

A KESHAB NARAYAN BANERJEE AND ORS.

v

THE STATE OF BIHAR

DECEMBER 16, 1999

B

[G.T. NANA VATI AND S.N. PHUKAN, JJ.]

Bihar Land Reforms Act, 1950—Compensation Officer—Compensation Officer appointed under the Act is not a Court under Section 195(1) (b) Cr. P.C.—Criminal Procedure Code, 1973—195(1)(b).

Words and phrases—“Court”—Meaning of in the context of Bihar Land Reforms Act, 1950.

The appellants were tried before the Special Judge (Vigilance) Patna.

D It was alleged that in pursuance to a conspiracy, payment of Rs. 2 crores by way of compensation was fraudulently obtained by them and consequently they had committed offences punishable under Sections 120B, 420, 467, 468, 471 and 473 IPC and under Sections 5 (2) read with Sections 5 (1) (c) and (d) of the Prevention of Corruption Act, 1988. The appellants raised a preliminary objection that as the aforesaid offences are alleged to have been committed in respect of a document produced in the compensation proceedings before the Compensation Officer, and as the said Officer under the Bihar Land Reforms Act, 1950 is a “Court” within the meaning of Section 195 (1) (b) Cr. P.C. the complaint would have to be filed by that Compensation Officer, and as that had not been done, the Special Judge (Vigilance) had no jurisdiction to take cognizance of the said offences. The Special Judge having overruled this objection, the appellants moved the High Court under Section 482 Cr. P.C. for quashing the proceedings.

The Division Bench of the High Court, doubted the correctness of a decision of an earlier Division Bench in *Chandra Kishore Jha v. Sate of Bihar*, (1975) BBCJ 656 which held that the Compensation Officer appointed under the Bihar Land Reforms Act 1950 was a “Court” as defined by Section 195 (1) (b) of the Code. It accordingly referred the matter to a Full Bench of the High Court which held that the Compensation Officer appointed under the Bihar Land Reforms Act, 1950 was not a “Court” within the meaning of Section 195 (1) (b) Cr. P.C. Hence this appeal.

H

Dismissing the appeal, the Court

HELD : 1.1. Section 195 (1) (b) (ii) Cr. P.C. debars the court from taking cognizance of any offence described in Section 463 or punishable under Sections 471, 475, 476 Cr. P.C. when offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, except on a complaint in writing of that Court, or some other Court to which that Court is subordinate. This bar also applies to criminal conspiracy to commit, or attempt to commit, or abetment of such offences. [397-D-E]

1.2. It is not in dispute that the Compensation Officer appointed under the Bihar Land Reforms Act, 1950, if he is a Tribunal, has not been declared by that Act to be "Court" for the purposes of section 195 (1) (b). [397-E-F]

1.3. The High Court was right in holding that the Compensation Officer appointed under the Bihar Land Reforms Act, 1950 was not a "Court" within the meaning of Section 195 (1) (b) Cr. P.C. [402-D]

1.4. The word "Court" had a wider meaning under the old Code. While enacting the New Code, Section 195 was redrafted as recommended by the law Commission in its 41st Report. Now the word "Court" does not include all the judicial bodies and authorities constituted for administering justice. The courts contemplated now by Section 195 are only Civil Courts, Revenue Courts and Criminal Courts and those Tribunals which are required by the Acts constituting them to be Courts for the purposes of section 195.

[400-B, C]

1.5. Assuming that the Compensation Officer appointed under the Bihar Land Reforms Act 1950 can be said to be a Court, it is not possible to hold that he is a Civil Court. Neither the Act nor any other legislation expressly provides that the Compensation Officer is a Civil Court. Though he possesses certain powers which a Civil Court possesses under the Code of Civil Procedure, and the proceedings before him are deemed to be judicial proceedings he does not possess all the attributes of a Civil Court. He lacks the essential attributes which a Civil Court possesses. Considering the nature of his jurisdiction and the extent of powers conferred on him it has to be said that he is not a Civil Court. Determination of compensation for divesting a tenure holder or an intermediary of his right in the estate or tenure is not a matter pertaining to Revenue. For that reason he is not a Revenue Court also. [401-F, G; 402-B-C]

A *Baliram v. Justice B. Lentin*, AIR(1988) SC 2267, relied on

Canara Bank v. Nuclear Power Corporation of India Ltd., [1995] Supp. 3 SCC 81 and *Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjunwala*, [1962] 2 SCR 339 and *Chandra Kishore Jha v. The State of Bihar*, (1975) B.B.C. 656, referred to.

