BANSILAL FARMS ETC. A

v.

UMARANI BOSE AND ORS.

NOVEMBER 22, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.] B

Land Acquisition :

West Bengal Land Requisition and Acquisition Act, 1948 : S. 3(1)—Nalban Fishery—Requisition—Challenge of—Receiver appointed—Took possession, but found it was already in the possession of the State Government—Mistake rectified by re- delivering—Subsequently compromise decree passed by Supreme Court—Whether the claim of rights of State Government protected?—Whether Receiver justified in re-delivering possession—Held, the rights and interests of State not affected by allotment in partition decree—No illegality in the act of the succeeding Receiver in rectifying earlier mistake and redelivering possession to the State—Amount of compensation to the family members to whom the fishery was allotted in the compromise decree to be determined in accordance with law. C D

Civil Procedure Code, 1908 : Section 11. E

Res-Judicata—Order of High Court—Held : Would not operate as res-judicata as State was neither a party to the proceeding nor notice issued to it before passing the order.

West Bengal Reforms Act (Amended in 1986)—Sections 2(7) and 3(A)—Definition of "Land"—Explained. F

The respondents are members of one Sarkar family who are owners of Nalban Fishery. A partition suit was filed by one of the co-sharers. Meanwhile, the State of West Bengal requisitioned Nalban Fishery under West Bengal Land Requisition and Acquisition Act, 1948. The respondents who were owners of the Nalban Fishery challenged the requisition order by filing a writ petition in High Court. The Writ Petition came to be dismissed both by Single Judge and by the Division Bench. G

A Special leave petition preferred before this Court was dismissed and the appeal on the partition suit was also finally disposed of. Two H

A appeals out of the above special leave petition were also disposed of as a compromise was arrived at between the parties. While granting special leave, this Court has directed to appoint Collector as Receiver. The Receiver submitted a compliance report to the Court. The Receiver could not actually take possession of the Nalban Fishery as it was already in the possession of the
B State Government. The Receiver brought to the notice of the court the mistake committed by him and re-delivered the possession to the Government.

The State Fisheries Development Corporation issued an advertisement for auctioning the fisheries for a boating complex. The respondents filed an application before the High Court on the ground that as per the
C orders of the Supreme Court in partition decree, the Nalban Fisheries belongs to them. The High Court directed the Receiver to take over possession from the State Government and give vacant possession to the respondent family. An appeal before the Division Bench was dismissed. Hence the present appeal.

D Allowing the appeal, this Court

HELD : 1. The Nalban Fishery had been requisitioned much prior to the partition decree of this Court and therefore the rights of the State to the fishery either by virtue of the requisition order or by any provision
E of any other statute remained protected and as such the State of West Bengal cannot be bound down by the so-called allotment of fisheries in favour of some members of the Sarkar family under the compromise decree. The fact that the Nalban Fishery had been requisitioned by the State of West Bengal in exercise of power under section 3(1) of the West Bengal
F Land Requisition and Acquisition Act, 1948 cannot be disputed since the validity of the order of requisition challenged by sarkar family before the High Court and in this Court were dismissed. [139-G-H; 140-A-B]

2. The successor Receiver was fully justified in bringing to the notice of this Court that his predecessor had erroneously taken possession of
G Nalban Fishery in contravention of the directions of the court and offered his unconditional apology. The Receiver appointed by court is an officer of the Court. There is no illegality in the act of succeeding Receiver in rectifying the earlier mistake and re-delivering possession to the State of West Bengal. The possession taken by earlier Receiver was a symbolic one and factually the
H State had not been divested of its possession. The succeeding Receiver

rightly took into account the directions of this Court and rightly took the view that rights and interest of the State in relation to Nalban Fishery are not affected in any manner by the so-called allotment of fishery in partition decree amongst the members of the respondent-farm. [141-A-C] A

3. The order of the High Court would not operate as *res- judicata* as the State of West Bengal was neither a party to the proceedings not was it noticed by the High Court before passing the order. The directions of the Judge does not in any way take away the rights of the State of West Bengal which is protected by the Supreme Court. The order of the High Court will not stand in the way of the State claiming and putting forth its interest and rights over the Nalban Fishery. [141-F; 142-B-C] B C

