
(1985) 06 CAL CK 0025
In the Calcutta High Court
Case No : Civil Order No. 2639 of 1983

Sukhamoy Baj and Others

APPELLANT

Vs

Nemai Mondal and Others

RESPONDENT

Date of Decision : 17-06-1985

Acts Referred:

West Bengal Estates Acquisition Act, 1953 — Section 4, 6

Citation : AIR 1986 Cal 100 : (1985) 2 CHN 90 : 89 CWN 1057

Hon'ble Judges : Shamsuddin Ahmed, J; Chittatosh Mookerjee, J

Bench : Division Bench

Advocate : Saktinath Mukherjee and Tarun Chatterjee, for the Appellant; B. Roy Chowdhury and A. Ghosh, for the Respondent

Final Decision : Partly Allowed

Judgement

Chittatosh Mookerjee, J.—The Revisional Application arises out of a proceeding u/s 24 of the West Bengal Non-agricultural Tenancy Act, 1949 for preempting transfer of a fractional interest in a tank measuring 14.48 acres in Plot No. 397, mouza Plassey, P. S. Majia, Dist. Birbhum. Both in the Cadastral Survey Records and also in the Revisional Survey Settlement Records the status of the co-sharer tenants of the said tank which was described as Ram Dhangar Pukur was recorded as "Raiyati Sthitiban. The principal point in the case was whether the said tank recorded in Plot No. 397 in mouza Plassey, P. S. Mejia, Dist. Birbhum was a non-agricultural or an agricultural holding and whether the pre-emption application u/s 24 of the West Bengal Non-agricultural Tenancy Act. 1949 was maintainable in law.

2. On 7th Nov. 1977 opposite parties 12 to 16 of the application u/s 24 of the West Bengal Non-agricultural Tenancy Act, 1949 purported to transfer 6 annas 10 gondas share in the aforesaid Plot No. 397 in favour of 13 purchasers including the petitioner of this Revisional Application. Out of the said purchasers, Rabilochan Pramanik and Mibaran Ghosh were already recorded as co-sharers of the said plot and, therefore, the pre-emptors after excluding their 2/13 share

prayed for pre-emption u/s 24 of the said Act in respect of the remaining 11/13 share of the rest of the purchasers. There was a compromise between the pre-emptors and the purchasers opposite parties 1, 5 and 11 of the pre-emption application and as between the said set of parties the case was disposed of in terms of settlement. The present petitioners contested the pre-emption case, inter alia, claiming that the disputed tank was an agricultural land and therefore the pre-emption proceeding u/s 24 of the West Bengal Non-agricultural Tenancy Act, 1949 was not maintainable.

3. The learned Munsif, 2nd Court, Bankura, inter alia, held that the disputed property was a non-agricultural land and the present petitioners were stranger purchasers and accordingly he allowed the pre-emption application u/s 24 of the West Bengal Non-agricultural Tenancy Act. The learned Subordinate Judge, Additional Court, Bankura dismissed the appeal preferred by the present petitioner against the said order of the learned Munsif. Thereafter, they have filed the present Revisional Application which has been heard as a contested one in the presence of the contesting opposite parties to the Rule.

