
(1955) 07 CAL CK 0039
In the Calcutta High Court
Case No : Civil Revision No. 1766 of 1954

Ajit Kumar Das

APPELLANT

Vs

Srimati Paeul Sashi Goswami

RESPONDENT

Date of Decision : 26-07-1955

Acts Referred:

Citation : (1957) 2 ILR (Cal) 998

Hon'ble Judges : P.N. Mookerjee, J

Bench : Single Bench

Advocate : Sushil Chandra Dutta, for the Appellant; Ranjit Kumar Banerjee and Bimal Kumar Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

P.N. Mookerjee, J.—In this Rule which arises out of a proceeding for pre-emption u/s 24 of the West Bengal Non-Agricultural Tenancy Act, 1949, I am called upon, in particular, to interpret the word "contiguous", appearing in Clause (b) of Sub-section (1) of that Section. The application for preemption was made by the landlords opposite parties. It failed before the learned Munsif, but, on appeal, it was allowed. Against this appellate order the present Rule was obtained by the transferee Petitioner.

2. The disputed holding C.S. Dag No. 1808, Khatian No. 1979, Mouza Khardah, originally belonged to one Manmatha Nath Das who held it under the opposite parties' predecessor Keshab Kishore Goswami, since deceased, and, thereafter, under the opposite parties themselves. On December 15, 1950, Manmatha sold the said holding to the present Petitioner for Rs. 1,000. The opposite parties applied for pre-emption on March 19, 1953, and simultaneously deposited the requisite money in court. In the pre-emption application, the opposite parties stated inter alia that no notice of the transfer (sale) had been served upon them and that they had learnt about the same only in the first week of February, 1953, and were claiming pre-emption u/s 24 of the West Bengal Non-Agricultural Tenancy Act, 1949. No particular ground of pre-emption was mentioned in the

application and there was also no statement in the application that the disputed property was contiguous to any property in the possession of the applicants. The application was resisted by the Petitioner on inter alia the ground of limitation and the absence of any valid ground of pre-emption under the statute. The Petitioner also stated specifically that the opposite parties (applicants) had no property, contiguous to the disputed land. The learned Munsif overruled the plea of limitation upon the view that, no notice of the transfer having been served upon the landlords applicants, their application for pre-emption, filed within three years of the sale, was quite within time. He held further that the landlords' homestead was "contiguous" to the disputed land within the meaning of Section 24 of the Act, an intervening municipal road notwithstanding. As, however, he was not satisfied that the applicants had any ground for the pre-emption under the said section there being no sufficient proof that the disputed land was required by them for use "for any of the purposes specified in Section 4" of the Act, he eventually held that no ground for pre-emption had been made out u/s 24 and dismissed the landlord's application.

3. The landlords appealed and the learned Additional Subordinate Judge having agreed with the learned Munsif on the question of limitation and the contiguity of the disputed land to the landlords' homestead and having found further, contrary to the learned Munsif Section opinion, that the landlords required the disputed property for the purposes, mentioned in Clauses (b) and (c) of Section 4 of the Act, allowed the landlords' appeal and granted their prayer for pre-emption. The propriety of this order is challenged in the present Rule.

4. Sen, J, granted this Rule on ground No. 2 of the petition which runs as follows:

For that the learned Judge in exercise of his jurisdiction vested in him acted illegally and with material irregularity in allowing the application on the erroneous view that the landlord is entitled to pre-empt u/s 24 of the West Bengal Non-Agricultural Tenancy Act if he is in actual possession of land lying near the holding.

5. I have, however, examined the whole matter and, although in my view the above ground No. 2 is sufficient for disposal of the Rule in the Petitioner's favour, I am also inclined to agree with the learned Munsif in his adverse conclusion against the landlords opposite parties on the question of the opposite parties (landlords') requirement which also is fatal to their pre-emption application. The learned Additional Subordinate Judge appears, to have erred both in his approach and conclusion on this question of the landlords' requirement and his finding that it was genuine does not seem to be supportable on the materials on record.

6. On the point of limitation the courts below appear to have taken the correct view (vide the recent decision of this Court in the case of Hari Charan Kar v. Abhoy Charan Dey (1955) 59 C.W.N. 849).

7. Having practically stated my conclusion, I shall now proceed to indicate briefly

my reasons for accepting ground No. 2 of the petition of Rule. The short question is whether the disputed land (C.S. Dag No. 1802) is contiguous to the landlords' homestead (C.S. Dag No. 1804) within the meaning of Section 24. Admittedly the two plots are separated by a municipal road, but the courts below have expressed the view that the word "contiguous" in Section 24 ought to be liberally interpreted. They have, accordingly, chosen to give preference to the wider (loose) dictionary meaning of the word, namely, "neighbouring or "situated in close proximity (though not in actual contact)", as given in the Oxford Dictionary, and, in that view, they have concurrently held that the disputed plot (C.S. Dag No. 1802) and the landlords' homestead (C.S. Dag No. 1804) would be "contiguous" notwithstanding the fact that a municipal road admittedly intervenes and separates the two plots. With this view I am unable to agree.

