

(1978) 04 CAL CK 0007

Calcutta High Court

Case No: None

Dhirendra Nath Gole and
Another

APPELLANT

Vs

Revenue Officer, Hoogly and
Another

RESPONDENT

Date of Decision: April 13, 1978

Acts Referred:

- West Bengal Estates Acquisition Act, 1953 - Section 6, 6(1)(f)

Citation: 82 CWN 931

Hon'ble Judges: M.M. Dutt, J; D.C. Chakraborti, J

Bench: Division Bench

Advocate: S.N. Mukherjee and B. Chandra Mondal, for the Appellant; A.K. Basu Chowdhury, for the Respondent

Final Decision: Dismissed

Judgement

M.M. Dutt, J.

The principal question that is involved in this appeal is whether the disputed land measuring 36. 31 acres consisting of banana plants and a few mango trees is an orchard within the meaning of the proviso to sub-section (2) of section 6 of the West Bengal Estates Acquisition Act, 1953, hereinafter referred to as the Act. In the proceeding u/s 6(1) of the Act, it has been held by the Revenue Officer that the disputed land is not an orchard, but an agricultural land, and that the same has vested in the State. P.K. Banerjee J., has affirmed the finding of the Revenue Officer and has discharged the Rule Nisi out of which this appeal arises.

2. Section 6(1) (f) of the Act provides for retention of orchards by intermediaies. Unlike other classes of lands, no ceiling has been prescribed for orchards. Again, under the proviso to sub-section (2) of section 6 of the Act, 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 subject to such modification therein as the State Government may think fit to make. So under the proviso, the interest of a lessee of any land comprised in an orchard is saved from the operation of vesting. An orchard has not been defined in the Act nor has it been defined in the Bengal Tenancy Act. A lease in respect of an orchard is not governed by the Bengal Tenancy Act but by the Transfer of Property Act. In other words, an orchard is treated as a non-agricultural land.

3. In *State of West Bengal Vs. Mir Fakir Mohammad*, (1976) CHN 758, it has been held by R. Bhattacharya J., that a land consisting of banana plants is not an orchard within the meaning of section 6 (1) (f) of the Act. According to the Shorter Oxford English Dictionary, Third Edition, Page 1381--Column-I, the meaning of the word "orchard" is--

Formerly, in general sense, a Garden for herbs and fruit trees.

Now, an enclosure for the cultivation of fruit trees.

According to the Webster's New International Dictionary, Second Edition, Page 1714--2nd Column, it means:

A plantation or large enclosure containing fruit trees or by extension, nut bearing trees, sugar maples, etc.

According to the same Dictionary, page 2700--2nd Column, the word "tree" means :

A woody perennial plant having a single main axis of stem (trunk), commonly exceeding 10 feet in height and usually devoid of branches Below, but bearing a head of branches and foliage or a crown of leaves at the summit. There is no exact line of demarcation between trees and shrubs and many plants are capable of assuming either habits.

Hence, in some collocations, a shrub or Hush formed like a tree; as a rose tree; a banana tree.

4. The principal meaning of the word "tree" is that it is a woody perennial plant. In its extended meaning it may include a banana plant. It is true that when a word is not defined in a statute the court may apply the dictionary meaning of the word provided, however, such meaning is in accord with the scheme and object of the statute concerned. According to the dictionary meaning, orchard is an enclosure of land containing fruit trees. Banana plants are not considered as these in the true sense of the term "tree" but in the extended meaning of the term it may include a banana plant. The question, however, is whether by excluding the vesting of the interest of a lessee of an orchard or by allowing an intermediary to retain the entire quantity of orchard lands in his possession, the legislature also intended to exclude

lands consisting of banana plants. It may be stated that the principal object of the Act is to acquire agricultural and horticultural lands. The class of land which is not suitable for cultivation e.g. land containing perennial fruit trees like mangoes, jack fruits, black berries etc., that is, to say, orchards have been spared. A land containing fruit trees only or an orchard requiring scarcely any cultivation, is not governed by the Bengal Tenancy Act (*Raj Kumar Nali v. Mahesh Chandra Guha*, 42 I.C. 580). Banana plants require cultivation and cannot in any sense be said to be perennial. Moreover, green plantains, plantain flowers and the stems of banana plants are used as vegetables. In our view, therefore, though the extended dictionary meaning of "orchard", may include a land containing banana plants, such extended meaning not being in agreement with the object of the Act, it cannot be adopted. The Revenue Officer is, therefore, right in his view that the disputed land is not an orchard. There has been a further hearing of the appeal on the prayer made by Mr. Saktinath Mukherjee, learned Advocate for the appellant. Mr. Mukherjee has produced before us a certified copy of the judgment of a Division Bench of this Court in F.A. No. 427 of 1959 in which it has been held that one Mangal Chandra Gole, being the illegitimate son of the present appellant's father late Bhadreswar Gole, is entitled to one fourth share in the properties left by the appellant's father. It is submitted on behalf of the appellant that in case the said Mangal Chandra Gole asserts any right to the lands which have been retained by the appellant, there will be complications and accordingly, we have been pressed by the appellant to give such directions in the matter as would protect the interest of the appellant in the lands retained by him. We do not think that we are called upon to give such directions, particularly in view of the fact that the said Mangal Chandra Gole is not a party in this appeal. No other point has been argued on behalf of the appellant. In these circumstances, the judgment of the learned Judge is affirmed and this appeal is dismissed, but there will be no order for costs.

D.C. Chakravorti, J.

I agree.