

SUPREME COURT OF INDIA

Mrinalini Roy Ratna Prova Mondal

Vs.

State of W.B.

C.A.Nos.2486- 90 of 1981

(K. Ramaswamy and G. T. Nanavati, JJ.)

21.11.1996

ORDER

1. These appeals by special leave arise from the Division Bench judgment of the Calcutta High Court dated May 27, 1975 in FMA Nos. 1021-25/78.

2. It is not necessary to narrate all the facts in these cases. Suffice it to state that notification under S. 4(1) of the Land Acquisition Act 1894 (for short, the 'Act') was published on May 14, 1956 for reclamation of the fisheries in the lands comprising cadastral plots enumerated in the notification, of an extent admeasuring more or less 8760.53 acres. Declaration under S. 6 was published on January 5, 1971 declaring that the land for the reclamation of the Southern Salt Lake area was published. We are concerned presently to an extent of 1495.93 acres only. It was contended in the High Court and also repeated by Dr. S. Ghosh, learned senior counsel, that the "land", as defined under S. 3(a) does not include fisheries; that is made explicit by the West Bengal Amendment Act, 1981 bringing within the ambit of the word 'land'. It would indicate that the authorities have understood that the Act does not apply to acquisition of the fisheries rights and, therefore, the acquisition was without authority of law. In support thereof, Dr. Ghosh placed reliance on the judgment of the Division Bench of the Calcutta High Court in Pasupati Roy v. State of West Bengal, AIR 1974 Calcutta 99 and State of West Bengal v. Suburban Agriculture Dairy and Fisheries Pvt. Ltd. ((1993) Supp 4

SCC 674 : (1993 AIR SCW 2280) paragraphs 6, 13, 14 and 16) and in *State of West Bengal v. Shebait of Iswar Shri Saradiya Thakurani*, AIR 1971 SC 2097 at 2098 para 3. We find it difficult to give acceptance to the contentions of the learned counsel. The expression 'land' includes benefits to arise out of land and, things attached to the earth or permanently fastened to anything attached to the earth. Tank fisheries cannot survive independent of the tank and there cannot be a tank without the land. Therefore, the expression 'land' is required to be understood in that perspective when the tank fisheries are sought to be acquired. Tank fisheries thereby would be a benefit to arise out of the land. Thereby the word 'land' should be understood to have been covered by the elongated definition since it defines with inclusiveness that the tank fisheries is a benefit to arise out of land.

3. It is then contended that the acquisition is not for a public purpose and, therefore, the Notification is bad in law, we find no force in the contention. It is seen that the declaration under S. 6 expressly mentions that the acquisition was for reclamation of the Salt Lake area. Sub-sec. (3) of S. 6 of the Act gives conclusiveness to the public purpose.

4. It is true that a memo was filed on behalf of the Fisheries Department and was reiterated in the counter-affidavit filed in the High Court that the land acquired would be used to rehabilitate some of the displaced fishermen to eke out the livelihood in reclamation tank fisheries. The above statement is not inconsistent with the public purpose which became conclusive under S. 6(3). As seen, that while reclaiming the tank fisheries for the public purpose, some of the displaced fishermen on the other lakes are sought to be rehabilitated in the lake in question by enabling them to catch the fish to earn livelihood. It would, therefore, be not inconsistent with the declaration conclusiveness of which has been attached by operation of sub-section (3) of S. 6 which is also consistent with S. 114(h) of the Evidence Act. It is true that prior to the Amendment Act, 1981 tank fisheries were not expressly brought within the definition of land. In 1981, with a view to avoid any further litigation on the interpretation in that behalf, the Legislature expressly brought within the ambit of the land the tank fisheries or fisheries. That does not mean that it would not be capable of interpretation to bring within the ambit of a benefit to arise out of the land. The Division Bench judgments of the Calcutta High Court relied upon by Dr. Ghosh have not correctly laid down the law. In *Suburban Agriculture Dairy and Saradiya Thakurani cases* (1993 AIR SCW 2080) (supra), that question did not squarely arise. That was a case under the West Bengal Estates Acquisition Act. The definition of "land" expressly mentions that the tank fisheries are included within the definition of the "estate" but vis-a-vis the rights attached therein, option have been given to the intermediary within specified time for its retention. Therefore, the intermediary, if he had exercised the option after the notification abolishing the concerned estates within the specified time, then the tank fisheries stand excluded from vesting. That principle has no application to the facts in this case. Accordingly, we hold that the tank fisheries are the land and the acquisition was for public purpose. We do not find any illegality warranting interference with the Division Bench judgment.

5. The appeals are accordingly dismissed, but, in the circumstances, without costs.

Appeals dismissed.

