Union of India

Vs

Nihar Kanta Sen and Others

Civil Appeal Nos. 2050(N) of 1974 and 1026(N) of 1975

(K. N. SinghO. Chinnappa Reddy JJ)

21.04.1987

JUDGMENT

SINGH, J. -

1. These two appeals are directed against the judgment of the High Court of Calcutta dated October 10, 1969 awarding a sum of Rs. 18,74,080.75 as compensation to the claimants.

2. During the Second World War the property in dispute which consisted of an area of 199.04 acres of land situate in village Brindabanpur, District Burdwan in West Bengal was requisitioned by the Collector for the purpose of construction of a military aerodrome. As there was extreme urgency, the authorities took possession of the property on October 1, 1942 and to regularise the possession the Collector of District Burdwan, West Bengal issued order on June 8, 1943 under sub-rules (1), (2) and (5) of Rule 75-A of the Defence of India Rules, 1939 framed under the Defence of India Act. 1939 requisitioning the property. Nirode Kanta Sen the owner of the property, predecessor-in-interest of the claimants submitted a claim petition to the Collector, Burdwan, claiming a sum of Rs. 1,93,432 as compensation for the property requisitioned from him. Later he made another petition claiming further compensation, and the total claim raised by him amounted to Rs. 2,40,720. The Special Land Acquisition Collector, Burdwan after making inquiry and local inspection, awarded a sum of Rs. 11,878.50 as recurring compensation to the claimant for 1349 to 1359 B.S. i.e. (1942 to 1952). The claimant was not satisfied with the amount offered to him; he applied for reference, at his instance District Judge, Burdwan was appointed Arbitrator to determine the compensation, Nirode Kanta Sen and the State both produced evidence before the Arbitrator. It appears that Nirode Kanta Sen died, thereafter his two sons, namely Nihar Kanta Sen and Nirmal Kanta Sen and his widow Smt. Hiranmoyee Debi were brought on record. The Arbitrator by his order dated September 10, 1960 awarded a sum of Rs. 4,44,681 as compensation to the claimants. The Union of India preferred appeal before the High Court against the Arbitrator's award, the claimants also preferred cross-objection to the appeal. A Division Bench of the High Court of Calcutta by its order dated October 10, 1969 dismissed the appeal preferred by the Union of India and allowed the claimants' cross objection by enhancing the compensation to a sum of Rs. 18,74,089.75 for the period October 1, 1942 to October 1, 1969. Aggrieved the Union of India has preferred this appeal (C.A. No. 2050 of 1974) and the claimants have also filed appeal before this Court by special leave (being Civil Appeal No. 1026 of 1975). Both the appeals were consolidated, heard and are being disposed of by this judgment.

3. The requisitioned land has continued in the occupation of the State and it has not been acquired under the provisions of the Land Acquisition Act, 1894. The Defence of India Act, 1939 and the Rules framed thereunder expired on September 30, 1946, but the requisition of the property

continued under the provision of the Requisition of Land (Continuance of Powers) Act, 1947. Subsequently, the 1947 Act was replaced by the Requisitioning and Acquisition of Immovable Property Act, 1952 which continued the requisition of property, made before the commencement of the Act. Initially the period of requisition was to expire after three years from the date of commencement of the 1952 Act but by subsequent amendments the period of requisition was extended. The Parliament enacted the Requisitioning and Acquisition of Immovable Property (Amendment) Act, 1975 fixing the maximum period for which property could be retained under requisition. It is not necessary to refer to the provisions of this Act. Suffice it to notice that the property in dispute which had been requisitioned in 1942 continued to be under requisition during the relevant period in respect of which the dispute with regard to compensation is involved.

