PATNA HIGH COURT

Rebati Ranjan

Vs

State of Bihar

Misc. Judicial Case No. 344 of 1952

(Ramaswami and Sarjoo Prosad, JJ.)

16.12.1952

JUDGMENT

Ramaswami , J.

1. In this case a rule has been granted calling upon the State of Bihar and the other respondents to show cause why a writ in the nature of mandamus should not be issued restraining them from taking possession of certain estates notified under the Bihar Land Reforms Act.

2. The petitioners are Trustees of an estate called the Brojabala Trust Estate created by Maharani Padma Sundari Debi of Hetarnpur in the district of Birbhum. The trust deed was executed on the 14th Falgoon 1301 Bengal Sambat, corresponding to 27-2-1895. The petitioners along with pro forma respondents Suranjan Chakravarty, Pinaik Bhusan Deb Ray and Sachindra Mohan Roy are also Trustees of the Ramranjan Trust Estate created by the late Maharajah Ramranjan Chakravarty of Hetarnpur. The deed of trust was executed on 27th Sraban 1294 Bengal Sambat, corresponding to 11-8-1887. By the trust deed of the Brojabala Trust Estate, properties were vested in the Trustees for certain charitable and religious purposes. There was provision for the maintenance of a college at Hetampur, for the worship of the deity Sri Sri Gouranga Mahaprabhu installed in a public temple at Hetampur and for establishing a Sanskrit tole. The Ramranjan Trust deed similarly provided for the maintenance of a English High School at Hetampur, for the sebapuja of a deity Sri Sri Radha Ballav Jeo in a public temple at Hetampur, and for maintenance of a Charitable dispensary at Hetampur. On 30-5-1952, the Government of Bihar notified that the estates described in the schedule attached to the petition which form the subject-matter of the two trusts were vested in the State under the provisions of the Bihar Land Reforms Act of 1950. It was alleged on behalf of the petitioners that the notification was defective since the proper trustees were not mentioned with respect to touzi Nos. 554, 556, 609, 31/BBI, 175/12 and the tenures appertaining to touzi No.551. On the contrary, the trustees actually mentioned- Kumar Niranjan Chakravarty, Kumar Biswaranjan Chakravarty, Raja Satya Niranjan Chakravarty, Maharaj Kumar Mahimaranjan Chakravarty and Maharaj Kumar Kamala Niranjan Chakravarty - were all dead long past. As regards touzi No.551 R appertaining to 9 annas 2 gandas 3 krants notified in Notification No.77 LR/ZAN the names of all the trustees were not specified. With respect to touzi Nos.175/12, 175/3, 177/6 and 177/7 it was alleged on behalf of the petitioners

that they were touziz of Birbhum Collectorate in West Bengal and were not in the jurisdiction of the State of Bihar. It was also alleged that the Collector proclaimed by beat of drum that the residences belonging to the Trustees of Brojabala Trust in Jamtara and Dumka would be taken over by the State. The petitioners assert that the residences are not included within the touzi notified but they are properties held by the trustees as tenants under other touziz belonging to other proprietors.

