

(1986) 09 CAL CK 0015

Calcutta High Court

Case No: C. R. No. 741 of 1979

Ram Kissin Shaw

APPELLANT

Vs

Lachmonia Debi and Others

RESPONDENT

Date of Decision: Sept. 12, 1986

Acts Referred:

- West Bengal Estates Acquisition Act, 1953 - Section 4, 49, 5, 52, 5A
- West Bengal Land Reforms Act, 1955 - Section 14V, 2, 3A, 3A(1), 6(1)
- West Bengal Non-Agricultural Tenancy Act, 1949 - Section 24

Citation: 91 CWN 658

Hon'ble Judges: Susanta Chatterji, J; Mookerjee, J

Bench: Division Bench

Advocate: Saktinath Mukherjee, Satyajit Banerjee and Bhaskar Ghosh, for the Appellant; R.K. Banerjee and Tapendra Nath Basu, for the Respondent

Judgement

Mookerjee, J.

This Revisional Application arises out of a proceeding u/s 24 of the West Bengal Non-agricultural Tenancy Act, 1949 filed by the opposite party No. 1, Lachmonia Devi. It is the case of both parties that Lakshman Chandra Sadhukhan, Dulal Chandra Sadhukhan and Ram Chandra Sadhukhan were Co-sharers tenants in respect of a non-agricultural tenancy at an annual rent of Rs.20/- recorded in Khatian No.650. Mouza Bhatpara, P.S. Jagatdal, District 24-Parganas. On 13th September, 1978 by purchasing Ramchandra's interest, the opposite party no. 1 become a co-sharer tenant. On 25th August, 1970 another co-sharer, Dulal Chandra, sold his right, title and interest in the said non-agricultural tenancy of Ramkisen Shaw, the present petitioner. On 25th May, 1974 the learned Munsif, 1st Court, Barasat had allowed the opposite party No. 1's application u/s 24 of the West Bengal Non-agricultural Tenancy Act for Pre-emption the 1/3rd interest acquired by the petitioner, who was admitted a stranger purchaser. On 4th July, 1975 the lower appellate (sic) had allowed the appeal preferred by the present petitioner and

applying the ratio of the decision reported in the case of Madan Mohan Ghosh v. Sishu Bala Atta, 76 CWN 1058, had dismissed the opposite party no. 1's application for pre-emption. The opposite party no. 1 against the said order obtained Civil Rule No. 3744 of 1975. A Division Bench of this Court by their Judgment" dated 14th June, 1978 set aside the decision of the lower appellate court. The Division Bench held that the ratio of the decision in the case of Madan Mohan Ghosh v. Sishu Bala Atta, (Supra) was inapplicable in case of non-agricultural tenancies. The Division Bench further held that in view of the decision in the case of [Abinash Chandra Jana and Others Vs. Chakradhar Khatua and Another,](#), even when there had been partition of the lands of a holding itself had not been split up by creation of separate holdings co-sharer tenants of the holding would still have the right to preempt a transfer of a share in favour of stranger purchaser. The learned Judges remitted the case back to the lower appellate court. The learned Additional District Judge by his judgment dated 12th December, 1978 dismissed the Misc. Appeal preferred by the present petitioner and affirmed the order u/s 24 of the West Bengal Non-agricultural Tenancy Act passed by the learned Munsif in favour of the opposite party no. 1.

2. The learned advocate on behalf of the petitioners tried to urge before us that by an order of the Junior Land Reforms Officer passed during the pendency of the present pre-emption proceedings, the tenancy in question had been sub-divided by creation of separate jamas. The opposite party no. 1 has filed an affidavit stating that the said order for separation of the jama had been since recalled by the Junior Land reforms officer. Therefore, we must proceed on the basis that no order has yet been passed for splitting up of the jama as claimed by the Petitioner.

3. Mr. Mukherjee, learned advocate on behalf of the Petitioner, has submitted that by reason of coming into force of the West Bengal Land Reforms (Amendment) Act, 1981 the right of the opposite party to obtain Pre-emption u/s 24 of the West Bengal Non-agricultural Tenancy Act has been lost. Section 7 of the West Bengal Land Reforms (Amendment) Act, 1981 (Act 50 of 1981) has inserted in chapter-1 of the Principal Act Section 3A. The rights of all Non-agricultural Tenancy Act, 1949 have vested in the State free from all encumbrances. Mr. Mukherjee has drawn our attention to sub-section (2) of section (1) of the West Bengal Act 50 of 1981, which lays down that the provisions of the said Amendment 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 reason of the substituted definition of "land" in clause (vii) of section 2, land of every description shall be governed by the provisions of the Land Reforms Act, 1955. According to Mr. Mukherjee, the said non-agricultural holding recorded in Khatian No. 650, Mouza Bhatpara by operation of Law had ceased to exist and after the West Bengal Act 50 of 1981 came into force, the Principles laid down, in the case of Madan Mohan Ghosh v. Sishu Bala Atta (Supra), would be fully applicable and the opposite party no. 1 was no longer entitled to obtain pre-emption u/s 24 of the West Bengal Non-agricultural tenancy Act in respect of the properties sold in favour of the petitioner.

