

(1961) 04 CAL CK 0001
In the Calcutta High Court

Cooch Behar Bank Ltd. (S.G.)

APPELLANT

Vs

Jatindra Nath Ghosh and Others

RESPONDENT

Date of Decision : 20-04-1961

Acts Referred:

Transfer of Property Act, 1882 — Section 100, 73, 73(2)

West Bengal Estates Acquisition Act, 1953 — Section 12, 23, 26, 26(1), 7

Citation : 67 CWN 498

Hon'ble Judges : Lahiri, C.J; Bachawat, J

Bench : Division Bench

Advocate : S. Mukherjee, for the Appellant;

Final Decision : Allowed

Judgement

Bachawat, J.—This is an appeal from an order refusing to appoint a Receiver of the compensation monies awarded in favour of the respondents in respect of certain properties mentioned in the petition. The appellant is a banking Company in liquidation. The properties mentioned in the petition were mortgaged in favour of the appellant. The appellant instituted a suit on the Original Side of this Court to enforce the mortgage and obtained a preliminary mortgage decree on the 2nd April 1952 by which it was declared that a sum of Rs. 20,069/2/- was due to the appellant on the date of the decree. Final mortgage decree has not yet been passed. On the 7th July 1958, the Court Liquidator received a letter from the District Compensation Officer in which it was stated that a sum of Rs. 12,250/- and 54 nP. had been determined as the amount which was payable as compensation to the respondents in respect of the mortgaged properties. On obtaining this information the appellant launched the present application. The learned trial Judge held that the appellant was entitled to proceed only against fifty per cent, of the compensation money and he accordingly issued an injunction restraining the respondents from withdrawing fifty per cent, of the compensation money payable to them in respect of the properties mentioned in the petition. At the same time, he gave liberty to the respondents to withdraw a

sum of Rs. 1250/-, said to be the sum adjudged by the Compensation Officer to be payable to them by way of ad-interim payment. Apparently, the learned trial Judge took the view that the ad-interim compensation was entirely protected in view of sub-section (3) of section 26 of the West Bengal Estates Acquisition Act, 1953, and that fifty per cent, of the monies payable to the respondents on account of final compensation was also protected in view of sub-section (1) of section 26 of that Act. Now, sub-section (1) of section 26 provides that no portion of the compensation payable to any intermediary shall be liable to attachment at any time in execution of decrees including decrees for arrears of rent. I am of opinion that sub-section (1) of section 26 does not prevent the mortgagee decree-holder from recovering the mortgage money out of the compensation monies awarded in respect of the mortgaged properties. The mortgagee seeks to recover the mortgage monies out of the compensation monies not by virtue of any order of attachment but on the strength of its mortgage. The properties mortgaged in favour of the appellant were compulsorily acquired and the compensation money is now payable in respect of the mortgaged properties so compulsorily acquired. The mortgage now has shifted and attached to the compensation monies. The mortgagee has now a qualified right of property as a mortgagee in the compensation monies. Its right to have recourse to the compensation monies is in no way abrogated or fettered by the provisions of subsection (1) of section 26 of the West Bengal Estates Acquisition Act. Sub-section (3) of section 26 provides inter alia that all sums recoverable under an order of attachment under sub-section (1) shall be deducted from the amount of compensation payable in non-negotiable bonds under the provisions of clause (b) of sub-section (2) of section 23 and that no such sum shall be deducted from the amounts payable under sub-section (1) or subsection (2) of section 12. This section protects the whole of the interim compensation money from attachment. I am of opinion that this sub-section again does not protect the ad-interim compensation money from the mortgage claim. The mortgage rights have shifted and attached also to the ad-interim compensation money.

2. A Bench of this Court had occasion to consider the points involved in this case in the case of Nirmal Sundari Dasi and Another Vs. Sm. Mrinalini Dasi, . In that case, the Bench came to the conclusion that by virtue of section 73 (2) of the Transfer of Property Act read with section 100 of that Act, a charge-holder is prima facie entitled to claim compensation money payable to the judgment-debtors (intermediaries) for the charged properties and that by sub-section (3) of section 73 that claim must prevail against all other claims except those of prior encumbrances. The Bench also came to the conclusion that there was nothing in the Estates Acquisition Act which destroyed in any way the right which the charge-holder had over the compensation monies or which affected the right of the charge-holder to obtain payment of his dues out of such compensation monies. The Bench pointed out that that mortgagee or chargeholder had a right to obtain payment of the monies secured by the mortgage or charge independently of any attachment. It was pointed out that an order for

appointment of Receiver is not an order of attachment. The Bench held that section 26 of the Estates Acquisition Act did not limit the extent of recovery by a mortgagee or chargeholder who sought to realise his dues by appointment of a Receiver of the compensation monies. The Bench also held that ad-interim compensation was immune only from the order of attachment u/s 26 (1) and from an order of deduction u/s 7 and that there was nothing in the Estates Acquisition Act which debarred the charge-holder from realising his dues out of the ad-interim compensation monies payable to the intermediary. The Bench had occasion to consider the judgment in this very case which was then reported. The Bench stated that they were, with respect, unable to agree with the decision or the reasoning upon which it was founded. The Division Bench also relied upon a prior decision of this Court in Dhirendra Nath De Vs. Naresh Chandra Ray and Others, .

3. I have, therefore, come to the conclusion that the appellant was entitled to obtain an order for appointment of Receiver in respect of the compensation monies mentioned in the petition.

4. Several technical objections were raised by the respondent to the application launched by the appellant. Those contentions were rightly overruled by the learned trial Judge.

5. I find that during the pendency of the appeal, this Court made an interim order for appointment of Receiver on the 3rd February 1960.

6. I have come to the conclusion that the appellant is entitled to an order in terms of prayer (a) of the petition and consequently the interim order made by this Court on the 3rd February 1960 should continue.

7. I, therefore, propose that the following order be passed.

8. The appeal be and is hereby allowed. The judgment and order of the learned trial Judge dated the 3rd September 1958 is set aside. It is declared that the appellant is entitled to an order in terms of prayer (a) of the petition. Let the interim order passed by this Court on the 3rd February, 1960 continue. There will be no order for costs as between party and party. The Liquidator will retain his costs as between Attorney and client, of and incidental to this appeal and of and incidental to the application in the Court below out of the assets in his hands.

Lahiri, C.J.

I agree.