
(2011) 03 CAL CK 0092
In the Calcutta High Court
Case No : W.P.L.R.T. 23 of 2008

Rabi Waden Bhagat

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 18-03-2011

Acts Referred:

Factories Act, 1948 — Section 2
Land Acquisition Act, 1894 — Section 23, 24
West Bengal Estates Acquisition Act, 1953 — Section 4, 44, 44(2), 5, 6(1)
West Bengal Estates Acquisition Rules, 1954 — Rule 4

Citation : AIR 2011 Cal 84

Hon'ble Judges : Pranab Kumar Chattopadhyay, J; Ashok Kumar Dasadhikari, J

Bench : Division Bench

Advocate : Saktinath Mukherjee, D.P. Mukherjee and Debjit Mukherjee, for the Appellant; Prasenjit Basu and Ziaul Islam, for the Respondent

Final Decision : Allowed

Judgement

Pranab Kumar Chattopadhyay, J.—Instant writ petition has been filed assailing the judgment and order dated 7th December, 2007 passed by the West Bengal Land Reforms and Tenancy Tribunal in O.A. No. 989 of 2005 whereby and whereunder the said learned Tribunal was pleased to hold that the subject land being comprised within mill/factory vested in the State subject to the provisions of Section 6(3) of the West Bengal Estates Acquisition Act, 1953 and subsequently the purpose for holding subject land by the intermediary having been frustrated, the State Government by reason of the proviso to Section 6(3) and Section 6(1)(g) of the said West Bengal Estates Acquisition Act, 1953 is competent to resume the said subject land.

2. The learned Tribunal, therefore, did not find any reason to interfere with the order of resumption passed by the State Government and dismissed the application on merits.

3. The facts giving rise to this writ petition are briefly summarized hereinafter.

4. The property in question was initially leased out to the predecessor-in-interest of the Petitioner and during the subsistence of the lease period, the said predecessor-in-interest of the Petitioner purchased the property on 28th November, 1945. The father of the Petitioner was running a factory known as "Sodepur Pottery" on the said land. The name of the father of the Petitioner herein was recorded as Raiyat as per provision of Rule 4 of the West Bengal Estates Acquisition Act, 1953. There is no dispute that the aforesaid land measuring about 2.31 acres was used and occupied for the purpose of running the said factory known as "Sodepur Pottery". The father of the Petitioner after running the said factory for sometime closed down the same and left for Punjab-Haryana after posting guards at the property in question. The Petitioner claims to be still in possession of the land including the structure standing thereupon after the demise of the said predecessor-in-interest.

5. It has been submitted on behalf of the Petitioner that the predecessor-in-interest of the Petitioner had no land in the State of west Bengal save and except the aforesaid 2.31 acres of land which was recorded in the name of the father of the Petitioner in the R.S. Record of Rights as a Raiyat in terms of Rule 4 of the West Bengal Estates Acquisition Rules, 1954.

6. It appears that on 29th December, 1971 an order was passed by the Government of West Bengal u/s 6(3) of the West Bengal Estates Acquisition Act, 1953 declaring that the aforesaid 2.31 acres of land comprised in the said factory of the Petitioner being required for the purpose of the said factory may be retained by the owner in accordance with the provision of law. The said order dated 29th December, 1971 is set out hereunder:

Government of West Bengal Land and Land Revenue Department, Land Reforms
Order No. 13549-L. Ref./6M-302/68 dt. 29.12.71.

Whereas land measuring more or less 2.31 acres comprised in the Sodepore Potteries (Private) Ltd. (herein after called the said Factory) in mouze Sukchar J.L. No. 9 in Police Station Khardah District 24-Parganas, vested in the State Government free from all encumbrances u/s 5 of the West Bengal Estates Acquisition Act, 1953 (West Bengal Act 1 of 1954) (hereinafter called the said Act.)

Now, therefore, in exercise of the powers conferred by Sub-section (3) of Section 6 of the said Act the Governor is pleased to declare that 2.31 acres of land comprised in the said Factory as mentioned above being required for the purpose of the said Factory may be retained by the owner in accordance with the provision of law.

By order of the Governor, Sd/- S.S. Chatterjee. Deputy Secretary.

