

(1993) 03 CAL CK 0030

In the Calcutta High Court

Case No : Appeal No. 465 of 1991 and Matter No. 3570 of 1990

The State of West Bengal and Others

APPELLANT

Vs

Arun Kumar Basu and Another

RESPONDENT

Date of Decision : 05-03-1993

Acts Referred:

Companies Act, 1956 — Section 467, 484, 487, 490, 512
Constitution of India, 1950 — Article 162, 256, 300A
Evidence Act, 1872 — Section 63
West Bengal Estates Acquisition Act, 1953 — Section 10, 4, 5, 6
West Bengal Land Reforms (Amendment) Act, 1981 — Section 3A, 3A(1)

Citation : (1993) 2 CALLT 56

Hon'ble Judges : Rabin Bhattacharyya, J;Prabir Kumar Majumdar, J

Bench : Division Bench

Advocate : D.P. Kundu and Gayatri Choudhury, for the Appellant;P.B. Menon and I.P. Mukherjee, for the Respondent

Final Decision : Dismissed

Judgement

Rabin Bhattacharyya, J.—This appeal is directed against the judgment and order passed by Hon''ble Mr. Justice Altamas Kabir in matter No. 3570 of 1990, dated 22.4.91.

2. The sensitive facts of the case under appeal are that by a special resolution of 11.4.1956 the Bengal Provincial Railway Company, after its incorporation under the Companies Act, 1886 commenced its voluntary liquidation for the fatal blow dealt by the activities of the Trade Union. The company could not repair the damage though tried.

3. To wipe out the debts, the liquidators were appointed, with the, passage of time, who were entrusted with the disposal of the assets of the company, both movable and immovable. The liquidator succeeded in disposing of the movable properties of the Company but immovable properties of considerable worth could not be disposed of as it was resisted by the Dist. Magistrate and Collector,

Hooghly by his letter dated March 2, 1967.

4. However, the correspondences passed between the liquidator on one hand and the Government on the other in vain.

5. In the meantime much water had flown into the Ganges and the liquidators explored the avenues to effect sale of the property. But all their attempts registered unsucces. The liquidator sought for redressal of the grievances in court as last resort.

6. The learned Writ Court answered the claim of the writ petitioner in the affirmative and struck-down the letter No. 427/C dated 2.5.1967. The judgment of the court armed the writ petitioner with the right to dispose of the immovable properties contained in the letter aforementioned. The State of West Bengal since aggrieved by the judgment and order, has come up in appeal for reversal of them on various pleas.

Decision

The points for decision in the appeal are : -

(i) the land comprising an area of 30 miles and odd if had vested in the State by the reason of its being on intermediary forfeiting the right to dispose them of;

(ii) the liquidator if has no authority or locus standi to initiate any proceeding in the writ court for the desired objective;

(iii) the land being non-agricultural, if can escape the vesting as it comes within the fold of intermediary;

(iv) the vesting, if statutory, and can suffer any relaxation; and

(v) the notice to surrender possession in favour of the State, if can be postponed to a future date, as its being an act of the parties.

7. Mr. Kundu has intransigently argued here about the import, implication and meaning of Sections 4, 5, 6 and 10 of the West Bengal Estate Acquisition Act with reference to the issue in controversy.

8. In amplifying the first limb of submission, the counsel has urged that the vesting as absolute with the introduction of Section 4 of the West Bengal Estate Acquisition Act, 1953 followed by notification as envisaged therein. To fortify, he has drawn support from the case of the Fruit and Vegetable Merchants Union Vs. Delhi Improvement Trust, The word "Vest" has no fixed connotation meaning in all cases that the property is owned by the person or the authority in whom it vests. There is no quarrel about the proposition. But vesting according to Mr. Menon, the learned Counsel, appearing for the respondent must undergo the procedure provided by the statute. Further, vesting may dominate the field, if it embraces the definition of intermediary. Therefore, intermediary is the condition precedent for vesting. Vesting independent of intermediary is impermissible, thus :

9. To drive home the point, he has canvassed that Section 4 of the West Bengal Estate Acquisition Act is immuned with effect from Baisakh 15, 1362 B.S. It evinces, therefore, that all estates and the rights of every intermediary in each such State situated in any district or part of a district specified in the notification shall vest in the State free from all incumbrances. But the argument can hold the field only when a party comes within the pale of the West Bengal Estate Acquisition Act. It has been sedulously cultivated by Mr. Menon, that vesting is not absolute as it affords a right to an intermediary to retain land within the realm of Section 6 of the West Bengal Estate Acquisition Act 1953.

10. The sections referred to above on perusal attribute to only one and one meaning that the right of the intermediary to retain land within the prescribed limit has not been shapped of.