4.1. The extended definition of "Land" in Section 2(7) and amended provisions of Section 3(A) of the Land Reforms Act includes "tank fishery" like Nalban Fishery within the definition of "land". [142-D-E]

4.2. Under the amended provisions of the West Bengal Land Reforms Act tank fishery being included in the land would vest in the State. By a combined reading of sections 3A and 14 the State cannot be divested of the rights accruing by the amended provisions until the amended provisions are declared invalid by a competent court of law. [142-F-G] D

5. The State should determine the amount of compensation which the sarkar family is entitled to under the relevant provisions of the Act under which Nalban Fishery vests with the State of West Bengal and the compensation amount be paid on being determined in accordance with the law to the family members of Sarkar family in whose favour Nalban Fishery had been allotted under the compromise decree by this Court. [143-B-C] E F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 14754 of 1996 Etc.

From the Judgment and Order dated 25.9.92 of the Calcutta High Court in A. No. 396 of 1980. G

S.S. Ray, Harish Salve, G. Ramaswamy, Ms. Sarla Chandra, Ms. Aruna Banerjee, G.S. Chatterjee, Samar Dutta, Jaideep Gupta and Praveen Kumar for the appearing parties.

The Judgment of the Court was delivered by : H

A **PATTANAIK, J.** Leave granted.

These three appeals by special leave are directed against one and same judgment dated 25.09.1992 of the Division Bench of Calcutta High Court. The three appellants are the State of West Bengal in appeal arising out of SLP (C) No. 401 of 1993, the State Fishery Development Corporation Ltd. in appeal arising out of SLP (C) No. 13516 of 1992 and Bansilal Farms in appeal arising out of SLP (C) No. 13314 of 1992. The respondents are the members of one Sarkar family in the city of Calcutta. The dispute centres around a fishery called Nalban Fishery.

C A suit for partition was filed by one of the Co-sharers of said Sarkar family in the High Court of Calcutta on 3.9.1955, which was registered as Suit No. 2539 of 1955. The schedule of properties included the disputed Nalban Fishery. A learned Single Judge of the Calcutta High Court passed a preliminary decree in the said suit on 11.8.1960. One of the Co-sharers D of the Sarkar family preferred an appeal against the preliminary decree before the Division Bench which was registered as Appeal No. 200 of 1960. During the pendency of the aforesaid appeal the State of West bengal requisitioned large extent of fisheries including the disputed Nalban Fishery on 5.11.1969 in exercise of power under Section 3(1) of the West Bengal Land Requisition and Acquisition Act of 1948 (hereinafter referred E to as 'the Requisition Act'). Pursuant to the aforesaid requisition order the State of West Bengal took possession of the Nalban Fishery on 8.11.1969. Members of the Sarkar family challenged the order of requisition by filing a writ petition in Calcutta High Court in November, 1969 which was registered as Civil Rule No. 7317 (W) of 1969. The aforesaid writ petition F was dismissed by the learned Single Judge. The appeal to the Division Bench was preferred against the aforesaid order of dismissal which was registered as F.M.A. No. 126 of 1970. The Division Bench dismissed the appeal by its order dated 5.7.1971. Sarkar family moved this Court in SLP (C) No. 1452 of 1972. By order dated 17.11.1972 this Court dismissed the special leave petition. The appeal arising out of the partition suit bearing G Suit No. 2539 of 1955 which had been registered as appeal No. 200 of 1960 was finally disposed of by the Division Bench and the said order was assailed in this Court in SLP (C) Nos. 5370 & 5371 of 1978. The said two appeals arising out of the said two special leave petitions were disposed of by order dated 18.4.1979 on the basis of a compromise arrived at between H the parties on intervention of Shri Ashok Sen who was appearing for one

of the parties but it was indicated in the order that the State's right in relation to the fisheries will not be affected by the decree in question. This Court further ordered :

> "we again wish to re-emphasize that the terms of the decree shall not effect the rights of the State of West Bengal, in any manner whatsoever to the fisheries in question, if they have vested in State under the provisions of the West Bengal Estate Acquisition Act of 1953 (Act X of 1954)".

