

(1955) 05 CAL CK 0019

Calcutta High Court

Case No: Appeal from Appellate Decree No. 711 of 1950

Mritunjoy Pal and
Others

APPELLANT

Vs

Ram Chandra Sadhu
Khan

RESPONDENT

Date of Decision: May 27, 1955

Acts Referred:

- West Bengal Non-Agricultural Tenancy Act, 1949 - Section 88

Citation: 59 CWN 1039

Hon'ble Judges: Guha, J; Das Gupta, J

Bench: Division Bench

Advocate: Rishindra Nath Sarkar and Sudhanshu Kumar Hazra, for the
Appellant; Apurbadhan Mukherjee and Tarak Nath Roy, for the Respondent

Final Decision: Dismissed

Judgement

Das Gupta, J.

The appellants brought the present suit to obtain a permanent mandatory injunction on the defendant restraining him from making certain pucca structures on the suit land. Their case is that on the terms of the kabuliyat under which the defendant's predecessor-in-interest took lease of this land from the plaintiffs, he and consequently defendant had no right to raise any pucca structure. The defence was that the present defendant as well as his predecessor Nani, who had taken the lease from the plaintiffs, had right to raise pucca structures.

2. The trial Court rejected the defendant's plea and holding that the defendant has no such right, decreed the suit and restrained the defendant from making any permanent structure on the land and also directed him to demolish the walls that he had already constructed on the suit land. On appeal the learned Additional Subordinate Judge has ordered that an issue should be framed whether the tenancy

in suit is governed by the provisions of the West Bengal Non-Agricultural Tenancy Act, 1949, and whether in view of the provisions of that Act the plaintiffs are entitled to the relief claimed and has remitted the suit to the trial Court for disposal of the case after allowing the parties an opportunity to amend their pleadings and to adduce evidence with regard to a new issue. It is now contended before us on appeal that there was no justification for remand of the case to the trial Court and no necessity deciding whether the tenancy is governed by the provisions of the West Bengal Non-Agricultural Tenancy Act 1949, or not.

3. The first question is whether u/s 88 of the West Bengal Non-Agricultural Tenancy Act. the provisions of the Act shall have effect in respect of the present suit. Section 88 is in these words :

The provisions of this Act shall have effect in respect of all suits, appeals or proceedings including proceedings in execution for ejectment of a non-agricultural tenant which are pending at the date of the commencement of this Act.

4. It was contended for the respondent that on a proper interpretation of this section the provisions of this Act must be held to have effect in respect of all suits of whatever nature. That view seems to have found favour with the learned court of appeal below and was also accepted by Chunder, J., in [Sarat Chandra Mondal and Others Vs. Satish Chandra Baidya and Others](#), . It is contended on behalf of the appellants that that is not the correct view of the law.

5. The question is whether the phrase "for ejectment of non-agricultural tenant" qualifies only the words "proceedings in execution" or qualifies the words "suits, appeals and proceedings." Look-at the words, apart from any question of reasonableness or otherwise thereof, it appears to me that it would be putting too much strain on the structure of the sentence to limit the words "for ejectment of a non-agricultural tenant" to the words "proceedings in execution". On a plain view of the sentence it seems that the draftsman had in mind at first all suits, appeals or proceedings", all qualified by the words "for ejectment of a non-agricultural tenant" and thereafter introduced the words "proceedings in execution" by way of abundant caution to make it clear that "proceedings in execution" are also included in the word "proceedings". In that view, I am of opinion that the words "for ejectment of a non-agricultural tenant" qualify the words "suits, appeals and proceedings" and it would be wrong to read these words as qualifying the words "proceedings in execution".

6. Looking at the reason of the matter, I am unable to see anything that could weigh with the legislature for making the provisions available to all suits and appeals and proceedings irrespective of whether they are for ejectment or not, and at the same time when considering whether they should be applicable to proceedings in execution, apply them not to proceedings in execution of all decrees, but only to proceedings in execution for ejectment. It seems to me much more reasonable to

think that the legislature thought it right to give special protection in all matters connected with ejectment, whether suits, appeals or other proceedings, including proceedings in execution. Accordingly, I would respectfully differ from the view taken by Chunder, J., and hold that u/s 88 of the Non-Agricultural Tenancy Act, the provisions of the Act have no application to suits or appeals or proceedings except those which are for ejectment of non-agricultural tenant.

7. My conclusion, therefore, is that the Court below is wrong in thinking that the provisions of the Act are u/s 88 thereof applicable to the present suit. In spite of this, however, I am of opinion that he is right in the order he has passed. It has to be remembered that u/s 6 of the Non-Agricultural Tenancy Act a tenant holding a non-agricultural land comprised in any tenancy to which the provisions of section 7 or 8 apply, shall be entitled to erect any structure including any pucca structure on such land. The fact that at the date of the suit the tenant had not any such right, will not stand in the way of his acquiring such right, under the Non-Agricultural Tenancy Act, when it became law. The mandatory injunction to which the plaintiff might be entitled at the date when he brought the suit would be defeated by the new right that would be acquired by the tenant under the new law. In such circumstances it will not be proper for the Court to issue mandatory injunction. When, therefore, the Non-Agricultural Tenancy Act has already become law, it is only right that the question whether the defendant is a non-agricultural tenant and entitled to the benefit of section 6 thereof should be decided before the decree given by the trial Court is affirmed or reversed. I would accordingly dismiss this appeal but in the circumstances of this case order that the parties will bear their own costs here and in the Court of appeal below.

Guha, J.

I agree.