
(1984) 07 CAL CK 0024

Calcutta High Court

Case No: C.O. No. 3133 of 1983

Tarak Nath Gayen and Others

APPELLANT

Vs

Pravat Kumar Bej and Others

RESPONDENT

Date of Decision: July 4, 1984

Acts Referred:

- West Bengal Non-Agricultural Tenancy Act, 1949 - Section 2(4), 24

Citation: 88 CWN 1030

Hon'ble Judges: P.K. Majumdar, J; Anil Kr. Sen, J

Bench: Division Bench

Advocate: Sudhis Das Gupta and Nabaroon Karak, for the Appellant; S.N. Mukherjee and Prabhat Kumar Samanta, for the Respondent

Final Decision: Dismissed

Judgement

Anil Kumar Sen, J.

An application for pre-emption u/s 24 of the West Bengal Non-Agricultural Tenancy Act having been allowed concurrently by the two courts below the pre-emptee has preferred the present revisional application. The point raised in this revisional application is a short one. It is not in dispute that plot 272 of khatian no 502 and plots nos. 270 and 271 of khatian no. 105 Mouza Patnabazar in the town of Midnapore belonged to two brothers Prabhat and Sanat in equal shares. On April 6, 1976 Sanat sold his undivided one half share in the said plots along with the building standing thereon to the respondents nos. 1 to 3 in the application for pre-emption (the petitioner before this Court). That transfer was registered on June 26, 1976 and a notice of such transfer was served at the instance of the purchaser upon Prabhat on June 14, 1976. This led Prabhat to file an application for pre-emption u/s 24 of the West Bengal Non-agricultural Tenancy Act out of which the present revisional application arises.

2. To the application for pre-emption there was no substantial defence. The only defence that was sought to be placed at the trial was that the sale in favour of the pre-emptees having been effected with the alleged consent of Prabhat the pre-emptor Prabhat was estopped from enforcing his right of pre-emption. This objection failed in both the courts below on two grounds. In the first place, the tribunals below held that the pre-emptees could not substantiate their case of Prabhat consenting to his brother's transfer in favour of the pre-emptees. The other ground on which such an objection was overruled that there can arise no question of any estoppel by any conduct prior to the transfer because the right of pre-emption being inchoate could arise only upon transfer and on the terms thereof. Reliance was placed upon a single Bench decision of this Court in the case of *Asit Ranjan Datta v. Traces-war Sarkar and others*, 74 C.W.N. 279.

3. In the present revisional application by the pre-emptees Mr. Das Gupta appearing in support thereof has raised two new points. He has first contended that the right of pre-emption u/s 24 of the West Bengal Non-Agricultural Tenancy Act, 1949 is limited to non-agricultural lands alone and cannot extend to cover land with structures or buildings standing thereon as in the present case. Secondly it has been contended by Mr. Das Gupta that since on the case made out by the pre-emptor in his application the property transferred is a dwelling house the right of pre-emption must be limited to the provisions of the Partition Act and as such any right of pre-emption under the West Bengal Non-Agricultural Tenancy Act 1949 must be deemed to have been ruled out. Both the points thus raised by Mr. Das Gupts have been strongly contested by Mr. Mukherjee appearing for the pre-emptor.

4. We have carefully considered both the points raised by Mr. Das Gupta and, in our view, there is little substance in either of these two points.

5. So far as the first point raised by Mr. Das Gupta is concerned, it is not correct to think that the right of pre-emption granted u/s 24 of the Non Agricultural Tenancy Act is limited to land and lands alone and cannot extend to cover the land with structures or buildings thereon. In the absence of any intention to the contrary either express or implied the legislature must be deemed to have used the term in the sense it is ordinarily understood in law. When we refer to Osborn's Legal Dictionary we find the land to be defined to mean "Comprehendeth any ground, soile or earth whatsover, it regally includeth also all castles houses and other buildings and also water (Coke)." In the present case the context instead of ruling out the aforesaid contention clearly indicates the other way. In section 2 (4) the term non-agricultural land has been defined to mean land used for purposes not connected with agriculture or horticulture, and includes any land which is held on lease for purposes not connected with agriculture or horticulture irrespective of whether it is used for any such purpose or not, but does not include "(a) a homestead to which the provisions of (the West Bengal Land Reforms Act, 1955), (West Bengal Act 10 of 1956) apply. "Clearly, therefore, the legislature meant

non-agricultural land to include land put to non-agricultural use including use by raising of structures and buildings. The very fact that homestead within the meaning of West Bengal Land Reforms Act is specifically excluded necessarily leads to the conclusion that all other homestead are included therein. Therefore, there is no escape from the conclusion that in section 24 the legislature in referring to non-agricultural land really means to cover land with structures or buildings set up by way of use for non-agricultural purposes. The first point raised by Mr. Das Gupta, therefore, has no substance and is over-ruled. We may point out that such was the view expressed by the learned Single Judge of this Court in the case of Shyamapada Bhattacharjee and others vs. Satya Gopal Majumdar 67 C.W.N. 599 which we do hereby approve. So far as the second point raised by Mr. Das Gupta is concerned. We may agree with him that on the case pleaded in the application for pre-emption it may appear that the preemptor could also claim pre-emption under the Partition Act. But, in our opinion, there is no justification for a conclusion that as because such pre-emption could be claimed under the provisions of the Partition Act, necessarily the right of pre-emption under the provisions of section 24 of the Non-Agricultural Tenancy Act, stands ruled out. Mr. Das Gupta may be right that the requirement of the two provisions may be materially different but that, in our opinion, is of no relevance. If, as in the present case, law confers right of pre-emption under both the statutes it is always a choice for the pre-emptor to choose in which way he would claim the pre-emption and exert his right. We find no merit in the contention of Mr. Das Gupta that when the preemptor could claim right of re-emption under the Partition Act, he is necessarily precluded from claiming preemption under the provisions of the West Bengal Non-Agricultural Tenancy Act. This contention of Mr. Das Gupta must fail. As both the points raised by Mr. Das Gupta fail the application fails and is dismissed. There will be no order as to costs.

Prabir Kumar Majumdar, J.

I agree.