3. In support of this rule Dr. Sengupta contended in the first place that the notifications issued by the Government of the State did not correctly mention the names of the trustees and the title to the estates notified could not, therefore, pass to or vest in the State under the provisions of Section 3 (1), Bihar Land Reforms Act. Learned counsel pointed out that with respect to touziz 554, 556, 609, 31/BBI, 175/12 and tenures appertaining to touzi No.551 the notification was made in the names of the trustees who were dead long ago. As regards touzi No.551 R appertaining to 9 annas 2 gandas 3 krants share the names of the proprietors mentioned in the relevant column did not specify all the trustees. Learned counsel mentioned in particular that the name of Suranjan Chakravarty was not included. It was contended that the State Government had no jurisdiction to acquire the estates unless they correctly mentioned the names of the proprietors in the notification The argument is that it is a condition precedent to the vesting of title that the State Government should correctly specify the names of the proprietors or tenure-holders in the notification. In my opinion the argument of the learned counsel is not valid. The question turns on the true interpretation of Section 3(1) of the Act. Section 3(1) states that the State Government "may from time to time, by notification, declare that the estates or tenures of a proprietor or tenure-holder, specified in the notification, have passed to and become vested in the State." The section does not require that the Government should give notice to the proprietors before the Government issue notification. The section does not stipulate that Government should conduct a judicial enquiry into the question as to who is the proprietor of the estate which is to be notified. The section nowhere expressly states that the correct specification of the proprietor's name is a condition precedent to the jurisdiction of the State. If the correct mention of the proprietor's name is a condition of vesting there is no reason why the legislature should not have expressly said so. In my opinion the identity of the estate is the only relevant matter to be investigated on the question whether the title of the estate has passed to and become vested in the Government. It is not a relevant consideration whether the name of the proprietor or tenure-holder has been correctly specified in the notification. In other words, the mention of the proprietor's name in the notification is merely descriptive. It is not a condition of jurisdiction. Even if the name of a wrong proprietor is mentioned in the notification the title to the estate will pass and become vested in the Government so long as the identity of the estate is clear enough. There is no warrant for reading into Section 3(1) an implied condition precedent that that Government should correctly specify the name of the proprietors in the notification.

There are other considerations which support the construction of Section 3(1) which I have taken. Section 32(4) states that where there is a dispute about the interest of the proprietor or tenure-holder in an estate pending on 21-3-1948, in a Court, whether in any suit, appeal or other proceeding, and "was undisposed of 'at the date of vesting'," the Court shall, on the application of any party to such a suit, appeal or proceeding filed within sixty days of the 'date of vesting', stay all further proceedings in respect thereof and refer all matters in dispute to a Tribunal appointed by the State Government in this behalf. This section is important and throws light on the manner in which Section 3(1) ought to be construed. Section 32(4) contemplates that at the time when the State Government issues notification there might be a dispute about the interest of proprietor

or tenure-holder in the estate. Even so, the section states that title to the estate or tenure would vest in the State Government but the dispute would be referred to a Tribunal and the amount of compensation would be determined in accordance with the award of the Tribunal. The legislature has, therefore, manifested its intention that irrespective of the dispute as to the proprietary title a notification under Section 3(1) may be issued with respect to the estate and upon the making of such notification the title to the estate will pass to and become vested in the Government. On behalf of the petitioners Dr. Sengupta referred to Section 3(2) which states that the notification shall be published in the official gazette and in at least two newspapers having circulation in the State of Bihar. The Sub-section further requires that a copy of the notification shall be sent by registered post to the proprietor of the estate recorded in the general register of revenue paying or revenue-free lands maintained under the Land Registration Act. It was maintained by the learned counsel that unless the notification is published in the manner specified in the section and unless a copy of the notification is sent by registered post to the proprietor concerned the title to the estate will not vest in the State Government as enacted in Section 3(1). It was argued that in the present case the living trustees were not correctly named in the notification and notice to the actual trustees has not been given. I do not think that the argument of the learned counsel is correct. In my opinion the publication in the two newspapers referred to in Section 3(2) and the despatch of the copy of the notification by registered post to the proprietor of the estate are not mandatory provisions in the sense that failure to comply with those provisions would invalidate the notification made under Section 3(1). The provision as to the publication and posting of the notification to the proprietor is merely directory. It cannot have been the intention of the legislature that the validity of the notification issued under Section 3(1) should defend upon the subsequent action of the authorities in publication and posting of the notification. The provision enacted in Section 3(2) is merely intended for the purpose of giving information to the proprietors concerned. This view is supported by the phrasing of Section 3(1) which states that the State Government may, from time to time, by notification declare that "the estates or tenures of a proprietor or tenure-holder, specified in the notification, 'have passed to and become vested' in the State." The phrase "have passed to and become vested," grammatically construed must mean that on the date the notification is issued the title to the estate becomes vested in the State Government irrespective of any question as to the publication and posting contemplated in Section 3(2). It is also important to notice that Section 2(h) defines "date of vesting" to mean in relation to an estate or tenure vested in the State, the date of publication in the Official Gazette of the notification under sub-section

