

A WEST BENGAL GOVERNMENT EMPLOYEES (FOOD AND
SUPPLIES) CO-OPERATIVE HOUSING SOCIETY LTD. AND ORS.

v.

SMT. SULEKHA PAL (DEY) AND ORS.

B APRIL 16, 2003

[DORAISWAMY RAJU AND D.M. DHARMADHIKARI, JJ.]

C *West Bengal Estate Acquisition Act, 1953; Sections 4, 5, 6, 7 & 10/Rules
thereunder:*

D *Notifications—Acquisition of estate and rights thereof vesting with the
State—Right of retention of the land/properties by the intermediaries/successor-
in-interest—Exercise of—Held: Right to protect interest in the lands would be
available to intermediaries till their dispossession by the authorities in the
manner and by observing formalities as per statutory provisions—Since
effective, actual and physical possession of the properties continued with the
intermediaries/heirs, professed taking over of possession by the authority was
E a mere entry on paper, not in conformity with the mandatory procedure laid
down in the Act/Rules and become unlawful—High Court rightly sustained the
right of retention of intermediaries enabling them retention of lands of their
choice till their dispossession as per provision of law—Interpretation of Statutes.*

Words and Phrases:

F *'big raiyat' and 'khas possession'—Meaning of in the context of West
Bengal Estate Acquisition Act, 1953.*

G **A Notification was issued under the provisions of Section 4(1) of the
West Bengal Estate Acquisition Act vesting all estates and the rights of
intermediaries (big raiyat) in the State keeping aside certain areas in
agricultural and non-agricultural land in khas possession of the
intermediaries subject to their entitlement as per provisions of law.
Respondent's predecessor-in-interest, an intermediary, was in possession
of certain land and after his death a case was initiated in respect of
intermediaries' rights on such lands. In the meanwhile, appellant has
purchased the said lands from the successor-in-interest of the said
intermediaries and taken over possession. Later, State granted a lease in**

favour of appellant/purchaser. In the meanwhile, the concerned authority passed an order vesting lands of intermediaries in the State as no option for retention of such land was exercised by them. The order was challenged by the respondents by filing a writ petition which was allowed by the Single Judge of the High Court and affirmed by the Division Bench with slight modifications. Hence the present appeals. A

It was contended for the appellants that since legal representatives of the intermediaries did not avail of the option to retain lands of their choice as per provisions of law, High Court erred in giving them a fresh opportunity to exercise such option; and that since estate of intermediaries vested with the State and leased out to appellant/purchaser, successor-in-interest of intermediaries could not exercise such option. B C

On behalf of the respondents, it was submitted that since they were not dispossessed from khas possession of such lands, they could exercise their option under the provisions of law; and that it was not open for the appellant to re-agitate inter se dispute, if any, in these proceedings when the issue/dispute was left open by the High Court. D

Dismissing the appeals, the Court

HELD: 1.1. The objection based on laches and delay is of no merit. Viewed in the context of the facts of the instant case, the authorities of the State have not lawfully and factually dispossessed the petitioners, the heirs of the intermediary, of the khas possession of the lands in question. The right to vindicate and protect their interest in the lands in question in terms of the enabling provisions of the Act would enure till they are dispossessed in the manner envisaged and by observing the formalities contemplated under the statutory provisions. [636-G, H; 637-A] E F

1.2. The governing principles and the scheme underlying the provisions of the Land Reforms Act as rightly enunciated by the Calcutta High Court, in its various decisions cannot be said to lay down any wrong or incorrect proposition of law or anything in derogation of the interpretation placed by the apex Court as to the scope, extent and nature of vesting as well as the nature and character of rights safeguarded under the provisions of the Act. The right of the intermediaries to retain certain lands and properties under Section 6 of the Act does not come to an end once and for all or said to become extinct, irretrievably after the prescribed H

A date as envisaged in Section 6(5) of the Act read with Rule 4 A of the Rules. Without leaving anything for anyone to surmise as an aftermath of such omission or lapse, the legislature itself stipulated as to what should happen thereafter also in the latter part of sub-section (5) of Section 6 that if no choice is exercised under Section 6 (1) by the intermediary during the prescribed period also obligating the Revenue Officer to give the intermediary an opportunity of being heard, allow him to retain so much of the lands as do not exceed the limits specified in clauses (c), (d) and (j) of sub-section (1) of Section 6 of the Act. [642-F-H; 643-A, B]

C *State of West Bengal and Ors. v. Suburban Agriculture Dairy & Fisheries Pvt. Ltd. and Anr.*, [1993] Supp. 4 SCC 674 and *State of West Bengal and Anr. v. Arun Kumar Basu and Anr.*, [1997] 5 SCC 317, relied on.

D *Gour Gopal Mitra and Anr. v. State of West Bengal and Ors.*, (1962-63) (Vol.LXVII) Calcutta Weekly Notes page 12; *Tara Prasad Mukherjee and Ors. v. Ganesh Chandra Mondal and Ors.*, (1965-66) Vol.70, Calcutta Weekly Notes, page 652; *Mohan Lal Gupta v. Achhulal Saha and Ors.*, (1970-71) Vol. 75, Calcutta Weekly Notes, page 228 and *Lakshmi Narayan Roy and Ors. v. Land Reforms Officer and Ors.*, (1975-76) Vol.80, Calcutta Weekly Notes, page 42, approved.