7. Subsequently, another order was passed on 4th March, 1999 by the Joint Secretary, Land and Land Reforms Department, Government of West Bengal, whereby the earlier order dated 29th October, 1971 was revised and the State

Government resumed the aforesaid 2.31 acres of land as the same, according to the State Government, was not required for factory purpose. The relevant extracts from the said order dated 4th March, 1999 is set out hereunder:

Now, therefore, in exercise of power conferred by proviso to Sub-section (3) of Section 6 of the said Act, the Governor is hereby pleased to revise the Order No. 13549-L. Ref. dated 19.10.1971 and declare that the said area of 2.31 acres of land as given in the schedule below stands hereby resumed by the State Government as the same is not required by the said company for factory purpose and as such, the said company is not entitled to remain in possession of the said area of 2.31 acres of land from the date of taking over possession of the land by the State Government.

8. It has been submitted on behalf of the Petitioner that the aforesaid orders were never served upon the Petitioner. It has been submitted on behalf of the Petitioner that the predecessor-in-interest of the said Petitioner held only 2.31 acres of land as Raiyat and, therefore, the said land could not vest u/s 6(3) of the West Bengal Estates Acquisition Act, 1953 since the predecessor-in-interest of the Petitioner never held land in excess of the prescribed ceiling limit as provided u/s 6 of the West Bengal Estates Acquisition Act, 1953.

9. It has further been submitted on behalf of the Petitioner that in terms of Section 6(1) of the West Bengal Estates Acquisition Act, 1953 the predecessor-in-interest of the Petitioner was entitled to retain the said 2.31 acres of land since the same was agricultural land and within the ceiling limit and, therefore, there was no occasion for the State Government to allow the retention of the said land for the purpose of running the factory in question in terms of Section 6(3) of the said Act.

10. Mr. Saktinath Mukherjee, learned Senior Counsel representing the Petitioner, submitted that the State Government herein had no occasion to express an opinion that the aforesaid land in question was required for the purpose of running the factory, when the factory being "Sodepur Pottery" was not running or operative on the date of vesting under the West Bengal Estates Acquisition Act, 1953.

11. In the instant case, it has been claimed that the predecessor-in-interest of the Petitioner herein was entitled to retain the land in terms of Section 6(1) of the West Bengal Estates Acquisition Act, 1953 and, therefore, no permission was necessary from the State Government for retaining the said land in terms of Section 6(3) of the West Bengal Estates Acquisition Act, 1953.

12. The learned Senior Counsel of the Petitioner further submitted that the Government was never approached for issuance of any order u/s 6(3) of the West Bengal Estates Acquisition Act, 1953 for retention of the aforesaid 2.31 acres of land and, therefore, there was no occasion for the Government for issuance of the aforesaid order dated 29th December, 1971 in exercise of the powers conferred u/s 6(3) of the said Act.

13. Referring to the subsequent order dated 4th March, 1999 Mr. Mukherjee submitted that the State Government had no occasion to pass any order with regard to resumption of the aforesaid land in question since there was no scope to allow the owner of the land in question to retain the said land in terms of Section 6(3) of the West Bengal Estates Acquisition Act, 1953. The question of reviewing the said order, subsequently in view of closure of the factory in question, could not and did not arise specially when the factory was not in existence on the date of vesting.

14. It has been specifically urged before this Court on behalf of the Petitioner that the State Government herein had no authority to issue the order dated 4th March, 1999 under proviso to Section 6(3) of the West Bengal Estates Acquisition Act, 1953 in order to resume the possession of the land in question since the State Government had no occasion to issue any order u/s 6(3) of the said Act allowing the owner to retain 2.31 acres of land in question for the purpose of running the factory when the said factory was not operative and/or in running condition on the date of vesting.

15. The relevant provisions of Section 6(1)(a) to (g) and 6(3) of the West Bengal Estates Acquisition Act, 1953 and Rule 4 of the West Bengal Estates Acquisition Rules, 1954 are set out hereunder:

6 (1). Notwithstanding anything contained in Sections 4 and 5, an intermediary shall, except in the cases mentioned in the proviso to Sub-section (2) but subject to the other provisions of that Sub-section, be entitled to retain with effect from the date of vesting-

(a) land comprised in homesteads;

(b) land comprised in or appertaining to buildings and structures owned by the intermediary or by any person, not being a tenant holding under him by leave or license;

