

(1978) 07 CAL CK 0005

Calcutta High Court

Case No: None

Asraf Hossain

APPELLANT

Vs

Jahangir Hossain

RESPONDENT

Date of Decision: July 14, 1978

Acts Referred:

- Evidence Act, 1872 - Section 106
- WEST BENGAL LAND REFORMS ACT, 1955 - Section 10, 14J, 14K, 14M, 14S

Hon'ble Judges: Chittatosh Mookerjee, J

Bench: Single Bench

Judgement

Mr. Justice Chittatosh Mookerjee

1. This revisional application arises out of a proceeding u/s 8 of the West Bengal Land Reforms Act, 1955. Both courts of fact have found that the petitioner was a stranger purchaser of an undivided interest in the disputed raiyati holding and the pre-emptor opposite party was a co-sharer tenant. It is no longer disputed that the said application u/s 8 of the West Bengal Land Reforms Act was filed within time. Therefore, both the learned Munsiff in the trial court and the learned Subordinate Judge in appeal have upheld the claim of the opposite party to pre-empt the purchase made by the petitioner by the kobala dated April 5, 1965.

2. Mr. J. Islam, learned advocate for the petitioner, has submitted that both the learned Munsif and the learned Subordinate Judge failed to discharge their statutory duties by not satisfying themselves as to whether the pre-emptor opposite party was already possessing lands up to the ceiling area prescribed by Section 14M of the West Bengal Land Reforms Act, 1955. Mr. Islam has further submitted that the court before allowing the application for pre-emption ought to have made an enquiry and arrive at a finding in this behalf. He has submitted that this Court may now remand the case. In my view, the petitioner is not entitled to pray for a remand of the case on the above ground. The learned Subordinate Judge in his appellate

judgment has observed that this point was not taken either before the learned Munsif or in the memorandum of appeal filed in the appellate court. There was also no evidence in support of the submission made by the appellant at the time of the hearing of the appeal that the pre-emptor already owned lands up to the ceiling area mentioned in Section 14M of the West Bengal Land Reforms Act, 1955. The learned Subordinate Judge has further found that he had only 10 to 15 bighas of Agricultural land. The said evidence of the Respondent was not challenged in cross-examination. In my view, the learned Subordinate Judge has rightly over-ruled the above contention of the present petitioner. Mr. Islam, learned advocate for the petitioner, has submitted that the Section 106 of the Evidence Act was applicable and that the said fact as regards the actual area of his lands being within the special knowledge of the pre-emptor, he was bound to prove the same. I have already pointed out that in this case the pre-emptor did depose before the Munsif that the total area of his lands was much below the ceiling. The petitioner neither cross-examined him nor did he adduce any rebutting evidence on the said point. The petitioner did not urge before the learned Munsif the said point. The learned Subordinate Judge in appeal on facts answered the said question regarding Section 14M of the West Bengal Land Reforms Act, 1955 in favour of the pre-emptor respondent. The petitioner cannot be allowed to urge in revision a question of fact for which he did not lay any foundation in the court of first instance. In the above view, sitting in revision, I am not prepared to remand the matter for a de-novo trial on the question as to whether or not the pre-emptor had land in excess of the ceiling prescribed by Section 14M of the West Bengal Land Reforms Act, 1955.

3. Mr. Islam, learned advocate for the petitioner, relied upon the decision of Salil Kumar Datta, J. in (1) Pasupati Mondal v. Subhrangshu Mondal & Others, reported in 1978 CHCN 514. But the said decision is distinguishable on facts from the present case. It appears from the judgment of Salil Kumar Datta, J. that the transferee had taken a point before the learned Munsif that the pre-emption should not be allowed because it would be in violation of the provision of Section 14M of the West Bengal Land Reforms Act, 1955. Both parties had adduced evidence on this point. The learned Munsif found the said point against the transferee. At the time of the original hearing of the Civil Rule the said point regarding Section 14M was not taken. The petitioner in his review petition filed before Salil Kumar Datta, J. had, inter alia, relied upon a Nirupanpatra in order to substantiate his allegation that in case the pre-emption was allowed the lands of the claimant for pre-emption would exceed the ceiling area as provided in Section 14M of the said Act. The petitioner in his review application had relied upon the certified copies of the Record of Rights in respect of the lands allegedly held by the claimants for pre-emption. Salil Kumar Datta, J. had reviewed his earlier order and had remitted back the case. I have already pointed out that the evidence of the pre-emptor that he owned 10 to 15 bighas of lands was not challenged by the present petitioner. Secondly, the petitioner neither in the lower appellate court nor in this court filed any

documentary evidence in the shape of registered deeds, settlement records, proceedings of the Revenue Authorities to substantiate his allegation that the pre-emptor opposite party already possessed lands in excess of the ceiling prescribed by Section 14M of the West Bengal Land Reforms Act, 1955.