E 1.3. The provision of law inevitably postulates and leads only to the inescapable conclusion that even before the Collector actually takes khas possession of the estate and rights of an intermediary therein, the intermediary will have not only an opportunity but a right to choose the lands which he could retain as provided for under sub-section (1) of Section 6 of the Act. That such understanding and construction of the relevant provision alone would be proper and necessary to be adopted gets reinforced from sub-section (6) of Section 10 of the Act which stipulates that if after vesting takes place under Section 5 and the intermediary or any other person possesses any land which was in the khas possession of the intermediary before vesting, but which the intermediary 'has not retained or cannot retain under Section 6', then whether possession of such land has been taken by the Collector in pursuance of sub-section (2) or not the intermediary or such other person shall be liable for the period for which he is in possession of such land to make payments determined in the manner enumerated therein. [643-G-H; 644-A]

H 1.4. In the instant case, effective, actual and physical possession of

the properties appears to have continued with the intermediary and subsequently in the possession of his heirs and the Collector/Revenue Officer could not be said to have either dispossessed them or taken over physical or khas possession of the estate and the rights comprised therein in the manner statutorily mandated and provided for under Section 10(2) of the Act and Rule 7 of the Rules made thereunder. Single Judge and the Division Bench of the High Court rightly recorded concurrently that khas possession continued with the intermediary and after him his heirs. The professed taking over of possession seems to be a mere entry on paper but not in conformity with the mandatory procedure necessarily to be observed before such possession could be lawfully carried out. However, some of the observations of the Division Bench of the High Court lending an impression that the lands, which are eligible to be retained at the choice of the intermediary as envisaged under Section 6, could never have vested at all whether option for retention has been exercised or not. Some such observation run not only counter to the law laid down in the earlier decisions of the Calcutta High Court, but also run counter to the principles laid down by the apex Court in some of the decisions. Hence not approved. The vesting is total and complete once Notification is issued under Section 4 and got published by the combined operation of Sections 4 and 5 of the Act and what is secured under Section 6 is the right to hold on to the possession, subject to the limits prescribed in the statute by option for retention of the same before khas possession of the properties have been taken over as envisaged under Section 10(3) of the Act. [644-C-E; 645-B-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 12509 of 1996.

From the Judgment and Order dated 18.4.1996 of the Kolkata High Court in F.M.A.T. No. 3357 of 1992.

WITH

C.A. No. 442 of 1998.

Deepankar P. Gupta, Samarjit Gupta, T.C. Ray, G.L. Sanghi, K. Ramamoorthy, Bijan Kr. Ghosh, B.P. Nirbhay, Ujjwal Banerjee for H.K. Puri, R.K. Mehta, D.K. Bera for Mrs. Sarala Chandra, Dipayan Choudhary and Ms. Radha Rangaswamy for the appearing parties.

The Judgment of the Court was delivered by

A **D. RAJU, J.** The above appeals have been filed against the common order dated 18.4.1996 in F.M.A.T. No.3357 of 1992 filed in the High Court by the appellants in C.A. No.12509 of 1996 and F.M.A.T. No.3391 of 1992 filed by the State of West Bengal - appellant in C.A. No.442 of 1998, whereunder the Division Bench of the High Court, except for making certain modification of the order of the learned Single Judge and partly allowing the appeals, affirmed the decision so rendered.

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D
E The West Bengal Estates Acquisition Act, 1953 (hereinafter referred to as "the Estates Acquisition Act") came into force on 12.2.1954. On 15.4.1954, a Notification was issued under Section 4(1) vesting all estates and the rights of all intermediaries in the State free from all encumbrances and thereupon the State became the paramount title-holder by virtue of Section 5 also. Under Section 6, notwithstanding anything contained in Sections 4 and 5, an intermediary shall be entitled to retain with effect from the date of vesting land comprised in homesteads; land comprised in or appertaining to buildings and structures owned by the intermediary or by any person, not being a tenant holding under him by leave or licence; agricultural and non-agricultural lands in his khas possession, not exceeding twenty-five acres in area and fifteen acres in area respectively, subject to the stipulations contained therein as to the nature of such land and the total extent that could be so retained of different categories of such property. Sub-section (5) of Section 6 reads as follows :-

F
G "An intermediary shall exercise his choice for retention of land under sub-section (1) within such time and in such manner as may be prescribed. If no choice is exercised by him during the prescribed period, the Revenue Officer shall, after giving him an opportunity of being heard, allow him to retain so much of the lands as do not exceed the limits specified in clauses (c), (d) and (j) of that sub-section :

G
H Provided that nothing in this sub-section shall require an intermediary to exercise the choice if he has already done so before the date of coming into force of West Bengal Estates Acquisition (Second Amendment) Act, 1957"

H If, as indicated in the said provision, no choice of retention was exercised within the period stipulated under Rule 4A of the Rules, the Revenue Officer, after giving the intermediary an opportunity, shall allow him to retain the prescribed quantum of land in proceedings known as Big Raiyat Case (B.R.

