

(1952) 01 CAL CK 0021
In the Calcutta High Court
Case No : First Appeal No. 118 of 1943

Khagendra Nath Ganguli

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 15-01-1952

Acts Referred:

Independence (Rights, Properties and Liabilities) Order, 1947 — Article 12(2)
Independence Act, 1947 — Section 3

Citation : AIR 1952 Cal 855

Hon'ble Judges : K.C. Das Gupta, J; Das, J

Bench : Division Bench

Advocate : Satya Charan Pain, for the Appellant; Chandra Sekhar Sen, Govt. Pleader and J. Majumdar Asst. Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Das, J.—I shall deal with the two applications separately.

2. The first one is an application for amendment of the decree passed in the above appeal. The amendment prayed for is for substitution of "State of West Bengal" for "Province of Bengal."

3. The appellant petitioner was the plaintiff in a suit for declaration that the assessment of revenue upon the disputed land was ultra vires and for an injunction restraining the respondent 1, opposite party no. 1, from realising the assessed revenue and for other incidental reliefs.

4. The suit failed in the trial Court.

5. The appellant petitioner filed the above appeal in this Court in 1943.

6. The appeal was pending in this Court on 15-8-1947.

7. The Indian Independence Act, 1947 (10 & 11 Geo. VI , C. 30) received the assent of His Majesty on 18-7-1947.

8. Section 3 of the Act provided that as from the appointed day (15-8-1947) the Province of Bengal as constituted under the Government of India Act, 1935 shall cease to exist and that there shall be constituted in lieu thereof two new Provinces to be known respectively as East Bengal and West Bengal.

9. The question in this application concerns the effect of the above provision so far as the present appeal was concerned.

10. The material provision bearing on this point is contained in Article. 12 (2) of the Indian Independence (Rights, Property and Liabilities) Order, 1947, which reads as follows:

"Where any Province from which property, rights or liabilities are transferred by this Order is, immediately before the transfer, a party to legal proceedings with respect to that property, or those rights or liabilities, the Province which succeeds to the property, rights or liabilities in accordance with the provisions of this order shall be deemed to be substituted for the other Province as a party to those proceedings, and the proceedings may continue accordingly."

11. If this provision applies, then the relevant Province will be deemed, to be on record, although the proceedings may be proceeding in the name of the Province of Bengal which was non est by virtue of Section 3, Independence Act.

12. Mr. Pyne, learned Counsel for the applicant submitted that the appeal was with respect to a liability to which the old Province of Bengal was subject before the appointed day and that by force of Article 10 (2) (b) of the Indian Independence (Rights, Property and Liabilities) Order, 1947, that liability became a liability of the Province (now State) of West Bengal, as the cause of action arose wholly within the territories which, as from the appointed day, are the territories of the Province of West Bengal.

13. It has not been disputed that the subject matter of this appeal lay wholly within the territories of the Province of West Bengal and that the cause of action arose wholly within those limits. As such Article. 12 (2) (b) of the said order will be attracted to this case if the appeal related to a liability of the Province of Bengal.

14. The liability referred to in Article. 12 (2) (b) is any liability in respect*, of actionable , wrong other than breach of contract which is referred to in Section 10 (1).

15. The appeal did not admittedly relate to any breach of contract. The question therefore is whether it related to any liability in respect of actionable wrong.

16. The meaning of expression "actionable wrong" fell to be discussed in the recent case of The State of Tripura Vs. The Province of East Bengal, . Patanjali Sastri J., who delivered the judgment of Kania C. J., Patanjali Sastri J, and Chandrasekhara Aiyar J., observed that the learned judges of this Court, whose judgment they reversed, had placed "much too narrow a construction on the

phrase liability in respect of actionable wrong" and dissented from the view of this Court that the phrase connoted "only a liability for damages for a completed tortious act".

17. At page 12, Patanjali Sastri J., further said:

"We consider that the words are apt to cover the liability to be restrained by injunction from completing what on the plaintiff's case was an illegal or unauthorised act already commenced."

18. Mukherjea J., who agreed with the conclusion reached by Kania C. J., Patanjali Sastri J. and Chandrasekhara Aiyar J., observed as follows:

"The plain language of the provision read in the light of the context would demand and justify a wider and more liberal interpretation. In my opinion, there can be an actionable wrong which does not arise out of a breach of contract and at the same time does not answer to the description of a "tort" as it is understood in English Law" (page 45).

19. The learned Judge proceeded to state as follows :

"The word "wrong" in ordinary legal language means and signifies "privation of right". An act is wrongful if it infringes the legal right of another and "actionable" means nothing else than that it affords grounds for action in law" (page 45).

20. In the present appeal, the appellant complained of the illegal assessment of revenue in respect of the lands in dispute and prayed that a declaration might be made absolving the appellant from that liability and that the Province of Bengal might be restrained from enforcing that liability. The appeal was therefore, with respect to a liability of the Province of Bengal for an actionable wrong other than breach of contract and as the cause of action arose wholly within the territories of the Province of West Bengal as constituted by the Indian Independence Order 1947, the liability became the liability of the latter Province. Consequently, by virtue of Article. 12 (2) Independence (Rights, Property and Liabilities) Order 1947 the Province (now State) of West Bengal must be deemed to have been automatically substituted for the Province of Bengal as from 15-8-1947.

21. The decree passed in the appeal must therefore be deemed to have been passed against the Province (now State) of West Bengal.

22. The learned senior Government Pleader-referred us to an unreported Bench decision of this Court dated 22-1-1951 in the matter of an application filed on 7-12-1950 in F. A. 319 of 1943, to which I was a party.

23. That appeal related to a suit for a declaration that certain formations in the bed of the river Hooghly were not liable to assessment of revenue and. for consequential reliefs. The subject matter of that appeal was akin to that of the present appeal. The Bench held that there was no automatic substitution of the Province (State) of West Bengal in place of the Province of Bengal.

24. The Bench decision did not consider the effect of Article. 10 (2) (b) Independence (Rights, Property and Liabilities) Order 1947. The applicability of this article was not canvassed before the Bench presumably because of the Bench decision of this Court in the Province of Bengal Co-Operative Silk Union Ltd. Vs. Sasadhar Dalal and Others decided on 30-11-1948 where a restricted view of the meaning of the phrase "liability in respect of an actionable wrong other than breach of contract" occurring in Article 12 (2) was taken. As already stated, the decision last cited has been reversed by the Supreme Court where a liberal view of the said phrase has been taken. I have already pointed out that on this liberal interpretation of the phrase the present appeal concerns a liability of the nature referred to in Article 12 (2) (b) of the order.

25. The result therefore, is that the decree of this Court dated 15-12-1948 passed in f. a. 118 of 1943 must be taken to be a decree against the State of West Bengal. The decree as passed by this Court must therefore be amended by substituting the words "State of West Bengal" for "the Province of Bengal" in the said decree.

26. The application for amendment must therefore, be allowed but in the circumstances of this case, we direct that the parties should bear their own costs of this application.

27. As regards the other application wherein the applicant prays for a direction for fixing a time within which the decretal costs have to be paid, in view of the above decision, this application must also succeed. We order that a direction be made in the decree of this Court that the costs decreed in favor of the appellant petitioner must be paid by the State of West Bengal respondent 1, opposite party No. 1 within 3 months from this date and we order that the decree be amended accordingly.

28. We make no order as to costs of this application.

Das Gupta, J.

29. I agree.