

(1990) 12 CAL CK 0001

Calcutta High Court

Case No: F.M.A. No. 180 of 1982

Bakul Nag

APPELLANT

Vs

Saibal Guin

RESPONDENT

Date of Decision: Dec. 7, 1990

Acts Referred:

- West Bengal Land Reforms (Amendment) Act, 1981 - Section 1(2), 3, 5, 53, 6
- West Bengal Land Reforms Act, 1955 - Section 1(3), 2, 3, 63(2), 8

Citation: (1992) 1 ILR (Cal) 77

Hon'ble Judges: Satyabrata Mitra, J; S.K. Mookherjee, J

Bench: Division Bench

Advocate: R.N. Mitra and B. Ghosh, for the Appellant; Utpal Bhattacharjee, for the Respondent

Judgement

S.K. Mookherjee, J.

The present Misc. Appeal is directed against the judgment and order No. 60 dated April 27, 1978, passed by the learned Subordinate Judge, Birbhum at Suri, in Misc. Case No. 40 of 1975, allowing the application for preemption in favour of the Respondents Nos. 1 to 3, who were the applicants in the Court below. Since, at the time the application in question, which was filed on August 27, 1975, had been presented, the land in question was non-agricultural land, the application was made invoking the provisions of Section 24 of the West Bengal Non-Agricultural Tenancy Act. The instant appeal against the said decision of the learned Subordinate Judge had been presented before this Court on July 28, 1978. During the pendency of the appeal, the West Bengal Land Reforms (Amendment), Act 1981 (hereinafter referred to as the Amending Act), had been enacted and the effect of the said Act on the aforesaid pending proceeding constitutes the major part of the controversy between the parties before this Court.

2. The pro forma opposite party, Respondent No. 4 herein, was a non-agricultural tenant under the State of West Bengal and by a Registered Sale Deed dated April 7, 1971, he sold to the Respondent No. 2 three cottahs 10 chattacks of land of dag No. 1375 appertaining to the said Respondent No. 4 further sold 8 decimals of land out of the very same dag to the present Appellant on the basis of another Registered Sale Deed dated April 18, 1947, for a consideration of Rs. 24,999. The application for pre-emption u/s 24 of the West Bengal Non-Agricultural Tenancy Act had been filed to pre-empt this sale.

3. Mr. Mitra, appearing in support of the appeal, had very emphatically contended that in view of the provisions of the West Bengal Land Reforms (Amendment) Act, 1981, the preemptor is not entitled to any relief u/s 24 of the West Bengal Non-Agricultural Tenancy Act as, the said section stands impliedly repealed by the changes introduced in the provisions of the West Bengal Land Reforms Act (hereinafter referred to as the Principal Act) by the Amending Act, rendering the application non-maintainable. In this connection, Mr. Mitra has relied on a Division Bench decision of this Court in the case of *Niranjan Khanna and Anr. v. Shyamal Kumar Mukherjee and Ors.* 1988 (2) C.H.N 297 Mr. Bhattacharjee, appearing on behalf of the contesting Respondents/pre-emptors, had, however, argued that since the decision under appeal in the present case had been delivered long before the Amending Act had come into operation, the effect of the decision or the maintainability of the application cannot now be upset by application of the provisions of the Amending Act even though the same have been made retrospective from August 7, 1969. Mr. Bhattacharjee had endeavored to substantiate his submissions by reiterating the well-established canon of construction that the effect of a judgment/decreed or pronouncement of the Court of law cannot be rendered nugatory by making a statutory provision retrospective as such a judgment/decreed or judicial pronouncement creates a substantive right in favour of a party. Mr. Bhattacharjee in this connection had referred to the decisions reported in [Hoosein Kasam Dada \(India\) Ltd. Vs. The State of Madhya Pradesh and Others](#), ; [Garikapatti Veeraya Vs. N. Subbiah Choudhury](#), and *Nagendra Nath Bose v. Mon Mohan Singha* 34 C.W.N. 1009. He had also referred to Section 63(2) of the West Bengal Land Reforms Act, as amended, which had been introduced by Section 53 of the Amending Act. We propose to deal with the contention above-mentioned first for the reasons which would be manifest from What follows hereinafter. Sub-section (2) of Section 1 of the Amending Act lays down:
The provisions of this Act shall be deemed to have come into force on the 7th day of August, 1969, unless the context of any provision otherwise indicates.

By Section 5 of the Amending Act Section 2 of the Principal Act had been amended and the definition of "land" as given in Clause (7) of the Principal Act has been substituted by the following definition:

(7) "land" means land of every description and includes tank, tank-fishery, fishery, homestead, or land used for the purpose of livestock breeding, poultry farming, dairy or land comprised in tea garden, mill, factory, workshop, orchard, hat bazar, ferries, tollies or land having any other sairati interests and any other land together with all interests and benefits arising out of land and things attached to the earth or permanently fastened to anything attached to earth.

