

(2012) 03 CAL CK 0093
In the Calcutta High Court
Case No : W.P.L.R.T. 132 of 2011

The State of West Bengal and Others

APPELLANT

Vs

Star Iron Works Ltd. and Others

RESPONDENT

Date of Decision : 28-03-2012

Acts Referred:

Factories Act, 1948 — Section 2

West Bengal Estates Acquisition Act, 1953 — Section 4, 6(1), 6(2), 6(3), 6(5)

West Bengal Land Reforms Act, 1955 — Section 4, 4C, 5

Citation : AIR 2012 Cal 148 : (2012) 2 CHN 572

Hon'ble Judges : Pranab Kumar Chattopadhyay, J; Mrinal Kanti Sinha, J

Bench : Division Bench

Advocate : Sundarananda Pal, Mr. Tapan Mukherjee and Mr. Bikash Kr. Mukherjee, for the Appellant; Saktinath Mukherjee, Santimoy Panda, Jaharlal De and Mr. B. K. Jain, for the Respondent

Final Decision : Dismissed

Judgement

Pranab Kumar Chattopadhyay, J.—The State of West Bengal and some officers of the State Government have filed the instant writ petition challenging the judgment and order dated 16th March, 2011 passed by the learned West Bengal Land Reforms and Tenancy Tribunal, inter alia declaring that the provisions of Section 6 (3) of the West Bengal Estates Acquisition Act, 1953 are not applicable in the instant case and those of Section 4C of the West Bengal Land Reforms Act are applicable. By the said judgment and order, learned Tribunal directed the petitioners herein to dispose of the application filed by the respondent nos. 1 and 2 for conversion of the lands in question within a period of three months from the date of receipt of the copy of the said order. The respondent nos. 1 and 2 herein filed an application being O.A. No. 1919 of 2010 before the learned Tribunal praying for issuance of the following directions :-

(a) To forthwith process the application of the petitioners for conversation of the said lands for being used as Housing Complex and to communicate the same.

(b) To receive and accept forthwith the land revenue of the land of the petitioners in Mouza Liluah and Mouza Belur for the Bengali Year 1416 and for all subsequent periods.

(c) Other allied or ancillary reliefs.

2. It was alleged before the learned Tribunal on behalf of the respondent nos. 1 and 2 that the prayers for conversion of the lands in question and acceptance of revenue were not being entertained by the concerned authority on the plea that the lands of the aforesaid respondents are liable to be resumed under the provisions of Section 6 (3) of the West Bengal Estates Acquisition Act, 1953.

3. The learned Tribunal by the judgment and order dated 17th August, 2010 disposed of the said application being O.A. 1919 of 2010 by directing the District Land and Land Reforms Officers, Howrah, to dispose of the said application for conversion within nine months from the date of communication of the order with liberty to consult his superior authority, or the appropriate authority in disposing of the said application.

4. The respondent nos. 1 and 2 herein challenged the aforesaid judgment and order passed by the learned Tribunal before this Court by filing an application being W.B.L.R.T 123 of 2010 which was disposed of by a Division Bench of this Court on 9th December, 2010 by granting liberty to the aforesaid respondents to file a supplementary Affidavit before the learned Tribunal challenging the legality and validity of the contents of the document dated 4th February, 2010. By the aforesaid document namely, Memo dated 4th February, 2010 Block Land and Land Reforms Officer, Bally -Jagacha informed the learned advocate-on-record of the respondent Company that the applicability of the different provisions of Section 6 (3) of the West Bengal Estates Acquisition Act, 1953 in relation to the land in question was under consideration of the Land and Land Revenue Department, Govt. of West Bengal and therefore, there was no reasonable cause to realise the land revenue in respect of the said land at that stage.

5. The Division Bench by the aforesaid order also directed the learned Tribunal to pass a comprehensive order both on the question of applicability of Section 6 (3) of the West Bengal Estates Acquisition Act as well as the alleged inaction u/s 4C of the West Bengal Land Reforms Act.

