Kadambini Tea Co. Ltd. Vs State of West Bengal

Court: Calcutta High Court

Date of Decision: Sept. 20, 1976

Acts Referred: Crown Grants Act, 1895 â€" Section 3
West Bengal Estates Acquisition (Amendment) Act, 1955 â€" Section 2, 4, 42, 42(1), 42(2)
West Bengal Land Registration Act, 1876 â€" Section 3(2), 77, 78, 79

Citation: (1976) 2 ILR (Cal) 588

Hon'ble Judges: Sharma, J; M.M. Dutt, J

Bench: Division Bench

Advocate: Ranjit Kumar Banerji, P.C. Ray, S.C. Bose and A.N. Basu, for the Appellant;Chandidas Roy Chowdhury, for the Respondent

Judgement

M.M. Dutt, J.
Kadambini Tea Company Ltd. is the Petitioner in all these three Rules. The principal question that is involved in these Rules

is the applicability of the West Bengal Estates Acquisition Act, 1955 (hereinafter referred to as the Act), to the lands comprised in the tea-gardens

belonging to the Petitioner company and the power of the Revenue Officer to assess and determine rent in respect of the said lands of the

Petitioner company under the provisions of the Act.

2. In C.R. Nos. 2176(W) of 1970 and 2177(W) of 1970 the subject-matter is the Bamandanga Tea Estate comprising tea lands appertaining to

J.L. No. 107, Tousi No. 97 within P.S. Nagrakata in Western Duars in the district of Jalpaiguri. The district of Jalpaiguri is divided into two parts,

Western Jalpaiguri and Eastern Jalpaiguri. Eastern Jalpaiguri was a part of Bhutan, but after the Bhutan war the king of Bhutan ceded a portion of

the territory to the Queen of England sometime in 1865, which was subsequently annexed to the district of Jalpaiguri as Eastern Jalpaiguri and is

otherwise known as Bhutan or Western Duars. The lands of Western Duars which are mostly tea lands belong to the Government in sovereign

right. On December 23, 1927, the Government granted a lease of tea lands to the Duars Tea Company Ltd., the predecessor-in-interest of the

Petitioner company, for thirty years with effect from April 1, 1951, in Form C of chap. V of Tea Lease Rules under the Bengal Waste Land

Manual, 1936, with perpetual right of renewal. The tea lands covered by the said lease is known as the Bamandanga Tea Estate. As far back as in

1898, the Government by a notification No. 963 T.R. extended the Bengal Tenancy Act to the whole of Jalpaiguri district, except Western Duars,

with effect from January 1, 1899. Again by a notification No. 14007 L.R. dated December 1, 1933, the Government excluded the operation of

the Bengal Tenancy Act from Western Duars. Under Clause (III) of this notification, it has been provided, inter alia, that nothing in the Bengal

Tenancy Act shall apply to any lands hereinbefore or hereinafter granted or leased by the Government to any person or company under an

instrument in writing for the cultivation of tea, or for the reclamation of land under the Arable Waste Land Rules. These two notifications clearly

show that the Bengal Tenancy Act does not apply to tea-plantations in Western Duars. The Petitioner company and its predecessor-in-interest had

been paying rents to the Government as reserved in the lease.

3. On February 12, 1954, the Act came into force. Section 4 of the Act provides for the vesting of all estates and the rights of every intermediary

in each such estate situated in any district or part of a district with effect from Baisakh 1, 1362 B.S. corresponding to April 15, 1955. The word

''intermediary has been defined in Section 2(i) under which it means a proprietor, tenure-holder, under-tenure-holder or any other intermediary

above a raiyat or a non-agricultural tenant and includes a service tenure-holder and in relation to mines and minerals, includes a lessee and a sub-

lessee. The Act, however, does not define an estate nor does it define a proprietor, tenure-holder, under-tenure-holder or a raiyat. But in Clause

(p) of Section2 of the Act, it is provided that the expressions used in the Act and not otherwise defined have in relation to the areas to which the

Bengal Tenancy Act, 1885, applies, the same meaning as in that Act and in relation to other areas meaning as similar thereto as the existing law

relating to land tenures applying to such areas, permits. Section 6(1) of the Act confers on the intermediary the right to retain certain lands. Under

