

(1992) 06 CAL CK 0020

Calcutta High Court

Case No: Civil Order No. 4353 (W) of 1990

Debasis Mondal

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: June 22, 1992

Acts Referred:

- Forest (Conservation) Act, 1980 - Section 2
- Forest (Conservation) Amendment Act, 1988 - Section 2
- Forest Act, 1927 - Section 20, 24

Citation: (1994) 2 ILR (Cal) 73

Hon'ble Judges: Altamas Kabir, J

Bench: Single Bench

Advocate: R.N. Mitra, Seba Basu and Mahananda Roy, for the Appellant; D.P. Kundu and Smritikana Mukherjee and Uma Sanyal, for Union of India, for the Respondent

Final Decision: Dismissed

Judgement

Altamas Kabir, J.

The relief sought for in this writ application is for a direction upon the Respondents to give delivery of possession of the fisheries described in para. 2 of the writ petition, to the writ Petitioner.

2. It appears that a tender notice was published by the Sub-divisional Land Reforms Officer, Diamond Harbour, district 24-Parganas South, on October 26, 1988, inviting applications from persons who were interested in the taking lease of fisheries comprised in Dag No. 3, pertaining to R.S. Khatian No. 1, of Mouja Burge Island, under Pathart-pratima P.S., district 24-Parganas South, for a period of ten years commencing from 1395 B.S. In terms of the tender notice, the last date for filing tenders was November 11, 1988, upto 2 p.m. and the tenders were to be opened on the same date at about 3 p.m.

3. According to the Petitioner, he filed his tender form and duly participated in the auction with other tenders. It appears that the Petitioner's bid of Rs. 1,70,401 was the highest bid and that, thereafter, the Petitioner received a communication from the Sub-divisional Land Reforms Officer, Diamond Harbour, South 24-Parganas, being Memo, no 1354/25/88 dated November 15, 1988, requesting him to deposit 1/4th of the tender money by November 16, 1988, subject to the approval of the higher authorities. A copy of the said Memo, dated November 15, 1988, has been made Annex. "B" to the writ petition.

4. According to the Petitioner, on receipt of the aforesaid communication he deposited a sum of Rs. 42,600.25 P. being ♣th of the bidden amount, in the Treasury on November 16, 1988. The money receipt for the same has been made Annex. "C" to the writ petition.

5. The Petitioner's grievance is that, thereafter, despite the fact that his offer was the highest and had been accepted and he had been directed to deposit ♣th of the bid money, which had also been done by him, possession of the fisheries in question had not been made over to him. Even when the writ petition was taken up for hearing possession of the fisheries in question had not been made over to the writ Petitioner.

6. Appearing for the State and the State Respondents Mr. D.P. Kundu submitted that it was no doubt true that tenders for granting lease of the fisheries in question had been invited by the State Government, but that the legal position had since undergone a change and the writ application would have to be decided on the basis of the law as it now stands at the time of hearing of the writ application.

7. Referring to Annex. "X" to the affidavit-in-opposition filed on behalf of the State Respondents, Mr. Kundu pointed out that the lands in question are described therein as "reserved forest". It was submitted that Annex. "X" to the affidavit-in-opposition is a Notification published by the Forest and Excise Department on May 29, 1943, under the provisions of Section 20 of the Indian Forest Act, 1927, whereby the Governor had declared various lands in the Sundarban area, including the lands and waterways involved in the present writ application, to be "reserved forest" with effect from July 20, 1943. Mr. Kundu submitted that in view of the above, the Land Reforms Department of the State Government was not entitled to invite tenders for grant of settlement of the said reserved forest areas, in view of the above Notification and the provisions of the Indian Forest Act, 1927.

8. It was submitted that the entries in the C.S. Record-of-Rights stood nullified by virtue of the Notification dated November 29, 1943 and any entries made in the R.S. Record-of-Rights must be held to be erroneous in view of the Notification published under, the aforesaid Act, which had overriding effect over other enactments, being a special Act.

9. It was also urged, on behalf of the State and the State Respondents that Section 2 of the Forest (Conservation) Act, 1980, was amended by the Forest (Conservation) Amendment Act, 1988 (69 of 1988), which came into force on and from December 17, 1988. Section 2 of the Amending Act reads as follows:

Amendment of Section 2. In Section 2 of the Forest (Conservation) Act, 1980 (69 of 1980) hereinafter referred to as the Principal Act), (a) after Clause (ii), the following clauses shall be inserted, namely:

(iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government:

(iv) that any forest, land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reforestation.

