

PETITIONER:
STATE OF WEST BENGAL

Vs.

RESPONDENT:
SAILENDRA NATH SEN

DATE OF JUDGMENT 22/04/1993

BENCH:
SAWANT, P.B.
BENCH:
SAWANT, P.B.
KULDIP SINGH (J)

CITATION:
1993 AIR 2146 1993 SCR (3) 343
1993 SCC (3) 386 JT 1993 (3) 61
1993 SCALE (2) 646

ACT:

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West Bengal Estate Acquisition Act, 1953 :
Ss. 4, 5, 5A, 5B, 49.52, 44 (2a)-Raiyati holdings-
Prohibition on sale with effect from 1.6.1954-Notification
under s. 49 issued w.e.f. 10.4.1956- Decree for arrears of
rent in respect of land held by Raiyat-Execution of- Auction
sale of raiyati interests effected after 1.6.1954-Name of
auction purchaser entered as Raiyat in record of rights-
Proceeding to revise entries-Order of Asst. Settlement
Officer substituting name of original Raiyat for auction
purchaser-Held, sales of raiyati interests effected on or
after 1.6.1954 are invalid-Order of Asstt. Settlement
Officer upheld.

The Bengal Tenancy Act, 1885:

S.168A-Decree for arrears of rent in respect of land held by
Raiyat-Execution of-Sale of raiyati interests on land in
question-Held, decree pursuant to suit under Tenancy Act can
not be executed except under the provisions thereof-
Provisions of Code of Civil Procedure not applicable-After
intermediary interests vest in State under West Bengal
Estate Acquisition Act, 1953, s. 168A would not come in
operation-Decree-holder is to proceed against other property
of judgment-debtor.

HEADNOTE:

The name of the respondent auction-purchaser was entered as
raiya in respect of certain lands on the basis of auction
sales dated 6.11.1954 and 3-12-1954 in execution of the
decree for arrears of rent in respect thereof. In 1970 the
Assistant Settlement Officer initiated proceedings under s.
44(2a) of the West Bengal Estate Acquisition Act, 1953 for
revision of the record of rights in respect of the lands,
taking the view that the rent execution sales being effected
after 1.6.1954 were invalid under s. 5B of the Act.
Accordingly, he ordered correction of the record of rights
by substituting the names of the original raiyats for the
auction-purchaser.

The respondent filed appeals which were allowed by the
appellate authority holding that s. 5B of the Act had no
application to raiyati interests. The State filed writ

petition under Article 227 of the Constitution before the
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High Court.

The Special Bench of the High Court, confirming the decision of the appellate authority, held that the effective date in s. 5B of the Act in respect of sale of raiyati and under-raiyati holdings under the relevant statutes mentioned therein was 1.6.1954; that s. 5B did not operate as a bar to execution of decree for arrears of rent as a money decree against raiyati or under raiyati interests, and s. 168A (1) of the Bengal Tenancy Act, 1885 was impliedly repealed by the vesting of the interests of the intermediary including raiyats and under-raiyats in the State; and that the initiation of the proceedings under s. 44(2a) of the Act was without jurisdiction. The State filled the appeals by special leave.

The State challenged the judgment of the High Court on the ground that the High Court was not right in holding that s. 5B of the Act would not operate as a bar against the sale of raiyati or under-raiyati interests if the execution of the rent decree is treated as an execution of money decree under the Code of Civil Procedure; and that the sale made pursuant to the execution of the money decree under the Code even though for rent, and of the raiyati or under-raiyati interest holder, would not be a sale under the statutes mentioned in s. 5B including the Tenancy Act.

Allowing the appeals, this Court,

HELD:1.1 The proceedings initiated by the Assistant Settlement Officer to revise the entries in the record of rights made in favour of the respondent auction purchaser and the orders passed by him recording the names of the former raiyats as raiyats with possession of the lands and deleting the name of the auction purchaser, were valid as the raiyati interests were sold after 1.6. 1954 in execution of the decree for arrears of rent in respect of the lands in question. (360 -C-E)

1.2 By virtue of the notification issued under s. 49, s. 52 makes the provisions of ss. 4, 5, 5A and 5B, among others, of Chapter 11 of the Act applicable to the raiyati and the under-raiyati interests on the issuance of such notification. (351-H)

1.3 In the instant case the Notification No. 680 dated 9.4.1956 issued under s. 49 was brought into force with effect from 10.4.1956. It was not given retrospective effect from 15.4.1955. The effect of this notification was that by
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virtue of s. 4 the intermediary interests stood vested in the State at the latest from 15.4.1955 while the raiyati and under-raiyati interests stood vested in the State with effect from 10.4.1956. The restriction on transfer of the said interests, however, came into effect retrospectively on or from 1.6.1954 by virtue of s. 5B, since that date is mentioned in the section itself. (352 -AB)

