Radha Mohan Bagcsi and Others Vs Nalini Kanta Adhikary

Court: Calcutta High Court

Date of Decision: Feb. 24, 1958

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 47
West Bengal Estates Acquisition Act, 1953 â€" Section 26, 3, 5B, 7, 8

Citation: 62 CWN 330

Hon'ble Judges: Renupada Mukherjee, J; Banerjee, J

Bench: Division Bench

Advocate: Binoyendra Prosad Bagchi and Narayan Chandra De, for the Appellant;Jyotirindra Nath Das and Rabindra Kumar Dutta Gupta, for the Respondent

Final Decision: Dismissed

Judgement

Banerjee, J.
In Rent suit No. 7 of 1955, Nalini Kanta Adhikary, the decree-holder respondent, obtained a decree for arrears of rent

against one Lalit Mohan Bagchi, whose heirs and legal representatives are the present appellants. The decree is dated the 22nd. November, 1945.

Out of a total claim of Rs. 12,992-5-9, a sum of Rs. 10,995-13-9 was decreed and a further sum of Rs. 1095-10-0 was decreed as costs; total

sum decreed being Rs. 12,091-7-9.

2. Between the years 1948 and 1954, the decree was put to execution several times and various sums of money were realised in part satisfaction

of the decree.

3. On the 22nd. July 1955, the decree-holder respondent Marled Rent Execution case No. 2 of 1955, out of which the present appeal arises, for

realisation of a sum of Rs. 4335-11-0, being the balance due under the decree.

4. Prior to the filing of Rent Execution case No. 2 of 1955, the West Bengal Estates Acquisition Act 1 of 1954 had come into operation and the

defaulting tenure vested in the State Government on and from the 15th. April 1955.

5. In-as-much as the defaulting tenure (in the instant case a Darpatni) could no longer be proceeded against, on account of its vesting in the State

Government, the decree-holder respondent prayed for attachment and sale of other properties belonging to judgment-debtors as indicated in

column 11 of the application for execution of the decree.

6. On the 8th October 1955, the judgment-debtors appellants filed an objection u/s 47 of the CPC in the Rent Execution case above referred to.

Their objection in substance was that section 168A of the Bengal Tenancy Act was a bar to the execution of the decree against the other

properties of the judgment-debtor and also that the remedy of the decree-holder was to realise his dues out of the compensation payable under the

provisions of the West Bengal Estates Acquisition Act. in respect of the defaulting Darpatani. The objection was registered as Misc. case No. 130

of 1955.

7. By an order, dated the 10th September, 1956 the executing court overruled the objection u/s 47, C.P.C. preferred by the judgment-debtors

appellants and dismissed the application. The reason given by the court below in overruling the objection is quoted below:

The fact that compensation would be payable by the Government does not mean that the tenure exists in another shape. The tenure in question

ceased to exist other than by surrender before the present execution case was started and as such the bar u/s 168 A.B.T. Act has been removed.

It is therefore open to the decree-holder to proceed against other properties of the judgment-debtor.

8. The present appeal is directed against the order dismissing the objection u/s 47 of the Code of Civil Procedure.

9. Mr. Benoyendra Prosad Bagchi, learned Advocate for the appellants, in his opening of the appeal, submitted that on a true construction of the

provisions of the West Bengal Estates Acquisition Act, as also of section 168A of the Bengal Tenancy Act, the remedy of the decree-holder must

be confined only to the compensation money and in so far as trial court held otherwise, the decision was erroneous.

10. We pointed out to Mr. Bagchi that there were certain unreported judgments, by several division benches of this Court, which were very much

against his contention. The unreported judgments to which we drew the attention of Mr. Bagchi were:

(1) A decision by Das Gupta and Guba, JJ. in (1) S.M.A. 5 of 1957 (Tarapada Sarkar v. Amitava Pal Chaudhuri) delivered on the 21st

November, 1957. That decision concerned itself with the point whether vesting of an intermediary interest in the State Government amounted to

expiration of the terms of the tenancy other than by surrender, within the meaning of the proviso to clause (a) of sub-section (1) of section 168A of

the Bengal Tenancy Act. After examining the relevant provisions of the West Bengal Estates Acquisition Act, their lordships decided the point in

the affirmative. Since that case the vesting had taken place prior to the date of the application for execution of the decree, their lordships held that

the proviso to clause (a) of sub-section 1 of section 168A of the Bengal Tenancy Act had full scope so that the provision in clause (a) of section

168A (1) debarring execution of the decree otherwise than by way of execution against the defaulting tenure had no application.

