

SUPREME COURT OF INDIA

State of West Bengal

Vs.

Ratnagiri Engg. Pvt. Ltd

C.A. Nos. 369-70 of 2005

(R.V.Raveendran and Markandey Katju JJ.)

24.02.2009

JUDGMENT

Markandey Katju, J.

CIVIL APPEAL NOS. 369-370/2005:

1. These two appeals have been filed against the final judgment and order dated 11.7.2003 passed by the Division Bench of the Calcutta High Court in W.P.L.R.T. No. 279 of 2002 and W.P.L.R.T. No. 309 of 2002.

2. Heard learned counsel for the parties and perused the record.

3. The facts of the case have been mentioned in detail in the impugned judgment of the Division Bench and we need not repeat the same here except where necessary. The controversy in this case relates to the interpretation of the proviso to Section 6(3) of the *West Bengal Estates Acquisition Act, 1953* (hereinafter referred to as the '1953 Act').

4. Before dealing with the controversy we may mention that like in many other States in India, after India became independent in 1947, and after the Constitution of India came into force in 1950, it was decided by the State Legislature of West Bengal to abolish the Zamindari system because of its various evils. Consequently, the 1953 Act was enacted.

5. Section 4(1) of the 1953 Act states:

"The State Government may from time to time by notification declare that with effect from the date mentioned in the notification, all estates and the rights of every intermediary in each such estate situated in any district or part of a district specified in the notification, shall vest in the State from all encumbrances".

6. Section 5(1)(a) of the 1953 Act states :

"Upon the due publication of a notification under section 4, on and from the date of vesting - -

(a) the estates and the rights of intermediaries in the estates, to which the declaration applies, shall vest in the State free from all encumbrances; in particular and without prejudice to the generality of the provisions of this clause, every one of the following rights which may be owned by an intermediary shall vest in the State, namely :-

(i) rights in sub-soil, including rights in mines and minerals,

(ii) rights in hats, bazaars, ferries, fisheries, tolls and other sairati interest;"

7. Thus Sections 4 and 5 of the 1953 Act have the effect of abolishing Zamindari in the State of West Bengal from the date of notification in the gazette, and from the date of such notification the estates and rights of intermediaries vest in the State free from all encumbrances. Notifications were duly issued under those provisions.

8. Section 6(1) of the 1953 Act, however, states that despite the vesting of the rights of intermediaries in the State, an intermediary can continue to retain certain lands etc. despite the vesting. Section 6(1)(a) to (g) of the 1953 Act states as follows: "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 - (a) land comprised in homesteads; (b) land comprised in or appertaining to buildings and structures [owned by the intermediary or by any person, not being a tenant, holding under him by leave or license]; (c) non-agricultural land in his khas possession [including land held under him by any person, not being a tenant, by leave or license], not exceeding fifteen acres in area, and excluding any land retained under clause (a): Provided that the total area of land retained by an intermediary under clauses (a) and (c) shall not exceed twenty acres, as may be chosen by him: Provided further that if the land retained by an intermediary under clause (c) or any part thereof is not utilized for a period of five consecutive years from the date of vesting, for a gainful or productive purpose, the land or the part thereof may be resumed by the State Government subject to payment of compensation determined in accordance with the principles laid down in sections 23 and 24 of the *Land Acquisition Act, 1894*; (d) agricultural land in his khas possession, not exceeding twenty-five acres in area, as may be chosen by him: Provided that in such portions of the district of Darjeeling as may be declared by notification by the State Government to be hilly portions, an intermediary shall be entitled to retain all agricultural land in his khas possession, or any part thereof as may be chosen by him; (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; (f) subject to the provisions of sub-section (3), land comprised in tea gardens or orchards or land used for the purpose of livestock breeding, poultry farming or

dairy; (g) subject to the provisions of sub-section(3), land comprised in mills, factories, or workshops;".

