

SUPREME COURT OF INDIA

S.K. Arsed Ali

Vs.

S.K. Fazle Hakani

(M. M. Punohhi and Sujata V. Manohar JJ.)

20.11.1996

ORDER

The respondent filed a petition under Section of the West Bengal Land Reforms Act for preemption in respect of two sale deeds executed by the vendors on 22nd and 23rd February 1977 transferring 1.70 acres of land in two plots in favour of the appellant. The appellants resisted the respondent's claim for preemption on the ground that the respondent need to have been a co-sharer in the land sold and since he claims to have purchased sometime in the past a portion of a plot, which was purchased sometime in the past a portion of a plot, which was described in the revenue records as a 'tank', it was not 'land' as defined in the Land Reforms Act and therefore he was not a co-sharer. The trial court found that the pre-emptor had purchased a portion of a plot which was a 'doba' and since 'doba' was a tank, it was outside the definition of land provided in the Land Reforms Act. The appellate court concurred with that view. The High Court, however, in second appeal up set it. To adjudge the correctness of the View of the High Court are the present appeals at the instance of the vendees. Miss Aruna Banerjee, learned counsel appearing for the appellants has placed before us the English translation of the deed of sale in favour of the respondent together with the copy of the original deed in Bengali. There the land sold to the pre-emptor has been described as "Matsyasheho Pushkarini" which in English means a tank/pond full of fish. The learned Single Judge of the High Court in relying upon an earlier decision of the that Court in Niranjana Das Versus Lakshmi Mani Dasi, 1986 Calcutta Weekly Note 318 has taken the view that 'doba' does not come within the mischief of the word 'tank' as is apparent from the Wilson's Glossary of words. We have caused a copy thereof to be placed before us and we find therefrom that the word 'doba' in Bengali means immersed, low and swampy or inundated land. The depth of such land perhaps comes to cause a distinction between a 'doba' and a 'tank'. Apparently the High Court was of the View that if surface waters be shallow, then the land even though inundated will retain the character of the land, bearing at the back of its mind that paddy crop can be grown in puddled lands. correspondingly, if the depth is more which prevents the land being put to agricultural use then it would be 'tank' for the purposes of the West Bengal Land Refors Act and in particular Section 2(7) thereof, which defines 'land' to be agricultural land, tank being an exception there to. Now here the land has been described as 'Matsyasheho Pushkarini' which apparently would mean a pond with sufficient water abounding in fish and seemingly it was so described in the deed of sale in favour of the respondent. Thus the area owned by the respondent did not come within the ambit of the word 'land' for the purposes of Section 2(7) of the West Bengal Land Reforms Act 1995 and therefore the respondent was disentitled to claim himself as co-sharer in the land in order to maintain a claim for pre-emption. In our view the High Court was in error in proceeding on the basis that the land purchased by the

respondent was put to agricultural use in the manner which entitled the respondent to a decree in his favour. We therefore, upset the judgment and order of the High Court and order restoration of the judgment and and decrees of the Courts below but without any order as to costs.