6. Pursuant to the aforesaid order dated 9th December, 2010 supplementary affidavit was filed on behalf of the respondent Star Iron Works Ltd. challenging the applicability of Section 6 (3) of the West Bengal Estates Acquisition Act in respect of the land and structures of the Star Iron Works Ltd. and for quashing the entire proceedings sought to be taken or contemplated in the aforesaid written communication dated 4th February, 2010. The respondent Star Iron Works Ltd. also sought for permission for conversion of the lands in question. On behalf of the said authorities, Affidavit-in-Opposition was filed contending inter alia that the proceeding u/s 6 (3) of the W.B.E.A. Act has been initiated and conversion case has been kept pending due to the pendency of the resumption

proposal u/s 6 (3) of the W.B.E.A. Act. The learned Tribunal finally decided the application being O.A. No. 1919 of 2010 by the impugned judgment and order dated 16th March, 2011.

7. The lands involved in the proceeding altogether measuring about 10.11 acres on which the original owners namely the Singha Family, governed by the Mitakshara Law, constructed a factory in the name and style of "Star Iron Works" as a Joint Hindu Family Business in a small portion of the said lands.

8. A Partition Suit being Partition and Administration Suit No. 1346 of 1949 was instituted in the High Court.

9. By an order dated 1st August, 1949 the Hon"ble High Court was pleased to appoint a Member of the Bar as Receiver in respect of all assets, properties and business of the said Singha Family.

10. The learned Receiver filed Affidavits dated 24th May, 1960 and 13th November, 1960 respectively in the said Suit recording and confirming that the factory of Star Iron Works has been lying idle and closed since the beginning of the year 1950. The said Affidavits have been annexed as Annexure "B" to the Original Application before the learned Tribunal.

11. On 22nd May, 1961 the High Court passed an order in the said Suit directing the sale of the land and other assets of the said "Star Iron Works".

12. The respondent No. 2 Shri Dalmia being the promoter of the respondent No. 1 became entitled to purchase the shed and structures as also the plants, machineries, equipments etc. of the said Star Iron Works and for that purpose had the respondent No. 1 company incorporated in the Year 1964 under the Companies Act, 1956.

13. By an order dated 23rd September, 1964 passed by the High Court in the said Partition Suit direction was given to the learned Receiver to execute and register the conveyance deed in favour of the respondent No. 1, the Limited Company. Accordingly, on 29th August, 1965, the Deed of Conveyance was duly executed and registered.

14. In the said Deed the area sold was mentioned to be 9.906 Acres but on measurement it was found to be 10.11 acres partly in Mouza Belur and partly in Mouza Liluah.

15. It may be mentioned that the lands in question with structures belonged to the Singha H.U.F. and was recorded in the name of individual members of the Singha Family in the Revisional Record of Rights published under the West Bengal Estates Acquisition Act. They were so recorded as lands retained by the Singhas were u/s 6 (2) of the West Bengal Estates Acquisition Act and there was no mentioning about the retention u/s 6 (3) of the said West Bengal Estates Acquisition Act

16. After acquisition of the property the respondent No. 1 Company again started

a factory at the old site in the name of Star Iron Works Ltd..

17. The aforesaid property has been recorded in the name of Star Iron Works (Private) Ltd., with Director and Chairman Kailashpati Dalmia in the L.R. Record of Rights published under the West Bengal Land Reforms Act.

18. Mr. Saktinath Mukherjee, learned senior counsel of the respondent Star Iron Works Ltd. submitted that the aforesaid factory started by the respondent No. 1 Company was not the old closed factory of the Singhas. In support of the aforesaid contention, Mr. Mukherjee referred to the affidavit of the learned Receiver and also the Deed of Conveyance dated 29th August, 1965. In the said Deed of Conveyance, it has been specifically mentioned that the plants, machineries and the moveable assets of Star Iron Works other than those which could not be traced were sold earlier and only the immovable property was sold by the said Deed of Conveyance. Thus according to Mr. Mukherjee by the aforesaid Deed of Conveyance dated 29th August, 1965 only the site on which a factory stood prior to 1950 was conveyed and not a running factory. It has been submitted on behalf of the respondent Star Iron Works Ltd. that the newly started factory had to be closed down in view of the restrictions or stringent provisions of the Water (Prevention and Control of Pollution) Act, 1974. The said factory had to be closed down permanently with effect from 15th September, 2006 as will be evident from the Certificate dated 7th December, 2006 of the Additional Labour Commissioner, West Bengal.

