

PETITIONER:
UNION OF INDIA & ANR.

Vs.

RESPONDENT:
M/S MUNDRA SALT & CHEMICAL INDUSTRIES & ORS.

DATE OF JUDGMENT: 14/11/2000

BENCH:
Ruma pal, A.P.Misra

JUDGMENT:

J U D G M E N T

MISRA, J.

L.....I.....T.....T.....T.....T.....T.....T...J

The present appeals are directed against the judgment and order of the High Court dismissing the appellants appeal, challenging the order of the District Judge holding that the respondents are owners of the suit land and the grant made by the Government in their favour was in fact a sale and not merely lease or licence to manufacture salt on the suit land. The question raised in these appeals is: who is the owner of the suit land, whether the appellant Union of India or the State Government? This is raised in the land acquisition proceeding, in the context of adjudication of the apportionment of the compensation. In order to appreciate the controversy it is necessary to give certain facts.

On 22nd May, 1952 Tehsildar issued a notification for sale of Khajan (Marshy) land on ownership basis through public auction. In the public auction dated 12th June, 1952 Hanumanbux Lalchand Mundra offered highest bid and deposited the part amount on the same day towards the price of land. The balance amount was deposited on 26th June, 1952. On 5th May, 1955 the Collector confirmed the said auction sale. As a consequence, on 25th May, 1955 an agreement was executed with the said purchaser and on 24th November, 1955 the Circle Officer handed over the possession of the land. Through mutation Entry No. 227 dated 24th February, 1970 the names of all the partners of Respondent No. 1 were entered in the revenue records. In the land acquisition proceedings for the construction of highway a portion of land bearing Sl. No. 386 (p) Mulund through the award, ownership of Respondent No. 1 was recognised and compensation was held to be payable to the said Hanumanbux Lalchand Mundra. The Municipal Corporation of Greater Bombay also acquired a portion of the land purchased in public auction held on 12th June, 1952 and through an award dated 13th April, 1972 accepted the title of the respondents and paid compensation to the partners of the Respondents. A notification under Section 4 of the Land Acquisition Act, 1894 read with Section 128 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as the said Act) was issued by the Government of Maharashtra for acquiring land measuring 32,506 Sq. Mtrs. Out of Gat. No.

86 (p). A notification dated 11th November, 1980 under Section 126 of the said Act read with Section 6 of the Land Acquisition Act, 1894 was issued. The respondents challenged these notifications through a writ petition, in which respondents agreed to hand over possession of the aforesaid area. The respondents accordingly handed over possession of the said area and submitted their claim for compensation.

It is at this stage, the Salt Department of the Union of India challenged the ownership of the respondents in respect of this acquired land. The Land Acquisition Officer referred the matter of ownership to the Collector who held respondents to be the owners. However, on 19th September, 1986 the Collector in review proceedings held, Union of India to be the owner and respondents were only the lessees who were entitled to receive compensation only for the loss of their business. The respondents challenged this order through a writ petition. The High Court quashed the aforesaid order and directed the District Judge to decide this question of ownership of land in pending Land Acquisition Ref. No. 90 and 91 of 1986. In this, only Union of India and not the Government of Maharashtra filed written statement. The aforesaid references of the respondent were allowed. The Court held that respondents were the owners and were entitled for the compensation calculated at the market value of Rs. 80/- per sq. mtr. Aggrieved by this the appellants filed the first appeal before the High Court, which was also dismissed. The High Court confirmed respondents to be owners of the acquired land. However, the rate of compensation was reduced from Rs. 80/- per sq. mtr. to Rs. 70/- per sq. mtr. The High Court held, that Section 37 of the Bombay Land Revenue Code of 1879 (hereinafter referred to as the 1879 Code) on which strong reliance was placed, cannot confer title on the appellants.

Learned senior counsel for the appellants Mr. Mukul Rohtagi, Addl. Solicitor General, submits with vehemence that High Court fell into error in not applying Section 37 of the 1879 Code. The submission is, application of this Section clearly recognises title of the Union hence any finding to the contrary is liable to be set aside. He also referred to the proclamation issued for selling the land on ownership basis through public auction including the agreement of sale to show the land which was given to the respondents was not to confer any ownership but at best confer right as a lessee or licensee. He also relied on the aforesaid order of the Collector, wherein the appellant was held to be the owner of the land in question. He also referred to the licence issued under the Central Excise and Salt Act, 1944.

