Gangarani Bera and Others Vs State of West Bengal and Others

Court: Calcutta High Court

Date of Decision: Dec. 24, 1986

Acts Referred: Constitution of India, 1950 â€" Article 14
General Clauses Act, 1897 â€" Section 6
West Bengal Land Reforms Act, 1955 â€" Section 1, 50, 50A, 51, 51A

Citation: 91 CWN 882

Hon'ble Judges: S. Ahmed, J

Bench: Single Bench

Advocate: B.S. Manna in C.O. Nos. 10946W and 10948W of 1985, B.C. Bagchi and Raj Grihi Ram in C.O. No. 10947W of 1985 and Ashok Maity in C. R. No. 81W of 1982, for the Appellant; Nirmalendu Patra, S. Gupta, genl., Manjuri Gupta and Abhas Dasgupta for State and K.K. Moitra and A.K. Das for Amicus Curiae, for the Respondent

Judgement

S. Ahmed, J.
On these matters 10948(W) of 85 was disposed by order dt. 27.11.86. The case of the petitioners in 10946(W) of 1985

and 10947(W) of 85 in brief is that the petitioners are the owners in respect of the lands described in the respective petitions. They are cultivating

the lands themselves. There were no bargadars on the said land. During the preparation of record of rights under the provisions of the W. B. L. R.

Act the names of the petitioners were rightly recorded in respect of the disputed land as owners in khas possession. Upto the attestation stage

nobody claimed any right of bargadarship on the aforesaid land. Petitioners received notice from the Revenue Officer directing them to appear

before him with necessary documents. The notices are annexures "B" in both the applications. The petitioners contended that once attestation has

been made the Revenue Officer has no right to make any further entry before publication of draft record of rights. The Revenue Officers concerned

are not officers with the additional designation of Settlement Officers, accordingly they have no power to act under second proviso to rule 1 of

Schedule A of rule 22 of West Bengal L.R. Rules. Accordingly, the said notice was without jurisdiction. The petitioners have come for quashing

the said notice. The petitioner"s case in C.R. 81(W) of 82 is that he is the recorded raiyat in respect of the disputed land. There has been a

notification u/s 51 for preparation and revision of record of rights in 1978. After attestation was completed he was given a copy of the revised

record duly prepared. Petitioners came to know that a barga certificate has been issued in favour of the private respondents on 29.4.81, even

though in fact there was no bargadar on the land in question. Section 50 read with rule 21(l) provides for maintenance of record of rights by a

Revenue Officer specially empowered. It has been contended that after notification u/s. 51, Sec. 50 has no application. On 19th September 1978

Schedule A to rule 22 of the West Bengal Land Reforms Rule was amended which provided that Revenue Officer exercising power u/s. 51 may

on an application or suo moto record the name of bargadars after giving the owner an opportunity of being heard and holding spot enquiry. The

petitioners claimed that before recording the name of the private respondents as bargadars no notice was served upon him. It has also been

asserted that under second proviso to rule 1 of Schedule A that only the Revenue Officer with additional designation of Settlement Officer may

exercise power under the said proviso. In the present case there has been no cancellation of the record-of-rights by the Revenue Officer with

additional designation of Settlement Officer; therefore, the Revenue Officer concerned had no jurisdiction to revise the record of rigthts. It is also

stressed that the rule making power conferred by section 60 of the W. B. L. R. Act does not authorise the rule making authority to make such a

rule which was clearly beyond the scope of the Act. The vires of Clause (iii) of the second proviso has also been challenged being beyond the

scope and the purpose of the West Bengal Land Reforms Act, On these facts the petitioners have prayed for writ of Mandamus commanding the

respondents to forbear from giving effect to the barga certificate granted in favour of the respondents. The opposite party State and private

respondents have appeared. The private respondents have filed an application for vacating interim order of injunction. In the said application they

have asserted that the notice was duly served on the petitioners and the steps taken by the Revenue Officer in granting barga certificate was strictly

in accordance with law. Notices were duly received by the petitioners and they were present in the local enquiry held. This has been treated as

affidavit-in-opposition.

