

(1961) 04 CAL CK 0004
In the Calcutta High Court
Case No : Civil Rule No. 654 of 1958

NAKULESWAR MONDAL AND OTHERS

APPELLANT

Vs

UNION OF INDIA AND ANOTHER

RESPONDENT

Date of Decision : 05-04-1961

Acts Referred:

Constitution of India, 1950 — Article 143(1)
Estate Duty Act, 1953 — Section 9

Citation : (1961) 43 ITR 59

Hon'ble Judges : Deep Narayan Singh, J

Bench : Division Bench

Judgement

DEEP NARAYAN SINGH J. - The facts in this case are shortly as follows : The Estate Duty Act, which is a central Act, being Act No. 34 of 1953 (hereinafter referred to as the "Act"), came into operation on the October 6, 1953. It is an Act to provide for the levy and collection of an estate duty. Section 9(1) of the Act provides that property taken under a disposition made by the deceased, purporting to operate as an immediate gift inter vivos, whether by way of transfer, delivery, declaration of trust, settlement upon persons in succession, or otherwise, which shall not have been bona fide made, two years or more before the death of the deceased, shall be deemed to pass on the death. In the case of gifts made for public charitable purposes the period is six months instead of two years, but we are not concerned with that in this case. The petitioners are sons of Manindra Nath Mondal, since deceased. They are residents of Chandernagore which was previously a French territory, but was ceded to India and has now merged into the State of West Bengal. The said Manindra Nath Mondal died on the October 18, 1955, at Chandernagore. prior to his death on the August 13, 1954, and on the September 25, 1954, the said Manindra Nath Mondal executed two deeds of gifts in favour of his sons, the petitions in this case. The Chandernagore (Merger) Act, 1954, is a Central Act, which came into operation on or about the September 29, 1954, u/s 2(a) of the said Act, "appointed day" means the October 2, 1954. Section 3 provides that as and from he appointed

day, Chandernagore, which has been defined u/s 2(c) as "the whole of the territory which immediately before the June 9, 1952, was comprised in the Free Town of Chandernagore", shall form part of the State of West Bengal and the boundaries of that State shall be so altered as to comprise within them the territory of Chandernagore. Section 4 contains an amendment of the first Schedule to the Constitution, incorporating into the State of West Bengal the territory of Chandernagore. Section 17 of the said Act is important and is set out below :

"17. Extension of laws to Chandernagore. - All laws which immediately before the appointed day extend to, or are in force in, the State of West Bengal generally shall, as from that day, extend to or, as the case may be, come into force in Chandernagore."

The position, therefore, is as follows : If the Estate Duty Act applied to Chandernagore at the time of the death of the said Manindra Nath Mondal, that is to say, on the October 18, 1955, then, in order to escape estate duty, the deeds of gifts would have not only to be bona fide but executed two years before the date of death. In this case, the two deeds were not executed two years before the death, and as such, the properties which are the subject-matter of the gifts would also be the subject-matter of estate duty. So far as the applicability of the Estate Duty Act is concerned, I see no difficulty at all. The Act was an All-India Act and was in force in the State of West Bengal on the appointed day. Therefore, u/s 17 of the Merger Act, this law extended to Chandernagore. Mr Dutt appearing on behalf of the petitioners has tried to take refuge behind the provisions of the Constitution. His argument is as follows. He said that under article 1 of the Constitution , prior to the seventh amendment thereof in November, 1956, India is to be a Union of States and the States and the territories thereof shall be the States and their territories specified in Parts A.B. and C of the First Schedule, In Part A of the First Schedule of the Constitution, item No. 10 is West Bengal. The Constitution (Seventh Amendment) Act, 1956, came into operation on the November 1, 1956. By this, the sub-division of the State into classes A, B and C was abandoned, the States and territories thereof were to be as specified in the First Schedule, as amended. The State of West Bengal was described as follows :

"The territories which immediately before the commencement of the Constitution were either comprised in the Province of West Bengal or were being administered as if they formed a part of that Province and the territory of Chandernagore as defined in clause (c) of section 2 of the Chandernagore (Merger) Act, 1954, and also the territories specified under sub-section (1) of section 3 of the Bihar and West Bengal (Transfer of Territories) Act, 1956."

