

(2013) 08 CAL CK 0023
Calcutta High Court
Case No: C.O. No. 82 of 2013

Monchop Ali Mondal @ Monsuf
Ali Mondal @ Munsef Ali Mondal

APPELLANT

Vs

Ayub Ali Molla and Another

RESPONDENT

Date of Decision: Aug. 22, 2013

Acts Referred:

- Constitution of India, 1950 - Article 227
- West Bengal Land Reforms Act, 1955 - Section 14M, 14T, 14T(1), 14X, 14Y

Citation: (2014) 1 CHN 261

Hon'ble Judges: Tarun Kumar Gupta, J

Bench: Single Bench

Advocate: Hiranmoy Bhattacharya, Mr. Tanmoy Mukherjee and Mr. Sounak Bhattacharya, for the Appellant; Sabyasachi Bhattacharyya, Arijit Sarkar and Mr. Sagnik Chatterjee, for the Respondent

Final Decision: Allowed

Judgement

Tarun Kumar Gupta, J.

The pre-emptor is the petitioner in this case under Article 227 of the Constitution of India. He has prayed for setting aside the order dated 28th September, 2012 passed by learned Additional District Judge, 3rd Court, Alipore in Misc. Appeal 3 of 2009 reversing the judgment and order dated 19.09.2007 passed by learned Civil Judge (Junior Division), 3rd Court at Baruipur in Misc. Case No. 30 of 1994. The admitted position of the case may be summarized as follows:-

One Abdul Khalek Mondal was the owner of 77 decimals of land appertaining to R.S. plot No. 4630 of mouza Gordwan. He sold 36 1/2 decimals of land out of said 77 decimals of land to the O.P.s. namely Ayub Ali Mollah and his wife Mihiran Bibi through a registered sale deed dated 22.07.1994 showing Rs. 20,000/- as the consideration money. Present petitioner is the owner of plot No. 4627, 4628, 4629

and 4631 of the suit mouza. The petitioner's land appertaining to plot No. 4629 was to the adjacent south of the suit land and the petitioner's lands appertaining to plot Nos. 4627 and 4628 were to the adjacent west of the suit land. The petitioner being adjacent landowner of the suit plot, a portion of which was sold out by its owner Abdul Khalek Mollah to the O.P. purchasers being strangers, filed said case for pre-emption u/s 8 of the West Bengal Land Reforms Act, 1955 (hereafter to be referred as the Act of 1955). The petitioner filed the suit for pre-emption on 17.11.1994 i.e., within the stipulated time of four months from the date of registration. The petitioner also deposited the entire consideration money of Rs. 20,000/- together with 10% of the same i.e., in total Rs. 22,000/- in the trial court before hearing of the suit.

2. After contested hearing learned trial court allowed the application for pre-emption by an order dated 19th of September, 2007. O.P. pre-emptees filed an appeal being Misc. appeal No. 3 of 2009 challenging said order of pre-emption dated 19.09.2007. learned lower appellate court concurred with the learned trial court on the factual aspects of the case as stated above. However, learned appeal court set aside the order of pre-emption dated 19.09.2007 and remanded the matter back to the learned trial court on the grounds that learned trial court did not consider the plea of the O.P. pre-emptees that they were "Bargadars" in the suit land and also the question as to whether the order of pre-emption will subject to the limit mentioned in Section 14(M) of the Act of 1955.

3. Mr. Hiranmoy Bhattacharya appearing for the petitioner pre-emptor submits that in the written objection filed by the O.P. pre-emptees it was nowhere stated that they were "Bargadars" of the suit plot. According to him, in the absence of any specific averment to that effect there was no question of considering their alleged claim of being "Bargadar" on the suit plot or referring the matter to the proper authority u/s 18(1) read with Section 21(3) of the Act of 1955.

4. Mr. Bhattacharya next submits that u/s 14(X) of the Act of 1955 no civil court has jurisdiction to decide or deal with any application or to determine any matter which comes under chapter-II B of the Act of 1955 as those are required to be determined by the revenue officer or other officers specified therein. According to him, chapter II B of the Act of 1955 covers Section 14J to 14Z. According to Mr. Bhattacharya in view of said specific bar u/s 14X of the Act of 1955 the observations of learned appeal court that learned trial court should have referred the matter to the competent authority u/s 18 of the Act of 1955 for determining as to whether any order of preemption in favour of the petitioner pre-emptor would have crossed the limit of the land mentioned in Section 14M of the Act of 1955 was not tenable in law. In support of his contention he has referred a case law reported in [Asraf Hossain Vs. Jahangir Hosain](#) Accordingly, he prays for restoring the judgment of learned trial court after setting aside the impugned order of learned appeal court.

