

Saroj Kumar Bose

Vs

Kanailal Mondal and Others

Civil Appeals Nos. 887-888 of 1971

(E. S. Venkataramiah, R.B. Misra JJ)

06.08.1985

JUDGMENT

R. B. MISRA, J. -

1. The present two consolidated appeals by certificate are directed against the judgment of the High Court of Calcutta dated April 11, 1963.

2. The dispute between the parties centres round a Jalkar fishery right in a tank known as Teremara Jalkar situate in village Chandiguri in the district of 24-Paraganas. Hari Charan Mondal, predecessor-in-interest of the respondents took a permanent lease of the said fishery without the subsoil from different sets of proprietors by virtue of registered kabuliyats dated November 4, 1914 on certain rent and came in possession thereof. Thereafter on June 14, 1952 they in their turn granted a registered lease of the said fishery right to the appellant for a term of 11 years up to and including the Bengali year 1369 at an annual rent of Rs. 650.

3. Under the West Bengal Estates Acquisition Act, 1953, here-inafter referred to as 'the Act', the interest of the intermediaries vested in the State of West Bengal with effect from April 15, 1955. The respondents filed a suit for the recovery of Rs. 1440 as rent for the years 1361 and 1362 B.S. together with interest. The claim was resisted by the appellant and his defense in the main was that the interest in the fishery had vested in the State from 1362 B.S. under the said Act and so the contract created by the lease had been frustrated and he is not liable to pay rent for 1362 B.S., that the last year's rent deposited in advance was to be credited towards rent for 1361 B.S. and as such no rent was due from him. The learned Munsif decreed the suit in part with interest at the rate of 6 1/4 % per annum holding that the interest of the plaintiff-respondents did not vest in the State, it being a tank fishery, so that the lease continued to subsist and the rent for 1369 B.S. paid in advance could not be credited towards rent for 1361 B.S. On appeal by the defendant the Subordinate Judge upheld the judgment and decree of the Munsif holding that in any case the interest of the plaintiffs had not come to an end and the contract as such subsisted and they were entitled to recover the amount claimed. Undaunted by the failure the defendant filed a second appeal before the High Court. The High Court also confirmed the judgment of the Subordinate Judge and dismissed the appeal. The defendant has now come up to this Court, as stated earlier, by certificate.

4. The learned counsel for the appellant has reiterated the same contentions before this Court as well. The only pertinent question for consideration in this case is whether the right and interest of the plaintiffs had come to an end by virtue of the Act. It was contended for the appellant that the lease granted by the plaintiffs in favour of the defendant-appellant was a lease of a fishery right without the sub-soil. The fishery right, so contends the counsel, was only a profit a prendre which

amounts to an encumbrance within the meaning of the Act and when the interest of the plaintiff-landlords vested in the State of West Bengal free from encumbrances the plaintiffs' right ceased to exist. Alternatively it was argued that even assuming that the fishery right was not an encumbrance, the defendant being a non-agricultural tenant within the meaning of the Act and the plaintiffs having an interest superior to that of the defendant, they were intermediaries as defined in the Act and their interest had vested in the State.

5. Section 4 of the Act provides for the vesting of the interest of the intermediary in the State free from all encumbrances. Section 6 of the Act authorises the intermediary to retain certain properties in spite of the vesting, including tank fisheries. Sub-section (2) of Section 6 provides that an intermediary who is entitled to retain possession of any land under sub-section (1) shall be deemed to hold such land directly under the State from the date of vesting as a tenant subject to certain terms. The proviso to sub-section (2) contemplates that if any tank fishery or any land comprised in a tea-garden, orchard, mill, factory or workshop was held immediately before the date of vesting under a lease, such lease shall be deemed to have been given by the State Government on the same terms and conditions as immediately before subject to such modification therein as the State Government may think fit to move. On a plain reading of Section 6 tank fisheries will not vest in the State but will be retained by an intermediary. Thus even assuming that the plaintiffs were intermediaries their right in the tank fishery did not come to an end.

6. It was, however, contended for the appellant that unless the plaintiffs were in actual possession of the tank fishery the same will vest in the State and Section 6 saves only such persons who were in actual possession of the property. This contention cannot be accepted for the obvious reasons that Section 6 itself has clearly specified in some of its clauses khas possession and not in other clauses, for example, clause (d) of sub-section (1) of Section 6 reads : "agricultural land in his khas possession", but no such khas possession is contemplated by clause (e) of sub-section (1) of Section 6. It only says "tank fisheries". It is, therefore, quite clear that khas possession is not a necessary condition for retaining the property by an intermediary. The kabuliyats Exs. 3 and 3-A and rent receipts Exs. 2 and 2-A and the return submitted by one of the landlords, Ex. 4, describe the plaintiffs as tenants. They have been so described in the plaintiffs' Ledger of Land Reforms Department, Ex. 5, and their status has also been recognised as tenants by the Government by accepting rent from them (Exs. 2 and 2-A). Thus the interest of the plaintiffs did not vest in the State either as tenants or as intermediaries.

7. The fishery in question is a tank fishery as would be evident from the explanation added to clause (e) of sub-section (1) of Section 6. It reads :

Explanation. - "tank fishery" means a reservoir or place for the storage of water, whether formed naturally or by excavation or by construction of embankments, which is being used for pisciculture or for fishing, together with the subsoil and the banks of such reservoir or place, except such portion of the banks as are included in a homestead or in a garden or orchard and includes any right of pisciculture or fishing in such reservoir or place.

The fishery in dispute satisfies the requirements of the Explanation added to clause (e) of sub-section (1) of Section 6. Section 5 of the Act provides the effect of notification under Section 4. Clause (c) of sub-section (1) of Section 5 contemplates :

(c) subject to the provisions of sub-section (3) of Section 6, every non-agricultural

tenant holding any land under an intermediary, and until the provisions of Chapter VI are given effect to, every raiyat holding any land under an intermediary, shall hold the same directly under the State, as if the State had been the intermediary, and on the same terms and conditions as immediately before the date of vesting.

The provisions of Chapter VI of the Act were given effect to from Baisakh 1363 B.S. but in the present case we are concerned with the recovery of rent for the years 1361 and 1362 B.S. In this view of the matter also there was no difficulty in recovering the rent holding any land under an intermediary and every raiyat holding any land under an intermediary shall hold the same directly under the State. Considered from any aspect there is no escape from the conclusion that the plaintiffs still retain their rights in respect of the tank fishery and they are entitled to recover the rent for the years 1361 and 1362 B.S.

8. There is yet another aspect which cannot be lost sight of. The defendant got the land under a lease. He cannot deny right and title of the plaintiffs at the commencement of the tenancy. The counsel for the appellant has not been able to show that the lessor's title has subsequently come to an end. We have already held that the interest of the plaintiffs had not vested in the State and, therefore, we find no fault with the view taken by the High Court.

9. The appeals, therefore, must fail. They are accordingly dismissed, but in the circumstances of the case we direct the parties to bear their own cost of this Court.

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