

PETITIONER:
RAM KRISSEN SINGH

Vs.

RESPONDENT:
DIVISIONAL FOREST OFFICERBANKURA DIVISION & OTHERS

DATE OF JUDGMENT:
04/08/1964

BENCH:
Ayyangar, N. Rajagopala
BENCH:
Ayyangar, N. Rajagopala
Gajendragadkar, P.B. (CJ)
Wanchoo, K.N.
Hidayatullah, M.
Shah, J.C.

CITATION:
1965 AIR 625 1965 SCR (1) 1

ACT:
West Bengal Estates Acquisition Act, 1953 (West Bengal Act 1 of 1954) as amended by West Bengal Act (25 of 1957)-Section 5(aa)Estates-Acquisition of-Estates and rights of intermediaries in estates vesting in State from date specified in notification by State Government Right to cut zamindari trees granted by intermediary to third person whether would also vest in State by virtue of amended law--construction and validity of amendment.

HEADNOTE:

The appellant had been granted by the Zamindar of Simlapal in West Bengal a right to cut trees in certain forests of the zamindari. The exercise of this right was interrupted by action taken against him under the West Bengal Private Forests Act, 1948. The appellant filed a writ petition under Article 226 of the Constitution of India. In the meantime, the West Bengal Estates Acquisition Act, 1953, (Act 1 of 1954) was passed. This Act provided that from the date specified in a notification under section 4 of the Act, property and interests specified in section 5 of the Act would vest in the State Government. According to the Forest Department the right to cut trees enjoyed by the appellant was within the purview of section 5 of the Act and, therefore, had become vested in the State Government. Certain decisions of the Calcutta High Court, however, went against this interpretation; it was held therein that a right to cut trees granted by an intermediary to a third person was not within the terms of section 5. Thereupon the State Legislature of West Bengal passed Act 25 of 1957 which by adding section 5(aa) to the Act provided that upon the due publication of a notification under section 4, on and from the date of vesting, all lands in any estate comprised in a forest together with all rights to trees therein or the produce thereof and held by an intermediary or any other person shall, notwithstanding anything to the contrary contained in any judgment, decree or order of any Court or Tribunal, vest in the State. The appellant's writ petition, coming up for hearing after this amendment, was dismissed.

An appeal to the Division Bench also failed. Appeal before the Supreme Court came by virtue of a certificate of fitness under Article 133 (1) (c) of the Constitution.

The question for consideration was whether the terms of section 5(aa) were sufficient and apt to provide for the vesting of the right to cut the trees when such right belonged, on the date of vesting, not to the intermediary or zamindar but to another person to whom it had been granted under a contract with the said intermediary.

HELD : (i) The words "together with" used in section 5(aa), on the basis of which it was contended by counsel for the appellant that it was only where the right to the trees constituted an integral part of the right to the land that a vesting was effected of the latter right, meant in the context of the section no more than the expression 'as well as' and imported no condition that the right to the trees should also belong to the owner of the land. Also, it was not possible to read the words "held by an intermediary

2

or any other person" to mean that they were applicable only to cases where the entirety of the interest-to the land, to the trees, and to the produce were vested in a single person-be he the intermediary or another person. These words would obviously apply equally to cases where the land belonged to an intermediary and the right to the trees or to the produce of the trees to another person. In construing the section, moreover, the fact that it was amended to overcome certain decisions rendered under the original enactment was not an irrelevant factor to be taken into account. [41-G; 5B-D, 5G].

(ii) From the mere fact that there was no provision in the Act for compensating the interest of persons like the appellant, the Court could not hold that such an interest was not within the vesting section--section 5(aa). The absence of a provision for compensation might render the vesting section unconstitutional, but it could not detract from the clear operation of the words used in section 5(aa). After the passing of the 17th Amendment to the Constitution and the inclusion of West Bengal Act 1 of 1954 among those specified in Schedule IX, the absence of a provision for compensation for the acquisition of the appellant's rights would not render the West Bengal Act or the acquisition thereunder, unconstitutional. [6B; 6E].

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 781 to 784 of 1963.

Appeals from the judgment and order dated March 17, 1961 of the Calcutta High Court in Appeal from Original orders Nos. 212, 433, 435 and 436 of 1959 respectively.