1.4. In view of s. 5B of the Act, no estate, tenure or under-tenure including raiyati and under-raiyati interests could be sold under the statutes mentioned in s. 5B including the Tenancy Act on and after 1.6.1954 and a sale after that date under any of those statutes would be void and have no effect under that section. (352 -C)

1.5 The present auction sales being of raiyati interests and effected on 6.11.1954 and 3.12.1954 in execution of the decrees for the arrears of rent under the Tenancy Act were obviously invalid. (352 -D)

2.1 The decree pursuant to the suit under the Tenancy Act cannot be executed except under the provisions of that Act.

There cannot, therefore, be sale of the property in question pursuant to such decree under the provisions of the Code of Civil Procedure. (358-B)

2.2 The intention of the legislature in enacting s. 5B was to prevent sales of the intermediary interests after 1.6.1954. In view of the provisions of the Tenancy Act, the said interests could be sold only under and in accordance with the provisions of that Act. The sale of such interests in the land pursuant to a decree for arrears of rent in respect of that land could not therefore, be made under the Code of Civil Procedure. (360-D)

2.3 The Bengal Tenancy Act, 1885 is a self-contained code governing the relations between the landlord and the tenant and for resolution of their disputes. The Act incorporates certain provisions of the Code of Civil Procedure in toto while others with modification. The Tenancy Act by implication prevents any suit between landlord and tenant to be filed otherwise than under its provisions. All proceedings in the suit filed under the Bengal Tenancy Act from its inception to the satisfaction of the decree are to be governed by its provisions and the provisions of the Code are applicable to such proceedings only to the extent and subject to the conditions stated therein. The Code as such is not applicable to the proceedings or to any part of it and hence no part of the proceedings can be prosecuted under the Code. Even if simple money-decree is obtained for the arrears of rent, no interest of

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the tenant can be brought to sale in execution of such decree except under the provisions of the Tenancy Act. In other words, no such interest can be sold under the Code and independently of the Tenancy Act. (357-H, 358-A-C)

2.4 Besides, Section 168A of the Tenancy Act removes the doubt, if any, and provides the procedure for attachment and sale of tenure or holding for arrears of rent due thereon, and liability of purchasers thereof. The nonobstante clause of the Section excludes all other provisions of the Tenancy Act itself as well as of any other law and the provisions of any contract as well. Clause (a) of the Section states that a decree for arrears of rent whether having the effect of a rent-decree or a money decree or even a certificate for such arrears under the Bengal Public Demands Recovery Act, 1930 shall not be executed by the attachment and sale of any movable or immovable property other than the entire tenure or holding to which the decree or certificate relates. That provision will not apply only if the term of the tenure has expired before an application is made for the execution of such decree or certificate. When the entire tenure or holding is purchased in execution of a decree for arrears of rent in respect thereof, clause (b) of s. 168A (1) provides that the purchaser shall pay to the decree holder the deficiency, if any, between the purchase price and the amount due under the decree together with the cost incurred for the auction sale and also the rent which may have become due between the date of the institution of the suit and the date of confirmation of the sale. This provision is inconsistent with the provisions of the Code. (358 C-F)

2.5 The High Court was not right in holding that the sales can be treated as being pursuant to a money-decree and, therefore, under the Code and independently of the Tenancy Act. The High Court unfortunately missed the vital fact that whether it is a money-decree or rent-decree, the entire raiyati interests of the judgement-debtor in the land in question had to be sold under Section 168A of the Tenancy Act but could not be sold in view of the bar imposed by Section

5B of the Act. The bar cannot be over-come by treating the sale under the Code to circumvent the provisions of the Tenancy Act and in particular of Section 168A of that Act. (359-H, 360 A-B)

2.6 After the intermediary interests vest in the State, they cannot be brought to sale and the remedy of the decree-holder is to proceed against other property of the judgment-debtor if any. In that event, Section 168A would not come in the picture. (358 G-H)

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2621-22 of 1977.

From the Judgment and Order dated 9.11.1976 of the Calcutta High Court in Civil Rule Nos. 1817 and 1818 of 1972.

P.S. Poti and Rathin Das for the Appellant

Dr. Shankar Ghosh for the Respondent.

