

Maharaja Chintamani Saran Nath Shahdeo

Vs

State of Bihar

Civil Appeal No. 5451 of 1995

(M. Jagannadha Rao, S. N. Phukan JJ)

07.10.1999

JUDGMENT

PHUKAN. J :-

1. This is an appeal against the judgment and order dated 9-5-1990 passed by the Division Bench of the Patna High Court, Ranchi Bench in LPA No. 133 of 1989 ®. By impugned judgment the Division Bench in the appeal refused to interfere with the judgment and order of the learned Single Judge date d13-9-1987 passed in Civil Writ No. 540 of 1983 (R).

2. The admitted facts are as follows:

The appellant herein was the proprietor within the meaning of the Bihar Land Reforms Act, 1950 (for short "the Act") in the interest in the estate including the subsisting lease of mines and minerals vested in the State of Bihar under the Act. A proceeding for payment of compensation was initiate dunder Chapter V of the Act in Compensation Case No. 1/r/8 or 1951. The Assessment Roll dated 12-5-1978 was published under Section 28 of the Act for a sum of Rs. 4,29,527.50 paise. Payment was made under Section 32 of the Act to the appellant in the form of bond which was accepted.

3. The assessment Roll was revised and a fresh roll was prepared on 3-11-1979 and compensation was assessed at Rs. 46,66,014.76 paise calculated at three times of the net annual income. This amount also included the earlier amount of Rs. 4,29,527.50 paid and received by the appellant in the form of bond.

4. The appellant made a grievance to the Government regarding the compensation assessed and claimed at 15 times the net income but thereafter the Additional Collector, Respondent 4, who was the Compensation Officer, asked the appellant to file an affidavit if he was ready and willing to accept compensation for mines and minerals at ten times of the net annual income which was duly agreed to by the appellant on 6-8-1982. Accordingly, a fresh Compensation Assessment Toll was prepared and additional compensation of Rs. 25, 87,300 was paid to the appellant through his agent.

5. The Member, Board of Revenue, Respondent 2 in March 1982 (sic) took suo motu action, reopened the compensation case of the appellant and held that compensation so computed was contrary to Section 25(4) of the Act which prescribed only three times the net income and directed the Deputy Commissioner, Respondent 3 to issue notice to the appellant for refund of the excess amount of Rs 25,87,300. Accordingly the notice was issued followed by a certificate case an being aggrieved the appellant approached the High Court.

6. The appellant took a plea that the Member, Board of Revenue was not authorised under the Act to pass the impugned order and if the authority was of the opinion that any excess amount was paid, an appeal under Section 27 of the Act could have been filed.

7. Before the High Court the respondent pleaded that under Section 25 of the Act compensation of account of mines and minerals was paid and determined that three times under the amending Act, 1974, was wholly without jurisdiction. It is further pleaded that the appellant received the compensation as earlier determined without any protest and, therefore, the excess amount was liable to be refunded. According to the respondents the Member, Board of Revenue had power of superintendence, direction and control and, therefore, the order was legally and validly passed.

8. It may be stated that the Act was amended including Section 25 by the Bihar Land Reforms (Validation and Amendment) Act, 1974 (Bihar Act 15 of 1974) (for short "the amending Act") A question arose before the High Court as to whether the amending Act would have retrospective effect. The High Court decided that the unamended provisions of Section 25 of the Act would apply to the present case. The High Court was of the view that the appellant having accepted compensation without protest in the year 1979 vide Form 'G' the matter could not have been reopened as there was implied agreement between the parties in terms of Section 25(4)(a) of the Act. It was also held that under Section 30-A no fresh Compensation Assessment Roll could have been prepared as no further interests had vested in the Government. Regarding orders of the Member, Board of Revenue, the High Court held that if the order is set aside on the ground that it was without jurisdiction it will result in restoring an illegal order, therefore, it refused to interfere in the matter.

9. We have heard Shri S. B. Sanyal, learned Senior counsel for the appellant and Shri H.L. Agrawal learned Senior Counsel for the respondents.

