

(1972) 05 CAL CK 0026

In the Calcutta High Court

Case No : Appeal from Original Order No. 42 of 1972

Sri. Sri. Devi Mata

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 03-05-1972

Acts Referred:

Assimilation of Laws Act — Section 3
Constitution of India, 1950 — Article 143
Criminal Procedure Code, 1898 (CrPC) — Section 491
Payment of Bonus Act, 1965 — Section 37
West Bengal Estates Acquisition (Amendment) Act, 1963 — Section 2
West Bengal Estates Acquisition Act, 1953 — Section 60, 61, 61(2)

Citation : (1972) CriLJ 1619 : 76 CWN 930

Hon'ble Judges : P.B. Mukharji, C.J.;B.C. Mitra, J

Bench : Division Bench

Advocate : A.K. Dutt, S.C. Bose, Nanda Lal Pal and Shib Kumar Mazumdar, for the Appellant;S.C. Das Gupta, Sr. Government Pleader and Suproakash Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

P.B. Mukharji, C.J.—These appeals are from the judgment and order of Anil Kumar Sen J. made under Article 226 of the Constitution of India. In these five Rules, the Petitioners are challenging three notifications and two proclamations issued by the State of West Bengal or its authority. As common questions have been raised in all these Rules, they were heard and disposed of by the learned trial Judge by one judgment. We in these appeals have followed the same procedure.

2. It is not disputed that the facts relevant to the issues are the same or similar, The facts set out in C.R. No. 565(W) of 1955 are taken as in the main petition. In this petition, the Petitioner is Sri Sri Devi Mata who is the family deity of Panchkote Raj Estate. The Petitioners Appellants have been holding certain land in the intermediary interest in Purulia which was previously within the district of

Manbhum in the State of Bihar. On September 1, 1956, the Bihar and West Bengal (Transfer of Territories) Act, 1956, (hereinafter referred to as the Transfer of Territories Act) came into force. By virtue of Section 3 of this Act, major part of Purulia was transferred to West Bengal with effect from November 1, 1956. Section 43, however, provided that notwithstanding such transfer otherwise enacted by competent Legislature or other competent authority, the laws then applicable to the transferred territories would continue to remain operative in such territories. Section 44 of the said Act provided that the appropriate Government may then a year from the date of transfer adapt the laws which continue to remain in force with necessary modifications and that such laws so adapted would remain in force until altered, repealed or amended by a competent authority or a competent Legislature. On the date of transfer, the Bihar Land Reforms Act, 1950, which provided the vesting of certain categories of intermediary interests was in force in the territories so transferred to West Bengal. By virtue of Section 43 of the Transfer of Territories Act, 1956, the provisions of the said Act continue to remain in force in the transferred territories of Purulia.. it is not disputed that the provisions of the Bihar Land Reforms Act, 1950, are materially different from the provisions of the corresponding West Bengal Act, namely, the West Bengal Estates Acquisition Act, 1953.

3. On September 24, 1958, an Act passed by the West Bengal Legislature came into effect and that Act was called the West Bengal Transferred Territories (Assimilation of Laws) Act, 1958 (hereinafter referred to as Assimilation of Laws Act). By provisions of Section 3 of the Assimilation of Laws Act read with sch. 2 thereof, the provisions of the Bihar Land Reforms Act, 1950, were kept in force for the transferred territories including the transferred territories of Purulia. Applying the provisions of the said Bihar Land Reforms Act, 1950, the Government of West Bengal issued a proclamation u/s 3(b) of the said Act announcing its intention to take over the intermediary interest in the transferred territories to West Bengal. The said proclamation was challenged by the Appellants in a writ petition in this Court which was registered as C.R. No. 589(W) of 1963. It is, however, conceded on behalf of the Appellants that the Petitioners' challenge failed and the Rule was discharged sometime in 1966.

4. Then there came another legislative change. In the meantime, by West Bengal Act XL of 1963 the West Bengal Estates Acquisition Act, 1953, was amended by incorporating a new chapter being chap. VIII consisting of two sections only. They are Sections 60 and 61. Section 60 of the said Act provided that the provisions of the newly incorporated chapter shall come into force on such date and in such area of the transferred territories as the State Government may by notification appoint. Section 61 of the said Act provided that on the issue of a notification u/s 60 of the said Act, the Bihar Land Reforms Act, 1950, shall stand repealed and the provisions of the foregoing chapters of the West Bengal Estates Acquisition Act shall mutatis mutandis apply to the area in respect of which notification u/s 60 of the amended Bengal Act is made. Section 61 of the Bengal Act, as amended, provides for a certain adaptation and certain legal

consequences which will follow on the application of the West Bengal Estates Acquisition Act, 1953.

5. On February 17, 1964, the State of West Bengal issued a notification u/s 60 of the West Bengal Estates Acquisition Act appointing the first day of March 1964 to be the date on which the provisions of chap. VIII of the Act shall come into force in all the areas of the territories transferred from Bihar to this State of West Bengal. This notification is annex. A to the writ petition.

6. It was followed by two further notifications both dated March 10, 1964. u/s 4(1) read with Section 60 and read with Section 52 and Section 61 respectively of the West Bengal Estates Acquisition Act whereby the State declared that with effect from Baisakh 1, 1371 B.S., corresponding to April 14, 1964 all the estates and rights of every intermediary as also the land held by raiyai and under-raiyat together with their rights therein in the district of Purulia shall vest in the State of West Bengal. These notifications appear as, annexes. B and C to the writ petition.

7. These notifications were followed by two proclamations issued by the Collector of Purulia. These three notifications and the two proclamations appearing in annexes. A to E are the subject-matter of challenge in the Rule. Same and similar notifications and proclamations are challenged in other Rules.

8. On behalf of the Appellants, the argument has been advanced on three heads. The arguments before the trial Judge were as follows:

(1) In enacting chapter 8 of the West Bengal Estates Acquisition Act, 1953, and in applying Sections 60 and 61 to the transferred territories there has been no honest application of, mind by the Legislature and, as such, those two sections can have no application. " -" (2). Section 61 of the West Bengal Estates Acquisition Act seeks to extend the provisions of the foregoing chapter of that Act mutatis mutandis; but in so extending without legislative amendment of substantive provisions, the Legislature has abdicated its function by leaving the matter uncontrolled by any guide-line in favour of the executive; or in other words, the said section suffers from the vice of excessive delegation of legislative powers.