> (1) of Section 3 in respect of such estate or tenure. Section 3(3) is also important. It enacts that the publication and posting of such notification where such notification is sent by post, in the manner provided in sub-section (2) shall be conclusive evidence of the notice of the declaration to such proprietors whose interests are affected. The provision of Section 3(3) that mere constructive notice is sufficient is an additional reason for holding that the provision of Section 3 (2) with respect to the publication in two newspapers and the posting of the notification is merely directory. In the light of these considerations I am of opinion that it is not incumbent upon the State Government to mention in the notification under Section 3(1) the correct name of the proprietor or the tenure-holder. The failure of the State Government to mention the correct name of the proprietors or tenure-holders will not invalidate the notification under Section 3(1) nor will it prevent the

title to the estate or tenure passing to or becoming vested in the State Government under the provision of Section 3(1).

4. The question was next debated whether the State Government have authority under the Bihar Land Reforms Act to notify the properties belonging to a religious or charitable trust. The argument of Dr. Sengupta is that the Act makes no provision for the payment of compensation to the trustees of a religious or charitable endowment. Reference was made to Article 31, Constitution of India, which states that no property shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensations or specifies the principles on which, and the manner in which, the compensation is to be determined and given. Dr. Sengupta referred to Section 24(3), Bihar Land Reforms Act, which provides that in the case of a religious or charitable trust the compensation payable would be assessed as a perpetual annuity equal to the net income. Section 23 indicates in what manner the net income of the proprietor or tenure-holder should be computed for the purpose of preparing compensation assessment roll. Dr. Sengupta, however, complained that there was no section in the Act which provides in what manner the compensation is to be paid to the trustees of a religious or charitable endowment. On behalf of the respondents the learned Government Pleader replied that Section 32(2) clearly provides that the amount of compensation shall be paid in cash or in bonds or partly in cash and partly in bonds. Dr. Sengupta, however, argued that Section 32(2) had no application to the trustees of a religious or charitable endowment. Counsel pointed out that according to Section 32(2) the compensation should be paid in cash or in bonds. Learned counsel contended that in the case of perpetual annuity payable to the trustees there was no question of any payment in bond and that Section 32(2) could not, therefore, apply to trustees of a charitable or religious endowment. In my opinion the argument of Dr. Sengupta proceeds on a misconception. Section 23(1) clearly states that for the purpose of preparing Compensation Assessment roll the net income of the proprietor or tenure-holder shall be computed after making the deductions specified in the section. Section 24(3) enacts that in the case where the net income has been dedicated exclusively to charitable or religious purposes, the compensation payable shall be assessed as a perpetual annuity equal to the net income. Section 26 provides for the preliminary publication of the compensation assessment roll. Section 28 requires that the compensation Assessment roll shall be finally published in the manner prescribed and every entry in the roll so finally published shall be final and conclusive evidence of the matter referred to in such entry and also of the nature of the interest of a proprietor or tenure-holder. Section 32(1) states the Compensation Officer shall proceed to make payment to the proprietors or tenure-holders shown in the Compensation Assessment roll as finally published all the compensation payable to them in terms of the said roll. Section 32(2) enacts that the amount of compensation so payable in terms of Compensation Assessment roll as finally published shall be paid in cash or in bonds and partly in cash and partly in bonds. Section 32(3) further provides that the Compensation Officer shall in the prescribed manner tender payment of the compensation as payable in cash or in bonds to the persons entitled thereto according to the Compensation Assessment roll as finally published. Upon an examination of these sections it is manifest that Section 32 (2) applies to the payment of compensation to the trustees of a charitable or religious endowment to whom a perpetual annuity is payable as provided in Section 24(3). Dr. Sengupta argued that Section 32(2) said that the compensation shall be payable in cash or in bonds and that payment by bonds was not

appropriate in the case of a perpetual annuity payable to the trustees. But Section 32(2) confers a discretion on the compensation officer to pay the amount of compensation in cash or alternatively in bond. If Section 32(2) is read in the context of Section 24(3) it is obvious that as regards payment of perpetual annuity to the trustees the compensation officer is required to make payment in cash and not in bonds. If Section 32(2) is so construed there is no foundation for the argument that the Act makes no provision for payment of the compensation in the case of a religious or charitable trust. It is true that Section 32(2). does not expressly state that in the case of a religious or charitable endowment the compensation officer ought to make payment of perpetual annuity in cash. But it is a sound rule of construction that a statutory provision should be construed in the context of the whole Act, Reading, therefore, Section 32(2) along with Section 24(3) it is manifest that in the case of a perpetual premium payable to trustees of a religious or charitable endowment the compensation officer is bound to make payment in cash.