Clause (f) of Section 6(1), subject to the provisions of Sub-section (3), the intermediary is entitled to retain tea gardens. Section 6(2) provides as

follows:

An intermediary who is entitled to retain possession of any land under Sub-section (1) shall be deemed to hold such land directly under the State

from the date of vesting as a tenant, subject to such terms and conditions as may be prescribed and subject to payment of such rent as may be

determined under the provisions of this Act and as entered in the record-of-rights finally published under Chapter V except that no rent shall be

payable for land referred to in Clause (b) or (i);

Provided that if any tank fishery or any land comprised in a tea garden, orchard, mill, factory or workshop was held immediately before the date of

vesting under a lease, such lease shall be deemed to have been given by the State Government on the same terms and conditions as immediately

before such date, subject to such modification therein as the State Government may think fit to move.

Sub-section (3) of Section 6 is as follows:

In the case of land comprised in a tea garden, mill, factory or workshop the intermediary, or where the land is held under a lease, the lessee, shall

be entitled to retain only so much of such land as, in the opinion of the State Government, is required for the tea garden, mill, factory or workshop,

as the case may be and a person holding under a lease shall, for the purpose of assessment of compensation, be deemed to be an intermediary.

The proviso to Sub-section (3) is not relevant for our purpose and as such, it is omitted. Section 42(1), inter alia, provides for determination by the

Revenue Officer of rent payable by an intermediary who is entitled to retain possession of any land under Sub-section (1) of Section 6. Sub-

section (2) of Section 42 is as follows:

When an intermediary is entitled to retain possession of any land comprised in a tea garden under Clause (f) of Sub-section (1) as read with Sub-

section (3) of Section 6, the Revenue Officer shall determine the rent payable in respect of such land in the following manner, that is to say--

(a) for land under cultivation of tea or covered by factories, office buildings or quarters for labourers of the tea garden, at twice the average rate of

rent paid for the highest class of agricultural lands in the vicinity, subject to a maximum of Rs. 6-50 per acre.

Clauses (b), (c), (d) and (e) of Sub-section (2) are not relevant and are omitted. Sub-section (3) provides as follows:

Notwithstanding anything to the contrary contained in the proviso to Sub-section (2) of Section 6 or in any contract, where any land comprised in

a tea garden is held under a lease, the rent payable by the lessee in respect of such land shall be the rent determined by the Revenue Officer in the

manner specified in Sub-section (2).

4. The Revenue Officer prepared the draft record-of-rights in respect of the said Bamandanga Tea Estate of the Petitioner company and recorded

that Sub-section (3) of Section 6 of the Act was applicable to the land comprised in the said tea estate. By an order dated May 5, 1961, the

Government of West Bengal in exercise of its power under Sub-section (3) of Section 6 declared that 1582-90 acres of land of the said

Bamandanga Tea Estate was required for the purpose of the tea garden and that the remaining 752-22 acres of land was surplus. By the said

order, the Petitioner was allowed to retain the said 1582-90 acres of land in accordance with law. The Petitioner preferred an objection to the

draft record-of-rights u/s 44(2) of the Act contending, inter alia, that the Revenue Officer had no power to record that the provision of Section

6(3) was applicable. The said objection of the Petitioner was overruled by the Revenue Officer. On March 25, 1968, the Revenue Officer

directed the opening of khanda khatian in terms of the sand order of the Government of West Bengal under Sub-section (3) of Section 6 of the

Act and on the same date, the Revenue Officer also determined and assessed the rent payable by the Petitioner in respect of the said 1582-90

acres of land under Sub-section (2) of Section 42 at Rs. 8,514-1-6. Against the said orders of the Revenue Officer rejecting the objection of the

Petitioner to the draft record-of-rights and determining rent u/s 44(2), the Petitioner preferred two appeals to the Tribunal, namely, E.A. Appeals

Nos. 4 of 1968 and 12 of 1968. Both these appeals were dismissed by the Tribunal holding, inter alia, that the tea estates are "estates" within the

meaning of the Act and that the Revenue Officer had jurisdiction to determine the rent of the tea lands allowed to be retained by the Petitioner.

