NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6264 OF 2013

SMT. RENUKA DEY & ORS. …APPELLANTS

VERSUS

NARESH CHANDRA GOPE (D)
THR. LRS. & ANR. …RESPONDENTS

J U D G M E N T

ANIRUDDHA BOSE, J.

The West Bengal Restoration of Alienated Land Act, 1973 contemplates, in substance, return of land to a small land-holder in a situation such a landholder conveys the same to raise funds to tide over financially distressed condition. For restoration of the conveyed land, the concerned landholder is required to make an application to the authority prescribed under the said statute. We shall refer to that statute henceforth as the 1973 Act. This legislation lays down certain parameters within which a landholder ought to come to invoke the provisions relating to restoration of the land already

conveyed by him. The nature of land to which the said Act applies is defined in Section 2 (2) of 1973 Act. Under the said provision, land means agricultural land and includes homestead, tank, well and water channel. To be eligible for the protective umbrella of this statute, the aggregate holding of the transferor cannot exceed two hectares. The 1973 Act, as originally framed, applied to any transfer made by a landholder "in distress" or "in need of money for the maintenance of himself and his family" or "for meeting the cost of his cultivation". There has been subsequent amendment to the Act by which the words "in distress or" has been omitted. In this appeal, we are concerned with a deed of conveyance executed on 26th April, 1968. The transferors of the land forming subject-matter of that deed applied for restoration thereof on 9th August, 1974. At that point of time, the 1973 Act, as originally framed was applicable. Section 4 (1) of the Act lays down the conditions under which a transferor could seek restoration of conveyed land. Section 4 of the said statute, as originally enacted, read:-

> "4. *Procedure for effecting restoration of lands alienated under certain*

circumstances.—(1) Where before the commencement of this Act a person being the transferor holding not more than 2 hectares of land in the aggregate transferred the whole or any part of his land by sale to any person being the transferee, then, if-

(a) such transfer was made after the expiry of the year 1967 being in distress or in need of money for the maintenance of himself and his family or for meeting the cost of his cultivation, or

(b) such transfer was made after the expiry of the year 1967 with an agreement written or oral, for reconveyance of the land transferred, to the transferor,

the transferor may, within five years from the date of such transfer or within two years, from the date of commencement of this Act, whichever period expires later, make an application in the prescribed manner to the Special Officer having jurisdiction in the area in which the land transferred is situate for restoration of such land to him.

(2) On receipt of such application, the Special Officer shall cause a notice thereof to be served in the prescribed manner on the transferee.

(3) On the date fixed in the notice for hearing such application or on any subsequent date to which the hearing may be adjourned by the Special Officer, the Special Officer shall receive such evidence as may be adduced by the transferor and the transferee.

(4) If after considering such evidence and hearing the parties the Special Officer is satisfied that such transfer was made by the transferor within the time, and for the purpose, referred to in clause (a) of sub-section (1), or, as the case may be, within the time, and under the conditions, referred to in clause (b) of that sub-section, the Special Officer shall make an order in writing restoring the land transferred to the transferor and directing the transferor to pay, in such number of equal instalments not exceeding ten and by such dates as may be specified in the order, the amount of the consideration which was actually paid by the transferee to the transferor for such transfer, together with interest on such amount at the rate of four ***per centum per annum*** from the date of his receipt of such consideration and the amount of any compensation for improvements effected to such land, allowed by the Special Officer and determined by him in the manner prescribed, less the amount determined in the manner prescribed of the net income from such land of the person in possession of such land as a result of such transfer.

Provided that the first of the instalments provided in the order made under this sub section shall be payable within three months of the date of the order.

Explanation-Subject to the other provisions of this section,-

(i) the word "transferor" referred to in this Act means the first transferor between the

expiry of the year 1967 and the date of commencement of this Act and includes the heirs of such first transferor;

(ii) the word "transferee" shall mean where the land is in the possession of any person other than the first transferee by virtue of a subsequent transfer such subsequent transferee; and

(iii) the expression "consideration which was actually paid by the transferee to the transferor" shall mean where there was more than one transfer, the amount which was paid by the first transferee to the first transferor.

(5) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) any evidence adduced by a transferor varying, adding to, or subtracting from, the terms of the sale deed to prove the necessity or purpose for which the transfer was made or the amount of consideration actually paid by the transferee to the transferor, shall be admitted.

