

(1977) 03 CAL CK 0016

Calcutta High Court

Case No: None

Ishan Chandra Ghatak

APPELLANT

Vs

Sasadhar Maity

RESPONDENT

Date of Decision: March 9, 1977**Acts Referred:**

- Constitution of India, 1950 - Article 227
- West Bengal Land Reforms Act, 1955 - Section 2, 8

Citation: 82 CWN 182**Hon'ble Judges:** R.N. Bhattacharyya, J**Bench:** Single Bench**Advocate:** Bankim Chandra Banerjee and Prasanta Kumar Banerjee, for the Appellant; Debaprosad Adhikary, for the Respondent**Final Decision:** Allowed

Judgement

R.N. Bhattacharyya, J.

By the instant application under Article 227 of the Constitution of India the petitioner challenges the legality and propriety of the order passed by the additional District Judge, Midnapore, the appellate authority, in Misc. Appeal No. 80 of 1979 dismissing an appeal prepared by the petitioner against the order of the learned Munsif in a Miscellaneous Case stated u/s 8 of the West Bengal Land Reforms Act, 1955. The Additional Judge confirmed the decision of the learned Munsiff who rejected the application filed by the petitioner to preempt the land being a portion or plot no. (sic) in Mouza Kalicharanpur within Than Nand gram in the district of Midnapore, sold by one Trairakya Nath Maity. The present application is being opposed by the opposite party purchaser. Briefly stated, the facts not in dispute are that Trairakya Maity was a co-sharer rayat in respect of a Jama consisting of several lands including Dag No. 579, already mentioned. He sold his share of land in plot no. 579 by a kobala dated 12th April, 1973 to the opposite party, Sasadhar Maity. Thereafter, the present petitioner filed an application u/s 8 of the West Bengal Land

Reforms Act, 1955 (hereinafter referred to as the Act) for getting advantage of preemption on the ground that he has land adjoining the plot of land, a portion or which was sold by Trailakya. The application was opposed by the purchaser and ultimately the learned Munsif found that the pre-emptor, I mean, the petitioner, having no land contiguous to the land sold, had no right to pre-empt. According to the learned Munsif and the learned Additional District Judge, the petitioner having land to the north of plot no. 579 intervened by a portion of the said plot on the northern side held by a different co-sharer of the holding had no right to pre-empt the portion of land which was on the southern side of plot no. 579.

2. Mr. Banerjee, learned Advocate appearing on behalf of the petitioner contends mainly on the ground that the petitioner has the right to preempt u/s 8 of the Act being a person possessing land adjoining the plot of land out of which a portion was sold to a third party purchaser having no land near about the plot no. 579.

3. Mr. Adhikary, however has contended before me that section 8 is not applicable to a case where the entire share of a raiyat in respect of the holding is sold out. According to him, only in a case when a portion of the land is sold by a raiyat being the owner of the entire holding, the person having adjoining land can claim pre-emption. It has also been contended by Mr. Adhikary that in the present case as the portion of the land which was sold was not contiguous to the land belonging to the petitioner, there can be no claim for pre-emption.

4. According to the definition of "holding" in section 2 of the Act we get that "holding" means the land or lands held by a raiyat and treated as a unit for assessment of revenue. The definition clearly indicates that the holding may include one piece of land or one dag or it may include several plots of land. The holding is no doubt a unit for assessment of revenue. It cannot, therefore, be stated that in all cases "holding" means one particular plot of land or a single plot of land. Coming to section 8 of the Act, we find that if a portion or share of a holding of a raiyat is transferred to any person other than a co-sharer in the holding, any cosharer raiyat of the holding or any raiyat possessing land adjoining such holding may apply for transfer of the said portion or share of the holding to him, of course, subject to certain conditions, as mentioned in the said section 8. The section clearly says that if a raiyat transfers a portion or share of a particular holding, then a co-sharer of the holding or a person having land adjoining such holding may claim pre-emption. This section goes contrary to the submission of Mr. Adhikary when he says that the holding referred to in section 8 must be of only one raiyat, that is to say there should be no other co-sharer in the holding. Moreover, the words "a portion or share" of a holding indicate that when a raiyat sells his entire share or portion of his interest, a co-sharer in the holding or a person having adjoining land may claim preemption. Therefore I cannot accept the contention that the holding referred to in section 8 must be a holding belonging to only one person alone or that the entire share of the raiyat must be transferred for bringing a case u/s 8 of the Act.

5. I will now deal with the main contention raised by Mr. Banerjee. It appears from the judgment of the learned Munsif and that of the learned Additional District Judge that they refused the claim of the petitioner on the ground that the petitioner's land and the land sold, as mentioned in the kobala was intervened by some portion of land in plot no. 579 held by another co-sharer and, therefore according to them, the land of the petitioner was not adjoining. I am afraid, there has been a wrong interpretation of section 8 of the Act. As I have already indicated, with reference to the definition of the word "holding", it may include only one plot of land or there may be cases where several plots of lands constitute a holding. In the present case the relevant R.S. Khatian has been marked exhibit, and it appears that the plot no. 579 and several other plots of land constitute the holding of which there are several co-sharers including Trailakya Maity. When Trailakya Maity has sold his interest in the land in Dag No. 579 to a person other than a co-sharer having no land adjoining the petitioner, I find, has a right to claim pre-emption because admittedly he has plot nos. 580 and 581 just adjoining the plot no. 579. Plot no. 579 is only a part of the holding out of which the land in question was sold by a co-sharer. In section 8 there is no qualifying word to "holding". Therefore, it must be held that the petitioner having land just to the north of plot no. 579, and thus possessing land adjoining the holding out of which the land was sold, has every right to claim pre-emption. I am afraid the proper meaning of the word "holding" was not appreciated either by the learned Additional District Judge or by the learned Munsif. The petitioner should have been allowed the prayer he made.

6. In the result, the application succeeds and the Rule is hereby made absolute. The judgments of the authorities complained against are set aside. The application filed u/s 8 of the Act stands allowed and the relief he claimed is hereby granted. In the circumstances, I pass no order as to costs. Let the records go down as early as possible.