5. It is contended by Mr. Ranjit Kumar Banerji, the learned Advocate appearing on behalf of the Petitioner, that the grant of the lease to the

Petitioner or to its predecessor-in-Merest of the said Bamandanga Tea Estate does not come under the purview of the Act, for it was a grant by

the Crown and in view of the Crown Grants Act (now Government Grants Act, 1895), the operation of the Act is excluded. In support of his

contention a Division Bench judgment of this Court in State of West Bengal Vs. Birendra Nath Basunia and Others, has been relied on. In that

case, the Division Bench presided over by Chakravartti C.J. held that the effect of Section 3 of the Crown Grants Act was to exclude the

operation of not merely the Transfer of Property Act but of all laws. In this connection, reference may be made to Section 3 of the Act which

provides that the provisions of the Act shall have effect notwithstanding anything to the contrary contained in any other law or in any contract,

expressed or implied, or in any instrument and notwithstanding any usage or custom to the contrary. Section 3of the Crown Grants Act is surely

contrary to the provisions of the Act and in view of Section 3 of the Act, the provisions of the Act shall have effect notwithstanding the Crown

Grants Act. There can be no doubt that the West Bengal Legislature was competent to enact the provisions of the Act including Section 3. Section

3, therefore, overrides the provisions of the Crown Grants Act. The view which we take finds support from a later Division Bench decision of this

Court in Azizus Subhan Vs. Union of India (UOI) and Others, . It has been held that Section 3of the Crown Grants Act has no overriding effect on

Section 3 of the Act and a competent Legislature can legislate so as to vary the effect of a Crown Grant. Further, it has been held that Section 3 of

the Crown Grants Act cannot limit the statutory competence of a State Legislature to legislate on a subject assigned to it by the Constitution and

that, accordingly, Section 3 of the Act will take effect notwithstanding the provisions of the Crown Grants Act. The Judicial Committee in AIR

1946 127 (Privy Council) also laid down the same legal principles to the effect that Section 3 of the Crown Grants Act could not extend so far as

to limit the statutory competence of a provincial Legislature to legislate on a subject assigned to it by a Constitution Act. The contention of the

Petitioner founded on the Crown Grants Act has, therefore, no substance and it is, accordingly, rejected.

6. The next contention of the Petitioner is that the Government became the owner of the Bhutan lands in sovereign right and not in the right of a

proprietor or a zemindar after the same were ceded to by the King of Bhutan. It is for the sovereign to confer rights on inhabitants of the ceded

land and beyond the rights that might be so conferred, the inhabitants will have no right to enforce in a Court of law. In Vajesingji Joravarsingji v.

Secretary of State for India (1924) L.R. 51 IndAp 357 the Privy Council has ruled that after a sovereign State has acquired territory, either by

conquest or by cession under a treaty, or by the occupation of territory theretofore unoccupied by a recognised ruler, or otherwise, any inhabitant

of the territory can enforce in the municipal Courts established by the new sovereign only such proprietory rights as that sovereign has conferred or

recognised. There can be no doubt about the proposition of law laid down by the Privy Council which was followed by the Supreme Court in Raja

Rajinder Chand Vs. Sukhi, . On the basis of the above principles of law it is argued on behalf of the Petitioner that, as the Bhutan land comprising

the land of the Bamandanga Tea Estate belonged to the Government in sovereign right and as there was or is no proprietor of the said land, the

same could not be an ''estate''. It is also urged that there is a distinction between khas mahal land owned by the Government and land owned by

the Government in sovereign right. In Saradacharan Mitra''s Land Law of Bengal (2nd ed., p. 32), it is stated as follows:

A khas mahal is an estate held by Government standing in the place of the proprietor. Waste lands not included within the area of any permanently

settled estate, islands thrown up in large navigable rivers, resumed revenue-free lands and settled estates which have lapsed by sale for arrears or

escheat are included within this definition. In the Bengal Tenancy Act of 1885 Government khas mahals are ''estates'' and the Government is a

''proprietor'' owning estates. The Government is also a ''landlord'' like other landholders.

There is some force in the contention of the Petitioner that the land with which we are concerned is not khas mahal land, as the Government is not

the proprietor of the same like any other proprietor or zemindar. The definition of the word ''estate'' under the Bengal Tenancy Act includes khas

mahal land, but as the disputed land is not khas mahal land and in any event, the Bengal Tenancy Act having been expressly excluded from its

application to Western Duars, the said definition is inapplicable.

