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**Tinkari Mondal and ors. Vs. Block Development Officer, Joynagar-1 and ors.**

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**SooperKanoon Citation** : sooperkanoon.com/851396

**Court** : Kolkata

**Decided On :** Mar-20-1979

**Reported in** : AIR1980Cal7,83CWN738

**Judge** : Salil Kumar Datta, J.

**Acts** : Constitution of India - Articles 14 and 298

**Appeal No.** : Civil Revn. Case No. 7708 (W) of 1974

**Appellant** : Tinkari Mondal and ors.

**Respondent** : Block Development Officer, Joynagar-1 and ors.

**Advocate for Def.** : Smriti Kumar Roy Chowdhury, Adv. for (Nos. 3 and 4) and ;Ajit Kumar Bose, Adv. for (Nos. 1 and 2)

**Advocate for Pet/Ap.** : Nisith Nandan Adhikary and ;Santimoy Panda, Advs.

**Judgement** :
ORDER

**Salil Kumar Datta, J.**

1. In this Rule the petitioners are claiming that their case for settlement of the railway surplus land within the station limits should also be considered by the Railway authorities. The case is that they had taken settlement of lands which

appears to be annual settlements from the Block Development Officer acting on behalf of the Railways and had been in possession of such lands by cultivation on payment of licence fees on renewals. All of a sudden the Block Development Officer expressed his inability to renew the licence as no instruction had been issued to him from the Railways. In this state of affairs the petitioners have approached the Court for issuance of appropriate writ directing the respondents, the Railway authorities, who admittedly own these lands, for granting licenses to them for cultivation of such lands and, not distribute the lands to anybody else other than the petitioners. These lands are situate near and around Bahara Station of the Eastern Railway, Sealdah Section.

2. The Rule is being opposed by the Railway authorities who have filed an affidavit-in-opposition to the petition. It is firstly stated that the petitioners have no legal right to take settlement of the Station limits surplus land either from the Railway administration or from the State Government or its officers duly authorised for the purpose. It further appears that the Railway authorities issued a circular bearing No. 342/O/L dated 18-12-73 which should be quoted in extenso to appreciate the Railways' position:

EASTERN RAILWAY

No. 342/O/L. Dated Sealdah 18-12-73To

The Block Development Officer,

P. O. Jaynagar Majilpur,

Village Jaynagar Majilpur,

Dist. -- 24-Parganas.

Sub : Utilisation of surplus cultivable land for Grow More Food Purpose.

Surplus cultivable Rly. lands beyond station limits handed over to the State Government are allotted by the State Government through the BDOs and the Rly. lands within the Station limits are allotted by the Rly. Administration among its employees.

In recent years there has been some dispute in regard to the allotment of Rly. lands in some areas between the Rly. and the State Government. This dispute in some stations is due to the widening of the limits of the stations for reasons of various kinds of construction works.

In order to put an end to such dispute it has now been decided in modification of all previous circulars on the subject, that Rly. lands within the station limits will be distributed by the Rly. among its employees. The area of the station limits will be taken as follows:--

(i) At station where there is signal, the limit should be outer signal from one side to the outer signal on the opposite side.

(ii) At station where there is no signal but wider area exists, the wider portion should be taken as station limit.

(iii) At station where there is neither signal or wider area, the station limit should be taken 300' on either of the platform.

(iv) In the manned level crossing 200' on either side of the road should not be distributed by the State Govt.

(v) No Rly. land within 300' on either side of the Gangut in between stations and quarters of any station should be allotted by the State Govt.

You are requested to ensure that the demarcation of the land as indicated above for the purpose of allotment is maintained.

Sd/-

18-12

for DIVISIONAL SUPERINTENDENT,

SEALDAH.

Copy forwarded for information to:-

1. District Magistrate, 24-Pars, Alipore, Calcutta-27.

2. Addl. District Magistrate CN)/24-Par-ganas, Barasat.

3. Dist. Magistrate, Nadia, P.O. Krishnagar, Dist. Nadia.

4. Dist. Magistrate, Murshidabad, P.O. Berhampur, West Bengal.

5. Principal Agricultural Officer, 24-Parganas, Calcutta-27.

6. Principal Agricultural Officer/Nadia, P.O, Krishnagar, Nadia.

7. Principal Agricultural Officer/Murshi-dabad, P.O. Berhampore.

Copy to the Chief Engineer/Eastern Rly. Calcutta for information.

DEN/HQ & ALL AENS/SDAH Divn. and all AIOWs/SDAH Divn. A copy is forwarded for information and necy. action.

