

Sushanta Tagore & Ors vs Uoi&Ors on 3 March, 2005

Equivalent citations: AIR 2005 SUPREME COURT 1975, 2005 (3) SCC 16, 2005 AIR SCW 1299, (2005) 3 JT 48 (SC), (2005) 29 ALLINDCAS 145 (SC), 2005 (3) JT 48, 2005 (2) SCALE 503, 2005 (29) ALLINDCAS 145, 2005 (2) SLT 749, (2005) 2 SCALE 503, (2005) 2 CAL HN 183, (2005) 2 CAL LJ 107, (2005) 3 SCJ 59, (2005) 1 LACC 471, (2005) 2 SUPREME 486

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Bench: N. Santosh Hegde, S.B. Sinha

CASE NO.:

Appeal (civil) 1151 of 2005

PETITIONER:

Sushanta Tagore & Ors.

RESPONDENT:

Union of India & Ors.

DATE OF JUDGMENT: 03/03/2005

BENCH:

N. Santosh Hegde & S.B. Sinha

JUDGMENT:

J U D G M E N T [@ S.L.P. (Civil) Nos. 23803 of 2004] S.B. SINHA, J :

Leave granted.

INTRODUCTORY REMARKS:

The Appellants herein are residents of Santiniketan in the District of Birbhum of the State of West Bengal.

Visva Bharati University (University) was conceived and established by Rabindranath Tagore, the great poet, story writer, song composer, playwright, essayist, painter, educationist and Nobel Laureate, on 23rd December, 1921.

An environment ambience had all along been maintained in consonance with the ideals of Tagore and for which the same was established.

THE ACT:

The Parliament with a view to preserve and protect the uniqueness, tradition and special features of the said University, in exercise of its legislative power conferred on it under Entry 63, List I of the Seventh Schedule of the Constitution of India enacted The Visva-Bharati Act, 1951 (the Act) declaring it to be an institution of national importance. The University was constituted as an unitary, teaching and residential University with a view to preserve the tradition and special features of the institution, as would appear from its Statements of Objects and Reasons which are as under:

"The Visva-Bharati founded by Dr. Rabindranath Tagore at Santiniketan in 1921 is a unique institution, and has since its inception served as a centre for the study of, and research in, the different cultures of the East on the basis of their underlying unity, and has sought to approach the West from the stand-point of such a unity of the life and thought of Asia. The Institution has acquired a world-wide recognition and has attracted scholars and pupils from many countries all over the world.

2. The University Education Commission commended the special and very valuable work done by this institution, particularly its "effort to discover, preserve and transmit the vast elements of old Indian culture, and the work with the surrounding villages" and recommended that the Visva-Bharati should be given a provisional Charter as a University with suitable capital and recurring grants. The recommendations of the University Education commission were approved by the Central Adversory Board of Education at its meeting in April, 1950, and the Government of West Bengal agree to the establishment of a unitary, teaching and residential University at Santiniketan by an Act of Parliament.

3. There is no provision in the Constitution of India for the grant of a Charter (as distinct from an Act) as recommended by the University Education Commission, but the Constitution makes the Union Government responsible for institutions declared by law to be of national importance (vide item 63 of List I of the Seventh Schedule to the Constitution).

4. It is, therefore, proposed to make such a declaration and have the Visva-Bharati constituted as a Central University. The constitution that is proposed to be given to Visva-Bharati is in conformity with the recommendations made by the University Education Commission with such modifications as are considered necessary to preserve the tradition and special features of the institution."

Section 4 of the Act provides for incorporation of the University. The object of the University in terms of Section 5A thereof was to disseminate and advance knowledge and understanding by providing instructional, extension and research facilities and by the example and influence of its corporate life, and in organizing its activities, have due regard to the objects specified therein for which the Visva-Bharati at Santiniketan was founded by Rabindranath Tagore, as expressed in his own words including "to see to realize in a common fellowship of study the meeting of the East and the West, and thus ultimately to strengthen the fundamental conditions of world peace through the establishment of free communication of ideas between the two hemispheres".

Section 5B provides for the principles to be followed in organizing the activities of the University, in respect whereof as also for implementation of its academic programmes shall have due regard to the pattern of education envisaged by Rabindranath Tagore in his writings.

