

CASE NO.:
Appeal (civil) 834 of 1981

PETITIONER:
STATE OF WEST BENGAL & ORS.

Vs.

RESPONDENT:
SCENE SCREEN (PVT.) LTD., & ANR.

DATE OF JUDGMENT: 28/09/2000

BENCH:
R.P.Sethi, D.P.Mohapatro

JUDGMENT:

D.P.MOHAPATRA, J.

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State of West Bengal represented by the Secretary Land and Land Reforms Department, the Junior Land Reforms Officer, Barrackpore Circle, P.S.Khardah, Distt. 24 Parganas and the Additional Collector and Additional District Magistrate (Land Reforms), 24 Parganas (North) have filed this appeal assailing the judgment of the Division Bench of the Calcutta High Court dated 7.4.1977 allowing the Appeal from Original Order No.409 of 1961 filed by Sasthidas Malik, (respondent No.2 herein) on setting aside the judgment of the learned Single Judge in Civil Rule No.915/59. The Civil Rule was filed by Sasthidas Malik who will hereinafter be referred to as the petitioner.

The dispute raised in the case relates to the question whether the writ petitioner is entitled to retain the lands comprised in plot Nos. 11 and 32 under Khatyan Nos. 21 and 390 respectively of Mouza Kalidah extending over an area of 2.3432 acres, under the provisions of the West Bengal Estates' Acquisition Act, 1953 (hereinafter referred to as 'the Act'). In the records of right published in the year 1931 the lands were recorded in the name of the petitioner's father and as having pucca structures therein. By two indentures of lease dated 26.11.1947 and 25.8.1952. Prosad Das Malik, father of the petitioner, gave lease of the said two plots of land to M/s Scene Screen (Pvt.) Ltd., respondent No.1 herein, (hereinafter referred to as the lessee), for the purpose of building a cinema house and shop rooms, for a term of 30 years on payment of rent mentioned in the documents. After the death of his father the petitioner had become the owner of the said lands. After coming into force of the West Bengal Estates' Acquisition Act, 1953 the petitioner submitted a return in Form 'B' proposing to retain the lands covered by the said leases as an intermediary under section 6 of the Act. In the record of rights prepared under section 39 of the Act the lands were recorded in the name of respondent No.1 as a

non-agricultural tenant under the petitioner. When the petitioner demanded arrears of rent amounting to Rs.4725/- from the lessee it replied that as a result of operation of the provisions of the Act the petitioner was no longer entitled to receive the rent which was being paid to the Government of West Bengal. Faced with the situation the petitioner filed the writ petition contending inter-alia that the State Government has no right to collect rent from the - lessee as under section 6(1)(b) of the Act the petitioner is entitled to retain the lands and he has elected to do so by submitting the return in Form 'B' including these lands. Having failed to get favourable response from the officers concerned of the State the petitioner filed the writ petition seeking inter alia a writ of mandamus directing the State Government and its officers not to recognise the lessee as a tenant under the State and not to realise rent from it.

In the affidavit in opposition filed on behalf of the respondents 1 to 3 to the writ petition, who are the appellants herein, the gist of the case pleaded was that the petitioner was not entitled to retain the rent receiving interest in respect of the land leased in favour of the respondent-lessee. Even though the leases were created prior to the date of coming into force of the Act. Reference was made to section 5(c) of the Act in support of the contention that the lessor's interest created in favour of the predecessor in interest of the petitioner had vested in the State on April 14, 1955 on the same terms and conditions as agreed between the lessor and the lessee on the date of vesting. The learned single Judge in his judgment noticed the relevant provisions of the Act particularly section 6(1)(b) of the Act as it stood prior to the amendment of the Act by the West Bengal Act 9 of 1961 which was published in the Gazette on April 24, 1961 and held that the section 6 aims on taking away all the lands of intermediary except such portions thereof as are in his actual possession within the specified limits. The learned single Judge was of the view that it would not be right to hold that the land in the possession of tenants could be retained by the ex-intermediary merely because of the absence of the words "khas possession" in section 6(1)(b). Interpreting section 6(1) (b) the learned Single Judge held that an intermediary can only retain the land comprised in building or structures owned by him or held under him by leave or licence and not by a tenant. The learned single Judge dismissed the writ petition on the finding that under section 6(1)(b) as it stood before the amendment as also under the altered provision after the amendment, the petitioner was not entitled to retain the lands covered by the structures erected by the lessee.

