
(1978) 12 CAL CK 0014
In the Calcutta High Court
Case No : C.R. No. 6776 (W) of 1974

Tarapada Hazari and Others

APPELLANT

Vs

Revenue Officer and Others

RESPONDENT

Date of Decision : 05-12-1978

Acts Referred:

Bengal Alluvion and Diluvion Regulations, 1825 — Section 4
West Bengal Land Reforms Act, 1955 — Section 12

Citation : AIR 1979 Cal 102 : 83 CWN 417

Hon'ble Judges : Salil Kumar Datta, J

Bench : Single Bench

Advocate : Muraridas Roy, for the Appellant; Prabir Kumar Samanta, for the Respondent

Judgement

Salil Kumar Datta, J.—This Rule is directed against the order No. 8 dated 26-8-1974 passed in Case No. 33 of 1974 u/s 44(2a) read with Section 57 of the West Bengal Estates Acquisition Act by the Revenue Officer, Tollygunge-I Settlement "C" Camp. The learned Revenue Officer initiated proceedings on 29-7-1974 in respect of finally published record of rights relating khatian No. 415/3 of Mouza Matiary J.L. 94, P.S. Sonarpore as in his view the same was not properly recorded. It appears that in the proceeding the parties appeared before the authority and after hearing the parties, the learned Revenue Officer delivered a judgment directing the lands of Khatian No. 415/3 with an area of 1.18 acres as also another khatian not being the subject-matter of this Rule of the said Mouza which was within the bed of Bidyadhari river be recorded in the name of State Government and the names of the recorded possession be recorded in each agricultural and homestead plot in column 23 as "Bina Anumati Dakhalkar" and the jamas of the connected khatians be revised or cancelled, if found necessary. In this ease, we are concerned with khatian No. 415/3 and dag No. 238/1122 measuring 1.18 acres. It appears that the lands were within the bed of Bidyadhari river in the last district settlement and were outside the Mouza. The river was very big and it was tidal and navigable and the learned Revenue officer

following authorities held that the bed of the river belonged to the Crown before Independence and in 1947 to the State Government. In the revisional settlement In the year 1955-56 these lands were recorded in the name of Tarapada Hazari, Dukhiram Hazari and Biswanath Hazari the petitioners before us under the tenure-holders, Narendra Nath Chakraborty and others with raiyati sthitiban and with dalchali satwa under the State under Rule 4 of West Bengal Estate Acquisition Rules, 1954. The river Bidyadhari, as the Revenue Officer states, began to sink due to silting up from both sides of the river banks and the bed of the river rose to view due to gradual retirement of the river after 1942. Gradually part of the river bed became fit for cultivation and by 1945 the entire river bed became so fit for cultivation. The petitioners trespassed in the suit lands which were silted up and began to cultivate the lands. Thereafter the tenure-holders granted unlawful settlement to the trespassers against considerable selami in the year 1950 or afterwards. No documents were produced from the recorded landlords or tenants' side to prove settlement of the silted up river beds from the Government, and none appeared for Narendra Nath Chakraborty and others. The Revenue Officer was of opinion that the owner of the lands adjacent to this silted up river had no legal right in the nearby formed lands because this case was not one of alluvial accretion defined in Regulation XI of 1825 or in any subsequent case law. The learned Officer further observed:

"The process of alluvial accretion is to be followed up by corresponding encroachment on the opposite bank not necessarily directly opposite while the river itself comprising the bed, the bank, the water, the current the channel on course, the source and the terminus shall remain in complete existence. If the river loses most of those essential characteristics by being silted up, it no longer remains a river and, therefore, the question of alluvial accretion does not arise. In the instant case, it is simply a matter of "Nadibharati" which is fundamentally different from alluvial accretion."

