

PETITIONER:
STATE OF WEST BENGAL

Vs.

RESPONDENT:
SINGELL TEA AND AGRICULTURAL INDUSTRIES LIMITED AND ORS.

DATE OF JUDGMENT 31/03/1993

BENCH:
KASLIWAL, N.M. (J)
BENCH:
KASLIWAL, N.M. (J)
KULDIP SINGH (J)

CITATION:
1993 SCR (2) 879 1993 SCC (2) 678
JT 1993 (3) 743 1993 SCALE (2) 388

ACT:
West Bengal Estates Acquisition Act, 1953: Sections 4, 5, 6, 44(3)-Tea Estate-Acquisition of--Notice issued for assessment of rent--Registered on the grounds that the estate was not intermediary and that tea garden was on free-hold land-Termination of tenancy-Order passed by the Collector-Jurisdiction and validity of the order.

HEADNOTE:
The appellant-State issued a notification under section 4 of the West Bengal Estates Acquisition Act, 1953 covering the land comprised in the tea garden of the respondent-company. The Revenue Officer issued notices to the respondent-company initiating proceedings for assessment of rent. The Company objected stating that it was not an intermediary within the meaning of the Act and since its tea estate comprised of free-hold land the Revenue Officer had no jurisdiction to assess the rent under Section 42(2) of the Act. The Revenue Officer rejected the contention and fixed the rent at Rs.2,375.94 per year. On revision preferred by the State, the Revenue Officer determined the rent at Rs.8,765.24 per year. The Company preferred appeals before the Tribunal. The appeals were dismissed in default and the restoration applications were also rejected. Thereafter, the Company preferred applications before the High Court under Section 115 CPC read with Article 227 of the Constitution for restoration of the two appeals, and obtained stay of the operation of the Revenue Officer's order. During the pendency of the cases, the Additional Deputy Commissioner informed the respondent that inspite of the repeated reminders the company had not executed the long-term lease for 30 years on prepayment of the requisite number of instalments or rent and cess. The respondent-company replied pointing out that the High Court had granted the stay order and therefore the matter stood stayed till the disposal of the said cases. Thereafter, the Collector served upon the Company, a notice under section 106 of the Transfer of Property Act, 1882 determining the tenancy of the company in respect of the tea garden on the expiry of the specified date. The

company was required to hand over the vacant and peaceful possession of the tea garden. In reply to the said notice, the company stated that in view of the stay order granted by the High Court no further proceedings be taken. Thereafter the Collector took over the possession of the tea garden. The applications before the High Court were still pending. However, aggrieved by the order of the Collector taking over its tea garden, the Respondent preferred a Writ Petition before the High Court. Allowing the writ petition, the High Court directed the appellant-State Government and other authorities to deliver the possession of the tea garden to the Company within a month.

Aggrieved by the High Court's order, the State as also the West Bengal Tea Development Corporation to whom the possession of the tea garden is transferred by the State, preferred appeals, before this Court.

Disposing of the appeals, this Court,
HELD:1. The Revenue Officer had initially determined the rent at the rate of Rs.2,371.94 per year, but the same was not accepted by the Government and on a representation made by the State Government, the Revenue Officer had refixed the rent at Rs.8,769.24 per year by order dated 22.8.1968. The Company had challenged the rent refixed at Rs. 8,769.24 and the High Court had stayed the order of the Revenue Officer fixing the rent at the rate of Rs.8,769.24. In view of these circumstances, it was necessary on the part of the Collector to have passed an order of summary settlement as contemplated under Form I Schedule F of the West Bengal Estates Acquisition Rules, 1954. The High Court was, therefore, right in holding that the Collector had no jurisdiction to terminate the tenancy on the ground of non-payment of rent for not executing a lease deed inasmuch as the Collector had not mentioned in the notice terminating the tenancy under Section 106 of the Transfer of Property Act, that he was prepared to accept the rent at the rate of Rs. 2,375.94 per year as determined initially by the Revenue Officer. [886 F-H; 887 A,B]

2. In order to do complete justice between the parties, it is proper that the respondent-Company should be given the possession of the tea garden provided the Company pays the entire arrears of rent from 27.7.1965 to 21.4.1981, the date when the Company was dispossessed,

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calculated at the rate of Rs. 8,769.24 per year after adjusting any amount already paid, within three months. There would be no necessity for the Collector to make any order of summary settlement and a long term lease should be executed as contemplated under sub-section (3) of Section 6 of the West Bengal Estates Acquisition Act, 1953. As soon as the arrears of rent are paid by the Company and a lease deed is executed, the Company should be handed over the possession of the tea garden. In case any increase in the amount of rent is permissible under the law due to lapse of time, the State Government would be free to take the same into consideration while granting the long term lease. [887 B-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2919-20 of 1981.

