

(1993) 08 CAL CK 0001

Calcutta High Court

Case No: F.M.A.T. No. 1236 of 1992

Monoranjan Mahapatra

APPELLANT

Vs

Basanta Kumar Mahapatra and
Others

RESPONDENT

Date of Decision: Aug. 23, 1993

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 11
- Constitution of India, 1950 - Article 227
- West Bengal Land Reforms Act, 1955 - Section 15A, 16(1), 18, 18(1), 19

Citation: (1994) 1 CALLT 168

Hon'ble Judges: Suhas Chandra Sen, J; Arun Kumar Dutta, J

Bench: Division Bench

Advocate: Subir Kumar Bhattacharjee, for the Appellant; Ajit Kumar Saha and Tapan Kumar Mukherjee, for the Respondent

Judgement

Arun Kumar Dutta, J.

We have heard the appeal with consent of the learned Advocates for the contending parties.

2. The instant appeal is directed against the judgment and order dated 12.3.92 passed by Paritosh Kumar Mukherjee, J. in CO. No. 11142(W) of 1990 on the writ petition filed by the Respondents Nos. 1 to 6 herein for quashing the order dated 8.8.90 passed by the Collector, L.R. at Midnapore, in L.R.A. Case No. 12 of 1989 before him on the grounds made out therein.

3. The facts as are relevant for the present purpose may shortly be stated as follows :

4. One Jagadish Chandra Khatua was, undeniably, the recorded tenant in respect of plot Nos. 2239 and 134, measuring 0.48 and 0.24 decimals of land respectively,

within Mouza Kultha, J.L. No. 8 of Khejuri, Post and District-Midanpore (hereinafter referred to as, disputed plots), whose name had been recorded during the Survey Operation under the West Bengal Estates Acquisition Act. The said Jagadish had transferred the same in favour of his son Aswini Kumar Khatua under a registered Deed of Nirupan on 6.1.54. The said Aswini had transferred the disputed plot No. 2239 to Ashim Kumar Mondal and others by a registered Deed of Conveyance dated 5.4.1966. Priyanath Mahapatra (hereinafter referred to as Priyanath) was, admittedly, the recorded bargadar in respect of the aforesaid two disputed plots since the time of the said Jagadish. He is stated to have surrendered his barga right in respect of the disputed plot No. 2239 in favour of the aforesaid transferees Ashim Kumar Mondal and others under a registered Istafanama dated 5.8.1966. Priyanath is stated to have again surrendered his barga right in respect of the other disputed plot No. 134 in favour of the aforesaid Aswini Kumr Khatua under a registered Istafanama on 7.5.1973. The said Aswini had thereafter transferred the aforesaid disputed plot No. 134 to Bhima Charan Mahapatra, the father of the writ Petitioners Nos. 1 to 5 and the husband of the Writ Petitioner No. 6, under a registered Deed of Conveyance dated 7.5.73. The aforesaid Ashim Kumar Mondal had thereafter transferred the disputed plot No. 2239 to the Writ Petitioner No. 2 Bijoy Kumar Mahapatra and others under. registered Deeds of Conveyance on 13.3.76. The aforesaid undisputed bargadar Priyanath Mahapatra in respect of the aforesaid disputed plots having allegedly surrendered his barga right in respect thereof in favour of the transferees concerned under the registered Istafanamas dated 5.8.1966 and 7.5.1973, as stated above, the aforesaid transferees concerned claim to be in physical possession of the disputed plots in question since the aforesaid" dates of alleged surrender by Priyanath.

