

PETITIONER:
STEEL AUTHORITY OF INDIA LTD.

Vs.

RESPONDENT:
STATE OF M.P. & ORS

DATE OF JUDGMENT: 05/04/1999

BENCH:
M.Jagannadha Rao, S. N. Phukan

JUDGMENT:

JUDGEMENT
S.N. PHUKAN, J.

This appeal is directed against the Judgment and Order passed by the Madhya Pradesh High Court at Jabalpur in Misc. Petition No. 1826 of 1993.

A few facts leading to this appeal deserve to be noted at the outset for highlighting the grievance of the appellant in the present appeal.

The Central Government, Ministry of Production wrote a letter dated 8th January, 1955 to the Chief Secretaries of the States of West Bengal, Bihar and Madhya Pradesh. In this letter it was indicated that it was under consideration of the Central Government to establish Russian technical assistance steel plants at three places in the three States. For this purpose a piece of land measuring about 50 sq. miles, would be required. Therefore, the Central Government by letter dated the 8th January, 1955 wanted to know from the State Governments whether the Governments would be prepared to accord facilities. The said three facilities are stated below:-

"(1) 50 sq. miles of land, free to the extent it is the property of the State Government, and guarantee of a ceiling cost for the acquisition of privately owned land, it being understood that any cost in excess of the guaranteed ceiling would be borne by the State Government concerned.

(2) A guarantee of adequate and continuous water supply, as required for the steel plant, associated projects and the town, at rates to be mutually agreed upon between the State Government and the Government of India and/or an autonomous State Co. to be registered for the purpose.

(3) Guarantee of prior claim on all unleased mining concessions in respect of iron-ore, coal, limestone, dolomite and any other raw material discovered or to be discovered within the territory of the State concerned and required for the steel project."

By letter dated 11th of January, 1955 the Government of Madhya Pradesh informed the Central

Government that the State Government was prepared to accord all the above facilities.

Another letter was sent dated 25th of September, 1958 by the Government of Madhya Pradesh bringing to the notice of the Central Government the rules framed by the Secretary of State in 1925. Two salient features of the rules particularly A and B were stated in the said letter. These features are:

"(A) When any land is required by the Central Government that Government are required to pay (i) cost of acquisition, if the land is occupied and market value of land, if the land belongs to the State Government and {ii) capitalised value of land revenue at the assessment to the State Government the loss of land revenue, as no land revenue can be recovered from the Central Government.

(B) When any land is not required by the Central Government for the purpose for which it was acquired, the State Government are given the first option to take it back on payment of its market value. Should the State Government exercise the option and pay the market value of the land then they are at liberty to dispose it of in such a manner as they deem fit."

By this letter Central Government was informed that the land for the Bhilai Steel Plant might be classified in two categories namely land belonging to private persons and land belonging to State. It was brought to the notice of the Central Government that the Central Government agreed to pay the cost of acquisition of land and that the State Government was also entitled to claim the amount awarded, that is, market value plus 15% on account of compulsory nature of acquisition from the Central Government. It was further brought to the notice of the Central Government that the State Government would be entitled to recover capitalised value of land revenue at 25 times the amount of land revenue in accordance to above 1925 rules.

Regarding land which belonged to State Government as per earlier agreement it was agreed to transfer such land free of cost.

We may like to quote paragraph 10 of the said letter which is as follows:

"The State Government are, therefore, of the view that the land shall be held by the Central Government on the following terms and conditions :-

(1) Land acquired/transferred for the Bhilai Steel Plant should be treated as if it were in possession of the Central Government for the purposes of the Union.

(2) in respect of occupied land, i.e. land belonging to private persons, the Central Government should pay the cost of acquisition, including 15% on account of compulsory nature of acquisition, to the owners of the land and capitalised value at 25 times the amount of land revenue assessed on such land to the State Government.

(3) in respect of unoccupied land, i.e. land belonging to the State Government, neither the cost nor capitalised value of land revenue shall be payable by the Central Government.

