Kalipada Ghose Vs Sk. Kurban Ali

Civil Revision Case No. 816 of 1955

Court: Calcutta High Court

Date of Decision: Aug. 24, 1955

Acts Referred:
Bengal General Clauses Act, 1899 â€" Section 8#Constitution of India, 1950 â€" Article 227#West Bengal Bargadars (Amendment) Act, 1954 â€" Section 1(2), 12(2), 12(3), 12A, 3(4)#West Bengal Bargadars (Amendment) Ordinance, 1954 â€" Ordinance 5#West Bengal Bargadars Act, 1950 â€" Section 10(2), 12(8), 12A, 12A(1), 12A(2)

Citation: 60 CWN 241 : (1957) 2 ILR (Cal) 855

Hon'ble Judges: Debabrata Mookerjee, J

Bench: Single Bench

Advocate: Shyama Charan Mitter, for the Appellant;Arun Prokash Chatterjee, for the Respondent

Judgement

Debabrata Mookerjee, J.
This is an application under Article 227 of the Constitution directed against an order of a Magistrate, dated

January 18, 1955 purported to have been made u/s 12A(1) of the West Bengal Barger"s Act, 1950 as amended by Act XXIII of 1954 declaring

the opposite party Kurban Ali as Barger in respect of certain plots of land and directing restoration to his cultivation the plots of which the

Petitioner is the owner.

2. The case made by the opposite party who was the applicant before the Magistrate is that he has been a bargadar for about 7/8 years in respect

of 5.2 acres of land comprised in 4 dags bearing Nos. 697, 257, 278 and 1087 in Mouza Shankpore within P.S. Keshpore. The case which he

made was that he was the Barger till about Jaistha 8, 1381 B.S. when he was unlawfully dispossessed without reference to the Bhagchas

Conciliation Board established for that area. After he was so dispossessed the lands were settled with four persons, named Saiyed Ali,

Anishuddin, Maijuddin and Ainuddin who started cultivation of the lands forcibly. In those circumstances a prayer was made by the opposite party

Kurban Ali for the lands being restored to his cultivation.

3. The Petitioner resisted the application and his case was that he himself had cultivated the lands till 1357 B.S. and in the year 1358 the lands

were settled with the four persons named above as tenants.

4. The proceedings thus commenced before the Subdivisional Magistrate, Midnapore, were transferred for disposal to Sri G.C. Chatterjee who

dealt with and disposed of them by an order dated January 18, 1955 against which this Rule is directed.

5. It appears that the President of the Local Union Board was directed to enquire and make a report. The report not having been received a fresh

enquiry was directed by the President of another Union Board at Anandapur who held an enquiry, examined several witnesses and made a report.

Before the Magistrate the applicant Kurban Ali who is the opposite party here examined himself and some evidence was produced on behalf of the

Petitioner.

6. The learned Magistrate in deciding the question that arose for consideration before him did not confine himself to the evidence which he himself

had heard but relied in a substantial measure upon the report of the President, Union Board of Anandapur, which embodied the statements of

persons examined by the latter. In dealing with the materials which emerged from the report of the President, the learned Magistrate observed that

he saw no reason to disbelieve the evidence recorded by the President, Union Board, and his report based upon such evidence. It appears that the

persons who gave their version of the possession of the disputed lands were not called to give evidence before the Magistrate who dealt with these

proceedings. On a consideration of the materials appearing from the report the learned Magistrate came to the conclusion that he had no hesitation

in holding that the applicant Kurban Ali was the bhagchasi in respect of the disputed lands under the Petitioner till the year 1357 B.S. and was

dispossessed by the Petitioner in the year 1358 B.S. with the help of Saiyed Ali, Anishuddin and others named above. In this view of the matter

the Magistrate held that the eviction of the opposite party Kurban Ali from the lands was unlawful and that he should in those circumstances be

restored to cultivation of the lands in dispute forthwith. There being no standing crops on the land at the time there was no question of ordering

payment of compensation in the case.

7. The owner being dissatisfied with the decision given by the magistrate applied to this Court under Article 227 of the Constitution and obtained

the present Rule.

