

CALCUTTA HIGH COURT

Jyotish Chandra Das

Vs.

Dhananjoy Bag

Civil Revision Cases Nos. 3589 and 3812 of 1960

(Banerjee and D. Basu, JJ.)

30.04.1964

JUDGMENT

D. Basu, J.

1. Section 6(2) of the West Bengal Estates Acquisition Act, 1953, read with rule 4 of the Rules framed under the Act, has produced apparently anomalous results, the principles for the interpretation of which we have laid down in *Abharan Chandra v. Sanat Kumar, (1963) 68 C.W.N. 574*. In the present case, a further elaboration of those principles appears to be necessary so as to be applicable to different situations.

2. Dhananjay Bag and others were co-sharers of three tenancies recorded in khatians 102, 24 and 48 of Mouza Daluigachha. The tenancy in khatian, 102 was recorded as a mokatari sthitiban raiyati holding, while the holdings in-khatians 24 and 48 were recorded as korfa holdings to which section 48G of the Bengal Tenancy Act was attracted, or, in short, occupancy under raiyati holdings. One of the co-sharers in these holdings, Krishna Chandra Bag, transferred his interest to Jyotish Chandra Das and others by a registered kobala of May 6, 1959. Thereupon Dhananjay Bag, another co-sharer in the holdings, brought the application under section 26F of the Bengal Tenancy Act, for pre-emption, which was registered as Misc. Case no. 170 of 1959 before the Munsif of Chandernagore. The transferees (Jyotish and others) resisted this application on the ground that no application for pre-emption under section 26F of the Bengal Tenancy Act, was maintainable in respect of a transfer of shares in mokatari raiyati or under-raiyati holdings.

3. The objection of the transferees was heard by the learned Munsif as a preliminary point. He upheld the objection and disallowed the application in toto on the ground that it was not maintainable. In his view, a mokatari raiyat or an under-raiyat was not, by virtue of rule 4 of the West Bengal Estates Acquisition Rules, elevated to the status of an occupancy raiyat and was not, accordingly, entitled to claim pre-emption under section 26F of the Bengal Tenancy Act. On

appeal, the learned District Judge of Hooghly modified the decision of the learned Munsif and held that though the application for pre-emption was not maintainable in respect of the under-vaiyati holding recorded in khatians 24 and 48, it was maintainable in respect of the mokorari holding recorded in khatian no. 102. He accordingly directed the Munsif to dispose of the application on the merits in respect of khatian no. 102.

4. Both the parties, having been aggrieved by the decision of the District Judge in part, have moved this Court in revision in these two Civil Rules. C.R. 3589 has been brought by the transferee Opposite Parties in the preemption case and they urged that the learned District Judge has erred in holding that an application under section 26F was maintainable in respect of a mokorari raiyati holding. The petitioner in the pre-emption case, Dhananjay, has brought C.R. 3812, urging that the learned District Judge has erred in holding that an under-raiyati holding with occupancy right had no right of pre-emption by virtue of rule 4 of the Rules framed under the West Bengal Estates Acquisition Act.

5. These two Rules have been heard by us together, as they involve a common question of law, viz., the effects of rule 4(a) of the Rules. Since we have fully dealt with the relevant provisions in our previous judgment in (1) Abharan Chandra's case (ibid.) referred to at the outset, we may start straightaway with rule 4(a), as it stood at the material point of time:

"4. Terms and conditions under which an intermediary will hold land under section 6(1).-- Every intermediary who retains possession of any land by virtue of the provisions of sub-section (1) of section 6, shall, subject to the provisions of the Act, be deemed to hold such land from the date of vesting-

(a) if it is agricultural land, on the same terms and conditions as an occupancy-raiyat under the Bengal Tenancy Act, 1885.

6. In (1) Abharan Chandra's case (ibid.), we have held that the expression 'terms and conditions' has been used in a generic sense, to include all the incidents of an occupancy raiyat under the Bengal Tenancy Act, whether such rights are available against the landlord or against the co-sharers in the holding, so as to include the right of pre-emption conferred by section 26F of that Act. In this view, we concluded that any 'intermediary' who retains land under section 6(1) of the West Bengal Estates Acquisition Act, (hereinafter referred to as the 'Act') would be entitled to claim the right of preemption under section 26F. The immediate question for determination in that case was, of course, whether the right of pre-emption under section 26F itself was comprehended by the expression 'terms and conditions' in rule 4, because the status of the applicant for pre-emption in that case was that of an occupancy raiyat who, undoubtedly, possessed the right under section 26F prior to the commencement of the 'Act'.

7. But the interpretation given in (1) Abharan Chandra's case (ibid.) was general and was applicable to 'every intermediary who retains possession of land under section 6(1)' to whom rule

4 relates, and would thus include any class of tenant or tenure-holder who came within the definition of an 'intermediary' under section 2(i), read with Ch. VI of the Act. There is no dispute in the cases before us that the mokorari and under-raiyati holdings involved in these cases are 'incumbrances' and that these lands have been retained under section 6(1) of the Act. It would, accordingly, follow from our decision in Abharan Chandra's case (ibid.), without more, that the incident under section 26F of the Bengal Tenancy Act, is attracted to mokarari and korfa holdings (whether with or without occupancy right) since the date of vesting of the estate concerned, under the Act.

