
(1981) 02 CAL CK 0023

Calcutta High Court

Case No: C.R. No. 19437 (W) of 1979

Ram Prosad Singha
Ray

APPELLANT

Vs

State of West Bengal
and Others

RESPONDENT

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 raiyat 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. Roy 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.