

Supreme Court of India

State Of West Bengal & Ors vs Karan Singh Binayak & Ors on 20 March, 2002

Author: Y Sabharwal

Bench: U.C. Banerjee, Y.K. Sabharwal

CASE NO. :

Appeal (civil) 2270 of 2002

PETITIONER:

STATE OF WEST BENGAL & ORS.

Vs.

RESPONDENT:

KARAN SINGH BINAYAK & ORS.

DATE OF JUDGMENT: 20/03/2002

BENCH:

U.C. Banerjee & Y.K. Sabharwal

JUDGMENT:

Y.K. SABHARWAL, J.

Leave granted.

By order dated 15th May, 1995 passed by the appellants, it was held that the rights and interests in respect of the leased out lands in question vested in the State absolutely under the provisions of The West Bengal Estates Acquisition Act, 1953 (for short, 'the Act') and the record of rights be corrected accordingly. The High Court, on the writ petition of the respondents, has set aside that order and held it to be ineffective so also the action of the appellants of taking possession of land allegedly on 5th September, 1996. The appellants have been prohibited by the impugned judgment from interfering with lawful work of construction carried on by the respondents in accordance with the sanctioned plans and the writ petition was allowed accordingly. The State is in appeal.

Section 4 of the Act, inter alia, provides that the State Government may from time to time by notification declare that with effect from the date mentioned in the notification, all estates and the rights of every intermediary in each such estate situated in any district or part of a district specified in the notification, shall vest in the State free from all encumbrances. Section 5, inter alia, provides that upon the due publication of a notification under Section 4, on and from the date of vesting, the estates and the rights of intermediaries in the estates, to which the declaration applies, shall vest in the State free from all encumbrances. The Act was enforced by a notification on 11th November, 1954. According to the appellants, as a result thereof all rights of every intermediary vested in the

State free from all encumbrances except those lands which were under acquisition proceedings before vesting by virtue of sub-sections (1) and (2) of Section 4 of the Act. 'Intermediary' is defined in Section 2(i) to mean a proprietor, tenure-holder, under-tenure-holder or any other intermediary above a raiyat or a non-agricultural tenant and includes a service tenure-holder and, in relation to mines and minerals, includes a lessee and a sub-lessee.

Section 6 of the Act provides for the right of intermediary to retain certain lands. The said section, inter alia, stipulates that notwithstanding anything contained in Sections 4 and 5, an intermediary shall, except in the cases mentioned in the proviso to sub-section (2) but subject to the other provisions of that sub-section, be entitled to retain with effect from the date of vesting - (b) land comprised in or appertaining to buildings and structures owned by the intermediary or by any person, not being a tenant, holding under him by leave or licence. The High Court by the impugned judgment came to the conclusion that Section 6(1)(b) was applicable to the case of the respondents-writ petitioners and they, under the said section, were entitled to retain the land in question. According to the appellants, the intermediary was not entitled to retain land comprised in or appertaining to buildings and structures under Section 6(1)(b) which was tenanted. Thus, the case of the appellants is that the land in question being tenanted, the respondents were not entitled to retain it under Section 6(1)(b). Further case of the appellants is that the present case is governed by Section 6(1)(g) of the Act as the land in question is comprised in a mill. With reference to Section 6(1)(g) and Section 6(3), it has been submitted on behalf of the appellants that in respect of land comprised in mills under a lease, the lessee alone is entitled to retain only so much of such land as in the opinion of the State Government is required for the mill. The stand of the appellants is that under proviso to Section 6(2), the lease of the mill or factory given prior to the date of vesting would be deemed to have been given by the State Government on the same terms and conditions before such date of vesting or subject to such modification by the State Government. The appellants have thus challenged the judgment of the High Court that as the intermediary the erstwhile owners were entitled to retain land under Section 6(1)(b) and it does not vest in the State Government under Section 4(1) of the Act. The land being tenanted and not in possession of the respondents or the erstwhile owners, according to the appellants, Section 6(1)(b) is not attracted and, therefore, the respondents are not entitled to retain the land. Further, the contention of the appellants is that the lease to Union Paper and Board Mills shall be deemed to have been given by the State Government and the lessee will be deemed to be an intermediary for the purpose of compensation under Section 6(3) of the Act.