9. Mr. Dutt appeared to challenge both Sections 60 and 61 of the Act.

(3) In view of the provisions of Sections 3, 43 and 44 of the said Transfer of Territories Act, 1956, without specific repeal of the Bihar Land Reforms Act, 1950, by a competent Legislature, the said Act cannot Be construed to have been repealed in terms of Section 61(1) of the West Bengal" Estates Acquisition Act.

10. That appears to be in short the arguments of the Appellants. Similar challenge was thrown though not by the., present Appellants to the extension and application of the West Bengal . Estates Acquisition Act to such transferred territories in Amarnath Singh v. State of West Bengal Unreported decision of D. Basu J. in C.R. 476 (W) of 1941 ." Mr. Dutt who has appeared in support of the

Rules and for the Appellants before us argued the said case but unsuccessfully. Extension of the West Bengal Estates Acquisition Act to the transferred territories was upheld by D. Basu J. and his judgment was upheld both by the Appeal Court as also by the Supreme Court. Notwithstanding his failure in the said case Mr. Dutt has again disputed the validity of the extension and application of the provisions of the West Bengal Estates Acquisition Act to such transferred territories on grounds as above and which he described as totally new. Though I must confess that, whether new or old, the extension of the West Bengal Estates Acquisition Act to the transferred territories having been upheld by the Supreme Court, how it can now be challenged on some other points which according to Mr. Dutt were not argued, is not clear to me. The point is concluded by principles of res judicata or constructive res judicata and by principles analogous thereto. Be that as it may, I shall now proceed to deal with the points as raised by Mr. Dutt.

11. Taking up the first point of Mr. Dutt that there has been no honest application of the mind of the Legislature, if Section 60 and Section 61 of the West Bengal Estates Acquisition Act are taken as valid pieces of legislation by competent Legislature, then I do not see where the mind of the Legislature comes in. The Legislature has said u/s 60 of the Act that the provisions of this chapter shall come into force on such date and in such area of the transferred territories as the State Government may, by notification in the Official Gazette, appoint, and for this purpose different dates may be appointed for different areas.

In an explanation to that section it is stated, in this chapter "transferred territories" means the territories transferred from the State of Bihar to the State of West Bengal by Section 3 of the Bihar and West Bengal (Transfer of Territories) Act, 1956. The Legislature applied its mind, considered all the aspects of the case and came to the conclusion that the provisions of Section 60 shall come into force on such date and in such area of the transferred territories as the Government may by notification in the Official Gazette appoint. In fact, for this purpose different dates may be appointed for different areas. It also defines the expression "transferred territories" which included Purulia.

12. Then Section 61 of the West Bengal Estates Acquisition. Act provides for the application of that Act to the transferred territories. The opening words of the section are--

On the issue of a notification u/s 60 in the area in respect of which such notification is issued. It goes on to provide that certain effect will follow. By Sub-section (1) of Section 61 it is provided as follows:

The Bihar Land Reforms Act, 1950, shall stand repealed and the provisions of the foregoing chapters of this Act shall mutatis mutandis apply.

13. So it repeals the Bihar Land Reforms Act 1950. It ceases to" have any application in the transferred territories by virtue of this provision. Its second effect is that all the foregoing provisions in the foregoing chapters of the West

Bengal Estates Acquisition Act shall mutatis mutandis apply. It is a very well-known legislative expression and is used in a number of Acts and Statutes. The expression "mutatis mutandis" is an expression taken from Latin language and has the well-known implication which means with due alteration of details in comparable causes. Sub-section (1) of Section 61 has two provisos which are as follows:

Provided that any reference in the foregoing chapters of this Act to the Bengal Tenancy Act, 1885, or any provision thereof shall, as the case may be, be construed as a reference, (i) in the" Case of application of such chapters to the area comprised in the district of Purulia,--to the Chotanagpur Tenancy Act, 1908, or the corresponding provision thereof, and (ii) in the case of application of such chapters to any other area of the transferred territories,--to the Bihar Tenancy Act, 1885, or the corresponding provision thereof;

In other words, the reference to the Bengal Tenancy Act, 1885, under the West Bengal Estates Acquisition Act, 1953, will mean reference to Chotanagpur Tenancy Act, 1908, to Purulia and to Bihar Tenancy Act to other parts of the transferred territories.

14. This, however, does not mean (.hat Section 61 and the provisions of the West Bengal Estates Acquisition Act shall not mulalis mutandis apply, which remain the opening word of Sub-section (1).

15. Sub-section (2) of Section 61 of the West Bengal Estates Acquisition Act provides:

Estates or interest vested in the State Government under the provisions of the Bihar Land Reforms Act, 1950, prior to the date of issue of the notification shall be deemed to have vested in the State Government under the provisions of this Act.

In plain language, it means that the estate or interest which vested under the Bihar Land Reforms Act will now be deemed to have vested in the West Bengal Government under the provisions of the West Bengal Estates. Acquisition Act..

16. Then Sub-section (2) of Section 61 of the Act is followed by five provisos. In other words, this Sub-section (2) along with the set of provisos means that the estate or interest vested under the Bihar Land Reforms Act, 1950, prior to the issue of the notification under this section, shall all be deemed to have vested in the West Bengal State Government under the provisions of the West Bengal Estates Acquisition Act subject to these provisos.

17. Here, again, it docs not seem to me that these provisions in any way indicate that the Bihar Land Reforms Act has not been repealed. It has been repealed and the West Bengal Estates Acquisition Act mutatis mutandis apply subject to these specific provisos.

18. Mr. Dutt relied on The Barium Chemicals Ltd. and Another Vs. The Company

Law Board and Others, and Pad field"s of Ors. v. Minister of Agriculture, Fisheries and Food and Ors. [1968] 1 All E.R. 69.

