
(1974) 09 CAL CK 0037
In the Calcutta High Court
Case No : C.R. No. 1484 (W) of 1971

Bikas Chandra Ghosh

APPELLANT

Vs

State Of West Bengal and Another

RESPONDENT

Date of Decision : 30-09-1974

Acts Referred:

Income Tax Act, 1961 — Section 44(ii)
West Bengal Estates Acquisition Act, 1953 — Section 44(2a), 57
West Bengal Land Reforms Act, 1955 — Section 12

Citation : 86 CWN 767

Hon'ble Judges : B.C. Roy, J

Bench : Single Bench

Advocate : R.N. Mitra, for the Appellant; Sibapada Mukherjee for State, for the Respondent

Final Decision : Allowed

Judgement

Bankim Chandra Roy, J.—The petitioner who has been appointed receiver in partition Suit No. 2539 of 1955 has challenged in this Writ petition the notice dated 16th March, 1971 issued Suo moto u/s 57 read with Section 44(2a) of the West Bengal Estates Acquisition Act by the Revenue Officer, Brisha Settlement Camp No. 2, for revision of R.S. Record of rights of Khatain No. 140 and Sub Khatian Nos. 574 -580 of Mouza Dhapa Manpur. The disputed property comprised in Plot No. 1664 of Khatian No. 140, Sub Khatian Nos. 574 to 580 in Mouza Dhapa Manpur P.S. Bhangore, District 24-Parganas belonged to Bidhu Bhusan Sarkar and his co sharers In the petition it has been stated that the said plot is a fishery which is in existence for about 100 years. It has also been averred that the said property was recorded as "Beel" in the District Settlement record of rights as well as in Sundarban settlement record of rights in the names of Bidhu Bhusan Sarkar and his co-sharers. In the present Revisional Settlement record of rights it has been recorded a "Gheri Machchas" and the same have been finally published. The said property is a fishery and the petitioner under the directions of this Hon'ble Court has been issuing licences to different persons in respect of

the said fishery. The said land revere formed part of alluvial part of rivers Piyali and Bidyadhari. It has also been stated that even of it is alluvial land as it accreted to the holding of Sarkars it will be an addition to their holding under the then extent law. It has also been stated that even u/s 12 of the West Bengal Land Reforms Act, 1955 the said Plot will belong to the Sarkars as accretion. to their holding and the State all along realised rents from them in respect of the said fishery. The impugned notice was challenged as void, inoperative and without jurisdiction. On these averments the petitioner has obtained the instant Rule and also an interim order of stay in terms of prayer (E) of the petition.

2. An Affidavit-in-Opposition has been filed on behalf of the Respondents sworn by the Respondent No. 2, the Special Revenue Officer and Assistant Settlement Officer, alleging inter alia that the disputed plot has arisen by gradual silting up of the river Vidyadhari and the Sarkars unlawfully occupied the same as trespassers. It has been admitted in paragraph 4 of the said affidavit-in-opposition that the said plot was previously recorded in the name of Bidhu Bhusan Sarkar and others in Khatian No. 140 of Mouza Dhapa Manpur as "Beel" and in the Revisional record of rights the same has been recorded as "Gheri Machchas". It has also been stated that Bidhu Bhusan Sarkar and others retained the said property by submitting return in form "B" and Khanda Khatians Nos. 574 to 588 has been opened in their name in respect of the same. It has been stated further that from fishery report appeared that the said plot as formed out of Vidyadhary river. It has also been alleged that subsequently from a local enquiry report it revealed that the said plot was not a tank fishery but a small land utilised for cultivation. It has been alleged that the instant proceeding has been started to remove the irregularities and mistakes from the record of rights

3. An affidavit in reply has been filed on behalf of the petitioner denying all the allegations and statements made in the said affidavit-in-opposition and reiterating the statements and contentions made in the said petition. The statement that subsequently on enquiry it appeared that the disputed property was land used for cultivation as made in the said affidavit-in-opposition was denied and it was stated that no local enquiry was ever held in the disputed fishery in the presence of the petition. It will appear that the disputed property is a flourishing tank fishery if an enquiry is held in the local and it is not small land as wrongly alleged. It has also been stated the rein that the impugned proceeding is malafide.