The Judgment of the Court was delivered by

SAWANT, J. On 18th December, 1970, the Assistant Settlement Officer, Diamond Harbour, initiated proceedings under Section 44 [2a] of the West Bengal Estate Acquisition Act, 1953 [the 'Act'] for revising the finally published record of rights in respect of Khatians Nos. 10, 11 of Mouza Haradhanpore and Khatians Nos 6,7,13,15 and 24 of Mouza Kailpara within his jurisdiction. According to him, incorrect entries were made in favour of the respondent in the record of rights in respect of the said Khatians based on the purchases made by the respondent in auction sales of the Khatians in execution of the decrees for arrears of rent. Two different cases-Case No. 156/70 and No. 22/70-were respectively initiated in regard to the two properties. In both these cases, in the record of rights, the name of the respondent-auction purchaser was entered as raiyat on the basis of the said sales. These sales were effected on 6th November, 1954 and 3rd December, 1954 respectively. The sales were admittedly of the rights of the raiyats, and hence the Assistant Settlement Officer took proceedings for revision of the record of rights taking the view that such rent execution sales effected after 1st June, 1954 would be invalid under Section 5B of the Act. By his orders dated 8th January, 1971 and 27th January, 1971 respectively passed in the two cases, he directed the correction of the record of rights by substituting the names of the original raiyats for the auction purchaser.

The auction purchaser preferred appeals before the Tribunal appointed for the purpose under Section 44[3] of the Act being E.A. Nos. 86 and 87 of 1971. The Tribunal allowed the appeals and set aside the orders of the Assistant Settlement Officer holding that Section 5B of the Act had no application to raiyati interest. Against the decision of the appellate authority, the appellant-State of West Bengal approached the High Court by way of a writ petition under Article 227 of the Constitution. The Division Bench before which the matters came, referred them to a Special Bench since questions of public importance relating to the interpretation of the provisions of Section 5B of the Act were involved. The Special Bench

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held, that (i) the effective date in section 5B in respect of sales of raiyati and underraiyati holdings under the relevant statutes mentioned therein is 1st June, 1954 as provided therein; [ii] Section 5B does not operate as a bar

to the execution of decree for arrears of rent as money-decree against raiyati or under-raiyati interests and Section 168A [1] of the Bengal Tenancy Act is impliedly repealed by the vesting of the interests of the intermediary which include raiyats and under-raiyats] in the State. In this view of the provisions of the Act, the High Court held that the initiation of the proceedings by the Assistant Settlement Officer Under Section 44 [2a] was without jurisdiction, and confirmed the order of the appellate authority. It is this order which is questioned before us.

2. In order to appreciate the answer to the question raised before us, it is necessary to have a brief glance at the relevant provisions of the Act. As its preamble shows, the Act has been placed on the statute book to provide for the acquisition of estates, of the rights of intermediaries therein and also certain rights of raiyats and under-raiyats and of the rights of certain other persons in the lands comprised in the estates.

Section 2 (i) of the Act defines "intermediary" as follows: "intermediary" means a proprietor, tenure-holder, under-tenureholder or any other intermediary above a raiyat or a non-agricultural tenant and includes a service tenure-holder and, in relation to mines and minerals, includes a lessee and a sub-lessee".

By virtue of Section 2 (p), the "tenure-holder" and "raiyat" as defined under the Bengal Tenancy Act, 1885 [hereinafter referred to as to the Tenancy Act'] are to be read in the present Act. They are defined under Section 5 (1) & (2) of the Tenancy Act as follows:

"5. Meaning of Tenure-holder and Raiyat. (1) "Tenure-holder" means primarily a person who has acquired from a proprietor or from another tenure-holder a right to hold land for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it, and includes also the successors in interest of persons who have acquired such a right.

(2) "Raiyat" means primarily a person who has acquired a right to hold land for the purpose cultivating it by himself, or by members of his family or by servants or labourers or with the aid of partners,

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and includes also the successors in interest of persons who have acquired such a right.

Explanation

Coming back to the present Act, Chapter II of the Act deals with the "acquisition of estates and of the rights of intermediaries therein" and consists of Sections 4 to 13. For our purpose, the relevant sections are Sections 4, 5, 5A and 5B. Sub-sections (1) and (2) of Section 4 read as follows:

"4. Notification vesting estates and rights of intermediaries. (1) The State Government may from time to time by notification declare that with effect from the date mentioned in the notification, all estates and 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.

(2) The date mentioned in every such Notification shall be the commencement of an agricultural year; and the notifications shall be issued so as to ensure that the whole area to which this Act extends, vests in the State on or before the 1st day of Baisakh of the Bengali year 1362."

