

In Re: Khalilur Rahaman

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SooperKanoon Citation : sooperkanoon.com/872065

Court : Kolkata

Decided On : Jun-08-1994

Reported in : (1995)2CALLT62(HC)

Judge : Tarun Chatterjee, J.

Acts : West Bengal Land Holding Revenue Act, 1979 - Sections 2, 3, 4, 5, 7, 8, 10, 11, 12, 13 to 16, 20, 23, 26(1), 26(2) and 27; ;[West Bengal Land Reforms Act, 1955](#) - Sections 2(6), 8 and 11(1); ;West Bengal Non-Agricultural Tenancy Act, 1949

Appeal No. : C.O. Nos. 414-416 of 1991

Appellant : In Re: Khalilur Rahaman

Advocate for Def. : Sudhis Dasgupta and ;Subasis Ghosh, Advs.

Advocate for Pet/Ap. : Kazi Md. Ali and ;Sipra Chanda, Advs.

Disposition : Application dismissed

Judgement :

Tarun Chatterjee, J.

1. A short but important question of law that arises for determination in this revisional application is whether the saving clause as contained in Section 26(2) of

the West Bengal Land Holding Revenue Act, 1979 (in short 'Revenue Act') saves a pending proceeding for preemption under Section 8 of the [West Bengal Land Reforms Act, 1955](#) (in short 'Land Act') after amendment of the definition of 'Holding', as contained in Section 2(6) of the Land Act. This question has, however, already been decided by me in an earlier revisional application which is reported in 1994(Vol. II) CHN 35 (Md. Abdul Karim and Ors. v. Jitendra Nath Mondal and Ors). The same view was also expressed by another learned Judge of this Court in 94 CWN 335 (Jella Rahaman Mondal and Ors.v. Gelezam Bibi). But after hearing the learned Counsel, appearing for the parties and after considering the scheme and object of the Revenue Act in details and in depth, I feel inclined to express a view contrary to the view expressed in 1994 (Vol. II) CHN 35 (Md. Abdul Karim and Ors. v. Jitendra Nath Mondal and Ors).

2. In the earlier revisional application, reported in 1994 (Vol-II) CHN 35 (Md. Abdul Karim and Ors. v. Jitendra Nath Mondal and Ors.) I have held that in a pending pre-emption proceeding under Section 8 of the Land Act, the definition of 'Holding' as contained in Section 2(6) of the Land Act would not be applicable. But, as noted hereinabove, considering the problem at hand in depth and in detail and also the scheme and object of the Revenue Act, I am now of the view that the definition of 'Holding' as contained in the amended Section 2(6) of the Land Act would be applicable in a pending proceeding for pre-emption, i.e. the saving clause, as contained in Section 26(2) of the Revenue Act cannot save a pending proceeding for pre-emption filed under Section 8 of the Land Act. In that view of the matter, it must be held that no interference under Section 115 of the Civil Procedure Code can be made against the order of the Appellate Court rejecting the application for pre-emption filed by the pre-emptor petitioner. Reasons are as follows :

3. The petitioner, as a pre-emptor, made an application for pre-emption in the year 1979 under Section 8 of the Land Act (hereinafter referred to as the said application) in respect of the lands mentioned in the schedule of the said application, on the ground that the pre-emptor/petitioner was a co-sharer of the holding in question. This matter was brought to this Court in revision earlier. A. K. Nandi-J (as His Lordship then was) by an order dated 18th of June, 1990 had set aside the order of the Court below and remitted the matter back to the Appellate

Court for a decision in the light of the change of definition of 'Holding' as now occurring in the Land Act. A. K. Nandi-J directed the appellate Court to decide and pass a final judgment on the question whether in a pending proceeding for pre-emption under Section 8 of the Land Act, the change of definition of 'Holding' as contained in Section 2(6) of the Land Act which had come into force in 1981 would be applicable or not. After remand from this Court, the appellate Court on this question found in favour of the pre-emptee/opposite party by holding that the said application was not maintainable after the definition of 'Holding' was amended in view of the fact that the saving clause as contained in Section 26(2) of the Revenue Act cannot save a pending preemption proceeding and consequent thereof, the appellate Court allowed the appeal filed by the pre-emptee/petitioner and rejected the said application. This order of the appellate Court is now under challenge in this revisional application.

