

(1980) 06 CAL CK 0028
In the Calcutta High Court
Case No : Matter No. 38 of 1979

Bhagaban Roy and Others

APPELLANT

Vs

First Land Acquisition Collector and Others

RESPONDENT

Date of Decision : 23-06-1980

Acts Referred:

Constitution of India, 1950 — Article 245, 246

Citation : AIR 1981 Cal 67 : (1980) 2 CHN 135 : 85 CWN 59

Hon'ble Judges : Bimal Chandra Basak, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Bimal Chandra Basak, J.—In this application under Article 226 of the Constitution of India the petitioners are challenging an order of the respondents dated the 11th January, 1979 whereby the land mentioned in the order has been requisitioned under the provisions of Sub-section (1) of Section 3 of the West Bengal Land (Requisition and Acquisition) Act. 1948, (hereinafter referred to as the 1948 Act).

2. The said Act came into force in 1948. It was a temporary Act. The life of the said Act was extended from time to time by way of amendment of the Act. Ultimately it expired on the 31st Mar., 1977 without any further extension being made before such expiry. On the 30th of April, 1977, there was a Presidential Rule and thereafter on the 7th June, 1977, there was an Ordinance which was replaced by the West Bengal Land (Requisition and Acquisition) Re-enactment Act, 1977, (hereinafter referred to as the 1977 Act). It is a very short Act and may be set out herein below.

West Bengal Act XV of 1977 The West Bengal Land (Requisition and Acquisition) Re-enacting Act, 1977.

(Passed by the West Bengal Legislature) (Assent of the President was first published in the Calcutta Gazette, Extraordinary of the 22nd July, 1977)

An Act to re-enact the West Bengal Land (Requisition and Acquisition) Act, 1948.

Whereas it is expedient to re-enact the West Bengal Land (Requisition and Acquisition) Act, 1948, for the purposes and in the manner hereinafter appearing:

It is hereby enacted- in the Twenty-eighth Year of the Republic of India, by the Legislature of West Bengal as follows :--

1. Short title and commencement.-- (1) This Act may be called the West Bengal Land (Requisition and Acquisition) Re-enacting Act. 1977,

(2) It shall be deemed to have come into force on the 1st day of April, 1977.

2. Re-enactment of West Bengal Act II of 1948. -- The West Bengal Land (Requisition and Acquisition) Act, 1948, as in force on the 31st day of March, 1977 (hereinafter referred to as the said Act), is hereby re-enacted subject to the modification that for Sub-section (4) of Section 1, the following Sub-section shall be substituted, namely:--

"(4) It shall remain in force until the 31st day of March, 1979."

3. Mr. B. N. Sen appearing on behalf of the petitioners made the following submissions. His main submission was to the effect that though legislation by incorporation is possible, but the mode followed in this case is not an accepted mode. He has further submitted that it must be by way of incorporation of some existing law. It was submitted that in the present case the law in question having expired on the 31st March, 1977, it was not "law". For this purpose, it was submitted, the law" means an existing law -- a valid law. An enactment which has expired was not a valid law. For this purpose nothing can be incorporated which does not exist. It was admitted that there was no decision directly on this point but various observations made in various judgments and several passages from some text books were cited by Mr. Sen.

4. AIR 1949 175 (Federal Court) AIR 1931 149 (Privy Council); Ram Sarup Vs. Munshi and Others, ; Bouvier's Law Dictionary, 3rd Edition, page 1877; Wade and Phillips Constitutional Law, 8th Edition page 6.

Mr. Sen has also drawn my attention to various decisions in connection with the scope and effect of the validation Act. It was submitted that though directly the same would not apply in the present case, but there are certain observations which might help the petitioner in this matter. The State of Madhya Pradesh Vs. M.V. Narasimhan, ; P.L. Mehra, etc. Vs. D.R. Khanna etc., ; D. Macropolo and Co. Vs. Union of India (UOI) and Another, ; Krishna Chandra Gangopadhyaya and Others Vs. The Union of India and Others, ; Jaora Sugar Mills (P) Ltd. Vs. State of Madhya Pradesh and Others, .