Section 5 refers to the effect of notification published

under Section 4 and states that on or from the date of vesting, among other things, the estates and the rights of intermediaries in the estates to which the declaration applies, shall vest in the State free from all incumbrances. It further states that in particular and without prejudice to the generality of the provisions, everyone of the following rights which may be owned by an intermediary shall vest in the State. Among the rights so mentioned are the rights in sub-soil, in mines and minerals, in hats, bazaars, ferries etc. Clause (c) of Sub-section (1) of the said section then states as follows:

"5. Effect of notification. (1) Upon the due publication of a notification under section 4, on and from the date of vesting-

[a]

[b]

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(c) Subject to the provisions of sub-section (3) of section 6, every non-agricultural tenant holding any land under an intermediary, and until the provisions of Chapter VI are given effect to, every raiyat 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:

x x x x x XI'
Section 5A places restrictions on certain transfers. Sub-sections (1) and (2) thereof read as follows:

"5A. Restrictions on certain transfers. (1) The State Government may after the date of vesting enquire into any case of transfer of any land by an intermediary made between the 5th day of May, 1953 and the date of vesting, if in its opinion there are prima facie reasons for believing that such transfer was not bonafide.

(2) If after such enquiry the State Government finds that such transfer was not bonafide, it shall make an order to that effect and thereupon the transfer shall stand cancelled as from the date on which it was made or purported to have been made;"

Then comes Section 5B which without its proviso with which we are not concerned, reads as follows:

"5B. Estate or tenure not liable to be sold under Act XI of 1859, Cooch Behar Act V of 1897, Bengal Regulation VIII of 1819 and Act VIII of 1885. On and from the 1st day of June, 1954, no estate, tenure or under-tenure shall be liable to be sold under the Bengal Land Revenue Sales Act, 1859 or the Cooch Behar Revenue Sales Act, 1897 or the Bengal Patni Taluks Regulation, 1819 or the Bengal Tenancy Act, 1885, as the case may be, and any sale which took place on or after that day under any of those acts or that Regulation shall be deemed to have been void and of no effect:"

We are not concerned in the present case with Chapter IIL which deals with "assessment and payment of compensation" for the estates of the intermediaries acquired; Chapter IV which relates to "mines and minerals" and which has overriding effect over other provisions of the Act and Chapter V which relates to

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the "preparation of the record of rights".

Chapter VI deals with the "acquisition of rights of raiyats and under-raiyats". As it stood at the relevant time, it consisted of Sections 49 and 52, which were newly inserted

in place of the old Sections 49 and 52 retrospectively by the Amending Act 35 of 1955. The same amending Act deleted Sections 50 and 51. Section 49 reads as follows:

"49. When this Chapter is to come into force. The provisions of this Chapter shall come into force on such date and in such district or part of a district as the State Government may, by notification in the Official Gazette, appoint and for this purpose different dates may be appointed for different districts or parts of districts".

Section 52 without its proviso, is as follows:

"52. Application of Chapters 11, III, V and VII to raiyats and underraiyats. On the issue of a notification under section 49 the provision of Chapters 11, III, V and VII shall, with such modifications as may be necessary, apply mutatis mutandis to raiyats and under-raiyats as if such raiyats and under-raiyats were intermediaries and the land held by them were estates and a person holding under a raiyat or an under-raiyat were a raiyat for the purposes of clauses (c) and (d) of section 5:"

It is on record that by notification No. 6804 L. Ref dated 9th April, 1956 published in Calcutta Gazette Extraordinary of the same day, Part 1, Page 47, Chapter VI came into force in all the districts of West Bengal with effect from the 10th April, 1956.

It is clear from the aforesaid provisions of the Act that when notifications are issued under Section 4, all estates and rights of every intermediary in each such estate, vest in the State, free from all incumbrances. The notifications under that Section have to be issued so as to ensure that the whole area to which the Act extends vests in the State on or before 15th April, 1955 which corresponds to the 1st day of the Baisakh to the Bengali year 1362 mentioned therein. When Chapter VI of the Act comes into force by virtue of the notification issued under Section 49, Section 52 which falls under that Chapter makes the provisions of Chapter II, among others, applicable also to the raiyats and the under-raiyats as if such raiyat and under-raiyat were intermediaries and the lands held by them were estates. In other words, Sections 4, 5, 5A and 5B, among others, of Chapter II become applicable to the raiyati and the under-raiyati interests on the issuance of such

notification. In the present case, as stated above, the notification under Section 49 was brought into force w.e.f. 10th April, 1956. It was not given retrospective effect from 15th April, 1955. The effect of this notification was that by virtue of Section 4 the intermediary interests stood vested in the State at the latest from 15th April, 1955 while the raiyati and the under-raiyati interests stood vested in the State with effect from 10th April, 1956. The restriction on transfer of the said interests, however, came into effect retrospectively on or from 1st June, 1954 by virtue of Section 5B, since that date is mentioned in the Section itself.

