
(2011) 07 CAL CK 0094
In the Calcutta High Court
Case No : W.P.L.R.T. No. 694 of 2003

Radha Gobinda Jew Thakur	Vs	APPELLANT
State of West Bengal		RESPONDENT

Date of Decision : 19-07-2011

Acts Referred:

West Bengal Land Reforms Act, 1955 — Section 14T(3), 4(13), 4(2)(b), 4(3)(c)(i), 4(3)(c)(ii)

Citation : (2012) 4 CHN 558

Hon'ble Judges : Pratap Kumar Ray, J; Abdul Ghani, J

Bench : Division Bench

Advocate : Abdul Alim, for the Appellant; Chandi Charan De and Md. Sk. Galid, for the Respondent

Final Decision : Dismissed

Judgement

Pratap Kumar Ray, J.—A judgment has been delivered by Special Bench comprising of Three Judges of the Hon'ble High Court at Calcutta in W.P. No. 331 of 2009 on 14th July, 2011 by passing the following Order:

On consideration of the entire materials on record, we, therefore, hold that unless the following defects in the Act are removed in the light of our observations, the Act as presently structured is unconstitutional for the reasons stated earlier. However, the Act may be made operational by making suitable amendments, as indicated below:

A) Section 4(2) (b) of the Ac should be deleted and should be substituted by a new provision for constitution of Selection Committee broadly on the following lines:

(a) Chief Justice of High Court or his nominee-as Chairperson (with a right of casting vote);

(b) A senior Judge of the High Court as Member;

(c) Secretary in the Ministry of Finance -- as Member; and

(d) Secretary in any of the Ministries -- as Member.

(B) In section 4(3)(c)(i) of the Act, the phrase "Joint Secretary" should be deleted and substituted by "Secretary or Additional Secretary" and the phrase "a specified Act" mentioned therein should be deleted and substituted by "all the specified Acts".

(C) In section 4(3)(c)(ii) of the Act, the phrase "Joint Secretary" should be deleted and substituted by "Secretary or Additional Secretary" and the phrase "a specified Act" mentioned therein should be deleted and substituted by "all specified Acts."

(D) The last proviso to section 4 (13) of the Act should be deleted and instead thereof, suitable proviso should be incorporate by giving power of constitution of the larger Bench of the Tribunal to the Chairman of the same in of difference of opinions case between two or more benches with further stipulation that in such larger Bench, the number of Administrative Member must be less than that of Judicial Member.

The writ-application is, thus, disposed of in terms of our present Order.

Though in the judgment there is no indication that the judgment will have prospective effect by applying the doctrine of prospective over ruling and, as such, the judgment delivered will have a retrospective effect in view of the decision passed by the Apex Court in the case P.V. George and Others Vs. State of Kerala and Others, The doctrine of prospective overruling is a feature of American Jurisprudence and is an exception to the normal principle of law about effect of a judgment which normally is retrospective. The said doctrine has been applied by the Apex Court for the first time in the case I.C. Golak Nath and Others Vs. State of Punjab and Another, .

2. Despite such legal position about effect of said judgment as quoted above, this writ application could be considered for our adjudication, which has been filed assailing the Order passed by West Bengal Land Reforms and Tenancy Tribunal applying the defacto and de jure doctrine. The principle has been illustrated by the Apex Court in several cases by holding, inter alia, that even if the appointment of a Judge or a Presiding Officer or any Adjudicatory Forum stand cancelled or set aside, the decision or judgment pronounced shall not be illegal on that score, but merit of the said judgment could be decided by Court. The Three Judges Bench of the Apex Court in the case Gokaraju Rangaraju Vs. State of Andhra Pradesh, held to this effect "a Judge, defacto, is one who is not mere intruder or usufruct but one who held office under colour of lawful authority, even though his appointment is defective and may later be found to be so. Whatever be the defect of his title to the office, judgments pronounced by him and acts done by him when he was clothed with the power and function of the office, albeit unlawfully, have the same efficacy as judgment pronounced and acts done

by a Judge de jure. Such is a de facto doctrine born of necessity and public policy to prevent needless confusion and needless mischief."

