Shibsankar Nandy vs Prabartak Sangha And Ors on 1 February, 1967

Equivalent citations: 1967 AIR 1040, 1967 SCR (2) 528, AIR 1967 SUPREME COURT 940

Author: S.M. Sikri

Bench: S.M. Sikri, M. Hidayatullah, C.A. Vaidyialingam

PETITIONER:
SHIBSANKAR NANDY

Vs.

RESPONDENT:
PRABARTAK SANGHA AND ORS.

DATE OF JUDGMENT:
01/02/1967

BENCH:
SIKRI, S.M.
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SIKRI, S.M.
HIDAYATULLAH, M.
VAIDYIALINGAM, C.A.

CITATION:
1967 AIR 1040 1967 SCR (2) 528

ACT:
West Bengal Non-Agricultural Tenancy Act (20 of 1949) s. 24-Conditions for applicability of section-Validity of section with reference to Constitution of India, Art. 19(1)(f).
West Bengal Estates Acquisition Act (1 of 1954), s. 2(1)(i)-Non-Agricultural tenanr receiving rent from under-tenant-Whether "intermediary."

HEADNOTE:
Respondent No. 1, a Society registered under the Societies Registration Act, 1860, took to lease a piece of land part of which was already leased to Respondents 2 and 3. Under the lease Respondent No.1 was entitled to receive rent from Respondents 2 and 3. The latter transferred the land held by them to the appellant. Respondent No.1 thereupon filed an

application claiming the right of transfer under s. 24 of the West Bengal Non-Agricultural Tenancy Act, 1949. The trial Court and the appellate court dismissed the application but the High Court, in revision, allowed it. By special leave, the appellant came to this Court. It was urged on behalf of the appellant : (i) that the terms of s. 24 of the aforesaid Tenancy Act were not satisfied in the case, (ii) that s. 24 was ultra vires as the right of transfer therein was based solely on the ground of vicinage and created an unreasonable restriction on the guaranteed right of the appellant and respondents Nos. 2 and 3 under s. 19(1) (f) of the Constitution and (iii) that Respondent No. 1 being only entitled to receive rent from respondents 2 and 3 was an "intermediary" within the meaning of the West Bengal Estates Acquisition Act and therefore all its rights vested under the Act in the State of West Bengal.

HELD: (i) The Society was the immediate landlord of the land in dispute. The said land was contiguous to the other land in its actual possession, and was bona fide required by it for the expansion of its educational institution. The purpose for which it was required was covered by cls. (b) and (c) of s. 4 of the Tenancy Act. The terms of s. 24 of the Act were therefore fully satisfied in the case. [562 B-E]

(ii) The. object of s. 24 is to have an adjustment of the rights of landlords and tenants. The consideration of the land being contiguous is not the sole consideration. The principle of Bhau Ram v. B. Raijnath Singh's ease is not therefore attracted. The restriction contained in s. 24 cannot by any means be treated as an unreasonable restriction,, [565 D]

Bhau Ram v. Baijnath Singh, [1962] Supp. 3 S.C.R. 724, distinguished.

Ram Sarup v. Munshi, [1963] a S.C.R. 858, relied on.

(iii) Being itself a non-agricultural tenant the 1st respondent was excluded from the definition of "intermediary" by the terms of S. 2(1)(i) of the Estates Acquisition Act. [563 D-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1004 of 1965.

Appeal by special leave from the judgment and order dated February 27, 1963 of the Calcutta High Court in Civil Rule No. 3723 of 1962.

D. N. Mukherjee and Dhurba Kumar Mukherjee, for the appel- lant.

Sukumar. Ghose, for respondent No. 1.

The Judgment of the Court was delivered by Shelat, J. This appeal by special leave relates to a plot of land admeasuring about - 41 decimals situate within the municipal' limits of Chandernagore.

Respondent No.1 is a society registered under the Societies Registration Act, XXXI of 1860. Its objects as set out in clause 3(s) of its Memorandum of Association inter alia are "to work, manage; develop, improve and utilise properties and business for the promotion of education, art, science, religion and charity or other useful objects." On March 23, 1941 one Kashinath Seal, the owner of a large plot of land, granted a permanent lease of the land in dispute out of the said plot in favour of respondents 2 and 3. By a registered deed of lease dated September 29, 1944 he granted lease of the entire plot of land including the land in dispute to one Motilal Roy for 99 years. So far as the land in dispute is concerned, which as aforesaid was leased out to respondents 2 and 3, the said Motilal Roy acquired under this lease only the right of realising the rent. The said Motilal Roy was the founder of the 1st respondent Association and was a mere benamidar thereof By a deed of relinquishment dated March 14, 1953 he relinquished all his interest in the said plot in favour of the 1st respondent Association. By a registered deed of sale with a condition for reconveyance dated November 3, 1960 respondents 2 and 3 transferred the land in dispute to the appellant and handed over its possession to him. On coming to know of this sale the 1st respondent Association made an application claiming a right of transfer under section 24 of the West Bengal Non- Agricultural Tenancy Act, XX of 1949 on the ground, that it was the immediate landlord in relation to that land, that the land in question was contiguous to its other lands and that it required it for the purpose of extension of the school conducted by it.