Sd/-

18-12

SRule Divil. Engineer/Sealdah.

It will appear from this letter that in modification of the previous circulars these railway lands within station limits will be distributed by the Railway amongst its employees only. The propriety of this decision has been challenged by MRule Nisith Nandan Adhikary on behalf of the petitioners.

3. The purpose of settlement of these lands is utilisation of the surplus cultivable lands for grow more food purpose. If production of food is the reason for settlement the persons like the petitioners who are the actual tillers of the soil appear to be more suitable for the purpose.On the other hand, the Railway employees are its full time employees and it may be said that they will have little time to cultivate lands on their own and further they may not be as efficient or qualified in respect of cultivation as the tillers of the soil like the petitioners. It is further said that in the event of necessity it will be possible for the Railways to get

back the land from its employees whenever such occasion arises. This reason has not been expressly or impliedly indicated in the letter we have quoted above. There is no reason or material before us to think that the Railway employees will be so obliging as to vacate possession whenever so called upon by the Railways. In such cases the Railways may have to take recourse to provisions of a Public Premises (Eviction of Unauthorised Occupants) Act 1971. Such Act is available against all including the employees of the Railways as also the other persons for the purpose of obtaining recovery of possession. There may also be an occasion when a settlee who was a Railway employee at the time of settlement goes out of the Railway service and it is not provided that in such contingency he is to restore possession of the land to the Railways.

4. We may refer in this connection to the decision in Erusian Equipment & Chemicals Ltd. v. State of West Bengal : [1975]2SCR674 where the Court observed:

'Under Article 298 of the Constitution the executive powers of the Union and the State shall extend to the carrying on of any trade and to the acquisition, holding and disposal of property and the making of contracts for any purpose. The State can carry on executive function by making a law or without making a law. The exercise of such powers and functions in trade by the State is subject to Part III of the Constitution. Article 14 speaks of equality before the law and equal protection of laws. Equality of opportunity should apply to matters of public contracts. The State has the right to trade. The State has there the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination. The order of black listing has the effect of depriving a person of equality of opportunity in the matter of public contract..... when the State acts to theprejudice of a person it has to be supported by legality.....'

5. The Supreme Court considered this decision in Radhakrishna v. State of Bihar, : [1977]3SCR249 holding that Erusian Equipment and Chemicals Ltd.'s case involved discrimination at the very threshold or at the time of entry into the field of consideration of persons with whom the Government should contract at all. At this

stage the State acts in executive capacity and is bound by the obligations obviously of Part III of the Constitution. But after the field of ordinary contract is entered into, the relations are no longer governed by the constitutional provisions but by the contracts which determine rights and obligations of parties inter se.

6. The position thus is that the discharge of executive functions of the State under Article 298 like the carrying of trade or business or acquisition, holding or disposal of property or the making of contracts for any purpose, subject to legislation by the Union or State, shall also be subject to the provisions of Part III of the Constitution. Article 14 which provides for equality before the law or equal protection of the laws within the territory of India extends to matters of public contracts where the State is one contracting party. The Government cannot choose not to deal with or exclude any person by discrimination when equality of opportunity shall apply to public contracts. Exceptions may be in respect of executive functions under the authority of law or otherwise free from the vice of discrimination on reasonable nexus with their objects. Such equality of opportunity is however confined at the threshold or at the time of entry into the field of consideration of persons with whom the Government could contract at all and not beyond such state.

7. Considering the matter in all these aspects I do not find any reasonable nexus for making a distinction between the Railway employees and private persons in respect of settlement of surplus cultivable lands of the Railways for grow more food purpose which is the object of such settlement. The people are entitled to have equal treatment from the State in respect of the executive functions of the State as provided in Article 298 of the Constitution. The circular referred to above seems to be discriminatory without any nexus with reference to the object of such settlement which is 'grow more food'.

8. Before I conclude I must observe that the Railways are not bound to settlethe surplus land within the station limit to others. They can do so when they think it necessary or proper. But in doing so, they are not entitled to make any distinction between the employees of the Railway or private persons, so that the persons like the petitioners are also entitled to be considered for settlement as and when occasion arises while the ultimate selection will depend on respective merits of the

applicants as may be decided by the Railways.

9. The Rule accordingly is made absolute and the impugned circular No. 342/ O/L dated Dec. 18, 1973 in respect of the provisions for settlement to the Railway employees only is struck down. Let Writs issue accordingly. The interim orders are vacated and the Railway authorities are directed to proceed in the matter in accordance with law. There will be no order as to costs.

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