

Ram Prosad Singha Ray Vs State of West Bengal and Others

Court: Calcutta High Court

Date of Decision: Feb. 18, 1981

Acts Referred: Constitution of India, 1950 " Article 32

Citation: 85 CWN 511

Hon'ble Judges: G.N. Ray, J

Bench: Single Bench

Advocate: Shyama Prasanna Roy Chowdhury and Phani Bhusan Das, for the Appellant; Sunil Kumar Basu, for the Respondent

Judgement

G.N. Ray, J.

In this Rule, the petitioner prays for a writ or writs in the nature of Mandamus commanding the respondents to refrain from

giving any effect to Chapter IIB of the West Bengal Land Reforms Act as introduced by the West Bengal Land Reforms (Amendment) Act, 1971

followed by West Bengal Land Reforms (Amendment) Act, 1972. A prayer for declaration of the said provisions of Chapter IIB of the West

Bengal Land Reforms Act as unconstitutional and void has also been made. It may, however, be noted that the provisions of Chapter IIB of the

West Bengal Land Reforms Act have been declared to be constitutional and valid by the Division Bench of this Court and as such, there is no

occasion to declare the said provisions as ultra vires the Constitution. So far as the other prayer of the petitioner, namely, a prayer for appropriate

writ in the nature of Mandamus commanding the respondents to refrain from giving effect to the provisions of the said Chapter IIB of the West

Bengal Land Reforms Act in respect of the lands of the petitioner and/or requiring the petitioner to submit his "B" Form return is concerned, it is

necessary to appreciate certain facts. The petitioner contends that he holds 25 acres of agricultural land, 1.35 acres of non-agricultural land, 0.61

acre of orchard land. 0.34 acre of tank fishery and 0.32 acre of homestead land. It appears that a Big Raiyat Case was started against the

petitioner under the provisions of the West Bengal Estates Acquisition Act being Case No. 63 (K) of 1969. In the said Big Raiyat proceeding,

certain agricultural lands and other categories of lands were directed to be vested and against the said adjudication made in the Big Raiyat

proceeding the petitioner moved the Constitutional Writ Jurisdiction of this Court and obtained Civil Rule No. 6175 (W) of 1969. The said Rule

was disposed of in favour of the petitioner. The petitioner contends that the wife of the petitioner Sandhya Rani Debi also holds 0.34 acre of

agricultural lands and 1.63 acre of non-agricultural lands and 0.13 acre of tank fishery and in paragraph 6 of the writ petition, the particulars of all

such lands have been set out. Under the West Bengal Land Reforms (Amendment) Act, 1971 since followed by the West Bengal Land Reforms

(Amendment) Act, 1972, Chapter IIB of the West Bengal Land Reforms Act has been introduced with retrospective effect from 15th February,

1971. Under the provisions of the said Chapter IIB of the West Bengal Land Reforms Act, the ceiling land of a raiyat and the members of his

family and the ceiling land of other institutions and association of persons have been provided for. Under the provisions of the said Chapter IIB, a

raiayat together with the members of his family holding lands beyond the ceiling prescribed under the said Act is required to file a return as

prescribed in Form 7A under the Land Reforms Rules within a prescribed period.

2. It appears that challenging the validity of the said Amendment Act the petitioner moved this Court in Constitutional Writ Jurisdiction against

enforcement of Chapter IIB of the Land Reforms Act under the said amended provisions and a Rule, being Civil Rule No. 3051 (W) of 1972, was

issued by this Court, The said Rule was made absolute on 31st May, 1974. By making the said Rule absolute, this Court held that the provisions

of Chapter IIB was ultra vires the Constitution and as such the said provisions could not be enforced in the lands of the petitioner.