2. Before entering into merits of the case in these three matters, a new question cropped up because of enactment of section 51B by West Bengal

Land Reforms Amendment Act 1981 (W. B. Act L of 1981) which has come into effect on 24.3.86. In sub-sec. (2) of sec. 1 of the said

Amending Act it has been provided that the provisions of this Act shall be deemed to have come into force on 7th day of August, 1969, unless the

context of any provision otherwise indicates. Section 51B has substituted old section 51B. It runs thus : ""51B revision or correction of entry in

record of rights :- i) Any Revenue Officer specially empowered by the State Government in this behalf may, on an application or on his own

motion, at any stage of revision or preparation of the record of rights under this Chapter but before final publication of any such record of rights,

revise or correct any entry in such record of rights after giving the persons interested an opportunity of being heard and after recording the reasons

therefor provided that any order made under this sub-section shall be appealable in accordance with the provisions of sub-section (5) of Section

51A"". It is clear from this provision that powers have been given to the Revenue Officer specially empowered to revise or correct any record of

rights at any stage of revision or partition of the record of rights but Before final publication. Only conditions imposed are that the persons

interested must have an opportunity of being heard and the officer concerned must record his reasons therefor. The order thus passed has been

made appealable u/s 51A(5). By the said Amending Act the Chapters for preparation or revision of record of rights has been re-numbered as

Chapter VII A. New section 50A has been incorporated which provides that section 50 will not apply where Chapter VIIA has come into force

for the purpose of revision or preparation of record of rights but section 50 shall apply to any land in any such district or part of such district after

final publication of any such record of rights u/s. 51A deals with revision or preparation of record of rights. Sub-section (1) lays down that the

State Government may make an order directing the record of rights in respect of any district or part thereof be revised or prepared by a Revenue

Officer in accordance with provisions of this Chapter and such rules as may be made by the State Government in this behalf. In exercise of this

power rule 22 has been framed. It provides that the record of rights be revised or prepared u/s. 51 in the manner laid down in Schedule ""A

appended to these rules. For our present purpose rule 1 of Schedule ""A"" is relevant. It lays down the process by which the record has to be

revised or prepared. It has enumerated 8 such processes. Proviso 1 to the said rule lays down that items (i) to (v) may be omitted or amalgamated

with another with previous permission of the State Government. Second proviso as it stands now to this rule was substituted for the old second

proviso by a notification dated 2nd May 1981. The controversy raised in this case revolves round this proviso. It states that a Revenue Officer

who has been appointed with the additional designation of Settlement Officer may either on his own motion or on receipt of application from others

at any time before final publication of the record of rights direct - (i) cancellation and preparation of do-novo record of rights from such stage as

may be directed; clause (ii) provides that the names of bargadars shall be incorporated in the record of rights by the Revenue Officer subordinate

to him after holding such enquiry and after giving the persons claiming as bargadars and the owners of the land concerned such opportunity of

being heard as the Revenue Officer may deem fit. Clause (iii) further lays down that the persons claiming as bargadars and persons claiming as

owners of the land shall be deemed to have been given an opportunity of being heard as required under item (ii) if, within one week, before

enquiry, the Revenue Officer publishes a notice of his intention of enquiry by affixing a notice to a conspicuous place in the office of the Gram

Panchayat in whose jurisdiction the land affected is situated. This was the only provision by which a further revision of the records under

preparation would be made by a Revenue Officer with the additional designation of Settlement Officer prior to introduction of section 51B by

1981 amendment.

3. I will now consider the effect of section 51B on the second proviso to rule 1 of schedule A of rule 22. At the out set it may be noted that prior

to introduction of section 51B there were no provisions in the Act itself for further revision of a record of right under preparation until draft

publication and/or final publication was made. Section 51A(1) provided that after draft publication is made the Revenue Officer shall receive and

consider any objection which may be made during such period of any entry therein or to any omission therefrom. Sub-section (4) of the said

section also provides that any officer specially empowered by the State Government may on application within one year from the date of final

publication of the record of rights revise an entry in the record finally published in accordance with the provisions of sub-section (2) after giving the

persons interested an opportunity of being heard and after recording the reasons therefor. Sub-section (5) has provided an appeal against an order

passed under sub-section (4) section 51B which has been repealed provided for correction of any entry in finally published record of rights on his

own motion or on application within one year which according to him has been made owing to a bonafide mistake. This section now has been

deleted and new section 51B has been substituted. I have already referred to the provisions of section 51B. Section 51C has imposed a bar to

jurisdiction of civil court in respect of certain matters. This in a whole are the provisions of Chapter VII A, as far as it concerns us. Section 60 of

the said Act is another provision which is required to be reconsidered. It has empowered the State Government to make rules for carrying out the

purpose of this Act after previous publication. Section 60(2) lays down that the Rules so made shall have effect as if they were incorporated in this

Act, Rule 22 as well as Schedule A thereto has been made by the State Government in exercise of its power given by section 60.