These cases have no application to the facts of the instant appeal. In those cases, what was laid down was that where any particular authority is bestowed with any power or discretion by statute either with expressed or implied indication, it is open to the Court to go into the question whether the power or the discretion has been exercised within the specified Dr implied limit. Not one of these cases is concerned with the exercise of legislative power by the Legislature itself. The Legislaure has applied its mind and has laid down the law in this case. Undoubtedly "this Court will go into the problem whether a particular legislation is within the legislative competence of the Legislature having regard to the arrangement in the Constitution of India. It-is also open to this Court to consider whether a particular piece of legislation is a colourable exercise of such legislative power or not. It also means that this Court may even consider whether a particular statute or any particular provision thereof suffers from the vice of unauthorised or excessive delegation of legislative power. But, subject to this consideration, the powers of the Legislature being otherwise plenary, the Legislature is not answerable to this Court on the issue raised by Mr. Dutt. It should be noted that Mr. Dutt has now contended that the provision of the West Bengal Estates Acquisition Act, specially that of Section 61, is ultra vires the power of the said Legislature. In fact, this is not open to. me after the decision of the Supreme Court. The first point of Mr. Dutt, therefore, fails.

19. The second argument on behalf of the Appellants is that Sections 60 and 61 of the Act" constitute a delegation of legislative power by the Legislature to the executive and, as such, is bad. This point of delegation is, in my view, misconceived. What Section 60 does is to decide when this chap. VIII will come into force. It comes into force by notification on such date and in such area of the transferred territories as the State Government may appoint. The West Bengal Estates Acquisition Act is a considered piece of legislation. When new territories have been added to West Bengal, the West Bengal Legislature acquires full legislative competence subject to the Constitution of India. All that it says is that the State Government may by notification appoint the time when the West Bengal Estates Acquisition Act should come into force. Then, what Section 61 of the West Bengal Estates Acquisition Act does is to provide for what is going to happen to other Acts which had been in operation before the transfer of territories. I do not, therefore, quite see the soundness of Mr. Dutt's argument that there has been a delegation of legislative power by notification and that it is excessive and unguided or that it means no application of legislative mind by the West Bengal Legislature. The legislative power, and the legislative scheme contained in the West Bengal Estates Acquisition Act were carefully thought out. What Sections 60 and 61 do is to facilitate the application of the West Bengal Estates Acquisition Act to the added territories. When some fresh" territories come from another State to the West Bengal State, the West Bengal State Legislature has, subject to the Constitution of India, absolute power, domination

and control over such transferred territories. It is competent to make such laws, as it thinks proper, subject of course to the limitations contained in the Constitution.

20. Mr. Dutt's argument seems to have been by leaving with the executive the right to apply the provisions *mutatis mutandis*, the West Bengal Legislature has delegated the legislative power or rather abdicated its legislative power. I have already said what the expression "*mutatis mutandis*" means. The said expression is used not only in Section 61 but also in other provisions of the same Statute, for example, in Section 15(5), in Section 38 and in Section 52. It is a legislative expression which is a rule of adaptation. Incongruity, of Mr. Dutt's argument is apparent from provision like Section 4(2) and Section 4(6) of the West Bengal Estates Acquisition Act. Section 4 of the Act says that the State Government may from time to time by notification declare that, with effect from the date mentioned in the notification, all estates and rights of every intermediary in each such estate shall vest in the State free from all encumbrances. The date appointed by Section 4(2) of the Act said to be the date mentioned in every notification shall be the commencement of an agricultural year; and the notification shall be issued so as to ensure that the whole area to which this Act extends, vests in the State on or before Baisakh 1, 1362 B.S. corresponding to April 14, 1954. Similarly, a date is fixed u/s 6(6) of the Act. Mr. Dutt's argument is that these dates are inapplicable. But, it is precisely for that reason the expression *mutatis mutandis* is used in Sections 60 and 61 of the West Bengal Estates Acquisition Act. This could not be applied on the date specified in the Act without adaptation, because the West Bengal Estates Acquisition (Amendment) Act, 1963, was being made applicable a decade after the West Bengal Estates Acquisition Act, 1953. Naturally this had to be done by adaptation and by the use of such expression *mutatis mutandis*. It does not appear to me to be a delegated legislation at all. If anything, it is a conditional legislation.

21. That was the decision of the Privy Council in *Her Majesty the Queen v. Burah* L.R. 5 IndAp 178 (193, 194) . There the Indian Legislature passed an Act purporting first to remove a district called the Garo Hills from the jurisdiction of civil and criminal Courts and from the control of the offices of Revenue and, secondly, to vest administration of civil and criminal justice in such officers as the Lieutenant-Governor of Bengal might for the purpose of Tribunals of first instance or of reference and appeal, from time to time appoint. By Section 9 of that Act, the Lieutenant-Governor was empowered from time to time by notification in the Calcutta Gazette to extend "*mutatis mutandis*" all or any of the provisions contained in the other sections to the Jaintia Hills, the Naga Hills and to such portion of the Khasi Hills, as for the time being forms part of British India. On the interpretation of Section 9 of that Act, Lord Selbourne's well-known observations may be noted and, in particular, the observations where his lordship has said:

Nothing of that kind has, in their Lordships' opinion, been done or attempted in the present case. What has been done is this. The Governor-General in Council

has determined in the due and ordinary course of legislation to remove a particular district from the jurisdiction of the ordinary Courts and offices and to place it under new Courts and offices, to be appointed by and responsible to the Lieutenant-Governor of Bengal leaving it to the Lieutenant-Governor to say at what time that change shall take place; and also enabling him not to make what laws he pleases for that or any other district but to apply by public notification to that district any law, or part of a law, which either already was, or from time to time might be in force, by proper legislative authority, "in the other territories subject to his Government". The Legislature determined that so far a certain change should take place; but that it was expedient to leave the time and the manner of carrying it into effect to the discretion of the Lieutenant-Governor; and also, that the laws which were or might be in force in the other territories subject to the same Government were such as it might be fit and proper to apply to this district also; but that, as it was not certain that all those laws and every part of them could with equal convenience be so applied, it was expedient, on that point also, to entrust a discretion to the Lieutenant-Governor. On that basis, the Privy Council decided that where plenary powers of legislation exist as to particular subject, they may; be well exercised, either absolutely or conditionally, in the latter case, leaving it to the discretion of some external authority the time and manner of carrying its legislation into effect, as also the area over which it is to extend.

22. This case does exactly the same thing. The West Bengal Legislature has the legal competence to pass the West Bengal Estates Acquisition Act, 1953, and had the full competence and the legislative power to pass chap. VIII which was added by Section 2 of the West Bengal Estates Acquisition (Second Amendment) Act, 1963 (W.B. XL of 1963). I hold that this was not a case of delegation and I say that it was, at best, a case of conditional legislation. The West Bengal Estates Acquisition (Second Amendment) Act, 1963, did nothing more than facilitate and render possible the operation of the West Bengal Estates Acquisition Act, 1953, with such necessary modifications as the circumstances require. It cannot be a case of "imperium imperio" as the Bihar Land Reforms Act, 1950, was validly repealed. I, therefore, hold that the second point raised by Mr. Dutt must also be overruled.