Case). Section 10 enables the Collector to take charge of estates and interests of intermediaries, which vest in the State under Section 5. Sub-sections (2), (5) and (6) of Section 10, which are relevant for the purpose of consideration of the issues raised in these cases, read as follows:-

“(2) For the purpose as aforesaid, the Collector may, by a written order served in the prescribed manner, require any intermediary or any person in possession khas or symbolical (of any such estate or of any such interest to give up such possession by a date to be specified in the order which shall not be earlier than sixty days from the date of service of the order) and to deliver by that any documents, registers, records and collection papers connected with the management of such estate or of such interest which are in his custody and to furnish a statement in the prescribed form in respect of such estate or such interest;

(5) Nothing in this section shall authorize the Collector to take khas possession of any estate or of any right of an intermediary therein, which may be retained under section 6; and

(6) If after any estate or any interest therein of an intermediary has vested in the State under section 5, the intermediary or any other person possesses any land which was in the khas possession of the intermediary before the date of vesting but which the intermediary has not retained or cannot retain under section 6, then, whether possession of such land has been taken by the Collector in pursuance of sub-section (2) or not, the intermediary or such other person shall be liable for the period for which he is in possession of such land to pay-

(a) where such possession is authorized by the licence of the Collector, such licence fee as may have been agreed upon between him and the Collector or, in the absence of any agreement, as shall be calculated at the rate of Rs. 10 per acre per annum; or

(b) where such possession is not authorized by the Collector, such damages for use and occupation of such land as may be determined by the Collector, after giving the intermediary or such other person an opportunity of being heard, at a rate not exceeding-

(i) in the case of agricultural land, twenty-five per centum of the money value of the gross annual produce of such land,

- A (ii) in other cases, ten per centum of the market value of the land per annum.”

So far as the case on hand is concerned, it relates to the rights of land of Shri Ganga Das Pal, a big raiyat (intermediary), who was said to have died some time in 1958. In the year 1967, B.R. Case No.5 of 1967 was initiated in respect of the vesting of intermediary's rights on the land of Ganga Das Pal. According to the appellants in C.A. No.12509 of 1996, a registered Agreement for Sale of 28.56 acres of land was entered into by and between the appellants and the writ petitioners before the High Court and the appellants were given possession of the lands agreed to be sold on payment of half of the total sale consideration with rights enabling the proposed purchasers-appellants therein to develop the land by undertaking activities as envisaged in paragraph 3 of the said Agreement. On 16.9.1971, an order came to be passed that all the lands of the said Big raiyat enumerated in Schedule 'A' to the order stood vested in the State on and from the date of vesting and that the vested land statement be sent to the respective Junior Land Reforms Officer for taking necessary action in the matter. This order came to be passed on the ground that in spite of parties having said to have been given sufficient opportunity, did not choose to exercise an option to retain any land in their khas possession, leaving an impression that they are not willing to retain any land in their khas possession and that their prayer for grant of another two months' time cannot be countenanced. Apart from the writ petitioners having claimed to have written to the District Magistrate and Collector, 24 Parganas, Alipore, on 29.11.1976 informing about the registered Agreement for Sale when the appellants in C.A. No.12509 of 1996, on 3.10.1977 came to know about the order of vesting of the land, they made an application before the State Government and sought for long term lease of the said land. Thereupon, on 13.3.1978, it is claimed by the said appellants that the one year lease was initially granted, pending preparation of the proposal for long term lease with a direction initially to make the payment of annual lease rent assessed at Rs. 4,100 subject to final assessment, which they were said to have deposited on 15.3.1978 and formal possession certificate was said to have been issued also in favour of the said appellants on 21.3.1978. Those appellants were said to have been directed to pay further lease rent of Rs. 9,608.80 on 13.5.1980, which was claimed to have been paid on 6.8.1980. On 14.10.1980, the Additional District Magistrate wrote to the Commissioner that possession of land after vesting was taken over by the Junior Land Reforms Officer on 12.11.1971 and 13.11.1971 and the Government formally again gave possession to those appellants on short-term lease. On 23.8.1991,

a long term lease of 28.56 acres of land for thirty years with right of renewal was said to have been granted by the State Government to those appellants and the Government was said to have proposed to regularize the continuity of the lease from 1978 to 1990 by realizing balance lease rent at the rate of Rs. 4,100 per year. In the meantime, the West Bengal Land Reforms Act, 1955, which came into force on 30.3.1956, underwent several changes and modifications till 1991. While matters stood thus, on 20.9.1991 the heirs of Big raiyat filed Writ Petition being Civil Order No.11737(W) of 1991 challenging the order of vesting dated 16.9.1971. In the said proceedings, the appellants in Civil Appeal No.12509 of 1996 got impleaded as party-respondents.

A learned Single Judge of the Calcutta High Court, overruling the objections of the authorities of the State as well as the Cooperative Housing Society, allowed the Writ Application by observing as hereunder:-

“Having considered the case of the parties appearing in this writ application, the order of vesting challenged in the writ application has to be set aside, in view of the fact that the said order is not followed up by taking over possession under Section 10(2) of the W.B.E.A. Act. The order was passed long back in the year 1971. Up till now, no possession under Section 10(2) has been claimed. This being the position, the petitioners are at liberty to file the prescribed form retaining land to which they are entitled and the State of West Bengal has to consider the same and permit them to retain that amount of land. It appears that the quantum of land held by Ganga Das Pal is disputed in the writ proceeding. It is for the Revenue Officer to determine the amount of land held by Ganga Das Pal on the death of vesting. It is also for the Revenue Officer to decide which lands are agricultural and which lands are not agricultural and to what amount of land Ganga Das Pal was entitled to retain on the death of vesting.