4. The total area of the requisitioned land was 199.04 acres, out of which an area of about 176.91 acres was full of jungle and forest containing various kinds of a trees including Sal trees. The remaining area was occupied by tank, homestead, road danga and about 50 bighas was cultivated area. There was a building standing on the land, some quantity of extracted gravels and building material was stacked near the building. In their statement of claim the claimants stated that they had Patni right in respect of 8 annas and 12 annas share in Mouza Brindabanpur, under a deed of lease in respect of Patni taluk which conferred right to excavate and prospect minerals including stone chips and clay and moorams. The claimants stated that they had been extracting and selling minerals and Nirode Kanta Sen had built a homestead and also kutcheary on a portion of the land, and building being a one storeyed three roomed bungalow made of brick walls and cemented floors. It was further stated that Nirode Kanta Sen intended to build a farm house on the land and a factory for the purpose of developing the business of manufacture of bricks from the sub-soil clay of very good quality available in the area in dispute. They further asserted that the entire land had sal trees which contained valuable timber and forest yielded fuelwood. Nirode Kanta Sen used to sell sal, murgas as timber and also used to sell fuelwood as produce of the forest. On these allegations compensation was claimed for cultivated land including land cultivated after reclamation, trees, timber wood and fuelwood, homestead including building and fixtures; furniture and other movables within the homestead area; and mooram and other underground deposits including coloured clay. The claimants further claimed terminal compensation for the destruction of the property which included the homestead, the building furniture, building material and the mooram which had been taken into possession by the military authorities and for the rest of the items they claimed recurring compensation. For determining fair compensation the Arbitrator categorised the claims so raised under six different heads : (1) Homestead (2) Trees - timber, wood and fuel (3) Culturable land including lands cultivated after reclamation (4) Furniture and other movables within the homestead area, (5) Moorams excavated from the land and (6) other underground deposits like coloured clay etc. Before the Arbitrator the State urged that the claimants were not entitled to any recurring compensation as their right, title and interest in the property vested in the State of West Bengal on April 15, 1955 under the provisions of the West Bengal Estates Acquisition Act, 1953. The Arbitrator rejected the State's plea and determined compensation on the assumption that claimants continued to be owners of the property. Terminal claim for the building, furniture etc. was rejected by the Arbitrator on the ground that the claimants were denied use of the bungalow, so he awarded as recurring compensation on rental basis. The Arbitrator awarded compensation in respect of other items also, it is not necessary to enter into details; however, in all the Arbitrator awarded a sum of Rs. 4,44.681 as compensation to the claimants.

5. In appeal High Court held that claimants were entitled to terminal compensation as well as to recurring compensation. As regards terminal compensation it held that the claimants suffered total loss on account of the destruction of property which included bungalow (Rs. 15,000), furniture in

bungalow (Rs. 500), building material stacked on the ground (Rs. 15,000), Sal timber destroyed (Rs. 1,60,000), moorams kept on surface (Rs. 3000) and fuelwood destroyed (Rs. 7300). Thus in all a sum of Rs. 2,00,300 was awarded as terminal compensation to the claimants in respect of the aforesaid items. The High Court awarded interest on the aforesaid amount at the rate of 4.5 per cent per annum for 27 years with effect from October 1, 1942 to October 1, 1969. While determining the recurring compensation the High Court held that the claimants would have derived income from the forest and minerals to the extent of Rs. 50,000 per year. In addition to that the High Court further held that the claimants were put to a loss of Rs. 650 per annum on account of the requisition of a the cultivable land and crop compensation, tank and mango trees. Thus in all the High Court held that the claimants were entitled to a sum of Rs. 13,67,550 as recurring compensation. If further awarded interest at the rate of 4.5 per cent per annum on the aforesaid amount for a period of 27 years. Thus in all the High Court awarded a sum of Rs. 18,74,089.75 as compensation to the claimants.

6. Learned counsel for the appellant urged that the High Court committed error in awarding recurring compensation to the claimants for the period beyond April 15, 1955 as the claimants ceased to have any right, title or interest in the property in dispute, as the same vested in the State with effect from April 15, 1955 under the provisions of the West Bengal Estates Acquisition Act, 1953. We find merit in the submission. Agrarian reform was initiated in the State of West Bengal and with that end in view the West Bengal Estates Acquisition Act, 1953 (hereinafter referred to as the 1953 Act) was enacted to provide for the acquisition of estates, rights of intermediaries therein and certain rights of raiyat and under-raiyat in the land comprised in the estates. Section 4 lays down that the State Government may be notification declare that with effect from the date mentioned in the notification, all estates and the rights of every inter-mediary in each such estate situated in any district or part of a district specified in the notification, shall vest in the State free from all incumbrances. Section 5 provides for publication of notification in the official gazette, in addition to its being published in the newspapers. Section 5 provides that on publication of notification under Section 4 the estate and the rights of intermediaries in the estate shall vest in the State free from all incumbrances, and all lands in any estate comprised in a forest together with all rights in the trees therein or to the produce thereof, held by an intermediary or any other person shall vest in the State. Though Section 4(1) conferred power on the State Government to issue notifications from time to time in respect of any district or part of a district but the legislative intent is evidenced by sub-section (2) of Section 4 which ordained that the State shall issue notifications so as to ensure that the entire area to which the Act applies shall be notified, enabling the vesting of the interest of all intermediaries in the State on or before the 1st day of Baisakh of the Bengali year 1362 i.e. April 15, 1955. The legislative mandate made it imperative to ensure that right, title and interest of all intermediaries in the State of West Bengal shall be acquired by April 15, 1955.