On the other hand, learned senior counsel for the respondents Mr. Gopal Subramaniam submits, High Court findings require no interference. It is rightly concluded Section 37 will have not application. Further, Article 294 of the Constitution of India read with Section 99 and 100 and legislative entries under the Government of India Act, 1935 makes the legal position clear that it is not the Union but the State Government which is the owner of the suit land.

The main thrust of argument on behalf of the appellants is with reference to Section 37 of 1879 Code,

which is quoted hereunder:-

Section 37 (1): All public roads, lanes and paths, the bridges, ditches, dikes, and fences, on, or beside, the same, the bad of the sea and of harbours and creeks below high-water-mark, and of rivers, streams, nallas, lakes, and tanks, and all canals, and water-courses, and all standing and flowing water, and all lands wherever situated, which are not the property of individuals, or of aggregates of persons legally capable of holding property, and except in so far as any rights of such persons may be established, in or over the same, and except as may be otherwise provided in any law for the time being in force are and are hereby declared to be, with all rights in or over the same, or appertaining thereto, the property of the Crown and it shall be lawful for the Collector, subject to the orders of the Commissioner, to dispose of them in such manner as he may deem fit, or as may be authorized by general rules sanctioned by the Government concerned, subject always to the rights of way, and all other rights of the public or of individuals legally subsisting.

Explanation In this section high-water-mark means the highest point reached by ordinary spring-tides at any season of the year.

(2) Where any property or any right in or over any property is claimed by or on behalf the Crown or by any person as against the Crown, it shall be lawful for the Collector or a survey officer, after formal inquiry of which due notice has been given, to pass an order deciding the claim.

(3) Any suit instituted in any Civil Court after the expiration of one year from the date of any order passed under sub-section (1) or sub-section (2), or, if one or more appeals have been made against such order within the period of limitation, then from the date of any order passed by the final appellate authority, as determined according to section 204, shall be dismissed (although limitation has not been set up as a defence) if the suit is brought to set aside such order or if the relief claimed is inconsistent with such order, provided that in the case of an order under sub-section (2) the plaintiff has had due notice of such order.

(4) Any person shall be deemed to have had due notice of an inquiry or order under this section if notice thereof has been given in accordance with rules made in this behalf by the Provincial Government. {Emphasis supplied}

The empahsis is that this section makes all public roads, lanes, paths, the bridges, ditches, dikes, ..bed of the sea, harbours and creeks below high-water-mark..and all lands wherever situated, which are not the property of individuals are declared to be the property of the Crown. The use of the words all lands wherever situated is comprehensive to include all lands which would include the suit land and the Crown referred to in the Section, at the relevant time, refers to the Crown of England which could only be the Central Government now and it by no stretch of imagination would mean the Provincial Government.

Having considered the submission of the parties, before considering Article 294 of the Constitution, it is

necessary to refer to the preceding legislative history, in relation to the ownership of the land which has some relevance for the consideration of the ownership in question, whether it is the Union or the Provincial Government which is the owner of the land.

The first legislation in this regard is Regulation No.1 of 1799. This was enacted to constitute a regular code or regulations for the internal Government management of the British territories under the Presidency of Bombay. This regulation prescribes the manner and method of making the rule or passing the orders, in respect of the rights and tenures of the cultivators of the soil. Then came the Regulation No. 1 of 1808, which records that the island of Salsette was conquered by the Portuguese in 1584, thereafter it was parcelled out among the European subjects into village allotments for a very small (or) fixed rent. The lands were subject to grants either from the Mohammedan rulers, the Peshwas or the Portuguese. After the annexation of Salsette by the East India Company sometime in 1774, the question arose, whether the properties in the salt vested in the company or the occupants, as salt was cultivated both on the land of the Government as also on the land purchased by the natives from the Portuguese. Under this regulation, Governor General in Council recognised the right of the occupants of the soil by charging moderate and fixed rent from them. This regulation records, after 1801, when deeds were introduced as evidence of the grants of rights to the occupants, various persons, some of whom named in the Regulation, accepted the deeds. Next came Regulation IX of 1827 which obligated the authorities to maintain a register of title deeds. It was done as it was thought to be conducive to the security of titles of the immovable properties, which also greatly facilitated the transfer of such properties through sale, gift, mortgage etc.. This register of title deeds was established in each Zilla (District). Under Section VI Clause 1st, every deed or other writing, transferring or mortgaging immovable properties, situated within the Zilla, if registered in this Register of title deeds, shall without regard to the date of its execution, if proved to be valid, be preferred to, either subsequently registered or not registered at all but this preference was extended only to the immovable properties. Thus, came the aforesaid 1879 code followed by the Record of Rights Act, 1903 which required the detailed enquiry before recording the creating of any right in any person.

