

## Iswar Chandra Kamila Vs The State and Another

**Court:** Calcutta High Court

**Date of Decision:** Sept. 6, 1956

**Acts Referred:** West Bengal Bargadars Act, 1950 " Section 14

**Citation:** 61 CWN 149

**Hon'ble Judges:** Guha Ray, J

**Bench:** Single Bench

**Advocate:** S.K. Das and Benode Behari Halder, for the Appellant; Priti Bhusan Burman for the State and Rajendra Kumar Bhattacharjee, for the Respondent

### Judgement

Guha Ray, J.

The petitioner Iswar Chandra Kamila who is a Bhagchasi in respect of certain land was convicted under sec. 14 of the West

Bengal Bargadars Act. 1950, and sentenced to a fine of Rs. 100/- or in default of payment of the fine to rigorous imprisonment for one month. The

facts which are not in dispute are briefly as follows: On the 12th of November, 1955 Barendra Maity, a Jotedar in respect of certain plots of land,

applied to the Chairman of the Bhagchas Board of Union No. 16 of Contai Police Station alleging that Iswar Chandra Kamila, a Bargadar in

respect of the plots in question who had cultivated the plots during the current year, i.e., 1362 B.S. was conspiring to remove by force the paddy

grown. and the straw and if he succeeded in doing that, the applicant would be put to serious loss and as Iswar Chandra was extremely poor it

would be impossible for him to recover his share of the produce from him. He also alleged that in the year preceding the same Bargadar cultivated

the major part of the land and. in spite of a direction from the Board that he should reap the paddy and stock it in the presence of a member of

Bhagchas Board, removed the paddy and the straw according to his own sweet will and a case was pending in respect of that. Barendra

accordingly prayed that an order should be passed by the Board regarding the reaping, thrashing etc. and the distribution of the paddy for the year.

On this petition the Board passed an order on the 12th of November", 1955 prohibiting the reaping of paddy on the land in question without the

knowledge of the Bhagchas Board. Iswar Chandra Kamila appeared before the Bhagchas Board on the 3rd of December, 1955 and after hearing

both the parties the Board passed the order which is Ex. 1. The order may be translated as follows:

2. On receipt of the notice of the Board Sri Iswar Chandra Kamilai Bhagehasi is present. The defendant made a proposal that he would appear

before the Board 3 days before the reaping of the paddy and take a member of the Board with him to the spot. He is accordingly given a direction

to that effect.

3. The case for the prosecution now is that in spite of this direction Iswar Chandra Kamila without appearing before the Board and without taking

a member of the Bhagchas Board with him to the spot went to the spot un-accompanied by any member of the Board and reaped the paddy from

the scheduled lands in violation of the order of the Bhagchas Board and he has been charged under sec. 14 of the West Bengal Bargadars Act.

The defence of the petitioner was that he was not guilty and that he had not reaped the paddy. The Court however found that he had reaped the

paddy and as he did so in violation of the order passed, he committed the offence under sec. 14. The learned trying Magistrate in convicting the

petitioner had to deal with the question whether the order contravened was an order under the Act and this is also the only point raised before me

on behalf of the petitioner.

4. In deciding whether the order in question was an order under the Act certain provisions of the Act have to be referred to, Section 3 provides

certain principles on which the produce of any land cultivated by a Bargadar has to be apportioned as between the Bargadar and the owner. The

sections 4, 5, 7, 8, 9, 12 and 14 lay down as follows:

4. As between a bargadar and the owner whose land he cultivates, the bargadar shall have the prior right to supply plough-cattle, plough other

agricultural implements or manure or to bear any other expenses of cultivation.

5. Section 5 provides that the owner of any land cultivated by a bargadar" shall not be entitled to terminate the cultivation of such land by the

bargadar except on one or more of the grounds mentioned in the section.

Section 7. (1) Every dispute between a bargadar and the owner whose land the bargadar cultivates with regard to any of the following matters,

namely:--

(a) the division or delivery of the produce;

(b) the priority of the right to supply plough-cattle, plough, other agricultural implements or manure or to bear any other expenses of cultivation;

(c) the termination of or the restoration to cultivation of such land by the bargadar or the determination of the sum of money payable as

compensation under sub-section (2) of section 5; -"

(d) the place of thrashing, the place of stacking or the place of delivery of the owner's share of the produce, shall be decided by a Board

established for the local area within which such land is situated.

(2) In deciding any dispute referred to in sub-section (1), a Board shall observe the provisions of sections 3, 4 and 5.

Explanation:--Where there is an agreement in writing as to the mode of division of the entire produce under clause (1) of section 3, a Board shall

consider whether such agreement was made by the free consent of the parties thereto and shall disregard such agreement if it is satisfied that

consent to such agreement was caused by coercion, undue influence, fraud, misrepresentation or mistake.

(2a) If in deciding any dispute referred to in sub-section (1), any question arises as to whether a person is a bargadar or an owner, such question

shall be determined by the Board:

Provided that every" such determination shall be subject to any subsequent decision of a Civil Court of competent jurisdiction.

(3) The decision of a Board shall be embodied in the form of an award where the dispute is in respect of the division of the produce and shall in

other cases be in the form of an order:

Provided that where the dispute is in respect of the division or delivery of the produce, the Board shall specify the money which shall be payable

under the award or the order, in default of delivery of the produce, as being the value of such share.

