(1966) 09 CAL CK 0024

Calcutta High Court

Case No: None

Manindra Nath Mukherjee		APPELLANT
	Vs	
Nitai Chandra Hazra		RESPONDENT

Date of Decision: Sept. 28, 1966

Acts Referred:

- Transfer of Property Act, 1882 - Section 106

Citation: 71 CWN 278

Hon'ble Judges: R.N. Dutt, J

Bench: Single Bench

Advocate: Lala Hemanta Kumar and Sudhir Kumar Dutt, for the Appellant;Ranjit Kumar Banerjee, Harinarayan Mukherjee and Murari Mohan Dutt, for the Respondent

Final Decision: Dismissed

Judgement

R.N. Dutt, J.
The Defendant is the Appellant before me. The Plaintiff filed the suit for ejectment of the Defendant from the disputed tank and its banks. The learned Munsif dismissed the suit. The Plaintiff filed an appeal. The learned Subordinate Judge reversed the decree of the learned Munsif and decreed the suit.

2. The Plaintiff alleged as follows:

One Harendra and one Nagendrabala were non-agricultural tenants under a niskar touzi-holder in respect of holding No. 8 Mallickpara Lane, Howrah within the municipal town of Howrah. Nagendrabala died leaving two daughters Saibalini and Mira who in their turn surrendered their interest in the holding to Nagendrabala''s reversioner Nripen. Thereafter there was a partition between Harendra and Nripen and the disputed property comprising a tank and its banks came to the share of Nripen. The Plaintiff subsequently acquired the interest of Nripen. The Defendant was a lessee in respect of the jalkar of the

disputed tank. The Plaintiff determined this lease by service of notice to quit u/s 106 of the Transfer of Property Act but the Defendant failed to vacate and hence the suit. The defence was that one Benimadhab was a tenant of the tank and its banks under Harendra and Nagendrabala. One Kalicharan was the heir of Benimadhab. The Defendant had taken lease of the tank from Kalicharan and was in possession of the same. Kalicharan surrendered his tenancy of the tank and its banks in favour of Harendra and Nagendrabala but they treated the Defendant as a tenant of the tank and its banks and accepted rent as such. The service of notice was not disputed but it was said that the notice did not determine the Defendant''s tenancy.

3. The learned Munsif found that the Plaintiff was the owner of the tank and its banks but the Defendant was a thika tenant under the Plaintiff governed by the Calcutta Thika Tenancy Act and so the Defendant was not liable to be evicted and the suit was dismissed. The learned Subordinate Judge has found that the Defendant was not in any case governed by the Calcutta Thika Tenancy Act. He also found that the Defendant was a lessee in respect of the jalkar right in the tank and that his lease was determined by service of notice to quit. Before the learned Subordinate Judge one more point was mooted, viz., whether the interest of the Plaintiff had vested in the State of West Bengal under the Estates Acquisition Act, 1953. The learned Subordinate Judge found that the interest of the Plaintiff had not vested in the State. He, accordingly, decreed the suit.

4. The disputed tank is within the Howrah Municipality but it appertains to a niskar touzi. Harendra and Nagendrabala were non-agricultural tenants under the niskar touzi. Both the Courts have now found that the Plaintiff is a non-agricultural tenant under the niskar touzi holder in respect of some non-agricultural lands which include this tank also. Mr. Lala first submits that the learned Subordinate Judge misinterpreted the decision in (1) Kinuram Sadhukhan and Anr. v. Hazi Md. Yusuf and another, reported in 63 CWN 939. The reference to the said decision made by the learned Subordinate Judge is certainly not appropriate. But the decision in that case will not be of much relevance here. It was said in that case that if the head lessee is a raiyat the under-lessee will be an under-raiyat under the Bengal Tenancy Act, no matter whether the under-raiyat holds the land for agricultural or for non agricultural purpose. Mr. Lala submits that even though the Defendant might hold that tank for non-agricultural purpose he would be an under-raiyat under the Plaintiff. This argument cannot be accepted, because the Defendant is not in this case a lessee of the bed or the banks of the tank. The learned Subordinate Judge has found that the Defendant took lease of the tank for rearing and catching fish and his interest was that of a lessee of the lajkar right of the tank. Since there was no lease of the land the decision in (1) Kinuram Sadhukahan''s case (supra) is not attracted. The Defendant was, therefore, a lessee of the jalkar right and this lease was determined u/s 106 of the Transfer of Property Act.