4. Mr. Saktinath Mukherjee, learned advocate for the petitioners, has submitted that both the learned Munsif and the learned Subordinate Judge committed errors of jurisdiction by not considering the statutory presumption attaching to the C. S. and R. S. Records which showed the status of the recorded tenants as "Raiyati Sthitiban". According to Mr. Mukherjee, the learned Munsif and the learned Subordinate Judge failed to appreciate the import of the decisions of this Court in the case of *Mishri Show v. Belur Nikunjamoyee Gadar Institution* (1978) 1 Cal LJ 532 *Eyachhin Ali Naskar and Another Vs. Golap Gazi, and Badal Chandra Das v. Kinkar Chandra Das* 87 CWN 543. Mr. Mukherjee has submitted that before the vesting of intermediary interests under the West Bengal Estates Acquisition Act it was settled law that if the lease was governed by the provisions of the Bengal Tenancy Act then sub-leases of portions of properties included in the main lease would be deemed to be agricultural leases. The nature of the original tenancy and not the character of the parcel included in the sub-tenancy would determine whether the sub-tenancy was to be governed by the Bengal Tenancy or the T.P. Act vide *Baburam Roy v. Mohendra Nath Samanta* 8 CWN 454 *Nirshi Dhobin and Another Vs. Dr. Sudhir Kumar Mukherjee and Others*, . Mr. Mukherjee's contention is that the persons recorded in the C. S. Records as co-sharer-tenants of the disputed tank were "raiyaati Sthitiban" tenants and, therefore, after the notification u/s 4 of the West Bengal Estates Acquisition Act in respect of raiyati and under-raiyati interests came into force, the interests of the recorded tenants had vested in the State subject to their right to retain in terms of the different clauses of Sub-section (1) of Section 6 of the West Bengal Estates Acquisition Act. The entire R. S. Records indicated that the said raiyats had in terms of Rule 4 of the West Bengal Estates Acquisition Rules had been allowed to retain the disputed plot. According to Mr. Mukherjee, after such vesting under the West Bengal Estates Acquisition Act persons in whose name the plot had been jointly recorded in the C. S. Records ceased to be co-sharer

tenants and with effect from the date of vesting each one of them began to hold new and separate tenancies under the State subject to the terms and conditions prescribed by the West Bengal Estates Acquisition Rules. Therefore, after the vesting, the pre-emptors could no longer be considered as co-sharer tenants of the transferors of the petitioners and irrespective of the question whether the holding was agricultural or non-agricultural in character, their pre-emption application was not maintainable in law.

5. We propose to remand the case to the court of first instance for adjudication of the points presently indicated. The ratio of the reported decisions (vide *Mishri Show v. Belur Nikunjamoyee Gadar Institution* (supra) and *Badal Chandra Das v. Kinkar Chandra Das* (supra) and *Eyachhin Ali Naskar v. Golap Gazi* (supra)) would be applicable in determining the character of tenancies after vesting of intermediary including raiyati and under-raiyati interests under the provisions of the West Bengal Estates Acquisition Act. After vesting, the character of the tenancies created by operation of the provisions of Section 6(1) of the West Bengal Estates Acquisition Act read with Rule 4 of the West Bengal Estates Acquisition Rules would depend upon the nature of the user of particular land at the date of vesting. When immediately before the date of vesting a land was being ordinarily used for non-agricultural purposes, an intermediary including raiyat or under-raiyat, upon retaining the same would be deemed to be a non-agricultural tenant. Similarly, when an intermediary including raiyat or under-raiyat retained a land which was being ordinarily used for purposes of agriculture, he would be deemed to be a raiyat in respect of the said land. But so long as the Bengal Tenancy Act was in force, the settled law was that the nature of the original tenancy and not the character of the parcel included in the subtenancy would determine whether the subtenancy was to be governed by the Bengal Tenancy Act or by the T. P. Act. We have already mentioned that it is equally settled that upon enforcement of the notification u/s 4 of the West Bengal Estates . Acquisition Act the estates and rights of the intermediaries vested in the State. After the provisions of Chap. VI were given effect to the provisions of Chaps. II, HI, V and VII with necessary modification applied mutatis mutandis to raiyats and under-raiyats as if they were intermediaries and the land held by them were estates. We are bound by the Full Bench decision in the case of *Madan Mohan Ghosh and Others Vs. Sishu Bala Atta and Others*, , that after the enforcement of Chap. VI of the West Bengal Estates Acquisition Act and vesting of interests of raiyats and under-raiyats with effect from 1st of Baisakh 1363 B.S., the co-sharer raiyats of a holding ceased to be co-sharers and in respect of their retained lands, each raiyat became a direct tenant under the State. We hold that for the very same reasons even in respect of non-agricultural holdings of intermediaries including raiyats and under-raiyats, pre-vesting co-sharers ceased to be co-sharers and each co-sharer raiyat in respect of lands retained by him u/s 6(1)(c) of the West Bengal Estates Acquisition Act became holder of a new and separate tenancy under the State.