5. Even though Priyanath is stated to have surrendered his barga right in respect of the aforesaid two disputed plots in the manner stated above his barga possession in respect thereof appears to have been recorded during the last Revisional Settlement Operation, and he had also succeeded in retaining his barga recording in respect thereof during the current record of rights under the West Bengal Land Reforms Act (hereinafter shortened into Act), as recorded by the learned Appellate Authority in this relevant judgment and order dated 8.8.90 u/s 19 of the aforesaid Act. Priyanath had as well filed an application before the Bhag Chas Officer concerned in June 1988 u/s 18(1) of the Act for deciding the dispute regarding the division and delivery of share of produce of the disputed plots for the year 1394 B.S., which was registered as B.C. Case No. 34(H) of 1988. While challenging the maintainability of the aforesaid case before the Bhag Chas Officer concerned, it was contended by the opposite parties purchasers that Priyanath had surrendered his right in respect of the disputed plots under registered Istafanamas dated 5.8.1966 and 7.5.1973 respectively in favour of the aforesaid transferees, as stated above. Priyanath had asserted that he had never surrendered his barga right in respect of any of the aforesaid two disputed plots in favour of the aforesaid transferees-tenants thereof.

The Bhag Chas. Officer had disposed of the aforesaid case by his judgment and order dated 7.11.88 observing that since the name of Priyanath Mahapatra has been recorded as bargadar in respect of the disputed plots during the present Settlement Operation, attested on 6.8.79, with a note in column 16 that Section 19B of the Act would be applicable there is prima facie reason to believe that Priyanath had no barga right over the disputed plots in the year 1394 B.S. He had accordingly come to the decision that Priyanath is not a bargadar in respect of the disputed plot and the relevant case u/s 18(1) of the Act was not maintainable.

6. Being aggrieved by the aforesaid order dated 7.11.88 passed by the learned Bhag Chas Officer concerned, Priyanath had preferred an appeal before the Collector concerned u/s 19 of the Act, registered as L.R.A. Case No. 12 of 1989. The Writ Petitioners had as well filed a civil suit, being T.S. No. 102 of 1989 before the competent Civil Court at Contai contending, inter alia, that Priyanath is not a bargadar in respect of the disputed plots, praying for declaration and permanent injunction in terms of the reliefs prayed for therein. A petition was filed therein on behalf of the bargadar Priyanath praying for making a reference before the appropriate authority u/s 21(3) of the Act, to be rejected by the learned Munsif. On Revisional Application being preferred there against by Priyanath, Amulya Kumar Nandi, J. in CO. No. 2398 of 1989 before this Court, had been pleased to hold that since it had once been found in a proceeding u/s 18(1) of the Act that Priyanath is not a bargadar there is little reason for sending the matter before the competent authority for determination of his status over again. His Lordship had accordingly directed the learned Munsif to dispose of the aforesaid suit without any further reference to the authority concerned in terms of the relevant order passed on 28.8.89 therein. The learned Munsif had thereupon disposed of the aforesaid T.S. No. 102 of 1989 by his judgment and order dated 24.1.90 holding, on the basis of the aforesaid order of the Bhag Chas Officer concerned dated 7.11.88 in the aforesaid B.C. Case No. 34(H) of 1988, that Priyanath is not a bargadar in respect of the disputed plots. The learned Munsif by his aforesaid judgment and order dated 24.1.90 had accordingly decreed the suit, restraining the defendants, the substituted legal heirs of Priyanath, permanently from causing any disturbance in the peaceful possession of the plaintiffs of the disputed plots in any manner whatsoever.

7. After the disposal of the aforesaid suit on 24.1.90, the aforesaid relevant appeal before the Collector, being L.R.A. Case No. 12 of 1989, filed by the bargadar Priyanath against the aforesaid order of the Bhag Chas Officer concerned dated 7.11.88, had subsequently been disposed of on 8.8.90 whereby the Appellate Authority, u/s 19 of the Act, had set aside the aforesaid order of the Bhag Chas Officer concerned (dated 7.11.88) and had sent back the relevant case to him for hearing on remand u/s 20B of the Act in terms thereof, for the reasons recorded therein. The Respondents therein had thereupon filed the relevant writ application before this Court on 14.9.90 for quashing the aforesaid order of the Appellate

