
(2006) 10 GAU CK 0016
In the Gauhati High Court

State of Tripura

APPELLANT

Vs

Pannalal Ghosh and Others

RESPONDENT

Date of Decision : 31-10-2006

Acts Referred:

Tripura Land Revenue and Land Reforms Act, 1960 — Section 11(3)

Citation : (2007) 1 GLT 608

Hon'ble Judges : R.B. Misra, J;A.B. Pal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A B. Pal, J.—This writ appeal has arisen from the judgment dated 16.03.01 in W.P. (C) No. 394 of 2000 passed by a learned Single Judge of this Court. By that judgment the writ petition by the respondents herein was allowed directing the State respondent to appoint an Arbitrator to decide the compensation admissible for the acquisition of lands as required by Clause (b) of Sub-section (3) of Section 29 of the West Bengal Security Act, 1950 (for short, the Security Act) as extended to the State of Tripura. Aggrieved, the State respondent has preferred the present appeal.

2. The short fact leading to the writ proceeding is as under:

(i) On 04.05.1951, the State Government by an order u/s 29 of the Security Act requisitioned 80 acres of land appertaining to the Taluk (kharija) of one Akhil Chandra Ghosh within mouja Ratiabari. The nature of the lands were described as fallow and jungle. It was provided in the said order that the owners and occupiers of the lands requisitioned may file their claims for compensation before the Secretary, Revenue Department, Government of Tripura by 25.05.1951.

(ii) Akhil Chandra Ghosh died in 1964. Admittedly, he never made any claim for compensation during his life time. Before his death, in 1960 the Tripura Land Revenue and Land Reforms Act (for short, TLR & LR Act) came into force with effect from 14.11.1961. Section 134(1) of that Act provides that all right, title

and interest of every intermediary (Talukdar etc.) in all estates notified in Official gazette shall vest in the State Government for all encumbrances. Such notification in respect of the aforesaid estate of Akhil Chandra Ghosh was issued on 15.02.1963 vesting thereby the intermediary rights of Akhil Chandra Ghosh in Government. After such vesting, the record of rights was prepared during the survey operation in respect of the requisitioned lands showing the State Government in the Rehabilitation Department as owner thereof.

(iii) In 1981, after a long lapse of more than 30 years from the date of requisition, the legal heirs of Akhil Chandra Ghosh filed a petition u/s 11(3) of the TLR & LR Act before the Revenue Court for correction of the record of rights in respect of the requisitioned land in their names which was registered as Revenue case No. 252 of 81. The decision of the Revenue Court went against the said legal heirs by virtue of an order dated 20.08.1981.

(iv) Aggrieved, they filed Title suit No. 4 of 1986 after about 5 years u/s 11(4) of the TLR & LR Act which mandates that any person aggrieved by an order u/s 11(3) may institute a civil suit to contest the order within a period of six months from the date of such order. However, though there is no provision to condone any delay in filing a suit, the trial Court entertained the suit and decreed the same. In the face of Section 44(2) of the TLR & LR Act which provides that no Civil Court shall entertain any suit or application concerning any land if it relates to alteration of any entry in the record of rights finally published, revised, corrected or modified under any of the provisions contained in Chapter V or Chapter VIII of the Act consequent upon the notification issued u/s 26 after the enforcement of the Tripura Land Revenue and Land Reforms (Fifth Amendment) Act, 1979. The decree of the learned trial Court included a direction to the State Government to appoint an Arbitrator within two months from the date of decree u/s 29(3)(b) of the Security Act.

(v) Aggrieved, the State Government preferred an appeal registered as Title Appeal No. 8 of 90 in the Court of District Judge, Kailashahar which was dismissed.

(vi) The State Government then preferred Second Appeal No. 4 of 93 which was disposed of by this Court on 30.05.97 setting aside and quashing the decree of the trial Court as affirmed by the first appellate Court. At the end of the judgment, after allowing the second appeal, this Court made following observation:

This judgment and order shall not stand on the way of the plaintiffs/respondents to approach the competent authority for compensation, if so advised. It is also further made clear that the competent authority shall dispose of the matter if approached by the plaintiffs/respondents, in accordance with law.

(vii) The legal heirs of Akhil Chandra Ghosh challenged the said judgment and order of this Court in an SLP being SLP(C) No. 18827 of 97 which was dismissed on 31.08.1998 with the following order:

In view of the observations made and directions given in the last paragraph of the judgment of the High Court, we do not think it fit to entertain this special leave petition. It is, therefore, dismissed.