5. It follows that the statute has specified the principle and the manner in which compensation is to be determined and given with respect to properties of a religious or charitable endowment. There is no violation of the guarantee of Article 31(2) of the Constitution and the argument presented by Dr. Sengupta must fail.

6. It was next contended on behalf of the petitioners that there was no provision in the Act for making ad interim payments to the trustees of a religious or charitable endowment. Learned counsel made reference to Section 33 which states that after the date of vesting and before the date of payment of the compensation under Section 32(2) ad interim payments may be made six-monthly to the outgoing proprietor or tenure-holder of an estate. There is a table annexed to Section 33(1) which states what is the measure of the interim compensation payable:

(a) Where the approximate amount of compensation to be calculated by the Collector in the prescribed manner, does not exceed Rs.50,000.	3 per centum p
(b) Where the approximate amount of compensation, to be calculated in the prescribed manner by the Collector, exceeds Rs.50,000.	2 per centum maximum of I

It was contended on behalf of the petitioners that Section 33 was not applicable to the case of a religious or charitable endowment since the table only makes provision for ad interim payments in the case of proprietors to whom a lump sum compensation is payable. It was argued by Dr. Sengupta that there was a 'casus omissus' and the legislature has forgotten the case of a religious or charitable trust while enacting Section 33. I do not think the argument is valid. For, in my opinion, the language of Section 33(1) is wide enough to include payment of interim compensation to the trustees of the endowments. The table attached to Section 33(1) is merely illustrative. I have already shown that Section 32(2) contemplates payment of compensation to trustees of endowments. Section 24(3) expressly provides for payment of perpetual annuity equal to net income in such a case. It is not possible to suppose that the legislature did not intend that interim payments should not be made in the case of trustees of a religious or charitable endowment. In this connection Section 4(f) is important. It states that the Collector shall take charge of an estate or tenure which had vested in the State provided that nothing contained in the clause shall be deemed to authorize the Collector to take charge of any institution, religious or

secular, of any trust or any building connected therewith or to interfere with the right of a trustee to apply the trust money to the objects of the trust. It is conceivable that there might be a long interval of time between the date of vesting and the date when compensation is assessed and paid under Section 32(2) of the Act. How are the trustees of a religious or charitable trusts to perform their duties during the interim period? In the present case, for instance, it is alleged that worship of deities is performed and a school and a college are maintained by the trustees. It is further stated that a dispensary is maintained out of the income of the endowment. Payments are also made for performing the worship of deities in Vrindaban. If no interim payment is made to the trustees it is manifest that the charitable and religious institutions would suffer, and the trustees would be prevented from applying the trust money for the purpose of maintenance and upkeep of the objects of the trust. Section 4(f) prohibits such a course on the part of the Collector. It is true that the proviso is expressed in negative language but reading Section 33(1) of the Act in the context of Section 4(f) it must be held as a matter of necessary implication that if the State Government take charge of the estate of a religious or charitable endowment it is incumbent on its part to make interim' provision for the upkeep and maintenance of all the objects of the trust. The section ought to be interpreted 'ut res magis valeat quam pereat'. In other words, Section 33(1) must be construed to mean that the State Government have authority to make - indeed the State Government are bound to make - interim payment of compensation to the trustees equal to the approximate net annual income from the trust properties calculated in accordance with Section 23 of the Act.