Feeling aggrieved by the judgment of the learned single Judge the petitioner filed the appeal which was decided in his favour by the Judgment dated 7th April, 1977 which is under challenge in this appeal. The Division Bench took the view that the appellant is a tenant in respect of the non- agricultural land holding under the proprietor or a tenure holder and so he is not an agricultural tenant within the meaning of clause (k) of section 2 of the Act. He is also not an 'intermediary' as defined in the Act. Elucidating the point the Division Bench observed that as the disputed land is a part of the Government Khas Mahal land, it must have been settled in favour of the predecessor-in-interest of the appellant by the Government.

That the relationship between the Government and the predecessor-in-interest of the appellant as per the provisions of the Bengal Tenancy Act would be that of the landlord and tenant. Referring to the status of the lessee -respondent No.4 in that appeal the Division Bench observed that the said respondent has been recorded as possessor ('dakhalkar') in respect of the non-agricultural land and that there is no dispute that the said lessee is a non-agricultural tenant. Relying on the C.S. Record -of-Rights in which the names of the predecessor-in-interest of the appellant including the name of his father were recorded as tenure holders and in the absence of any evidence that the disputed land was ever used for agricultural purposes; on the contrary there being positive evidence that the disputed land was being used for non-agricultural purposes by the lessee since 1931, the Division Bench held that the appellant being non-agricultural user was liable to pay the rent. The Division Bench rejected the contention raised on behalf of the State and its officers that since under the document of lease the appellant was given a rent receiving right he is an intermediary for the purposes of the Act. On the said finding the Division Bench set aside the judgment of the learned single Judge and directed that a writ in the nature of mandamus be issued directing the respondents not to realise the rent from respondent No.4 (R-1 herein) who holds the land as a tenant under the appellant and further directed issue of a writ in the nature of certiorari quashing the orders of the State Government or its officers directing to treat the said land as vested land and to realise rent from respondent No.4 (R-1 herein) in respect thereof.

Shri Jaideep Gupta, learned counsel appearing for the appellants strenuously urged that the Division Bench of the High Court committed error in holding that the interest of the lessor-respondent No.2 in the land in question did not vest in the State under the West Bengal Estates' Acquisition Act, 1953. According to the counsel, the Division Bench having found that respondent No.1 was undisputedly a non-agricultural tenant holding the land under the respondent No.2, should have held that all such interests between the possessor of the land and the State Government were intermediary interests which stood vested under the said Act. The learned counsel also submitted that since respondent No.2 himself submitted a return in Form 'B' expressing the intention to retain the lands in dispute thereby acknowledging his status as an intermediary, the Division Bench was not right in holding to the contrary.

Shri Manoj Chatterjee learned counsel for Respondent-1 also adopted the contention raised on behalf of the appellants.

Learned counsel appearing for respondent No.2, the lessor supported the judgment of the Division Bench under challenge contending that in the facts and circumstances of the case respondent No.2 could not be said to be an 'intermediary' under the Act, and therefore, the Division Bench rightly held that his interest in the lands did not vest in the State Government.

Since the notification under section 4 of the Act was issued on 1.4.1955 and the vesting of the intermediary estate therein took effect from 14.4.1955 the statutory provisions of the Act as it stood prior to the amendment in

1961 are relevant for the purpose of deciding this case.

