81 CWN 361

Calcutta High Court

Case No: F.M.A. 95 of 1966

Sub Divisional Land Reforms Officer and Others		APPELLANT
	Vs	
Ukhara Forest and Fisheries Ltd.		RESPONDENT

Date of Decision: Aug. 27, 1976

Acts Referred:

- Companies Act, 1956 - Section 43A
- Constitution of India, 1950 - Article 226
- Contract Act, 1872 - Section 56, 65
- Transfer of Property Act, 1882 - Section 3, 54
- West Bengal Estates Acquisition Act, 1953 - Section 10(2), 2(ff), 3(a), 4, 5
- West Bengal Private Forest Act, 1948 - Section 10(2), 2(ff), 3(3), 4, 4(1)

Citation: 81 CWN 361

Hon'ble Judges: T.K. Basu, J; M.N. Roy, J

Bench: Division Bench

Advocate: P.K. Sengupta and A. Basu Chowdhury, for the Appellant;P. Burman and Ranajit Ghose, for the Respondent

Final Decision: Dismissed

Judgement

M.N. Roy, J.

This appeal under clause 15 of the Letters Patent is directed against the judgment and order dated July 5, 1965, made in Civil Rule No. 197 (W) of 1972, by Binayak Nath Banerjee J., whereby the Rule was made absolute. The Ukhara Forests and Fisheries Ltd., (hereinafter referred to as the said Company), was a private limited Company incorporated under the Indian Companies Act 1913, having its registered office at Ukhara, Burdwan and at the time relevant for the connected Rule, the same became a public

company u/s 43A of the Companies Act, 1956, as introduced by the Indian Companies (Amendment) Act, 1960. The objects of the said Company were, inter alia to acquire forests, waste lands, tanks, jheels etc., on lease, purchase or otherwise and to carry on business of afforestation and of planters, growers, exploiters of forest and forest produce and making such produce marketable and of selling exporting the same and further to prove the tanks, jheels etc., to carry (sic) business of pisciculture and business of fish and fish products. It has also been contended that the object of the said Company was also to acquire by lease lands covered by forest, forest lands, forest waste lands and also tanks and jheels etc., from the Ukhara Estate Zamindaries Ltd., Burdwan.

2. The said Company was granted a lease for 999 years by a registered document dated February 20, 1954, by the Debattor Estate, known as "Ukhara Estate Debattor" for the purpose of working the private forests and forest lands in C.S. Plot Nos. 458, 475, 477, 473, 491, inter alia amongst others (herein-after referred to as the said lands), measuring more or less 98.91 acres in Mouza Bonsol, J.L. No. 49, P.S. Faridpur, Burdwan under the working plan prepared in accordance with the West Bengal Private Forests Act and as approved by the Regional Forest Officer, Burdwan. Since then, it has been stated that the said Company was in possession of the said lands and was working on them in accordance with the working plan as approved in 1951. It further appears that the status of the said Company in respect of the said lands was recorded as "Dakhalikar" and the same was in peaceful possession and enjoyment of the said lands and the trees standing thereon. Such status, on, a reference being made, was also duly determined by the Director of Land Records, West Bengal and furthermore the lease in question which was of February 20, 1954, was also held to be a valid and genuine one, in an enquiry held u/s 5A of the West Bengal Estates Acquisition Act, 1953 (hereinafter referred to as the said Act).

3. The said statements of the said Company regarding its peaceful possession and enjoyment has of course been denied and disputed by the Respondents in the connected Rule, alleging that the forest belonged to the Debattor Estate from whom the said Company has alleged to have taken lease. The said Debattor Estate did not submit any working plan for the forests in question, in terms of the West Bengal Private Forest Act, 1948, whereupon the then Regional Forest Officer, Burdwan, prepared a working plan u/s 3(3) of the Act and the same was approved by the Conservator of Forests (Southern Circle), West Bengal u/s 4(1) of the Act. Thereafter, copies of the approved plan together with maps were served upon the owners on or about January 13, 1935 and January 24, 1955. It has also been alleged that the said Company did not make any endeavour to let the Forest Department know of the existence of any proprietary right of it in regard to the forest and although it claimed to be a lessee, it did not raise an objection or even sent any information to the Forest Department, even though the approved plan and map were duly served on the owners viz., the Ukhara Estate Debattor as late as January 1955. Such statements of the said Respondents have of course been denied by the said Company.

