

Samijan Bewa Vs Revenue Officer, Lalgola

Court: Calcutta High Court

Date of Decision: March 19, 1986

Acts Referred: Constitution of India, 1950 " Article 14
 West Bengal Land Reforms Act, 1955 " Section 16, 18, 2(2), 50

Citation: 90 CWN 556

Hon'ble Judges: B.P. Banerjee, J

Bench: Single Bench

Advocate: Chandi Charan De, for the Appellant;

Judgement

B.P. Banerjee, J.

In the writ application, the petitioner, inter alia, challenged the vires of the amendment of Rule 21(3) of the West Bengal

Land Reforms Rules 196b which was incorporated by the Notification No. 1960-L. Ref/20R-1-79 dated May 26, 1979.
 The petitioner also

challenged the validity of the recording of the name of the respondent No. 5 to 9 as Bargadars in respect of the land
 belonging to the petitioner.

The case of the petitioner in short is that the petitioner is the owner of plot Nos. 1939 and 1352 in mouja Badupur under
 P.S. Lalgola in the district

of Murshidabad and it is alleged that the petitioner was and still is cultivating the said land by her only son. It is further
 stated that the name of the

petitioner was recorded in the present revised settlement records and neither in the revisional settlement nor in the
 present revised settlement

records in respect of the said land there was recording of the name of any bargadar in respect of the said land which
 clearly indicated that the lands

were under the personal cultivation of the petitioner. The petitioner's case is that on 17.12.82, the petitioner came to
 know that the names of the

respondent Nos. 5 to 9 were recorded as bargadars in respect of the said land of the petitioner without serving any
 notice upon the petitioner

and/or without giving the petitioner any hearing and/or any opportunity of being heard. It was alleged that the said
 recording of the name of the

bargadar was made behind the back of the petitioner and without the knowledge of the petitioner. It is further stated that
 an enquiry was made by

the petitioner in the office of the Revenue Officer, the respondent No. 1 as to whether any notice was issued to the
 petitioner before the recording

of the name of said respondents as bargadars and that the petitioner was informed that there was no requirement for service of any individual

notice in view of the amended provision of Rule 21(3) of the West Bengal Land Reforms Rules as amended by the Notification dated 26th May,

1979. The relevant provision of Rule 21(3) as amended by the Notification dated of Rule 21(3) as amended by the Notification dated 26th May

1979 is set out below:

21(3) The parties interested shall be deemed to have been given an opportunity of being heard under sub-rule (2), if, before one week of the

injury, if any, or, where no inquiry is made, one week before incorporating in the village record-of-rights any change on account of clause (e) of

Section 50, the Revenue Officer publishes a notice of his intention to make an inquiry, or, as the case may be to incorporate any change as

mentioned in sub-rule (2), by affixing a notice to some conspicuous-part of the village/Mouza where the land affected is situated and by affixing a

notice to a conspicuous place in the office of the Gram Panchayat within whose jurisdiction the land affected is situated.

In the writ petition, the petitioner categorically stated that no notice whatsoever was issued and the petitioner was not given any opportunity of

being heard before recording the names of the respondent Nos. 5 to 9 as bargadars in respect of the land in question.

2. Nobody appeared on behalf of the respondents to oppose the Rule and no affidavit-in-opposition was filed by the respondents controverting

any of the statements and/or allegations made in the writ petition and as such the statements made in the writ petition remain uncontroverted.

3. "Bargadar" has been defined u/s 2(2) of the West Bengal Land Reforms Act and ""bargadar"" means a person who under the system generally

known as adhi, or bhag cultivates the land of another person on condition of delivering a share of the produce of such land to that person and

includes a person who under the system generally knows as kisani cultivates the land of another person on condition of receiving a share of the

produce of such land from that person"" Under the scheme of the Act, a Bargadar has been conferred certain rights and obligations. One such

important obligation cast upon the bargadar is that the bargadar has to deliver a share of produce of any land cultivated by a bargadar to the

person whose land is cultivated. Bargadar has to tender the share of the produce as laid down in Section 16 of the said Act within the prescribed

period and if the share of produce is accepted, in that event, the person whose land is cultivated has to grant receipt therefore. It is also provided

that if the person whose land is cultivated by the Bargadar refused to accept the due share of the produce tendered to him by the Bargadar Or

refused to give receipt therefor, the bargadar had to deposit such share of produce within the prescribed period with such officer or authority as

may be prescribed and that it was made clear that such deposit shall discharge the bargadar from his obligation to deliver the share of the produce

to the person whose land he cultivates. Section 18 of the said Act provides, inter alia, that every dispute between the bargadar and the person

whose land he cultivates relating to termination of cultivation by the bargadar shall be decided by such officer as the State Government might

appoint. Under the scheme of the Act, Bargadar is an encumbrance and the person whose land is being cultivated by a Bargadar, loses his right to

cultivate the land permanently except in exceptional cases, as provided under the Act. Section 50 of the said Act provides the provision of

maintenance of the records of rights. The said Section reads as follows:

50. Maintenance of the record-of-rights: The Revenue Officer especially empowered by the State Government in this behalf shall maintain up-to-

date in the prescribed manner the village record-of-rights by incorporating therein the changes on account of

(a) mutation of names as a respondent of transfer or inheritance;

(b) partition, exchange, or consolidation of lands comprised in holdings, or establishment of Co-operative Farming Societies;

(c) new settlement of lands or of holdings;

(d) variation of revenue;

(e) alteration in the mode of cultivation for example by a bargadar:

(f) such other cause as necessitate a change in the record-of-rights.

4. Now the question is about the scope and ambit of the provision of Rule 21(3) of the said Rules and the validity of the said provision which has

been raised in the writ petition. It is a firmly established principle that in the matter of recording the name of the bargadar, principles of natural

justice have to be observed. In Administrative Law natural justice has a well defined concept which comprises two fundamental rules of fair

procedure: that a man may not be judge of his own cause; and that a man's defence must always be fairly heard and it is firmly established

principle that violation of the principles of natural justice makes a decision void, as in other cases of ultra vires.

5. The validity of sub-rule (3) of Rule 21 is being challenged on the ground that the said rule is not only unreasonable as it will introduce a system

which will not only create a hardship to the raiyats and/or owners of the land whose proprietary rights would be affected, but the same cannot be

said to be reasonably related to the purpose of the main Act. Under the impugned rule it is provided that merely by affixing notice to a conspicuous

part of the village or mouja under which the land is situated and by affixing notice in the office of the Gram Panchayat of the area in which the land

is situated it would be deemed that the person interested has been given opportunity of being heard. This provision is, as a whole unreasonable and

is designed to create hardship to the owners of the lands. There may be owners whose land may be situate in different villages or mouza and that in

that case, the owner and/or the raiyat concerned who resides in other villages or mouzas will not be able to know that the name of any person is

recorded as a bargadar in his land and that he will not get any opportunity to defend himself and/or to contest the matter at all. The bargadar, if ho

is a genuine and bonafide one, is supposed to know the name and address of the person whose land he was cultivating and that under such

circumstances there should not have been any difficulty on the part of the authorities concerned to serve at least a notice on the persons likely to be

affected by the impugned proceeding.

6. It is not understood why such a deeming provision for service of notice had been introduced in such a matter where the rights of property of the

citizens are likely to be affected. In case of recording the name of a bargadar the only person who is affected is the person whose land is claimed

to have been cultivated by a Bargadar and the impugned rule provided that the publicity should only be given to the village in which the land is

situated or by affixing a copy of the notice in the office of the Gram Panchayat. Public at large are not affected or likely to be affected. There was

no bonafide purpose for introducing such a peculiar rule which is capable of being evaded and in any event it is designed not to give any notice to

the persons affected when in the interest of justice and fairplay notice is required to be given to the person whose land is claimed to have been

cultivated by a Bargadar. The rule making authorities completely ignored the interest of such persons who are likely to be vitally affected and on

the contrary laid down a procedure which is useless and absurd in the context in which it is made. When there are only two parties involved in

such case, adoption of an uncertain, cumbrous procedure which on the face of it indicates a design to keep in dark the person whose land is

claimed to have been cultivated by the Bargadar, is in my view not only mala fide but beyond the scope and object of the Act. In my view the

provision of Rule 21(3) is only applicable and/or limited to cases of alteration only made in the mode of cultivation as provided u/s 50 of the said

Act and that secondly such wide power as conferred by Rule 21(3) of the said Act would result in gross abuse of the power by the officer

concerned and that on the strength of that provision anybody may get his name recorded as bargadar without affording any opportunity to the

persons affected. This is neither the scheme nor the purpose of the Act. The object and/or the purpose of the Act is to reform the land relating to

land tenure consequent on the vesting on State and of certain rights thereon in the State.

7. It appears that the said Rule was amended after this Court struck down the provision of "Operation Barga" and that after the provision of

"Operation Barga" was struck down by the Court, this amendment in the rule had been made to get the names of the persons claiming to be

bargadar in a most perfunctory manner. It was observed in Bernard Schwartz's "Administrative Law" at page 151 that ""Ultra vires doctrine is of

particular importance in the field of rule-making. Agency power to make rules extends no further than the authority given by the relevant statutory

delegation. On review, the court will determine whether the challenged rules are within the power conferred.... At page 152 of the book it was

observed that ""But even a rule which deals with the subject matter within the agency"s delegated authority may be invalid if it is arbitrary or

unreasonable, not only must a regulation, in order to be valid, be consistent with the Statute, it must be reasonable. The validity of a regulation will

be sustained only if it "reasonably relates to the purpose of enabling legislation" It is for the court to say whether or not there is a rational

relationship between a particular regulation and governing statute"". It is also stated the Craies on Statute Law (Sixth Edition) at page 324 that

There are five main grounds on which the by-laws may be treated as ultra vires.... (c) That they are repugnant to the Statute under which they are

made. (d) That they are uncertain. (e) That they are unreasonable"". Lord Russell C.J. in the case of *Kruse v. Johnson* reported in (1898) 2 Q.B.