3. Hence there cannot be any dispute that no estate, tenure or under tenure including raiyati and under-raiyati interests could be sold under the statutes mentioned in section 5B including the Tenancy Act with which we are concerned, on and after 1st June, 1954 and a sale after that date under any of those statutes would be void and have no effect under that Section. Admittedly, the present auction sales were held in execution of the decrees for the arrears of rent under the Tenancy Act and took place on 6th November and 3rd December, 1954 respectively. What came to be sold

under the said sales were the raiyati interests of the judgment debtors, and the respondents were entered in the record-of-rights as raiyats in place of the original raiyats on the basis of the said sales.

4. The High Court has rightly held that the effective date in Section 5B for prohibition of the sales of raiyati and under-raiyati holdings under the statutes mentioned therein, is 1st January, 1954 as is provided therein. This conclusion of the High Court is not challenged before us. However, the High Court has further held that Section 5B does not operate as a bar against the sale of raiyati or underraiyati interests if the execution of the rent-decree is treated as an execution of money-decree under the Code of Civil Procedure [hereinafter referred to as the 'Code']. According to the High Court, the sale made pursuant to the execution of the money decree under the Code even though for rent, and of the raiyati or underraiyati interest-holder, would not be a sale under the statutes mentioned in Section 5B including the Tenancy Act. It is this conclusion of the High Court which is under challenge before us.

5. In order to arrive at the said conclusion, the High Court has reasoned that Section 5B only declares void, sales of tenures of holdings under the statutes mentioned therein but does not prohibit the sales under the Code. According to the High Court, the Section has no concern with other sales since the tenure or holding was transferable and inheritable under the provisions of the Tenancy Act and other connected regulations till the estates vested in the State w.e.f. 15th April, 1955 by notification issued under Section 49 of the Act.

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6. We are afraid that the interpretation placed by the High Court ignores some obvious provisions of law. In the first place, it, is not correct to say that the sale or transfer of the holding or tenure, was permissible till the estates vested in the State. Section 5A of the Act applies to the case of transfer of any land by an intermediary, made between the 5th May, 1953 and the date of vesting. Under that section, the legislature has given power to the State Government to make an inquiry into the question whether such a transfer was bonafide or not, and if the State Government came to the conclusion that the transfer was not bonafide, consequences stated in the said section followed. It cannot be suggested that the voluntary transfers of the tenure or under-tenures or raiyati or under-raiyati interests in the estates, the sale of which is prohibited under the relevant statutes mentioned in Section 5B, is not covered by Section 5A of the Act.

Secondly, the Tenancy Act is a piece of legislation which amends and consolidates certain enactments relating to the law of landlord and tenant. Under section 3 [6] of that Act "landlord" is defined as "a person immediately under whom a tenant holds, and includes the Government" while under Section 3 [17] of that Act "tenant" is defined as "a person who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that person". The classes of tenants mentioned under Section 4 of that Act include [i] tenure-holders, including under-tenure-holders, [ii] raiyats, and [iii] under-raiyats. The said Act further exclusively governs the relations between the landlord and the tenant as is evident from the provisions of that Act. It is not necessary to refer to all the said provisions. Suffice it to say that the matters relating to the fixation, payment and enhancement of rent, the grounds of ejectment of the tenant and the procedure for

their ejection, transfer and surrender of tenancies, improvements on land, record of rights, the occupancy and non-occupancy rights, the judicial procedure to be followed in suits between landlord and tenant, the sale of interests in land for arrears under a decree, the restrictions on the exclusion of the provisions of the Act by agreement between the landlord and the tenant, the limitation for suits to be filed under the Act, the penalties for illegal interference with the produce of the land, damages, for denial of landlord's title, and even matters relating to the agents and representatives of landlords are all subjects regulated by the said Act. We are concerned in the present case with regard to the suit for the arrears of rent and with the execution of the decree obtained in such suit. Chapter XIII which contains Sections 143 to 158 relates to the "judicial procedure" to be followed in suits between the landlord and the tenant. Section 143 gives power to the High Court to make rules from time to time with the approval of the State Government consistent with the said act declaring that any portion of the Code shall not apply to suits between landlord and tenant as such or to any specified classes of such suits, or shall apply to them subject to modifications specified in the rules made

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by the High Court. Subject to any rules so made and subject also to the other provisions of the said Act, the Code applies to all suits between the landlord and the tenant. Section 144 confers jurisdiction on the suits under the Act on the civil courts which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the suit is brought. The section also makes clear that no suit between landlord and tenant under the Act shall be instituted in any court other than such court. Section 145 specifies the persons who can be recognised agents of the landlord, and the manner in which they are to be authorised by the landlord to be his agents, and notwithstanding anything contained in the said Act, every such agent is empowered to verify the pleadings on behalf of the landlord without the permission of the Court. Section 146 ordains that the particulars of the suits between the landlord and the tenant should be entered in a special register to be kept by each civil court in such form as the State Government may prescribe in this behalf instead of in the register of civil suits prescribed by the court. Section 146A makes a special provision for joint and several liability for rent of co-sharer-tenants notwithstanding anything contained in the Contract Act. Section 146B likewise lays down a special procedure in rent suits against co-sharer-tenants notwithstanding anything contained in the Limitation Act. Section 147 prevents a landlord from instituting successive rent suits against a raiyat except under circumstances mentioned therein. Section 147A prevents the Court from wholly or partly adjusting by agreement or compromise, any suit between landlord and tenant unless the agreement can be enforced under the said Act, viz., the Tenancy Act. This provision again is made notwithstanding anything contained in this behalf under the Code.