Article 3 of the Constitution lay down that Parliament may by law, either increase the area of any State, or diminish the area of any State or alter the boundaries of any State. Under article 4(1) any law referred to in articles 3 shall contain such provisions for the amendment of the First Schedule and the Fourth

Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions as Parliament may deem necessary. Under clause (2) of article 4, no such law as aforesaid shall be deemed to be an amendment of the Constitution for the purposes of article 368. Article 368 of the Constitution lays down that an amendment of the Constitution may be initiated by the introduction of a Bill for the purpose in either House of Parliament and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President for his assent and upon such assent being given to the Bill, the Constitution shall stand amended accordingly. Up to now, there have been nine amendments to the Constitution. What is argued is that Parliament alone can alter the boundaries of a State, and the State of West Bengal can only be as was to be found in the Schedule to the Constitution. This Schedule had not been amended prior to November, 1956. It is, therefore, argued that prior to that date, Chandernagore could never be a part of the State of West Bengal, and deeds of gifts were much earlier than November 1956. In my opinion, this argument seems to take us nowhere. It is true that Parliament alone can enact a law increasing the area of any State or altering the boundaries of any State under article 3. For that purpose certainly the First Schedule or the Fourth Schedule as the case may be will have to be altered. But how this alteration is to be effected is contained in article 4 itself. All that is necessary is that the law itself, as promulgated by Parliament, should contain provisions for the amendment of the First Schedule or the Fourth Schedule as the case may be. It may be commented that the amendment of a Schedule as the case may be. It may be commented that the amendment of a Schedule to the Constitution cannot be contained in a statute passed by Parliament without it being incorporated in the Constitution. Such however is the law. A law promulgated by Parliament under article 3, of the nature of the Chandernagore Merger Act, is not to be deemed to be an amendment of the Constitution for the purposes of article 368 and it is sufficient if the statute itself contains the proposed amendment to the First Schedule. I have already pointed out that u/s 4 of the Chandernagore (Merger) Act, there was provision for the amendment of the First Schedule. It may then be asked as to why the Schedule was amended from the objects and reasons for introduction of the Seventh Amendment to the Constitution, and the reason is that the Constitution was brought up-to-date with regard to the amendments to the Schedule. As I said, an amendment to the First Schedule can be done by a Parliamentary Act passed under article 3. Since these amendments were contained in a number of statutes, it was convenient in 1956 to bring them together in one place and amend the Schedule in the Constitution itself. It does not follow, however, that prior to 1956 to bring them together in one place and amend the Schedule in the Constitution itself. It does not follow, however, that prior to 1956 the Chandernagore (Merger) Act, together with the amendment in the First Schedule to the Constitution was ineffective. Mr. Dutt then refers me to a Supreme Court decision in *In re Berubari Union and Exchange of Enclaves*. This

was a reference under article 143(1) of the Constitution of India, and related to the proposed cession of a portion of the Berubari Union of Pakistan. It is not quite clear to me with what objects Mr. Dutt cited this case, because it completely goes against the contention put forward by him. It was held there that the acquisition of foreign territory by India could be done in the exercise of its inherent right as a sovereign State. For this purpose, it was not necessary for Parliament to pass a law. But after the said territory formed a part of the territory of India, the process of assimilation was to be done, either under article 2 or article 3(a) or (b) of the Constitution. In the Berubari case Gajendragadkar J. gave an illustration of this procedure and referred to the Chandernagore (Merger) Act itself. The learned judge said as follows :

