

SYEDABAD TEA CO. LTD.

v.

STATE OF BIHAR

November 30, 1982

[A.P. SEN, E.S. VENKATARAMIAH AND R.B. MISRA, JJ.]

*Interpretation of statutes—Legal fiction—Should be carried to its logical end to achieve the desired result.*

*West Bengal (Transfer of Territories) Act, 1956 Sections 17 and 47—Scope of.*

In 1951 three pieces of land belonging to the appellant situated in Bihar were acquired by the State of Bihar for a public purpose. When appeals against the judgment of the District Judge enhancing the compensation payable in respect of these lands were pending before the Patna High Court the West Bengal (Transfer of Territories) Act, 1956 came into force in consequence of which the acquired lands stood transferred to the State of West Bengal. The appeals pending before the Patna High Court were, however, not transferred to the Calcutta High Court, nor was the State of West Bengal substituted in place of the State of Bihar. The Patna High Court dismissed the State's appeals.

In the execution petitions the appellant impleaded the State of Bihar as the judgment-debtor but the State of Bihar raised an objection that since the lands were then situated in the State of West Bengal it was that State which was liable to pay the decretal amounts.

Upholding this contention the executing court, dismissed the execution petition. This was upheld by the High Court.

Allowing the appeal,

HELD : Section 17 of the Act enjoins that only such proceedings pending in the High Court of Patna immediately before the appointed day *as are certified* by the Chief Justice of that High Court having regard to the place of accrual of the cause of action and other circumstances, have to be transferred to the High Court of Calcutta, which means that if there is no such certification they have to be disposed of by the High Court of Patna even though the cause of action might have accrued in any part of the transferred territories as that court continues to exercise jurisdiction over those cases. [862 E-G]

In the instant case since there was no such certificate the High Court of Patna rightly disposed of the appeals. [882 G]

Under s. 47 of the Act the State of West Bengal should be deemed to have been substituted for the State of Bihar even though no such order had been passed on a formal application for substitution. When the law says that something should be deemed to have been done, the legal fiction should be carried to its logical end to achieve the desired result. The decrees must, therefore, be deemed to have been passed by the High Court of Patna against the State of West Bengal when the appeals were dismissed by the Patna High Court.

[882 H; 883 A-C]

By virtue of Section 47 the State of West Bengal would be bound by the decrees or orders made in respect of matters referred to therein against the State of Bihar both before and after the appointed day even though the State of West Bengal is not formally brought on record in the place of State of Bihar. In all such cases the State of Bihar should be considered as effectively representing the State of West Bengal. [883 D-E]

There is no merit in the submission that the interest accrued on the amounts of compensation upto-date or upto the date on which the notices were served on the State of West Bengal should be disallowed. The executing court cannot go behind the decree. [883 B-C]

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 2563-2565 of 1969.

From the judgment and order dated the 17th May, 1968 of the Patna High Court in Original Order Nos. 283-285 of 1963.

*M.L. Lahoty, S.C. Patel and H. Roy* for the Appellant.

*G.S. Chatterjee*, for the Respondent—State of Bengal.

*K.G. Bhagat* Additional Solicitor General and *D. Goburdhan* for the Respondent, State of Bihar.

The Judgment of the Court was delivered by

VENKATARAMIAH, J. The question involved in these three appeals by certificate relates to the liability of the State of Bihar to pay the amount of compensation in respect of lands which after their acquisition by it under the Land Acquisition Act stood transferred to the State of West Bengal under the Bihar and West Bengal (Transfer of Territories) Act, 1956 (Act No. 40 of 1956 hereinafter referred to as 'the Act').

The facts of these cases may be briefly stated thus : Three pieces of land belonging to the appellant which were situated in village Madati in the District of Purnea in the State of Bihar were

A acquired under the provisions of the Land Acquisition Act by the State of Bihar in the year 1951 for a certain public purpose. After the Land Acquisition Officer passed the awards in respect of the said lands, the question of determination of proper compensation was referred to the District Judge, Purnea under section 18 of the Land Acquisition Act at the instance of the appellant. The District Judge by his judgment and award dated May 7, 1954 enhanced the compensation payable in each of the three cases. Against that judgment, the State of Bihar filed three appeals before the High Court of Patna in the year 1954. When the appeals were pending before the High Court the Act was passed and it came into force on the appointed day i.e. November 1, 1956. Under the Act, the area in which the acquired lands were situated stood transferred to the State of West Bengal. The appeals were, however, not transferred to the Calcutta High Court. The State of West Bengal was also not substituted in the place of the State of Bihar in the appeals. The appeals were dismissed by the Patna High Court after hearing the counsel for the State of Bihar on March 8, 1960. The appellant thereafter filed execution petitions in the Court of the Additional District Judge impleading the State of Bihar as the judgment debtor in 1961. The State of Bihar raised objections to the execution proceedings by way of petitions under section 47 of the Code of Civil Procedure in March, 1962 stating that its liability under the decree had ceased by virtue of the provisions of the Act and that the State of West Bengal within whose jurisdiction the acquired lands were situated was liable to pay the decretal amounts. The executing court upheld the plea of the State of Bihar and dismissed the execution petitions by its order dated July 9, 1963. The appellant preferred appeals against the orders of the executing court before the High Court of Patna. The said appeals were also dismissed. Hence these appeals.

