

State of West Bengal

Vs

Atul Krishna Shaw and Another

Civil Appeal No. 1422 of 1973

(N. M. Kasliwar, K. Ramaswamy JJ)

28.08.1990

JUDGMENT

K. RAMASWAMY, J. –

1. This appeal by special leave under Article 136 of the Constitution arises against the order dated July 5, 1971 made by the Calcutta High Court in Civil Order No. 1826 of 1971 dismissing the writ petition in limine. The material facts are that the lands of Hal Plot Nos. 2202, 2204, 2206, 2209, 2210, 2212, 2214, 2219, 2220, 2225, 2226, 2228, 2229, 2232, 2233, 2234, 2236 of 2239 of Mouza Kishorimohanpore, J.L. No. 168, P.S. Jaynagar were recorded in the final Khatian Nos. 143 and 144 of J.L. No. 168 as "Tank Fishery" (being used for pisciculture) and by operation of Section 6(1)(e) of West Bengal Estates Acquisition Act 1 of 1954, for short 'the Act' stand excluded from its purview. The Assistant Settlement Officer initiated suo moto proceedings on May. 14, 1968 that they have not been properly classified and prima facie require correction of classifications of those lands. Accordingly, he drew up the proceedings under Section 44(2-a) of the Act, issued notice to the respondents who are brothers, intermediaries. They filed their written objections and appeared through counsel. They also filed the documents, examined three witnesses apart from themselves. On behalf of the State one Mr. Ranjit Kumar Dutta, Revenue Officer, Yadavpur Settlement was examined. The objections raised by the respondents are that the lands originally belong to Smt. Banodamayee Dasi, Superior Landlady, who granted to them dakhilas Nos. 9 and 10 in the year 1359 B.S. i.e. 1952 A.D. Thereafter they have been cultivating pisciculture in the said lands. They got embankment raised around the land. They have been conducting fishery business. In the fields survey the property was recorded in their name as the occupiers. On account of the injunction issued by the High Court the attestation in the original settlement was not affected. When they approached the Junior Land Revenue Officer for receipt of the rents, after due enquiry by endorsement dated April 30, 1958 A.D., the Tehsildar made an endorsement on the body of the receipt "For Pisciculture". They were conducting fishery in a large scale. They had applied to the Chief Minister Dr. B.C. Roy for a loan of Rs. 25,000. An endorsement on the application was made by the concerned Secretary. When the miscreants sought to disturb the embankments, they made a complaint to the police, who initiated action in this regard. Agricultural Income Tax Department levied on them income tax relying on pisciculture being done by the respondents.

2. The Assistant Settlement Officer considered the entire evidence on record in great detail like civil court and held that the three witnesses examined in proof of the respondents conducting pisciculture in the disputed plots of lands are interested and brought up witnesses for the detailed reasons given in support thereof; the respondents did not produce the report of the Junior Revenue Officer who was directed to accept the rents from the respondents. Admittedly, all the lands stood vested in year 1955-56 in the State by operation of the notification issued under Section 4(1) of the Act. Though

the settlement was stated to have been obtained from the Principal Landlady in the year 1952 (1359 B.S.), they did not produce any pre-or post-settlement records for the period up to 1955-56, the year of vesting, to establish that the disputed lands are recorded as tank fishery. Mr. R.K. Dutta examined on behalf of the State stated that he made local inspection on April 11, 1968 A.D. and found recorded the class of land in 18 dags (plots), Serial Nos. 2202, 2204, 2206, 2209, 2210, 2212, 2214, 2219, 2220, 2225, 2226, 2228, 2229, 2232, 2233, 2234, 2236 and 2239 within that Mouza. The present dags (plots) Nos. 2206, 2239, 2229, 2225, 2212, 2219, 2220 are small dobas i.e. "ponds" and he did not find any sign of pisciculture in those plots. Plot Nos. 2210, 2209, 2233 and 2234 are blind canals. There was no connection whatsoever of those plots with river or big canals. He stated that there was water within those dags (plots), but he did not find any sign of pisciculture therein. He did not find any water in Plot Nos. 2202, 2232, 2204, 2214, 2236, 2239, 2228 and 2226 either existing or drained in those plots. Danga (elevated land) "Layek Jangal Bheter" (like jungle inside) "Layek Jangal" (jungle outside) and there was no water at all. He also made local enquiries from other persons in the neighborhood and they testified to the same fact. He admitted that adjacent to those plots there were two plots, namely, Plot Nos. 2201 and 2235, but outside the disputed lands where in pisciculture was being carried out in those plots at the time of inspection. He also stated that the people examined by him have stated that till date the lands remained in the same condition. In the settlement plan (map) the plots were not classified as pisciculture. Only two plots i.e. 2201 and 2235 were classified as pisciculture.