4. I have already indicated that prior to substituted section 51B there was no provision in the Act itself enabling anybody to further revise the

record being prepared under Chapter VII before draft publication. The purpose of Chapter VII was maintenance and revision of record of rights.

Going through the section, I have already indicated above that the object of the whole exercise was to maintain the record upto date as well as to

revise or prepare the record of rights. Section 51 clause (i) clearly lays dawn that revision or preparation of the record of rights has to be made in

accordance with provision of Chapter now VII A and such rules as may be made by the State Government in this behalf. It is, therefore, clear that

the State Government is armed with the authority for framing rules laying down the manner in which the record has to be revised or prepared. Rule

22 of the West Bengal Land Reforms Rules has been framed in exercise of that authority. Schedule A is a part of the said Rule. When there was

no substituted section 51B the State Government was free to lay down the manner in which the record of rights is to be prepared. Until substituted

section 51B came into effect there was no question of lack of authority of the State Govt. to make the second proviso and lay down the rules as

contained in Schedule A. Section 60 gives power to the State Government to make Rules for carrying out the purpose of the Act. Such rules to be

framed by the State Govt. cannot be in derogation of or in conflict with the provisions made in the body of the Act itself. Substituted section 51B

has provided for further revision of the record of rights at any stage of its preparation or revision before final publication. On the face of it,

therefore, the State Govt. is not now competent to rely on the rules framed before section 51B came into force which related to the further revision

of record of rights at any stage of its being prepared or revised.

5. The learned Advocate General appearing for the State has submitted that new section 51B has given power to the Revenue Officer specially

empowered to revise or correct any entry in the record of rights. According to his submission this section does not provide for supplying any

omission. According to him only those entries which have been made can be revised or corrected but it any omission was there such as omission to

record the name of the bargadar, it cannot be made under the provision of section 51B; therefore, proviso 2 which has made provision for

incorporating the names of bargadars operated on a field not covered by section 51B. Drawing my attention to section 51A(l) he has submitted

that after draft publication has been made objection can be made to any entry made in the record of rights of which draft publication has been

made or to any omission therefrom. He stressed that the legislature has taken into consideration the entries"" which have been made and omission

which has been left out. Accordingly he submits that there is no conflict between substituted section 51B and the second proviso. On the other

hand, the learned Advocates appearing for the petitioners have submitted that substituted section 51B now holds the entire field of revision or

correction of entry in the record of rights at any stage of its preparation or revision.

6. The general rule of construction is that if reconciliation between a section and the rule made under the Act is not possible then the rule which is

subordinate provision must give way. No rule can be so framed as to be in conflict or in derogation of the statute under which it is framed. Let us

now consider if the second proviso to rule 1 of Schedule A is in derogation of the statute under which it is framed or it is in conflict with any

express provision contained in any section of the Act itself. The learned Advocate General"s submission is not acceptable to me as in my view

section 51B has given authority to the Revenue Officer specially empowered to revise or correct any entry. The expression revision is also there. It

does not say that the authority given only relates to correction of any entry made in such record. Revise in its ordinary sense means to look back to

what is already does not correct the same on review. So expression revision includes both correcting an entry which has already been made and

also by supplying an omission which is not there. It may also be noted in this connection the section 51 itself says that records are to be revised or

prepared. The rules framed thereunder make abundant provision for supplying the omission which was not in the record of rights finally published

before revision. Accordingly, with regards to the learned Advocate General I am unable to accept his contention.

7. Let me now examine if there is really any conflict between substituted section 51B and proviso 2 to rule 1 of Schedule A. Things are inconsistent

with each other when they cannot stand together at the same time. One law is inconsistent with another when the command or power or other

provisions in one law conflicts directly with the command or power or provision in the other. On examination of substituted section 51B as well as

second proviso (for short second proviso to rule 1 of Schedule A to rule 22) there appear inconsistencies which cannot stand together. In section

51B power can be exercised by any Revenue Officer specially empowered by the State Govt. whereas according to the second proviso the

power is vested in a Revenue Officer with additional designation of Settlement Officer. In both the revising officer concerned has to give the

persons interested an opportunity of being heard. In section 51B the opportunity of being heard is unqualified. In second proviso clause (ii) such

opportunity is qualified by the expression as the Revenue Officer may deem fit. So in section 51B the opportunity of being heard is in general terms

and in proviso 2 the opportunity of being heard as the officer may deem fit. In section 51B the officer who exercises power under the said section

has to record his reasons for effecting any revision or correction. Clause (iii) only provides that any Revenue Officer subordinate to the Revenue

