

(1978) 02 CAL CK 0003

Calcutta High Court

Case No: Civil Revision No. 3358 (W) of 1971

Rajani Kanta Hazra

APPELLANT

Vs

Junior Land Reforms Officer

RESPONDENT

Date of Decision: Feb. 10, 1978

Acts Referred:

- Bengal Tenancy Act, 1885 - Section 160, 161
- Constitution of India, 1950 - Article 226
- West Bengal Estates Acquisition Act, 1953 - Section 2, 3, 4, 5, 6
- West Bengal Land Reforms Act, 1955 - Section 2(6A)

Citation: (1978) 1 ILR (Cal) 376

Hon'ble Judges: Sankar Prasad Mitra, C.J; S.K. Datta, J

Bench: Division Bench

Advocate: Sipra Sarkar Gayan, for the Appellant; Swadesh Bhusan Bhunia and Ranjit Kumar Roy, for the Respondent

Judgement

Sankar Prasad Mitra, C.J.

This Rule has been referred to a larger Bench by M.N. Roy J. on April 5, 1977.

2. The Petitioner in an application under Article 226 of the Constitution has sought to impeach the attempt of the Respondent, Junior Land Reforms Officer, Kukrahati, Midnapore, to distribute 37 acres of land out of lands held by the Petitioner to other settlers who are Respondents Nos. 4 and 5.

3. The Petitioner's case is that at all material times he was and still is, a bargadar in respect of 74 acres of land situate at mouza Iswardaha. The Petitioner and his brother have cultivated the said land in equal half share under the erstwhile landlord, Bhabani Charan Mitra. The landlord, admittedly, held lands above the ceiling fixed by the West Bengal Estates Acquisition Act, 1953.

4. The Respondents in their affidavits-in-opposition have admitted that the Petitioner was a bargadar. They have also admitted that the Petitioner was recorded as a bargadar before the vesting of the land. They have admitted, further, that the Petitioner deposited necessary fees, like others, for obtaining licence in respect of the land, but the fees were received subject to the approval of the authorities concerned.

5. The Petitioner has stated that he has paid rents upto 1968 for which the necessary dakhilas have been granted. The Petitioner's allegation is that on Shravan 8, 1371 B.S., while he was cultivating the land, the Respondents Nos. 4 and 5 entered upon the land and obstructed his cultivation. The Respondents Nos. 4 and 5 intimated the Petitioner that they had obtained necessary licences from the appropriate authorities for cultivating the land.

6. The Petitioner thereupon went to the office of the Junior Land Reforms Officer and came to know that after the vesting agricultural lands, mentioned in the petition, have been distributed to the Respondents Nos. 4 and 5. According to the Petitioner, such settlement or distribution is wholly unauthorised, irregular and illegal and is without jurisdiction.

7. The point that arises for our consideration is, whether a barga right is an "incumbrance" within the meaning of Section 2(h) of the West Bengal Estates Acquisition Act, 1953. If we hold that it is an "incumbrance", then the vesting was free from this "incumbrance" and the State of West Bengal was at liberty to distribute the land in question to other cultivators.

8. Various decisions were relied on before M.N. Roy J. There is an unreported judgment of P.K. Banerjee J. in Mohd. Kalu Molla v. State of West Bengal C.R. 601(W) of 1973 decided by P.K. Banerjee J. on March 10, 1975. The Petitioner in that case was in possession of lands for which he held rent receipts. An attempt was made to evict the Petitioner. A rule was obtained. Banerjee J. held that the rule must succeed to the extent that the Petitioner's land could not be settled to any other person until the Petitioner was evicted in due course of law or by any other legislative process.

9. There is another unreported decision of A.K. Mookerji in Bhusan Chandra Giri v. State of West Bengal 2 Ors. C.R. 2182(W) of 1972 by A.K. Mookerji J. Here the Petitioner's case was that he was a bargadar and his name had been recorded as such in the record of rights, but the Respondents were trying to evict him without any legal process. The learned Advocate for the Petitioner contended that barga right was not an "incumbrance". Considering the facts and circumstances of the case, A.K. Mookerji J. directed the Respondents not to evict the Petitioner without taking recourse to law.

10. In Sasadhar Gayen and Ors. v. Junior Land Reforms Officer Gosaba and Ors. 1974 (1) C.H.N. 44, M.M. Dutt J. had to deal with the points raised before us more specifically. His Lordship has held that the interests of bargadars are

"incumbrances" within the meaning of the term as defined in Section 2(h) of the West Bengal Estates Acquisition Act, 1953 and along with the vesting of the disputed land or the vesting of the interests of the intermediaries, namely, the trustees to the estate of Sir Daniel Hamilton, the interest of the Petitioners who were bargadars under the intermediaries, also vested in the State as "incumbrances". Dutt J. has observed that the Petitioners in that case had no legal right to continue in possession of the disputed land and the State Government had the right to take possession of the same and settle the same with others.

11. The same view was taken by Anil K. Sen J. in an earlier decision in Gobinda Prasad Jana v. Junior Land Reforms Officer Patashpur and Ors. C.R. 5844(W) of 1970 decided by Anil K. Sen J.