5. The second contention of Mr Sen was that the original Act contained a preamble which shows that the Act of 1948 was being enacted to enable speedy requisition and acquisition. In the present case in the Re-enactment Act of 1977 that preamble finds no place. In view of that preamble the 1948 Act was held

valid though it did not provide for showing cause before an order of requisition is passed. However, in the 1977 Act there being no such preamble, it cannot be for speedy requisition and, therefore, the need for a hearing before the order is passed is not dispensed with. Reference was made in this connection to the decision of *Narendra Nath Tripathy v. State of West Bengal*, (1974) 78 Cal WN 397.

6. During the hearing of this case I requested Mr. Soumen Bose, a Senior Advocate of this Court, to address the Court on this point inasmuch as he was appearing in various other matters in this Court on the same point. He has supported the contention of Mr. Sen and in this connection he has relied on the following :--

Craies on Interpretation of Statutes 7th Edn. at page 29; *Phillips v. Parnaby*, (1934) 2 KB 299 at p. 304.

He has further submitted that even if it is held that there was valid incorporation by reference, the Re-enactment Act of 1977 is obscure and vague because what is enacted has not been stated. In this connection he has also relied on the following cases:--

R.M.D. Chamarbaugwalla Vs. The Union of India (UOI), ; *In re : C. P. Motor Spirit Act*, AIR 1939 FC 1 at p. 12.

7. The learned Advocate-General appeared in this matter pursuant to the notice issued and he has supported the State action and the 1977 Act. He has submitted that there is nothing wrong in such a kind of legislation and there is no invalidity attached, Legislation by incorporation in such a manner is valid. In this connection he has relied on the following :

Craies on Interpretation of Statutes, 7th Edn. p. 31; *New Central Jute Mills Co. Ltd. Vs. The Assistant Collector of Central Excise, Allahabad and Others*, ; *Practical Legislation* at page 66; *Rashbchari Jana v. Addl. Dist. Magistrate Midnapore*, (1979) 83 Cal WN 608 at p. 620, para. 16; *Krishna Chandra Gangopadhyaya and Others Vs. The Union of India and Others*, ; *The State of Madhya Pradesh Vs. M.V. Narasimhan*, ; *U.P. State Road Transport Corporation, Lucknow Vs. State Transport Appellate Tribunal, Lucknow and Others*, . He has also produced before me two Ordinances where similar provisions of legislation was made by incorporation. I am unable to accept the contention raised on behalf of the petitioner. I am unable to hold that the 1977 Act is not a valid piece of legislation. Legislation by incorporation is now a well known mode of legislation. This incorporation may be by reference. In my opinion it is not necessary to set out the whole of the Act intended to be legislated. In the case of validating Act it is found that it is possible to legislate in such a manner.

7-A. In the case of *Krishna Chandra Gangopadhyaya and Others Vs. The Union of India and Others*,) the question involved was whether a State law earlier declared by the Supreme Court to be unconstitutional could be validated or

otherwise re-enacted by the Parliament. In that case the rules framed by the Bihar Government u/s 15 of the Mines and Minerals (Regulation and Development) Act, 1957 and the second proviso to Section 10(2) of the Bihar Land Reforms Act, 1950 were challenged on various grounds. In that case originally the petitioners were called upon to pay certain amounts and royalty under the provisions of the Bihar Act and this was challenged and the case was decided in favour of the petitioner. It was held that the Bihar Legislature had no jurisdiction to enact the second proviso to Section 10 (2) of the Bihar Act. It was also held that Section 15 of the Central Act read with Section 2 thereof had appropriated the whole field relating to the Mines and Minerals for Parliamentary legislation. The up-shot of the decision was that the action taken by the Bihar Government in modification of the terms and conditions of the lease which were in existence anterior to the rules and the levy sought to be made on the strength of the amended Bihar Act and the rules were unsustainable. Thereupon the State persuaded the Parliament to re-enact Validation Act of 1969 with a view to remove the road blocks which had resulted. The short Act enacted by the Parliament and impugned before the Supreme Court provides thus :--

"2. Validation of certain Bihar State laws and action taken and things done connected therewith.

(1) The laws specified in the Schedule shall be and shall be deemed always to have been, as valid as if the provisions contained therein had been enacted by Parliament.