4. The said Company has stated that immediately after the execution of the lease, due intimation was given to the Range Officer concerned for the purpose and object of working the said forests according to approved working plans and also it sought for permission to fell trees and in fact such permission has been alleged to have been received from the Divisional Forest Officer concerned. It has also been alleged that the said Company duly sent annual reports of the working of the Forest to the relevant authorities. It has further been alleged that even in 1955 the said Company wanted a working plan to be approved in respect of certain C.S. Plots which had been omitted through oversight and such plan was also approved. The said Company has further alleged that annual returns for 1955, 1956 and 1957 have been duly filed with reference to the approved working plans and in fact those authorities also assisted the said Company to protect the said lands when a complaint was lodged that some refugees were unauthorisedly cutting and removing the trees.

5. Although the rights and interests of the said Company, being the lessee under the subsisting and valid lease in respect of the said lands were not affected by the said Act, and in fact they were recognised, a notice in Case No. 35 of 1961-62, u/s 10 (2) of the said Act read with Rule 7(1) of the Rules framed thereunder, was issued by the Sub divisional Land Reforms Officer, Asansol, alleging that by virtue of the Notification No. 12516-L, Ref/6840-L. Ref. dated 16.8.1954/ 10.4.1956, issued by the State of West Bengal u/s 4 of the said Act, the said lands comprised in the forest together with all rights to the trees therein or to the produce thereof held by an intermediary or any other person had vested in the State free from all encumbrances and by the said order, which was received by the said Company on July 13, 1961, it was directed that possession of its interests, should be handed over to the Forest Range Officer, Ukhara Range, Burdwan. However, the said Company at all material times maintained that since it was a lessee under a subsisting lease and was not an intermediary under the said Act, so the said lands and its interest therein as such lessee, could not vest in the State and the State had no right to disturb its lawful possession of the said lands. In fact, on or about August 18, 1961, the said Company duly filed an objection before the Sub divisional Officer concerned for withdrawing the said notice u/s 10(2) of the said Act and also for dropping the said Case No. 35 of 1961-62. The particulars of the objection of the said Company were in the line as mentioned hereinbefore. In addition to those objections, it was also submitted that the said Company, not being an "intermediary" but only a "Dakhalikar", without a fresh notification u/s 4 of the said Act, its rights and interests in the said lands could not also vest in the State. It is also an admitted fact that at all material times and a throughout, the said Company maintained the possession of the said lands, trees thereon and the interests therein.

6. The said Company has further alleged that although an objection was duly filed, which incidentally was received by the authorities concerned on August 21, 1961, without giving it hearing on those objections, a notice was served intimating that possession of the said lands would be taken on November 10, 1961. Immediately thereafter, on October 30,

1961, the said Company requested the Forest Range Officer concerned not to take possession of the said lands as the objection as filed by it was not disposed of. Such request, it has of course been alleged, produced no result, as possession of the said lands was sought to be taken. The said Company apart from its objection dated August 18, 1961, by letter dated December 7, 1961, demanded justice from the Respondents and by his order dated January 10, 1962, the Sub divisional Land Reforms Officer, without duly considering the objections as raised, recorded that the matter should be treated as closed.

7. Aggrieved by the order u/s 10(2) of the said Act, the said Company obtained the connected Rule and although several points were taken in the petition, only the following point :

"For that there being no fresh notification u/s 4 of the said Act after the amendment by the amending Act XXV of 1957 the lessee"s viz., the said Company"s right have not vested in the State Government and remained intact and as such the purported notice u/s 10(2) of the said Act was illegal, without jurisdiction and arbitrary";

was urged at the time of the hearing of the same. It may be mentioned that other points were not of course given up.

8. The learned trial Judge, after setting out the legislative changes in the said Act in respect of "Forest" and following the principles as enunciated in the case of Katras Jharia Coal Co. Ltd. Vs. State of West Bengal and Others, , made the Rule absolute, quashed the notice u/s 10(2) of the said Act and directed the Respondents therein not to follow up the same or to take any steps on the basis thereof. Such determination, was made on the basis of the following findings:

The word "forest" as originally appearing in section 5(a) (ii) and the definition of "forest" as in section 2(ff) were omitted by the West Bengal Estates Acquisition (Second Amendment) Act, 1957 with retrospective effect. That being so, the notification u/s 4 of the West Bengal Estates Acquisition Act, 1953 could not apply to any forest or forest land. It is true that section 5 (aa) was also incorporated in the statute with retrospective effect. But the effect of such incorporation was to entitle the State Government to acquire forests with retrospective effect from the date of the Statute and no more. To contend that the effect of the amendment was such as made an anachronistic notification applicable to the type of land mentioned in section 5 (aa) is not to contend correctly. That being the position, the notifications u/s 4 of the Act published in 1954 and 1956 would not apply to the type of land brought u/s 5(aa).