3. The long journey which commenced in 1981 thus came to an end 31.08.1998 with the legal proceeding receiving a finality in the second appeal. Regarding right, title and interest of late Akhil Chandra Ghosh or his legal heirs in the requisitioned lands, this Court in the said Second Appeal made following observations:

I have perused the order dated 20.08.1981 by the competent authority. On careful perusal of the available materials on record, it has been revealed that Ext-2 documents and deposition of Akhil Chandra Ghosh in Title Suit No. 50 of 58 established the fact that he had no land in Pabiacherra and that he did not approach the competent authority within 20 days for compensation as per notification under West Bengal Security Act, u/s 29(1) of the Act.

However, availing the liberty given to the legal heirs to approach the competent authority for compensation, the legal heirs submitted a prayer to the official respondents concerned seeking a reference to the Arbitrator by a petition dated 29.07.1999. The Chief Secretary of the State Government transmitted the petition to the under Secretary of the Government who by order dated 01.07.2000 dismissed the petition mainly on the ground that as per observation of this Court in the Second Appeal there was no land in Pabiacherra mouja owned by Akhil Chandra Ghosh and, therefore, the question of appointment of an Arbitrator did not arise. Aggrieved by the said order of the Under Secretary, Revenue Department, the legal heirs of Akhil Chandra Ghosh preferred the instant writ petition which has been disposed of with a direction to the respondent to appoint an Arbitrator pursuant to Clause (b) of Sub-section (3) of Section 29 of the Security Act.

4. In this writ appeal by the State the judgment and order of the learned Single judge has been called in question mainly on the ground that after an unambiguous decision by this Court in the said Second Appeal that Akhil Chandra Ghosh had no land in the said mouja, the question of appointing an Arbitrator to assess compensation for the requisitioned lands in favour of the legal heirs of Akhil Chandra Ghosh does not arise and, therefore, the direction to appoint an Arbitrator given by the learned Single Judge is erroneous, perverse and unsustainable in law.

5. We have heard Mr. S. Chakraborty, learned Counsel for the appellant-State and Mr. D. K. Biswas, learned Counsel for the respondents.

6. The limited question for consideration in this appeal is whether the Under Secretary of the Revenue Department is the competent authority to decide that no Arbitrator need be appointed pursuant to the direction of this Court in the aforementioned Second Appeal which has been affirmed by the Apex Court.

7. Assuming that Akhil Chandra Ghosh was the intermediary of the lands requisitioned, as clearly mentioned in the order of requisition dated 04.05.1951, it would be seen that he made no claim for compensation during his life time of about 14 years after the order of requisition was issued. The time limit for filing claims for compensation given in the said order was only 20 days. Learned. Single Judge held that such a time limit in the said order was arbitrary as the Security Act contemplates no such provision.

We have noticed that under Sub-section (3) of Section 29 of the Security Act, the State Government shall pay compensation for any property requisitioned which can be fixed by agreement or where no agreement can be reached, then by appointing an Arbitrator. According to the proviso to that sub-section in case of immovable property, the Arbitrator shall be a District Judge or an Additional District Judge.

8. This being the legal position that only a District Judge or an Additional District Judge can be the Arbitrator to decide the compensation in respect of the immovable property requisitioned under the said Act, it is to be seen whether the direction of this Court in the aforementioned Second Appeal as affirmed by the Apex Court was complied with when the legal heirs of Akhil Chandra Ghosh approached the State Government for appointment of an Arbitrator. In the first place, the appointment of the Under Secretary to decide the question of compensation is not in terms of the proviso to Sub-section (3) of Section 29 of the Security Act. Secondly, whether in view of the observation of this Court in the second appeal that Akhil Chandra Ghosh had no property in mouja pabiacherra, the legal heirs are at all entitled to any compensation, such a question cannot be decided by any authority other than the Arbitrator to be appointed by the State Government. It is not open to the State Government to decide whether appointment of an Arbitrator is at all called for, after the direction of this Court in the Second Appeal to appoint an Arbitrator, if approached by the legal heirs of late Akhil Chandra Ghosh, has received finality in the Special Leave Petition.

9. In view of the above, this writ appeal has no merit and the same is accordingly dismissed. The direction of the learned Single Judge in the judgment impugned is hereby affirmed. The State respondent shall appoint an Arbitrator who must be a District Judge or an Additional District Judge in consultation with the High Court to decide the question whether for the period of requisition between 04.05.1951 when the order of requisition was passed and 15.04.1963 when the intermediary right came to be vested with the State Government, Akhil Chandra Ghosh or his legal heirs were entitled to any compensation. Needless to say, such decision shall depend on the question whether Akhil Chandra Ghosh had any right, title and interest before vesting of the lands requisitioned. The State respondent shall appoint an Arbitrator accordingly within a period of sixty days from today whereafter the Arbitrator shall, after being so appointed, decide the question of compensation within a period of six months from the date of appointment.

10. No cost.