
(1970) 07 CAL CK 0004
In the Calcutta High Court

Malhati Tea Syndicate Ltd.

APPELLANT

Vs

Revenue Officer, Jalpaiguri

RESPONDENT

Date of Decision : 08-07-1970

Acts Referred:

Constitution of India, 1950 — Article 14, 226(1)

West Bengal Estates Acquisition Act, 1953 — Section 10, 2(4), 2(i), 2(p), 4

Citation : 74 CWN 825

Hon'ble Judges : Anil Kumar Sen, J

Bench : Single Bench

Advocate : Nani Coomar Chakraborty, Mukul Gopal Mukherji and Nepal Chandra Sen, for the Appellant; P.K. Sengupta, M.C. Chakravarti and J.M. Bakshi, for the Respondent

Final Decision : Allowed

Judgement

Anil Kumar Sen, J.—This Rule, issued on an application under Article 226(1) of the Constitution, raises an interesting point as to the extent of application of the provisions of the West Bengal Estates Acquisition Act, 1953 (hereinafter referred to as the said Act) to leases under tea grants made by the Government prior to the said Act.

2. On December 9, 1937 the Governor of Bengal granted 1268.95 acres of land in Touzi No. 410. Pargana - Chengmari, Police Station - Mal, Sub-registry - Moynaguri, District _ Jalpaiguri, commonly known as Malhati Tea Estate or tea lease under Chapter 5 of the Bengal Waste Lands Manual 1936 in favour of Malhati Tea Syndicate Limited for a period of 30 years with effect from April 1, 1932 on yearly rent of Rs. 2,760.12 as. Some other jote lands were also settled with the said lessee as a part of the said tea estate. It is not in dispute that altogether an area of 1383.43 acres were being held by the lessee constituting the tea estate under the Government when the said Act came into effect. The term of 30 years having expired, the Petitioner to this Court, who came to own the said tea estate by subsequent transfer, obtained a few summary leases of

renewal from year to year. The last of such renewal was made in the month of March 1965 for the year 1965-66. It is not in dispute that both under the original lease as also under the summary lease of renewal the Petitioner lessee is entitled to further renewals. Clause 15(1) of the last summary lease of renewal provides as hereunder: - "The lessee shall be entitled to the renewal of this lease for a further period of one year or such period as the State Government may think fit subject to the reservation that the decision of the State Government u/s 6(3) of the Estate Acquisition Act would be binding on the lessee, and to renewals for similar periods in perpetuity subject to the Rules and the terms and conditions of this lease and to such clauses as the State Government may from time to time find it necessary and on the renewal of a lease and subject further to such rent as may then be fixed provided that such additional clauses shall not be inconsistent with the law or the express conditions of the grant and shall not have retrospective effect."

3. Admittedly the Petitioner was allowed by the State Government to retain the entire area of 1383.43 comprising the tea estate u/s 6(3) of the said Act. The order to that effect, dated October 10, 1963 is made annexure D to the petition.

4. Thereafter a proceeding u/s 42(2) read with Section 42A of the said Act was started by the Revenue Officer for fixation of the rent payable by the Petitioner in respect of the tea estate, allowed to be retained by the Petitioner. In the said proceedings after hearing the parties including the Petitioner, the Revenue Officer by his order dated November 12, 1965 determined the rent at Rs. 8334.26. Although this order does not indicate anything to show that the Revenue Officer also determined the cess payable by the Petitioner, it appears from the memorandum dated February 22, 1966 issued by the Additional Deputy Commissioner that what was determined was not only the rent but also the road and P.W. cess at Rs. 1,373.16. The order and the aforesaid memorandum indicate that such fixation was to take effect from November 1965. Under the original lease rent payable was Rs. 2,760.12 as, as referred to herein before and it is also not disputed that road and P.W. cess payable was Rs. 614.12 and education cess payable was Rs. 723.76.