7. In a case of this description the principle to be applied is well known. If the statute is enacted for the purpose of enabling some action to be taken but the statute omits to mention expressly some important detail essential for the proper and effectual performance of the work which the statute contemplates the Court is at liberty to supply the 'casus omissus' and to infer that the statute by implication empowers some detail to be carried out. For instance, in - *'Cookson v. Lee'*[1], a private Act vested certain land in trustees for the purpose of enabling them to sell the land for building purposes but the Act contained no express provision empowering the trustees to expend any portion of the purchase money in making roads. In these circumstances the Court held that having regard to the object of the Act, viz., sale of the property as
building land such power ought to be implied. At page 475 Lord Chancellor states :

> "The object of the Act of Parliament was that this property should be sold for building purposes. Now, in point of fact, the act of Parliament did not contain that which acts of Parliament of a similar nature generally do contain, namely, power to apply a portion of the purchase-money immediately in the making of roads, and giving facilities for putting the property in a state in which it is capable of being sold and immediately used for building purposes. It did not do that expressly. It is said that the Act was drawn by a very eminent conveyancer, but we have nothing to do with that; we must take it as we find it, and one very natural question is, whether though it does not in terms do it, it does not do it by implication, - whether we must not infer that, from the powers given, the legislature considered that they had given the power which is contended for, or whether, directing something to be done, they must not be considered by necessary implication to have

empowered that to be done which was necessary in order to accomplish the ultimate object."

8. Two other matters were raised in the course of the argument. Dr. Sengupta said in the first place that touzi Nos. 175/12, 175/3, 177/6, 177/7 and 186 appertain to no estate in Bihar but they were touzis of Birbhum Collectorate in West Bengal. It was argued by the learned counsel that the Bihar Government had no jurisdiction to notify these estates. The argument cannot be sustained. It is conceded by the learned counsel that the land which these estates comprise lie partly in Bihar and the notification in question covers only the area within the territorial limits of Bihar. Section 2(i) of the Act defines 'estate' to mean any land included under one entry in any of the general register of revenue-paying lands and revenue-free lands, prepared and maintained under the law for the time being in force by the Collector of a district. It is important to notice that Section 2(i) defines 'estate' to mean 'a share in or part of an estate'. Since the land lies within the territorial limits of Bihar it is manifest that the State Government had jurisdiction to make notification with respect to the estate. Dr. Sengupta referred to the definition of 'Collector' in Section 2(e) which states that 'Collector' includes any officer not below the rank of a Deputy Collector appointed by the State Government to discharge the functions of a Collector under this Act. It is obvious that the definition does not exclude the Collector of a district outside Bihar. Section 2(e) obviously refers to officers appointed for the purpose of administering the provisions of the Land Reforms Act. Section 2(e) has no relevance while considering the question as to the meaning of an 'estate' and as to whether the Government had jurisdiction to notify the estate under Section 3(1) of the Act. In my opinion the Government had jurisdiction to notify the touzis of Birbhum Collectorate in so far as the land appertaining to touzis falls within the territorial limits of Bihar.
Another point was raised by Dr. Sengupta. Counsel referred to para. 11(b) of his application and said that the Collector had proclaimed by beat of drum that the two residences belonging to the Trustees of Broajabala Trust in Jamtara and Dumka would be taken possession of. No written order of the Collector is produced on behalf of the petitioners. There is no material to show that there was any written order of the Collector under Section 4 requiring the petitioners to deliver possession of the houses in question. The allegation of the petitioners is also vague. No description of the residences is given. The plot numbers and boundaries are not specified and it is not said in which touzi and under which proprietor the properties are held by the petitioners as tenants. In view of the vagueness of the allegation it is not possible to say whether the allegation is well-founded or whether the petitioners are entitled to any relief.

9. For the reasons I have expressed I think that the petitioners are not entitled to the grant of a mandamus or any other writ against the State of Bihar and the other respondents. I would accordingly dismiss this application. There will be no order as to costs.

Sarjoo Prosad, J.

10. I find myself in general agreement with the decision just pronounced. When I issued rule in some of these cases concerning "trust" estates, I felt no doubt in my mind that on a proper notification under Section 3(1), Bihar Land Reforms Act, even "trust" estates would vest in Government. This conclusion inevitably follows from a perusal of Section 4(f) with Sections 24(3) and 39 of the Act. The prohibition contained in the proviso to clause (f) of Section 4 would

be unnecessary if the intention was not to vest a "trust" estate in Government; nor would it be necessary to provide for compensation by way of a "perpetual annuity" equal to the net income of the estate in the case of a religious or charitable trust.

