(1983) 02 CAL CK 0016

Calcutta High Court

Case No: C. R. No. 3073 of 1980

Bankim Behari Maity		APPELLANT
	Vs	
Ganesh Ch. Dhal and Another		RESPONDENT

Date of Decision: Feb. 9, 1983

Acts Referred:

- West Bengal Estates Acquisition Act, 1953 - Section 6
- West Bengal Land Reforms Act, 1955 - Section 14M, 14X, 2(10), 2(6), 2(7)

Citation: 86 CWN 372

Hon'ble Judges: Chittatosh Mookerjee, J; Amitabha Dutta, J

Bench: Division Bench

Advocate: Pushpandu Bikas Sahoo, for the Appellant;Bidyut Kr. Banerjee and Shila Sarkar, for the Respondent

Final Decision: Allowed

Judgement

Amitabha Dutta, J.

This divisional application is directed against an appellate order dated 23.6.80 passed by the learned Additional District Judge, 5th Court, Midnapore reversing an order of the learned Munsif, 3rd Court, Midnapore who had allowed the petitioner''s application u/s 8 of the West Bengal Land Reforms Act (hereinafter called the Act) for pre-emption of a portion of the raiyati holding. recorded in R.S. Khatian No. 69 of Mouja Math pukur. It appears that the raiyati holding appertaining to R.S. Khatian No. 69 of Mouja Mathpukur belonged to Rajendra Nath Maity and devolved after his death on Bankini, the petitioner and Amulya who became cosharers by inheritance. Thereafter Amulya transferred.54 acre land out of Plot No. 197 measuring 94 acre of the said holding to the opposite party Nos. 1 and 2 by a kobala dated 23.4.74 which was registered on 26.7.74. No notice u/s 5(4) of the Act was served on the petitioner. The petitioner came to know of the said transfer on 7.1.77 and applied for pre-emption on 21.2.77.

2. The opposite parties contested the application by pleading that as there was previous partition of the disputed holding between the petitioner and Amulya they were not cosharers at the time of transfer in question and that the disputed transaction was a loan in substance as it was subject to an agreement for re-conveyance.

3. The learned Munsif after considering the evidence adduced by the parties allowed the petitioner''s application for pre-emption repelling the contention of the opposite parties. In appeal the learned District Judge has reversed the decision of the Court of first instance as according to him the tenancy appertaining to R. S. Khatian Nos. 69 of Mouja Mathpukar comprises six plots of which four plots including the disputed plot No. 197 are paddy lands and the other two plots are tanks being non-agricultural land and so it was not a holding as denned in Section 2(6) read with Section 2(7) of the Act and the petitioner and Amulya were not raiyats as denned in Section 2(10) of the Act at the time of the transfer in question of the disputed land.

4. The appeal court has also referred to the conflict of decisions in Asraf Hossain v. Jehangir 1978(2) C.L.J. 143 and Kali Pada Ghosh v. Dulal 1978(2) C.L.J. 155 on the question wheter or not the Munsif before making an order for pre-emption u/s 8 should determine the area and description of land that can be retained by the pre emptor within the ceiling limit u/s 14M of the Act applicable to him.

5. After hearing the learned advocates appearing for the parties and considering the material on record we find that the impugned order of reversal passed by the learned Additional District Judge cannot be sustained as he has acted in exercise of his jurisdiction illegally or with material irregularity in making such order.

6. Holding" has been defined in Section 2(6) of the Act as follows Holding means the land or lands held by a raiyat and treated as a unit for assessment of revenue".

