

(1974) 08 CAL CK 0025

Calcutta High Court

Case No: Civil Rule No. 1335 of 1974

Behari Lal Santaia

APPELLANT

Vs

Bishnupada Pattanayak and
Others

RESPONDENT

Date of Decision: Aug. 30, 1974

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 146, 151
- Constitution of India, 1950 - Article 227, 27
- West Bengal Land Reforms Act, 1955 - Section 19, 21, 8, 9, 9(6)

Citation: 79 CWN 103

Hon'ble Judges: Amal Krishna De, J

Bench: Single Bench

Advocate: S.N. Ghorai, S.B. Das, for the Appellant; Madan Mohan Saha for Opposite Party No. 1 and Kripasindhu Hait for 2 (ka) to 2 (ga), for the Respondent

Judgement

Amal Krishna De, J.

This application is under Article 227 of the Constitution of India by the applicant u/s 8 of the West Bengal Land Reforms Act in the first court of Munsif at Tamruk. He made the application seeking pre-emption of a transfer made by opposite parties Nos.3 to 10 to opposite party No.1 on 31.10.72. Opposite party No.1 sold a portion of that land to his son, opposite party No.2. petitioner, who was not served with the notice of the first transfer, came to know of it the second transfer by the opposite party No.1 to opposite party No.2 was made, when opposite party No.2 started collecting building materials on the land with a view to constructing pucca structures. The petitioner filed his application for pre-emption on 26.5.73 against opposite parties Nos.1 to 10 on 21.6.73 the petitioner filed an application for a temporary injunction to restrain opposite parties Nos.1 and 2 from changing the character of the land and from raising any structure on it. To that the opposite party No.1 filed another petition for injunction on 11.9.73 making the same prayer against

opposite parties Nos.2(ka), 2(kha) and 2(ga) after having added them in his petition. The learned Munsif has rejected this second petition by this order No.12 dated 14.9.73 and rejected the first petition filed on 21.6.73, by his order No.24 dated 19.2.74. The petitioner has moved this court against this order No.24 dated 19.2.74 filing this application under Article 27 of the Constitution.

2. The learned Munsif before whom the application for pre-emption has been filed has refused the prayer for temporary injunction made on 11.9.73 on the ground that he has no power under the West Bengal Land Reforms Act to grant an injunction u/s 151 of the CPC and secondly, on the ground that order of injunction, if any, granted against opposite parties Nos.1 and 2 would not be of any use as the petitioner's application for an order of injunction against opposite parties Nos. 2(ka), 2(kha) and 2(ga) has already been refused on 14.9.73 and has not been challenged in any superior court.

3. Mr. S. N. Ghorai, learned Advocate appearing for the petitioner, submits that the application for pre-emption has been filed before a Munsif and he has as such Munsif, all the powers under the CPC including the powers u/s 151 of the CPC to grant injunction. Before the West Bengal Land Reforms (Amendment) Act, 1972 came into force, application for pre-emption u/s 8 of the West Bengal Land Reforms Act to be hereafter called the Act, was to be filed before the Revenue Officer specially empowered by the State Government in that behalf. By the 1972 amendment the applications are now required to be filed before the Munsif having territorial jurisdiction. The present application was filed after the 1972 amendment came into force. It has been filed before a Munsif i.e. a Civil Court, he has all the powers under the Code of Civil Procedure. In support of his contention he has placed reliance on the case of [Ramchandra Aggarwal and Another Vs. State of Uttar Pradesh and Another](#), . In that case the question that fell to be determined was whether a reference made to a civil court of competent jurisdiction u/s 146 of the CPC was a civil proceeding. Mudholkar, J speaking for the court held that the said reference was a civil proceeding observing as follows:

When a special or local law provides for an adjudication to be made by a constituted court - that is, by a court not created by a special or local law but to an existing court - it in fact enlarges the ordinary jurisdiction of such a court. Thus where a special or local statute refers to the presiding officer of that court, the reference cannot be said to be to a persona designata.

4. The question is whether the expression "Munsif having territorial jurisdiction" in section 8, as amended in 1972 refers to a court or to a person designata. The meaning given to the expression "persona designata" in Osborn's Concise Law Dictionary, 4th Edition p. 263 is a "person who is pointed out or described as an individual, as opposed to a person ascertained as a member of a class or as filling a particular character".

5. Section 8 of the Act is not that the application is to be made to a civil court but to a learned Munsif having territorial jurisdiction. The decision in [Ramchandra Aggarwal and Another Vs. State of Uttar Pradesh and Another](#), is not thus on fours with the present case.