3. It may be stated at this juncture that though Mr. Dutta was subjected to gruelling cross-examination at great length on the nature of pisciculture and characteristics etc. as regards the existence of the condition of the lands at the time of his inspection and that he did not find any trace of carrying pisciculture, no cross-examination was directed nor was suggested to the contrary. The Assistant Settlement Officer after consideration to the entire evidence found that the respondents claimed to have started fishery after obtaining settlement from landlady in the year 1952, they admitted that khasra enquiry was conducted in the year 1954 (1361 B.S.) in their presence and examined witnesses. The Enquiry Officer did not enter in the khasra record that any pisciculture was being carried on in any disputed plots except Plot Nos. 2201 and 2235. On the other hand he noted that there is no fishery in any on those plots except those two specified plots. The vesting of plots under the Act took place in the year 1955-56. Except the receipt issued by the Tehsildar, no documentary evidence of payment of rent has been produced. The Tehsildar had no business to write on the receipt "for pisciculture", nor record of enquiry made by Junior Land Revenue Officer in this regard was produced. It is, therefore, clear that in the khasra enquiry it was not recorded that the suit plots are fishery and in none of the plots it was recorded that any pisciculture was being conducted. The attestation took place in July 1959, i.e. after seven years from 1359 B.S. (1952) the year of settlement and three years from the date of starting the so called fishery. No documentary evidence except the solitary receipt which was rejected by the Assistant Settlement Officer was produced to show that any pisciculture was being conducted. The receipt given by the Tehsildar is obviously to accommodate the respondents. There is no sufficient proof of laying any road to carry the fish from the said plots. Sri Atul Kumar Sahoo, one of the respondents, when was examined as a witness admitted it. Admittedly, fishery was carried out in Plot Nos. 2201 and 2235 which are linked up with river Alian Khal with tide but they are not part of lands in dispute. None of the plots which are subject matter of the suit is linked up with river or any high canal with tide.

4. With regard to making an application to the Chief Minister the copy has not been produced. There is no evidence whether these plots of lands have been mentioned in that application. Since, admittedly, the respondents are having fishery in Plot Nos. 2201 and 2235, it was likely that the loan application would relate to those plots. The total extent of the disputed land is about 550 bighas.

Even account books showing income and expenditure of fishery were not produced, though time was allowed to produce the documents more than once. Some lands are dry lands and some lands are with the shrubs inside river embankment and outside. So the question of fishery over those plots does not arise. Only to refute this factual situation the respondents tried to patch it up by saying that these plots were dried up for some months in every year. But they have failed to prove the existence of any fishery over those plots by adducing sufficient and reliable evidence. When there is no evidence to show the existence of fishery in any of the disputed plots, it is obvious that plots were wrongly recorded as fishery. Primary authority considered the oral evidence and rejected it for valid reasons and ordered that the classification of Plot Nos. 2202, 2239, 2225, 2232, 2204, 2210, 2234, 2214, 2236, 2228 and 2226 in Hal Khatian Nos. 134 and 144 within Mouza Kishorimohanpore, J.L. No. 168, P.S. Jaynagar as recorded as "Ghert" and pisciculture in column No. 23 should be deleted and instead the classification of Plot No. 2202 and 2209 should be recorded as 'Layek Jungle Outside' Plot Nos. 2202, 2204 2236 and 2228 should be recorded as 'Layek Jungle Outside'. Plot Nos. 2201, 2234 should be recorded as 'pond', 2214 and 2226 should be recorded as 'danga'. Recording in column No. 23 to the effect 'pisciculture' in Plot Nos. 2209, 2229, 2206, 2212, 2219, 2233 and 2220 should be deleted.

