

MIR FAKIR MOHD.

v.

STATE OF WEST BENGAL

February 15, 1978

[R. S. SARKARIA AND P. S. KAILASAM, JJ.]

West Bengal Estate Acquisition Act, 1954 s. 6 (1)(f)—Bamboo garden or banana plantation whether an 'Orchard' within the meaning of s. 6(1)(f) of the Act entitling an intermediary, to retain the land as such.

The petitioner's claim, by virtue of the provisions of s. 6(1)(f) of the West Bengal Estate Acquisition Act, 1954, for his entitlement, as an intermediary, to retain the land in which he has raised in addition to mango and Jack fruit trees, bamboo clumps and also banana-plants, was allowed by the Courts below but rejected by the Calcutta High Court in appeal by the State of West Bengal. The High Court held that though cultivated bamboo garden would fall within the definition of 'Agricultural land' in s. 2(b) of the Act, it cannot in any view be called an 'Orchard' within the purview of s. 6(1)(f) of the Act. It further held that a banana plantation is not an 'Orchard' because banana plants are not fruit-trees.

Dismissing the special leave petition the Court,

HELD : 1. In view of clause (p) of Section 2 of the West Bengal Estate Acquisition Act, 1954 read with s. 14K(e) of the West Bengal Land Reforms Act, the existence of cultivated fruit trees on a compact area, is central to the connotation of 'Orchard'. A tree is "a perennial plant having a self-supporting woody main stem or trunk (which usually develops wood branches at some distance from the ground), and growing to a considerable height." [10 H, 11 A-B]

(2) A plant to come within the connotation of 'tree' must have two essential characteristics : (a) It must be perennial and not seasonal; and (b) Its main stem must be "woody" and not herbacious or pulpy. A banana plant lacks both these characteristics. It is not a perennial plant, but is more in the nature of seasonal crop lasting for one or one and a quarter years. Once the plant yields fruit, it becomes useless and does not yield any further fruit. Further, its stem is not "woody" but "fleshy" or "herbacious". A banana plant, therefore, cannot be regarded as a fruit-tree and a banana plantation is not an 'Orchard' within the contemplation of s. 6(1)(f) of the Act. [11 B-C, E]

CIVIL APPELLATE JURISDICTION : Special Leave Petition (Civil) No. 2107 of 1977.

(From the Judgment and Decree dt. 21-7-76 of the Calcutta High Court in Appeal from Appellate Decree No. 1658 of 1965).

Purshottam Chatterjee & Rathin Das for the Petitioner.

S. C. Majumdar & G. S. Chatterjee for the Respondent.

The order of the Court was delivered by

SARKARIA, J. The principal question that has been mooted before us in this petition for special leave to appeal under Article 136 of the Constitution, against an appellate judgment dated 21st July, 1976 of the High Court at Calcutta, is, whether a bamboo garden or banana plantation is an 'Orchard' within the meaning of Section 6(1)(f), of the West Bengal Estate Acquisition Act, 1954 (hereinafter referred to

A as the Act). The material portion of Section 6 of the Act reads as under :

“6(1) Notwithstanding anything contained in Section 4 and 5, an intermediary shall except in the cases mentioned in the proviso to sub-section (2) but subject to other provisions of that sub-section, be entitled to retain with effect from the date of vesting—

B (f) subject to the provisions of subsection (3) Land comprised in tea garden or orchard or land used for the purpose of live stock breeding, poultry farming or dairy.”

C The petitioner claims himself to be an intermediary. The High Court has held (reversing the judgments of the courts below) that a cultivated bamboo garden would fall within the definition of ‘Agricultural land’ in Section 2(b) of the Act and cannot in any view be called an ‘orchard’ within the purview of Section 6(1) (f) of the Act. It further held that a banana plantation is not an ‘orchard’ because banana plants are not fruit-trees.

D Mr. Purshotham Chatterjee, appearing for the petitioner contends that ‘orchard’ has not been defined in the Act, and we must, therefore, interpret the expression ‘orchard’ in its popular sense and not in the strict botanical sense, as the High Court has done. An ‘orchard’, it is argued, in the broad Dictionary sense, means a garden of fruit plants, or fruit trees, and a banana plant, according to the Concise Oxford Dictionary, is a “fruit-tree.”

E As against this, Mr. Majumdar, appearing for the Respondent State, submits that a banana plant is not a ‘tree’ but a herbacious plant.

We are unable to accept the contention canvassed on behalf of the petitioner. Section 2(p) of the Act provides :

F “(p) Expressions used in this Act and not otherwise defined have in relation to the areas to which the Bengal Tenancy Act, 1885, applies, the same meaning as in that Act and in relation to other areas meaning as similar thereto as the existing law relating to land tenures applying to such areas, permits.”

G Now, Section 14K(e) of the West Bengal Land Reforms Act (as amended) defines an ‘Orchard’ to mean :

“A compact area of land having fruit bearing trees grown thereon in such number that they preclude; or when fully grown would preclude, a substantial part of such land from being used for any agricultural purpose.”

H In view of clause (p) of Section 2 of the Act, it will not be wrong to look to this definition in the Land Reforms Act, for guidance. This definition, it will be seen, substantially conforms to the dictionary meaning of the term ‘orchard’. According to the Oxford Dictionary,

the modern connotation of 'orchard' is "an enclosure with fruit trees", or "an enclosure for the cultivation of fruit trees". Webster's New World Dictionary, also, gives its meaning as "an area of land, generally enclosed, devoted to the cultivation of fruit trees, nut trees". Thus, the existence of cultivated fruit trees on a compact area, is central to the connotation of 'orchard'. The question before us, therefore, resolves into the issue, whether a bahana plant is a 'tree'? A 'tree', according to the Shorter Oxford Dictionary, is "a perennial plant having a self-supporting woody main stem or trunk (which usually develops wood branches at some distance from the ground), and growing to a considerable height.

Thus, for a plant to come within the connotation of 'tree', it must have two essential characteristics : (a) It must be 'perennial and not seasonal; and (b) Its main stem must be 'woody' and not herbacious or pulpy.

A banana plant lacks both these characteristics. It is not a perennial plant, but is more in the nature of a seasonal crop lasting for one or one and a quarter years. Once the plant yields fruit, it becomes useless and does not yield any further fruit. Further, its stem is not 'woody' but 'fleshy' or 'herbacious'.

Banana plant, according to Webster's Dictionary, is "a tree-like perennial herb of the genus *Musa* plant with soft herbacious stalk". Oxford Dictionary, no doubt, loosely describes it as a 'fruit-tree' belonging to the genus *Musa sapientum*, but it also concedes that it has no 'woody' stem or trunk but only a soft herbacious stalk. The Webster's Dictionary appears to be more correct when it uses the word 'tree-like' for a banana plant.

Thus considered, a banana plant cannot be regarded as a fruit tree. Therefore, a banana plantation is not an 'orchard' within the contemplation of Section 6(1)(f) of the Act.

We are, therefore, of opinion that the High Court was right in deciding that point against the petitioner. There is no ground to interfere with its decision. The petition fails and is dismissed.

S.R.

Petition dismissed