Section 6 to the extent material for determining the present controversy reads as under :

"6. Right of intermediary to retain certain lands.- (1) Notwithstanding anything contained in sections 4 and 5, an intermediary shall, except in the cases mentioned in the proviso to sub-section (2) but subject to the other provisions of that sub-section, be entitled to retain with effect from the date of vesting-

(a) land comprised in homesteads;

(b) land comprised in or appertaining to buildings and structures owned by the intermediary or by any person, not being a tenant, holding under him by leave or license;

Explanation.-For the purposes of this clause `tenant' shall not include a thika tenant as defined in the Calcutta Thika Tenancy Act, 1949;

(c) non-agricultural land in his khas possession including land held under him by any person, not being a tenant, by leave or license, not exceeding fifteen acres in area, and excluding any land retained under clause (a) :

Provided that the total area of land retained by an intermediary under clauses (a) and (c) shall not exceed twenty acres, as may be chosen by him :

Provided further that if the land retained by an intermediary under clause (c) or any part thereof is not utilised for a period of five consecutive years from the date of vesting, for a gainful or productive purpose, the land or the part thereof may be resumed by the State Government subject to payment of compensation determined in accordance with the principles laid down in sections 23 and 24 of the Land Acquisition Act, 1894;

(d) agricultural land in his khas possession, not exceeding twenty five acres in area, as may be chosen by him :

Provided that in such portions of the district of Darjeeling as may be declared by notification by the State Government to be hilly portions, an intermediary shall be entitled to retain all agricultural land in his khas possession, or any part thereof as may be chosen by him;

(e) tank-fisheries;

Explanation.-'tank fishery' means a reservoir or place for the storage of water, whether formed naturally or by excavation or by construction of embankments, which is being used for pisciculture or for fishing, together with the sub-soil and the banks of such reservoir or place, except such portion of the banks as are included in a homestead or in a garden or orchard and includes any right of pisciculture or fishing in such reservoir or place;

(f) subject to the provisions of sub-section (3), land comprised in tea gardens or orchards or land used for the purpose of livestock breeding, poultry farming or dairy;

(g) subject to the provisions of sub-section (3), land comprised in mills, factories, or workshops;

(h) where the intermediary is a local authority,-land held by such authority, notwithstanding such land or any part thereof may have been let out by such authority :

Provided that where any land which has been let out by any local authority is retained by such authority under this clause, no person holding such land shall have any right of occupancy therein,

and every such person shall be bound to deliver possession of the land to the local authority when required by it for its purposes;

(i) where the intermediary is a corporation or an institution established exclusively for a religious or a charitable purpose or both, or is a person holding under a trust or an endowment or other legal obligation exclusively for a purpose which is charitable or religious or both-land held in khas by such corporation or institution, or person, for such purpose including land held by any person not being a tenant, by leave or licence of such corporation or institution or person;

(j) where the intermediary is a co-operative society registered or deemed to have been registered under the Bengal Co-operative Societies Act, 1940, or a company incorporated under the Indian Companies Act, 1913, engaged exclusively in farming (and in business, if any, connected directly with such farming),--agricultural land in the khas possession of the society or the company on the 1st day of January, 1952, and chosen by the society or the company, not exceeding in area the number of acres which persons, who were the members of the society or the company on such date, would have been entitled to retain in the aggregate under clause (d), if every such person were an intermediary:

Provided that where any such person retains any land under clause (d), such person shall not be taken into account calculating the aggregate area of the land which the society or the company may retain.

(k) so much of requisitioned land as the intermediary would be entitled to retain after taking into consideration any other land which he may have retained under the other clauses;

Explanation.-- 'requisitioned land' means any land which was in the khas possession of the intermediary and which was requisitioned by Government under the provisions of any law for the time being in force or was occupied by Government in pursuance of rule 49 of the Defence of India Rules and continued to be subject to requisition or occupation on the date mentioned in the notification issued under Section 4.

(l) so much of land in the unauthorized occupation of refugees from East Bengal immediately before the date of vesting as an intermediary would be entitled to retain after taking into consideration any other land which he may have retained under the other clauses;

Explanation.- 'Refugees from East Bengal' includes those who are displaced persons within the meaning of the Rehabilitation of Displaced Persons and Eviction of Persons in Unauthorised Occupation of Land Act, 1951.

