

(1955) 03 CAL CK 0024
In the Calcutta High Court
Case No : Civil Revision Case No. 684 of 1955

Lala Gangaram

APPELLANT

Vs

Krishna Gopal Jhunhunwala and Others

RESPONDENT

Date of Decision : 21-03-1955

Acts Referred:

West Bengal Estates Acquisition Act, 1953 — Section 39, 4, 44, 46

Citation : 59 CWN 1006

Hon'ble Judges : S.R. Das Gupta, J; Mallick, J

Bench : Division Bench

Advocate : Atul Chandra Gupta and Sachindra Chandra Das Gupta, for the Appellant; Lala Hemanta Kumar, N.C. Talukdar, Soudhendra Kumar Basu, Chandra Narayan Laik and Ajit Kumar Mukherjee, for the Respondent

Judgement

S.R. Das Gupta, J.—This is an application for revision of an order passed by the Subordinate Judge, Asansol. on an application made u/s 46 of the West Bengal Estates Acquisition Act, 1953. The learned Subordinate Judge refused to stay the suit under the said section. The present application is made for revision of the said order. The suit which is sought to be stayed is a suit filed by the respondents for khas possession of a colliery. The respondents are admittedly the proprietors of the said colliery. They granted a lease of the same to the defendant No. 1 and father of the defendants 2 and 3. On the 7th June, 1941, the lessee had granted a sub-lease to one Haripada. Thereafter Haripada transferred his interest in the said sub-lease to defendant No. 4, the Bengal Agency and Stores Syndicate of which the defendants 5 and 6 were the partners. On the 30th September, 1951, the said lease came to an end. This suit was instituted, after the expiry of the said lease, for khas possession. The original lessees did not at first resist the suit, but the suit was contested by the said Bengal Agency and Stores Syndicate and its partners. The contention of the said defendants was that there had been renewal of the said lease, the renewal having been obtained by the sub-lessees for and on behalf of the original lessees. The respondents after filing the said suit made an application for injunction restraining the defendants from cutting away

coal from the said colliery. The learned Subordinate Judge who heard the said application did not make any order for injunction but only directed the defendants to file security for Rs. 5,000. Against that order an appeal was filed to this Court. The said appeal was heard by us sometime ago and we adjourned the said appeal and directed the learned Subordinate Judge to hear the said suit within the month of February last and liberty was given to the appellant to renew the appeal in case the suit was not heard within the said period. It was after the said order was made by us that the original lessee for the first time filed his written statement and therein he stated that he had exercised his right of option and the said right of option was exercised by the sub-lessees for and on his behalf. Having filed the said written statement at this late stage the lessee made the present application u/s 46 of the West Bengal Estates Acquisition Act, 1953, and asked for a stay of the suit. The learned Subordinate Judge rejected the said application and thereafter the present application has been made to this Court for revision of the said order.

2. Before setting out the contentions of the parties before us it would be necessary to set out the relevant provisions of section 46, and section 39 of the West Bengal Estates Acquisition Act, 1953. Section 46 reads as follows :

Where an order has been made under sub-section (1) of section 39 directing the preparation or revision of a record-of-rights, no Civil Court shall, until after the final publication of the record-of-rights under sub-section (2) of section 44, entertain any suit or application for the determination of rent or determination of the status of any tenant or the incidents of any tenancy to which the record-of-rights relates, and if any such suit or application is pending before a Civil Court on the date of such order it shall be stayed :

Provided that in computing the period of limitation prescribed by any law for the time being in force for any suit or application, the time during which such suit or application cannot be entertained or remains stayed under the provisions of this Act shall be excluded.

Explanation--In this section suit includes an appeal.

3. Sub-section (1) of section 39 of the said Act reads as follows :

(1) Subject to the provisions of sub-section (4) the State Government" may, for carrying out the purposes of this Act, make an order directing--(a) that a record-of-rights be prepared in respect of any district, or part of a district, or (b) that the record-of-rights prepared and finally published under Chapter X of the Bengal Tenancy Act, 1885, in respect of any district, or part of a district be revised, by a Revenue Officer in accordance with the provisions of this Chapter and such rules as may be made in this behalf by the State Government.

4. Sub-section (4) of section 39 reads as follows :

Where any proceedings in respect of the preparation of record-of-rights have been commenced under Chapter X of the Bengal Tenancy Act, 1885, before this

Act comes into force and such record-of-rights has not been, finally published before such date, any further proceedings required for the completion and final publication of such record-of-rights shall be undertaken in accordance with such rules as may be prescribed. Such record-of-rights shall thereupon be deemed to have been duly prepared and finally published under this Chapter.