7. The question, however, is whether the tea lands of Western Duars are ''estates'' within the meaning of the Act. We may once more refer to

Clause (p) of Section 2 of the Act which has been quoted above. The first part of Clause (p) will not apply as the Bengal Tenancy Act is not itself

applicable, but in the latter part of Clause (p) it is provided that the expressions not defined in the Act shall in relation to other areas, have the

meaning as similar thereto as the existing law relating to land tenures applying to such areas, permits. On behalf of the Respondents, it is pointed

out that the disputed tea land has been recorded as a touji in one of the General Registers of revenue-paying lands under the Bengal Land

Registration Act VII of 1876. It is contended on their behalf that the definition of the word ''estate'' as given in Section 3(2) of Act VII of 1876

applies to the disputed land and that the non-application of the definition of ''estate'' under the Bengal Tenancy Act is immaterial. Sub-section (2) of

Section 3 of Act VII of 1876 defines an estate as follows:

(2) ''Estate'' includes--

(a) any land subject to the payment of land revenue either immediately or prospectively, for the discharge of which a separate engagement has

been entered into with the Crown;

(b) any land which is entered on the revenue-roll as separately assessed with land revenue (whether the amount of assessment be payable

immediately or prospectively), although no engagement has been entered into with the Crown for the amount of revenue so separately assessed but

upon it as a whole;

(c) any land being the property of the Crown of which the Board shall have directed the separate entry on the General Register hereinafter

mentioned or on any other register prescribed for the purpose by a rule made under this Act.

The tea land of the Petitioner satisfies the definition of ''estate'' as contained in Clause (a) of Sub-section (2). It is said on behalf of the Petitioner

that the tea-lands were registered as estates under Act VII of 1876 as directed by the Board of Revenue. If that be the fact then it also comes

under Clause (c) of Sub-section (2) of the definition. It is, however, contended on behalf of the Petitioner that Act VII of 1876 is not a "law

relating to land tenures" within the meaning of Clause (p) of Section 2of the Act and accordingly, even assuming that the land of the Petitioner

constitutes an estate under Act VII of 1876, such an estate is not contemplated by the Act so as to make the Act applicable. On behalf of the

Petitioner reliance has been placed on the observations of some of the learned Judges of a Full Bench case of this Court in Alimuddin Khan v. Hira

Lall Sen ILR (1895) Cal. 87 (F.B.). It has been observed that the object of Act VII of 1876 is, on the one hand, to afford protection to the

Government, on behalf of public revenue, so as to facilitate the realization of revenue from proprietors of estates; and on the other hand, to afford

protection to such proprietors by registration of their titles on proof of their possession. Ghose J. observed as follows:

The object of the Land Registration Act of 1876 as may well be gathered from the preamble and its various provisions, as also from the previous

Regulations on the subject, seems to be three-fold first, the protection of the revenue; second, the protection of the proprietors; and third, the

protection of the tenants.

It is submitted on behalf of the Petitioner that the object of Act VII of 1876 shows that it has nothing to do with land tenures. In the Bench

Decision of this Court in Munindra Deb Roy v. Sree Sree Hanseswari Thakurani (1935) 40 C.W.N. 271 it has been observed that the whole

object of registering the names of the proprietors or managers etc. under Act VII of 1876 is not to make an inquisition into titles either in revenue-

paying or revenue free properties but to keep the proper record of possessory title in landed properties so as to have a knowledge of the persons

who are in actual possession and are responsible for the discharge of their duties. Our attention has been drawn to the dictionary meaning of the

word "tenure", namely,

the conditions of service etc. under which a tenement is held of the superior; the title by which the property is held; the relations, rights and duties of

the tenant to the landlord--(Shorter Oxford Dictionary, 2nd vol., 3rd ed., p. 2151).

It is contended on behalf of the Petitioner that the object of Act VII of 1876 as laid clown in the above decisions does not lend support to the view

that Act VII of 1876 lays down the law relating to land tenures so that the definition of the word "estate" will be attracted for the purpose of the

application of the Act. Again, it is said on behalf of the Petitioner that the dictionary meaning of the word "tenure" also shows that Act VII of 1876

is not a law relating to land tenures. We have also been referred to the decision of the Privy Council in Attorney-General of Ontario v. Ardrew F.