The Trial Court dismissed the application holding that the land in dispute was not contiguous to the land in possession of the 1st respondent Association. It however held that it was satisfied that the 1st respondent Association required the said land bona fide for the purpose of expanding its school. In an appeal against this order by the 1st respondent Association the Additional District Judge set aside the finding of the Trial Court holding that the land in dispute was adjacent to the other land in possession of the 1st respondent Association. But he held that the 1st respondent Association was an "intermediary" within the meaning of section 2(a) of the West Bengal Estates Acquisition Act, 1 of 1954; that therefore its interests vested in the State of West Bengal on the extension of the Act to Chandernagore after its merger in the State of West Bengal and consequently respondent No.1 had no right to claim transfer and dismissed the appeal. The 1st respondent Association thereupon filed a revision application in the High Court under section 116 of the Code of Civil Procedure and Art. 227 of the Constitution.

Three contentions were raised before the High Court on behalf of the present appellant: (1) that the first respondent Association was. an "intermediary" within the meaning of S. 2(1)(i) of the West Bengal Estates Acquisition Act and therefore all its right's vested under that Act in the State of West Bengal; (2) that section 24 of the Non- Agricultural Tenancy Act did not apply as (a) the land in dispute was not contiguous, (b) that under proviso (b) to that section it must be established to the satisfaction of the Court that such land was required for any of the purposes specified in section 4 and that the courts below had not given any finding as to their satisfaction and (3) that section 24 did not apply to a case where an under- tenant transferred his rights to a third party as the section applied only to a transfer by a tenant. The High Court repelled all the three contentions and allowed

the revision setting aside the order of dismissal passed by the Trial Court and confirmed by the Additional District Judge. Before us, Mr. Mukherjee besides reagitating the aforesaid three contentions also raised a constitutional point as to the invalidity of section 24 on the ground that it constituted an unreasonable restriction on the right of the appellant and respondents 2 and 3 to hold property. Section 2(3) of the, West Bengal Non-Agricultural Tenancy Act, defines a "landlord" to mean a person immediately under whom a non-agricultural tenant holds. subsection 5 of that section defines a "non-agricultural tenant-" as a person who holds non-agricultural land under another person and is, or but for a special contract would be, liable to pay rent to such person for that land. Section 3 provides that for the purposes of this Act there would be two classes of non-agricultural tenants, namely, (a) tenants and (b) under- tenants. Sub-section 2 of section 3 defines a "tenant" as meaning a person who has acquired from a proprietor or a tenure-holder a right to hold non-agricultural land for any of the purposes provided in the Act and includes also the successors-in-interest of persons who have acquired such a right. Sub-section 3 defines an "under-tenant" as meaning a person who has acquired a right to hold non-agri-

cultural land either immediately or immediately under a tenant and includes also the successors-in-interest of persons who have acquired such a right. Section 4 provides that a non-agricultural tenant may hold non-agricultural land for (a) homestead or residential purposes,, (b) manufacturing or business purposes or (c) other purposes, Section 7 deals with incidents of non-agricultural tenancy and provides that if any non-agricultural land has been held with or without any lease having been entered into by the landlord and the tenant from before the commencement of the Transfer of Property Act or if such land comprised in' any tenancy created after the commencement of that Act has been held for a term of not less than twelve. years without a lease in writing or if such land has been held for not less than twelve years under a lease in writing but no period is specified therein or if such land held under a lease in writing for a specified period continues to be held with the express or implied consent of the landlord after the expiry of such period and the total period for which such land is so held is not less than twelve years or if the landlord has allowed pucca structures to be erected on any non- agricultural land held under a lease in writing for a specified period whether such structures have been erected before the expiry of the said period or where such land continues to be held with the express or implied consent of the landlord after the expiration of the. said period, during the period such land so continues to be held, then the tenant holding such land shall not be evicted by his landlord except on the ground that he has used such land in a manner which renders it unfit for use for the purpose of the tenancy. The. section further provides that the interests of such a tenant in the land comprised in such tenancy are both heritable and capable of being transferred and bequeathed in the same manner as the other immovable property of such tenant. Section 23 provides that a transfer of non-agricultural tenancy or of any portion or share thereof shall be made by a registered instrument but the Registering Officer is not to accept for registration any such instrument unless the sale price, or where there is no sale price its value is stated therein and unless it is accompanied by a notice of such transfer on the landlord who is not a party to the transfer. Section 24 runs as follows:-