4. Mr. Ali, the learned advocate, appearing on behalf of the pre-emptor/ petitioner submits that in view of the saving clause, as contained in Section 26(2) of the Revenue Act, the Court of appeal below has acted illegally and with material irregularity in the exercise of its jurisdiction by not holding that in view of such saving clause in Section 26(2) of the Revenue Act, the proceeding for pre-emption under Section 8 of the Land Act which was pending on the date of coming into force of the Revenue Act had been saved. According to Mr. Ali, as the word 'any proceeding' having been used in Section 26(2) of the Revenue Act, it must also include a proceeding for pre-emption as well. Therefore, Mr. Ali submit that in view of Section 26 (2) of the Revenue Act, all pending proceedings for pre-emption filed under Section 8 of the Land Act would still be maintainable as the definition of 'Holding' as now occurring in Section 2(6) of the Land Act would not be applicable in such pending proceednig for pre-emption.

5. Mr. Dasgupta, appearing on behalf of the pre-emptee/opposite party, has, however, strongly contested the submission of Mr. Ali. Mr. Dasgupta contended that the saving clause as occurring in Section 26(2) of the Revenue Act would not be applicable in a pending proceeding for pre-emption. According to him, in view of change in definition of 'Holding' as occurring in Section 2(6) of the Land Act, the application for pre-emption would not be maintainable in view of the fact that the

pre-emptor had ceased to be a co-sharer of the holding. Therefore, Mr. Dasgupta has submitted that the appellate Court was right in rejecting the said application for pre-emption.

6. It is not disputed by the learned Counsel, appearing for the parties that in the event it is held that the definition of 'Holding' as contained in Section 2(6) of the Land Act' as amended, is applicable also in a pending proceeding for pre-emption then the said application on the ground of co-sharership must be rejected. As noted hereinabove, the said application was filed in the year 1979 on the ground that the pre-emptor-petitioner was a co-sharer of the holding in question.

7. Having heard the learned Counsel appearing for the parties and after going through the materials on record and on consideration of the preamble, scheme and Statement of Objects and Reasons and the provisions of the Revenue Act, there is no doubt in my mind now that a pending proceeding for pre-emption under Section 8 of the Land Act is not saved by the saving clause in Section 26(2) of the Revenue Act although in Section 26(2) of the Revenue Act the word 'any proceedings' has been used by the legislature.

8. In view of the above, the question that needs to be decided in this revisional application is whether the word 'any proceedings' as used in Section 26(2) of the Revenue Act also includes a pre-emption proceeding initiated under Section 8 of the Land Act.

9. The Supreme Court in the case of Utkal Contractors & Joinery Pvt. Ltd. and Ors. v. State of Orissa and Ors. : [1987]3SCR317 while considering the rival submissions of the learned counsel and in defining and construing the area and the content of the Act and its provision observed as follows in paragraph 9 at page 1459 :

'.....it is necessary to make certain general observations regarding the interpretation of statutes. A statute is best understood if we know the reason for it. The reason for the statute is the safest guide to its interpretation. The words of a statute take their colour from the reason for it. How do we discover the reason for a statute There are external and internal aids. The external aids are Statement of

Objects and Reasons when the Bill is presented to Parliament, the report of Committees which preceded the Bill and the reports of Parliamentary Committees. Occasional excursions into the debates of Parliament are permitted. Internal aids are the preamble, the scheme and the provisions of the Act.....'

10. Keeping the above observation of the Supreme Court in mind, let me now see whether the word 'any proceeding' as used by the legislature in 26(2) of the Revenue Act should be given a restrictive meaning or whether it would be proper for me to construe the word 'any proceeding' in its literal sense. If it is held that the word 'any proceeding' shall be given a restrictive meaning then it must be held that the word 'any proceeding' as used by the legislature in Section 26(2) of the Revenue Act would only mean to include the proceedings in respect of revenue and rent under the Revenue Act and does not include a pre-emption proceeding. As observed by the Supreme Court in the aforesaid decision, the external aids are Statement of Objects and Reasons. The Statement of Objects and Reasons for enacting the Revenue Act was as follows :

'The raiyats and the non-agricultural tenants are not legally bound to pay any revenue now until assessment is made under the West Bengal Land Holding Revenue Act, 1979.