Section 6 provides for the power of the University some of which are:

"(6) to establish and maintain such Bhavanas, Schools of Studies and Research, Chatravasas, Gymnasias and such other institutions as are deemed necessary, from time to time, for the development of healthy corporate life in the University and to abolish any such Bhavana School, Chatravasa, Gymnasium or other institution;

(7) to establish; at any place in India, campuses, special centres, specialized laboratories or other units for research and instruction as are, in the opinion of the University, necessary for the furtherance of its objects;

(9) to undertake the promotion of adult education, rural reconstruction, co-operative organizations, social welfare, development of cottage industries and all other nation-building activities and works for the benefit of the public;

(32) to establish campuses within the territorial limits of the University specified in the Second Schedule;"

By reason of Section 7 of the Act, the powers of the University conferred by or under this Act shall be restricted to the area specified in the Second Schedule.

The Second Schedule appended to the Act provides for an area known as Santiniketan admeasuring 3000 hectares bounded on the North by the Kopai River, on the west by a line running from Ballavpur and Bonuri villages to Bandgora, on the south by a line running from Bandgora via Bolpur Dak Bungalow to the bridge over the Eastn Railway cutting, and, on the east by the Eastern Railway line.

PUBLIC INTEREST LITIGATION:

The Appellants herein who are residents of Santiniketan filed a public interest litigation before the Calcutta High Court aggrieved by the continuing process of defacement of the ambiance and environment which was destroying the very ideals and purpose for which Visva Bharati was conceived and founded by Tagore. Such encroachment upon the ambiance is said to have been committed by reason of indiscriminate constructions and in particular construction of residential cum commercial complexes by developers and promoters in utter disregard of, inter alia, environmental and pollution control laws and requirements which had endangered the very purpose, tradition and objective with which Visva Bharati was established and which was thereafter sought to be preserved by the Act. The Appellants herein who are in particular aggrieved by proposed constructions which are likely to come

up in the area known as Khoai being land created in the natural process through running rain water for millennia which is a rare natural phenomenon and which, if destroyed, cannot be restored even with the help of science and, thus, requires preservation, approached the High Court in the said proceedings.

RESPONDENTS' CONTENTIONS :

The Legislature of the State of West Bengal enacted the West Bengal Town and Country (Planning and Development) Act, 1979 to provide for the planned development of rural and urban areas in West Bengal and for matters connected therewith or incidental thereto.

The State of West Bengal claims to be owner of the lands situated at Santiniketan being vested in it under Section 4 of the West Bengal Estate Acquisition Act, 1953. It is, however, not disputed that 1761 acres of land, according to Sriniketan Santiniketan Development Authority (SSDA) (1127 acres, according to the University), were acquired for the University within the aforementioned 3000 acres of land.

The Respondents contend that the Universities which are either declared to be of National Importance or have been set up by the State only contain a territorial jurisdiction for the sole purpose of academic activities and Section 7 of the Act must be interpreted accordingly. Academic territorial jurisdiction, according to Respondents, would not confer any title thereupon in the University. The area which was in contemplation of Rabindranath Tagore is said to be known as the "Deer Park Area" as in 1870, i.e., around the time when the said composition was made there was only one barrage or bandh, in Santiniketan, which is still in existence and is known as "Lal Bandh". A decision to develop the said area was taken whereupon a Land Use Map was published and objections thereto were invited. Upon consideration of such objections, some modifications in Land Use Development and Control Plan were made out and the same received the approval of the State of West Bengal in terms of Section 37 of the 1979 Act. The Government of West Bengal allegedly sanctioned long term settlement of the government land as mentioned in the Government Order dated 25th April, 2003 in favour of SSDA. Pursuant thereto or in furtherance thereof SSDA has entered into an agreement with Bengal Ambuja Cement Housing Development Ltd. which is a joint sector company of West Bengal Housing Board, a body corporate formed under the West Bengal Housing Board Act, 1972 and Gujarat Ambuja Cements Ltd. having equal participation of 49.99%. It is contended that the proposed constructions are being made at a minimum distance of 250 meters of Visva Bharati area and in terms of the land use and development plan no development is permitted within 50 metres outside the boundary of Visva Bharati University. In its counter affidavit, SSDA contended :

