Pasupati Mondal Vs Subhrangsu Mondal and Others

Court: Calcutta High Court

Date of Decision: April 28, 1978

Acts Referred: West Bengal Land Reforms Act, 1955 â€" Section 14M, 8

Citation: 82 CWN 947

Hon'ble Judges: S.K. Datta, J

Bench: Single Bench

Advocate: S.B. Bhunia and S.P. Roy Chowdhury, for the Appellant;Saktinath Mukherjee and P.B. Sahu, for the Respondent

Judgement

S.K. Datta, J.
These Rules were obtained by the petitioners for review of the order passed by me on 29th June, 1976 in Civil Rules Nos.

1945-46 of 1975. By that order the Rules were discharged. The proceedings arose out of two preemption applications and the preemption was

allowed by the learned Munsiff and the order was affirmed on appeal. Before the learned Munsif a point was taken that the pre-emption should not

be allowed as it would be in violation of the provisions of section 14-M of the West Bengal Land Reforms Act. The learned Munsif found against

the petitioners and held that by the pre-emption the petitioners for preemption would not be exceedings the ceiling provided under the Act. In the

appellate court the only point that was taken was about the vires of the Act and the appeals as already noted were dismissed. No other point was

taken before the appellate court. At the hearing of the Rules also no point was taken by the learned Advocate for the petitioners on section 14-M

of the Act. In the present petition for review the petitioner alleges that it would be obvious from the Nirupanpatra itself that the claimants for

preemption would he exceeding the ceiling as provided u/s 14-M and he also relied on the certified copies of record-of-rights in respect of the

lands alleged to have been held by the opposite parties (claimants to pre-emption) which would nullify, according to him, the claim for pre-

emption.

2. Mr. Bhunia appearing for the petitioner in these Rules submitted that under the provisions of law before a pre-emption could be allowed the

court is required to consider that the limit mentioned in section 14-M in not exceeded. This is a mandatory provision of law which the court is

required to consider even in the absence of any pleading before allowing a pre-emption in view of the express provision of section 8. He

accordingly submitted that in the order passed by me on June 29, 1976, there was no direction to that effect which should also be incorporated in

the order. In support reliance was placed in the decision in Smt. Nai Bahu Vs. Lala Ramnarayan and Others, in which it was held that a court

cannot even pass a decree for eviction though on compromise unless it is satisfied that a statutory ground for eviction has been pleaded which the

tenant has admitted by the compromise dispensing further proof of the claim. Further the court must be satisfied about compliance with the

statutory requirement on the totality of facts of a particular case bearing in mind the entire circumstances from the stage of pleadings upto the stage

when the compromise is effected.

3. Mr. Bhunia also referred to the decision in Rehman Jeo Wangnoo Vs. Ram Chand and Others, where the trial court and the first appellate court

had not really considered the question contemplated in the proviso to explanation to section 11 (1) (h) of Jammu & Kashmir Houses and Shops

Rent (Control) Act, 1966 and there was no evidence nor any specific plea in that behalf, the Supreme Court was of opinion that the proviso

aforesaid mandates the court to consider whether partial eviction as contemplated therein should have been ordered or the entire holding should be

directed to be evicted. The Supreme Court felt that this aspect require judicial exploration after giving opportunity to both sides to lead evidence in

this behalf and direction was issued accordingly. On these authorities and on the aforesaid Provisions of law Mr. Bhunia submitted that the question

required further exploration as to whether the pre-emptors, who were otherwise made entitled to pre-emption, would be entitled to do so in view

of the provisions of section 14-M and appropriate directions in that behalf should be issued by this Court.

4. Mr. Saktinath Mukherjee, learned Advocate appearing for the O.Ps submitted that this point essentially one of fact was taken before the

learned Munsif who held against the petitioner. This point, according to Mr. Mukherjee, was deliberately abandoned and the petitioner should not

be allowed to raise a ground even of law again at this stage. In support he referred to the Bench decision in Premchand Manickchand Vs. Fort

Gloster Jute Manufacturing Co. Ltd. (Oil Mill), Chakravorti C.J. speaking for the court held that though a ground of law going into the validity of

the entire proceeding can be taken for the first time at any stage but if such ground had been taken and as deliberately abandoned by a party he

cannot be allowed to raise it at the appellate stage. Mr. Mukherjee also referred to the decision in Sadhan Nath Das and Others Vs. Aghore Nath

Das, , in which it was held that where a ground not taken in suit or appeal requires investigation of facts and other things, such ground cannot be

taken in a review application. Mr. Mukherjee lastly relied on the decision of Khushro S.Gandhi and Others Vs. N.A. Guzder and Others, , in

which the Supreme Court noted that in revision this Court cannot try other issues arising in the case even if the parties conceded except the

interlocutory order which was in that case before the High Court. On these authorities Mr. Mukherjee submitted that as there was no patent error

on the face of the record nor discovery of new facts not known to the petitioners at the time of hearing of the application, in the attending

circumstance the application for review should be rejected. On a consideration of the rival contentions it appears to me that section 14-M enjoins a

duty on the court and as observed by the Supreme Court mandates the court to take into consideration the limit mentioned in section 14-M of the

Act subject to which the pre-emption is to be allowed. This provision casts a duty on the court in considering an application for preemption

particularly when the facts have been raised at the trial stage. It is true that the petitioner opposing preemption brought those facts to the attention

of the learned Munsif whose dealing of this controversy is not very satisfactory. The point again was not taken before the appellate court or even

before me at the time of hearing of the Rules. But as already indicated, since the grant of pre-emption is dependent to the limit u/s 14-M the court

has to ensure compliance with the said provision even though there has been some lapse on the part of a party. For this reason I do not think that I

should refrain from adding certain directions to the order which I have already passed discharging the Rules. I accordingly give the following

additional directions while holding that the opposite parties are otherwise entitled to the pre-emption. But it will be subject to the limit mentioned in

section 14-M. The case on this point will be considered by the learned Munsif on the materials on record as also on the materials as may be

produced before the court by the parties. The parties are given opportunity to produce additional evidence before the court in support of their

respective contentions and in rebuttal of the case of the other side and the learned Munsif will pass appropriate orders, after considering the entire

evidence on record, in accordance with law, I make it clear that I am not expressing any opinion as to the merits of the case of any party in passing

the above order and this order will be supplemental to the order passed by me on June 29, 1976. These Rules are made absolute and the learned

Munsif will dispose of the matter expeditiously in the light of the directions given above. Records may be sent down at once. There will be no order

as to costs.