Officer with the additional designation of Settlement Officer to hold an enquiry after giving the persons an opportunity of being heard. There is no

duty cast on him to record the reasons for his action. The order passed u/s. 51B has been made appealable in accordance with the provision of

section 51A(5), whereas the action taken under clause (ii) of second proviso is not expressly appealable. It may be contended that u/s. 54 any

order is appealable but as I have already noted there is no provision in clause (ii) of the second proviso for passing any order. The command on

the Revenue Officer acting under the said clause is only to incorporate the name of the bargadars in the record of rights. Incorporation of the name

of the bargadars in the record of rights is in my view is also the revision and/or correction of the record of rights prepared upto a stage.

Accordingly there are conflicts between section 51B and the second proviso. It is not possible to contrue them harmoniously so that both can

stand together. In terms of section 51B the person interested is entitled to a notice in accordance with the manner of service of notice as provided

in rule 30 of the West Bengal Land Reforms Rules, 1965; whereas in the case of proviso 2 an opportunity of being heard can be deemed to have

been given if within one week before the contemplated enquiry the Revenue Officer publishes a notice of his intention of enquiry by affixing a notice

to a conspicuous place in the office of the Gram Panchayat in whose jurisdiction the affected land is situated. From the point of view of proper

opportunity of being heard the opportunity as contemplated in section 51B is much more extensive than the opportunity provided to clause (iii) of

the second proviso. Accordingly, I am unable to contrue that both the provisions can stand together and operates in different field. If the legislature

deals with a particular Act and prescribes conditions under which it will be lawful and those under which it will be unlawful the subordinate

authority cannot under the pretence of making rules alter the law as so declared by the legislature. Here in the facts of the case and the provisions

of law in question it appears to me that the second proviso seeks to alter the provision contained in substituted section 51B.

8. Mr. Moitra appearing amicus curiae has submitted that proviso 2 is only a direction given on a subordinate officer to incorporate the name of the

bargadar in the manner laid down therein. According to him it is only for administrative or executive purposes. It does not create any judicial or

quasi judicial authority and does not direct a thing to be done as is required to be done by a quasi judicial authority whereas the authority created

by section 51B is a quasi judicial authority whose order is appealable. That with respect to Mr. Moitra I am unable to accept his contention that

second proviso does not create a quasi judicial authority The authority concerned under the second proviso has to give opportunity both the

contending parties herein to hold an enquiry and thereafter came to a decision. He is to determine judicially on the basis of facts ascertained by him:

therefore, it is not acceptable that the whole direction is an executive direction. Moreover, as I have also held that both section 51B and second

proviso operate in the same field no purpose will be served by taking into account the nature and character of the authorities exercising their

powers under those different provisions. Mr. Moitra submitted that section 51B is a supernumerary provision and it operates in case which are not

covered by the rules or other previsions of this Act. This view cannot also be accepted as section 51B is a substantive provision and the proviso 2

is a subordinate legislation promulgated in the form of a Rule, Primacy of the substantive section cannot remain idle only because there are some

similar provision in the rule.

9. In the circumstances that I have indicated above a question crops up if there is a repugnancy between amending section 51B and proviso 2. It

may also be considered whether proviso 2 has been impliedly repealed by introduction of section 51B. The test of implied repeal is that the

provisions of the latter Act are so inconsistent with or repugnant to the provision of an earlier Act that the two cannot stand together. In such a

case maxim leges posteriores priores contrarias abrogant which means that latter laws repeal earlier laws inconsistent therewith applies. While

noting the contradictions between section 31B and the proviso 2 I have clearly indicated that both of them cannot stand together. Accordingly, it

may be construed that section 51B has impliedly repealed proviso 2 but this aspect need not detain us any longer as I have held that section 51B

being a substantive provision of the Act itself will prevail over the proviso which is only a rule. The same can also be said in respect of the question

of repugnancy between the two.