9. Section 6(2) makes it clear that the intermediary who is entitled to retain possession of the land under Section 6(1) shall become tenant of the State in respect of such land. Section 6(2) of the Act states: " An intermediary who is entitled to retain possession of any land under sub-section (1) shall be deemed to hold such land directly under the State from the date of vesting as a tenant, subject to such terms and conditions as may be prescribed and subject to payment of such rent as may be determined under the provisions of this Act and as entered in the record-of-rights finally published under Chapter V except that no rent shall be payable for land referred to in clause (h) or (i) : Provided that if any tank fishery or any land comprised in a tea-garden, orchard, mill, factory or workshop was held immediately before the date of vesting under a lease, such lease shall be deemed to have been given by the State Government on the same terms and conditions as immediately before such date subject to such modification therein as the State Government may think fit to make."

10. We may now come to Section 6(3) of the 1953 Act and its proviso which states: "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 Government, 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 State 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 or 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".

11. A perusal of Section 6 of the 1953 Act discloses that there is a difference between sub-clauses (a) to (e) of Section 6(1) on the one hand, and sub-clauses (f) and (g) of Section 6(1) on the other. While in the case of lands which can be retained under sub-clauses (a) to (e) of Section 6(1), the retention is automatic from the date of vesting and no order of any authority need be passed for that purpose, in the case of sub-clauses (f) and (g) of Section 6(1) the retention after the date of vesting is not automatic, but it is only when the State Government passes an order under Section 6(3) of the 1953 Act. In other words, after the date of vesting the lands mentioned in sub-clauses (f) and (g) of Section 6(1) cannot be retained by the intermediary unless and until an order is passed by the State Government under Section 6(3) of the 1953 Act.

12. Also, unlike lands mentioned in sub-clauses (a) and (b) of Section 6 (1) which can be retained after the date of vesting irrespective of the area, in the case of lands mentioned in sub-clauses (f) and (g), only so much of the said land can be retained which in the opinion of the State Government is required for the tea-garden, mill, factory or workshop.

13. The proviso to Section 6(3) gives the power to the State Government after reviewing the circumstances of the case to revise an order passed under Section 6(3) after giving opportunity of hearing to the intermediary or lessee. As already stated above, the controversy is about the interpretation of the proviso to Section 6(3) of the 1953 Act.

14. In the impugned judgment the High Court has taken the view that since Section 14Z of the *West Bengal Land Reforms Act, 1955* (hereinafter referred to as the '1955 Act') has become operative on and from 7-8-1969, the impugned order of resumption under the proviso to Section 6(3) of the 1953 Act which was made on 21-8-1996 was misconceived and illegal, as in the opinion of the High Court the proviso to Section 6(3) of the 1953 Act does not continue in operation after the enactment of Section 14Z of the 1955 Act which has been given retrospective operation wef 7-8-1969. We regret we cannot agree.

15. The 1955 Act also imposes a ceiling on the land which can be retained by a raiyat. Section 14Z (2) of the 1955 Act states as follows: "In the case of land comprised in a tea garden, mill, factory or workshop or land used for the purpose of livestock breeding, poultry farming or dairy, [or township in a Planning Area as may be permitted to be developed under the West Bengal Town and Country (Planning and Development) Act, 1979] the raiyat, or where the land is held under a lease, the lessee, may be allowed to retain [in excess of the prescribed ceiling] only so much of such land as, in the opinion of the State Government, is required for the purpose of the tea garden, mill, factory, workshop, livestock breeding, poultry farming or dairy, as the case may be: Provided that the State Government may, if it thinks fit so to do, after reviewing the circumstances of a case and after giving the raiyat or the lessee, as the case may be, an opportunity of being heard, revise any order made by it under this clause specifying the land which the raiyat or the lessee shall be entitled to retain for tea garden, mill, factory, workshop, livestock breeding, poultry farming or dairy, [or township in a Planning Area as may be permitted to be developed under the *West Bengal Town and Country (Planning and Development) Act, 1979*], as the case may be."

16. The High Court was of the view that the proviso to Section 6(3) does not give a right to the State Government to revise any order passed under the main part of Section 6(3) in view of the 1955 Act. In other words, the High Court was of the view that if the lands are allowed to be retained by an order of the State government under Section 6(3) of the 1953 Act and was below the ceiling limit, then in view of Section 14Z of the 1955 Act the power under the proviso to Section 6(3) of the 1953 Act cannot be exercised by the State Government. We regret we cannot agree with this view.