23., In this connection, see Sachindra Mohan Nandy and Others Vs. The State of West Bengal and Others, and also the report of the Supreme Court in the same case AIR 1971 S.C. 963

Mr. Dutt has relied at one stage of his argument on this point on the case of AIR 1949 175 (Federal Court) That case, in my opinion, has no application to the facts of the instant appeal. There the question was that Section 1(3) of the Bihar Maintenance of Public Order Act, 1947, prescribed the life of the Act as one year and the question was whether by resolution of the two Houses of the Legislature the life of the Act could be extended. It was held that the power to extend the operation Of the Act beyond the period mentioned in the Act prima facie was

legislative power. In" the instant appeal, there is no question of the West Bengal Estates Acquisition Act, 1953, having ceased to exist. There the Supreme Court held that the extension of the Act beyond the first year by notification or resolution cannot escape being classed as delegated legislation.

24. Similarly, the case relied on by Mr. Dutt in *Rajnarain Singh Vs. The Chairman, Patna Administration Committee, Patna and Another*, can have no application to the facts of the present case. There it was held that an executive authority can be authorised to modify either existing or future laws, but not in essential features. This is not so in the instant appeal before us. There in the Supreme Court it was a part of an Act extended by an executive authority. But it was laid down by the Supreme Court in that case that when a section of an Act is selected for application, whether it is modified or, not, it must be done so as not to affect any change of policy or any essential change in the Act regarded as a whole. Nothing of that kind has been done in the instant appeal. Here the whole of the West Bengal Estates Acquisition Act, 1953, has been applied to the transferred territories without picking or" selecting any particular section. There in the Supreme Court it was held that the notification extending Section 104 of the Bihar and Orissa Municipal Act to Patna village area affected a radical change in the policy of the Act. There the Supreme Court held that the action of the Government in subjecting the residents of Patna village area to municipal taxation without observing the formalities imposed by Sections 4, 5 and 6 of the Bihar and Orissa Municipal Act cuts across one of its essential features and, therefore, the notification travelled beyond the authority which Section 3(i)(f) conferred, and hence it was held to be ultra vires.

25. As a last resort Mr. Dutt attempted to use the Delhi Laws Act case AIR 1951 S.C. 332 . That case has no application to the instant appeal, because Delhi had no Legislature at the time. It was on that basis the case of the Privy Council in *Queen v. Burah* (Supra) was distinguished. For the same reason, the case of *B. Shama Rao Vs. The Union Territory of Pondicherry*, is to be distinguished. There it was held that the Pondicherry General Sales Tax Act which extended the Madras General Sales Tax Act as it stood immediately before the date on which Pondicherry Act was brought into force in the territory of Pondicherry by notification issued by the Government as provided in Section 1 was void. There the question was whether in extending the Madras Act in the manner and to the extent it did u/s 2(1) of the principal Act, the Pondicherry Legislature abdicated its legislative power in favour of the Madras Legislature, a very different question from the one raised in the instant appeal before us. The case of *Jdan Trading Company Pvt. Ltd. v. Mill Mazdoor Sabha* AIR 1947 S.C 691 on the question of validity of Section 37 of the Payment of Bonus Act also does not apply to the facts of the present case. There the provision empowering the Central Government to remove doubts or difficulties in giving effect to the provisions of the Act was passed, but the section was held to be invalid as it delegated legislative power to executive authority. There it was held that the power to remove the doubts or difficulties by altering the provisions of the Act would in

substance amount to exercise of legislative authority. Nothing of that kind has been done in the instant appeal where the whole of the West Bengal Estates Acquisition Act, 1953, has been applied to the transferred territories. See also *Ambujakhyia Mukherjee v. State* ILR (1966) 1 Cal. 495 (525) .

26. The third point argued by Mr. Dutt is whether there has been any effective repeal of the Bihar Land Reforms Act, 1950, so far as the transferred territories are concerned. It was necessary that the Bihar Land Reforms Act, 1950, should be repealed by a competent Legislature and Section 61 of the West Bengal Estates Acquisition Act cannot do it. Mr. Dutt's argument was that when Parliament by Section 43 kept the life of the Bihar Land Reforms Act, 1950, it could not be repealed by the West Bengal Estates Acquisition Act. This argument cannot be accepted. Section 43 of the Transfer of Territories Act, 1956, expressly provided for the transitional application of laws to the transferred territories pending the matter being taken up by competent Legislature. In extending the existing laws it made an important reservation, namely, "until otherwise provided by competent Legislature or other competent authority." After the transfer of territories to the State of West Bengal, the Legislature of West Bengal became the competent authority to legislate on matters involving acquisition of estates and rights of intermediaries in respect of transferred territories. I, therefore, cannot accede to the argument made by Mr. Dutt on this point.

27. The next branch of submission of Mr. Dutt related to the question that the impugned notifications and the proclamations were not made in compliance with the procedural law. Mr. Dutt argued that these notifications were rational. He argued that the notifications could not have been issued under the joint provisions of Section 4, 52 and 61. Section 4 empowers the State Government to issue necessary notifications for vesting of the rights of the intermediaries. This is extended to the transferred territories, by Section 61. Provisions contained in Section 4 are- extended to raiyats u/s 52. This again had been applied to the transferred territories by Section 61 of the Act. That being the state of affairs, the authority issuing the notification must recite all the provisions which "together" confer the power to take over such interests. I cannot accept the argument of Mr. Dutt that separate notifications under Sections 4 and 61 in one case and, separate notification under Sections 61 and 52 and Section 4 in the other case is at all- necessary. One combined notification, reciting all the sections indicating the source of power, is enough to satisfy the procedural requirements. This argument, therefore, of Mr. Dutt on procedural defects in the notifications and the proclamations must also fail.

