

CASE NO.:
Appeal (civil) 814 of 2005

PETITIONER:
Rozan Mian

RESPONDENT:
Tahera Begum & Ors

DATE OF JUDGMENT: 14/08/2007

BENCH:
H.K. SEMA & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 814 OF 2005

H.K.SEMA, J

(1) This appeal preferred by the plaintiff is directed against the judgment and order dated 13.11.2003 passed by the High Court in F.A.No.103 of 1988, dismissing the suit of the plaintiff, by reversing the decree granted by the Trial Court.

(2) Briefly stated the facts are as follows:-
An agreement was entered into between the plaintiff and the defendant on 3.12.1973 for sale and purchase of Thika Tenancy. The agreement having not been carried out, the plaintiff filed a suit on 7.2.1974 for specific performance of agreement for sale. The Trial Court decreed the suit on 24.4.1990. However, the High Court upset the decree and hence the present appeal. The undisputed fact is that the aforesaid agreement was entered into between the parties while the Calcutta Thika Tenancy Act, 1949 was in vogue. The agreement was to sell structure without the land. There was no bar in transferring structure without the land under 1949 Act and a person purchasing the structure would have become a Thika Tenant. However, during the pendency of the suit, West Bengal Act 37 of 1981, The Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981 (hereinafter the 1981 Act) was promulgated.

(3) Section 5 of the Act provides that with effect from the date of commencement of this Act, lands along with the interest of the landlords therein shall vest in the State, free from all encumbrances.

(4) Sub-Section (3) of Section 6 prohibits the transfer of the interests of thika tenants and tenants of other lands holding directly under the State except the transfer amongst the heirs and existing co-sharers-interest or to the prospective heirs, subject to the provisions of sub-section (1) of Section 7.

(5) By reason of sub-section (2) of Section 7 any transfer or agreement for transfer, whether oral or in writing in contravention of the provisions of sub-section (3) of Section 6 or sub-section (1) of Section 7 shall be void and be of no effect whatsoever and the land and structure shall stand vested in the State in accordance with the prescribed procedure.

(6) Section 4 of the Act has an overriding provision. It reads:-

"4. Act to override other laws.-
The provisions of this Act shall have effect notwithstanding anything inconsistent therewith in any other

law for the time being in force or in any custom, usage or agreement or in any decree or order of a court, tribunal or other authority."

(7) In the background of the position of law, the question to be determined in this appeal is as to whether the specific performance of the agreement for sale becomes impossible of performance by reason of promulgation of the West Bengal Thika Tenancy (Acquisition and Regulation) Act 1981, during the pendency of the suit. As already noticed, the plaintiff's suit was filed on 7.2.1974 for specific performance of agreement for sale-dated 3.12.1973. The suit was decreed on 24.4.1990. During the pendency of the suit, 1981 regulation was promulgated. By virtue of Section 5, all lands and interests of the landlords vested with the Government. By virtue of sub-section (3) of Section 6 of the Act, transfer of thika tenancy is prohibited. By virtue of sub-section (2) of Section 7, any transfer in contravention of sub-section (3) of Section 6 is void. Section 4 provides overriding effect on all laws including the agreement or any decree or order of a court, tribunal or other authority.

(8) It is noticed that the 1981 Act has brought about drastic changes in the concept of Thika tenancy. The superior interest of the landlord holding under the State stands vested in the State by operation of law. The land having been vested in the State and the Thika Tenant occupying the land under the landlord became a Thika Tenant holding the Thika Tenancy directly under the State.

(9) Section 56 of the Indian Contract Act, 1872 (in short "the Act") provides that an agreement to do an act impossible in itself is void. A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful. In the present case, by virtue of 1981 Act, the land under the landlord has been vested in the State and the Thika Tenant under the landlord becomes the Thika Tenant under the State.

(10) Mr. S.B. Sanyal, learned senior counsel appearing for the appellant, contended that the right accrued by an agreement dated 3.12.1973 under the 1949 Act still subsists and could not have been taken away by 1981 Act, as the application of the Act itself was not made retrospectively. This contention, in our view, is thoroughly misplaced. We have already pointed out various Sections of the Act, by which the agreement dated 3.12.1973 itself becomes void. No such right as contended by learned counsel for the appellant was accrued under the 1949 Act, as the suit for specific performance of agreement for sale was decreed only on 24.4.1990, by the Trial Court, after the agreement itself became void, by virtue of 1981 Act. In support of his contention Mr. Sanyal referred to various decisions of this Court; K.S Paripoornan vs. State of Kerala, (1994) 5 SCC 593, R. Rajagopal Reddy vs. Padmini Chandrasekharan, (1995) 2 SCC 630, Shyam Sunder vs. Ram Kumar, (2001) 8 SCC 24, Narayan Chandra Ghosh vs. Kanailal Ghosh, (2006) 1 SCC 175. The aforesaid decisions are not at all relevant for the purpose of disposal of the present appeal.

(11) The High Court was of the view that after the promulgation of 1981 Act by reason of operation of law, the contract has become void, the plaintiff is entitled only to the refund of the consideration together with interest and cost of the suit at the rate assessed by the High Court.

(12) We see no reason to interfere with the views of the High Court. This appeal being devoid of merits is, accordingly,

dismissed with no order as to costs.

JUDIS