8. But this conclusion, it is contended, is unreasonable and would lead to anomalous results inasmuch as these two classes of tenants had no right of pre-emption under section 26F of the Bengal Tenancy Act, prior to the coming into operation of the West Bengal Estates Acquisition Act, and the conclusion just stated can be drawn only if it was intended by the Act' to promote the incidents of these two classes of tenants and thus to effect a substantive amendment of the Bengal Tenancy Act. It is true that under the Bengal Tenancy Act, by reason of section 18 (2), a raiyat at fixed rate, having occupancy right, could not claim the right of preemption under section 26F, which was specifically excluded. Similarly, by reason of the words 'as regards his immediate landlord' in sub-section (2) of section 48G, it was held in the case of *Santosh v. Upendra*¹, that though the application of section 26F to under-rayats with occupancy right was not specifically excluded by sub-section (2) (i) of section 48G, since the amendment of section 26F in 1938, that section could not possibly be applied to such tenants, because after the amendment of 1938, section 26F became a right available, not against the immediate landlord, but against the co-sharer tenants of the transferor. If a settled raiyat or an under-raiyat had no occupancy right, no question of applicability of s. 26F could arise at all.

9. The question is, whether the West Bengal Estates Acquisition Act, 1953, intended to override the law, as just stated. In (1) Abharan Chandra's case, it was argued, incidentally, that the scope of the 'Act' was limited to 'acquisition of Estates' by the State, and that, accordingly, the Rules made under the Act, could not intend to deal with the incidents of tenants and that if they did so intend, the Rules would be ultra vires. This argument was repelled with reasons given in the judgment of one of us. As pointed out in that judgment, it is possible for a competent Legislature to deal with ancillary and incidental matters while legislating on a subject-matter. By the Act, (section 4), the rights in estates and all subordinate interests therein were to be acquired by the State, but certain intermediaries were to be allowed to retain certain lands as specified in section 6, and such persons were to hold as tenants directly under the State. It was, therefore, imperative for the Act, to lay down what would be the incidents of such tenants in respect of the retained lands, otherwise, there would be a vacuum. There was no limitation on the legislative power of the State Legislature that it could not deal with the rights of tenants inter se, while legislating on the subject of acquisition of lands. Of course, the Act did not itself define these rights of the tenants, but left it to the rule-making authority, by section 59(1), in the widest terms, and this power was exercised by framing rule 4. We held that the expression 'terms and conditions' included the right of preemption which related to the relationship between tenants inter se, and

for the reasons aforesaid, we held that rule 4 could not, on that account, be condemned as ultra vires and we reiterate that view in the instant cases.

10. The result of the above conclusion is, of course, to elevate the incidents of certain classes of tenants. But that is the plain object of rule 4. This rule has two clauses; Clause (a) deals with agricultural land and clause (b) deals with non-agricultural land, and the incidents of all intermediaries, whatever may have been their status prior to the Act, are to be governed by either of these two classes according as the land held by them is agricultural or non-agricultural. Just as clause (b) does away with any class division as non-agricultural tenants and it is laid down that all intermediaries retaining such land shall have the incidents of a tenant holding for not less than 12 years without a lease in

¹(1940) 45 C.W.N. 790

writing, under the West Bengal Non-Agricultural Tenancy Act, 1949, so does clause (a) eliminate the class-division between different classes of intermediaries holding agricultural land, such as tenure-holders of different degrees, raiyats of different classes and under-raiyats of different classes and status, and lays down that since the date of vesting of the estate in the State under the Act, all such tenants shall hold the land 'on the same terms and conditions as an occupancy raiyat'. It is plainly evident that even a tenure-holder, mokarari raiyat or a non-occupancy raiyat or an under-raiyat were thus conferred the incidents of an occupancy raiyat which they did not previously possess. It was conducive to the interests of the State that it should have to deal with only one class of tenants, with uniform incidents and this was provided for by rule 4. To contend otherwise would lead us to the conclusion that the Legislature provided only for occupancy raiyats, leaving the rest of the different classes of intermediaries to a 'no-man's land'. The only question left is whether the Act conferred only such rights and incidents of an occupancy raiyat upon these heterogeneous intermediaries which were available against the State as their landlord, or also extended to them any of the other rights of an occupancy raiyat as were directed against their co-tenants. On this question, our decision in (1) Abharan Chandra's case governs and we adhere to it.

11. In the result, the application for pre-emption brought by Dhananjay Bag in Misc. case no. 170 of 1959 before the Munsif of Chandernagore is maintainable in toto, i.e., in respect of the holdings recorded in the three khatians --102, 24 and 48, comprising both the mokarari and korfa holdings and the order of the District Judge, Hooghly is modified accordingly. C.R. 3589 is discharged and C.R. 3812 is made absolute, on the above terms, but without any order as to costs.

12. Let the record be sent down to the learned Munsif for disposal of the application for pre-emption on the merits, in the light of the observations made herein.

Banerjee, J.

13. I agree with the order made by my Lord.

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