

(1971) 12 CAL CK 0018

In the Calcutta High Court

Case No : Civil Rule No's. 565 (W) -569 (W) of 1964

Debi Mata

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 14-12-1971

Acts Referred:

Constitution of India, 1950 — Article 226, 245

Transfer of Territories Act, 1956 — Section 43

West Bengal Estates Acquisition Act, 1953 — Section 60, 61, 61(2)

Citation : AIR 1972 Cal 497 : 76 CWN 308

Hon'ble Judges : Anil Kumar Sen, J

Bench : Single Bench

Advocate : Arun Kr. Datta Jr. and Nanda Lal Pal, for the Appellant; S.C. Das Gupta and Suproakash Banerjee, for the Respondent

Judgement

Anil Kumar Sen, J.—In these five Rules the petitioners are challenging three notifications and two proclamations issued by the State of West Bengal or its Authorities. As common questions have been raised in all these Rules they have been heard together and would be disposed of by one judgment.

2. It is not in dispute that facts relevant to the issues raised in these five Writ petitions are same or similar and as such I prefer to set out the facts in Civil Rule 656 (W) of 1964. The petitioner in this Rule Sri Sri Devi Mata is the family Deity of Panchkote Raj Estate. The petitioner had been holding certain lands in intermediary interest in Purulia which was previously within the District of Manbhum in the State of Bihar. On September 1 1956 the Bihar and West Bengal (Transfer of Territories) Act, 1956 (hereinafter referred to as the Transfer of Territories Act) came into force. By virtue of Section 3 of this Act major part of Purulia was transferred with effect from 1-11-1956 to West Bengal. Section 43 however provided that notwithstanding such transfer until otherwise provided by a competent legislature or other competent authority the laws then applicable to the transferred territories would continue to remain applicable to such territories. Section 44 provided that the appropriate Government may within a year from the

date of transfer adapt the laws which continued to remain in force with necessary modifications and that such laws so adapted would remain in force until altered, repealed or amended by a competent authority or competent legislature. On the date of transfer Bihar Land Reforms Act 1950 which provided for vesting of certain categories of intermediary interest was in force in the territory so transferred to West Bengal and by virtue of Section 43 of the Transfer of Territories Act, 1956 the provisions of the said Act continued to remain in force in the transferred territory of Purulia. It is not in dispute that the provisions of the Bihar Land Reforms Act, 1950 are materially different from the provisions of the corresponding West Bengal Act viz., West Bengal Estates Acquisition Act, 1953.

3. On September 24, 1958 an Act passed by the West Bengal Legislature came into effect which is called the West Bengal Transferred Territories (Assimilation of Laws Act), 1958 (hereinafter referred to as the Assimilation of Laws Act). By the provisions of Section 3 of this Assimilation of Laws Act read with Schedule 2 thereof the provisions of the Bihar Land Reforms Act, 1950 was kept in force for the transferred territories including the transferred territory of Purulia. Applying the provisions of the said Bihar Land Reforms Act, 1950 the Government of West Bengal issued a proclamation under the Section 3-B of the said Act announcing its intention to takeover the intermediary interest in the transferred territories to West Bengal. The said proclamation was challenged by the petitioner in a Writ petition in this Court which was registered as C. R. 589 (W) of 1963. It is, however, conceded on behalf of the petitioner that the petitioner's challenge failed and the said Rule was discharged sometime in 1966.

4. In the meantime by West Bengal Act 40 of 1963 the West Bengal Estates Acquisition Act, 1953 was amended by incorporating therein a new chapter being chapter 8 consisting of two sections being Sections 60 and 61. Section 60 provided that the provisions of the newly incorporated chapter shall come into force on such date and in such area of the transferred territory as the State Government may by notification appoint. Section 61 provides that on issue of a notification u/s 60 the Bihar Land Reforms Act, 1950 shall stand repealed and the provisions of the foregoing chapters of the West Bengal Estates Acquisition Act shall mutatis mutandis apply to the areas in respect of which notification u/s 60 is made. Section 61 also provides for certain adaptations and certain legal consequences which are to follow on the application of West Bengal Estates Acquisition Act.

