(1976) 11 CAL CK 0014

Calcutta High Court

Case No: None

Anand Kumar Chakraborty and Another		APPELLANT
	Vs	
State of West Bengal and Others Sm. Satadal Basini Ghosh and Others Vs Revenue Officer and Others		RESPONDENT

Date of Decision: Nov. 24, 1976

Acts Referred:

- Constitution of India, 1950 - Article 200, 201, 226, 255, 288
- West Bengal Estates Acquisition Act, 1953 - Section 10, 10(2), 2, 26, 3

Citation: AIR 1977 Cal 73 : (1977) 2 ILR (Cal) 685

Hon'ble Judges: Sankar Prasad Mitra, C.J; Salil Kumar Datta, J; Sabyasachi Mukharji, J

Bench: Full Bench

Advocate: Arun Kumar Dutt Jr., Sitaram Bhattacharjees in F.M.A.869/74, Nirmal Chandra Chakraborty and Murari Mohan Mukherjis in 100/74, for the Appellant;P.K. Sengupta (Govt. Pleader), Anil Kumar Bhandari for respondents in F.M.A. 869/74, P.K. Sengupta (Govt. Pleader) and S.N. Dutta for respondents in F.M.A. 100/74, for the Respondent

Final Decision: Allowed

Judgement

1. The petitioners state that they took raiyati settlement of lands mentioned in paragraph 2 of the petition from the recorded landlords, Kartick Chandra Shawoo and Tarit Kumar Ballav. The particulars of the lands have been mentioned in the petition and it is not necessary for the present purpose to refer to the said particulars. As the landlords'' right had vested in the State of West Bengal, the petitioners'' estate were recorded as raiyati in the Government Settlement records in respect of the said lands mentioned in the petition and a notice u/s 10(2) of the West Bengal Estates Acquisition Act, 1953 was served on the landlords and the said landlords had filed an objection petition on the ground that the property in question

was tank fishery right and as such excluded from the operation of the Act, that they had submitted requisite returns for the lands in question to keep these in khas. On the 4th of December, 1967 the Revenue Officer specially empowered u/s 44(2a) of the West Bengal Estates Acquisition Act, 1953 directed the record of rights and papers to be put up for his examination. On the 5th of December, 1967 on the ground that the classification of lands had been wrongfully recorded for some plots the said Officer examined the record of rights and the connected records and papers and passed an order starting suo moto proceedings u/s 44(2a) of the Act for revision of the classification of lands in respect of the above. On the 9th of December, 1967 an order was passed by the said Officer for issue of notice upon the recorded tenants to appear before him on 8th of January, 1968 to adduce evidence. It appears that the Revenue Officer passed a final order correcting the records of rights in respect of classification of the said lands on 21st of March, 1968. The petitioners, thereupon, moved this Court under Articles 226 of the Constitution and obtained a rule nisi. The petitioners disputed the Jurisdiction of the Revenue Officer to initiate such proceedings u/s 44(2a) of the said Act. By virtue of section 2 of the amending Act, being West Bengal Act IX of 1967, the time specified in Section 44(2a) within which such proceeding could be initiated suo moto was extended from 9 years to 12 years. It is not in dispute in this case that but for the period of 12 years the said proceedings could not have been initiated. It was contended on behalf of the petitioners that the said amending Act IX of 1967 had not been reserved for the consideration of the President and had not received the assent of the President. According to the petitioners the amending Act could not have the effect of law, in view of the provisions contained in the said amending Act without the assent of the President because of Article 31(3) of the Constitution of India. The petitioners contended that the provisions of Clause (2) of Articles 31 would be applicable to the amending Act and without the assent of the President the said Act could not have been enforced as law. Mr. Justice P. K. Banerjee before whom the matter came up for hearing came to the conclusion that in view of the Provisions of the West Bengal Estates Acquisition Act, 1953 and in view of the provisions of the amending Act IX of 1967 the said Act in order to become enforceable as law required the assent of the President. But Mr. Justice Banerjee was, further, of the opinion that in view of the fact that assent of the President was obtained to the subsequent Amending Act of 1973 which was the West Bengal Act XXXIII of 1973 the defect of assent not being given to the earlier amending Act was cured. Mr. Justice Banerjee in coming to the said conclusion relied on the decisions of the Supreme Court in the case of (1) Jawaharmal Vs. State of Rajasthan and Others, as well as the decision of the Supreme Court in the case of (2) Venkata Rao Esajirao Limbekar and Others Vs. The State of Bombay and Others, . In the premises the learned Judge dismissed the application and discharged the rule nisi.

