SUPREME COURT OF INDIA

Tandon Brothers

Vs.

State of West Bengal

(A. P. Misra and U. C. Banerjee JJ.)

03.04.2001

JUDGMENT

BENERJEE, J.

1. These appeals for consideration before this Court are directed against a common judgment of the Division Bench of the Calcutta High Court containing an order of reversal in favour of the State of West Bengal, has a chequered career, but before taking a run up as to its career being chequered, a brief factual reference needs to be adverted at this juncture for appreciation of the contentions raised in the matter.

2. The appellant is a registered partnership firm said to be the Proprietor of Tea Estate known as Rohini Tea Estate which stands purchased by the appellant in 1960 in a public auction held by the Official Liquidator attached to the High Court at Calcutta. The Tea Estate admittedly, comprised of a total area of 5042.86 acres of land. Though the appellant is said to have spent a substantial amount of money but we are not inclined to go on to the details thereof, neither the veracity of the same need to be gone into by reason of the peculiar factual situation and the issues involved in the appeal.

3. On the factual score it appears that on 1st November, 1962, a notice under West Bengal Estate Acquisition Act, 1953 was issued intimating thereunder that lands measuring more or less 4959.27 acres comprising the Tea Estate have vested in the State Government free from encumbrances under Section 5 of the West Bengal Estate Acquisition Act, 1953. While some submissions though advanced before the Court in regard to the effect of the statute but we need not dilate on this score since on a proper conspectus of the issue, this Court earlier categorically came to a conclusion that by and under West Bengal Estate Acquisition Act, 1953 pre-existing right, title and interest in the land stood extinguished and ceased to have effect on and from the notified date i.e. June 1, 1956 and stood vested in the State free from all encumbrances (vide State of West Bengal v. Suburban Agriculture Diary & fisheries Pvt. Ltd. 1993 Suppl. (4) SCC 674) and on the wake of the aforesaid, further deliberations on the issue are neither required nor we are entering the arena therefore and if we may so, fairness has prompted the learned Advocates to also reach unanimity in regard thereto.

4.The notice (dated 1st November, 1962) however, intended to inform that 1451.40 acres of land as described in the schedule appended therein, have been declared to be surplus to the requirement of the said tea garden and, therefore, 3544.17 acres were retainable by the tea garden as against 4994.57 (assuming the quantum of land to be correct as recorded in the notice). The notice further recorded that the State Government proposed to make an order to that effect and directed the Deputy Commissioner of Darjeeling to take charge of 1451.40 acres in accordance with the

provisions of West Bengal Estate Acquisition Act, 1953. Objection was asked for and by the return letter dated 22nd November, 1962, the appellant herein objected to the proposed retention of an area of 1451.40 acres with the request that retention for the governmental purposes can only be restricted to 777.12 acres from the concerned Tea Estate. Incidentally, 1451.40 acres have been arrived at on the basis of Field Inquiry Report under Section 6(3) of the West Bengal Estate Acquisition Act, 1953 and upon consideration thereof by the Tea Garden Advisory Committee at a meeting held on 9.7.1962. It is, however, convenient to note the relevant extracts from the report of the Advisory Committee for its proper appreciation:

"The Chairman of the Tea Board said that principle of two acres of other land for every one acre under Tea bushes should be applied to this garden as had been broadly done in several other cases. It was pointed out that if the entire area of 1,451.40 acres was resumed from the Tea Garden, as recommended by the Settlement Officer, Cooch Behar, the garden would be left with 2,378.89 acres of land in addition to 3,175.28 acres of land under Tea Bushes. Therefore, it was agreed that prima facie, the area recommended for resumption by the Settlement Officer, Cooch Behar, is surplus to the Settlement Officer, Cooch Behar, is surplus to the garden pointed out that certain areas recommended for resumption by the Settlement Officer, Cooch Behar, were suitable extension of Tea Bushes and the garden should be allowed to retain such land. They wanted an adjournment of two months to make a thorough survey of their garden and point out to the Tea Garden advisory Committee the blocks or areas which they should surrender to the government without causing less to the Estate. It was pointed out by Shri Mookherjee, I.A.S., that the Tea Estate would get another opportunity of representing their case before the Government and as such the recommendations of the Settlement Officer, Cooch Behar, should be accepted by the Committee and the Tea Estate given an opportunity to represent their case at the appropriate stage."

5. Significantly, there was a total lull for a period of nearly 41/2 years and inaction thus written large, so far as the State Government is concerned and it is only in June, 1967, another notice was served dated June 21, 1967 intimating that a decision under Section 6(3) of the West Bengal Estate Acquisition Act in respect of Rohini Tea Gardens will now be taken and the case of the garden will be taken up on 11th July, 1967. The quantum of land in acres have been to the identical extent namely 1451.40 acres.

