

SUPREME COURT OF INDIA

K.N. Farms Industries (Pvt.) Ltd.

Vs.

State of Bihar

C.A.No.4154 of 2009

(R. V. Raveendran and J. M. Panchal JJ.)

07.07.2009

JUDGMENT

R.V.Raveendran, J.

1. Leave granted. Heard parties.

2. This appeal by special leave raises the question whether a tank will fall within the definition of land under section 2(f) of the *Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961* as applicable in the State of Jharkhand ('Act' for short), extracted below:

3. Land means land which is used or capable of being used for agriculture or horticulture and includes land which is an orchard, kharhur or pasturage or forest land or even land perennially submerged under water or the homestead of a land-holder;

4. Explanation I.- Homestead means a dwelling house for the purpose of living or for the purpose of letting out on rent together with any courtyard, compound, attached garden, orchard and out-building and includes any out-building for the purpose connected with agriculture or horticulture and any tank, library and place of worship appertaining to such dwelling house.

Explanation II.- Land perennially submerged under water shall not include submerged in the bed of a river.

2. The appellant is a land-holder. Proceedings were initiated in the year 1973 for determination of the surplus land held by it. The appellant filed a return showing the extent of land in its possession as 379.12 acres. The Circle Officer submitted a report to the Land Reforms Deputy Collector, Jamshedpur, showing the extent of land in the possession of appellant as 443.09 acres. The appellant filed the objections contending that certain tanks which did not fall under the definition of land in all measuring 43.29 acres had been wrongly included in the draft publication. By order dated 9.10.1982,

the Addl. Collector held that the tanks covering an area of 43.29 acres fell within the definition of land and therefore, had to be taken into account for determining the surplus area. The challenge to the inclusion of the tank area was rejected by the appellate authority on 22.3.1983 and upheld by the Board of Revenue on 22.11.1983.

3. Feeling aggrieved, the appellant filed a writ petition (WP No.995 of 1984), contending that while even land perennially submerged under water was 'land' for the purpose of the ceiling area, a tank cannot be considered to be land. The appellant contended that only land which was arable, that is land which was used or capable of being used for agriculture or horticulture could be considered as land for determining surplus land and a tank which is land covered with water incapable of being used for agriculture or horticulture could not be treated as land for the purpose of the Act. A learned Single Judge of the Patna High Court rejected the said contention and dismissed the writ petition by order dated 2.3.1993. He held that the legislative intent was to include all tanks and ponds used for agricultural purposes, within the definition of land by including in the definition even land perennially submerged under water. The appeal filed by the appellant was dismissed by order dated 19.2.2004 affirming the reasoning and findings of the Learned Judge. The Division Bench also noticed the amendment to the Act in the State of Bihar by Act 5 of 2002 by which the words 'also the land' were substituted for the words even land and held that the subsequent amendment showed the legislative intent was that 'land' should also include any land perennially submerged under water.

The said order is challenged in this appeal, giving rise to the question whether a tank will be 'land' for purposes of the Act.

4. The learned counsel for the appellant contended that the Preamble to the Act showed that the object of the Act was to provide for fixation of ceiling, restriction on sub-letting and resumption of certain raiyats for personal cultivation of land, acquisition of status of raiyat by certain under- raiyats, and acquisition of surplus land by the State and matters connected therewith. He submitted that the definition of land shows that it means only land which is used or capable of being used for agriculture or horticulture. According to him, the addition of certain categories of land by using the words includes does not take away or dilute the requirement that only land used or capable of being used for agricultural or horticultural purposes, will be 'land'. He submits that the additions of certain categories by use of the words and includes land which is an orchard, karhur or pasturage or forest land or even land perennially submerged under water or the homestead of land holder merely accentuates the requirement that the land should be used or capable of being used for agricultural or horticultural purposes. He points out that each of the categories of land referred to in the inclusive definition is also land which is used or is capable of being used or incidental to the use of land for agriculture or horticulture; that orchard refers to a garden of trees devoted to cultivation of fruit trees; karhur refers to land producing thatching grass or shrubs; pasturage refers to land covered with grass or herbage and grazed or suitable for grazing by livestock; homestead of the land-holder means dwelling house together with courtyard, compound, attached garden, orchard and includes any out-building for the purpose of connected with agriculture or horticulture and any tank, library and place of worship appertaining to such

dwelling house; even land perennially submerged under water refers to level land covered by water which is shallow (which retains the character of land that is capable of growing certain types of crop or of vegetation trees/shrubs). He therefore contended that what was included to the general definition of land that is land which is used or capable of being used for agricultural or horticultural, were different categories of land which though not directly used for agriculture or horticulture, were capable of being used for agriculture or horticulture or which were incidental or necessary for agricultural horticultural activities. He therefore contended that a tank cannot be termed as land for the purpose of the Act.

5. The learned counsel for appellant relied upon two decisions of this Court in support of his contention that the definition of 'land' and the provision relating to fixation of ceiling area of the land when read with the object of the Act made it clear that the Act is intended to apply only to land which is used or capable of being used for agriculture or horticulture, and that a tank which is obviously not capable of being used for agriculture or horticulture is not therefore land.

