

(1965) 04 CAL CK 0023
In the Calcutta High Court
Case No : C.R. No. 389 (w) of 1962

Ukhara Forests and Fisheries Ltd.

APPELLANT

Vs

The Sub-Divisional Land Reforms Officer, Asansol and Others

RESPONDENT

Date of Decision : 06-04-1965

Acts Referred:

Constitution of India, 1950 — Article 226
West Bengal Estates Acquisition Act, 1953 — Section 10(2), 4, 5(A)
West Bengal Private Forest Act, 1948 — Section 3(3), 4(1)

Citation : 69 CWN 810

Hon'ble Judges : Banerjee, J

Bench : Single Bench

Advocate : Priti Bhusan Burman, for the Appellant; Nepal Chandra Sen and Manindra Ch. Chakraborty, for the Respondent

Final Decision : Allowed

Judgement

Banerjee, J.—The petitioner company was granted a lease for 999 years in respect of certain plots of forest land including c.s. plots nos. 12 and 56, in mouza Kanksa J.L. No. 86, district Burdwan, by a Debatter estate known as "Ukhara Estate Debattar", under a deed of lease dated February 20, 1954. The genuineness and validity of the document of lease was, the petitioner company says, upheld in a proceeding u/s 5(A) of the West Bengal Estates Acquisition Act and the petitioner company was also recorded as "Dakhalkar" in respect of the leasehold plots in the settlement records prepared under the said Act. The petitioner company further says that the leasehold plots were covered by a working plan prepared under the West Bengal Private Forest Act and the petitioner was working the forest in accordance with the plan. This is, however, not wholly admitted by the respondent no. 3, the Forest Range Officer, who states in his affidavit-in-opposition as hereinafter stated:-

5***. The forest belonged to the Ukhara Estate Debattar from whom the petitioner alleges to have taken lease. The said Ukhara Estate Debattar did not

submit any working plan for the aforesaid forest as required by the provisions of the West Bengal Private Forest Act, 1948, whereupon the then Regional Forest Officer, Burdwan district prepared a working plan u/s 3(3) of the said Act and it was approved by the Conservator of Forests (Southern circle), West Bengal, u/s 4(1) of the said Act. Thereafter copies of the approved plan together with maps were served upon the owner on or about January, 13, 1955 and January 24, 1955.

6. I may state here that the petitioner company did not make any endeavour to let the forest department know of the existence of any proprietary right of the company in regard to the forest.

7. I further state that the petitioner while alleging to be a lessee since February 1954, did not raise any objection or even send any information to the forest department even though the approved plan and map were served on the owners (Ukhara Estate Debottar) as late as January, 1955.

2. The allegations in the affidavit-in-opposition are denied in the affidavit-in-reply and in paragraph 5 of the affidavit-in-reply it is stated as follows:-

With regard to paragraphs 6 and 7 of the said affidavit-in-opposition I deny the allegations therein. I say that the allegations that the petitioner company did not make any endeavour to let the Forest Department know of the existence of the rights of the company with regard to the forests is incorrect and not true.

3. Immediately after your petitioner took the lease intimation was given to the Range Officer, Ukhara, about the petitioner taking lease from Ukhara Estate Debottar with the object of working the said forests according to approved working plans and also sought permission to fell trees. On 9th April 1954 by Memo. No. 2058/4-67 the Divisional Forest Officer, Burdwan Division permitted your petitioner to fell trees till the 15th April.

4. Your petitioner also sent annual reports of the working of the forests to the Regional Forest Officer, Burdwan. Even in 1955, your petitioner wanted a working plan to be approved with respect to certain c.s. plots which had been omitted through oversight. On or about 20 April, 1955, the Forest Range Officer sent to the petitioner an approved working plan. On the 3rd June, 1955, by Memo. No. 3516(19)-17-3 the Divisional Forest Officer, Burdwan Division, wrote to your petitioner to register the property mark (brand) of the timber. Your petitioner submitted annual returns in 1955, 1956 and 1957 to the Regional Forest Officer, Burdwan with reference to two approved working plans dated 28.9.61 and one dated 11.4.55. On a complaint having been made by the petitioner to the Divisional Forest Officer, Burdwan, about refugees unauthorisidely cutting and removing trees the Divisional Forest Officer wrote to the Range Officer, Durgapur Range with copies to the District Authorities for taking suitable steps against the miscreants.