(2) Notwithstanding any judgment, decree or order of any court, all actions taken, things done, rules made, notification issued or purported to have been taken, done, made or issued and rents or royalties realised under any such laws shall be deemed to have been validly taken, done, made, issued or realised, as the case may be, as if this section had been in force at all material times when such action was taken, things were done, rules were made, notifications were issued, or rents or royalties were realised, and no suit or other proceeding shall be maintained or continued in, any court for the refund of rents or royalties realised under any such laws.

(3) For the removal of doubts, it is hereby declared that nothing in Sub-section (2) shall be construed as preventing any person from claiming refund of any rents or royalties paid by him in excess of the amount due from him under any such laws."

8. In the schedule various Acts and Rules of the State Govt. which were earlier declared by the Supreme Court to be without legislative competency were set out.

9. The Supreme Court pointed out that the dispute is not whether Parliament can legislate into validity of a State Act which is outside the State List. It was pointed out that if Section 2 of the impugned Act merely validates invalid State law by Parliament's action, it was deemed to fail. It was for the Constitution and not the

Parliament to confer competence on the State Legislature. In this connection reference was made to the following observations of Supreme Court in Jaora Sugar Mills case (supra):--

".....What Parliament has done by enacting the said section is not to validate the invalid State Statutes, but to make a Law concerning the cess covered by the said Statutes and to provide that the said law shall come into operation retrospectively. There is a radical difference between the two positions. Where the Legislature wants to validate an earlier Act which has been declared to be invalid for one reason or another, it proceeds to remove the infirmity from the said Act and validates its provisions which are free from any infirmity. That is not what Parliament has done in enacting the present Act. Parliament knew that the relevant Statutes were invalid, because the State Legislatures did not possess legislative competence to enact them. Parliament also knew that it was fully competent to make an Act in respect of the subject-matter covered by the said invalid State Statutes. Parliament, however, decided that rather than make elaborate and long provisions in respect of the recovery of the cess, it would be more convenient to make a compendious provision such as is contained in Section 3. The plain meaning of Section 3 is that the material and relevant provisions of notifications, orders and rules issued or made thereunder are included in Section 3 and shall be deemed to have been included at all material times in it. In other words, what Section 3 provides is that by its order and force, the respective cesses will be deemed to have been recovered because the provisions in relation to the recovery of the said cesses have been incorporated in the Act itself. The command under which the cesses would be deemed to have been recovered would, therefore, be the command of Parliament, because all the relevant sections, notifications, orders and rules have been adopted by the Parliamentary Statute itself,"

10. Thereafter it was observed that it was a far constitutional cry from this position to the other proposition where Parliament has power to enact on a topic actually legislated within its competence but, as an abbreviation of drafting, borrows into the Statute by reference the words of a State Act not qua State Act but as a convenient shorthand, as against a longhand writing of all the sections into the Central Act, such legislation stands or falls on Parliament's legislative power vis-a-vis the subject viz., Mines and Minerals. It was pointed out that the distinction between the two legal lines may sometimes be fine but always is real. After referring to a passage in Jaora Sugar Mills (P) Ltd. Vs. State of Madhya Pradesh and Others, , it was pointed out that no Parliamentary Omnipotence to redraw Legislative Lists in the 7th Schedule can be arrogated to confer on the State competence to enact on a topic where it is outside its Lists. But if Parliament has power to legislate on a topic, it can make an Act on the topic by any drafting means including by referential legislation. In this connection it was further observed as follows :

"The learned Solicitor-General, in the course of his submissions made it clear

that he did not want to vindicate the levy by any validation of the invalidated portion of Section 10 of the Bihar Act. He based his case on the success with which Parliament had legislated for itself, although adopting a shorthand form of incorporation referentially of a State Act and subordinate legislation given in the Schedule to the validation Act. He also made it clear that R. 20 (2) had nothing to do with the Bihar Legislature but was the product of Parliamentary legislation by delegation in favour of State Government. Thus, in his view, the Parliament legislated for itself and statutorily adopted for itself the second proviso to Section 10 of the Bihar Act and the otherwise ultra vires Sub-rule (2) of R. 20. If the re-enacting technique adopted for the referential or incorporating legislation was insufficient in law, he failed. Otherwise, the Act and Rules referred to in the Schedule to the Validation Act revived and became operational, retroactively. There is force in the submission that taking a total view of the circumstances of the validation Act Parliament did more than simply validate an invalid law passed by the Bihar Legislature but did re-enact it with retrospective effect in its own right adding an amending Central Act to the statute book."

