
(1977) 06 CAL CK 0016
In the Calcutta High Court
Case No : C.R. No. 3046 of 1975

Raich Ali Khan

APPELLANT

Vs

Hazi Sadek Ali Sk. and Others

RESPONDENT

Date of Decision : 08-06-1977

Acts Referred:

West Bengal Land Reforms Act, 1955 — Section 21(3)

Citation : AIR 1977 Cal 295 : 81 CWN 926 : (1977) 1 ILR (Cal) 638

Hon'ble Judges : Sankar Prasad Mitra, C.J.; Salil Kumar Datta, J; Sabyasachi Mukharji, J

Bench : Full Bench

Advocate : B.C. Mitter and Aruna Mukherjee, for the Appellant; Ramapati Roy, for the Respondent

Judgement

Sankar Prasad Mitra, C.J.—In C. R. 3165-66 of 1975 (Noor Mohammad Sk. v. Sushil Kumar Mistry) a Division Bench of this Court has referred to a Special Division Bench under Rule 1 of Chap. II of the Appellate Side Rules the following question:

Whether the provisions of Sub-section (3) of Section 21 of the West Bengal Land Reforms Act, 1955 as amended apply to pending proceeding before any civil or criminal court ?

The Division Bench made this Reference on the 10th December, 1976. The present Reference has been made on the same question on the 22nd February, 1977 by Mr. Justice Rule Bhattacharya in view of the Reference already made by the Division Bench as aforesaid.

2. It appears that Hazi Sadek Ali Sk. filed a suit in June 1971 in the court of the Second Munsif at Baruipur in the District of 24-Parganas, inter alia, for a declaration of title and recovery of possession of land in suit. The petitioner before us filed a written statement contending that he was a bargadar under the plaintiff.

3. While the suit was pending before the learned Munsif Sub-section (3) of Section 21 was added by Section 7 of the West Bengal Land Reforms (Amendment) Act, 1974 (West Bengal Act XXXIII of 1974). The subsection came into force on the 21st June, 1974. It is as follows:--

"If any question as to whether a person is or is not a bargadar arises in course of any proceedings; before any Civil or Criminal Court, the Court shall refer it to the officer or authority mentioned in Sub-section (1) of Section 18 for decision."

4. In view of this amendment the petitioner Raich Ali Khan made an application to the learned Munsif for referring the question as to whether he was a bargadar to the officer or authority mentioned in Sub-section (1) of Section 18 of the West Bengal Land Reforms Act, 1955.

5. The learned Munsif by his order No. 97 made on the 22nd July, 1975 dismissed the application of Raich Ali Khan holding, inter alia, that Sub-section (3) of Section 21 had no application to the suit.

6. Raich Ali Khan thereupon made a revisional application to this Court u/s 115 of the Civil P. C. on the 25th August, 1975 which came up for hearing before Mr. Justice Rule Bhattacharya on 22nd February, 1977. Mr. Justice Rule Bhattacharya, as we have already noted, had referred the matter to a larger Bench.

7. We have had the benefit of considering the judgment delivered by Mr. Justice Bhattacharya as well as by my learned brother Mr. Justice S. K. Datta presiding over a Division Bench consisting of himself and Mr. Justice H. N. Sen in Noor Mohammad Sk.'s case.

8. On the point under reference there are two reported judgments of this Court. There is a judgment of Mr. Justice Chittatosh Mookherjee in Chapala Bala Adhikary v. Monoranjan Das reported in 1975 (2) CLJ 447. There is also a Division Bench Judgment of Mr. Justice S. K. Bhattacharyya with Mr. Justice Arun Kumar Janah in Birendra Nath Gayen v. Kali Ch. Mandal reported in 1975 (2) Cal LJ 504.

9. Mr. Justice Chittatosh Mookherjee has proceeded on the basis that the amendments made by Sub-section (3) of Section 21 relate to procedure and as such it would affect pending proceeding. The Division Bench, however, has taken a contrary view. According to the Division Bench, a substantive right has been affected and the amended provision cannot impeach a pending proceeding.

10. It seems to us on the facts and in the circumstances of this case that it is unnecessary to decide whether the right affected is a substantive or procedural right. We will assume that a substantive right has been taken away. It has been urged on behalf of the respondent-opposite parties that they had the right to institute a suit u/s 9 of the Civil P. C. and had further right of preferring an appeal against the judgment delivered in the suit in accordance with the provisions of the Code. All these rights, according to the learned Counsel, are

substantive rights which have been taken away.

11. As regards substantive rights, the law is well settled. In Maxwell "On The Interpretation of Statutes", 12th Edition at p. 215. it is stated-

"It is a fundamental rule of English law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication."

12. In Craies on "Statute Law", 3rd Edition at p. 324 reliance is placed on the observations of Lord Justice Lindley in *Lauri v. Renad*, 1892 (3) Ch 402 at p. 421. Lindlay, L.J. observed:

"It is a fundamental rule of English law that no statute shall be construed so as to have a retrospective operation unless its language is such as plainly to require such a construction and the same rule involves another and subordinate rule to the effect that a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary."

13. The Supreme Court in *Mahadeolal Kanodia Vs. The Administrator-general of West Bengal*, had made the position abundantly clear. The Supreme Court has said :

"The principles that have to be applied for interpretation of statutory provisions of this nature are well established. The first of this is that statutory provisions creating substantive rights or taking away substantive rights are ordinarily prospective; they are retrospective only if by express words or necessary implication the Legislature has made them retrospective; and the retrospective operation will be limited only to the extent to which it has been so made by express words or necessary implication... .."

14. The problem before us, therefore, is whether by express words or necessary implication, Sub-section (3) of Section 21 of the West Bengal Land Reforms Act, 1955 can be said to have affected pending proceedings. The language used appears to us, to be plain and explicit. It does not present any difficulty. The word "arises" and the expression "in course of any proceedings before any Civil or Criminal Court" made the position abundantly clear. Whenever in course of any proceedings in a Civil or Criminal Court the question arises as to whether a person is or is not a bargadar, that question has to be referred to the officer mentioned in Sub-section (1) of Section 18 for decision. By necessary implication, in our opinion, Sub-section (3) of Section 21 has been made to apply to pending proceedings. We have reached this conclusion on the basis of the plain, ordinary and grammatical meaning of the word "arises" and of the expression "in course of any proceedings before any Civil or Criminal Court."

15. We hold, therefore, that the provisions of Sub-section (3) of Section 21 of the West Bengal Land Reforms Act, 1955 an amended apply to pending proceedings before any Civil or Criminal Court. The Reference is answered accordingly.

16. The order of the learned Munsif being order No. 97 dated the 22nd July, 1975 is set aside and the Rule is made absolute. The learned Munsif will proceed according to law in the light of the observations made by us in this judgment. There will be no order as to costs.

Sabyasachi Mukharji, J.

17. I agree.

S.K. Datta, J.

18. I agree.