
(2015) 01 CHH CK 0009

Chhattisgarh High Court

Case No: Writ Petition No. 1066 of 2002

Yadram

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

Date of Decision: Jan. 23, 2015

Acts Referred:

- Chhattisgarh Land Revenue Code, 1959 - Section 165, 170-B, 170-B(1)

Hon'ble Judges: Inder Singh Uboweja, J.; T.P. Sharma, J.

Bench: Division Bench

Advocate: A.K. Prasad, Counsel, for the Appellant; J.K.T. Gilda, Advocate General and Ramakant Mishra, Deputy Advocate General and Roshan Dubey, Panel Lawyer, Advocates for the Respondent

Judgement

@JUDGMENTTAG-ORDER

T.P. Sharma, J.

This reference has been made by the learned Single Judge (Hon'ble Mr. Justice Manindra Mohan Shrivastava) under Rule 32(2)(ii) of the High Court of Chhattisgarh Rules, 2007. Vide order dated 3-9-2014, Hon'ble the Chief Justice has directed to place the reference before this Bench to answer the following referred question of law:--

"Whether the provision of Section 170-B of the Chhattisgarh Land Revenue Code, 1959 inserted vide M.P. Amendment Act No. 15 of 1980 with effect from 24-12-1980, are applicable in respect of transactions prior to commencement of Chhattisgarh Land Revenue Code, 1959, involving transfer/acquisition of right by a non-tribal over a land which, before such acquisition of title or interest or transfer, belonged to a member of tribe who has been declared to be an aboriginal tribe under sub section (6) of Section 165 of the C.G. Land Revenue Code, 1959?"

2. Scope of application of the provisions contained in Section 170-B of the Chhattisgarh Land Revenue Code, 1959 (for short "the Code") relating to the period of its application

was first considered by the learned Single Judge of this Court (Hon"ble Mr. Justice Prashant Kumar Mishra) in the case of Parwati Bai and another v. State of Madhya Pradesh and others W.P. No. 1739/1997 (decided on 2-2-2010) wherein on consideration of rulings of the High Court of Madhya Pradesh in the cases of Roopchand v. Board of Revenue, M.P., Gwalior and others 1995 RN 184 and Chandrabhan Singh and others v. Banspati Kalar and others 1998 RN 32 it was held that Section 170-B of the Code has no application to transaction entered prior to 2-10-1959. Later another Single Judge of this Court (Hon"ble Mr. Justice Satish K. Agnihotri) in the case of [Smt. Ramkunwar Vs. Banshilal and Others](#), held that the provisions of Section 170-B of the Code would also apply to transaction done prior to 2-10-1959.

3. The learned Single Judge making the reference (Hon"ble Mr. Justice Manindra Mohan Shrivastava) took view that the provisions of Section 170-B of the Code have no application relating to transaction made before 2-10-1959, and in the light of aforesaid two contrary views taken by coordinate Benches, formulating the question directed to place the matter before Hon"ble the Chief Justice with a recommendation to place it before a Bench of two Judges for decision.

4. The learned Advocate General and counsel for the parties heard and records of the writ petition perused.

5. The learned Advocate General appearing on behalf of the State/respondents No. 1 to 3 submitted that the language of Section 170-B of the Code is unambiguous and specific period of its application i.e. the period commencing on 2-10-1959 and ending on the date of commencement of the Amendment Act of 1980 i.e. 24-10-1980 has been mentioned in Section 170-B of the Code. Although the provision is a beneficial provision to the member of Scheduled Tribe, but in absence of legislation its application cannot be considered as retrospective even prior to the Act i.e. 2-10-1959 mentioned in Section 170-B of the Code. It is contended that a well recognized rule of interpretation is that in absence of express words or appropriate language from which retrospectivity may be inferred, legislations take effect from the date they are issued and not from any prior date. In the present case, period of application of the amendment has already been mentioned in the amending act, therefore the amending act would be operative for the transaction made between 2-10-1959 till 24-10-1980 and not prior to 2-10-1959.