5. On April 19, 1967 the Additional Deputy Commissioner, Jalpaiguri, sent a demand to the Petitioner calling upon it to pay a sum of Rs. 59,150.97 towards arrears of rent and a sum of Rs. 6,527.01 towards arrears of education cess. Such demand was made on the basis of the determination u/s 42(2) of the said Act and giving retrospective effect to such determination with effect from the date of vesting, namely, April 14, 1955. This demand further indicated that to the extent the claim was made retrospective from the date of vesting it superseded the earlier order dated February 22, 1966. The Additional Deputy Commissioner, Jalpaiguri further intimated the Petitioner on April 29, 1967 that unless the Petitioner pays the arrears claimed from him the renewal of the lease cannot be granted. The Petitioner not having paid the amount a certificate was levied against the Petitioner for a total claim of Rs. 99,184.64 towards the

aforesaid arrears of rent and cess together with interest thereon.

6. On these facts the Petitioner in this Rule prays for issues of an appropriate writ for setting aside the order of determination of rent by the Revenue Officer dated November 12, 1965 the memorandum of the Additional Deputy Commissioner, Jalpaiguri, dated February 22, 1966 intimating such determination, the demand dated April 19, 1967 and the certificate dated November 29, 1967 as aforesaid. The Petitioner has also prayed for a writ of mandamus commanding the Respondents to execute a lease in Form 1 Schedule F to the Rules framed under the Act for a period of 30 years.

7. Petitioner claims that it is not an intermediary within the meaning of the said Act and was also not so on the date of vesting and as such Section 42 can have no application to the lease in its favour. The Petitioner further challenges the authority of the Respondents to assess the cess payable by it in a proceeding u/s 42 of the said Act and further disputes the validity of a retrospective claim with effect from April 14, 1955 as made in the Memo dated April 19, 1967 in modification of the earlier orders. Incidentally of Section 42(2) of the said Act to be discriminatory in so far as it makes special provision for assessment of rent of tea estates with more onerous obligations than those in the cases of assessment u/s 42(1) of the said Act and as such void.

8. No affidavit-in-opposition has been filed by the State but Mr. Bakshi appearing for the State has contested this Rule purely on the principles of law: According to him, even on the facts set out in the application the Petitioner is an intermediary in law and as such there has been a valid determination made u/s 42(2) read with Section 42A of the said Act. According to him, the determination being in accordance with law, the demand and the certificate following such determination are equally in accordance with law.

9. Mr. Chakraborty appearing on behalf of the Petitioner does not dispute that in view of the provisions of the explanation added to Section 6(3) of the said Act, it is open to the State Government to determine what would be the quantum of land which is required for the tea garden even in respect of the lessees the Petitioner holding directly under the State. What would be the result of such adjudication or more precisely whether the land found in such adjudication to be surplus for the tea garden would or would not vest by the other provisions of the said Act or not need not be gone into in this case as admittedly in the adjudication u/s 6(3) of the said Act the Petitioner has been found entitled to retain the entire tea estate. Therefore the only dispute which stands to be decided in this Rule is limited to the question as to whether Section 42(2) read with Section 42A of the said Act is applicable to the lease held by the Petitioner under the State and whether the determination made is according to law or not. On the decision on this issue would again depend the validity or otherwise of the certificate.

10. Mr. Chakraborty has strongly contended that his client being a lessee directly under the State in respect of the tea estate, it is not an intermediary within the