Exception.-Subject to the provisions contained in sub-section (3), nothing in this sub-section shall entitle an intermediary or any other person to retain any land comprised in a forest or any land comprised in any embankment as defined in the Bengal Embankment Act, 1882, the proper maintenance of which should, in the opinion of the State Government, be taken over by the State Government in the public interest.

(2) An intermediary who is entitled to retain possession of any land under sub-section (1) shall be deemed to hold such land directly under the State from the date of vesting as a tenant, subject to such terms and conditions as may be prescribed and subject to payment of such rent as may be determined under the provisions of this Act and as entered in the record-of-rights finally published under Chapter V except that no rent shall be payable for land referred to in clause (h) or (i) :

Provided that if any tank fishery or any land comprised in a tea-garden, orchard, mill, factory or workshop was held immediately before the date of vesting under a lease, such lease shall be deemed to have been given by the State Government on the same terms and conditions as immediately before such date subject to such modification therein as the State Government may think fit to make.

(3) In the case of land comprised in a tea-garden, mill, factory or workshop the intermediary, or where the land is held under a lease, the lessee, shall be entitled to retain only so much of such land as, in the opinion of the State Government, is required for the tea-garden, mill, factory or workshop, as the case may be, and a person holding under a lease shall, for the purpose of assessment of compensation, be deemed to be an intermediary :

Provided that the State Government may, if it thinks fit so to do after reviewing the circumstances of a case and after giving the intermediary or the lessee, as the case may be, an opportunity of being heard, revise any order made by it under this sub-section specifying the land which the intermediary or the lessee shall be entitled to retain the land which the intermediary or the lessee shall be entitled to retain as being required by him for the tea-garden, mill, factory or workshop, as the case may be.

Explanation.-The expression 'land held under a lease' includes any land held directly under the State under a lease.

Exception.-In the case of land allowed to be retained by an intermediary or lessee in respect of a tea-garden, such land may include any land comprised in a forest if, in the opinion of the State Government, the land comprised in a forest is required for the tea-garden."

Facts in brief leading to the controversy are :

On 14th June, 1951 Das family (erstwhile owner) granted in favour of Union Paper and Board Mills Limited a lease for a period of 25 years in respect of land with building and structure mentioned in the lease document. The lease was executed and registered on 11th April, 1955 but the date of the commencement of the lease is 14th June, 1951. As per the lease, the lessors demised unto the lessees, the land mentioned in the lease together with all buildings, sheds, structures outhouses, boundary walls etc. and all other structures of erections whatsoever standing thereon or part thereof and belonging to lessors from 14th June, 1951 for full period of 25 years. As already noticed, the Act was enforced by notification on 11th November, 1954. The provisions relating to vesting and retention of land have already been noticed. The provision in relation to record of rights is contained in Section 44 of the Act. That section, inter alia, provides that when a record-of-rights has been prepared or revised, the Revenue Officer shall publish a draft of the record so prepared or revised in

the prescribed manner and for the prescribed period and shall receive and consider any objections which may be made to any entry therein or to any omission therefrom during the period of such publication. Sub-section (2) of Section 44 provides that when all such objections have been considered and disposed of according to such rules as the State Government may make in this behalf, the Revenue Officer shall finally frame the record and cause such record to be finally published in the prescribed manner and make a certificate stating the fact of such final publication and the date thereof and shall date and subscribe the same under his name and official designation.

The record-of-rights with respect to the land in dispute was prepared under Section 44 of the Act on 26th May, 1957 whereby the land in question was held to be retainable by Das family under Section 6(1)(b) of the Act.

On 4th May, 1981, the lessee, Union Paper and Board Mills Ltd. Went into liquidation. The erstwhile owners filed an application before the High Court for an order directing the official liquidator to disclaim the said property. The order was passed accordingly by the High Court on 17th December, 1982 and the possession of land was handed over to the erstwhile owners. They sold the parcels of land to the writ petitioners.

