Nibaran Chandra Bag Vs Mahendra Nath

Civil Revn. Case No. 1851 of 1956

Court: Calcutta High Court

Date of Decision: Nov. 21, 1957

Acts Referred:
Constitution of India, 1950 â€" Article 132(1), 227

Citation: AIR 1958 Cal 679

Hon'ble Judges: P.N. Mookerjee, J; P.K. Sarkar, J

Bench: Division Bench

Advocate: Jitendra Kumar Sen Gupta and Asoke Kumar Sen Gupta, for the Appellant; Apurbadhan Mukherjee and Monomohan Mukherjee, for the Respondent

Final Decision: Dismissed

Judgement

P.N. Mookerjee, J.
This is an application under Article 132(1) of the Constitution or India, praying for a certificate that the case involves a

substantial question of law as to the interpretation of the Constitution.

2. The matter arises under the following circumstances :

In the recent record of rights, prepared under the West Bengal Estates Acquisition Act (Act I of 1954), the opposite party before us was recorded

as a raiyat in Khatian No. 52 of Mouza Howrahmari, District 24 Parganas. Upon objection by the petitioner, the record was altered by the

Assistant Settlement Officer by recording the opposite party as a permanent mokarari tenure-holder with the petitioner as a temporary lessee

(ijaradar) under him for a term of two years from Magh 1360 B.S. to Pous 1362 B.S.

3. Aggrieved by this alteration, the opposite party appealed to the learned District Judge u/s 44(3) of the above Act, that learned Judge being the

appropriate appellate authority for that purpose under the said statute, and, upon dismissal of the appeal, he moved this Court under Article 227 of

the Constitution and obtained this Rule.

4. The Rule was eventually heard by us and it was made absolute in part by directing, inter alia, deletion of the entry of the petitioner as a lessee as

aforesaid. The petitioner then applied for leave to appeal to the Supreme Court. The application was made under Art 132 (1) and Article 133(1)

(c) of the Constitution and it came up for hearing before the learned Chief Justice and Das Gupta, J. In view of the practice of this Court and the

decision, reported in Standard Vacuum Oil Co. Vs. The Commercial Tax Officer and Others, , their Lordships directed the petitioner to obtain a

certificate from us that the case involves a substantial question of law as to the interpretation of the Constitution as provided in Article 132(1).

Thereupon, the present application was made by the petitioner.

5. Initially, we had some doubt as to whether this application to us was necessary or whether the Supreme Court Bench could and should have

considered the whole matter of leave (including the question of certificate) both under Article 132(1) and Article 133(1)(c), as no specific

provision of law could be placed before us in support of or authorising or requiring such an application. Looking into the matter further, however,

we find that the practice, so long prevailing in this Court, supports such an application and, as, moreover, this application should, in our opinion, fail

on the merits, we do not deem it necessary to consider the question of main, taxability of the application or the correctness of the view, expressed

in Standard Vacuum Oil Co. Vs. The Commercial Tax Officer and Others, , or the implication and effect of the decision of the Supreme Court in

Election Commission, India Vs. Saka Venkata Subba Rao and, , which also was cited to us during argument.

6. On the merits, as we have said above, the application, in our opinion, should fail. The certificate is prayed for on the ground that the case

involves a substantial question of law as to the interpretation of the Constitution, that is, of Article 227 thereof. The petitioner complains that we

exceeded our powers under that Article and that we did so on a wrong view of that constitutional provision. In other words, his argument is that

we had no jurisdiction to interfere in this Rule under that Article. No such question was, however, raised or argued before us when the Rule was

heard and no occasion arose for deciding the same. On this short ground, this application is liable to be rejected.

7. That, indeed, was the view, taken by the Madras High Court (vide Gaddam Padmanabham Vs. Pasupuleti Kamaraju and Others, (C), u/s 205

of the Government of India Act, 1935, the predecessor of Article 132 of the Constitution, and, later on, by the Allahabad High Court too (vide

Jagdam Sahai Vs. Emperor, . There is no doubt some difference in the two provisions. But that difference is not material for our present purpose.

On matters, relevant to our immediate enquiry, the two provisions are substantially similar and the word ""involve"" must bear the same construction

in both. That construction, in the light of the two decisions cited, would justify refusal of the certificate, prayed for by the petitioner, and rejection of

his application,

8. Even apart from that, this application must fail. Here the Tribunal below decided the case practically on inadmissible evidence, or, in other

words, in flagrant violation of the Indian Evidence Act, and, in so doing, it served to perpetuate a grave injustice. To hold that, even in such

circumstances, this Court must shut its eyes and deny itself the right to step in under Article 227 of the Constitution would be a negation of the very

purpose, for which, manifestly, the Article was enacted. Interference in such cases would be amply justified under the leading authorities on this

Article (vide Dalmia Jain Airways Ltd. Vs. Sukumar Mukherjee, , approved by the Supreme Court in Waryam Singh and Another Vs. Amarnath

and Another, and Sm. Subodh Bala Biswas Vs. State of West Bengal, . These authorities definitely lay down that the High Court has power under

the Article ""to keep subordinate courts and tribunals in their proper places and within the bounds of their authority"", so that they might act properly

and ""exercise their jurisdiction in accordance with the provisions of the laws they administer"" and ""do what then- duty requires and do it in a legal

manner"" and, though, undoubtedly, such power should be sparingly used, its exercise would be perfectly legitimate for preventing or remedying

grave injustice"", vide Haripada Dutta Vs. Ananta Mandal, .

9. The tribunal concerned in the present case must, at least, be held to have acted illegally in the exercise of its jurisdiction and that was sufficient

for our interference under Article 227 as the illegal exercise of jurisdiction by the lower tribunal had resulted in a grave injustice.

10. The Article again, as stated above, has already been construed by the Supreme Court and we do not think that, in deciding the case as we

have done, we have deviated from the principle of that decision.

11. In the premises, it cannot be said that any substantial question of law as to the interpretation of the Article is involved in this case and the

certificate, prayed for under Article 132(1), must be refused.

12. In the above view, it is not necessary for us to go into the question of limitation, raised on behalf of the opposite party. That question arose

because the present application before us was not filed within 90 days of our decision. It may be argued, however, that no limitation is prescribed

for a certificate under Article 132, although, eventually, the appeal may not be entertained, if it was filed without the necessary certificate and the

certificate was not obtained within the time, prescribed for the filing of the appeal. We are not, however, expressing any opinion on the point, as it

is not necessary for us to do so for purposes of this case.

13. In the result, we dismiss this application with costs, hearing-fee being assessed at two goldmohurs.

P.K. Sarkar, J.

14. I agree.