In Section 2 of the Act are incorporated the definitions of the different terms used in the Act. Under clause (f) of the said section it is provided that "estate" or "tenure" includes part of an estate or part of a tenure. Under clause (h) "incumbrance" in relation to estates and rights of intermediaries therein does not include the rights of a raiyat or of an under-raiyat or of a non-agricultural tenant. In clause (I) "intermediary" means a proprietor, tenure-holder, under-tenure-holder or any other intermediary above a raiyat or a non-agricultural tenant. Non-agricultural land is defined in clause (j) to mean land other than agricultural land. In clause (k) 'non-agricultural tenant' means a tenant of non-agricultural land who holds under a proprietor, a tenure-holder or an under-tenure holder. In section 2(p) it is laid down that the expressions used in this Act and not otherwise defined have in relation to the areas to which the Bengal Tenancy Act, 1885 (VIII of 1885), applies, the same meaning as in that Act and in relation to other areas meaning as similar thereto as the existing law relating to land tenures applying to such areas, permits.

In Section 3 it is provided that the provisions of this Act shall have effect notwithstanding anything to the contrary contained in any other law or in any contract express or implied or in any instrument and notwithstanding any usage or custom to the contrary.

Section 4 in which provision is made regarding issue of notification vesting estates and rights of intermediaries lays down in sub-section(1) that the State Government may from time to time by notification declare that with effect from the date mentioned in the notification, all estates and the rights of every intermediary in each such estate situated in any district or part of a district specified in the notification, shall vest in the State free from all incumbrances.

In section 5 the effects of a notification issued under section 4 are enumerated. The relevant portions of the same are quoted hereunder : "5. Effect of notification - Upon the due publication of a notification under section 4, on and from the date of vesting -

(a) the estates and the rights of intermediaries in the estates, to which the declaration applies, shall vest in the State free from all incumbrances; in particular and without prejudice to the generality of the provisions of this clause, every one of the following rights which may be owned by an intermediary shall vest in the State, namely :-

xxxxx xxxxx xxxxx

(c) until the provisions of Chapter VI are given effect to, every raiyat or non-agricultural tenant, 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 :

(d) every raiyat or non-agricultural tenant holding under an intermediary shall be bound to pay to the State his rent and other dues in respect of his land, accruing on and

from the date of vesting, and every payment made in contravention of this clause shall be void and of no effect."

In Section 6 the provisions regarding right of intermediary to retain certain lands are enumerated. The relevant provisions are quoted hereinbelow: "6. Right of intermediary to retain certain lands -

(1) Notwithstanding anything contained in sections 4 and 5, an intermediary shall, except in the case mentioned in the proviso to sub-section (2) but subject to the other provisions of that sub-section, be entitled to retain with effect from the date of vesting -

(a) land comprised in homesteads;

xxxxx xxx

(b) land comprised in or appertaining to buildings and structures, whether erected by the intermediary or not;

(c) non-agricultural land in his khas possession, not exceeding fifteen acres in area, and excluding any land retained under clause (a) -

Provided that the total area, of land retained by an intermediary under clauses (a) and (c) shall not exceed twenty acres, as may be chosen by him;

Provided further that if the land retained by an intermediary under clause (c) or any part thereof is not utilised for a period of five consecutive years from the date of vesting, for a gainful or productive purpose, the land or the part thereof may be resumed by the State Government subject to payment of compensation determined in accordance with the principles laid down in sections 23 and 24 of the Land Acquisition Act, 1894 I of 1894);

(d) agricultural land in his khas possession, not exceeding twenty five acres in area, as may be chosen by him:

Provided that if he does not cultivate such land or any part thereof for a period of four consecutive years from the date of vesting, the State Government shall be entitled to resume such land or part thereof upon payment of such compensation as may be determined in accordance with the principles laid down in sections 23 and 24 of the Land Acquisition Act, 1894;

xxxxx xxxxxx "

(2) 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 such terms and conditions as may be prescribed and subject to payment of such rent as may be determined under the provisions of this Act and as entered in the record-of-rights finally published under Chapter V except that no rent shall be payable for land referred to in clause (h) or (i):

Provided 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 such date.

(Emphasis supplied)

Section 10 which provides for the Collector to take charge of estates and rights of intermediaries vested in the State provides that upon the publication of any notification under section 4, the Collector shall take charge of estates and interests of intermediaries which vest in the State under section 5.