19. In view of the aforesaid facts and circumstances, the respondent nos. 1 and 2 claimed that the provisions of Section 6 (3) of the West Bengal Estates Acquisition Act can have no manner of application and the State of West Bengal cannot invoke the provisions of Section 6 (3) and resume the lands in question.

20. On behalf of the petitioners, it has been submitted that the lands in question cannot be regarded as open land. Mr. Sundarananda Pal, learned standing counsel representing the petitioner State submitted that the lands in question should be regarded as factory land and not as open land. Mr. Pal submitted that there is no evidence before the appropriate authority which would suggest that there was no factory when the West Bengal Estates Acquisition Act came into force. Mr. Pal further submitted that the word "factory" mentioned in Section 6 (1) (g) of the West Bengal Estates Acquisition Act cannot mean and include only running factory.

21. Mr. Pal also submitted that no word could be added to the statute and therefore, the provisions of Section 6 (1) (g) of the West Bengal Estates Acquisition Act should be read and understood by the words mentioned in the statute. Section 6 (1) (g) of the said West Bengal Estates Acquisition Act provides :-

Subject to the provisions of sub-section (3), land comprised in mills, factories, or workshops;

22. Mr. Pal further submitted that if the word factory land appearing at Section 6 (1) (g) is given a wide meaning of non-agricultural land, the same will defeat the very purposes of Categorisation of land contemplated in the statute.

23. Mr. Pal submitted that a statute should be and must be read as it is and therefore, the word factory u/s 6 (1) (g) cannot be construed as running factory by giving a restricted meaning.

24. It may be noted that in the instant case the controversy is confined to the scope and implication of the provisions of Section 6 (3) of the West Bengal Estates Acquisition Act. It may be convenient at this stage to recall some of the relevant provisions of the said Act. The Act provides for the acquisition of Estates and the interests therein of some of the persons specified therein. Section 4 deals with the issuance of the Notification to bring about vesting and indicating the date thereof. This vesting is a notional vesting of all Estates and the specified interests therein. Section 5 provides for the consequences of such vesting. In accordance with the scheme of land reforms undertaken all over the country the basic object and purpose of the Act was to eliminate the different classes of intermediaries and bring the cultivators as also the persons in possession directly under the State.

25. Section 6 (1) of the Act begins with a non-obstante clause and declares -

Notwithstanding anything contained in Section 4 and 5, an intermediary shall, except in the cases mentioned in the proviso to sub-section (2) but subject to other provisions of that Section be entitled to retain with effect from the date of vesting

26. Section 6 under different clauses deals with different categories of lands some of which are retainable without any ceiling and some other are subject to the prescribed ceilings. Thus u/s 6 (1) (b) lands comprised in buildings and structures whether or not in possession of the intermediary can be retained without any ceiling. Evidently the said Act was not providing for taking over the building and structure and thus does not contain any provision for assessment and payment of compensation for any building or structure. Similarly tank fishery could be retained under Clause 6 (1) (e) without any ceiling. Retention of agricultural or non-agricultural lands is, however, subject to the prescribed ceilings and subject to the further condition of being possessed in khas by the intermediary seeking to retain.

27. Section 6 (2) of the said Act deals with the post-vesting and post-retention status of the person in respect of lands retained. The person retaining the land loses his pre-vesting status under the old scheme and acquires his pre-vesting one or other status.

Section 6 (2) provides :-

An intermediary who is entitled to retain possession of any land under sub-section (1) shall be deemed to hold such land directly under the State from the

date of vesting as a tenant, subject to such terms and conditions as may be prescribed and subject to payment of such rent as may be determined.

28. The provision of Section 6 (2) is not relevant as it applies to leasehold land.

29. Section 6 (3) is in the nature of proviso to Section 6 (2). It carves out an exception from the Section 6 (2). Sub-Section (3) of Section 6 of the West Bengal Estates Acquisition Act runs as follows :-

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 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.