As defined in Section 2(7) of the Act "land" means agricultural land other than land comprised in a tea garden which is retained under sub-section (3) of Section 6 of the West Bengal Estates Acquisition Act 1953 and include homestead but does not include tank. According to Section 2(10) of the Act "raiyat" means a person or an institution holding land for purpose of agriculture. Section 51 of the Act deals with the revision or preparation of record of rights in respect of a district or part of a district, after the State Government makes an order directing the same and sub-section (4) thereof provides follows:

(4). Notwithstanding anything contained in the West Bengal Non-agricultural Tenancy 1949, where any non-agrricultural land is comprised in the holding of a raiyat or where any agricultural land is comprised in any non-agricultural tenancy the revenue officer shall (a) divide the holding or tenancy as the case, may be so as to constitute separate holdings or tenancies for the agricultural and non-agricultural land (b) apportion the existing revenue or rent as the case may be between the holdings and the tenancies so constituted, on the basis of area and (c) Record the

non-agricultural tenant holding any agricultural land whether under a superior tenant or not as a raiyat holding directly under the State.

7. Having regard to the aforesaid provisions of the Act we are of the view that the Act contemplates cases where the holding of a raiyat comprises agricultrual land as well as non-agricultural land and the key note of the definition of holding is that it is the unit of assessment of revenue. A holding of a raiyat does not cease to be a holding for the purpose of Section 8 of the Act even if a part of it is non-agricultural land. In such case the raiyat will hold as a raiyat the agricultural land within the holding and the operation of Section 8 of the Act will be attracted to a transfer in so far as it relates to transfer of agricultural land within the holding. That would be the position till the holding is divided by the Revenue Officer to constitute separate holdings; for agricultural land and non-agricultural land u/s 51(4) of the Act and the existing revenue or rent as the case may be is apportioned.

8. It is well known that in many coses holdings of raiyats primarily consisting of agricultural lands also contain tanks ancilliary to the purpose of cultivation. In the present case also the two tanks constitute an insignificant par areawise of the disputed holding. By the amendment introduced by section 2(ii) of the West Bengal Land Reforms (Amendment) Act, 1972 the definition of land has been changed so as not to include tank. But in our view the Legislature did not intend that the said amendment would have the effect of an existing holding ceasing to be a holding merely because it includes a tank or tanks and the raiyat in respect of such holding ceasing to be a raiyat. We can not accept the view taken by the learned Judge of the appellate court because to uphold that view will have the absurd consequence of making chapters II, IIA, IIB, IV and V of the Act inapplicable to such composite holdings and raiyats thereof. If the grammatical sense of the words is contrary to or inconsistent with, any expressed intention or declared purpose of the statute or if it would involve any absurdity, repugnance, or inconsistency, the grammatical sense must then be modified, extended or abridged so far as to avoid such an inconvenience and no further. (See Craies on Statute Law, 7th Edn. P. 84). The Supreme Court has also approved the rule that if two constructions are possible then the Court must adopt that which will ensure smooth and harmonious working of the statute and eschew the other which will lead to absurdity or give rise to practical inconvenience or make well established provisions of existing law nugatory (See Chandra Muhan V. State of V. P. AIR 1966 S.C 1987, 1992-93). Moreover, the express reference in Section 51 (4) of the Act to such composite holding "where non-agricultural land is comprised in the holding of a raiyat" as the holding of a raiyat militates against the view of the learned Judge which in our opinion is not warranted in law.

9. Regarding the conflict of decisions on the question whether or not an order for pre-emption can be made without determining the limit u/s 14M of the Act applicable to the pre-empter the matter has been set at rest by the decision of the

Division Bench in Ismail Sk. v. Fasiuddin Mondal 1982 (1) CHN. 68 in which it has been held that the expression "subject to the limit mentioned in Section 14M" in Section 8 of the Act does not require the Munsif to determine the ceiling applicable to the pre-emptor before making the order, as the jurisdiction of the Civil Court is expressly barred by Section 14X of the Act and that the effect of the said expression is that the order for pre-emption is subject to the ceiling limit mentioned in Section 14M of the Act.

10. We, therefore, find that the learned Judge has committed error in the exercise of his jurisdiction in reversing the decision of the learned Munsif.

11. In the result, the revisional application succeeds and the Rule is made absolute. The impugned order passed by the learned Additional District Judge is set aside and the order of the learned Munsif is restored. There will be no order as to costs.

Chittatosh Mookerjee, J.

I agree.