
(2018) 11 CAL CK 0050
In the Calcutta High Court
Case No : Criminal Revision No. 508 Of 2017

Sankar Podder

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 28-11-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 482
West Bengal Land Reforms Act, 1955 — Section 4(4), 4B, 4C, 4C(5), 4D
Mines and Minerals (Development and Regulation) Act, 1957 — Section 2, 15
Constitution of India, 1950 — Article 245, 246

Citation : (2018) 11 CAL CK 0050

Hon'ble Judges : Asha Arora, J

Bench : Single Bench

Advocate : P.N. Mishra, R.N. Mishra, P. Mishra, Ayan Basu, Gautam Banerjee

Final Decision : Dismissed

Judgement

By the instant application under section 482 of the Code of Criminal Procedure petitioner sought for quashing the charge-sheet no. 110 of 2013 dated

31/5/2013 under section 4D of the West Bengal Land Reforms Act 1955 arising out of Balagarh P.S. Case no. 83 of 2013 dated 4/4/2013 being G. R.

Case no. 493 of 2013 pending before the learned Judicial Magistrate 5th Court Hooghly.

It is the contention of the petitioner that he has been carrying on the business of brick manufacturing at Mouza Guptiparachar under the name and

style "M/S Poddar Brickfield" having a valid licence and he has been depositing the price of extraction of brick earth in the office of the Block

Land and Land Reforms officer Balagarh. On the basis of a written complaint of the B.L. & LRO Balagarh, alleging that the petitioner had

established a brick field named M/S Poddar Brickfield at Guptiparachar

unauthorizedly in violation of Section 4C of the West Bengal Land Reforms

Act, the O/C of Balagarh P.S. initiated the above mentioned case against him which culminated in the submission of the charge-sheet under Section

4D of the Act.

Placing reliance upon the decision of this Court in Bengal Brickfields Owners's Association and Others versus State of West Bengal and others

reported in 2006(3) CHN 28, learned counsel for the petitioner argued that the complaint lodged by the B.L & LRO, the FIR registered thereon and

the charge-sheet under Section 4D of the West Bengal Land Reforms Act violates Articles 245 and 246 of the Constitution read with Section 2 of the

Mines and Minerals (Development and Regulation) Act, 1957. It is canvassed that in view of Entry 54 List I of the Seventh Schedule of the

Constitution, the Central Legislative Authority is the only authority in respect of mines and minerals and the State has no legislative competence over

the same. It is contended that prosecution of the petitioner under Section 4D of the Act is not maintainable as the State Legislature has no independent

law making power and as such Section 4C of the West Bengal Land Reforms Act could not operate as a valid provision in view of Section 15 of the

Mines and Minerals (Development and Regulation) Act, 1957. In this context reference has been made to the case of Chhotelal Choudhury and

Others versus State of West Bengal reported in 2008(3) CHN 1060.

Learned counsel for the State countered that the question of repugnancy between the Mines and Minerals (Development and Regulation) Act, 1957

and the West Bengal Land Reforms Act, 1955 does not arise since the object of the two Acts is different. It is further argued that the subject matter

of the two Acts is also not the same. As 'land' falls within the State List, there cannot be any repugnancy with the Mines and Minerals

(Development and Regulation) Act since mines and minerals are the subject matter of Union List.

In Bengal Brickfields Case (supra) this Court set aside a notification dated 30/10/86 issued by the Government of West Bengal relating to West

Bengal Minor Minerals Rules 1973 whereby the State authority was given power to issue quarry permit. It was held in the said case that the

notification was issued in violation of the Mines and Minerals (Regulation and Development) Act 1957 and in violation of the prohibitions made in

Entry 54 List I of the Seventh Schedule to the Constitution and as mines and minerals are the subject matter of Union List, the Central Government is

the only authority to issue quarry permit for excavating mines and minerals. The aforesaid case is clearly distinguishable since the question of

repugnancy which is in issue in the case at hand was not in issue in the case relied upon nor was it dealt with. In Chhotelal's Case (supra) it was

held by this Court that mines and minerals being the subject of Union list, prosecution in terms of section 4D of West Bengal Land Reforms Act 1955

is not tenable. In the case at hand the allegation against the petitioner is conversion of land without prior permission from the Collector which is an

offence punishable under section 4D of West Bengal Land Reforms Act. At this juncture it would be beneficial to refer to a Division Bench decision

of this Court in the case of State of West Bengal versus Sanjeevani Projects (P) Ltd reported in 2006(1) CHN 241 wherein it has been held as follows

in paragraphs 10.4 and 11:

10.4. Section 4D of the WBLR Act added by the 1981 Amendment makes change, conversion or alteration in the area, character or mode or use

of any land except in accordance with section 4C, or in violation of any order passed by the Collector, a cognizable and non-bailable offence

punishable with imprisonment for a term extending to three years with fine extended to 50,000 rupees or with both under sub-section (5) of section 4C.

Provided that no prosecution shall lie if action has been taken under section 4(4) and in cases where change of character or conversion was made in

accordance with the provisions of any other law for the time being in force.

11. Mr. Mukherjee had contended that section 4C of the WBLR Act has not become operative because of the reason of the decision in Paschim

Banga Bhumijibi Krishak Samity, 1996 (2) CLJ 285 (supra), by reason whereof the 1981 amendment cannot be treated as continuing to be operative

after 26th July, 1996 holding that the old unamended definition of land continues to remain operative in view of the judgment in Paschim Banga

Bhumijibi Krishak Samity (supra) and Prafulla Kumar Maity vs. Amal Krishna Mishra & Ors., 1997 (2) CHN 20. But such a contention does not

seem to cut any ice in the present case. Even without the amendment of the definition of land the conversion could still be a subject-matter of sections

4B, 4C and 4D.

The allegation against the petitioner is conversion of land by extracting brick earth without compliance of the provision of section 4C of the WBLR

Act which is an offence within the meaning of section 4D of the said Act. Having regard to the facts and circumstances of the case with reference to

the materials collected in course of investigation, it appears that a prima facie case under section 4D of the West Bengal Land Reforms Act has been

made out against the petitioner. Having reached this conclusion, I am of the view that the decisions relied upon by the learned counsel for the

petitioner in the case of Baijnath Kedia versus The State of Bihar and Others reported in AIR 1970 Supreme Court 1436, Behram Khurshid Pesikaka

versus State of Bombay reported in AIR 1955 Supreme Court 123 and Sant Lal Gupta and Others versus Modern Cooperative Group Housing Society

Limited and Others reported in (2010)13 Supreme Court Cases 336 are not apposite for the purpose of the present case.

For the reasons aforesaid, the application being CRR 508 of 2017 is dismissed.

No order as to cost.

Urgent photostat certified copy of this order, if applied for, be given to the applicant upon compliance of requisite formalities.