2. Being aggrieved by the said decision the petitioners preferred an appeal. The appeal came up for hearing before Mr. Justice Anil K. Sen and Mr. Justice M. N. Roy.

After discussing the facts of the case the learned Judges observed that the appeal raised tow questions of importance, the decision whereon might lead to far reaching consequences. The questions, formulated by the learned Judges of the Division Bench were, as follows:-

(a)Whether the West Bengal Estates Acquisition Act (Amendment Act of 1967) being West Bengal Act IX of 1967 was an Act which required under Article 31(3) of the Constitution to be reserved for consideration by the President and his assent thereto in order to become law;

(b)Whether the President having given his assent to the West Bengal Estates Acquisition Amending Act, 1969 and to the West Bengal Estates Acquisition Amending Act of 1973, can be said to have given his assent to the West Bengal Estates Acquisition Amendment Act of 1967 (West Bengal Act IX of 1967) and if so with effect from what date?

In view of the importance of the questions raised the learned Judges of the Division Bench were of the opinion that the matter should be heard by a larger Bench to be constituted by the learned Chief Justice and they reported accordingly. The matter has thus come up for hearing before us.

3. As mentioned herein before it is not in dispute that if the West Bengal Act IX of 1967 had not become enforceable as law the impugned proceedings were beyond time. Section 44 of the West Bengal Estates Acquisition Act, 1953 which is in the Chapter V of the said Act deals with the draft and final publication of the record of rights. Sub-section (2a) of Section 44 authorises an officer specially empowered by the State Government to revise an entry in the record of rights finally published. Section (2a) as it stands at present is to the following effect:-

(2a)An Officer specially empowered by the State Government may on an application within 9 months, or of his own motion within 21 years from the date of the final publication of the record of rights or from the date of coming into force of the West Bengal Estates Acquisition (2nd Amendment) Ordinance, 1957, whichever is later, revise an entry in the record finally published in accordance with the provisions of sub-section (2) after giving the persons interested an opportunity of being heard and after recording the reasons therefore.

4. The sub-section contains two provisos which are not material for consideration of the issues before us. Sub-section (2a) was inserted with retrospective effect by section 7(a) of the West Bengal Estates Acquisition Act (2nd Amendment) Act, 1957, being West Bengal Act XXV of 1957. Originally the power of the officer was limited to nine months, which was extended to six years. Then that was extended to 9 years by section 9 of the West Bengal Estates Acquisition (Amendment) Act, 1963 being West Bengal Act XXII of 1963. Thereafter it was, further, extended from the period of 9 years to 12 years by section 2 of the West Bengal Estates Acquisition (Amendment) Act, 1967, being West Bengal Act IX of 1967. We are concerned in this reference with