5. On February 17, 1964 the State of West Bengal issued a notification u/s 60 of the West Bengal Estates Acquisition Act appointing 1st of March, 1964 to be the date on which the provisions of chapter 8 of the Act shall come into force in all the areas of the territories transferred from Bihar to the State of West Bengal. This notification is annexure "A" to the Writ petition. Then followed two notifications both dated 10-3-1964 u/s 4(1) read with Section 61 and read with Sections 52 and 61 respectively of the West Bengal Estates Acquisition Act whereby the State declared that with effect from 1st of Baisakh, 1371 B. S.

corresponding to 14-4-4964 all the estates and rights of every intermediary as also the lands held by raiyats and under-raiyats together with their rights therein in the District of Purulia shall vest in the State. These are annexures "B" and "C" to the Writ petition. These notifications were followed by two proclamations issued by the Collector of Purulia respectively u/s 10(1) of the Estates Acquisition Act and Rule 6(1) of the West Bengal Estates Acquisition Rules, 1954. These proclamations are annexures "D" and "E" to the Writ petition. These three notifications and the two proclamations annexures "A" to "E" are the subject-matter of challenge in this Rule. Same or similar notifications and proclamations are the subject-matter of challenge in the other Rules.

6. Bereft of other details petitioners' substantial challenge is to the extension and application of the West Bengal Estates Acquisition Act to the territories transferred from Bihar to the State of West Bengal by Section 3 of the said Transfer of Territories Act, 1956. Similar challenge was thrown though not by the present petitioners to such extension and application of the West Bengal Estates Acquisition Act to such transferred territories in C. R. No. 476 (W) of 1964 (Amar Nath Singh v. The State of West Bengal) Mr. Dutt who is appearing in support of these Rules before me argued the said case but unsuccessfully. Extension of the West Bengal Estates Acquisition Act to the transferred territories was upheld by my learned brother D. Basu, J., and his judgment was upheld both by the Appeal Court as also by the Supreme Court. Notwithstanding his failure in the said case Mr. Dutt has again disputed validity of extension and application of the provisions of the West Bengal Estates Acquisition Act to such transferred territories on grounds which according to him are totally new.

7. Mr. Dutt appearing in support of these Rules has raised three points which I set out hereunder as far as possible in his own language.

(1) in enacting chapter 8 of the West Bengal Estates Acquisition Act, 1953 and in applying Sections 60 and 61 to the transferred territories there has been no honest application of mind by the legislature and as such those two sections can have no application.

(2) Section 61 of the West Bengal Estates Acquisition Act seeks to extend the provisions of the foregoing chapter of that Act *mutatis mutandis*; but in so extending without legislative amendment of substantive provisions, the legislature has abdicated its function by leaving the matter uncontrolled by any guide line in favour of the executive; or in other words the said section suffers from the view of excessive delegation of legislative powers.

(3) in view of the provisions of Sections 3 43 and 44 of the said Transfer of Territories Act, 1956 without specific repeal of the Bihar Land Reforms Act, 1950 by a competent legislature, the said Act cannot be construed to have been repealed in terms of Section 61(1) of the West Bengal Estates Acquisition Act.

8. These Rules are being contested by the State of West Bengal and the Learned Government Pleader Mr. S. C. Dasgupta appearing on behalf of the State has

contested each of these points raised by Mr. Dutt.

9. To take up the first point raised by Mr. Dutt I have felt great difficulty in appreciating the true import of his contention. Mr. Dutt to support his first point has placed strong reliance on the line of decisions by the Supreme Court starting from the case of *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, and the case of *Padfield v. Minister of Agriculture*. (1968 2 WLR 924) the House of Lords held that where a statute conferring discretion on the Minister did not expressly limit or define the extent of his discretion his discretion might nevertheless be limited to the extent that it must not be so exercised as to frustrate the object of the statute. In all these cases therefore what was laid down was that where any authority is vested with any power or discretion by a statute either with express or implied limitations, it is open to the Court to go into the question as to whether the power or the discretion has been exercised within the limits so specified or implied. None of these cases is concerned with exercise of legislative power by the legislature. It is really difficult for me to accept a proposition that this Court has the authority to adjudicate over the application or non-application of mind by the legislature in enacting laws. Undoubtedly this Court can go into an issue as to whether a particular legislation is within the legislative competence of the legislature on the provisions of the Constitutional Law. This Court may also consider whether a particular piece of legislation is really in colourable exercise of such legislative powers or not. Or this Court may even consider whether a particular enactment or any particular provision thereof suffers from the vice of unauthorised delegation of legislative powers. But apart from these issues the power of the legislature being otherwise plenary, the legislature is not answerable to this Court on a proposed issue as sought to be raised by Mr. Dutt in his first point. Mr. Dutt has neither contended that the provisions of the West Bengal Estates Acquisition Act, 1963 is ultra vires the powers of the State Legislature nor that it had been passed in colourable exercise of its powers. Of course, he has raised a separate point that it suffers the vice of excessive delegation of legislative powers but he is not pleading the same to support his first point. That apart, as a legislature competent to legislate for the territories of West Bengal on matters of acquisition of estates and rights of intermediaries or raiyats therein the State Legislature has passed the Amending Act to extend the West Bengal Estates Acquisition Act to the transferred territories by repealing the earlier applicable Bihar Land Reforms Act. Such being the position, it is difficult to find any substance in the suggestion made by Mr. Dutt that such legislation reflects any in application of mind by the legislature. In this view I must overrule the first point raised by Mr. Dutt.