Accordingly, I allow the writ application, set aside the order of vesting and direct the writ petitioners to file a form retaining land to the extent permissible under the provisions of the West Bengal Estates Acquisition Act within a period of six weeks from this date. The State Authorities are directed, if such return is submitted, to consider and dispose of the same within a period of six weeks from the date of filing of the return. On such disposal, the State Government will be at liberty to take possession of the surplus land. Till then, the

A status quo in respect of the disputed property to be maintained. There will be no order as to costs”.

Aggrieved, the State as well as the Cooperative Housing Society filed the appeals and, as noticed supra, except for the modifications made to the extent as hereinafter to be noticed, the judgment of the learned Single Judge came to be affirmed. The observations and the modifications, which came to be made by the Division Bench, are in the following terms :-

“Accordingly, after construing the provisions of Section 6 of the said Act, with various sub-sections, we are clearly of the view that the order passed in the big raiyat proceedings, vesting all the lands was contrary to the provisions of law. The lands comprised in homestead, lands comprised in or appertaining to the buildings and structures owned by the intermediary or by any person, not being a tenant, holding under him by lease or licence, could not be vested whether option for retaining has been exercised or not. In order to give effect to the provisions of this Act and not to defeat the purpose of the said Act, we hold that the writ petitioners/respondents would be entitled to retain lands as per provisions of Section 6 of the West Bengal Estates Acquisition Act which were in his khas possession of non-agricultural lands and agricultural lands mentioned in clauses (c) and (d) of Section 6(1) of the said Act can be held by the writ petitioners including the lands in respect of which claim has been made by the appellant-society. The Revenue Officer or the authority under the Estate Acquisition Act could not decide the right, title and interest of the appellant in the said land, which could only be adjudicated by instituting suits and/or proceedings as directed by the learned Trial Judge. But, the Revenue Officer, while allowing the writ petitioner/ opposite parties to retain lands, should consider the scope and ambit of Section 6(1)(c) and (d) of the said Act and the intermediaries may be allowed to retain lands the intermediaries were holding and were continuing to hold and were keeping in their possession directly and/or indirectly and pass necessary orders in accordance with law. Since the writ petitioners/respondents were already allowed to retain lands as per the order of the learned Trial Judge, we direct that the authority may reconsider the matter in the light of observations made in this judgment with regard to the par-observations made in this judgment with regard to the particulars of agricultural land and non-agricultural land in the light of the classification of the lands within a period of

three months from the date of communication of this order. We also make it clear that it would not be open to the Revenue Officer to go into the question of right, title and interest of the parties. But, the only purpose of directing the authority to reconsider the matter was with regard to the question of classification of the lands which were in the possession of the writ petitioners/respondents and which they were holding according to law, which they are entitled to retain under Section 6(1)(c) and (d) of the said Act.

We also make it clear that the lands in the clauses (a) and (b) of sub-section (1) of Section 6, allowed to be retained and we direct them to make any further consideration and reconsideration of those categories of lands.

.Our direction in this appeal is limited to the categories of lands in clauses (c) and (d) of sub-section (1) of Section 6 of the said Act, to the extent indicated above. The order of the learned Trial Judge is modified. The appeal is allowed to the extent indicated above.

There will be no order as to costs.

We also make it clear that we have not decided the question of the legal effect of the agreement for sale entered into by and between the writ petitioners and the appellant-society in view of the fact that under Section 58 of the Transfer of Property Act, agreement for sale does not create any interest in the land and secondly we have not adjudicated the legal effect of the settlement made by the State Government in favour of the appellant-society.

This order shall govern the other appeals heard analogously, i.e., F M A T 3391 of 1992".

Hence, the above appeals.

Heard Mr. Depankar P. Gupta and Mr.T.C. Ray, Senior Advocates, for appellants, and M/s G.L. Sanghi and K. Ramamoorthy, Senior Advocates, for the respondents. It was strenuously contended on behalf of the appellants that the Writ Petition filed by the legal representatives and heirs of the Big Raiyat ought to have been rejected on the ground of inordinate delay and laches in approaching the Court and challenging the proceedings made as early as in September, 1971 and that, at any rate, the writ petitioners not having availed of the option envisaged under the provisions of Section 6(5) and even thereafter

A during the course of the proceedings initiated, they have lost once and for all the right to exercise their option once more and again and the High Court committed grave error in affording them a fresh opportunity by quashing the impugned proceedings dated 16.9.1971. It was further contended that inasmuch as original intermediary as well as his legal heirs had all opportunities and were given due notice and yet have not chosen to exercise the option, no further chance could be given to them in law and the vesting must be held to have reached finality, with no scope for undoing it. It was also contended for the appellants in C.A. No.12509 of 1996 that the society having been in possession of lands agreed to be sold, having parted to and in favour of the Cooperative Housing Society, there was nothing for the writ petitioners to exercise their choice or option in respect of those lands, which came to have not only vested in the State, but granted under a lease by securing their possession by the Officers of the State.