5. A copy of the letter written by the Divisional Forest Officer to the Range

officer, referred to above is an annexure to the affidavit-in-reply and I quote the relevant extract therefrom:-

I send herewith a copy of letter No. UFF/FD/6/56 dated 18.6.56. of the Ukhara Forests and Fisheries Private Ltd. which will speak for itself. Please take suitable steps to detect illicit felling and take necessary action against them.

6. Considering the averments made in the affidavit-in-reply and the materials therein disclosed, it is impossible for me to hold that the forest department was not even aware of the existence of the petitioner company working in the forest. Paragraph 6 of the affidavit-in-opposition by the Forest Range officer must, therefore, be treated as containing an exaggeration and I leave the disputed question at that, because it is not necessary for me to go further into the point.

7. The petitioner company feels aggrieved by an order u/s 10(2) of the West Bengal Estates Acquisition Act, made by the respondent no. 1, Sub-Divisional Land Reforms Officer, a copy of which was served on the petitioner company on May 5, 1952. The material portion of the said order reads as follows:-

Whereas by virtue of the Notification No. 12516-L. Ref./6840 L. Ref. issued on the 16th August, 1954/10th April, 1956 by the Government of West Bengal under the provision of section 4 of the West Bengal Estates Acquisition Act, 1953 the lands comprised in the forest specified in the schedule below together with all rights to the trees therein or to the produce thereof and held by any intermediary or any other person have vested in the State of West Bengal free from all incumbrances.

Now, therefore, I do hereby require you u/s 10(2) of the West Bengal Estates Acquisition Act, 1953, to give up possession on the 15th day of Ashar (Bengali) month of the Bengali year, 1369 B.S. of the interests in your possession as specified in the schedule below to the officer authorised by me in this behalf.

8. Aggrieved by the order, the petitioner company moved this Court, under Article 226 of the Constitution, praying for a writ of Certiorari for the quashing of the order and for a Mandate upon the respondents directing them to cancel or withdraw the impugned order and obtained this Rule.

9. The points taken in the petition were many. But Mr. Priti Bhusan Burman, learned Advocate for the petitioner company, chose a single point in support of the Rule. That point is to be found in ground No. III, which reads as follows:-

For that there being no fresh notification u/s 4 of the Estates Acquisition Act after the amendment by the amending Act XXV of 1957 the lessee's, the petitioner's, right have not vested in the State Government and remained intact and as such the purported notice u/s 10(2) of the said Act is illegal, without jurisdiction and arbitrary.

10. Mr. Burman did not give up other points taken in the application, particularly, the point touching on the vires of the West Bengal Estates Acquisition Act but

asked for leave to urge the said points on an appropriate future occasion. I permit him to do so.

11. Before I take up for consideration the points urged in this Rule, it is necessary for me to refer to certain legislative changes made in the West Bengal Estates Acquisition Act, concerning forests. In the Original West Bengal Estates Acquisition Act (Act I of 1954, hereinafter referred to as the said Act). there was no definition of the word "forest". Nevertheless, section 5 of the said Act contained the following provision:-

Upon the due publication of a notification u/s 4, on and from the date of vesting (a) the estates and the rights of intermediaries in the estates, to which the declaration applies, shall vest in the State free from all incumbrances; in particular and without prejudice to the generality of the provisions of this clause, every one of the following rights which may be owned by an intermediary shall vest in the State, namely:-

- (i) rights in sub-soil, including rights in mines and minerals,
- (ii) rights in hats, bazars, ferries, forests, fisheries, tolls and other sairati interests.