6. Incidentally, the records depict that between October 20, 1964 and November 11, 1964, the appellant was served with several notices under Section 29 of the Defence of India Act, 1962 expressing the intention of taking over by way of requisition a major portion of the land comprising tea bushes of the said tea garden for the purpose of Defence of India Act and in terms therewith, an area of 2427.57 acres were requisitioned including 1100 acres under actual cultivation and tea bushes which were existing at the relevant time as the property of the erstwhile company by reason of title being acquired in terms of the auction sale of the Official Liquidator as noticed earlier in the judgment.

7. The factual situation further emerges that out of 5042.88 acres, about 2427.57 acres stand requisitioned under the Defence of India Act, 1962 which stands subsequently acquired permanently and the appellant being convinced that there was little chance of getting back those requisitioned land, moved the appropriate authority for payment of compensation for the lands taken over and the appellant also received some part payment towards said compensation but at a stage subsequent, the

Land Acquisition collector, Darjeeling, intimated the appellant that further payment as regards compensation would not be effected, until after the decision under the proceedings under Section 6(3) of the West Bengal Estate Acquisition Act, 1953. The petitioner in that perspective thereafter moved an application under Article 226 of the Constitution of India being C.R.No.4251 (W) of 1969 in the Calcutta High Court, which was disposed of in April 11,m 1975 with a direction that the respondents therein ought to determine the compensation payable in respect of the lands in question within a period of six months from the date of disposal of the Civil rule No.4171 W of 1974 issued against the proceedings under Section 6(3) of the said Act.

8. The conspectus of facts thus depict that at the time of issuance of the second notice, the Collector was fully aware of the order of requisition/acquisition under the Defence of India Act and the Rules framed thereunder since the Collector himself disbursed the amount of periodic compensation and eventually passed an order recording the inability to pay further by reason of the pending Section 6(3) proceeding.

9. One redeeming feature ought to be noticed that whereas the first notice dated 1.11.1962 did not specifically mention any provision of the statute recorded therein but only that 1451.40 acres of land ought to be treated as surplus as regards the requirement of the said tea garden, the June, 1967 notice has a categorical reference to Section 6(3) of the West Bengal State Acquisition act - is it an inadvertent omission? Mr. Ranjit Kumar appearing in support of the appeal rather with an emphasis contended that the omission is otherwise deliberate and an instance of malice in law with which we will deal with slightly later in this judgment.

10. A further factual score depicts that in August, 1969, the petitioner was asked to appear before the Darjeeling Tea Estate (Resumption of Land) Advisory Committee in connection with a proceeding under Section 6(3) of the Act and the petitioner shortly thereafter however moved a further Writ Petition under Article 226 of the Constitution being Civil Rule 6128 W of 1968 which however, was disposed of subsequently with a direction that the proceeding under Section 6(3) be disposed of within a period of two months from the date of the order. Subsequently, another notice was served whereby the petitioner was directed to appear before the Self same Samiti and inspite of petitioner' representation, an order was communicated to the petitioner dated April 6, 1973 wherein the petitioner was directed to deliver possession of the lands, declared as surplus to the requirement of the garden to the Sub-Divisional Officer, Kurseong by 19th April, 1973. This order of delivery of possession was also challenged before the High Court at Calcutta under Article 226 and Chittatosh Mookerjee, J. (as His Lordship then was) finally disposing of the writ, issued a writ of Mandamus not to give effect of the order as noticed above without giving an opportunity of hearing and to pass a fresh order under Section 6(3) of the Act and it is in terms therewith, the petitioner was asked to appear for personal hearing on 23rd September, 1977 before the authority concerned and alongwith the notice, a copy of the recommendations made by the Darjeeling District Tea Estate (Resumption of Land) Advisory Committee dated 29th March, 1973 was enclosed for information of the appellant. Objections were filed categorically disputing that availability of any land as surplus within the meaning of Section 6(3) of the Act. Subsequent intimations were also sent for asking for production of balance sheet and quantum of production of tea in 5 years from 1960 to 1964 as also the statement of Land Revenue paid by the company since the date of purchase of the garden. The records further depict that the hearing of the so-called Section 6(3) proceedings under the Act was concluded on 28th November, 1977 but till April, 1978, petitioner did not receive any copy of the order which stands challenged before the High Court under Article 226 and the learned Single judge dealing with the matter came to a conclusion that subsequent proceeding including the land already

requisitioned under the Defence of India Act cannot but be said be in the nature of a review but there being no material for formation an opinion that such a review is needed for the purpose of exercise of power under Section 6(3) of the Act and resultantly allowed the Writ Petition by setting aside the order dated December 15, 1977.

11. It is this order, the State Government however, being aggrieved thereby moved the Appellate Forum and the Appellate Court reversed the judgment of the learned Single Judge and hence the Appeal before this Court.