Prior to the passing of the aforesaid order on April 18, 1979 while granting special leave petition on 10.11. 1978 this Court had directed that the State of West Bengal will be made a party to the proceeding and further the Collector 24 Parganas was appointed as Receiver in respect of the fisheries owned by the Sarkar family. The Court had also further directed that the Collector will be the Receiver in respect of the fisheries which has not already been vested in the State and whose possession has not already been taken over by the State. Pursuant to the aforesaid order appointing Collector 24 Parganas as Receiver, the Collector 24 Parganas took possession of the fisheries including Nalban Fishery as Receiver and submitted a compliance report dated 22.11.1978 to the Registrar of this Court. It may be noted that Nalban Fishery had been requisitioned by the State of West Bengal under the provisions of Requisition Act since 5.11.1969 and possession thereof had been taken on 8.11.1969 and the Sarkar family had challenged the said order unsuccessfully which became final by the dismissal of the special leave petition by this Court on 17.11.1972. On 25.5.1979 the Collector 24 Parganas who had been appointed as Receiver realised that he could not have taken possession of Nalban Fishery as Receiver since the said fishery had already been in possession of the State of West Bengal pursuant to requisition order dated 5.11.1969. Obviously, the earlier compliance report dated 20.11.1978 stating that the Receiver has taken possession of the Nalban Fishery was a symbolic one inasmuch as the State of West Bengal was in fact in possession of the said fishery. The Receiver, therefore, intimated to the Registrar of this Court the mistake committed by him in his earlier report and after taking advice from the Senior Counsel expressed apology to this Court for the mistake committed in the earlier report. While the matter stood thus in relation to the aforesaid Nalban Fishery, the Government of West Bengal handed over the possession of the said Nalban Fishery to the Director of Inland Fisheries, State Fisheries

A Development Corporation for undertaking fisheries development scheme. The aforesaid Corporation issued an advertisement for auctioning the Nalban Fishery for a Boating Complex. The Sarkar family thereupon filed an application before the Calcutta High Court contending *inter alia* that under the decree passed in the petition suit by the Supreme Court the
B property belongs to the Sarkar family and could not have been handed-over to the State of West Bengal. That application was disposed of by the learned Single Judge of the Calcutta High Court on 19th September, 1979 and the learned Single Judge called upon the Collector 24 Parganas who was the Receiver pursuance to the orders of the Supreme Court to take over the possession of Nalban Fishery from the State of West Bengal and
C give vacant possession of the same to the Sarkar family. This order of the learned Single Judge was challenged in appeal before the Division Bench and the Division Bench having dismissed the same, the present appeals have been preferred. It may be noticed at this stage that Bansilal Farms, appellant in appeal arising out of SLP (C) No. 13314 of 1992 was the
D highest offerer for running the Boating Complex on the surface water of Nalban Fishery and had been granted licence for that purpose and in fact had started the operation of the Boating Complex since 1991 but on the application of Mrs. Dhira Mitra one of the Co-sharers of the Sarkar family, the High Court having issued on order of injunction, the farm is no longer operating.

E

Mr. Harish Salve, the learned Senior Counsel for the State of West Bengal, Mr. S.S. Ray, the learned Senior Counsel appearing for Bansilal Farms and Mr. G. Ramaswamy, the learned Senior Counsel appearing for the State Fishery Development Corporation Ltd. contended that a com-
F promise decree between the parties in a suit for partition will not in any way affect the rights of the State in respect of the fisheries whether such rights the State acquires by virtue of an order of requisition under the Requisition Act or by virtue of any other statutory provisions under which the fisheries right vest in the State. It was further contended that this Court
G while giving effect to the compromise arrived at between the members of the Sarkar family made it explicitely clear that the said compromise will not in any way affect the right of the State over the fisheries even if those fisheries agreed to be divided between the parties and in that view of the matter and and State of West Bengal having already requisitioned the Nalban Fishery and having taken possession of the same the Receiver could
H not have taken possession of the said Nalban Fishery pursuant to the order