5. Mr. Gupta appearing on behalf of the petitioner before us contended that because of section 46 of the West Bengal Estates Acquisition Act, 1953, the present suit should be stayed. The determination of the question as to whether or not the petitioner is a tenant would according to Mr. Gupta, be determination of his status as a tenant. In any event, he contended, it would be a question relating to the incidents of a tenancy to which the record-of-rights relates. In other words Mr. Gupta contended before us that a suit in which the question as to whether or not a person is a tenant is raised is a suit to which section 46 of the Act would apply. In support of the said contention Mr. Gupta relied upon the provisions of the Bengal Tenancy Act wherein the items which are to be included in a record-of-rights have been stated. He also referred us to Rule 26 of the Rules prepared under the Act of 1953, being the West Bengal Estates Acquisition Rules, 1954. That Rule provides that when an order is made under clause (a) or clause (b) of sub-section (1) of section 39 for the preparation or revision of a record-of-rights shall be specified in the order, and may include, either without or in addition to other particulars, some or all of the matters mentioned in the said rule. One of such matters is in the name of each person, who is a tenant or occupant of land or who is a bargadar as described in the West Bengal Bargadars Act, 1950. There are various other matters mentioned in the said rule. Mr. Gupta contended before us that the name of each person, who is a tenant or occupant of land has to be recorded in the record-of-rights under rule 26 of the said Rules. It therefore, according to him, follows that a suit in which the question arises as to whether or not a particular person is a tenant is a suit which would come within the purview of section 46 of the Act and has to be stayed; in other words, Mr. Gupta's contention, amounts to this that if a suit is instituted in a Civil Court respecting any matter which is mentioned in rule 26, that suit has to be stayed. In our opinion, this contention of Mr. Gupta cannot be accepted as sound. It is true that in rule 26 a number of particulars have been mentioned which may be set out in an order made under clause (a) or clause (b) of sub-section (1) of section 39 for the preparation or revision of a record-of-rights but that does not mean that any suit relating to any of the matters mentioned in the said rule would be a suit which has to be stayed under section 46 of the West Bengal Estates Acquisition Act, 1953. In our opinion, the correct position is that although various particulars have to be given in a record-of-rights to be prepared under the new Act, the suit which has to be stayed u/s 46 would be only those suits in which the determination of rent or the determination of the status of any tenant or the incidents of any tenancy to which the record-of-rights relates are raised; in other words, if the suit or application be a suit or application for the determination of rent or the determination of the status of a tenant or the

incidents of a tenancy to which the record-of-rights relates, such a suit or application only would be a suit u/s 46 of the West Bengal Estates Acquisition Act, 1953. We cannot accept the view that any suit which may be filed relating to any matter to be included in a record-of-rights must be stayed u/s 46 of the Act, nor can we accept the view that the question as to whether or not a person is a tenant comes within the words status of any tenant" or within the words "incidents of any tenancy". The question as to the status of a tenant or the incidents of any tenancy in our opinion presupposes the existence of a tenancy. In other words, the question of the status of a tenant or the incidents of any tenancy can only arise on the admitted fact of a tenancy. This view seems to be supported by decision of this Court reported in 3 C.L.J. [(Notes portion) 63n (Rajaram Singh v. Sheo Prosad Roy (1))], decided by McLean, C. J. and Mookerjee, J. In that case a suit was filed by A to eject B on the ground that B was a trespasser and B set up a tenancy and pleaded that the suit was not maintainable as settlement proceedings were in progress in the village in which the land was situated. Chief Justice McLean and Mr. Justice Mookerjee held that the suit was not one for the alteration of the rent, or the determination of the status of any tenant within the meaning of section 111 of the Bengal Tenancy Act and was consequently not barred under that section. This view was followed in the case of Kshemananda Kumar v. Rashamaya Haldar, (2) (32 C. W. N. 132). In our opinion also the question as to whether or not the defendant is a tenant is not a question for the determination of the status of a tenant. I should have mentioned that section 111 of the Bengal Tenancy Act corresponds to section 46 of the West Bengal Estates Acquisition Act, 1953. The said section provides that where an order has been made u/s 101, directing the preparation for a record-of-rights, then, a Civil Court shall not,--where a settlement of land-revenue is being or is about to be made--until after the final publication of the record-of-rights, and, where a settlement of land-revenue is not being made or is not about to be made--until four months after the final publication of the record-of-rights, entertain any application made u/s 158, or any suit or application for the alteration of the rent or the determination of the status of any tenant, in the area to which the record of-rights applies. u/s 46 of the West Bengal Estates Acquisition Act suits or applications for the determination of rent or the determination of the status of any tenant or the incidents of a tenancy are to be stayed. It would be helpful to refer in this connection to section 158 of the Bengal Tenancy Act. That section provides that subject to the provisions of section 111, the Court having jurisdiction to determine a suit for the possession of land may, on the application of either the landlord or the tenant of the land, inter alia determine the class or classes to which he belongs and the rent payable by him at the time of the application. It seems to me that section 46 of the West Bengal Estates Acquisition Act, 1953, only bars those suits or proceedings in which questions similar to the questions permitted to be raised u/s 158 of the Bengal Tenancy Act are involved. In other words, it is the application or the suit in which the determination of rent or the determination of the status of a tenant or the determination of the incidents of tenancy are raised which should be

stayed u/s 46 of the said Act. The suit in which the title has to be determined, namely, whether or not X is a tenant in respect of a particular land or Y is the landlord thereof does not in my opinion come within the purview of section 46 of the said Act. The contention of Mr. Gupta, therefore, must fail and the, present suit cannot be stayed u/s 46 of the West Bengal Estates Acquisition Act, 1953.

6. The result, therefore, is that the decision of the learned Subordinate Judge is upheld. The Rule is discharged with costs to the opposite parties Nos. 1 to 4--the hearing fee being assessed at three gold mohurs.

7. We make an order that the suit be heard and disposed of as quickly as possible. We make it clear that in disposing of this application, we are not at all deciding the merits of the suit which are left open.

Mallick, J.

I agree.