3. Mr. Roy Chowdhury, the learned Counsel appearing for the petitioner, contends that although the Appeal Court in another case held that the

provisions of the said Chapter IIB was intra vires the Constitution, the said decision made in a different proceeding cannot invalidate the judgment

passed in the said earlier Civil Rule obtained by the petitioner. Mr. Roy Chowdhury contends that as the judgment passed in the earlier Civil Rule

is a judgment inter parties, such judgment binds the parties in the said Rule irrespective of the fact that subsequently the principle of law decided in

the said case was held by the appropriate court as invalid. Mr. Row Chowdhury contends that unless the judgment is set aside or modified by

superior court or there is change in legislation subsequently or there is a different cause of action, a judgment inter parties binds the parties for all

time to come. For this contention, Mr. Roy Chowdhury refers to a Full Bench decision of this Court made in the case of Tarini Charan

Bhattachajee v. Kedar Nath Halder, reported in 33 C.W.N. 126. Chief Justice Rankin speaking for the Court held in the said case that whether a

decision is correct or erroneous has no bearing on the question of its operating as res judicata. What is res judicata between the parties is not the

reasoning or any principle of law but the actual decision declaring the rights of the parties. When a matter whether concerning fact or law has been

directly and substantially at issue between the parties as barring on their right, the decision thereon, provided other conditions are separate, will

operate as res judicata concluding those rights. In the said Full Bench decision, however, a query was also raised to this effect that when a plea of

res judicata is effected with reference to a point of law which concerns question of jurisdiction or procedure or limitation it is a question whether

special consideration will apply or not. It was also held that a decision on a concrete question in accordance with the judicial authority as it stood

on the date cannot fail to operate as res judicate by reason of the fact that the law has since been determined to be otherwise by judicial decision.

Mr. Roy Chowdhury also refers to another decision of this Court made in the case of Debala Mukherjee vs. Sujit alias Surjit Singh, reported in 81

C.W.N. 1007. It was held in the said decision that a decree or order made on account of the subsequent exposition of law in a different manner by

binding authority become contrary to law and thus contains an error apparent on the face of the record but even then such a decree or order

having been reached the finality, is valid, effective and binding on the parties. Mr. Roy Chowdhury also refers to another decision of the Supreme

Court made in the case of Mathura Prasad Bajoo Jaiswal and Others Vs. Dossibai N.B. Jeejeebhoy, . It was held in the said case that erroneous

decision on the question of jurisdiction will not operate as res judicata because otherwise it will partake a special law as regards jurisdiction in

derogation to the law declared by legislature. Mr. Roy Chowdhury in his fairness also refers to another decision of the Bombay High Court made

in the case of The Lokamanya Mills Barsi Limited Vs. Barsi Municipal Council, Barsi and Another, . It was held in the said decision that no general

proposition of law can be laid down that a decision on a questions of law cannot have the effect of res judicata. Questions of law are of various

types, namely, pure question of law and legality and validity of a particular transaction. The decision on general question of law such as

interpretation or validity of a statutory law or bye-law is not binding on the parties in a subsequent proceeding whether the subsequent question

relates to same cause of action or not. Mr. Roy Chowdhury contends that in the earlier Civil Rule, a challenge was thrown against the State

Government to enforce the provisions of Chapter IIB relating to the lands of the petitioner on the ground that such provisions were ultra vires the

Constitution. The said Rule was made absolute by this Court and it was held that the provisions of Chapter IIB, were ultra vires. It was also held

that the State Government had no authority to enforce the provisions of Chapter IIB relating to the lands of the petitioner. Mr. Roy Chowdhury

contends that a finality was thus attached to the said judgment of this Court made in the earlier writ proceeding that the provisions of Chapter IIB

could not be enforced in respect of the lands of the petitioner. In such circumstances, although subsequently by the appropriate authority it has

been decided that Chapter IIB of the West Bengal Land Reforms Act is intra vires the Constitution and as such the said provisions are legal and

valid yet the effect of the decisions made inter parties in the earlier Civil Rule cannot be negated by the subsequent decision as to the validity of

the provisions of Chapter IIB in a different case. Mr. Roy Chowdhury contends that in the Full Bench decision made in the case of Tarini Charan