4. Mr. Rabindra Nath Mitra, learned advocate for the petitioner has submitted firstly that the disputed property is tank fishery out and out and this has been recorded as "Beel" in the District Settlement record of rights as well as in Sundarban Settlement record of rights. In the R. S. Record of rights also it has been recorded as "Gheri Mach Chas" and the same has been finally published. The impugned notice as well as the impugned proceeding for revision of the said finally published record of rights are illegal, bad and malafide.

5. Mr. Mitra secondly submitted that the disputed property even if it is assumed

to be an addition to the holding of Sarkars gained by gradual accretion belongs to the riparian owners in accordance with the provisions of Section 4 of the Bengal Alluvion and Dilluvion Regulation 1825 which was then prevalent. Moreover under the provisions of Section 12 of the West Bengal Land Reforms Act, 1955, as it originally, was, the said fishery belongs to the Sarkars and as such the record of right is not at all erroneous

6. Mr. Mitra thirdly submitted that the Section 12 of the West Bengal Land Reforms Act, 1955 which has been amended and substituted by Section 5 of the West Bengal Land Reforms (Amendment) Act 1965 cannot take away the vested right of the riparian owners to own the said fishery accreted to their holding and possessed for nearly 100 yeards i.e long before the enforcement of the said Act. He has further contended that the amended Section 12 has not been given retrospective effect. Mr. Sibapada Mukherjee, learned Advocate appearing on behalf of the respondents contends that the disputed property is not a fishery but a sali land used for cultivation and as such the proceeding has been only initiated for revision of the said record of rights which erroneously recorded the property as a fishery.

7. Before dealing with the contentions raised on behalf of the parties it is necessary to quote below the provisions of Section 12 of the West Bengal Land Reforms Act prior to its amendment.

When any land has been gained by gradual accession to any holding whether from the recess of a river or of the sea, it shall form an addition thereto and the raiyat who owns the holding shall be liable pay such revenue on re-assessment as may be determined by the Revenue Officer. Provided that a raiyat shall be entitled to retain only so much of land so gained which together with his other lands excluding homestead does not exceed twenty five acres, and the remainder, if any of the land gained by accession shall vest in the State Government free from all encumbrances.

8. The said provisions of the Section 12 have been substituted by Section a of the West Bengal Land Reforms (Amendment) Act. 1965 (W..B. Act No. XVIII of 1965) and the assent of President to the said Act was published in Calcutta Gazette Extraordinary dated 31st July. 1965 and the same was enforced on November 1, 1965 by notification No. 1481. L.Ref. date 25th September, 1965 published in Calcutta Gazette, Extraordinary dated (sic)7.9.1965.

9. The provisions of the new Section 12 is set out below:

Any land gained by gradual accession to a holding whether from the recess of a river or of the sea shall vest in the State Government and the raiyat who owns the holding shall not be entitled to retain such land as an accretion thereto.

10. It appears that the impugned notice annexure "B" to the petition has been issued with the purpose of revising the record of rights on the ground that the disputed property being an accretion from the river Vidyadhari belong to the

State as its Khas lands presumably in view of the provisions of amended Section 12 of the said Act. The disputed tank fishery is being possessed by the Saekars for a long time and the same was recorded as "Beel" in the District Settlement record of rights in their names. The said property has also been recorded as "Gheri Machchas" in their names in the finally published Revisional Settlement record of rights and the State of West Bengal. the respondent No. 1 realised rents from them in respect of the said tank fishery. u/s 4 of the Bengal Alluvion and Dilluvion Regulation, 1825 the said fishery if treated as an accretion to the holding of Sarkars belonged to them. The said fishery belonged to the Sarkars under the provision of Section 12 of the West Bengal Land Reforms Act. 1955 as it was prior to its amendment in 1965. The provisions of the substituted Section 12 provide that lands gained by gradual accretion to a holding from the recess of river shall vest in the State Government. The question is whether this Section has been given retrospective effect so as to take away the vested right of the Sarkars in the disputed fishery. Maxwell in interpretation of Statutes (11th Edition) Page 205 stated the law thus :

Upon the presumption that the legislature does not intend what is unjust rests the leaning against giving certain. Statutes a retrospective operation. Nova Constitution futereis forcan imponeredenet non praeteriti"s. They are construed as operating only in cases or on facts which come into existence after the statutes were passed unless a retrospective effect be clearly intended." It has also been stated at page 206 of the said book. "Every statute, it has been said which takes away or impairs vested rights acquired under existing laws or creates a new obligation or imposes a new duty or attaches a new disability in respect of transactions or considerations already past, must be presumed out of respect to the legislature, to be intended not to have a retrospective operation.