the effect of the said amendment. It was, further, extended from 12 years to 15 years by the West Bengal Estates Acquisition (Amendment) Act, 1969, being West Bengal Act XXXI of 1969. By the West Bengal Estates Acquisition (Amendment) Act, 1973 being West Bengal Act I of 1973 the period was further extended from 15 years to 18 years and by the West Bengal Estates Acquisition (Amendment) Act, 1975 being West Bengal Act XXI of 1975 the period has no been extended from 18 years to 21 years. The provisions of the various Acts amending the period during which the empowered officer can take action for revision of the record of rights will have to be examined in little more detail. As mentioned hereinbefore the main contention in this reference before us, is whether the West Bengal Estates Acquisition (Amendment) Act IX of 1967 could be enforced as law. The Act in question was passed by the West Bengal Legislature. It received the assent of the Governor and such assent was published in the Calcutta Gazette Extra-Ordinary on the 17th of April, 1967. The Act was, as the preamble indicated, an Act to amend the West Bengal Estates Acquisition Act, 1953. It has three sections, the first dealing with the short title and the second providing for the substitution of the words "within 12 years" for the existing words, "within 9 years" in sub-section (2a) of Section 44 of the West Bengal Estates Acquisition Act, 1953. Section 3 of the said Amending Act repeals the West Bengal Estates Acquisition (Amendment) Ordinance 1966 and saves any action taken pursuant to the said Ordinance which had commenced from 1st of November, 1966. Thereafter, came the West Bengal Estates Acquisition (Amendment) Act, 1969. The same was passed by the West Bengal legislature and received the assent of the President which was published in the Calcutta Gazette Extra-Ordinary on the 3rd of November, 1969. Section 2 of the said Act amended the provisions of section 6 of the West Bengal Estates Acquisition Act, 1953, being West Bengal Act 1 of 1954. It is not material or necessary to refer to the said amendment. Section 3 amends section 42 of the Act in certain manner and section 4 amended sub-section (2a) of section 44 of the West Bengal Estates Acquisition Act, 1953 by substituting 15 years to the then existing period of 12 years. The next amendment was made by the West Bengal Estates Acquisition (Amendment) Act, 1973 being West Bengal Act 1 of 1973. The said Act received the assent of the Governor which was published in the Calcutta Gazette Extraordinary on the 6th of March, 1973. Section 2 of the said amending Act substituted the words "within 18 years" for the expression "within 15 years". Section 3 of the said amending Act repealed the West Bengal Estates Acquisition (Amendment) Ordinance of 1972 but saved actions taken under the Ordinance. Thereafter, came the West Bengal Estates Acquisition (Second Amendment) Act, 1971. This Act was passed by the West Bengal Legislature and received the assent of the President which was published in the Calcutta Gazette Extra-Ordinary on the 12th of July, 1973. It amended section 7 of the West Bengal Estates Acquisition Act, 1953 by section 2 of the amending Act. By section 3 sub-section (4) of section 44 the main Act was amended. It is not necessary to refer to the said amendment. By section 4 of the amending Act section 46 of the main Act was omitted. By section 5 of the amending Act section 57(B) was inserted barring

the jurisdiction of the civil courts in respect of certain matters. For the present purposes it is not necessary to refer to the said provisions of amendment. Thereafter, came the West Bengal Estates Acquisition (Amendment) Act, 1975 which was passed by the West Bengal Legislature. It received the assent of the President and was published in the Calcutta Gazette Extra-Ordinary on the 30th of June, 1975. By section 2 of the amending Act Section 10 of the West Bengal Estates Acquisition Act, 1953 was amended. For the present purpose it is also not relevant to refer to the said amendment. Section 3 of the amending Act amended section 26 of the main Act. It is also not relevant for the present purpose to refer to the actual provisions of amendment. Section 4 of the amending Act amended sub-section (2a) of section 44 of the main Act by subsisting the words "21 years" for the existing words "18 years".

5. In the aforesaid background of the legislative history of amendments the present questions referred to this Bench will have to be determined. The impugned action has been challenged on the ground that at the relevant time when section was taken in this case namely between 6thof December, 1967 and 21st of March, 1968 the respondent authorities had no right to initiate proceedings for rectification of the record of rights as the said action was taken beyond the period of 9 years. The West Bengal Estates Acquisition (Amendment) Act, 1967, being West Bengal Act IX of 1967, was not enforceable at the time having not received the assent of the President and as such the proceedings for re-opening or rectifying the record of rights could not be taken within the period of 12 years. Therefore, the action of the respondent authorities was without the authority of law. The first question, therefore, that requires to be considered is whether West Bengal Act IX of 1967 was an Act which required the assent of the President to be enforceable. Clause (2) of Article 31 of the Constitution enjoins that no property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of law which provides for acquisition or requisitioning of the property for an amount which may be fixed by such law or which may be determined in accordance with such principles and given in such manner as may be specified in such law; and no such law shall be called in question in any Court of law on the ground that the amount so fixed or determined is not adequate or that the whole or any part of such amount is to be given otherwise than in cash. The proviso to clause (2) of Article 31 of the Constitution is not material for the present purpose. Clause (2A) provides that where a law does not provide for the transfer of the ownership or right of possession to any property to the State or to a corporation owned or controlled by the State it shall not be deemed to provide for the compulsory acquisition or requisitioning of the property, notwithstanding that it deprives any person of his property. Clause (3) of Article 31 enjoins that no law as is referred to in clause (2) made by the legislature of a State shall have effect unless such law, having been reserved for the consideration of the President, has received his assent. The combined effect of Clause (3) and Clause (2) of Article 31 of the Constitution is that any law providing for