6. To buttress his contentions, the learned Advocate General placed reliance in the matter of [Sri Vijayalakshmi Rice Mills, New Contractors Co. and Others Vs. State of Andhra Pradesh](#), in which in case of amendment in the Rice (Andhra Pradesh) Price Control Order, 1963, the Supreme Court has held that in absence of express words or appropriate language specifying the application of amendment, retrospective notification will take effect from the date of its issuance and not from any prior date. The learned Advocate General further placed reliance in the matter of [K. Kapen Chako Vs. The Provident Investment Company \(P\) Ltd.](#), in which while dealing with the provisions of the Kerala Land Reforms Act (1 of 1964), the Supreme Court has held that in case words not

requiring retrospective operation so as to affect an existing statutory provision prejudicially ought not be so construed, it is a well recognized rule that statute should be interpreted if possible so as to respect vested rights. The learned Advocate General also placed reliance in the matter of [Purbanchal Cables and Conductors Pvt. Ltd. Vs. Assam State Electricity Board and Another](#), in which while dealing with the scope of operation of law as retrospective, the Supreme Court has held that the fundamental rule of construction is the same for all statutes whether fiscal or otherwise. The underlying principle is that the meaning and intention of a statute must be collected from the plain and unambiguous expression used therein rather than from any notion. The learned Advocate General also relied upon the matter of [Assam Small Scale Ind. Dev. Corp. Ltd. and Others Vs. J.D. Pharmaceuticals and Another](#), in which the Supreme Court has held that in absence of any specific provision for making the law retrospective, the Assam Preferential Stores Purchase Act, 1989, although it is a beneficent legislation but, has no application in case of supply order prior to enforcement of the Act. The learned Advocate General also relied upon the matter of [Shakti Tubes Ltd. Vs. State of Bihar and Others](#), in which the Supreme Court while dealing with the applicability of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993, has held that it has no application in case of prior supply and will apply only on the date of its enforcement. The learned Advocate General also relied upon the matter of [Rampur Fertiliser Ltd. Vs. Vigyan Chemicals Industries](#), in which the Supreme Court has held that the provisions of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993, is prospective, not retrospective, therefore, it will not affect the prior transaction.

7. Addressing the issue, learned counsel for the petitioners Mr. A.K. Prasad, submitted that the amended provisions of Section 170-B of the Code will not apply in case of transaction made prior to 1959. Mr. A.K. Prasad further submitted that law in the subject is specific and specific period of its application has been specifically mentioned in the amended provision, therefore, the amended provision has no application in case of transaction made prior to 2-10-1959. Mr. A.K. Prasad also submitted that prior to the dictum in Smt. Ramkunwar (supra), another coordinate Bench of this Court has decided the issue in Parwati Bai (supra). Mr. A.K. Prasad placed reliance in the matter of Balvant Rai v. Collector, Jhabua and others 1988 RN 169 in which the Division Bench of the High Court of Madhya Pradesh has held that that Section 170-B of the Code has no application in case of transaction made prior to 2-10-1959. Mr. A.K. Prasad further placed reliance in the matter of [Hariprasad Vs. Dhannu through L.Rs. Shyamlal and Others](#), in which the M.P. High Court (Indore Bench) has taken the same view.

8. The answer to the referred question would unfold on analysis of Section 170-B of the Code. Amended Section 170-B(1) of the Code reads thus,

"170-B. Reversion of land of member of aboriginal tribe which was transferred by fraud.--(1) Every person who on the date of commencement of the Madhya Pradesh Land Revenue Code (Amendment) Act, 1980 (hereinafter referred to as the Amendment Act of

1980) is in possession of agricultural land which belonged to a member of a tribe which has been declared to be an aboriginal tribe under Sub-section (6) of Section 165 between the period commencing on the 2nd October, 1959 and ending on the date of the commencement of Amendment Act, 1980 shall, within two years of such commencement, notify to the Sub-Divisional Officer in such form and in such manner as may be prescribed, all the information as to how he has come in possession of such land."

9. By amending Section 170-B of the Code vide Act No. 15 of 1980 which came into force from 24-10-1980, the Legislature has extended the application of the provisions. On plain reading of Section 170-B of the Code, the transaction made between 2-10-1959 and ending on the date of commencement of the Amendment Act of 1980 i.e. 24-10-1980 came in the purview of scrutiny. The law is given limited retrospective effect and specific date of its application has been provided in the amendment by the Legislature.