10. The first point urged on behalf of the appellant was that the Act did not empower the Member of Board of Revenue to exercise any power and, therefore, the order of the Member of Board of Revenue directing the subordinate authority to take action for recovery of the additional compensation which was paid @ ten times was illegal. The learned counsel for the respondent urged that under the Bihar Practice and Procedural Manual, Member of Board of Revenue had power of superintendence, direction and control in such matters.

11. But in the Act, the authorities and their powers have been specified and we do not find any provision which vests power on the Board of Revenue, so we have to proceed on the assumption that the Board of Revenue has no power.

12. Therefore, the question is whether the order of the Member of Board of Revenue should be quashed on this ground. If the order is set aside, the result would be that the notice directing the appellant to refund the additional amount of compensation assessed at ten times of the net income would have to be quashed. In other words, the earlier reassessment of compensation made by giving ten times of the net income would revive. If under the law the appellant is not entitled to get compensation more than three times of the net income it would amount to restoring an illegal order.

13. In *Gadde Venkateswara Rao v. Govt.*, of A.P.¹ this Court considered the action of the State Government under the Andhra Pradesh Panchayats Samithis and Zilla Parishads Act, 1959 and came to the conclusion that the Government had no power Section 72 of the Act to review an order made under Section 62 of the act but refused to interfere with the orders of the High Court on the

ground that if the High Court had quashed the said order, it would have restored an illegal order and, therefore, the High Court rightly refused to exercise its extraordinary jurisdictional power.

14. In Mohd. Swallah v. IIIrd ADJ² similar view was also expressed by this Court. In that case the order passed by the prescribed authority under the U.P. (Temporary) Control of Rent and Eviction Act, 1974 was set aside by the District Judge in appeal though the appeal did not lie. The High Court came to the finding that the order of the prescribed authority was invalid and improper but the District Judge had no power to sit in appeal. The High Court did not interfere with the orders of the District Judge. The order of the High Court was affirmed by this Court on the ground that though technically the appellant had a point regarding the jurisdiction of the District Judge but the order of the prescribed authority itself being bad, no exception can be taken against the refusal of the High Court to exercise powers under Article 226.

15. Therefore, in view of the above ratio laid down by this Court, we hold that even if the Member of Board of Revenue had no power to issue direction for giving notice for refund of the excess amount paid, no exception can be taken to the said order if it is found that legally the appellant was paid excess compensation under the Act.

16. Therefore, the question is whether under the provisions of the Act the appellant is entitled to get compensation @ three times or ten times of the net times of the net income.

17. We extract below the relevant portion of Section 24 25,30 and 30-A of the Act before amendment of 1974 and also sub-section (2) of Section 1 and Section 6 of the amending Act, 1974:

"24 Rates of Compensation- After the net income has been computed under Section 23, the Compensation Officer shall for the purpose of preparing the Compensation Assessment Roll proceed to determine the amount of compensation to be payable in respect of the transference to the State of the interests of each intermediary as follows-

1. in the case of a proprietor or tenure-holder of a permanent or resemble tenure, the compensation payable shall be determined in accordance with the following table, namely-

<i>Amount of net income</i>	<i>Rate of compensation payable.</i>
(a) Where the net income so computed does not exceed Rs 500	Twenty times such net income.
(b)-(k) *	* *
(l) Where the net income so computed exceeds Rs 1,00,000.	Three times such net income but in any case not less than the maximum amount under item (k) above.

To the amount thus determined shall be added –

the amount of compensation payable to a proprietor or tenure holder in respect of mines and minerals as determined under Section 25.