From the statutory provisions referred to above it is fairly clear that upon publication of a notification under section 4 estates and the rights of intermediaries in the estates to which the declaration applies are vested in the State free from all encumbrances. Section 6 vests a statutory right in the intermediary to retain certain lands as enumerated in the section. Under sub-section (1) of section 6 an intermediary is entitled to retain the land comprised in or appertaining to building and structures owned by the intermediary or by any person, not being a tenant, holding under him by leave or licence. Clause (c) of sub-section (1) which refers to non-agricultural land provides that such land in khas possession of the intermediary including land held under him by any person not being a tenant by leave or licence not exceeding 15 acres in area and excluding any land retained under clause (a) i.e. land comprised in homestead. The different clauses (a) to (j) in sub-section (1) of section 6 enumerated the different types of land which an intermediary is entitled to retain after vesting, each clause refers to a distinct and separate category of land which he is entitled to retain. However, the ceiling on the extent of land under the broad heads, agricultural land non-agricultural land and forests are also provided in the section.

In the present case, as noted above, respondent No.2 filed a return in Form 'B' stating therein that he intended to retain the land in dispute with him after vesting. Such a return could only be filed by an intermediary. Respondent No.2 by submitting the return accepted the position that he was an intermediary coming within the purview of the Act. Therefore the question to be considered is whether the claim for retaining the land under the provision of section 6(1) (b) is acceptable. For deciding that question it was not necessary for the Division Bench to embark upon the inquiry whether the respondent No.2 was a non-agricultural tenant and on that basis consider the further question whether his interest in the land at all vested under the Act. The respondent having himself accepted the position that he was an intermediary the High Court in the writ jurisdiction should not have embarked upon an inquiry which was clearly beyond the scope of the proceeding. Therefore, in our considered view, the Division Bench of the High Court was not right in taking up the question whether Krishnamany from whom father of the respondent No.2 purchased the land was a tenure holder and whether the interest of his father and after him of respondent no.2 was also that of a tenure holder. In that connection certain provisions of the Bengal Tenancy Act, 1885 and decisions of Calcutta High Court and the Privy Council have been referred to. In view of the

matter we have taken we do not feel called upon to determine the question of correctness of the findings in that regard on merits. At the cost of repetition we may reiterate that the entire discussion on that question was unnecessary for decision of the case.

However, that is not the end of the problem. The question that remains to be considered is whether the Division Bench was right in setting aside the judgment of the learned single Judge holding inter alia that the petitioner respondent No.2 herein was not entitled to retain the land in dispute because he was not in khas possession of the same. In our considered view the Division Bench was right in setting aside the judgment of the learned single Judge. Section 6(1)(b) does not lay down that intermediary should be in khas possession of the land comprised in or appertaining to buildings or structures, whether erected by him or not. On a close look at the section 6 it is manifest that wherever the legislature intended to lay down the requirement of "khas possession" as a condition precedent for the claim of right of retention it expressly stated so. In this connection the provisions of section 6(1)(c) and (d) may be seen. Section 6(1) (b) clearly and unambiguously lays down that the intermediary shall be entitled to retain the land comprised in or appertaining to buildings or structures whether erected by the intermediary or not. It is a well accepted principle of interpretation of statutory provisions that if the plain language of the section is clear or unambiguous it is not open to a Court to interpret it giving a meaning different from the plain grammatical meaning of the provision. The learned single Judge, in view of the plain and unambiguous language of the provisions of the Act, was in error in introducing the condition of khas possession in section 6(1)(b) even though the section made no such provision. Equally incorrect was the reason by the learned single Judge that if the requirement of khas possession by the intermediary is not read into that section it will result in discrimination between different categories of lands which the intermediary may be entitled to retain. Each clause of section 6 (1) refers to a separate category of land. The reason for and the wisdom of the legislature in insisting on khas possession in respect of certain categories of land while not insisting upon the same in others, cannot be questioned. We are therefore of the view that the Division Bench of the High Court rightly set aside the judgment of the learned single Judge. In conclusion while not agreeing with the reasoning in the judgment of the Division Bench under challenge we endorse its decision that the respondent No.2 is entitled to retain the land which was leased in favour of the respondent No.1 for construction of the cinema hall. Accordingly, the appeal is dismissed, but in the circumstances of the case without any order for costs.