"(Ac) The proposed development of the said plot will be advantageous in all respects. Had the project not being undertaken the said plot would be occupied by encroachers and unauthorised buildings constructed by them. Areas nearby have been encroached upon by private persons and buildings have been constructed. Under the planned development much, lesser area than permissible under SSDA will be covered and accordingly there will be considerable open space in addition to 3 acres of land for greenery. No building will exceed permissible height as mentioned hereinbefore. There will be primary school, which in very much needed in the area. Unauthorised structures on the plot have been mostly removed but still some of them exist. Revenue to be received by SSDA out of this project is to be utilized for carrying out various other projects for public purpose. SSDA has undertaken various works of public benefit. Several roads have been developed project for supply of potable water has been undertaken and has been substantially implemented. Further implementation in other area is also under process. Genuine residents of Santiniketan will be benefited out of the said works undertaken by SSDA."

HIGH COURT:

A Division Bench of the High Court dismissed the said public interest litigation holding that the University being not the owner of the entire 3000 acres of land no relief can be granted. While arriving at the said finding, it was opined :

(i) " If it is not Vishwabharati's special dominion land for setting up campuses as and when it so will, then the State has authority to deal with the same in accordance with law, because there are no other objectors. It is not illegal to set-up reasonably peaceful activities or abodes of citizens, near or even very near, Universities."

(ii) "That the continued increase of population in Santiniketan and the continued increase of building activity there, will slowly change the place almost beyond the recognition of the poet, if he were to be alive even today, cannot be disputed."

(iii) "The Act contains no indication that by reason of any spirit of the Act, or the spirit of the poet, Santiniketan is to be made into such an exclusive spot forever."

(iv) "Moreover, assuming that the building activity is to take place only in accordance with the spirit and ideas of the poet, Rabindra Nath Tagore, how, we ask ourselves, is such activity to be monitored in the practical World? Will every builder make an application first to the Vishwabharati University, seeking permission? Will every such case of permission ultimately travel to the Public Interest Litigation Court, for us to decide ultimately whether the building activity would be in keeping with the old ideas of the old Santiniketan? In our opinion, this is an unreasonable and, therefore, an illegal and an impractical way of thought. The building activity can be mentioned and controlled only if some law says that it is to be so monitored and controlled, and also lays down specific ways in which such restrictions are to be imposed by specified or

named authorities. None of the laws shown to us prevents the Bengal Ambuja Project."

(v) "We are of the opinion that the Bengal Ambuja Housing Complex will, to that extent, change the topography of Santiniketan in the canal front but that there is no public interest which calls for restraint of such a change. In our opinion, the University activities can go on with substantially the same amount of vigour and benefit to mankind whether we are aware that we are going a long way in saying this, but still we do state this to do so, the Santiniketan outside the University becomes a residential town or even an Industrial town, provided the growth is planned, systematic and in accordance with the laws relating to freedom from population."

SUBMISSIONS:

Mr. Soli J. Sorabjee, learned senior counsel appearing on behalf of the Appellants, in assailing the judgment of the High Court, would submit that the issues raised in the writ petition must be considered having regard to the purposes for which the Act was enacted and having regard to its Preamble and the Statement of its Objects and Reasons. Activities going against the tenor the said Act, Mr. Sorabjee would contend, should not be permitted.

The learned counsel submitted that the findings of the High Court to the effect changes necessary to be brought about in the topography and the same would slowly change the place almost beyond the recognition of the poet, if he were to be alive even today as fallacious inasmuch postulate such activities which the Act intends to prevent. Comparison of the said University with other universities, Mr. Sorabjee argued, is wholly misconceived. Mandate of the Act, according to Mr. Sorabjee, provides for guidelines to maintain the ambiance of entire Santiniketan which will itself be in public interest. If by reason of the activities, the character of the place sought to be preserved by the Act is changed beyond recognition and topography of Santiniketan itself is affected thereby, the Court should invoke the doctrine of 'implied prohibition' for giving a true meaning of the Act. Our attention in this connection has been drawn to a report of the West Bengal Pollution Control Board. It was urged that although the said report was in relation to the construction activities carried out by M/s. Bengal Peerless Housing Development Company but it would appear therefrom that the site of development of housing of M/s. Bengal Ambuja Ltd. was also visited.