11. In AIR 1967 J. K. page 44 Collector V. Habibullah Din and others it was held by the Full Bench that the amendment of Section 28 of the Jammu and Kashmir Land Acquisition Act whereby the rate of interest on sums unpaid was reduced from 6% to 4% was prospective and it did not apply to proceedings pending on lands acquired before the coming into force of the Amendment Act. It was also held that the owner has vested right to receive interest from the. Court at the rate of 6% per annum on the excess of the sum awarded by the collector as found by Court u/s 28 as it stood before the amendment. Such a vested right could not be taken away, curtailed or impaired by the amendment unless there were strong words in the amendment to indicate that it was to apply retrospectively.

12. In Mukund Deo (Dead) represented by his legal representatives Kasibai and Others Vs. Mahadu and Others, it has been held that a right of appeal to a particular forum is a substantive right and is not lost by alteration in the law, unless provision is made expressly in that behalf, or a necessary implication arises, In Reid V. Reid (1886) 31 Ch. D. 402 Bowcu L. J. said :

The particular rules of construction which has been referred to, but which is

valuable only when the words of an Act of parliament are not plain is embodied in the well known maxim *Omnis Nova Constitution futuris temporibus formam imponere debet non pariter* that is, except in special cases, the new law ought to be construed so as to interfere as little as possible with vested rights.

13. In Halsbury's Laws of England 3rd Edition page 433 it has been stated : "The general rule is that all statutes other than those which are declaratory or which relate only to matters of procedure or of evidence, are *prima facie* prospective; and retrospective effect is not to be given to them unless by express words or necessary implication it appears that this was the intention of the legislature."

14. In *Sree Bank Ltd. Vs. Sarkar Dutt Roy and Co.*, the question for consideration was whether Section 45-0(1) of Banking Companies Act (1949) as amended by Act 52 of 1953 has a retrospective operation. Section 45-0(1) is as follows:-"Notwithstanding anything to the contrary contained in the Indian Limitation Act, 1908 or in any other law for the time being in force in computing, the period of limitation prescribed for a suit or application by a banking company which is being wound up, the period commencing from the date of the presentation of the petition for the winding up of the banking company shall be excluded. "It was held that it was given retrospective effect. It has been observed that the general rule no doubt is, as was stated by Wright, J. in *In re Athlumney, Ex parte. Wilson* 1898 2 Q. B. at page 551-52; "perhaps no rule of construction is more firmly established than this that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation it ought to be construed as prospective only."

15. In *Aswini Kumar Dey and Another Vs. Sm. Angur Bala Kundu and Others*, the question for consideration was whether Section 4 of the West Bengal Amendment Act 9 of 1961 which amended Section 6(1) of the West Bengal Act 1 of 1954 was retrospective in operation. Section 4(1) (a) provides that provision therein "Shall be and shall be deemed always to have been substituted." It was held by S. K. Dutta, J. that it was clear from the language of Section that the said provision as retrospective in operation.

16. In *Income Tax Officer, Alleppey Vs. M.C. Ponnose and Others*, . Income Tax Act, 1961 came into force on last April, 1962. u/s 44(ii) of the Act the State Government was empowered to authorise by general or special notification in the official. Gazette any such officer empowered to effect recovery of arrears of land revenue or public demand under any law relating to land revenue or public demand for the time being in force in the State to exercise the powers of a Tax Recovery Officer. In pursuance of this power a notification dated August 14, 1963 was published in Kerala Gazette whereby the various revenue officials mentioned therein including the Taluk Tahashildar were empowered to exercise the powers of Tax Recovery Officer. The concluding portion was :

This notification shall be deemed to have come into force on the first day of April, 1962". The question was whether the State Government could invest the Tahashildar with the powers of a Tax Recovery Officer from a date prior to the date of notification i.e. retrospectively. It was held that the impugned notification was invalid in as much as the provision of the Act have not empowered either expressly or by necessary implication the State Government to make a notification with retrospective effect. It was observed; "The Courts will not, therefore, ascribe retrospectively to new laws affecting rights unless by express words or necessary implication it appears that such was the intention of the legislature.

