(1967) 05 CAL CK 0003

Calcutta High Court

Case No: Appeal from Original Order No. 294 of 1959

Bijoli Prova Nandy Chowdhury	APPELLANT
Vs	
H.C. Dutta and Others	RESPONDENT

Date of Decision: May 11, 1967

Acts Referred:

- Constitution of India, 1950 - Article 226
- Transfer of Property Act, 1882 - Section 53A
- West Bengal Estates Acquisition Act, 1953 - Section 10(2), 10(2), 4, 4(1), 5

Citation: 71 CWN 681

Hon'ble Judges: D.N. Sinha, C.J; A.K. Mukherjee, J

Bench: Division Bench

Advocate: S.C. Das Gupta and Nagendra Mohan Saha, for the Appellant; N.C. Chakrabarty and S.K. Biswas and Pravash Chandra Chatterjee, for the Respondent

Final Decision: Allowed

Judgement

Sinha, C.J.

The facts in this case are shortly as follows : In this case we are concerned with plots Nos. 4091, 4095 and 4096 of the total area of 40.97 acres, under khatian 7/11 of mouza Krishnapur, J.L. No. 17, P.S. Rajarhat in the district of 24-Parganas. It is the common case that these plots are tank fisheries as defined in section 5(1) (e) of the West Bengal Estates Acquisition Act, 1953 (W. B. Act 1 of 1954) (hereinafter referred to as the ""said Act"). It is unnecessary to relate the previous history of the said fisheries. It is sufficient to say that on or about the 4th Falgoon, 1355 B.S. There was a partition amongst the joint owners thereof and on such partition the said lands were allotted to Shri Haragopal Nandy Chowdhury. A copy of the deed of partition is set out at pages 43 to 54 of the paper book, on or about the 2nd Aswin 1367 B.S. the said Haragopal Nandy Chowdhury granted mourashi mokurari lease of die said lands to his wife Sm. Bijoli Prova Nandy Chowdhury. This lease was effected by two

documents, one executed by the said Haragopal Nandy Choudhury described as an "Amalnama" which is set out at pages 55 to 58 of the paper book. The lady Sm. Bijoli Prova Nandy Chowdhury, executed a kabuliyat, a copy whereof is set at pages 59 to 63 of the paper book. The said Sm. Bijoli Prova Nandy Chowdhury gave a settlement of the said fishery to Bhusan Chandra Naskar and Nilkantha Mondal from 1st Baisakh, 1357 to 30th Chaitra, 1361 B.S. This deed of Amalnama is not forthcoming, but it is recited in a subsequent document a copy of which is set out at pages 65 to 67 of the paper book. There is also a receipt executed by the said Bhusan Chandra Naskar and Nilkantha Mondal dated 9th Chaitra 1360 B.S. a copy whereof is set out at page 64 of the paper book. It is not disputed before us that there was such a settlement and it was from 1st Baisakh 1357 B.S. to 30th Chaitra 1361 B.S. at an annual jama of Rs. 2000/- From this document which is set out at pages 65 to 67 of the paper book, it appears that even before the expiry of the settlement from 1st Baisakh 1357 to 30th Chaitra 1361 B.S., in fact almost a year before the expiry, there was a document resettling the fishery with Bhusan Chandra Naskar and Nilkantha Mondal for the period 1st Baisakh 1362 to 30th Chaitra 1366 B.S. at an annual jama of Rs. 2400/-. The said Act came into operation as and from the first day of Baisakh 1362 B.S. It is not disputed that by a notification issued under the sadi Act, the said lands vested in the State Government as and from 1st of Baisakh, 1362 B.S. (corresponding to 15th April. 1955). On the 5th of January, 1956 the opposite party No. 1 and the Collector of Barasat, 24-Parganas as purporting to act as Collector u/s 10 (2) of the said Act, served on the appellant a notice u/s 10(2) of the said Act requiring her to give up possession of the said tank fisheries within the 2nd of Chaitra 1362 B.S. corresponding to 16th March 1956. The appellant through her solicitor protested but this was of no avail and objection was overruled by order dated 3rd of April, 1956. Thereafter, the opposite party No. 2, the Land Reform Officer, Barasat, was directed to take possession by using force if necessary. On or about the 9th of April 1956 the appellant made an application to this Court under article 226 of the Constitution and Rule was issued calling upon the opposite party to show cause why a writ in the nature of Mandamus should not issue directing them to forbear from giving effect to the orders dated 5th January, 1956 and 3rd April 1956 as also notice dated 4th April, 1956 and for other reliefs. Originally, opposite parties Nos. 1 to 4 were made parties but by a subsequent order dated 21st February, 1959 opposite parties Nos. 5, 6 and 7 were added. The application came up for hearing before Bachawat, J., and the learned Judge by his judgment dated 20th of May 1959 held that he was bound by a Division Bench decision of this Court (1) Reliance Development and Engineering Limited v. Corporation of Calcutta, 61 CWN 533 and dismissed the application and the Rule was discharged. It is against this judgment that this appeal is directed. Before I proceed to examine the effect of the said decision, I might refer to the relevant provisions of the said Act. u/s 4(1) of the said Act, the State Government may from time to time, by notification declare that with effect from the date mentioned in the notification, all estates and the rights of every intermediary in such estate situated in any district or part of a district