The learned counsel submitted that the Division Bench of the Calcutta High Court neither took into consideration the report of the West Bengal Pollution Control Board in its proper perspective nor applied its mind with regard to preservation and protection of Khoai which was the basis for maintaining the writ petition.

Mr. G.L. Sanghi, learned senior counsel appearing on behalf of the Respondent No. 10, took us through the counter-affidavit filed by SSDA and submitted that having regard to the fact that the State has the exclusive legislative competence as regard town planning, the Parliamentary Act cannot interdict in the areas covered by the State Act.

The learned counsel would contend that by reason of such constructional activities neither the academic programme of the University as contemplated under Section 5B of the Act nor the academic territory of the University has contemplated under Section 7 thereof are affected. The University itself having not claimed any ownership in respect of the land beyond what had been acquired for its purpose, and, thus, the writ petition filed by the Appellant herein had rightly been dismissed. It was pointed out that there exist many houses within the area of 3000 acres of land and in fact the most of the Appellants are residents thereof and, thus, it does not lie in their mouth to contend that no constructional activities should be carried out within the area contained in the Second Schedule of the Act.

The learned counsel appearing on behalf of the State of West Bengal and SSDA adopted the submissions of Mr. Sanghi.

Mr. Gautam Banerjee, learned counsel appearing on behalf of the University, however, left the matter at the hands of the court stating that the activities of Respondent No. 10 are outside the area of the University.

Mr. T.S. Doabia, learned senior counsel, appearing on behalf of the Union of India, however, would support the Appellants herein contending that in the larger interests the provisions of the Act should be implemented in letter and spirit and nothing should be done so as to destroy the purport and object for which the University was founded.

Mr. R. Mohan, learned ASG, appearing on behalf of the West Bengal Pollution Control Board submitted that his client stands by its report.

REPORT OF THE POLLUTION CONTROL BOARD:

From the report sent by the W.B. Pollution Control Board, it would appear that it had issued a direction restricting the municipal corporations, etc. from sanctioning any building plan of big housing complexes without obtaining its environmental clearance. Having regard to the peculiar features and the fact that SSDA's working area includes maintenance and preservation of cultural heritage and natural environment of Sriniketan- Santiniketan and further in view of the increase in the price of the land of Khoai and as people visiting Santiniketan enjoy Khoai by seeing in different climatic and scenic conditions, it was stated:

"Increasing constructional activity in Sriniketan- Santiniketan area may cause serious disruption in natural drainage system. It is therefore necessary to examine the drainage pattern (both dry weather flow and storm water flow) in the area and document it as per field condition. It is suggested that SSDA could take up the job examining the drainage pattern and system and document them in a map (marked with contour). The coming rainy season (July-September) could be ideal for the field study.

As Santiniketan is getting developed as tourist place, therefore, it is essential to preserve the natural beauty and heritage which people like to enjoy. It is true that planned housing is one of the component of urbanization. There is a great demand of housing not only from the local residents but also from people outside. Many want to keep a 2nd home for use during weekends, holidays and festivals. Housing needs supporting infrastructures, also required to be constructed. Further, it will require adequate water supply, sanitation and drainage, solid waste management, etc. Urbanization will have impact on ambient air quality unless problem mitigation measures are taken properly. The rapid EIA report submitted by BPHDCL though indicated that suspended particulate matters in ambient air at Sonar Taree area are below maximum permissible limit, but the same near Pearson memorial Hospital was more than the permissible limit in December. Even on some days of December the SPM was more than the permissible limit at Sonar Taree area. However, other parameters of ambient air are well below the permissible limit."

It was opined:

"SSDA should follow land use and development control plan already prepared by Urban Development (T&CP) Department. In addition, SSDA must see to conservation of the natural heritage of the place as far as practicable. It is also true that when development of Santiniketan- Sriniketan area is a necessity due to promotion of tourism and urban pull, there must be certain changes in the land use pattern resulting in disappearance of khoyai landscape from certain places. Hence SSDA must look into this aspect while planning for development of area keeping changes of Khoyai land formation minimal."