Mercer (1883) 8 A.C. 767. The Lord Chancellor (Earl of Selborne) observed:

All land in England, in the hands of any subject, was holden of some lord by some kind of service and was deemed in law to have been originally

derived from the Crown and therefore the King was Sovereign Lord, or Lord paramount, either mediate or immediate, of all and every parcel of

land within the realm.... The word "tenure" signified this relation of tenant to Lord.

In Strouds" Judicial Dictionary (4th ed., vol. V, p. 2741), the said Privy Council case has been referred to and it has been further-stated that the

word "tenure" means "the service whereby lands and tenements be holden".

8. The entire argument of the Petitioner is based on the misconstruction of the expression "law relating to land tenures" in Clause (p) of Section 2

of the Act. That expression does not mean "law regulating land tenures". The word "relate" means "have reference to; stand in some relation to"

(The Concise Oxford Dictionary, 5th ed.). There-fore, the English meaning of the words "relating to land tenures" is "having reference to land

tenures". One of the objects of the Act VII of 1876 as found by Ghose J. in the Full Bench case of Alimuddin Khan v. Hira Lall Sen Supra,

referred to above, is protection of the tenants. Both under the dictionary meaning of the word "tenure" and as construed by Selborne C. in the case

of Attorney-General of Ontario v. Andrew F. Mercer Supra "tenure" signifies the relation of tenant to the landlord. If any law refers to the relation

of tenant to the landlord in respect of lands, it will be a law relating to land tenures. It is not correct to say that a law which does not regulate or lay

down the conditions under which land is held is not a law relating to land tenures. The view which we take does not come in conflict with the

object of Act VII of 1876.

9. Moreover, we are of the view that the words "land tenure" have a wide connotation and comprise within it the interest of tenants and occupants

of land and of the proprietors as well. Act VII of 1876 provides for the registration of the names of the proprietors, the rights and liabilities

regarding registration, payment of revenue and acceptance of rents from tenants. Section 77 of Act VII of 1876 provides for changes in the names

of the proprietors and for notifying the extent of interest on the estate. u/s 78 no person shall be bound to pay rent to any person claiming such rent

as proprietor or manager of an estate or revenue-free property in respect of which he is required to cause his name to be registered, or as

mortgagee, unless the name of such claimant shall have been registered under that Act. Section 79 provides for the indemnity to persons paying

rent to the registered proprietor, manager or mortgagee. Sections 78 and 79, therefore, afford protection and indemnity to tenants paying rent to

the proprietors, managers or mortgagees in possession. A similar contention was made before the Supreme Court in Sri Ram Ram Narain Medhi

Vs. The State of Bombay, . In that case, it was argued that the Bombay Land Revenue Code was not a law relating to land tenures in force in the

State of Bombay and therefore, the definition of the expression ''estate'' as contained therein would not avail the Respondent. The Supreme Court

referred to certain provisions of the said Code regarding the occupant of land who may be a person other than a tenant or the landholder or

superior landlord, as the case may be and held that the Bombay Land Revenue Code, 1879, was an existing law relating to land tenures in force in

Bombay. Act VII of 1876 also deals with the, rights and liabilities of the proprietors regarding registration, payment of revenue etc. and affords

protection and indemnity to the tenants and occupants of land holding under the proprietors, managers and mortgagees of estates. In our view, Act

VII of 1876 is an existing law relating to land tenures within the meaning of Clause (p) of Section 2 of the Act.

10. Even assuming that the definition of the word ''estate, under Act VII of 1876 is inapplicable to the lands comprised in tea gardens of Western

Duars and is not contemplated by Clause (p) of Section 2 of the Act because of the exclusion of the Bengal Tenancy Act from Western Duars by

the said Government notifications, still, in our view, ''the Act will be applicable to the tea gardens of Western Duars for the reasons stated

hereafter. It is true that u/s 4of the Act the estates and the rights of intermediaries in each such estate vest with effect from the date of vesting under

the Act, but the Act also makes provisions for vesting of lands which are not held by intermediaries or which are not estates as contemplated by

Clause (p) of Section 2. It is not disputed that the lessee of land comprised in a tea garden, mill, factory or word shop is not an intermediary.

