State of West Bengal and Another Vs Abdul Quader and Others

Court: Calcutta High Court

Date of Decision: July 12, 1956

Acts Referred: Constitution of India, 1950 â€" Article 13, 226, 31(1)
West Bengal Land Development and Planning Act, 1948 â€" Section 1, 1(2), 1(3), 2, 3

Citation: 60 CWN 962

Hon'ble Judges: Chakravartti, C.J; Lahiri, J

Bench: Division Bench

Advocate: Anil Kumar Das Gupta and Somendra Chandra Bose, for the Appellant;Amarendra Mohan Mitra and Arunendra Nath Bose and Alak Gupta, for the Respondent

Final Decision: Allowed

Judgement

Chakravartti, C.J.
This is an appeal from a judgment and order" of Bose, J., dated the 16th of January, 1952. The appellants before us

are the State of West Bengal and the Collector, Land Acquisition, 24-Parganas. It appears that on the 9th of May, 1950, a notification, being

Notification No. 4988 L. Develop, was issued u/s 4 of the West Bengal Land Development and Planning Act, 1948. whereby it was declared that

a certain area of land, measuring about ten bighas and situated in Jadavpur within the limits of the Tollygunge Municipality, was likely to be needed

for a public purpose. The owners of the land tried the various means open to them under the special Act to have the order withdrawn, but failed to

obtain any relief. Thereupon, on the 13th of February. 1951, they moved this Court, under Article 226 of the Constitution for a writ in the nature of

mandamus and | or certiorari and | or any other appropriate writ for quashing the notification or directing the appellants before us to withdraw or

cancel the same or to forbear from giving effect to it. The application which came to be heard by Bose, J., succeeded. Various points appear to

have been canvassed before the learned Judge, but of them only three are material for the purpose of the present appeal. Really speaking, only one

point is material, because Mr. Das Gupta, who appears for the appellants, abandoned the remaining two points.

2. The question which falls for decision is the following. Section 1(2) of the West Bengal Land Development" and Planning Act, 1948, which

defines the extent of the Act said, as it originally stood, inter alia that the Act would not apply to any area to which the Calcutta Improvement Act,

1911, had been extended under sub-section (3) of section 1 thereof before the commencement of the Act. Actually, on the 20th of December,

1911, section 167 of the Calcutta Improvement Act had been extended to the area constituting the jurisdiction of the Tollygunge Municipality by

Notification No. 1721M. If that extension of section 167 of the Calcutta Improvement Act amounted to an extension of the Act to the area

concerned, as contemplated by section 1 (2) of the Act of 1948, the notification issued on the 9th of May, 1950 with respect to the ten bighas of

land at Jadavpur would be clearly bad in law. The Act of 1948, by section 1(2), would exclude itself front such area. There was. however, an

amendment of the Act which came into force on the 27th of October, 1951, when the Rule issued under Article 226 of the Constitution was

pending. It was effected by the West Bengal Land Development and Planning (Amendment) Act, 1951 and was in the form of adding an

explanation to section 1(2) of the main Act and also enacting a new provision as section 3 of the amending Act. The Amendment Act began with a

preamble of two paragraphs which sought to explain the reason for making the amendments. It was declared that it had become necessary in

public interest to clarify what was and had always been the true intendment of section 1(2) of the Act of 1948 and that it had also become

necessary in public interest to remove any doubts that might arise regarding the effect of such amendment of the main Act. Having thus declared the

reason for making the amendments, the amending Act proceeded to make them. The first amendment which was made by section 2 of the

amending Act. was as follows :--

To sub-section (2) of section I of the West Bengal Land Development and Planning Act, 1948 (hereinafter referred to as the said Act), the

following Explanation shall be added and shall be deemed always to have been added, namely :--

Explanation--For the purpose of this Act, the Calcutta Improvement Act. 1911, shall not be deemed to have been extended under sub-section (3)

of section 1 of that Act to any area if section 167 only of that Act has been extended to such area.

