(2003) 07 CAL CK 0036

In the Calcutta High Court

Case No : W.P.L.R.T. No. 279 of 2002

Ratnagiri Engineering Pvt. Ltd. and Others	APPELLANT
Vs	
State of West Bengal and Others	RESPONDENT

Date of Decision : 11-07-2003

Acts Referred:

Companies Act, 1956 — Section 446
West Bengal Estates Acquisition Act, 1953 — Section 44(2), 6(3)
West Bengal Land Reforms Act, 1955 — Section 14Z

Citation : (2004) 1 CHN 280 : 108 CWN 717

Hon'ble Judges : Joytosh Banerjee, J;Aloke Chakrabarti, J

Bench : Division Bench

Advocate : Biswajit Das, Krishna Nanda Mukherjee, Saktinath Mukherjee, Jaydeep Kar, Debasish Kundu, N. Mishra and Vishan Jain, for the Appellant;S.P. Sarkar, Raja Basu Chowdhury and Sanjoy Bose for the respondent Nos. 6 and 7 and A.C. Moitra and Aniruddha Bagohi, for the Respondent

Judgement

Aloke Chakrabarti, J.—This writ petition was heard along with WPLRT No. 309 of 2002 as in both writ petitions the self-same judgment of the West Bengal Land Reforms and Tenancy Tribunal was under challenge.

2. The respondent No. 6 is a school established by the members of the Jewish community for imparting education to their children. By an indenture dated March 27, 1912 a trust was created by the then members of the managing committee of the school appointing three members of the said community as trustees of the trust. The trust subsequently by a deed of trust dated June 16, 1916 appointed the Official Trustee of West Bengal as the trustee of the said trust for managing its affairs.

3. By a registered indenture dated November 17, 1938 the trust purchased 76 Bighas 17 Cottahs of land at Mouza-Ariadaha, Kamarhati which was popularly known as Ezra Arakie Park (hereinafter referred to as PARK).

4. On June 2, 1950, the Official Trustee demised the rear portion of the PARK

comprising of an area of 40 Bighas by a deed of lease in favour of one B.M. Singh & Sons for 51 years having an option clause for renewal of lease for a further period of 51 years.

5. The said B.M. Singh & Sons by an indenture dated March 14, 1951 assigned their unexpired term of leash hold interest in favour of Beni Engineering Works Ltd. and the same was confirmed by the Official Trustee. The said Beni Engineering Works Ltd. subsequently came to be known as Beni Ltd.

6. The balance front portion of the PARK having an area of 36 Bighas 17 Cottahs of land was let out to Beni Ltd. by the Official Trustee on a monthly tenancy with effect from June 1, 1950 on the terms and conditions contained in letter dated May 29, 1950 and for a period of one year with option to continue for a further period of one year or to terminate it earlier upon serving one month''s notice.

7. Beni Ltd. constructed its factory premises in the said PARK and by a letter dated November 25, 1954 created a license in favour of one Ramanlal Madanlal in respect of 36 Bighas 17 Cottahs in the PARK.

8. Official Trustee filed Title Suit No. 71 of 1960 for eviction of Ramanlal Madanlal as well as Beni Ltd. from the suit premises covering 36 Bighas 17 Cottahs on the ground of subletting. The suit was dismissed on contest on February 28, 1972 on the ground the notice was defective. The Official Trustee filed Title Appeal No. 429 of 1972 which was allowed and the cross-appeal filed by Beni Ltd. was rejected. The Title Suit itself was decreed thereby. Ramanlal Madanlal filed a Second Appeal before this Court which was admitted and the operation of the impugned decree was stayed and the said appeal remain pending.

9. On November 17, 1992 Beni Ltd. went into liquidation in a winding up proceeding and the Official Liquidator took over possession of the assets. The Official Liquidator thereafter sold the property in a sale held in open Court wherein offer of the petitioner No. 1 company for Rs. 1.57 crores was accepted in open bid. The said sale was confirmed in favour of the petitioner No. 1 and the petitioner has already paid the entire consideration.

10. Before requisite conveyance could be executed following the said sale, the school and its authorities filed an application being C.A. No. 62 of 1999 praying, inter alia, for a direction on the Official Liquidator to hand over the possession of the said premises to the Official Trustee and for cancellation of the sale. During pendency of the said proceeding, the petitioner company received a notice dated April 30, 1999 issued by the State of West Bengal inviting objection" in writing against the proposed decision of the State Government to resume an area of 24.25 acres of land being surplus to the requirement of the company, namely, Beni Ltd. (in liquidation). The petitioner No. 1 was also invited to appear in hearing on 11th June, 1999.