(2) A decision by Das Gupta and Law, JJ. in (2) S.M.A. 54 of 1956 (Hiranmoyee Dasi v. Jyotish Chandra Pal Chaudhuri) delivered on the 3rd

January, 1958. In that case the objection by the judgment-debtor to execution of the decree against properties other than the defaulting tenure was

allowed because the application for execution was made before the date of vesting. The proviso to clause (a) of sub-section (1) of section 168A of

the Bengal Tenancy Act, not being attracted, the main provision of section 168A (1) (a) was held to apply.

(3) A decision by P.N. Mookerjee and Sarkar, JJ. in F.M.A. 170 of 1956 (Ahidhar Ghosh v. Nisubala Devi) (3) reported in 62 C.W.N. 172, in

which their lordships held that (a) the term of a tenure expires within the meaning of the proviso to clause (a) sub-section (1) of section 166A of the

Bengal Tenancy Act as a result of vesting the State Government under the West Bengal Estates Acquisition Act and if the proviso was attracted to

the case the bar of the main part of the sub-section to the decree-holder"s prayer for realisation of dues from other properties of the judgment-

debtor would not apply, (b) There was nothing in section 8 or any where else in the Estates Acquisition Act to warrant the view that the arrears of

rent from an intermediary were to be recovered only from the compensation money payable to an intermediary. The proviso to section 8 made it

abundantly clear that recovery of arrears due from the compensation money was only one of the modes of such recovery.

(4) A decision by this very bench in (4) S.M.A. 80 of 1955 (Hiranmoyee Dasi v. Anil Pal Chaudhuri) delivered on the 7th January, 1958 in which

it was held that the introduction of section 5E in the West Bengal Estates Acquisition Act by section 3 of the West Bengal Estates Acquisition

(Second Amendment) Act of 1954 placed a disability on the decree-holder to proceed against the tenure in default and impliedly repealed section

168A of the Bengal Tenancy Act, even in cases where it might otherwise have applied, because the provision of section 5B of the West Bengal

Estates Acquisition Act was so inconsistent or repugnant to the provision of section 168A of the Bengal Tenancy Act that the two could not stand

together. The decision by Das Gupta and Law, JJ. in S.M.A. 54 of 1956 did not consider this aspect of the matter.

11. We pointed out to Mr. Bagchi that in the instant case the last petition for execution was filed on the 22nd July. 1955, but long prior to that, on

April 15, 1955, the defaulting tenure had vested in the State Government. Therefore even if section 168A of the Bengal Tenancy Act be held to be

operative law at the material time, even then the present case would come under the proviso to clause (a) to sub-section (1) of section 168A and

the bar under the main provisions of sub-section (1) would not apply. The three decisions in (1) S.M.A. 5 of 1957 (Tarapada Sarkar v. Amitava

Pal Chaudhuri) (2) S.M.A. 54/1957 (Hiranmoyee Dasi v. Jyotish Chandra Pal Chaudhuri) and (3) F.M.A. 170 of 1956 (Ahidhar Ghosh v.

Nisubala Dasi) stood in the way of a contrary contention.

12. We also pointed out to Mr. Bagchi that on the basis of the decision of this bench, in (4) S.M.A. 80 of 1955 (Hiranmoyee Dasi v. Anil Pal

Chaudhuri), the bar u/s 168A of the Bengal Tenancy Act would not in any event apply because, according to the said decision, section 168A

stood impliedly repealed with the coming into operation of section 5B of the West Bengal Estates Acquisition Act, even in cases where it might

otherwise have applied.

13. Thereafter, Mr. Bagchi recast his argument and submitted that although there might not be any bar u/s 168A of the Bengal Tenancy Act, the

execution of the decree against other properties of the judgment-debtors was barred under the amended section 8 read with section 26 of the

West Bengal Estates Acquisition Act and the only remedy with which the decree-holder was left was to proceed against the compensation money.

Mr. Bagchi further submitted that in so far as the judgment reported in (3) Ahidhar Ghose Vs. Sm. Nisu Bala Devi, , took a contrary view, the

decision was wrong.

14. Elaborating his argument Mr. Bagchi invited our attention to the language of section 7, under which the recovery of arrears of land revenue,

cesses, taxes and other impositions by the State Government were made recoverable from the compensation money without prejudice to any other

mode of recovery. Similar words which occurred in section 8 of the West Bengal Estates Acquisition Act were omitted by the West Bengal

Estates Acquisition (Second Amendment) Act XXVIII of 1954 (which came into force on the 2nd October, 1954) and a proviso was added to

section 8, as hereinbelow:

Provided that if such person be himself an intermediary the recovery of such arrears from the compensation payable to him shall be subject to the

provisions of section 26 of the Act.

