

(1963) 07 CAL CK 0004
In the Calcutta High Court

Jatindra Nath Maity and Others

APPELLANT

Vs

Rasmoni Mahapatra and Others

RESPONDENT

Date of Decision : 22-07-1963

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : 67 CWN 934

Hon'ble Judges : Chatterjee, J

Bench : Single Bench

Advocate : S.C. Jana and Sasti Roy, for the Appellant; A.P. Chakraborty, for the Respondent

Judgement

Chatterjee, J.—These are two petitions under Article 227 of the Constitution relating to West Bengal Land Reforms Act and are on behalf of persons who are alleged to be bargadars under the provisions of this Act. The opposite parties applied for share of crops and for ejectment of the alleged bargadars from the disputed property. The defence case is that if a licence is granted for cultivating betel leaves, that piece of land would not be considered to be agricultural land and, therefore, the provisions of the West Bengal Land Reforms Act would not apply. The second ground is that there being a previous decision between the parties as to the applicability of the Act and the Land Reforms Officer having decided that the Act would not be applicable, the present petitions are barred by the doctrine of finality of litigation or by the doctrine of res judicata and the Land Reforms Officer had no authority in that matter. With regard to the second point I have been referred to a decision of the Bhagchas Officer in a case No. 30/58-59. That was a case for ejectment under the West Bengal Land Reforms Act and the ground was for bonafide requirement of the owner. The question was whether the owner required it for his own use and purpose. The officer found in favour of the bargadar; but the officer observed as follows: --

Moreover, it is well known that to construct a Pan Boroj a permanent fencing is required for safeguard which may be denoted as an immovable property. In this

view, I hold that Civil Court is the competent authority where the petitioner should have appeared for relief." But this I find was not the issue but that was an incidental observation made by the officer concerned after having overruled the case made out in the petition on its merits. It is urged that the finding aforesaid constitutes a final determination of the rights of the parties and would, therefore, operate as *res judicata* to all subsequent proceedings. As I have said, it is an incidental observation and may at most be considered to be an *obiter dictum*. I can not hold that the authority decided the question of jurisdiction on an issue raised by the parties. It was an expression of opinion not called for by the parties on a matter not raised.

The first point is over-ruled.

2. With regard to the second point, Mr. Janah has referred me to a decision in 24 Madras, 421, between *Murugesu Chetti v. Chintathambi Goundan and ors.* (1) where it has been held that a lease of land for the cultivation of betel garden is an agricultural lease. I entirely agree with the observation of the Madras High Court. It has been held by this court in a case between *Surendra v. Hari Mohan* (2) in 31 Calcutta, 174, that cultivation of indigo is agricultural purpose though the manufacture of indigo cakes was not so. Clearly, therefore, cultivation of betel, which has no greater commercial value than indigo, will be for agricultural purpose. Therefore, I hold that the West Bengal Land Reforms Act is attracted and the applications are maintainable.

3. The result is that the Rules are discharged. I make no order as to costs.