6. The legal position would be otherwise in case before vesting the holding

comprising the disputed tank was non-agricultural one and the co-sharer tenants were non-agriculture tenants and not raiyats or under-raiyats. Non-agricultural tenants were neither intermediaries nor deemed to be intermediaries within the meaning of the West Bengal Estates Acquisition Act, 1953 and, therefore, there could be no question of vesting of interests of non-agricultural tenants or of exercising their option of retaining the said lands. In case of non-agricultural tenancies those who were recorded as co-sharer tenants in C. S. Records would continue even after vesting to be co-sharer tenants, inter alia, with right of preemption in case of transfer of a portion or share of the said land in favour of a stranger purchaser.

7. For the foregoing reasons, the moot point for decision ought to be whether before the vesting of intermediaries including raiyati and under-raiyati interests, the disputed holding was agricultural or non-agricultural in character and whether persons whose names were recorded in the C. S. Records as co-sharer tenants of the holding were in fact raiyats or non-agricultural tenants. It would be necessary to decide, inter-alia, whether or not the C. S. Record showing the co-sharer tenants as raiyats was correct. In order to determine the said question whether before the vesting, tenancy in respect of the disputed tank was agricultural or non-agricultural, the court ought to consider what was the status of the person under whom the said tenancy was held by the pre-emptors and their co-sharers tenants. When the question is whether a lease in respect of tank and its banks was for and agricultural or a non-agricultural purpose, the true test would be the primary object of the lease, namely, whether the same was a lease of the tank or a lease of the surrounding lands for the purpose of agriculture with the tank within (vide Surendra Kumar Sen Chaudhury and Others Vs. Chandratara Nath and Others, ; Nidhi Krishna Bose v. Ram Dass Sen 20 CWN 341. See also Maharaja Bir Bikram Kishore Manikya Bahadur v. Amanaddin 40 CWN 156. The mere fact that the lease was of a tank would not take it out of the operation of the Bengal Tenancy Act, (vide Bhabani Charan Banikya Vs. Suchitra Baisnabi, (also see discussion in A. C. Ghose's Bengal Tenancy Act, 1943 at pages 26 and 28).

8. While deciding that the tank was held under a non-agricultural tenancy, neither the trial court nor the lower appellate court had considered what was the purpose for which the lease in respect of the said tank had been granted and whether the presumption raised by the C. S. Record stood rebutted. The above question touches the jurisdiction of the Court to entertain the application u/s 24 of the West Bengal Non-agricultural Tenancy Act and, therefore, we have permitted the petitioner to raise it. There is no sufficient material on record to adjudicate whether before the date of vesting under West Bengal Estates Acquisition Act tenancy in respect of the disputed holding was agricultural or non-agricultural, with reference to the purpose of the tenancy and also the nature and character of the superior tenancy or tenure within which the disputed holding was comprised. Therefore after remand the trial court will give opportunities to both parties to adduce further evidence and thereafter decide

whether immediately before the West Bengal Estates Acquisition Act came into force, the status of the co-sharer tenants of the holding was agricultural or non-agricultural on the basis of the evidence already on record and further evidence, if any, which may be adduced by the parties.

9. For the foregoing reasons, we allow this application in part, set aside the order both of the trial Court and the lower appellate court and remit the case back to the trial Court for fresh disposal in accordance with law and in the light of the observations contained in our judgment upon the evidence already on record and further evidence which may be adduced by the parties. Let the records be sent down expeditiously.

Shamsuddin Ahmed, J.

I agree.