> "If the entire non-agricultural land in a non- agricultural tenancy is transferred, the immediate landlord may, within four months of the service of notice issued under section 23, apply to the court for such land .... to be transferred to himself Provided

that-

(a)

(b) the immediate landlord of the non-

agricultural tenant shall not have any right to purchase unless the, non-agricultural land..... so transferred is contiguous to any land in the actual possession of the landlord and the court is satisfied that such land .... is required for use by such landlord for any of the purposes specified in section 4.

In view of the clear finding by the Additional District Judge it can no longer be disputed that the land in question is contiguous to the land in actual possession of the 1st respondent Association. 'There is also no reason why the finding of the High Court that the land is bona fide required by the 1st respondent Association for expansion of its educational institution should be disturbed. The 'Trial Court held that it was bona fide required by the 1st

-respondent and though the Additional District Judge did not expressly give any finding it appears as the High ,Court has stated that fact was not challenged before him. 'The proviso to section 24 however requires that though such land may be needed bona fide the use for which it is needed must be for any of the purposes set out in section 4. Since the land is not required for a hostel or residential purpose of the 1st respondent -or its employees it cannot fall under clause (a) but the case would -seem to fall under clause (b) and in any event under clause (c). As aforesaid, the objects of the 1st respondent are inter alia to promote education, arts etc., by utilising, improving and developing properties and business. Since the case of the 1st respondent is that it requires the land in question for expansion of its educational -activities, the land in dispute is required for its business purposes, -viz., to develop, improve its properties or in any event for the "other purposes," viz., to carry out its educational objects for which the land in its actual possession is being utilised. There is therefore no ,difficulty in holding that clause (b) of the proviso is satisfied.

The next question is whether section 24 of the Act applies to 'the case of a transfer to a third party by the under- tenant. Section 24 lays down that if non-agricultural land in a non-agricultural tenancy is transferred the immediate landlord may within the prescribed period apply for such land to be transferred to him, ,Counsel argued that section 24 would apply only to a case of transfer .by a tenant and therefore respondents 2 and 3 being the under-tenants a transfer by them in favour of the appellant did not attract 'its provisions. The contention is erroneous, for it does not take into account the special definition of a non- agricultural tenant in section 3. That section is contained in Chapter 11 which is headed "Classes of Non-Agricultural Tenants." The section clearly provides that there are two classes of non-agricultural tenants, (a) tenants and (b) under-tenants and though sub-sections 2 and 3 define a tenant and an under-tenant both the categories are tenants 'for the purposes of the Act. Therefore respondents 2 and 3 though ,under-tenants must be regarded tenants of the 1st respondent Association for the purposes of the Act. Consequently, when respondents 2 and 3 effected transfer of their rights in the land in dispute in favour of the appellant they were bound to give notice thereof to the 1st respondent and on such transfer being made the 1st

respondent was entitled to apply for the land to be transferred to it. It is true that by reason of the perpetual lease in favour of respondents 2 and 3 in respect of the land in dispute the first respondent Association had only the right of receiving rent from them but that makes no difference to the position that the first respondent' war,, the immediate landlord of respondents 2 and 3 in regard to the land in question. Therefore there can be no doubt that both section 23 and section 24 were attracted to the transfer made by respondents 2 and 3 and under section 24 the first respondent as their immediate landlord became entitled to apply for transfer. Counsel however contended that the first respondent having merely the right to receive rent, it was an "intermediary" within the meaning of Act 1 of 1954, that under that Act the interests of such an intermediary vested in the State on the extension of that Act to Chandernagore and therefore the Association had no locusstandi to apply for transfer. This contention also cannot be accepted, for, an "intermediary" as defined in s. 2(1)(i) of that Act means "a proprietor, tenure-holder, under-tenure holder, or any other intermediary above a raiyit or a non-agricultural tenant and in relation to mines and minerals, a lessee or a sub-lessee..... It is thus obvious that the 1st respondent being itself a non-agricultural tenant in respect of the entire land including the land in dispute it does not fall within this definition. Not being thus an intermediary it is impossible to say that its interests in the land in dispute vested in the State or that therefore it was not entitled to apply under section 24.

