

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Sugato Majumdar

SA 614 of 1995

with

IA NO: CAN 1 of 2021

MOHAMMED ALI CHOWDHURY & ORS.

VS

STATE OF W.B

For the Appellants : Mr. Subhabrata Das, Adv.
Mr. Mrinal Kanti Das, Adv.
Mr. Arindam Banerjee, Adv.

For the Respondent : Mr. Rabindra Narayan Dutta, Adv.
Mr. Hare Krishna Haldar, Adv.

Heard on : 06.01.2026

Judgment on : 15.01.2026

Sugato Majumdar, J :

The instant Second Appeal was filed against the Judgment and the Appellate Decree dated 22/09/1988 passed by the Assistant District Judge, Arambagh whereby the Judgment and Decree passed by the Trial Court was set aside.

The Appellants/Plaintiffs herein, filed the original suit in the Court of 2nd Munsif, Arambagh where the Judgment and Decree dated 12/12/1985 was passed in favour of the Appellant/Plaintiffs.

The plaint case in nutshell was that the suit property originally belonged to one Abdus Sukur Chowdhury which he inherited from his father late Elahi Bux, who,

in turn purchased the suit property from one Netai Charan Dutta and Sachindranath Dutta on 30/10/40. In the year 1944 an agreement came into being between the said Elahi Bux and the Respondent/Defendant State. In terms of the agreement, the Respondent/Defendant State would use the land in question for running A.G. Hospital for which rent was fixed at Rs.15 per annum. It was also agreed that in case the said A.G. Hospital be shifted or wound up, the Respondent/Defendant State would restore the possession. Accordingly, one agreement was executed and the Sub-Divisional Officer of Arambagh signed the same on behalf of the state. The original agreement was kept with the State. The State thereafter took possession of the land in question and began to run A.G. Hospital. Rent had been paid till 1958. In the year 1962, A.G. Hospital merged with the newly set up sub-divisional hospital, as a result of which, the earlier A.G. Hospital lost existence. The District Magistrate, Hooghly, by Order No.3795G dated 27/07/1966 asked the then Sub-Divisional Officer to restore the property to the Appellant/Plaintiffs. In spite of the order passed by the then District Magistrate, the suit property was not restored to the Appellant/Plaintiffs which led to institution of the original suit.

The Respondent/Defendant State contested the suit by filing written statement. It was contended that the suit property had not been purchased by the father of the Appellants/Plaintiffs on 31/01/1940. The suit property had been recorded as “*dakhalkar*” in the name of the Public Health Department of the Govt. of West Bengal as a tenant under the predecessors of the Appellants/Plaintiffs. Subsequently, the suit property became that of the Respondent/Defendant State and the Appellants/Plaintiffs lost their rights, title and interest in the suit property. The Respondent/Defendant State also denied existence of any agreement. The Respondent/Defendant State admitted that there had been an order passed by the

District Magistrate, Hooghly, but the said order was recalled by the Additional District Magistrate (E.A), Hooghly in terms of the Memo No.692/EA dated 16/02/1968. In view of the recall, as aforesaid, the suit property had not been restored. Apart from this, the Appellants/Plaintiffs had accepted compensation amounting to Rs.1960/- on account of vesting of the suit property with the State. The Respondent/Defendant State also pleaded that there was no valid notice under Section 80 of the Code of Civil Procedure, 1908. In nutshell, the Respondent/Defendant State pleaded that the suit should be dismissed.

On the basis of rival pleadings, following issues were framed:

1. “Is the suit maintainable in the present form?
2. Is the notice u/s 80 C.P.C legal, valid and sufficient? Was it duly served?
3. Has the suit been properly valued? Has proper court fees been paid?
4. Have the plffs. their alleged right title and interest in the suit property?
5. Is the plff. entitled to a decree prayed for?
6. To what other relief or reliefs, is the plff entitled.”

The Trial Court was pleased to allow the suit in favour of the Appellants/Plaintiffs and directed the Respondent/Defendant State to restore possession of the suit property. The Trial Court observed that a process of acquisition was pending and compensation roll was about to be prepared. The Trial Court also considered under Section 7(2) of the West Bengal Non-Agricultural

Tenancy Act, 1949 but observed that the provision was not applicable in the case. That section has nothing to do with a lease under the Transfer of Property Act, 1882. The lease deed was unregistered, hence void. This led to the Trial Court to conclude that this was a case of license which had been revoked. Therefore, the property should be restored. Accordingly, the Trial Court passed the aforesaid Judgment and Decree in favour of the Appellants/Plaintiffs.

