

(1973) 04 CAL CK 0025
In the Calcutta High Court
Case No : Second Appeal No. 1601 of 1964

Anglo India Jute Mills Co. Ltd.

APPELLANT

Vs

Sarjoo Prasad Singh
 Sarjoo Prasad Singh Vs Anglo
India Jute Mills Co. Ltd.

RESPONDENT

Date of Decision : 06-04-1973

Acts Referred:

West Bengal Land Reforms Act, 1955 — Section 18, 18(1), 21

Citation : AIR 1973 Cal 419 : 77 CWN 530

Hon'ble Judges : Debi Prosad Pal, J

Bench : Single Bench

Advocate : Nirmal Chandra Chakraborty, for the Appellant;

Final Decision : Dismissed

Judgement

Debi Prosad Pal, J.—The only question raised in this appeal on behalf of the defendant-appellant relates to the jurisdiction of the Civil Court to entertain the suit filed by the plaintiff for a declaration that he is a tenant under the defendant-appellant and for a permanent injunction restraining the defendant from interfering with the rights and possession of the plaintiff in the suit land as a tenant.

2. The defendant is the owner of the disputed land. The defendant brought a case against the plaintiff u/s 17 (1) (a) and (b) of the West Bengal Land Reforms Act, 1956 (hereinafter referred to as the Act) before the Bhagchas Officer, Barrackpur for eviction of the plaintiff on the ground that the defendant required the suit land for bringing the same under personal cultivation. In the said proceeding the plaintiff contended that he was not a bargadar but a tenant. This plea was overruled by the Bhagchas Officer who held the plaintiff to be a bargadar. Against that decision an appeal was preferred before the Munsif, Second Court, Barasat who upheld the decision of the Bhagchas Officer. The plaintiff obtained a rule thereafter from the High Court but ultimately the said rule, on contest, was discharged by the Hon'ble High Court. The preliminary

objection having filed up to the High Court the case before the Bhagchas Officer proceeded on its merits. At this stage the plaintiff filed the present suit for a declaration that he is a tenant and for a permanent injunction restraining the defendant from interfering with the rights and possession of the plaintiff in the suit land as a tenant and from proceeding with the case now pending before the Bhagchas Officer. Before the learned Munsif, the defendant was successful in raising the preliminary objection that the jurisdiction of the Civil Court to entertain the present suit was ousted by Section 21 of the Act. The plaintiff thereafter preferred an appeal which was heard by the learned Subordinate Judge, 9th Court, Alipore. The learned Subordinate Judge allowed the appeal holding inter alia that the Civil Court has not lost its jurisdiction to entertain the present suit to determine whether a person is a tenant or not and Section 21 of the Act cannot be considered to be a bar.

3. On a second appeal before this Court, Mr. Nirmal Ch. Chakraborty appearing for the defendant-appellant has contended that Section 21 of the Act gives a finality to an order passed by the Special Tribunals set up under the Act and when there is an express bar of the jurisdiction of the civil Court to entertain disputes which have been decided by the authorities under the Act, this present suit was not maintainable.

4. To appreciate this contention it is necessary to refer to certain provisions of the Act. Section 17 of the Act sets out the circumstances under which it will be permissible to terminate cultivation of land by a bargadar. Section 18 confers upon the Officer or authority appointed by the State Government in that behalf to decide every dispute between a bargadar and the person whose land he cultivates in respect of matters relating to division or delivery of the produce, termination of cultivation by the bargadar, place of storing or threshing the produce. Sub-section 18 (2) vests such authority with the power to determine any question as to whether a person is a bargadar or not and to whom the share of the produce is deliverable when such question arises for the purpose of deciding any dispute referred to in Section 18 (1) of the Act. Section 19 provides for an appeal to the Munsif having jurisdiction over the area even the land is situated against any order made u/s 17 or 18 of the Act. Section 21 ousts the jurisdiction of the Civil Court to entertain any suit or proceeding in respect of any matter mentioned in Sections 17 and 18 of the Act and any order or other proceeding whatsoever under Chapter 3 of the Act shall not be questioned in any Civil Court. Reading the different sections, it appears that disputes relating to bargadars and jotedars about termination of cultivation by the bargadar or division or delivery of the produce or place of storing or threshing of the produce are according to the scheme of the Act to be decided by the statutory authority, namely, Bhagchas Officer and in deciding such disputes, the elaborate procedure involved in civil suit may not be resorted to. It is only for the purpose of deciding such disputes, if a question arises as to whether a person is a bargadar or not, the statutory authority is vested with the authority to decide such a question. When therefore the question arises as to whether a person is a tenant or not, it

is not the intention of the legislature to confer upon the statutory authority the jurisdiction to decide such controversial question as to title of the property.

