

(2004) 09 CAL CK 0015

Calcutta High Court

Case No: F.M.A. No. 11 of 2004

Islampur Municipality and
Another

APPELLANT

Vs

Chaudhuri M. Manjar Afaque
and Others

RESPONDENT

Date of Decision: Sept. 15, 2004

Acts Referred:

- Constitution of India, 1950 - Article 226
- West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 - Section 28, 37, 4, 4(1)
- West Bengal Estates Acquisition Act, 1953 - Section 6(1), 61(2)

Citation: (2005) 1 CALLT 285 : (2005) 1 CHN 1

Hon'ble Judges: Rajendra Nath Sinha, J; Dilip Kumar Seth, J

Bench: Division Bench

Advocate: Amal Baran Chatterjee, N.C. Behari and Asique Rasul, Himangsu Kumar Basu and Dipti Bhattacharya, for the Appellant; Santimoy Panda, Anupam Chatterjee and Gautam Kumar Thakur and Amalesh Ray, Debasis Goon, for the Respondent

Judgement

D.K. Seth, J.

The petitioner had applied for licence for holding haat (market) in Plot No. 676 which he claims to belong to him by reason of the proceedings u/s 6(1) of the West Bengal Estates Acquisition Act (W. B. E. A. Act) in which he was allowed to retain the said land.

2. Elaborate argument has been made by Mr. Panda and Mr. Anupam Chatterjee referring to the Bihar Land Reforms Act, Bihar & Bengal Transfer of Territories Act, 1956, West Bengal Estates Acquisition Act, West Bengal Agricultural Produce Marketing (Regulation) Act in order to drive home the point that there is no dispute with regard to the ownership of the land so far as the petitioner is concerned. He

has also referred to various orders, proceedings and the record-of-rights in order to establish that he is in possession and that this land was never vested either u/s 6(a) of the Bihar Land Reforms Act or West Bengal Estates Acquisition Act after it was made applicable in the year 1964 since transferred to West Bengal under the Transfer of Territories Act, 1954 from Bihar. Therefore, the ownership is not in dispute and as such, the Municipal Authority cannot refuse the licence.

3. In this case, the learned Counsel for the appellant, Mr. Amal Baran Chatterjee, had pointed out that pursuant to a resolution by the Regulated Market Committee, the land was proposed to be given to the Municipality and the Municipality, the appellant, was to take over possession of the said market. He raised a contention that the ownership and the possession of the writ petitioner is in dispute, which is to be established in an appropriate forum before he can claim issuance of a licence.

4. After having heard Mr. Panda, ably assisted by Mr. Anupam Chatterjee and Mr. Amal Baran Chatterjee for the appellant, it appears that so far as the ownership is concerned, Mr. Panda might have a very good case on record and might be said that the petitioner is the owner. Similarly, on record, it can be said that Mr. Panda's client is in possession. But the fact remains that a notification was issued in 1974 under the West Bengal Agricultural Produce Marketing (Regulation) Act declaring the Islampur Bazar as within the Regulated Market Committee. Whether this Plot No. 676 was included within the said notification or not is not clear from the said notification and Mr. Amal Baran Chatterjee, on behalf of the appellant, has not been able to show anything from which we can identify the area covered under the said notification.

5. Relying upon various deeds of transfer, Mr. Panda contended that part of Plot No. 676 was sold by the writ petitioner to different purchasers who are running the market. These deeds of sale show the possession of the writ petitioner. Whereas, in the resolution, it is pointed out that the Regulated Market Committee collected tolls from the Fish Market controlled by Islampur Market Committee. The market requires improvements. It is also noted in the said resolution that the income of the Regulated Market Committee is diminishing and the respective Superintendent-in-Charge had informed the defects due to which the income was decreasing.

6. The Municipality, in its order dated 19th June, 2000, had refused to grant licence on two grounds; first that the subject plot was not vacant and that there is a market which is controlled as Fish and Flesh Market since 1973 by Islampur Regulated Market Committee and that the said Committee collects "Toll" from the individual stall holders trading in the said market area situated on the plot. The second ground was that the said market has been handed over to the Municipality on leasehold basis pursuant to a meeting of the Regulated Market Committee held on 24th December, 1999 by the ex officio Chairman and the said market area has been taken over by the Islampur Municipality as Municipal Market by its resolution dated 22nd

July, 1999. Our attention has been drawn to page 319 of the Paper Book from which it appears that the Municipality had taken a resolution on 22nd July, 1999 to acquire the Fish Market.

7. The totality of these facts goes to show that there is a dispute with regard to the running of the market either by the Municipality or by the Regulated Market Committee or by the writ petitioner. It appears that the Municipality has taken a resolution to acquire the said property. In the circumstances, even if the writ petitioner is found to be the owner of the property even then it is open to the Municipality to refuse grant of licence in contemplation of acquiring the property. It is also not known whether this plot is within the said market area or not which requires to be determined. This Court sitting in writ jurisdiction cannot go into such question as raised before us.

8. In the circumstances, it appears that the Municipality had proposed to acquire the property and it further appears that the owner-writ petitioner was allowed to retain the said land in an appropriate proceeding under the W. B. E. A. Act, which according to Mr. Panda u/s 61(2) clause (ii), is supposed to be restored to the writ petitioner even if it was vested u/s 7A of the Bihar Land Reforms Act, though according to Mr. Panda, it was not vested u/s 7A of the Bihar Land Reforms Act and that admittedly his client was in possession of the land and the ownership continued with his client, yet we do not think it a fit case to grant relief.