meaning of Section 2 Clause (i) nor is it a lessee under an intermediary. Mr. Chakravorty further contends that the Petitioner is a non-agricultural tenant and as such specifically outside the purview of the provisions of the said Act. Mr. Chakraborty relies on decision of the Supreme Court in the case of (1) Shibsankar Nandy Vs. Prabartak Sangha and Others, and a decision of this Court in the case of (2) M. N. Mukherjee v. N. C. Hazra 71 CWN 279. According to Mr. Chakraborty, Section 42 in both the Sub-sections as it stood on the relevant date authorizes the Revenue Officer to determine the rent in respect of the land retained by an intermediary. Mr. Chakraborty emphasizes the use of the term "Intermediary" to contend that rent payable by any person who is not an intermediary but nonetheless who is entitled to retain any land under the provisions of the Act would not come under the provisions of Section 42(2). Secondly, Mr. Chakraborty has contended that even assuming that Section 42 of the said Act is applicable still what is within the powers of the Revenue Officer to determine is rent and no cess. According to Mr. Chakraborty, cess is to be assessed under different provisions and under a different statute namely, the Cess Act, and it was not open to the Revenue Officer to abrogate the provisions of the said statute and himself determine the cess. Thirdly, Mr. Chakraborty has contended that the provisions of the statute never conferred any power at the relevant time on the Revenue Officer to give effect to the determination from any retrospective date and the provisions of Rule 29 of the Rules framed under the Act leading to such an effect is ultra vires the provisions of the Act; in the present case, Mr. Chakraborty contends that the Revenue Officer, therefore, acted rightly in directing that the determination will take effect from the date of the order but the subsequent modification made by the Additional Deputy Commissioner on April 19, 1967 is accordingly ultra vires the provisions of Section 42(2) of the said Act discriminates the holders of the tea estate in so far they are taken out of the normal provisions for assessment of the rent and subjected to a special onerous burden which is wholly unreasonable and highly discriminatory; according to Mr. Chakraborty therefore the provisions of Section 42(2) should be held as void being discriminatory and if the assessment is to be made it should be made under the provisions of Section 42(1) of the Act.

11. Let me first dispose of the last contention of Mr. Chakraborty as to constitutional validity of Section 42(2) of the said Act argued with reference to Article 14 of the Constitution. It cannot be denied that compared to the provisions of Section 42(1), Section 42(2) provides for a more onerous rent obligation. This differentiation between ordinary agricultural or non-agricultural land holdings and the tea estates by itself would not necessarily amount to discrimination. The legislature itself has made the differentiation and has also laid down the limit of variation between the rent payable for ordinary agricultural or non-agricultural holdings and the tea estates. Such classification when consciously made by the legislature must be presumed to be reasonable unless the contrary is proved. It is now well settled that Article 14 does not prohibit reasonable classification for the purpose of legislation. So where, as in the

present case, the legislature takes care to reasonably classify holders of different kinds of estates or lands into well defined classes, it is not open to the charge of denial of equal protection on the ground that the law made for one class does not apply to the other. It cannot but be said that user of land for ordinary agricultural or non-agricultural purposes are not so profitable as those for cultivation of tea - one of the principal foreign exchange earners of this country. The utility and the use for the two purposes are so widely different that it was certainly open to the legislature to treat them on different footings and, in my view, such differentiation can well be accepted as based on a reasonable classification. In this view I must overrule this contention of Mr. Chakraborty and must hold that Section 42(2) of the said Act cannot be said to be violative of Article 14 of the Constitution on grounds as suggested by the Petitioner.

12. Next I take up the first contention of Mr. Chakraborty to the effect that the Petitioner - a lessee under the Government since prior to vesting - is not an intermediary and as such Section 42 of the said Act which provides for assessment of rent of an intermediary in respect of estates allowed to be retained has got no application. Mr. Chakraborty very strongly relies on the recent amendment to the said Section in November 1969, whereby a new Sub-section being Sub-section (3) with a proviso was incorporated into this Section, to contend that such amendment clearly indicates that prior to the amendment a lessee under the Government in respect of a tea estate never came within the purview of Section 42 of the said Act and the amendment not being retrospective the assessment in the present case is without jurisdiction. The point raised is undoubtedly intriguing.

13. To decide the point it would be necessary to refer to some of the relevant provisions of the statute viz. the West Bengal Estates Acquisition Act 1953 as it stood on the date of the assessment order, namely, November 12, 1965 and subsequent amendments thereto. Section 2(i) defines intermediary as follows: "Intermediary means a proprietor, tenure-holder, under-tenure-holder or any other intermediary above a raiyat or a non-agricultural tenant and includes a service tenure-holder and, in relation to mines and minerals, includes a lessee and a sub-lessee."

14. It should be remembered that Chapter 6 of the said Act has already been brought into force so that by virtue of the provisions of Section 52 thereof raiyats and under-raiyats are also now intermediaries. Section 2(p) provides that expressions used in the said Act but not otherwise defined shall have the same meaning as in the Bengal Tenancy Act, 1885 in relation to areas where such Act is applicable. The notification u/s 4 of the said Act having already been made all estates, and the rights of every intermediary in each such estate now stand vested in the state free from all incumbrances. Section 5 provides for the effect of the notification made u/s 4. Section 6(1) of the said Act in the different clauses set out thereunder provides what an intermediary can retain in spite of vesting of his rights. Section 6(1) (f) provides as follows: (f) "Subject to the

provisions of Sub-section (3), land comprised in tea gardens or orchards or 1 used for the purpose of livestock breeding, poultry, farming or dairy."