11. Assessment of revenue under the said Act will take some time. Revenue under the provisions of the West Bengal Non-Agricultural Tenancy Act, 1949 cannot also be realised now. As a result, huge amount of revenue will be in arrear when the assessment under 1979 Act will be completed. It is, therefore, considered necessary to make revisions in the West Bengal Land Holding Revenue Act, 1979 enabling the Government to realise revenue and rent as per provisions contained in the [West Bengal Land Reforms Act, 1955](#) and the West Bengal Non-Agricultural Tenancy Act, 1949 subject to adjustment with the amount to be finally collected under the West Bengal Land Holding Revenue Act, 1979 after assessment. Refund will be made where necessary.

The Bill has been framed with the above object in view.'

From a perusal of the Statement of Objects and Reasons it appears that the object of enacting the Revenue Act by the legislature was to realise revenue and rent from raiyats or non-agricultural tenants in respect of their land holding as per the provisions contained in the [West Bengal Land Reforms Act, 1955](#) and the West Bengal Non-Agricultural Tenancy Act, 1949, subject to adjustment of the amount to be finally collected under the Revenue Act as the raiyats and non-agricultural tenants were not legally bound to pay any revenue until assessment was made under the Revenue Act which, however, would take some time to complete and that the revenue under the provisions of the Land Act and the West Bengal Non-Agricultural Tenancy Act, 1949 could not be realised at the time the Revenue Act was brought into operation. It is also seen that the Statement of Objects and Reasons also expressly mentions about realisation of revenue and rent from raiyats or non-agricultural tenants in respect of their land holdings.

12. As observed by the Supreme Court in the case of Utkal Contractors & Joinery Pvt. Ltd and Ors. v. State of Orissa and Ors. : [1987]3SCR317 as already referred to hereinabove, the internal aids are the preamble, the scheme and provisions of the Act. Before I proceed to consider the scheme and provisions of the Revenue Act, let me, at this stage, consider the preamble of the Revenue Act as the same would be necessary to solve the ambiguity or to fix the meaning of words which may have one or more than one meaning or to keep the effect of the statute within its real scope, whenever the enacting part is in any of these respects open to doubt. The Supreme Court in : [1960]3SCR887 Kochuni v. States of Madras and Kerala) in paragraph 35 at page 1097 has observed, in this respect, as follows :

'The Preamble of a statute is 'a key to the understanding of it' and it is well established that 'it may legitimately be consulted to solve ambiguity, or to fix the meaning of words which may have more than one, or to keep the effect of the Act within its real scope, whenever the enacting part is in any of these respects open to doubt.....'

13. Taking inspiration from the above observation of the Supreme Court, let me now, therefore, consider the preamble of the Revenue Act. The preamble of the Revenue says that the Revenue Act has been enacted to provide for levy of

revenue and rent on land holdings in the State of West Bengal and to rationalise and improve the system of revenue or rent on land holdings in the case of proper implementation of comprehensive measures for land reforms in the State with a view to providing incentives for increased production and ensure proper distribution of material resources for financial and economic welfare.

14. It also appears from the preamble of the Revenue Act that to levy rent on the raiyats and non-agricultural tenants in respect of their land holdings and to realise the revenue or rent for such land holdings the Revenue Act was enacted.

15. Let me now proceed to examine the scheme and the provisions of the Revenue Act. ,

16. Section 2(e) of the Revenue Act defines 'Board' which means that the State Rating Board constituted under Section 3 of the Reveune Act.

17. Section 2(g) defines 'Land Holding-which means total land of every description held by a raiyat.

18. Section 2(k) defines a 'raiyat'. Which says that a person who holds land of every description directly under the State and is under any other law for the time being in force, is a raiyat or a non-agricultural tenent or a lessee.

19. Section 2(o) defines 'revenue, which means, whatever is lawfully payable by a raiyat under the provisions of this Act in respect of his land holdings.

20. Section 2(p) defines 'revenue of land holding' which means the amount of revenue determined on the basis of the rateable value of the area in which the land holding is situated.

21. Section 3 of the Revenue Act says that the State Government, by notification, shall constitute a Board to be called the State Rating Board consisting of a Chairman and other members not exceeding four.