From the Judgment and Order dated 15.9.1981 of the Calcutta High Court in Civil Rule No.3567 (W) of 1981.

S. Murlidhar, Rathin Das and R.F. Nariman for the Appellant.

S.S. Ray, S.M. Jain, A.P. Dhamija, Sudhanshu Atreya, B.K. Jain, S.K., Jain and P.K. Mukherjee for the Respondents.

The Judgment of the Court was delivered by KASLIWAL, J. Both the above appeals by grant of special leave are directed against the common order of the High Court dated 15.9.1981 as such the same are disposed of by one single order.

The respondent Messrs Singel Tea and Agricultural Industries Limited, a private limited company incorporated under the Companies Act, 1956 (in short 'The Company') filed a writ petition under Article 226 of the Constitution in the High Court on 22.4.1981 challenging the order dated 16.4.1981 issued by the Collector, Darjeeling whereby possession of the tea garden known as M/s. Singell Tea Estate were taken over with effect from 16.4.1981. In view of the fact that the West Bengal Tea Development Corporation Limited, a Government Company (in short 'The Corporation') had been handed over the possession of the tea garden on 21.4.1981; the said Corporation was also impleaded as a party respondent.

The State of West Bengal enacted The West Bengal Estates Acquisi-

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tion Act, 1953 (hereinafter referred to as 'The Act') to provide for the State acquisition of estates, of rights of intermediaries therein and of certain rights of raiyats and under-raiyats and of the rights of certain other persons in lands comprised in estates. The State Government also issued a notification under Section 4 of the Act vesting all estates and rights of every intermediary in the State free from all encumbrances. This notification also covered the land comprised in the tea garden know as M/s. Singell Tea Estate. The Revenue Officer, Kurseong, Darjeeling issued notices to the Company initiating proceedings for assessment of rent of the said tea garden. The Company appeared in the said proceedings and contended that it was not an intermediary within the meaning of the Act and the provisions of the Act were not applicable to the said tea garden as the same was a freehold land and the Revenue Officer had not jurisdiction to assess the rent under Section 42(2) of the Act. The Revenue Officer rejected the contentions of the Company and passed two orders fixing the rent at Rs.2,375.94 per year. The Government being not satisfied with the quantum of rent determined by the Revenue Officer took further proceedings for the revision of the entries in the record of rights in respect of the tea garden and in those proceedings the Revenue Officer by order dated 22.8.1968 redetermined the rent at Rs.8,769.24 per year.

The Company aggrieved against the aforesaid order of the Revenue Officer preferred two appeals before the District Judge, Darjeeling acting as Tribunal under sub-section (3) of Section 44 of the Act. Both the appeals were dismissed in default. The company filed two applications for restoration of the appeals under Order 41 Rule 19 of the Code of Civil Procedure, but both the applications were dismissed by the Learned District Judge by his order dated 16.8.1975. The Company then filed two applications under Section 115 of the Code of Civil Procedure read with Article 227 of the Constitution in the High Court challenging the aforesaid orders of the District Judge dated 16.8.1975. A Division Bench of the High Court by its order dated 1.10.1975 granted interim stay of the operation of the order of the Revenue Officer dated 22.8.1968. During the pendency of the aforesaid cases in the High Court, the Additional Deputy Commissioner of Darjeeling by his letter dated 20.6.1979

informed the Manager of Singell Tea Estate that inspite of repeated reminders, the Company had not executed the long term lease for 30 years on prepayment of the requisite number of instalments of rent and cesses.