30. Having regard to the scheme of the said West Bengal Estates Acquisition Act and the language of Sub-Section (3) including the proviso thereto, there can be no doubt that Section 6 (3) applies only to mill or factory which was in operation or was functioning on the date of vesting. In respect of a mill which was closed long before the date of vesting there could not be any question of assessing the requirement of factory. Section 6 (3) does not directly deal with the right of retention. It really deals with the extent of retention and such extent is required to be determined having regard to the requirement of a mill, factory (emphasis supplied).

31. In the instant case the land involved measuring about 10.11 Acres were owned by the Singhas who were members of a Joint Hindu Family which under the settled principle of law, suffered a disruption of a coparcenery with the institution of a partition suit. In view of such disruption or disintegration of the coparcenery the members of the erstwhile coparcenery were recorded in the Revisional Records of Right published under the West Bengal Estates Acquisition Act as the Raiyats independently and separately having defined shares. Such Records of right were finally published and in addition there was an endorsement in such finally published Records of Right that the lands were retained u/s 6 (1).

32. The West Bengal Land Reforms Act, 1955 was enforced stage by stage by Notification as required by sub-section 3 of section 1. Section 4 of the 1955 Act was enforced with effect from 7th June, 1965. u/s 4 the erstwhile tenant of the Estates Acquisition Act became a raiyat under the L.R. Act. It was further provided by Section 4 that such a raiyat shall on and after the commencement of

the said Act will be the owner of his plot of land and the plot of land shall be heritable and transferable. Previously raiyat was declared to be "the owner of the holding" and by the L.R. (Amendment) Act, 2003 the right of the raiyat was so declared to be "the owner of the plot" (emphasis supplied) with effect from 19th October, 2003.

33. The Star Iron Works Private Limited was incorporated in 1965 as will be evident from the Deed of Conveyance of 1965 executed by the Learned Receiver appointed by the High court. The Star Iron Works Private Limited reopened the factory after the Deed of Conveyance. The Deed of Conveyance was only in respect of the lands and structures. The machinery and equipment of the erstwhile Star Iron Works of the Singha family (excluding those which were not traceable) were purchased previously. Such machineries and equipments of the erstwhile factory being not traceable is recorded in the Deed of Sale executed by the learned Receiver. There is no dispute that the plot of land in question with structure were all along in the custody of the learned Receiver since 1950 and according to the declaration of the learned Receiver the factory was lying idle and closed since 1950. The closure in 2006 was not the closure of the old Star Iron Works but the closure of the factory which was purchased by Star Iron Works Private Limited in 1965 on account of pollution problem.

34. The learned counsel of the petitioners submitted that the lands in question was Karkhana land at the time of promulgation of the West Bengal Estates Acquisition Act and therefore, it does not matter if anything happened afterwards. The learned counsel of the petitioners further submitted that this Court should relegate the parties to the proceeding u/s 6 (3) of the West Bengal Estates Acquisition Act which has been initiated and pending where the respondent will get every opportunity by making submissions rather than creating clog to the same by making application u/s 4C of the Land Reforms Act to overtake the proceeding u/s 6 (3) of the West Bengal Estates Acquisition Act.

35. Mr. Pal also submitted that the State has every jurisdiction to exercise power u/s 6 (3) for resumption of land and the respondent would get opportunity to place their case at the time of final hearing by the competent authority. The proceeding u/s 6 (3) of the West Bengal Estates Acquisition Act, 1953 can not be prejudged at this stage.

36. From the records, it does not appear that the lands in question was ever allowed to be retained by the State Government u/s 6 (3) of the West Bengal Estates Acquisition Act after assessing the requirement for the purpose of said running factory. The learned senior counsel of the respondent Company specifically submitted before us that there was no question of applicability of Section 6 (3) of the West Bengal Estates Acquisition Act in the facts of the present case as the respondent No. 1 Company acquired the lands from the learned Receiver appointed by the High Court and the said lands are recorded as the retained lands of the predecessors in title. It is the specific case of the said Company that the respondent Company cannot be deprived of the said land by

unjust and illegal invocation of Section 6 (3) of the West Bengal Estates Acquisition Act.