22. Section 4 says that the State Government shall, by notification, constitute a Regional Rating Board for a region.

23. Section 5 prescribes how a Regional Rating Board shall function for assessment of the rateable value or values for the area or areas within the region on the basis of ten per cent of the market value of land in the area to be determined in such manner as may be prescribed and prepare statements of rateable values for different areas within its jurisdiction and publish such statements in the area concerned in the prescribed manner inviting objections, if any, from interested persons to the assessment of rateable value or values within such period as may be prescribed; and consider the objections received by it and after causing such enquiry, as may be necessary, determine the rateable value which may be fixed for each area and submit the same for consideration of the State Rating Board.

24. Section 7 of the Revenue Act deals with publication and duration of rateable values.

25. Section 8 deals with levy and collection of revenue on land holding.

26. Section 10 of the Revenue Act requires furnishing of return by a raiyat.

27. Section 11 provides for procedure for determination of revenue in respect of a land of raiyat.

28. Section 12 provides for payment of revenue when changes were made subsequent to the determination made under Section 11 of the Revenue Act.

29. Section 13 of the Revenue Act provides for time and manner for payment of revenue which has been determined under Sections 11 or 12 of the Act.

30. Section 14 of the Revenue Act prescribes for non-payment of such revenue.

31. Section 15 of the Revenue Act provides for procedure for recovery of arrear revenue.

32. Section 16 is a provision by which a raiyat who is aggrieved by any assessment of revenue made or any penalty imposed upon him under this Act to file an appeal before the appellate authority specified in sub-section (2) in such manner and within such time as may be prescribed.

33. Section 20 of the Revenue Act provides for refund of any amount that has become due to any person by the authority as a result of any order passed in appeal or for any other reason.

34. Section 23 of the Revenue Act says that the provisions of Revenue Act shall have effect notwithstanding anything contained in any other law for the time being in force or in any contract, custom or usage or any judgment, decree, award or decision of any Court or any Tribunal or any authority to the contrary.

35. From a perusal of the summary of the provisions of the Revenue Act which have been referred to hereinabove, I find that Section after Section deals with levy of revenue and rent and realisation of revenue and rent in respect of land holdings of raiyats and non-agricultural tenants. From the provisions of the Revenue Act, it does not also appear to me that there is any provision in the Revenue Act by which a preemption proceeding was meant to be included. As noted 'hereinabove, practically, all the sections of the Revenue Act deal with only levy of revenue and rent in respect of land holdings of a raiyat or a non-agricultural, tenant and realisation of the same. None of the provisions, as mentioned hereinabove, deal with pre-emption proceeding nor is there any other provision which expressly deals with pre-emption proceeding. The Scheme of the Revenue Act is, therefore, fully in tune with the objects set out in the Statement of Objects and Reasons and in the preamble, which provides for levy of revenue and rent on land holdings in the State of West Bengal.

36. In view of my discussions made hereinabove, it is, therefore, perfectly clear that 'any proceedings' initiated under the Revenue Act cannot include a pre-emption proceeding under Section 8 of the Land Act and 'any proceedings' in the above background can only mean 'any proceedings' initiated under the Revenue Act in connection with revenue and rent in respect of the holdings of raiyats and non-agricultural tenants.

37. Apart from that, there is another aspect of the matter. Keeping the above in mind, let me now consider whether Section 26(2) of the Revenue Act saves 'any proceeding' pending on the date of coming into force of the Revenue Act or it only saves pending proceedings initiated in respect of the amendments referred to in

Section 26(1) (a) to (d) of the Revenue Act. Section 26 of the Revenue Act runs as under :

'Section 26. Amendments and savings-

(1) With effect from the date of coming into force of this Act in any district, the following amendments to the [West Bengal Land Reforms Act, 1955](#) shall be deemed to have made--

38. Provided that notwithstanding the provisions of sub-section (1), the liability of a raiyat to pay revenue for his holding and collection of such revenue in accordance with the provisions of the [West Bengal Land Reforms Act, 1955](#) shall continue till the revenue in respect of such holding of a raiyat is assessed, determined and levied in accordance with the provisions of this Act:

(Provided further that such payment of revenue made by a raiyat shall, in the manner prescribed, be adjusted towards the revenue payable by such raiyat in respect of his land holding on being assessed and determined in accordance with the provisions of this Act or be refunded to the raiyat if after assessment and determination of the revenue under the provisions of this Act, it is found that the raiyat is not liable to pay any revenue.)

(a) in clause (6) of Section 2, the words 'and treated as a unit for assessment of revenue' be omitted;

(b) clause (11) of Section 2 be omitted;

(c) subsection (1) of Section 11 be omitted;

(d) Chapter IV be omitted.