Section 148 then lays down a special procedure to be followed in rent suits. It states in clause [a] thereof that Sections 68 to 72 of the Civil Procedure Code and rules 1 to 13 of Order XI, rule 83 of Order XXI and Rule 2 of Order XLVIII in Schedule 1 of the said Code and Schedule III thereof shall not apply to such suit. Clause [b] thereof states that the plaint in such suit shall contain in

addition to the particulars specified in the code, certain additional particulars which are mentioned therein. Clauses [c] and [d] require further particulars in such plaints in certain situations mentioned therein. Clause [e] thereof states that the summons shall be for the final disposal of the suit unless the court is of opinion that it should be for the settlement of issues only. Clause [f] lays down a special mode of service of summons if the High Court by rule so directs and also permits the Court to presume service of summons in certain circumstances. Clauses [g] and [h] similarly relate to the special procedure of summons in such suits. Clause [i] requires leave of the Court to file a written statement. Clause [i] makes the rules for recording the evidence of witnesses contained in rule 13 of Order XVIII in Schedule 1 to the Civil Procedure Code applicable in the trial of such suits, whether

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an appeal is allowed or not. Sub-clause (j) of Clause [k] permits a Court to issue a special summons under certain circumstances notwithstanding anything contained in the Code and Sub-clause (ia) thereof, and also provides for the procedure for effecting the service of the special summons and Sub-clause (ii) provides for the consequences for the non-appearance of the defendants in answer to such special summons. Clause [m] permits the Court to order execution of oral application of the decree-holder unless the decree is for ejectment for arrears. Clause [n] requires the Court not to insist on a fresh vakalatnama or to file a copy of the decree for the purpose of executing the decree notwithstanding anything contained in the Code. Likewise, notwithstanding anything contained in the Code. Clause [o] prohibits an application for the execution of a decree for arrears by an assignee of the decree unless the landlord's interest in the land is vested in such assignee.

Section 148A permits a co-sharer-landlord to sue for rent in respect of his share in the tenure. Section 149 requires the defendant to deposit the amount in Court once he admits that money is due from him even though he pleads that it is not due to the plaintiff but to a third person. Section 150 likewise requires the defendant to deposit the admitted amount due to the landlord notwithstanding the defendant's plea that the plaintiff's claim is in excess of the amount due. Section 153 then provides for appeals in rent suits and while doing so, lays down conditions under which the appeal will lie and will not lie. Section 153A lays down special conditions under which an application to set aside decree, or for review of the judgment won Id lie. Section 154 provides for the dates from which the decree for enhancement of rent would take effect.

Then comes Section 155 which provides for relief against forfeiture under certain circumstances and Section 156 lays down the rights of ejected raiyats and under-raiyats in respect of crops and land prepared for sowing.

Section 157 lays down special power of the Court to fix fair rent as alternative to ejectment.

Section 158 gives power to the Court to determine incidence of tenancy on the application either of the landlord or tenant. Chapter XIV of the Act provides for "Sale for arrears under Decree". We are directly concerned with the said Chapter. Section 159 thereof details "general powers of purchaser as to avoidance of incumbrances". Section 160 mentions the "protected interests" within the meaning of the said Chapter. Section 161 gives a special meaning of "incumbrance" and "registered and notified incumbrance" for the purpose of the said Chapter. Section 162 gives the

particulars of the statement which a decree-holder has to produce when he makes an application for attachment and sale of the tenure or

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holding in execution of the decree. Section 163 makes special provision for a combined order of attachment and proclamation of sale to be issued notwithstanding anything contained in the code on the subject. Section 164 provides for the sale of tenure or holding subject to "registered and notified incumbrance" and the effect thereof. Section 165 is another special provision which provides for sale of tenure or holding with power to avoid all incumbrances and states the effect thereof. Likewise, Section 166 makes provision for sale of occupancy holdings with power to avoid all incumbrances and for the effect thereof. Section 167 gives procedure for annulling incumbrances under Sections 164, 165 or 166. Section 168A with which we are directly concerned in the present case then states as follows:

"168A. Attachment and sale of tenure or holding for arrears of rent-due thereon, and liability of purchasers thereof.

