(1969) 10 CAL CK 0004

Calcutta High Court

Case No: Civil Rules No''s. 3642 to 3645 of 1962

Haripada Pramanik		APPELLANT
	Vs	
Gopal Chandra Maity		RESPONDENT

Date of Decision: Oct. 7, 1969

Acts Referred:

- West Bengal Estates Acquisition Act, 1953 - Section 49, 5B, 6
- West Bengal Land Reforms Act, 1955 - Section 18, 19

Citation: 74 CWN 400

Hon'ble Judges: P.N. Mookerjee, J; A.N. Chakraborty, J

Bench: Division Bench

Advocate: Arun Prakash Chatterjee, for the Appellant; S.N. Ghorai and A.B. Pal, for the Respondent

Judgement

1. These four Rules are directed against a judgment and order dated the 16th day of July, 1962, of the Munsif, Ghatal allowing four appeals, heard by him u/s 19 of the Land Reforms Act, 1955. The facts, out of which these cases arise, may briefly be stated thus: One Haripada Nandi had some raiyati holdings under Bishnu Mallik and others. The said landlords obtained decrees for arrears of rent in respect of these holdings, the arrears being due for a period to the date of vesting of landlords'' interest in the State under the provisions of the West Bengal Estate Acquisition Act. In execution of these decrees, the lands appertaining to the holdings, were put to sale and purchased in the year 1960 by the present Opposite party and the delivery of possession of the lands through court was taken on the 22nd Jaista 1373 B.S. corresponding to June 5, 1960. The present petitioners Haripada Pramanik and Hare Krishna Pramanik were Bargadars under the outgoing tenant in respect of some of the lands. The auction purchaser instituted two proceedings against each of the bargadars u/s 18 of the Land Reforms Act, one for recovery of the owner''s share of the crops for the year 1367 B.S. and another for termination of Bhag cultivation by the bargadars.

2. The bargadars contended, in the first place, that the auction purchaser did not acquire any valid title to the lands, as the sales were void, being hit by the provisions of section 5-B of the West Bengal Estates Acquisition Act: and, in the second place, that the Bhag crops for the year 1367 B.S. had already been delivered to the original tenant Haripada Nandi.

3. The learned Bhag Chas Officer who heard the four cases held that the auction sales were hit by the provisions of section 5-B of the West Bengal Estates Acquisition Act, 1953, and hence they were void. In this view of the matter, he dismissed all the four cases.

4. The auction purchaser appealed against the order of the Bhag Chas Officer to the Munsiff u/s 19 of the Land Reforms Act, 1955. The appellate authority took the view that the sales in question were not rent sales under the Bengal Tenancy Act as the superior interest of the landlords had already vested in the State and there was no relationship of landlord and tenant, subsisting between the decree-holders and the judgment debtor on the dates of the execution sales in question. The sales, not being rent sales under the Bengal Tenancy Act, he held, they were not hit by section 5-B of the Estates Acquisition Act, 1953. Accordingly he set aside the order of the Bhag Chas Officer and sent back the cases on remand for being decided on merits.

5. Section 5-B of the West Bengal Estates Acquisition Act reads as follows:-"On and from the first day of June, 1954, no estate, tenure or under tenure shall be liable to be sold under the Bengal Land Revenue Sales Act, 1859 (XI of 1859) or the Cooch Behar Revenue Sales Act, 1897 (Cooch Behar Act C of 1897) or the Bengal Putni Taluks Regulation, 1819 (Bengal Regulation VIII of 1819) or the Bengal Tenancy Act 1885 (VIII of 1885) as the case may be, and any sale, which took place on or after that day under any of these acts, or that Regulation shall be deemed to have been void and of no effect".

6. In the present case, the interest that was sold was that of a raiyat. Chapter VI of the West Bengal Estates Acquisition Act, which deals with raiyats and under raiyats, came into force on the 10th day of April, 1956, on the issue of a notification u/s 49 of the Act, and, thereupon section 5-B became applicable to raiyats and under raiyats with such modifications as might be necessary.

7. The sales here took place in 1960, that is to say, long after even the date of vesting of raiyati interests in the State, which took place on April 14, 1956. Prima facie, therefore, the sales would be hit by the provisions of Section 5-B of the West Bengal Estate Acquisition Act.

8. But the sales, though they purported to be under the Bengal Tenancy Act could not actually be so as there was no relationship of landlord and tenant between the decree-holders and the judgment debtors at the time when the sales took place. The interest of the landlords vested in the State on the 15th day of April, 1955, and the sales were held, as already stated in 1960. So the Appellate Authority rightly held

that the sales in question were not under the Bengal Tenancy Act. There is yet another reason for which the sales could not be treated as under the Bengal Tenancy Act. The raiyati interests having vested in the State on 14th day of April, 1956, the original holdings ceased to exist on and from that date. If the raiyats choose to retain the lands u/s 6 of the West Bengal Estates Acquisition Act he was to be deemed to be a direct tenant under the State: but in that case his tenancy under the State would be a new or different tenancy altogether. That being the position, it was no longer possible to put the defaulting holding to sale for it was not then in existence.

9. In any view of the case, therefore, a rent sale under the Bengal Tenancy Act was neither permissible under the law nor possible. The ex-landlord, could however, execute the decrees under the CPC treating them as money decrees. There is no bar in section 5-B of the West Bengal Estates Acquisition Act to such a sale. The lands, which the judgment debtor previously held under the Malliks were still being held by him though under a different landlord, viz. the State, and as constituting different tenancies. Clause (a) of Section 168(A)(I) of the Bengal Tenancy Act was a bar to attachment and sale of any property other than the defaulting tenure or holding in execution of a decree for arrears of rent. But in (1) Ahidhar Ghose Vs. Sm. Nisu Bala Devi, , this court held that, when as a result of vesting, the defaulting tenure ceased to exist the proviso that the clause could apply, that is to say, other properties of the ex-tenant might be proceeded against. In another case viz. (2) Hiranmoyee v. A. Pal Chowdhury, reported in the same volume of CWN at p. 373, it was held that there was an implied repeal of clause (a) of section 168(1) of the Bengal Tenancy Act by Section 5-B of the West Bengal Estates Acquisition Act. Clause (a) of section 168A(1) of the Bengal Tenancy Act, would therefore, be no longer a bar to the sale of other properties of the judgment debtor in execution of a decree for arrears of rent.

10. In the present case, the sales could not be sales under Chapter XIV of the Bengal Tenancy Act for the reason, already given. So section 5-B of the West Bengal Estates Acquisition Act could have no application. The bar under clause (a) of section 168-A(1) of the Bengal Tenancy Act to the sale of other properties is also out of the way in view of the authorities, referred to above. There is, therefore, no reason why the sales in question would not have the effect of sales under money decrees. The judgment debtor had lost the original holdings on the vesting of his interest in the State, but he still had some interest in the lands which constituted those holdings in view of the provisions of section 6 of the Estates Acquisition Act. It is this interest, which passed to the auction purchaser upon his purchase of the disputed lands.

11. The State also appears to have recognized the auction purchaser as its tenant. In paragraph 4 of his affidavit-in-opposition, the opposite party has stated that he has been paying rent to the State since his auction purchase of the lands, and that, in the revisional settlement, his name has been recorded as the raiyat in respect thereof and that the present petitioners have been shown as bargadars under him.

There was no denial of these facts by the petitioners in their affidavit in reply. The appellate authority had, therefore, rightly set aside the order of Bhag Chas Officer and sent back the cases on remand.

The result, therefore, is that all the four rules are discharged but, in the circumstances of the cases no order is made as to costs.