
(1958) 12 CAL CK 0026
In the Calcutta High Court
Case No : Civil Revn. Case No. 2725 of 1957

Sakti Pada Roy

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 09-12-1958

Acts Referred:

Constitution of India, 1950 — Article 31(2), 31A
West Bengal Estates Acquisition (Second Amendment) Act, 1957 — Section 3, 4
West Bengal Estates Acquisition Act, 1953 — Section 5, 6(4)

Citation : AIR 1959 Cal 316

Hon'ble Judges : D.N. Sinha, J

Bench : Single Bench

Advocate : Tarak Nath Roy, for the Appellant; J. Majumdar and P.K. Banerjee, for Nos. 1 to 6, for the Respondent

Judgement

D.N. Sinha, J.—It is alleged in the petition that the respondents Nos. 7, 8 and 9, by a registered deed of sale dated 14th September 1951 (corresponding to 30th Falgun, 1357B. S.), sold to the petitioner certain types of standing timber, fuel wood and trees in the jungle Asnasuli, Touzi No. 82, mahal Behala, Revenue survey No. 8499, khatian No. 4, plot No. 1, extending Over an area of 162. 74 acres. A copy of the deed is annexed to the petition and marked with the letter "A". It appears to me that the deed gave the power to the petitioner to enter the forest, to cut certain standing shall and other trees for fuel-wood, within a period of six years, viz., from the Bengali year 1360 to 1365 B. S. It is expressly stated therein that within that period all wood that would be grown in the forest, fit to be used as fuel wood, may be cut by the petitioner. Under the Bengal Private Forest Act (XIV of 1948), wood could only be cut and taken away according to a working plan prepared in accordance with the provisions of the Act, and that is what was being done. In 1954, the West Ben gal Estates Acquisition Act, 1953 (Act I of 1954) came into operation. The State save notice of acquisition, and when the petitioner asked for leave to enter the forest and cut timber, such leave was refused. Hence this application.

2. The application is really based on a decision of mine, *Ajit Kumar Bagchi Vs. State of West Bengal and Others*, . In that case also, the petitioner entered into an agreement with, the owners of a private forest for cutting wood there in for the purposes of fuel. Upon an interpretation of the document in that case, I held that the petitioner therein had contracted to purchase a lot of wood, that is to say, moveable property, and the property therein had passed, although a time limit had been imposed during which the wood would be cut and removed. As the West Bengal Estates Acquisition Act, 1953 stood at the time when that decision, was given, the right to standing timber in a forest, or to the produce thereof, was not expressly vested in the State. In other words, although forests were directed to be vested in the State, yet the produce thereof, considered separately from the forest, did not vest. By the West Bengal Estates Acquisition Act (2nd Amendment) Act, 1957 (West Bengal Act XXV of 1957) this position has been altered. The relevant provision of this amending Act, which is applicable to the facts of this case is Section 3(b), which runs as follows :

"In Section 5 of the said Act:

(a)

(b) after Clause (a), the following clause shall be, inserted and be deemed always to have been inserted, namely :

"(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".

3. As I have held in *Bhutnath Garai Vs. Divisional Forest Officer, Midnapore and Others*, , the foundation of *Ajit Kumar Bagchi Vs. State of West Bengal and Others*, has vanished, because the amending Act makes all trees in a forest and forest produce vest in the State. In this application, the learned Advocate for the petitioner contends that he will take certain new points which have not been considered by me in *Bhutnath Garai's* case 62 Cal 610 (supra). The points that he has formulated are as follows: He says that the right that his client has got under the deed above-mentioned, is not a right to immovable property, and cannot be considered as land or interest in land. It is contended, therefore, that this interest cannot vest in Government, because it is neither an estate, nor a right in an estate, Also it is said that it cannot come within, the provisions of Section 4(b) of the Amending Act, which runs as follows :

"(4) In Section 6 of the said Act,

(a)

(b) after Sub-section (3), the following sub-sections shall be inserted and be deemed always to have been inserted, namely :

"(4) In the case of lands comprised in a forest and held by a person other than

an intermediary which vest in the State, such person shall, for the purpose of assessment of compensation, be deemed to be an intermediary".