4. The Chapter VI of the West Bengal Estates Acquisition Act provided for acquisition of interests of raiyats and under-raiyats. On the issue of a notification u/s 49 of the said Act the provisions of Chapter-I, II, III, V and VII with such modifications as might be necessary applied mutatis mutandis and to raiyats and under-raiyat as if the raiyats and under-raiyats were intermediaries (vide section 52 of the West Bengal Estates Acquisition Act) and land held by them were estates and a person holding under a raiyat and an under-raiyat were a raiyat for the purpose of clauses (c) and (d) of section 5 of the said Act. On and from the date of vesting notified by notifications u/s 4 of the West Bengal Estates Acquisition Act every non-agricultural tenant holding any land under an intermediary was to hold the same directly under the State, (vide clauses (c) and (d) of section 5 of the West Bengal Estates Acquisition Act). Neither such Non-agricultural tenant nor any under-tenant governed by the West Bengal Non-agricultural Tenancy Act, 1949 were intermediaries (vide [Shibsankar Nandy Vs. Prabartak Sangha and Others](#),). Intermediaries including raiyats and under-raiyats had become non-agricultural tenants in respect of lands retained u/s 6(1) of the said act and which at the date of vesting were being ordinarily used not for the purposes of agriculture and horticulture.

5. Until then West Bengal Land Reforms Act, 1955 did not apply to non-agricultural tenancies and under-tenancies. The West Bengal Land Reforms (Amendment) Act, 1981 (West Bengal Act 50 of 1981) was passed by the West Bengal Legislature and the assent of the President of India to the said Act was published in the Calcutta Gazette (extraordinary) of 24th March, 1986. We are unable to accept the broad submission of Mr. Mukherjee that by reason of sub-section (2) of section 1 read with section 7 of the West Bengal Act 50 1981 all rights including the rights of pre-emption u/s 24 of the West Bengal Non-agricultural Tenancy Act of non-agricultural tenants and under-tenants as under the said Act had vested in the State with the effect from 7th August, 1969, Section 7 of the Act 50 has inserted section 3A in the Principal Act. The sub-section (1) of section 3A of the West Bengal Act 50 of 1981 has laid down :

Rights of non-agricultural tenants and under-tenants under West Bengal Non-agricultural Tenancy Act, 1949 shall vest in the State free from encumbrances.....

6. But such provision of vesting of the rights of non-agricultural tenants and under-tenants ought to be read in the context of the words used in the remaining part of sub-section (1) of section 3A. The provisions of sections 4, 5 and 5A of Chapter-II of the West Bengal Estates Acquisition Act shall with such modification as may be necessary-apply mutatis mutandis to non-agricultural tenants and under-tenants as if such non-agricultural tenants and under-tenants were intermediaries and lands held by them were estates and persons holding under a non-agricultural tenant or under-tenant were a raiyat. Significantly, there is a broad similarity in the language used in section 3A(I) of the Principal Act and those in

section 52 of the West Bengal Estates Acquisition Act. Both are deeming provisions. By section 52 of the said Act raiyats and under-raiyats were to be deemed as intermediaries. Whereas in case of raiyats and under-raiyats, first, a publication of a notification u/s 49 of the said Act was necessary to bring Chapter-VI of the said Act into force. Section 3A(1) does not provide for issue of any separate notification and the opening words of sub-section (1) of section 3A itself declares that rights of non-agricultural tenants and under-tenants shall vest in the State. The second difference between the provisions relating to raiyats and under-raiyats in the West Bengal Estates Acquisition Act and the provisions relating to non-agricultural tenants and under tenants in section 3A(1) of the West Bengal Land Reforms Act is while raiyats and under-raiyats were given right u/s 6(1) to retain the different classes of lands mentioned in the clauses u/s 6(1) of the said Act. But on the vesting of the estates and rights of non-agricultural tenants and under-tenants u/s 3A(1) the provisions of Chapter-IIB of the West Bengal Land Reforms Act would apply and amounts of compensation payable to them would be determined in accordance with the provisions of section 14V of the West Bengal Land Reforms Act. (Vide sub-section (2) and (3) of section 3A).