Similarly, with reference to the Regulation of Salt Manufacture, the Salt Act, 1837 was enacted under which no salt could be manufactured on any land without express permission. Then came the Salt Act, 1850 under which detailed provision was made to levy duties of custom and excise on the manufacture of salt. In fact, the Land Revenue Code Rules, 1905 was made under Section 214 of the aforesaid 1879 Code.

The legal position which emerges from the aforesaid laws appears to be that unless an individual proves his claim and title over the land, where the salt work is being carried on, such land was deemed to be that of the Government. It is in these set of laws, Section 37 of the 1879 Code also projects itself in the same manner. Under it, if any individual fails to establish his title, the Union Government is presumed to be the owner of the land.

However, we have to keep in mind, when 1879 Code was promulgated federalism was not even born. In other words, then there was no question of any right of two Governments to hold the properties between them as it is now between the Union and the State Governments. Then the right over the land was confined to that of the Crown and an individual. That is why Section 37 of the 1879 Code recognises preemptory right of the Crown in respect all lands which are not the property of individuals. This conception of exclusive ownership over all land by the Crown stood dissolved after coming into force of the Constitution of India, under which right over such land was conferred both on the Union and the State Governments.

In order to adjudicate the controversy in this case it is necessary to refer to Article 294 of the Constitution of India, which is quoted hereunder:

294. Succession to property, assets, rights, liabilities and obligations in certain cases As from the commencement of this Constitution

(a) all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of Dominion of India and all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of each Governors Province shall vest respectively in the Union and the corresponding State, and

(b) all rights, liabilities and obligations of the Government of the Dominion of India and of the Government of each Governors Province, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations respectively of the Government of India and the Government of each corresponding State,

subject to any adjustment made or to be made by reason of the creation before the commencement of this Constitution of the Dominion of Pakistan or of the Provinces of West Bengal, East Bengal, West Punjab and East Punjab.

This Article declares which property would vest in the Union and which would vest in the State Government. Under it, all properties immediately before the commencement of the Constitution which vested in His Majesty for the purposes of the Government of Dominion of India vests in the Union and all properties which vested in His Majesty for the purposes of the Government of each Governors Province vests in the corresponding State and all rights, liabilities and obligations of the Government of Dominion of India and of the Government of each Governors Province are recognised to be the rights, liabilities and obligations respectively of the Government of India and the Government of each corresponding State. So under this Article ownership question between the Union and the State Government is to be tested and not under obsolete Section 37 of 1879 Code. Faced with this, Mr. Rohtagi submits this vesting in favour of the State could only be, if before the commencement of the Constitution the land was used for the purposes of Government of Governors Province. We have already referred to the historical background as to how first rights of individual were recognised. Thereafter a register was brought into the picture for recording the names of such

owners including occupancy right holders and later land revenue was charged from such holders of such land by the Government of the Province, the administration and control of which was with the Government of Provinces except when licences were issued by the Union under the relevant Salt Act. This position becomes more clear, after coming into force of the Government of India Act 1935. The 1935 Act for the first time effectively demarcated the legislative powers of the federal legislation and the provincial legislation. Sections 99 and 100 of this Act define fields of legislation read with three lists contained in the Seventh Schedule. The land under Entry 21 and land revenue under Entry 39 fell under the provincial list. When the Constitution of India came into force, we find similar entries of the land under Entry 18 and land revenue under Entry 45 of List II of the Seventh Schedule. This leaves no doubt that both land and land revenue fell under State List and was governed by the State even prior to the coming into force of the Constitution of India.

The question of title of the Union in the proceedings under the Land Acquisition Act, which is under consideration, admittedly is after the enforcement of the Constitution of India hence the title over the land in question could not be that of the Union of India.

Lastly, learned counsel for the Union submits that significantly the very High Court in another set of contest, which is subject matter of consideration in Civil Appeal Nos. 2286-2343 of 1998 has held, Union of India to be the owner over such land. We have perused the said judgment, we find, the High Court merely relies for drawing such inference on Section 37 of 1879 Code. We have already held after Government of India Act, 1935, in any case after the Constitution of India, Section 37 of the 1879 Code would have no application for the claim by the Union. Hence this submission has no merit. Hence we do not find any sustainable submission to hold Union of India to be the owner of the suit land. Consequently, we find no error in the impugned judgment of the High Court.

For all the aforesaid reasons, we do not find any merit in the present appeals. Accordingly, the same are dismissed with costs.