It has further been observed that :

"The said Act has not been made applicable to forest land as in section 5(aa) under the procedure prescribed by the Act itself, then, the respondents acted without jurisdiction in issuing a notice u/s 10(2) to the petitioners calling upon them to give up possession of the

forest land in question."

9. The propriety of the said determination has been challenged in this appeal. Mr. Sengupta, appearing for the appellants contended that such determination was not only irregular on the facts of the case but the same was bad since the same was made on misconception of law and particularly when in view of the amendments made with retrospective effect, the position in law was that there was no other provision relating to lands in any estate comprised in a forest except section 5(1) (aa) of the said Act. It was also submitted, that the learned trial Judge, following the determination in the case of Katrash Jharia. Coal Co. v. State of West Bengal & Ors., (Supra), was incorrect and wrong in holding that the notifications published in 1954 and 1956 would not apply to the type of land viz., "forest" brought under the purview of the said Act. It was further argued by Mr. Sengupta that under the provisions of the said Act, all lands comprised in a forest have vested in the State and although the status of the said Company has been recorded as "Dakhalikar", yet they would not, in view of the position in law as stated above, be entitled to hold the forest lands.

10. There is no dispute that the said lands were forest lands and they were held by the said Company having the status of "Dakhalikar". Thus the question to be decided is whether such forest lands on the material date had vested in the State in view of the provisions of the said Act.

In the said Act, which originally came into force on February 12, 1954, viz., Act I of 1954, "forest" was not admittedly defined although section 5 made the following provisions :

"Upon the due publication of a notification under -section 4 on and from the date of vesting (a) the estates and the rights of intermediaries in the estates, to which the declaration applies, shall vest in the State free from all incumbrances; in particular and without prejudice to the generality of the provisions of this clause, every one of the following rights which may be owned by an intermediary shall vest in the State, namely :--

(i) rights in sub-soil, including rights in mines and minerals,

(ii) rights in hats, bazars, ferries, forest, fisheries and other sairati interests".

Thereafter, by the West Bengal Estates Acquisition (Amendment Act) 1955 (Act 25 of 1955), definition of "forest" was incorporated in the said Act with retrospective effect, meaning thereby and lands recorded in the re-cord-of-rights prepared or revised for the purpose of the said Act, under the classification "Jhari", Jhati, Jangal, ban, salban or other similar terms. Such definition was of course there in the said Act for a limited period as by the West Bengal Estates Acquisition (Amendment) Act, 1957 (Act 4 of 1957) which was published in the Extraordinary issues of the Calcutta Gazette on March 9, 1957, the same so also the word "forest" appearing in sub-clause (ii) of section 5(a) of the said Act, was omitted with retrospective effect. The said subsequent deletion as aforesaid was made by virtue of the West Bengal Estates Acquisition (Second Amendment) Ordinance,

1957 (West Bengal Ordinance No. X of 1957). Thereafter, by the West Bengal Estates Acquisition (Second Amendment) Act, 1957 (Act XXV of 1957), which was published in the Extraordinary issues of the Calcutta Gazette on January 8, 1958, a new clause as clause (aa) to section 5 of the said Act was inserted in the following manner and with retrospective effect after directing omission of the word "forest" in section 5(a) (ii) :--

"(aa) all lands in any estate comprised in a forest together with all rights to the trees therein or to the produce thereof and held by an intermediary or any other person shall, notwithstanding anything to the contrary contained, in any judgment, decree or order of any court or Tribunal, vest in the State".

11. Section 4 of the said Act contemplated a notification by which all estates and rights of intermediaries under the said Act at the relevant time could be vested in the State with effect from April 15, 1955 and the notification in question was dated August 16, 1954. Chapter VI of the said Act, which deals with "Acquisition of Interests of Raiyats and Under-Raiyats" was introduced by Act XXV of 1955 and at the time when the said Chapter was sought to be enforced, there was a fresh notification u/s 4 of the said Act, which was dated April 10, 1956. Admittedly, those are the two notifications viz., August 16, 1954 and April 10, 1956, which have been mentioned in the impugned notice u/s 10(2) of the said Act. Thus, the further- question for consideration would be whether the said notification of August 16, 1954 would also apply to forests in question although section 5(aa) of the said Act was introduced in 1957 only i.e. long after the said notification.