12. M.N. Roy J. was of the view that on the point raised in this petition, this Court's opinions did not appear to be uniform. And that is why M.N. Roy J. has referred the matter to a large Bench.

13. We have gone through the four judgments referred to above. It seems to us that neither P.K. Banerjee J. nor A.K. Mookerji J. decided expressly that a barga right was not an "incumbrance" and therefore, the bargadar could continue to cultivate the land held under the barga even after the vesting of the land under the West Bengal Estates Acquisition Act, 1953. The point in question specifically arose both before Anil K. Sen J. and M.M. Dutt J. and both the learned Judges expressed their views against the bargadars.

14. Let us now read Section 2(h) of the West Bengal Estates Acquisition Act, 1953. It runs thus:

Section 2.

In this Act unless there is anything repugnant in the subject or context,

... ..

(h) "incumbrance" in relation to estates and rights of intermediaries therein does not include the rights of a raiyat or of an under-rayat or of a non-agricultural tenant, but shall, except in the case of land allowed to be retained by an intermediary, under the provisions of Section 6, include all rights or interests or whatever nature belonging to intermediaries or other persons, which relate to lands comprised in estates or to the produce thereof.

15. From the definition it is clear that the rights of a raiyat or an under-rayat or a non-agricultural tenant are not included within the definition of "incumbrance". But "incumbrance" includes all other rights or interests of whatever nature barring land allowed to be retained by an intermediary. The definition is of widest amplitude. It does not give protection to anyone except raiyats, under-rayats, non-agricultural tenants and to lands allowed to be retained by an intermediary u/s 6. A barga right

is not entitled to any protection and is an "incumbrance" and when the vesting takes place, it takes place without the barga right.

16. The Supreme Court has recently considered the scope of the definition of "incumbrance" in [State of West Bengal Vs. Sudhir Chandra Ghose and Others](#), . In this case, cattle grazing rights were under consideration. The Supreme Court has said that the vesting of estates in the State under Sections 3, 4 and 5 extinguishes the rights of cattle grazing which the villagers enjoy in the grass lands of such estates. Such right amounts to "incumbrance" within Section 2(h). Indubitably says the Supreme Court, the right to graze cattle in an estate is a restrictive interest clearly falling within the scope of Section 2(h). The Supreme Court has observed:

Indeed, so designedly limitless an area of rights and interests of whatever nature is included in the special definition of "incumbrance" for the purposes of the Act, that to deny the familiar rurally enjoyed right of pasturage as converted by it is to defeat, by judicial construction, the legislative intendment.

17. In the opinion of the Supreme Court, therefore, the expression "all rights or interests of whatever nature" indicates limitless area of rights or interests. In other words, excepting the rights or interests expressly excluded by the definition, all other rights or interests relating to lands comprised in estates or to the produce thereof arising from any source whatsoever would be treated as an "incumbrance" within the meaning of the Act.

18. Mrs. Sarkar, appearing for the Petitioner, drew our attention to Section 2(h) of the Act. According to this clause, expressions used in the Act and not otherwise defined have in relation to the areas to which the Bengal Tenancy Act, 1885, applies, the same meaning as in that Act and in relation to other areas meaning as similar thereto as the existing law relating to land tenures applying to such areas, permits.

19. Mrs. Sarkar wanted to rely on the definition of "incumbrance" in Section 161(a) of the Bengal Tenancy Act, 1885. It says:

(a) the term "incumbrance" used with reference to a tenancy means any lien, sub-tenancy, easement or other right or interest created by the tenant on his tenure or holding or in limitation of his own interest therein and not being a protected interest as defined in Section 160.

20. Mrs. Sarkar's point is that "all rights or interests of whatever nature" have not been defined in the West Bengal Estates Acquisition Act, 1953. We have, therefore, to look to the definition of "incumbrance" in Section 161(a) of the Bengal Tenancy Act, 1885, to determine that is meant by "all rights or interests of whatever nature" And since a barga right has not been mentioned in Section 161(a) of the Bengal Tenancy Act, 1885, it cannot be an "incumbrance" under the West Bengal Estates Acquisition Act, 1953.

21. It seems to us that for the definition of "incumbrance" we are not required to rely on any provision of the Bengal Tenancy Act, 1885, in view of the definition of "incumbrance" in Section 2(h) of the West Bengal Estates Acquisition Act, 1953. We are required to construe the expression "all rights or interests of whatever nature" used in Section 2(h). And our construction is, as we have already stated, that excepting rights or interests expressly excluded, no other rights or interests would escape the ambit of the definition of "incumbrance" in Section 2(h). For the same reason, we are not required to take into consideration the definition of "incumbrance" in Section 2(6A) of the West Bengal Land Reforms Act, 1955. This definition was brought into force for the purpose of the Land Reforms Act only.

22. For all the reason aforesaid, as the Petitioner has come to this Court only on the basis that he is a bargadar and his interest has not vested in the State, this application must fail.

23. The Rule is discharged. Interim orders, if any, are vacated. There will be no order as to costs.

24. The Petitioner will be at liberty to make an application within a month from this date to the appropriate authorities for settlement of the lands which are the subject-matter of this application in favour of the Petitioner, as prayed for and the appropriate authorities would deal with the application according to law. The application, however, would have to be made within a month from date.

S.K. Datta, J.

25. I agree.