4. I may further observe that I am not inclined to accept the submission of the learned advocate for the petitioner regarding the scope and effect of the expression "subject to Section 14M" in Section 8(1) of the West Bengal Land Reforms Act, 1955.

5. Section 8(1) of the West Bengal Land Reforms Act specifies the classes of persons who may apply for pre-emption in case of a portion or share of holding of a raiyat is transferred to a person other than a co-sharer of a holding. Sub-section (1) of Sec. 8 further qualifies that a co-sharer tenant or contiguous tenant may apply for transfer of the said portion or share of the holding "subject to the limit mentioned in Section 14 M" on deposit of the consideration money together with a further sum of 10% of that amount. It is significant that Section 9(1) of the West Bengal Land Reforms Act, 1955 which prescribes the manner in which the learned Munsif shall dispose of an application u/s 8 or Section 10 which mentions the consequences of allowing a pre-emption application, make no reference to the provisions of section 14M of the West Bengal Land Reforms Act.

6. We may now consider the meaning of the expression "subject to Section 14M" in Section 8(1). This qualifies the nature of the right which the pre-emptor would acquire over the share or portion of a holding pre-empted by him. Section 8(1) in substance means that when a portion or share of the holding in question is transferred to a stranger, the pre-emptor may apply that the said portion or share be transferred to him subject to the provisions of Section 14M of the West Bengal Land Reforms Act. Thus the vesting of land upon a co-sharer or a Contiguous tenant in terms of an order allowing his application for pre-emption would attract the provisions of Section 14M of the Act.

7. The Chapter IIB of the West Bengal Land Reforms Act, 1955 contains provisions relating to ceiling on holding and ceiling area has been defined as "the extent of land which a raiyat shall be entitled to own" (vide-Section 14K(a). Section 14J provides that the provisions of Chapter IIB shall override provisions contained elsewhere in the West Bengal Land Reforms Act and also the provisions of any other law. Section 14X has specifically barred the jurisdiction of Civil Courts to determine any matter which is by or under the Chapter IIB required to be decided or dealt with by the Revenue Officer or the authority specified in Chapter IIB. The orders passed in the proceedings under the said Chapter shall not be called in question in civil court. Thus the provisions of Chapter IIB require that all questions relating to the ceiling specified u/s 14M shall be determined only by the authorities mentioned in the different provisions of Chapter IIB. There is also exclusion of jurisdiction of civil court in respect of these questions.

8. After the commencement of the provisions of Chapter IIB, any land owned by a raiyat in excess of "the ceiling area" in terms of Section 14S vested in the State. Every raiyat owning land in excess of the ceiling area under sec. 14T was under a duty to furnish within the specified time a return of the lands which he proposed to retain within the ceiling area applicable to him u/s 14M. On receipt of a return the Revenue Officer u/s 14T(3) would determine the extent of land which is to vest. The sub-section (3A) of section 14T gives power to the Revenue Officer to revise an order made u/s 14T(3). If after the commencement of Chapter IIB any raiyat acquires any land whether by transfer inheritance or otherwise and such land together with the land owned by him exceeds the ceiling area u/s 14M, the area in excess of the ceiling area in terms of Section 14Y would vest in the State and all the provisions of Chapter IIB relating to ceiling on holding shall apply to such land. The expression "acquired" in Section 14Y has a very wide meaning. Acquisition may be by a voluntary or an involuntary act, by a private treaty or under orders of a court or authority. Mode of acquisition may be by transfer inter vivos, inheritance or devolution in any manner. This Section 14Y has provided that Chapter IIB would apply in case a raiyat in any made acquires land after Chapter IIB had come into force. When a land would be transferred to a raiyat after the Chapter IIB had come into force, the area of the transferred land would be taken into consideration for determination by the appropriate authority under Chapter IIB of the extent of the land such transferee shall be entitled to own and possess and how much land as surplus would vest. A pre-emption is a right to preferential purchase. When the order is made allowing the application u/s 8(1), the right, title and interest of the transfer raiyat, of his transferee and also of his subsequent transferee would vest in the pre-emptor in the manner indicated in Section 10 of the West Bengal Land Reforms Act. Thus an order passed u/s 9 results in transfer/devolution of the interests specified in Section 10. u/s 8, after a transfer of a share or portion of a raiyati holding is made to a stranger purchaser, a co-sharer or a contiguous tenant may purchase the said transferred share or portion in the manner laid down in Sections 8 and 9 of the West Bengal Land Reforms Act. The effect of allowing a pre-emption application would be that the pre-emptor who would acquire the share or portion in question u/s 14Y, the said pre-emption would be subject to the provisions of Chapter IIB. Thus Section 8(1) by using the expression "subject to Section 14M" has only clarified that a pre-emption by a co-sharer or a contiguous tenant u/s 8 would be conditional upon a determination of his right under Chapter IIB of the West Bengal Land Reforms Act to retain the said land. The Section 8(1) of the West Bengal Land Reforms Act, 1955 by using the expression "subject to Section 14M" has dispelled all doubts on the question whether or not land acquired by a raiyat under a pre-emption order would be exempted from the ceiling area u/s 14M. But the learned Munsif while disposing u/s 9(1) of the West Bengal Land Reforms Act a pre-emption application, cannot work out the consequence of vesting of land upon the pre-emptor. In fact, Section 14X has expressly excluded civil court's jurisdiction to decide matters coming under Chapter IIB. The authorities specified