5. Mr. Lala then submits that the interest of the Plaintiff as the lessor of this lease was a rent-receiving interest subsisting at the time when the interest of "intermediaries" vested in the State of West Bengal and so the interest of the Plaintiff had vested in the State and

the Defendant should be considered to be a direct lessee of the jalkar right under the State in view of the proviso to Section 6(2) of the Estates Acquisition Act, 1953. The proviso to Section 6(2) of the Act comes into operation only when the interest of an intermediary vests in the State u/s 5 of the Act. If the interest of the Plaintiff had vested in the State u/s 5 of the Act, clearly enough under the proviso to Section 6(2) of the Act, the Defendant is to be deemed to be a direct lessee of the fishery right under the State. So the real question for consideration is if the interest of the Plaintiff had vested in the State and the answer to this question will be found in an answer to the question as to whether the Plaintiff was an "intermediary" within the meaning of the definition contained in Section 2(i) of the Act. "Intermediary" means a proprietor, tenure-holder, under-tenure-holder or any other intermediary above a raiyat or a non-agricultural tenant. Thus if the Plaintiff is himself a non-agricultural tenant he cannot be an intermediary. "Non-agricultural tenant" has been defined in Section 2(k) of the Act as a tenant of non-agricultural land who holds under a proprietor a tenure-holder or an under-tenure-holder. We have seen that the Plaintiff is a tenant of non-agricultural land within the municipal area of Howrah under a niskar touzi holder, i.e., a proprietor. Mr. Banerjee submits that the revisional record-of-rights has recorded the Plaintiff as "DAKHALKAR" which means non-agricultural tenant under a touzi holder. Mr. Lala points out that the revisional settlement records were not till then finally published and so there was no question of presumption arising from an entry there. But in this second appeal I am not to consider the evidence to find if the Plaintiff was a non-agricultural tenant under the touzi holder. The final Court of fact has found that the Plaintiff was a non-agricultural tenant in respect of some non-agricultural lands which included the disputed tank under a touzi holder. This finding has to be accepted as final. Thus since the Plaintiff was himself a non-agricultural tenant, he was not an "intermediary", and as such his interest could not have vested in the State of West Bengal. Section 5 relates to the vesting of the estates and the rights of "intermediaries" in the estates and S. 52 deals with the vesting of the rights of raiyats and under-raiyats. There is, however, no provision for the vesting of the interest of non-agricultural tenants. On the other hand, the provisions of Section 5(c) & (d) indicate that the interest of non-agricultural tenant was not to vest in the State. Mr. Lala submits that under the provisions of the Estates Acquisition Act no intermediary or raiyat or under-raiyat can hold lands exceeding a certain limit. But if the interest of non-agricultural tenants is not to vest in the State then a non-agricultural tenant may hold lands without limit. This consequence may no doubt ensue. But merely because of the possibility of this consequence it cannot be said that the interest of non-agricultural tenants would also vest in the State. Mr. Lala has to concede that there is no direct provision in the Estates Acquisition Act for the vesting of the interest of non-agricultural tenants and in the absence of such a provision it must be said that the interest of non-agricultural tenants does not vest in the State. I hold, therefore, that the Plaintiff"s interest in the disputed property, though the interest was at the time of the vesting a rent-receiving interest for the jalkar right of the tank, did not vest in the State of West Bengal and the Plaintiff was competent to determine the same even thereafter. And this determination has taken place and the Plaintiff is, therefore, entitled to recover khas

possession of the tank. Mr. Lala refers to the decisions in (2) Purna Chandra Ganguly and Another Vs. Sridhar Bishnu Salagram Thakur and Another, , in (3) Manindranath Bose v. State of West Bengal, reported in 63 CWN 513 and in (4) Sankar Prosad Mukherji Vs. The State of West Bengal and Another, . But it is not necessary to consider the facts of these cases or the decisions made therein, because these relate to cases where the interest of the intermediary had vested in the State. But, as I have said, in the present case the interest of the Plaintiff had not vested in the State and so the provisions of Section 6 of the Act are not at all attracted.

6. In the result, the appeal fails and stands dismissed.

No order is made as to costs in this Court.

Leave to appeal under Clause 15 of the Letters Patent is prayed for and is refused.