(1982) 02 CAL CK 0032

Calcutta High Court

Case No: None

Gita Nandy		APPELLANT
	Vs	
Satya Kinkar Patra and Others		RESPONDENT

Date of Decision: Feb. 19, 1982

Acts Referred:

- Limitation Act, 1963 - Section 14
- WEST BENGAL LAND REFORMS ACT, 1955 - Section 8, 9

Citation: 86 CWN 655

Hon'ble Judges: P. K. Banerjee, J

Bench: Single Bench

Advocate: Saktinath Mukherjee and Tarun Chatterjee, for the Appellant;R. K. Banerjee, Samaresh Banerjee and J. Bhattacharjee, for the Respondent

Judgement

P. K. Banerjee, J.

This Rule is directed against an order passed in a proceeding initiated u/s 8 of the West Bengal Land Reforms Act. The applicant Sm. Gita Nandi filed an application on 19th August 1971, after she un-successfully filed an application u/s 24 of the Non-agricultural Tenancy Act came up to this Court and it was held ultimately that the West Bengal Non-agricultural Tenancy Act does not apply in respect of the land sought to be pre-empted.

2. We are concerned with a sale deed by which one Renuka sold the land to Satya Kinkar Patra on 17.11.66 at a price of Rs. 1500/-. The plot in question is numbered as 794 of C. S. Khatian No. 1813. The interest of Abdul Based in the said plot devolved on Amir Hossain and Asasul Hossain. This Hossain brothers sold the whole of the plot to Nandalal Das on 19.9.60. The applicant Gita Nandi purchased a portion of plot No. 794 and other lands from Nandalal Das and others and built a pucca structure on the said portion. Nandalal made a gift of plot No. 794 to one Renuka Dasi. Renuka as we have already said sold to Satya Kinkar Patra on 17.11.66. On

18.11.66 Satya Kinkar Patra sold away the land again to Md. Jakeria at a price of Rs. 2000/- whereupon Sm. Gita Nandi filed Mis. Case u/s 24 of the West Bengal Non-agricultural Tenancy Act and lost upto High Court. After the rule was discharged on 2nd August, 1971 in the present application u/s 8 of the West Bengal Land Reforms Act was filed before the S.L.R.O. being Misc. Case No. 18 of 1971. In the meantime on 23rd March, 1972 West Bengal Ordinance IX of 1972 was promulgated. On 4th May, 1972 the West Bengal Land Reforms (Amendment) Act, 1972 was passed. On 25th August, 1972 an application was filed before the Revenue Officer for transferring the case to the learned Munsif. On 28th August, 1975 the learned Munsif heard the matter and rejected the application u/s 8 of the Land Reforms Act as barred by limitation as also on the ground that the petitioner is not a co-sharer of the land transferred. An appeal was taken and dismissed. The appellate as well as the learned Munsif''s order.

3.Before I refer to the argument advanced by the parties it is convenient for me to set out the relevant provision of the amendment of the West Bengal Land Reforms Act as amended being Act XII of 1972. Prior to the said Amendment Act, West Bengal Ordinance IX of 1972 was enacted. In the Ordinance the relevant portion which sought to be amended is that be section 8 of the amending order section 9 of the Parent Act was amended and it was provided under sub-section (6) of section 9 that for the word "Munsif" the word "District Judge" shall be substituted or in the other words in the amended section 9 every appeal pending before the Revenue authority shall stand transferred to the learned Munsif has now revised by the amendment and shall be dealt with by the Additional District Magistrate. Under sub section (7) it has been further provided that the Appeal pending before on Additional Magistrate shall stand transferred to and be disposed of by the District Judge. The amendment Act however made some differences and sought to be amended section 8 of the Act by section 7 of the Amending Act. Un-amended section 8 gave the power to the Revenue Officer to hear out the application for pre-emption. By the amendment this power was taken away and the learned Munsif having territorial jurisdiction was given the power to dispose of the mater. Section 8 of the parent Act was further amended by addition of sub-section (3) which is as follows :-
(3). Every application pending before a revenue Officer at the commencement of section 7 of the West Bengal Land Reforms (Amendment) Act, 1972, shall on such commencement, stand transferred to, and be disposed of by the Munsif if having jurisdiction in relation to the area in which the land is situated and on such transfer every such application shall be dealt with from the state at which it was so transferred and shall be disposed of in accordance with the provisions of this Act, as amended by the provisions of this Act, as amended by the West Bengal Reforms (Amendment) Act, 1972".

4. On the basis of the facts and statutory amendment Mr. Saktinath Mukherjee on behalf of the petitioner contended that the application filed on 19-8-71 cannot be

said to be non-est in view of section 8(2) read with section 8(3) read with section 8(3) as amended by the Amendment Act of 1972. it is further argued by Mr. Mukherjee that the finding of the Court below that the petitioner is not a co-sharer is not tenable in law. In the facts of the present case thirdly it is argued by Mr. Mukherjee that he application is not barred by limitation in view of the fact that the petitioner pre-emptor was not a notified co-sharer. It is further argued that the plea of non-agricultural land has taken by the opposite party because of the bar of res-judicata.

