

PETITIONER:
THE STATE OF WEST BENGAL & ANR.

Vs.

RESPONDENT:
ARUN KUMAR BASU & ANR.

DATE OF JUDGMENT: 04/04/1997

BENCH:
K. RAMASWAMY, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Delay condoned. Leave granted. This appeal, by special leave, arises from the judgment of the Calcutta High Court made on March 5, 1993 in Appeal No.465/91.

The admitted position is that the respondents are liquidators of erstwhile West Bengal Provincial Company Ltd. Proceedings have been placed before us to establish that the Bengal Government had acquired the land applying Chapter 8 of the Land Acquisition Act (1 of 1894) and delivered possession of the land admeasuring 30 miles for laying the railway line. The specifications of the land attached were given in Schedule-B to the acquisition proceedings.

The notification under sections 4(1) of the West Bengal Estates Acquisition Act, 1953 (for short, the 'Act') was published on April 16, 1954 w.e.f. April 15, 1955 notifying the vesting of the estate in the State. The consequence have been provided in Sections 4(1), 5 and 6 of the Act with a non-obstante clause excluding the applicability of any other provisions under Section 3 of the Act. As a consequence, the preexisting right, title and interest held by the company and vested in its liquidators for sale of the property, stood divested by operation of Section 4(1) of the Act and vested in the State. The consequences of the notification and vesting have been considered by this Court in State of West Bengal & Ors. v. Suburban Agriculture Dairy & fisheries Pvt. Ltd. [(1993) Supp. 4 SCC 674]. This Court had held thus:

"Admittedly, the Act came into force on February 12, 1954. Notification under Sections 4(1) and (3) was published in the prescribed manner specifying the date of vesting of the estate and had come into effect from June 1, 1956. By operation of sub-section (1) of Section 5 the estate and all the rights of intermediaries including fisheries in the estate shall stand determined and ceased and stood vested in the State free

from all incumbrances. "Incumbrance" defined under Section 2(h) of the Act means 'in relation to estates and rights of intermediaries therein, does not include the rights of a raiyat or of an under-raiyat or of a non-agricultural tenant, but shall, except in the case of land allowed to be retained by an intermediary under provisions of Section 6, include all rights or interests of whatever nature, belonging to intermediaries or other persons, which relates to lands comprised in estates or to the produce thereof". Therefore, title to rights or interests in lands which include fisheries held by an intermediary shall stand extinguished and ceased and stood vested in the State free of all incumbrances. The respondents being purchasers of leasehold interest in tank fisheries, as per their own case, it also stood extinguished. But, however, since the appellant treated the respondent as intermediary, we proceed on that footing. The exceptions engrafted in the incumbrance and exempted from the operation of Sections 4 and 5 are only the rights of a raiyat or of an under-raiyat or of a non agricultural tenant and the right of retention of possession allowed to an intermediary under Section 6 of the Act. All other rights, interest of whatever nature or title belonging to the intermediaries or other persons who hold the lands under lease from an intermediary should also stand extinguished. All grants and confirmation of title, to estates and rights therein, to which the declaration of vesting applies and which were made in favour of intermediaries shall stand dismissed and ceased by operation of Section 51(b) of the Act. Section 6 postulates by a non obstante clause that notwithstanding anything contained in Sections 4 and 5 an intermediary shall, except in the cases mentioned in the proviso to sub section (2) but subject to the other provisions of that sub-section, be entitled to retain with effect from the date of vesting", various of lands like homestead etc. enumerated therein including 'tank fisheries' means " a reservoir or place for the storage

of water, whether formed naturally or by excavation or by construction of embankments, which is being used for pisciculture or fishing, together with the sub-soil and the banks of such reservoir or place, except such portion of the banks as are included in a homestead or in a garden or orchard and includes any right of pisciculture or fishing in such reservoir or place".

On the issue of notification under section 49 . Section 62 prescribed procedure to deal with raiyats and under-raiyats covered in chapter II etc. It says that the provisions in Chapter II shall with such modification as may be necessary apply mutatis to raiyats or under-raiyats (sic under-raiyats) were intermediaries and the land held by them were estates and such a person holding under a raiyat or an under-raiyat were a raiyata for the purpose of clauses (c) and (d) of Section 5, provided that, where a raiyat or an under-raiyat retains under Section 6 any land comprised in a holding, then notwithstanding anything to the contrary contained in sub-section (2) of section 6, he shall pay the rent as prescribed in clauses (a) to (ds) thereto, Under section 5(c) every raiyat holding any land under an intermediary shall hold the same directly under the State as if the State had been the intermediary and on the same terms and conditions as immediately before the date of vesting. Thus the right, title and interest of a raiyat or under-raiyat in the lands in his possession and enjoyment are saved. By operation of law they because full owners thereof subject to the terms and conditions that may be imposed under Section 52 and payment of Jama existing on the date of notification or revised from time to time and finally entered in Record of Rights.

The pre-existing rights of the intermediaries in the estate to which the declaration applied shall stand vested in the State free from all incumbrances. Section 6 does not have the effect of divesting the State of the vested right, title and interest or the intermediary. One of the right i.e. possession held by the intermediaries is the only interest saved b Section 6 from the operation of Sections 4 and 5. The fishery rights also stood vested.

The pre-existing rights, title and interest therein, also shall stand determined as against the State and ceased. The Collector had symbolic possession under Section 10. But by use or non obstante clause in Section 6(1) the respondent became entitled to retain khas possession of tank fisheries, and he shall hold tank fisheries directly under the state on such prescribed terms and conditions and subject to payment of such rent as may be determined under the Act from time to time as finally entered in Record of Rights."

As a consequences, the right title and interest held by the proprietary company within the meaning of Section 2(i) of the Act, stood vested in the State free from all encumbrances.

It is sought to be contended by the learned counsel for the respondent that though notice under Section 10 was issued by the Collector for surrender of the possession, it was withdrawn and that, therefore, the vesting does not apply to the company. We find no force in the contention. Once the land stood vested in the State free from all encumbrances, by operation of Section 4(1) of the Act, the mere inaction on the part of the Collector in not taking possession of the land does not have any effect on vesting, which statutorily operated under section 4(1) of the Act. It is then contended that it being a non-agricultural land, the Act has no application. We find no force in the contention. By operation of Section 6(1)(c), all non-agricultural lands including the tenancy rights, if any, under the land held by third parties stood vested in the State except to the extent of 15 acres of the land to which the company is entitled to retain title to and possession of the same. It is then contended that under Section 6(j), it being the company, the land does not vest in the State. We are unable to agree with the learned counsel. Section 6(1)(j) applies only to the agricultural lands or to the business of farming. Railway company is not engaged in the business of farming. Therefore, it has no application.

It is then contended that by operation of Section 3A of the West Bengal Land Reforms Act 1959, the non-agricultural land does not stand vested. We find no force in the contention. What is vested under Section 3A of the Land Reforms Act is the tenancy rights in a non-agricultural land; and not the proprietary right. Proprietary rights having been abolished by operation of Section 4(1) of the Act Section 3A of the Land Reforms Act in this regard has no application. It is then contended that direction may be given to the State Government to pay the compensation to which the respondents are entitled to. We need not well upon that for the reason that if the respondents are entitled to any compensation under the Act and if the state is liable to pay for it, it is open to them to make necessary application. It is needless to mention that the competent authority would consider and dispose it of in accordance with law.

The appeal is accordingly allowed. The appeal and writ petition stands dismissed. No costs.