3. The Apex Court in the said case considered the views of different High Courts as well as the English Court, namely, the case *Pulin Behari Das and 34 others Vs. King-Emperor*, *Immedisetti Ram Krishnaiah and Sons Vs. The State of Andhra Pradesh*, *P.S. Menon Vs. State of Kerala and Others*, *Milward vs. Thatcher* reported in 100 E.R. 45, *Sadding vs. Lorant* reported in 10 E.R. 165 (H.L.), *Re:- James (an insolvent)* reported in 1977 (1) A.E.R. 364 (C.A.), *State of Connecticut vs. Carroll* reported in (1871) 38 Conn. 449, *Re:- Albridge* reported in (1893) 15 N.Z.L.R. 361 and *Notion vs. Sheby County* reported in 30 L.Ed. 178.

4. Same view echoed by the Apex Court in a Constitution Bench judgment in the case *B.R. Kapur Vs. State of Tamil Nadu and Another*, wherein appointment of a Chief Minister was quashed, but action taken by Chief Minister and Council of Ministers was declared as valid.

5. The said de facto principle has been applied by the Apex Court, in the case *The State of Haryana Vs. The Haryana Cooperative Transport Ltd. and Others*, where it is held "acts of officers defacto cannot be questioned for lack of legal authority except by some direct proceeding". The legal maxim that acts of officers de facto, cannot be allowed to be questioned collaterally, relied upon.

6. Having regard the said principle as discussed, we are of the view that the Order impugned in the writ application could be decided under the anvil of judicial review by us sitting in the writ jurisdiction and the judgment dated 14th July, 2011 passed in W.P. No. 331 of 2009 though has not identified its force applying prospective overruling principle and, as such, effect could be considered as retrospective, the writ application is maintainable to test the legality and validity of the impugned Order applying the "principle of defacto and de jure doctrine" as discussed above.

7. Now the main matter is taken up for hearing.

8. The impugned Order of the learned Tribunal below dated 22nd January, 2003 reads such:

22.1.2003 --The above noted two applications for restoration are allowed and T.A. Nos. 781 and 782 of 2001 are restored to their original files.

Heard the Id. lawyers for the applicants as well as the Id. Government representative at length.

In the instant writ petitions the notice dated 21.10.1997 issued in connection with case No. 13/Mid/1997 has been challenged on the ground that the lands of the deity, the applicant in T.A. No. 782 are going to be clubbed with those of the applicants in T.A., No. 781.

However, on perusal of the impugned notice that has been issued to the individuals in connection with a proceeding for determination of their ceiling area

u/s 14T(3) of the Act, we find no indication anywhere in the said notice that the lands of the deity are going to be clubbed with the lands of the notices. Hence, the writ petitions were filed without any valid cause of action.

From the report sent by the District Land and Land Reforms Officer, Paschim Medinipur, it appears that the said proceeding has been disposed of.

The writ petitions therefore having lost their relevance have become infructuous also.

The writ petitions are thus disposed of with the observation that a certified copy of the Order, if applied for, by the applicants shall be supplied to them within one month from the date of receipt of such applications.....

9. On a bare reading of the impugned Order, we are of the view that assailing the notice issued by concerned Competent Authority u/s 14T(3) of West Bengal Land Reforms Act, the original application was moved before learned Tribunal below. Learned Tribunal held that the writ application which was a transfer application, became infructuous in view of report of District Land & Land Reforms Officer, Paschim Medinipore that the property of the deity was not clubbed together but a mere notice was issued for hearing.

10. In view of such finding, there is no scope of judicial review exercising power in writ jurisdiction.

11. The writ application accordingly stands dismissed.

12. There will be no Order as to costs.

Md. Abdul Ghani, J.

I agree.