4. If this provision applies, then indeed the Act has provided for payments of compensation to the petitioner who is admittedly not an intermediary. If it does not apply, then it is argued that the matter comes under Article 31(2) of the Constitution and as the property of the petitioner is being compulsorily acquired without payment of compensation, therefore it is void. Certain arguments were advanced also on Article 31A, but it is difficult to see how that article comes into the picture. It is said that if it is covered by Article 31A then the question of compensation could not be agitated, but the petitioner is not hit by it because Article 31A is not retrospective and the 4th amendment, which came into operation in 1953, cannot affect the West Bengal Act I of 1954, which was enacted earlier. This argument suffers from a number of defects, firstly, the learned Advocate has overlooked the first amendment (Act of 1951). Under that Act, which came into operation in 1951, Article 31A provided that acquisition of any estate or a right in an estate cannot be challenged on the ground of compensation. In fact, the first amendment was much more drastic than the 4th amendment, which is only confined to the Articles 14, 19 and 31. Reference is next made to a Supreme Court decision *Bombay Dyeing and Manufacturing Co. Ltd. Vs. The State of Bombay and Others*, . In my opinion, this argument also is misconceived. In that Supreme Court decision, Article 31A was not being considered at all. That case dealt with the Bombay Labour Welfare Fund Act (Bombay Act XL of 1953). Under that Act, a fund was constituted, known as the Bombay Labour Welfare Fund, which, inter alia, provided that all unpaid accumulations and/or fines realised from the employees would vest in, and be held for the purpose of the Act by a Board of Trustees, and subject to its provision. It was urged by the employer that this was acquisition by the State without the payment of compensation. Money was of course neither land, nor interest in land, and could not conceivably come under Article 31A. The whole point was whether the Act was hit by Article 31(2) and whether it was saved by Article 31(2A). It was on this point that it was held that if it was hit by Article 31(2), it could not be saved by Article 31(2A), because Article 31(2A) was not retrospective in operation. It was held however, that Article 31(2) did apply, and certain provisions of the Act which dealt with the unpaid accumulations were declared to be ultra vires and void, because the Bombay Act did not provide for payment of any compensation. In my opinion, that does not assist us in this case, unless of course the petitioner could bring the case under Article 31(2).

5. The learned Advocate for the petitioner ultimately tried his best to bring this case under that provision of the Constitution. His endeavour was to prove that the interest of the petitioner was neither an estate, nor an interest in any estate, and was not land or interest in land. In fact, according to him, it is not an interest in any immovable property at all. On this question a comparison with *Ajit Kumar Bagchi Vs. State of West Bengal and Others*, is of no assistance. The case depended on its own facts. So far as I can see, the facts of this case are almost

indistinguishable from the case of *Shantabai Vs. State of Bombay and Others*, . In that case, the petitioner took a lease, whereby she got the right to enter into a certain forest & to cut the wood therein, within a certain period. After the execution of the lease, the Madhya Pradesh Abolition of Proprietary Rights Act 1953 came into force in Jan. 1951. Under that Act, all proprietary rights in land vested in the State. The State refused permission to the petitioner therein to enter the land or cut trees therein any longer. Thereupon, the petitioner applied to the Supreme Court under Article 32 of the Constitution. Naturally, the nature of the interest of the petitioner therein came up for consideration, and the deed had to be interpreted. The deed in that case was an unregistered deed, The majority of the Judges including the learned Chief Justice held that it was not necessary to lay down definitely as to the exact nature of the petitioner's rights, because it was held that a registered deed was necessary and in the absence of such a deed, there was no interest which could prevail against that of the State. Vivian Bose, J., however, went into the question in some detail and interpreted the documents. According to him, the documents conferred merely a right to enter upon the land in order to cut down certain kinds of trees and to carry away the wood. It was, therefore, a licence coupled with a grant. The learned Judge held that it was not a mere sale of the trees as wood and therefore, was a sale of an interest in an immovable property, and required registration. As there was no registration, no title or interest passed, and there was no enforceable right. I do not see any distinction between *Shantabai Vs. State of Bombay and Others*, and the facts and circumstances of the pre sent case. Here also, what was granted by the deed was a right to enter the forest and to cut trees in future. The statement of the law by Bose, J., appears to be applicable directly, and the interest must be considered to be an interest in immovable property or arising therefrom. From that point of view, it would come within the provisions of Section 4(b) of the Amending Act. In fact, Mr. Majumdar, appearing on behalf of the State has himself pointed this out and says that the law has laid down provisions for payment of compensation to the petitioner and Article 31(2) has not been infringed. Since the right of the petitioner is a right in immovable property, the matter would also come within Article 31A and, therefore, even if no compensation was provided, this Court would be powerless to intervene. However, as I have pointed out above, the State has declared that it does not intend to deprive the petitioner of compensation and this is the utmost that the petitioner can hope to achieve in this application,

6. For the reasons given above, this application must fail.

7. The Rule is discharged. Interim orders, if any, are vacated.

8. There will be no order as to costs.

9. The operation of this order will remain in abeyance for three weeks from date in order to enable the petitioner to prefer an appeal, as prayed for.