17. In *Rafiquennessa Vs. Lal Bahadur Chetri (Dead) through his Representatives and Others*, the question for consideration was whether the provision of Section 5(1) of Assam Non Agricultural Urban Areas Tenancy Act (12 of 1955) was retrospective. Relevant portion Section 5(1) reads thus; "Notwithstanding anything in any contract or in any law for the time being in force-(a) where under the terms of a contract entered into between a landlord and his tenant whether before or after the commencement of this Act, a tenant is entitled to build, and has in pursuance of such terms actually built within the period of five years from the date of such contract, a permanent structure on the land of the tenancy for residential or business purposes, or where a tenant not being so entitled to build, has actually built any structure on the land of the tenancy for any of the purposes aforesaid with the knowledge and acquiescence of the land lord, the tenant shall not be ejected by the landlord from the tenancy etc." It was held. "That the legislature is competent to take away vested rights by means of retrospective legislation; Similarly the legislature is undoubtedly competent to make laws which override and materially affect the terms of contracts between the parties, but unless a clear and unambiguous intention is indicated by legislature by adopting suitable express words in that behalf, no provision of a statute should be given retrospective operation if by such operation vested rights are likely to be affected." It was held that the provision of Section 5(1) was retrospective.

18. In this case it does not appear from the provision of the amended Section 12 or from the West Bengal Land Reforms (Amendment) Act 1965 that the said section has been given retrospective effect expressly or by necessary implication in order to take away the vested right of the riparian owners to own and possess lands gained by gradual accession from the recess of the river to their holding.

19. In my opinion the provision of Section 12 as amended is prospective in its operation and as such it does not in any way impair or affect the vested right of the Sarkars to hold the fishery in question as an accretion to their holding.

20. It appears that the disputed property was recorded as "Beel" in the District Settlement record of rights as well as in the Sundarban Settlement records of rights. In the finally published revisional Settlement record of rights the said property has been recorded as "Gheri Mach Chas" i.e. a tank fishery. The said

tank fishery has been duly retained as tank fishery by the owners Bidhu Bhusan Sarkars and his co-sharers on submitting returns on 8.10.55 and Khanda Khatians have been prepared in respect of the same. There is no material on record to show that the disputed property is land used for cultivation. Only a bare statement has been made in the affidavit-in-opposition but no materials whatsoever have been disclosed nor the alleged enquiry report has been produced to show prima facie that the disputed property is land used for cultivation. Moreover there is no material on record to show that at the date of vesting the disputed property did not comprise of tank fishery but agricultural land. In the impugned notice initiating the proceeding u/s 44 (2a) of the West Bengal Estates Acquisition Act there is no whisper that the property in question is agricultural land and not fishery and as such the record of rights needs to be revised. On the other hand there is no specific denial of the averment made in paragraph 3 of the petition that the said property is a fishery in existence for about 100 years. It also appears that the petitioner as receiver has been issuing licences to various persons in respect of the said fishery with the permission of court. So the contention of Mr. Mitra that the disputed property is a fishery and the same has been properly recorded in the R. S. record of rights succeeds.

21. The learned advocate for the respondents also submitted that in C.R. No. 633 (W) of 1971 as well as in C.O. 1561(W) of 1971 the applications challenging the notices u/s 44(2a) of the Act were dismissed as premature. It appears that C.R. No. 633(W) of 1971 Elahi Bux Sardar, Revenue Officer, Tollygunj and others P. K. Banerjee, J. dismissed the said Rule on the ground that the order sheet of proceeding u/s 44(2a) was not annexed to the petition.

22. In C.O. No. 1561 (W) of 1971 Muhammad Laskar v. State of West Bengal and others A. K. Sen J. dismissed the Writ petition as the order passed u/s 44 (2a) has not been challenge, merely the notice u/s 44 (2a) was challenged. As such in none of these cases there has been any decision on the question raised in this case. Thus the contentions raised on behalf of the petitioner succeed The Rule is, therefore, made absolute. Let a Writ of Certiorari be issued to quash the impugned proceeding being objection Case No. 89 of 1971 of Barisa Settlement Camp. No. 2 mentioned in annexure "B" to the petition. There will be no order as to costs.