91 at page 99 said: ""Unreasonable in what sense? If, for instance, they (the by-laws) were found to be partial and unequal in their operation as

between different classes; if they were manifestly unjust; if they disclose bad faith; if they involved such oppressive or gratuitous interference with

the rights of those subject to them as could find no justification in the minds of reasonable men, the court might well say ""Parliament never intended

to give authority to make such rules: they are unreasonable and ultra vires: But it is in this sense and in this sense only, as I conceive, that the

question of reasonableness can properly be regarded....

8. Applying the tests laid down as mentioned above, it is clear that the impugned sub-rule (3) of Rule 21 of the said rules is wholly unreasonable

and oppressive to the rights of the persons whose land is the subject matter of Barga recording. There is no sense in making a rule for affixing the

notice regarding Barga recording on the land in question or affixing such a notice in the office of the Gram Panchayat. Here the person under whom

Barga cultivation is claimed is a known person and the Bargadar who claims to be cultivating the lands as Bargadar and delivering or tendering a

share of the produce to the person under whom the Bargadar claims such right, knows the name and address of such person and there is no

difficulty to find out such person who may or may not reside in the same village where the land situates and to serve a notice upon such a person.

The introduction of such Rule had given scope to make barga recording behind the back and without the knowledge of the person in whose land

such barga right is claimed and the question of rights and interest of the parties in respect of lands cannot be allowed to be decided which have a

far reaching consequence on the basis of such an unreasonable rule.

9. In the instant case after examining the scheme and the purpose of the Act and the object of the Rule 21(3) it is clearly evident the Rule is

unreasonable and "not reasonably related" to the purpose of the Act in question. The purpose of the Act as it appears, is to protect the interest of

the bonafide bargadars and that for the purpose of protecting the interest of the bonafide bargadars, several provisions have been made to

safeguard the interests of the bargadars and that at the same time in the name of safeguarding the interest of the bargadar, the interest of the person

under whom the bargadars are cultivating, cannot be ignored altogether. In the instant case, in my view, the provision of Rule 21(3) of the said

Rules is violative of the provision of Article 14 of the Constitution of India inasmuch as it is on the face of it bad, unreasonable, oppressive and

further the said Rule is ultra vires the provision of the said Act. The Act is protected under the 9th Schedule of the Constitution of India, but the

rules are not protected when the said rules are ultra vires. In each and every case the persons who are likely to be affected by the barga recording

whether he is owner or the raiyat or a recorded bargadar, is entitled to get a reasonable opportunity of being heard and whenever an application is

received from any person for change of the record of rights for recording the name of the bargadar, it is imperative on the authorities concerned

firstly, to issue a notice upon the persons interested along with a copy of such application, if any, made in this behalf, and to offer such persons a

reasonable opportunity of being heard in the proceeding which had been initiated for recording the names of the bargadars. In such proceeding, the

authorities concerned cannot rely on any document and/or evidence without disclosing the same to the persons affected. If any local inspection is

required to be made, such inspection has to be made with notice to all the affected parties and the onus of proof that a person is a bargadar, is on

the person who claims such rights and he has to establish his rights on the basis of the evidence and records. This is the minimum requirement

which has to be observed in case of barga recording. As in the instant case, the barga recording was made without serving any notice and without

giving any opportunity of being heard to the petitioner, the impugned barga recording is set aside and the rule is made absolute. It is hereby

declared that the provision of Rule 21(3) as amended by notification No. 1960-L.Ref-20R-1-79 dated 26th May, 1979 is ultra vires the provision

of Article 14 of the Constitution of India as also the provision of the West Bengal Land Reforms Act 1955 and the respondents are restrained from

giving any effect or further effect to the said provision of Rule 24(3). Let a writ in the nature of Mandamus do issue commanding the respondents

to cancel, withdraw and/or to rescind the impugned barga recording made in favour of the Respondent No. 5 to 9 and to cancel the barga

certificate if already issued in this behalf in favour of the said respondents. This order is passed without prejudice to the rights and conditions of the

petitioner as well as of the private respondents and that the respondents would be at liberty to proceed afresh in accordance with law in the matter

in the light of the observation made above.

There will be no order as to costs.