5. Against this order an appeal was filed before the Tribunal (IXth Addl. District Judge, Alipore) under Section 44(3) of the Act which by judgment dated March 4, 1971 in E.A. No. 49 of 1968 in one paragraph with cryptic order assuming the role of an administrator reversed the order of the ASO. The conclusion, without discussing the evidence recorded by the Appellate Judge are that in the C.S. Khatian he found that these lands were recorded as layek jungle vitar and bahir, doba pukur and khal. He had gone through the R.S. map and from the map he found no sing of jungle as against the disputed land. One salt manufacturing company was in occupation of the disputed land before the respondents took settlement from the original landlady. The existence of salt manufacturing company shows that there was salt water on the disputed lands. With a view to develop the land they applied for the loan to the Chief Minister on May 25, 1955. That shows that there exists fishery in the disputed land. The Junior Land Revenue Officer found on May 11, 1958 after inspection the existence of fishery. Therefore, it shows that on the date of vesting there exists fishery in the lands. Local witnesses who were examined support the existence of fishery for a pretty long time. Against this there is no rebutting evidence adduced by the State. Accordingly he set aside the order of the Assistant Settlement Officer and confirmed the original classification. The State filed the writ petition and the High Court, as stated earlier, dismissed the writ petition in limine.

6. Shri Roy, the learned senior counsel appearing for the State contended that the Assistant Settlement Officer has carefully assessed the evidence and recorded the findings. The Appellate Tribunal has reversed the findings without considering the validity of the reasons recorded by the Assistant Settlement Officer. It has taken irrelevant factors or non-existing factors into account and thereby the findings recorded by the Appellate District Judge is based on no evidence. On the other hand it is beset with conjecture and surmises. Shri Chatterjee, the learned senior counsel appearing for the respondents contended that the appellate authority has recorded the findings of fact that pisciculture was in existence as on the date of vesting. This Court cannot interfere with the findings of fact recorded by the appellate court, in particular, when the High Court did not choose to interfere with the finding. The record in the settlement refers that the lands are used for pisciculture. It is open to the State to establish that the lands are not being used for pisciculture. In its absence the findings recorded by the appellate court is one of fact and this Court cannot interfere with that finding.

7. Admittedly the High Court did not go into any of the questions raised by the appellant in the writ

petition. It summarily dismissed the writ petition. Therefore, what we have to read is only the orders of the appellate tribunal and the Assistant Settlement Officer - the primary authority together with the record of evidence. Counsel took us through the evidence to show that the findings recorded by the appellate Judge are based on either no evidence or surmises and conjectures. We have given our anxious consideration to the respective contentions and considered the evidence on record once again. It is indisputably true that it is a quasi-judicial proceeding. If the appellate authority had appreciated the evidence on record and recorded the findings of fact, those findings are binding on this Court or the High Court. By process of judicial review we cannot appreciate the evidence and record our own findings of fact. If the findings are based on no evidence or based on conjectures or surmises and no reasonable man would, on given facts and circumstances, come to the conclusion reached by the appellate authority on the basis of the evidence on record, certainly this Court would oversee whether the findings recorded by the appellate authority is based on no evidence or beset with surmises or conjectures. Giving of reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of sound system of judicial review. Reasoned decision is not only for the purpose of showing that the citizen is receiving justice, but also a valid discipline for the Tribunal itself. Therefore, statement of reasons is one of the essentials of justice.

8. The appellate authority in particular a trained and experienced District Judge is bound to consider the entire material evidence adduced and relied on by the parties and to consider whether the reasons assigned by the primary authority is cogent, relevant to the point in issue and based on material evidence on record. The District Judge has forsaken this salutary duty which the legislature obviously entrusted to him. The question, therefore, is whether the reasons assigned by the appellate tribunal are based on no evidence on record or vitiated by conjectures or surmises. For appreciating this point it is necessary to look into the purpose of the Act and relevant provisions therein. The Act has been made to acquire the estates, all rights of intermediaries therein and of certain rights of raiyats and under raiyats of non-agriculture tenants in occupation of the lands comprised in the State, Section 4(1) empowers the State Government to issue notification under the Act from time to time declaring that with effect from the date mentioned in the notification all estates and all rights of every intermediary in each such estate situated in the district or a part of the district specified in the notification "shall vest in the State" free from all incumbrances. The procedure has been provided in this behalf in sub-sections (2) to (6) of Section 4 of the Act, the details of which are not relevant for the purpose of this case. The effect of the notification as adumbrated in Section 5 thereof is that all grants of, and confirmation of titles to, estates and rights therein, to which the declaration applies and which were made in favour of the intermediaries shall determine. Thereby, by statutory operation the pre-existing rights and all grants of and confirmation of the titles to the estate and the rights therein statutorily have been determined by issuance and publication of the notification under Section 4(1) read with Section 5 of the Act. Section 6 of the Act employing non-obstante clause carved out exceptions to the operation of Sections 4 and 5 and preserve the right of intermediary to retain possession and title of certain land in certain circumstances. Sub-section (1) postulates thus :

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

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(e) tank fisheries :

Explanation. - "tank fishery" means a reservoir or place for the storage of water, whether formed naturally or by excavation or by construction of embankments, which is being used for pisciculture or for fishing, together with the sub-soil and the banks of such reservoir or place, except such portion of the banks as are included in a homestead or in a garden or orchard and includes any right of pisciculture or fishing in such reservoir or place."