D Per contra, on behalf of the respondents, it was contended with equal force that the rights of the Big Raiyat as well as his heirs have to be adjudicated in terms of the date of vesting and as long as there had been no dispossession of the Big Raiyat or his heirs from khas possession of the lands in question, they have a right to exercise their option under Section 6(5) and Section 10 of the Act and, therefore, no exception could be taken to the orders of the High Court. Adverting to the claims on behalf of the appellants in C.A.No.12509 of 1996, it has also been contended for the respondents that the inter se dispute, if any, between those appellants and the writ petitioners, no matters which should weigh with the authorities obliged to deal with and exercise powers under Sections 6 and 10 of the Act, consequently have been properly left open by the High Court and it is not open to the Cooperative Housing Society to re-agitate them in these proceedings.

F We have carefully considered the submissions of the learned counsel appearing on either side. We are of the view that the objection based on laches and delay is of no merit. Viewed in the context of the facts of the case, which are indisputable, the authorities of the State have not lawfully and factually dispossessed the petitioners herein, who are the heirs of the intermediary, of the khas possession of the lands in question. The right to vindicate and protect their interest in the lands in question in terms of the enabling provisions of the Act would enure till they are dispossessed in the manner envisaged and by observing the formalities contemplated under the statutory provisions.

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So far as the legal principles governing the relevant provisions of the Act are concerned, in our view, they are not *res integra*. A

In *Gour Gopal Mitra and Anr. v. State of West Bengal and Ors.*, [1962-63] (Vol.LXVII) Calcutta Weekly Notes page 12], P.B. Mukherji, J., while analyzing the scheme underlying the provisions of the Act particularly Sections 6 and 10, observed as hereunder:- B

“Under Section (6) there is a right in the intermediary to retain certain lands as specified under Section 6(5). The intermediary shall exercise his choice of retention within the 30th April, 1958 in Form “B” as prescribed under Rule 4A of the West Bengal Estates Acquisition Rules. But even if the intermediary does not exercise his choice within the prescribed period and notwithstanding the word “shall” in the earlier part of Section 6(5), he still can claim his right to retain under section 6 of the Act as is expressly provided in the latter portion of sub-section (5) of section 6. I construe that part of section 6(5) of the Act to mean in this context, that the right of the intermediary to retain does not become extinct even after the prescribed period has passed by. To give effect to that part of the statute, therefore, it must follow that the intermediary can go to the Revenue Officer claiming an opportunity of being heard and to allow him to retain so much of the lands as do not exceed the statutory limits of section 6(1) (c), (d) and (j). In other words, it will mean this that so long as the intermediary has not delivered possession to the Collector under section 10(2) of the Act he has the right to claim retention. Once however the intermediary has lost possession to the Government no question of his any more “retaining” possession arises, for such a claim will be to “repossess” and not to “retain”. This construction keeps alive the statutory right of the intermediary to retain under section 6 only till he parts with possession under section 10(2) of the Act. This construction is further supported by the period of notice under section 10(2) of the Act. The notice that the Collector gives under this section for giving up possession must specify a date, which shall not be earlier than sixty days from the date of the service of the order. Now that is the ultimate time limit. If he wants to claim retention or exercise his choice of retention the intermediary must do so within those sixty days. I am, therefore, of the view that it is open to the petitioner to claim retention in the facts of this case. The primary authority before whom the petitioners should make this claim for retention is obviously H

A the Revenue Officer under the second part of section 6(5) of the Act.”

In *Tara Prasad Mukherjee and Ors. v. Ganesh Chandra Mondal and Ors.*, [1965-66] (Vol.70), Calcutta Weekly Notes, page 652], *P.B. Mukherji, J.*, while reiterating the construction placed on Section 6(5) in *Gour Gopal Mitra's* case (supra), observed that the intermediary can retain only lands in his khas possession, which possession need not actually be khas possession or actual possession at the date of vesting of the estate in the Government and that it is only after the estate had vested in the Government that the right of retention really arises. The learned Judge also observed that after the Act, no doubt the effect is that all such estates vested in the Government and the intermediaries are retainers in their character, but, at the same time, the Government itself gives a right to retain certain lands and that this right to retain, which is contained in section 6 of the Statute, the minimum land was not intended to be confiscated by the State merely on account of the fact that at the date of vesting the agricultural land was not in khas possession or in actual physical possession of the intermediary. Making it clear that an intermediary in such a case should be left free with the right to retain, which the Statute has given him, and claim to keep in his khas possession the minimum land permitted by the Statute, denying such intermediaries the said minimum right would, in the view of the learned Judge, create inequality among two classes of intermediaries, namely, one who had not parted with their khas possession at the date of vesting and the other who had parted with khas possession before the date of vesting, particularly when there is no express or implicit intention in the Statute itself to deprive any class of intermediary of their right to retain the minimum land permissible under the Statute on that ground.

