

ROZAN MIAN  
v.  
TAHERA BEGUM AND ORS.

AUGUST 14, 2007

[H.K. SEMA AND LOKESHWAR SINGH PANTA, JJ.]

*Indian Contract Act, 1872; Section 56/Calcutta Thika Tenancy Act, 1949/Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981; Ss. 4, 5, 6, 7:*

*Agreement for sale and purchase of Thika tenancy—One of the parties did not perform his part of contract, other party filing suit for specific performance—Suit decreed by trial Court—Reversed by High Court—On appeal, Held: An agreement to do an impossible act is void—By virtue of 1981 Act, thika tenant became the thika tenant under the State—The suit for specific performance of agreement for sale decreed after the 1981 Act came into force in terms thereof the agreement itself became void—Thus no right accrued to appellant in terms of the agreement—Under the circumstances, High Court rightly held that since the contract has become void appellant is entitled only to refund of consideration amount with interest and cost of the suit—No reason is found to interfere with the judgment of the High Court.*

An agreement for sale and purchase of thika tenancy was entered into between the parties under the Calcutta Thika Tenancy Act, 1949. The agreement was to sell structure without the land. The agreement having not been performed, a suit for specific performance of the contract has been filed by the aggrieved party. However, during the pendency of the suit, West Bengal Act 37 of 1981 was promulgated. Section 5 of the Act provides that with effect from the date of commencement of this Act, lands along with the interest of the landlords therein shall vest in the State, free from all encumbrances. Sub-section (3) of Section 6 prohibits the transfer of the interests of thika tenants and tenants of other lands holding directly under the State except the transfer amongst the heirs and existing co-sharers-interest or to the prospective heirs, subject to the provisions of sub-section (1) of Section 7 of the 1981 Act. The trial Court decreed the suit. On appeal, High Court upset the decree. Hence the present appeal.

**A** The question which arose for determination in this appeal was as to whether the specific performance of the agreement for sale becomes impossible of performance by reason of promulgation of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 1981 during the pendency of the suit.

**B** Appellant contended that the right accrued to him by way of an agreement dated 3.12.1973 under the 1949 Act still subsists and could not have been taken away by 1981 Act, as the application of the Act itself was not made retrospectively.

**C** Dismissing the appeal, the Court

**D** HELD:1.1. Section 56 of the Indian Contract Act, 1872 provides that an agreement to do an act impossible in itself is void. A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful. In the present case, by virtue of Thika Tenancy (Acquisition and Requisition) Act, 1981 the land under the landlord has been vested in the State and the thika tenant under the landlord becomes the thika tenant under the State. [Para 9] [1016-G]

**E** 1.2. No such right as contended by the appellant was accrued under the Calcutta Tenancy Act, as the suit for specific performance of agreement for sale was decreed only on 24.4.1990, by the Trial Court, after the agreement itself became void, by virtue of 1981 Act. [Para 10] [1017-B-C]

**F** *K.S. Paripoornan v. State of Kerala*, [1994] 5 SCC 593; *R. Rajagopal Reddy v. Padmini Chandrasekharan*, [1995] 2 SCC 630; *Shyam Sunder v. Ram Kumar*, [2001] 8 SCC 24 and *Narayan Chandra Ghosh v. Kanailal Ghosh*, [2006] 1 SCC 175, held inapplicable.

**G** 2. The High Court was of the view that after the promulgation of 1981 Act by reason of operation of law, the contract has become void, the plaintiff is entitled only to the refund of the consideration together with interest and cost of the suit at the rate assessed by the High Court. No reason is found to interfere with the views of the High Court.

[Paras 11 and 12] [1017-D-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 814 of 2005.

**H**

From the Final Judgment and Order dated 13.11.2003 of the High of A  
Calcutta in F.A. No. 103/1999.

S.B. Sanyal, Rauf Rahim, Md. Iqbal for the Appellant.

Jaideep Gupta, Tapash Ray, G.S. Chatterjee, Sachin Das, Alean Moohuri,  
Satish Vig, Pijush K. Roy and G. Ramakrishna Prasad for the Respondents. B

The Judgment of the Court was delivered by

**H.K. SEMA, J.** (1) This appeal preferred by the plaintiff is directed  
against the judgment and order dated 13.11.2003 passed by the High Court  
in F.A.No.103 of 1988, dismissing the suit of the plaintiff, by reversing the C  
decree granted by the Trial Court.