11. But the question which merited serious consideration is what was to happen to the "trust" after the "trust" estate had vested in Government. Section 4(f) definitely provided that nothing contained in the Act should be deemed to authorise the Collector

> "to take charge of any institution religious or secular, of any trust or any building connected therewith or to interfere with the right of a trustee to apply the trust money to the objects of the trust."

The Act, however, appears to have made no specific provision for interim payments to the trustee. The legislation is somewhat inartistically drafted ana even in this case I have felt difficulties in the interpretation of Section 3(1) as also the other sections contained in Chapter VI of the Act, in regard to payment of compensation in relation to "trust" estates. Legislation of this kind may well furnish a fruitful field for dialectical exploration but are more often than not the tragedy of judicial adventures. In dealing with another such legislation inartistically drafted I remarked relying upon a passage in Maxwell on Interpretation of Statutes that

> "where the main object and intention of a statute are clear, it must not be reduced to a nullity by the drafts-man's unskilfuiness or ignorance of the law, except in a case of necessity or absolute intractibility of the language used. The rules of grammar yield readily in such cases to those of common sense."
> *'Atma Ram Budhia v. State of Bihar'*[2], With a view, therefore, to give full effect to the mandatory provision contained in Section 4(f) of this Act, it should and must be held that interim compensation shall also be payable to the
> trustee on the basis of the principle laid down in Section 23(4) of the Act, otherwise the objects of the trust would suffer and the proviso to Section 4(f) would defeat its purpose. The complaint also is that there is no specific provision in the Act laying down the manner in which compensation is to be paid to the trustees of a religious or charitable endowment. Apparently, there is some seeming justification for the complaint but on a close scrutiny of the relevant sections of the Act there can be no doubt that Section 32(2) must be lead in the light of Section 24(3) and then it would be fairly obvious that the Compensation Officer is required to pay to the trustees of a religious or charitable trust the perpetual annuity in cash and not in bond.

12. Turning now to the other important question whether the failure to specify correctly the name of the proprietor under Section 3(1) of the Act vitiates the entire notification and prevents the vesting of the estate in Government,. I am exactly of the same view as my learned brother, though initially I was inclined to a different course. I agree that the mention of the proprietor's name in the notification is merely descriptive and not a condition precedent to the vesting of the estate. The essential thing is the identity of the property or estate which should be properly specified. There are sound reasons for that inference. Firstly, the vesting of the estate depends not

upon the publication of the notification as required by sub-section (2) of Section 3 but upon the declaration contained in the notification. Secondly, sub-section (2) requires that a copy of the notification should be sent under registered post to the proprietor recorded in the Land Registration records. Now the proprietor so recorded may be dead or perhaps may have been wrongly recorded and there may be a dispute pending, yet Government may have no information about the real owner. Could it be then reasonably assumed that the incorrect mention of the name of the proprietor in the notification or in the registered notice affected the validity of the notification or the vesting of the estate? Thirdly, under Section 32(4) the Act provides that where there is a dispute pending about the interest of a proprietor or tenure-holder and such dispute was undisposed of at the date of vesting, the whole matter in dispute shall be referred to a tribunal in this behalf. It is, therefore, evident that the dispute as to the proprietary interest does not affect the vesting; and yet by virtue of Section 4(a) the estate or tenure vested "absolutely in the State free from all encumbrances". All these considerations converge on the issue that the mention of the words "proprietor or tenure-holder" with reference to estates or tenures in Section 3(1) of the Act is merely descriptive and indeed even superfluous. If, therefore, the notification correctly specifies the estate or tenure, it is quite sufficient to vest the same in the State Government.

13. The other points arising in the case have been amply considered in the judgment of my learned brother and I do not propose to add anything to the discussion.

14. I, therefore, agree that the applications should fail and the rules should be discharged.

Rules discharged.

Cases Referred.

[1](1853) 23 LJ Ch 473
[2] AIR 1952 Pat 359 (SB)