8. Mr. Mitter appearing in support of the Rule has argued that the order complained of involves infringement of the law of a grave character, and

the order is not only wrong on the merits but appears to have been made on a complete misapprehension of the effect of the West Bengal

Bargadar''s Amendment Act, 1954 (Act XXIII of 1954) which came into force on the West Bengal Bargadar''s Amendment Ordinance, 1954

ceasing to operate; in other words, Mr. Mitter''s contention seems to be that the provisions of Section 12A under which the Magistrate purported

to act could not possibly be applied to the present case in view of the date on which the application was filed by the bargadar for relief. It is to be

observed that the application for relief was filed by the opposite party on August 3, 1954 when the West Bengal Ordinance v. of 1954 was in

force. That Ordinance was published in the Calcutta Gazette, Extraordinary on June 9, 1954 and by Section 1(2) it was brought into force

immediately on the date of its publication in the official gazette. Section 12A which was introduced by this amendment ordinance reads as follows:

Where the owner of any land has, whether before or after the commencement of the West Bengal Bargadar''s (Amendment) Ordinance 1954,

terminated or caused to be terminated the cultivation of the land by a bargadar in contravention of the proviso of Sub-section (2) of Section 5 or of

the provisions of Sub-section (2) or Sub-section (3) of Section 12, the bargadar may apply to the Subdivisional Magistrate within whose

jurisdiction the land is situated for the restoration to cultivation of the land and such Magistrate may, after giving an opportunity to the owner of the

land of being heard, order the restoration to cultivation of the land by the bargardar and enforce such order.

9. This is Sub-section (1) of Section 12A. Sub-section (2) of the section does not fall to be considered in the present context and is therefore left

out of account.

10. The proviso to Sub-section (2) of Section 5 says that cultivation of land by a bargadar shall not be terminated on any of the grounds set out in

Sub-section (1) of Section 5 except under the order of a Board. The grounds need not here be set out in extenso. They relate, generally speaking,

to the one or other of the grounds which the legislature has recognised as entitling the owner to obtain possession of the land cultivated by a

bargadar. Sub-section (8) of Section 12 relates to matters of execution of the order or an award made by a Board or an appellate officer.

11. It is, therefore, clear that by Ordinance v. of 1954 the bargadar was given the right to apply to a Magistrate named in the section within whose

jurisdiction the land is situate from the possession of which the bargadar has been ousted, in contravention of certain provisions of the Barger''s Act

mentioned in the section. This Ordinance was succeeded by another Ordinance VIII of 1954 which came into force on August 17, 1954

introducing certain amendments which are not material to the present consideration. Then followed Act XXIII of 1954 (The West Bengal Barger''s

(Amendment) Act, 1954) by which Section 12A was considerably added to and elaborate provisions were made for transfer of cases by the

Subdivisional Magistrate to an officer subordinate to such Magistrate. Matters affecting not merely procedure but also creating substantive rights

were also introduced. Sub-section (2) of Section 1 of the Amendment Act, 1954 provides that it shall come into force immediately on the West

Bengal Barger''s (Amendment) Ordinance ceasing to operate. Section 4 of the Amendment Act further provides as follows:

On the West Bengal Bargadar""a (Amendment) Ordinance, 1954 ceasing to operate, Section 8 of the Bengal General Clauses Act, 1899 shall

apply as if the said Ordinance and the West Bengal Bargadar''s (Second Amendment) Ordinance, 1954 were enactments then repealed by a West

Bengal Act.

12. It is, therefore, clear that the legislature provided that the amendment Act would come into force on the Ordinance ceasing to operate and

express provision was made in Section 4 as respects the effect of the passing of the Act in relation to matters which were provided for in the

Ordinance. Section 8 of the Bengal General Clauses Act as is well known lays down the consequences of repeal. That section provides that unless

a different intention appears a repeal shall not affect the previous operation of an enactment so repealed or affect any right, privilege, obligation,

liability acquired, accrued or incurred under any enactment so repealed. It is therefore reasonably clear that the legislature by the express provision

contained in Section 4 of the Amendment Act ruled out any supposed intention to incorporate bodily the provisions of the new Act; rather, the

provisions of the two Ordinances that preceded it were dealt with in manner indicated by Section 8 of the General Clauses Act. The result,

therefore, is that the rights and liabilities that were acquired or accrued remained and parties to proceedings which were commenced at a time

when Ordinance v. of 1954 was in force continued to be governed by the provisions of that Ordinance.

13. Mr. Chatterjee in opposing the Rule has argued that taking the provisions of the Amendment Act, 1954 as a whole, the legislature merely

wanted to provide an elaborate machinery for the purpose of securing the rights of bargadars and consequently the provisions that have been made

with that end in view must be construed as mere matters of procedure.

14. It is indeed true that suitors have no vested right or interest in procedure. They have no right to complain if in the course of the litigation the

procedure is changed. But that implies that no injustice is caused to either party by change of such procedure. It is an accepted rule of construction

that where an enactment deals with procedure the enactment applies to all actions whether commenced before or after it. In so far, therefore, as

the Amendment Act of 1954 seeks to lay down matters of procedure there can be no difficulty whatever in holding that nobody can be heard to

complain of the change of procedure. In the present case it must, therefore, be held that matters affecting mere procedure introduced by the

different provisions of the Amendment Act, 1954 will apply. But it is to be considered whether the Amendment Act of 1954 is all procedure.