11. In my opinion this decision supports what I have held. Though I am not concerned with the question of re-enacting and validating of a State Act by Parliament but the observations made by the Supreme Court regarding legislation by reference is applicable in the present case also. What has been done in the present case is, in the language of the Supreme Court, is merely following an abbreviated mode of drafting. A convenient shorthand method has been followed instead of a longhand writing of all the sections of the 1948 Act in the 1977 Act. There is no question of competence of the West Bengal State Legislature. In the present case the State Legislature has adopted a mode of drafting which it was open for it to do.

12. I am also unable to accept the contention of Mr. Sen that to enable the Legislative Authority to legislate by reference, it must be by reference to an existing law, that is, a law valid at the relevant time. No authority on such point could be placed before me. I am unable to accept such contention. In my opinion, it is not necessary that to legislate by incorporation it must be with reference to a law valid and in existence at the time. As a matter of fact the necessity for such re-enactment arises out of the fact that there is no valid law to that effect in existence at the relevant time. The Supreme Court case referred to above, also goes against such contention. It was a case of re-enactment by the Parliament by way of incorporation with reference to State Laws which were earlier declared to be ultra vires being beyond the legislative competency. Accordingly such State laws could not be described as existing laws as meant by Mr. Sen.

13. I should also point out that the present Act was enacted with retrospective effect from 1st April, 1977 whereas the old 1948 Act expired on the expiry of 31st March, 1977.

14. I shall now refer to some other cases and passages cited by the learned

Advocates.

15. In the case of Jaora Sugar Mills (P) Ltd. Vs. State of Madhya Pradesh and Others, , the question involved was the validity of the Central Act, that is, the Sugarcane Cess (Validation) Act, 1961. What actually happened is that the State of Madhya Pradesh enacted the Madhya Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1958 (hereinafter called the Madhya Pradesh Act). The validity of Section 23 of the Madhya Pradesh Act was challenged before the Madhya Pradesh High Court under Article 226 of the Constitution of India. A similar provision in the U. P. Sugarcane Cess Act, 1956 had already been struck down by the Supreme Court as unconstitutional in Diamond Sugar Mills Ltd. and Another Vs. The State of Uttar Pradesh and Another, . As a result of the decision of the Supreme Court in the case of Diamond Sugar Mills case the U. P. Sugarcane Cess (Validation) Act, 1961 was passed by the Central Legislature on March 21, 1961. Parliament thought that it was necessary to validate the imposition and collection of cesses made under the said Act, and so, the U. P. Sugarcane Cess (Validation) Act, 1961 was passed. Parliament however realised that there were several other State Acts which suffered from the same infirmity and so on. September 11, 1961 the Act with which the Supreme Court was concerned in the Jaora Sugar Mills" case was passed. This Act purports to validate the imposition and collection of cesses on sugarcane under ten different Acts passed by the Legislatures of seven different States. This was challenged by the appellant on the ground that what the Act has done was to attempt to cure the legislative incompetence of the State Legislatures by validating Acts which were invalid on the ground of absence of legislative competence in the respective State Legislatures. It was submitted that if an Act is invalid not because the Legislature enacting the impugned Act had no legislative competence, but because some of its provisions contravene the fundamental rights of citizens unjustifiably, it was possible to validate the said Act by removing the invalid provisions from its scope. On this point the Supreme Court pointed out that it cannot be disputed that where an impugned Act passed by a State Legislature is invalid on the ground that the State Legislature did not have legislative competence to deal with the topic covered by it, then even Parliament cannot validate such an Act, because the effect of such attempted validation, in substance would be to confer legislative competence on the State Legislature in regard to a field or topic which, by the relevant provisions of the schedules in the Constitution, is outside its jurisdiction. It was pointed out that if it is shown that the impugned Act purports to do nothing more than validate the invalid State Statutes, then of course, such a validating Act would be outside the legislative competence of Parliament itself. It was held that Section 3 of the Central Act did not purport to validate the invalid State Statutes. What Parliament had done by enacting the said section was not to validate the invalid State Statutes, but to make a law concerning the cess covered by the said Statutes and to provide that the said law shall come into operation retrospectively.

