
(1971) 12 CAL CK 0019
In the Calcutta High Court
Case No : C.R. No. 580 of 1970

Rabindra Nath Sinha Roy

APPELLANT

Vs

The Divisional Commissioner, Burdwan Division, at Chinsura
and Others

RESPONDENT

Date of Decision : 09-12-1971

Acts Referred:

West Bengal Land Reforms Act, 1955 — Section 4(2A)

Citation : AIR 1972 Cal 447 : 76 CWN 378

Hon'ble Judges : Anil Kumar Sinha, J

Bench : Single Bench

Advocate : Kishore Mukherjee, Saktipada Mukherjee and Chitra Ranjan Mitra,
for the Appellant; Aditya Narayan Roy, for Opposite Parties Nos. 1 to 3, for the
Respondent

Final Decision : Allowed

Judgement

Anil Kumar Sinha, J.—This Rule is directed against an order passed by the Divisional Commissioner in appeal modifying the order of the Additional District Magistrate, Estates Acquisition, Hooghly, imposing upon the petitioner fine for removing sands from his land.

2. The petitioner claims to be the owner of certain plots of land on a portion of which, it is alleged, he was under dire necessity of digging a tank. In course of excavation some sands came out which were kept on his own land not for the purpose of either selling or making any profit. Even then a case was started against the petitioner under Sub-sections (2-A) and (2-B) of Section 4 of the West Bengal Land Reforms Act, 1956, which was introduced by amendment by West Bengal Land Reforms (Amendment) Act, 1966. The Additional District Magistrate, Estate Acquisition, who heard the case, imposed a fine of Rs. 1,500/-, but this fine of Rs. 1,500/- was reduced to Rs. 1,000/- on appeal before the Divisional Commissioner.

3. It appears that the Additional District Magistrate did not take any evidence of

the parties, but merely on the report of the J.L.R.O. or other information received from sources which are also not disclosed, he was satisfied that the petitioner contravened the provisions of Sub-section (2-A) of Section 4 of the Act by permitting another person to quarry sand from his holding for commercial purpose. I fail to see how without any evidence the Additional District Magistrate, who is under an obligation to act judicially, could have proceeded to decide the matter only on a report of the J.L.R.O. even without examining him. I also do not find any other evidence or the particulars of information stated to have been received by the Magistrate in deciding the case. In fact Mr. Roy, the learned Advocate for the opposite parties, very fairly submits before me that excepting the report of the J.L.R.O. he also does not find any evidence adduced for establishing the offence of the petitioner. It is one of the fundamental concepts of well established judicial procedure that finding arrived at by authorities acting judicially or quasi-judicially, must be based on some evidence. Here in the instant case, the report of the J.L.R.O. without examining him was clearly inadmissible and cannot be considered as evidence on record.

4. Although such is the position, the appellate authority did not consider this aspect of the matter at all, but it equally proceeded to penalise the petitioner without any evidence to show that the petitioner committed any offence within the meaning of Sub-section (2-A) of Section 4 of the Act. It may be that he reduced the fine of Rs. 1,000/-, but that again was based not on any evidence, but purely on surmises and suspicions and his finding is "that during the alleged excavation of tank on those plots or land for whatever purposes it may be sands were found under the surface land and the appellant allowed the licensee Sri Rafiqe Sarkar to extract sand and to remove the same for business purpose without previous permission from the State Government under Sub-section (2-A) of Section 4 of the Act." I think, to say the least of it, the appellate authority which was required to decide the question of fact, ought to have applied its mind to see whether there was any evidence adduced on behalf of the prosecution who was under a duty to establish its case against the petitioner by adducing sufficient and proper evidence. On the other hand, it appears that the appellate authority cast the onus upon the petitioner to prove that he was not guilty of the offence with which he was charged. It is stated that the appellant also could not conclusively prove that the sands extracted from the said plots of land were removed for his own use and were not permitted to be removed by any other person for any other purpose. I think both the Additional District Magistrate and the appellate authority utterly failed to make a judicial approach in taking its decision against the petitioner as they did so without any regard even to the elementary principle on burden of proof of criminal offence which lies heavily on the prosecution. In this view of the matter which I have taken, it is sufficient to dispose of this Rule.

5. But Mr. Mukherjee also has raised question involving construction of the Sub-sections (2-A) and (2-B) of the Act. Sub-section (2-A) of Section 4 provides:

"(a) raiyat intending to quarry sand, or permit any person to quarry sand, from his holding.

(b) dig or use or permit any person to dig or use earth or clay of his holding for the manufacture of bricks or tiles, for any purpose, other than his own use shall make an application in Form AI for a permit for such quarrying or digging or use to the Additional District Magistrate through the Junior Land Reforms Officer of the area. A copy of the application shall be sent at the same time to the Sub-divisional Land Reforms Officer and to the Additional District Magistrate."

6. Sub-section (2-B) provides after amendment that "in case of offence being committed under Sub-section (2-A) a fine not exceeding Rs. 2,000/- and where the breach is a continuing one a further fine not exceeding Rs. 50/- for each day is imposed.

7. On a fair reading of Sub-section (2-A) it seems clear, there is thus distinction between Clauses (a) and (b) of Sub-section (2-A) as the first clause concerns quarrying sand and the second clause deals with digging of earth or clay. The question, therefore, is in the instant case, whether the petitioner can at all be convicted for quarrying sand which is the case of the prosecution. It is found by the Divisional Commissioner that the petitioner was excavating the tank, but the reasons which led the Commissioner to hold that even then the petitioner was guilty of the offence, were that the sands were found on the surface land and the appellant allowed the licensee to extract sand and to remove the same for business purpose. I fail to see how this is so. If in course of excavating a tank some sands come out, as they must in almost all cases from the surface of the earth, clearly, that cannot mean quarrying of sand or permitting any person to quarry sand from one's own holding. If that construction is put to this section the result, in my view, would be disastrous. Digging or excavating tank become completely prohibited or at least such excavation of tank cannot be undertaken without previous permission of the State Government. In my view, that is neither the provision nor such can be the intention of the legislature. It seems therefore clear that on the case made out against the petitioner, Sub-section (2-A) of Section 4 or for the matter of that Sub-section (2-B) which provides for imposition of fine, cannot have any application to the case of the petitioner. Considering the matter from both the aspects, it must be held that the impugned orders suffer from serious infirmities and must be struck down 85 invalid.

8. Accordingly, I set aside the orders and the Rule is made absolute. Fines, if paid, must be refunded to the petitioner.

9. There will be no order as to costs.