37. Mr. Mukherjee, learned senior counsel of the petitioners referred to a Memo dated 31st December, 2008 issued by B.L.&L.R.O. to the D.L.&L.R.O. concerned with reference to the prayer of the respondent company for conversion of the land wherein the said B.L.&L.R.O. specifically observed that the lands in question do not come within purview of Section 6 (3) of the West Bengal Estates Acquisition Act. The aforesaid Memo dated 31st December, 2008 issued by the B.L.&L.R.O., Bally-Jagacha is set out hereunder :-

GOVERNMENT OF WEST BENGAL

Office of the Block Land & Land Reforms Officer, Bally-Jagacha 229, G.T. Road, Belur Bazar, Howrah

Dated : -31.12.08.

Memo No. 3160/BL/08

To

The D.L.&L.R.O.,

Howrah.

Sub:- Conversion Case of M/s. Star Iron Works (P) Ltd. of 5.07 acre of land of mouza - Belur, JL No: 15, LR kh. No. : 151.

Ref:- His memo No. : Conv-36/Bally/07/4894/LR dated 99-08.

In pursuance of above, thorough verification of relevant R.O.Rs. as available with this office, has been done. Thereafter it appears that the relevant R.S. plots (RS plot nos. 2473, 2473/2518, 2474, 2476, 2477, 2478, 2478/2510, 2479, 2480 & 2481) of mouza - Belur, JL. No. : 15, PS - Bally, were recorded in favour of M/s. Star Iron Works (P) Ltd. during K.B. stage of the mouza in the year 1993.

Apart from above, any entry regarding attraction of Section 6 (3) of WBEA Act, 1953 is not found on the body of the relevant R.S. Khatians (RS kh. Nos. 113, 161, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154 & 1156).

Besides, R.S. kh. No: 113 & 161 are of "Dakhalkar" status and as the two R. S. khatians are not come within the purview of Section 6 (3) of WBEA Act, 1953. Perhaps, in view of above, the aforesaid R.S. plots (corresponding LR plots are 2634, 2635, 2636, 2638, 2642, 2643, 2641, 2639, 2640 & 2644 respectively) were recorded during K-B in favour of M/s. Star Iron Works (P) Ltd. vide R. S. kh. No. 151.

However, the undersigned is open to acknowledge any mistake that might have been committed in the above mentioned act. Necessary instruction issued from his kind end in this regard will help to rectify the mistake and prevent recurrence

of the same.

Sd/- Illegible

31.12.08

BL &LRO

Bally-Jagacha

Howrah

38. Mr. Mukherjee submitted that the provisions of Section 6 (3) of the West Bengal Estates Acquisition Act can be made applicable in respect of a factory running on the date of vesting and in the present case there was actually no factory on the lands in question on the date of vesting u/s West Bengal Estates Acquisition Act. Mr. Mukherjee relied on a Division Bench judgment of this Court in the case of Rabi Waden Bhagat vs. State of West Bengal & Ors., reported in 2011 (2) CLJ Cal 77 which is very much relevant for the purpose of deciding the issues raised herein.

39. It has been noted in the said judgment that the Revisional Record of Rights reflect the situation as it prevailed on the date of vesting and the said records are prepared for working out the rights of the parties under the E.A. Act. The Division Bench has also referred to the definition of "factory" in Section 2 (m) of the Factories Act, 1948. The definition so quoted runs as follows :-

2 (m) "factory" means any premises including the precincts thereof :-

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power or is ordinarily so carried on-But does not include a mine subject to the operation of (the Mines Act, 1952 (35 of 1952) or [a Mobile unit belonging to the armed forces of the union, a railway running shed or a hotel, restaurant or eating place].

40. It is abundantly clear that "factory" referred to in Section 6 (1) (g) and Section 6 (3) of the West Bengal Estates Acquisition Act must be a factory running on the date of vesting. The expression "factory" used in the West Bengal Estates Acquisition Act cannot be equated with the site of a pre-existing factory.

41. Unless a mill is in running condition by operating the machineries it will be nothing but a mere structure and covered u/s 6 (1) (b) of the West Bengal Estates Acquisition Act. Singhas were admittedly recorded as raiyat. Had there been existence of any factory then there would not have been any recording in respect of the land as raiyat.