11. The force of the contention of Mr. Kundu is that, that an intermediary is not armed with the right to retain land even within the prescribed limit until he fulfils his obligation u/s 6 of the West Bengal Estate Acquisition Act, 1953. The obligation, according to him, has not been discharged in the instant case and, therefore, the right of the respondent to retain land does not continue to survive. Mr. Kundu has tried to impress upon us throughout that the company is an intermediary within the meaning of Section 2(i) of the Act, as such, the land had vested in the estate by the reason of failure of the company to retain it.

12. In support of his aforesaid contention, he has relied upon the case of Gour Gopal Mitra and Another Vs. State of West Bengal and Others, .

13. Browsing through the decisions under reference, it affords an irresistible conclusion that the right of an intermediary to retain land has not been forfeited. The right can be exercised even at subsequent stage to exercise an option for retention till possession is not surrendered. But possession according to Mr. Kundu, does not lie with the respondent and the inevitable consequence ensued i.e. that the land had vested in the State. This contention of Mr. Kundu is not borne out by any poignant material on record. On a clear analysis of the materials on record, it reveals that the boot is on the other leg. If we turn for a moment to the affidavit-in-opposition dated 13.9.91 of the respondent, it is notorious from Annexure "B" of the said affidavit that the notice u/s 10(2) of the West Bengal Estate Acquisition Act, 1953 was withdrawn. It does not hold water, therefore, that the respondent lost its possession of the land intended to be sold.

14. Mr. Menon, to repel the contention has argued with much emphasis that the company is not an intermediary liable to be controlled by the provisions of Section 6 of the West Bengal Estate Acquisition Act, 1953. It is a non-agricultural tenant, according to him, which enjoys the immunity from vesting. Mr. Menon placed his reliance on the case of Shibsankar Nandy Vs. Prabartak Sangha and Others, On perusal of the ruling under reference, it stands out that non-agricultural tenant is protected against vesting.

15. In the background of the above, the case of Monoranjana Belthoria v. Dy.

Commissioner 1979(1) CLJ 557 loses its significance. The main thrust of the case of Monoranjan Belthoria (supra) is that the State is not bound by the post vesting transfers. This question would have been vital, had the land of the company vested in the estate.

16. Mr. Kundu, could not enlighten us on the basis of the materials on record that the respondent cannot claim any immunity.

17. On the other hand, Mr. Menon, has placed much reliance on Section 3A of the West Bengal Land Reforms (Amendment) Act, 1981. He tried to make an improvement of the case that Section 3A(1) has been inserted in the West Bengal Land Reforms Act by the West Bengal Land Reforms (Amendment) Act 1981 by which the rights of all non-agricultural tenants and under tenants under the West Bengal Non-agricultural Tenancy Act, 1949 shall vest in the State free from all incumbrances. But Section 3A, according to Mr. Menon, does not date back to 1953 or at the time when the company commenced its voluntary liquidation by a special resolution. Besides, the vesting being an independent provision requires a valid declaration. In absence of valid declaration vesting is not automatic Mr. Menon has cited the case of Ram Kissin Shaw Vs. Lachmonia Debi and Others, to found his claim. There the lordship held that the State cannot wriggle out of its obligation to issue a valid notification u/s 4 of the West Bengal Estate Acquisition Act, 1953. But in the instant case there is no material patent or latent which could fix the respondent with the vesting. The contention, thus, putforward by Mr. Kundu, bears no force.

18. The second limb of submission of Mr. Kundu, is that the writ application filed in the court of the first instance by the liquidator is manifestly illegal inasmuch as the action has not been sanctified by the Companies Act, 1956.

19. In elaborating the issue in controversy, he has laboriously researched in his argument that the application in the Writ Court by the liquidator can not be equated with the institution of a proceeding by the company itself.

20. To undo the writ application, the learned Counsel has referred to Sections 467, 487, 490 and 512 of the Companies Act, 1956. It is true that even after the company commenced its voluntary liquidation, it still retains its corporate power and existence and the proceedings, if any, should be by the Company.

21. Mr. Menon has seriously disputed the correctness of the contentions urged by Mr. Kundu. According to him, Chapter-III of the Companies Act, 1956 is the fountain of power for the liquidator. The provisions as contained in Chapter-III are inpregnable and vulnerability of Chapter-III is beyond the reach of the members or shareholders of the company, if the liquidator fulfils his obligations imposed by Chapter-III of the Act. He has laid much stress on Sections 484, 487, 489 and 512 of the Act to dislodge the claim of Mr. Kundu that liquidator is not the person competent under the Companies Act to initiate action for the beneficial interest of the company and its shareholders and to thwart the action of others which is baneful for the company.

22. The preface to Section 484 lays down the circumstances in which a company may be wound up voluntarily. In the wake of trade union activities in the State, a special resolution was taken by the company to commence voluntary winding up which fairly and squarely falls on the premises of Section 484. The effect of voluntary winding up, as enshrined in Section 487, forfeits the right of the company to carry on its business except so far as may be required for the beneficial winding up of such business although the corporate state and corporate powers still survive until dissolution. But Section 512 of the Act is the reservoir of power for the liquidator where the company commenced its voluntary liquidation.