11. By letter dated 12th June, 1999, petitioners informed the concerned authority that the petitioners had purchased the land in a Court sale free from all

encumbrances though the question of ownership of the land is subjudice in a pending company application.

12. The petitioner company was served with orders dated 30th August, 1999 and 10th September, 1999 respectively informing the petitioner company that as the State Government considering all facts and circumstances was satisfied and the Governor exercised the power conferred u/s 6(3) of the West Bengal Estates Acquisition Act, 1953, the said land with an area of 24.25 acres was resumed and the said order was passed in a proceeding wherein the said Beni Ltd. (in liquidation) was unrepresented. The petitioners were directed to give up possession of the said land by 14th September, 1999.

13. Being aggrieved the petitioner filed application before this Court being C.A. No. 568 of 1999 u/s 446 of the Companies Act, 1956 whereupon a learned Judge of this Court on 13th September, 1999 directed maintenance of status quo initially for a short period which by subsequent order was directed to be continued till disposal of the said application. The said application is still pending.

14. The respondent No. 6 being the school filed an application before the West Bengal Land Reforms And Tenancy Tribunal challenging the said orders dated 30th August, 1999 and 10th September, 1999 which was numbered as O.A. No. 257 of 2001. The petitioners filed their affidavit in the said proceeding and the State Government also contested the same by filing affidavit. Another application was filed against the same order giving rise to O.A. No. 2731 of 2001. Ultimately upon hearing, bothe(sic) said proceedings were decided by one judgment and order dated January 30, 2002 holding that the records-of-rights in respect of disputed 76 Bighas 14 Cottahs is erroneous and the said land was recorded in the name of Beni Ltd. (in liquidation). By the said order, the orders passed in the proceeding being No. 6 of 1997 u/s 44(2a) of the West Bengal Estates Acquisition Act, so far it related to 36 Bighas 14 Cottahs was quashed. The order of the State Government u/s 6(3) vesting 24.25 acres of land was also quashed giving further direction to decide question with regard to 11.25 acres afresh in the same proceeding after giving opportunity of hearing and expressing that orders u/s 6(3) should be made thereafter. Challenging the said judgment and order dated January 30, 2002, this writ petition was filed. The school and its Secretary filed writ petition being W.P.L.R.T. No. 309 of 2002 challenging the same judgment and order.

15. Heard Mr. Saktinath Mukherjee, learned counsel for the petitioners, Mr. S.P. Sarkar, learned counsel for the respondent nos. 6 and 7 being the school and its Secretary and Mr. Moitra, learned counsel for the State authorities. The Official Liquidator and Official Trustee were also represented at the time of hearing.

16. The contention of the petitioners is that the notice to resume land on the ground that the said land is not required by the company, is itself bad as on the said ground the Government is not entitled to resume the land if the land was allowed to be retained by the company within the prescribed ceiling. It is stated

that therefore, before issuance of such notice, it is the first duty of the respondent to assess whether the total lands of the company, on the relevant date, was within prescribed ceiling taking into consideration the total area of lands held by each member of the company on the said relevant date. In the present case, it is argued, as there was no finding that members of the company were holding lands beyond the prescribed ceiling on the relevant date of vesting, the proceeding cannot be allowed to be continued any further and the notice itself is required to be quashed.

17. Learned counsel relied on Section 4 of the West Bengal Estates Acquisition Act for showing that the interest of the intermediaries were vested in the Government on 1st Baisakh, 1361 B.S. corresponding to 14th April, 1955 and the interest of the raiyats and under-raiyats were vested in the State of West Bengal with effect from 1st Baisakh, 1362 B.S. corresponding to 14th April, 1956.

18. Learned counsel also referred to Section 6 of the said Act particularly its Clauses (a), (b) and (g) of Sub-section (1) and also Sub-section (3) thereof in support of his aforesaid contention.

19. In support of such contention, learned counsel for the petitioners further referred to the West Bengal Land Reforms Act, 1955 and in particular Section 3, Section 14J and Section 14Z of the said Act for showing the overriding effect of the provisions of West Bengal Land Reforms Act as also of Chapter-IIB of the said Act. Section 14Z was relied on for showing that the law recognises the principle that the Government can resume excess land only if originally the company was allowed to retain land beyond prescribed ceiling taking into consideration the land of each member of the company. It is argued that Section 14Z is a declaratory law and therefore, has to be read as retrospective in nature. It is also contended that the West Bengal Estates Acquisition Act is relating to vesting of the land on enforcement of the Act itself and the law applicable subsequent to such vesting is the West Bengal Land Reforms Act.