Apart from what is noticed above, it further appears that proceedings were also taken under the Urban Land (Ceiling & Regulations) Act, 1976 (for short, 'the ULC Act') for declaration of excess vacant land on 26th August, 1991. A final statement under the said Act was issued by the competent authority declaring 6145.90 square meters of land to be excess vacant land. It appears that construction on the land commenced after the sanction of the plans by the municipality. That was also the commencement of the troubles for the respondents and the litigation between the parties.

The District Magistrate on 14th October, 1993, in exercise of the powers conferred under sub-section (2) of Section 548 of the Bengal Municipal Act, 1932 suspended the order/resolution of the municipality sanctioning the plan and directed the Chairman of the municipality to take appropriate measures not to give effect to the sanctioned plan. The Chairman, in turn, asked the respondents to suspend all the constructions till further orders. The order of the District Magistrate and that of the Chairman was challenged by the respondents by filing a writ petition in the High Court at Calcutta. The State Government in the writ petition also questioned the genuineness and authenticity of the preparation and publication of the statement under the ULC Act. The competent authority that had issued the said statement was summoned by the High Court. He deposed that the documents were signed by him and were genuine. On 28th February, the writ petition was allowed and the order of the District Magistrate was quashed by a learned Single Judge. The appeal of the Government was dismissed by the Division Bench on 24th February, 1995.

Within a period of less than three weeks, the appellants claim to have commenced proceedings under Section 57A of the Act read with Section 151 of the Code of Civil Procedure. Section 57A confers power of a civil court on the State Government in the manner provided therein. The said section reads as under :

"57A. Power of State Government to invest certain authorities with powers of a Civil Court.-The State Government may by order invest any authority referred to in section 53 with all or any of the powers of a Civil Court under the Code of Civil Procedure, 1908."

On 15th March, 1995, the specially empowered officer under Section 57A of the Act invoked power under the aforesaid provision and commenced proceedings under Section 151 of the Code of Civil Procedure for rectification of the record finally published under the Act, inter alia, stating that the survey record prepared and finally published under the Act are quite anomalous and defective and they do not reflect the actual picture. Notice was directed to be issued in terms of the order dated 15th March, 1995. The order sheet dated 15th March, 1995 reads as under :

"Whereas it appears from the writ petition filed in the Hon'ble High Court, Calcutta, in case No. C.R./C.O.....(W) of 1993 - Shri Bijay Raj Jain & others Vs. State of West Bengal & others that the lands of the original owners were situated at premises no.59, Kalicharan Ghosh Road, Cal-50 were comprised in the enclosed schedule 'A'; Whereas it appears that the ex-owners executed a lease deed dated 11.4.55 in favour of Union Paper Board Mills Ltd. w.e.f. 14.6.51 for 25 years at a monthly lease rent of Rs.500/- upto 1.4.54 and again at Rs.1000/- w.e.f. 2.4.55.

Whereas it appears that the R.S. records bearing Kh.Nos. (Mentioned in schedule A) Prepared and finally published under the W.B.E.A. Act, 1953 are quite anomalous and defective and they do not reflect the actual picture;

Whereas it appears that proceedings u/s 44(2a) of the W.B.E.A. Act, 1953 was previously drawn-up to open khanda khatain.

Now, therefore, I Md. Ali Mondal, Dy.D.L. & L.R.O. & A.S.O. specially empowered u/s 57A of the W.B.E.A. Act, 1953 invoke power u/s 57A of the W.B.E.A. Act, 1953 and draw this instant proceeding u/s 151 C.P.C. for rectification of records finally published under the W.B.E.A. Act, 1953.

Issue notice u/s 57A of the W.B.E.A. Act, 1953 read with Section 57 A of the W.B.E.A. Act, 1953 and 151 C.P.C. upon all the materially interested parties i.e. R.S. recorded original owners/possessors i.e. Union Paper Board Mills Ltd. & others and BL & LRO, Barrackpur-II on behalf of the State of West Bengal fixing date of hearing on 12/4/95 at 11 a.m. at the chamber of the undersigned at 3rd floor in the office of the A.D.M. & D.L. & L.R.O. North 24 Parganas, Barasat and requesting them to appear either personally or through authorized representative and to adduce documentary evidence if any failing which action will be taken as per law."

As can be seen from the above neither any fraud nor any misrepresentation is alleged in the preparation of record of rights in the year 1957 but what is stated is that the said records are 'anomalous', 'defective', and 'do not reflect the actual picture'.