"As an illustration of the procedure which can be adopted by Parliament in making a law for absorbing newly acquired territory we may refer to the Chandernagore Merger Act, 1954 (XXXVI of 1954), which was passed on September 29, 1954, and came into force as from October 2, 1954. Chandernagore, which was a French Government, in agreement with the Government of India, stated that it intended to leave the people of the French establishments in India a right to pronounce on their future fate and future status. In pursuance of this declaration a referendum was held in Chandernagore in 1949, and in this referendum the citizens of Chandernagore voted in favour of the merger of the territory with India. Consequently, on May 2, 1950, the President of the French Republic effected a de facto transfer of the administration of Chandernagore to India, and as from that date the Government of India assumed control and jurisdiction over Chandernagore u/s 4 of the Foreign Jurisdiction Act, 1947 (47 of 1947). Relevant notification was issued by the Government of India under the said section as a result of which certain Indian laws were made applicable to it. The said notification also provided that the corresponding French laws would cease to apply with effect from May 2, 1950. This was followed by the treaty of cession which was signed at Paris and in due course on June 9, 1952, Chandernagore was transferred de jure to the Government of India on the ratification of the said treaty. The result was Chandernagore ceased to be a French territory and became a part of the territory of India; and the Foreign Jurisdiction Act was no longer applicable to it. Article 243(1) which was then in operation applied to Chandernagore as from June 9, 1952, and in exercise of the powers conferred under articles 243(2) the President promulgated a regulation for the administration of Chandernagore which came into force from June 30, 1952. The Government of India then ascertained the wished of the citizens of Chandernagore by appointing a Commission of enquire and on receiving the Commissions report that the people of Chandernagore were almost unanimously in favour of merging with West Bengal, the Government introduced in Parliament the Chandernagore Merger Act in question. After this Act was passed Chandernagore merger with the State of West Bengal as from October 2, 1954. This Act was passed by Parliament under article 3 of the Constitution. As a result of this Act the boundaries of West Bengal were altered

under article 3(d) and by section 4 the First Schedule to the Constitution was modified. We have thus briefly referred to the history of the acquisition and absorption of Chandernagore and its merger with West Bengal because it significantly illustrates the operation of article 1(3)(c) as well as article 3(b) and (d) of the Constitution... The effect of article 4 is that the laws relating to article 2 or article 3 are not to be treated as constitutional amendments for the purpose of article 368, which means that if legislation is competent under article 3, in respect of the Agreement, it would be unnecessary to invoke article 368."

In my opinion there is no substance in Mr. Dutts argument. The above decision has held the Chandernagore (Merger) Act to be valid and has pointed out how it came to be made under the provisions of article 3(b) and (d). It also explains the utility of article 4 read with article 368. I must mention here that Mr. Dutt formulated two other points, which are as follows :

1. The two deeds being executed before the appointed day, section 17 of the Merger Act has no application.
2. No removal of difficulty order having been made u/s 19 of the Chandernagore (Merger) Act, regarding the Estate Duty Act and taxable territory not having been defined in the Income Tax Act, the payment of tax is illegal.

So far as the first point is concerned, the execution of the two deeds prior to the appointed day has no legal consequence at all. The appointed day was the October 2, 1954. On that day the Estate Duty Act, which was in operation in the whole of India including West Bengal, was extended to Chandernagore. The petitioners father died on the October 18, 1955. On that date, the Estate Duty Act was in operation in Chandernagore and was attracted. There is no question of any retrospective operation of the Act. As Mr. Meyer has pointed out, section 9 of the Estate Duty Act does not avoid the gift, but merely lays down that if the gift was not bona fide and not made within two years before death, it would be deemed to be the estate of the deceased for calculation of estate duty. With regard to the second point, I do not see what section 19 of the Merger Act has got to do with the problem before us. That section gives power to the Central Government, if any difficulty arises in relation to the transition from any corresponding law, to any law which by virtue of section 17 may extend to or come into force in Chandernagore, to make such provisions as would appear necessary for removing the difficulty. I, however, do not find that any difficulty at all arose, at any time, with regard to the Estate Duty Act, and its extension to Chandernagore, or that any difficulty arises now, in giving effect to the provisions of the Act. As regards the location and nature of the property, the rules framed under the Act deal with the question.

For the reasons aforesaid, I do not see that any grounds have been made out for any intervention and this application should be dismissed. The rule is discharged. Interim orders, if any, are vacated. There will be no order as to costs.

Rule discharged.