28. This brings me to the end of the matter except one point. This point relates to an application; for the amendment of the petition by adding another ground being ground No. XIV which is as follows:

For that your Petitioner not being an intermediary, or a raiyat with respect to the Kashipur Hat and with respect to the land in question, the West Bengal Estates Acquisition Act, 1953, cannot be made applicable to such lands under

the .purported notification dated the 17th February, 1964, which is made annexure "A" to the main petition. The act of the Respondents amounts to deprivation of the property without authority of law and infringes the fundamental rights of the Petitioner guaranteed by Article 31(1) of the Constitution of India.

This amendment cannot be allowed having regard to the Supreme Court decision. There is also another application in the appeal under Order 41, Rule 27, whereby it is said that the additional evidence should be taken in the appeal. The additional evidence is the discovery of a notification dated November 6, 1951, published" in the Bihar Gazette Extra-Ordinary on Thursday, November 15, 1951. It was supposed to state that the property of the Panchkote Raj including Devi Mata comprising-the subject-matter of the present -Rule vested in the State of Bihar under .the provisions of the Bihar Land Reforms Act, 1950. Therefore, it came under the provisos to Section 61. I have said enough to state that verifier the proviso to Section 61 of the-West Bengal Estates Acquisition Aid and otherwise and specialty having regard to the effect of the repeal of the Bihar Land Reforms Act, 1950, this is a point of no substance.

29. The applications of amendment and for additional evidence must therefore be dismissed.

30. For the above reasons, the appeals, are dismissed. There will be no order as to costs.

31. The" operation of this judgment and order will remain stayed for four weeks from today as prayed for.

B.C. Mitra, J.

I agree but Avill like to add a few words of my own.

33. The subject-matter of challenge in the writ petition out of which this appeal arises were three notifications and two proclamations issued by the State of West Bengal.

34. The Appellant is the family deity of Panchkote Raj Estate and, as such, held certain lands as intermediary in Purulia which was previously in the district of Manbhum in Bihar. On September 1, 1956, the Bihar and West Bengal (Transfer of Territories) Act, 1956, (hereinafter referred to as the Central Act) came -into force. By Section 3 of this Act, major part of Purulia was transferred to West Bengal from November 1, 1956. Section 43 of this Act provided that notwithstanding such transfer, until otherwise provided by a competent Legislature or other competent authority, the laws then applicable to the transferred territory would continue to remain applicable to such territory. On the. date of the transfer the Bihar Land Reforms Act, 1950, which provided for vesting of certain categories of intermediary. interest in the State, was in force in the. territory so transferred to West Bengal, by virtue of Section 43 of the Central Act, the provisions of the Bihar Act continued to be applicable to the

transferred territory of Purulia.

35. On September 24, 1958, the West Bengal Transferred Territories (Assimilation of Laws) Act, 1958, came into force and u/s 3, of this Act, the provisions of the Bihar Act were kept in force for the transferred territories-including the district of Purulia. Thereafter, applying the provisions of the Bihar Act, the State of West Bengal issued a proclamation u/s 3B thereof for taking over the intermediary interest in the transferred territories of West Bengal.

36. Thereafter; the "West Bengal" Act XL of 1963 came into force and by its provisions the West Bengal Estates Acquisition Act, 1953, was amended by introducing a new chapter; namely chap. VIII consisting of two sections, namely Sections 60 and 61. Section 60 provided that the provisions of the newly incorporated chapter shall "come into" force on such date and in such area of the transferred territory as the State Government may, by "a notification, appoint. Section 61 provides that on issue of a notification u/s 60 the Bihar Land Reforms Act, 1950, shall stand, repealed and; the provisions of the foregoing chapters of the West Bengal Estates Acquisition Act shall mutatis mutandis apply, to the area in respect of which the notification u/s 60 was made

37. On February 17, 1964, the State of West Bengal issued a notification u/s 60 of the West Bengal Estates Acquisition Act appointing March 1, 1964, as the date on which the provisions of chap. VIII of the Act should "come into" force in all the territories transferred from Bihar to the State of West Bengal. This was followed by two other notifications both dated March 10, 1964, u/s 4(1) read with Section 61 and Section 52 of the West Bengal Estates Acquisition Act, whereby the State decided that with effect from Baisakh 1, 1371 B.S. corresponding to April 14, 1964, all the estates and rights of every intermediary, as also the lands held by raiyats and under-raiyats together with their rights therein in the district of Purulia, shall vest in the State. These notifications were followed by two proclamations issued by the Collector of Purulia respectively u/s 10(1) of the Estates Acquisition Act and r. 6(1) of the West Bengal Estates Acquisition Rules, 1964. The Appellant feeling aggrieved by the notifications and proclamations mentioned above, obtained a Rule nisi in an application under Article 226 of the Constitution, which was discharged by a judgment and order dated December 14, 1971, which is the subject-matter of this, appeal.

38. The first point canvassed by Mr. Arun Dutt for the Appellant was that the delegation of legislative power to the State Government by Section 60 of the West Bengal Estates Acquisition Act was invalid. It was argued that chap. VIII of the West Bengal Act was to be brought into force by a notification in the Official Gazette to be issued by the State Government. This it was submitted, was in effect legislation for the transferred territories by executive notification. It was argued that such delegation of legislative power to the State Government was not permissible, and since the West Bengal Estates Acquisition Act was purported to be made effective and applicable to the transferred territories by the notification contemplated by Section 60 of the West Bengal Act, the

subsequent notifications and proclamations made by the State Government were invalid inasmuch as the West Bengal Estates Acquisition Act was never validly brought into operation so far as the transferred territory , was concerned.

39. It seems to us that there is no merit in this contention of the Appellant for more than one reason. In the first place, the competence of -the State Legislature to enact the West Bengal Estates Acquisition Act cannot be questioned or challenged, and if the Legislature is competent to make the enactment, it is equally competent to amend the Statute which it has passed. If, as in this case, the Legislature provides that the amended section will come into operation, so far as the transferred territory is concerned, on a particular date, it can by no means be said that this process is legislation by-executive fiat, namely, the notification contemplated by Section 60 of the Act. It is to be noticed that, the transfer of territory from Bihar to West Bengal is not challenged so that, admittedly, the territory in question is a part of West Bengal; and that being so, the West Bengal Legislature is quite competent to legislate for such transferred territory. If by such legislation it is provided that a particular enactment or particular sections of a Statute, as in this case, would apply to the transferred territory upon a notification being issued by the State Government, it cannot, in our opinion, be said that the State Government by issuing a notification in exercise of powers conferred upon it by the Legislature was not carrying out the mandate of the State but was in effect legislating for the transferred territory.