of this Court appointing the Collector 24 Parganas as Receiver and under the circumstances the said Receiver rightly intimated this Court about the mistake committed by him and re-delivered possession of Nalban Fishery to the State of West Bengal. The Calcutta High Court, both the learned Single Judge as well as the Division Bench committed serious error of law in directing the Receiver to take possession of Nalban Fishery from the State of West Bengal and deliver the vacant possession of the same to the members of the Sarkar family. The learned counsel also urged that in any view of the matter, on the amendment of the West Bengal Land Reforms Act in the year 1986 giving it retrospective effect and defining land to include tank - fishery the Nalban fishery vests in the State of West Bengal and, therefore, the High Court could not have issued the impugned direction. Mr. Ray the learned senior counsel appearing for Bansilal Farms in addition to the contentions raised by Mr. Salve appearing for the State of West Bengal contended that the State being the owner of Nalban Fishery and having vested the management and control thereof with the State Fishery Development Corporation and the said Corporation having decided to use the tank fishery for a Boating Complex and the Bansilal Farms being the highest bidder and having been granted the right to have a Boating Complex therein and he having invested a huge sum of money, his rights cannot be taken away in the dispute between the State and the Sarkar family.

Mr. Jaideep Gupta, learned counsel appearing for the respondents on the other hand contended that the decree passed by the Supreme Court in the petition suit amongst the members of the Sarkar family on the basis of a compromise arrived at between the parties would bind the State of West Bengal as the decree has been passed in presence of the State who was impleaded as a party. He further contended that Nalban Fishery having been vested in the State of West Bengal under the provisions of West Bengal Acquisition Act, 1955, the State cannot get rid of the direction given by the Supreme Court to the Receiver to handover possession of the various fisheries covered by the final decree to the parties to whom they have been allotted under the decree and the Nalban Fishery being one such fishery, the possession thereof was required to be given to the person in whose favour the said fishery has been allotted and therefore the learned Single Judge as well as the Division Bench in appeal have rightly issued the directions. Mr. Gupta also contended that the Receiver assumed possession of the fisheries pursuant to the order of the Supreme Court

A dated 6th of November, 1978 and having submitted a report to that effect on 22.11.1978 indicating that it has taken possession of the Nalban Fishery. The subsequent incumbent to the post of District Magistrate 24 Parganas, who became the Receiver by virtue of his official position had no further jurisdiction to re-deliver possession of the Nalban Fishery to the State of West Bengal and the comments already made by the High Court on the B report of the subsequent Receiver sufficiently indicate how he had acted with the bias mind and consequently the Nalban Fishery having not vested in the State of West Bengal under the Acquisition Act, the decree passed by the Supreme Court on 18.4.1979 remains operative. Judged from this view there is no infirmity with the direction issued by the learned Single C Judge as well as Division Bench of the Calcutta High Court warranting interference by this Court. Mr. Gupta, also contended that the order of the High Court of Hon'ble Mr. Justice Deepak Kumar Sen dated 23.9.1980 directing the Receiver to allow M/s. Ghose and Saha Surveyors to make proper demarcation in the Nalban Fishery dividing the same in two lots and thereafter carry out the directions of the Supreme Court in respect D thereof has become final, the same not having been challenged by the State of West Bengal and, therefore, it would not be open for the said State in application for execution of the decree to raise the question of vesting of the Nalban Fishery with the State and this Court would not interfere with the direction given by the learned Single Judge and Division Bench of the E Calcutta High Court. On the question of vesting of the tank fishery under the amended provisions of the West Bengal Land Reforms Act, Mr. Gupta contended that the validity of the said Act has been challenged and is pending before the Calcutta High Court, an interim order has been passed in the said proceeding and therefore until that matter is decided it cannot F be said the tank fishery vested with the State of West Bengal. In this connection, he had further urged that this question had not been raised before the High Court.

In view of the rival submissions at the Bar the first question that arises for consideration is whether in the suit of partition amongst the G members of the Sarkar family which was ultimately disposed of by a compromise decree in this Court Nalban Fishery had been allotted to some members of the Sarkar family and whether such decree would affect the rights of the State and bind the State of West Bengal. The Nalban Fishery was one of the items of property in the suit for partition is not disputed. It H is also not disputed that the State of West Bengal though was not a party

to the suit but in course of proceeding before this Court by an order of the Court the said State of West Bengal was impleaded as a party. The aforesaid order directing impleadment of the State of West Bengal as a party was obviously intended for the purpose that the interest of the State and the rights of the State in relation to several fisheries could be protected. The suit ultimately no doubt was disposed of on the basis of a compromise arrived at between the parties but the court took sufficient care in disposing of the appeals on the terms of compromise by observing that the State has substantial interest with regard to fisheries rights covered by the litigation and nothing in the decree will affect the claim of the State in that regard. This Court further re-emphasised that the terms of the decree will not affect the rights of the State of West Bengal in any manner whatsoever to the fisheries in question if they are vested in the State under the provisions of West Bengal Estates Acquisition Act, 1953. It would be appropriate at this stage to extract this part of the decree passed by this Court :