5.1) The first is the decision in *Authorized Officer, Thanjavur v. S. Naganatha Ayyar*¹ where this Court held that the object of land ceiling laws is equitable distribution of land to the landless by taking over the surplus land by the State from large land-holders. He contended that a 'tank' cannot be distributed to the landless and that 'land' with reference to land ceiling law can only refer to land which is capable of being used for agriculture or horticulture.

5.2) The second decision relied on by him is *S. K. Arsed Ali v. S. K. Fazle Hakani*² wherein this Court while considering whether an area described as 'Matsyasheho Pushkarini' in a sale deed, is 'land' or 'tank' for the purpose of West Bengal Land Reforms Act, 196, observed thus :

There the land sold to the pre-emptor has been described as Matsyasheho Pushkarini which in English means a tank/pond full of fish. The learned Single Judge of the High Court in relying upon an earlier decision of that Court in *Niranjana Das v. Lakshmi Mani Dasi*³ has taken the view that 'doba' does not come within the mischief of the word 'tank' as is apparent from the Wilson's Glossary of Words. We have caused a copy thereof to be placed before us and we find therefrom that the word 'doba' in Bengali means immersed, low and swampy or inundated land. The depth of such land perhaps comes to cause a distinction between a 'doba' and a 'tank'. Apparently the High Court was of the view that if surface waters be shallow, then the land even though inundated will retain the character of the land, bearing at the back of its mind that paddy crop can be grown in puddled lands. Correspondingly, if the depth is more which prevents the land being put to agricultural use then it would be 'tank' for the purposes of the West Bengal Land Reforms Act and in particular Section 2(7) thereof, which defines 'land' to be agricultural land, tank being an exception thereto. Now here the land has been described as 'Matsyasheho Pushkarini' which apparently would mean a pond with sufficient water, abounding in fish and seemingly it was so described in the deed of sale in favour of the respondent. Thus the area owned by the

respondent did not come within the ambit of the word 'land' for the purposes of Section 2(7) of the *West Bengal Land Reforms Act, 1995*.

6. At the outset, we should notice that we are not concerned with the validity of the Act or the validity of the definition of 'land' in the Act. We are concerned only with the true meaning of the word 'land' as defined in the Act. When a particular word is defined in an Act with reference to its ordinary and normal meaning, and then includes certain additional 'meaning' which would not normally follow but for the specific inclusion, it is not possible to contend that that the extended meaning is contrary to the general or normal meaning and therefore it should be ignored. To put it differently, if a word is defined as A and B and includes C, D, E and F, the word 'includes' is used in order to enlarge the meaning of the words 'A' and 'B'; and when it is so used, those words must be construed as comprehending not only what they signify according to their natural import (that is 'A' and 'B') but also those things which the interpretation clause declares that they shall include (that is C, D, E F). (See : generally the observations in Justice G.P. Singh's Principles of Statutory Interpretation - 11th (2008) Edition Page 174-181)

7. Section 3 of the Act provides that the provisions of the Act shall have effect, notwithstanding anything to the contrary contained in any other law, customs, usage or agreement, for the time being in force or in any decree or order of any court. Section 4 deals with fixation of ceiling area of land. It provides that on the appointed day, the following shall be the ceiling area of land for one family for the purpose of the Act;

(a) 15 acres of land irrigated or capable of being irrigated by flow irrigation work or tubewells or lift irrigation which are constructed, maintained, improved or controlled by government or its agencies etc, capable of growing at least two crops in a year (class I land);

(b) 18 acres of land irrigated by private lift irrigation, or private tubewells which provide or are capable of providing water for more than one season (class II land); or

(c) 25 acres of land irrigated or capable of being irrigated by works which provide or are capable of providing water for only one season (class III land); or

(d) 30 acres of land other than those referred to in clauses (a), (b), (c) and (f) or land which is an orchard or used for any other horticulture purpose (class IV land); or

(e) 37.5 acres of Diara land or chaur (class V land); or (f) 45 acres of hilly, sandy, forest land, even land perennially submerged under water or other kind of land, none of which yields paddy, rabi or cash crop (class VI land).

8. At the outset we should clear certain red-herrings. First is the amendment to the Act in Bihar whereby the words even land has been substituted by the words also the land in the year 2002. The said amendment cannot be applied or extended to the State of Jharkhand as that State has not made such amendment. Secondly, it is not possible to treat the said

amendment as mere clarification or re-statement of the pre-amendment position. There are sufficient indications in the Act to show that the word 'even' was not used to mean 'also'. The Hindi version of the Act uses the words Barhaon mahine jalmagan Samtal Bhoomi for the English words even land perennially submerged under water. The use of the word 'Santal' for 'even' shows the word 'even' was not intended to mean also, but to mean level surface. Further, section 4(f) lists even land perennially submerged under water as one of the categories of land to be considered as class VI land along with hilly, sandy, forest land. Therefore, the words even land perennially submerged under water refer to level land perennially submerged under water as contrasted from river beds covered with water or ravines filled with water.