17. In our opinion, the power under the proviso to Section 6(3) of the 1953 Act continues with the State Government even after the enactment of 1955 Act or Section 14Z thereof. There is nothing in the 1955 Act or in Section 14Z thereof which states that on its enactment the power of the State Government under the proviso to Section 6(3) of the 1953 Act will cease to exist.

18. Section 59 of the 1955 Act repealed certain earlier Acts and Regulations in Bengal. Also, it may be mentioned that Section 63 of the 1955 Act repealed certain provisions of *West*

Bengal Non-Agricultural Tenancy Act, 1949 which were repugnant to the provisions of the West Bengal Land Reforms (Amendment) Act, 1981 in any district or in any area of Calcutta.

19. Section 30 of the 1955 Act repealed the West Bengal Land Holding Revenue Act, 1979 with effect from the date notified by the State Government in the official gazette.

20. Thus, the 1955 Act specifically mentions which earlier Acts it intends to repeal. There is no provision in the 1955 Act which repeals the proviso to Section 6(3) of the 1953 Act. Nor in our opinion can such a repeal be implied.

21. Hence, we cannot agree with the view taken by the High Court that the proviso to Section 6(3) of the 1953 Act is repealed by necessary implication after the promulgation of the 1955 Act, and in particular Section 14Z thereof.

22. However, we have also to understand the true purport of the proviso to Section 6(3) of the 1953 Act.

23. In our opinion, the correct interpretation of the said proviso is that once an order is passed by the State Government under Section 6(3) of the 1953 Act, thereafter the power under the proviso to Section 6(3) the Act can be exercised only if (i) some fraud or misrepresentation was made to the State Government for obtaining the order under Section 6(3) of the 1953 Act, or (ii) there was a genuine and important mistake made by the State Government in passing the order under Section 6(3) of the 1953 Act. However, in our opinion, the power under the proviso to Section 6(3) cannot be exercised on the ground that after the order of the State Government was passed under the main part of Section 6(3) of the 1953 Act, some subsequent developments have taken place.

24. To explain this, we may clarify that there may be cases where an order under the main part of Section 6(3) of the 1953 Act was obtained by the intermediary or lessee by misrepresentation or fraud, e.g. by stating that he has a tea garden, mill or factory or workshop although he has none, or that the land he requires for the above purpose is more than what he actually required. There may also be cases where the State Government has in exercising the power made an honest mistake. In our opinion in such a case the power under the proviso to Section 6(3) of the 1953 Act can be validly exercised by the State Government. However, the power under the proviso to Section 6(3) cannot be validly exercised on the ground that some subsequent developments have taken place after the order under the main part of Section 6(3) of the 1953 Act was passed, by the State Government.

25. It was contended by learned counsel for the appellant in some of these cases that although when the order under the main part of Section 6(3) of the 1953 Act was passed by the State Government there was a factory on the land in dispute, subsequently when an enquiry was made in 1991 it was found that there was no factory at all. Hence it was submitted that the State Government validly passed the order resuming the said land which had been retained under Section 6(3) of the 1953 Act.

26. We are of the opinion that if this submission of the State Government is accepted, it will create chaos because the rights which were settled 20 or 30 years ago or even more may suddenly be disturbed.

27. For example, under Section 6(1)(a) of the 1953 Act, the intermediary can retain the land comprised in his homestead. A homestead has been defined in Section 2(g) of the 1953 Act as follows: "homestead" means a dwelling house together with - any courtyard, compound, garden, out-house, place of worship, family grave-yard, library, office, guest-house, tanks, wells, privies, latrines, drains and boundary walls annexed to or appertaining to such dwelling house".

28. Thus, an intermediary is entitled to retain his homestead even after the date of vesting.

29. If we accept the contention of learned counsel for the appellant and if a provision similar to proviso to Section 6(3) were to apply, it will follow that if the dwelling house of the erstwhile intermediary is demolished after the date of vesting, the State Government can resume such land. In our opinion, such a view will only lead to large scale chaos because there must be thousands of such homestead lands and many of such homesteads may have been demolished subsequent to the date of vesting.