F In *Mohan Lal Gupta v. Achhulal Saha and Ors.*, [1970-71] Vol.75, Calcutta Weekly Notes, page 228], it was observed that unless an order under Section 10(2) has been passed after serving a notice as envisaged in Rule 7 in the Statutory Form No.3 and the final order came to be passed under Section 10(2) and possession taken pursuant to the order purported to have been passed under Section 10(2), the State is not lawfully entitled to get into the possession of the land.

H In *Lakshmi Narayan Roy and Ors. v. Land Reforms Officer and Ors.*, [1975-76] (Vol. 80), Calcutta Weekly Notes, page 42] a Division Bench of the Calcutta High Court, while approving the view taken in *Gour Gopal*

Mitra's case (supra), held as hereunder:-

“The next question which has to be considered is the validity of the notices under section 10(2) of the Act as were served on the appellant by the authority concerned. Section 10(1) empowers the Collector to take charge of the estates and rights of the intermediaries vested in the State upon the publication of any Notification under section 4, and section 10(2) for the said purpose lays down that the Collector may, by written order served in the prescribed manner, require any intermediary or any person in possession (khas or symbolical) of any such estate or of any such interest, to give up such possession by a date to be specified in the order (which shall not be earlier than 60 days from the date of service of the order) and to deliver by that date any documents, registers, records and collection papers connected with the management of such estate or of such interest which are in his custody and to furnish a statement in the prescribed form in respect of such estate or such interest. Section 10(5) provides that nothing in section 10 shall authorize the Collector to take khas possession of any estate or of any right of an intermediary therein, which may be retained under section 6 of the Act. Relevant Rule, made under the aforesaid sections is the Rule 7 which prescribes the mode of service of the order of the Collector under section 10(2) and the form of statement referred to therein. Rule 7(1) states that the order of the Collector and the statement referred to in section 10(2) shall be in Form “3” appended to the said rules or in a form substantially similar thereto.....”

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A perusal of the notices will show that they are certainly not in accordance with or in conformity with the statutory form as prescribed under Rule 7(1) of the said Rules. In fact, the provision under which the power in the instant case has been exercised has not been mentioned in the impugned notices and furthermore there has been no compliance with the clause (iii) of the said form or clause 5(c) in the reverse of the same. Clause (iii) in the Form under Rule 7(1) requires the Collector concerned to give an opportunity to the intermediary to furnish a statement in respect of such estates or such interests in the form given on the reverse showing the particulars

A specified therein amongst others as to the description of the lands under clause 5(c) which the intermediary would like to retain under the provisions of the Act. This part it appears is conspicuously absent in the present notices, which were served on the appellant. By the said notices, in exercise of power under section 10(2) of the Act the intermediary was only asked to give up possession of the lands and/or interests in the same in respect of the lands in the schedule on or by 10th December, 1966. Thus admittedly the notices in the instant case were not in the statutory form in which the notice under section 10(2) of the Act were required to be served on the appellant and furthermore they were not in conformity or in substantial compliance with the statutory form. On the basis of such defective notices the authorities concerned had neither jurisdiction nor can they claim to have any power under the law to deprive the appellant of his lands. The determinations made in *Mohal Lal Gupta v. Achhulal Saha* (supra) thus support the contentions of the appellant and fits in with the facts of the present case and as such it must be held that on the basis of such irregular notices possession of the appellant's lands could not be taken over by the Collector concerned.

E It is also an admitted fact that the appellant has not yet parted with the possession of the lands required to be vested and since he has not yet parted with such possession, on the authority of the case of *Gour Gopal Mitra v. State of West Bengal* (supra), he can also claim to have a right to file a fresh return in Form "B" by altering, reviewing or by adding or amending the "B" form which was initially filed."

F In *State of West Bengal and Ors v. Suburban Agriculture Dairy & Fisheries Pvt. Ltd. and Anr.*, [1993] Supp. 4 SCC 674, this court observed that when the Estates Acquisition Act came into force on 12.2.1954 and a Notification under Sections 4(1) and 4(3) was published in the prescribed manner, by the operation of Section 5(1) the estate and all the rights of intermediaries, including fisheries in the estate shall stand determined and ceased and vested in the State free from all encumbrances, and that Section 6 postulated by a non obstante clause that notwithstanding anything contained in Sections 4 & 5 an intermediary shall, except in the cases mentioned in the proviso to Sub-section (2) but subject to the other provisions of that Sub-section, be entitled to retain "with effect from the date of vesting" various kinds of lands like homestead enumerated therein and that, therefore, the intermediaries became entitled to retain possession despite the intermediaries

having been divested of right, title and interest therein. The provisions of sub-Section (5) of Section 10 of the Act also was considered to manifest the said position in stating that “nothing in this Section shall authorize the Collector to take khas possession of any estate or of any right of an intermediary therein, which may be retained under Section 6.” The purport, nature and extent of vesting and the rights preserved simultaneously of the intermediaries under Section 6, in juxtaposition to the vesting has been highlighted therein as hereunder:-

“10. Section 10(2) of the Act empowers the Collector, after his taking charge of the estate and the interest of the intermediaries under Section 10(1), to issue a written order served in the prescribed manner requiring the intermediary or any person in possession (khas or symbolic) of any such estate or any interest to give up such possession by a date to be specified in the order which shall not be earlier than 60 days from the date of service of the order, etc. Sub-section (5) of Section 10 prohibits him to take khas possession of any right of intermediary in the estate retained under Section 6.

