;

(b) direct that the owner, occupier or person in possession of the property shall not without the permission of Government, dispose of it or where the property is a building, structurally alter it till the expiry of such period as may be specified, in the order.

(5a) Without prejudice to any powers otherwise conferred by these Rules, any person authorised in this behalf by the Central Government or the Provincial Government may enter any premises and inspect such premises and any property therein or thereon for the purpose of determining whether and, if so, in what manner, an order under this rule should be made in relation to such promises or property, or with a view to securing compliance with any order made under this rule.

(6) Any orders made, and any action taken, under or in relation to Rs. 76, 79 or 83 before 16th May 1942, shall be deemed to have been made or taken under or in relation to this Rule and to be as valid as if this rule had been then in force.

(7) If any person contravenes any order made under this rule, he shall be punishable with imprisonment for 1 term which may extend to three years or

with fine or with both.

12. The record of the case shows that the notices of acquisition were duly served not only upon the plaintiffs but also upon the defendants. It is reasonable, therefore, to suppose that the Government regarded both the plaintiffs and the defendants as owners of the property. The only other class of persons which is recognised under Rule 75-A are the hire-purchasers under a hire-purchase agreement. The rest of the sub-rules of Rule 76-A deal with the procedure to be followed in determining the compensation payable under sub r. (4).

13. Mr. Borah's contention that the present suit was not competent in virtue of Section 19, Defence of India Act, we think, is not well founded. Section 19, Defence of India Act is in these terms:

19. Compensation to be paid in accordance with certain principles for compulsory acquisition of immovable property etc.--Where by or under any rule made under this Act any action is taken of the nature described in Sub-section (2) of Section 299, Government of India Act, 1935, there shall be paid compensation the amount of which shall be determined in the manner, and in accordance with the principles, hereinafter set out, that is to say:

(a) Where the amount of the compensation can be fixed by agreement, it shall be paid in accordance with such agreement.

(b) Where no such agreement can be reached, the Central Government shall appoint as an arbitrator a person qualified under Sub-section (3) of Section 220 of the above-mentioned Act for appointment as a Judge of a High Court.

(c) The Central Government may, in any particular case, nominate a person having expert knowledge as to the nature of the property acquired, to assist the arbitrator, and where such nomination is made, the person to be compensated may also nominate an assessor for the said purpose.

(d) At the commencement of the proceedings before the arbitrator, the Central Government and the person to be compensated shall state what in their respective opinions is a fair amount of compensation.

(e) The arbitrator in making his award shall have regard to:

(i) the provisions of Sub-section (1) of Section 23, Land Acquisition Act, 1894, so far as the same can be applicable; and

(ii) whether the acquisition is of a permanent or temporary character.

(f) An appeal shall lie to the High Court against an award of an arbitrator except in cases where the amount thereof does not exceed an amount prescribed in this behalf by rules made by the Central Government.

(g) Save as provided in this section, and in any rule made thereunder, nothing in any law for the time being in force shall apply to arbitrations under this Section.

(2) The Central Government may make rules for the purpose of carrying into effect the provisions of this section.

(3) In particular and without prejudice to the generality of the foregoing powers such rules may prescribe--

(a) the procedure to be followed in arbitrations under this section;

(b) the principles to be followed in apportioning the costs of proceedings before the arbitrator and on appeal;

(c) the maximum amount of an award against which no appeal shall lie.

14. Mr. Borah contends that the proper remedy of the plaintiffs was to seek arbitration u/s 19, Defence of India Act 1935, and not to bring a suit. The contention is manifestly based upon a misunderstanding of the provisions of Section 19 of the Act. u/s 19 of the Act, the appointment of an arbitrator is contemplated only when there is no agreement between the Government and the owners of the property. Section 19 does not contemplate appointment of an arbitrator for the purpose of settling disputes involving rights of parties in the matter of the apportionment of the compensation. The question of apportionment of compensation as between the claimants is not to be decided under the Defence of India Act or the rules framed thereunder. Mr. Borah attempted to argue that there was no agreement between the Government on the one hand and the plaintiffs and the defendants on the other as to the amount of compensation to be fixed. So far as the plaintiffs are concerned, their Advocate has frankly stated that his clients have never disputed the compensation fixed by Government and that, in fact, all the parties had agreed to the amount so fixed. This statement of the plaintiffs' advocate is substantiated by what the defendants have stated in paragraph 5 of their written statement which is in these terms. [After quoting para. 5, his Lordship proceeded:] We are satisfied that there was an agreement between the plaintiffs and the defendants on the one hand and the Government on the other as to the amount fixed as compensation by Government.