40. A question identical to the one discussed above came up for decision before the Judicial Committee in *The Queen v. Burah* (Supra). The facts in that case are as follows: In 1869, the Indian Legislature passed an Act purporting to remove the Garo Hills district from the jurisdiction of civil and criminal Courts and from the control of the Revenue officers and, secondly, to vdst the administration of civil and criminal justice in such officers as; the "-Lt: Governor of Bengal might from time to time appoint. This Act was td come into operation" on such date as the Lt. Governor by ""notification in the Gazette direct. The Act also provided that the Lt; Governor might from time to time by notification the Gazette extend; mutatis mutandis, all "Or any of the provisions in the "Act to the Jaintia Hills, the Naga Hills and such portris of the "Khasi Hills as might; form part of British India. The Lt. Governor by a notification fixed the time at, which the Act should come, into operation in the Garo Hills and by a subsequent, notification-extended the provisions of the Act to Khasi and Jaintia Hills. Under .this Act, a person named Burah and another person .were tried; on a charge of murder by the Deputy Commissioner, of Khasi and Jaintia Hills. They were convicted and sentenced to death., They appealed to this. Court, and by a majority judgment this Court decided that the case fell within the appellate jurisdiction of this. Court. From this decision, the matter went up" in appeal to the Judicial Commit-; tee. One of the points raised at the hearing of the appeal was that the Governor-General in Council had. no legislative competence to remove any place or territory from the jurisdiction of the High Court at Calcutta. This contention was rejected! The next question was whether the Governor-General in Council by

legislation could remove a particular district from the jurisdiction, of the ordinary Court and place it under new Courts to be appointed by the Lt. Governor of Bengal leaving it to the Lt. Governor to say at what time the change should take place and also enabling him to apply any law by notification to that district. Dealing with this question, the Judicial Committee held that the Legislature determined that a certain change should take place, but that it was, expedient to leave the time and manner of carrying the change into effect to the discretion of the Lt. Governor. It was also held that the Legislature was not certain that all the laws could with equal convenience be so applied to all the excluded territories and it was expedient to entrust a discretion to the Lt. Governor. It was further held that the Legislature had decided that it was fit and proper that the adjoining district of Khasi and Jaintia Hills should be removed from the jurisdiction of the existing Court and brought under the same provisions with the Garo Hills, but if and when the Lt. Governor should think it desirable to do so, and further that it might be expedient that not all but some of the provisions should be applied to the adjoining districts and, accordingly, the Legislature entrusted a discretionary power to the Lt. Governor. It seems to us that this decision of the Judicial Committee is a complete answer to the contention of the Appellant that there was delegation of legislative power to the executive Government and, therefore, the application of the West Bengal Estates Acquisition Act and, in particular, provisions in chap. VIII thereof is invalid.

41. Reliance was placed on behalf of the Appellant on a decision of this Court in *Sachindra Mohan Nandi and Ors. v. State of West Bengal* 6 Ors. (Supra). In that case, an order of requisition of land in Chandernagore was challenged on the ground that the West Bengal Land (Requisition and Acquisition) Act, 1948, had not been introduced in Chandernagore. It was argued that in that case Section 17 of the Chandernagore Merger Act, 1954, did not have the effect of introducing the West Bengal Land (Requisition and Acquisition) Act, as it was not an Act which could be said to be generally enforced in West Bengal. This contention was rejected by my Lord the Chief Justice (P.B. Mukharji J. as he then was) and it was held that the West Bengal Act was an Act which was generally applicable to the whole of West Bengal. It was further argued that as the West Bengal Act was limited in area and also, in time, it was outside the purview of Section 17 of the Chandernagore Merger Act, 1954. This contention was also rejected on the ground that, if a temporary statute as distinguished from a permanent one would be an Act which was "generally" applicable as it applied generally without exception and that shortness of duration did not affect the question of generality of the application of the Statute so long as it lasted! It was finally held that "the West Bengal Act was a general law applicable immediately before the appointed date to the whole of West Bengal and this Act applied to Chandernagore on its merger with West Bengal. This decision went up in appeal to the Supreme Court and was upheld. The decision of the Supreme Court in *Sachindra Mohan Nandi and Ors. v. State of West Bengal* (Supra) and was upheld.

42. Reliance was next placed by Mr. Dutt on a decision of the Federal Court in

Jatindra Nath Gupta v. Province of Bihar (Supra). In that case, an Act of the Bihar Legislature, namely, the Bihar Maintenance of Public Order Act, came into force on March 15, 1947, extending it to the whole of the province. It was provided that the Act should remain in force for a period of one year from its commencement and that the Provincial Government might, by notification on a resolution passed by the Bihar Legislative Assembly and agreed to by the Bihar Legislative Council, direct that the Act should remain in force for a further period of one year. With such modifications, if any, as might be specified in the notification. By a subsequent notification the Bihar Government, directed that the Act should apply to the partially excluded area of Chotanagpur Division. Shortly before the expiry of the Act, the Provincial Government, on a resolution passed and agreed to by the two Houses of Legislature, extended the duration of the Act for a further period of one year upto March 15, 1948. No notification, however, was issued applying the extended Act to the partially excluded area. On the strength of the extension of the Act, a number of persons were arrested in Chotanagpur Division and orders were issued for their detention. Applications were made to the Patna High Court u/s 491 of the Code of Criminal Procedure for their release, and pending the hearing of these applications the Governor directed that the Act should apply and should always be deemed to have applied, to the partially excluded area after March 16, 1948. On March 15, 1949, the Act was amended, by substituting the words "till March 1950" for the words "for a period of one year from its commencement" in Sub-section (3) of Section 1 of the Act. Subsequently, the Governor applied the amended Act to the partially excluded area. The said applicants challenged the detention orders mainly on the ground that the proviso to the Bihar Act was invalid and the subsequent extension of the Act to the partially excluded area was not lawful and the Act was not legally in operation in Chotanagpur Division. It was held that the Provincial Legislature could not delegate to the Provincial Government acting on a resolution of the two Houses of Legislature, the right to extend the duration of and to modify the "Act passed by the Legislature, because these were legislative powers and not executive or administrative powers and also that the delegate was an authority outside of a body that is invested with legislative powers by the Government of India Act. It was also held that the power to extend the life of the Act was a legislative power" and exercise thereof was an Act of legislation and hence it could not be delegated. This decision to our mind is of no assistance to the Appellant in this case, because there is no question involving extension of the life of a statute beyond the specified period, nor is there any question of the extension of the Act upon a resolution of the two Houses of Legislature which is not the Legislature itself. All that the Legislature has done in this case, is to provide in Section 60 of the Act that chap. VIII would come into force on such date and in such area of the transferred territory as the State Government by notification might appoint. There is no question of exercise of legislative power by the State Government. The only question is that it is for the State Government to decide when the Act would come into force and in what area. These two are the matters in which the Legislature in enacting Section 60 of the