D. N. Mukherjee, for the appellant (in C.A. No. 781/63).

N. C. Chatterjee, Ramkrishna Pal, Taraknath Roy and D. N. Mukherjee, for the appellants (in C.As. Nos. 782-784/63).

C. K. Daphtary, Attorney-General, S. C. Bose and P. K. Bose, for respondents Nos. 1 to 3 (in C.A. No. 781/63).

B. Sen, S. C. Bose and P. K. Bose, for respondents Nos. 1 to 3 (in C.As. Nos. 782 to 783/63) and respondents (in C.A. No. 784/63).

The Judgment of the Court was delivered by

Ayyangar J. These appeals are before us by virtue of certificates granted by the High Court under Art. 133(1)(c) of the Constitution and they raise for consideration the question of the proper construction of S. 5(aa) of the West

Bengal Estates Acquisition Act, 1953 (West Bengal Act 1 of 1954) as amended by West Bengal Act 25 of 1957.

The relevant facts in these four appeals are analogous and they raise the common question of law which we have already indicated. For the disposal of these appeals it is sufficient therefore to refer to the facts of any one of them. We propose to set out those of Civil Appeal 781 of 1963.

3

The Zamindar of Simlapal in the Collectorate of Bankura entered into a contract with the appellant Ram Krissen Singh and by a document dated September 3, 1946, granted him the right to cut the trees, in certain demarcated areas, of certain forests of the Zamindari on payment of a sum of Rs. 7,131/8/-. Under the terms of the said document the period during which the appellant was given this right to cut trees was to end on April 14, 1955. The appellant started the cutting operations and cut only for, the first few years, but thereafter action was taken by the Forest Officers of the State to prevent him from further cutting under the powers vested in them by the West Bengal Private Forests Act, 1948. Thereupon, the appellant tiled a petition under Art. 226 of the Constitution for a writ of certiorari for quashing the orders passed against him and also for an injunction restraining the Forest Officers from taking delivery of possession and from cutting and disposing of the forests covered by his agreement. By the time the petition was filed the West Bengal Estates Acquisition Act, 1953 (Act 1 of 1954), (hereafter referred to as the Act) had been passed and in the counter-affidavit which was filed to this petition reliance was placed upon its provisions for contending that the "estate" belonging to the Zamindar in which the forest lay as well as all the rights to the trees therein, to whomsoever belonging, had vested in the State -under S. 5 of the Act by reason of a notification issued by the State Government under s. 4. By the date the writ petition came to be heard the West Bengal Legislature had, in view of certain decisions rendered by the Calcutta High Court which held that the terms of s. 5 of the Act which specified the property or interest in property which would vest in the Government did not include the right to cut trees in a forest, which had been granted to a third person by the proprietor or intermediary before the date of the vesting, amended the said vesting section by introducing S. 5 (aa) to have retrospective effect from the date of the commencement of the principal Act. Section 5 (aa) read:

"5. Upon the due publication of a notification under section 4, on and from the date of vesting(aa) all lands in any estate comprised in a forest together with all rights to the trees therein or to the produce thereof and held by an intermediary or any other person shall, notwithstanding anything to the contrary contained in any judgment, decree or order of any court or Tribunal, vest in the State';

4

After this amendment was brought to the notice of the Court the petitioner was allowed to amend -his writ petition by adding allegations (a) regarding the construction of the said section, and (b) its constitutional validity. The petition then came on for hearing in December, 1958, and the learned Single Judge, by his judgment dated December 24, 1958 discharged the rule followcertain earlier decisions of his on the same point. An appeal filed to the Division

Bench under the Letters Patent was also dismissed but the learned Judges granted a certificate under Art. 133(1) (c) and that is how the appeal is before us.