6. Mr. Ghorai next submits that section 8 providing for filing the application before a Munsif having territorial jurisdiction makes it clear that it was to be filed before a civil court and not to the judge presiding over the civil court. He also refers to the case of Brajendra Kumar Paria v. Gosta Dolui, reported in 64 CWN 1062 where a Division Bench of this court held that a Munsif exercising appellate powers u/s 19 of the West Bengal Land Reforms Act, 1955 has jurisdiction to remand a case to the Revenue Officer as a "Court" having powers under the Code of Civil Procedure. The contention made in that case before the Division Bench was that the learned Munsif exercising appellate powers was not a civil court, but was a mere persona designata. That contention was not entertained by Banerjee, J observing.

The jurisdiction exercised by the learned Munsif u/s 19 was not part of his ordinary jurisdiction. Therefore, the jurisdiction is either a special jurisdiction conferred on him in his capacity as an ordinary court of the country or is a jurisdiction conferred on him as a person or a named officer not in his capacity as an ordinary court of the country.

7. The learned Judge referred to the provision of Section 21 of the Act and then concluded that the proceeding before the learned Munsif u/s 19 of the Act was a proceeding before the Munsif as a Civil Court and not as a persona designata.

8. Mr. Saha, appearing for the opposite party, referred to the case of [M. Deivanayagam Pillai Vs. P.T.S. Diwan Mohideen Rowther and Others](#), and submits that the application before the learned Munsif u/s 8 is not before a Civil Court. In that case an application, under rule 1 made under the Madras District Municipalities Act challenging an election, was filed before a Subordinate Judge and his order was challenged in a revisional application before the High Court. Devadoes, J took the view that the Subordinate Judge in an application under rule 1 of the Madras District Municipality Act was acting merely as a persona designata and as such was not subject to the revisional jurisdiction of the High Court. The expression used in that Rule was "Subordinate Judge having jurisdiction". The words "having jurisdiction" were interpreted as referring to the territorial jurisdiction over the municipalities to fill up vacancies in which the elections are held.

9. Section 9 (6) of the Act provided for an appeal to the District Judge against an order of the learned Munsif made u/s 9.

10. On a reading of the provisions of section 8 and section 9 of the Act and applying the decision reported in [Brajendra Kumar Paris Vs. Gosta Dolui](#), it appears to me that the expression "Munsif having territorial jurisdiction" in section 8 of the Act refers to a civil court and not to a persona designata. The contention made by Mr.

Saha is not entertainable.

11. The next question for consideration is whether the learned Munsif, if acting as a civil court u/s 8 has the powers u/s 151 of the Code to grant injunction. The law is well settled that if there are any specific provisions in the Code against granting of a prayer made before a court, those should not be passed taking recourse to section 151 see [Sm. Indira Debi and Another Vs. State of West Bengal and Others](#), and [Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal](#), . But if there is no such bar and there are no specific provisions for granting the prayers the court by exercise of its inherent powers for ends of justice is to grant the relief. In this Act there are no specific provisions empowering the learned Munsif, while dealing with an application u/s 8, to grant injunction. Section 151 of the Code vests no new powers on the court. It only reminds the court of its inherent powers. When for ends of justice it becomes necessary for a court to grant a particular relief asked for by the parties, it exercises its inherent power u/s 151 to grant if there are no specific provisions in the Act forbidding exercise of such powers. In this view of the matter, the learned Munsif should have considered the prayer for temporary injunction on merits and should not have rejected it on the view that he was not empowered to consider it under the Act.

12. The learned Munsif has referred to a case referred to in 65 CWN p. 597 observing that it supports the contention made by the opposite party before him. That decision does not refer to the subject arising in this case and has no relevance. The other point which is urged is that the learned Munsif has been wrong in observing that an order of injunction granted in favour of the petitioner against the opposite parties Nos.1 and 2 will not be of any effect as the said prayer against opposite parties Nos.2 (ka), 2 (ga) had already been refused without any challenge of that order on any higher court.

13. It is however, pointed out from the records that opposite party No.1 transferred a part of his land to opposite party No.2 and that opposite party No.2 and opposite party No.1 had later transferred some portions of the remainder to opposite parties Nos. 2(ka) to 2(ga). In these facts are borne out by the records, there is still a portion of the land with opposite party No.1 and possibly also with opposite party No.2. the learned Munsif is therefore required to look into the records and see whether still remains with opposite party No.1 and or opposite party No.2 any portion of the land sought to be pre-empted in this application. If after examining the records he finds that there are no lands sought to be pre-empted with either opposite party No.1 or opposite party No.2 on 21.6.73, he will reject the application for injunction. If however, he finds otherwise, he will consider the application for injunction on merits.

14. In view of the above conclusions, I make the Rule absolute, set aside the order No.24 dated 19.2.74 of the learned Munsif and direct that he considers the application by petitioner filed on 21.6.73 in accordance with the directions in this

judgment.

15. There will be no order for costs.

16. The applications u/s 8 of the Act should be disposed of quickly.