(2) Notwithstanding the amendments mentioned in sub-section (1) any proceedings pending on the date of such coming into force of this Act before any authority appointed under the said Act or any court shall be continued and disposed of as if this Act had not come into in that district.'

39. From a plain reading of Section 26(1) of the Revenue Act it is clear that with the effect of commencement of Revenue Act, certain provisions in the Land Act which are inconsistent with the provisions of the Revenue Act have been omitted with effect from the date the Revenue Act was brought into operation i.e. from 14th of April, 1981. The relevant provisions of the Land Act are Section 2 Clause 6, Section; 2 Clause 11, Section 11 Clause 1 and Chapter IV. The proviso to Section 26(1) of the Revenue Act clearly says that notwithstanding the provisions of Section 26(1) the liability of a raiyat to pay revenue for his holding and collection of such revenue in accordance with the provisions of Land Act shall continue till the revenue in respect of such holding of a raiyat is assessed, determined and levied in accordance with the provisions of the Revenue Act. The second proviso to Section 26(1) of the Revenue Act also says that such payment of revenue made by a raiyat shall, in the manner prescribed, be adjusted towards the revenue payable by such raiyat in respect of his holding on being assessed and determined in accordance with the provisions of the Revenue Act and shall be refunded to the raiyat if, after assessment and determination of the revenue under the provisions of the Revenue Act, it is found that the raiyat is not liable to pay any revenue. It is, therefore, clear from the aforesaid two provisions of Section 26(1) of the Revenue Act that only for the purpose of determining the liability of a raiyat to pay revenue for his holding and for collection of such revenue, the aforesaid two amendments of Section 26(1) were brought into force. Therefore, by the amendments to the Land Act, as referred to, in Section 26(1) of the Revenue Act, in my view, the legislature only intended to include proceedings initiated for determination of rent and revenue and realisation thereof in respect of a holding of a raiyat or a non-agricultural tenant and not for any other purpose.

40. Now let us take the saving clause as contained in Section 26(2) of the Revenue Act which has already been quoted hereinbefore.

41. From a plain reading of Section 26(2) of the Revenue Act, it would be evident that notwithstanding the amendment mentioned in sub-section (1) any proceeding pending on the date of such coming into force of this Act before any Authority appointed under the said Act or any Court shall be continued and disposed of as if this Act had not come into force in that district. There would be no difficulty if it is

held that the words 'any proceeding pending' would also include a 'pending proceeding' for pre-emption under Section 8 of the Land Act. But after consideration of the scheme, provisions and object of the Revenue Act and in view of my discussions made hereinabove and after perusing Section 26(1) and (2) of the Revenue Act, it would not be permissible to hold that in a pending pre-emption proceeding, the saving clause as in Section 26(2) of the Revenue Act can be made applicable only because the legislature has used the word 'any proceeding' in Section 26(2) of the Revenue Act. Section 26(2) of the Revenue Act, in my view, shall apply in a pending proceeding where amendments to the Land Act, as indicated in Section 26(1) (a) to (d), are only involved. Therefore, the word 'any proceeding pending' has a special significance. So far as Section 26(1) (a) and (b) is concerned, it has not been disputed nor it can be disputed that any proceeding can be initiated for adjudication in respect, of the amendments referred to in Section 26(a) and (b) of the Revenue Act. Section 26(1) (c) of the Revenue Act says that sub-section (1) of Section 11 of the Land Act is omitted on and from the date the Revenue Act had come into force i.e. on and from 14th of April, 1981. At this stage, it would be expedient to refer to the old subsection (1) of Section 11 of the Land Act, which was as follows :

'(1) If the holding of a raiyat or a portion of it is lost by diluvion, revenue of the holding shall, on application made by a raiyat in the prescribed form to the Revenue Officer, be remitted or abated by an amonut which, in the opinion of the Revenue Officer is fair.'

42. From the aforesaid old sub-section (1) of Section 11 of the Land Act, it is evident that a proceeding can be initiated by a Revenue Officer under the old sub-section (1) of Section 11 of the Land Act only for the purpose of remitting or abating by an amount in respect of the revenue of the holding of a raiyat or a portion of it which is lost by diluvion. Therefore, in my view, the proceeding which was started under Section 11(!) of the Land Act for remitting or abating the amount of revenue which was to be determined by the Revenue Officer in respect of a hoiding of a raiyat or a portion of it which was lost by diluvion and which was pending on the date the Revenue Act was brought into force, was saved by the introduction of the saving clause under Section 26(2) of the Revenue Act.