(c) non-agricultural land in his khas possession including land held under him by any person, not being a tenant, by leave or licence, not exceeding fifteen acres in area, and excluding any land retained under clause(a): Provided that the total area of land retained by an intermediary under Clauses (a) and (c) shall not exceed twenty acres, as may be chosen by him:

Provided further that if the land retained by an intermediary under Clause (c) or any part thereof is not utilised for a period of five consecutive years from the date of vesting, for a gainful or productive purpose, the land or the part thereof may be resumed by the State Government subject to payment of compensation determined in accordance with the principles laid down in Sections 23 and 24 of the Land Acquisition Act, 1894(1 of 1894)

(d) agricultural land in his khas possession, not exceeding twenty-five acres in area, as may be chosen by him: Provided that in such portions of the district of Darjeeling as may be declared by notification by the State Government to be

hilly portions, an intermediary shall be entitled to retain all agricultural land in his khas possession, or any part thereof as may be chosen by him;

(e) take fisheries;

(f) subject to the provisions of Sub-section (3), land comprised in tea gardens or orchards or land used for the purpose of livestock breeding, poultry farming or dairy;

(g) subject to the provisions of Sub-section (3), land comprised in, mills, factories, or workshops;"

*** **

6 (3). In the case of land comprised in a tea garden, mill, factory or workshop the intermediary, or where the land is held under a lease, the lessee, shall be entitled to retain only so much of such land as, in the opinion of the State Government, is required for the tea garden, mill, factory or workshop, as the case may be, and a person holding under a lease shall, for the purpose of assessment of compensation, be deemed to be an intermediary;

Provided that the State Government may, if it thinks fit so to do after reviewing the circumstances of a case and after giving the intermediary or the lessee, as the case may be an opportunity of being heard, revise any order made by it under this Sub-section specifying the land which the intermediary or the lessee shall be entitled to retain as being required by him for the tea garden, mill, factory or workshop, as the case may be."

*** ** 4. Terms and conditions of holding land retained by an intermediary u/s 6(1).- Any land retained by an intermediary under the provisions of Sub-section (1) of Section 6 shall, subject to the provisions of the Act, be held by him from the date of vesting on the terms and conditions specified below:

...

16. The learned Counsel representing the State Respondents, however, submitted that on the date of vesting the said factory was running on the land in question. Referring to the Affidavit-in-Reply of the writ Petitioner the learned Counsel of the State Respondents submitted that the Petitioner had also admitted the aforesaid fact that the predecessor-in-interest of the Petitioner was running the factory on the date of vesting and the same was closed down in the year 1955 and 1956.

17. The learned Senior Counsel of the Petitioner, on the other hand, referring to the impugned judgment of the learned Tribunal submitted that the learned Counsel representing the State Government conceded before the learned Tribunal that the factory was inoperative on the date of vesting. The relevant extract from the aforesaid impugned judgment of the learned Tribunal is set out hereunder:

3.4. Ld. Govt. Representative further argued on the point of law.-

(a)

(b)

(c)

(d)

(e)

(f) The factory being Sodepure Pottery was inoperative on the date of vesting....

18. Mr. Mukherjee, learned Senior Counsel of the Petitioner submitted that where each party makes admission detrimental to itself and such mutual admission cancelled out each other, the question for consideration thereafter should be decided on the materials-on-record irrespective of such alleged admission.

19. Mr. Mukherjee referred to and relied on the following decisions in support of the aforesaid contentions:

1) Bhawarlal Vs. Mathura Prasad,

2) Dhiyan Singh and Another Vs. Jugal Kishore and Another,

3) Nagubai Ammal and Others Vs. B. Shama Rao and Others,

4) Kishori Lal Vs. Mst. Chaltibai,

5 Kedar Nath Motani and Others Vs. Prahlad Rai and Others,

20. It is true that admissions are not conclusive and the parties responsible for such admissions are at liberty to prove that the said admissions are mistaken or untrue.

21. In the case of Kedar Nath Motani and Others Vs. Prahlad Rai and Others, the Hon"ble Supreme Court specifically observed:

10. ...The rival admissions cancel each other and leave the matter at large....