16. This case supports the conclusion I have arrived at. In the present case

though we are not concerned with the question of legislative competence, what has been done in the present case is not to amend the old Act which has come to an end, but to re-enact the same. However, the mode followed is of incorporation by reference which instead of setting out in longhand the whole of the 1948 Act, merely sets out the same in a shorthand form.

17. In the case of AIR 1949 175 (Federal Court)), reliance was placed on the following passage:

"In my opinion this contention has no substance, Bihar Act V of 1949 is an amending Act. It is not a new Act. It purports only to amend the Bihar Maintenance of Public Order Act, 1947. That Act, which was a temporary Act, as its duration was fixed for one year by the Act itself, came to an end when the first year expired. The result is that when the Bihar Amending Act V of 1945 was passed, there was no Bihar Maintenance of Public Order Act, 1947, in operation in the province which could be amended and the notification of 18th March, 1949, issued in the name of the Governor, could not improve the position."

18. In my opinion the facts of this case are different and the observations made therein do not assist the petitioner. In the present case we are not concerned with the amendment of any non-existing Act but re-enactment of an expired Act by way of reference.

19. In the case of the AIR 1931 149 (Privy Council) , the Privy Council was concerned with the case where a statute is incorporated by reference. In the second statute it was stated that the repeal of the first statute does not affect the second. It was held that despite the death of parent Act it survives. We are not concerned with such a case here.

20. In the case of Ram Sarup Vs. Munshi and Others, , it was similarly held by the Supreme Court that where the provisions of an Act are incorporated by reference in a later Act, the repeal of the earlier Act has in general no effect upon the construction of the Act in which its provisions have been incorporated. As already pointed out we are not concerned with this question in the present case and this is not an authority for the proposition that the shorthand mode of legislation by incorporation cannot be adopted or that it must be incorporation of a so-called existing law.

21. In Bouvier's Law Dictionary, 3rd Edn, 1877 the definition of law was given as follows :

"The idea of law has commonly been analysed as composed of three elements : (1) a command of the law giver, which command must prescribe not a single act merely, but a series or class of acts; (2) an obligation imposed thereby on the citizen; (3) a sanction threatened in the event of disobedience; Benth. Frag. on Gov.; Austin, Prov. Jur.; Maine, Anc. Law. Hamilton declared a sanction essential to the idea of law. Federalist, No. 15."

In my opinion this does not assist Mr. Sen.

22. In the "Constitutional Law" by Wade & Phillips the observation relied upon is as follows:

"Rules of law may be defined as "rules of civil conduct recognised by the Courts". Such rules may be divided into two categories :

- (a) those prescribed by legislation, and
- (b) those to be deduced from the decisions of courts of authority."

In my opinion this observation does not in any way militate against what I have held.

23. In the case of *The State of Madhya Pradesh Vs. M.V. Narasimhan*, , the Supreme Court had to deal with the question of incorporation of the provisions of a previous Act and the effect of the same. After consideration of various decisions the Supreme Court came to the following conclusion ;

"Where a subsequent Act incorporates the provisions of previous Act, then the parent provisions become an integral and independent part of the subsequent Act and totally unaffected by any repeal and amendment of the previous Act. This principle, however, will not apply in the following cases :

- (a) Where the subsequent Act and the previous Act are supplementary to each other.
- (b) Where two Acts are *par materia*.
- (c) Where the amendment of the previous Act is not incorporated into the subsequent Act, it also renders the subsequent Act wholly ineffectual.
- (d) Where the amendment of the previous Act applies to the provisions of the subsequent Act."

