Prafulla Bala Debi and Another Vs State of West Bengal and Others

Court: Calcutta High Court

Date of Decision: April 9, 1976

Acts Referred: West Bengal Estates Acquisition Act, 1953 â€" Section 10(2)

Citation: 80 CWN 544

Hon'ble Judges: S.K. Datta, J

Bench: Single Bench

Advocate: Sakti Nath Mukherjee and Probodh Ranjan Das, for the Appellant;P.K. Sen and Prativa Banerjee and Dilip Kumar Bose for the Respondents 2(a) (b) (c), for the Respondent

Final Decision: Allowed

Judgement

S.K. Datta, J.
The plaintiffs'' case is that beels containing an area of 15.92 acres situated in Mouja Palashi P. S. Dhanikhali District

Hooghly, comprised in C. S. Dags 398 and 1800 -- Nuruda Beel and 537 and 1967 -- Bamandaha Beel Khatian 253 were held under Patni from

Burdwan Raj by Peary Mohan Mukherjee. Those beels were settled by Chandra Nath Mukherjee, only heir of Peary Mohan, to Abinash

Chandra Sarkar with banks and subsoil rights on basis of a registered kabuliyat dated January 8, 1946 at an annual rental of Rs. 96.50 Abinash in

his turn settled jalkar right therein to Kali Chandra Saha on Agrahayan 13, 1353 B. S. (November 29, 1946) for a period of ten years at an annual

rental of Rs. 200/-Abinash sold his 2/3 interest in the said property to the plaintiff by registered deed on September 25, 1956. Remaining l/3rd

interest therein was sold by Abinash to Sankar Bose who by Kobala dated December 8, 1958 sold the same to the plaintiffs. They thereby

became the full owner of the said property and had been in possession thereof on making various improvements thereto. With the enforcement of

the West Begal Estates Acquisition Act, 1953, the interests superior to that of Abinash vested in the State while Abinash became a tenant under

the State. Notices u/s 10(2) of the said Act was issued and it was held by the Additional Collector of Hooghly by order dated June 1, 1957 in

Case No. XIII/42/56 that the interest of the Mukherjees had vested in the State and Abinash was to be recognised as a tenant under the State and

rents were in fact realised from the plaintiffs. The plaintiffs filed Case No. 19 u/s 44(2a) of the Act but the S.E.O. by his order dated February 4,

196C erroneously came to finding that Abinash was an intermediary under the Act and his interest vested in the State. The plaintiffs contended that

Abinash became a tenant under the State in occupation of the property and as the order referred to above cast a cloud on their title to the

property, they instituted a suit against the State on notice u/s 80 on November 30, 1960 on the above allegations and contentions praying for a

declaration of their title to the said property on the finding that the entries of the name of Kali Charan as tenant under Mukherjees in the revisional

settlement in respect thereof were erroneous and without basis and also for injunction restraining the State from laying any claim to khas possession

of the property or from settling the property to others,

2. State of West Bengal contested the suit by filing a written statement contending that the suit property had vested in the State and the alleged

purchases being after vesting, conferred no interest in the plaintiffs. Further none of the interested parties like Abinash, Mukherjees or Kalicharan

filed any return u/s 6. The State was recorded to be in possession in Case No. 19 of Mouza Palashi u/s 44(2a) as it had taken possession of the

properties u/s 10(2). It was stated that the revisional record of right was not erroneous and plaintiffs'' possession of the property was disputed. It

was accordingly submitted that the suit should be dismissed.

3. Abinash filed a written statement asserting his title to the property and contending that the kobalas relied on by the plaintiffs were bogus and

malafide transaction. It appears that Abinash did not appear to contest the suit.

4. On a trial on evidence, the learned Munsif held that Abinash''s Interest was not that of an intermediary but of non-agricultural tenant and such

interest was not liable to be vested. Accordingly his interest in the beels did not vest in the State but subsisted after coming into operation of the

West Bengal Estates Acquitition Act, 1953. It was further found that the beels were made khas on the expiry of the lease to Kalicharan. The

plaintiffs in the circumstances acquired title to the disputed beels by their purchase and got khas possession thereof. It was further held that the

case of the State taking possession of the beels was not correct. The suit was accordingly decreed.