> "In view of the foregoing, we again wish to re-emphasize that the terms of the decree shall not affect the rights of the State of West Bengal, in any manner whatsoever to the fisheries in question, if they have vested in the state under the provisions of the West Bengal Estates Acquisition Act, 1953 (Act X of 1954)."

Further while directing the Receiver to handover possession on the various fisheries covered by the final decree to the parties to whom they have been allotted under the decree, this Court also protected the interest of the State by observing :

> "we made it quite clear that this will not in any manner prejudice or affect the right of the State to its claim over the fisheries under the West Bengal Acquisition Act, 1955 (West Bengal Act 1 of 1954) or under any other statute".

It is an undisputed fact that Nalban Fishery had been requisitioned much prior to the aforesaid decree of this Court dated 18.4.1979 and, therefore, the rights of the State to the fishery either by virtue of the requisition order or by virtue of any provision of any other statute remained protected and as such said State of West bengal can't be bound down by the so-called allotment of fisheries in favour of some members of the Sarkar family under the compromise decree in question. The Nalban

A Fishery had been requisitioned by the State of West Bengal in exercise of power under Section 3(1) of the West Bengal Land Requisition and Acquisition Act is not disputed and cannot be disputed since the validity of the said order of requisition had been challenged by the Sarkar family in the Calcutta High Court and being unsuccessful there, they had also filed
B special leave petition in this Court in SLP (C) No. 1452/72 which was ultimately dismissed by this Court on 17.11.1972. The dismissal of the special leave petition as aforesaid affirmed that the Nalban Fishery had been legally requisitioned by the State of West Bengal and the State was in possession of the same since 8.11.1969.

C The next question that arises for consideration is whether the Receiver appointed by this Court was at all entitled to take possession of the Nalban Fishery pursuant to the Order of this Court or the Nalban Fishery could not have been taken possession by the Receiver and, therefore, the second Receiver rightly corrected the mistake committed by his
D predecessor. From the report submitted by the Receiver it transpired that the District Magistrate 24 Parganas who was appointed as Receiver took possession of several fisheries including Nalban Fishery obviously on the impression that the lease in respect of the said fishery which had been granted by the Sarkar family had lapsed. The said Receiver was not aware of the fact that Nalban Fishery had in fact requisitioned by the State of
E West Bengal and the State is in possession of the same since November, 1969. The possession thus taken by the Receiver of the vast extent tank fishery is obviously a symbolical possession but in view of the order of this Court dated 18.4.1979 as well as 22.4.1979 while passing a decree in terms of compromise arrived at between the parties and on the admitted position
F that State had already come into possession of the fishery by virtue of the order under the Requisition Act, the said fishery remained out of the purview of the allotment made by the Sarkar family in the compromise and, therefore, the Receiver could not have taken possession of the same. The successor Receiver, in the circumstances, therefore, was fully justified in bringing it to the notice of this Court by giving a second report indicating
G therein that his predecessor had erroneously taken the possession of Nalban Fishery which is in contravention of the directions of this Court dated 18.4.1979 and for which the Receiver offerred his unconditional apology. We do not find any force in the contention of Mr. Gupta appearing for the respondents that the succeeding Receiver had no jurisdiction to re-deliver
H the possession of Nalban Fishery to the State of West Bengal when his

predecessor has already taken possession of the same pursuant to the order of this Court. The receiver appointed by a court is an officer of the court. The said receiver will be fully justified in rectifying any mistake or error committed by him while implementing the direction of the court. We do not find any illegality in the act of the succeeding Receiver in rectifying the earlier mistake and re-delivering the possession of Nalban Fishery to the State of West Bengal. As has been stated earlier the possession which was taken by the earlier Receiver was a symbolical one and factually the State had not been divested of its possession which it took on 8.11.1969. In our considered opinion the succeeding Receiver rightly took into account the directions of this Court passed on 18.4.1979 and 24.4.1979 and rightly took the view that the rights and interest of the State in relation to Nalban Fishery is not affected in any manner by the so-called allotment of the fishery in the partition decree amongst the members of the Sarkar family.