B CRIMINAL APPELLATE JURISDICTION: Civil Appeal No. 765 of 1991.

From the Judgment Order dated 15.1.1990 of High Court of Patna in Criminal Misc. No. 4073 of 1986.

C S.B. Sanyal, K.J. John and P.S. Sudheer for the Appellants.

Rakesh K. Dwivedi and B.B. Singh for the Respondent.

The Judgment of the Court was delivered by

D G.T. NANAVATI, J. The question which arises in this appeal is whether Compensation Officer appointed under the Bihar Land Reforms Act, 1950 is a 'Court' within the meaning of Section 195 (1) (b) of the Code of Criminal Procedure, 1973. The High Court held that Compensation Officer is not a Court and dismissed Criminal Miscellaneous Application No. 4073 of 1986, filed by the appellants, for quashing the proceedings pending against them in the Court of Special Judge (Vigilance), Patna.

E The appellants are facing trial in the Court of Special judge (Vigilance), Patna wherein it is alleged that in pursuance of a conspiracy entered into by them, payment of Rs.2 crore by way of compensation was fraudulently obtained by them and thus they have committed offences punishable under Sections 120B, 420, 467, 458, 471 and 477 of the Indian Penal Code and under Section 5(2) read with sub-section (1)(c) and (d) of Section 5 of the Prevention of Corruption Act, 1947. The appellants raised a preliminary objection before the learned Special Judge that the aforesaid offences are alleged to have been committed by the appellants in respect of a document produced in the compensation proceedings before the Compensation Officer and as Compensation Officer appointed under the Bihar Land Reforms Act is a "Court" within the meaning of Section 195(1)(b) the complaint could have been filed only by that Compensation Officer and as that has not been done in this case, the Special Judge (Vigilance) had no jurisdiction to take cognizance of those offences. The learned Special Judge overruled that objection. The

appellants then filed an application under Section 482 of the Code in the Patna High Court praying that the proceedings before the Special Judge be quashed on the ground that no proper complaint, as required by Section 195(1)(b) of the Code has been filed. Initially, the said application was heard by a Division Bench of that Court. It doubted correctness of the decision of an earlier Division Bench in *Chandra Kishore Jha v. The State of Bihar*, (1975) B.B.C.J. 656, wherein it was held that Compensation Officer appointed under the Act is a 'Court' as defined by Section 195(1)(b) of the Code. The said application was, therefore, placed before a Full Bench of the High Court. It held that Compensation Officer appointed under the Act is not a Court within the meaning of Section 195(1)(b) of the Code. The correctness of that decision is questioned in this appeal.

Section 195(1)(b)(ii) of the Code debars Court from taking cognizance of any offence described in Section 463, or punishable under Section 471, Section 475 or Section 476, of the Code of Criminal Procedure, when offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, except on a complaint in writing of that Courts, or some other Court to which that Court is subordinate. This bar also applies to criminal conspiracy to commit, or attempt to commit, or abetment of such offences. Sub-section 3 of that Section provides that the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act, if declared by that act to be a Court for the purposes of that Section. It is now not in dispute that the compensation officer appointed under the Bihar Land Reforms Act, if he is a tribunal, has not been declared by that Act to be a Court for the purposes of Section 195(1)(b).

Therefore, what we have to consider is whether compensation officer can be said to be a Civil or Revenue Court. For deciding this question it is necessary to refer to those provisions of the Act which provide for appointment and jurisdiction of a Compensation Officer and consider the nature of functions which he has to perform.

The Bihar Land Reforms Act, 1950 has been enacted to provide for the transference to the state of the interests of proprietors and tenure-holders in land and for certain other purposes connected therewith. Section 3 of the Act provides that the State government may by notification, declare that the estates or tenures of a proprietor or tenure-holder, specified in the notification, have passed to and become vested in the State. Section 3-A provides for

