

**Surendra Narayan and ors. Vs. Notan Behary Mondal and anr.**

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**SooperKanoon Citation :** [sooperkanoon.com/883448](http://sooperkanoon.com/883448)

**Court :** Kolkata

**Decided On :** Jul-15-1930

**Reported in :** 131Ind.Cas.856

**Judge :** Zahhadur Rahim, ;Zahid Suhrawardy and ;Costello, JJ.

**Appellant :** Surendra Narayan and ors.

**Respondent :** Notan Behary Mondal and anr.

**Judgement :**

1. The opposite party purchased on the 2nd May, 1929, an occupancy holding from one Radha Sundar Ghose. On the 6th May, 1929, he deposited with the Collector Rs, 92 as the landlords' fee under Section 26 D of the new Bengal Tenancy Act. The petitioner after getting notice of the transfer applied for re-transfer of the holding under Section 26-F of the Act after depositing the price of the holding along with the compensation at the rate of 10 per cent. At the hearing of the proceeding thus started before the Munsif at Kandi in the District of Murehidabad the opposite party appeared and alleged that the holding which he had purchased from Radha Sunder Ghose was not an occupancy holding but a mokatari tenancy. The learned Munsif tried the question as to whether it was an occupancy holding or a mokatari tenancy and he decided the question against the petitioner. This Rule was obtained on the ground that under Section 26-F he should not have entered into the question of the nature of the tenancy. Without laying down any general rule of law in this matter it seems to us that the Rule

should be made absolute on the ground that the opposite party was precluded from raising the question of the nature of the tenancy at that stage. He purchased the tenancy purporting to be an occupancy holding as appears from the deposit of the landlords' transfer fee under Section 26-D. The proceeding came before the Court as initiated by the opposite party which gave a chance to the landlord to exercise his right of re purchase under Section 26 F. We accordingly make the Rule absolute, set aside the order, of the Court below and direct it to proceed according to law. If the opposite party so desires he may take such steps as he is entitled to do under the law for the relief he seeks before the Munsif. The Rule is thus made absolute with costs--one gold mohur.

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