Authority dated 8.8.90 on the grounds made out therein. The Bhag Chas Officer concerned, since designated as B.L. & L.R.O., appears to have thereafter disposed of the aforesaid relevant B.C. Case No. 34(H) of 1988, after remand by the Appellate Authority, by order dated 26.10.90 clearly holding therein that the alleged surrender of the disputed plots by Priyanath in favour of the owners thereof under the aforesaid alleged registered Istafanamas dated 5.8.66 and 7.5.73 respectively had not been made voluntarily, and that he had never surrendered his barga right in respect thereof, as alleged by the transferees owners thereof. He had further clearly held that Priyanath is actually the bargadar in respect of the disputed plots, further observing therein that the entry in the relevant record of rights in column 16 that Section 19B of the Act would be applicable would mean that the bargadar had been forcefully evicted. In View of the aforesaid findings arrived at by him, he had held the relevant case to be maintainable. The fact that the bargadar Priyanath had filed an application before the Bhag Chas Officer concerned u/s 18(1) of the Act for deciding the dispute regarding division and delivery of share of produce of the disputed plots for the year 1394 6.S. in June 1988, that he had filed an application u/s 19B of the Act, though somewhat misconceived, for correction of the entry in the relevant record of rights in respect of the disputed plots to the effect that Section 19B of the Act would be applicable, as also the fact that his possession in respect of the disputed plots had been recorded in the last Revisional Settlement Operation and that he had also succeeded in retaining his barga recording in respect thereof in the present record of rights under the West Bengal Land Reforms Act would all cumulatively seem to lend point to the aforesaid decision of the authority/officer concerned u/s 18 of the Act dated 26.10.90 that Priyanath had not surrendered his barga right in respect of the disputed plots, and that he is actually the bargadar in respect thereof. The decision of the Civil Court in the aforesaid T.S. No. 102 of 1989 that Priyanath is not a bargadar in respect of the disputed plots, based upon the earlier decision of the Bhag Chas Officer concerned dated 7.11.88, has to be considered in the background of the aforesaid facts and circumstances and the relevant provisions of law applicable in respect thereof.

In terms of sub-section (2) of Section 18 of the Act :

"If in deciding any dispute referred to in sub-section (1) or otherwise any question arises as to whether a person is a bargadar or not and to whom the share of the produce is deliverable, such question shall be determined by the officer or authority mentioned in sub-section (1)."

In terms of sub-section (3) of Section 21 of the Act as well :

"If any question as to whether a person is or is not a bargadar arises in the course of any (suit, case, appeal or other) proceedings before any Civil or Criminal Court, the Court shall refer it to the officer or authority mentioned in sub-section (1) of Section 18 for decision and such Court shall dispose of the suit, case, appeal or other proceedings in accordance with the decision communicated to it by the officer or

authority mentioned in sub-section (1) of Section 18 to whom the question was referred."

As held in the decision in [Sudarshan Ghosh Vs. Janakinath Pandit](#), with which we are in complete agreement, if once the Bhag Chas Officer assumes jurisdiction and such jurisdiction exists, his finding as to the relationship of bargadar and jotedar between the parties operates as res judicata in a subsequent civil suit although such special tribunal has no jurisdiction to decide the subsequent suit or the suit in which the issue is subsequently raised. The Kerala Full Bench in [George Vs. Thekkekkara Vareed](#), in relation to Section 125(3) of the Kerala Land Reforms Act, similar to the provisions of Section 21(3) of the West Bengal Land Reforms Act, has as well held that if there is a previous decision on the question which operates as res judicata to the civil court, such a question cannot be said to arise any further, and as such reference to the tribunal of special jurisdiction is unnecessary. Our Court in Shankar Khan v. Kalipada Roy (1978)2 CLJ 469 has as well similarly held that if the authority to be referred has already in a proceeding decided that a party is or is not a bargadar then the same question cannot be referred to him, and the Civil Court or the Criminal Court should proceed to decide the suit without making any reference. There is little to disagree therewith.