Section 6(2) and (3) are in the following terms:

(2) An intermediary who is entitled to retain possession of any land under Sub-section (i) shall be deemed to hold such land directly under the State from the date of vesting as a tenant, subject to such terms and conditions as may be prescribed and subject to payment of such rent as may be determined under the provisions of this Act and as entered in the record of rights finally published under Chapter v. except that no rent shall be payable for land referred to in Clause (h) or (i).

Provided that if any tank, fishery or any land comprised in a tea-garden, orchard, mill, factory or workshop was held immediately before the date of vesting under a lease, such lease shall be deemed to have been given by the State Government on the same terms and conditions as immediately before such date subject to such modification therein as the State Government may think fit to make. (3) In the case of land comprised in a tea garden, mill, factory or workshop the intermediary, or where the land is held under a lease, the lessee, shall be entitled to retain only so much of such land as, in the opinion of the State Government, is required for the tea garden, mill, factory or workshop, as the case may be, and a person holding under a lease shall, for the purpose of assessment of compensation be deemed to be an intermediary.

Explanation - The expression "land held under a lease" includes "any land held directly under the State under a lease. This explanation was added with retrospective effect by the Amending West Bengal Act 4 of 1957.

15. A proviso to this Sub-section (3) has been added by the Amending West Bengal Act 31 of 1969 which empowers the State Government to review an earlier decision as contemplated by this Sub-section. Section 10 of the said Act provides that the Collector is to take charge of all vested estates and interest of intermediaries and lays down the procedure thereof.

16. Next I come to the most relevant provision for the purpose of the present case, namely, Section 42. Section 42(1) provides that the Revenue Officer shall determine the rent payable by an intermediary in respect of agricultural and non-agricultural lands. Section 42(2) provides as follows: - "When an intermediary is entitled to retain possession of any land comprised in a tea garden under Clause (f) of Sub-section (1) as read with Sub-section (3) of Section 6, the Revenue Officer shall determine the rent payable in respect of such land in the following manner, that is to say - (a) for land under cultivation of tea or covered by factories, office buildings, or quarters for labourers of the tea garden, at twice the average rate of rent paid for highest class of agricultural lands in the vicinity subject to a maximum of Rs. 6.50 per acre, (b) for land under cultivation of cardamom, at Rs. 15 per acre, (c) for land under cultivation of any other crop, at one and a half times the average rate of rent paid for the average class of

agricultural lands in the vicinity, (d) for land under hats or markets, at the average rate of rent paid for the highest class of agricultural lands in the vicinity, plus an amount equivalent to 50 per centum of the net profits from such hats or markets and (e) for any other land, at the average rate of rent paid for the average class of agricultural lands in the vicinity.

17. There has been an important amendment to this Section by the Amending West Bengal Act 31 of 1969. Two more Sub-sections have been added to Section 42 which are in the following terms. "Sub-section (3): Notwithstanding anything to the contrary contained in the proviso to Sub-section (2) of Section 6 or in any contract, where any land comprised in a tea garden is held under a lease, the rent payable by the lessee in respect of such lands be rent determined by the Revenue Officer in the manner specified in Sub-section (2) Explanation - In this Sub-section lease includes a lease granted directly by the State. (4) Notwithstanding anything to the contrary contained in any judgment, decree or order of any Court or tribunal or in any law, the rent determined under Sub-section (2) or Sub-section (3) shall take effect and shall be deemed always to have taken effect from the date of vesting". Section 47A was introduced in 1961 to meet the decision of this Court in the case of (3) Ramnuggar Cane and Sugar Co., Ltd. Vs. State of West Bengal, to authorize the Revenue Officer to determine the rent even after publication of the record of rights.