12. As was argued before the learned trial Judge, it was also argued before us that since section 5(aa) was introduced in the said Act with retrospective effect, the same must always be deemed to have been in existence at all material times and as such the said notification dated August 16, 1954 should be deemed to apply to lands covered by section 5(aa). It may be mentioned that the learned trial Judge made the determination as mentioned hereinbefore, apart from his own reasonings, on the basis of the determination and the parity of reasonings in the case of Katrash Jharia Coal Co. v. State of West Bengal & Ors., (Supra), as in that case similar question arose for determination and D.N. Sinha J. observed that :

"Since the amendment of the definition is retrospective I have to imagine that Government acquired a right of acquisition of the estates and rights therein of lessees and sub-lessees of mines and minerals from as early as February 1954 when the original Act came into operation. There is however, nothing, in section 4 as it stands now, to lay down that I have to deem that a notification issued in 1955 should be considered as a notice to lessees and sub-lessees, who were then outside the purview of the Act, and have only come in by reason of the amendment in 1957. As I have said, a notice must in fact, be given to amount to notice and cannot be notional. Such a notice must however be a real notice. Supposing it were said that a notice given many years ago and to a different set of persons should be considered as the requisite notice, then the very object of giving

notice is frustrated. It had not conveyed the information to the persons affected so that they might exercise the rights given to them under the Act of removing their belongings making arrangements for evacuation. Unless the court is compelled to interpret the law in that fashion it cannot accept such a grossly unjust interpretation, which almost brings it within the border line of absurdity. If the Act said expressly that a notification issued u/s 4 in 1955 would be deemed to be a notification under the Act, also in respect of lessees and sub-lessees of mining interest then I should be powerless. But there is no such provision. All that I have to do is to hold that the Government acquired a right in 1954 of effecting the acquisition of estates and rights in such an estate of intermediaries, including lessees and sub-lessees of mines and minerals. The existence of such a law must be considered to be a fact as from the inception of the Act. The Act requires a notification declaring such estates, or rights to be wasted in Government and a notification has to be published in a particular manner conveying information to the particular persons affected, that such a vesting has taken place so that they may exercise their rights and discharge their liabilities under the Act. I am unable to hold that a notification issued and published in 1955 relating to a certain set of persons must also be considered as or deemed to be a notification upon a different set of persons, but with effect from the original date mentioned therein. There is no provision for such a notice to be retrospective."

13. In support of his contentions regarding retrospective character and nature of section 5(aa), Mr. Sengupta first relied on the case of Ram Krissen Singh Vs. Divisional Forest Officer Bankura Division and Others, . The relevant facts of the said case are :

"The Zamindar of Simlapal in the Collectorate of Bankura entered into a contract with the appellant--Ram Kissen Singh and, by a document dated September 3, 1946, granted him the right to cut the trees in certain demarcated areas of certain forests of the Zamindari on payment of a sum of Rs. 7131.50. Under the terms of the said document the period during which the appellant was given this right to cut trees was to end on April 14, 1955 and cut only for the first few years, but thereafter action was taken by the Forest Officers of the State to prevent him from further cutting under the powers vested in them by the West Bengal Private Forests Act, 1948. Thereupon the appellant filed a petition under Art. 226 of the Constitution for a writ of certiorari for quashing the orders passed against him and also for an injunction restraining the Forests Officers from taking delivery of possession and from cutting and disposing of the forests covered by his agreement. By the time the petition was filed the West Bengal Estates Acquisition Act, 1953 (Act I of 1954) (hereinafter referred to as the Act) had been passed and in the counter-affidavit which was filed to this petition reliance was placed upon its provisions for contending that the "estate" belonging to the Zamindar in which the; forest lay as well as all the rights to the trees therein to whomsoever belonging had vested in the State u/s 5 of the Act by reason of a notification issued by the State Government u/s 4. By the date the writ petition came to be heard the West Bengal Legislature had, in view of certain decisions rendered by the Calcutta High Court which held that the terms of section 5(b), of the Act which

specified the property or interest in property which would vest in the Government did not include the right to cut trees in a forest which had been granted to a third person by the proprietor or intermediary before the date of the vesting, amended the said vesting section by introducing section 5 (aa) to have retrospective effect from the date of the commencement of the principal Act." And on such facts, it was held by the Supreme Court that:

The terms of S. 5 (aa) of the Act are sufficient and apt to provide for the vesting of the right to cut the trees when such right belonged, on the date of the vesting, not to the intermediary or Zamindar but to another person to whom it had been granted under a contract with the intermediary. It was not the land held or other rights possessed by an intermediary only that became vested in the State. Clause (aa) of section 5 also deals with those cases where the right to the trees had been served from the right to the land and belonged to a third person on the date of the vesting.

The expression "together" in section 5 (aa) is used to denote not the necessity for integrality between the land and the right to cut trees by way of common ownership but as merely an enumeration of the items of property which vest in the State. The word means no more than the expression "as well as" and imports no condition that the right to the trees should also belong to the owner of the land. If the words "or to the produce thereof" occurring in the section are read disinjunctively, as they must in view of the conjunction "or", the words would indicate that not merely lands in the estate and the right to the trees but independently of them the right to the produce of the trees on the land would also vest In the State.

The words "held by an intermediary" are followed by "any other person". Obviously that other person i.e. person other than the intermediary, could have the right either to the land, a right to the trees or a right to the produce. By the use of the expression "or any other person" therefore the legislature could obviously have intended only a person who might not have any right to the lands which are held by the intermediary but has a right to the trees in that land. Besides, it is not possible to read the words "held by an intermediary or any other person" to mean that they are applicable only to cases where the entirety of the produce--are vested in a single person--be he the intermediary or another person. These words would obviously apply equally to cases where the land belongs to an intermediary and the right to the trees or to the produce of the trees to another person.

The amendment effected by the addition of clause (aa) to section 5 was admittedly necessitated by certain decisions of the High Court of Calcutta which held that where an intermediary had granted a right to cut trees or to forest produce, the rights so conferred were unaffected by the vesting provision in section 5 of the Act as it stood before the amendment. If it is accepted, that it was only the land held or other right possessed by an intermediary that became vested in the State and that clause (aa) did not deal with those cases where the right to the trees had been severed from the right to the land and

belonged to a third person on the date of the vesting, it would mean that the amendment has achieved no purpose.

14. Mr. Sengupta, next relied on the case of Walamji Lalji v. Chandra Bhusan Bangal, a Bench decision of this Court, reported in 78 C.W.N. 735. The said appeal was at the instance of the defendant and arose out of the following facts :

"The defendant Walamji Lalji was the owner of the jungle to the extent of Rs. 0-10-3 ps situated in the mouza Baghakhula-Mancharpur within P.S. Onda in the district of Bankura. He offered to sell the fuel to the plaintiff in respect of 205.39 acres of land in the property mentioned in the schedule of the document Ext. 1 termed as "Satanama". The said deed was executed by him in favour of the plaintiff on the 5th Magh, 5357 B.S. corresponding to 17th February, 1951. The price was settled at Rs. 1999/-. On the date of the execution of the deed the plaintiff advanced a sum of Rs. 600/- towards the consideration money. The parties stipulated that the balance of the consideration money would be paid in the following installments :

Rs. 66-5-6p on the 15th pous, 1357 B.S. Rs. 300- on the 15th Magh, 1358 B.S.; Rs. 366-5-3p on the 15th Chaitra, 1358 B.S. Rs. 366-5-3p on the 15th Magh 1359 B.S. and the balance to Rs. 300/-to be paid on the 15th Chaitra, 1359 B.S.

The plaintiff further stipulated that he would obey the directions of the Forest Department as the working of the said forest was to be regulated under the provisions of the Forest Act.

Under the directions of the Forest Department the jungle was divided into five blocks; the plaintiff purchaser was permitted to cut the fuel at an interval of one year. As per said direction the plaintiff was to cut fuel of the first black in 1950-51, that of the second block in 1952-53, that of the third block in 1954-55, that of the 4th block in 1956-57 and that of the 5th block in 1958-59.

In default of payment of installments, the defendant brought two money suits being Nos. 14 of 1953 and 48 of 1953 in the 3rd Court of Munsif at Bankura and got decrees for the same.