The Revenue Officer has relied on several decisions to show that Government is the proprietor of bed of the navigable rivers of the country and on this point in view of the decisions cited there can be no scope for any dispute. On this ground the Revenue Officer was of opinion that the record of rights finally published was incorrect and should be rectified by recording the names of the Government in respect of the plots referred to above and of the petitioners as being in possession without permission cancelling the khatian if necessary.

2. The petitioners, whose names were recorded in respect of dag No. 238/1122 of khatian 415/3 contended that they had purchased the raiyati lands in 1948 long before the West Bengal Estates Acquisition Act came into force. It was also disputed that the lands were or could be Government khas lands and it was stated that they were in possession thereof for the last 30 years by cultivation with their plough and cattle.

3. The petitioners also referred to original Section 12 of the Land Reforms Act which provided for accession to any holding by recess of river or sea as forming

addition thereto, subject to ceiling. By Section 5 of the West Bengal Land Reforms (Amendment) Act 1965 the above Section 12 was substituted by the new provision though without retrospective effect. It was contended that this section had no application not being retrospective and the petitioners' vendor as well as their lessors became owner of the said accreted land and acquired substantive title to the same. It was further submitted that u/s 4 of the Bengal Alluvion and Dihivion Regulation, 1825 lands gained by gradual accession from the recess of river or sea will be considered an increment to the tenure of the person to whose land or estate it is annexed whether such land is held directly from the Government or other superior landholders or as a subordinate tenure by any description of under-tenant whatever. It is accordingly contended that the order of the Revenue Officer was erroneous in that he did not take into consideration these aspects and the fact that subsequently the entire river became silted up did not alter or affect the right of the petitioners to hold the disputed lands in any way.

4. Mr. Samanta appearing for the State contended, on the other hand, that the bed of the navigable rivers can never be the property of an individual and in view of the change of character of the river by its complete silting up, there can be no question of any accretion u/s 4 of Regn. XI of 1825.

5. The Bengal Alluvion and Diluvion Regulation, 1825 (Bengal Regulation XI of 1825) provides for rules to be observed in determining claim to land gained by alluvion or by dereliction of a river or sea. Section 1 mentions that due to changes in the channel of rivers and shifting of sands in beds of rivers, chars or small islands are thrown up by alluvion in the midst of the stream, or near one of the banks. Large portions of land are carried away by an encroachment of the river on one side while accession of land at about same time or subsequently are gained by dereliction of the water on the opposite side. Similar instances of alluvion, encroachment and dereliction also sometimes occur on the sea coast of Bengal. As the lands gained as aforesaid are a frequent source of contention and affray, the rules for general information and guidance to be in force throughout the whole of the territories subject to the Presidency of Fort William had been enacted under the aforesaid regulation.

6. Section 4 First clause provides for lands gained by gradual accession from the recess of the river or sea and is as follows:--

"4. First-- When land may be gained by actual accession, whether from the recess of a river or of the sea, it shall be considered an increment to the tenure of the person to whose land or estate it is thus annexed, whether such land or estate be held immediately from the Government by a zamindar or other superior landholder, or a subordinate tenure by any description of under-tenant whatever."

7. It was further provided that the increment will not entitle the person in possession of the estate or tenure to a right to property beyond his interest

therein or to exempt him from payment of additional revenue under the Bengal Land Revenue Assessment (Resumed Lands) Regulation, 1819.

8. The Regulation XI of 1825 governed the rights of parties inter se as also of the Government in respect of such lands till its repeal by the West Bengal Land Reforms Act 1955 (hereinafter referred to as L. R. Act) by Section 59, Clause (1). This Act in Section 12 in its original form provided as follows:--

"12. When any land has been gained by gradual accession to any holding whether from the recess of a river or of the sea, it shall form an addition thereto and the raiyat who owns the holding shall be liable to pay such revenue on re-assessment as may be determined by the Revenue Officer."

This section was subject to the proviso providing that the raiyat would be entitled to retain so much of the land which together with his other lands did not exceed twenty five acres excluding homestead and the remainder if any was to vest in the State Government free from encumbrances.