15. Mr. Bagchi argued that the language used in section 7 when contrasted to language used in the amended section 8 led to the conclusion that the

right to resort to modes of recovery of arrears otherwise than by proceeding against the compensation money was reserved only for recovery of

arrears of land revenue or other impositions by the State Government; the said right was not available to any intermediary for recovery of arrears

of rent and cesses.

16. In the judgment reported in (3) Ahidhar Ghose Vs. Sm. Nisu Bala Devi, . Mookerjee and Sarkar, JJ. gave some reason, why section 8 of the

West Bengal Estates Acquisition Act was amended in the manner indicated above, which we quote below:

The proviso to the section does, on the other hand, makes it abundantly clear that the arrears may be recovered from the compensation money,

that being one of the modes of such recovery, subject to the provisions of section 26 of the Act. In other words, the proviso only prescribes that,

where the above mode, one amongst many, of recovery of arrears of rent is adopted or sought to be availed of, namely, recovery from the

compensation money, it must be subject to the provisions of section 26. The proviso is intended only to apply the restrictions u/s 26 when the

arrears of rent are sought to be recovered from the compensation money. There was necessity for the proviso as, otherwise, the whole of the

compensation money might have gone to satisfy dues on account of arrears of rent which was not the intention of the statute and section 26 might

have been frustrated in a number of cases and in any event, unnecessary conflicts and complications would have arisen. Our attention was drawn

to the amendment of section 8, by which the words ""and shall without prejudice to any other mode of recovery be recoverable by attachment of

any money that may be payable as compensation to such person under the Act"" were omitted, and it was argued that the omission, in the light of

the proviso added, was intended to restrict the right of recovery only to the compensation money. We do not think the argument can be accepted.

The necessity and purpose of the proviso has already been explained and, as to the omission, it is enough to say that the words omitted were

redundant or unnecessary and that, with or without them, the section means the same thing namely, that the arrears would be recoverable in any

manner (including attachment of the compensation money), recognised by law.

17. Criticising the decision reported in Ahidhar Ghose Vs. Sm. Nisu Bala Devi, . Mr. Bagchi argued that the purpose behind the amendment

introduced in section 8 of the West Bengal Estates Acquisition Act by the West Bengal Act XXVIII of 1954 can never be properly understood

unless the language used both in sections 7 and 8 of the Act are taken into consideration together and contrasted, which was not done in the case

reported in (3) Ahidhar Ghose Vs. Sm. Nisu Bala Devi, .

18. We have ourselves examined the language used in section 7 and amended section 8 of the West Bengal Estates Acquisition Act and have

contrasted them in the light of the argument of Mr. Bagchi; we are, however, of opinion that the process does not lead to a concision different from

what is to be found in the judgment reported in (3) Ahidhar Ghose Vs. Sm. Nisu Bala Devi, .

19. Section 7 of the West Bengal Estates Acquisition Act does not authorise recovery of arrears of revenue cesses, taxes and other impositions by

the State Government out of the compensation money by process of execution of decree. The section mealy authorises deduction of the amount of

such arrears from the money payable as compensation to an intermediary under an order of a Collector. This additional right was conferred for

recovery of particular kinds of arrears, as mentioned in the section, without prejudice to any other mode of recovery. There may have been good

reason behind this because the State Government being liable to pay compensation to an intermediary and also entitled to receive its dues from

such intermediary, authority was taken to pay compensation after deduction of all Government dues, by way of some sort of set-off.

20. No question of deduction arises u/s 8. Right was given to all intermediaries, u/s 8 as it stood prior to its amendment under West Bengal Act

XXVIII of 1954, to recover their dues by attachment of compensation money payable to their tenants, without prejudice to any other mode of

recovery. After amendment, the amended section did not expressly or by necessary implication take away the right to resort to other modes of

recovery but only made it abundantly clear that the decree-holder could also proceed against the compensation money in process of execution, as

one of the modes of recovery, but subject always to the provisions of section 26.

21. We hold that even without the words omitted from section 8, by the Amending Act XXVIII of 1954 arrears of rent and other dues of an

intermediary would be recoverable by any mode recognised by law and that is particularly so because section 168A of the Bengal Tenancy Act

has now ceased to be operative.

22. All the arguments advanced by Mr. Bagchi, therefore, fail and this appeal is dismissed with costs.

Renupada Mukherjee, J.

I agree.