3. The other amendment was made by section 3 which, briefly stated, declared that all proceedings for declaring the acquisition of any land under

the main Act pending at the commencement of the amending Act which could not have been validly commenced, if the amending Act had been in

operation at the date of its commencement, would abate and that every decree or order made before the commencement of the amending Act by

which acquisition of any land under the main Act had been declared invalid would, if such decree or order could not have been validly made, if the

amending Act had been in operation at the date thereof, be void. This was really not an amendment, but an independent enactment of a positive

kind.

4. The question before Bose, J., to limit myself to the one point that was actually argued before us, was whether section 2 of the amending Act by

which section 1 (2) of the main Act had been amended was retrospective in operation so as to be applicable to the proceedings pending before

him; and, secondly, whether section 3 of the amending Act, which purported to declare that all pending proceedings of the specified kinds would

abate and that all decrees and orders of the nature specified would be treated as void, was a valid provision. The learned fudge held that section 3

of the amending Act was doubly bad, inasmuch as thereby the Legislature had arrogated to itself judicial powers and further because in so far as it

purported to affect proceedings pending under Article 226 of the Constitution, it was clearly repugnant to Article 13 of the Constitution. The

learned Judge held further that the issue of the notification constituted sufficient interference with the fundamental rights of the petitioners or at least

a sufficient threat to those rights to enable them to invoke Article 226 of the Constitution. On those several grounds, the learned Judge made the

Rule absolute to the extent that he directed the cancellation of the notification of the 9th of May, 1950. It was against that order that the present

appeal was preferred.

5. In support of the appeal, Mr. Das Gupta formulated three points before us. He contended, in the first place, that in holding that as a matter of

construction section 2 of the amending Act was not retrospective in operation and that the amended section could not be applicable to pending

proceedings, the learned Judge had been clearly in error. It was contended next that he had also been in error in holding that in enacting section 3

of the amending Act, the Legislature had assumed judicial powers which it had no jurisdiction to do. It was contended, lastly, that a mere issue of a

notification furnished no ground for invoking Article 226 of the Constitution.

6. Quite early in the course of his argument. Mr. Das Gupta realised that he could not possibly maintain the second of his grounds to any practical

purpose, nor would his clients profit in any practical sense, even if the third of his points succeeded. The amending Act, being an Act of a

Legislature, could not possibly have effect as interfering with proceedings instituted tinder the Constitution and pending before Courts of law.

Whatever, therefore, might be the effect of section 3 on proceedings commenced under other laws and pending before other Courts, it could not

possibly operate to affect proceedings under Article 226 of the Constitution pending before the High Court. Mr. Das Gupta also conceded that it

would not be worth while to pursue his third point, because even if the notification u/s 4 could not be removed by a writ, his clients would, in the

ordinary course of things, have to proceed to implement that notification by taking the further steps contemplated by the Act and when they did so,

a right would clearly arise in the respondents to invoke Article 226 of the Constitution. In view of those considerations, Mr. Das Gupta finally

limited himself to the first of his points.

7. In my view, that point must succeed. The reasons given by the learned Judge for the view taken by him have been tersely expressed. ""This

section 2 of the West Bengal Act XXIX of 1951,"" he observes, ""may be held to be validly enacted while section 3 can be declared as void, but as

section 2 is not in terms made retrospective in operation for the purpose of affecting pending proceedings, it cannot affect the present proceeding

which was instituted long before the amending Act XXIX of 1951 came into force."" And again, ""as section 2 of the amending Act by itself cannot,

affect pending proceeding and as section 3 of the amending Act is ultra vires in so far as it purports to affect proceeding under Article 226 of the

Constitution, the petition must succeed."" In my view, it must be held, with great respect to the learned Judge, that the construction put by him upon

the words of section 2 of the amending Act is plainly not correct. I have already read the terms of the section. It adds an explanation to section

1(2) of the main Act and says that the explanation ""shall be added and shall be deemed always to have been added."" The plain effect of that

provision is that the explanation becomes a part of the Act of 1948 from the commencement of that Act and that Act as speaking on and from the

date on which it came into force, namely, the 7th of October, 1948, speaks and has always spoken with the explanation as a part of its section