Among other things, the Report recommended that:

- (i) no more housing projects be undertaken until SSDA's perspective plan 2025 including Visva Bharati's special requirements was approved,
- (ii) ensure minimal damage to the remaining Khoai so as to preserve its natural beauty, heritage and natural drainage system,
- (iii) a Satellite Township be built at a suitable distance from the Visva Bharati area.

ANALYSIS OF THE PROVISIONS OF THE ACT:

Visva Bharati is an institution of national importance. The purport and object for which the Act was enacted is neither in doubt nor in dispute. The preamble of the Act as well as the Statement of Objects and Reasons are clear and explicit.

As Shri A.C. Guha put it during the Parliamentary Debate on the Bill, Visva Bharati is a "symbol of our culture". During the Parliamentary Debate, Maulana Abdul Kalam Azad had said, "Nature has provided it with the canopy of the sky and the open places and they do not want to make any additions to them in the form of brick and stone". Pandit Jawaharlal Nehru said, "And I entirely agree with Dr. Mookerjee when he laid stress on certain factors that may be called external if you like, but, nevertheless, which must have a very powerful influence in moulding the student there and creating a new environment, whether it is teaching in the mango grove or doing anything like that. I entirely agree with him that we should not spend our money on a large number of brick structures as we unfortunately still do in making our buildings, whether educational buildings or other buildings, and have little left to carry on the work in those buildings".

The Act was enacted with the consent of the State of West Bengal. The State, having regard to the purport and object of the Act, has, thus, a duty to see that the environmental ambience which would not be in consonance with the ideals of Visva Bharati should not be undertaken. Visva Bharati is *sui generis*. It is an institution of national importance. It is a unitary teaching and residential University. The jurisdiction of the University is not only confined to the area specified in the Second Schedule appended to the Act, as regard its academic activities but in view of Section 6(32) of the Act it may establish campuses within the territorial limits of the University as specified therein.

The provisions of the Act and in particular Sections 5A, 6, 7 and the Second Schedule thereof must be conjointly read with the preamble and the Statement of Objects and Reasons thereof.

DETERMINATION The Division Bench of the High Court, as noticed hereinbefore, arrived at a finding that the continued increase of building activities will slowly change the place almost beyond recognition of the poet and the activities of Bengal Ambuja Housing Complex Ltd. will to some extent change the topography of Santiniketan in the canal front. Despite holding so, the High Court observed that such changes are necessary having regard to the continued increase in population of Santiniketan and, as the Act does not contain any provision Santiniketan was required to be made an exclusive spot forever and, furthermore, as allowing the Santiniketan in its original form would be impractical, it can be permitted to become residential town or even industrial town provided the growth is planned, systematic and in accordance with the laws relating to freedom from population.

If by reason of any activity, the tradition and special features of Visva Bharati are not preserved, the very purpose of the enactment would be defeated. It has not been denied or disputed that even now the Visva Bharati organizes classes in open air and also on Khoai lands, particularly, drawing and painting classes.

Indisputably, changes are taking place everywhere in India but Santiniketan should maintain the tradition and special features of the Visva Bharati in terms of the statutory scheme.

The Appellants had brought on records that frequent and unscheduled excursions and picnics in the area by the students of Kala Bhavana and Patha Bhavana were the hall-marks of Tagore's unique educational innovation.

The Division Bench of the High Court, in our opinion, was not correct in holding that in the event the building activity in the territorial area comprising Santiniketan as specified in the Act was to take place in accordance with the spirit and ideas of Rabindranath Tagore, such activity cannot be monitored in the practical world and, therefore, would constitute illegal and impractical way of thought and furthermore although the House Complex project of the Respondent No. 10 would change the topography of Santiniketan in the canal front, there was no public interest calling for restraint of such a change.

The West Bengal Pollution Control Board is a statutory body. The environmental impact assessment in terms of the provisions of the laws governing ecology of the area is imperative. The Pollution Control Board which has statutory duties to perform had issued certain directions for preservation and conservation for cultural, historical, archaeological, environmental and ecological purposes. Such directions are binding on the State as well as SSDA. If any construction is carried on the Khoai, the same indisputably will destroy its unique natural and cultural heritage, as opined by the Board, and, thus, all constructional activities must abide by the same.