30. Similarly, the lands covering by Section 6(1)(b) of the 1953 Act which can be retained even after the date of vesting could be resumed by the State Government if we accept the submission of learned counsel for the appellant.

31. In our opinion, an interpretation which leads to widespread chaos should be eschewed.

32. Moreover, on a plain reading of Section 6(3) of the 1953 Act it can be seen that the State Government can revise an order passed under the main clause of Section 6(3) of the 1953 Act. The use of the word "revise" in the proviso also supports the view we are taking. In other words, only the facts as existing at the time when the order under the main part of Section 6(3) of the 1953 Act was passed by the State Government can be taken into consideration while exercising the power under the proviso to Section 6(3) of the 1953 Act. Events subsequent to passing of the order under the main part of Section 6(3) cannot be seen for exercising the power under the proviso.

33. In view of the above, while we do not agree with the view taken by the High Court in the impugned judgment, we also hold that once an order under the main part of Section 6(3) of 1953 Act is passed by the State Government, the power under the proviso to Section 6(3) of the 1953 Act cannot be exercised by the State Government by taking into consideration events which occurred after the said order was passed.

34. Since in the present case the power under the proviso to Section 6(3) of the 1953 Act was exercised by the State Government by taking into consideration events which happened after

the order under the main part of Section 6(3) of the 1953 Act was passed, the order of the State Government for resuming the land in question cannot be sustained.

35. We are informed by learned counsel for respondents 3 and 4 in Civil Appeal No.369 of 2005 and respondents 1 and 2 in Civil Appeal No.370 of 2005 that there was no order of the State Government under the main part of Section 6(3) of the 1953 Act, and hence there was no question of revising the said order, under the proviso to Section 6(3).

36. While we agree with the submission, we are of the view, which we have already expressed above, that unless and until there is an order under the main part of Section 6(3) of the 1953 Act, the intermediary or lessee cannot retain the land under Section 6(1)(g) of the 1953 Act. This is because unlike sub-clauses (a) to (e) of Section 6(1) of the 1953 Act in which retention is automatic, there is no automatic retention in cases covered by sub-clauses (f) and (g) of Section 6(1) of the 1953 Act, and the retention can validly be done only when there is an order by the State Government under Section 6(3) of the 1953 Act.

37. However, in such cases i.e. where there is no order of the State Government under Section 6(3), the State Government should not straightaway resume or take possession of the land, but may issue notices to the persons in possession of the land to show cause how they are in possession of the land. In response to the show cause notice the said person will be entitled to demonstrate that he is entitled to retain the land under sub-clauses (a) to (e) of Section 6(1), and if he claims the benefit of those provisions his case will be considered, after giving an opportunity of personal hearing, and be decided by a speaking order. The said person to whom show cause notice is issued will also be entitled to make a representation claiming the benefit of sub-clauses (f) or (g) of Section 6(1), and if he makes such a representation the same shall be decided by the concerned authority after giving an opportunity of personal hearing to him and by a speaking order.

38. Thus while we do not agree with the reasoning in the impugned judgment we uphold it for a reason other than that contained in the said judgment.

39. With the above observations these appeals stand disposed off. No costs. CIVIL APPEAL NOS. 371/2005, 372/2005 , 3662/2005, 1123/2007

40. In view of the decision made in Civil Appeal Nos. 369-70/2005 above, these appeals stand disposed of. No costs. W.P.(C) NO. 403/2008

41. This writ petition has been filed under Article 32 of the Constitution for declaring the amendment brought about in the West Bengal Land Reforms Act, 1955 in so far as they relate to Section 4 and Section 14Z (1) of the West Bengal Land Reforms Act, 1955 as unconstitutional.

42. In our opinion, the petitioner can file a writ petition before the High Court under Article 226 of the Constitution for this purpose. Hence, we are not inclined to entertain this writ petition under Article 32 of the Constitution. The writ petition, therefore, stands dismissed

with liberty to the petitioner to file a writ petition in the High Court for the same relief, if so advised.