24. In my opinion this decision does not in any way support Mr. Sen's contention.

25. In the case of *P.L. Mehra, etc. Vs. D.R. Khanna etc.*, , it was held as follows :

"A wholly void statute may be rendered operative by the Legislature in any of the following ways :

- (1) The statute may be re-enacted after the vice which had led to the declaration of voidness being removed from it.
- (2) The legislature may. pass a validating Act retrospectively putting out of the way one of the competing statutes which enabled unconstitutional discrimination being practised under it and by providing that all actions should be deemed to have been taken and shall be continued under the other statute which is otherwise without blemish.
- (3) By constitutional amendment specifically mentioning the void statute and protecting it against any attack on the ground that it violates any of the

fundamental rights secured under Part III of the Constitution."

Though this decision relates to the question of a wholly void statute being rendered operative by a competent legislative under certain circumstances, this does not militate against the conclusions I have arrived at in this case. If an unconstitutional and therefore void statute may be validly re-enacted under certain circumstances, there is no reason why an expired statute cannot be revived by way of a fresh legislation by re-enactment.

26. In the case of *D. Macropolo and Co. Vs. Union of India (UOI) and Another*, , the main question that was canvassed was whether the proposed action u/s 7(2) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 was permissible in law. Reference was made in this connection to a Special Bench decision in the case of *Rajendra Prosad Singh Vs. Union of India (UOI) and Others*, , where following the decision of the Supreme Court in the case of *Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another*, , it was held that Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 was violative of Article 14 of the Constitution and, therefore, void. Thereafter Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1968 was passed and the relevant amendment was made by the insertion of Section 10-E which bars the jurisdiction of the Court. It was submitted that Section 7 could not have any independent existence. Reference was made in this connection to the Delhi High Court decision in the case of *P.L. Mehra, etc. Vs. D.R. Khanna etc.*, . It was held that Section 10-E of the Amendment Act was ineffective and remained void. It was further held that Section 7 of the said Act suffers from the same infirmity as Section 5. It was accordingly held that Section 7 (2) of the Act before the Amendment Act, 1968 was void. Accordingly it was a nullity ab initio. It was held that the doctrine of eclipse has no application to post-Constitution laws infringing the fundamental rights as they would be void ab initio to the extent of their contravention of the fundamental rights. Accordingly it was held that Section 4 of the Amendment Act of 1968 cannot make Section 7 (2) of the principal Act valid. In my opinion, in the present case we are concerned with something different. We are not concerned with question of validity of a law which is a nullity ab initio. We are only concerned with a re-enactment with reference to a temporary Act which has died a natural death.

27. In the case of *New Central Jute Mills Co. Ltd. v. Asstt. Collector of Central Excise, Allahabad* (AIR 1971 SC 457) one of the contentions raised was that Sea Customs Act, 1878 having been repealed it was not open to the Central Government u/s 12 of the Act to apply Section 105(1) of the Customs Act, 1962 to the Act and the notification dated May 4, 1963 by which this was done was illegal and ultra vires. This has no relevance to the present case.

28. In the case of *Rashbehari Jana v. Addl. District Magistrate, Midnapore* reported in (1979) 83 Cal WN 608 it was held that the West Bengal Land (Requisition and Acquisition) Act, 1948 as amended by the West Bengal

(Requisition and Acquisition) Re-enacting Ordinance, 1977 was effective from April 1, 1977.

29. There is also no merit in the contention of Mr. Bose that the Act is absurd or vague. What is enacted is not vague. It is a case of re-enactment; a case of legislation by reference to the 1948 Act following a shorthand method. Therefore what is being enacted can be easily determined and there is no vagueness. The cases cited in this connection are, in my opinion, of no assistance to Mr. Bose.

30. In my opinion, there is no question of any natural justice in this case, It is true that the preamble of the 1948 Act has not been specifically incorporated in the 1977 Act but when the question of interpretation of the Act arises, the Court is entitled to take into consideration various matters. This is a question of re-enactment by way of incorporation and the Court is entitled to look into the facts and circumstances under which the re-enactment was made and to ascertain the true scope of the re-enactment. In this connection it is open to the court to look into the preamble of the 1948 Act also.

31. For the aforesaid reason I reject the contentions raised in support of this Rule. Accordingly I dismiss this application and discharge the Rule. All interim orders are vacated. There will be no order as to costs.

32. Status quo for a period of fortnight from the date.