On the 28th January, 1956, the plaintiff brought the Money Suit No. 17 of 1956 in the first Court of the Munsif at Bankura on the allegations that the defendant prevented him to cut and remove the fuel from four blocks to be worked in the year 1952-53, 1954-55, 1956-57 and 1958-59, he however admitted that he could work in the 1st block in the year 1950-51. On the said allegations he submitted that he sustained loss and as such the money payable under the decree passed against him would be considered to have been satisfied and that he was entitled to get back a sum of Rs. 1,500/- from the defendant.

His further case was that the right of the defendant in the forest having been vested in the State on the 1st of Baisak, 1352 B.S. equivalent to 15th April, 1955, it was not possible

for him to work in the 4th and 5th blocks and as such he could not cut and remove the fuel from these blocks and thereby he sustained loss. On that allegation the plaintiff brought the abovementioned money suit for realisation of money on account of the damage sustained by him.

The learned Munsif rejected the plea of the defence. The prayer of the plaintiff for a decree for damage caused to him on the allegation that he was prevented to cut the fuel and remove the same in the year 1952-53 and 1954-55 was also refused. But the learned Munsif passed a decree for Rs. 799 9-0 holding that after the vesting of the estate under the provisions of the West Bengal Estate Acquisition Act, the fuel which was to be cut and removed in 1956-57 and 1958-59 could not be so removed as the estate in which the forest was situated vested in the State of West Bengal, the result being that the plaintiff lost his right in - the wood purchased by him sustaining the above loss, for which the decree was passed.

And it has been held that :

The amended Section 5(1) clause (aa) of the West Bengal Estates Acquisition Act, 1955 is retrospective in operation and therefore the forest together with all rights transferred even prior to its coming into operation of the section must be deemed to have vested in the state of West Bengal.

The benefit of the standing trees which draw nourishment from the soil underneath goes to the grantee. Such a right is profits a prendre, benefit arising from the land and therefore, an immovable property. Standing timber growing crops or grass are specifically excluded by Section 3 of the Transfer of Property Act. Trees not being so excluded come within the category of immovable property. In a case where such standing trees of the value of Rs. 100/- or upwards, to be cut and removed in future, are transferred, it must be done by means of a registered deed as laid down in section 54 of the Transfer of Property Act.

To get a relief u/s 56 of the Contract Act, the following condition and essential to be established before a person can get any relief under that section :--

(a) a valid and subsisting contract between the promisor and promise,

(b) there must be some part of the contract yet to be performed,

(c) the contract, after it is entered becomes impossible to be performed,

Only in case of fulfillment of the above conditions, the question of compensation to be paid to the promise arises.

It is a well established principle of equity that when one person pays money to another in pursuance of an agreement which is ineffective or which subsequently becomes so, he

under certain circumstances, can recover the money which he had paid. The said rule of equity has been incorporated in several sections of the Indian Contract Act Sec. 65 of the said Act is one of such sections.

15. The question whether "Forest," vested in the State under the said Act came up for consideration at first in the case of Ajit Kumar Bagchi v. State of West Bengal & Ors., 61 C.W.N. 576 and it was held on December 7, 1956 by D.N. Sinha J, that a prior sale of the wood standing in the forest passed the title thereto to the transferee and the Government could not prevent the transferee from removing the wood for which he made full payment. Then came the amendment of the said Act in 1957 by Act XXV of 1957. The amended provisions came into force on January 8, 1958. In fact the amendment as mentioned hereinbefore, it appears, was necessitated to overcome or obviate the effect of the decision in the case of Ajit Kumar Bagchi v. State of West Bengal (Supra), as in the said determination it was held that, where, by a transaction, completed before the vesting to a contractor of certain quantity of wood in a forest was effected, the contractor having paid the price had the right to cut wood and remove the same and that such a contractor cannot be said to have had an estate and that estate cannot be said to have vested in the State under the said Act, taking away the contractor''s right to remove the goods he had purchased and paid for the same. The effect of the said amendment further came up for consideration in the case of Bhutnath Garai v. Divisional Forest Officer Midnapore & Ors., 62 C.W.N. 610 and it was also held by D.N. Sinha J., on April 23, 1958 that :

"In Ajit Kumar Bagchi''s case (61 C.W.N. 576) it was held, on the wording of the particular agreement therein that a prior sale of the ''wood'' standing in the forest passed the title thereto to the transferee and the Government could not prevent the transferee from removing the wood, for which he had made full payment. Since the passing of the West Bengal Estates Acquisition (Second Amendment) Act, 1957, being West Bengal Act XXV of 1957 which came into operation on the 8th January, 1958 the law has been made all embracing and what vests in Government is not only the land but all the trees standing thereon or the produce of the trees held by the intermediaries or any other person.