It is evident that the proceedings of the record-of-rights of 26th May, 1957 was now sought to be reopened after nearly 38 years after the respondents had succeeded in the writ petition and in the appeal, resulting in quashing of the order of the District Magistrate dated 14th October, 1993 and

also negating the challenge to the genuineness of the proceedings taken under the ULC Act. Further, it appears from a reading of the aforesaid order sheet that the notice was directed to be issued to the Union Paper Board Mills Ltd., despite the fact that the order sheet itself records the factum of the writ petition filed by Bijay Raj Jain and others which makes it evident that the officer was in the knowledge of the fact that the writ petitioners were in possession and the company to which the notice was directed to be issued had already gone into liquidation.

On 15th May, 1995 order was passed holding that the status of the original owners being that of intermediary and lease having been in existence prior to 15th April, 1955, the date of vesting, the rights and interests in the leased out lands vested in the state absolutely without any scope to get it back on the strength of any contract or document or order of any authority based on misleading facts and directing that all connected records be corrected mutates mutandis under Section 47 of the Act. The order also states that there is no specific direction of the High Court against such an action being initiated. Reference, of course, is to the writ petition in which the respondents had succeeded. It further states that the record-of-rights was based on defective and wrong and irregular record and the ground stated therein cannot be a bar for revision of records on the basis of new and genuine facts. The order also records that the mill authority or any other person did not turn up in the said proceedings. According to the respondents, they had no notice of these proceedings and learnt of this order only on 26th December, 1996 and immediately thereafter they filed the writ petition in the High Court on 3rd January, 1997 which was allowed by the impugned judgment. The State is said to have taken physical possession on 5th September, 1996 pursuant to the order dated 15th May, 1995. The respondents claimed that they learnt of this order from application dated 24th December, 1996 served on them on 26th December, 1996. It may be noticed that an application dated 24th December, 1996 was filed by the land authorities under Section 144 of the Criminal Procedure Code before the Executive Magistrate, Barrackpore praying therein that the respondents may be restrained from undertaking unauthorized construction of buildings over the disputed premises on the allegation that the land had vested in the State by virtue of order dated 15th May, 1995. On 26th December, the order was passed drawing up proceedings under Section 144 of the Criminal Procedure Code and directing stoppage of work of construction at the premises. By judgment under appeal, the High Court has set aside the order dated 15th May, 1995.

On the aforesaid facts, the question to be considered is about the legality of the action of the appellants in reopening the preparation of record of rights after lapse of 38 years and particularly the manner in which it was sought to be reopened.

The period of 25 years under the lease expired in the year 1976. The notification under the Act was issued on 11th November, 1954. In 1957 record of rights was prepared under Section 44 of the Act according to which the land was held retainable under Section 6(1)(b) of the Act. The possession was handed over to the original owners in 1981 on liquidation of the lessee on an order being passed by the High Court directing official liquidator to disclaim the property which was later transferred to the writ petitioners in terms of the agreements of sale entered in the year 1988 and sale deeds in 1992-93. Meanwhile, in the year 1991 on proceedings being taken under the ULC Act, 6145.90 square meter of the land was held to be excess under the said Act. In June 1993, the plans were sanctioned and construction commenced. It can, thus, be seen that after the preparation of

record-of-rights, not only the appellants did not take any steps and slept over the matter but various steps as above were taken by the respondents in respect of the land in question. The argument that the proceedings under the ULC Act or the preparation of record-of-rights were ultra vires and the acts without jurisdiction and, therefore, those proceedings would not operate as a bar in appellants invoking inherent jurisdiction under Section 151 CPC by virtue of conferment of such power under Section 57A of the Act is wholly misconceived and misplaced. The inherent powers cannot be used to reopen the settled matters. These powers cannot be resorted to when there are specific provisions of the Act to deal with the situation. It would be an abuse to allow the reopening of the settled matter after nearly four decades in the purported exercise of inherent powers. It has not even been suggested that there was any collusion or fraud on behalf of the writ petitioners or the erstwhile owners. There is no explanation much less satisfactory explanation for total inaction on the part of the appellants for all these years.