Bhattacharjee, this Court has specifically held that on a concrete question, in accordance with the judicial authority as it stood on the date, cannot

fail to operate as res judicata by reason of the fact that the law has since been determined to be otherwise by judicial decision. He contends that

the question for decision in the earlier Civil Rule was as to whether or not Chapter IIB was intra vires the Constitution and whether or not such

provisions could be enforced in the lands of the petitioner. The said Rule was made absolute and as such the decision of the provisions of Chapter

IIB cannot be enforced relating to the lands of the petitioner. Mr. Roy Chowdhury contends that the petitioner is required to file a Return in Form

7A under the provisions of Chapter IIB and the same was the requirement when the earlier Civil Rule was obtained. Accordingly the cause of

action in the earlier Writ Rule and the cause of action in the present Writ Rule remain the same. Hence, the decision made in the earlier Civil Rule

must be held binding on the parties.

4. Mr. Sunil Kumar Basu, the learned Counsel appearing for the respondents, however, contends that in the earlier writ proceeding, this Court

having declared the provisions of Chapter IIB as ultra vires the Constitution, made the Rule absolute in view of the fact that on such declaration of

the provisions of Chapter IIB as ultra vires, the State Government and/or the respondents in the said writ proceeding could not have any

jurisdiction to enforce the provisions of Chapter IIB of the West Bengal Land Reforms Act in the lands of the petitioner. He contends that the

decision in the earlier Civil Rule was basically a decision on the jurisdiction of the State Government to enforce the provisions of Chapter IIB in

respect of the lands of the petitioner. Mr. Basu contends that the Supreme Court, in Mathura Prosad's case, (Supra) has clearly laid down that

erroneous decision on the question of jurisdiction will not operate as res judicata because otherwise it will partake a special law as regards

jurisdiction in derogation to the law declared by the Legislature. Mr. Basu also refers to a decision of the Supreme Court made in the case of

Anwar Khan Mehboob and Co. Vs. State of Madhya Pradesh and Others, . In the said case, the petitioner, a manufacturer in Bidis had acquired

a right to pluck and carry away tendu leaves in certain area for some period under the Madhya Pradesh Abolition and Proprietary Rights (Estates,

Mahals and Alienated Lands) Act 1, of 1951. The State having obstructed the right of the petitioner as also other contract-holders for tendu

leaves, the petitioner as also other contract holders moved the Supreme Court and it was held in Firm Chhotabhai Jethabai Patel and Co. and

Others Vs. The State of Madhya Pradesh, , that the contracts of tendu leaves were in essence and effect licences to the transferees to cut and

carry the tendu leaves and that there was nothing in the said Abolition Act to affect their validity. Subsequently, Madhya Pradesh Tendu Patta

(Vaypar Viniyaman) Adhiniyam was passed creating a monopoly in favour of the Government. The petitioner on being informed by the

Government of the abrogation of his right under the Adhiniyam, moved the Supreme Court under Article 32 of the Constitution, contending, inter

alia, that the Adhiniyam did not touch the rights of the petitioner firm as recognized and enforced by the Supreme Court in the said-earlier case

(Chhotabhai's case) and that the Adhiniyam also did not attempt to nullify the decision of the Supreme Court either expressly or even indirectly by

making the law retrospective. It was also contended that the earlier decision in Chhotabhai's case recognizing the petitioner's right to pluck and

carry tendu leaves was binding between the parties and operated as res judicata. The Supreme Court, however, held in the case of Anwar Khan