[1] Notwithstanding anything contained elsewhere in this Act, or in any other law, or in any contract-

[a] decree for arrears of rent due in respect of a tenure or holding, whether having the effect of a rent decree or money decree, or a certificate for such arrears signed under the Bengal Public Demands Recovery Act, 1913, shall not be executed by the attachment and sale of any movable or immovable property other than the entire tenure or holding to which the decree or certificate relates:

Provided that the provisions of this clause shall not apply if, in any manner other than by surrender of the tenure or holding, the term of the tenancy expires before an application is made for the execution of such a decree or certificate;

[b] The purchaser at a sale referred to in clause (a) shall be liable to pay to the decree-holder or certificate-holder the deficiency, if any, between the purchase price and the amount due under the decree or certificate together with the costs incurred in bringing the tenure or holding to sale and any rent which may have become payable to the decree-holder between the date of the institution of the suit and the date of the confirmation of the sale.

[2] In any proceeding pending on the date of the commencement of the Bengal Tenancy (Amendment) Act, 1940, in execution of a decree or certificate to which the provisions of sub-section (1) apply, if there has been attached any immovable property of the

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judgment-debtor other than the entire tenure or holding to which the decree or certificate relates, and if the property so attached has not been sold, the Court or Certificate-officer as the case may be shall, on the application of the judgment-debtor, direct that, on payment by the judgment-debtor, of the costs of the attachment, the property so attached shall be released.

[3] A sale referred to in clause (a) of sub-section (1) shall not be confirmed until the purchaser has deposited with the Court or Certificate-officer, as the case may be, the sum referred to in clause (b) of that sub-

section."

We will revert to this section soon.

Section 169 provides for special rules for disposal of the sale proceeds instead of the rules contained in the Code. Similarly, Section 170 provides for circumstances under which tenancy of holding is to be released from attachment notwithstanding the provisions of the Code in that behalf. Section 173 enables a decree-holder to bid for the purchase of the tenure or holding in an auction-sale without the permission of the Court which is against the provisions of the Code. Section 174 provides for application to set aside the sale and makes the relevant provisions of the Code inapplicable in certain circumstances. Section 174A provides for the circumstances under which sale shall become absolute or shall be set aside and purchase money will be returned. It is also necessary to refer to Section 178 in Chapter XV of the Act which expressly provides for restrictions on the exclusion of the Act by agreement between the parties. Sub-section [c], in particular of that section, states that nothing in any contract between a landlord and a tenant made before or after the passing of the said Act shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of the said Act. Section 184 provides for special limitation in suits, appeals and applications filed under that Act and Section 185 makes certain provisions of the Limitation Act inapplicable to such suits. Section 186 provides for penalties for illegal interference with produce. Section 186A provides for damages for denial of landlord's title. Section 187 gives landlord power to act through agents. These are all the provisions which are necessary for us to notice. It will be apparent from the said provisions that the Act is a self-contained Code governing the relations between the landlord and the tenant, for resolution of their disputes, for the suits to be filed by them, for the procedure to be followed in such suits and the conditions on which decrees may be passed in such suits, for the execution and

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satisfaction of the said decrees. The Act incorporates certain provisions of the Code in toto while others with modification. At the same time, it makes still other provisions inapplicable to the proceedings in the suit filed under it. The Act by implication prevents any suit between landlord and tenant to be filed otherwise than under its provisions. Thus all proceedings in the suit filed under the Act from its inception to the satisfaction of the decree are to be governed by its provisions and the provisions of the Code are applicable to such proceedings only to the extent and subject to the conditions stated therein. The Code as such is not applicable to the proceedings or to any part of it and hence no part of the proceedings can be prosecuted under the Code. It is thus clear that even if simple money-decree is obtained for the arrears of rent, no interest of the tenant can be brought to sale in execution of such decree except under the provisions of the Act. In other words, no such interest can be sold under the Code independently of the Act. Secondly, if any doubt in that behalf was left, it is removed by the provisions of Section 168A. The said section which is reproduced above begins with the non-obstante clause which excludes all other provisions of the Tenancy Act itself as well as of any other law and the provisions of any contract as well. Clause [a] of that section states that a decree for arrears of rent whether having the effect of a rent-decree or a money decree

or even a certificate for such arrears under the Bengal Public Demands Recovery Act, 1930 shall not be executed by the attachment and sale of any movable or immovable property other than the entire tenure or holding to which the decree or certificate relates. That provision will not apply only if the term of the tenure has expired before an application is made for the execution of such decree or certificate. What is further, when the entire tenure or holding is purchased in execution of a decree for arrears of rent in respect thereof, Clause [b] of sub-section [1] of that section provides that the purchaser shall pay to the decree-holder or certificate-holder, as the case may be, the deficiency, if any, between the purchase price and the amount due under the decree or the certificate, together with the cost incurred for the auction sale and also the rent which may have become due between the date of the institution of the suit and the date of the confirmation of the sale. This provision is inconsistent with the provisions of the Code.

