

(2000) 02 CAL CK 0012

In the Calcutta High Court

Case No : Civil Appellate Jurisdiction S.A. No. 277 of 1985

Md. Roushan Ali Shaikh

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 16-02-2000

Acts Referred:

Bengal Tenancy Act, 1885 — Section 48(C)
Civil Procedure Code, 1908 (CPC) — Section 100
Estates Acquisition Act — Section 4
Specific Relief Act, 1963 — Section 34
West Bengal Estates Acquisition Act, 1953 — Section 10(2), 52

Citation : (2000) 2 CALLT 480

Hon'ble Judges : Bhaskar Bhattacharya, J

Bench : Single Bench

Advocate : Mr. Puspendu Bikash Sahoo and Mr. Samiran Giri, for the Appellant;

Judgement

B. Bhattacharya, J.—This second appeal is at the instance of a plaintiff in a suit for declaration of title and permanent Injunction and is directed against the judgment and decree dated June 3, 1980 passed by the learned Additional District Judge, 12th Court, Alipore in Title Appeal No. 413 of 1978 thereby affirming those dated March 29, 1978 passed by the learned Munsif, 1st Court, Diamond Harbour in Title Suit No.8 of 1977.

2. The aforesaid Title Suit No. 8 of 1977 was initiated by the present appellant for declaration of title and permanent injunction against the State of West Bengal and the case made out by the plaintiff was inter alia as follows :--

3. The property originally belonged to one Harihar Sarkar, who was holding rayati interest. The father of the present appellant executed a registered kabuliyat by which he agreed to take settlement from 21st Chaitra, 1361 B.S. corresponding to April 4, 1955 and expiring with the month of Magh 1362 B.S. According to the plaintiff after the coming into operation of the West Bengal Estate Acquisition Act ("Act") his father became direct tenant under the State of West Bengal and his

name was also recorded in the revisional record of right.

4. The further case of the appellant is that even the State of West Bengal realised arrears of rent from the father of the plaintiff by way of execution but from 1976, the State started threatening the plaintiff with dispossession on the allegation that the suit property is a vested property. Hence the suit.

5. The aforesaid suit was contested by the state of West Bengal by filing written statement thereby denying the material allegations made in the plaint and the defence of the State of West Bengal was that after the coming into operation of the Act, the property has vested in as much as at that point of time the tenancy of the father of the appellant had come to an end. Therefore, according to the State of West Bengal, the plaintiff had no right, title or Interest over the property.

6. The learned trial Judge on consideration of the materials on record although recorded the admitted fact that the State did not take possession of the land but dismissed the suit on the sole ground that section 52 of the Act having come into operation with effect from April 14, 1956 and the settlement of the father of the plaintiff having already expired two months prior to the said date, on the date of vesting of the Interest of the raiyat, the father of the plaintiff was not a tenant and as such cannot claim that he became direct tenant under the State.

Being dissatisfied, the present appellant preferred an appeal before the learned first appellate Court below as mentioned earlier, the learned first appellate Court below has affirmed the findings of the learned trial Judge and has dismissed the appeal. The learned first appellate Court below further held that the plaintiffs possession in the suit property has no legal consequence because such possession is not based on any title. The learned first appellate Court below however disbelieved the case of the State/ respondents that It had already taken possession of the suit land: on the other hand, the first appellate Court specifically arrived at a conclusion that there was no material to show that the Collector had taken possession of the suit land u/s 10(2) of the Act.

7. Being dissatisfied, the plaintiff has preferred the Instant second appeal.

8. At the time of admission of the instant second appeal, the Division Bench admitting such appeal did not formulate any substantial question of law as required u/s 100 of the Code of Civil Procedure. However, at the time of hearing of this appeal and after hearing Mr. Sahoo, the learned advocate appearing in support of this appeal, the following substantial question of law was formulated by this Court for the purpose of disposal of the Instant second appeal;

"If a person is granted tenancy right upto Magh 1362 B.S. by execution of a kobuliyat on April 5, 1955, that is to say, prior to the coming into operation of section 4 of the Estate Acquisition Act, 1955. whether such a person becomes direct tenant under the State in view of the aforesaid Act?"

9. As mentioned earlier, there is no dispute that at the time of execution of kobuliyat the Act did not come Into operation but with the expiry of Magh 1362

B.S. although section 4 of the Act had come Into operation but section 52 thereof was not given effect to. There is no dispute that the person, who granted settlement in favour of plaintiffs father was a raiyat. Therefore, the position of the plaintiffs father was that of under Raiyat and the registered kobuliyat shows that such tenancy expired with the month of Magh. 1362 B.S.

10. It has however been contended by Mr. Sahoo appearing on behalf of the appellant that although in the registered kobullyat it was mentioned that tenancy would come to an end with the expiry of Magh, 1362 B.S., but according to section 48(c) of the Bengal Tenancy Act which was then in force an under-raiyat's right continues notwithstanding the expiry of the alleged settlement so long the raiyat has not recovered possession by Initiating a proceeding for eviction on the grounds mentioned in the Bengal Tenancy Act. Mr. Sahoo contends that in this case undisputedly the appellant's father and after his death, the appellant is in possession of the property and in the revisional record of right, such possession has been recorded. There is also no dispute that State of West Bengal even realised arrears of rent not by mere payment and acceptance but by starting an execution proceeding against the appellant's father.

11. Under the aforesaid circumstances, Mr. Sahoo contends that in view of the fact that the appellant's father was continuing in possession even after expiry of such settlement, he became direct tenant under the State and the original raiyats had no right to even retain the suit property after the coming into operation of the Act in view of the fact that they were out of possession.

12. None appears on behalf of the State/respondent inspite of service.

13. After hearing Mr. Sahoo in support of this appeal and after going through the materials on record I find substance in his contention. There is no dispute that by virtue of registered kobullyat, the father of the appellant took settlement of the property prior to the date of vesting and although according to the terms of the kobullyat such settlement expired two months prior to the coming into operation of section 52 of the Act, he continued in possession and his name was recorded in the revisional record of right There is also no dispute that State Government realised arrears of rent from the father of the appellant by Initiating execution case on the basis of revisional record of right.

14. It goes without saying that the original raiyat had no right to retain the suit property after vesting in view of the fact that he was not in possession of the property. Therefore, by virtue of the settlement taken earlier from the raiyat before the coming Into operation of the Act, the appellant's father became direct tenant under State of West Bengal by operation of law as there is no material to show that the landlord recovered possession by filing a proceeding on any of the grounds mentioned in section 48(C) of the Bengal Tenancy Act. As pointed out earlier, such fact has also been proved by publication of record of right in the name of father of the appellant and realisation of rent on the basis of such record

of right by way of execution. There is also no dispute that the State of West Bengal did not take possession of the property u/s 10 of the Act as found by the learned Court of appeal below.

15. Under such circumstances, the learned Courts below erred in law in holding that the appellant's father and after his death, the appellant did not become direct tenant under the State of West Bengal. The judgment and decree passed by the learned trial Judge are thus set aside. It is hereby declared that the appellant's father had become a direct tenant under State of West Bengal and after his death and plaintiff has inherited such right and the State of West Bengal is permanently restrained from disturbing possession of the plaintiff in the suit properly.

Appeal is thus allowed.

In the facts and circumstances there will be however no order as to costs.

16. Appeal allowed