The jurisdiction conferred upon the Bhagchas Officer is of a limited character. He can decide only disputes referred to in Sections 17 and 18 of the Act and it is only in respect of those matters, that the Civil Court has been ousted from the jurisdiction to decide them. The counsel for both the parties drew my attention to the trilogy of the jurisdiction of this Court on this point. The first case relied upon is *Jadu Nath Roy v. Lal Mohan Malik*, (1962) 66 Cal WN 88. In that case the plaintiff had been adjudged as a bargadar in connection with a dispute as contemplated in Section 18. The plaintiffs thereafter brought a suit for a declaration of their tenancy rights and for a permanent injunction restraining the defendant from dispossessing the plaintiff. The plea of ouster of the jurisdiction of the Civil Court to maintain the suit u/s 21 of the Act was raised. Bhattacharjee, J. was of the view that the jurisdiction of the Civil Court on the facts of that case was not ousted u/s 21. His Lordship held that the existence of a "dispute" is a sine qua non of the applicability of Section 21 of the Act and consequently the bar to the jurisdiction of the Civil Court must be related to the existence of such a dispute. When there was no such "dispute", clearly the bar would not be applicable. His Lordship was of the view that the suit cannot be an essential fact u/s 21 of the Act. The relief claimed in the said suit was inter alia for a declaration of tenancy rights by contracts and alternatively acquisition of tenancy right by adverse possession besides confirmation of title. There was also a prayer in the suit for permanent injunction restraining the defendant from dispossessing the plaintiff. According to the Lordship since the prayer portion relating to declaration of tenancy right does not purport prima facie to affect any "dispute" Section 21 will not be a bar. The question arose again in the case of *Sarat Ch, Panda v. Amin Ali* (1962) 66 Cal WN 229, In that case certain persons being disgruntled by award recorded by Bhagchas Board sued for a declaration that they were not bargadars under the persons found by the Board but under some others. P. N. Mookerjee, J. speaking for the Court held that as the primary or the main relief was for a declaration that they were not bargadars under the persons found by the Board, the granting of that relief would obviously affect the particular "award" of the Special Tribunal under the Act. It was held that the civil court's jurisdiction was completely ousted in view of the express language of the statute. His Lordship however did not decide this question as the suits filed were held to be bad for multi-fariousness or mis-joinder of parties and causes of action. Hence, according to their Lordships the suits failed on that ground and no decision was called for on the other questions decided by the learned Munsif. In the case of *Kalipada Naskar v. Moni Mohan Naskar* the dispute arose between Moni Mohan and Kalipada for delivery of the produce the Munsif qua Appellate Officer determined u/s 18 (2) of the Act that Kalipada was not a bargadar. Thereupon Monimohan instituted a suit in the Civil Court for a declaration that Kalipada and his brothers are not tenants under him and for recovery of khas possession. Bijayesh Mukherji, J. held that such a suit did not question the

Appellate Officer's finding that Kalipada was not a bargadar and therefore the suit was not hit by Section 21 (I) of the Act. His Lordship was of the view that the authority under the Act has the only jurisdiction to decide whether one is a bargadar or not. As soon as it decides that he is not a bargadar, that matter falls outside the jurisdiction. In the present case it has been held by the Bhagchas Officer as well as the Munsif qua Appellate Officer that the plaintiff was a bargadar in a dispute raised u/s 18 (1) of the Act. In the case decided by Bijayesh Mukhejee, J. the finding of the authority under the Act was that the plaintiff was not a bargadar. This decision, therefore, does not directly cover the present controversy. The Division Bench in the case referred to above did not consider it necessary to decide this point. The only other case where this point had been considered is the judgment in the case of Jadu Nath v. Lal Mohan, 66 CWN 88. In my opinion, reading the scheme of the Act it is clear that complicated questions relating to title to the property or controversy as to whether there subsists a relationship of landlord and tenant between the parties are not to be decided by the statutory tribunals set up under the Act. Such questions are left for the Civil Court to determine according to the procedure laid down under the ordinary law of the land. It is only when a person is a bargadar, disputes which arise on the basis of such relationship mainly division or delivery of the produce, termination of the cultivation by the bargadar, place of storing or threshing the produce which are of a less complicated nature and which require a speedy and summary disposal for the interests of all the parties are to be decided by the tribunals set up under the Act. Questions may sometimes crop up in the determination of such disputes as to whether the person is a bargadar or not, it is only for the purpose of deciding such disputes the authorities have been given power to decide this question and such jurisdiction is necessarily of a limited, incidental and collateral character.

5. There is a well-recognised distinction between incidental or collateral jurisdiction and direct and exclusive jurisdiction. The determination of the existence of relationship of bargadar may be relevant and appropriate, and sometimes may be necessary too, because on the existence of such a relationship, the statutory tribunal is vested with the jurisdiction to decide the different categories of disputes u/s 18 (1) of the Act. The jurisdiction of the Civil Court may be excluded expressly or by clear implication arising from the scheme of the Act. Where the Legislature sets up a special Tribunal to determine questions relating to rights or liabilities which are the creation of a Statute, the jurisdiction of the Civil Court may be deemed excluded by implication. In my opinion, although the statutory tribunals have been vested with the jurisdiction to determine the question about the existence of the relationship of bargadar, such jurisdiction being of an ancillary and collateral character was not intended to oust jurisdiction of the Civil Courts when the dispute is whether a person is a tenant or not. Such a dispute, in my opinion, does not come within the jurisdiction of the special Tribunal set up under the Act.

6. Reliance was placed by Mr. Chakraborty learned counsel for the defendant-

appellant upon the decision of the Supreme Court in the case of Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, in support of the proposition that where the statute gives a finality to the order of the special tribunals, the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Court would normally do in a suit. I do not see how this decision can be of any assistance to the appellant in this case. If a Bhagchas Officer, as I have held, has no jurisdiction to decide any dispute as to whether a person is a tenant or not, the question of giving a finality to his decision on such a question does not arise. It is only those matters which are mentioned in Sections 17 and 18 of the Act where the Bhagchas Officer and the appellate authority have the exclusive jurisdiction to decide and the finality of the orders of the Special Tribunals can be pleaded in respect of such matters only. If such Tribunals have no jurisdiction to decide the dispute raised in the present suit, I do not see how it will oust the jurisdiction of the Civil Court to entertain such a suit.

7. For the reasons stated above I dismiss the appeal and the judgment of the learned Subordinate Judge is affirmed.

8. There will be no order as to costs.