Act had applied its mind and in its own wisdom thought it fit to leave it to the State Government to determine the date and the area. It is to be remembered that Section 43 of the Bihar and West Bengal (Transfer of Territories) Act, 1956, provided" that the territorial reference in such law to Bihar and West Bengal should, until otherwise provided by a competent Legislature or other competent authority, be construed as meaning the territories in that State immediately before the appointed date. The Central Act, therefore, made clear provisions that the Bihar Act should apply to the transferred territories until the West Bengal Legislature made other provisions regarding such transferred territories in exercise of its legislative power. That is precisely what has been done in this case. The impugned notifications and proclamations were issued under the Bihar Act which undoubtedly applied to the transferred territory and,, thereafter, the West Bengal Legislature introduced Sections 60-and 61 in the West Bengal Estates Acquisition Act, 1953.

43. Reliance was next placed by Mr. Dutt on another decision of the Supreme Court, *Rajnarain Singh v. Chairman, Patna Administration Committee* (Supra). In that case, it was held that an executive authority could be authorised to modify existing or future laws but not any essential feature, that is to say, it could not affect any change of policy. It was also held that a section of an Act could be picked up and applied, but such application could not be made in such a manner as to affect any change of polity or any essential change in the Act regarded as a whole. It was also held that the notification extending Section 104 of the Bihar and Orissa Municipal Act to Patna village area effected a radical change in the policy of the Act and the Governor's action in subjecting the residents of Patna village to municipal taxation, cut across one of the essential features touching a "matter; of policy and therefore the notification traveled, beyond the authority which Section 3(1)(f) of the Act conferred and was -ultra vires. This decision again is of no assistance to the Appellant in this; case, because there is no question of .change of policy involved in the notification issued by the State Government. Now is there any question of picking out a particular section of a statute and making it, applicable to the transferred territory. The statute as a whole was to be applied to the transferred territory which, undoubtedly- form part of West Bengal and, u/s 1(2). of the West Bengal, Act, the statute extends to the whole of West Bengal except certain areas mentioned in the Calcutta Municipal Act. Reliance-was also .placed on another decision of the Supreme Court in *Re Article 143 Constitution of India and Delhi Laws Act* (Supra). This decision again is entirely against the Appellant's contention, in this appeal, as it was held firstly that the executive authority could select and apply a provincial Act already in existence in any part of the province and also that the executive authority could select future Central laws and apply them to any part of India. It was only in the case of authorisation to repeal laws already in force in an area and either substitute nothing in their place or substitute other laws with or without modification and that it was held that such authorisation was ultra vires. In this case, it is to be noticed that the Legislature itself has repealed the Bihar

Act .so far as the transferred territories are concerned and there is no question of repealing an existing Act by executive fiat. Reliance was next placed by Mr. Dutt on *Jalan Trading Company Pvt. Ltd. v. Mill Mazdoor Sabha* (Supra). In that case, it was" held that Section 37 of the Payment of Bonus Act, 1965, which authorised the Central Government to?: provide by an order for removal of doubts and difficulties in giving effect to the provisions of, the Act, was delegation of legislative power which was not permissible. We do not see Oaf application of this principle to the facts in the appeal before us. The next case relied upon by Mr. Dutt was *Shamdrao v. Union Territory of Pondicherry* (Supra). In" that case," the provisions in the Pondicherry General Sales Tax Act, which extended the Madras General Sales Tax Act, as it stood immediately before the date on which the "Pondicherry Act would be brought into force in the territory of Pondicherry by a notification issued by the Government was held to be void, because the Pondicherry Legislature in enacting the Act had totally, abdicated its legislative powers in the matter of sales tax legislation. The Pondicherry Act not only adopted the Madras Act hut. also provided that the Act applicable to Pondicherry should be the Act as amended in future by the Madras Legislature and, in fact, the Madras Act was amended, and it was the amended Act which was brought into operation in Pondicherry. It was in these facts, that it was held that the Pondicherry Legislature had abdicated its powers and the notification was held to be ultra vires. In our opinion, no such question is involved in this appeal and there is no question of the Act passed by the Legislature of one State being, applied to another State with amendment made by the former.

44. The last case to be referred to is a decision of this Court: *Gour Gopal Mitra and Ors. v. The State of West Bengal* if Ors. 6 C.W.N. 12. In that case, my Lord the Chief Justice (P. B. Mukharji" J. as he then was) held that u/s 6(5) of the West Bengal Estates Acquisition Act the intermediary had a right, even after the prescribed time limit had expired to make a claim for retention of land u/s 6(l) (c), (d) & (j) of the Act so long as he had not parted with the possession of his lands. This decision was relied on by Mr. Dutt in support of his contention that although the time limit had expired for submitting the B Form for retention of land, his client could still exercise the right under the Act. This submission,, however, is inconsistent with the principal contention of the Appellant that the West Bengal Act did not apply to the State on the ground that Sections 60 and 61 of the Act are bad on account of delegation of legislative power to the executive.