7. Intermediary as defined by Section 2(1) includes a proprietor, tenure holder, under-tenure holder or any other intermediary above a raiyat. An intermediary's right, title and interest in the land stood acquired by the State on the issue of notification under Section 4 of the 1953 Act. Thereafter no intermediary could claim any right, title and interest in the property. There is no dispute that Nirode Kanta Sen the predecessor-in-interest of the claimants held a Patnidar interest in respect of the property in dispute as is evident from the sale deed dated January 20, 1925 executed by Benode Behari Roy in favour of Nirode Kanta Sen Ex. 7(b) and sale deed dated October 27, 1921 executed by K. G. Dumaine in favour of Jogendra Kumar Sen (Ex. 7 who executed release deed in favour of Nirode Kanta Sen on December 16, 1927 (Ex. 4(a)]. These documents evidenced transfer of Patnidar rights in the property in favour of Nirode Kanta Sen. Under the provisions of the Bengal Patni Regulations 8 of 1819, holder of a Patni deed enjoyed the right of the zamindar unless some limitation was expressly mentioned in the deed. The interest of a Patnidar was capable of being

transferred by sale in the same manner as any other real property. A Patni right holder is a proprietor, therefore included within the meaning of intermediary under the Act. Since Nirode Kanta Sen had Patni rights in the property, he was an intermediary and his right, title and interest in the property vested in the State with effect from April 15, 1955 and thereafter Nirode Kanta Sen and his heirs could not claim any right or interest in the property except that they were entitled to receive compensation for the property so acquired in accordance with the provisions of the 1953 Act. The High Court refused to consider this question on the ground that copies of relevant notifications issued under Section 4 were not on record. The State had filed copies of relevant notifications before the High Court as additional evidence but the High Court refused to accept the same. The notifications issued are published in the gazette, the High Court should have taken judicial notice of the same. Even though the claimants ceased to have any right or title in the requisitioned property after April 15, 1955 the High Court proceeded to award compensation to the claimants on the assumption that they continued to hold right, title and interest in the property even after April 15, 1955. This was apparently in utter disregard of the legislative mandate contained in Section 4(2) of the 1953 Act.

8. Learned counsel for the claimants contended that the provisions of the 1953 Act do not apply to the property in dispute which was under requisition in view of the second proviso to Section 3 of the Act. This is a totally misconceived submission. Section 3 provides that the provisions of the Act shall have overriding effect notwithstanding anything to the contrary contained in any other law, contract, usage or custom to the contrary. There are two exceptions to this which are contained in the two provisos. The first proviso lays down that the provisions of the Act shall not apply to any land held by a Corporation, while the second proviso lays down that the Act shall not affect any land possession of which may have been taken by the State Government before issue of notification under Section 4 of the Act i.e. April 15, 1955, the furtherance of any proposal for acquiring the land irrespective of the fact whether any formal proceedings for such acquisition were started or not before the commencement of the Act. The second proviso is intended to protect the rights of those tenure holders whose land may have been the subject matter of acquisition proceedings under any law with a view to protect their right to get compensation. Since the property in dispute was not under acquisition and the possession of the same had been taken by the State in requisition proceedings, the second proviso has no application.

9. Learned counsel for the claimants urged that under Section 6 of the 1953 Act the claimants were entitled to retain an area of 75 acres of land with them and therefore they are entitled to recurring compensation with regard to that area even after April 15, 1955. He placed reliance on the provisions of Section 6(1)(k) which provides for retaining requisitioned land by intermediary. Section 6 provides that notwithstanding anything contained in Sections 4 and 5, an intermediary shall be entitled to retain land with effect from the date of vesting, as specified in various sub-clauses, which include land comprised in homestead; land comprised in or appertaining to a building and structure owned by the intermediary; non-agriculture land in intermediary's khas possession not exceeding fifteen acres; agricultural land in khas possession of the intermediary not exceeding twenty-five acres in area, as may be chosen by him; tank fisheries; land comprised in tea gardens or orchards or land used for the purpose of livestock breeding, poultry farming or dairy; land comprised in mills, factories, or workshops. Section 6(1)(k) entitles an intermediary to retain so much of requisitioned land as the intermediary may be entitled to retain after taking into consideration any other land which he may be entitled to retain after taking into consideration any other land which he may be entitled to retain under other clauses of the section. These provisions confer right on an intermediary to retain land to the extent specified in the various sub-clauses of Section 6(1) even though his right, title and interest in the estate may have vested in the State. An

