

(2018) 10 CAL CK 0072
In the Calcutta High Court
Case No : Writ Petition No.1205 Of 2010

Rita Basu & Anr @APPELLANT@Hash State Of West Bengal & Ors

Date of Decision : 11-10-2018

Acts Referred:

West Bengal Estate Acquisition Act, 1957 — Section 44(2a)
promulgation of West Bengal State Acquisition Act, 1953 — Section 4(1), 6, 6(1)(c)
Tribunal Act, 1997 — Section 2(r), 8
Limitation Act, 1963 — Section 14
Constitution of India, 1950 — Article 32, 136, 226, 227, 323A, 323B

Citation : (2018) 10 CAL CK 0072

Hon'ble Judges : Harish Tandon, J

Bench : Single Bench

Advocate : Shantimoy Panda, Subir Kr. Chandra, Bratin Dey, Aditi Kumar, Ayan Banerjee, P.Sinha, A.Mondal, Supratim Dhar,.Devashish Sharma, Dhananjay Nayak

Final Decision : Disposed Off

Judgement

The facts pleaded in the writ petition and the reliefs claimed therein creates no impediment on the High Court to entertain the writ petition, but, it took

different turn because of the defense taken in the affidavit-in-opposition by the respondents inviting the High Court to rule upon whether it shall

proceed to determine the same despite embargo created under another statue.

To have more clarity on the above statements, the salient facts are required to be adumbrated hereinafter:-

The petitioner challenged the notice issued by the respondent no. 2 on 11th August,2010 which was duly published in a daily newspaper, Economic

Times, inviting applications from intending individual enterprises for developed space to be used for housing industrial units including light engineering

units, IT & IT enabled services, food processing or any other non-polluting industrial end usages. The petitioner claimed ownership in respect of the

plot of land measuring .96 decimals comprised in Dag Nos. 517,518 and 519 appertaining to J.L No. 34, Khatian No. 21, R.S. No. 6 , Touzi No.56,

Mouza â?" Bade Raipur, Police Station- Jadavpur, District-South 24-Parganas. The facts, so unferred, would reveal that one Dr. Kumud Nath Ghosh

purchased the aforesaid plot of land on the basis of a deed of conveyance duly executed and registered on 5th December, 1933 in the office of the

District Sub- Registrar 24-Parganas at valuable consideration. The said owner, prior to his death, made and published his Last Will and Testament

dated 30th April, 1948 bequeathing his estate unto and in favour of his two sons namely Chitta Ranjan Ghosh and Satya Ranjan Ghosh.

The said will was duly probated by the District Delegate at Alipore in Probate case no. 26 of 1948. A deed of lease was executed by the aforesaid

two sons on 31st July, 1954 in favour of Krishna Cilicate and Glass Works Limited for a period of 25 years. Subsequently, the said deed of lease was

terminated and a fresh lease was granted in favour of the said lessee on 14th October, 1958 for a period of 99 years and was duly registered in the

office of Sub-Registrar, Alipore Sadar on 15th October, 1958. It was stipulated in the said deed of lease that the said lessee shall pay the lease rent of

Rs.500/- (Rupees Five Hundred) only per month for initial period of five years which shall be enhanced to Rs. 600/- (Rupees Six Hundred) only per

month for rest period of the lease. The said lease deed contained the forfeiture clause and right of re-entry was reserved to the lessors in the event of

default in payment of rent for consecutive two months or on breach of any of the terms and conditions embodied in the said lease deed. The lessee

defaulted in payment of lease rents and the lessors upon forfeiture of the lease instituted Title Suit No. 154 of 1971 in the Court of 4th Munsif at

Alipore and was decreed exparte on 17th February, 1972. It is not in dispute that the aforesaid lessors could not execute the said decree for recovery

of possession and allowed the lessee to remain in possession thereof.

However, in the meantime, both the lessors decided to partition their shares and executed a deed of partition which was duly registered in the office of

Sub- Registrar, Alipore on 28th March, 1972. By virtue of the said deed of partition the elder son namely Chitta Ranjan Ghosh was allotted 1 Bigha 9

kathas 11 chittacks and 5 square feet of land with structure and the younger one namely Satya Ranjan Ghosh was allotted 1 Bigha 8 kathas 14

chittaks and 43 square feet of land.

The lessee company thereafter stood wound up by an order of this Court and the Government of India then thought to reopen and restart the said

company under the management of a body of persons. A permission was obtained from the High Court on 21st February, 1973 and the Ministry of

Industrial Development, Government of India issued a notification under the provisions of the Industries (Development and Regulation) Act, 1951 duly

published in the Gazette of India on 5th March, 1973. The management of the lessee, the industrial undertaking, was taken over and a Special Officer

and Ex-Officio Secretary, Department of closed and sick Industries, Government of West Bengal was appointed as Chairman of the Board of

Management.