- A similar declaration with respect to the intermediary interests of all intermediaries. As a result of such divesting of their right compensation has to be paid to the estate or tenure-holders or the intermediaries, as the case may be, and for determination thereof Section 19 provides for appointment of a compensation officer. It is his legal obligation to prepare a Compensation Assessment Roll
- B containing gross asset and net income of each proprietor or tenure holder of the estate or tenure and the amount of compensation to be paid to him. In case of a trust comprising an estate or tenure he has to refer the matter to the Collector, who, in his turn, has to submit a report to the State Government for passing a final Order thereon and the Compensation officer thereafter has to act in accordance with that order. Section 22 defines 'Gross Asset' and in
- C terms thereof the Compensation Officer has to determine the gross asset of the proprietor or the tenure holder. Section 23 provides which amounts are to be deducted from the gross asset for purpose of determining the net income. After net income has thus been computed the Compensation Officer has to determine the amount of compensation in accordance with the table
- D given therein. He has also to compute compensation payable for mines and minerals. After thus preparing a draft Compensation Assessment Roll he has to publish it together with a public notice declaring that the amount of compensation specified in the draft is the entire amount of compensation payable in respect of the interest of the tenure holder or intermediary in that estate or tenure or part thereof, as the case may be, and that the person
- E named therein is presumed to be the only person entitled thereto and inviting objections, if any, in respect of any entry in that draft assessment roll. Section 26(1)(b) empowers certain officers of the State Government to issue such directions to the Compensation Officer, before the publication of the draft Compensation Assessment-roll, in regard to the computation of compensation and matter relating thereto, as they consider fit. The Compensation Officer
- F has to consider the objections that may filed pursuant to the notice issued by him and after all such objections is have been disposed of and suitable alterations in the draft compensation assessment roll are made he has to finally publish the compensation assessment roll. Entries made in the roll so
- G finally published are made final and conclusive evidence of the matters referred to in such entries and also in the nature of the interest of an intermediary and the apportionment of the compensation among the persons claiming interest therein. The Compensation Officer has then to make payment of compensation in accordance with the compensation assessment roll. Section 35 of the Act bars the jurisdiction of the Civil Court in respect of any entry, in or omission from a compensation assessment roll or in respect of any order
- H passed by the Compensation Officer under chapters V & VI of the Act or

concerning any matter which is or has already been the subject of any application made or proceeding taken under the said chapters. Section 40 confers upon the Compensation Officer power to ask for information or require production of documents relating to any estate or tenure. Rule 15 of the Bihar Land Reforms Rules, 1963 provides, apart from the form in which the notices are to be issued and the compensation assessment roll is to be prepared, that the Compensation Officer must give reasonable opportunity to the proprietors, tenure holders and other persons concerned to be heard and to place before him evidence before finalising the roll. He has to record a brief summary of the evidence and also record his finding. Section 42-B gives an overriding effect to the provisions contained in the Act.

As the Act provides imposition of penalty for non-compliance with the requisition to give true information or produce a document, it was at one time contended by Mr. Sanyal that the compensation officer can be said to be a Criminal Court. But finding that the said contention was not tenable he gave it up. It was, however, forcefully contended by Mr. Sanyal that compensation officer appointed under the Act can rightly be held a "Civil Court" or "Revenue Court". He submitted that it is the function of the compensation officer under the Act to determine right title and interest of the tenure holders and intermediaries and the amount of compensation to be paid to them. These issues are of a civil nature and they are required to be decided by the Compensation Officer in the same way as they are required to be decided by a Civil Court. He also submitted that for deciding such issue jurisdiction of the ordinary Civil Courts is taken away and conferred upon the compensation officer. While holding an enquiry under the Act the compensation officer has by virtue of Section 38 the same powers as the Civil Court has under the Code of Civil Procedure for the purposes of summoning and enforcing attendance of witnesses and for compelling production of documents or relevant information. He also drew our attention to Rule 33 which provides for the notices to be given to the affected parties and the following words in forms in Nos. N(3) and N(3-A), in which notices have to be given: "In the Court of the Compensation Officer.....Given under my hand and the seal of the Courts, this day of 19....." and "In the Court of the Compensation Officer" respectively.

The word 'Court' is a word of very wide connotation. In legal parlance it indicates a place where justice is judicially administered. But for the purposes of Section 195(1)(b) of the Code we have to go by the definition of the word 'Court' contained in sub-section 3 of that Section. Under the old Code (1898

- A Code) the term 'Court' was defined differently, and it read "In Clauses (b) and (c) of sub-section (1) the term 'Court' includes a Civil, Revenue or Criminal Court, but does not include a Registrar or Sub-Registrar under the Indian Registration Act, 1877." While enacting the new Code Section 195 was redrafted as recommended by the law Commission in its 41st Report. The Commission had felt that for the purposes of clause (b) of sub-section (1), the term 'Court' should mean a Civil Court, a Revenue Court or a Criminal Court *properly so called* and include a Tribunal created by an Act it is declared by that Act to be a Court for the purposes of Section 195. The term 'Court' had a wider meaning under the old Code but under the new Code it is given a restricted meaning. Now the word 'Court' does not include all the judicial bodies and authorities constituted for administering justice. The Courts contemplated now by Section 195 are only Civil Courts, Revenue Courts and Criminal Courts and those Tribunals which are required by the Acts constituting them to be Courts for the purposes of Section 195.