* * *

25. *Computation of compensation payable for mines and minerals.* – (1) The Compensation Officer shall prepare in the prescribed form and in the prescribed manner a compensation Assessment Roll containing in respect of every intermediary in receipt of royalties on account of mines and minerals or directly working mines comprised in the estate or tenure

- a. his gross income and net income from such royalties;

* * *

(4) After the net income from royalties has been computed under subsections (2) and (3), the Compensation Officer shall proceed to determine that amount of compensation to be payable to the intermediary in the manner and in accordance with the principles hereinafter set out, that is to say-

- a. where the amount of compensation can be fixed by agreement, is shall be determined in accordance with such agreement;
- b. where no such agreement is reached within the prescribed period, the Compensation Officer shall refer the question of the determination of the amount of compensation to a tribunal to be appointed by the State Government in this behalf;
- c. for the purposes aforesaid, the tribunal to be appointed by the State Government shall consist of a District Judge;
- d. the State Government shall nominate a Mining Expert to assist the tribunal;
- e. at the commencement of the proceeding before the tribunal, the State Government and the intermediary shall state what in their respective opinion is a fair amount of compensation;
- f. the tribunal in giving its award shall have regard to the provisions of sub-sections (2) and (3) and to the opinion of the Mining Expert, with regard to the extent of the mining operations carried on and of the minerals obtained, and determine the amount of compensation to be payable to the intermediary at such rate which shall be not less than three and not more than twenty times of the net income from royalties as may appear to the tribunal to be fair and equitable;
- g. every award made by the tribunal under this sub-section shall be final and shall be communicated to the Compensation Officer who made

and shall be communicated to the Compensation Officer who made the reference and thereupon he shall proceed to complete the Compensation Assessment Roll accordingly.

* * *

30. *Correction by Compensation Officer of bona fide mistakes.* – (1) A Compensation Officer may, on application, or of his own motion, at any time before payment of compensation in accordance with a Compensation Assessment Roll under Section 32, correct any entry in the Compensation Assessment Roll as finally published in respect of any intermediary to whom such Compensation Assessment Roll relates or any entry in such Compensation Assessment Roll which he is satisfied has been made owing to a bona fide mistake or is necessary as a r

result of succession to or transfer of the interest of an intermediary or any other person whose name appears in such roll as a person entitled to compensation:

Provided that no such correction shall be made if an appeal affecting such entry has been presented under Section 27.

(2) No correction of any entry in the Compensation Assessment Roll as finally published in respect of any intermediary to whom such Compensation Assessment roll relates shall be made under sub-Section (1) unless the Compensation officer has first published a draft of such correction and sent by registered post, with acknowledgement due, a copy of such draft to the intermediary to whom such correction after considering and despoising of any objections which may have been made to any such correction in the manner provided in the last four preceding sections.

30-A. *Fresh preparation of Compensation Assessment Roll where new interest are discovered.* - Where the Compensation Assessment Roll of an intermediary in respect of his interests which have vested in the State has been prepared and finally published under the provisions of this Act, and where subsequent to the final publication of such Compensation Assessment Roll it is discovered that further interests of such intermediary have vested in the State, then, notwithstanding anything contained in this Act, the Compensation Officer shall prepare a fresh Compensation Assessment Roll under Section 19 or Section 25, after taking into consideration the total interests of such intermediary including the interests subsequently discovered in the manner provided in the last five preceding sections:

Provided that the amount of the compensation in the fresh Compensation Assessment Roll shall be reduced by the amount of any compensation which may have been paid to the intermediary before the preparation of such assessment roll:

Provided further that in case the amount of compensation which has been paid to the intermediary before the preparation of the fresh Compensation Assessment Roll exceeds the amount of compensation to which such intermediary would be entitled under the fresh Compensation Assessment Roll the excess amount shall be recoverable from the intermediary as a public demand."

(emphasis supplied)

18. We shall next refer to the provisions of sub-section (2) of Section 1 and Section 6 of the amending Act, 1974:

"I. (2) It shall come into force at once.

*

*

*

6. *Amendment of Section 25 of Bihar Act 30 of 1950.* – In place of the sub-section (4) of Section 25 of the above Act, following sub-section shall be substituted –

‘(4) After the net income from *royalties* has been computed under sub-sections (2) and (3), the *Compensation Officer shall proceed to determine* the amount of compensation to be payable to the intermediary in accordance with the rates prescribed under sub-section (1) of Section 24.’