20. Law was also referred to as decided in the case of State of West Bengal and Others Vs. Karan Singh Binayak and Others, as also the unreported judgment of a learned Single Judge of this Court in C.R. No. 146 of 1997 in C.P. No. 646 of 1983 decided on 17th November, 1998.

21. It is also contended on behalf of the petitioners that the Tribunal has not also taken into consideration as to whether originally land was allowed to be retained by the company within ceiling or beyond prescribed ceiling. Argument was also advanced with regard to extent or prescribed ceiling as contained in various provisions of the said relevant Acts.

22. Mr. Sarkar, learned counsel for the respondent Nos. 6 and 7 contended that his client has also preferred WPLRT No. 309 of 2002 challenging the selfsame judgment of the Tribunal. But the contention of the said respondent Nos. 6 and 7 are in respect of the rights claimed by the present petitioner company and the said Beni Ltd. (in liquidation). Mr. Sarkar contended that the dispute between the

school authorities and the present petitioner and its predecessor-in-interest being Beni Ltd. (in liquidation) are subject-matter of various pending proceedings wherein the transaction in favour of either Beni Ltd. (in liquidation) or the present petitioner company are under challenge and therefore, in this proceeding though the order of the Tribunal should be interfered with but the disputes between the respondent Nos. 6 and 7 and the present petitioner company or its predecessor-in-interest being Beni Ltd. (in liquidation), may be left open. Same argument has been advanced by Mr. Sarkar in respect of possession of the property which is also alleged to be in dispute.

23. Learned counsel for the State respondents reiterated the stand of the Government as recorded in the impugned judgment.

24. Considering the aforesaid contentions and perusing the materials on record as also the law cited by the respective parties, I find that the West Bengal Estates Acquisition Act was enforced and thereunder interest of the intermediaries vested in the State with effect from the 1st Baisakh, 1361 B.S. corresponding to 14th April, 1955 and the interest of raiyat and under-raiyat vested in the State on and from the 1st Baisakh, 1362 B.S. corresponding to 14th April, 1956. The law in this regard shows that by the said West Bengal Estates Acquisition Act, 1953 vesting was effected on and from the date indicated. After such vesting such properties are to be governed by the provisions of the West Bengal Land Reforms Act, 1955 which has also been amended from time to time.

25. The judgment in the case of Karan Singh Vinayak (supra) and the relevant portion thereof is as follows:--

"It cannot be said that Section 6(1)(b) would not apply to a composite lease of lands and that of buildings and structures. A bare plain reading does not suggest it. Section 6(1)(b) permits the intermediary to retain the land when it is appertaining to building and structure owned by the intermediary. The section does not contemplate that when building and structure is leased out, the owner will not be entitled to retain land appurtenant to such building and structure which was leased with land. It is pertinent to bear in mind that in Clause (b) of Sub-section (1) of Section 6 khas possession has not been mentioned whereas it is so in certain other clauses of Section 6(1). Where it was intended that actual possession should be with the intermediary, it was. said so specifically. Section 6(1)(b) only means that where building and structure is not owned by intermediary or any person holding under him by leave or licence, he would not be entitled to retain land comprised in or appertaining to such building or structure. In other words, it means that when building and structure is owned by the intermediary even though tenanted, he would be entitled to land comprised in or appertaining thereof."

26. Section 6(3) of the West Bengal Estates Acquisition Act, 1953 provides as follows:--

"(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.

Explanation.--The expression ''land held under a lease'' includes any land held directly under the State under a lease.

Exception.--In the case of land allowed to be retained by an intermediary or lessee in respect of a tea garden, such land may include any land comprised in a forest if, in the opinion of the State Government, the land comprised in a forest is required for the tea garden."

27. With effect from the date of introduction of the said Act, the entire land vested in State of West Bengal permitting the raiyat to retain lands upto a prescribed limit. In respect of land comprised in mill, factory or workshop the. intermediaries or the lessee, as the case may be, were made entitled to retain only so much of such land as in the opinion of the State Government is required for the mill, factory or workshop, as the case may be.

28. Proviso to the said Sub-section (3) entitled the State Government to review the circumstances of the case and after giving the intermediaries an opportunity of being heard, revise any order made under the said Sub-section (3) specifying the land which the intermediaries or the lessee shall be entitled to retain as being required by him for the mill, factory or workshop, as the case may be.

29. The said law contained in sub-section (3) did not take away the rights of the individual to retain lands upto a ceiling prescribed in earlier sub-sections of Section 6 nor it gives right to State Government to resume any portion of the land an intermediary or a lessee entitled to hold within prescribed ceiling. Therefore, this sub-section has to be read as permitting the State Government to resume land on the ground that the land was required by the mill, factory or workshop only when mill, factory or workshop at the initial stage of vesting of the land in the State was allowed to retain an area more than the area the intermediary or the lessee was entitled to retain under the ordinary law.