- D As to what Courts and Tribunals, this Court in *Canara Bank v. Nuclear Power Corporation of India Ltd.*, [1995] Supp 3 SCC 81, after referring to its earlier decision in *Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjhunwala*, [1962] 2 SCR 339 and particularly the judgment delivered by Hiadyatullah, J., observed as under:

- E "He said that all tribunals were not courts though all courts were tribunals. The word 'courts' was used to designate those tribunals which were set up in an organised State for the administration of justice. By administration of justice was meant the exercise of the judicial power of the State to maintain and uphold right and to punish wrongs. Whenever there was an infringement of a right or an injury, the courts were there to restore the "vinculum juris". When right were infringed or invaded, the aggrieved party could go and commence a 'querela' before the ordinary civil courts. These courts were invested with the judicial power of the State and their authority was derived from the Constitution or some act of legislature constituting them. Their number was ordinarily fixed and they were ordinarily permanent and could try any suit or cause within their jurisdiction. Their numbers might be increased or decreased but they were almost always permanent and went under the compendious name of "Courts of Civil Judicature. xxxxxxxxxxxx With the growth of civilisation and the problems of modern life, a large number of administrative tribunals had come into existence. H These tribunals had the authority of law to pronounce upon valuable

rights. They acted in a judicial manner and even on evidence on oath, but they were not part of the ordinary courts of civil judicature. They shared the exercise of the judicial power of the State but were brought into existence to implement some administrative policy or to determine controversies arising out of some administrative law. They were very similar to courts but were not courts.”

This Courts has also further observed in this behalf as under:

“A court in the strict sense was a tribunal which was a part of the ordinary hierarchy of courts of civil judicature maintained by the State under its Constitution to exercise the judicial power of the State. These courts performed all the judicial functions of the State except those that were excluded by law from their jurisdiction. The word ‘judicial’ was itself capable of two meanings. It might refer to the discharge of duties exercisable by a judge or by justice in court or to administrative duties which need not be performed in court but in respect of which it was necessary to bring to bear a judicial mind to determine what was fair and just in respect of the matters under consideration. That an officer was required to decide matters before him judicially in the second sense did not make him a court or even a tribunal because that only established that he was following a standard of conduct and was free from bias or interest. Courts and tribunals acted judicially in both senses and in the term ‘Courts’ were included the ordinary and permanent tribunals and in the term ‘tribunals’ were included all others which were not so included.”

Assuming that the Compensation Officer appointed under the Act can be said to be a Court, it is not possible to hold that he is a Civil Court. Neither the Act nor any other legislation expressly provides that the Compensation Officer is a Civil Court. Though he possesses certain powers which a Civil Court possesses under the Code of Civil Procedure and the proceedings before him are deemed to be judicial proceedings he does not possess all the attributes of a Civil Court. Though a proceeding before him is to be considered as a Judicial proceeding and is of a civil nature, it is of a limited nature. His appointment is under a Special Law and for a specific and limited purpose. His main function is to determine the amount of compensation. The amount of compensation is to be determined by finding out the rent and then making certain additions, subtractions and multiplications as provided in the Act itself. He cannot determine the questions of title or rights of the rival claimants except for the purpose of determining who should be paid compensation. The

- A party claiming compensation cannot lead evidence as regards the value of his interest in the estate or tenure. Nor does a Compensation officer has the discretion to decide independently the amount of compensation on the basis of such evidence. We have already pointed out earlier that in the matter of preparation of draft assessment roll directions can be given to him by the state Government and Officers mentioned in Section 26(ii). He lacks the essential attribute of evidence which a Civil Court possesses Thus , considering the nature of his jurisdiction and the extent of powers conferred on him it has to be said that he is not a Civil Court. Though not directly on the point the decisions of this Court in *Baliram v. Justice B. Lentin*. AIR (1988) SC 2267 supports the view that we are taking. Determination of compensation for divsting a tenure holder or an intermediary of his right in the estate or tenure is not a matter pertaining to revenue. For that reason he is not a Revenue Court also.

We are, therefore, of the opinion that the High Court was right in holding that Compensation Officer appointed under the Act is not a 'Court' within the meaning of Section 195(1)(b) of the Code. In the result, this appeal is dismissed. The limited interim stay granted by this Court stands vacated.

P.K.S.

Appeal dismissed.