42. On behalf of the respondent Company it was argued that there was no occasion to exercise any option for holding the lands since it was within the ceiling limit. The learned senior counsel of the respondent Company submitted that exercising of option by a raiyat under the West Bengal Estates Acquisition Act can arise only when such raiyat holds land more than the prescribed ceiling limit.

43. Mr. Sundarananda Pal, learned senior counsel for the petitioners submitted that the lands in question herein stood vested in the State after promulgation of West Bengal Estates Acquisition Act, 1953 since no option was exercised by the intermediary. The aforesaid argument is not at all tenable since the lands in question did not exceed the ceiling limit and had structures thereon. Mr. Pal however, submitted that option was required to be exercised even if the total lands did not exceed the prescribed ceiling limit. We do not accept the aforesaid contention. It cannot be the law that the Revenue Officer will allow an intermediary to retain land upto the ceiling in a case where the intermediary has lands in excess of the ceiling and will not so allow him to retain where the intermediary has lands far below the ceiling. Mr. Pal referred to and relied on a decision of a learned Single Judge of this Court in the case of Gour Gopal Mitra & Anr. Vs. State of West Bengal & Ors., reported in 67 CWN 12 and submitted that the contentions of the respondent Company regarding exercise of option for retention of land only in the case of excess of the ceiling limit cannot be accepted.

44. Mr. Pal submitted that in the case Gour Gopal Mitra & Anr. Vs. State of West Bengal & Ors. (supra), it has been held that the Collector has no obligation to allow a raiyat to retain land suo motu. Mr. Pal further submitted that the ratio of the aforesaid decision has been applied by the Hon'ble Supreme Court in the case of W. B. Govt. Employees (Food & Supplies) Coop. Housing Society Ltd & Ors. Vs. Sulekha Pal (Dey) (Smt) & Ors. with State of W. B. & Ors. Vs. Sulekha Pal (Dey) (Smt) & Ors., reported in (2003) 9 SCC 253 Paras 2 & 12.

45. Relying on the aforesaid decision, Mr. Pal submitted that a raiyat is obliged to show his intention to retain the land to the extent he wants to retain after the promulgation of the West Bengal Estates Acquisition Act by filing an application.

46. Mr. Mukherjee, learned senior counsel of the petitioners, however, strongly disputed the correctness of the aforesaid decision of the learned Single Judge of this Court in the case of Gour Gopal Mitra & Anr. Vs. State of West Bengal & Ors. (supra).

47. Mr. Mukherjee, submitted that the aforesaid judgment of the learned Single Judge cannot be followed by the Division Bench of this Court as the law decided by the learned Single Judge cannot be held to be a good law.

48. In the present case there is no dispute about the right of retention or about the fact of retention as recorded in the finally published R.S. Record of Rights. In fact there is no challenge about such retention which is expressly recorded in the said record of Rights. The decision in the case of Gour Gopal Mitra & Anr. Vs.

State of West Bengal & Ors. (supra) needs to be dealt with to clarify the principles to be applicable in such cases.

49. Sub-Section (5) of Section 6 of the West Bengal Estates Acquisition Act 1953 on which the arguments in the aforesaid case of Gour Gopal Mitra & Anr. Vs. State of West Bengal & Ors. (supra) were principally advanced, provides :-

An intermediary shall exercise his choice for retention under sub-section (1) within such time and in such manner as may be prescribed. If no choice is exercised by him during the prescribed period, the Revenue Officer shall, after giving him an opportunity of being heard, allow him to retain so much of the lands as do not exceed the limits specified in clauses (c), (d) and (j) of the sub-section:

Provided that nothing in sub-section shall require an intermediary to exercise the choice if he has already done so before the date of coming into force of the West Bengal Estates Acquisition (Second Amendment) Act, 1957 (West Ben. XXV of 1957).

50. In the case of Gour Gopal Mitra & Anr. Vs. State of West Bengal & Ors. (supra), learned Single Judge has observed :-

It seems to me clear from this language that even after the time for exercising the choice has expired the statute gives the intermediary both opportunity and occasion to claim retention permitted by the Act and there is an obligation and statutory duty cast upon the Revenue Officer to give the intermediary the opportunity of being heard and allow him to retain.