10. The second point raised by Mr. Dutt is based on an assumption that Section 61 of the West Bengal Estates Acquisition Act as incorporated by the Amending Act really constitutes delegation of legislative powers by the legislature to the executive. In my view, however, there is nothing in Section 61 which indicates that there has been any delegation of legislative powers. Secondly, I am also of the view that even if it be assumed that there is any such delegation, it cannot

be said that such delegation is so excessive or unguided that it amounts to abdication of legislative powers. Mr. Dutt's grievance is with Section 61(1) of the said Act which provides that on the issue of a notification u/s 60, the Bihar Land Reforms Act shall stand repealed and the provisions of the West Bengal Estates Acquisition Act. shall "mutatis mutandis" apply to the areas to which the said provision is extended. According to Mr. Dutt by leaving with the executive the right to apply the provisions mutatis mutandis, the legislature has delegated legislative powers. The term "mutatis mutandis" means with necessary changes in points of details. Mr. Dutt has again relied on a number of decisions in the cases of *Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others*, and *Commrs. of Customs v. Cure and Deeley* (1961) 3 All ER 641. But I am unable to find the real relevancy of these decisions to the point raised. In the former Supreme Court declared a provision of a taxing statute to be unconstitutional when it resulted in absolute abdication of legislative powers in favour of the delegatee while in the latter the Queens Bench Division held that regulation 12 framed in exercise of powers u/s 33(1) of the Finance Act, 1940 was not within the powers conferred by the said section or in other words the regulation was ultra vires the Act. Here it is not the contention of Mr. Dutt that the Amending Act which brought in Section 61 is ultra vires the power of the State Legislature. What he contends, however, is that by incorporating the phrase "mutatis mutandis" the legislature has abdicated its legislative powers. There, however. Mr. Dutt is not correct. By the said phrase the legislature has neither abdicated nor delegated any of its legislative powers. The said phrase is used not only in Section 61 but also in the other provisions of the same statute as for example,) Sections 15(5) 38 and 52. Such a phrase is often used in legislation in applying or extending legislative provisions to same or similar circumstances or to same or similar subjects. It is nothing but a rule of adaptation. The decision of this Court in the case of *Haranath Ghosh v. The State*. (1963) 67 Cal WN 129 relied on by Mr. Dutt as also the decision of this Court in the case of *Ambujakshaya Mukherjee v. The State* ILR (1966) 1 Cal 495 relied on by Mr. Dasgupta explain the real implication of such a phrase. It is held "the words mutatis mutandis following the word modifications make it abundantly clear as to the modifications intended u/s 52 of the Act. In other words the word modifications in Section 52 of the Act means contextual adaptation of these chapters of the Act to the case of raiyats and under-raiyats and not amendment of the substantive provisions and the effects of those chapters". It is explicit on the provisions of the West Bengal Estates Acquisition Act reference being made to Section 4(2), Section 4(6) and the like that such provisions could not have been appropriately made applicable to the transferred territories where such provisions are being made applicable nearly a decade after the promulgation of law except by appropriate adaptation. It is only to meet such exigencies that Section 61 provided that the earlier provisions would apply mutatis mutandis i. e. with necessary changes or adaptations. This in my view, does not authorise the executive or those implementing the provisions of the Act to make any subordinate legislation and as such it does not amount to delegation

of legislative powers. Next even if I assume that it confers an authority to make subordinate legislation it can in no way be said that the power so vested is uncontrolled or unguided and as such amounts to total abdication of legislative powers. All the essential part of the legislation is there incorporated in the statute what has been delegated is the power to make such changes as would be necessary on the face of the provisions in their application to the transferred territory to which such provisions are being extended long after the promulgation of the law. Making the changes is fully within the control of the substantive provisions of the statute itself. In this view the second point raised by Mr. Dutt must also be overruled.