(6) When the special Officer makes an order for payment under sub-section (4), he shall direct that-

(a) where such land has been sold before or after such order is made, in execution of a decree or of a certificate under the Bengal Public Demands Recovery Act, 1913, (Bengal Act III of 1913) against the transferee the whole of the amount payable under the said order or such part of it as may then remain due, shall, notwithstanding anything contained in such order become due and payable at once and on such payment being made, such sale in execution of the decree or the certificate shall be set aside and the amount paid shall be applied towards

satisfaction of the decree or the certificate, as the case may be;

(b) in the case where such land has been alienated by the transferee before the date of such order by means of a bonafide lease for valuable consideration or a usufructuary mortgage, such payment shall be made to the transferee and the person in possession of such land as a result of such transfer in such proportion and in such manner as may be determined by the Special Officer and specified in the order; and

(c) in other cases, such payment shall be made to the transferee;

Provided that if such land is subject to a bonafide mortgage other than a usufructuary mortgage and such mortgage was executed after the transfer of such land referred to sub-section (1), the Special Officer shall direct that such instalments shall first be paid to the mortgagee until the amount due under the mortgage as determined by the special Officer is paid off and that the thereafter any such instalments or part thereof still remaining due shall be paid in the manner provided in clause (a), clause (b) or clause (c) of this sub-section as the case may be.

(7) the amount ordered to be paid by instalments under sub-section (4) shall be a charge on the land in respect of which the order under that sub-section has been made.

(8) Where any land, in respect of which an order under sub-section (4) is made, is after the date on which such order takes effect under sub-section (1) of section 5, sold in execution of a decree or of a certificate filed under the Bengal Public

> Demands Recovery Act, 1913, against the transferor to whom restoration had been made, or otherwise transferred by him, the whole of the amount payable under such order then remaining due shall, notwithstanding anything contained in such order, at once become due and payable, and the person to whom such amount is payable shall be entitled to recover it under Section 6."

2. Malina Bala Dey (since deceased), Smt. Bebi and Renuka Dey (the first appellant) before us had conveyed approximately 31 decimals of land to Naresh Chandra Gope (since deceased) in the district of Burdwan in West Bengal by a deed executed on 26th April, 1968 for a consideration of Rs. 9,500/-. So far as Renuka Dey is concerned, she conveyed the land for self and on behalf of her two minor sons and also a daughter. The land forming the subject of the sale transaction included parts of a pond (tank) and garden. In the deed itself, it has been recorded that the first vendor (i.e. Malina Bala Dey) was effecting transfer for buying other property whereas the second vendor (Smt. Bebi also spelt as Baby on certain documents) wanted the sale proceeds to be applied for repaying loan obtained for marriage of her sister. The third vendor (Smt. Renuka Dey), also representing her two minor sons and daughter declared in the deed that the sale was being effected for meeting the

educational costs of her two minor sons and also for repaying loans obtained for (i) marriage of her daughter (ii) obtained by her husband and (iii) for buying "some paddy land for our food, cash is required" (quoted from the copy of the deed forming part of the paper book, at page 50). On the very same date the subject-land was conveyed, Malina Bala Dey and Smt. Renuka Dey purchased another piece of immovable property for a consideration of Rs. 5,000/-.

3. It has been urged on behalf of the appellants, (who are the original transferors Renuka Dey, Baby Basu Mallick as also the two sons and daughter of Renuka Dey and legal representative(s) of Malina Dey) that simultaneous with the deed of conveyance, another agreement of reconveyance of the land was also executed by and between the same set of parties. The time period by when the agreement was to be executed, as specified in that agreement itself, was broadly two years. We are quoting below relevant extracts from that agreement :-

> "Now I enter into an agreement with you that within the month of Chaitra, 1377 B.S you shall pay me back Rs. 9500/- (which I paid to you today) at a time and I shall sell to you the property described in the

schedule below and execute and register a deed of sale in your favour.

But if do not sell to you the aforesaid property inspite of receiving from you Rs. 9500/- at a time within the aforesaid period then you, by this Ekrarnama, shall get the aforesaid property executed and registered through Court.