1(2) and not without that explanation. The language used by the Legislature in section 2 of the amending Act is a well-known form of language

used for enacting provisions with retrospective effect, so as to affect even pending proceedings. As has been said, when a new provision is

introduced by such language and the provision becomes a part of the parent Act. the question is not so much whether the addition has been made

with retrospective effect, but the question is what the Act, as added to by the amendment, means. I hope I do the learned Judge no injustice when

I say that he must have taken the view that he did, because for some reason or other he overlooked the words ""shall be deemed always to have

been added."" If the explanation added to section 1(2) of the parent Act of 1948 was always a part of that sub-section and necessarily was such

part when the notification of the 9th of May of 1950, was issued, it follows that the notification did not seek to apply the West Bengal Land

Development and Planning Act, 1948, to an area wherefrom it was excluded by the provisions of section 1 (2) of the Act itself. On the other hand,

the notification must be held to have related to an area to which the Act of 1948 applied and that must be deemed to have been the position even

when the application under Article 226 was made. Mr. Mitra, who appears for respondent No. 1, frankly-conceded that he could not usefully

spend any time in contending that the amendment of 1951 would not have the effect which I have indicated.,

8. Mr. Gupta, who appears on behalf of the minor respondents, did, however, contend that section 2 of the amending Act did not in truth and in

fact amend the parent Act, but it either purported to interpret or explain, the provisions of the earlier legislation or it amounted to a new enactment.

If it was merely a commentary on the earlier Act and an expression by the Legislature of 1951 of its opinion of what the intention of the Legislature

of 1948 was, such opinion was not binding on the Court and could not be treated as indicative of the real intention of the 1948 Act. If, on the other

hand, the amending Act constituted a fresh enactment and, therefore, new legislation, it could not take effect as valid law, unless it declared the

public purpose for which its enactment had become necessary.

9. Ingenious as this argument is, I am unable to accept it as sound. Mr. Gupta built his reasoning largely on the two paragraphs of the preamble to

the amending Act. It is well-established that where the provisions of an Act are clear and unambiguous in their meaning, a reference to the

preamble is neither legitimate, nor permissible. A preamble has been picturesquely called the key to the mind of the Legislature, but where the

chambers of the legislative mind are open, no key is required. The provisions to which regard must first be paid are the provisions of the enactment

itself and not the recitals in the introductory paragraphs. The language in the present case of the enacting provision contained in section 2 of the

amending Act, is, to my mind, perfectly clear. It declares the Explanation to have always been a part of the main Act, even from the date of its

commencement, and there is no ambiguity about that declaration. A Legislature cannot undoubtedly alter a fact in the physical sense, but it is

entitled to avail itself of a fiction and does frequently avail itself thereof by saying that something shall be deemed to be something else, meaning

thereby that something which is not some other thing shall, nevertheless, be treated as that other thing with all consequences following from such

complete identity. It undoubtedly shocks the ordinary man''s sense of justice that an amendment should be made of a statute which would have the

effect of making acts, done under the statute at its pre-amendment stage and illegal at the time, legal, particularly when the amendment is not made

to prevent some public evil or abuse and it involves an invasion of private rights. But in the sphere of law-making, the Legislature is supreme. If the

amendment is within its legislative powers and has been made in accordance with the correct legislative procedure, the justice of such amendment

of its integrity is not justifiable in a Court of law; and if the amendment is in form only declaratory or explanatory of the principal Act and thus

retrospective by express enactment, effect must be given to it as if it was a part of the Act from its commencement and as if even things done under

the Act before the amendment were done under the Act, as amended. That rule applies here. The Explanation added by the amending Act. though

in actual truth not a part of the Act of 1948 when it was enacted, must now be treated as having been such part and if that be so, the parent Act,

speaking as on the 7th of October. 1948, and henceforward, must be taken as declaring that an extension of section 167 only of the Calcutta

Improvement Act to any particular area shall not amount to an extension of the whole Act so as to attract the exclusion provided for in the main

provision of section 1(2).

