

SUPREME COURT OF INDIA

Bina Das Gupta

Vs.

Sachindra Mohan Das Gupta

C.A.Nos.991 to 997 of 1964

(K. N. Wanchoo, R. S. Bachawat and V. Ramaswami, JJ.)

07.03.1967

JUDGEMENT

RAMASWAMI, J.:-

1. These appeals are brought, by certificate, from the judgment of the Judicial Commissioner, Tripura in Civil First Appeals Nos. 10 to 14 and 18 of 1959 whereby the appeal of respondent No. 1 who had a Dar Talukdari right, was allowed and respondent No. 1 was held to be entitled to compensation amounting to Rs. 1,62,905 and odd.

2. The Kayemi Taluk No. 154 of Mouja Chaliarjala stood in the name of Brajendra Kumar Das Gupta under a Patta dated 12th November, 1918 T. E. The Taluk comprised of an area of 383 and odd drones or roughly 2,500 acres. Out of the said Taluk, a Dar Taluk was created by Brajendra Kumar Das Gupta on 11th August, 1928 T. E. in respect of 355 and odd drones after deducting 27 and odd drones in possession of the tenants. Subsequently the management of the estate of Brajendra Kumar Das Gupta was taken over by the Court of Wards. The Dar Taluk of the Ishanpur Tea Company was sold in auction and purchased by the Court of Wards in or about 1930. The Court

of Wards thereafter agreed to execute a fresh Dar Taluk Patta in respect of 355 and odd drones out of the total area of 383 and odd drones in favour of Sarala Sundari Das Gupta, wife of Brajendra Das Gupta. On the basis of the agreement, Sarala Sundari Das Gupta entered into an agreement in February, 1933, with respondent No. 1 in respect of the Dar Taluk. By that agreement, Sarala Sundari Das Gupta and respondent No. 1 were to enjoy the land and run the tea estate as partners. On 1st February, 1943 T. E. (May 1933) a Patta was granted by the Court of Wards in respect of the said 355 and odd drones to Sarala Sundari Das Gupta and clause 2 of the said patta provided that there was to be a survey to fix the exact extent of the boundaries mentioned. On 13th April, 1944 T. E. (July 1934) Sarala Sundari Das Gupta conveyed the entire Dar Taluk right to respondent No. 1 and in the said deed it was mentioned that the land under the Dar Taluk measuring 355 and odd drones was the balance of 383 and odd drones after deducting 27 and odd drones in possession of the tenants. Respondent No. 1 later on raised a dispute and by his order dated September 20, 1950, the Settlement Officer held that respondent No. 1 was entitled only to 290 and odd drones and the balance of the land was in the possession of the tenants. It is not necessary, in these appeals, to describe in detail the legal proceedings further taken by respondent No 1 with regard to the claim of the tenants. On May 29, 1951, the Government of Tripura in exercise of its powers under Section 29 of the West Bengal Security Act, 1950 (West Bengal Act 19 of 1950) requisitioned the land described in the Schedule thereto for rehabilitating the displaced persons. More than 1000 acres of land requisitioned was in Kayemi Taluk No. 154 and the possession of the land requisitioned was taken on June 11, 1951. Thereafter, in the year 1953 the said lands were formally acquired under the West Bengal Land Development and Planning Act, 1948. In 1955, land acquisition proceedings were started in respect of the requisitioned lands to the extent of 1020.59 acres. The Land Acquisition Officer made his award on April 6, 1956 and, at the instance of respondent No. 1 and the tenants who were affected, the Land Acquisition Officer made 7 references under Section 30 of the Land Acquisition Act in respect of the apportionment of the compensation. The case of Amarendra Chandra Das Gupta before the District Judge was that there was a covenant in the Dar Taluka lease in favour of Sarala Sundari Das Gupta that in case of compulsory acquisition, the whole of the compensation money for land should be received by the superior landlord alone and that Dar Talukdar would not be entitled to any share in the same and that respondent No. 1 was bound by the terms of the lease. Respondent No. 1, however, contended that the covenant, properly construed, only meant that if the lands were acquired by the Government for construction of roads respondent No. 1 would not be entitled to any compensation, but in this case the lands were acquired for the purpose of settlement of displaced persons from East Bengal and therefore the covenant could not be invoked. By his judgment dated April 27, 1959, the District Judge held that respondent No. 1 was not entitled to any compensation because of the covenant and the compensation awarded to him must be apportioned between the superior landlord and the tenants. Respondent No. 1 took the matter in appeal before the Judicial Commissioner, Tripura. By his judgment dated July 22, 1960, the Judicial Commissioner allowed the appeal, holding that Clause 15 of the Dar Taluka Patta, Ex. A-1 did not bar the right of respondent No. 1 to get compensation and that Amarendra Chandra Das Gupta could not claim compensation awarded to respondent No. 1 in respect of the land acquired. The Judicial Commissioner, Tripura accordingly set aside the judgment of the District Judge

3. The only question presented for determination in these appeals is whether, on a proper construction of Clause 15 of the patta, Ex. A-1 granted on May 14, 1933 (1-2-1943 T. E.) by the Talukdar creating a Dartalukdari interest, the Dartalukdar has been completely deprived of his share in the compensation which was awarded on the acquisition of the land under the Land Acquisition

Act.

4. Clause 15 of Ex. A-1 reads as follows :

[Clause being in local language omitted-Ed.]