compulsory acquisition or requisitioning of property passed by the legislature of the State will require reservation for consideration of the President and until after the assent of the President has been received such law will not be enforceable. In the case of (3) The State of Bihar Vs. Sir Kameshwar Singh, at page 304 of the report the Supreme Court had occasion to examine the provision of Clause (3) of Article 31 of the Constitution. S. R. Das, J., as the learned Chief Justice then was, explained the meaning of the expression "Law" in Clause (3) of Article 31 of the Constitution. The learned Judge observed at page 305 of the report that the procedure to be followed if a Bill was passed by the State Assembly was laid down in Article 200. Under the article the Governor can do one of the three things, namely, he may declare that he assents to it, in which case the Bill becomes a law, or he may declare that he withholds assent therefrom in which case the Bill falls through unless the procedure indicated in the proviso is followed or he may declare that he reserves the Bill for the consideration of the President, in which case the President will adopt the procedure laid down in Article 201. Under that Article the President shall declare either that he assents to the Bill in which case the Bill will become law or that he withholds assent therefrom in which case the Bill falls through unless the procedure indicated in the proviso is followed. A Bill passed by the State Assembly may become the law if the Governor gives his assent to it or if, having been reserved by the Governor for the consideration of the President, it is assented to by the President. The learned Judge, further, observed that the question whether the requirements of Article 31(3) have been complied with will arise only when the State purports to acquire the property of any person under any law and that person denies that the asserted law has any effect. It is at that point of time that the Court has to ask itself "is it a law which having been reserved for the consideration of the President has received his assent". It is in this sense that the word "law" has been used in Clause (3) of the Article 31 of the Constitution. In other words, the word "law" has been use to mean what at the time of the dispute purports to be or is asserted to be the law. The learned Judge went on to explain that Article 200 of the Constitution did not contemplate a second reservation which would be necessary if initially the Governor instead of himself assenting to the Bill had reserved it for the consideration of the President. In the case of (4) Sundraramier and Company v. State of Andhra Pradesh AIR 1958 SC page 468 the Supreme Court observed at page 489 of the report that in considering the question as to the effect of the unconstitutionality of a statute it is necessary to remember that unconstitutionality might arise either because the law is in respect of a matter itself being within its competence its provisions offend constitutional restrictions. A legislation on a topic not within the competence of the legislature and the legislation within its competence but violative of constitutional limitations have both the same reckoning in a Court of law; they and both of them are unenforceable but it does not follow from this that both the laws are of the same quality and character and stand on the same footing for all purposes. While a law on a matter not within the competence of the legislature is a nullity, a law on a topic within its competence but repugnant to the constitutional prohibitions is only

unenforceable. If a law is on a field not within the domain of the legislature, it is absolutely null and void, and a subsequent cession of that field to the legislature will not have the effect of breathing life into what was a still born piece of legislation and a fresh legislation on the subject would be required. But if the law is in respect of a matter assigned to the legislature but its provisions disregard constitutional prohibitions, though the law would be unenforceable by reason of these prohibitions, when once they are removed the law will become effective without re-enactment.

6. Counsel in this connection also drew our attention to the observations to the similar effect in the case of (5) Kodarap Laxmiah v. Hyderabad State, AIR 1955 Hyderabad pag 41. Inasmuch as the observations were made in the context of different facts and different question we do not feel it necessary to refer to the same in detail. Similar observations, that law which requires the assent of the Presidents to be enforceable is not enforceable unless such assent is obtained, were made in the case of (6) Rameshwar Kumar and Others Vs. R.P. Mishra and Others, in a Bench decision of the Patna High Court. The Andhra Pradesh High Court in the case of (7) Inamdars of Sulhnagar Colony and Others Vs. Government of Andhra Pradesh and Another, was dealing with the Hyderabad Tenancy and Agricultural Land Act, 1950.The said Act contained provisions bearing on the acquisition and requisitioning of land. The Division Bench of the Andhra Pradesh High Court was of the view that the Act came within the purview of Articles 31 of the Constitution and was inoperative as it had not been reserved for the consideration of the President and had not received his assent. Counsel for the petitioner drew our attention to the decision of the Supreme Court in the case of (8) Mahant Sankarshan Ramanuja Das Goswami etc., etc. Vs. The State Of Orissa and Another, ; there the Supreme Court observed that the benefit of Articles 31A of the Constitution would be available not only to those laws which by themselves provided for compulsory acquisition of property for public purpose but also to laws amending such laws, provided the assent of the President was obtained to such amending Act. It was to be presumed that the President gave his assent to the amending Act in its relation to the Act it sought to amend and this was more so when by the amending law the provisions of the earlier law relating to compulsory acquisition of property for public purpose were sought to be extended to new kinds of properties. In assenting to such law the President assented to new categories of properties being brought within the operation of the existing law and he in effect assented to law for the compulsory acquisition for public purpose of these new categories of property. The Supreme Court observed that the assent of the President to the Orissa Estates Abolition (Amendment) Act, 1954 amending the Orissa Estates Abolition Act (Act 1 of 1952) brought the same under the protection of Article 31A as a necessary consequences. The amending Act, according to the Supreme Court, should be considered in relation to the old law which it had sought to extend and the President assented to such an extension or in other words to a law for the compulsory acquisition of the