The High Court has held that the said-Section 168A [1] stands impliedly repealed by the vesting in the State of the interests of the intermediary which include raiyati and under-raiyati interests and attract the proviso thereunder leaving the decree-holder free to execute his decree as money-decree in view of Section 5B of the Act, against any other property of the judgment-debtor, tenureholder or tenant. There is no doubt that after the intermediary interests vest in the State, they cannot be brought to sale and the remedy of the decree-holder is to proceed against other property of the judgment-debtor, if any. In that event, Section 168A would not come in the picture.

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However, the High Court has gone further and observed as follows:

"In Bithika Maity's case, it was correctly decided that the effective date in section 5B in respect of raiyati and under-raiyati holdings is also the first day of June 1954. The decision however failed to take notice that the impugned sale therein held on September 10, 1954 could be treated as,; a sale under the Code of Civil Procedure as a sale in execution of a money decree. This aspect of the case was not taken in consideration possibly because the case was heard exparte. We are accordingly unable to approve the decision that all sales between the first day of June 1954 to the vesting of raiyati interest are to be deemed as being under the Statutes mentioned therein and hence to be declared void as was summarily held by it. On the contrary, such sales though deemed as invalid and of no effect under the aforesaid acts, are to be treated and will have the effect of sales under the Code of Civil Procedure in execution of money decrees, if otherwise valid. Accordingly accepting Mr. Mitra's contention, we hold that the name of the opposite party being auction-purchaser of the right, title and interest of the judgment-debtor was validly recorded as raiyat in respect of the disputed holdings in the finally published record-of-rights in place and stead of defaulting judgment-debtors who held the sake [sic] holdings."

It is difficult to appreciate these observations which are self-contradictory. There is a conflict of view on the question as to when the raiyati and the underraiyati interests vested in the State, viz., whether on 15th April, 1955 when Section 4 became applicable to them by virtue of the retrospective operation of Sections 49 and 52 or on 10th April 1956 when the notification under Section 49 was

issued. It is not necessary for us to go into that question on the facts of the present case nor was the question debated before us. Hence we would refrain from expressing any opinion on the point there is, however, no dispute before us that the sales even of raiyati and under-raiyati interests effected after 1st June, 1954 were invalid under Section 5B of the Act. Hence, the sales of the raiyati interest in the present case effected on 6th November, 1954 and 3rd December, 1954 were obviously invalid. After 15th April, 1955 or 10th April, 1956, as the case may be, (according to the conflicting views of the High Court), when the raiyati and under-raiyati interests came to be vested in the State, no sale could have been held of those interests, and the decree-holder would have been required to proceed against the other properties of the judgment-debtor. However, admittedly in the present case it is the raiyati interests of the judgment-debtor in the land in question which were sold. Hence, the sales were void. The High Court has reasoned that the sales can be treated as

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being pursuant to a money-decree and, therefore, under the Code and independently of the Tenancy Act. The High Court unfortunately missed the vital fact that whether, it is a money-decree or a rent-decree, the entire raiyati interests of the judgement-debtor in the land in question had to be sold under the said Section 168A, but could not be sold in view of the bar imposed by Section 5B of the Act. The bar cannot be overcome by treating the sale under the Code to circumvent the provisions of the Tenancy Act and in particular of Section 168A of that Act. We have already pointed out that the decree pursuant to the suit under the Tenancy Act cannot be executed except under the provisions of that Act. There cannot, therefore, be a sale of the property in question pursuant to such decree under the provisions of the Code. What is further, the intention of the legislature in enacting Section 5B was to prevent sales of the intermediary interests after 1.6.1954. In view of the provisions of the Tenancy Act, the said interests could be sold only under and in accordance with the provisions of that Act. The sale of such interests in the land pursuant to a decree for arrears of rent in respect of that land could not therefore be made under the Code. Admittedly in the present case, the raiyati interests were sold after 1.6.1954 in execution of the decree for arrears of rent in respect of the land in question. Hence the proceedings initiated by the Assistant Settlement Officer to revise the entries in the record-of-rights made in favour of the auction-purchaser and the orders passed by him on January 8 and 27, 1971 recording the name of the former raiyats as raiyats with possession of the lands and deleting the names of the auction-purchaser, were valid. We, therefore, set aside the impugned decision of the High Court and restore that of the Assistant Settlement Officer. The appeals are allowed accordingly. In the circumstances of the case, there will be no order as to costs.

RP

Appeals allowed.

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