9. Section 12 quoted above was substituted by the new section by West Bengal Land Reforms (Amendment) Act, 1965 (XVIII of 1965) which received the assent of the President having been published in Calcutta Gazette Extraordinary dated July 31, 1965. Both Section 12 and Section 59 were brought into force with effect from November 1, 1965. Thus the original Section 12, not having been brought into force prior to its substitution by the new section, was dead before it could be given effect to and the provisions of the Bengal Regulation XI of 1825 governed the rights of parties till its repeal on November 1, 1965. The rights accrued under the said Regulation could not be taken away as the provisions of the new Section 12 were not made retrospective by express provision or necessary implication.

10. Under the Regulation, the land accruing to the tenure of the erstwhile superior landlords of the petitioners in this case by gradual accession from the recess of the river became an increment to such tenure. As the West Bengal Estates Acquisition Act, 1953, came into operation the interest of the landlords of the petitioners vested in the State with the result that they being raiyats became the raiyats under the State which was so recorded in the finally published record of rights.

11. The Revenue Officer by the impugned judgment as we have seen held that S. 4 of the Regulation had no application in the facts of the case. According to him there was no change of course of the channel of the river but the river itself silted up so that the river bed gradually came up in view and was trespassed upon by the petitioners and others. The case was one of "nadibharati" (filling up of the river) but not one of formation of land by alluvion in the stream. As the river bed of a navigable river is the property of the Government over which there is no dispute, the petitioners acquired no right in such accreted land. The entries in the finally published record of rights were erroneous and accordingly required revision by recording the petitioners as possessors without permission and

cancelling the khatian if necessary and orders were passed accordingly.

12. The preamble of the Regulation XI of 1825 speaks of changes in the channel of the principal rivers and shifting of sands in the bed of the rivers throwing up chars or shall islands by alluvion in the midst of the stream or near one of the banks. It also speaks of large portions of land being carried away by an encroachment of the river on one side while accessions of land are at the same time or in subsequent years, gained by dereliction of the water on the opposite side. Similar instances of alluvion, encroachment and dereliction also sometimes occur on sea coast.

13. Section 4 declares the right of the superior land holder to the increment of land to whose tenure or estate the land is annexed from the recess of the river, and when such accession is gradual and by natural causes and not by human or artificial agency, the provisions of Section 4 of the Regulation become applicable. The increment annexed to the tenure or estate becomes a part of the tenure of estate in the same right subject to condition therein provided as to assessment of revenue for the accretion. The above rule is not to be considered applicable to cases in which a river by a sudden change of its course intersects an estate without any gradual encroachment or violence of the stream separates considerable piece of land from one estate and joins it to another. But no exception has been made when a river itself silts up by natural causes, obviously by change of course at some point in the upstream. All that Section 4 of the Regulation requires is that there should be gradual accession from the recess of a river or of the sea when such accession is to be considered as increment of the tenure or estate to which it is annexed. After vesting of the superior interest such right devolved on the rattyat subject to ceiling but by the amendment of Section 12 of L. R. Act the right accruing after November 1, 1965 was again taken away in favour of the Government. The conception of "Nadibharati" by natural causes in case of gradual accession introduced by the Revenue Officer appears to have no warrant in law and thus cannot be sustained.

14. We have seen that the Regulation XI of 1825 was repealed on November 1, 1965 when the amended Section 12 also came into force. The right already accrued u/s 4 of the Regulation was not expressly or by implication taken away and that is also not the case of the State.

15. In view of this position, I do not think that there was any reason for the Revenue Officer to initiate proceedings suo motu u/s 44(2a) and accordingly the impugned proceedings and order dated 26th August, 1974 in Case No. 33 of 1974 in so far as it relates to khatian No. 415/3, Dag No. 238/1122 must be and is quashed.

16. The Rule is accordingly made absolute. Let appropriate writ issue accordingly. There will be no order for costs.