8. The aforesaid decisions apart, the aforesaid position of law stands confirmed by Explanation VIII to Section 11 of the Code of Civil Procedure, added by the C.P.C. (Amendment) Act of 1976 which reads as follows :-

An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised."

In view of the aforesaid clear position of law if the Authority concerned u/s 18(1) of the Act has once decided the question as to whether a person is or is not a bargadar, a further reference to such Authority/Officer u/s 21(3) could not clearly arise as the question cannot be said to arise any further. The adjudication of the said question by the Authority/Officer concerned u/s 18(1) of the Act would accordingly be binding on the Civil Court in deciding such a question in a suit, without the necessity of making any further reference to such Authority/Officer u/s 21(3), subject to appeal u/s 19 of the Act, and the said Court cannot arrive at a conclusion on the question of bargadar relationship contrary to that of the Officer or the Authority concerned. That being so, the decision of the Civil Court in the aforesaid T.S. No. 102 of 1989 holding Priyanath to be not a Bargadar in respect of the disputed plots on the basis of the order of the B.C.O. concerned dated 7.11.88, which had subsequently been set aside on appeal by the Appellate Authority u/s 19 of the Act and remanded back to the Authority concerned for a fresh decision in terms thereof, and subsequently decided afresh by him (Officer/Authority concerned) on 26.10.90 holding the said Priyanath to be Bargadar in respect of the disputed plots,

could not clearly be held to be sustainable according to law. As already indicated above, the decision of the Officer/Authority concerned dated 26.10.90 u/s 18 of the Act (after remand on appeal u/s 19 of the Act) would operate as *res judicata* to the Civil Court, as otherwise conflict of judicial/quasi-judicial decisions could not be ruled out, which could never have been intended by the Legislature.

9. In the relevant proceedings before the Officer/Authority concerned on an application by the Bargadar u/s 18 of the Act, it was contended on behalf of the owners of the disputed plots that the Bargadar Priyanath had allegedly surrendered his Barga right in favour of the owners by registered Istafanamas dated 5.8.66 and 7.5.73 respectively. No information had presumably been given either by the Bargadar or the Owners of the land or any other person of such alleged surrender to "the Officer or the Authority concerned referred to in Section 18(1) of the Act in terms of Section 20B of the Act, as required. The alleged surrender came to light during hearing of the aforesaid application u/s 18(1) of the Act in the relevant B.C. Case No. 34(H) of 1988. The alleged surrender had been vehemently disputed by the Bargadar Priyanath during the said hearing. In terms of sub-section (2) of Section 20B of the Act it was obligatory for the Officer/Authority concerned to make enquiries and determine whether the Bargadar had voluntarily surrendered or abandoned his right of cultivation, the moment the alleged surrender came to his notice, after giving the parties concerned an opportunity of being heard. In the relevant case, it was all the more obligatory for him to determine the aforesaid question, because without determining the said question he could not conceivably have decided whether Priyanath was or was not a Bargadar in respect of the disputed plots, which he (Officer/Authority concerned) was obliged to decide for deciding the dispute u/s 18(1) of the Act in the relevant Application filed by the aforesaid Bargadar, claiming himself to be the Bargadar in respect of the disputed plots. But the Officer/Authority concerned without considering as to whether the alleged Istafanamas dated 5.8.1966 and 7.5.1973 respectively, allegedly executed by the Bargadar Priyanath, were genuine documents or not duly executed and registered by him or not, or whether the same had been obtained by exercising by fraud, misrepresentation, undue influence, duress or coercion, as sought to be contended by him, and whether he had, in fact, surrendered his Barga right in respect of the disputed plots or not and if surrendered, whether the alleged surrender had been made voluntarily or not, had held under the relevant order dated 7.11.88 that he (Priyanath) was not a Bargadar in respect of the disputed plots merely because there is *prima facie* reason to believe that he had no Barga right in respect thereof in view of a note in column 16 of the present record-of-rights, attested on 6.8.1979, that Section 19B of the West Bengal Land Reforms Act is applicable in respect thereof, without making any enquiry whatsoever on the aforesaid points. And so far as the alleged subsequent surrender under the alleged Istafanamas dated 7.5. 1973 is concerned it was indeed obligatory for the Officer/Authority concerned to determine whether the Bargadar had voluntarily