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The above mentioned letter of the Additional Deputy Commissioner, Darjeeling was received by the Company on 8.8.1979 and was replied by the Solicitor of the Company by letter dated 13.8.1979. In the reply, it was pointed out that the High Court had granted the stay order and as such requested the Additional Deputy Commissioner to stay his hands till the disposal of the said cases. Thereafter, the Collector of Darjeeling served upon the Company a notice under Section 106 of the Transfer of Property Act, 1882 determining the tenancy of the Company in respect of the tea garden on the expiry of 14.4.1981. The Company was requested to hand over vacant and peaceful possession of the tea garden to the Junior Land Reforms Officer or the Sub-Divisional Land Reforms Officer of the area or the Executive Magistrate immediately on the expiry of 14.4.1981, failing which it was directed that the Company would be deemed a trespasser and would also be liable to pay mesne profits till the Company was evicted in due course of law. The above notice was received by the Company on 15.11.1980. In reply to the said notice under Section 106 of the Transfer of Property Act, the Solicitor of the Company replied by letter dated 15.12.1980 agains pointing out the issuance of the stay orders by the High Court and requested the Collector of Darjeeling to stay his hands until further order from the High Court. Thereafter, the Collector, Darjeeling issued the order dated 16.4.1981 which reads as under:-

"To : The Proprietor,
M/s. Singella Tea Estate, P.O. Kurseong,
District : Darjeeling.

I do hereby take over the possession of your tea garden known as Singel Tea Estate with effect from 16th April, 1981 as you have failed to execute Long Term Lease/Summary Lease, by paying the government dues by 14th April 1981 as required in the notice served upon you u/s. 106 of Transfer of Property Act.
Sd/- Illegible
Collector, Darjeeling."

According to the Company, by the impugned order the Collector intimated the Company that he would take possession of the estate. But the language of the order shows as if the Collector had taken possession of the tea estate on 16.4.1981 and he recorded the fact of taking possession

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of the tea garden in the said order. According to the Company, the said order did not mention as to how and in what manner the possession of the tea garden was taken by the Collector. The stand of the State Government in this regard was that possession of the tea garden was taken by the Collector on 16.4.1981, as stated in the order. The further case of the Government was that the possession of the tea garden was handed over to the Corporation on 21.4.1981. As already stated above, the Corporation was subsequently added as a party and an affidavit was filed by Shri Aninda Mohan Bose, the Managing Director of the Corporation stating therein that possession of the tea garden was taken by one Shri R.B. Subba, Circle Inspector (Land Reforms) Kurseong, L.R. Circle on behalf of the

Government on 21.4.1981 and handed over to the Corporation. The High Court from the above circumstances concluded that the statement made by the Collector in the impugned order dated 16.4.1981 about his taking over the possession of the tea garden on that date was incorrect. The High Court, however, observed that it was not disputed that tea garden was now in the possession of the West Bengal Tea Development Corporation Limited since 21.4.1981.

The High Court examined the question whether the tenancy of the Company in respect of the tea garden could be terminated and the possession of the same could be taken over by the Government. The High Court in the circumstances mentioned above held that the Collector of Darjeeling was fully aware of the stay order dated 1.10.1975 passed by the High Court against the order of the Revenue Officer dated 22.8.1968 fixing the rent at Rs.8,769.24 per year before issuing the notice under Section 106 of the Transfer of Property Act as well as on the date of issuing the impugned order dated 16.4.1981. According to the High Court, there was no question of granting a lease so long as the rent was not determined under Section 42 (2) of the Act. As the order fixing the rent was stayed by the High Court, the question of granting on execution of the lease by the Company could not arise. Thus, the action of the Collector in taking possession of the tea garden by the impugned order dated 16.4.1981 on the ground that the Company had failed to execute a long terms lease or summary lease by paying the Government dues by 14.4.1981 as required in the notice given under Section 106 of the Transfer of Property Act, was not correct. The High Court further held that the Collector did not make any order of summary settlement as required by paragraph 1 of Schedule F of The West Bengal Estates Acquisition Rules, 1954. Thus, the Collector failed to

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perform his statutory duty by not granting a summary settlement specifying the terms and conditions of the tenancy and violated the provisions of the Rules. As regards the contention on behalf of the State Government that the Company should have paid at least the rent at the rate of Rs.2,375.94 per year initially determined by the Revenue Officer under Section 42 (2) of the Act, the High Court rejected the same on the ground that the Government had not accepted the same and had not made any demand for payment of rent at that rate. The High Court took the view that the rent was fixed for the second time by order dated 22.8.1968 but the demand for payment of rent was made after a long time in 1979 and obviously such demand would be for the enhanced rent as fixed for the second time and the same having been stayed by the High Court, it was doubtful whether the tenancy could be terminated and possession could be recovered on the ground of non-payment of rent. The High Court, as such, held that the Collector had taken the law into his own hands and took over possession otherwise than in accordance with law and such action on the part of the responsible officer like the Collector cannot be approved. As a result of the above findings, the High Court allowed the writ petition and issued a writ of mandamus commanding the State Government and other authorities to deliver the possession of the tea garden to the Company within a month from the date of the order.