property for public purpose. Our attention was also drawn to the decision of the Supreme Court in the case of (9) Sriram Narayan Medhi Vs. The State of Maharashtra, , but the said decision does not carry the point any further.

7. The first question, therefore, is whether the West Bengal Act IX of 1967 comes within the purview of Clause (2) of Article 31 of the Constitution? We have noticed the provisions of the said Act. The West Bengal Estates Acquisition Act, 1953, being West Bengal Act 1 of 1954, is undoubtedly an Act which is for compulsory acquisition of property. The question, however, is whether the provisions of the West Bengal Act IX of 1967 are inextricably linked up with the said acquisition of property under the West Bengal Estates Acquisition Act, 1953. The said amending Act merely substituted the period of 12 years to the existing period of 9 years for taking steps by the empowered officer to revise the records finally published in accordance with the provisions of sub-section (2) of section 44 of the West Bengal Estates Acquisition Act, 1953. Section 44 is in Chapter V of the said Act. Chapter V of the West Bengal Estates Acquisition Act, 1953 deals with the preparation of the record-of-rights. Section 39 being the first section in Chapter V empowers the State Government for carrying out the purpose of the West Bengal Estates Acquisition Act, 1953 to make an order directing that the record of rights might be prepared or revised in accordance with the provisions of said Chapter V and such rules as may have been made by the State Government. The importance of the record-of-rights for implementing the provisions of the West Bengal Estates Acquisition Act, 1953 cannot be over emphasized. The record of rights indicates the quantum of land and the particulars of the land to be retained. Such record-of-rights is the basis upon which the quantum and the persons entitled to the compensation for acquisition of properties will have to be determined. The right and extent of retention of land is inextricably linked up with the record-of-rights. The right to obtain in compensation and the quantum thereof are also dependent upon the record-of-rights. It follows, therefore, that the procedure and the method for the preparation of the record-of-rights are integral parts of the scheme of acquisition under the West Bengal Estates Acquisition Act, 1953. A reading of the different provisions contained in Chapter V of the Act along with the rules, namely Rule 25 onwards of the West Bengal Estates Acquisition Rules, 1954 leads to that conclusion. In the case of (10) Mt. Chabiran Bibi Vs. The State of West Bengal and Others, a Division Bench of this Court observed than an order u/s 39 of the West Bengal Estates Acquisition Act, 1953 directing the record of rights to be prepared in respect of any district or part of a district was made only after the vesting of estates. Preparation of record of rights, according to the said Bench decision, followed vesting and reflected the position after vesting. The revision of an entry in the record of rights u/s 44(2a) was permissible only to correct an existing error in the record so that the true position resulting from the acquisition of the estate was reflected in the record-of-rights. Section 44(2a) thus not being, according to the Division Bench, inextricably connected with the object of the Act nor being integral part of the machinery of