30. Similar is the position as regards Section 14Z of the West Bengal Land Reforms Act, 1955 Sub-section (2) whereof contains provision substantially similar to that of Section 6(3) of the West Bengal Estates Acquisition Act.

31. This aspect was considered by a learned single Judge in an unreported judgment relied on by the learned counsel for the petitioner as decided on 17th November, 1998 in C.A. No. 146 of 1997 in C.P. No. 646 of 1983 (Champdani Industries Ltd. v. Official Liquidator, High Court, Calcutta and Ors.) and the relevant extract thereof is as follows:--

"That the legislature intended that there should be a distinction between raiyats and direct tenants under the State Government, such as those holding lands as lessees, is apparent from the language of Section 14Z itself, despite the definition of ''raiyat'' in Clause (1) of Section 2 of the 1955 Act, whereas raiyat has been defined to mean a person or institution holding land for any purpose whatsoever. By virtue of such definition, a lessee under the State Government should ordinarily have been designated as a raiyat, but in Section 14Z a raiyat and a lessee have been referred to as two separate entitles, but they have been treated on the same footing in the matter of retention of lands, both .... with the prescribed ceiling and in excess thereof.

Although, the provisions of Section 142 of the 1955 Act are almost similar to the provisions of Section 6(3) of the 1953 Act, and the objects sought to be achieved are also similar, one major difference has been introduced in Section 14Z. While Section 6(3) of the 1953 Act did not refer to any prescribed ceiling, since no ceiling was contemplated either in Section 6(1)(g) or Section 6(2) thereof, Section 14Z of the 1955 Act provides for the State Government to decide as to whether a lessee, holding land in excess of the prescribed ceiling, would be entitled to retain the excess land, if in the opinion of the State Government, the same was required, inter alia, for the purpose of a mill, factory or workshop. The presumption is that a lessee would be entitled to hold lands for the purpose of a mill, factory or workshop within the ceiling limit, but in respect of any land held by the lessee in excess of the ceiling limit, the State Government could grant exemption if it was of the view that such excess land was required by the mill, factory or workshop.

This is also the fall-out of the amended definition of ''land'' in clause(7) of Section 2 of the 1955 Act.

In the present case the lands held by the company(in liquidation) were below the ceiling prescribed in the 1955 Act and license Section 14Z was given retrospective operation from 7th August, 1969, the inevitable conclusion is that the company (in liquidation) became entitled, as a matter of right, to hold the lands in question within the prescribed ceiling, but in respect of any land held in excess, the State Government continued to be vested with the power to decide as to whether the tenant would be entitled to retain such excess land upon relaxation of the prescribed ceiling.

The impugned order of resumption was made on 21st August, 1996, purportedly under the proviso to Section 6(3) of the 1953 Act, although, the provisions of Section 14Z of the 1955 Act had become operative on and from 7th August,

1969. The impugned order must be held to be misconceived on such score as well since after final determination of the quantum of lands which the company (in liquidation) was allowed to retain u/s 6(3) of the 1953 Act, the said lands came to be governed by the provisions of the 1955 Act and more particularly Section 14Z thereof. The provisions of Section 6(3) of the 1953 Act came to be replaced by the provisions of Section 14Z of the 1955 Act in 1981 with retrospective effect from 7th August, 1969, and the exercise of such power under the proviso to Section 6(3) of the 1953 Act thereafter cannot be sustained."

32. Agreeing with the above view, I also find that the provision of Section 6(3) of the West Bengal Estates Acquisition Act was applicable at the initial stage but after introduction of a similar provisions in Section 14Z of the West Bengal Land Reforms Act, such power could be exercised only under such law contained in Section 14Z.

33. Moreover, such power u/s 14Z can be exercised only if the concerned raiyat or lessee is holding land beyond the prescribed ceiling as it was required for the mill, factory or workshop.

34. In view of the aforesaid findings and no other question having been raised by any party, the writ petition succeeds and the impugned direction for further proceeding in the impugned order is hereby quashed. But I make it clear that the appropriate authority is entitled to take appropriate action in respect of any proposed resumption of land in accordance with law upheld hereinabove after coming to necessary finding as regards facts including the fact that the land has been allowed to be retained beyond the prescribed ceiling. Necessary notices of the proceeding are to be served on all persons entitled to such notice being interested in the disputed lands.

Joytosh Banerjee, J.

35. I agree.