specified in the notification, shall vest in the State free from all incumbrances. In this particular case, it is admitted that the notification vested all estates including the lands mentioned above, in the State Government, as and from the 1st of Baisakh, 1362 B.S. Notwithstanding the vesting clause, section 6 lays down certain exceptions. In other words, notwithstanding anything contained in sections 4 and 5 of the said Act, an intermediary is entitled to retain certain land., Under clause (e) of sub-section (1) of section 6, he may retain "tank fisheries." As I have stated above, it is admitted that the lands in question are tank fisheries. Sub-section (2) of section 6 is in the following terms :

An intermediary who is entitled to retain possession of any land under sub-section (1) shall be deemed to hold such land directly under the State from the date of vesting as a tenant, subject to such terms and conditions as may be prescribed and subject to payment of such rent as may be determined under the provisions of this Act and as entered in the record-of-rights finally published under Chapter V except that no rent shall be payable for land referred to in clause (h) or (i) :

Provided that if any tank fishery or any land comprised in a tea-garden, orchard, mill, factory or workshop was held immediately before the date of vesting under a lease, such lease shall be deemed to have been given by the State Government on the same terms and conditions as immediately before such date.

2. This proviso has been the subject-matter of interpretation in the case of, Reliance Development and Engineering Limited v. Corporation of Calcutta, (supra). It was held that the proviso to sub-section (2) of section 6 of the said Act refers to a lease held under an intermediary and not a lease under which the intermediary himself holds. In other words, if an intermediary holds a lease immediately before the date of vesting, that will not be governed by the proviso. What the proviso deals with is a lease under a intermediary. Therefore, in the present case, if the Narskars were the lessee in possession, under the appellant immediately before the date of vesting, then the right of the appellant will vanish and the Naskars will hold directly under the State Government. In fact, this is what is being claimed by the respondents. In my opinion, the decision in 61 CWN 533 does not solve the problems that arise in this case. It is not disputed that if the Naskars were the lessee in possession immediately before the date of vesting they would hold it directly under the State Government. But the question has been raised as to whether they at all held a lease immediately before the date of vesting. Two points have been argued by Mr. Das Gupta on behalf of the appellant. The first point is that the Amalnama or settlement, was up to Chaitra 1361 B.S. In other words, if it was a valid lease, it expired on the 30th Chaitra 1361 B.S. Chaitra 1361 consisted of 31 days. The said Act vested the lands in the State on the 1st of Baisakh 1362 B.S. and the last settlement by the appellant in favour of Naskar and Mondal purports to be operative from the 1st Baisakh 1362 B.S. Therefore, it is plain that immediately before the date of vesting there was no subsisting lease in favour of Naskar and Mondal, Therefore, under the

proviso to sub-section (2) of section 6 they do not become direct tenants under Government. In (2) Sankar Prosad Mukherji Vs. The State of West Bengal and Another, it has been held that the words "immediately before" in the proviso to section 6(2) of the said Act, means a lease subsisting on the date of vesting. It does not refer to leases expiring before the date of vesting. From that point of view, it is the appellant who would be entitled to retain the lank fisheries under the provisions of section 6(1) (e) of the said Act.