12. Thereafter there was a definition of the word "forest" imported in the Act, with retrospective effect, by the West Bengal Estates Acquisition Act (Amendment Act) 1955, to mean any land recorded in the record-of-rights prepared or revised for the purpose of the Act, under the classification jhari jhati, jangal, ban, salban or other similar terms. This definition was also omitted by the West Bengal Estates Acquisition (Second Amendment) Act, 1957, so also was the word "forest" appearing in section 5(a)(ii) of the Act, both with retrospective effect. Further the Second Amendment Act of 1957 introduced a new clause, namely, clause (aa) to section 5 with restrospective effect, in the following language:-

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,

13. By the notification contemplated u/s 4 of the Act, all estates and rights of intermediaries then under the purview of the Act vested in the State Government with effect from April 15, 1955. That notification bears the date August 16, 1954. Thereafter Chapter VI of the Act was sought to be enforced, there was a fresh notification published u/s 4 of the Act which notification bears the date April 10, 1956. Those are the two notifications which are referred to in the notice u/s 10(2) of the Act served upon the petitioner company. The question for my consideration is whether the notification of August 16, 1954 also applies to forests although section 5(aa) was introduced in the Act only in 1957, long after the date of the publication of the notification of August 16, 1954.

14. It was sought to be argued on behalf of the respondents that since section 5(aa) was introduced in the Statute with retrospective effect, the section must be deemed to have always existed on the statute book and as such the notification of August 16, 1954, must be deemed to apply to lands covered by section 5(aa). In my opinion, this argument is unworthy of acceptance. The word "forest" as originally appearing in section 5(a)(ii) and the definition of forest as in section 2(ff) were both omitted by the West Bengal Estates Acquisition (Second Amendment), Act 1957 with retrospective effect. That being so, the notification published in 1954 could not apply to any forest or forest land. It is true that section 5(aa) was also incorporated in the Statute Book with retrospective effect. But the effect of such incorporation was to entitle the State Government to acquire forests with retrospective effect from the date of the Statute and no more than that. To contend that the effect of the amendment was such as made an anachronistic notification applicable to the type of land mentioned in section 5(aa) is not to contend correctly. Dealing with a similar situation in the case of (1) (1) Katras Jharia Coal Co. Ltd. Vs. State of West Bengal and Others, , Sinha, J. said as follows:-

Since the amendment of the definition is retrospective I have to imagine that Government acquired a right of acquisition of the estates and rights therein of lessees and sub-lessees of mines and minerals from as early as February 1954 when the original Act came into operation. There is however, nothing, in S. 4 as it stands now, to lay down that I have to deem that a notification issued in 1955 should be considered as a notice to lessees and sub-lessees, who were then outside the purview of the Act, and have only come in by reason of the amendment in 1957. As I have said, a notice must in fact, be given to amount to notice and cannot be notional. *****Such a notice must however be a real notice. Supposing it were said that a notice given many years ago and to a different set of persons should be considered as the requisite notice, then the very object of giving notice is frustrated. It had not conveyed the information to the persons affected so that they might exercise the rights given to them under the Act of removing their belongings making arrangements for evacuation. Unless the court is compelled to interpret the law in that fashion it cannot accept such a grossly unjust interpretation, which almost brings it within the border line of absurdity. If the Act said expressly that a notification issued under S. 4 in 1955 would be deemed to be a notification under the Act, also in respect of lessees and sub-lessees of mining interests, then I should be powerless. But there is no such provision. All that I have to do is to hold that the Government acquired a right in 1954 of effecting the acquisition of estates and rights in such an estate of intermediaries, including lessees and sub lessees of mines and minerals. The existence of such a law must be considered to be a fact as from the inception of the Act. The Act requires a notification declaring such estates or rights to be vested in Government, and a notification has to be published in a particular manner conveying information to the particular persons affected, that such a vesting has taken place so that they may exercise their rights and

discharge their liabilities under the Act. I am unable to hold that a notification issued and published in 1955 relating to a certain set of persons must also be considered as or deemed to be a notification upon a different set of persons, but with effect from the original date mentioned therein. There is no provision for such a notice to be retrospective.

15. I have quoted a long extract from the judgment delivered by Sinha, J. in the aforementioned case, I have done so because on a parity of reasoning I hold that the notification published in 1954 and 1956 will not apply to the type of land brought under the purview of the West Bengal Estates Acquisition Act u/s 5(aa). If the West Bengal Estates Acquisition Act has not been made applicable to forest land as in section 5(aa) under the procedure prescribed by the Act itself, then the respondents acted without jurisdiction in issuing a notice to the petitioner (under section 10(2) of the Act) calling upon them to give up possession of the land. For the reasons above I quash the notice u/s 10(2) of the Act issued upon the petitioner and direct the respondents not to follow it up. This Rule succeeds to the extent indicated above with costs hearing fee being assessed at three gold mohurs.