Both the State of West Bengal as well as the Corporation have come in appeal challenging the order of the High Court. We have heard learned counsel for the parties and have perused the record. The two revisions filed under Section 115 of the Code of Civil Procedure read with Article 227 of

the Constitution challenging the two orders passed by the District Judge dismissing the two applications filed under Order 41 Rule 19 of the Code of Civil Procedure for restoration of the two appeals filed against the determination of the rent for the second time at the rate of Rs.8,769.24 per year are still pending before the Calcutta High Court. This Court on 13.12.1991 had passed the following order:-

"The Calcutta High Court is requested to dispose of finally within the three months from today Civil Rule Nos.3741-42 of 1975. These appeals to be on board on 7th April, 1992.

The order communicated to the Calcutta High Court forthwith."

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However, inspite of the above order, we were informed by the learned counsel for the parties that the Civil Rule Nos.3741-42 of 1975 have not been disposed of by the High Court. As the above mentioned two appeals directed against the order of the High Court dated 15.9.1981 are pending in this Court for the last more than 11 years, we do not consider it proper to further wait for the decision of the Civil Rule Nos.3741-42 of 1975 pending in the High Court and we propose to decide these appeals.

The West Bengal Estates Acquisition Act, 1953 abolished the intermediaries and upon the due publication of a notification under Section 4 of the Act, the estates and the rights of intermediaries in the estates vested in the State free from all intermediaries under Section 5 of the Act. Section 6 provides for retaining certain lands by the intermediaries. Section 42 provides for retaining possession of any land subject to the liability to pay rent as determined by the Revenue Officer. Sub-section (2) of Section 42 provides that when an intermediary is entitled to retain possession of any land comprised in a tea garden under Clause (f) of sub-section (1) as read with sub-section (3) of Section 6 of the Act, the Revenue Officer shall determine the rent payable in respect of such land in the manner provided in the said sub-section. In the present case, the Revenue Officer had initially determined the rent at the rate of Rs.2,375.94 per year and on the representation of the State Government the same was refixed at Rs.8,769.24 per year. So far as the Company is concerned, it had taken a clear stand before the Revenue Officer that it was not an intermediary nor the provisions of the Act applied in the case as the land was claimed as freehold.

The admitted facts of the case are that the Revenue Officer had initially determined the rent at the rate of Rs.2,375.94 per year, but the same was not accepted by the Government and on a representation made by the State Government, the Revenue Officer had refixed the rent at Rs.8,769.24 per year by order dated 22.8.1968. The Company had challenged the rent refixed at Rs.8,769.24 and the High Court in Civil Rule Nos. 3741-42 of 1975 had stayed the order of the Revenue Officer dated 22.8.1968 fixing the rent at the rate of Rs.8,769.24 in view these circumstances, it was necessary on the part of the Collector to have passed an order of summary settlement as contemplated under Form I Schedule F of The West Bengal Estates Acquisition Rules, 1954. The High Court in these circumstances was right in holding that the Collector had no jurisdiction

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to terminate the tenancy on the ground of non-payment of

rent or for not executing a lease deed inasmuch as the Collector had not mentioned in the notice terminating the tenancy under Section 106 of the Transfer of Property Act that he was prepared to accept the rent at the rate of Rs.2,375.94 per year as determined initially by the Revenue Officer. We agree with the reasoning and conclusion arrived at by the High Court.

Now, taking in the view the entire facts and circumstances of the case and in order to do complete justice between the parties, we deem it proper that the respondent-Company should be given the possession of the tea garden provided the Company pays the entire areas of rent from 27.7.1965 to 21.4.1981, the date when the Company was dispossessed calculated at the rate of Rs.8,769.24 per year after adjusting any amount already paid within three months from today. There would be no necessity for the Collector to make any order of summary settlement and a long term lease shall be executed as contemplated under sub-section (3) of Section 6 of the Act. As soon as the arrears of rent as mentioned above are paid by the Company, and a lease deed is executed, the Company shall be handed over the possession of the tea garden. In case, any increase in the amount of rent is permissible under the law due to lapse of time, the State Government would be free to take the same into consideration while granting the long term lease. The learned counsel appearing for the respondent-Company had not objected for determining the arrears of the rent at the rate of Rs.8,769.24 per year, to put an end of this litigation.

These appeals are disposed of in the manner indicated above. In the facts and circumstances of the case, we make no order as to costs.

G.N.
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Appeals disposed of.