22. In the aforesaid circumstances let us now examine the materials-on-record.

23. In the instant case, it is not in dispute that the Revisional record of rights have been finally published under the provisions of Section 44 of the West Bengal Estates Acquisition Act, 1953. It will appear from the annexed record of rights that the holding (Khatian) has been recorded with remarks that it will remain effective under the State Government and that the character of the holding is "Raiyat Dakhali Satta Bisistha" (or raiyat with occupation right) under Rule 4. The reference to Rule 4 is significant. Rule 4 comes into play at the post-vesting tenancy stage for determination of the post-vesting character of the tenancy under the State upon retention of a plot u/s 6 of the West Bengal Estates Acquisition Act under one or other clauses. The present Petitioner becomes a

tenant under the State on such terms and conditions as may be prescribed u/s 6(2) of the Act. Such terms and conditions are laid down in Rule 4 of the West Bengal Estates Acquisition Rules. In such finally published record of rights altogether 5 plots have been recorded with their respective classification as on the date of vesting. None of the plots so recorded is classified as mill or factory. The Revisional record of rights are required to reflect and do reflect precisely the exact status of the holding on the date of vesting, so as to facilitate the implementation of the West Bengal Estates Acquisition Act, 1953.

24. Mr. Mukherjee referred to and relied on a decision of this Court in the case of Collector of 24-Parganas Vs. Life Insurance Corpn. of India, wherein Hon''ble Justice P.N. Mookerjee, speaking for the Division Bench, observed that the record of rights must have reference to the State of things as it exists on the date of vesting.

25. Mr. Mukherjee also relied on a decision of this Court in the case of M/s. Chandipur Fisheries Pvt. Ltd. v. Revenue Officer, 24-Parganas and Ors. reported in 75 CWN 270 wherein Anil Kumar Sen, J. held that the record of rights is to be prepared and finally published on the basis of the facts and circumstances existing on the date of vesting and not subsequent events. The record of rights finally published was there in 1971 when the order u/s 6(3) is alleged to have been made. It is alleged in the application that the Petitioner never applied for any permission and there was no occasion for making any prayer as the lands were retained as Raiyati land and there was no pottery on the land at the material point of time.

26. On examination of the record of rights we find that the character of holding is "Raiyat Dakhali Satta Bisistha" under Rule 4. The Revisional record of rights will undoubtedly reflect the exact status of holding on the date of vesting. In the present case, the subject land has not been recorded as mill/factory in the Revisional record of rights and, therefore, it cannot be said that on the date of vesting the subject land was comprised in mill/factory.

27. Mr. Prasenjit Basu, learned Counsel representing the State- Respondents, however, submitted that so far land comprised in factory is concerned, no ceiling limit for retention of such land by the intermediary has been provided in Section 6(1)(g) but quantum of such retention of land depends upon the opinion of the State Government as provided in the First Part of Section 6(3).

28. Mr. Basu further submitted that the predecessor-in-interest of the Petitioner was running a factory on the subject land and, therefore, the entitlement of the Petitioner to retain such land will be governed by the provisions of Section 6(1)(g), read with Section 6(3) of the West Bengal Estates Acquisition Act, 1953.

29. Mr. Basu also submitted that the order of retention of the subject land by the Petitioner was issued by the State Government under the provision of first part of Section 6(3) of the said Act for which no opportunity of hearing to the Petitioner was required to be given by the State.

30. The learned Counsel of the State-Respondents submitted that the Revisional record of rights is the revenue record and the same cannot create any title in respect of a property. The learned Counsel of the State-Respondents however, submitted that entry in record of rights should be presumed to be correct until the correctness is disproved by evidence.

31. In the present case although the learned Counsel of the State-Respondents sought to rely on the admission of the Petitioner regarding the existence of the factory on the subject land, we also cannot ignore the categorical submission of the learned Government Representative before the learned Tribunal that the factory being "Sodepur Pottery" was inoperative on the date of vesting. Therefore, in order to ascertain the exact status of the holding we have no other alternative but to rely on the Revisional record of rights wherein the subject land was not recorded as mill/factory. Therefore, the provisions of Section 6(1)(g) and Section 6(3) of the West Bengal Estates Acquisition Act, 1953 have no manner of application in respect of the subject land.

32. The learned Government Representative clearly submitted before the learned Tribunal that the factory, being "Sodepur Pottery", was inoperative on the date of vesting. The finally published record of rights also does not suggest the existence of any factory on the subject land. In absence of an operative factory on the date of vesting, it cannot be said that the land involved in the present case was comprised in a mill or factory.