Section 8. Where a Board established for a "local area within which the land which a bargadar cultivates is situated, is satisfied that necessary

steps may not be taken by the bargadar or the owner as the case may be. for harvesting or thrashing any crop in proper time or stacking of the

produce it may of its own motion or on the application of the aggrieved party cause such crop to be harvested or thrashed or the produce to be

stacked at the expense of the defaulting party and may order such expense to be recovered from the defaulting party in such manner as may be

prescribed.

Section 9. (1) No award or order or other proceedings whatsoever of a Board or of an Appellate Officer and no proceedings whatsoever in

execution of such award or order shall be questioned in any Court.

(2) No Court shall entertain any suit or any proceedings whatsoever in respect of a matter required under sub-section (1) of section 7 to be

decided by a Board referred to in that sub-section.

Section 12. (1) The procedure to be followed by a Board or by an Appellate Officer, shall be as may be prescribed.

(2) An award or order made by a Board or by an Appellate Officer, shall be executed by the Collector in such manner as may be prescribed.

(3) No order made by a Board or an Appellate Officer for the termination of the cultivation of or the restoration to cultivation of any land by a

bargadar shall be executed except during the month of Baisakh of the Bengali year.

Section 14. Any person who fails to comply with an award or order made under this Act shall be punishable with imprisonment for a term which

may extend to six months or with fine which may extend to five hundred rupees or with both

6. It is clear from the provisions referred to that the Board has the power of deciding certain disputes as between a Bargadar and an owner of

land. It is worth noticing in the first place that there is no provision in the Act which empowers the Board to pass any interim order or even to pass

any prohibitory order. It was argued on behalf of the opposite parties, the State as well as the owner, that the Board must be supposed to have

that general power, for unless it has such a general power it will not be in a position to protect the rights of the parties with regard to the matter in

dispute; in other words, it is the contention of the opposite parties that even though there is no specific provision in the Act the Board must be

supposed to have such general powers. It is impossible to agree with this contention for the simple reason that the Board which is entirely a

creature of the statute cannot act except within the four corners of the statute which sets it up. Even the Civil Courts had to be armed with such

powers by specific provisions of the CPC and if the Courts could be supposed to have such general powers no specific provisions would be called

for. From that point of view in the absence of any provisions in the Act which confer any such general powers on the Board it has got "to be held

that the Board has no power other than those specifically conferred on it by the Act. My attention was drawn to a decision of this Court in the case

of Debendra Nath Sen Vs. Bhagchas Conciliation Board, Joynagar and Others, in which S.R. Das Gupta J. held that section 7 of the West Bengal

Bargadars Act, 1950, empowers the Board to decide disputes, with respect to matters mentioned in the section between a bargadar and an owner

of the land and there is nothing in the said section or in the Act or in the Rules empowering the Board to make an interim order to the effect, that

pending the decision of the Board the produce of the land in question would be kept in the custody of a person who was appointed the Receiver

by the Board. With this decision I respectfully agree and I must further hold that the Board has not been given the power of issuing any prohibitory

order either.

7. The order in question is certainly not a final decision of the dispute, because it cannot be regarded as an award for the final division or

distribution of the produce under clause (a) of sub-section (1) of section 7 nor can it be regarded as an order under clause (d) of sub-section (1) of

section 7 as to the place of thrashing, the place of stacking or the place of delivery of the owner's share of the produce, none of which is

mentioned in: any part of the order. It was argued on behalf of the opposite parties that the order amounts to one under sec. 8 which, as I have

already said, empowers the Board to cause a crop to be harvested and thrashed and to be stacked when it is satisfied that necessary steps may

not be taken by the Bargadar or the owner as the case) may be for harvesting, or thrashing any crop in proper time. The essential prerequisite to

an order under sec. 8 is the satisfaction of the Board that necessary steps may not be taken by the Bargadar or the owner for the harvesting or

thrashing of the crop in proper time. In this case the order does not indicate that the Board even considered this aspect of the matter.

8. As a matter of fact, the application on which the Board proceeded to act itself makes it clear that the grievance of the owner was not that the

Bargadar would not reap the paddy in time but his grievance was that the Bargadar might take away the whole of the produce without giving the

owner his share of it. The essential pre-requisite thus to act on under sec. 8 does not appear to have existed. That being so, an order under sec. 8

could not have been passed and the order as it stands can hardly be construed as one u/s 8.

9. It was next argued on behalf of the opposite parties that the order was one passed on the basis of the petitioner's own application as appears

from the order-sheet itself. Mr. Das on behalf of the petitioner points out that in the certified copy of the order which he has filed with the petition

the word "" is missing from the second line although it occurs in the original order. Whether the word "" "" is there or not the order of the Board seems

to me to indicate clearly that the proposal came from the petitioner himself, viz., that 3 days before the reaping of the paddy the petitioner should

appear before the Board and take one of the members of the Board to the spot and an order was made on the basis thereof. If that is so, that is

certainly an order on the basis of an undertaking given by the petitioner himself. From that standpoint the order may not be one which can be

challenged as illegal in the sense that it contravenes any provisions of the Act, but at the same time in deciding whether the petitioner comes within

the mischief of section 14 of the Act what one has to consider is whether this is an order under the Act, for the order in question may be perfectly

legal without it at the same time being an order under the Act. It seems to me to be obvious that the order is not; one under any of the provisions of

the Act and that being so, the petitioner did not make himself liable u/s 14 of the Act. As I have already said the Board being a creature of the

statute must act within the four corners thereof and as it cannot be shown that the order in question was passed under any of the provisions of the

Act, it cannot be held to be an order under the Act.

10. In this view the conviction of the petitioner together with the sentence passed upon him must be set aside and the petitioner acquitted.

11. The fine if realised should be refunded. The Rule is accordingly made absolute.