Subsequently, the said undertaking was acquired by the State of West Bengal in 1987 after promulgating the Krishna Cilicate and Glass Works

Limited (Acquisition and Transfer of Undertakings) Act, 1986. Prior to the acquisition of said industrial undertaking by the State of West Bengal, the

Government was approached by the predecessor of the petitioner for settlement and an agreement was entered into enhancing the rent. Despite such

agreement the rent was not paid and a suit for recovery of the rent was filed being Title Suit No. 67 of 1981 wherein the said industrial undertaking

through the Government instrumentality agreed to pay a sum of Rs. 74,200/- (Rupees Seventy four Thousand and Two Hundred) only towards the

rent for the period from March, 1973 to 1981. It is stated in the writ petition that the rent was paid till 1995, thereafter, the said industrial undertaking

again defaulted in payment of rent.

After the death of Chitta Ranjan Ghosh, the predecessor of the present petitioner a notice dated 5th November, 2009 was issued under Section 44(2a)

of the West Bengal Estate Acquisition Act, 1957 inviting the petitioner to appear before the authority on 24th November, 2009 for correction of record

of rights in respect of the said plot of land. The petitioner claims to have given reply to the said notice and it is not in dispute that the said proceeding is

still pending. Subsequently, the West Bengal Industrial Development Corporation Limited published a notification in the Economic Times on 11th

August, 2010 inviting the expression of interest from the interested persons for entering into and/or joining with the West Bengal Industrial

Development Corporation Limited on the Public Private Partnership (PPP) model to build industrial units under sites of the different closed industries.

The petitioner thus claimed that the Government may have within its rights to take over the management and administration of the sick industries

through process of law but can never exercise their right as the owner of the land and challenged the said notification in the instant writ petition.

This Court does not find any fetter or embargo in entertaining the writ petition challenging the said notification on the aforesaid pleaded facts but

because of the defense having put forth by the respondent authorities and inviting the Court to adjudicate thereupon, the first and foremost question

which clinches an issue is whether the Court should proceed to determine such issue which is intricately related to the main issue despite express bar

under West Bengal Land Reforms and Tenancy Tribunal Act, 1997.

The defense taken by the respondent is required to be succinctly narrated hereunder:-

The respondent states that the predecessors of the petitioner executed the lease as indicated above in favour of the industrial undertaking for factory

purpose. After the promulgation of West Bengal State Acquisition Act, 1953 the said lands stood vested with the state and, therefore, the said owners

lost their right, title and interest in respect of the subject plots. According to the respondent the predecessors were recorded as dakhalkar in the record

of rights and created a non-agricultural tenancy in favour of the said industrial undertaking and, therefore, being intermediary their right vested with the

State by virtue of section 4(1) of the 1953 Act. It is further stated that the said owners never exercised the right of retention under Section 6 of the

said Act and, thus, lost his right, title and interest as intermediary in respect of the said plots of land. It is further stated that the said non-agricultural

land was never in khas possession of the aforesaid owners as they demised the same to the industrial undertaking and, therefore, cannot claim any

benefit under Section 6(1)(c) of the said Act. It is thus stated that though the rents were paid to the owners it cannot confer any title upon them if

otherwise lost by operation of law.

On the backdrop of the aforesaid facts involved in the instant writ petition the point which this Court finds and needs adjudication is whether the

predecessors of the present petitioner were the intermediary within the definition

thereof given in 1953 Act. If the answer is "yes" then the petitioners cannot claim any right, title and interest in respect of the subject plots. If the answer is "no" then another question which cropped up is whether the status of the predecessor of the petitioner was that of a non-agricultural tenant and not above it and being not in khas possession can claim that the provisions of the West Bengal State Acquisition Act, 1953 do not apply to them. Essentially in both the cases this Court is required to determine the status of the owners of the said plot of lands and the applicability of the various provisions of the West Bengal State Acquisition Act, 1953.

As stated above this Court initially did not find any fetter in maintaining the writ petition challenging the impugned notification but the moment a special defense of such nature is taken which is so intermingled with the other issues that it cannot be segregated therefrom, the question of entertainability of the writ petition takes the front seat.

The West Bengal Land Reforms and Tenancy Tribunal Act, 1996 received the assent of Governor on 12th December, 1997 and was promulgated to set up the Land Reforms Tenancy Tribunal in pursuance of Article 323B of the Constitution of India to adjudicate and try all disputes, claims, objections and applications relating to, or arising out of Land Reforms or Tenancy Land and other matter under the specified Act and/or the matters connected therewith or incidental thereto. The "specified act" is defined in Section 2 (R) of the Tribunal Act, 1997 and includes the West Bengal Estate Acquisition Act, 1953 within its boundaries. Section 8 of the Tribunal Act, 1997 creates express bar in entertaining any proceeding or application or exercise any jurisdiction, power or authority in relation to adjudication or trial of disputes or applications relating to land reforms touching and/or connecting directly or incidentally any matters under the provision of the said specified Act.