33. The Division Bench of this Court presided over by the Hon"ble Mr. P.N. Mookherjee J. in the case of Collector of 24-Parganas Vs. Life Insurance Corpn. of India, observed:

2. ...The record of rights which is prepared under the Act is for carrying out the purposes of the Act and the purposes of the Act, primarily, at least, have reference to the date of vesting, which is the relevant date for judging the rights of the parties under the Act. The records, therefore, must have reference to the state of things as it exists at the said date of vesting.

34. In the case of M/s. Chandipur Fisheries Pvt. Ltd. (Supra) a learned Judge of this Court held:

8. ...It appears clear from a reading of this schedule that the record is to be prepared upon a thorough enquiry and investigation with reference to the existing facts as on the date of such preparation. These details have been referred to by me only because they, in my view, clearly indicate that the record of rights is to be prepared and finally published with reference to and on the basis of the facts and circumstances as they exist at the time of preparation. In my view, again if the record is to be finally prepared and published on the basis of the facts and circumstances existing at the time of preparation, the object of revision of the entries provided u/s 44(2a) in such finally published record of rights would necessarily be with reference to such facts and circumstances and not on the basis of subsequent events....

35. "Factory" has been defined in Section 2(m) of the Factories Act, 1948 as hereunder:

2(m) "factory" means any premises including the precincts thereof -(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power or is ordinarily so carried on, - But does not include a mine subject to the operation of [the Mines Act, 1952 (35 of 1952)] or [a Mobile unit belonging to the armed forces of the union, a railway running shed or a hotel, restaurant or eating place];

36. On behalf of the State-Respondents neither any material was produced before the learned Tribunal nor even before this Court at the time of hearing of the writ petition in order to establish that a mill or factory was running on the subject land on the date of vesting or adequate number of workers were working on the subject premises in order to treat the said premises as factory in terms of Section 2(m) of the Factories Act, 1948. Therefore, in the absence of any proper and/or valid document we are unable to hold that a mill or factory stood on the subject land on the date of vesting. As a matter of fact, the Revisional record of rights in respect of the subject land does not suggest the existence of any factory and/or mill on the date of vesting of the land in question.

37. In the case of State of West Bengal and Others Vs. Karan Singh Binayak and Others, the Hon"ble Supreme Court held:

29. There is neither any finding nor any material to suggest that a mill stood on the land on the date of vesting. Section 6(1)(g), proviso to Section 6(2) and Section 6(3) have no applicability....

39. For the reasons discussed hereinabove, we are unable to hold that any mill/factory was at all in existence or operative on the subject land on the date of vesting and, therefore, provisions of Section 6(1)(g) as well as proviso to Section 6(3) have no manner of application in the facts of the present case.

40. As we have already held that there was no factory on the subject land on the date of vesting and in the Revisional record of rights said land has been described as Raiyati land, the Respondent authorities herein had no authority and/or jurisdiction to pass any order u/s 6(3) of the West Bengal Estates Acquisition Act, 1953 or under the proviso to Sub-section (3) of Section 6 of the said Act.

41. For the aforementioned reasons, the order dated 29th December, 1971 passed by the Deputy Secretary, Land and Land Reforms Department, Government of West Bengal in exercise of powers conferred by Sub-section (3) of Section 6 of the West Bengal Estates Acquisition Act, 1953 and subsequent

order dated 4th March, 1999 passed by the O.S.D. and Deputy Secretary to the Government of West Bengal, Land and Land Reforms Department in exercise of powers conferred by proviso to Sub-section (3) of Section 6 of the West Bengal Estates Acquisition Act, 1953, cannot be sustained in the eye of law and the same are accordingly, quashed.

42. The aforesaid 2.31 acres of land cannot vest in the State since the Petitioner or his predecessor-in-interest had no land within the State of West Bengal beyond the prescribed ceiling limit.

43. For the reasons mentioned hereinbefore, the impugned judgment and order passed by the West Bengal Land and Land Reforms Tribunal in O.A. No. 989 of 2009 cannot be sustained and the same is, therefore, set aside.

44. Accordingly, this writ petition stands allowed.

45. In the facts of the present case, there will be no order as to costs.

46. Let urgent Xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

Ashok Kumar Dasadhikari, J.

I agree.