9. Having regard to the facts and circumstances of this case, it appears that the question of ownership of the petitioner in respect of Plot No. 676 may not be questioned after the petitioner has been allowed to retain the land in the proceedings u/s 6(1) of the W. B. E. A. Act. This Court within the scope of the present writ petition need not go into that question. The Court may accept the contention of Mr. Panda that Section 7A was introduced in the Bihar Land Reforms Act, 1950 after 1954, namely after the promulgation of the Transfer of Territories Act. But it is contended that the W. B. E. A. Act was made applicable in the transferred territories in 1964. It may be a case where the petitioner may be allowed to retain the land or even if it is vested under the Bihar Land Reforms Act, assuming that u/s 7A the rights in the haat also stood vested in the State, by reason of Section 61(2) of the W. B. E. A. Act, the petitioner would be entitled to the restoration of the land on application of the W. B. E. A. Act. The very proceedings ending with allowing the petitioner to retain the said particular land would amount to an order, if vested under the Bihar Land Reforms Act, of restoration of Plot No. 676 u/s 61(2) of the W. B. E. A. Act.

10. But, in this case, the petitioner has asked for a licence for running a market on the said land. Question of ownership and right to establish or run a market on a land assumes a different dimension when the area is declared a regulated market area u/s 4 of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972. A person has every right to establish and run a market on his own land on the

strength of the license granted by the Municipal Authority. But the moment the land comes within the area declared to be a principal market yard or sub-market yard or market proper u/s 4 of the 1972 Act, the right becomes regulated by the provisions of the 1972 Act. The absolute right to establish and run a market in such a case would be circumscribed by reason of the provision contained in the 1972 Act.

11. Admittedly, in the present case, a notification was issued in 1974 declaring the area of Islampur Bazar as a market area within the meaning of Section 4 of the 1972 Act. There is no material before us to determine as to whether this Plot No. 676 falls within the area declared to be a Regulated Market Area. If this plot is hit by the declaration u/s 4(l)(i) or under clause (ii) thereof, then the petitioner cannot obtain a license for establishing and running a market on the said land. Inasmuch as, Section 4 empowers the State Government to declare by notification any enclosure, or building or locality in any market area, to be the principal market yard and other enclosures, buildings or localities in such area to be one or more sub-market yard or yards for a market area and also to declare that such area including land and the buildings thereon, within such distance of the market yard or yards, as it thinks fit, to be market proper. In view of sub-section (2), if the State Government declares by notification then no local authority or any other person, notwithstanding anything contained in any other law for the time being in force, shall set up, establish or continue or allow to be continued to any place for the purchase, sale, storage or processing of any agricultural produce within such distance of the principal market yard or a sub-market yard as may be specified in the notification. Agricultural produce includes pisciculture and animal husbandry. As such a fish or flesh market would definitely come under the provisions of the 1972 Act. In these circumstances, even if the petitioner is the owner of the said land, he cannot establish or run a market if the said land is situated within the area falling under the declaration issued u/s 4 of the 1972 Act.

12. In case the said area does not fall within the area covered under the declaration issued u/s 4 of the 1972 Act and not hit by the declaration under sub-section (2) thereof, in that event, the Municipality cannot refuse to grant licence to the petitioner. But in case the said land falls within the area covered under the notification issued either under sub-section (1) or under subsection (2) of Section 4 of the 1972 Act, in that event, the petitioner has no right to establish and run a market on the said land except in accordance with the provision of the 1972 Act. Though he may exercise all his rights of ownership in respect of the said land and the property and carry on business under the licence granted by the Regulated Market Committee. He may exercise all other rights on the property as would be permissible under the 1972 Act but cannot claim any independent right to establish and run a market on the said land except otherwise than as provided in the 1972 Act. The 1972 Act has given overriding effect to its provisions in Section 37 of the 1972 Act. Therefore, the Municipality has no authority to grant license to the petitioner if the land is covered by the notification u/s 4 of the 1972 Act. The

petitioner may apply to the Regulated Market Committee, if he is so advised, for appropriate permission for construction of stall or letting it out or carrying on his own business in accordance with the laws and the rules after obtaining sanction for such construction from the Municipality. If the land is not hit by the said declaration u/s 4 of the 1972 Act, then only he could apply for a licence and the Municipality can consider the case for grant of licence and not otherwise. However, by reason of Section 28, it is open to the State Government to acquire the said land under the Land Acquisition Act, 1894. In case the land is covered within the declaration u/s 4, in that event, it would be open to the State Government to acquire the said land. It appears that the Municipality has already taken a resolution for acquiring the said land. In the circumstances, let the acquisition of the land be undertaken within a period of 1 (one) year from today. In case it is not acquired, in that event, if the petitioner applies for construction of market stalls, in that event, the petitioner may be permitted to do but regulated under the provisions of 1972 Act and may carry on business by himself or by his agents or anyone who will obtain or occupy stalls, however under the licence granted by Regulated Market Committee in terms of Section 13 of the 1972 Act.

13. The order appealed against stands modified to that extent and this appeal is allowed in part to the extent indicated above.

14. Urgent Xerox certified copy of this order be issued to the parties, if applied for, on priority basis.

R.N. Sinha, J.

15. I agree.