Looking at the various amendments that have been introduced, it is impossible to say that all the amendments relate to matters of procedure and

none to matters of substantive rights. A right of appeal is undoubtedly a matter of substantive right. So also would be a right of revision particularly

when the power to revise is without limitation. Sub-section (2)(i) of Section 3 of the Amendment Act, 1954 clearly gives a new right which must be

held to be substantive right of revision to the party aggrieved by an order of the Magistrate. That Sub-section provides that any person aggrieved

by an order made by a Magistrate under Sub-section (1) of Section 12A may within 30 days apply to the District Judge within whose jurisdiction

the land is situate, for revision of the order made by the Magistrate; and the District Judge is given power to revise the order in such manner as he

thinks fit and His orders are made final. This is indeed wide power of revision. There is no limitation imposed upon the power of the District Judge

to revise an order made by the Magistrate u/s 12A(1). Viewed in this light it is almost as wide as the power of appeal and a person who has been

given this right has indeed been given a very valuable right. I, therefore, cannot quite conceive how this provision introduced by the Amendment

Act of 1954 can be called a mere procedural provision. It is not necessary to refer to other minor aspects which may emerge to view on a

conspectus of Section 12A as amended by the Amendment Act, 1954. Therefore it must be held that the Amendment Act of 1954 does not

merely alter procedure but also gives new remedies which are substantive rights of a very valuable kind.

15. An examination of Section 12A reveals that there are details of procedure which have been added to by the Amendment Act, I think those

provisions which are merely procedural will apply to the present proceedings; but I cannot agree that the whole of Section 12A can be made to

apply in view of the fact that the application for relief was filed by the bargadar on August 3, 1954, a date on which date Ordinance v. of 1954

ruled.

16. In the instant case the application was made to the Sub-divisional Magistrate under the provisions of Section 12A of Ordinance V. The

Subdivisional Magistrate was alone competent to deal with the application but during the pendency of the proceedings the Amendment Act XXIII

of 1954 came into operation which provided for transfer of a proceeding instituted before the Subdivisional Magistrate to an officer subordinate to

such Magistrate. In this case there was in fact such transfer made. It cannot be complained that the transfer was without jurisdiction inasmuch as

transfer of a proceeding is merely a matter of procedure and the parties concerned cannot be heard to complain of the change of procedure which

entitled the Subdivisional Magistrate to transfer the proceedings. I, therefore, hold that the present proceedings which were dealt with by Sri G.C.

Chatterjee on transfer were proceedings dealt with in accordance with law.

17. Section 8 of the Bengal General Clauses Act, 1899 which has been expressly made applicable by Section 4 of the Amendment Act, 1954 may

have the effect of preserving the rights and liabilities of parties as they were under Ordinance v. and Ordinance VIII of 1954; but that will not

prevent, in my view, application of the new procedure to pending proceeding"s. I therefore hold that a bargadar"s application, if made at a time

when Ordinance v. of 1954 or Ordinance VIII of 1954 was in force, could still be dealt with and disposed of in accordance with the new

procedure laid down in Section 12A(2) of the Barger"s Amendment Act XXIII of 1954. But the application of the Amendment Act is strictly to be

confined to matters procedural and no substantive right which that Act created or a new remedy which it provided, could be availed of m a

proceeding which originated when the pre-Amendment Act and Ordinance were in force. To be more precise although in the present case the

procedural parts of the Amendment Act, 1954 may be applicable, the substantive right of revision given to the aggrieved party under Sub-section

(2)(i) of Section 12A cannot possibly be availed of.

18. The learned Magistrate who dealt with the proceedings has, however, stated in the order that the Conciliation Board for the area functioned

from March 15, 1950. That has been strenuously disputed by the Petitioner before me. In the affidavit which has been filed in this Court it has been

clearly stated that the Bhagchas Conciliation Board for the area within P.S. Keshpore started functioning in July, 1952 and that there was no

Board for the area prior to that date. The Petitioner has also produced a document which is marked annexure A to the petition purporting to

contain the statement issued by the office of the Chairman of the Keshpore P.S. Bhdgchds Conciliation Board that the work of the Board was

started on July 4, 1952. There is no counter-affidavit challenging this statement on behalf of the opposite party.