And if you fail to pay me Rs. 9500/- at a time within the aforesaid period then this Ekrarnama shall be cancelled and after expiry of the aforesaid period you shall not be entitled to make any claim for purchasing the aforesaid property and even if done the same shall be rejected." **(quoted verbatim)**

4. The transferors applied for restoration of the subject property on 09th August 1974 before the Special Officer having jurisdiction over the subject land. It was urged before the Special Officer that the subject land was sold in distress and the deed of conveyance was coupled with a reconveyance agreement. Before the set of proceedings giving rise to this appeal had originated, there was an earlier round. The proceedings in the earlier round had also reached the High Court at Calcutta, in its constitutional writ jurisdiction. The original transferors were the petitioners before the High Court, as their application for restoration of land stood rejected by the Special Officer as also by the appellate authority. The writ

petition before the High Court was registered as Civil Rule No. 8574 (w) of 1983. By a judgment delivered on 18th March, 1993, a Single Judge of the High Court had set aside the two orders passed by the statutory fora under the 1973 Act and the matter was remanded to the Special Officer. Hearing the matter on remand, the Special Officer sustained the application for restoration by an order passed on 14th March, 1995. Corollary directions were passed for refund of the consideration money and interest to the purchaser. The computation of the sum to be paid to the purchaser was specified in the order of the Special Officer. The latter authority found the application for restoration to be in order on technical points. On the point as to whether the applicants fulfilled the criteria specified in Section 4 (1) of the 1973 Act, the Special Officer found that at the time of effecting sale, Renuka Dey was unemployed widow and employment of the son of Malina Bala Dey was also not established. As regards purchase of 1.33 acres of land out of sale proceeds, it was the applicant's stand that the said paddy land was originally purchased for maintaining the family and this land also had to be sold after four years, in the year 1972 at a reduced price to meet further debt. The Special Officer

specifically came to the finding that transfer of the subject land was made in need of money for maintenance of the family of the vendors. The subsistence of agreement for reconveyance within two years from 26th April, 1968 was also recorded in the said order, which was made on 14th March, 1995.

5. The appeal of the purchaser (whose successors are respondents before us) against the restoration order was also dismissed by the Sub-Divisional Land and Land Reforms Officer. The appellate authority sustained the finding of the Special Officer. It was held by the West Bengal Land Reforms and Tenancy Tribunal (the Tribunal), which heard the application of the purchaser against the restoration Order, while dismissing such application :-

> "To establish that the transferor was financially sound at the material time the applicant has again baselessly submitted that the husband of Renukabala was a railway employee, that Renukabala was a school teacher, that the son of Malinabala, another transferors was a School teacher, that transferors purchased on the same date 1.33 acre of land. All these points were raised before the Special Officer who after due consideration rejected them as baseless. The husband of Renukabala died in 1957, that is long ago. Renukabala got an appointment as a teacher after the transfer was made. The son of laminable

was a student of Higher Secondary at the material time. The transferors got deep into debt because there was no earning member in the family. Because of the marriage of the sister and daughter they had to incur further debt. Hence, they had to sell the lands in the urban area. With half the consideration money they purchased the paddy land which also they could not hold on for more than 4 years. They were compelled to sell the land.

It is therefore, evident that the applicant has not only raised the same questions of fact which were decided by the authorities on sound grounds but also that all the contentions are totally baseless. The authorities have rightly decided the questions, and there is no illegally committed by them." **(quoted verbatim)**

6. The purchasers subsequently invoked writ jurisdiction of High Court at Calcutta and their petition was registered as W.P.L.R.T No. 630 of 2003. Before the High Court however, the main point which was urged on behalf of the purchaser/respondents was that the land in question was homestead non-agricultural land and hence the said Act would not be applicable so far as the subject-transaction was concerned. The factum of the character of the transaction being distress sale was also contested before the High Court. The High Court decided the issue in favour of purchaser, holding that the

Tribunal or the other statutory fora never addressed the question as to whether the land in question came within the purview of the 1973 Act or not. The High Court also went against the applicants on the aspect of "distress sale". It was held by the High Court :-

> "Now the next question that arises for our consideration is of utmost importance. The Scheme of the said Act deals with restoration of the land sold by a person in need of money for his maintenance or that of his family or meeting the cost of his cultivation. In the present case, we feel none of the said criterions has been fulfilled.
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> The deed, which was prepared for the purpose of sale, clearly mentioned that the land was required to be sold for the purpose of meeting the loan incurred for the Sister's marriage and for the purpose of education of the minor child.
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> On the one hand, we find that the reasons for sale cannot bring the transaction within the purview of the said Act and on the other hand, we find that on the very same day the petitioner had purchased certain agricultural land. This is an undisputed position.
>
> If that be so, it cannot be said to be a distress sale. This Act primarily intends to provide relief to the Agriculturists in respect of distress sale or the like and

> when from the very recitals of the deeds it appears that transferors' own case was to meet the need of money for other purpose, obviously, it cannot be called a distress sale within the purview of Section 4 of the said Act. In this context the Division Bench decision of this Court in Prosad Kumar Dhara vs. Kamala Kanta Dikshit & Ors. (supra) cited by Shri Basu is fully applicable."

