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(1956) 07 CAL CK 0019

In the Calcutta High Court

Case No : Civil Revision Case No. 271 of 1956

Purna Chandra Ganguly and Another — APPELLANT

Vs

Sridhar Bishnu Salagram Thakur and Another — RESPONDENT

Date of Decision : 12-07-1956

Acts Referred:
Provincial Small Cause Courts Act, 1887 — Section 25, 5(d)
Transfer of Property Act, 1882 — Section 107
West Bengal Estates Acquisition Act, 1953 — Section 10, 2, 2(i), 4, 42

Citation : 60 CWN 979

Hon'ble Judges : Panchkari Sarkar, J

Bench : Single Bench

Advocate : Kalipada Sinha and Pravash Kumar Sen, for the Appellant;Basanta Kumar Panda, for the Respondent

Final Decision : Dismissed

Judgement

Sarkar, J.—This is an application u/s 25 of the Provincial Small Cause Courts Act directed against a decree passed by a Small Cause Court Judge, Alipore, on the 13th January, 1956. in a suit for recovery of rent for four months from the 1st Baisakh 1362 B.S. at the rate of Rs. 75 per month in respect of a non-agricultural tenancy. The opposite party who is a Deity represented by a sebait was the plaintiff in the suit and the decree was passed against the petitioners and also their mother, who was not joined in the application as a petitioner but has been made an opposite party. The tenancy and the arrear of rent were not disputed by the petitioners at the trial court, but an objection was taken that the opposite party being an intermediary, as defined in the West Benal Estates Acquisition Act, 1953 (West Bengal Act I of 1954), and the rights of all intermediaries having vested in the State of West Bengal with effect from the 1st Baisak, 1362 B.S. under the said Act, the opposite party had no right to recover the rent claimed and the petitioners were bound u/s 5(d) of the said Act to pay such rent to the State, This objection was, however, overruled and the suit was decreed with costs The very same objection has been taken in the present

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application, and it has been urged that the decision of the learned Judge was based on misconception and wrong construction of the relevant provisions of the West Bengal Estates Acquisition Act.

2. Section 4, sub-section (1) of the West Bengal Estates Acquisition Act (which will be hereafter referred to as the Act) provides that the State Government may by a notification, declare that with effect from the date mentioned in the notification, an) estates and the rights of every intermediary in each such estate situated in any district or part of a district specified in the notification, shall vest in the State free from all incumbrances; and sub-section (2) provides that the date mentioned in every such notification shall be the commencement of an agricultural year; and the notifications shall be issued, so as to ensure that the whole area to which this Act extends, vests in the State on or before the first day of Baisakh of the Bengali year 1362.

3. It is admitted on both sides that such a notification was issued in respect of the area in which the lands of this particular tenancy are situated and that the day of vesting mentioned in such notification was the first day of Baisakh, 1362 B.S. It is accordingly contended by the petitioners that the interest of the opposite party which is that of an intermediary has vested in the State of West Bengal with effect from the 1st Baisakh, 1362 B.S. and reference has been made to section 5, clause (c) of the Act which provides that upon the due publication of the notification u/s 4 on and from the date of vesting, until the provisions of Chapter VI are given effect to, every raiyat or non-agricultural tenant, holding any land under an intermediary, shall hold the same directly under the State, as if the State had been the intermediary, and on the same terms and conditions as immediately before the date of vesting, and to clause (d) which provided that every raiyat or non-agricultural tenant holding under an intermediary shall be bound to pay to the State his rent and other dues in respect of his land, accruing on and from the date of vesting, and that every payment made in contravention of this clause shall be void and of no effect.