It should be stated here that the State of West Bengal had not been impleaded as a party either in the executing court or in the High Court. In these appeals by an order made by this Court in the year 1972, the State of West Bengal was impleaded as a respondent in each of these cases.

The decision in these appeals turns on the true construction of the relevant provisions of the Act since it is not disputed that the acquired lands are transferred to the State of West Bengal under the Act. Section 47 of the Act reads :

“47. Legal proceedings.—Where immediately before the appointed day, the State of Bihar is a party to any legal

proceedings with respect to any property rights or liabilities transferred to the State of West Bengal under this Act, that State shall be deemed to be substituted for the State of Bihar as a party to those proceedings, or added as a party thereto, as the case may be, and the proceedings may continue accordingly."

Section 48 of the Act deals with the transfer of proceedings arising from the transferred territories and pending immediately before the appointed day before a court (other than the High Court) tribunal, authority or officer in the State of Bihar to the corresponding court, tribunal, authority or officer in the State of West Bengal. We are now concerned with the proceedings pending in the High Court. Section 17 of the Act is the relevant provision dealing with them. It reads thus :

"17. Extension of jurisdiction of, and transfer of proceedings to, Calcutta High Court—

(1) Except as hereinafter provided,

(a) the jurisdiction of the High Court at Calcutta, shall, as from the appointed day, extend to the transferred territories ; and

(b) the High Court at Patna shall, as from that day, have no jurisdiction in respect of the transferred territories.

(2) Such proceedings pending in the High Court at Patna immediately before the appointed day *as are certified by the Chief Justice of that High Court* having regard to the place of accrual of the cause of action and other circumstances, to be proceedings which ought to be heard and decided by the High Court at Calcutta shall, as soon as may be after such certification, be transferred to the High Court at Calcutta.

(3) Notwithstanding anything contained in sub-sections (1) and (2), but save as hereinafter provided, the High Court at Patna shall have, and the High Court at Calcutta shall not have, jurisdiction to entertain, hear or dispose of appeals, applications for leave to appeal to the Supreme Court, applications for review and

A other proceedings, where any such proceedings seek any relief in respect of any order passed by the High Court at Patna before the appointed day :

B Provided that if, after such proceedings have been entertained by the High Court at Patna, it appears to the Chief Justice of that High Court that they ought to be transferred to the High Court at Calcutta, he shall order that they shall be so transferred and such proceedings shall thereupon be transferred accordingly.

C (4) Any order made by the High Court at Patna :

(a) before the appointed day in any proceedings transferred to the High Court at Calcutta by virtue of sub-section (2) or

D (b) in any proceedings with respect to which the High Court at Patna retains jurisdiction by virtue of sub-section (3),

shall, for all purposes, have effect, not only as an order of the High Court at Patna, but also as an order made by the High Court at Calcutta."

E (underlining by us)

F Sub-section (2) of section 17 of the Act states that only such proceedings pending in the High Court of Patna immediately before the appointed day *as are certified* by the Chief Justice of that High Court having regard to the place of accrual of the cause of action and other circumstances, have to be transferred to the High Court at Calcutta. It follows that if there is no such certification, they have to be disposed of by the High Court of Patna even though the cause of action might have accrued in any part of the transferred territories as that court continues to exercise jurisdiction over those cases. In the instant case since there was no such certificate, the High Court of Patna rightly disposed of the appeals. The liability, however, would be that of the State of West Bengal because of section 47 of the Act. The State of West Bengal should be deemed to have been substituted for the State of Bihar even though no such order had been passed on a formal application for substitution. When the law says that something should be deemed to have been done in a given case, the said legal fiction should be carried to its

G

H

logical end to achieve the desired result. The decrees must, therefore, be deemed to have been passed by the High Court of Patna against the State of West Bengal when the appeals were dismissed by the Patna High Court. It may be mentioned here that the State of West Bengal has not taken any steps to get those decrees revoked till now before the Patna High Court even though it had actual notice of those proceedings when notices in these appeals were served on it. It is also not contended by the State of West Bengal, and we feel rightly, that the decrees are not binding on the State of West Bengal. The only submission made on its behalf is that the interest that had accrued on the amount of compensation awarded by the Court upto date or at least upto the date on which the notices issued in these appeals were served on the State of West Bengal should be disallowed. There is no merit in this submission. The executing court cannot go behind the decree. The judgment debtor has to pay the entire decretal amount.

By virtue of section 47 of the Act, the State of West Bengal would be bound by the decrees or orders made in respect of matters referred to therein against the State of Bihar before the appointed day and also after the appointed day even though the State of West Bengal is not formally brought on record in the place of the State of Bihar. In all such cases the State of Bihar should be considered as effectively representing the State of West Bengal. That is the true effect of the 'deeming' provision contained in that section. In this situation the executing court should have been directed by the High Court to substitute the State of West Bengal in the place of the State of Bihar in the execution petitions and to proceed to execute the decrees against the State of West Bengal.

In view of the foregoing, these appeals are allowed, the judgments of the High Court and of the executing court are set aside and execution applications are remanded to the executing court to proceed with the execution against the State of West Bengal after substituting the State of West Bengal as the judgment debtor in the place of the State of Bihar. In the circumstances, the parties shall bear their costs throughout.

P.B.R.

*Appeal allowed.*