Therefore, 'any proceeding', as described in Section 26(2) of the Revenue Act includes this proceeding started under Section 11(1) of the Land Act and pending on the date of coming into force of the Revenue Act. Accordingly, the proceeding under the old sub-section (1) of Section 11 of the Land Act is saved by the saving clause made in Section 26(2) of the Act if such proceeding, under old Section 11(1) of the Land Act, was pending on the date the Revenue Act had come into force.

Now I come to Chapter IV of the Land Act (in short 'said Chapter') which has been omitted by the introduction of Section 26(1) of the Revenue Act. Chapter IV of the Land Act which has been omitted by the introduction of the Revenue Act was enacted to make provisions as to Revenue.

Section 22 in the said Chapter deals with liability of a raiyat to pay revenue for his holding.

Section 23 in the said Chapter makes a provision for determination of revenue.

Section 23A in the said Chapter deals with abatement of revenue in respect of homestead. Section 23B in the said Chapter deals with re-assessment of revenue and examination of revenue of small holdings and payment of such charge.

Section 33 in the said Chapter provides for alteration of revenue if holding of the raiyat has increased or decreased in area due to amalgamation, purchase, partition, sub-division, acquisition or any other cause whatsoever or any other cause subsequent to the determination of the revenue.

43. Section 34 in the said Chapter deals with bar of jurisdiction of Civil Court in respect of the determination of any revenue or the omission to determine and revenue under this Chapter IV of the Land Act.

44. Section 35 in the said Chapter deals with payment of revenue in instalment, time of payment, grant of revenue receipts, allowance of rebate on due payment and interest on arrears.

45. Section 36 of the said Chapter entitles the raiyat to a receipt for revenue for the amount paid by him signed by the person authorised to make collection of revenue.

46. Section 37 of the said Chapter deals with rebate on payment in time and interest on arrears.

47. Section 38 of the said Chapter provides for procedure for recovery of arrears of revenue.

48. From a perusal of the aforesaid provisions contained in Chapter IV of the Land Act, which is now omitted by the introduction of the Revenue Act, there cannot be any doubt in one's mind that all the provisions in the said Chapter (omitted) concerned with the revenue only. Therefore, it must be said that the said Chapter, which is omitted by the introduction of Section 26(1) of the Revenue Act, also dealt with revenue only. Therefore, for determination of revenue and rent and/or any other allied matter concerning revenue in respect of a holding of a raiyat or a non-agricultural tenant, a proceeding can be initiated under Chapter IV of the Land Act. Therefore, Section 26(2) of the Revenue Act shall save a proceeding initiated under Chapter IV of the Land Act which was pending on the date of coming into force of the Revenue Act. Therefore, in my view any proceeding pending as described in Section 26(2) of the Revenue Act, shall also save the proceeding initiated and pending under Section 11(1) of the Land Act and the proceedings under Chapter IV of the Land Act and it cannot, therefore, include a pending pre-emption proceeding initiated under Section 8 of the Land Act.

49. Before parting with this judgment, one more Section of Revenue Act must be dealt with. This is Section 27 of the Revenue Act. This is another over-riding provision in the Revenue Act which has the effect of repealing all the provisions of West Bengal Non Agricultural Tenancy Act, 1949 as are repugnant with the provisions of this Act. Section 27 of the Revenue Act runs as follows :

'Section 27. Repeal and savings-(1) with effect from the date of coming into force of this Act in any district, such provisions of the West Bengal Non-Agricultural Tenancy Act, 1949, as are repugnant to the provisions of this Act, shall cease to

have effect in that district.

(Provided that notwithstanding the cessation of the provisions of the West Bengal Non-Agricultural Tenancy Act, 1949 in any district, the liability to pay rent for non-agricultural land in accordance with the provisions of the West Bengal Non-Agricultural Tenancy Act, 1949, shall continue till the revenue in respect of such land holding is assessed, determined and levied under the provisions of this Act:

Provided further that such payment of rent made for non-agricultural land in any district, shall, in the manner prescribed, be adjusted towards the revenue payable in respect of such land holding on being assessed and determined in accordance with the provisions of this Act or be refunded if after assessment and determination of the revenue under the provisions of this Act, it is found that no revenue is payable on such land holding.)