9. A reading of these provisions clearly indicates that notwithstanding the determination of pre-existing rights, titles and interest of the holders of the estate in the notified estate, subject to proviso to sub-section (2) and other provisions of the sub-section, sub-section (1)(e) retains the rights and possession of intermediary in respect of tank fisheries. Tank fishery means the lands being used for pisciculture or any fishing in a reservoir or storage place whether formed naturally or by artificial contrivance as a permanent measure except such portion of embankment as are included in a homestead or in a garden or orchard to be tank fishery. Such lands occupied by pisciculture or fishing stood preserved to the intermediary. In Chambers 20th Century Dictionary at page 829, the word 'pisciculture' is defined to mean "the rearing of fish by artificial methods". In Webster Comprehensive Dictionary, (vol. II) 'pisciculture' means hatching and rearing of fish. In Stroud's Judicial Dictionary (vol. II, 4th edn.) at page 1051 the term 'several fishery' is sometimes said to be a right of fishing in public waters, which may be exercisable by many people. Therefore, when by means of reservoir or a place for storage of water whether formed naturally or by excavation or by construction of embankment, is being used for pisciculture or for fishing is obviously a continuous process as a source of livelihood, would be 'tank fisheries' within the meaning of Section 6(1)(e). Such tanks stand excluded from the operation of Sections 4 and 5.

10. The question, therefore, emerges whether the disputed plots are tank fisheries. Undoubtedly, as rightly contended by Shri Chatterjee that if the findings recorded by the appellate tribunal that the disputed plots of land are tank fisheries, are based on evidence on record, after its due consideration in proper perspective certainly that finding is binding on this Court, as being a finding of fact. The finding recorded by the appellate tribunal is based on five grounds, namely, non-existence of the forestry in the map; making application for loan; revenue receipts produced by the respondent; previous salt cultivation and the oral evidence adduced on behalf of the respondents. Yet another ground is absence of rebuttal evidence by the State. We have already noted the findings recorded by the Assistant Settlement Officer. They need no reiteration. Mr. Dutta examined on behalf of the State made personal inspection. The contention of Shri Chatterjee is that he inspected the land in the year 1968, but the relevant date is of the year 1952 and there is no evidence contrary to the existence of land in 1952 being used for pisciculture. It is true that the crucial date for establishing, as a fact that the pisciculture was being carried on in the disputed land is the period of vesting, namely, 1955-56. The existence of fishery subsequent to that period is not of any relevance. Admittedly, the respondents did not produce before the Assistant Settlement Officer either post-or pre-record till date of vesting to establish that from 1952 to 1955-56 i.e. from the date of obtaining settlement till date of vesting, the lands were recorded in settlement records as pisciculture or fishery. Admittedly, in 1954 the khasra enquiry was conducted in the presence of the respondents. The findings recorded in the relevant columns are that no pisciculture or fishery was being carried on except in two plots i.e. 2201 and 2235 which are not subject matter of enquiry but are situated adjacent to these lands. Those findings were not challenged at any time. The report of the Tehsildar directing payment of the land revenue was not produced. What was produced is only receipt, on the body of which an endorsement "for pisciculture" was made by the Tehsildar. The reason given by the Assistant Settlement Officer in rejecting the receipts was that there was no need for the Tehsildar to write "for pisciculture" and that was not the practice. This finding was not disputed by the

