A S.K. ARSED ALI AND ANR.

*v.*

S.K. FAZLE HAKANI

NOVEMBER 20, 1996

B [M.M. PUNCHHI AND MRS. SUJATA V. MANOHAR, JJ.]

*Land Laws and Agricultural Tenancy :*

*West Bengal Land Reforms Act, 1959 :*

C *Ss. 2(7) and 8—Pre-emption—Owner of a portion of a plot described in revenue records as 'tank' filing petition u/s 8 against the vendor of the part of the land—Purchaser of the adjacent land resisting the claim on the ground that 'tank' was outside the definition of land—Held, 'tank' did not come within the ambit of the word 'land' for purpose of s.2(7) and as such*
D *claim for pre-emption was not maintainable.*

*Words and Phrases :*

*'Matsyasheho Pushkarini' and 'doba'—Held, do not come within the ambit of 'land' for the purpose of s.2(7) of West Bengal Land Reforms*
E *Act, 1959.*

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5457-57A of 1985.

F From the Judgment and Order dated 5.6.85 of the Calcutta High Court in C.R. Nos. 2017-18 of 1975.

Ms. Aruna Banerjee and Raja Chatterjee for G.S. Chatterjee for the Appellants.

G The following Order of the Court was delivered :

The respondent filed a petition under Section 8 of the West Bengal Land Reforms Act for pre-emption in respect of two sale deeds executed by the vendors on 22nd and 23rd February 1977 transferring 1.79 acres of
H land in two plots in favour of the appellant. The appellants resisted the

respondent's claim for pre-emption on the ground that the respondent need to have been a co-sharer in the land sold and since he claims to have purchased sometime in the past a portion of a plot, which was described in the revenue records as a 'tank', it was not 'land' as defined in the Land Reforms Act and therefore he was not a co-sharer. The trial court found that the pre-emptor had purchased a portion of a plot which was a 'doba' and since 'doba' was a tank, it was outside the definition of land provided in the Land Reforms Act. The appellate court concurred with that view. The High Court, however in second appeal upset it. To adjudge the correctness of the view of the High Court are the present appeals at the instance of the vendees.

Miss Aruna Banerjee, learned counsel appearing for the appellants has placed before us the English translation of the deed of sale in favour of the respondent together with the copy of the original deed in Bengali. There the land sold to the pre-emptor has been described as 'Matsyasheho Pushkarini' which in English means a tank/pond full of fish. The learned Single Judge of the High Court in relying upon an earlier decision of that court in *Niranjan Das Versus Lakshmi Mani Dasi*, 1986 Calcutta Weekly Note 318 has taken the view that 'doba' does not come with in the mischief of the word 'tank' as is apparent from the Wilson's Glossary of words. We have caused a copy thereof to be placed before us and we find therefrom that the word 'doba' in Bengali means immersed, low and swampy or inundated land. The depth of such land perhaps comes to cause a distinction between a 'doba' and a 'tank'. Apparently the High Court was of the view that if surface waters be shallow, then the land even though inundated will retain the character of the land, bearing at the back of its mind that paddy crop can be grown in puddled lands. Correspondingly, if the depth is more which prevents the land being put to agricultural use then it would be 'tank' for the purposes of the West Bengal Land Reforms Act and in particular Section 2(7) thereof, which defines 'land' to be agricultural land, tank being an exception thereto. Now here the land has been described as 'Matsyasheo Pushkarini' which apparently would mean a pond with sufficient water abounding in fish and seemingly it was so described in the deed of sale in favour of the respondent. Thus the area owned by the respondent did not come within the ambit of the word 'land' for the purposes of Section 2(7) of the West Bengal Land reforms Act 1995 and therefore the Respondent was dis-entitled to claim himself as co-sharer in the land in order to maintain a claim for pre-emption. In our view the High Court was in error in proceeding on the basis that the land purchased by the respondent was put to agricultural use in the manner which entitled the

A respondent to a decree in his favour. We therefore, upset the judgment and order of the High Court and order restoration of the judgment and decrees of the Courts below but without any order as to costs.

R.P. Appeals disposed of.