5. Mr. Ranjit Kumar Banerjee in reply contended that section 28(2) protects only the proceeding pending or started under the Ordinance. In the present case the proceeding was started after the Ordinance. In the present case the proceeding was started after the Ordinance came into force and therefore the application cannot be entertained.

6. The first point therefore arises whether the application for pre-emption filed on 19th August, 1971 u/s 8 of the West Bengal Land Reforms Act before the Sub-Divisional Land Reforms Officer is maintainable or no. Mr. Mukherjee contended that it is maintainable in view of the West Bengal Land Reforms (Amendment) Act, 1972, in particular, sections 1(2), 7 and 28(2) of the Act, while Mr. Banerjee appearing for the opposite party contended that the application filed u/s 8 of the Act being not a pending proceeding on the date of commencement of the amending Act is not protected. In my opinion, Mr. Banerjee''s contention cannot be accepted to be correct. I have already quoted the relevant sections hereinbefore. It will suffice for me to say that (under section 1(2) of the Act, section 7 of the amending Act came into force on 15th of February, 1971. u/s 28(2) of the Act it is quite clear that at the time when this Act was enforced retrospectively from 15th of February, 1971. the proceeding which was started on 19.8.1971 u/s 28(2) of the amending Act.). u/s 7(3) of the amending Act eh application made on 19th of August 1971 is deemed to be pending when the amending Act came into force on 15th February, 1971. Therefore, in my opinion, the application as filed is maintainable. By amendment of 1972 the forum for disposal of the application has been changed and which being retrospective amendment, the application filed before the Sub-Divisional Land Reforms Officer must be disposed of by the learned Munsif, as contained in sub-section (7) of the amending Act has been inserted in the main Act retrospectively from 15th of February, 1971. Therefore, in my opinion, the application is maintainable. Mr. Banerjee, however, contended that section 28(2) of the Act will not be applicable, inasmuch as, when the specific provision has been made, it will prevail over the general provision. It must be remembered that (this amending Act does not repeal the substantive right of pre-emption, but only changes the forum where the pre-emption application will be disposed of). In the Ordinance which proceeded the Act the learned Munsif had no power at all excepting the appellate power which was given to the Additional District Magistrate in the Ordinance. In section 8 of the Ordinance by which section 9 of the West

Bengal land Reforms Act, 1955 was amended and in sub-section (6), for the word "Munsif" the words "Additional District Magistrate" were substituted that means, the power of hearing the appeal was vested in the Additional district magistrate from the order passed u/s 8 of the main Act. It appears to me that (the substantive right of pre-emption has not at all been affected by the amendment but only the forum for making application and the appellate authority has been changed.) In place of J.L.R.O. the learned Munsif having territorial jurisdiction becomes the authority to decide the matter coming u/s 8 of the Act and the appellate authority u/s 9 has been stated to be District Judge having jurisdiction in relation to the area in which the land is situate. Therefore, in my opinion, (the application which is filed before the Sub-Divisional Land Reforms Officer, will be deemed to have been filed before the learned Munsif who had been authorized to dispose of the matter retrospectively from 15th of February, 1971).

7. The second question is one of limitation. The application was filed on 19th of August, 1971 for pre-emption application u/s 24 of the West Bengal Non-Agricultural Tenancy Act and agitated the question till it was set at rest by the order passed by this Court in Civil Revision Case No. 16 of 1971 disposed of on 2nd of August, 1971, holding, inter alia, that the land is not non-agricultural land and therefore, section 24 of the West Bengal Non-Agricultural Tenancy Act is not maintainable. Thereupon an application u/s 8 of the Land Reforms Act was filed on 19th of August, 1971 along with an application u/s 14 of the Limitation Act. It is argued by Mr. Banerjee that in the facts and circumstances of this case section 14 of the Limitation Act, 1963 is not applicable. He referred to several decisions viz. Rabindra Nath Samuel Dawson Vs. Sivakasi and Others, . Mr. Banerjee argued that section 14 of the Limitation Act is not applicable, inasmuch as, section 14 only applies in cases where application or any matter has been rejected initially on the ground of jurisdictional error or lack of jurisdiction. Mr. Banerjee further contended that section 14 of the Limitation Act incorporates the word "entertain". The word "entertain" can only mean entertaining the application at the initial stage and cannot mean the matter which has been disposed of on merits. These decisions, as hereinbefore referred to, support Mr. Banerjee''s views in a case reported in Hariprosad Roy Vs. Babulal Chaukhani, it has been held by a Division Bench of this court through R. C. Mitter, J. that "in our view that section 14(2) of the Limitation Act, 1908 is only applicable where there is initial want or jurisdiction. In cases reported in AIR 1964 Cal. 204 and Rabindra Nath Samuel Dawson Vs. Sivakasi and Others, it has been held that "a person who has resisted to the objection regarding non-joinder of parties at the initial stage and also at the revisional stage and run the risk of proceeding with the suit without impleading the necessary parties, cannot be said to act in good faith because he cannot be said to have acted with due care and attention. Consequently, such person will not be entitled to benefit of section 14 of the Limitation Act, 1963". In a case reported in 42 C. W. N. 1051 at page 1053 Bijon Kumar Mookerjee, J, inter alia, held that section 14(1) of the Limitation Act will not apply unless the Court is unable