Mehboob Company that the petitioner had only a contract in its favour and not a right to property and as such no right could be said to be invaded

by Adhiniyam. The Supreme Court also held that it could not be said either by reason of any of res judicata or on an analogy that the petitioner

was entitled to invoke Article 32 of the Constitution when it possessed no right to property leaves. The Adhiniyam did indirectly overreach the

decision of the Supreme Court in Chhotabhai's case but that, in any event, was open to the State Legislature to do so by passing a valid law to

that effect. The law being not challenged as invalid it applied to the petitioner firm, as to any other person. Relying on the said decision, Mr. Basu

contends that apart from the decision made by this Court in another proceeding that the provisions of Chapter MB was intra vires the constitution

and as such legal and valid, the said provisions have been included in the 9th Schedule of the Constitution and as such its validity cannot be

challenged by the petitioner on the basis of the earlier decision made by this Court in the said Writ proceeding. Mr. Basu contends that by including

the provisions of Chapter IIB of the West Bengal Land Reforms Act in the 9th Schedule of the Constitution, there has been a virtual change in the

legal position and as such it must be held that there has been change in law for which the earlier decision made in the writ Rule obtained by the

petitioner has become ineffective.

5. In reply to the said contention of Mr. Basu, Mr. Roy Chowdhury however, contends that the law was not changed by the Legislature but by

including the said Chapter IIB in the 9th Schedule, certain protection under the Constitution was given to the said provisions of Chapter IIB of the

Land Reforms Act. Hence it cannot be contended that there has been change in the legislation and a new right has accrued to the State for

enforcing the provisions of Chapter IIB of the West Bengal Land Reforms Act in respect of the lands of the petitioner. After considering the

respective submissions of the learned Counsels of the parties, it appears to me that the decision made in the earlier Rule was really a decision on

the question of jurisdiction of the State Government to enforce the provisions of Chapter IIB in respect of the lands of the petitioner upon a

declaration that the provisions of Chapter IIB were ultra vires the Constitution. Such declaration about the validity and/or legality of the provisions

of Chapter IIB was, however, reversed by the competent authority, namely, by the Appeal Court in a later case. Apart from that, the Amendment

Act containing the provisions of Chapter IIB having been included in the 9th Schedule of the Constitution, it has also received further protection

under the Constitution. In such circumstances, although the decision of the earlier Civil Rule was inter parties, it cannot be held to be valid and

binding between the parties in the matter of enforcing Chapter IIB. In my view, the principle decided by the Supreme Court in Mathura Prasad

Bajoo Jaiswal and Others Vs. Dossibai N.B. Jeejeebhoy, that erroneous decision on the question of jurisdiction will not operate as res judicate,

applies in the facts and circumstances of the instant case. It may be noted in this connection that even in the Full Bench decision of this Court made

in Tarini Charan's case (33 CWN 126), this Court raised a query to the effect that when a plea of res judicata is raised with reference to point of

law or limitation and the Court and the public have an interest, it is a question whether special consideration will apply or not. In my view, in such

circumstances, it will not be proper to hold that the adjudication made in the earlier Writ jurisdiction will bind the State Government for all time to

come thereby prohibiting the State Government from enforcing the provisions of Chapter MB of the Land Reforms Act simply because at one

time, this Court entertained a view that the said provisions of Chapter IIB was ultra vires and as such ineffective and void but later on the law was

interpreted differently and the vires was upheld. In the circumstances, this Rules must fail. As the petitioner challenged the power of the State

Government to enforce the provisions of Chapter IIB relating to the lands of the petitioner in view of the earlier decision of this Court in the

aforesaid Writ Rule, it appears to me that it will be only just and proper to give the petitioner an opportunity to file a Return in Form 7A within a

specified time after the disposal of this Rule. It is, accordingly, directed that the petitioner will submit this Return in Form 7A before the

Appropriate Authority within six weeks from today. If such a return is filed within the aforesaid period, the concerned authorities will decide the

ceiling land of the petitioner and the members of his family in accordance with the provisions of Chapter IIB of the West Bengal Land Reforms Act

after giving the petitioner a reasonable opportunity of being heard. So long such adjudication is not made, status quo as regards the possession of

the lands is to be maintained by the parties. The Rule is accordingly disposed of but there will be no order as to costs.

C. R. Nos. 19438(W) of 1975 and 19439(W) of 1975.

These two Rules were also heard analogously with C. R. No. 19437(W) of 1975. The facts and circumstances being similar, these two Rules are

also disposed of on similar terms but there will be no order as to costs.