18. According to Mr. Chakraborty, if a person, who is otherwise an intermediary under the provisions of the said Act, holds any tea estate he becomes entitled to retain the same u/s 6(1)(f); again if any one holds such a tea estate under an intermediary as a lessee then u/s 6(2) of the said Act the said lessee shall be deemed to be holding the same directly under the State. In either of these two cases, according to Mr. Chakraborty, there will be no difficulty and the estate would be an estate of an intermediary; it would be subject to a determination as to the area required for the tea garden u/s 6(3) and also subject to a determination of rent u/s 42(2) of the said Act. But Mr. Chakraborty contends that when a tea estate is held by a lessee directly under the State such estate does not come within the mischief of Section 4, 5 or 6 other than Sub-section (3) thereof. Sub-section (3) has been made to be applicable by the amendment introduced by the West Bengal Act 4 of 1957 when the explanation was added to indicate that land held under a lease includes any land held on lease directly under the State. According to Mr. Chakraborty, the effect of the explanation is that such a lessee who not being ordinarily an intermediary would not have come within the mischief of Section 6(3) of the said Act but has been brought within the mischief of only Sub-section (3) of Section 6 but not the other provisions of the Act. Mr. Chakraborty refers to the last part of the Sub-section which provides that such a person holding under a lease shall, for the purpose of assessment of compensation, be deemed to be an intermediary and contends that if such a lessee be deemed to be an intermediary only for the purpose of assessment of compensation, he is, by necessary implication, not an intermediary for other purposes and certainly not for the purpose of Section 42(2) of the said Act. Next

Mr. Chakraborty consolidates this contention of his by referring to the newly added Sub-section (3) of Section 42 of the said Act referred to hereinbefore. According to Mr. Chakraborty this newly added Sub-section (3) read with its explanation has conferred for the first time the power and authority to determine rent for lessees directly under the State on the Revenue Officer. Necessarily he contends prior thereto rent for such a lessee under the State could not have been assessed u/s 42(2) of the said Act, or in other words Sub-section (3) of Section 42 clearly indicates that what it authorizes was earlier beyond the authority conferred by Section 42(2) of the Act. According to Mr. Chakraborty, Section 42(3) is not retrospective in its operation and it came into effect only on November 3, 1969 and as such the assessment of rent in the present case on November 12, 1965 by the Revenue Officer u/s 42(2) must be deemed to be wholly unauthorized under the provisions of the Act as it then stood.

19. However impressive this contention may be, Mr. Chakraborty himself does not dispute that under the provisions of the said Act even intermediaries may themselves hold tea estates and rent of such tea estates can lawfully be assessed u/s 42(2). This position also follows from the provisions of the said Act. So if it be held that a lessee like the present Petitioner is an intermediary within the meaning of the said Act then the point raised by Mr. Chakraborty would be of no avail and the Revenue Authorities must be deemed to have appropriate authority to make the impugned assessment of rent u/s 42(2). Hence it will be my endeavour now to consider of a lessee of a tea estate like the Petitioner under the Land Laws of Bengal as it stood prior to the enforcement of the said Act as also under the said Act.

20. According to Mr. Chakraborty, a lessee under the Government in respect of a tea estate can never be in the position of an intermediary. According to him in order to be an intermediary there must be a proprietor, tenure holder, under-tenure-holder or some other intermediary interest above a raiyat or a tenant whose interest should vest in the state. To quote his words, the land which all along belonged to the State cannot again vest in the State. I shall presently show that there is a fallacy in this contention; theoretically and in the actual history of the land laws of Bengal, it is possible to contemplate the position of the State as that of a landlord.