11. The conjoint operational conspectus assists us to conclude that the pre-existing right, title and interest in the lands situated in an estate stood extinguished and ceased to have effect on and from notified date i.e. June 1, 1956 and stood vested in the State free from all encumbrances. The non obstante clause under Section 6 excluded from the operation of Sections 4 and 5 only the interest of the respondent to retain physical possession of the lands covered by Section 6, subject to Section 6(2). The intermediary by operation of Section 10(2) shall be required to submit in Form ‘B’ within 60 days from the date of issuing notice under Section 10(1) of his intention to retain possession of the tank fisheries. On such submission of Form ‘B’, the Collector without dispossessing him/it shall be entitled to prescribe such terms and conditions to which the intermediary or the lessee shall be bound and hold the tank fishery and shall remain in possession, using the tank fisheries for pisciculture or for fishing and subject to payment of such rent as may be determined under the Act and finally entered in the Records of Rights.”

It was further observed therein, as to the overall effect of Sections 4, 5 and 6 of the Act as follows:

“17. As seen earlier the effect of the operation of Sections 4 and 5

A is that of divesting the intermediary of his pre-existing right, title and interest in the estate except those which were exempted from the operation of the Act. One of the exemptions is retention of the possession of the lands covered by Section 6 of the Act. Under Section 6(1)(e), tank fisheries is one such. Sub-section (2) amplifies its effect.

B Sub-section (2) transposes the pre-existing possessory right of the retained lands of an intermediary of tank fisheries into holder of it as a tenant without any interest therein. By fiction of law the respondent was transposed as “holder” of the possession directly under the State as tenant, subject to such terms and conditions as may be specified and subject to payment of rent as may be determined from time to time. Therefore, what was saved by non obstante clause of Section

C 6(1) and (2) of the Act is the right of retention of the physical (khas) possession of the tank fisheries. What was intended in *Atul Kishan Shaw* case was that Section 6(2) saved the retention of possession of tank fisheries and not divesting the State of the vested rights etc. in the estate.”

D In *State of W.B. and Anr. v. Arun Kumar Basu and Anr.*, [1997] 5 SCC 317], this court reiterated the same principles as to the extent and effect of vesting and the nature of the rights, saved under the statute.

E The claims and contentions on behalf of the parties on either side have to be adjudged in the light of the above noticed principles laid down in interpreting the relevant provisions of the Act, particularly Sections 4, 5, 6 and 10, thereof. The governing principles and the scheme underlying the provisions of the Act as enunciated by the Calcutta High Court, in the earlier decisions noticed supra cannot be said to lay down any wrong or incorrect

F proposition of law or anything in derogation of the interpretation placed by this court as to the scope, extent and nature of vesting as well as the nature and character of rights safeguarded under Section 6 etc., for retention of the land and other properties by the intermediary and their successors-in-interest. On a careful reading of the above referred two decisions portions of which

G have been brought to our notice and extracted above with emphasis laid in support of the respective stand taken for the parties on either side, we are also of the view that the right of the intermediaries to retain certain lands and properties under Section 6 does not come to an end once and for all or said to become extinct, irretrievably after the prescribed date as envisaged in Section 6 (5) read with Rule 4 A of the Rules. Without leaving anything for

H anyone to surmise as an aftermath of such omission or lapse, the legislature

itself stipulated as to what should happen thereafter also in the latter part of Sub-section (5) of Section 6 that if no choice is exercised under Section 6 (1) by the intermediary during the prescribed period also obligating the Revenue Officer to give the intermediary an opportunity of being heard, allow him to retain so much of the lands as do not exceed the limits specified in clauses (c), (d) and (j) of sub-section (1) of Section 6 of the Act.

The right of the Collector to take charge of the estate and rights therein of intermediaries, which vest in the State under Section 5 are dealt with under Section 10 of the Act. While Sub-section (2) of Section 10 lays down the procedure to be followed and stipulates the manner and method in which the possession has to be taken, Sub-section (5) declares in clear and unmistakable terms that nothing in the said Section shall authorize the Collector to take khas possession of any estate or of any right of an intermediary therein which 'may' be retained under Section 6 and the embargo is not merely with reference to those properties already chosen to be retained as envisaged under Sub-sections (1) and (5) of Section 6. Before taking possession, sub-section (2) of Section 10 mandates the Collector to serve a written order in the prescribed manner requiring the intermediary or any other person in khas or symbolic possession, by the date to be specified in the order which shall not be earlier than sixty days from the date of its service, to give up such possession and all documents, registers, records and collection papers connected with the management of such estate/interest. Rule 7 of the Rules prescribes the statutory form (No.3) of order/notice and provides that the order of the Collector and the statement shall be in the said form or in a form substantially similar thereto. The Collector has to by his order essentially call upon the intermediary/person concerned, among other things, to furnish a statement in the format prescribed, as part of Form No.3 itself and particularly in clause 5 (iii) (c) of the statement to disclose the description and area of land which the intermediary would like to retain under the provision of the Act. This, in our view, inevitably postulates and leads only to the inescapable conclusion that even before the Collector actually takes khas possession of the estate and rights of an intermediary therein, the intermediary will have not only an opportunity but a right to choose the lands which he could retain as provided for under Sub-section (1) of Section 6 of the Act. That such understanding and construction of the relevant provision alone would be proper and necessary to be adopted gets reinforced from Sub-section (6) of Section 10 which stipulates that if after vesting takes place under Section 5 and the intermediary or any other person possesses any land which was in the khas possession of the intermediary before vesting, but which the intermediary 'has not retained

A or cannot retain under Section 6', then whether possession of such land has been taken by the Collector in pursuance of Sub-section (2) or not the intermediary or such other person shall be liable for the period for which he is in possession of such land to make payments determined in the manner enumerated therein.