10. It was urged that sub-section (2) to section 60 has made the rules effective to the extent as if they were incorporated in this Act. This provision

in my mind has no special significance. Rules framed under the authority of enactment is always a part of the same enactment. Simply because a

specific provision has been made to treat them as if incorporated in the Act does not by themselves take away he character of the rules made

under the provisions of the principal Act. Rules are framed by the authorities on whom the legislature makes the delegation of its power for framing

the rules, in the instant case the State Government. The Act itself is a piece of legislation made by the legislature whereas the rules are subordinate

legislation made by authorities as provided under the Act or in other words a delegate of the State Legislature provided in the Act itself. My

attention was drawn to the case of Biswanath Ghosh reported in 1979 (1) CLJ 613 which held that sec. 60 of the W.B. Land Reforms Act 1955

is not ultra vires because of excessive delegation or other vice. This question is not directly involved in this case even if sec. 60(2) of the said

section has not given any immunity to the Rules framed and does not place them above the character and scope of application of the rules framed

under any other legislation which do not have a similar provision like sub-sec. (2) of sec. 60.

11. Mr. Abhas Dasgupta appearing for the State respondents has submitted that in the decision reported in 1981(1) CLJ 214 Sachinandan Bag &

Anr. v. The Revenue Officer, Central Camp, Panskura & Ors the question of application of proviso 2 was considered. The Court has held that

powers can only be exercised under the said proviso 2 only by a Revenue Officer having additional designation of Settlement Officer. According to

him this implies that proviso 2 is within the scope of the object of the Act. He also relied on the decision reported in 1983(1) Cal, High Court

Notes 384 in re: Rahima Khatoon, In that case Mr. Justice Chittatosh Mookerjee as His Lordship then has decided that the Revenue Officers who

do not have the additional designation of Settlement Officer also would have jurisdiction to hold an enquiry under clause (ii) of proviso 2 and to

incorporate the names of the bargadars in the record of rights if the names of the bargadars in the record of rights if the Revenue Officer wish the

additional designation of Settlement Officer directs him to do so under clause (i) of the said proviso. Mr. Dasgupta wanted to indicate that in this

case too the. validity of the rules in question has been upheld by implication. It may be rioted that both these decisions were arrived at when there

was no section 51B in the Statute itself. Their Lordships did not have the opportunity to examine the question which has cropped up for

consideration in this case.

12. Mr. Ashoke Maity(sic)d. advocate appearing for the petitioner in one of the writs under consideration as well as Mr. Das appearing Amicus

Curie has drawn my attention to a case reported in 1986(1) Cal. High Court Note''s Samijan Bewa v. The Revenue Officer, Lalgola. In the said

decision Mr. Justice Bhagabati Prosad Banerjee sitting singly has held that provision of rule 21(3) is violative of Art. 14 of the Constitution of India

and as such it is on the face of it unreasonable, oppressive and also the said rule is ultra vires of the provision of the said Act. He further held that

even though the Act is protected being incorporated in the 9th Schedule of the Constitution the rules framed under the said Act do not enjoy the

said protection. Under the said Act does not enjoy the said protection. Rule 21 (3) of the West Bengal Land Reforms Rules was framed for the

purposes of manner of maintenance of record of rights u/s. 50. Sub-rule (2) of the said rule authorises the Revenue Officer to make an enquiry

including on the spot enquiry and inspection after giving the parties interested an opportunity of being heard for incorporating the names of the

bargadars in the village record of rights. Sub-rule (3) provided that the parties interested shall be deemed to have been given an opportunity of

being heard under sub-rule (2) if before one week of the enquiry, if any, or where no enquiry is made one week before incorporating in the village

record of rights any change on account of clause (3) of section 50 the Revenue Officer publishes a notice of his intention to make an enquiry, or, as

the case may be, to incorporate any change as mentioned in sub-rule (2) by affixing notice to a conspicuous place in the office of the Gram

Panchayat within whose jurisdiction the land affected is situated. Provision of clause (iii) of the second proviso is pari materia identical. Here also

the persons claiming as bargadars and persons claiming as owners of the land shall be deemed to have been given an opportunity of being heard if

within one week before the enquiry the Revenue Officer publishes a notice of his intention of enquiry by affixing a notice to a conspicuous place in

the office of the Gram Panchayat within whose jurisdiction the land affected is situated. I have no hesitation in accepting the grounds on which my

learned Brother Mr. Justice B.P. Banerjee has relied in the aforesaid case and to hold that clause (iii) of proviso 2 is also ultra vires of the Act itself

but since I have held that the entire proviso 2 including clause (iii) is ultra vires because it stands against the substantive provision of amending

section 51B, it is not necessary to separately declare clause (iii) of the said proviso as ultra vires.