It is imperative that the ecological balance be maintained keeping in view the provisions of both directive principles of State Policy read with Article 21 of the Constitution. Furthermore, a State within the meaning of Article 12 of the Constitution of India must give effect to the provisions of Article 51A(g) of the Constitution which reads as under :

"51A. Fundamental duties It shall be the duty of every citizen of India *** *** ***

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;"

It may be true that the Appellants herein have their own houses within 3000 acres of land but they have been residing there for a long time. What is being objected to by them is constructions of huge

residential and commercial complexes which even according to the High Court would not only change the topography but also would change the place almost beyond the recognition of the poet.

It may be true that the development of a town is the job of the town planning authority but the same should conform to the requirements of law. Development must be sustainable in nature. A land use plan should be prepared not only having regard to the provisions contained in the 1979 Act and the rules and regulations framed thereunder but also the provisions of other statutes enacted therefor and in particular those for protection and preservation of ecology and environment.

As Visva Bharati has the unique distinction of being not only a University of national importance but also a unitary one, the SSDA should be well-advised to keep in mind the provisions of the Act, the object and purpose for which it has been enacted as also the report of the West Bengal Pollution Control Board. It is *sui generis*.

It is idle to compare Shantiniketan with any other university. Truism is that Shantiniketan has unique features. Its environmental ambiance, thus, must be maintained. There is no other university which having regard to the purport and object of the Act, as would appear from the objects and reasons thereof, can be compared with Visva Bharati. Our attention has not been drawn to any other statute establishing any university which has such unique features as Visva Bharati.

Only because some advantages would ensue to the people in general by reason of the proposed development, the same would not mean that the ecology of the place would be sacrificed. Only because some encroachments have been made and unauthorized buildings have been constructed, the same by itself cannot be a good ground for allowing other constructional activities to come up which would be in violation of the provisions of the Act. Illegal encroachments, if any, may be removed in accordance with law. It is trite law that there is no equality in illegality.

The Parliamentary Debates, some of which we have noticed hereinbefore, clearly go to show that the Act was enacted with particular objectives in view. Such statutory objects could not have been given a go by. It is not suggested that the Santiniketan should remain as it was in 1921 but it cannot be permitted to become full of concrete jungles and industrial hub. For carrying out further constructional activities, it may not be necessary for a builder to apply to the University for seeking its permission but the local-self government which is responsible therefor must take into consideration the salutary principles laid down in the pollution control laws as well as the Act. The land use and future planning of Santiniketan must be done in such a manner so that the changes be brought about which would not be beyond the recognition of the poet as also the provisions of the Act. SSDA in that sense must distinguish itself from the other development authorities. It has an extra-burden to shoulder. It cannot shut its eyes to the provisions of the Act and the object and purport it seeks to achieve. It cannot ignore the environmental impact assessment made by the Board. It is one thing to say that the SSDA may permit small constructions to be made by the owners of the land or additions or allow alterations to the existing building for residential purposes but it is another thing to say that it would not consider the effect of the changes which may be brought about by turning Santiniketan into a commercial and industrial hub.

We, with respect to the High Court, are not in a position to agree with the observations which clearly run counter to its own findings of fact.

CONCLUSION:

The question is what do we do in the instant case?

SSDA issued notices as regard adoption of the land use map as far back as in the years 1999 and 2000. The State Government had granted a long term settlement in favour of SSDA with a further right to the residential flat owners for the unexpired period of lease by an order dated 25.4.2003. In 2003 itself, the project had been given a green signal and it is stated before us that the Respondent No. 10 has already spent about 1.5 crores of rupees.

Our attention has further been drawn by Mr. Sanghi that the house project of Bengal Peerless has already come into being. In that view of the matter, we do not intend to stop the construction activities which are being carried out by the Respondent No. 10 but direct that in future SSDA must keep in mind the statutory provisions referred to hereinbefore as also the observations made by us herein.

This appeal is disposed of with the aforementioned directions. No costs.