19. In those circumstances it is necessary to ascertain when exactly the Board started functioning. That enquiry is essential in view of the fact that

the rights of the parties may be affected by the presence or absence of the Board. There are certain grounds which can be urged before the

Magistrate u/s 12A(1) where a Board has been established and there are certain other grounds which can be availed of if there is no Board

established for the area. Section 12A(1) provides that when the owner of a land has before or after the commencement of the Amendment Act,

1954 terminated or caused to be terminated the cultivation of land by a bargadar in contravention of the proviso to Sub-section (1) of Section 5 or

of Sub-section (2) or of Sub-section (3) of Section 12, the bargadar may apply to the Magistrate for relief. The section also provides that in any

area for which no Board has been established the ground of relief will be grounds other than those mentioned in Sub-section (1) of Section 5 of the

Bargadar"s Act. Therefore it is necessary to ascertain the date when exactly the Board came to be established and started functioning. The

Magistrate''s finding is that the opposite party was dispossessed sometime in April or May, 1954. The date of the alleged dispossession is also

material and that has to be considered with reference to the time when the Board was established for a particular area.

20. It is further to be observed that the finding of the Magistrate in the present case has been largely influenced by the statements of witnesses

made before the President of the Anandapur Union Board. The learned Magistrate has relied upon the report of the President based on the

statements of witnesses examined by him. The question arises whether that can be legally done. There is nothing to suggest that the witnesses who

were examined before the President, Anandapur Union Board, were the persons examined before the Magistrate. I have not the slightest doubt

that the Magistrate''s decision in the present case was largely determined by the report of the President and its contents. I do not think that the

West Bengal Barger''s Act entitles the Magistrate in a proceeding u/s 12A(2) to refer to and rely upon materials which are not properly brought

before him. There is no warrant for the procedure adopted by the Magistrate in treating as evidence statements of persons who never appeared

before him. It is true that Sub-section (2) of Section 10 of the West Bengal Bargadars Act provides that a Conciliation Board would not be bound

to observe the provisions of the Indian Evidence Act in deciding any matter before it; but this provision is unambiguous and is expressly limited to

proceedings before the Board. But proceedings before a Magistrate u/s 12A(1) are not proceedings before the Board. There is nothing in the Act

which will entitle a Magistrate to disregard the ordinary rules of evidence. The Board has been expressly excluded by the legislature as not being

subject to the disabilities imposed on the reception of hearsay evidence. The scheme of Section 12A seems to preclude any construction which

would favour the view that Magisterial proceedings under that section are proceedings comparable to those before the Board. Sub-section (4) of

Section 3 of Amendment Act, 1954 provides that the Subdivisional Magistrate or other officer to whom the proceeding may be transferred shall

be deemed to be a court for certain specified purposes mention in the section. I cannot quite conceive that where such responsibility is vested upon

Magistrates dealing with proceedings u/s 12A(2) it could be the intention of the legislature to make the provisions of the Indian Evidence Act

inapplicable. To my mind there is no scope for speculation in a case of this kind. All that Sub-section (2) of Section 10 says is that the Board will

not be bound in the conduct of its proceedings by technical rules of evidence. That does not surely give the Magistrate u/s 12A(2) the power to

override the provisions of the Indian Evidence Act.

21. In the present case there cannot be the slightest doubt that there has been complete disregard of the rules of evidence and consequently the

findings reached by the Magistrate cannot be upheld.

22. I have already held that the procedural provisions of the Amendment Act XXIII of 1954 will be attracted to the present case even though it

was filed at a time when Ordinance 5 of 1954 was in force. The law of evidence is law of procedure and cannot be said to affect substantive

rights. Therefore the rules of procedure that have been prescribed by the Amendment Act of 1954 will apply to the present proceedings.

23. The result, therefore, is that the order of the Magistrate must be set aside and the matter remanded to be dealt with by him in accordance with

law and in the light of the observations made above.

24. I am not unmindful of the limitation on the powers of this Court when dealing with an application under Article 227 of the Constitution. The

jurisdiction which this Court exercises under this Article is not merely supervisory taking that word in its ordinary acceptation. There must be

something which goes to the root of the matter before this Court can feel called upon to interfere under the provisions of that Article. The true

scope of the Article was defined by the Supreme Court in the case of Waryam Singh and Anr. v. Amarnath and. Anr. (1954) S.C.A. 334, which

approvingly referred to a decision of this Court in the case of Dalmia Jain Airways Ltd. Vs. Sukumar Mukherjee, , in which Harries, C.J. held that

the powers of superintendence conferred by Article 227 has to be exercised sparingly and only in appropriate cases in order to keep the courts

and tribunals within the bounds of their authority and not to correct mere errors. In this case I am persuaded that there has been not mere mistakes

in the exercise of jurisdiction but the order complained of has been made in complete disregard of the provisions of the law. In my view, therefore,

interference is called for.

25. The Rule is accordingly made absolute. There will, however, be no order for costs.