intermediary is entitled to retain land, only if it falls within one of the various sub-clauses of Section 6(1) of the Act. The claimants' contention that they are entitled to retain 75 acres of land is founded on the provision of Section 6(1)(d) which relates to agricultural land in the khas possession of intermediary. Under that provision an intermediary is entitled to retain twenty-five acres of agricultural land which may be in his khas possession. Since there are three claimants, they are claiming right to retain 75 acres of land. It is noteworthy that Section 6(1)(d) relates to agricultural land in khas possession of intermediary and not to any other land including forest land. There is no evidence on record to show that 75 acres of agricultural land was in the khas possession of the claimants on the date of vesting. There is further no evidence that the claimants did not possess any other agricultural land apart from that which is the subject matter of the requisition. In the absence of any such evidence it is not possible to determine the question raised by the claimants in the present proceedings. If the claimants were entitled to retain any part of the requisitioned land they should have taken proceedings before the appropriate authorities under the provisions of the 1953 Act. This question cannot be raised for the first time before the court. Section 6(1)(k) merely provides that an intermediary is entitled to retain land which may be under requisition to the extent he is entitled to retain, under the various sub-clauses of Section 6(1). Therefore merely because the land is under requisition the claimants being intermediaries are not entitled to retain the same unless they are able to make out their case by leading cogent evidence to show that they were entitled to retain 75 acres of land or any other area under Section 6(1) of the Act. In the absence of any evidence on record it is not possible to determine the question raised by the claimants in the present proceedings, their contention therefore must fail.

10. Another submission made for claimants was that the requisitioned land contained minerals, the claimants had been excavating moorams and coloured clay, they are therefore entitled to retain the entire land with them under Section 6 read with Section 28 of the Act. Section 28 provides that so much of an area as was being used by an intermediary as mine immediately before the date of vesting shall with effect from such date be deemed to have been leased by the State Government to such intermediary on such terms and conditions as may be determined by the State Government. This provision confers right on an intermediary to retain that much of area which may be comprised in a mine provided the mine was being directly worked by him immediately before the date of vesting. Before an intermediary can claim this right he must first establish that he was directly working mine immediately before the date of vesting. If this condition is not fulfilled the intermediary has no right to retain that land or to continue the mining operation. If the mine was operated by a licensee or by some other person the intermediary would not be entitled to the benefit of Section 28 of the Act. In Tarkeshwar Sio Thakur Jiu v. Bar Dass Day and Co. ((1979) 3 SCR 18 : (1979) 3 SCC 106 : AIR 1979 SC 1669) this Court held that an intermediary can claim benefit of Section 28 of the 1953 Act only if he was himself carrying on the mining operations directly and not through any licensee. In the instant case there is no evidence on record to show that the claimants were carrying on any mining operations immediately before the date of vesting. The only evidence which is available on record shows that in some area mooram had been excavated. But there is no evidence to show as to whether the claimants had themselves excavated the mooram directly or they had got the same excavated through some other agency. Similarly there is no evidence on record to show that the coloured clay which is a mineral was being prospected or excavated by the claimants themselves directly. There is further no evidence to show that the claimants were carrying on mining operations directly immediately before the date of vesting. In this view the claimants are not entitled to any benefit under Section 28 of the Act.

11. Now reverting to the amount of compensation awarded to the claimants, we find that the High Court has awarded terminal compensation of Rs. 2,00,000 to the claimants in respect of bungalow,

furniture, factory material, building material, gravel stacked on the ground, Sal timbers, on the premise that these were completely destroyed by the military authorities as a result of which the claimants suffered loss. On the basis of the material available on record the High Court assessed the total loss suffered by the claimants in respect of the aforesaid items and it thereupon held that the claimants were entitled to terminal compensation of Rs. 2,00,000. Learned counsel for the appellant did not challenge the findings of the High Court in this respect, we accordingly uphold the award of Rs. 2,00,000 as terminal compensation payable to the claimants.