45. In my opinion, the Appellant"s contention cannot be upheld. The authorisation made by the Legislature in favour of the State Government to bring into force chap. VIII of the West Bengal. Act by a notification on such dates and with regard to such area., as the State Government may appoint, cannot be said to be a delegation of legislative power by the Legislature to the executive. This position has been made amply clear by the Judicial Committee in *The Queen v. Burah* (Supra). All that has been left to the executive to determine is the date on which and the areas with, regard to ;which chap. VIII of the Statute will come

into force. The, principles relating to invalid delegation of legislative power, to the .executive and the; principle"s of abdication or surrender of legislative, power by the Legislature, of a State in favour of the executive, in my view, have, no application to the facts .in this appeal. The transferred territory admittedly became part of West Bengal u/s 3(b) of the Bihar and West Bengal (Transfer of Territories) Act, 1956. Secondly, the West Bengal Estates Acquisition Act, 1953, extends to the whole of West Bengal except certain specified areas u/s 1(2) of the Act. u/s 43 of the Central Act, the Bihar statute applied to the district of Pirulia until the West Bengal Legislature amended the West Bengal statute by introducing chap. VIII to that statute. The competence of the West Bengal Legislature to legislate for the transferred territories cannot be questioned, and indeed it has not been questioned in this appeal. The West Bengal Legislature amended the West Bengal statute by introducing Sections 60 and 61 therein and by Section 61, Bihar Land Reforms Act, 1950, was repealed and all the provisions in the West Bengal statute were made applicable to the transferred territories mutatis mutandis. The, West Bengal Legislature decided that the West Bengal statute should apply to the transferred territories and. it also decided that the date on which", and the areas with regard to which, the West Bengal statute would apply to the transferred territories, would be decided by the State Government. The provision in Section 60 of the West Bengal statute, in my view, is not delegation of legislative power to the State Government.

46. There is, however, one more formidable ground.-on which the Appellant"s contention must be rejected. According to the Appellant, Section 60 being bad on the ground of delegation of legislative power, the West Bengal statute does not apply, to the transferred territories. Further, according to him, the Bihar Land Reforms Act, 1950, continues to apply to the transferred territories, having regard to" the provision in Section 43 of the Central Act. If this view is to be upheld, it must be held that the interest- in the land in the transferred territories would be vested in the State of Bihar even after the transfer of territory to West Bengal u/s 3 of the Central Act. In other words, according to the Appellant, since"the Bihar statute applied to the transferred territories arid since the Bengal statute did not apply to such territories, the interest in land would continue to remain vested in the State of Bihar, even after the transfer of such territories to "the State of West Bengal. "This would inevitably imply that the State of Bihar would continue to have vested in itself the interest in land which has been validly transferred to the State of West Bengal, and further that the State of Bihar would continue to enforce the provisions of the Bihar statute in land which has been transferred by the Central Act to the State of West Bengal. This, in my view, is an altogether untenable proposition. There is no provision in any law that I know of, which enables one State of the Union of India to hold interest in land which is admittedly situated within the boundary of another State. In my view, it cannot, by any means or method, be held that the State of Bihar would have vested in it the interest in land which has been validly transferred to the State of West Bengal and even after such transfer the former State would continue to enforce

the provisions of the Bihar statute within the territorial limits, of the State of West Bengal. , 47. Mr. Soumen Bose for the Appellant in F.M.A: 44 of 1972 supported Mr. Dutt, but in doing so, he advanced an argument which to an extent militated against the contention of Mr. Dutt. Mr. Bose argued that Section 60 of the West Bengal Estates Acquisition Act was good and valid and it could not be assailed on the ground of delegation of legislative power. But he next argued that Section 61 of the Act was bad on the ground of delegation. In support of this contention he relied on the decision of the Supreme Court in Rajnarain Singh v. Chairman, Patna Administration Committee (Supra) on which Mr. Dutt had also relied earlier. In particular, Mr. Bose relied upon the analysis made of the Supreme Court's decision in Delhi Laws Act case (Supra (573)). He referred to Clause (5) of the analysis which is as follows:

(5) Where the authorisation was to repeal laws already in force in the area and either substitute nothing in their places or substitute other laws,. Central or Provincial,, with or without modification. This was held to be ultra virus by a majority of four to three.

48. It seems to us that there is no merit in" this contention. The authorisation, in this "case, is neither-for the purpose of repealing/an existing law nor does it/ enable the State Government; to substitute the West Bengal Estates Acquisition Act. The, mandate for appeal of the Bihar, Act and application of the West Bengal Act is-a mandate of the West Bengal Legislature. The State Government !has not been authorised by notification either .to repeal the, Bihar Act or to introduce, and apply the West Bengal Act in the transferred territories. All that the State Government has been authorised to do is to publish a notification specifying different dates with regard to different areas in which the West Bengal Act would come into force, and as soon as such a notification is published, then by operation of the statute itself and not by reason of the notification, the Bihar Act is to stand repealed and the West Bengal Act is to apply. It is to be remembered that in the Delhi Laws Act's "case (Supra) the Central Legislature had empowered an executive authority under its legislative control to apply, at its discretion, laws to an area which was also under the legislative control of the Central Government.

49. The second infirmity in Mr. Bose's contention is that, according to him, Section 60 of the West Bengal Act is not open to attack on the ground of delegation and that" being so the State Government can, according to him, lawfully publish the notification contemplated by that section. If the State Government can validly issue the notification, then under the mandate of Section 61, the Bihar Land Reforms Act stands repealed and the provisions of the West Bengal Estates Acquisition Act applies to the transferred territories. As soon as the notification is published by the State Government the statute by its own force repeals the Bihar Act and brings into operation the provisions of the West Bengal Act. The authorisation, in this case, does not enable the State Government to apply, at its discretion, any law which was not in force in the transferred

territories. It merely enables the State Government to make a notification, and on such notification being made, the mandate of the Legislature comes into operation.

50. For the reasons mentioned above, I concur in the order made by my Lord.

51. As the points in this appeal and also in F.M.A. 43 of 1972, F.M.A. 44 of 1972, F.M.A. 45 of 1972 and F.M.A. 46 of 1972 are the same except the submissions made by Mr. Bose in F.M.A. 44 of 1972, which have been dealt with by me in this appeal, and no fresh arguments were advanced with regard to these appeals, I concur in the order made by my Lord.

52. This is an application for amendment of the writ petition in F.M.A. 42 of 1972. Mr. Das Gupta opposing the application submitted that the notification, which is sought to be introduced by the proposed amendment, does not include the estate of the applicant, as the touzi numbers are entirely different from the touzis which were involved in the writ petition.

53. In that view of the matter, quite apart from the fact that such an amendment involving questions of fact cannot be allowed at this stage, the application must be dismissed and we order accordingly.

54. This is an application under Order 41, Rule 27 of the CPC for admission of additional evidence. We are not satisfied that the evidence sought to be adduced is required to enable us to pronounce judgment in this appeal or that there is any other cause for admission of the additional evidence. This application is, therefore, dismissed. There will be no order as to costs.