5. On appeal, it was held that the principle purpose of the lease to Abinash was for rearing fish and accordingly Abinash was not a non agricultural

tenant without any settlement of land, It was further held that as Kalicharan was admittedly in possession of the beels that is the tank fishery in

Jalkar right on the date of vesting, under proviso to Section 6(2) of the said Act, Kalicharan was to be deemed to be holding the tank fishery under

the State on the same terms and conditions as immediately before such vesting. Accordingly Abinash''s interest was wiped out and Kalicharan

became a direct tenant under the State. Further if Abinash was a non-agricultural tenant, Kalicharan would be an non-agricultural under tenant, a

status unknown in the West Bengal Estates Acquisition Act, 1953. For these reasons the appeal was allowed and the suit was dismissed. This

appeal is against this decision.

6. The real point in controversy is the determination of the nature of the grant to Abinash by the Mukherjees. There is no dispute that settlement

was made on the basis of the Kabuliyat Ext. 13. To be a non-agricultural tenant under the said Act, the settlement must be under an intermediary in

respect of the land and not merely the right of rearing and catching fish without any right in the subsoil and the banks of the tanks concerned, as

definition in section 2(k) of the Act indicates, as also held in the The State of West Bengal Vs. Shebaits of Iswar Sri Saradia Thakurani and

Others, . The settlement here was as its terms provide, in respect of the jalkar with the banks of the beels for rearing and catching fish without any

limit of time and the only right reserved by the Mukherjee intermediary was in respect of minerals if found in the settled jalkar or lands underneath.

No right of re-entry or provision for determination of the settlement was reserved and the only condition, to which the settlement was subject was

the right of irrigation of other raiyats from the beels for agricultural purposes. This settlement, which was indisputably accepted and acted upon,

appears in the context of the circumstances to be a settlement of the lands of comprising the beels with banks and subsoil with the right of rearing

and catching fish. Accordingly Abinash''s interest in the disputed beels was that of a non-agricultural tenant. As was held in Shibsankar Nandy Vs.

Prabartak Sangha and Others, non-agricultural tenant of whatever degree is excepted from the definition of ""intermediary"" under the said Act. On

the above authority which was again followed in successive decisions of this Court in Fakir Chandra v. Pandit Shri Lakshmi Kant, 75 C.W.N. 952

(DB) and Ahindra Nath Mukhopadhyaya and Others Vs. Manmatha Nath Kurmi and Others, it must be held that Abinash''s interest being that of

a non-agricultural tenant under the Act, such interest did not vest in the State as contended by the appellant.

7. The contention of the respondent State that the under-tenant Kalicharan on the date vesting was to be deemed to be tenant under the State in

respect of the tank fishery, in view of the above finding, is also misconceived. Undoubtedly the beels or reservoir of water with the subsoil and

banks are tank fishery as contemplated under explanation to section 6(1) clause (e). Under the proviso to sub section (2) of section 6, if the tank

fishery an intermediary was entitled to retain was held immediately before the date of vesting under a lease, such lease shall be deemed to have

been given by the State Government. As a result, the interest of the intermediary in the tank fishery is wiped out and the lessee of the intermediary

becomes a lessee of the State from the date of vesting. This provision applies to an intermediary, as its terms indicate, and has no application to

non-agricultural tenant of such tank, as his interest does not vest in the State. The interest of the under-tenant under the said non-agricultural tenant

would continue in the circumstances subject to the terms of his lease. The appellate Court was thus in error in thinking that the status of under-

tenant under the non-agricultural tenant is unknown in the West Bengal Estates Acquisition Act, 1953, as the Act is not concerned with the non-

agricultural land unless the tenant thereof is also an intermediary which is not the case before us.

8. As to possession, it is obvious that such possession was symbolic and could not deprive the non-agricultural tenant of his settled "tank fishery"

which did not vest in the State. For all these reasons the appeal succeeds and is allowed. The judgment and decree under appeal are set aside and

those of the trial court, for reasons indicated above, are restored. There will be no order for costs in the appeal in the circumstances.