An agreed translation of this clause was filed in the Court of the Judicial Commissioner and it was to the following effect :

"So much lands can be made khas on behalf of the Government as may be necessary for Government purpose or public benefit for construction of roads etc.. you will not be entitled to get any reduction of rent in respect of the lands made khas for the above purpose: besides this you will not be entitled to claim any compensation".

5. Before proceeding to the interpretation of this clause it is necessary to make a reference to the "Law of landlord and Tenant" Act I of 1296 T. E. of the Government of Tripura which was in force in Tripura at the material time. Sections 68 to 73 deal with the acquisition of lands by the Government and the rights of landlords and tenants for compensation on such acquisition. Under these sections land can be acquired for the purpose of the State or for the use of the Royal family or for the benefit of the public. Section 72 expressly provides that on such acquisition of land the Talukdars and other landlords as well as tenants (Prajias) having jote or raiyati rights shall be entitled to compensation." Sections 5, 6 and 7 define three classes of tenants and it is not disputed in this case that according to the statutory definition the Dar Talukdar is a tenant within the meaning of the Act and entitled to compensation under Section 72. Section 73 of the Act provides that in the Sadar Division, the Officer-in charge of the Revenue Department and in the Sub-divisions the respective Officer-incharge of those Sub-divisions shall assess the amount of compensation".

6. Having examined the language of Clause 15 of the patta? Ex. A-1, we are satisfied that it does not prohibit the right of the Dar Talukdar to receive compensation for the land acquired by Government in the present case. What clause 15 states is that in cases where the Government makes portions of the land "khas for Government purpose or for public benefit or for construction of roads, the Dar Talukdar will not be entitled to get any reduction of rent in respect of the lands made "khas". It is important to notice that the word "acquired" is not used in Clause 15. In our opinion, Clause 15 on its true interpretation is applicable only when certain portion of the land is made "khas" by the State for construction of roads, paths etc. either for the purpose of the State or for the beneficial interest of the public. The clause does not contemplate acquisition of land by the State for any other purpose. The fact that the rent reserved was made fixed and inflexible by the Talukdar also indicates that Clause 15 did not contemplate any large scale acquisition of land by the State, but the

parties only contemplated by that clause that small strips of land would be made "khas" by the State for the construction of roads, paths, water channels, drains etc. In our opinion, the word "khas" in Clause 15 cannot therefore be interpreted as equivalent to "acquisition of land by the Government" under the provisions of the Land Acquisition Act. It is clear that Clause 15 contemplates that the Dar Talukdar would continue to pay the rents to the Talukdar in respect of the lands made "Khas" on behalf of the Government and there is no annulment of the Dar Talukdari rights on the land so made "Khas". Nor is it apparent that there is any annulment of the Talukdari rights over the lands so made "Khas". It is not possible to imagine that the parties intended by Clause 15 that even if the entire land was dismissed or a major portion of it was acquired by the Government, the Dar Talukdar would get no compensation from the State but would allow the landlord to get the entire amount of compensation and at the same time the Dar Talukdar would continue to pay the entire rent stipulated without any reduction to the landlord. It is true that Clause 15 states that the Dar Talukdar "will not be entitled to get any reduction of rent in respect of the land made 'Khas' for the above purpose". The clause further proceeds to say "Besides this you will not be entitled to claim any compensation." It is not possible to accept the argument of the appellants that the expression any compensation" in Clause 15 means that the Dar Talukdar will not be entitled to claim the statutory compensation from the Government for the land acquired under the Land Acquisition Act. The clause does not say "you will not be enticed to claim compensation from the Government." In our opinion, what the landlord provided by clause 15 was only that the tenant shall not be entitled to claim any compensation from the landlord for such loss of land by acquisition. It is apparent that there is already a provision in Clause 15 that the Dar Talukdar will not be entitled to get any reduction of rent in respect of the land made khas. It is manifest that the last sentence of Clause 15 is tautologous. But in the absence of more clear and precise language we are unable to accept the contention of the appellants that the right of the Dar Talukdar to get compensation for land acquired under the Land Acquisition Act has been taken away and extinguished by Clause 15.

7. The principle of construction applicable to this case is similar to the principle of construing exceptions in a grant where the rule of *contra preferentem* has been employed. For instance, in *Savill Bros., Ltd. v. Bethell*, 1902-2 Ch 523 at pp. 537-538 *Stirling. L. J.* stated as follows :

"It is a settled rule of construction that where there is a grant and an exception out of it, the exception is to be taken as inserted for the benefit of the grantor and to be construed in favour of the grantee. If then the grant be clear, but the exception be so framed as to be bad for uncertainty, it apt pears to us that on this principle the gram is operative and the exception fails."

8. It was further contended on behalf of the appellants that if Clause 15 is construed prohibiting the Dar Talukdar from claiming compensation money from the Government under the Land Acquisition Act the clause would not be legally valid since it would tantamount to contracting out of a statute. It was said that under Act I of 1296 T. E. a landlord and a tenant would both be entitled to compensation in accordance with their respective rights in the land at the time of the acquisition and their rights arose by virtue of the statute which was a statutory right and not a matter of grant by the Talukdar. It was contended that the Talukdar cannot therefore make a reservation of the tenants right to claim compensation when granting the lease. It is not necessary for us to go into this question of

law because we have already held that Clause 15 of the Patta on its true interpretation does not prohibit the Dar Talukdar from getting compensation money from Government for the land acquired under the Land Acquisition Act.

9. For the reasons expressed we hold that the judgment of the Judicial Commissioner, Tripura dated July 22, 1960 is correct and these appeals are without merit and must be dismissed with cost-one set for all the appeals to respondent No 1.

Appeals dismissed.