Apart from the facts stated above, even when the appellants woke from its slumber, the manner in which they acted has already been noticed and it is apparent therefrom that at that stage they did not proceed to take action for the correction of the record-of-rights. They did not at that stage invoke Section 57A of the Act. What they did was to issue an order suspending the sanction of the building plans and directed the Chairman of the Municipality to ask the respondents to suspend the construction according to the plan sanctioned by the Municipality. In proceedings of the writ petition wherein the said order was challenged, it does not appear that appellants took the stand of the land vesting in it and the further stand that the record-of-right was prepared without jurisdiction or that the proceedings under the ULC Act were void and without jurisdiction. The stand taken by them was that proceedings under the ULC Act were not genuine. The competent authority was called in those proceedings and stood by the documents signed by him. The statement issued under the ULC Act were held to be genuine. The order directing suspension of the plans and stoppage of construction were quashed by a learned Single Judge of the High Court. The order of the learned single Judge was upheld in appeal by the Division Bench of the High Court. After the decision of the Division Bench, the appellants started proceedings in question under Section 57A purporting to Act on the basis that 1957 record-of-rights was based on defective, wrongful and irregular record and it was not a bar for revision of records on the basis of new and genuine facts. The notice issued even within less than three weeks of the decision of the Division Bench itself shows that the appellants were aware of the proceedings of the writ petition but did not think it proper to move the High Court and seek a clarification that they could reopen the matter explaining to the High Court the circumstances under which in response to the writ petition they had not taken the stand before the High Court on the basis whereof they were seeking to exercise power under Section 57A after lapse of nearly 38 years. It is evident that they knew about the factum of liquidation of the lessee. Despite that, notice of proceedings under Section 57A was directed to be issued to the Mill and not to the writ petitioners on whose petition the order of the District Magistrate was set aside by the High Court. Two months later, i.e., on 15th May, 1995, the order was passed noticing that nobody had appeared to oppose those proceedings. The appellants purported to take paper possession on 5th September, 1996. There is nothing on the record to suggest that any attempt was made to serve the notice dated 15th March, 1995 or the order dated 15th May, 1995 on the respondents who, it seems, came to know of these proceedings only towards the end of 1996 when proceedings were initiated for breach of Section 144 of the Code of Criminal Procedure. It is

difficult to comprehend, the applicability of Section 144 Cr.P.C. to the fact situation. To say the least, the appellants have been wholly negligent and having slept over the matter for nearly 40 years, they could not reopen the matter in the manner sought to be done.

Further, it deserves to be noticed that if land had vested in the State under Sections 4 and 5 of the Act on issue of notification in the year 1954 as sought to be contended, the ULC Act, will have no applicability as Section 19 of the ULC Act, inter alia, provides that Chapter II of the Act, subject to provisions of sub-section (2) of Section 19 shall not apply to any vacant land held by any State Government. In the earlier writ petition filed by the respondents, the stand taken by the appellants was not that the proceedings under the ULC Act were ultra vires and without jurisdiction on the ground that the land vested in the State under Sections 4 and 5 of the Act and in view of Section 19, the ULC Act was not applicable. Their stand was that the proceedings under the ULC Act were not genuine and were fraudulent and had been fabricated. That stand was rejected. Despite the decision of the High Court, the appellants seek to abrogate to themselves the decision making power that the earlier proceedings were without jurisdiction. It is interesting and rather surprising to note that in the notice dated 15th March, 1995 and the order dated 15th May, 1995, namely, the proceedings that followed immediately after the decision of the High Court and that too without any notice to the concerned parties it is not even stated that the earlier proceedings were without jurisdiction. In this state of affairs, it is evident that actions of the appellants are far from bona fide. It was an attempt to even overreach the Court. The High Court, therefore, was right in allowing the writ petition.

In view of our conclusions as aforesaid, it is not necessary to examine the question of interpretation of Section 6 of the Act and also the question whether the High Court committed any illegality in holding that the land is retainable under Section 6(1)(b). However, learned counsel for the appellants having strenuously supported the orders and the action of the appellants on the interpretation of Section 6, we may briefly deal with the aspect relating to interpretation of the said provision and the applicability or otherwise of Section 6(1)(b).