7. The order of the Tribunal was set aside by the High Court mainly relying on a Division Bench decision of the same court in the case of **Prosad Kumar Dhara v. Kamala Kanta Dikshit** [AIR 1982 Cal 532]. In this judgment, while analysing the definition of land, it was held by the Division Bench that the 1973 Act did not profess to reopen all transfers of all properties and it was intended to give relief to agriculturists in respect of distress sales or the likes and in the definition clause land has been defined to be limited to agricultural land. Referring to homestead land, the Division Bench took the view that homestead land when included within the meaning of the term "land" in 1973 Act means homestead of an agriculturist and not any and every structure on non-agricultural land. The High Court further held in the judgment under appeal before us:-

> "In view of the fact the basic question, which we have found, has remained unanswered by all the fora including the Tribunal and as the same decides a preliminary issue. We feel the order passed, which has been brought before this court in this application is required to be set aside.
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> Accordingly, we allow the application. Order dated 13.06.2003 passed by the West Bengal Land Reforms and Tenancy Tribunal in T.A. No. 571 of 2002 (LRTT) is set aside."

8. This judgment has been assailed before us on behalf of the applicants for restoration or their legal representatives. Our attention has been drawn to the definition of land, contained in section 2(2) of the 1973 Act, which reads:-

> "2(2) - "land" means agricultural land and includes homestead, tank, well and water-channel;"

Mr. Bhattacharya, learned advocate appearing for the appellants, has argued that the definition of land includes homestead, tank, well and water channel. So far as the land involved in this appeal is concerned, we find from the schedule to the deed that what was sold was a pond, which can mean

tank, as also highland trees as part of fishery. We quote below the said schedule from Annexure R-1 of the counter affidavit filed on behalf of the respondents :-

> "Schedule-I
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> Under District and District Registry Burdwan, P.S. – and Sub-Registry Kalna, Pargana Raipur, within Kalna Municipality, J.L. No. 166, Mouza – Madhuban, Touzi No. 135, R.S. No. 948, Khatian No. 47, Jot Khatian Nmo. 53, Dag No. 156 Pond named Galakata Pond, total 24 satak except of 26 satak of 2/7, part of 87 satak total: (10th page).
>
> 7 Satak excepting 1 Satak of 8 Shatak of 1/7th part of 54 Satak Garden in Dag No. 168. Total 31 Shatak with high land trees and part of fishery with all rights and titles thereof and the annual tax of it is 2.31 paisa total 1.59 shatak tax 6.765 paisa payable to collector Burdwan on behalf of Government of West Bengal thorough J.L.R.O. Kalna, Burdwan."

9. Mr. Bhattacharya has sought to justify the restoration order on the ground that alienation was effected for maintenance of vendors and their family and further the deed was coupled with an agreement for reconveyance which was proved before the fact-finding statutory fora. He has cited a

decision of Calcutta High Court in the case of **Chitta Ranjan Ghosh v. State of West Bengal,** reported in (1976) 2 CLJ 180. In this judgment, a Division Bench of the High Court upheld the constitutional validity of the 1973 Act. The Bench has opined that liberal construction of the word "distress" ought to be given. We quote below the relevant passage from this judgment :-

> "33. It is true that the word "distress" has got divergent meanings. But where the purpose of the Act is to give relief to the poor raiyats, the word, distress, must have only one meaning, i.e. "economic distress". The cost of cultivation of an owner of less than two hectares of land, obviously, does not include the cost of either of a costly tractor or the cost of diesel or electric pumps for the purpose of irrigation. In West Bengal the cost of cultivation varies from one district to another. It depends upon the nature and character of the soil, the availability of the labour, facilities of irrigation, cost of menures and similar other factors.
>
> 34. So, it is impossible for the legislature to lay down the detailed items of cost. Flexible powers have been conferred by the Act upon the Special Officer to meet the exigencies of the situation." **(quoted verbatim)**.

10. In a later judgment, **Habu Mondal v. Collector, Bankura** [1983 C.W.N. 728] a Single Judge of the said High Court held that either of the two conditions specified under Section 4(1)(a) and (b) of the 1973 Act can justify invoking the provisions for restoration contemplated under that statute.

11. On behalf of the respondents, who are successors of the original purchaser, Mr. Rajesh Srivastava, learned advocate has defended the judgment under appeal. It is his submission that the said statute does not apply to non-agricultural land. He has also emphasised that the enactment was meant to benefit only the people engaged in agriculture who had to resort to distress sale and not every transfer of immovable property could come within the purview of the statute. In support of this argument, he has relied upon the decision in the case of **Prosad Kumar Dhara** (supra).