23. It is noteworthy that the company commenced its voluntary liquidation on the strength of a special resolution following which liquidators were appointed to square up the dues of the company.

24. In the background of the set of facts, the liquidators appointed from time to time took such other and reasonable steps to sell the land of the company which was thwarted by the inhospitable attitude of the respondent. The liquidators were driven from post to pillar and pillar to post. As a last resort to enforce the right of the company with the object of squaring of the dues, the institution of the Writ proceeding does not seem to be bristled with illegalities. The infirmity spoken of by Mr. Kundu is therefore, illusory.

25. In the background of the above, the case of H. P. Jayantilal & Company v. I.T. Officer, Ahmedabad AIR 1966 SC 1481 does not flavour the claim of Mr. Kundu.

26. The case of Eastern Coal Co. Ltd. Vs. Sunil Kumar Roy, also indicates that the petition for amendment of plaint signed by one of the liquidators for himself and on behalf of other liquidators in order to incorporate the fact that the Company was under liquidation, was allowed. It is suggestive of the fact that such filing of the application by the liquidator in the suit was allowed by the Hon"ble Court. Therefore, the contention of Mr. Kundu does not gain any dimension.

27. Mr. Menon in order to gain ground for the competence of the liquidator to initiate action in Court has placed reliance on the case of Eastern Coal Co. Ltd. Vs. Sunil Kumar Roy, . There the petition for amendment signed by one of the liquidators was held to be valid as Section 512 of the Companies Act, 1956 acknowledges the wide power, of the liquidator.

28. Mr. Kundu has tried to squeeze the averments to draw food from there. But technicalities alone could not divest the party of their right to get relief. We can ourselves cite decisions to resolve controversy over this particular issue, though we were detained over it for a long.

29. In the case of S.B. Noronah Vs. Prem Kumari Khanna, the Court observed that technicality is the unfailing resource of an Indian . litigant. Parties win or lose on substantial question not technical tortures and Court cannot be abettors.

30. At the risk of repetition, we cannot but hold that no infirmity lies in the action

of the liquidator. The bone of contention behind the point raised by Mr. Kundu is aimed at to make a mountain out of a mole hill. He should not be lost sight of the fact that technicalities cannot precede the substance.

31. For the foregoing reasons, the contention of Mr. Menon is upheld and that of Mr. Kundu fails.

32. However, Mr. Kundu to salvage the point made a faint attempt that the land had vested in the State of West Bengal. He has put in a Xerox copy of the judgment dated February 28, 1992 delivered by the 2nd Additional District Judge, Burdwan to admit into evidence. We are unable to accept the contention put forth by Mr. Kundu, as Xerox copy is not admissible in evidence. Section 63 of the Evidence Act, 1872 is very much alive. Its aim and object is to prevent admisibility of a document which does not come within the fold of Section 63 of the Evidence Act, 1872.

33. Therefore, the contention of Mr. Kundu does not survive. Last but not the least, Mr. Menon has researched in his argument that the learned Advocate who appeared for the State in the Writ Court made a concession to the claim of the respondents. It is trite saying, a court of law could never be carried away by a concession made by a learned Advocate. The concession made by a learned Advocate without anything more is no concession in the eye of law. All that we are concerned is about the viability of the claim of the respondents as agitated in their application before the Writ Court followed by other affidavits on record. Thus, the contention of Mr. Menon does not hold any water.

34. The last straw on the Camel's back is about the applicability of Articles 162 and 256 of the Constitution of India. But the facts and, law involved in the case do not demonstrate that Articles 162 and 256 have any scope to apply. The learned Writ Court has correctly concluded that it was not necessary to go into the questions relating to violation of Articles 162 and 256 of the Constitution of India. It is proved to the hilt that the state authorities were caught up in deep slumber shortly over two decades in connection with the impugned letter for which correspondences that passed between the parties swelled in number. The directions contained in the said letter could not be kept in abeyance for an indefinite period. Therefore, the View taken by the learned Writ Court is correct that the directions contained in the letter are stricken with arbitrariness. Though, they do not infract the Provision of Article 300A of the Constitution of India yet the directions spoken of very well tread the area as respondents were sufficiently prevented from dealing with properties belonged to the company since 1967. Therefore, from all peak and angle, the case of the appellant is devoid of substance and merit which cannot be cured in the appeal.

35. The learned court has scrutinised the facts and circumstances including the submissions made by the respective parties and there could be no reason to dislodge the conclusion reached by the learned Court below as it is based upon sound reasonings.

36. Thus, the points raised in the appeal are, accordingly, disposed of.

37. In the premises, the facts and circumstances of the case, as mentioned herein before, the appeal stands dismissed. The judgment and order of the learned single Judge are hereby confirmed.

38. In the facts of this case, however, we direct that the party shall bear and pay their own cost.

P.K. Majumdar, J.

39. I agree.