(4) the State Government shall be entitled to recover

royalty on all minor and major minerals extracted from lands acquired transferred at rates fixed by the State Government.

(5) if any land acquired/transferred for Bhilai Plant is not required for the purposes of the plant, the first option to take it back should be given to the State Government and the State Government should pay the cost of acquisition minus 15% on account of compulsory nature of the acquisition, where at the time of acquisition, it was paid for. In cases where the Central Government have not been required to pay the cost of any land, the State Govt. should get it back without any payment whatsoever; and

(6) if, however, the Central Government wants to transfer any land acquired/transferred for Bhilai Plant or any right therein to any private persons, the terms and conditions of such transfer should be intimated to the State Government and their concurrence obtained before the transfer and in appropriate cases, divide or allocated the proceeds between the Central and State Govt. on agreed terms."

By two deeds of assignment executed on 31st day of March, 1959 and 27th of March, 1978 the Central Government transferred land etc. as indicated in the schedules to a company wholly owned by the Central Government namely Hindustan Steel Ltd.. The present company is a successor company of Hindustan Steel Ltd. in respect of Bhilai Steel Plant. We may state here also that by letter dated 7th of May, 1963 the Central Government informed the State Government that as advised land could be acquired for Union of India for the Bhilai Steel Plant though the project had been handed over to the Hindustan Steel Ltd. and for this purpose Central Government authorised the General Manager of the Bhilai Steel Plant to act for the Central Government in all matters relating to acquisition of land and while doing so the General Manager would not be deemed to be acting on behalf of the company.

The Deputy Collector, Durg by letter dated 4th of March, 1987 informed the Bhilai Steel Plant authority that a sum of Rs. 3,27,90,220.00 was due as land revenue for the years 1962-87 from the above Steel Plant and amount had to be realised. From the letter in the subject it was mentioned that this was so done in view of the report of the Comptroller and Auditor General of India for the year 1981-82.

From the letter dated 23rd of June, 1987 issued by Deputy Collector, Durg to the Assistant Estate Manager(Land), Bhilai Steel Plant it appears that a piece of land measuring 32759.00 acres was allotted to the Steel Plant and revenue was payable @ Rs. 40/- per acre per annum and assessment for the land revenue was for the years 1962-86. Finally, the Collector, Durg by an order dated 27th of January, 1990 assessed the land revenue at Rs. 3,73,96,873.20 after making some deduction and passed an order for immediate realisation of the above amount. The area of land was assessed by the Collector for 32759.00 acres and land revenue was assessed @ Rs. 40 per acre per annum. An appeal was filed before the Commissioner, Raipur Division which was dismissed by order dated 19th January, 1992. Thereafter matter was taken up before the Board of Revenue and by order dated 16th of November, 1992 it was dismissed.

The appellant-company approached the High Court by filing

Misc. Petition No. 1826/93 under Article 226 and 227 of the Constitution of India which was dismissed by order dated 29.04.1993. Hence the present appeal.

We have heard Mr. C.S. Vaidyanathan, learned Additional Solicitor General for the appellant and Mr. B.S. Banthia, learned advocate for the respondents.

Section 58 of the Madhya Pradesh Land Revenue Code, 1959 (for short the Code) which fixes the liability of land to payment of land revenue is quoted below:-

"Sec. 58 - (1) All land, to whatever purpose applied and wherever situate, is liable to the payment of revenue to the State Government, except such land as has been wholly exempted from such liability by special grant of or contract with the State Government. or under the provisions of any law or rule for the time being in force. (Emphasis supplied)

(2) Such revenue is called "land revenue", and that term includes all moneys payable to the State Government for land notwithstanding that such other manner in any enactment, rule, contract or deed."

We also quote Section 264 of the Code:-

"Sec. - 264. Nothing contained in this Code shall apply to a person who holds land from the Central Government. (Emphasis supplied)

The only point to be decided is whether in view of the above facts and laws the appellant is liable to pay any land revenue for the land in occupation of Bhilai Steel Plant.