21. In considering this question it would be necessary to refer to a little history of the development of this District of Jalpaiguri. Physically this District of Jalpaiguri is divided into two parts, western and eastern - with the river Teesta flowing in between; the two parts comprise two well defined tracts which differ alike in history and administration. The older portion which is west of the river is known as the regulation tract because it was administered under ordinary laws and regulations in force in Bengal; it originally formed part of Rangpur. It consists primarily of four Police Stations of Jalpaiguri - Titalia, Rajgunge and Boda lying to the west of the river and one Police Station Partgram on the east. This part is permanently settled area and is typical of the lower Bengal generally;

the most notable zaminders being the Raja or Raikot of Baikuntapur and Maharaja of Coochbehar. Within this District east of the river Teesta hemmed between estates of Coochbehar on the south and Bhutan on the north lies a strip of sub-mobthane country, 22 miles in width which was originally annexed from Bhutan sometime in 1865 and is known as western Dooars or Bhootan Dooars. This part was mostly waste and jungle land originally not subjected to any settlement at the time of permanent settlement. But lands were reclaimed gradually and subjected to temporary settlements and/or leases to tea estate owners by the Government. The present disputed tea estate appertains to this part of the District of Jalpaiguri. Details as to different land laws that were gradually made applicable to this District can be found from Mitter's Tagore Law Lectures on the Land Law of Bengal 1895 at page 552. Suffice it to say for the present purpose Bengal Tenancy Act 1885 was extended to the whole of this District. It was extended to this Western Dooars with effect from January 1, 1899 by notification No. 964 TR dated November 5, 1898 issued in exercise of powers under the Schedule Districts Act 14 of 1874 with certain modifications as set out in the said notification. Imperial Gazetteer of India (Oxford) page 30 etc.

22. Though not primarily settled the Government owning these lands is all along considered to be in the position of a proprietor in reference to its relationship with the settlers. Such lands are often incorporated into an estate held by the Government standing in the place of the proprietor and treated as Khasmahal. Reference may be made to Mitter's Tagore Law Lectures on Land Laws of Bengal page 32 and page 42 and also to Fields Regulations page 41. It is true that though the amount payable to Government in respect of such settlements was rent, the paramount title of State being there, right to receive revenue and the proprietary right to receive rent uniting in Government, the proprietary interest merges into the paramount title. Yet it cannot for a moment be denied that in fact this distinction between proprietary interest and the paramount title was maintained for practical purposes and the Government stood in the position of a landlord in respect of such lands in their relation to the tenants under it. Mr. Chakraborty's contention that an estate of the State cannot vest in the State overlooks the existence of this distinction. This question was gone into in a way by the Supreme Court in the case of (4) Union of India (UOI) Vs. Jubbi and Dunia, etc., . It would be useful in this connection to refer to the views expressed by the learned Author M. Finucane, one of the eminent authorities on land laws and Syed Amir Ali, on their commentary on the Bengal Tenancy Act. Considering the position of lessees like at page 58 of their second edition of the book said: "For similar reasons it would appear that tea estate planters in Jalpaiguri and lessees of waste lands under the Arable Waste Land Rules are not proprietors. They are entitled to renewal of their leases on certain terms specified, in the leases themselves but, should they refuse to accept renewal on these terms, they are not, as a rule, entitled to malikana. They are, ordinarily, tenure holders whose rights and obligations of the Bengal Tenancy Act, where it is in force or by so much of the Act as is in force where the lands are situated, subject, however,

to the conditions of their leases where the leases were given before the commencement of the Act and to those conditions, so far as they are consistent with the provision of the Act, where the leases were given after the commencement of the Act. When the tea planters of Jalpaiguri and lessees under the Waste Land Rules do not come under the definition of "tenure holder" in Section 5(1) they are raiyats under this Act."

23. It appears therefore clearly from what has been set out hereinbefore that these lands which are the subject-matter of tea leases were always treated as part of the khasmahal estates let out to tenants whose position was either that of tenure-holder or a raiyot, both of which come within the definition of intermediary under the said Act since the enforcement of Chapter 6 thereof.

24. This position is further corroborated by the fact that the land let out to the present Petitioner appertains to Touji No. 410, that is the land appertains to an estate which bears a distinct number on the Revenue Roll (Touji) of the Collectorate. Land so recorded is certainly an estate. (5) Priyanath Mitter v. Kiransarkar Roy, ILR 27 Cal 290. The land appears clearly to be recorded under one of the general registers maintained under the Land Registration Act (Act 7 of 1876). It must be deemed to be an estate and the owner thereof a proprietor. From the above discussion I come to the conclusion that the position of the Government in respect of the lands let out to tea lessees is that of a proprietor - an intermediary - and such land appertains to an estate within the meaning of Bengal Tenancy Act. The necessary conclusion would be that the lessee stands in the position of a tenure-holder or a raiyat or at least a lessee under any intermediary so that all the provisions of the Estates Acquisition Act including that of Section 42(2) of the Act would be made applicable, by its own force irrespective of the amendments to Section 6(3) by its explanation and 42(3) with its explanation. This Court in the case of (6) Haranath v. State of West Bengal 67 CWN 129 held that Government as owner of khas mahal lands are proprietors within the meaning of the Act.

