(1967) 05 CAL CK 0019

Calcutta High Court

Case No: None

State of West Bengal		APPELLANT
	Vs	
Gopeswar Satiar		RESPONDENT

Date of Decision: May 19, 1967

Acts Referred:

- West Bengal Estates Acquisition Act, 1953 - Section 44(2a), 6

Citation: 71 CWN 677

Hon'ble Judges: P.N. Mookerjee, J; Gupta, J

Bench: Division Bench

Advocate: Murari Mohan Dutta, for the Appellant;Manindra Chandra Chakraborty, for the Respondent

Judgement

P.N. Mookerjee, J.
These four Rules, which are at the instance of the State of West Bengal, arise out of four proceedings u/s 44(2a) of the West Bengal Estates Acquisition Act, 1953.

2. The proceedings were started in respect of the disputed property, which is comprised in Dags Nos. 155, 179 and 234 under Touzi No. 468 and 245 of the Malda Collectorate. That property, which is a big beel, popularly known as Babla Dhap, is connected with another beel, Sadipur Dhap, lying to its north. The opposite party before us, Gopeswar Satiar, was the proprietor of the said disputed property. Under him, there was a lessee, Mir Tajen Ali, who had a lease up till 31st Chaitra, 1361 B.S. Under the vesting provision of the West Bengal Estates Acquisition Act, applicable to the case, Gopeswar''s interest vested in the State with effect from 1st Baisakh, 1362 B.S., subject to his right of retention, if any, under the above Act.

3. In the revisional settlement records, Gopeswar''s right of retention under the Act was recognised and recorded, the disputed properties being entered in Khatian''s Nos. 1/1 and 61/1.

4. The State, feeling aggrieved, filled, objections Nos. 3 and 2 u/s 44(2a) of West Bengal Estates Acquisition Act before the Revenue Officer, the objections being primarily to the effect that the disputed beel being a fishery and not being in the khas possession of the proprietor, who was the intermediary on the date of vesting, namely, 1st Baisakh, 1362 B.S., it vested in the State and the proprietor or the intermediary had no right of retention of the same.

5. It was specifically pleaded the above contention that the disputed property was not in the Khas possession of Gopeswar on the said relevant date, but was in the possession of the lessee, Mir Tajen Ali, even though his lease had expired. The Revenue Officer overruled the State''s objections and, thereupon, two appeals were taken by the State to the appellate Tribunal under the law, namely, appeals Nos. 362 and 363 of 1959.

6. On the arguments, made before him, and, on the materials, then on record, the learned Judge of the appellate Tribunal felt that, before the matter could be disposed of, it was necessary to find out (1) whether the disputed beel was a tank fishery under the above Act and (2) whether the lessee of ex-lessee, Mir Tanjen Ali, was holding over according to law. Upon that view, he remanded the matter to the Revenue Officer for further consideration in the light of certain directions, given by him in his judgment.

7. From the appellate judgment, the present opposite party Gopeswar, the intermediary, took the matter of this Court in Civil Revision Case No. 370 of 1960. The Rule, however, was ultimately discharged with some observations, made by this Court in its judgment, and the matter, accordingly, went back to the Revenue Officer for his findings on the two questions, (1) whether the disputed beel was a tank fishery within the meaning of the Act and, (2) whether the lessee of ex-lessee, Mir Tajen Ali was holding over or Gopeswar was in possession of the same. The Revenue Officer, on this occasion, also, found both the points in favour of the opposite party, Gopeswar, and in his view, the disputed property was a tank fishery under the Act and the ex-lessee, Mr. Tajen Ali was so holding over according to law. He, however, found that the actual possession was still with Mir. Tajen Ali, who had not parted with the same. Upon these findings, the records, this time too, were, again, made in favour of the intermediary Gopeswar, with a rider that Mir Tajen Ali was in "Jore Dakhal" or "Jabar Dakhal". By this decision of the learned Revenue Officer, both the parties felt aggrieved, - the State, by reason of his decision that Gopeswar had the right of retention under the law and was entitled to the property, and Gopeswar by the entry "Jabar Dakhal" or "Jore Dakahal" in favour of Mir Tajen Ali, - and both parties took appeals to the lower appellate Tribunal, the State''s appeals being Nos. 1 and 2 and the opposite party''s appeals being Nos. 3 and 4 of 1962.

8. The learned appellate officer, on this occasion, agreed with the learned Revenue Officer on house findings that the disputed property was a tank fishery and, secondly, that Mir Tanjan Ali was not holding over according to law. He however,

further held that, in the circumstances, the property must be deemed to be in Gopeswar''s possession.

9. Upon the above view, the learned appellate officer dismissed the State''s appeals Nos. 1 and 2 and allowed Gopeswar''s appeals Nos. 3 and 4, directing deletion of the entry "Jore Dakhal" or "Jabar Dakhal" by Mir Tanjen Ali. The State has now come up in revision and obtained the present Rules against the adverse decision against it in the above four appeals.