12. In our opinion, the mere fact that part of the sale proceeds has been utilised for purchasing another agricultural land would not per se disentitle a transferor from invoking the restoration provision contained in the 1973 Act, provided of course, the transaction sought to be repudiated otherwise

attracts the provisions of the said statute. In the given facts of this case, substantial part of the sale proceeds was to be applied to meet the maintenance need of the vendors and their family. This was the finding of fact returned by all the three statutory fora. Fresh purchase of land, covering little over half of the consideration sum received from sale of the subject-land was also for the purpose of maintaining the necessities of the vendors. This appears from submissions recorded in the order of the authority of first instance.

13. We do not accept the finding of the High Court contained in the judgment under appeal that the said transaction per se did not constitute distress sale. The reasons cited by the vendors for selling the land definitely show that they were in need of money. Under Section 4 (1) (a) of the Act three situations have been contemplated as alternative conditions to enable a land holder to seek restoration of land already conveyed by him. These are “in distress” or “in need of money for the maintenance of himself and his family” or “for meeting the cost of his cultivation”. These are interconnected situations and the vendors’ reasons for transfer, spelt out in the conveyance deed itself, in our view, comes within the broad

terms expressed in the statute. We set aside this part of the finding of the High Court. We, however, are unable to find sufficient reason to upset the finding of the High Court that the nature or character of land was never gone into. In our view that would be the determinant factor for invoking the provisions of Section 4 of the 1973 Act in the factual context of this case. In **Prosad Kumar Dhara** (supra), it was held by the Division Bench of the High Court, that homestead land, when included within the meaning of the term 'land' means homestead of the agriculturist and not any or every structure of non-agricultural land. We approve this view, as expressed in the said judgment. This proposition has been laid down on interpretation of a State Law by the jurisdictional High Court. The said judgment has held the field since 1982. On the basis of reasoning contained in the judgment of the High Court in the case of **Prosad Kumar Dhara** (supra), we are of the opinion that even waterbodies like pond or tank should also have some connection with agricultural land or the occupation of the transferor as agriculturist to come within the purview of the 1973 Act.

14. We find from the schedule to the deed of conveyance dated 26th April, 1968 that there is reference to Kalna municipality in description of the land. It is a fact that on a reading of the orders of the Special Officer, Appellate Authority, and the Tribunal, it does not appear to us that the issue relating to the character of the land conveyed was raised before any of these three fora. All the three fora proceeded on the basis that the subject land attracted the provisions of 1973 Act. This being a question of fact, we would have had avoided entertaining that question at this stage. But that point was argued before the High Court and the High Court has upset the findings of three statutory fora on this count. The materials available before us do not clearly establish that the land came within the purview of the said Act. To that extent, we are of the view that the High Court's opinion is correct. Moreover, this question goes to the root of the matter in controversy. But because of this lacuna, we do not think the applicants ought to have been altogether non-suited from the restoration proceeding, particularly since this point does not appear to have had been raised before the statutory fora by the original purchaser. There is no reflection of such argument in the said three orders. In our opinion, this is a

crucial point which should have been determined before foreclosing the applicants' restoration plea.

15. For this reason, we modify the judgment under appeal and remand the matter to the Tribunal, as this is the highest fact-finding forum, with a direction to the Tribunal to undertake the exercise of determining the nature of the land with the object of finding out if the same came within the purview of the 1973 Act or not. Needless to add, such adjudication shall be done upon giving opportunity of hearing to the opposing parties or their learned advocates, as the case may be. We also request the Tribunal to complete the process of adjudication on this point within a period of four months.

16. In the event the Tribunal finds the land to be covered by the said statute, the order of the authority of first instance passed on 14th March, 1995 shall stand revived and the Tribunal shall make appropriate order for refund of the sum received as sale proceeds with interest upon making computation in terms of the statutory provisions. We have already discussed the reasons as to why such a course ought to be taken. If, on the other hand, it is found that the land did not

come within the purview of the said Act on the date of execution of the deed in the year 1968, then the Appellants shall have no right or claim under the 1973 Act for restoration of the land conveyed and the deed executed on 26th April, 1968 shall remain effective, without any interference from the authorities constituted under the 1973 Act.

17. The appeal stands partly allowed in the above terms. Pending applications, if any, shall stand disposed of. Parties to bear their own costs.

.....J.
(Sanjay Kishan Kaul)

.....J.
(Aniruddha Bose)

.....J.
(Krishna Murari)

New Delhi
2nd November, 2020