25. In disposing of this point another contention of Mr. Chakraborty has got to be met. Relying on the decision of the Supreme Court in the case of (1) Shibsankar Nandy Vs. Prabartak Sangha and Others, , Mr. Chakraborty has contended that the Petitioner being a non-agricultural tenant is excluded from the definition of an intermediary. In a sense this contention is of little importance. On my findings made hereinbefore namely that lessor, the State, is itself an intermediary, its lessee, whether agricultural or non-agricultural, is a lessee under an intermediary who comes within the operative part of Section 6(2) proviso of the Act so that the other provisions become applicable. That apart it is difficult to accept the contention of Mr. Chakraborty that a lessee under a tea lease is a non-agricultural tenant. It is now well settled that lease for tea plantation is agricultural inasmuch as the primary object is cultivation of tea. It was held as such by a Bench decision of this Court in the case of (7) Pravat Chandra Syam v. Bengal Central Bank Ltd. 42 CWN 761. On the authority of this decision therefore

I overrule the contention of Mr. Chakraborty that the Petitioner's lease as non-agricultural and as such excluded from the definition of intermediary within the meaning of the Act.

26. It appears to me that the second contention raised by Mr. Chakraborty is of great substance. He has contended that even if Section 42 of the said Act is applicable in respect of the estate of the Petitioners, still the said provision confers no authority on the Revenue Officer to assess the cess which is payable under a different statute, namely, the Cess Act of 1880 in respect of the road and P.W. cess and the Bengal Rural Primary Education Act, 1930 in respect of the education cess. Accordingly, Mr. Chakraborty has contended that the pretended assessment of the cess u/s 42 of the said Act by Revenue Officer and the claim and the certificate for the amount of cess so assessed is wholly unauthorized. The Petitioner has specifically taken this objection in paragraph 16 and paragraph 37 of the application. The Petitioner has further pointed out in the application that in the year 1951-52 a purported attempt at revaluation of the cess by a Cess Revaluation Officer was set aside by this Court. According to the Petitioner, its original liability under the assessment as made under the Cess Act is Rs. 614.12 for road and P.W. cess and Rs. 723.76 for the education cess. The Petitioner however points out that the Respondents are now claiming as road and P.W. cess a sum of Rs. 366.98 and as education cess a sum of Rs. 1,373.16 alleged to have been determined u/s 42(2) of the said Act and the certificate under challenge incorporates a claim of cess on the aforesaid enhanced rate. These allegations have not been denied by the Respondents and as a matter of fact none of the allegations made in the application has been denied. Mr. Bakshi who is appearing on behalf of the Respondents fails to point out any authority under any statute which confers any jurisdiction to a Revenue Officer making an adjudication u/s 42(2) of the said Act to assess the cess. In my opinion, Mr. Chakraborty is right in his contention that there are separate and independent statutory provisions not only fixing the liability for cess but also there is a different mode and procedure prescribed by the statute for imposition or revising a cess liability. It is therefore necessary that if there is any need for revaluation for the purpose of realisation of the cess payable by the Petitioner normally, such revaluation should be in accordance with the provisions laid down in such statute. Provisions of Section 42(1) and (2) or Section 42A do not profess, even to confer any authority or prescribe any mode for effecting any revaluation for or reassessment of any liability for cess. Mr. Bakshi also appearing for the Respondents does not claim that provisions of Section 42 in any manner authorize any revaluation for or re-assessment of cess. I am conscious of the position that the definition of rent as in Section 2(4) of the said Act is wide enough to include any money recoverable under any enactment for the time being in force as if it was rent as also the provision of Section 40A of the Cess Act which provides for realization of cess as if it was an arrear of rent. But in my view, reading the provisions of Section 42 on its terms it would be repugnant to the said provision itself to think or hold that the rent referred to in the said

Section would include the cess. Section 42 in its different Sub-sections and different clauses thereunder clearly lays down the manner how the rent in the ordinary sense of the term is to be assessed and such provisions can have no application in the matter of assessment of cess. In this view I cannot but hold that Section 42 conferred no authority on the Revenue Officer to revise any liability for cess. In any event any such revision would require revaluation in the manner set out under the Cess Act which has not been followed in the present case.

