

Nidhibala Mahato Vs Netai Chandra Mahato

Court: Calcutta High Court

Date of Decision: Feb. 16, 1990

Acts Referred: Constitution of India, 1950 " Article 227

West Bengal Estates Acquisition Act, 1953 " Section 4, 5, 5A

West Bengal Land Reforms (Third Amendment) Act, 1986 " Section 3A

West Bengal Land Reforms Act, 1955 " Section 1(3), 2(10), 2(7), 3, 3A

Citation: (1994) 2 ILR (Cal) 553

Hon'ble Judges: Sudhangshu Sekhar Ganguly, J

Bench: Single Bench

Advocate: Saumyabrata Mukherjee, for the Appellant; Bhaskar Ghosh, for the Respondent

Final Decision: Dismissed

Judgement

Sudhangshu Sekhar Ganguly, J.

The facts leading to the present applications under Article 227 of the Constitution of India are the

following:

The opposite parties Nos. 4 to 6 and Kenaram, the prodecessor of the opposite parties Nos. 1 to 3 purchased half of the disputed tank and its

embankments from the opposite party No. 7 by a registered deed dated May 12, 1975. The opposite party No. 7 having sold the remaining 1/8th

and 3/8th of the disputed property to the Petitioners in the two rules on May 26, 1975 and June 27, 1977, respectively; Kenaram and opposite

parties Nos. 4 to 6 started cases u/s 24 of the West Bengal Non-agricultural Tenancy Act for purchasing up the said shares by pre-emption. The

defence apart from others was that the disputed property formed part of an agricultural holding. The learned Munsif overruled the objection and

allowed the Misc. Cases holding that the disputed property appertained to a non-agricultural tenancy. The Appeals from the decision of the

learned Munsif were dismissed. Hence these revisional applications.

2. It is urged from the side of the Petitioners that the provisions of West Bengal Non-agricultural Tenancy Act cannot have any further application

to the facts of this case. It is pointed out that under the definition of "land" as per Section 2(7) of the West Bengal Land Reforms Act, as it stood

after the coming into effect of the West Bengal Land Reforms (Amendment) Act of 1972, tanks were specifically excluded. Therefore, a tank

could be considered as non-agricultural land.

3. The definition of "land", however, was changed by new Section 2(7) inserted by the West Bengal Land Reforms (Amendment) Act, 1981,

which has come into operation with retrospective effect from August 7, 1969. The new amended definition of "land" includes tanks. It is also

pointed out that under the provisions of the new Section 3A inserted by the West Bengal Land Reforms (Third Amendment) Act, 1986, which

came into force on May 12, 1989, with retrospective effect from September 9, 1980, Non-agricultural tenants have seized to exist and they have

been transformed into raiyats, presumably under the West Bengal Land Reforms Act. It is urged that in the circumstances stated the impugned

orders passed by the learned Munsif and as confirmed by the learned Appellate Court cannot be supported.

4. There is a lot of strength in this argument. Section 3A added to the West Bengal Land Reforms Act by the West Bengal Land Reforms

(Amendment) Act of 1981 sought to do away with the rights of all non-agricultural tenants and under-tenants under the West Bengal Non-

agricultural Tenancy Act, 1949, with effect from August 1969, subject to publication of a notification u/s 4 of the West Bengal Estates Acquisition

Act. It was held in *Ram Kissin Shaw Vs. Lachmonia Debi and Others*, that unless and until a valid notification u/s 4 of the West Bengal Estates

Acquisition Act was published mentioning the date from which the rights and interests of non-agricultural tenants and under-tenants would vest in

the State free from encumbrance, the non-agricultural tenancies would continue to subsist. In *Niranjan Khanra and Another Vs. Shyamal Kumar*

Mukherjee and Others, on the other hand, it was held that the definitions of "land" and "raiya" contained in Sections 2(7) and (10) and 3 of the

West Bengal Land Reforms Act substituted by the Amendment Act of 1981 would apply without fresh notification u/s 1(3) of the West Bengal

Land Reforms Act and that, as such, petitions u/s 24 of the West Bengal Non-agricultural Tenancy Act would no longer be maintainable.

Thereafter Section 3A of the West Bengal Land Reforms Act was amended. The old Section 3A which was added by the West Bengal Land

Reforms Act of 1981 made the provisions of Sections 4, 5 and 5A of the West Bengal Estates Acquisition Act, 1953, applicable to the case of

non-agricultural tenants and under-tenants. By the West Bengal Land Reforms Act (Third Amendment) Act of 1986 Section 4 of the West Bengal

Estates Acquisition Act was omitted from Section 3A. The decision in *Ram Kissin Shaw Vs. Lachmonia Debi and Others*, can no longer, therefore

affect the validity of Section 3A of the West Bengal Land Reforms Act as it stands in the statute book after the amendment.

5. Under the provisions of Section 3A the rights and interests of all non-agricultural tenants and under-tenants under the West Bengal. Non-

agricultural Tenancy Act, 1949, have vested in the State free from all encumbrances and the non-agricultural tenants and under-tenants in

possession and within the statutory limits were to be treated as raiyats.

6. It is urged from the side of the opposite parties that Section 63(2) of the West Bengal Land Reforms. Act will save the situation in this case.

Section 63(1) repeals provisions of the West Bengal. Non-agricultural Tenancy Act, 1949, as are repugnant to the provisions of the West Bengal

Land reforms Act with effect from the date of coming into force of the West Bengal Land Reforms (Amendment) Act of 1981, i.e., with effect

from August 7, 1969. Section 63(2) of the said Act, however, saves all proceedings pending on that day and it is provided that they would be

continued or disposed of without being influenced by the West Bengal Land Reforms (Amendment) Act of 1981. It appears, however, that it has

already been held in Niranjana Khanra's case (Supra) that Section 63 could become effective only after the publication of a notification as required

u/s 1(3) of the West Bengal Land Reforms Act. There is no indication from anywhere that such a notification has been published as yet. In that

view of the matter I am unable to hold that the present cases started u/s 24 of the West Bengal Non-agricultural Tenancy Act would survive the

coming into effect of the two Amendment Acts of 1981 and 1986.

7. The proper course in this case will be to pass an order as passed in Niranjana Khanra's case (Supra). In, exercise of the powers under Act. 227

of the Constitution the present two applications for pre-emption are transferred to the Court of the learned Munsif having territorial jurisdiction.

The learned Munsif is hereby directed to treat the same as applications u/s 8 of the West Bengal Land Reforms Act, 1955 and to dispose of the

same in accordance with the Act. The Respondents are hereby authorised to deposit the required amount u/s 8(1) of the West Bengal Land

Reforms Act when moving their applications before the learned Munsif. The learned Munsif will also consider whether the Respondents are entitled

to maintain their applications for pre-emption on the ground of being contiguous owners.

8. Send back the lower Court records to the Courts below at once along with copies of this order. The learned Munsif is hereby directed to

dispose of the pre-emption cases as early as possible and in any case within a period of four months from the date of arrival of the records at his

end. The evidence already on record--documentary as well as oral--shall be treated as evidence in the two cases and in view of the changed

circumstances, if the parties feel that they should adduce some fresh evidence in support of their respective cases, they should be permitted to do

that.

Rules made absolute remanded to trial Court to decide on merits as directed.