(Emphasis supplied)

51. It is very difficult to agree with and accept the views expressed by the learned Single Judge in the passage quoted above. It is to be noted that in Sub-Section 5 of Section 6, there is a reference to clauses (c), (d) (j) of Section 6 (1) of the W.B.E.A. Act. The said clauses deal with categories of lands in respect of which there is a ceiling in respect of the right of retention of erstwhile intermediary.

52. In Section 6 (5) of the W.B.E. A. Act, there is no reference at all to clauses (a), (b), (e), (h) & (i) which deal with categories of land in respect of which there is no ceiling. It is very difficult to hold that the Revenue Officer will act u/s 6 (5) and allow on his own and in discharge of statutory obligation, a defaulting intermediary to retain only so much of the land as do not exceed the ceiling limit. In other words the intermediary will be allowed to retain only the ceiling category lands and in respect of non-ceiling category of lands a defaulting intermediary will not be entitled to retain the same on account of his failure to exercise "the choice" contemplated by Section 6 (5). Having regard to the socioeconomic condition prevailing in the rural Bengal on the date of vesting i.e. in April 1955 it will not be reasonable to attribute such an intention to the legislature and interpret the scheme of Section 6 so as to deprive a defaulting intermediary of

his right of retention in respect of non-ceiling category of lands and in respect of his landholding well within the prescribed ceiling under Clauses (c), (d) and (j).

53. The W.B.E. A. Act, 1953 is a confiscating piece of legislation and cannot be made more confiscatory than it patently provides for. Section 6 (5) of the W.B.E. A. Act deals with "choice for retention" and not with the right of retention. In the case of non-ceiling category of lands or ceiling category of lands held well within the ceiling there can be no question of choice for retention. The question of choice should arise only in the case of ceiling category lands held beyond the limit and only that aspect has been dealt with by Section 6 (5).

54. Sections 4 and 5 of the W.B.E.A. Act provide for vesting in a comprehensive way. Section 6 of the said Act declares :-

6 (1). Notwithstanding anything contained in Sections 4 and 5, an intermediary shall except in the cases mentioned in the proviso to Section 2 but subject to the other provisions of that sub-sections, be entitled to retain with effect from the date of vesting.

55. This declaration is without any qualification and is not subject to any option for retention.

56. By way of illustration, the land with structures coming under Clause 6 (1) (b) may be taken into consideration. In the event of exercise of no express option such categories of land structure should vest in the State not merely notionally u/s 5 but also in possession. Significantly the E.A. Act does not provide for any compensation in respect of structures so treated to be vested. In a very recent judgment the Hon'ble Supreme Court in State of West Bengal and Others Vs. Ratnagiri Engg. Pvt. Ltd and Others, has aptly observed :-

10. A perusal of Section 6 of the 1953 Act discloses that there is a difference between clauses (a) to (c) of Section 6 (1) on the one hand and clauses (f) and (g) of Section 6 (1) on the other. While in the case of lands which can be retained under Clauses (a) and (e) of Section 6 (1) the retention is automatic from the date of vesting and no order of any authority need be passed for that purpose, in the case of clause (f) and (g) of Section 6 (1), the retention after the date of vesting is not automatic, but it is only when the State Government passes an order u/s 6 (3) of the 1953 Act.

57. In such view of the matter, decision of the learned Single Judge in the case of Gour Gopal Mitra & Anr. Vs. State of West Bengal & Ors. (supra), cannot be held to be laying down the correct law.

58. For the reasons discussed hereinbefore, we hold that the land purchased by the respondent Company did not vest in the State due to promulgation of the West Bengal Estates Acquisition Act. We hold that there was no question of the applicability of Section 6 (3) of the West Bengal Estates Acquisition Act in the facts of the present case. The learned Tribunal, in our opinion, has correctly decided the issues raised before it upon appreciating the relevant provisions of

law and we find no error and/or infirmity in the aforesaid decision of the learned Tribunal.

59. For the aforementioned reasons, we affirm the decision of the learned Tribunal and direct the petitioners herein to implement the same without any further delay but positively within a period of 2 (two) months from the date of communication of this order. With the aforesaid directions, we dismiss the writ petition without awarding any costs. Let urgent Xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.