surrendered his right of cultivation in relation to the disputed plot in question after making such enquiries, as necessary, and after giving the parties concerned an opportunity of being heard.. He clearly appears to have failed to perform his statutory duty in connection therewith. The decision of the Officer or Authority concerned dated 7.11.1988 could hardly be deemed to be sustainable according to law as such. That being so, the learned Appellate Authority seems to us to have been perfectly justified (though the recording of his judgment appears to be good deal less happy and far from satisfactory) in directing the Officer/Authority concerned (B.C.O.) by his relevant order dated 8.8.90 for hearing the relevant case [being No. 34(H) of 1988] on remand u/s 20B of the Act, in the aforesaid circumstances. In our view, the Court below had gone wrong in setting aside/quashing the aforesaid order of the Appellate Authority dated 8.8.1990 by passing the impugned judgment and order dated 12.3.92, as he did.

9. In the premises above, the Appeal should clearly succeed and the aforesaid order of the Appellate Authority dated 8.8.90 passed in L.R.A. Case No. 12 of 1989 must clearly be confirmed.

10. As indicated above, the Officer/Authority concerned by his subsequent judgment and order dated 26.10.90 (in terms of the aforesaid appellate order dated 7.8.1990) had held that Priyanath Mahapatra is Bargadar in respect of the disputed plots, whose cultivation of the same has not been terminated according to law. No appeal u/s 19 of the Act appears to have been preferred by any of the parties there against. The aforesaid judgment and order of the Officer/Authority concerned dated 26.10.90 must, therefore, certainly stand, which would operate as res judicata to the Civil Court for the reasons already discussed above. The judgment and decree of Civil Court in T.S. No. 102 of 1988 between the parties concerned in respect of the disputed plots on the finding that Priyanath Mahapatra is not a Bargadar in respect of the disputed plots, based on the earlier decision of the B.C.O. concerned dated 7.11.88 (which had been set aside by the Appellate Authority u/s 19 of the Act), could scarcely be held to be according to law as such. We are told that an Appeal has been preferred against the aforesaid judgment and decree passed by the learned Munsif in the aforesaid suit, which is still pending. The Appellate Court would certainly dispose of the said Appeal according to law in the light of the observations hereinabove made and may, in its discretion, send back the suit on remand to the Trial Court for disposing of the same on the basis of the subsequent decision of the Officer/Authority concerned dated 26.10.93 (on remand on appeal u/s 19 of the Act) that the said Priyanath Mahapatra is a Bargadar in respect of the disputed plots.

11. The Bargadar Priyanath Mahapatra is reported to have died during the pendency of the aforesaid civil suit. That being so, his lawful heir or heirs in terms of Section 15A of the Act, entitled to continue the right of cultivation of the disputed plots, if any, if not in possession thereof, shall be at liberty to take step for restoration of the same u/s 19B of the Act, and for revision/correction of the

relevant record of rights, as may be necessary, if entitled to and if not otherwise barred, if no such step had been taken therefore as yet, if so advised.

12. In the result, the Application and the Appeal are both disposed of on contest with the foregoing observations. The impugned judgment and order of the Court below dated 12.3.92 be hereby set aside and the relevant order of the Appellate Authority dated 8.8.90 in L.R.A. Case No. 12 of 1989 be confirmed,

13. In the facts, and circumstances of the matter, we direct the parties to bear their respective costs of hearing.

S.C. Sen, J.

14. I agree.