The first, and possibly the only, question that now calls for consideration is whether the terms of s. 5 (aa) are sufficient and apt to provide for the vesting of the right to cut the trees when such right belonged, on the date of the vesting, not to the intermediary or Zamindar but to another person to whom it had been granted under a contract with the said intermediary. The argument addressed to us by Mr. Chatterjee-learned counsel for the appellant-was that it was only the land held or other rights possessed by an intermediary that became vested in the State and that cl. (aa) did not deal with those cases where the right to the trees had been severed from the right to the land and belonged to a third person on the date of the vesting. For this purpose learned counsel laid stress on two features of the clause. The first was the use of the words "together with" and the second the words "and held by an intermediary or any other person". Taking up, first, the word "together with" the submission was that it was only where the right to the trees constituted an integral part of the right to the land that a vesting was effected of the latter right and that where there had been a severance of the two rights it was only the land that remained in the intermediary that became vested and not the right to the tree,-,. We feel unable to accept this argument. We consider that the expression "together" is obviously used to denote not the necessity for integrality between the land and the right to cut trees by way of common ownership but as merely an enumeration of the items of property which vest in the State. In the context, the word means no more than the expression "as well as" and imports no condition that the right to the trees should also belong to the owner of the land. It may be added that the words "or to the produce thereof" occurring next also emphasis what we have just now pointed out, for if these words are read disjunctively, as they must, in view of the conjunction "or", the words would indicate that not merely lands in the estate and the right to the

5

trees but independently of them the right to the produce of the trees on the land would also vest in the State.

Coming next to the words "and held by an intermediary" learned counsel could not justifiably submit an argument that both the land and the right to the trees should inhere in the intermediary to attract the operation of the clause, because the words "held by an intermediary" are followed by "any other person". Obviously, that other person i.e., person other than the intermediary, could have the right either to the land, a right to the trees or a right to the produce. By the use of the expression "or any other person" therefore the legislature could obviously have intended only a person like the appellant who might not have any right to the lands which are held by the intermediary but has a right to the trees in that land. Besides, it is not possible to read the words "held by an intermediary or any other person" to mean that they are applicable only to cases where the entirety of the interest-to the land, to the trees and to the produce-are vested in a single person-be he the intermediary or another person. These words would obviously apply equally to cases where the land belongs to an intermediary and the right to the trees or to the produce of the trees to another person.

This apart, there is one further aspect Of the matter to

which also reference might be made. The amendment effected by the addition of cl. (aa) to s. 5 was admittedly necessitated by certain decisions of the High Court of Calcutta which held that where an intermediary had granted a right to cut trees or to forest produce, the rights so conferred were unaffected by the vesting provision in s. 5 of the Act as it stood before the amendment. If the argument now put forward by Mr. Chatterjee is accepted it would mean that the amendment has achieved no purpose. Undoubtedly, if the words of the amendment, on their plain reading, are insufficient to comprehend the case now on hand the fact that the legislature intended to overcome a decision of the High Court could not be any determining consideration but, if as we find, the words normally bear that construction, the circumstance that the amendment was effected with a view to overcome certain decisions rendered under the original enactment is not an irrelevant factor to be taken into account.

Mr. Chatterjee next submitted that the scheme of the Act was the provision of compensation for every interest acquired by the State by virtue of the vesting under s. 5 and that as there was no provision in the Act for compensating the interest of persons

6

like the appellant, the Court should hold that such an interest was not within the vesting section, - s. 5 (aa). This is, of course, a legitimate argument, and if there had been any ambiguity in the construction of s. 5 (aa), the circumstance referred to by learned counsel would certainly have great weight. But in view of the plain words of S. 5 (aa) which we have discussed earlier, we do not find it possible to accept the argument. The absence of a provision for compensation might render the vesting section unconstitutional, and that indeed was the argument addressed to the High Court and a matter which we shall immediately consider, but it cannot detract from the clear operation of the words used in s. 5 (aa).

A further point that was urged before the High Court was that the enactment was unconstitutional in that no provision was made for the award of compensation to persons in the position of the appellant whose rights to cut trees became vested in the State. Mr. Chatterjee pointed out that the learned judges of the High Court had upheld the validity of the enactment by holding that compensation had, in fact, been provided. Learned counsel drew our attention to the provisions quoted and submitted that the learned judges erred in their construction of these provisions and that, in fact, no compensation was provided, but this question about the constitutional validity of the amending Act does not really fall for consideration because learned counsel for the appellant did not contest the position that after the enactment of the 17th Amendment to the Constitution, and the inclusion of West Bengal Act 1 of 1954 among those specified in Schedule IX, the absence of a provision for compensation for the acquisition of the appellant's rights would not render the West Bengal Act or the acquisition thereunder unconstitutional.

These appeals fail but in the circumstances of the case there will be no order as to costs.

Appeals dismissed.