appellate Judge. Therefore, there is no documentary evidence to establish that the lands were being used, on the date of settlement or also on the date of vesting, for pisciculture or fishery. The findings recorded by the Assistant Settlement Officer is based on the evidence given by Mr. Dutta, who on personal inspection, found that the lands remained in the same conditions from the date of vesting till date of his inspection in the year 1968. This finding was also not contradicted in the cross-examination of Mr. Dutta, though he was subjected to gruelling cross-examination. Therefore, the finding that the State has not produced any rebuttal evidence is palpably wrong on the face of the record. The further findings that the map does not indicate that there exists any forestry, is also a conclusion reached by the appellate authority without discussing the evidence of Mr. Dutta who had stated in his evidence that there are shrubs outside and inside the lands in dispute. It is the specific case of the respondents that they made embankment, but Mr. Dutta finds that there was no embankment to any of the plots. That was also a finding recorded by the Assistant Settlement Officer. There is no discussion by the appellate authority of the evidence given on that count. Though written objections were filed and evidence was adduced by the respondents, neither in the objections nor in the oral evidence tendered by the two respondents or their witnesses it was shown that the lands were used earlier for salt cultivation by erstwhile landholder. Therefore, this is an extraneous factor which the District Judge picked from his hat without any foundation. The solitary revenue receipt produced by the respondents was rejected by the Assistant Settlement Officer for cogent reasons. The appellate authority being final authority on facts, is enjoined and incumbent upon it to appreciate the evidence; consider the reasoning of the primary authority and assign its own reasons as to why it disagrees with the reasons and findings of the primary authority. Unless adequate reasons are given, merely because it is an appellate authority, it cannot brush aside the reasoning or findings recorded by the primary authority. By mere recording that dakhilas (rent receipts) show that lands are used as pisciculture is a finding without consideration of the relevant material on record. The other finding that respondents applied to the Chief Minister for loan and that it would establish that the loan amount was utilised for developing fishery is also a surmise drawn by the appellate authority. It is already seen that admittedly the respondents have Plot Nos. 2201 and 2235 in which they have been carrying on fishery operations. The application said to have been filed before the Chief Minister has not been produced. The account books of the respondents have not been produced. When the documentary evidence, which being the best evidence, is available but not produced an adverse inference has to be drawn by the Tribunal concerned against the respondents for non-production and had it been produced, it would have gone against the respondents. A police complaint was said to have been made concerning disturbance in the enjoyment of the lands in question. No documentary evidence was produced or summoned. Even if it is done it might be self-serving one unless there is a record of finding of possession and enjoyment by the respondents for fishery. Even then also it is not binding on the State nor relevant in civil proceedings.

11. The contention of Shri Chatterjee that it is the duty of the appellant to produce the record to repudiate the findings recorded by the appellate authority is without substance. In a quasi-judicial enquiry it is for the parties who rely upon certain state of facts in their favour to adduce evidence in proof thereof. The proceedings under the Act is not like a trial in a civil court and the question of burden of proof does not arise. In the absence of adduction of the available documentary evidence, the necessary conclusion drawn by the Assistant Settlement Officer that the loan application made might pertain to Plot Nos. 2201 and 2235 is well justified. The appellate authority is not justified in law to brush aside that finding. The other finding that the witnesses examined on behalf of the respondents support the existence of the fishery for a pretty long time is also without discussing the evidence and assigning reasons in that regard. The Assistant Settlement Officer extensively

considered the evidence and has given cogent reasons which were neither discussed nor found to be untenable by the appellate authority. Thus, we have no hesitation in coming to the conclusion that the appellate tribunal dis-regarded the material evidence on record, kept it aside, indulged in fishing expedition and crashed under the weight of conjectures and surmises. The appellate order is, therefore, vitiated by manifest and patent error of law apparent on the face of the record. When so much is to be said and judicial review done, the High Court in our considered view, committed error of law in dismissing the writ petition in limine. In the facts and circumstances of this case, in particular, when the litigation has taken well over 28 years till now, we find it not a fit case to remit to the High Court or Tribunal for fresh consideration.

12. It is contended that the respondents are entitled to the computation of holding under the Act, since they are possessed of some other lands. We direct that if any determination of total holding of the lands including Plot Nos. 2201 and 2235 and any other lands are to be made under the Act or any other Land Reform law singly or conjointly it is open to the appropriate authorities to determine the holding of the respondents in accordance with law after giving reasonable opportunity to the respondents and the State after excluding the plots of lands in dispute.

13. Shri Roy, learned counsel for the State repeatedly asserted that the lands no longer remain to be fishery land and became part of urban area around the Calcutta city and building operations are going on. On the other hand the counsel for the respondents asserted to the contrary. We have no definite evidence on record. Therefore, if the lands are still found to be capable of using for fishery purpose and in case the State intends to lease it out for fishing operations, to any third party, as per rules in vogue, first preference may be given to the respondents, subject to the usual terms, as per the procedure prevalent in the State of West Bengal in this regard.

14. Accordingly, we quash the order of appellate tribunal dated March 4, 1971 and restore the order of the Assistant Settlement Officer dated July 12, 1968.

15. The appeal is allowed accordingly and the parties are directed to bear their respective costs.

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