Mr. Das Gupta has taken another point and it is this : He argues that an Amalnama is not a lease. It is a document which gives a right to possession and is neither a lease nor an agreement for a lease and that is why it does not require registration. As to what is an Amalnama appears to have been the subject-matter of various decisions of this Court. (3) See Syed Sufdar Reza v. Amzad Ali, ILR 7 Cal. 703, (4) Dwarka Nath Saha v. Ledu Sikdar. ILR 33 Cal. 502, (5) Lakshan Chandra Mondal v. Takim Dhali. 39 CLJ page 90. These authorities show that the matter depends on the nature and contents of the deed called an Amalnama. Where the deed is in such a form that it can neither be called a lease nor an agreement for a lease, but it gives a right to possession it may come within the description of an Amalnama. For example, in case of Dwarka Nath Saha, (supra), the defendant verbally applied for a grant of certain lands and he was permitted to clear the jungle on the said lands for which purpose he was allowed to hold the same without payment of rent for nine years and after nine years the landlord agreed to settle the lands upon him. It was held that there was no absolute agreement to grant a lease, which was subject to a condition to be fulfilled and such an Amalnama did not require registration. Though unregistered, it was admissible in evidence. In my opinion, the documents in the present case are not of that nature, although called Amalnamas. For example the one by which the lady got her mourashi mokurari interest is in the form of a patta and kabuliyat. I do not think that it is necessary to decide in this case as to whether these particular documents are Amalnamas and require registration. So far as the appellant and the opposite parties Nos. 3 and 4 are concerned, the admitted position is that the appellant settled the lands with the opposite parties Nos. 3 and 4, firstly from 1st Baisakh 1357 to 30th Chaitra 1361 B.S. and then from 1st Baisakh 1362 B.S. to 30th Chaitra 1366 B.S. The terms were reduced to writing and the parties were in possession. Thus, u/s 53A of the Transfer of Property Act, the terms are binding on them. Therefore, even if these so-called Amalnamas in favour of the opposite Nos. 3 and 4 be leases, the fact that the documents were unregistered did not make the terms any the less binding on the parties. It is not seriously disputed before us that on the 31st Chaitra 1361 B.S. the appellant was in possession and the opposite parties Nos. 3 and 4 had neither possession nor the right to possess the said tank fishery. We asked the learned Advocate appearing on behalf of the said opposite parties as to whether he could produce any material to show that his client was actually in possession on the 31st of Chaitra 1361 B.S. contrary to the terms of the Amalnama. But although time was given, he failed to produce any evidence to

that effect. The result is that it must be held that immediately before the said Act came into operation it was the appellant and not the opposite parties Nos. 3 and 4 who was the lessee of the tank fisheries and was in possession thereof. Consequently, it is a right of the appellant which would subsist under the said Act. In other words, it is the appellant who would become the tenant under the Government and consequently notice u/s 10(2) cannot be given as she has elected to retain the property. In other words, the application should succeed. During the hearing an application was made on behalf of Bhusan Chandra Naskar, respondent No. 4, to the effect that the c.s. plots in question and other adjoining plots have been requisitioned by Government for construction of dwelling places for people residing in greater Calcutta under the provisions of the West Bengal Land (Requisition and Acquisition) Act, 1948 and possession thereof has been taken on 25th February 1963 after which the tank has been filled up and at present there is no tank fishery. In, our opinion this does not affect the decision in this case, because it would only affect that right of compensation. We are informed by the appellant that she has claimed compensation and it is a matter with which we are not concerned. The result is that this appeal succeeds and the order of the Court below dated 20th April 1959 is set aside and the Rule is made absolute. There will be an appropriate writ directing the respondent not to give effect to the notice u/s 10(2) of the said Act by the Collector as stated in the petition. We make it clear that we say nothing about the proceedings under West Bengal Land (Requisition and Acquisition) Act, 1959 as if is not the subject-matter of this case. There will be no order as to costs.

Arun K. Mukherjea, J.

I agree.