
(2000) 06 CAL CK 0013
In the Calcutta High Court
Case No : W.P.L.R.T. No. 156 of 2000

Lokman Shaikh

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 12-06-2000

Acts Referred:

West Bengal Estates Acquisition Act, 1953 — Section 6

Citation : 104 CWN 882

Hon'ble Judges : S.B. Sinha, J;Hrishikesh Banerjee, J

Bench : Division Bench

Advocate : Sk. Abdus Salam and Mosleuddin Ahmed, for the Appellant; Subol Moitra and Gouri Mukherjee, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—This application is directed against an order dated 29.2.2000 passed by the West Bengal Land Reforms and Tenancy Tribunal, whereby and whereunder the petitioner's application has been dismissed. The petitioner claimed himself to be in possession of a tank fishery. However, from the record of rights which is contained in annexure "B" to the application it appears that the petitioner merely had a right of fishing. The question which arises for consideration is as to whether a right of fishing alone would come within the definition of tank fishery so as to enable the petitioner to take benefit of Section 6 of the West Bengal Estates Acquisition Act, 1953. Section 6 provides a right to intermediary to retain contained in Sections 4 and 5 but subject to the proviso appended to Sub-section (2) thereof. Section 6(e) provides for tank fisheries and thus an intermediary may have right to retain the same. The Explanation appended to Section 6(e) defined tank fishery to mean - "tank fishery" means a reservoir of place, for the storage of water whether formed naturally or by excavation or by construction of embankments, which is being used for pisciculture or for fishing, together with the sub soil and the banks of such reservoir or place, except such portion of the banks as are included in a

homestead or in a garden or orchard and includes any right of pisciculture of fishing in such reservoir or place."

2. The petitioner herein does not claim any sub soil right. The meaning of tank fishery as contained in explanation appended to Section 6(e) of the West Bengal Estates Acquisition Act leaves no manner of doubt that the right to catch fish alone will not come within the purview thereof and in that view of the matter, evidently Section 6(2) will have no application inasmuch as the right to retain possession in terms of Sub-section (2) of Section 6 will be attracted only when the intermediary is in possession of the tank fishery which would in turn must be held to mean a tank fishery within the meaning of the said provisions as defined in the Explanation appended thereto.

3. Right to catch fish merely amounts to a Profit of Business and any person without having any sub soil right cannot be held to be in possession of a tank fishery. The learned Tribunal, therefore, in our opinion, has rightly held that the petitioner is not entitled to any relief. The learned counsel appealing on behalf of the petitioner, however had drawn our attention to two orders of this court passed in CO. 9253(W) of 1995 and W.P. 9300(W) of 1998. The said orders do not contain any reason nor have dealt with the matter upon taking notice of the provision of Section 6(sic) read with Section 6(2) of the West Bengal Estates Acquisition Act. The said decisions therefore, did not lay down the law correctly and are thus overruled. For the reasons aforementioned, there is no merit in this application which is dismissed accordingly

Hrishikesh Banerjee, J.

I agree.