acquisition was not invalid simply because the amending Act IX of 1967 had not been assented to by the President. As we have noticed before, preparation of record of rights, under the scheme of the Act, is inextricably connected with the machinery of acquisition as also with the object of acquisition. Therefore, in so far as the Division Bench held that section 44(2a) was not inextricably connected with the object of the Act nor was an integral part of the machinery of acquisition, we are, with respect, unable to agree with the said view of the Division Bench. But this conclusion by itself does not solve the question whether the amending Act IX of 1967 not having received the assent of the President was enforceable. Though the preparation and the authority to revise the record of rights by the specially empowered officer are integral parts in the scheme of acquisition embodied in the West Bengal Estates Acquisition Act, 1953 the question remains whether an Act enlarging or curtailing the period of time during which such action could be taken is also an integral part of the scheme of acquisition engrafted in the main Act. In the case of (11) Syed Ahmed Aga and Others Vs. The State of Mysore and Others, the Supreme Court had to consider this aspect of the matter in connection with the Mysore Silk Worm Seed and Cocoon (Regulation of Production, Supply and Distribution) (Amendment) Act, 1969. The Supreme Court found that the principal Act had the sanction of the President and enabled orders to be passed which had the force of law enabling restrictions to be imposed and was covered by the purpose of the Act. The amendment only varied the form of restrictiveness without appreciably adding to its context, the amendment did not go beyond a regulation which was fully authorized by the language of the provisions of the Principal Act. Even any additional licencing involved did not go beyond the purview of the provisions of the Principal Act and the rules framed thereunder. The mere change in form was from statutory rules to statutory provisions. It was only an additional restriction from the special point of view of Article 304(b) of the Constitution which required presidential sanction. As noticed before the facts of the instant case are distinctly different from the facts before the Supreme Court. By the amending Act IX of 1967 there has been an enlargement of the period of time within which the empowered officer can suo moto take steps for revision of the record of rights. Such enlargement of time affects fundamentally the procedure of the rectification of record of rights which is inextricably connected with the scheme of acquisition. In the case of (12) Damodar Valley Corporation v. State of Bihar, AIR (1976) SC 1956 the Supreme Court had occasion to consider the effect of clause (2) of Article 288 of the Constitution deals with the exemption from taxation by States in respect of water or electricity in certain cases. Clause (2) of Article 288 provides that the legislature of a State may by law impose or authorize the imposition of any such tax as it mentioned in Clause (1) but no such law shall have any effect unless it has received the assent of the President and if any such law provides for the fixation of the rates and other incidents of such tax by means of rules or orders to be made under the law by any authority, the law shall provide for the previous consent of the President being obtained to the making of such rule or order. The Supreme Court observed that it

was not the effect of that clause that even if the requirements of two conditions mentioned in that clause were satisfied, the provisions which merely dealt with the manner and mode of payment of the aforesaid tax should also receive the assent of the President. In our view, the West Bengal Act IX of 1967 being inextricable linked up with the scheme of acquisition comes within the purview of Clause (2) of Article 31 of the Constitution and without the assent of the President the same is unenforceable. The question (a) formulated by the referring division bench must, therefore be answered in the affirmative.

8. The next question that requires consideration, i.e. whether the subsequent amending Act having received the assent of the President, can it be said that the President has given his assent to the West Bengal Estates Acquisition (Amendment) Act, 1967 and if so with effect from what date. After the West Bengal Act IX of 1967 the next amendment was by the West Bengal Estates Acquisition (Amendment) Act, 1969 being West Bengal Act XXXI of 1969 the said amending Act received the assent of the President. By section 4 of the amending Act sub-section (2a) of section 44 of the main Act has been amended by substituting 15 years, for 12 years. Thereafter, the West Bengal Estates Acquisition (Amendment) Act, 1973 was passed by the West Bengal Legislature. The said Act received the assent of the Governor only. Section 2 of the said Act substituted 18 years for 15 years in sub-section (2a) of section 44 of the main Act. But as mentioned hereinbefore the said amending Act being West Bengal Act 1 of 1973 did not receive the assent of the President. There was another amending Act in 1973 being West Bengal Estates Acquisition (2nd Amendment) Act, 1973 - West Bengal Act XXXIII of 1973. Though the said Act received the assent of the President the said Act did not contain any provision for extending the period of time during which the specially empowered officer could take steps to revise the record of rights. Therefore the purpose of considering the present question the said 2nd amendment Act may be ignored. In the premises the only material question, is whether the President having given his assent to the West Bengal Estates Acquisition (Amendment) Act, 1969 can it be presumed that the President has given assent to the West Bengal Act IX of 1967?

9. Assent implies consent or in other words when the Constitution requires the assent of the President to a particular Bill either to become a law or for a particular Act to be enforceable, it requires that President must consent or agree to that. Assent can be express or implied. There is no specific mode of giving the assent. We enquired from Counsel at the Bar whether there are any rules of business or any other rules framed under the Constitution indicating in what manner the assent of the President should be obtained whenever it is necessary. No such rules were brought to our notice. Assent can therefore be implied from the conduct. Therefore, when the President in 1969 agreed by giving his assent to the West Bengal Estates Acquisition (Amendment) Act, 1969 that the period of time during which the specially empowered officer could take steps for re-opening the proceeding suo moto for rectification of record of rights would be 15 years instead of existing 12 it