12. This rather longish narration could not be avoided by reason of the specific contentions raised as regards malice and thus to appreciate the same, the chequered history has to be set down in extenso in this judgment. The Appellate Court in paragraph 27 of the judgment recorded the following:

"27. In course of hearing before the Court and before the Advisory Committee the following facts had emerged from the submission made and materials placed, as appearing from the records:-

(i) Out of 1100 acres of land under tea cultivation, 1029 acres were covered by order of Requisition by which 2542.29 acres of land of the tea garden was requisitioned. And, when the petitioner was asked to show cause against acquisition of the requisitioned land, it did not lay claim to get back the 1029 acres under tea cultivation; and had instead, had moved the concerned Authority for payment of compensation. It had agreed to the acquisition, which would also be evident from its petition against the Union of India, and its letter dated 25.2.1969 to the Land Acquisition Collector, Darjeeling, on record.

(ii) From its objection dated 25.10.77 in the Section 6(3) proceedings it had confined its claim to the land mentioned in items 3 and 4 of the recommendation of the Advisory Committee; and had omitted to make any claim in respect of the land in item No.2 of the said recommendation, under Military occupation, making clear that it did no require the land under Military occupation for the tea garden.

(iii) The Petitioner M/s. Tandon Brothers has extremely limited experience in running a tea garden. Admittedly, it did not own any other tea garden, and did neither run the tea garden in question at all after 1964.

(iv) Inspite of claim to have increased tea production, production in Rohini Tea Estate from 1960 to 1965 was an average of 119.58 Kgs. Per acre much less than the production of neighbouring tea estates, Skunbari Tea Estate and New Chunta Tea Estate with an average of 685.49 Kgs. Per acre which was about 6 times Rohini's production.

(v) The Memorandum dated 3.7.69 of Superintendent, Central Excise, Siliguri, and the letter dated 29.10.65 from Chairman, Terai Branch, Indian Tea Association, and the list enclosed therewith would indicate that the Rohini Tea Estate was a defunct Garden.

(vi) It appears from the report of the Advisory Committee that the petitioner had not done anything since its purchase of the Garden which can be said to be an improvement or development of the Tea Garden, except leasing out the plucking right of the tea bushes in 147 acres to neighbouring Tea Gardens. It was further reported by the Settlement Officer, Cooch Behar, that there was no manger or any managerial staff of the Garden resident in or near the Garden.

(vii) The petitioner did not dispute either before the Advisory Committee or before this Court in C.R.No.4171 (W) of 1974 that it had not raised any objection to the vesting of 1451.04 acres of land, mentioned in para 3 of the recommendation of the Advisory Committee dated 29th March, 1973."

13. The narration above from the judgment undoubtedly makes an interesting reading but before embarking on a consideration of factual details, as contained in the narration above, let us however, analyse Section 6(3) of the Act for its true scope and to identify the issue involved in the appeal. Section 6(3) is set out herein below:

"(3) IN the case of land comprised in a tea-garden, mill, factory or workshop the intermediary, or where the land is held under a lease, the lessee, shall be entitled to retain only so much of such land as, in the opinion of the State governments, is required for the tea-garden, mill, factory or workshop, as the case may be, and a person holding under a lease shall, for the purpose of assessment of compensation, be deemed to be an intermediary.

Provided that the Stat Government may, if it thinks fit so to do after reviewing the circumstances of a case and after giving the intermediary or the lessee, as the case may be, an opportunity of being heard, revise any order made by it under this sub-section specifying the land which the intermediary or the lessee shall be entitled to retain as being required by him for the tea-garden, mill, factory or workshop, as the case may be.

Explanation. - The expression 'land held under a lease' includes any land held directly under the State under a lease.

Exception. - In the case of land allowed to be retained by an intermediary or lessee in respect of a tea-garden, such land may include any land comprised in a forest if, in the opinion of the State Government, the land comprised in a forest is required for the tea-garden."

14. Sub-section 3 therefore, in no uncertain terms allows and permits retention of the land as would be required for the tea-garden. This requirement of the tea-garden however, is to be assessed by the State Government. The statute obviously did place utmost faith and belief on the Governmental agencies to act fairly and reasonably since the most accepted methodology of a governmental working is farness. It is on this count that Mr. Ranjit Kumar was rather vocal in his criticism of the governmental action and we do feel it expedient to record that there is some justification therefore as would presently be noted. The satisfaction required is that of the State government and not of the owner or person in management of the garden but the Appellate Court with very great respect totally misplaced and misread the effect of the language of the statute by going into the issue of bonafide or malafide or honest or genuine or preference or convenience of the Appellant herein. The appellate Court on this score observed that "something more than desire other than mere wish or convenience or fancy is necessary for consideration of the question of requirement for the aforesaid purpose". - Misreading thus apparent.