(b) for the explanation, the following explanation shall be substituted, namely:

Explanation : For the purpose of this Section--"Non-forest purpose", the breaking up for clearing of any forest land or portion thereof for

(a) the cultivation of tea, coffee, spices, rubber, palm, oil-bearing plants, horticulture crops or medical plants;

(b) any purpose other than, reforestation, but does not include any work relating or ancillary to conservation, development and management of forests and wild life, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterways, trench marks, boundary marks, pipelines or other like purposes.

10. Mr. Kundu submitted that in view of the inclusion of Clause (iii) by the said amendment, the State Government was not entitled to make any assignment by way of lease or otherwise in respect of forest land or any portion thereof, without the prior consent of the Central Government. It was urged that in view of such amendment, the settlement could not be effected in favour of the writ Petitioner, despite the fact that he was admittedly the highest bidder at the auction and had also deposited 1/4th of the bidden amount, as directed by the Sub-divisional Land Reforms Officer, Diamond Harbour, South 24-Parganas. Mr. Kundu emphasized the fact that, although the auction had been held prior to the coming into effect of the amended provisions of the aforesaid Act, the claim of the Petitioner for grant of such lease would have to be decided on the basis of the law as it now stands.

11. It was further submitted by Mr. Kundu that the amount deposited by the writ Petitioner has been kept deposited in the Petitioner's name by the Sub-divisional Land Reforms Officer, Diamond Harbour and that since the Petitioners had not invested any further money, the question of any financial suffering being caused to the Petitioner did not arise.

12. Mr. Kundu lastly referred to an Inspection Report in connection with an inspection jointly conducted, by the District Land and Land Reforms Officer, 24-Parganas (South) and the Divisional Forest Officer, 24-Parganas Division. The Report which is dated August 14, 1991, has been made Annex. "A" to a Supplementary Affidavit affirmed by the Assistant Divisional Forest Officer, 24-Parganas Division. From the said Inspection Report it appears that Burge Island and Swan island are not two separate entities, but two different blames for the same Island. The Report also indicates that the Island is surrounded by the Thakurani river and those areas also fall under the category of "reserved forest". According to the Report, there is no trace of any "bheri" inside the island in question and considering the present physical condition of the island, there could not be any doubt that the island should be recorded as "forest" and the-connected records were required to be amended accordingly.

13. At this point it may be mentioned that in view of the submissions made on behalf of the State Government, leave was given to the Petitioner on February 24, 1992, to add the Union of India and its authorities as parties to the writ petition. Such amendment having been effected, the Union of India was duly served with notice of the writ application and Mrs. Uma Sanyal, learned Advocate, entered appearance on behalf of the Union of India and its concerned authorities.

14. Appearing for the Union of India, Mrs. Sanyal adopted the arguments of Mr. D.P. Kundu, so far as related to the provisions of the Indian Forest Act, 1927, the Forest (Conservation) Act, 1980 and the amendment effected thereto by virtue of the Forest (Conservation) Amendment Act, 1988. Mrs. Sanyal submitted that in view of the aforesaid provisions of the Forest (Conservation) Act, 1980, as amended, the State Government had no authority to invite tenders, and/or make any settlement of Burge Island, which in terms of the Notification dated May 29, 1943, was undoubtedly forest land.

15. Replying to the aforesaid submissions made on behalf of the Respondents, Mr. R.N. Mitra, learned Advocate for the Petitioner, firstly pointed out that the amendment to the Forest (Conservation) Act, 1980, came into effect on December 17, 1988; whereas the auction had already been conducted earlier and even the deposit of 1/4th of the tender amount had been deposited prior to the coming into effect of the amended provisions of the aforesaid Act. According to him, since the auction had already been conducted prior to coming into operation of the amendment of Section 2 of the Forest (Conservation) Act, 1980, the same could have no application to the Petitioner's case. Mr. Mitra also pointed out that both in the C.S. and R.S. records the area in question had been recorded as "bheri". In support of his said submission, Mr. Mitra produced the attested copy of the R.S. Record-of-rights and also the Survey Sheet in respect of Burge Island prepared under the West Bengal Estates Acquisition Act, 1953, on the basis of a survey made in 1925/26. From the survey map Mr. Mitra pointed out that the island in question

stands on the Thakurani river, as mentioned in the joint Inspection Report dated August 14, 1991. Mr. Mitra submitted that in view of the above, the State Government and its authorities should immediately be directed to accept the balance of the bidden amount and to make over possession of the area in question to the writ Petitioner.