4. There is no dispute that, if this definition had been in force at the time the application for pre-emption in the instant case had been filed, the appropriate forum for preferring the application would have been one in terms of Section 8 of the West Bengal Land Reforms Act. The only controversy, which has been raised, is that since Clause (7) of Section 2 in the Principal Act defined "land" in a different manner the effect of which was to exclude non-agricultural land and the proceedings upon invocation of Section 24 of the West Bengal Non-Agricultural Tenancy Act having ended long before the enactment of the Amending Act, the substituted definition should not be deemed effective to the extent of rendering the entire proceeding and the judgment nugatory because as noted above, with the pronouncement of the judgment a vested right had been created in favour of the party. This approach has been sought also to be justified by reference to Section 63(2) of the West Bengal Land Reforms Act. It is necessary to notice, at this stage, the provisions of Section 63(2) which stands as follows:

63(2). Notwithstanding the provisions of Sub-section (1) any proceeding pending on the date of such coming into force before any authority appointed under the West Bengal Non-Agricultural Tenancy Act, 1949, or before any Court shall be continued or disposed of as if the West Bengal Land Reforms (Amendment) Act, 1981 had not come into force in that district or area.

5. Before we proceed to find out the propriety of the aforesaid submission's, it is necessary for us also to take into consideration the Substituted provisions of Section 3 introduced by Section 6 of the Amending Act which, in our view, sets at rest the controversy raised on behalf of the contesting Respondents by Mr. Bhattacharjee. The substituted provision of Section 3. An Act to override other laws - The provisions of this Act shall have effect notwithstanding anything inconsistent therewith in any Other law for the time being in force or on any custom or usage or contract, expressed or implied, or agreement or decree or order or decision or award of a Court, Tribunal or other authority.

(underline is mine)

6. The substituted provisions became immediately operative in terms of Sub-section (3) of Section 1 of the Principal Act as the previous Section 3 was already in force with effect from March 31, 1965, by virtue of Notification No. 63461 dated March 30, 1956. The non obstante clause of the said Sub-section expressly nullifies a judicial pronouncement in the form of decree, order, decision or award of a Court, Tribunal

of other authority (vide underlined portion above). The decisions cited by Mr. Bhattacharjee also recognise the exception where by express retrospective provision in a subsequent Act or amending Act such judicial pronouncement is annulled and as such, the said decisions really ensure to the benefit of the Appellants before us. (Vide para. 23 of Garikapati Veeraya (Supra) para. 8 of Hoosein Kasam Dada v. State of M.P. (Supra) and righthand column at page 1011 of Nagendra Nath Bose v. Mon Mohan Singha (Supra)(1011). As far as Section 63(2) relied on by Mr. Bhattacharjee is concerned, the same has been brought into existence as a part of the Principal Act by Section 53 of the Amending Act, but the same has not been brought into force by issuance of a Notification in terms of Sub-section (3) of Section 1 of the Principal Act. Such conclusion of ours is also justified by the Division Bench decision of this Court in the case of Niranjana Khanna (Supra). The provisions of Sections 2(7) and 3, as substituted in the Principal Act by the Amending Act, remain unaffected, in any way, by the provision of Section 63(2) thereof. Land as defined by the substituted provisions of Section 2(7) has the effect of enlarging the scope of West Bengal Land Reforms Act by extending its operation to non-Agricultural lands also. Thus the land in dispute in the instant case falls within the purview of the said definition.

7. For the foregoing reasons, we hold that the application u/s 24 of the West Bengal Non-agricultural Tenancy Act giving rise to the impugned proceeding, has become misconceived. However, to avoid multiplicity of litigation and any prejudice or hardship being caused to the applicants, for events, which were not within their control, we decline to dismiss the same outright, but we feel that the ends of justice would be subserved if the said application is permitted to be treated as one u/s 8 of the West Bengal Land Reforms Act after appropriate amendments thereof and is directed to be dealt with and disposed of in terms of the provisions of the said section. The impugned judgment, for the reasons already indicated and particularly in view of the provisions of substituted Section 3 of the West Bengal Land Reforms Act, cannot also be sustained and deserves to be set aside.

8. Accordingly, we allow the appeal, set aside the impugned judgment of the learned Subordinate Judge and remand the Misc. case to the Court of the learned Munsif having territorial jurisdiction over the same in terms of Section 8 of the West Bengal Land Reforms Act for disposal thereof according to law. We have kept all the points open excepting one which we have decided specifically, as, we feel that expression of any view on the merits of the rival contentions would fetter the hands of the trial Court in coming to its own conclusion. Before proceeding with the matter in terms of the directions above; the trial Court must afford appropriate opportunities to suitably amend their pleadings so as to bring it within the purview of Section 8 of the West Bengal Land Reforms Act and also to adduce evidence, if they are so advised.

9. Since the matter has already been delayed for no fault of any of the contesting parties, we desire that the completion of the proceedings should be expedited as far as practicable and should preferably be completed within one year from the date of communication of this order to the trial Court.

10. Each party will bear his own costs.

11. Let records of the appeal along with a copy of this judgment be sent to the learned District Judge, Birbhum, who will transmit the same to the appropriate Court having jurisdiction over the matter for disposal on the lines as indicated hereinabove.

12. No formal decree needed be drawn.

Satyabrata Mitra, J.

13. I agree.