15. Sub-section 3 on its language, as noticed above permits retention of land as is required for the tea-garden and it is the opinion of the Stat government that will decide the issue of requirement. The proviso to the Section has further conferred a power to revise any order made by the State Government specifying the land which is to be retained as being required for the tea-gardens. The

power to revise the order thus obviously is conferment of a power in addition to what stands conferred under the main provision viz. sub-section 3. This exercise of review obviously upon formation of opinion of the State Government since the same is a power of determination in addition to the power as conferred by the principal provision. There are decisions galore of this Court as regards the issue of formation of opinion but we need not detain ourselves in this judgment to consider the issue since each case may be decided on the materials available for such formation of opinion - formation of opinion obviously is dependant upon available materials and cannot be a mere ipsedixit of the administrative authority: Existence of justifiable reasons in the mater of formation of opinion is the principal condition and any contra action would have the effect of the same being ascribed as arbitrary exercise of power which is admittedly an antithesis of law. The powers stand conferred on to the State government, but there is no option left for the State Government but to act in accordance with law and in order to act in that direction, State Government shall have to have relevant material pertaining to the requirements of tea gardens. A person sitting in the office in the metropolitan city of Calcutta cannot, in fact, decide the issue without taking recourse to actuals on the field or on the garden and that is the precise reason as to why the field study was effected on the first occasion by the Settlement Officer and the subsequent deliberations of the tea garden Advisory Committee wherein 1451.40 acres have been treated as surplus to the requirement of the tea estate. The power of review in terms of the proviso to sub-section 3 obviously shall have to be exercised upon materials on record and not be hors the same. And let us, therefore, analyse the materials on record pertaining to the issuance of the order dated 15.12.1977, relevant extracts of which is reproduced as below:

"And whereas the Stat Government head the said Tea Garden on 14th November, 1977, 21st November, 1977 and 28th November, 1977 giving liberty at ample scope of it to make its submission and produce necessary material in support of its case.

And whereas it was made clear to said tea garden during the course of hearing that the area of approximately 2542.29 acres of land in occupation of Military Authorities was required to be held permanently by the Military Authorities.

And whereas representation made by the tea garden during the hearing was duly considered by the State Government having regard to the circumstances and findings of Darjeeling District Tea Estate (Resumption of Lands) Advisory Committee relating to the said tea garden for areas after such consideration the State Government is of the opinion that not more than 1005.40 acres of land are required by the said Tea Garden for its purpose.

Now, therefore, in exercise of powers conferred by section 3 of sections 6 of the said Act, the Governor is pleased to declare that 3990.17 acres of land as mentioned and described in the schedule below are surplus to the requirement of said Rohini Tea Garden and that the said Tea Garden did not entitle to remain in possession of said 3990.17 acres of lands. The governor is Laos pleased to declare that 1005.40 acres of land being required for the purpose of said tea garden may be retained by it in accordance with the previous law."

16. It is on this score that Mr. Roy, appearing for the State Government very strongly contended that the order itself records that the same was issued upon consideration of the representation made by the tea garden during the hearing of the matter together with the finding so Darjeeling District Teat Estate (Resumption of Lands) Advisory Committee dated 29th March, 1973. The submission seem to be rather attractive at the first blush but on a close scrutiny of the document the same does not stand

a further consideration. The recital portion of the document would make the situation clear enough to indicate the same and we deem it fit thus to have it on record verbatim and the same reads as below:

"Annexure "A" contd..

COPY

ROHINI TEA ESTATE (DISTRICT DARJEELING)

Recommendation of the Darjeeling District Tea Estate

(Resumption of Land) Advisory Committee

Place: Office of the Deputy Commissioner, Darjeeling

Date: 29th March, 1973

Gentlemen present: All the members of the Advisory Committee were present, Shri A. Mannan, A.F.O. Kurselong, attended on behalf of D.F.O., Kurseong, on special request. None of the Tea Board attended. The proprietors of the Tea Garden were duly served with notice. But they prayed on two occasions for shifting of the hearing to mid-April. It was explained to them that no change of date could be allowed, as the proceedings have to be disposed to within 22.4.73 by Government in compliance with the orders of the High Court. Today, during the time of hearing, a telegram reached us, stating that the proprietors would reach Darjeeling by 4 P.M. Accordingly, the committee waited till 5.30 P.M. Shri G.M. Tandon, representing the proprietors, Shri J.C. Guha, Advocate and Shri J. Pugolia, Advocate appeared. They were given patient hearing till 6.10 PM. The first point taken by Shri J.c. Guha counsel was that the notice issued was bad in law. Another point taken by the counsel was that all the lands requisitioned for the Defence Authorities stood de-requisitioned as on today. Thereafter considering all their points the following decisions were taken:

....."