Mr. Mukherjee then raised a further contention which though not argued in the High Court we allowed him to urge, as it was. purely a question as to the constitutional validity of section 24. The contention was that the right of transfer enacted in that section was founded solely on the consideration of vicinage and therefore constituted an unreasonable restriction on the guaranteed right of respondents 2 and 3 and the appellant under Art. 19(1)(f) of the Constitution. In this connection he relied upon Bhau Ram v. Baijnath Singh(1) where by a majority judgment this Court struck down section 10 of the Rewa State Pre-emption Act, 1946. That section provided for pre-emption on the ground of vicinage and it was held that such a restriction on the right of the vendor to sell 'his property to a purchaser of his choice at a price settled between them was unreasonable. It was observed that besides there being no advantage to the general public from such a law, the real reason (1) [1962] Supp. 3 S. C. R. 724.

2Sup. Cl/67-7 behind a law of pre-emption on the basis of vicinage was to prevent strangers, i.e., people belonging to different religion, race or caste, from acquiring property in any area populated by a particular fraternity or class of people. Such a proviso could not be considered reasonable in view of the prohibition under Art. 15 of the Constitution of discrimination only on the ground of religion, race, caste, etc. It may however be observed that the Court in that decision considered certain provisions of the Punjab

-Pre-emption Act, 1913 and Berar Land Revenue Code, 1928 also and refused to strike down certain provisions of those Acts where apart from vicinage there - were other factors on the consideration of which the right of pre-emption was enacted. The decision therefore is an authority only for the proposition that where such a restriction is laid down exclusively on the ground of vicinage it might be liable to be struck down as an unreasonable restriction. This is illustrated by Ram Sarup v. Munshi(1) where section 15(a) of the Punjab Pre-emption Act, 1913 , as amended by Act 10 of 1960 was held valid on the ground that the restriction on the right of free allienation imposed by that

provision was intended to preserve the integrity of the village and the village community and to implement the agnatic rule of succession and that both of them were reasonable and calculated to further the interests of the general public. An examination of the different provisions of the Act and its scheme shows that contiguity is not the sole consideration for which section 24 was enacted. Chapter III of the Act deals with tenants and confers on them diverse rights. Section 6 permits a tenant holding non-agricultural land to erect pucca structures, to dig a tank and to fell, utilise or dispose of the timber of any tree planted by such a tenant. Under section 7 if the tenancy was created before the commencement of the Transfer of Property Act or its origin is unknown or if created after the commencement of that Act but the land is held thereunder for a period of 12 years or more or where the tenancy is for a shorter term but the tenant has continued to hold the land with the express or implied consent of the landlord and the period in the aggregate is not less than twelve years such a tenant cannot be ejected except only on the solitary ground that he has used such land in a manner which renders it unfit for use for the purposes of the tenancy. Under that section the interests Of such a tenant are made heritable and are capable of being transfeffed or bequeathed in the same manner and to the extent as the other immovable property of the tenant. Where any no agricultural land is held under a lease in writing for a period of not less than 12 years, section 8 confers on the tenant on the expiry of such period the option of successive renewals of such lease on fair and reasonable conditions as to rent as may be agreed upon between the parties or decided by the court in the absence of such agreement.

(1) [1963] 3 S. C. R. 858.

It further provides that such a tenant cannot be ejected either during the term provided by the lease or during its renewal except on the solitary ground that he has used such land in a manner which renders it unfit for use for the purposes of such tenancy. Chapter IV of the Act in like manner confers substantial rights on under-tenants. it is only when a non-agricultural tenant transfers his rights in the leased land to a third party that the provisions of sections 23 and 24 are attracted and in such an eventuality the immediate landlord who has interest in such land and has contiguous land in his actual possession is given the right to apply for the transfer of such land in his favour provided the court is satisfied that such land is required for any of the purposes set out in section 4. The scheme of the Act clearly is to afford security of tenure to tenants and under tenants even to the extent of making their rights transferable and heritable. It is only when such land is sought to be transferred that the immediate landlord is given the right to have it transferred to himself instead of to a third party. These provisions clearly reflect the true object of the legislature in enacting section 24. That object is to have an adjustment of rights of landlords and tenants. The consideration of the land being contiguous is therefore not the sole consideration as in the case of Bhau Ram v. B. Baijnath Singh.(1) The restriction contained in section 24 cannot by any means be treated as an unreasonable restriction. Consequently the contention as to the constitutional invalidity of section 24 cannot be Accepted The appeal is dismissed with costs.

G.C. Appeal dismissed.

(1) [1962] Supp. 3 S.C.R. 724.