under Chapter IIB have the exclusive jurisdiction to determine the question of ceiling area and other allied matters in the manner prescribed in the said Chapter IIB.

9. It may be also pointed out that under the West Bengal Land Reforms Act raiyati holdings or any portion or share thereof are transferable subject to the restrictions imposed by the Act. After the commencement of Chapter IIB acquisition of land by transfer or otherwise by a raiyat who already owns land up to the ceiling area would not be totally null and void. In such a case the provisions of Section 14Y would apply. I have already pointed out that Section 14Y has put limitations on future acquisition of land by providing that the land in excess of the ceiling area shall vest in the State and all the provisions of Chapter IIB relating to ceiling on holding shall apply. Therefore, in such a case the raiyat would be required to furnish a return u/s 14T. He can opt to retain the land acquired by him after the commencement of Chapter IIB by including the said land among his retained lands in his return required to be filed u/s 14T(1). The Revenue Officer on the receipt of such a return would make the necessary determination, allow the raiyat to retain land up to the ceiling area and vest the surplus land in the State.

10. If any other interpretation is put on Section 8(1), it would lead to various inconsistencies. I have already pointed out in that the learned Munsif exercising his powers under Sections 8 and 9 cannot usurp the functions of the authorities under Chapter IIB. The nature of the enquiry and the kind of evidence required in a proceeding u/s 8 for determination of the question of pre-emption are entirely different from those required for disposing of the questions arising u/s 14M. Further, law does not lay down one uniform ceiling area for all classes of raiyats. In each case the ceiling area is to be determined after taking into consideration several facts and circumstances whether he is adult, unmarried or whether he has a family and if so, the number of members of his family etc. Further, the Revenue Officer and the State would not be bound by any adjudication regarding the ceiling area made in a proceeding u/s 8 of the West Bengal Land Reforms Act unless they were impleaded as parties. But Law does not require them to be joined as parties in a proceeding u/s 8. Therefore, even if the learned Munsif in disposing of an application u/s 8 could arrive at a finding regarding total area of land possessed by the pre-emptor, the said determination would not be binding upon the authorities under Chapter IIB of the West Bengal Land Reforms Act. Therefore, in case it was held that the learned Munsif could determine the ceiling area applicable to the pre-emptor, the same may result in bringing into existence contradictory and conflicting orders one by the learned Munsif and another by the authorities under Chapter IIB. I have also pointed out that if the Munsif purports to make a determination of the ceiling area, he would transgress the limits of his jurisdiction (vide Section 14X of the Act). The said Section as already stated has excluded civil court's jurisdiction in respect of matters falling under Chapter IIB.

11. For all these reasons, I come to the conclusion that the petitioner is not entitled to urge that the present case should be now remanded for determination by the learned Munsif of the question whether the existing land owned by the pre-emptor exceeded the ceiling area u/s 14M of the West Bengal Land Reforms Act.

12. I, accordingly, discharge this Rule. There will be no order as to costs.