17. The order admittedly records as per latest survey report but the survey report itself has not seen the light of the day and, in fact, whether there was such a mention as regards area under military occupation or not, nobody could vouch-safe for the same including Mr. Roy since the same is not available on record. Government records ought to have its sanctity undoubtedly and to have a particular state of affairs should also be borne out from the records and if the same is not produced before the Court or withheld from the Court, there is no reason whatsoever as to why the presumption adverse to the contention be not taken unless however cogent reasons are made available to the courts, which however is not the case in the matter under consideration, since non-availability of governmental records cannot in the normal circumstances be presumed and on the wake of the aforesaid, it is a matter of basic requirement that the government should have sufficient material in the formation of an opinion that the earlier opinion ought to stand modified by reason of obviously of the change of existing situation. Incidentally, be it noted that the earlier order dated 6th April, 1973 which contains the materials as enclosure thereto and which form the basis of the earlier

order but the same stands quashed by the High Court and no further proceedings were initiated as a challenge to the order or to have it set aside and it is on this score that Mr. Ranjit Kumar contended that the same being an order on the basis of which a subsequent order was passed by a higher authority and int he event the latter order stands negatived, the former order also perishes with the latter. The recital portion of the order dated 6th April, 1973 contain 8 paragraphs which mainly consists of reiteration of the earlier order and the proceedings initiated under sub-section 3 of Section 6. The 8th paragraph of the recital is of some consequence and as such, the same is set out hereinbelow:

"And whereas the objections raised by the said tea garden against the notice issued upon, was duly considered and the State Government having regard to the circumstances and findings of the Darjeeling District Tea Estate (Resumption of Lands) Advisory Committee given in Annexure "A" appended hereto relating to the said tea garden is of opinion that 1005.40 acres of land are retainable by the said tea garden for its purpose and that the remaining 3990.17 acres of lands are not required for the said tea garden;"

18. The ordering portion ought also to be noticed at this juncture and the same reads as below:

"Now, therefore, in exercise of the powers conferred by sub-section (3) of Section 6 of the said Act. The Governor is pleased to declare that 3990.17 acres of lands as mentioned and described in the schedule below are surplus to the requirement of the said Rohini Tea Garden and the said tea garden is not entitled to remain in possession of the said 3990.17 acres of land. The Governor is also pleased to declare that 1005.40 acres of land being required for the purpose of the aforesaid tea garden may be retained by it in accordance with the provision of law."

19. Referring to Annexure 'A' as noticed in 8th recital in the order dated 6th April, 1973, one cannot but come to a definite conclusion that order dated 29th March, 1973 form part of the order dated 6th April, 1973 and the entire reliance is on the order dated 29th March, 1973. No other documentary evidence have been taken note of, neither placed any reliance nor referred to in the order dated 6th April, 1973 and it is on this count that Mr. Ranjit Kumar's submission that Annexure 'A' should also be read as part of the order cannot but be given credence.

20. In any event, there is no fresh material before the concerned authority as to the situation existing in the year 1977 end excepting an order passed by the administrative authority dated 29th March, 1973. Assuming this to be a material, no credence can also be given thereto on an assumption that such a review in the contextual facts is not maintainable, but in any event has been effected on a material not in conformity with the power to review. Statute has conferred such a power to review only on the basis of current situation and not de hors the same. A lapse of period of 41/2 years cannot be termed to current for a decision in December, 1977. In any event, review is permissible under the statute where the interest of State require such a review. The West Bengal Estate Acquisition Act, 1953 came on to the statute Book for acquisition of estates and of the rights of intermediaries therein and Section 6(3) is an enabling provision for retention of certain portion of the land which is required for revenue earning as well for the State exchequer. The inclusion of tea-

garden and the requirement of the tea-garden amply justifies such an observation so as to enable the occupier to enjoy he usufruct of the tea-garden. The essence of the Vesting means -- to make available the land - effect of the vesting is that every raiyat or known agricultural tenant after the vesting holds land directly under the State as tenant -- it is a beneficial legislation and a definite land reform methodology. The rights of intermediaries of the State stands vested in the State free from all encumbrance and an intermediary in terms of Section 2(i) means a proprietor, tenure-holder, under-tenure-holder or any other intermediary above a raiyat or a non-agricultural tenant and includes a service tenure-holder and in relation to mines and minerals, includes a lessee and a sub-lessee; What is the normal inquiry in the factual sphere would be as to the effect of the order impugned in the writ petition which stand negatived by the Appellate Bench of the High Court. Admittedly, the purpose of the Act as noticed above is to confer benefit on to the known agricultural tenant by withdrawing from the intermediary which the latter as in possession and the retention under sub-section 3 of Section 6 is on the basis of formation of the opinion of the State Government. Admittedly, the land is now under occupation of the military authorities, a totally different perspective from the order under Section 6(3) and it is on this score that Mr. Ranjit Kumar contended that now the time has come for assessment of compensation by the Central Government and as such the State Government in order to deprive the appellant from the compensation amount on the portion of the land acquired under the Defence of India Act read with the Act of 1952 and as such initiated this move, which cannot but be ascribed to be totally malafide and motivated and it is on this score also malice in law has been stated to be apparent on the face of the record.