15. It was next contended by Mr. Borah that the suit being one for a declaration only without any consequential relief, no decree could have been passed in view of the provisions of Section 42, Specific Relief Act. The proviso to Section 42 is in these terms:

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

16. It is plain that in this case the plaintiffs are not able to seek any further relief as against the defendants. The plaintiffs' suit is clearly for a declaration of their right to the entire sum of Rs. 7000 odd set apart by Government for the benefit of the defendants. The amount claimed by the plaintiffs is not in the possession of the defendants; it is in the possession of Government who are ready to pay it to the plaintiffs if their right to it is declared by a Court of law. The Government

not being a party, the plaintiffs cannot obtain relief in the matter of the payment of the amount from Government by a decree.

17. Out of the 121 defendants 94 have appealed. Mr. Borah for the appellants has drawn our attention to an inconsistency in the operative part of the judgment in which it is declared that the defendants have no occupancy rights in the busti lands, whereas the finding of the trial Court on issue No. 2 is in these terms:

I hold that the defendants were occupancy ryots at the time they were made to vacate these lands.

18. Mr. Borah contends that upon this finding, the defendants were clearly entitled to the entire sum of Rs. 7,000 odd which has been set apart as their share, the share of the plaintiffs having been withdrawn by them.

19. Mr. Ghose for the respondents has attempted to explain the inconsistency by stating that what the learned Judge meant was that notwithstanding the fact that the defendants were occupancy tenants at the date of the requisition, they were not so at the date of the acquisition, the relationship between the plaintiffs and the defendants as landlords and tenants having ceased at the date of the requisition. The explanation, though plausible, is not convincing, Occupancy ryots are not, in the strict sense of the word, mere tenants to whom the right to enjoy the property alone has been transferred; occupancy rights are heritable and transferable and cannot be regarded merely as rights accruing upon a lease. I am unable to accept the position that when there is a requisition of property under the Defence of India Rules in the first instance, followed by acquisition without surrendering the property, the rights of the claimants have to be ascertained first with reference to the requisition and, if those rights cease upon requisition, they must be regarded as extinct if there is a subsequent acquisition, even though there is no surrender in the interval. The acceptance of this contention would militate against the words " and the period of requisition thereof shall end" in sub-r. (3) of Rule 75A, Defence of India Rules. These words in sub-r. (3) mean that notwithstanding the fact that when there is requisition followed by acquisition, the rights of the claimants have to be determined as though there was no requisition in the first instance. I, therefore, propose to examine the finding of the trial Court whether the appellants have established their status as occupancy tenants.

20. Mr. Borah argued that all the appellants have succeeded in establishing their status in view of the fact that the plaintiffs failed in their allegation that they were tenants at will. It is true that the plaintiffs failed to establish that the defendants were tenants at will, but it was not the case of the plaintiffs that the defendants were occupancy tenants; that was the case of the defendants, which they had to establish. The question, therefore, arises whether all the defendant-appellants have succeeded in proving their status as occupancy tenants. The evidence on this issue is to be found at pp. 28, 29, 31, 34, 35 and 114 of the paper-book. [After discussing the evidence and holding that only defendant 21

has succeeded in establishing his status as occupancy tenant and that defendants 60 and 61 have not, his Lordship proceeded.]

21. The only reliable evidence which appears on the record is Ex. F a copy of a cheeta of 30 years of Ramcharani mouza, 1923-28. Mr. Ghose for the respondents contended that Ex. F has not been duly proved. We are, however, unable to entertain this objection for the first time in this Court. No objection appears to have been taken to the reception of EX. F at the trial. Mr. Ghose contends that even if Ex. F were taken into consideration, it serves to establish that defendants 21, 32 and 87 only were occupancy tenants. We think this contention must be upheld. Mr. Borah for the defendants was unable to point out from Ex. F that any other defendants had acquired occupancy rights. Exhibit F contains, with the exception of defendants 32 and 37, the names of persons who are not defendants in the suit. Mr. Borah urged that the other defendants did not give evidence at the trial because they relied upon the evidence of the three defendants and the 2 other witnesses; that, in any case, the failure of the defendants other than defendants 21, 32 and 37 to depose to their status was due to the manner in which the suit was framed--suit in which 28 plaintiffs had impleaded 121 defendants, notwithstanding the fact that the title of the plaintiffs and the defendants was to be found in different pattas. In other words, in his submission, as the suit was bad for multifariousness the plaintiffs were not entitled to take exception to the failure of the defendants other than defendants 21, 32 and 37, to depose to their status. It is to be observed, "however, that this aspect of the case was not argued or pressed in the Court of first instance. For the first time; Mr. Borah raised this question in reply to the respondents' advocate's address, Even so, we decided to permit Mr. Borah to address us on this aspect of the case.