27. The order of the Revenue Officer made u/s 42(2) of the said Act as disclosed by the Petitioner as annexure E to this application does not also show that he had in any manner re-determined cess u/s 42(2) of the said Act. The demand as also the certificate indicate such re-determination of cess. In the absence of any affidavit on behalf of the Respondents it does not appear clear to this Court as to whether the such intimation, demand or certificate is really in consonance with the Act made in the proceedings u/s 42(2) of the said Act. However, on my conclusion as above even if there had been any revision or re-assessment of the cess by the Revenue Officer u/s 42(2) of the said Act such revision or re-assessment is wholly ultra vires his powers and as such is liable to be set aside. Therefore Mr. Chakraborty succeeds in the second contention raised by him and this Court holds that purported revision or re-assessment of the cess in the proceedings u/s 42(2) of the said Act is illegal and void and the claim and the certificate in respect of the cess based on such revision or re-assessment are equally illegal and unauthorized.

28. The third contention raised by Mr. Chakraborty in my view has lost its importance in view of the provisions of Section 42(4) as introduced by the amending Act 31 of 1969. Mr. Chakraborty had contended that a Revenue Officer even if authorized to assess the rent payable by the Petitioner for the tea estate u/s 42(2) said Act, such assessment made by him cannot, in law, have any retrospective effect. Mr. Chakraborty has further pointed out that in consonance with the statutory provision, the Revenue Officer also directed that the liability for the re-assessed rent would accrue from the date of the order but the Additional Deputy Commissioner unauthorisedly gave retrospective effect to such assessment with effect from the date of vesting by his order dated April 19, 1967. According to Mr. Chakraborty, though under Rule 29 of the Rules framed under the Act it was permissible to give such retrospective effect to the assessment such a provision in the Rule inconsistent with the statute itself must be deemed to be ultra vires the powers of the framers thereof. Whatever may be the merit of this contention now that the statute itself has been amended by giving retrospective effect to every assessment of rent u/s 42(2) of the Act this contention loses all force. Section 42(2) now provides: "Notwithstanding anything to the contrary contained in any judgment, decree or order of any Court or tribunal or in any law, the rent determined under Sub-section (2) or Sub-section (3) shall take effect and shall be deemed always to have taken from the date of vesting". Now, therefore, it is by virtue of the statutory provisions itself

the liability has been made retrospective from the date of vesting and leaves no scope for any argument of the kind argued by Mr. Chakraborty on the basis of the third contention raised by him. In this view I must overrule the third contention raised by Mr. Chakraborty.

29. In the result, this Rule succeeds in part. The revision of re-assessment of the cess liability of the Petitioner purported to have been made in the proceedings u/s 42(2) of the West Bengal Estate Acquisition Act is set aside and declared void and inoperative. The Petitioner's prayer as against the assessment of rent in the said proceedings is refused. The claim made by the Additional Deputy Commissioner on April 19, 1967 in so far as it relates to cess both education and road and P.W. as also the certificate are set aside. The Respondents, however, would be at liberty to prefer a fresh claim without incorporating therein any claim of cess on the basis of the purported revision in respect thereof u/s 42(2) of the Estates Acquisition Act and to levy a certificate on such basis if and when the Petitioner fails to meet such a claim on the part of the Respondents. Let a writ of certiorari do issue incorporating the above directions and quashing the certificate dated November 29, 1967 and let a writ of mandamus do issue commanding the Respondents not to give effect to or enforce the demand dated April 19, 1967 and the certificate dated November 29, 1967 subject to the directions hereinbefore set out. There will be no order as to costs in this Rule.