On being aggrieved and dissatisfied, the Respondent/Defendant State preferred appeal. The Appellate Court being the Asst. District Judge, Arambagh, allowed the appeal. The Appellate Court framed the following points for consideration:

1. “Whether the suit itself is rejectable for not service or proper and valid notice u/s 80 C.P.C against the State in its proper form.
2. Whether the suit itself is barred by Sec.34 of the Specific Relief Act in view of the prayer claiming for possession without declaration of the title whereof.
3. Whether the APP/State is possession of the suit property is ejectable in view of Sec.7 of the West Bengal Non Agricultural Tenancy Act.
4. Whether the Resp/Plff accepting compensation money for the suit property can again be allowed to claim the right, title and interest as also possession for the self-same property.”

The Appellate Court observed that the notice under Section 80 of the Code of Civil Procedure, 1908 was insufficient as copy of the plaint had not been appended therewith. The Appellate Court further observed that there was no prayer for declaration of title in respect of the suit property. The alleged agreement was not in

existence; Record-of-Rights bear the name of the Respondent/Defendant State. In that perspective, prayer for restoration of possession could not be allowed. The Appellate Court also considered that Section 7(2) of the West Bengal Non-Agricultural Tenancy Act, 1949 extends protection to the non-agricultural tenants notwithstanding anything contrary to any other law. The Respondent/Defendant State sought to adduce additional evidence before the Appellate Court. An application under Order 41 Rule 27 was filed by the Respondent/Defendant State to adduce additional evidence of a receipt purporting to show payment of compensation to the Appellants/Plaintiffs. But the Appellate Court refused to entertain that application and refused to admit that additional evidence on the ground that the said receipt contained no signature of the recipients. For these reasons, the Appellate Court reversed the judgment and decree of the Trial Court.

The Learned Counsel for the Appellants argued that Section 80 of the Code of Civil Procedure, 1908 should not be interpreted by the courts in a pedantic manner but should be construed with commonsense. The Learned Counsel referred to in **Dhian Singh Sobha Singh & Anr. Vs. The Union of India (AIR 1958 SC 274)** and **Raghunath Dass Vs. Union of India and Anr. (AIR 1969 SC 674)**. It was further argued that the State failed to adduce in evidence record of rights only because final record of rights were never published, draft record of right is not admissible in evidence. Even the Learned Appellate Court refused to entertain application for additional evidence. Accordingly, it was argued that the State cannot be heard or failed to prove the defence of vesting. So far as, the additional substantial question of law is concerned. The Learned Counsel argued that such a proposition of law is totally misplaced in the facts and circumstances of the present case. It was submitted that instant suit is not at all a suit for permanent injunction

but a suit for restoration of possession which had been handed over to the State by the predecessors of the Plaintiffs at fixed annual rent. In view of such explicit admission of fact, the question of law, additionally framed, has become redundant.

The Learned Counsel for the State, on the other hand, argued that the suit property had already been vested and the Appellant has received compensation on account of such vesting. After receiving compensation he cannot be heard to say the opposite.

I have heard rival submissions.

Principal plea of the Respondent/Defendant State was that the suit property had been vested in the State. PW-1 was asked in the course of cross-examination as to whether the suit property had been vested or not. His answer was that he had applied in form-B to the State, praying for exemption from vesting but he was not aware of the outcome. DW-1 adduced in evidence, file of the District Magistrate's Office which was marked as Ext. A. Notes of the Additional District Magistrate (EA) contained in the file indicate, dated 07/09/1967, shows that Public Health Department was owner of the property at that point of time. The Defendant failed to produce any procedural documents to establish the fact of vesting and payment of compensation. Nevertheless, pleading and the documentary evidence castes very serious cloud on the title of the Plaintiff in the suit property. It was observed by the Supreme Court of India in **Anathula Sudhakar Vs. P. Buchi Reddy (Dead) & Ors. [(2008) 4 SCC 594]** that where a cloud is raised over the Plaintiff's title and he does not have possession, a suit for declaration and possession, with or without consequential injunction is the remedy. Nothing is there in the record to so that facing with challenge of the title the Appellant/Plaintiff took no steps to amend the plaint. When the title is very seriously challenged and some evidence are produced,

simplicitor decree of recovery of possession cannot be passed without deciding on the right, title and interests to recover possession. Reason is very clear. Order or decree for recovery of possession can only be allowed if the Appellant/Plaintiff was so entitled to. Adjudication of title once challenged is a prelude to consideration of prayer of recovery of possession. This was not done by the Plaintiff. In other words, the Appellant/Plaintiff did not invite the Court to decide on his right, title as well as entitlement to get back the possession. Incorporation of prayer for declaratory decree is, therefore, *sine qua non* for adjudication of the claim. The Trial Court committed error in this respect as rightly observed by the Appellate Court. Without establishing, in the face of challenge, the right, title and interests by way of declaratory decree, the decree for recovery of possession or permanent injunction or any other relief cannot be allowed.

This Court concurs with the finding of the First Appellate Court and upheld the same.

Accordingly, the instant Second Appeal stands dismissed without costs.

The instant Second Appeal is disposed of along with all pending applications.

The LCR be returned.

(Sugato Majumdar. J.)