must be deemed that he had assented or agreed to the period being 12 years before that assent, otherwise he could not have assented to the substitution of the period of 15 years for the period of 12 years. This question was considered by the Supreme Court in the case of (1) Jawaharmal Vs. State of Rajasthan and Others, . There the Supreme Court dealing with Article 255 observed at page 769 of the report that in the case of laws to which Article 255 of the Constitution applied the assent of the President given after the Act was passed served to cure the infirmity arising from the initial non-compliance with its provisions. In other words, an Act passed without obtaining the previous assent of the President does not become void by reason of the said infirmity; it might be said to be unenforceable until the assent was secured. Assuming such a law was otherwise valid, its validity could not be challenged only on the ground that the assent of the President had not been obtained earlier as required by the other relevant provisions of the Constitution. The said infirmity is cured by the subsequent assent and the law would become enforceable. As to the period of time when the President can be deemed to have given his assent the Supreme Court observed at page 771 of the report that the assent of the President cannot be legislative process be deemed to have been given to an earlier Act at a time when in fact it was not so given. The Supreme Court observed that in this context there was no scope for any retrospective deeming provision with regard to the assent of the President. We may emphasize that as the legislature was incompetent to deem that the President had given his assent to an earlier Act at a time when in fact it was not so given, so, are the court of law incompetent by the process of interpretation to deem that the assent of the President was given to an earlier Act at a point of time when in fact it was not so given. It follows, therefore, that by subsequent assent to a subsequent Act if the facts and circumstances of the case so justify it can be deemed that the President has given his assent to an earlier Act but such assent must be deemed to have been given on the date when the subsequent Act receive the assent required. In this connection reference may be made to the observations of the Supreme Court in the case of (1) Venkata Rao Esajirao Limbekar and Others Vs. The State of Bombay and Others, at page 129 of the report where the Supreme Court observed as follows:-

Now the question of lack of assent of the President was never pressed before the High Court, nor have we been invited to examine it. We would, however, like to observe that as noticed before, when Hyderabad Amending Act III of 1954 was enacted the assent of the President was duly obtained. Similarly, when Bombay Act XXXII of 1958 which was meant for amending Hyderabad Act XXI of 1950 was enacted the assent of the President had been given. If the assent of the President had been accorded to the amending Acts, it would be difficult to hold that the President had never assented to the parent Act, namely, Hyderabad Act XXI of 1950. Even if such assent had not been accorded earlier, it must be taken to have been granted when Amending Act III of 1954 was assented to.

For the aforesaid reasons we are of the opinion that the President having given his assent to the West Bengal Estates Acquisition (Amendment) Act, 1969 it can be said that the President has given his assent to the West Bengal Estates Acquisition (Amendment) Act, 1967 being the West Bengal Act IX of 1967 and such assent of the President to the West Bengal Estates Acquisition (Amendment) Act, 1967 being West Bengal Act IX of 1967 must be deemed to have been given when the President assented to the West Bengal Estates Acquisition (Amendment) Act, 1969.

10. The Division Bench has referred this appeal to the Special Bench and according to the relevant rule we have to dispose of the appeal as a whole. Therefore, we have to consider whether the order of Mr. Justice P. K. Banerjee discharging the rule nisi has to be altered or upheld. Before Mr. Justice Banerjee only one contention was urged, namely, that the proceedings initiated were at a point of time when the West Bengal Act IX of 1967 was unenforceable and, therefore, the officer concerned had no jurisdiction.

11. In the view we have taken when the suo moto proceedings for rectification of the record of rights were taken the said proceedings were beyond time and as such without jurisdiction. The subsequent assent of the President to the subsequent amending Act can only be effective from the date of the subsequent assent to the subsequent amending Act. Inasmuch as the said proceedings have been initiated before that date, it must be held that the said proceedings and the impugned order are without jurisdiction. In the aforesaid view of the matter, the appeal is accordingly allowed. The said proceedings and the rectification order in Case No.86 of 1967 mentioned in the petition are hereby quashed and set aside. The respondents, however, will be at liberty to take fresh proceedings in accordance with law. There will be no order as to costs.

F. M. A. 100/74.

12. In view of the judgment and order passed today in F.M.A. 869 of 1974 (Ananda Kumar Chakraborty & Anr. v. State of West Bengal & Ors), this appeal is also allowed.

13. There will be no order as to costs.

Mitra, C.J.

14. I agree.