7. We are unable to accept Mr. Mukherjee's submission that with the coming into force of the West Bengal Land Reforms (Amendment) Act, 1981 on 7th of August, 1969, all non-agricultural tenancies and under-tenancies governed by the West Bengal Non-agricultural Tenancy Act stood extinguished. In the first place, the sub-section (2) of section 1 of the West Bengal Act 50 of 1981 itself contains an exception to the date of commencement of the Amending Act by use of the context of any provision otherwise indicates". Therefore, in case any provision in the Amending Act shows a contrary intention about the application or coming into force of any particular provision, then the same would prevail. Sub-section (1) of section 3A declared that rights of all non-agricultural tenants and under-tenants shall vest and incorporates sections 4, 5, and 5A of the Chapter II of the West Bengal Estates Acquisition Act. In other words, the State Government's notification under sub-section (1) of section 4 would be necessary for specifying the date, with effect from which the rights of non-agricultural tenants and under-tenants shall vest. The sections 5 and 5A of the West Bengal Estates Acquisition Act have been also made applicable to non-agricultural tenants and under-tenants by West Bengal Non-agricultural Tenancy Act. Therefore only upon the publication of a notification u/s 4 of the West Bengal Estates Acquisition Act and from the date mentioned in such notification legal consequences or effect set out in clauses (a) to (d) of sub-section (1) of section 5 of the West Bengal Estates Acquisition Act would take place.

8. We may mention that after the decision of D. N. Sinha, J. in the case of Katrasjharia Coal v. State of West Bengal 66 CWN 304, to the effect after the amendment of the therein leasee or Sub-leasee in relation to mines and minerals, a fresh notification u/s 4 of the West Bengal Estates Acquisition Act would be

necessary for vesting the interests of such leassee or sub-leassee of mines and minerals. There-after Sub-section (2) was inserted in section 5 declaring that all rights of mines and minerals of intermediaries being leasee and sub-leassee shall be deemed to have vested in the State with effect from the date of vesting mentioned in the notification u/s 4 in respect of such notified area. The application of sub-section (2) of section 5 was limited to only to intermediaries being lessee or sub-lessee of mines and minerals. In the absence of similar provision in respect of non-agricultural tenants either in the West Bengal Act 50 of 1981 or in the West Bengal Estates Acquisition Act, we are unable to hold that all rights of non-agricultural tenants and under tenants by West Bengal Non-agricultural Tenancy Act had vested in the State with effect from the date of vesting mentioned in the notifications previously published u/s 4 of the West Bengal Estates Acquisition Act. We may also recall that after Chapter-VI of the said Act was brought into force, the State has issued fresh notification u/s 4 of the said Act for vesting rights and interests of raiyats and under-raiyats with effect from 1st Baisakh, 1362 B.S.

9. For the foregoing reasons, we hold that until and unless a valid notification u/s 4 of the West Bengal Estates Acquisition Act is published mentioning the date from which all the rights and interests of non-agricultural tenants and under-tenants would vest in the state free from encumbrances, the non-agricultural tenancy jointly recorded in the name of three co-sharers tenant in Khatian No. 560, Mouza Bhatpara, P.S. Jagatdal, District-24 Parganas would continue to subsist. Only after the date of vesting mentioned in a notification u/s 4 of the said Act, the Chapter-IIB of the West Bengal Land Reforms Act would apply to the said tenancy. The opposite party no. 1 was admittedly a co-sharer tenant at the date of the impugned transfer in favour of the petitioner. At the date of the order allowing her pre-emption application, she was still a co-sharer tenant entitled u/s 24 of the West Bengal Non-agricultural Tenancy Act to pre-empt the said transfer in favour of the petitioner.

10. It is significant that sub-section (1) of Section 63 West Bengal Act 50 of 1981 has provided that with effect from the date of coming into force of the West Bengal Land Reforms (Amendment) Act, 1981 in any district or any part of Calcutta such provisions of the West Bengal Non-agricultural Tenancy Act, 1949 as are repugnant to the provisions of the Amending Acts shall cease to have effect in the district or area. Instead of providing for repeal of the entire West Bengal Non-agricultural Tenancy Act, the Sub-section (1) of section 63 of the Amending Act gives the said Act an over-riding effect in case of repugnancy or inconsistency between the Amending Act and the West Bengal Non-agricultural Tenancy Act. The sub-section (2) of Section 63 of the West Bengal Act 50 of 1981 has laid down :

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.

11. Before we conclude, we may point out that in this Revisional Application directed against an appellate order is a pre-emption proceeding, we are not called upon to examine all the provisions of the West Bengal Act 50 of 1981. We also keep open the question of vires of the provisions contained in the West Bengal Land Reforms (Amendment) Act, 1981 in as much as no argument on either side was advanced upon the said point. For the foregoing reasons, we conclude that both on the date of the application for pre-emption and the date of passing of the order by this court, the opposite party no. 1 continued to be a co-sharer tenant and therefore, she had been rightly granted an order of preemption in respect of the, transfer made in favour of the petitioner who was admittedly a stranger.

Therefore, we discharge the Rule without any order as to costs.

Susanta Chatterjee, J.

Rule discharged.