(emphasis supplied)

19. Before amendment under Section 25 computation of compensation payable for mines and mineral could be fixed by agreement under Section 25(4)(a) failing with it was to be referred under Section 25(4)(b) to the tribunal and the tribunal could award compensation at the rate not less than *three and not more than twenty times* of the net income from royalties as may appear to the tribunal to be fair and equitable. In view of the amendment of sub-section (4) to Section 25 of the Act, the *Compensation Officer* had to determine the amount of such compensation in accordance with the rates prescribed under Section (24(1)(1)). The maximum limit for such compensation as provided under Section 24(1)(1) was *three times* of the net income.

20. Whether the maximum limit of rate of compensation would be twenty times under Section 25(4)(b) by the tribunal or three times of the net income from royalties under Section 6 of the amending Act of 1974 would depend on interpretation, whether the amending Act of 1974 has got retrospective effect.

21. Mr. Sanyal, learned counsel appearing for the appellant has urged that in view of the rule of interpretation as settled by this Court in a catena of decisions the only view that count be taken in that the amending Act would apply prospectively. The learned counsel has further urged that if it is held to be retrospective, the vested right of the appellant would be taken away which is not permissible under law.

22. In view of the facts and circumstances of the case and in the alternative Mr. Agrawal, the learned counsel for the respondents has urged that the amending Act being substituted legislation would have retrospective effect.

23. In *Garikapati Veeraya v. N. Subbiah Choudhry*³ Chief Justice S.R. Das speaking for the Court observed as follows:

"The golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed."

24. We may also refer to *Francis Bennion's Statutory Interpretation*, 2nd Edn., at p.214 wherein the learned author commented as follows:

"The essential idea of a legal system is that current law should govern current activities. Elsewhere in this work a particular Act is likened to a floodlight switched on or off, and the general body of law to the circumambient air. Clumsy though these images are, they show the inappropriateness of retrospective laws. If we do something today, we feel that the law applying to it should be the law in force today, not tomorrow's backward adjustment of it. Such, we believe, is the nature of law. Dislike of ex post facto law is enshrined in the United States Constitution and in the Constitutions of many American States, which forbid it. The true principle is that *lex prospicit non respicit* (law looks forward not back). As Willes, J. said, retrospective legislation is 'contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when introduced for the first time, to deal with future acts and ought not to change the character of past transactions carried on upon the faith of the then existing law'."

25. This Court in *Hitendra Vishnu Thakur v. State of Maharashtra*⁴ has culled out the principles with regard to the ambit and scope of an amending Act and its retrospective operation as follows: (SS p. 633, para 26)

(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law

(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication."

26. We are unable to accept the contention of the respondent State that Section 6 of the amending Act of 1974 is retrospective. In sub-section (2) of Section 1 the legislature clearly states that the Act would come into force at once i.e. from the date of publication in the Gazette. In Section 6 nor in any other section of the amending Act was it mentioned that the Act would have retrospective effect; it would go against the intention of the legislature.

27. Applying the golden rule of construction as stated by this Court in *Garikapati Veerraya*³ in the amending Act there was nothing to show that the Act would have retrospective effect. As "the

essential idea of a legal system is that current law should govern current activities". We hold that rate of compensation shall have to be determined in accordance with the provisions of the Act which was in force at the time compensation was payable i.e. the unamended sub-section (4) of Section 25 of the Act would apply. Moreover, the amending Act affects the substantive right of the appellant, therefore, it would have prospective operation. There is also no express or implied provision in the amending Act to indicate that the Act will have retrospective provision in the amending Act to indicate that the Act will have retrospective effect. We, therefore, hold that the amending Act would apply prospectively.

28. The High Court rightly proceeded on the basis that the unamended Section 25 of the Act would apply to the facts of the present appeal and, therefore, we agree with the finding of the High Court.