8. Pre-emption hinders transfer and enjoyment of property and, by providing for it, Section 24 doubtless encroaches upon normal rights of property and enjoyment thereof and seeks to restrict such rights and enjoyment. Ordinarily, therefore, the Section should be strictly construed. Clearly also the primary or proper meaning of the word "contiguous" is "touching in close "contact, next in space". That is its normal or exact connotation and it is usually employed in that sense. Sometimes, no doubt, the word is used loosely in the sense of "neighbouring "or situated in close proximity (though not in actual contact)". But this secondary meaning should not be accepted unless there is something compelling in that behalf in the subject or context. The matter is fully discussed by Lord Hewart, C.J. in *Spillers, Limited v. Cardiff (Borough) Assessment Committee and Pritchard* (1931) 2 K.B. 21, 42, 43 where the following passages occur:

As to the proper meaning of the word "contiguous" there can we think, be no doubt. Dr. Johnson, of whom it may probably be said that he employed the English language with a more anxious precision than any other man that ever lived, defines "contiguous" in his dictionary thus: "Meeting so as to touch; "bordering upon each other ; not separate," and he gives no other definition. The Oxford English Dictionary gives five definitions. The first and principal one is "Touching, in actual contact, next in space; meeting at a common "boundary, bordering, adjoining". The second and the third deal only with variants of that meaning, in the application of the word, not to space, but to time and thought. The fourth refers to a use now and long obsolete. The fifth is this: "losely. Neighbouring, situated in close proximity (though not "in contact)"... It ought to be the rule and we are glad to think that it is the rule, that words are used in an Act of Parliament correctly and exactly, and not loosely and inexactly. Upon those who assert that that rule has been broken the burden of establishing their proposition lies heavily. And they can discharge it only by pointing to something in the context which goes to show that the loose and inexact meaning must be preferred. This, indeed, must be not merely the legal, but also the literary canon of interpretation. No person of education or intelligence would understand, or suspect that a writer or speaker was using the word "contiguous" in its loose

sense of "neighbouring", unless there was something in the context that compelled that conclusion. If a man spoke or wrote of "contiguous islands" he must necessarily mean "neighbouring" because one island must be separated by water from another. But if he spoke of "contiguous houses" it would be difficult to suppose that he meant anything but houses touching each other.

The legal canon is the same.

9. and the Lord Chief Justice characterises the wider meaning of "near to or neighbouring", sometimes justified by context, "loose" and "inexact" and an "improper alternative meaning". It is interesting to note in this connection that even in the case of *Haynes v. King* (1893) 3 Ch. 439, which is often cited as an authority for the contrary view, North, J. did not dispute though he observed that that was the "strict" meaning—that the word "contiguous" meant "touching", but he thought that, in the document before him, that word "contiguous" had been used by some one who did not fully understand the meaning. This is noticed by Lord Hewart, C.J. when he observes at page 43 of the Report *Spillers Limited v. Cardiff (Borough) Assessment Committee and Pritchard* (Supra) at p. 43, that, in *Haynes v. King* (1893) 3 Ch. 439. North, J. says that "contiguous" means "touching". And so it does and must unless the context or the subject-matter necessarily requires the improper alternative meaning.

10. I do not also find anything in the present Act—in the subject or context—to justify a departure from the primary or the normal meaning of the word. It is to be noticed further that, under the relevant municipal law, the soil of the intervening municipal road between the disputed land (C.S. Dag No. 1802) and the landlords homestead (C.S. Dag No. 1804) belongs to the municipality and this would make inapplicable the rule, relied upon by North, J. in *Haynes v. King* (1893) 3 Ch. 439 and the earlier English case of *Micklethwait v. N'ewlay Bridge Company* (1886) 33 Ch. D 133, namely, the rule of *ad medium filum viae* on which *inter alia* reliance was placed in the present case also on behalf of the landlords opposite parties and which formed the basis of the decisions, cited by Mr. Banerjee as authorities in his favour.

11. I would, accordingly, construe the word "contiguous" as used in Section 24(1) (b) of the West Bengal Non-Agricultural Tenancy Act, 1949, in its strict, exact, proper, primary and normal sense of "touching, in actual contact or next in space" in preference to its loose, inexact, secondary, improper and abnormal sense of "neighbouring or near to or in close proximity, though not in actual contact". No other construction would be appropriate or at all justifiable either on principle or in the light of judicial precedents.