9. The second is the role of the object of the Act while interpreting its provisions. It is true that one of the objects of the Act is to take over surplus land from large land-holders, and distribute such excess land among landless. But it does not follow therefrom that only land that could be distributed among landless for agricultural/horticultural purposes, can be considered as 'land' and not other lands. The courts, while interpreting the provisions of any Act should, no doubt, adopt an object oriented approach keeping in mind the principle that legislative futility is to be avoided so long as interpretative possibility permits. But at the same time, the courts will have to keep in mind that the object oriented approach, cannot be carried to the extent of doing violence to the plain language used in the statute, by re-writing the words of a statute in place of the actual words used, or by ignoring definite words used in the statute. (See : the observations of this court in *Commissioner of Income Tax v. Budhraj and Company*⁴ and Justice G.P. Singh's Principles of Statutory Interpretation - 11th Edition, Page 116-117). Therefore the decision in *S. Naganatha Ayyar* (supra) relied on by the appellant will be of no assistance.

10. The third is the emphasis on the general meaning of the word 'tank' and the consequential contention that no one would think of a 'tank' as 'land'. The argument is sea is not considered as land, river is not land and therefore tank also cannot be land. It is pointed out that if the determining factor is existence of land or level surface beneath the water to say 'tank' is land, then even sea and rivers also will have to be treated as land. It is submitted that when land is perennially covered with water, such land cease to be 'land' as ordinarily understood, and become water bodies which may be an ocean, sea, river, lake, tank or pond, depending upon the size, situation and nature of the water body. Reliance is placed on the decision of *Arsed Ali* (supra) where it was held that a pond abounding with fish was not land. But general meanings and perceptions, or decisions rendered with reference to statutes containing different definitions will not be of any assistance in interpreting a word which is clearly, specially and exhaustively defined in the Act itself. We will have to find out the meaning of the word, with reference to its definition in the Act. While the object of the Act can be one of the indicators used in interpretation, clear and specific words used cannot be ignored. In fact the learned Single Judge keeping in view the object of the Act, has held that only tanks used for agricultural purposes will be 'land' for purposes of the Act and not all tanks in general. Let us now examine the provisions of the Act to find out whether a 'tank' used for agricultural purposes is land, as held by the High Court, keeping the above principles in view.

11. It is no doubt true that the word 'land' would not have included a tank, in the normal sense, but for its definition specifically including even land perennially submerged under water. The word 'tank' is defined in P. Ramanatha Aiyar's Advanced Law Lexicon, (Third Edition, Vol. 4, page 4608) as follows :

Tank. - A pond or pool, or lake; a tank is often of many acres in extent; an irrigation reservoir, a dammed up ravine or other suitable place for collecting the water.....

All the following three together, namely (i) the underground or the land underneath, on which water is stored (ii) the embankment or the bandh which serves the purpose of keeping the water confined within its boundary and (iii) the bed or pet of the tank, is known as tank.

12. As noticed above, the definition of land includes homestead of the land-holder. Explanation (I) to section 2(f) defines homestead as including any tank appurtenant to the dwelling house. If a tank appurtenant to the dwelling house is land, it follows that any tank appurtenant to agricultural/horticultural land used to irrigate or water such agricultural/horticultural land, will also be land. When tank is specifically referred to as land in Explanation-I to the definition of the word 'land' in section 2(f), it is not possible to accept the contention that no tank can be land.

13. Explanation (II) to the definition of 'land' states that land perennially submerged under water shall not include submerged in the bed of a river . This clearly implies that in the State of Bihar/Jharkhand, all land perennially submerged under water, except riverbeds, is land. The apparent legislative intention is that not only the land actually used for agriculture or horticulture but any or every land which is used incidental or appurtenant to agriculture or horticulture, is also land. This is evident from the definition of 'homestead'. Any dwelling house which is situated in an agricultural or horticultural land, which is intended for the dwelling of persons is a homestead and is included in the definition of land. Further, any outbuilding used for the purposes connected with agriculture or horticulture is also part of homestead and therefore, land. Any artificial or natural body of water, situated in private holdings, which irrigates or supplies water for the agricultural or horticultural purposes is also land. The word 'even land' with reference to the land submerged under water shows that what is excluded is riverbeds or ravines filled with water. The use of the words 'even land perennially submerged under water' in the definition of 'land' would thus indicate that a tank also is land. What is excluded from the definition of land is the riverbed, or a tank which is a dammed ravine. Section 4(f) of the Act which prescribes the ceiling area in regard to Class VI lands also reiterates that even land perennially submerged under water, is land.

14. Having regard to the clear and specific words used in the definition of 'land', it is not possible to exclude land perennially covered with water, which includes tanks, from the definition of land. We therefore agree that tanks meant to provide water for agricultural/horticultural purposes is 'land' for purposes of the Act. We therefore find no error

in the orders of the learned Single Judge affirmed by the Division Bench and consequently, the appeal is dismissed.

¹1979 (3) SCC 466

²1996 (11) SCC 585

³(1986 CWN 318)

⁴1994 Supp. (1) SCC 208