4. Before the trial court it was not disputed that the opposite party was an intermediary as defined in the Act, but it has been contended before me by Mr. Panda that that is not the correct position. Ar. intermediary has been defined in section 2(i) of the Act as meaning a proprietor, tenure-holder, under-tenure-holder or any other intermediary above a raiyat or a non-agricultural tenant. The petitioners'' case is that the opposite party is a tenure holder and as such, an intermediary. The word "tenure-holder" has not been defined in the Act. But in clause (p) of section 2 it has been provided that the expressions used in this Act and not otherwise defined have in relation to the areas to which the Bengal Tenancy Act applies, the same meaning as in that Act. Mr. Panda has argued that according to this clause, an intermediary should be a tenure-holder as under the Bengal Tenancy Act and that according to the definition of the expression in that Act, the opposite party could not be said to have been a tenure-bolder. A tenure-holder, as defined in section 5(1) of the Bengal Tenancy Act, means a person who

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has acquired from a proprietor or from another tenure-holder a right to hold land for the purpose of collecting or bringing it under cultivation by establishing tenants on it. Mr. Panda has argued that as there was no evidence in this'' case that the opposite party or his predecessor in interest had acquired the right to hold these lands for the purpose of collection of rents or for establishing tenants thereon the opposite party could not be said to have been a tenure-holder.

5. The petitioners have relied upon the record of rights to show that the opposite party was a tenure-holder. Several C. S. Khatians were produced by the petitioners in the trial court from which it appears that one Gopinath Panja held two permanent mokarari tenures under Estate No. 177 and two other such tenures under Estate No. 411 and also held a rent-free (niskar) permanent tenure jointly under Estates, Nos. 35,177 and 411. Under all these tenures one Protap Chandra Ganguly held a non-agricultural tenancy at an annual rental of Rs. 1,320 and this tenancy comprised 8 C.S. plots. Gopinath created a Debottar Estate in favour of the opposite party and appointed Jatindra Nath Das as the sole sebait thereof. Protap had a rice mill and some structures on the plots constituting his tenancy, and he made a gift of some of the said plots and portions of others to his son Bonomali Ganguly who subsequently executed a kabuliat on the 10th August, 1948, in respect of the present tenancy for a term of nine years from Falgun 1354 to Magh 1363 B.S. in favour of the opposite party. The rent was claimed in the suit by the opposite party under this kabuliat. The above facts ace taken from the kabuliat and were not disputed before me. The petitioners are the sons of Bonomali and they have also got a rice mill with certain structures on the "plots constituting the tenancy. It is, therefore, clear that the lands of the above mentioned tenures were not agricultural lands and were not used for the purposes of cultivation. All the plots were let out to a tenant and have been used for the purpose of a rice mill or rice mills. The total area of the plots constituting these tenures is 5 37 acres, and in view of this small area, it has been contended by Mr. Panda that these plots could not have constituted any tenure or tenures and he referred to section 5(5) of the Bengal Tenancy Act which provides that where the area held by a tenant exceeds one hundred standard bighas, the tenant should be presumed to be a tenure-holder until the contrary is shown. But this presumption is to be applied only when a question arises as to whether a certain person is a tenure-holder or a raiyat, and the contrary presumption that where the area held by a tenant is less than 100 bighas he is to be regarded aft a raiyat is not justified. The entries in the record of rights leave no room for doubt that Gopinath was a tenure-bolder and that the interest of the opposite party derives from him is also that of a tenure-holder. These entries should be presumed to be correct u/s 103 (b) of the Bengal Tenancy Act until they are proved by evidence to be incorrect. There is no such evidence in this case. I, therefore, agree with the learned Judge that the interest of the opposite party was that of a tenure-holder and as such, an intermediary within the meaning'' of the Act.