B So far as the case on hand is concerned, it is seen from the materials on record that effective, actual and physical possession of the properties appears to have continued with the intermediary in question and subsequently in the possession of his heirs and the Collector/Revenue Officer could not be said to have either dispossessed them or taken over physical or khas possession

C of the estate and the rights comprised therein in the manner statutorily mandated and provided for under Section 10(2) of the Act and Rule 7 of the Rules made thereunder. The learned Single Judge and the Division Bench of the High Court recorded concurrently that khas possession continued with the intermediary and after him his heirs and we find nothing contra concretely to disturb the same. The professed taking over of possession seems to be a

D mere entry on paper but not in conformity with the mandatory procedure necessarily to be observed before such possession could be lawfully carried out. We are not concerned with the internal controversy between the Cooperative Housing Society of its claim to have been given with possession pursuant to the agreement of sale since for the purposes of the Act, it is the

E dispossession by the Collector/Revenue Officer in the manner envisaged in the statutory provisions under the Rules made thereunder that alone could get legitimatised for determining the rights of parties. Consequently, the order of the learned Single Judge as well as the order of the Division Bench, insofar as they sustained the right in the respondents herein to express their choice

F of retention, cannot be said to suffer from any infirmity in law so as to call for our interference. As a matter of fact, it is seen from the materials placed on record that after the order of the learned Single Judge, on the respondents exercising their choice, an order dated 2.8.1994 came to be passed by the Revenue Officer allowing retention of 25 acres of agricultural land, 10.16

G acres of non-agricultural land and 0.06 acres of homestead land as per "B" Schedule to the said proceedings and declaring that 27.95 acres of agricultural land and 0.14 acres of homestead land as per details contained in the "C" Schedule to the said proceedings stood vested in the State. This order, which appears to have been made subject to the result of the appeal, has to be

H construed in that manner and the rights of parties thereunder could and ought to be only in terms of and subject to the modified order of the Division Bench and nothing more. Though we do not interfere with the order of the

Division Bench, we should not be understood to have approved the entire reasoning of the Division Bench and some of the observations, particularly the observations such as “.....the order for vesting becomes ineffective”, according to the learned Trial Judge as well as the Division Bench, if the proceeding initiated in big raiyat’s case is not followed up by service of a notice under Section 10(2) of the Act and yet another observation “..... could not be vested whether the option of retention has been exercised or not”, meaning thereby and lending an impression that the lands, which are eligible to be retained at the choice of the intermediary as envisaged under Section 6, could never have vested at all whether option for retention has been exercised or not. Some such observation run not only counter to the law laid down in the earlier decisions of the Calcutta High Court, but also run counter to the principles laid down by this Court in the decisions noticed supra. The vesting is total and complete once Notification is issued under Section 4 and got published by the combined operation of Sections 4 and 5 of the Act and what is secured under Section 6 is the right to hold on to the possession, subject to the limits prescribed in the statute by option for retention of the same before khas possession of the properties have been taken over as envisaged under Section 10(3) of the Act.

The Division Bench of the High Court has made it clear in the concluding portion of its order that they have not decided the question of legal effect of the agreement for sale entered into by and between the writ petitioners and the appellant-Society or the legal effect of the settlement made by the State Government in favour of the Society. We also leave such questions open since they are outside the purview of the real issues involved in these proceedings under the Estates Acquisition Act. It is for the parties to vindicate their rights, if any, in the manner known to and in accordance with law.

The learned Senior Counsel for the State of West Bengal pointed out that with the enactment of the West Bengal Land Reforms Act, 1955 and various subsequent amendments from time to time, the ceiling limit of the extent to be held by the respondents could vary from the one, which they are eligible to retain under the Estates Acquisition Act of 1953. In these proceedings, we are concerned only with the enforcement and implementation of the West Bengal Estates Acquisition Act, 1953. The rights of the State to enforce ceiling on the extent of holdings and the liabilities and obligations of the respondents under the provisions of the West Bengal Land Reforms Act, 1955 are not the concern of this Court in these proceedings. It is always open to the competent and concerned authorities, exercising powers under the

A West Bengal Land Reforms Act, 1955, to take action as is permissible in law to determine the ceiling of the respondents with equal liberties for the respondents to vindicate their rights, if any, under the said law in the manner provided therefor.

B For all the reasons state above, the appeals fail and shall stand dismissed with liberties reserved to parties on either side, as indicated in this order. No costs.

S.K.S.

Appeals dismissed.