21. We would be dealing with the aspect of malice little later and before so doing, it would be convenient to note the factual analysis as noticed herein before at paragraph 27 of the judgment under appeal. Since paragraph 27 of the impugned judgment stands noticed herein before in this judgment, we have deliberately avoided setting out the same once again but reference of the paragraph marks are maintained so as to identify the factual discrepancies which reads as below:

Re(i)... Out of 1100 acres of land On the factual score this is not correct by reason of the objection before the Board of Revenue dated 1.11.1977. Re(ii)... Recommendation of the Advisory Committee spoken of an omission to make any claim in respect of the land in Item No.2 of the recommendation under military occupation has been taken exception to by the High Court; The same however, does not stand to the reality of the situation as has been set forth more fully hereinbefore. Re(iii)... It did not matter for formation of opinion under Section 6(3). Re(iv)... No significant material on record Re(v)... It does not alter the situation neither the requirement of the statute. Re(vi)... No material available on record. Re(vii)... There may not be any objection for 1451.04 acres of land but that does not authorise the government to pass the order without any material on record.

22.The High Court was completely thus in error in appreciating even the factual aspect of the matter.

23. The other issue pertain to the applicability of the West Bengal Estate Acquisition Act, 1953 in regard to a particular portion of the land which stands under military occupation requisitioned and subsequently acquired under the Defence of India Act read with Acquisition Act of 1953.

24. It is in this context that certain factual recording of the Division Bench can be noticed -- The

Bench observed:

"4. Before registration of the Conveyance the petitioner had approached the Board of Revenue to obtain permission for transfer, in as much as the Deputy Commissioner, Darjeeling, had maintained that he would not recognise any transfer without the permission of the Board of Revenue. The Board of Revenue by its Memo No.4472/EA dated 15th March, 1962 had granted permission subject to decision under Section 6(3) of the E.A. Act. The Conveyance dated 17th May, 1962 was registered on 18th June, 1962 transferring the said Tea Estate in favour of the petitioner-M/s. Tandon Brothers. It claims itself to be the owner of the entire Tea Estate till any part thereof is lawfully acquired by the State of the Union of India or there is lawful resumption under Section 6(3) of the E.A. Act.

5. By a letter dated 22nd November, 1962 the petitioner had informed the Deputy Secretary to the Government of West Bengal that it had no objection regarding resumption to the extent of 777.12 acres, out of 1,451.40 acres, mentioned in the Notice. But nothing happened thereafter till June, 1967.

6. After the Chinese aggression, the Army Authorities were looking for a suitable site to locate accommodation for Army Supply Crops Battalion around the area at Rohini Tea Estate, Karseong, and the State of West Bengal had forwarded a proposal to the effect that the Army Authorities may take Rohini Tea Estate for the aforementioned purpose. The Army Authorities had initially refused to accept the proposal as the Government of India was opposed to taking over any land covered by the Tea Estate for defence purposes. The State of West Bengal having given an impression that the entire Rohini Tea Estate was defunct, had persuaded the Army Authorities to have the area of Rohini Tea Estate. Upon such suggestion of the State of West Bengal, the Army Authorities had accepted the proposal; and 2532.06 acres of land was thereupon requisitioned under the provisions of Defence of India Act, 1962, and possession thereof was taken over on diverse dates between November, 1964 and May, 1965. The said land is still under requisition. Out of 1,100 acres which was under tea cultivation, 1029 acres under actual tea cultivation was requisitioned and taken possession of by the Military Authorities. At the time of requisition thee were more than 16 lacs tea bushes according to the petitioner. The Military Authorities, however, noticed more than 7 lacs tea bushes and hands assured to verify later. But the verification was not done. It is not disputed that out of 2,426.57 acres requisitioned by the Defence Authorities, 1029 acres were under actual tea cultivation at the time of requisition. The petitioner had received recurring compensation from time to time amounting to Rs.13.57 lakhs in all for the said requisition."