6. The learned Judge, however, held that the opposite party was entitled to

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retain the lands of this particular tenancy u/s 6(1) of the Act. This section provided that notwithstanding anything contained in sections 4 and 5. an intermediary shall, except in the cases mentioned in the proviso to sub-section (2) but subject to the other provisions of that sub-section, be entitled to) retain with effect from the date of vesting certain lands. The lands which an intermediary is entitled to retain: are enumerated in clauses (a) to (j) of the sub-section, and clause (b) enumerates lands comprised in or appertaining to buildings and structures, whether erected by the intermediary or not. The learned Judge is of the opinion that the lands of the tenancy of the petitioners fall within this clause, because they are covered by structures. There are no permanent buildings on these lands, but it is admitted that there are structures which also appears from the kabuliat and the record of. rights. But it is pointed out that there is another clause viz. clause (g) which also may be applicable to these lands. This clause enumerates lands comprised in mills, factories or workshops, and the lands of this tenancy are covered by a rice mill, as already stated. Such lands, it is contended, may be retained by an intermediary u/s 6(1) of the Act and reference has been made to sub-section (5) of section 10 under which sub-section the Collector who is authorised by that section to take charge of estates and rights of intermediaries therein which vest in the State u/s 5 is debarred from taking possession of any right of an intermediary which may be retained u/s 6.

7. No evidence has been given in this case as to whether the Collector has taken charge of the estate or of the interests of intermediaries u/s 10 of the Act. But the estate and the interests of intermediaries having vested in the State, the intermediaries will have no right to recover rent from their tenants from the date of vesting even if the Collector has not yet taken charge of the same u/s 10. u/s 59 of the Act, rules for carrying out the purposes of this Act may be framed by the State Government and under rule 6 so framed an intermediary is required to lodge a return of his interests in the estate in the form prescribed in which there is a column for khas lands held by the intermediary including the land? which he wants to retain under the provisions of the Act. There is no evidence as to whether the opposite party has submitted such a return showing the lands of this particular tenancy as lands which he wants to retain u/s 6 of the Act.

8. It has been argued by Mr. Sinha that u/s 6(1) an intermediary is entitled to retain such lands only as may have been in his khas possession at the date of vesting and that he has no right to retain any land let out to a tenant even though such land may come within the purview of any of the clauses of that subsection. He has further argued that since clauses (c) and (d) of section 5 clearly provide that all tenants holding lands under an intermediary shall hold the same directly under the State and shall be bound to pay rent to the State from the date of vesting, any other interpretation of the provisions of section 6, sub-section (1) would be inconsistent with the said provisions and with the intention of the framers of the Act. Mr. Panda, however, points out that the sub-section itself does not contain any such limiting words as would indicate that the land

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which an intermediary is entitled to retain must be in his possession and that where it is intended that khas lands only should be retained by an intermediary it has been specifically so provided in some of the clauses of the sub-section. Thus clause (c) mentions non-agricultural lands and clause (d) mentions agricultural lands in the khas possession of the intermediary and khas lands are also mentioned in clauses (h), (i) and (j).

9. The dictionary meaning of the word ''retain'' is to keep possession of or to keep in possession and so the use of this word is sufficient to indicate that the Legislature intended that the intermediary must be in possession of whatever lands he was entitled to retain u/s 6. That this was the intention of the Legislature is also clear from the language used in subsection (2) of section 6 which provided that the intermediary who is entitled to retain possession of any land under sub-section (1) shall hold such land directly under the State from the date of vesting as a tenant, subject to payment of such rent as may be determined and as entered in the record of rights finally published under Chapter V of the Act. The word ''possession'' is used in this sub-section in addition to the word ''retain'' in referring to the provisions of sub-section (1) and the same words are used in section 42 of the Act which occurs in Chapter V and provides that when an intermediary is ''entitled to retain possession of any land under sub-section (1) of section 6'' then except in cases of land retained under clause (h) or (i) and except in the cases referred to in the proviso to sub-section (2) the Revenue Officer shall determine the rent payable in the prescribed manner and in accordance with the principles enumerated in the section. Sub-section (5) of section 10 to which reference has already been made makes this further clear because it provides that ''nothing in section 10 shall authorise the Collector to take khas possession of any estate or of any right of an intermediary therein, which may be retained u/s 6". The Collector would not certainly take khas possession of any land in the possession of a tenant and if he is debarred from taking khas possession of the lands enumerated in section 6. sub-section (1) the necessary implication is that it was intended by the framers of the Act that in order that an intermediary might retain such lands they must be in his khas possession and not in the possession of his tenants.