10. As per amended provision, a person found in possession of agricultural land belonging to a member of a tribe which has been declared to be an aboriginal tribe under sub-section (6) of Section 165 of the Code between the period commencing on 2-10-1959 and ending on 24-10-1980 is required to notify to the Sub-Divisional Officer within two years from 24-10-1980 in the manner prescribed that how he came into possession of such land. It is a beneficent legislation for members of Scheduled Tribe intended to save their agricultural property from fraudulent transfers.

11. It is trite to say that courts will apply rules of interpretation other than literal rule only when the language of the statute is ambiguous; or lead to no intelligible results or if literally read would nullify the very object of the statute. (See [B. Premanand and Others Vs. Mohan Koikal and Others](#), .

12. The provision under consideration is unambiguous and does not require different interpretation. It does not appear to be leading to no intelligible results or nullifying the object of the statute.

13. In any case, while dealing with the scope of application of the Act or the provision retrospective in Sri Vijayalakshmi Rice Mills (supra), the Supreme Court has held that "it is a well recognised rule of interpretation that in the absence of express words or appropriate language from which retrospectivity may be inferred, a notification takes effect from the date it is issued and not from any prior date. The principle is also well settled that statutes should not be construed so as to create new disabilities or obligations or impose new duties in respect of transactions which were complete at the time the Amending Act came into force. (See [Nani Gopal Mitra Vs. The State of Bihar](#), ".

14. While dealing with same question, the Supreme Court in K. Eapen Chako (supra) has held that "words not requiring retrospective operation so as to affect an existing statutory provision prejudicially ought not be so construed. It is a well-recognised rule that statute should be interpreted if possible so as to respect vested rights. Where the effect would be

to alter a transaction already entered into, where it would be to make that valid which was previously invalid, to make an instrument which had no effect at all, and from enactments merely affect procedure and do not extend to rights of action" and observed in para 37 as follows:--

"A statute has to be looked into for the general scope and purview of the statute and at the remedy sought to be applied. In that connection the former state of the law is to be considered and also the legislative changes contemplated by the statute. Words not requiring retrospective operation so as to affect an existing statutory provision prejudicially ought not be so construed. It is a well-recognised rule that statute should be interpreted if possible so as to respect vested rights. Where the effect would be to alter a transaction already entered into, where it would be to make that valid which was previously invalid, to make an instrument which had no effect at all, and from enactments merely affect procedure and do not extend to rights of action. See *Re Joseph Sucha and Co. Ltd.* (1875) 1 Ch D 48. If the Legislature forms a new procedure alterations in the form of procedure are retrospective unless there is some good reason or other why they should not be. In other words, if a statute deals merely with the procedure in an action, and does not affect the rights of the parties it will be held to apply *prima facie* to all actions, pending as well as future."

15. In *Shakti Tubes* (supra), the Supreme Court has taken similar view and observed in paras 24 and 25 as follows:--

"24. Generally, an Act should always be regarded as prospective in nature unless the legislature has clearly intended the provisions of the said Act to be made applicable with retrospective effect.

"13. It is a cardinal principle of construction that every statute is *prima facie* prospective unless it is expressly or by necessary implication made to have a retrospective operation. [The aforesaid] rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only—*nova constitutio futuris formam imponere debet non praeteritis*—a new law ought to regulate what is to follow, not the past. (See *Principles of Statutory Interpretation* by Justice G.P. Singh, 9th Edn., 2004 at p. 438.) It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole (*ibid.*, p. 440)."

25. In [Zile Singh Vs. State of Haryana and Others](#), , this Court observed as follows: (SCC pp. 9-10, paras 15-16)

"15. Though retrospectivity is not to be presumed and rather there is presumption against retrospectivity, according to Craies (Statute Law, 7th Edn.), it is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication from the language employed. If it is a necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the courts will give it such an operation. In the absence of a retrospective operation having been expressly given, the courts may be called upon to construe the provisions and answer the question whether the legislature had sufficiently expressed that intention giving the statute retrospectivity. Four factors are suggested as relevant: (i) general scope and purview of the statute; (ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what it was the legislature contemplated. (p. 388) The rule against retrospectivity does not extend to protect from the effect of a repeal, a privilege which did not amount to accrued right. (p. 392)