5. Mr. Sabyasachi Bhattacharyya appearing for O.P. pre-emptees concedes that as no specific plea of "Bargadarship" was taken in the written objection, there was no question of referring the matter to the competent authority for deciding that issue.
6. However, he submits that in terms of Section 8 of the Act of 1955 learned Munsif having territorial jurisdiction can pass said order of pre-emption subject to the limit mentioned in Section 14M of said Act of 1955. According to him, in view of the language of Section 8 learned trial court should have decided as to whether the order of pre-emption will be subject to the limit mentioned in Section 14M or not. He further submits that on that score learned trial court should have taken evidence before passing the order of pre-emption.
6. I have considered the submissions made by learned counsels of the parties. I have perused the order impugned and the referred case law. The same question as to whether learned Munsif, before allowing the order of pre-emption u/s 8 of the Act of 1955, is required to determine the ceiling area by invoking Section 14M of the Act of 1955 came up before this court for determination in the case of Asraf Hossain (ibid). Said question was set at rest by the Hon"ble Judge of this Court in the case of Asraf Hossain (ibid). The relevant portion of said case law is quoted below.
7. "Section 8(1) of the West Bengal Land Reforms Act, by using the expression "subject to Section 14M" has only clarified that a preemption by a co-sharer or a contiguous tenant u/s 8 would be conditional upon a determination of his right under Chapter II B of the Act to retain his land. Section 8(1) by using the said expression has dispelled all doubts on the question whether or not the 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 a preemption application u/s 9(1) of the Act, cannot work out the consequence of vesting of land upon the pre-emptor. In fact, section 14X has expressly excluded the civil courts' jurisdiction to decide matters coming under Chapter II B. The authorities specified under Chapter II B have the exclusive jurisdiction to determine the question of ceiling area and other allied matters in the manner prescribed in Chapter II B.
8. Incidentally, it may be mentioned 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 II B, acquisition of land by transfer or otherwise by a raiyat who already owns land upto the ceiling area would not be totally null and void. In such a case Section 14Y would be attracted. Section 14Y has put limitation 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 II B 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 II B by including the said land amongst his retained lands in his return required to be filed u/s 14T (1). The Revenue Officer on receipt of such a return would make the

necessary determination, allow the raiyat to retain land upto the ceiling area and vest the surplus land in the State. The nature of enquiry and the kind of evidence required for determination of the question of pre-emption in a proceeding u/s 8 are entirely different from those required for disposing of the questions arising out of a proceeding u/s 14M. Further the law has not laid down one uniform ceiling area for all classes of raiyats. In each case the ceiling area is to be determined after considering the facts and circumstances of the case- 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 Act unless they are impleaded as parties. But the law does not require them to be joined as parties in proceedings u/s 8. Therefore, even if the learned Munsif in disposing of an application u/s 8 could arrive at a finding regarding the total area of land possessed by the pre-emptor, such determination would not be binding upon the authorities under Chapter II B of the Act. Therefore, in case it is held that the learned Munsif can 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 authority under Chapter II B. So if the learned 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 has excluded civil court's jurisdiction in respect of matters falling under Chapter II B."

9. In this connection it is pertinent to note that Section 14Y lays down the provisions relating to limitation on future acquisition of land by a raiyat. According to Section 14Y if at any time after commencement of the provisions of this chapter i.e. Chapter II B, the total area of land owned by a raiyat exceeds the ceiling area applicable to him u/s 14M, on account of transfer, inheritance or otherwise, area of land which is in excess of the ceiling area shall vest in the State and all the provisions of this Chapter relating to ceiling area shall apply to such land.

(Emphasis added)

10. Section 14T lays down the duty of raiyat to furnish return. In terms of said Section 14T every raiyat owning land in excess of the ceiling area shall furnish to the Revenue Officer, in such form and within such time as may be prescribed, a return containing the full description of the land which he proposes to retain within the ceiling area applicable to him u/s 14M and a full description of the land which is in excess of the ceiling area and such other particulars as may be prescribed.

11. It is thus clear on conjoint reading of those two Sections namely 14Y and 14T that if any raiyat acquires any land by way of pre-emption u/s 8 of the Act and on account of said acquiring of further land through pre-emption his total land exceeds the ceiling area then he will be at liberty to exercise option as to which lands he would retain and which lands he would release to be vested to the State by filing return in terms of relevant provisions of Chapter II B of the Act of 1955. As such, it is

crystal clear that there is no scope of making any enquiry by the trial court at the time of passing of the order of pre-emption u/s 8 of the Act of 1955 as to whether said order of pre-emption will exceed the ceiling of land of the pre-emptor as prescribed u/s 14M of the Act of 1955. The duty will be on the pre-emptor to exercise his option in case his retained land exceeds the limit u/s 14M on account of acquiring of further land through any order of pre-emption.

12. This may be viewed from another angle also. As per Section 8 of the Act of 1955 the trial court may pass an order of pre-emption on fulfilling of conditions laid therein subject to the limit mentioned in Section 14M.

(Emphasis added)

13. Said words namely "subject to the limit mentioned in Section 14M" can perhaps be interpreted in two ways. It may be interpreted that the trial court shall pass the order of pre-emption after verifying that said allotment of land through pre-emption will remain within the limit prescribed u/s 14M.

14. It may also be interpreted that the trial court will pass the order of pre-emption if it is otherwise admissible subject to the limit mentioned in Section 14M to be dealt with by the appropriate authority as per provisions of chapter II B of the Act of 1955.

15. The first interpretation offends Section 14X which lays down bar of jurisdiction of civil courts to decide or deal with any question to be decided by the Revenue Officer or other authority specified dealing with provisions of chapter II B of said Act of 1955. Whereas the second interpretation does not offend any other provision of the Act of 1955. When there is scope of two interpretations and one interpretation offends some other provisions of the same statute whereas other interpretation is found to be in tune with other provisions of same statute, then the other interpretation which is in tune with other provisions of the same statute has to be accepted.

16. In view of the above discussions it is palpable that the impugned order of remand of learned appeal court was not sustainable in law. Accordingly, the impugned order of remand is hereby set aside.

17. As both the courts below came to concurrent findings of fact that the petitioner pre-emptor was otherwise eligible to get an order of preemption u/s 8 of the Act of 1955 being the adjacent land owner of the suit land, the order of learned trial court is restored.

18. The petition is hereby allowed on contest but without costs. Urgent photostat certified copy of this judgment be supplied to the learned counsels of the parties, if applied for.