16. The main question which arises for decision from the submission of the respective parties" is whether in pursuance of the auction conducted by the Sub-divisional Land Reforms Officer., Diamond Harbour, South 24-Parganas, a mandamus can issue upon the State Government to grant settlement and make over possession of the fisheries in question to the writ Petitioner.

17. The main plank of the argument advanced on behalf of the State of West Bengal and the Union of India is that the State Government was not entitled to grant settlement of any forest land without prior consent of the Central Government in view of the provisions of Section 2(a)(iii) of the Forest (Conservation) Act, 1980, as amended by the Amending Act of 1988.

18. In order to appreciate the above submission it would be in the fitness of things to refer to Section 2 of the aforesaid Act as it stood prior to the amendment of 1988. Section 2 of the unamended Act reads as follows:

Section 2. Restriction of the dereservation of forests or use of forest land for non-forest purpose--notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing--

(i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall ceases to be reserved;

(ii) that any forest land or any portion thereof may be used for any non-forest purpose.

Explanation : For the purposes of this section "non-forest" purposes means breaking up for clearing of any forest land or portion thereto for any purpose other than reforestation.

By the addition of Clause (iii) by the Amending Act of 1988, the State Government is now prevented from granting lease of any forest land to any private individual or institution, without the prior approval of the Central Government. Moreover, the non obstante clause in Section 2 of the Forest (Conservation) Act, 1980, gives the said provisions an over-riding effect over all the existing laws including the provisions of the Indian Forest Act, 1927, governing such matters.

19. Accordingly, the law as it stands today regarding grant of lease of forest lands makes it quite clear that the State Government cannot grant lease of forest lands to

private individuals or institutions without the prior approval of the Central Government. The question which falls for consideration is whether the amended provisions of the Forest (Conservation) Act, 1980, would be applicable to the Petitioner's case where the auction had been conducted prior to the coming into effect of the amendment and the Petitioner's bid had been duly accepted prior to such date.

20. The answer to the said question is dependant on the fact, although the auction had been completed and the Petitioner's bid had been accepted prior to the coming into effect of the amended provisions of the aforesaid Act, no final settlement had been made in favour" of the writ Petitioner at the time when the amended provisions came into force. The acceptance of the Petitioner's tender was the initial step for grant of settlement of the fisheries in question in the Petitioner's favour. Mere acceptance of the bid cannot be equated with actual settlement, which follows as a natural consequence of the acceptance of the payment. However, before such settlement could be made in the Petitioner's favour, pursuant to acceptance of his bid, the amended provisions came into force. In fact, while the Petitioner deposited ~~₹~~ of the tender amount on November 16, 1988, the amended provisions of the Forest (Conservation) Act, 1980, came into effect the very next day, that is, on November 17, 1988. The coming into effect of the amended provisions of the aforesaid Act created a situation whereby the State Government was no longer in a position to make a settlement of the fisheries in question in the Petitioner's favour.

21. Of course, the writ Petitioner ought to have been informed of the change of circumstances and the money deposited by him pursuant to the directions given by the Sub-divisional Land Reforms Officer, Diamond Harbour, South. 24-Parganas, should have, been refunded to him immediately thereafter. There is nothing on record to show that such steps were taken and on the other hand, it is the Petitioner who had to come to this Court for the reliefs prayed for in the writ petition.

22. Prior to the amendment of Section 2 of the Forest (Conservation) Act, 1980, the position was such that the State Government was entitled to grant lease of forest lands under the provisions of Section 24 of the Indian Forest Act, 1927. The said position was, however, altered by the amendment effected to the Forest (Conservation) Act, 1980.

23. That being the position, no relief, as prayed for in the writ petition, can be granted. However, that does not absolve the State Government from its responsibility in holding the amount deposited by the writ Petitioner, pursuant to the directions given by the Sub-divisional Land Reforms Officer, Diamond Harbour, 24-Parganas South, without making any attempt to return the same to him. In fact, Mr. Kundu, learned Counsel appearing for the State of West Bengal, very fairly submitted that that was a matter for the Court to decide.

24. Accordingly, the writ application is dismissed. The State Government is directed to refund to the writ Petitioner the amount deposited by him pursuant to the directions given by the Sub-divisional Land Reforms Officer, Diamond Harbour, South 24-Parganas, by his Memo. No. 1354/28-2/88 dated November 15, 1988, together with interest @ 18 % per annum, within a month from date.

25. The State Government is also directed to pay the costs of this application to the Petitioner assessed at 100 G.Ms, within the aforesaid time.

26. Let Xerox copies of this judgment be made available to the parties to enable them to comply with the same on their usual undertaking.