Learned counsel for the appellants contends that the High Court committed illegality in not applying to the facts of the case Section 6(1)(g) of the Act and in holding that Section 6(1)(b) was applicable despite the fact that the premises were tenanted. It was seriously contended that Section 6(1)(b) has no applicability to the tenanted premises and since admittedly the premises were under the tenancy of the mill when the Act came into force, Section 6(1)(b) will have no applicability. In support of the contention that the actual possession as against the possession of the tenant is necessary for the applicability of Section 6(1)(b), strong reliance has been placed on a three judge Bench decision in *State of West Bengal & Ors. v. Suburban Agriculture Dairy & Fisheries Pvt. Ltd. & Anr.* [1993 Supp.(4) SCC 674]. The contention is that the lease of the mill is deemed to have been given by the State and on the expiry of the lease the property will vest in the State. The further contention of Mr. Sanyal, learned counsel for the appellants is that only possession of licensee can be treated as the possession of the owner/intermediary but possession of a tenant cannot be so treated. The present case being of tenancy, it cannot be said that the erstwhile owners were in actual possession and, therefore, Section 6(1)(b) will have no applicability, is the contention. Reliance is also being placed on Section 6(3) to contend that as provided therein only lessee can retain possession and not the intermediary.

The question involved herein is about the interpretation of Section 6 of the Act in general and 6(1)(b) in particular. To retain the land comprised in or appertaining to buildings and structures owned by the intermediary, is it the requirement of the provision that the intermediary should be in khas/actual possession of such land and if he is not in such possession, actual possession being of a tenant, would he not be entitled to retain the possession. If actual possession as opposed to possession of a tenant is the requirement of this provision, what would be the position or effect on a composite lease in respect of building and structure with land appertaining thereto. What is the effect of not mentioning of khas possession in Section 6(1)(b) when it is so mentioned in some of other clauses of Section 6(1). It cannot be said that Section 6(1)(b) would not apply to a composite lease of lands and that of buildings and structures. A bare plain reading does not suggest it. Section 6(1)(b) permits intermediary to retain the land when it is appertaining to building and structure owned by the intermediary. The section does not contemplate that when building and structure is leased out, the owner will not be entitled to retain land appurtenant to such building and structure which was leased with land. It is pertinent to bear in mind that in sub-clause (b) of sub-section (1) of Section 6 khas possession has not been mentioned whereas it is so in certain other clauses of Section 6(1). Where it was intended that actual possession should be with the intermediary, it was said so specifically. Section 6(1)(b) only means that where building and structure is not owned by intermediary or any person holding under him by leave or licence, he would not be entitled to retain land comprised in or appertaining to such building or structure. In other words, it means that when building and structure is owned by the intermediary even though tenanted, he would be entitled to land comprised in or appertaining thereto.

In State of West Bengal & ors. v. Scene Screen (Pvt.) Ltd. & Anr. [(2000) 7 SCC 686], Section 6(1)(b) came for interpretation and it was held that this provision does not lay down that intermediary should be in khas possession of the land comprised in or appertaining to building and structure.

It was held :

"Section 6(1)(b) does not lay down that intermediary should be in khas possession of the land comprised in or appertaining to buildings or structures, whether erected by him or not. On a close look at Section 6 it is manifest that wherever the legislature intended to lay down the requirement of 'khas possession' as a condition precedent for the claim of right of retention it expressly stated so. In this connection the provisions of Sections 6(1)(c) and (d) may be seen. Section 6(1)(b) clearly and unambiguously lays down that the intermediary shall be entitled to retain the land comprised in or appertaining to buildings or structures whether erected by the intermediary or not. It is a well-accepted principle of interpretation of statutory provisions that if the plain language of the section is clear or unambiguous it is not open to a court to interpret it giving a meaning different from the plain grammatical meaning of the provision. The learned Single Judge, in view of the plain and unambiguous language of the provisions of the Act, was in error in introducing the condition of khas possession in Section 6(1)(b) even though the section made no such provision. Equally incorrect was the reason by the learned Single Judge that if the requirement of khas possession by the intermediary is not read into that section, it will result in discrimination between different categories of lands which the intermediary may be entitled to retain. Each clause of Section 6(1) refers to a separate category of land. The reason for the wisdom of the legislature in insisting on

khas possession in respect of certain categories of land while not insisting upon the same in others, cannot be questioned. We are, therefore, of the view that the Division Bench of the High Court rightly set aside the judgment of the learned Single Judge."