12. The meaning of the word "contiguous" has been considered in a number of English cases, of which reference has been made above to the two leading authorities. The various cases, including the above two and including also those, in which the equivalent word "adjoining" and the allied word "adjacent" have come up for consideration are carefully collected in Stroud's Judicial Dictionary,

Third Edition (1952), pp. 64-67 and 601, Vol. I. They say now be chronologically set out.

13. In Equity (?) *Coventry v. London Brighton and South Coast Railway Company* (1867) 5. Eq. 104 lands, separated by a private road, of which the claimant for pre-emption had the exclusive right of user, were held to be "immediately adjoining". In *Haynes v. King* (Supra), already cited, the word "contiguous" was given the wider meaning in context which we have already noticed. In *Vale and Sons v. Moorgate-street and Broad Street -Buildings Limited and Albert Baker and Co. Limited* (1899) 80 L.T. 487 Cozens-Hardy, J. refused to accept the wider meaning and adopted the view of Parke, J. in the very early case *Rex v. Hodge* (1829) 1 Moo. and M. 341 that "ground cannot "be "properly said to adjoin a house unless it is absolutely contiguous "without anything between them". In *(Ind, Coopei and Co. Limited v. Hamblin* (1901) 84 L.T. 168 as also in *Harrow v. Marylebone District Property Company Limited* (1902) 86 L.T. 4, the word "adjoining" was given the narrower meaning. In *Cave v. Horsell* (1912) 3 K.B. 533 the majority (Fletcher Moulton, L.J. and Buckley, L.J.) gave the wider meaning to the word "adjoining" in the particular context before them, Vaughan Williams, L.J. striking a different note and preferring the strict, primary and ordinary acceptance of the word. In *Derby Motor Cab Company v. Crompton and Evans Union Bank* (1913) 29 T.L.R. 673, the primary and ordinary narrower meaning of the "adjoining" was accepted by Eve, J. in the absence of a compelling context, justifying the secondary or the wider meaning. In *Spillers Limited v. Cardiff (Borough) Assessment Committee and Pritchard* (Supra) Lord Hewart. C.J., as already quoted laid particular stress on the primary meaning and stated the rule and the exception (depending on subject or context) in clear emphatic and unambiguous terms. In *Mayor etc. of the Borough of New Plymouth v. Taranaki Electric Power Board* (1933) A.C. 680, 683 Lord Macmillan expressed the same view and the word "adjoining" was construed in its primary and exact sense of "conterminous" and the loose narrower sense of "near to or neighbouring" was rejected in the absence of a special context. In *In re Ecclesiastical Commissioners for England's Conveyance and In re The Law of Property Act, 1925* (1936) 1 Ch. 430, 441 again Luxmoore, J. reiterated the same view in the light inter alia of the contrast and the distinction between the words "adjoining" and "adjacent", the latter meaning "that which "lies near but is not in actual contact". In this last mentioned case, *In re Ecclesiastical Commissioners for England's Conveyance and In re The Law of Property Act 1925* (1936) 1 Ch. 430, 441 and also in the earlier case, *Mayor, etc., of the Borough of New Plymouth v. Taranaki Electric-Power Board* (Supra) reference was made to the observations of Sir Arthur Wilson who delivered the judgment of the Board in *Mayor, Councillors, and Citizens of the City of Wellington v. Mayor, Councillors, and Burgesses of the Borough of Lower Hutt* (1904) A.C. 773, 775, 776, where at pages 775-76 it was said inter alia that

"Adjacent" is not a word to which a precise and uniform meaning is attached by ordinary usage. It is not confined to place adjoining ; and it includes places close

to or near. What degree of proximity would justify the application of the word is entirely a question of circumstances.

14. In the light of the above discussion, it is difficult to hold that the two plots (C.S. Dags Nos. 1802 and 1804), between which a municipal road admittedly lies or intervenes are "contiguous" or can be regarded as such in the present case.

15. On behalf of the landlords (opposite parties) an additional argument was put forward in this Court by Mr. Banerjee. He sought to support his clients' claim by referring to C.S. Dag No. 1801, which according to him, was "contiguous" to the disputed plot (C.S. Dag No. 1802) and was also in "the actual "possession" of his clients. There is, however, no evidence to support this argument and, prima facie, the settlement papers- the Khatian and the Map-are against Mr. Banerjee's contention.

16. I would, accordingly, hold that the landlords opposite parties have failed to establish that they are in actual possession of any land, to which the disputed plot (C.S. Dag No. 1802) is contiguous as required by Clause (b) of Sub-section (1) of Section 24 of the West Bengal Non-Agricultural Tenancy Act, 1949, and, accordingly, their application for pre-emption must fail.

17. This Rule, therefore, must succeed. It is, accordingly, made absolute. The order of the learned Additional Subordinate Judge is set aside and that of the learned Munsif, though not his reasonings, is restored. The opposite parties' application for pre-emption is dismissed.

18. Parties will bear their own costs throughout.