The words "any other person" cannot be read ejusdem generis and cannot be applicable only to the kind of persons known as intermediaries.

The rule of ejusdem generis can only apply where there is a genus, or category.

The word ''intermediary'' means many things. It means an owner of the land and also a tenant. Therefore, it is obvious that it does not contain one genus or one category to which the disputed words may be said to belong.

In applying the principles of ejusdem generis it is permissible to take into consideration the back ground and the circumstances in which the particular legislation came to be passed. In the case of forests the dispute was as to whether the wood in a forest which has been sold to outsiders before the Estate Acquisition Act came into operation, vested

in the State. There can be little doubt that the amendment (West Bengal Act XXV of 1957) was intended to ensure that it did."

16. Thereafter in the case of Ram- Kissen Singh v. Divisional Forest Officer (Supra), the Supreme Court on August 4, 1964 interpreted clause (aa) of section 5(1) in the manner as indicated hereinbefore and more particularly to the effect that provisions of section 5(1) (aa) of the said Act made ample provisions for the vesting of the right to cut trees when the said right on the date of vesting, belonged not to the intermediary or Zamindar but to another person, to whom the same was granted under a contract with the intermediary. It was not only the land held or other rights possessed by an intermediary that became vested in the State and section 5(1) (aa) of the said Act also deals with those cases where the right to the trees has been severed from the right to the land and belonged to a third person on the date of vesting. Thus, the said decision of the Supreme Court no doubt has overruled the determination of this Court in the case of Ajit Kumar Bagchi v. State of West Bengal (Supra). Clause (aa) to section 5(1) of the said Act which was added with retrospective effect by section 3(b) of West Bengal Act XXV of 1957, has in effect, overridden the effect of the decision in the case of Ajit Kumar Bagchi v. State of West Bengal (Supra) and the Supreme Court in its decision as aforesaid, has further upheld the amendment to the effect that all lands in any estate comprised in a forest together with all rights to the trees therein or to the produce thereof and held by an intermediary or any other person have vested in the State. There is also no dispute that the word "forest" appearing in sections 5 (a) (ii) and 2 (ff) were omitted by section 3(a) of the "West Bengal Estates Acquisition (Second Amendment) Act 1957 which as mentioned hereinbefore was incorporated on January 8, 1058, with retrospective effect, and clause (aa) to section 5(1) of the said Act was also inserted with retrospective effect by section 3(b) of the said Amending Act of 1957. In that view of the matter Mr. Sengupta argued that the notification u/s 4 of the said Act and as published in 1954 shall apply to forest in the said clause (aa) of section 5(1) of the said Act. He submitted that the learned Judge in the trial Court was wrong in holding that as the word "forest" which was originally appearing in section 5 (a) (ii) and the definition in section 2(ff) were omitted in 1957 with retrospective effect, the notification u/s 4 issued in 1954 and 1956 would not apply to forest or forest land. It was also submitted that in effect, the impugned determination has nullified the said clause (aa) in so far as the same has laid down that the notifications u/s 4 of the said Act published in 1954 and 1956 would not apply to the type of lands brought u/s 5(1).

17. Mr. Ghose, appearing for the Respondents mainly submitted that when the notification was issued originally, the word "forest" was not there in the said Act in 1954 and 1956 as the same was omitted with retrospective effect in 1957. In fact this was the basis on which the impugned determination was made by the learned Judge in the trial Court. Mr. Ghose in fact argued that since there has been no notification u/s 4 of the said Act in respect of "forest", so the action taken by the Respondents in the Rule i.e. in having those lands vested in the State, was improper and unauthorised. It was submitted

that the purposes of section 6 of the said Act, which came into effect after the date of vesting, was to grant the right of retention to the intermediary in some specified and specific class of lands and holdings and as such also, in the absence of the notification as aforesaid, "forest" cannot vest.