29. The contention of the learned counsel, Mr Agrawal in respect of legislation by substitution has no force inasmuch as the same rule of construction has to be applied while dealing with such a legislation. WE may also refer to the decision of this Court in *Union of India v. C. Rama Swamy*⁵. In this case a new rule namely Rule 16-A was inserted in the All India Services (Death-cum-Retirement Benefits) Rules, 1985. In respect of this substituted rule this Court held that the effect of a rule being substituted by a new rule clearly was that the old rule which stood substituted, could under no circumstances have any application at least from the date when it cased to exist.

30. But that does not mean that under the unamended provisions the appellant could claim the benefit of Section 25(4)(b). The provisions of Section 25(4)(b) would come into play only if the appellant's case does not fall under Section 25(4)(b) would come into play only if the appellant's case does not fall under Section 25(4)(a).

31. Now, the first Assessment Roll date 12-5-1978 was revised and a fresh Roll was prepared on 3-9-1979 as it was found that some rights of the appellant were excluded. The final Assessment Roll in Form 'G' dated 3-11-1979 which included three times the net income from mines and minerals under Section 25 was accepted by the appellant and by the letter dated 19-11-1979, the Additional Collector was informed" " I am not to file any objection against From 'G' prepared by your honour." An affidavit was also filed by the appellant stating that any excess amount paid to him would be recoverable if and when detected by the public Demand Recovery Act from the appellant. Thus it is clear that the appellant accepted the amount without any protest and, therefore, the High Court rightly held that it was an agreement between the appellant and the State as per clause (a) of sub Section (4) of Section 25 of the Act. Under the sub-section in the absence of an agreement the question of referring the dispute to a tribunal would arise. As in the present appeal there was a clear agreement between the parties the appellant forfeited his right for asking the matter to be referred under Section 25(4)(b) to a tribunal for arbitration and the question of granting compensation @ more than ten times could not arise.

32. The legislature clearly state that payment of compensation should reach its finality. Therefore, the restriction imposed by Sections 30 and 30-A for reopening the final Assessment Roll does not apply. Under Section 30 of the Act the Compensation Officer was empowered to correct the Assessment Roll but before payment of compensation if he was satisfied that there was a bona fide mistake or it was necessary to do so as a result of succession to or transfer of the interest of an intermediary or any other person whose name appeared in such Roll as a person entitle to compensation. This section does not apply to the facts of the present appeal inasmuch as the aforesaid conditions do not apply.

33. Section 30-A empowers the Compensation Officer to prepare a fresh Assessment Roll if it was discovered that further interests of such intermediary had vested in the State. It was not so in the present appeal.

34. Therefore, we hold that by exercising powers under Section 30 or Section 30-A, the Compensation Officer could not have revised the final Assessment Roll after payment was received without any objection by the appellant.

35. After acceptance of compensation as stated above the appellant approached the authority "to revise the calculation chart after taking into account 15 times of the income from mines and minerals and after adjustment of the previous order of payment for balance as provided in para 2 of Section 30-A". The contention of the appellant before the authority was that compensation @ three times had been assessed without agreement.

36. The appellant did not dispute the calculation made in the final Assessment Roll and what was disputed was the rate of compensation on the ground that there was no agreement. We have already held that there was a deemed agreement by acceptance of the amount of compensation by the appellant. The prayer of the appellant before the authority for invoking Section 30-A of the Act was not at all tenable as this power could be exercised only on discovery of further interest of the intermediary.

37. It has been urged before us by Mr. Sanyal that final Assessment Roll was prepared without complying with Rule 18(2) in Form 'F' which is a step prior to preparation of final Assessment Roll. As the petitioner accepted the final Assessment Roll such plea could not be taken up by the petitioner, therefore, this contention has no force.

38. For what has been stated above we hold that the order of the learned Member of Board of Revenue directing action to be taken for refund of the excess compensation was valid and proper though he had no jurisdiction to pass the order. In the event it is set aside it would amount to reviving an invalid order of payment of excess compensation to the appellant.

39. For the reasons stated above the appeal is liable to be dismissed which we hereby do but with no order as to costs.