10. On the materials on record and on the findings of fact, made by the two Tribunals below, the points, decided by them, cannot be attacked in this Court, and those findings, namely, about possession and about the nature of the property, have to be accepted.

11. But Mr. Dutt, arguing these Rules in favour of the Petitioner State, raised a very interesting and important question, namely, that, even if it was a tank fishery and even conceding other points in favour of the opposite party, in view of the proviso to Sub-section (2) of Section 6 of the West Bengal Estates Acquisition Act, the right of retention cannot be claimed by the intermediary Gopeswar, but the right of retention, if any, would be with the lessee or ex-lessee, Mir Tanjen Ali, on terms, contemplated in the said proviso. The whole of this argument rested, practically, on the two words "immediately before", as used in the said proviso with regarded to the lease, under which the property was held at or about the time of vesting in the State. On the words of the proviso, as they stand, it may be a matter of some doubt whether the lease, contemplated or spoken of in the said proviso, would be a lease by the intermediary or a lease in favour of the intermediary. That point, however, appears to be concluded in favour of the former view by the Bench decision of this Court, reported in (1) The Reliance Development and Engineering Limited v. The Corporation of Calcutta, 61 CWN 533, and, for our present purpose, and, in the view, which we are taking, it is not necessary to examine the said decision or to say anything more on that point. We will assume, for purposes of this case, that the lease, spoken of by the proviso, would be a lease by the intermediary in favour of another person, or, in other words, that the lease would refer to the lease of Mir Tajen Ali in the instant case, provided it can satisfy the other particulars or requirements in that behalf or in the matter of the description, contemplated by the proviso. Upon this point, Mr. Dutt argues that the words "immediately before" would be fully and sufficiently satisfied with regard to this lease, as it expired only with the expiry of the 31st of Chaitra, 1361 B.S., which, normally or in the normal sense, would immediately precede the date or moment of vesting, that is, the beginning of the 1st of Baisakh, 1362 B.S. Prima facie, this argument has a great attraction and seems to be of considerable force. But, on a closer examination of the matter in the light of the statute in question, the availability or validity of this argument, so far as the disputed proviso is concerned, has to be ruled out.

12. Indeed, that was the view, which was taken by our learned brother, P.B. Mukharji, J. in the decision of this Court, reported in (2) Sankar Prosad Mukherjee v. State of West Bengal, 63 CWN 620, and although it may be argued that, in the said decision, an apparently strained interpretation was put on the expression "immediately before", somewhat different from its normal construction, and it was, apparently, stretched in favour of the intermediary and against the lessee, whose lease under him was expiring just a moment prior to the moment of vesting, it will appear pretty clear, on an examination of the reasons, given by our learned brother, that, having regard to the content and the scheme of the disputed proviso and its intention, no other view can be taken in the matter.

13. As a matter of fact, the said decision of our learned brother has been affirmed by the Appellate Bench in the appeal, taken from that decision, namely, (3) First Misc. Appeal No. 366 of 1959, and the reasons, given by our learned brother, were closely examined and scrutinized by the said Appellate Bench in all their details and were ultimately approved upon the view that, in the circumstances, no other construction was possible on the said expression or the said two words, "immediately before", and used in the above proviso.

14. Having considered the matter from all possible points of view, we are in full agreement with the view, expressed in the above decisions. We may add, further, that, in support of the said view, an additional reason may be given, remembering that the same words appeared in the original proviso, or, the proviso, as it originality stood before its amendment, and, under its terms, the person concerned would continue to be a lessee under the State on the same terms, on which he was holding the property under the lease, immediately before the date of vesting. It cannot be disputed that, of the terms of a lease, the period is an important one, and, if the period actually expired before the vesting, however "immediately before" the same, the lease could not be continued after the vesting "on the same, terms as before or immediately before" - to quote the relevant pat of the statute, - and thus the proviso in question would have been unworkable. That sufficiently demonstrates the futility of the argument to the contrary and supports the view that the words "immediately before" or other connected or relevant words, if any, in the disputed proviso its amendment, could not have carried any meaning except that, given to them in the above two decisions of this Court, and the amendment in question contains no unequivocal or sufficient indication of any change in that respect and, in the circumstances, particularly when such change, if any, would affect substantive or vested rights by transferring the right of retention from one class or category of persons, who had the legal right at the time, to another, who were no better than trespassers no such change of intention should be imputed to the Legislature or inferred by implication.

15. Upon the grounds, given by our learned brothers in the above decisions and upon the above new ground, we would hold that the interpretation, put by this

Court on the said expression "immediately before" and connected or relevant expression, if any, in the proviso in question, in 63 CWN 620, (supra), and affirmed in the First Misc. Appeal No. 366 of 1959, cannot but be accepted. We, accordingly, respectfully agree with the said decisions on the point.

16. In the above, we would overrule the new submission made by Mr. Dutt, in support of this Rule, and it would be unnecessary to go into any other question in these proceedings. The Rules, accordingly, will fail and they will be discharged.

There will be no order for costs in any of these Rules.

Let the records go down as quickly as possible.

Gupta, J.

17. I agree.