(2) Notwithstanding the provisions of sub-section (1), any proceeding pending on the date of such coming into force before any authority appointed under this Act or before any court shall be continued and disposed of as if that Act had not come into force in that district.'

50. From a perusal of Section 27 of the Revenue Act, it is clear that from the date of coming into force of the Revenue Act in any district such provisions of the West Bengal Non-Agricultural Tenancy Act, 1949, as are repugnant to the provisions of Revenue Act, shall cease to have effect in that district. The first proviso to the said Section, however, says that notwithstanding the cessation of the provisions of the West Bengal Non-Agricultural Tenancy Act, 1949, the liability to pay rent for non-agricultural land in accordance with the provisions of the West Bengal Non-Agricultural Tenancy Act, 1949 shall continue till the revenue in respect of such land holding, by a non-agricultural tenant, is assessed, determined and levied under the provisions of the Revenue Act. Second proviso to this Section further says that such payment of rent made for non-agricultural land in any district, shall be adjusted towards the revenue payable in respect of such land holding on being assessed and determined in accordance with the provisions of the Revenue Act or be refunded if after assessment and determination of the revenue under the provisions of the Revenue Act, it is found that no revenue is

payable on such land holding.

51. From the aforesaid two provision it is, therefore, clear that in respect of revenue payable by a non-agricultural tenant, liability to pay rent for nonagricultural land shall continue in accordance with the provisions of the West Bengal Non-Agricultural Tenancy Act, 1949 and it is also clear from the second proviso to Section 27 of the Revenue Act that such payment of rent made for any non-agricultural land shall be adjusted or refunded when the assessment and/or determination of the revenue under the provisions of Revenue Act is made.

52. As noted hereinabove, Section 27(2) of the Revenue Act has, however, saved any pending proceeding initiated under the West Bengal Non-Agricultural Tenancy Act, 1949 for determination of the liability to pay rent for non-agricultural land in accordance with the provisions of the West Bengal Non-Agricultural Land Act, 1949 and also if any proceeding is pending for refund or determination of revenue in respect of a holding of a nonagricultural tenant, such proceedings can only be saved under Section 27 (2) of the Act. From an overall leading of the aforesaid Section 27 of the Revenue Act it is also clear that the proceedings which have been kept alive by the saving clause of Section 27(2) of the Revenue Act, are the proceedings under the West Bengal Non-Agricultural Land Act, 1949, which were started and pending on the date of coming into force of the Revenue Act, only for determination of the liability to pay rent for non-agricultural land and also for adjustment or refund of such revenue towards the revenue payable in respect of such land holding, after assessment or determination of the revenue under the provisions of the Revenue Act, is made by the authority. Therefore, Section 27(2) only saves the proceedings pending under the West Bengal Non-Agricultural Tenancy Act which concern only the revenue and rent payable by a non-agricultural tenant in respect of his holding. Therefore, from a perusal of Section 27(2) of the the Revenue Act it can also safely be said that any proceeding, as described in Section 27(2) of the Revenue Act, cannot include a proceeding pending for pre-emption under Section 24 of the West Bengal Non-Agricultural Tenancy Act.

53. In view of my discussions made hereinabove, I am firmly of the view that the definition of 'holding' as contained now in Section 2(6) of the Land Act would not be applicable in a pending proceeding of pre-emption under Section 8 of the Land Act. Since it has not been disputed by the learned Counsel, appearing for the parties, that if the definition of 'holding, as amended, is applicable in a pending pre-emption proceeding, the question of granting pre-emption under the Land Act on the ground of co-sharership shall not arise, as the pre-emptor cannot remain a co-sharer of the holding in question. Although this view has also been conceded by the learned Counsel for the parties, reference may be made in this connection to a Division Bench decision of this Court reported in 1990(2) CLJ 378 (Smt. Damayanti Maity v. Aswini Kumar Jana and Ors.).

For the reasons aforesaid, I am of the view that the appellate Court has acted within his jurisdiction by holding that in view of the amended definition of 'holding', as contained in Section 2(6) of the Land Act, the application for pre-emption, filed by the petitioners under Section 8 of the Land Act cannot be allowed.

Accordingly, this revisional application fails.

There will be no order as to costs.

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