Under Sub-section (3) of Section 6 of the Act such a lessee shall be entitled to retain only so much of such land as, in the opinion of the State

Government, is required for the tea garden, mill, factory or workshop, as the case may be and a person holding under a lease shall, for the purpose

of assessment of compensation be deemed to be an intermediary. Therefore, although the lessee of a tea garden, mill, factory or workshop is not

an intermediary, by the deeming provision as contained in Sub-section (3) of Section 6, he shall be deemed to be an intermediary for the purpose

of compensation and shall be entitled to retain so much of the land as, in the opinion of the State Government, is required for the tea garden, mill,

factory, etc. It has been already stated that an area of 752-22 acres of tea land of the Bamandanga Tea Estate of the Petitioner was held surplus

and vested in the State Government and the Petitioner was allowed to retain the remaining area of 1582-90 acres of land. Sub-section (3) of

Section 42 provides for the determination of rent payable by the lessee of land comprised in a tea garden in the manner specified in Sub-section

(2) of Section 42. The non obstante clause in Sub-section (3) overrides the terms of any contract as to the rent payable by the lessee. It is clear

from Sub-section (3) of Section 42 that although a lessee of a tea garden is not an intermediary still the rent payable by him for the land comprised

in the tea garden shall be the rent as determined by the Revenue Officer. It is the contention of the Petitioner that it is not an intermediary but a

lessee of the Government under a contract of lease reserving rent. That contention must necessarily fail" in view of Sub-section (3) of Section 42

which, it seems, has been enacted to bring within the purview of the Act, the tea gardens in Western Duars where the Bengal Tenancy Act is

inapplicable.

11. Our conclusion, therefore, is that tea gardens in Western Duars are "estates" within the meaning of the term under Sub-section (2) of Section 3

of Act VII of 1876 which is an existing law relating to land tenures as contemplated by Clause (p) of Section 2 of the Act. Even assuming that the

tea garden of the Petitioner is not an estate and the Petitioner is not an intermediary, still the Revenue Officer has jurisdiction and authority to

determine the rent payable by the Petitioner to the Government in respect of the land comprised in the tea garden under Sub-section (3) of Section

42 of the Act. The contention of the Petitioner that it is only liable to pay rent as reserved in the lease under the Government is not available in view

of the non obstante clause of Sub-section (3) which expressly overrides such a contract.

12. As regards S.R. No. 31(W) of 1973 relating to the determination of rent of another tea garden of the Petitioner company situate in the district

of Cooch Behar, the only point involved is whether the Revenue Officer has determined the amount of rent payable by the Petitioner to the

Government in accordance with law. The rent has been assessed under Clause (a) of Sub-section (2) of Section 42 which provides that for land

under cultivation of tea or covered by factories, office buildings or quarters for labourers of the tea garden, rent shall be determined at twice the

average rate of rent paid for the highest class of agricultural lands in the vicinity, subject to a maximum of Rs. 6-50 per acre. It is contended by Mr.

Somendra Chandra Bose, learned Advocate appearing on behalf of the Petitioner in this Rule, that before fixing the rate of rent at Rs. 6-50 per

acre in respect of tea land of the Petitioner, the Revenue Officer did not ascertain the average rate of rent paid for the highest class of agricultural

lands in the vicinity. This contention has no substance. It appears from the impugned order of the Revenue Officer that he noted the average rate of

rent of the highest class of agricultural lands in the vicinity as Rs. 6-1-9 and as twice the said amount is much higher than Rs. 6-50, he fixed the said

maximum rate of Rs. 6-50 per acre. We do not think that the average rate of rent per acre of the highest class of agricultural lands in any area will

be less than Rs. 6 per acre. Even assuming that the average rate of rent of the highest class of agricultural lands in the vicinity of the tea garden of

the Petitioner was Rs. 3-50 per acre, twice that rate would exceed the maximum rate of Rs. 6-50 per acre. In our view, therefore, the contention

of the Petitioner is devoid of any merit.

13. For the reasons aforesaid, all the contentions of the Petitioner having failed, these Rules fail and are discharged. There will, however, be no

order as to costs in any of them.

Sharma J.

14. I agree.