25. It is this context that Mr. Ray by way of submission in his inimitable style posed a question viz., the only question is, as to how much the appellant has been allowed to retain by the State Government and is it anything more than the area of 1451.40 acres - while however answering the question posed, Mr. Ray referred to the following events date wise which runs as below:-

(i) 1.11.1962 notice for vesting of only 1451.40 acres of land was given and consequently the government intended to allow the appellant to retain 3544 acres of land;

(ii) 22.11.62 the appellant in his reply stated that the appellant is working on 1104 acres of land and excess is only 777.11 acres of land which can be resumed;

(iii) 9.7.62 it would appear from the proceedings of the tea garden advisory committee meeting held

on 9.7.62 that the said committee recommended for resumption of 1451.40 acres of land. Till then there was no question of acquisition of any part of the said tea estate by the army authorities;

(iv) It appears that during the period between 9.7.62 and 21.6.67 there was no move in the office of the State Government or by the appellant with regard to the finalisation of the proceedings under Section 6(3) of the said Act;

(v) 21.6.67 the State government issued a second notice for resumption of 1451.40 acres of land. This notice seems to be one issued after the requisition of the said 2532 acres of land;

(vi) 21.1.69 to 26.2.69 several notices were issued by the military authorities proposing to acquire the said land. It appears that the appellant agreed to the said acquisition and wanted the compensation for the same to be paid to the appellant;

(vii) 26.8.69 the third notice was issued by the State government for resumption. Till this date no final order was passed by the State government under Section 6(3) of the Said Act;

(viii) 22.2.73 the first judgment of Mr. Justice Mukherjee of the Calcutta High Court quashing the notice under Section 6(3) of the said Act;

(ix) 6.4.73 after the said judgment of the High Court, for the first time in this matter a final order under Section 6(3) of the said Act was passed.

26. Whereas the events narrated above leave an important imprint looks to be very attractive, but the factual situation denotes otherwise since admittedly the final order was under Section 6(3) passed on 22nd August, 1967 for resumption of 1451.40 acres of land in terms of the notice dated 1st November, 1962 and the subsequent proceedings held thereafter. In this context the counter-affidavit filed on behalf of the State Government against the Special Leave Petition on 17th August, 1995 may be looked into, wherein the deponent in paragraph 3(SIC) has stated:

"By an order dated 22nd August, 1967 under Section 6(3) of the E.A. Act resumption of 1451.40 acres of land was ordered and possession of the same was delivered."

27. The notice dated 26th August, 1969 cannot possibly be issued otherwise then a notice to reopen the issue. The change of stance as regards the finality of the order has been very strongly criticised by Mr. Ranjit Kumar and ascribed to be totally mala fide in order to obtain the benefit of the compensation money and if we may say so, we find some justification in such a criticism. The notice dated 26.8.69 does not bear any provision of law under which the notice was issued -- governmental action must always be in accordance with law, at least it is so expected rather than de hors it.

28. The notice itself records "in suppression of notice No.13942-L.Ref., dated 1st November, 1962" - why this suppression!! Mr. Ranjit Kumar answers it as being unlawful gain of compensation amount and thus the action smacks of mala fide motive.

29. Let us however examine this issue in slightly more greater detail upon a deeper probe on to the

admitted factual parameters : Section 6(3) notice was served upon due compliance with all the requirements and orders passed thereon, but after a lapse of about 9 years the notice itself stands superseded! Why so? What was the reason for this sudden change -- Mr. Ray however answered the same more in avoidance rather than in factual situation! Obviously there was neither any option left; statutory authorities are authorised to act in terms of the statute only --- Under what provision can an earlier notice, assuming of course, that there was no order as such, though however as noticed above, the same is an admitted state of affairs, be superceded -- There was in fact no provision of review even on the date of the notice -- Thus resultantly no provision of law could be recorded therein! Needless to record that the notice dated 26th August, 1969 was challenged before the High Court and the High Court directed the State Government to dispose of the pending Section 6(3) proceedings within two months from the date of the order: But what happened thereafter is not only interesting but note-worthy; The learned Single Judge of the High Court directed the disposal of the Section 6(3) notice which admittedly referred 1151 acres. But the order passed was for 3059 acres!! It is justified? Can the government act on its own ipsi dixit -- The answer obviously will be in the negative; What about the doctrine of estoppel -- Would the governmental action beyond the approach of the doctrine of estoppel? The answer again cannot but be in the negative. Doctrine of estoppel is a doctrine of prudence -- It is a doctrine of ethics, justice and equity. In this context reference may be made to a recent decision of this Court in Tata Iron & Steel Co. Ltd. v. Union of India: AIR1996SC2462 wherein this Court upon reliance on Phipson on Evidence (Fourteenth Edn.) has the following to state as regards estoppels by conduct.

In modern times the doctrine has been extended so as to embrace practically any act or statement by a party which it would be unconscionable to permit him to deny.

30. Since there is existing no justifiable reasons for change of quantum of land as mentioned in Section 6(3) notice, the State Government cannot but be said to be bound by its own notice: The doctrine of Estoppel has its fullest play in the contextual facts.