to entertain revision petition for defect of jurisdiction or any cause of a like nature. It is not necessary for me to refer to other decisions relied upon by Mr. Banerjee on this point. In my opinion, Mr. Banerjee''s contention is that section 14 (1) of the Act is not applicable in the present case, inasmuch as, the petitioner persisted on the application u/s 24 of the Non-agricultural Tenancy Act from the very beginning inspite of objections being taken by the other side about non maintainability of the same, came to this Court and failed on the merits and cannot now turn round and say that the was proceeding with the said application with due diligence and care which is since qua non for the benefit u/s 14 of the Limitation Act and further more, in the earlier proceedings u/s 24 of the West Bengal Non-Agricultural Tenancy Act the Tribunal did not reject the application on the ground or entertainability of the application. To this argument of Mr. Banerjee, Mr. Mukherjee on behalf of the petitioner contended that in view of one Division Bench judgment reported in 1975(2) Cal LJ 436 which was approved in the case reported in 81 C.W.N. 580 (the bar of limitation will not stand in the way as the petitioners were not notified co-sharers and no notice was served on them). In view of the Division Bench judgment as hereinbefore stated, which considered the effect of section 137 of the present Limitation Act on the proceeding, by which I am bound, I must hold that the application u/s 8 of the West Bengal Land Reforms Act is not barred by Limitation.

8. The last question is whether the petitioner is co-sharer of the holding. As hereinbefore stated, Renuka sold the property to Satya Kinkar on 17th of November, 1966 and Renuka got the property by way of gift from Nandalal on 15th May, 1966. It appears, after vesting of the estate under the West Bengal Estates Acquisition Act Hossain Brothers sold their right, title and interest in the property jointly to one Nandalal Das. Nandalal sold a portion as also other lands belonging to him to the petitioner. Nandalal made a gift of a demarcated portion of plot no. 794 to Renuka on 16th May, 1966. Renuka in turn sold the demarcated portion of the property measuring .050 out of plot no. 794 to Satya Kinkar which was gifted to her by Nandala and others. Satya Kinkar in turn sold to Mohammed Zakaria on 18th of November, 1966 the same demarcated property which was gifted to Renuka by Nandalal and others. It must be stated that the property, which was gifted to Renuka was the demarcated portion, out of a large plot being Plot no. 794 a demarcated portion of which was purchased by Gita Nandi on 22nd of October, 1965. It further appears from the record that C. S. Khatian no. 1813 was sub-divided by two Khanda Khatians being nos. 6211 and 6212 and admittedly these two brothers being the sons of Sk. Based, became direct tenants under the State in view of the principle laid down by the Special Bench as reported in Madan Mohan Ghosh and Others Vs. Sishu Bala Atta and Others, . Subsequent to that it was sold to Nandalal who made a gift on 15.5.1966 of a demarcated portion of Renuka even after Gita Nandy (present applicant) purchased the property on 22nd of October, 1965. It appears, however, that these questions were not at all considered by the trial Court. Whether the effect of sale of the demarcated portion which was gifted to

Renuka cannot still continue to be under the co-sharership of the holding. More so, when it is found that after Gita Nandi purchased the property including the portion of plot no. 794. the co-owners gifted some portion or the Plot no. 794 to Renuka only .050 acre which is demarcated portion only. By no stretch of imagination it can be said that Renuka on the basis of a gift of a particular demarcated portion becomes co-sharer with Nandalal in respect of other portions of which Nandalal and other and Gita nandi were the owners. It appears further that after vesting two Khanda khatians being nos. 6211 and 6212 were opened.

9. In view of this fact in the deed as evidenced it is found that the gift to Renuka was not in respect of any share in the holding or portion thereof but the demarcated portion as contained in the deed of gift and the plan attached to the deed. (Therefore on the face of it, it appears that the property or portion which was the subject-matter of the deed of gift by the co-owners of Plot No. 794 of Khatian No. 1813 after the purchase by Gita Nandy whose plan shows the portion she has purchased and there was no other co-sharer as both the co-sharer gave absolute right to Renuka the right, title and interest in the portion demarcated by the plan and stated in the schedule of the deed)

10. In that facts and circumstances, in my opinion, Gita Nandy cannot be said to be a co-sharer of any portion of the holding in so far as .050 acres of land of plot no. 794 is concerned because Renuka was not a co-sharer of the property having got by gift a demarcated portion with the other owners who made the gift. Naturally the property was purchased by Gita Nandy from the owners and the rest of the property minus.050 acres of land which was demarcated gifted to Renuka. Therefore, on the face of it, the application u/s 8 of the Land Reforms Act is not maintainable in view of the fact that Renuka was not a co-sharer of the holding nor the purchaser of apportion of share. In the holding from the co-sharers who transferred the land to the pre-emptee.

11. In that view of the matter, in my opinion, the application u/s 8 of the Land Reforms Act is liable to be rejected on the reason as hereinbefore stated.

12. The Rule is, therefore, discharged. There will be no order as to costs.