10. It is true that in clauses (c) and (d) of section 6 (1) lands in the khas possession of the intermediary have been specifically mentioned but that is because the lands mentioned in the other clauses; excepting of course clauses (h), (i) and (j) which also refer to khas lands, are described as lands already in use for the specific purposes mentioned in the said clauses. while the lands mentioned in clauses (c). and (d) may not be lands put to any use whatsoever. But it does not follow from this that the lands mentioned in the other clauses need not be in the possession of the intermediary. Clause (b) enumerates land comprised in or appertaining to buildings and structures, whether erected by the intermediary or not, and it has been argued that the last expression implies, that such land may be retained by the intermediary, even if it is comprised in buildings or structures erected by a tenant and possessed by him. But if the

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building or structure belongs not to the intermediary but to a tenant who is in possession also of the land, it is not clear how the intermediary can retain possession of such land. Whoever might have constructed the building or structure, the clause requires that the intermediary must be in possession of the land comprised therein All the provisions discussed above clearly indicate to my mind that the intermediary is entitled to retain such lands only as are in his possession and not lands let out to tenants and in possession of such tenants

11. Apart from that, the land of this particular tenancy cannot really be deemed to be land comprised in or appertaining to buildings and structures, as has been held by the learned Judge. It is true that there are some structures on the land but these are structures used for the purposes of the rice mill which the petitioners have on the land. It is clear from the record of rights that there are open lands also and that the structures are few. The tenants were prohibited by the kabuliat from constructing pucca buildings'' and were only permitted to have kucha structures which are few. The tenants were prohibited by the kabuliat from constructing pucca buildings and were only permitted to have kucha structures and huts etc. for carrying on the business of the mill and the kabuliat provided that these were to be removed on the expiry of the term of the tenancy. If, therefore, the land of this tenancy is to be brought under the purview of section 6 the only clause to be applicable would be clause (g) and not clause (b).

12. With regard to this clause also it has been contended by Mr. Sinha that the land of this tenancy is excluded from its purview by virtue of the expression "except in the cases mentioned in the proviso to sub-section (2)" occurring in sub-section (1). This proviso lays down that if any land comprised in a 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 the said date. Mr. Sinha argued that the land of this particular tenancy being comprised in a mill and being covered by a registered kabuliat it could not be retained by the opposite party u/s 6, sub-section (1). The proviso does not make it quite clear whether the lease mentioned therein means a lease held by an intermediary or a lease granted by an intermediary but the section has since been amended by the West Bengal Act XXXV of 1955 which came into force on the 25th November, 1955 and by this amendment a third subsection has been added to section 6 which makes it clear that the lease mentioned in the proviso refers to a lease granted by an intermediary. This sub-section is in these terms :

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 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.

13. Mr. Panda, however, pointed out that the tenancy was created in the present

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case by a kabuliat and not by a patta and it was not executed by both the lessor and the lessee as required by section 107 of the Transfer of Property Act, and he contended that there was accordingly no valid lease created by the document and so the proviso did not apply. But the petitioners are admittedly tenants in possession, even though the kabuliat did not constitute a valid lease and the provisions of the new sub-section leave no room for doubt that the land comprised in a mill or factory can only (sic)e retained by the intermediary, if it is in possession of the intermediary himself. In the circumstances, I hold that the objection should succeed and that the opposite party is not entitled to recover rent from the petitioners. The Rule is therefore made absolute and the judgment and decree of the trial court are set aside and the suit is dismissed. In view of the special circumstances of this case, however, I direct that each party will bear his own costs in both the courts.

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