31. Be it noted further that the appellant herein has been all along paying the land revenue and the cesses for the entire land and there was no difficulty in acceptance thereof -- while it is true that the factum of acceptance of cess or revenue does not ipso-facto negate the claim, but considering the fact -- situation of the matter under consideration it can without any hesitation be recorded that the same is a factor which ought to be taken note of while delving into the matter.

32. Turning attention on to the malice aspect of the matter, Mr. Ranjit Kumar tabulated different situations in support thereof and we also it expedient to tabulate them in seriatim as below:

(i) The first notice under section 6(3) for resumption of 1451.40 acres was issued on 1.11.62 on the basis of detailed proceedings held by the Tea Garden Advisory Committee.

(ii) The final order after hearing the Appellants was passed on 22.8.1967 for resumption of 1451.40 acres of land. The fact that such a final order was passed is admitted by the respondents at page 108 in their Counter-affidavit in Para 3 (SIC). It is therefore erroneous for the State Government to contend that no order was passed under Section 6(3) prior to the 3rd notice dated 26.8.69.

33. This order was after the Military had already requisitioned 2532.06 acres of land.

(iii) Notice dated 26.8.69, reopening the issue of resumption does not mention any provision of law. This is because the proviso to section 6(3) granting the power to Review came into force only in November 1969.

(iv) The aforesaid letter is issued after the Central Government issued notices under section 7(1) of the Requisition and Acquisition of immovable Property Act, 1952 seeking to acquire the appellants lands. As per section 7(2) of the said Act, on the date of publication of the notice seeking to acquire under section 7(1), the requisitioned property vests absolutely in the Central Government Act. There could thus be no resumption of property already vested in the Central Government.

(v) Respondent No.1 realised that the Central Government shall pay Market price to the appellants which would be substantial. Therefore decided to resume the land so that the State will get the market price.

(vi) Though the military authorities wanted to pay compensation but the State Government wrote a letter to the Military authorities intimating that payment of compensation to the Appellants should be stopped

(vii) There is no material on record to show any ground for reviewing the order of resumption of 1451.40 acres, which was passed on 22.8.87 under Section 6(3). The ostensible reason for the review on 26.8.69 was on the basis that the land under occupation of Military authorities was not required by the Appellant as the Appellant had not objected to the requisition by the Army. But that was also the position when the second notice under Section 6(3) dated 21.6.67 was issued and when the order dated 22.8.67 was passed under Section 6(3)

(viii) Proceedings under 6(3) which had become final were reopened only to enable the state to make profit at the cost of a citizen.

(ix) For the period 1962 to March 1995 the appellants have paid Land Revenue for the entire tea estate;

(x) In the present case fresh notices and orders under Section 6(3) were issued only after the appellants had received the notices under Section 7(1) of the Central Act, the reason was clear, viz. to prevent the citizen from getting the market rate for its land.

34. While none of the grounds spoken of in the just preceding paragraph cannot be brushed aside but by reason of our observation as herein before we are not inclined to deal with the issue of malice and motive in detail, suffice however to record that accepted methodology of governmental working being fairness and the same is lacking in its entirety in the matter under consideration.

35. Shortly put the situation seems to be the following:

36. The word 'supersession' has a definite connotation in English language and has also its due jurisprudential affect. The Governor of the State issues a notification, obviously upon consideration of all the relevant materials, that notification stands superseded by another Governor of the State without however, ascribing any reason whatsoever -- as noticed earlier, formation of opinion ought to be with reasons and not de hors the same!! What was the reason for this change -- Apparently

there is no answer; the state of affairs existing in the year 1962-64 did not find any change in itself but the Government notification stands superseded -- it is on this score that Mr. Ranjit Kumar severely criticised the governmental action as totally unfair, mala fide and devoid of any reason. His comments as regards motivation toward more money may not strictly be unjustified since time has now come for the payment of compensation. Assuming the proceedings were pending, why it was kept pending for such a long period of time? There seems to be no reason whatsoever. Governmental action must be based on utmost good faith, belief and ought to be supported with reason on the basis of the state of law -- if the action is otherwise or run counter to the same the action cannot but be ascribed to be mala fide and it would be a plain exercise of judicial power to countenance such action and set the same aside for the purpose of equity goods conscience and justice. Justice of the situation demands action clothed with bona fide reason and necessities of the situation in accordance with the law. But if the same runs counter, law courts would not be in a position to countenance the same.

37. Action in the present context cannot be said to be in the category as noticed in the preceding paragraph but is otherwise as such cannot have the concurrence or acceptance from the Court. It appears prima facie to be tainted with motive and thus not sustainable -- this aspect of the matter has been completely overlooked by the Bench of the Calcutta High Court and as such the same cannot be sustained.

38. In the view of the matter, these appeals succeed. The order of the Division Bench of the High Court stands set aside and quashed and that of the learned Single Judge stands restored. No order for costs.