12. The High Court has awarded a sum of Rs. 25,000 as recurring annual compensation on rental basis for Sal trees standing over an area of 150 acres of the requisitioned land. There is no dispute that the Sal trees were standing on the aforesaid land at the time of requisition. The Sal trees contain valuable timber, its matured trees are sold at good price. The High Court has assessed the annual rental value of the Sal trees at the rate of Rs. 25,000 per year falling to the share of the claimants and has awarded recurring compensation to the claimants on that basis. We find no good reason to take a different view. In fact the learned counsel for the appellant did not seriously challenge the finding of the High Court in this respect. There is another item in respect of which the High Court has further awarded recurring compensation in respect of 50 bighas of cultivable land and crop compensation for 50 bighas, tank having an area of 3.96 acres and 22 mango trees. The High Court has recorded finding that 50 bighas of cultivable land was being used for cultivation and there was another 50 bighas of danga land where paddy crop was being cultivated. In addition to that there was a tank having an area of 3.96 acres. The land contained 22 mango trees also. The High Court has determined total compensation for the aforesaid items at the rate of Rs. 650 per annum. We find no infirmity in the High Court's order warranting interference. Thus the claimants are entitled to recurring compensation of Rs. 25,650 per year in respect of Sal forest, agricultural land, tank and mango trees, with effect from October 1, 1942 to April 15, 1955.

13. The High Court has awarded recurring annual compensation to the claimants for the underground deposits of mooram and coloured clay. The claimants did not produce any evidence to show that moorams and coloured clay were available in the entire area or in a particular area of the requisitioned land. No evidence was produced to indicate the quality of moorams and coloured clay or the actual loss which the claimants sustained. In the absence of any evidence the High Court on conjecture held that 50 cft. of mooram could be extracted in one acre and on that basis mooram could be extracted over a period of 10 years from 160 acres. On this assumption it held that the claimants could have excavated 10,00,000 cft. of mooram per year and the same could be sold at the rate of Re. 1 per 100 cft. On that basis the claimants could have derived income of Rs. 10,000 each year. The High Court then proceeded that land could be settled for mooram extraction to a willing party at an annual rent payable to the claimants at the rate of Rs. 5000. On these findings the High Court awarded a sum of Rs. 5000 as recurring annual compensation to the claimants. There is no evidence on record to show that mooram was available over the entire area of 160 acres. There is further no evidence to show that claimants had let out right to excavate mooram to any one or that they had been deriving any recurring income each year. In the absence of any such evidence, no recurring compensation could be granted to the claimants. Recurring compensation is granted to make good the loss which the owner may suffer. If the owner fails to prove recurring annual loss, he could not be entitled to recurring compensation for the requisitioned property. The High Court committed error in awarding recurring compensation of Rs. 5000 per year for the moorams.

14. The High Court has held that the coloured clay was available in the requisitioned land, which could be used for industrial purposes and for which Nirode Babu intended to set up a factory. The High Court proceeded on the assumption that the claimants would have extracted at least 200 cft.

coloured clay per every 500 cft. of excavation which would have been utilised for manufacturing bricks, mercilised tiles and potteries which would have brought net annual income to the claimants to the extent of Rs. 20,000 per year. The High Court had no evidence before it with regard either to the area or to the quality, or the quantity of the coloured clay available in the requisitioned land. The claimants led no evidence with regard to the loss of income which they may have suffered. Learned counsel for the claimants failed to point out any evidence on record to support the findings of the High Court with regard to the coloured clay. In this view, the High Court committed error in awarding a sum of Rs. 20,000 per annum as recurring compensation for the coloured clay.

15. In their appeal the claimants have raised a grievance that the High Court has awarded interest only at the rate of Rs. 4 1/2 per cent which is wholly illusory. In their objection the claimants had raised a claim for interest at the rate of 6 per cent per annum. Having regard to the facts and circumstances of the case we are of the opinion that the claimants are entitled to interest on the amount of compensation payable to them at the rate of 6 per cent per annum, from the date of taking over possession i.e. October 1, 1942 till the date of payment.

16. For the reasons stated above we allow both the appeals partly and modify the order of the High Court to the extent that the claimants are entitled to a sum of Rs. 2,00,000 as terminal compensation and also to a sum of Rs. 25,650 as recurring compensation, in respect of the Sal trees and agricultural land etc., per annum with effect from October 1, 1942 to April 15. 1955. The claimants are also entitled to interest on the aforesaid amount at the rate of 6 per cent per annum from the date of requisition till the date of payment. In the circumstances of the case parties shall bear their own costs.

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