16. Where a statute is passed for the purpose of supplying an obvious omission in a former statute or to "explain" a former statute, the subsequent statute has relation back to the time when the prior Act was passed. The rule against retrospectivity is inapplicable to such legislations as are explanatory and declaratory in nature. A classic illustration is *Attorney General v. Pougett* (1816) 2 Price 381 : 146 ER 130 (Price at p. 392). By a Customs Act of 1873 (53 Geo. 3, c. 33) a duty was imposed upon hides of 9s 4d, but the Act omitted to state that it was to be 9s 4d per cwt., and to remedy this omission another Customs Act (53 Geo. 3, c. 105) was passed later in the same year. Between the passing of these two Acts some hides were exported, and it was contended that they were not liable to pay the duty of 9s 4d per cwt., but Thomson, C.B., in giving judgment for the Attorney General, said: (ER p. 134)

"The duty in this instance was, in fact, imposed by the first Act; but the gross mistake of the omission of the weight, for which the sum expressed was to have been payable, occasioned the amendment made by the subsequent Act: but that had reference to the former statute as soon as it passed, and they must be taken together as if they were one and the same Act;" (Price at p. 392)""

16. Thus, normally, the statutes are applicable only with prospective effect or from the date indicated in it and not with retrospective effect unless specifically provided. In absence of express words or appropriate language from which retrospectivity may be inferred, law takes effect from the date it is issued and not from any prior date. Further, it is to be borne in mind while interpreting a statute that the interpretation given does not create new disabilities or new obligations or new duties in respect of transactions which are complete. If possible, the vested rights should be respected while interpreting a statute.

17. In the present case, law is amended with limited retrospective effect. Plain reading of Section 170-B of the Code as amended covers the transaction made between 2-10-1959 till 24-10-1980 and not the transaction made prior to 2-10-1959. The language of Section

170-B of the Code is plain and unambiguous and it is not permissible to deploy rules of interpretation to attribute any other meaning to the words used by the legislature, that those which naturally flow from it. If the plain words of Section 170-B of the Code are interpreted in such a way as to assign its meaning other than what is written in it, that is, if the Section is read to apply to transactions done prior to 2-10-1959 despite specific stipulation in the Section that it will apply to transactions done on and after 2-10-1959, then such an interpretation will create new obligations and duties disturbing the vested rights which, normally, should not be done by resorting to interpretation. Therefore, on the face of the plain and unambiguous wordings of Section 170-B of the Code, we are unable to subscribe to any view other than the one that it is restricted in its application to the transactions done between 2-10-1959 and 24-10-1980 only.

18. Yet another aspect of the matter is that while deciding Smt. Ramkunwar (supra), the learned Single Judge has not considered the dictum of the coordinate Bench in Parwati Bai (supra). Therefore also, the interpretation accorded to Section 170-B of the Code that it applies to transactions prior to 2-10-1959 in Smt. Ramkunwar (supra) won't be a good law as the same suffers from vice of being a judgment per incuriam as the same has been passed in ignorance of earlier co-ordinate Bench ruling. (See [Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Others](#), .

19. In view of the legal opinion we have formed regarding the applicability of Section 170-B of the Code, we answer the question referred that the provisions of Section 170-B of the Code and Act No. 15 of 1980 (with effect from 24-10-1980) will apply in respect of transaction involving transfer/acquisition of right by a non-tribal over a land, before such acquisition of title or interest or transfer, belonged to member of tribe who has been declared to be an aboriginal under sub-section (6) of Section 165 of the Code from the commencement of the Chhattisgarh Land Revenue Code, 1959 i.e. 2-10-1959 till commencement of the Amendment Act, 1980 i.e. 24-10-1980.

20. In the light of the view taken by us, it is manifest that the decision of the learned Single Judge in Smt. Ramkunwar (supra) is legally erroneous as it had wrongly applied and misconstrued the provisions of law and is a judgment per incuriam. Thus, we overrule Smt. Ramkunwar (supra) and other rulings whose ratio run counter to the principles enunciated above. We answer the reference accordingly.

21. Let this matter be now listed before the concerned Bench.