It will be noticed that we are concerned with two separate pieces of land, one assigned by the Central Government to the Company on 31st March, 1959 and another on 27th March, 1978. The assessment to land revenue by the State of Madhya Pradesh covers the period from 1962-1987.

The contention for the appellant is as follows:

So far as the first assignment, is concerned, no doubt, during this period i.e. from 1962 the said extent was owned by the Company after assignment by the Central Government on 31st March, 1959. This land not being owned by the Central Government from 1959 (i.e. after 1962) is not covered by Article 285 of the Constitution of India. It may be assumed that this piece of land is also not held by a person from the Central Government so as to claim the benefit of Section 264 of the Code. But the right to levy land revenue can be lost by 'contract' and by * rules as provided in sub-clause (1) of Section 58. In the present case, there is a contract implied by the correspondence that Central Government should make a one time payment of land revenue for 25 years. In addition, the 1925 Rules also provide that if land is transferred by the State to Central Government, and if such a payment is made, the Central Government need not pay any further land revenue to the State. Both on ground of contract and Rules, the Central Government gets exemption under sub-clause (1) of Section 58. So far as the extent covered by the second assignment dated 27.3.1979 is concerned, the contention is two fold - the Central Government is exempted in view of thg Article 285 and

Section 264 of the Code upto 26.3.1979. No levy on its successor, (the Company) can be made upto 26.3.1979. On or after 27.3.1979, the Company is not liable because of the contract (evidenced by correspondence) and also because of the 1925 Rules, the case comes within sub-clause (1) of Section 58.

On the other hand, the contention for the respondent-State of Madhya Pradesh is that the company is liable for the whole period 1962-1987 in respect of both the pieces of land assigned to the company on 31st March, 1959 and 27th March, 1978 inasmuch as Article 285 cannot help the Company, even if all its shares are held by the Central Government. The Company is a different juristic entity. Nor can Section 264 of the Code apply because the Company is not holding the land for the Central Government for after the assignments, the Central Government cannot be said to be holding the land through the Company. So far as sub-clause (1) of Section 58 is concerned, there is no contract entered into between the Central and State Governments in accordance with Article 299 of the Constitution of India, waiving the further land revenue on the ground that once 25 times of land revenue was paid, no further land revenue need be paid. There can be no estoppel against statute. The 1925 Rules cannot also help the appellant. Nor has any exemption been granted under Section 59 of the Code.

It will be noticed that in the letter of the Madhya Pradesh Government dated 25.9.58 which was referred to above, the salient features of the rules framed by the Secretary to the Madhya Pradesh Government in 1925 were referred to. The condition No. A clearly lays down that the capitalised value of the land revenue has to be assessed and paid to the State Government towards loss of land revenue as no land revenue can be recovered from the Central Government later on. From paragraph 10 of the letter which has been quoted above we also find that land revenue in respect of land held by the private persons has to be capitalised at 25 times and capitalised value of land revenue shall be payable by the Central Government to the Government of Madhya Pradesh.

A memorandum dated 17th July, 1958 from the Government of Madhya Pradesh was issued to the Commissioner of Raipur division raising a query as to whether capitalised value of land revenue had been recovered or not and if not, the amount to be reported to the Government so that it could be claimed from the Central Government.

According to the Black's Law Dictionary (Fifth Edition.) the word 'capitalize' means ... "To convert a periodical payment into an equivalent capital sum or sum in hand. To compute the present value of an income extended over a period of time...

According to the Oxford English Dictionary' (Being a Corrected Re-issue with an Introduction, Supplement, and Bibliography of A New English Dictionary on Historical Principles, Volume II-C) the word 'Capitalize' means 2 "To convert (a periodical income or payment) into an equivalent capital sum; to compute or realize the present value of such a payment for a definite or indefinite length of time....."

The object of the Rules framed by the Secretary of State in 1925 is clear that land revenue was to be capitalised and

collected once for all and that no land revenue could be further recovered thereafter. Land revenue had to be paid periodically and in view of the above dictionary meanings and in view of the rules framed in 1925, once land revenue was capitalized and paid, no further amount could be realised by the State Government for the land transferred. Thereafter the case falls under sub-clause (1) of Section 58 which states that by virtue of provisions in a rule made, land revenue could become exempt.