Suburban Agriculture Dairy's case (supra) on which strong reliance has been placed by learned counsel for the appellants is a case not interpreting Section 6(1)(b) but interpreting Section 6(1)(e) and Section 6(2) of the Act. In the face of the aforesaid decision interpreting the very provision with which we are concerned, reliance by the appellants on a decision in relation to Section 6(1)(e) and Section 6(2) is wholly misplaced. In Suburban Agriculture Dairy's case what was held was that if any lease by the intermediary of any tank fisheries was granted prior to the date of vesting, by operation of the proviso to sub-section (2) of Section, the lease shall be deemed to have been given by the State Government on the same terms and conditions and subject to such modification therein as the State Government may think fit. In the present case, this Court is not considering the case of a lease of tank fisheries but is considering a case of composite lease of building and structure with land.

Reliance on the aforesaid case was also placed to support the contention of the appellants that record of rights once made are not final and can be revised. Para 12 of the judgment on which reliance was placed itself shows that what the court was considering was the interpretation of the word 'revised' in sub-section (1) of Section 44 and interpreting the said word it held that the State Government or its officer shall be entitled to revise from time to time the record of rights. Insofar as the present matter is concerned it is nobody's case that the entries in relation to record of rights after a lapse of 38 years were being revised in exercise of power under Section 44(1). That was neither the notice dated 15th March, 1995 reproduced above nor was it the order dated 15th May, 1995. In fact the order records that proceedings were drawn up under Section 57A read with Section 151, CPC for revision of record avoiding Section 44(2a) of the Act already applied previously. Under the circumstances, the reliance by learned counsel on para 12 of the decision in Suburban Agriculture Dairy's case is wholly misplaced.

In *Saroj Kumar Bose v. Kanallal Mondal & Ors.* [(1985) 3 SCC 717] it was held that wherever khas possession was requirement it has been so stated in the provision. This Court held :

"It was, however, contended for the appellant that unless the plaintiffs were in actual possession of the tank fishery the same will vest in the State and Section 6 saves only such persons who were in actual possession of the property. This contention cannot be accepted for the obvious reasons that Section 6 itself has clearly specified in some of its clauses khas possession and not in other clauses, for example, clause (d) of sub-section (1) of Section 6 reads: 'agricultural land in his khas possession', but no such khas possession is contemplated by clause (e) of sub-section (1) of Section 6. It only says 'tank fisheries'. It is, therefore, quite clear that khas possession is not a necessary condition for retaining the property by an intermediary. The *kabuliyats* Exs. 3 and 3-A and rent receipts Exs.2 and 2-A and the return submitted by one of the landlords, Ex.4, describe the plaintiffs as tenants. They have been so described in the plaintiffs' Ledger of Land Reforms Department, Ex.5, and their status has also been recognized as tenants by the Government by accepting rent from them (Exs.2 and 2-A). Thus the interest of the plaintiffs did not vest in the State either as tenants or as intermediaries."

The case of Saroj Kumar Bose has not been dissented from in three judge Bench decision of Suburban Agriculture Dairy's case. In fact, it has been referred and cited with approval.

There is neither any finding nor any material to suggest that a mill stood on the land on the date of vesting. Section 6(1)(g), proviso to Section 6(2) and Section 6(3) have no applicability. It is a case of composite lease as aforesaid. Section 6(1)(b) has thus been rightly applied by the High Court.

The land did not vest in the State Government and, therefore, Section 19 of the ULC Act has no application.

Under these circumstances, the contention urged for the first time in this appeal during the course of hearing that the proceedings under the ULC Act were without jurisdiction and the appellants could ignore the orders passed under that Act, the same being without jurisdiction is an argument of desperation. That is not even the ground on the basis whereof the proceedings were initiated under Section 57A. As already observed, the appellants did not take such a stand in the earlier writ petition filed by the respondents.

From the aforesaid discussion it is evident that even on merits there is no substance in the contentions urged on behalf of the appellants.

For the foregoing reasons we dismiss the appeal with costs.

.....,J.

[U.C. Banerjee]J.

[Y.K. Sabharwal] March 20, 2002.