18. On the basis of the arguments as mentioned hereinbefore, repeated opportunities were given to the appellants to produce the relevant notification, if any, in respect of "Forest" and the departmental records were produced and from such records no such notification could be found out. In fact Mr. Sengupta submitted that he was not in a position to satisfy the Court about the existence of such notification from the records. He of course submitted that section 5(1) (aa) was incorporated in the said Act with retrospective effect and so the effect of such incorporation would be vital for determination of this appeal. The learned Judge in the trial Court has held the same to be, to entitle the State Government to acquire forest with retrospective effect only from the date of the statue and it was not correct to contend that such notification would cover the type of lands mentioned in section 5(1) (aa), and so the notifications in question u/s 4 of the said Act as issued in 1954 and 1956 would not apply to the type of lands as mentioned u/s 5 (1) (aa).

19. Section 4 as it stood at the relevant time required a notification, by which all estates and rights of intermediaries under the said Act could vest. Such vesting was effective from April 15, 1955 and in fact there was such a notification dated August 16, 1954. Thereafter, on the incorporation of chapter VI of the said Act, there was a fresh notification under the said section which was dated April 10, 1956. The word "forest", originally appearing in section 2 (ff) having been omitted by the aforementioned Second Amendment of the said Act with retrospective effect, we agree with the findings of the learned Judge in the trial Court that the notification of 1954 could not apply to forest or forest land and as such the argument that since section 5(aa) was introduced in the statute with retrospective effect, the section should have been deemed to have always been in the statute and consequently the notification in question should also be deemed to apply to lands concerned by section 5(aa), would not hold good and the more so in the absence of a definition of the word "forest," which at the material time was there in the statute. In view of the above, the notification published in 1954 could not apply to any forest or forest land even though section 5(aa) was incorporated with retrospective effect, because the effect of such incorporation, as has been rightly found by the learned Judge in the trial Court, was to entitle the State Government to acquire forest with retrospective effect only from the date of the statute. Apart from what has been stated hereinbefore, we also agree with the other reasonings of the learned Judge in the trial Court, on the effect of the incorporation of section 5(aa) with retrospective effect and the notifications in question, based on the reasonings in the case of Katrash Jharia Coal Co. v. State of West Bengal & Ors. (Supra). The said 1954 and 1958 notifications in our view would not apply to the types of lands brought under the purview of section 5 (aa) of the said Act. In view of the above, we also agree with the learned Judge in the trial Court that whether the

said Act has not been made applicable to forest lands as in section 5(aa), under the procedure prescribed by the said Act itself, the initiation u/s 10(2) of the said Act was unauthorised and without jurisdiction.

20. It is no doubt true that in the case of Walamji Lalji v. Chandra Bhusan Bangal (Supra), it has been held by a Bench decision of this Court that the amendment of section 5(1)(aa) of the said Act is retrospective in operation and as such forest together with all rights in the trees and in produce thereof, though transferred even prior to the coming into operation of the section must be deemed to have vested in the State of West Bengal, yet in our opinion the said decision would not be a bar in making the present determination in the instant case and the order we are proposing, because the relevant factor regarding the absence of the necessary notifications u/s 4 of the said Act in relation to "forest" and the absence of the definition of forest in the present statute, although the same was there at the material time, and/or the effect of them, have not been considered in the said decision.

21. There is also no dispute that in the absence of a specific definition of "forest" the words must be taken or read in its ordinary grammatical sense. Thus there would not have been any difficulty if "forest" was covered by the notifications as aforesaid. In fact the non-specification of "forest" or non-inclusion of the same in the said notifications have not only created the difficulties in the instant case but in fact the said fact has made the application of the provisions as mentioned hereinbefore retrospectively, impossible. Furthermore, the argument as advanced by the appellants cannot in our view be accepted and the rule of construction as mentioned hereinbefore would not apply, because at the material time there was a specific definition of "forest" in the said Act which is of course not there in the present statute. We are of the view that since there was once a specific definition of forest in the statute, the subsequent deletion of the said definition would not bring the matter within the ambit of the rule of construction as mentioned above.

22. In view of the above, the appeal in our, view has no merit and as such the same should be dismissed and we order accordingly. There will however be no order for costs. The judgment and order appealed against is approved and upheld. Since the fact and points of law in F.M.A. Nos. 96 and 97 of 1966 are identical, so the judgment and order which we have proposed in F.M.A. No. 95 of 1966 would also govern them. Those appeals are thus dismissed by upholding the determinations of the learned Judge in the trial Court. There would however be no order for costs in both the said appeals.

T.K. Basu, J.

I agree.