13. I would also like to note that the Statute itself has not made any special classification of bargadars when the records are being prepared or

revised u/s. 51 itself. I am aware that in the Act itself there are some provisions dealing with bargadars. Bagadar has been defined, some rights

have been given to them and authorities have been created to deal with disputes, between a bargadar and the owner of the land. Inspite of it is

clear that Chapter 7 A as it stands now does not indicate that special provision has to be made for preparing or revising the record in respect of

bargadars. Rule 23 has given the particulars which are to be recorded in the records under preparation or revision. None of these entries have

been treated to be special in the Act itself. Every entry has equal importance. Clause (a) of Rule 23 has made the provision that name of each

person who is a raiyat or occupant of land or who is a bargadar as described in the West Bengal Land Reforms Act is to be one of the particulars

to be recorded. Here the name of the raiyat or the occupant of the land or the name of the bargadar has been given equal importance. By proviso

2 special treatment for bargadars has been made. In the Act itself no such object was indicated. Therefore, in my mind proviso 2 is also had not

being within the object of the Act as specially indicated in Chapter 7A.

14. In dealing with these cases it appears that I will also have to consider the effect of section 51B on the transaction which has already been

completed under the provision of second proviso. Transactions that have been completed, rights that have been acquired and penalties that have

been incurred when Statute was in force are not affected by the mere fact of the Statute having ceased to be in force. There are the provisions of

section 6 of the General Clauses Act. According to this principle the cases enquired into the records prepared or revised by incorporating the

names of the bargadars on the authority of proviso 2 can be said to be a completed transaction and normally those cannot be opened only because

proviso 2 has now become repugnant or ultra-vires of the Act itself. But there are certain features which should be taken for special consideration.

Section 51B has given a right of appeal to the person aggrieved by an order passed under the section. He can prefer an appeal in accordance with

the provisions of sub-sec. (5) of section 51A. The Amending Act of 1981 has been given retrospective effect from the 7th day of August, 1969.

The same Act has come into force with effect from 24th March 1986. Right of appeal is a substantive right. Therefore, such right has vested in any

person who might be aggrieved by an order u/s. 51B. The substantive right of appeal will accrue to such person on and from 7th day of August,

1969. Proviso 2 also provides for making further revision of record of rights under preparation or revision under Chapter 7A. Even though under

the second proviso same action of further revision is taken, the person aggrieved has no right of appeal. I have already indicated that no order is

required to be passed while incorporating the name of a bargadar under proviso 2 therefore, it is doubtful whether any appeal can be preferred u/s.

54 of the Act against such incorporation of the name of the bargadars. Moreover under the proviso the Revenue Officer is not required to record

the reasons for incorporating the name of the bargadar whereas in section 51B the authority concerned has to record the reasons for his actions. In

appeal the reasons given by the Revenue Officer can be assailed. Such an opportunity is not available when an action by incorporating the name of

the bargadar is taken under second proviso. If I conclude that the cases which have already been completed under the proviso 2 shall remain

unaffected thereby I will have to accept the provision even though the right of appeal which was a substantive right be denied to the person

aggrieved in the circumstances in which section 51B has been enacted. To me it seems that the persons who have challenged the orders passed

under proviso 2 and which are pending in appropriate forum should not be so divested and their right of appeal as given to them under amending

section 51B. As on the date on which a case in which a final action taken under proviso 2 is being considered in the writ application, proviso 2 has

been declared to be ultra vires of the Act itself. Under such situation in such cases too the provisions of section 51B will apply and their cases have

to be disposed of in accordance with the said provisions of section 51B only.

15. With regard to CO. No. 10946 and 10947 the petitioners have challenged the notices in schedule B. As I have already declared that the

provisions of the second proviso is ultra vires of the Act the notices are liable to be quashed. In C. R. No. 81 of 1982 the petitioner has prayed for

a writ of mandamus commanding the respondents not to give effect to the barga recording in favour of the respondents; In this case the recording

has already been made. This writ application has been taken up for hearing with consent of the parties along with an application for vacating interim

order of injunction. In view of what I have stated above this application also succeeds. As a result this Rule along with the other two C.Os. are

allowed. The Rule in C.R. No. 81 of 1982 is made absolute. In the other two C.Os. the impugned Annexure B is set aside and the respondents

are directed not to proceed on the basis of the said two notice. I make it clear that I have not entered into the merits of the cases of the respective

parties. It will be open to the Settlement Authorities as well as all the parties concerned to proceed in accordance with law in the light of the

observations made above in further revising and/or preparing the record of rights at any stage of its preparation before final publication as

contemplated under Chapter 7A of the said Act. The application for vacating interim order of injunction is also disposed of.