This Court is not unoblivion of the Constitution Bench decision of the Apex Court rendered in case of L.Chandra Kumar "Vs- Union of India & Ors reported in (1997) 3 SCC 261 wherein it is held that the power of judicial review over the legislative action is an integral and essential feature of the Constitution and inheres into its basic structure :-

"78. The legitimacy of the power of courts within constitutional democracies to

review legislative action has been questioned since the time it was first conceived. The Constitution of India, being alive to such criticism, has, while conferring such power upon the higher judiciary, incorporated important safeguards. An analysis of the manner in which the Framers of our Constitution incorporated provisions relating to the judiciary would indicate that they were very greatly concerned with securing the independence of the judiciary. These attempts were directed at ensuring that the judiciary would be capable of effectively discharging its wide powers of judicial review. While the Constitution confers the power to strike down laws upon the High Courts and the Supreme Court, it also contains elaborate provisions dealing with the tenure, salaries, allowances, retirement age of Judges as well as the mechanism for selecting Judges to the superior courts. The inclusion of such elaborate provisions appears to have been occasioned by the belief that, armed by such provisions, the superior courts would be insulated from any executive or legislative attempts to interfere with the making of their decisions.

The Judges of the superior courts have been entrusted with the task of upholding the Constitution and to this end, have been conferred the power to interpret it. It is they who have to ensure that the balance of power envisaged by the Constitution is maintained and that the legislature and the executive do not, in the discharge of their functions, transgress constitutional limitations. It is equally their duty to oversee that the judicial decisions rendered by those who man the subordinate courts and tribunals do not fall foul of strict standards of legal correctness and judicial independence. The constitutional safeguards which ensure the independence of the Judges of the superior judiciary, are not available to the Judges of the subordinate judiciary or to those who man tribunals created by ordinary legislations. Consequently, Judges of the latter category can never be considered full and effective substitutes for the superior judiciary in discharging the function of constitutional interpretation. We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under Article 226 and in this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.â??

However, the Constitution Bench succinctly observed that the aggrieved person may move to the High Court under Article 226 or 227 of the

Constitution before the Division Bench against an order passed by the Tribunal in these words:-

“92. We may add here that under the existing system, direct appeals have been provided from the decisions of all Tribunals to the Supreme Court

under Article 136 of the Constitution. In view of our above-mentioned observations, this situation will also stand modified. In the view that we have

taken, no appeal from the decision of a Tribunal will directly lie before the Supreme Court under Article 136 of the Constitution; but instead, the

aggrieved party will be entitled to move the High Court under Articles 226/227 of the Constitution and from the decision of the Division Bench of the

High Court the aggrieved party could move this Court under Article 136 of the Constitution.”

99. In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, to the extent they exclude the

jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act

and the “exclusion of jurisdiction” clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent,

be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the

Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may

perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article

323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All

decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal

concerned falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been

constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory

legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned.

Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.â??

In view of the law so enunciated by the Constitution Bench though the application under Article 226 of the Constitution of India is not excluded in

express terms but the writ petition before the Division Bench without exhausting remedy before the Tribunal is not maintainable. Logically it is inferred

that the writ petition under Article 226 of the Constitution is not maintainable before the Single Bench but before the Tribunal. This Court cannot

overlook the importance of issues involved in the judicial proceeding and the onerous duty cast upon the Court to decide the same. The issues assumes

importance and evolves on the basis of the pleadings of the respective parties.

If the main relief claimed in the writ petition cannot be decided without the other issue directly or substantially or incidentally involved in the matter an

adjudication thereof is required to be made by a special forum. The Court should avoid the adjudication thereof and should relegate the party to

approach special forum for adjudication of such issues. Since the pivotal issue involved in the instant writ petition is in relation to or arising from the

provisions of the 1953 Act which is a specified act under the Tribunal Act, this Court do not deal to adjudicate and/or determine such issue because of

an express embargo created under Section 8 of the Tribunal Act.

The petitioner is directed to approach the Tribunal raising all points relating to the vesting of the plot of land as alleged by the respondents and if such

approach is made, the Tribunal shall adjudicate the same on its merit treating the same to have not decided by this Court directly, substantially or

incidentally in the instant writ petition. The petitioner has approached the wrong forum and, therefore, is entitled to the benefits given under Section 14

of the Limitation Act. The writ petition is thus disposed of. No order as to costs.