(2) Briefly stated the facts are as follows:-

An agreement was entered into between the plaintiff and the defendant  
on 3.12.1973 for sale and purchase of Thika Tenancy. The agreement having D  
not been carried out, the plaintiff filed a suit on 7.2.1974 for specific performance  
of agreement for sale. The Trial Court decreed the suit on 24.4.1990. However,  
the High Court upset the decree and hence the present appeal. The undisputed  
fact is that the aforesaid agreement was entered into between the parties while E  
the Calcutta Thika Tenancy Act, 1949 was in vogue. The agreement was to  
sell structure without the land. There was no bar in transferring structure  
without the land under 1949 Act and a person purchasing the structure would  
have become a Thika Tenant. However, during the pendency of the suit, West  
Bengal Act 37 of 1981, The Calcutta Thika Tenancy (Acquisition and  
Regulation) Act, 1981 (hereinafter the 1981 Act) was promulgated.

(3) Section 5 of the Act provides that with effect from the date of  
commencement of this Act, lands along with the interest of the landlords  
therein shall vest in the State, free from all encumbrances. F

(4) Sub-Section (3) of Section 6 prohibits the transfer of the interests  
of thika tenants and tenants of other lands holding directly under the State G  
except the transfer amongst the heirs and existing co-sharers-interest or to the  
prospective heirs, subject to the provisions of sub-section (1) of Section 7.

(5) By reason of sub-section (2) of Section 7 any transfer or agreement  
for transfer, whether oral or in writing in contravention of the provisions of  
sub-section (3) of Section 6 or sub-section (1) of Section 7 shall be void and H

A be of no effect whatsoever and the land and structure shall stand vested in the State in accordance with the prescribed procedure.

(6) Section 4 of the Act has an overriding provision. It reads:-

B “4. *Act to override other laws.*- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith in any other law for the time being in force or in any custom, usage or agreement or in any decree or order of a court, tribunal or other authority.”

C (7) In the background of the position of law, the question to be determined in this appeal is as to whether the specific performance of the agreement for sale becomes impossible of performance by reason of promulgation of the West Bengal Thika Tenancy (Acquisition and Regulation) Act 1981, during the pendency of the suit. As already noticed, the plaintiff's suit was filed on 7.2.1974 for specific performance of agreement for sale-dated 3.12.1973. The suit was decreed on 24.4.1990. During the pendency of the suit, 1981 regulation was promulgated. By virtue of Section 5, all lands and interests of the landlords vested with the Government. By virtue of sub-section (3) of Section 6 of the Act, transfer of thika tenancy is prohibited. By virtue of sub-section (2) of Section 7, any transfer in contravention of sub-section (3) of Section 6 is void. Section 4 provides overriding effect on all laws including the agreement or any decree or order of a court, tribunal or other authority.

E (8) It is noticed that the 1981 Act has brought about drastic changes in the concept of Thika tenancy. The superior interest of the landlord holding under the State stands vested in the State by operation of law. The land having been vested in the State and the Thika Tenant occupying the land under the landlord became a Thika Tenant holding the Thika Tenancy directly under the State.

F (9) Section 56 of the Indian Contract Act, 1872 (in short "the Act") provides that an agreement to do an act impossible in itself is void. A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful. In the present case, by virtue of 1981 Act, the land under the landlord has been vested in the State and the Thika Tenant under the landlord becomes the Thika Tenant under the State.

H (10) Mr. S.B. Sanyal, learned senior counsel appearing for the appellant,

contended that the right accrued by an agreement dated 3.12.1973 under the 1949 Act still subsists and could not have been taken away by 1981 Act, as the application of the Act itself was not made retrospectively. This contention, in our view, is thoroughly misplaced. We have already pointed out various Sections of the Act, by which the agreement dated 3.12.1973 itself becomes void. No such right as contended by learned counsel for the appellant was accrued under the 1949 Act, as the suit for specific performance of agreement for sale was decreed only on 24.4.1990, by the Trial Court, after the agreement itself became void, by virtue of 1981 Act. In support of his contention Mr. Sanyal referred to various decisions of this Court; *K.S Paripoornan v. State of Kerala*, [1994] 5 SCC 593, *R. Rajagopal Reddy v. Padmini Chandrasekharan*, [1995] 2 SCC 630, *Shyam Sunder v. Ram Kumar*, [2001] 8 SCC 24, *Narayan Chandra Ghosh v. Kanailal Ghosh*, [2006] 1 SCC 175. The aforesaid decisions are not at all relevant for the purpose of disposal of the present appeal.

(11) The High Court was of the view that after the promulgation of 1981 Act by reason of operation of law, the contract has become void, the plaintiff is entitled only to the refund of the consideration together with interest and cost of the suit at the rate assessed by the High Court.

(12) We see no reason to interfere with the views of the High Court. This appeal being devoid of merits is, accordingly, dismissed with no order as to costs.

S.K.S.

Appeal dismissed