10. It may appear that even assuming that this construction of the Explanation is not correct, Mr. Gupta''s argument must fail, if one takes the

provisions of section 1(2) of the main Act, as they are. It may be said that if an argument is merely technical, it can legitimately be met with another

technicality. If one takes the language of section 1 (2) of the main Act literally, one must read it as merely providing that only that area shall be

excluded from the operation of the 1948 Act to which the whole of the Calcutta Improvement Act had been extended. The language of section

1(2) of the 1948 Act is ""any area to which the Act has been extended"" and not ""any area to which any provision of the Act has been extended."" It

may therefore be said that even under the section, as it stood before the Explanation was added to it, an extension of only section 167 of the

Calcutta Improvement Act to any area would not effect its exclusion from the operation of the special Act. But the phrase which I have quoted is

followed by the words, ""under sub-section (3) of section 1 thereof,"" meaning thereby section 1(3) of the Calcutta Improvement Act, 1911. The

latter section provides that any provision of the Calcutta Improvement Act which extends only to the Calcutta Municipality may be extended by the

State Government entirely or in part by a notification under the procedure prescribed by section 148 to any specified area in the neighborhood of

that municipality. It will be noticed that the section speaks of the extension of ""any provision which extends only to the Calcutta Municipality"" and

not of ""any provision"" simpliciter or of the whole Act. What the qualification, ""which extends only to the Calcutta Municipality"" means is not too

clear, since it is preceded by the words ""this Act shall apply only to the Calcutta Municipality"", but it may be, as the opening words ""except as

otherwise hereinafter provided"" suggest, that there are provisions in the Act which apply not only to the Calcutta Municipality, but elsewhere as

well. Be that as it may. if section 1 (3) of the Calcutta Improvement Act provides for the extension of only ""any provision"" of the Act and not of the

whole Act, it is not too clear what is meant by the expression ""any area to which that Act has been extended under the provisions of sub-section

(3) of section 1 thereof,"" occurring in section 1(2) of the West Bengal Land Development and Planning Act, 1948, if that section is to be read

literally. So read, it would seem to assume something unreal or impossible Mr. Gupta contends that since there is a reference to sub-section (3) of

section 1 in section 1(2) of the 1948 Act, the only sensible meaning of which the expression is capable is that what it contemplates is the extension

of the Calcutta Improvement Act u/s 1(3) thereof in the only Way in which it can be extended under that provision, that is to say, by way of

extending one provision or another, I do not think that any other construction is reasonable, for, otherwise, it is difficult to see what actually is

contemplated by the 1948 Act and, also, one ought not to adopt a strained construction of a provision which affects the rights or subjects. It may

be that if the State Government takes the trouble of framing as many notifications as there are sections in the Calcutta Improvement Act and

extends them all one by one, the whole Act will be extended under sub-section (3) of section 1 thereof and a state of things will come into

existence to which section 1(2) of the Bengal Act of 1948 will be found applicable without any violence to its strict language. But it can hardly be

that that was. what was contemplated by the section and the reference to extension u/s 1(3) of the Calcutta Improvement Act cannot properly be

said to have had in view a wholesale extension of the Act by the method of piecemeal extensions of all the sections, taken one by one. Indeed, if

extension of the Act u/s 1(3) thereof was not intended to apply to or cover the extension of individual provisions, there was no need to add the

Explanation at all or even if the Explanation was needed to remove imaginary doubts, there was no reason why it should have been limited to the

extension of section 167 only, bat should have covered the extension of no other section. The correct construction is, I think, what Mr. Gupta

suggested; and even after the Explanation, a pre-Act extension of arty other section of the Calcutta Improvement Act would seem to exclude the

operation of the 1948 Act. I am accordingly of opinion that apart from the Explanation as expressly enacted with retrospective effect, section 1(2)

of the 1948 Act would make the Act inapplicable to the area with which we are concerned in the proceedings, but the effect of the Explanation is

to attract the Act to it Why only section 167 was chosen for the purposes of an exception when making the amendment of 1951 or, as it was then

declared, even in 1948, is a matter of legislative policy, into the reasonableness or bona fides of which courts are not permitted to enter.