Though Mr. Banthia has urged that as no reply was sent to the letter of the State Government dated 25th September, 1958, therefore, there was no contract under Article 299 of the Constitution of India between the Central Government and the State Government regarding the non-payment of land revenue, we are unable to accept the contention of the learned counsel inasmuch as by the conduct of the parties it is very clear that both the Governments agreed with the terms mentioned in the letter of the State Government dated 25th September, 1958 and, therefore, there was also a contract between the parties regarding the exemption from payment of land revenue, if 25 times of the land revenue was paid once for all. The contention that such a contract is not executed in the form required under Article 299 cannot be accepted. This point was not raised in the High Court. Apart from that it is clear that Article 299 applies only to contracts to be executed in exercise of "executive power" and not to those executed by virtue of statutory power like Section 58 of the Code. (See State of Haryana Vs. Lal Chand 1984 (3) SCC 634; Lalji Khimji Vs. State of Gujarat 1993 Suppl.(3) SCC 567. In the latter case, Anand, J.(as he then was) observed as follows:

"There is a marked distinction between contracts which are executed in exercise of the executive powers and agreements or orders made which are statutory in natureIn State of Haryana Vs. Lal Chand, this Court considered a contract granting exclusive privilege of liquor vending, in exercise of the statutory powers referable to Punjab Excise Act, 1914 and Punjab Liquor Licence Rules, 1956, and held that the grant of the exclusive privilege gave rise to a contract of a statutory nature, distinguished from the one executed under Article 299(1) and, therefore, compliance with Article 299(1) was not required in such a case."

Section 58 of the Code provides that land revenue is payable in respect of all land unless it is exempted from such liability by special grant or contract with the State Government. In view of the agreement between both the Governments and in view of the above provisions of Section 58 of the Code we hold that no land revenue is payable for the land in question more particularly as it has been capitalized at 25 times of the land revenue prevailing at that time.

Thus, whether it is because of the 1925 Rules or the Contract, Central Government was not liable to pay land revenue once it had paid the 25 times land revenue as a one time payment.

The next question is whether after the land was transferred to the Company, the Company would be liable to pay any land revenue under the Code? Two deeds of assignments were executed on consideration for transferring shares by the Company to the Central Government. We may refer to relevant

portions of the assignment deeds;

".....the Government doth hereby grant convey transfer assign and assure unto the Company all those several pieces or parcels of lands and hereditaments situate.. "

".....rights, liberties, privileges, easements, advantages, and opportunas whatsoever to the said lands, hereditaments and premises appertaining to or with the same or any part thereof now or hereto have or may hereafter be occupied or enjoyed or reputed or known as part and parcel or member thereof or appertaining thereto(hereinafter called "the said lands and buildings")

".....and all the estate, right, title and interest, claim and demand of the Government into and upon the lands and buildings, the plant or every part thereof and also all the deeds and other evidences of title in any way relating to the said lands and hereditaments and all receipts and documents and other evidence of title to the plant and the component parts thereof an installed or brought in by the Government in connection with the said "Bhilai Steel Project"....."

Thus it is clear from the above clauses of the deeds of assignment that while transferring the land to the Company rights, liberties, privileges etc. to the said land were also transferred. Therefore, the privileges of or right to exemption

accrued to the Central Government not to pay land revenue to the State Government under Section 58 of the Code would also be available to the appellant company, as a successor in interest to the Central Government.

Another point has been urged on behalf of the appellant that assessment of land revenue is barred by limitation. We need not entertain into this aspect as we have held that the appellant company is not liable to pay any land revenue.

We may mention that the State Government was also aware that no land revenue was payable but the proceedings were started in view of the audit objection.

For the reasons stated above the appeal is allowed. The impugned judgments and orders are set aside. We also quash the demand of the land revenue made by the Collector from the appellant. No order as to costs.