22. It is plain that unless Mr. Borah succeeds in taking the suit out of the purview of Order 1, Rule 3, Code of Civil Procedure., the objection as to multifariousness must fail. Order 1, Rule 3 is in these terms:

3. Who may be joined as defendants--All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons, any common question of law or fact would arise.

23. Mr. Borah contends that the plaintiffs' right to relief in this case does not arise out of the same, act or transaction or series of acts or transactions, so as to attract the provisions of Rule 3. But we think the plaintiffs' right to relief clearly arises out of the compensation determined by Government for the land acquired under the Defence of India Rules. We are unable to accept Mr. Borah's contention that the act or transaction in this case is not the compensation assessed by Government but rather a series of acts or transactions resulting in the deprivation of the rights of the plaintiffs and the defendants in the property acquired. It is true that upon acquisition, the plaintiffs and the defendants lost all

rights in the property, but it is equally true that upon a statutory acquisition under the Defence of India Rules, no rights remained with the persona whose lands were so acquired, except the right to compensation. The right to relief, therefore, of both the plaintiffs and the defendants arose as a result of the amount fixed by Government as compensation. In this view, it is plain that if separate suits had been brought against the defendants or each of them by the plaintiffs or each of them, the common questions of law and fact would have been (1) whether the defendants were occupancy tenants (2) what compensation, if any, were they entitled to ?

24. The legal position of the Government vis-a-vis the persona whose lands are acquired under the Defence of India Rules has been stated by the learned Judges of the Calcutta High Court in " Province of Bengal v. Board of Trustees for the Improvement of Calcutta," AIR 1946 Cal. 416 : (227 I. C. 117). With respect, I agree with all that the learned Judges have stated except in one particular, where the learned Judges have regarded the position of Government vis-a-vis the owners of the property upon requisition as amounting to a statutory tenancy in favour of Government. With all respect, I do not think any question of tenancy, contractual or statutory, arises between the Government and the owners of the property upon requisition under the Defence of India Rules. What happens is that upon requisition when the Government takes possession of the property, the claimants are kept out of it, and as the Government have taken possession in pursuance of their statutory powers, they must pay compensation for such possession, and one of the ways in which such compensation might be determined is to determine what rent the landlord would receive if he were to let or had let out the property to a tenant. If the learned Judges of the Calcutta High Court meant this when they said that there was a statutory tenancy created between the Government and the persons who were kept out of possession upon requisition under the Defence of India Rules, I would be content to endorse it.

25. On the merits of the appeal, we have come to the conclusion that defendants 21, 32 and 37 only have established their status as occupancy tenants. The Calcutta High Court had occasion to consider the right of occupancy ryots upon acquisition of land under the Land Acquisition Act. Garth C. J., delivering the judgment of the Division Bench observed:

The parties who usually suffer most from lands being taken for Government purposes are either the ryots with right of occupancy, or the holders, whoever they may be of the first permanent interest above the occupying ryots. The actual occupier is of course turned out by the Government, and if he is a ryot with a right of occupancy, he loses the benefit of that right, besides being driven possibly to find a holding and a home elsewhere; and the holder of the tenure immediately superior to the occupying ryots, whatever the nature of his holding may be, loses the rent of the land taken during the period of his holding. These two classes, therefore, would, generally speaking, be entitled to the larger portion of the compensation, and if the darpatnidar in this instance belongs to

the latter class, the larger portion of the compensation ought presumably, to have gone to him.

26. We have accordingly come to the conclusion that defendants 21, 82 and 37 who have established their status as occupancy ryots, should be awarded compensation. There is no evidence before us to indicate to what share of the compensation determined by Government an occupancy ryot is entitled, vis-a-vis the owner. In the absence of such evidence, it is to be supposed that if compensation is awarded to more than one person and their shares inter se cannot, with any degree of certainty, be ascertained, they would be entitled to an equal share. Happily in this case it is not necessary to determine the shares of defendants 21, 32 and 37 as they have claimed a stated sum and Mr. Ghose has stated that the plaintiffs will not withdraw the amount claimed by these 3 defendants. We would accordingly modify the judgment and decree of the trial Court by declaring the right of the plaintiffs to the entire amount lying in deposit with Government less the amount which has been claimed by defendants 21, 32 and 37.

27. The trial Court made no order as to costs of the suit presumably in view of the peculiar circumstances of the case. We allow the appeal to the extent of the modification to which we have referred, with no order as to costs.

Ram Labhaya, J.

28. I agree.