11. As regards the second branch of Mr. Gupta''s contention that the amending Act is in effect a piece of new legislation and, therefore, must

satisfy all the tests of such legislation affecting property rights, I think that the assumption underlying the argument is not wholly correct. I would

concede at once that while an amendment can add a section to an existing Act with retrospective effect so as to date it at. and bring it into force

concurrent with, the commencement of that Act, the passing of the amendment Act itself cannot be pushed back in time and cannot be ante-dated,

except perhaps where, if such a thing be at all possible, the amendment Act says that it shall be deemed to have been passed at the date of the

original Act. Normally, while the provisions enacted by an amending Act may be made to have retrospective effect as parts of the original Act, the

passing of the amending Act itself will be a legislative act of the date when the amending Act is actually passed and not of any earlier date. In that

sense, even an amending Act which merely adds certain new provisions to the original Act with effect from the commencement of the latter, will

certainly be a piece of new legislation. But I do not think it can be regarded as not only a new but also as an independent piece of legislation so as

to require separate compliance with all the structural conditions which must be complied with by any valid legislation on the subject, even when the

original Act has already complied with them. The amending Act, in such a case, only adds some flesh to the original Act, declaring it to have been

always there and the flesh, on being so added, be-comes a part of the old Act''s body, partaking of whatever quality that body already possesses.

Mr. Gupta''s contention is that the amending Act is bad, because it provides for the acquisition of lands from a further'' area and yet does not state

for what public purpose it had become necessary to make such provision. The answer, to my mind, is plain. It is not necessary, as has now been

finally decided, that an Act providing for the acquisition of property for public purposes, should state in express terms what such purposes may be.

It is enough if a public purpose can be ascertained from the; whole tenor and intendment of the Act. If to an Act providing for the acquisition of

private property and containing a declaration of the public purposes for which acquisition can be made, an amending Act adds certain provisions,

providing-for the acquisition of properties of certain further classes and giving such provisions effect from the commencement of the former Act,

the public purposes declared by the original Act, will attach themselves automatically to the amending Act as also the amendments made thereby

and there will be no absence of any declaration of a public purpose or purposes in regard to the latter. Indeed, the very fact that the amendments

are intended to form part of the original Act with effect from its very commencement would imply that the provisions made by the amendment are

for the same public purposes as are stated in the original Act; and. the amendments, on being engrafted on that Act as parts of its original

constitution, would necessarily attract to themselves the support of the public purposes which the original Act has already declared. It is to be

noticed that what Article 31(1) of the Constitution requires is not so much that the Act should be enacted for public purposes as that it should

make provision for acquisition of property for such purposes. In the present case, the amending Act of 1951, by seeking to make the amendments

introduced by it parts of the Act of 1948 with effect from its commencement as if that Act had been enacted even originally with those amendments

incorporated therein, declared impliedly, but nevertheless clearly, that the provisions contained in the amendments were being made in the interest

and furtherance of the same public purposes for which acquisitions were authorised under the original Act and as soon as the amendments became

parts of the Act of 1948 as some of its original constituents, they came under the protection of the same public purposes as were stated there. The

Act of 1948 contains, besides a general profession of public purposes, a detailed enumeration of such purposes, in section 2(d) for which private

property may be acquired under the Act.

12. Whether those purposes could properly be predicated of the amendments is a separate question which Mr. Gupta; did not raise. Nor did he

raise any question as to whether the order made under the Act in the present case could be justified by any of the public purposes stated therein.

His sole contention, as I understood it, was that the amending Act of 1951, being in itself a piece of new legislation providing for the acquisition of

private property, was required to declare the public purpose for which acquisition could be made, but as it contained no such declaration it was

invalid and the amendments made by it were of no effect. That contention must be overruled. For the reasons given above, this appeal must

succeed. The judgment and order passed by Bose, J., are accordingly set aside and the cancellation directed by him of Notification No. 4988, L.

Develop., dated the 9th of May, 1950 is cancelled. There will be no order for costs here or below.

Lahiri, J.

I agree.