

**(1955) 01 GAU CK 0005****Gauhati High Court****Case No:** None

Bhoirabendra Narayan

APPELLANT

Vs

State of Assam

RESPONDENT

**Date of Decision:** Jan. 21, 1955**Acts Referred:**

- Constitution of India, 1950 - Article 228
- Criminal Procedure Code, 1898 (CrPC) - Section 432

**Citation:** AIR 1955 Guw 154**Hon'ble Judges:** Sarjoo Prosad, C.J; Deka, J**Bench:** Full Bench**Final Decision:** Allowed

### **Judgement**

Sarjoo Prosad, C.J.

This is an application under Article 228 of the Constitution of India, in which the petitioner, who is the plaintiff in the suit, has prayed for transfer of Title Suit No. 27 of 1954, pending before the Subordinate Judge at Dhubri, to this Court.

2. It appears that on 21-7-54, a notification was issued by the State Government, which is the opposite party to this application and defendant in the above suit, to the effect that the estate of the petitioner would vest in the State Government from 15-4-1955, by virtue of the provisions of the Assam State Acquisition of Zamindaris Act, 1951 (Act 18 of 1951). Substantially, the petitioner's case is that the Act in question is "ultra vires" the Constitution, being in conflict with some of its provisions; and, in the alternative, the petitioner claims that even if the Act is held to be valid, it would not affect the estate of the petitioner and, therefore, the notification issued by the State Government cannot prejudice his interest. It is accordingly alleged that the said suit instituted by the petitioner in the Court of the Subordinate Judge at Dhubri involves substantial questions of law as to the interpretation of the Constitution, and that the determination of the said questions

is essential for the disposal of the case.

3. The application for transfer is opposed by the learned Advocate General on behalf of the State Government. The learned Advocate General points out that although there may be substantial questions of law as to the interpretation of the Constitution involved in the suit, those questions may not be necessary for the disposal of the suit, and, as such, this Court should not transfer the case from the file of the learned Subordinate Judge to its own file. The learned Advocate General states that so far no written statement has been filed in the suit and no issues have been settled; and it is, therefore, premature at this stage to find out whether or not the case will be concluded by certain other points raised therein. If those other points are decisive of the case, then it would be wholly unnecessary to adjudicate upon the constitutional questions raised therein.

In support of his argument, the learned Advocate General has relied upon a decision of the Patna High Court in -- State of Bihar Vs. A.F.A. Hamid, given by Das J., as he then was, sitting singly. In that case, Das J. observed that if the case could be disposed of on the other questions raised, then Article 228 would not apply, and the High Court would not act till this point was clear and would wait for the other issues to be decided in the case. The observations, taken broadly, may raise serious difficulties in the application of Article 228 of the Constitution; because, if the High Court has to wait until all the other issues have been decided, then the case cannot be transferred until a decision has been given by the Court before which the suit or the case is pending. In other words, the suit cannot be transferred at all. It may be that some of the other issues may be as decisive of the case as the Constitutional questions involved. Yet all those issues will be substantial issues, the decision of which would be necessary for the disposal of the suit.

It is well known that piece-meal trial of suits is not encouraged unless in rare cases to cut short litigation where the decision on a preliminary point of law may determine the whole suit; and it cannot be argued that, in preference to the other issues decisive of the case, the Constitutional issues involved would be of minor or inferior importance. I should think, however, that the decision of Das J., in the case in question may be justified on its own facts. It arose out of a criminal case, in which there was some question involved about the validity or vires of the Bihar Mica Act, 1947. The accused in that case had been convicted by the trial Court for an offence under the said Act, and an appeal was pending against the order of conviction, before an Additional Sessions Judge. It was at that stage that an application was moved for transfer of the hearing of the appeal to the High Court under Article 228 of the Constitution.

The application was opposed by the accused who did not want such a transfer and pleaded that he might be acquitted on the facts of the case. Yet the Government insisted that the case should be transferred to the file of the High Court, and, in dealing with the matter, Mr. Justice Das pointed out that it was somewhat of a

paradox in the case that the contentions which were raised by the accused were being pressed by the learned Government Advocate before the High Court for its consideration in order to effectuate the transfer, while the accused was opposing the transfer application. In those circumstances, the learned Judge felt justified in not transferring the case at all, and the observations broadly put there, which have been relied upon by the Opposite Party before us, if understood in the light of the context, cannot be extended beyond the facts in question.

4. A reference was also made to a decision of the Madras High Court in -- Ramaswami Ambalam Vs. The Madras Hindu Religious Endowments Board and Others, which is another single Judge decision. That case, however, does not very much support the contention of the learned Advocate General. It was pointed out there that if the suit could be disposed of on the other questions raised (like limitation, non-maintainability by a single person when a representative suit has to be filed under the law, etc.), Article 228 would not apply. It was further pointed out that usually the High Court would not act till this point was clear, and would wait for the other issues to be decided. By other issues, in all probability, the learned Judge meant preliminary issues of the nature indicated by him, and I agree that, in special cases of that nature, it may perhaps be desirable to stay one's hands before acting under Article 228; but, as I have said, I am not prepared to go to the length of holding that the High Court should wait until all the other issues had been decided. In that case, the object of the transfer under Article 228 of the Constitution would be rendered ineffective.

It is, however, important to note that in the Madras case, the learned Judge actually allowed the prayer for transfer of the case under Article 228 of the Constitution. In so far as the Patna decision goes, it may be also pointed out that there is a specific provision u/s 432, Criminal P. C. under which, if a Court was satisfied that a case pending before it involved a question as to the validity of an Act, Ordinance, Regulation or of any provision contained therein, the determination of which was necessary for the disposal of the case, and the Court was of opinion that such Act, Ordinance, Regulation or provision was invalid or inoperative, but had not been so declared by the High Court, to which the Court is subordinate, or by the Supreme Court, -- the Court should state a case setting out its opinion and the reasons therefore, and refer the same for the decision of the High Court. Therefore, if the learned Additional Sessions Judge, who had been in seisin of the appeal, considered that a decision on the question of the vires of the Bihar Mica Act, 1947, was essential for the purpose of deciding the appeal, it was obligatory on his part to refer the point u/s 432, Criminal P. C, for the decision of the High Court. On those grounds, Das J., refused to act under Article 228 of the Constitution.

Different considerations, therefore, applied to the facts" in that criminal case, and it is no authority for the proposition which has been put forward by the learned Advocate General. Article 228 of the Constitution is mandatory and its object is to

obtain the decision of the highest Court in the State in view of the importance of Constitutional questions raised at the earliest opportunity, and no such narrow interpretation should be adopted which may defeat its purpose, specially when this Court otherwise also enjoys larger powers of the transfer of suits pending in Subordinate Courts. It is true that the State Government has not yet filed any Written Statement in the case. But the frame of the issues will depend largely upon the allegations made in the plaint, generally the plaintiff having the initiative in the matter. As the plaint shows, the question of the validity of the legislation, namely, the Assam State Acquisition of Zamindaris Act, 1951 in its relation to the Constitution, is a substantial question of law which arises for disposal in the case and which, in our opinion and as at present advised, appears to be necessary for its disposal.

5. In these circumstances, we think that it would be desirable to grant the prayer of the petitioner and to transfer the case -- Title Suit No. 27 of 1954 pending in the Court of the Subordinate Judge at Dhubri -- to this Court. The Rule is accordingly made absolute.

Deka, J.

6. I agree.