The next question that arises for consideration is whether the order of Hon'ble Mr. Justice Deepak Kumar Sen dated 6.10.1980 would operate as *res judicata* since the State did not challenge the same. From the order in question which has been annexed as Annexure - P to the Special Leave Petition (C) No. 13314 of 1992, it appears that the order was passed on the application on one the members of Sarkar family Mr. Pulak Sarkar. The State of West Bengal was neither a party to the proceedings nor was noticed by the High Court before passing the order. The order was in fact a direction to the Collector 24 Parganas who had been appointed as a Receiver by the Supreme Court in the pending appeal before it. No reasons have been given by the learned Judge in issuing the said direction and on the other hand the order appears to be a bald order calling upon the Receiver to get the Nalban Fishery demarcated and, thereafter, carry out the directions of the Hon'ble Supreme Court in respect of the same. The aforesaid order cannot be held to operate as *res judicata* taking away the rights to the State of West Bengal in respect of the Nalban Fishery as the State was not a party to the proceedings. Besides the direction of the learned Judge to the effect;

> "The collector, 24 Parganas, is directed to allow Messers Ghose and Saha Surveyors to make proper demarcation in the Nalban dividing the same in two lots. After such demarcation is made the Commissioner of Partition is directed to approve the same and carry out the direction of the Hon'ble Supreme Court in respect

A thereof."

does not in any way take away rights of the State of West Bengal which is otherwise protected by the Supreme Court while passing the compromise decree. The direction of the learned Single Judge on the other hand is to carry out the directions of the Supreme Court in respect of the Nalban B Fishery. In view of our earlier conclusion that the rights and interest of the State of West Bengal was not in any way be affected by the so-called partition and allotment of the Nalban Fishery *inter se* amongst the members of the Sarkar family, the said order dated 6.10.1980 passed by the learned Single Judge of the Calcutta High Court will not stand on the way of the C State in claiming and putting forth its interest and right over the Nalban Fishery. The contention of Mr. Gupta appearing for the respondent, therefore, cannot be sustained.

The next question that arises for consideration is what is the effect D of the amendment to the West Bengal Land Reforms Act which was amended in the year 1986 but with retrospective effect. By virtue of the extended definition of 'land' in Section 2(7) and the amended provisions of Section 3(A) of the Land Reforms Act, tank fishery, like Nalban Fishery come within the definition of land and it vests in the State by operation of Section 3(1) read with Section 14. It is no doubt true that a writ petition E has been filed challenging the validity of the aforesaid Act and Notification issued thereunder in relation to very Nalban Fishery, which is still pending and, therefore, it would not be proper for us to examine the provisions of the amended West Bengal Land Reforms Act and to express any opinion thereon. Suffice it to say that under the amended provisions of the West F Bengal Land Reforms Act tank fishery being included in the land would vest in the State by combined reading of Sections 3A and 14 and, therefore, the State cannot be divested of the rights accruing by the amended provisions until the amended provisions are declared invalid by a competent court of law. Since we have been informed that the writ petition challenging the amended Act is still pending in the Calcutta High Court G we may observe that our conclusion hereunder in relation to applicability of the amended provisions of the West Bengal Land Reforms Act, so far as Nalban Fishery is concerned, would be subject to the constitutionality itself to be decided by the High Court in the pending writ petition.

H In view of our aforesaid conclusion, the impugned directions of the

learned Single Judge as well as of the Division Bench are set aside and these appeals are allowed. The injunction order issued against Bansilal Farms, appellant in appeal arising out of SLP (C) No. 13314 of 1992, stands vacated. We would further observe that the State should determine the amount of compensation which the Sarkar family is entitled to under the relevant provisions of the Act under which Nalban Fishery vests with the State of West Bengal and the compensation amount be paid on being determined in accordance with the law to the family members of Sarkar family in whose favour Nalban Fishery had been allotted under the compromise decree by this Court. There will be no order as to costs.

S.V.K.I. Appeal allowed.