

(1985) 07 CAL CK 0040
In the Calcutta High Court
Case No : C.R. No. 3588 of 1979

Sm. Shanti Debi

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 31-07-1985

Acts Referred:

West Bengal Estates Acquisition Act, 1953 — Section 2, 5A, 6

Citation : 90 CWN 44

Hon'ble Judges : M.M. Dutt, J;J.N. Choudhuri, J

Bench : Division Bench

Advocate : R.K. Majumdar, Anil Dr. Mallick and M. Bhattacharyya, for the Appellant;

Final Decision : Allowed

Judgement

M.M. Dutt, J.—In this Rule, the principle question is whether the disputed Beel is a "tank fishery" or not.

2. The Beel had been recorded as Plot No. 3379 of Mouza Goas, within P.S. Karimpur, in the district of Nadia measuring 58.19 acres in the names of one Indumati Debi, Narendra Nath Chandra and Subhash Kumar Mullick as occupancy raiyats. By a sale deed dated July 21, 1954, registered on September 27, 1954, the said persons transferred their interests in the said Beel to the petitioner, Sm. Shanti Debi. It is the case of the petitioner that ever since the aforesaid transfer, the petitioner has been in exclusive possession thereof by rearing and catching fish and selling them in the market to the knowledge of the Government.

3. Sometime in may, 1970, a proceeding u/s 5A of the West Bengal Estates Acquisition Act, 1953, hereinafter referred to as the Act, was started against the petitioner and her vendors in respect of the transfer of the said Beel.

4. The Assistant Settlement Officer, who initiated the proceeding u/s 5A of the Act, Overruled the contention of the petitioner that the Beel was aa "tank fishery" and, as such not hit by the provision of section 5A of the Act.

5. The Assistant Settlement Officer came to the finding that the transfer was not bona fide. As a result of the said finding, the transfer of the Beel would stand cancelled as invalid. On appeal by the petitioner u/s 5A(6) of the Act to the Special Judge, being the District judge, Nadia, the learned Special Judge also came to the same finding and dismissed the appeal. Hence this application.

6. Both the Special judge and the Assistant Settlement Officer proceeded on the basis that as there was no exercise by the petitioner's vendor before the date of vesting, any right of pisciculture or fishing in the said Beel, it was not a tank fishery. It may be stated here that "tank fishery" has been defined in the explanation to clause (e) of sub-section (1) section 6 of the Act. Under the definition, "tank fishery", inter-alia, includes any right of pisciculture or fishing. Thus whether a reservoir or place for storage of water e.g. a tank or a Beel is a "tank fishery" or not inter alia depends upon an answer to the question whether the intermediary claiming it to be a "tank fishery" has any right of pisciculture or fishing in such tank or Beel. It is, therefore, the existence of the right that is material for the purpose of deciding whether or not a particular tank or Beel is a tank fishery and not whether such right has been exercised or not. Both the learned District judge and the Assistant Settlement Officer have proceeded on the basis that as no such right has been exercised in the disputed Beel, it is not a "tank fishery". In our opinion, they have made a wrong approach to the question. It is not the case of the opposite party before the Settlement Officer or before the learned Special Judge that the petitioner's vendors had no such right, but their case is that the right of pisciculture or fishing was never exercised before the date of vesting.

7. Evidence adduced on behalf of the petitioner reveals that from time to time vendors of the petitioner had caught fish from the disputed Beel before the date of vesting, although they did not rear fish therein. Therefore, it cannot be said that the right of fishing was never exercised by the petitioner's vendors before the date of vesting. In this connection, we may notice a significant fact that the disputed Beel has been sought to be requisitioned under the West Bengal Fisheries (Requisition and Acquisition) Act, 1965 describing the disputed Beel as a fishery which, under the definition given in Section 2(3) of the said Act includes a tank fishery within the meaning of the explanation to clause (e) of sub-section (1) of section 6 of the Act. This purported notice of requisition also lends support to the contention of the petitioner that the disputed Beel is a tank fishery. That being so, the vendors of the petitioner, who were intermediaries, were entitled to retain the whole of the Beel, as a "tank fishery". In other words, for all practical purposes, the Beel did not vest and, accordingly, the transfer of the Beel during the prohibited period did not come within the mischief of section 5A of the Act.

8. For the reasons aforesaid, the impugned orders of the learned Special Judge and of the Assistant Settlement Officer are set aside.

The application is allowed. There will, however, be no order for costs.

J.N. Chaudhuri, J.

9. I agree.