11. The third point raised by Mr. Dutt was in a way also raised by him in the case of C. R. No. 47G (W) of 1964 (Cal) and was overruled by my learned brother D. Basu, J. Question raised by Mr. Dutt is as to whether there has been any effective repeal of the Bihar Land Reforms Act, 1950 so far as the transferred territories are concerned. According to him because of the provisions of Sections 3 and 43 of the Transfer of Territories Act, 1956 it was necessary that the Bihar Land Reforms Act, 1950 should be repealed by a competent legislature and Section 61 of the West Bengal Estates Acquisition Act cannot fulfil this purpose. What Mr. Dutt suggests is that when the Parliament by Section 43 kept alive Bihar Land Reforms Act, 1950 it could not be repealed by the West Bengal Estates Acquisition Act. In my view this contention of Mr. Dutt is not sound. Section 43 of the Transfer of Territories Act, 1956 specifically provides for a transitional application of laws to the transferred territory pending the matter being taken up by the competent legislature. It extended the existing laws but subject to an important reservation viz., "until otherwise provided by a competent legislature or other competent authority". In the present case after the transfer of the territory to the State of West Bengal, the legislature of West Bengal became the competent authority to legislate on matters involving acquisition of estates and rights of intermediaries therein in respect of the territories so transfer-"red. Now the said West Bengal Legislature has enacted in Section 61 incorporated by the Amending Act of 1963 that on the issue of a notification u/s 60 in the area in respect of which such notification is issued, the Bihar Land Reforms Act shall stand repealed. The notification now having been made u/s 60 in respect of transferred territory the Bihar Act therefore stands repealed. It is not necessary in my view that when the Parliament made the transitional provision in Section 43 Acts kept alive by such provision must needs be repealed by the Parliament alone. In this view the third point raised by Mr. Dutt is also overruled.

12. Incidentally, Mr. Dutt contended that the impugned notifications and the proclamations were not made in compliance with the procedural law. He condemned the notifications on the ground that those are notional notifications. In my view he has not been able to point out non-fulfilment of any procedural prerequisite for the notifications or the proclamations. Secondly it is difficult to appreciate how the notifications are notional. Reference has been made by Mr. Dutt to the notifications made annexures "B" and "C" and it is suggested that

such notifications could not have been issued under the joint provisions of Sections 4 and 61 and Sections 4 and 52 and 61. Section 4 authorises the State Government to issue the necessary notifications for taking over rights of the intermediaries. This provision is extended to the transferred territories by Section 61. Similarly provision of Section 4 is extended to ravats by Section 52 and that again to the transferred territories by Section 61. Such being the position, the authorities issuing the notifications had to recite all the provisions which together conferred the power to take over such interests. I find no irregularity in issuing the notifications in such manner. It is also difficult to accept the suggestion of Mr. Dutt that separate notifications u/s 61 and Section 4 in one case and separate notifications under Sections 61 and 52 and Section 4 in the other was necessary in the present case. In this view I must overrule this incidental point raised by Mr. Dutt.

13. Lastly, Mr. Dutt has referred to Section 61(2) proviso (ii) and has contended that such a provision is too vague and unworkable. This sub-section read with the relevant proviso reads as follows "estates or interests vested in the State Government under the provision of Bihar Land Reforms Act, 1950 (Bihar Act 30 of 1950), prior to the date of issue of the notification shall be deemed to have vested in the State Government under the provisions of this Act provided that (ii) any land or interest which is vested in the State Government under the provision of Bihar Land Reforms Act, 1950 but which the ex-intermediary shall be entitled to retain under the provision of this Act shall, if possible, be restored to him and no compensation shall be payable for any land or interest so restored."

14. Firstly in my view this provision takes effect only in respect of estates or interests which had earlier vested under appropriate notification u/s 3-A of the Bihar Land Reforms Act, 1950 prior to the extension of the West Bengal Act and there is no evidence in the present case that any of the estates of any of the present petitioners had so vested so that it may call for application of the above provision. Then in my opinion there is no inherent vagueness in the provision. It is a provision providing the consequence to the extension of the West Bengal Act to the transferred territory. The legislative mandate is to the effect that the land or interest which an intermediary would have been entitled to retain under the provision of the West Bengal Estates Acquisition Act but which had already vested under the different provision of the Bihar Land Reforms Act should when possible be restored back to the intermediary. The words "if possible" had to be incorporated because the Bihar Land Reforms Act came into effect more than ten years ago and it might in certain cases practically be not possible for the authorities to restore back lands or interests which had vested under the provision of the Bihar Act. It leads to no uncertainty. It only gives sanction to the failure to restore possession which is otherwise directed as a consequence to the extension of the West Bengal Act to the transferred territory. In this view I must overrule the last contention of Mr. Dutt.

15. As all the points raised in support of these Rules fail the applications fail and the Rules are discharged.

All interim orders are vacated forthwith.

There will be no order for costs. Let the operation of this order remain stayed for four weeks.

Let a plain copy of this order be given to the learned Advocate for the petitioner.