

Narendra Nath Sashmal Vs. Binode Behari Dey and ors.

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Court : Kolkata

Decided On : Jun-19-1951

Reported in : AIR1951Cal138,56CWN23

Judge : Harries, C.J. and ;Das, J.

Acts : [Constitution of India](#) - Article 227; ;West Bengal 'Bargadars' Act, 1950 - Sections 3(2), 6 and 9; ;West Bengal 'Bargadars' Rules, 1950 - Rule 6; ;
[Government of India Act, 1935](#); ;West Bengal 'Bargadars' Rules - Rule 6

Appeal No. : Civil Revn. No. 495 of 1951

Appellant : Narendra Nath Sashmal

Respondent : Binode Behari Dey and ors.

Advocate for Def. : Binode Behari Haldar, Adv.

Advocate for Pet/Ap. : Sarat Chandra Janah and ;Bankim Chandra Roy, Adv.

Judgement :

Harries, C.J.

1 This is a petition for revision of orders of a Bhag Chas Conciliation Board & of an Appellate Officer under Article 227 of the [Constitution of India](#).

2. The present petitioner cultivated a big area of land in two moujas in the Sunderban area & for this purpose he entered into an agreement with the opposite parties who cultivated the land as bhagchasis.

3. On 9-1-1951 one of the bhagchasis, Benode Behari De, filed a petition before the Bhagchas Conciliation Board & this he appeared to do on behalf of himself & a number of other bargadars. The petitioner filed an objection & contended that this application was not in form in that it was vague & indefinite & the names of the other bhagchasis were not given. The area, location & other particulars of the lands cultivated were not given & the petition was not verified as required by Rule 6 Sub-rule (2) of the rules made under the West Bengal Bargadars Act.

4. The Board directed by an order that each bhagchasi should file a separate petition in conformity with Rule 6 of the said rules. Separate applications were then filed, but it is to be observed that no copies of these applications were served on the petitioner & he had no notice of the filing of the petitions.

5. Later, the petitioner objected to these individual applications on the ground that they were vague and indefinite and not in proper form and further that they did not give the particulars which the rules required they should give. Further it was pointed out that none of these individual applications were verified.

6. The Bhagchas Conciliation Board overruled all the objections of the petitioner & refused to grant him any time to produce his defence. An award was eventually made dividing the produce.

7. The petitioner appealed to the Appellate Officer who dismissed his appeal.

8. Before us a preliminary point has been taken that interference by this Court is expressly forbidden by Section 9, West Bengal Bargadars Act, 1950, which is in these terms:

'1. No award or order or other proceedings whatsoever of a Board or of an Appellate Officer & no proceedings whatsoever in execution of such award or order shall be questioned in any Court.

2. No Court shall entertain any suit or any proceedings whatsoever in respect of a matter required under Sub-section (1) of Section 7 to be decided by a Board referred to in that sub-section.'

9. It is quite clear from Section 2 (e), West Bengal Bargadars Act that Section 9 applies to a High Court. But it is urged by Mr. Janah on behalf of the petitioner that Section 9, West Bengal Bargadars Act, cannot take away powers given to this Court under Article 227 of the Constitution. That article gives the Court a right of superintendence over all Courts & tribunals in territories over which this Court exercises jurisdiction. There can be no doubt I think that a Bhagchas Conciliation Board is a tribunal & in any event it is clear that the Appellate Officer is a tribunal. The Bhagchas Conciliation Board has to hear applications & decide them according to law. They have to give the parties an opportunity of putting forward their contentions & I think there can be no doubt whatsoever that a Bhagchas Conciliation Board is a tribunal which has to exercise its functions judicially. The Appellate Officer hears appeals from the Board & I think it is equally clear that he is a tribunal if not a Court.

10. As both the Bhagchas Conciliation Board & the Appellate Officer are tribunals this Court has power of superintendence over them under Article 227 of the Constitution. That power cannot be taken away by any Act of the local legislature. The West Bengal Bargadars Act was passed after the Constitution came into force & if it purports to take away the right of superintendence of this Court under Article 227 of the Constitution, then clearly Section 9 of the Act to that extent is 'ultra vires' the Constitution. The right cannot be taken away by the State legislature & therefore it must be held that a power of superintendence exists in this Court in spite of Section 9 of the Act. The question then arises: is this a case where this right of superintendence should be exercised

11. The right of superintendence involves the right to interfere judicially. The right of superintendence under the Govt. of India Act did not involve that right. But the limitation placed on the right by the Govt. of India Act, 1935, has been expressly omitted from Article 227 of the Constitution & I think it is now beyond all argument that Article 227 does allow this Court in a proper case to interfere judicially. It has

been frequently laid down that such interference should be rare & only in cases where justice clearly demands interference, & where there is no other way of securing justice.

12. It appears to me that justice demands that we should interfere in this case as neither the Bhagchas Conciliation Board nor the Appellate Officer have made any effort to comply with the provisions of the West Bengal Bargadars Act itself or the rules. The individual applications made were contrary to the rules. The applications did not contain the particulars which the rules require them to contain & further though the rules required each application to be verified none of the applications were verified. The Appellate Officer appears to have thought that these were merely technical defects & it has been urged before us that we should remember that Bargadars are usually ignorant & illiterate & cannot be expected to observe the formalities required by law. It cannot be overlooked however that this is an Act passed by the State Legislature affecting what the State Legislature knew to be illiterate & ignorant men; nevertheless the Act & the rules require applications to contain particulars because if the applications do not contain such particulars the landlord cannot possibly meet the applications. Further, the rules require verification & the applications must be verified, & though this is a technicality it is an important one. Obviously the framers of the rules insisted on verification to prevent bogus & false applications being made. It appears to me that the Board should never have proceeded with these applications & should have insisted upon further particulars being given as required by the rules & that the applications should have been verified. However, in spite of objection the Board insisted on proceeding & made an award. The matter however does not rest there because the petitioner appealed to the Appellate Officer. The Appellate Officer appears to agree that the applications were not in order, but he brushes the objections aside on the ground that they were applications filed by Bargadars where no legal assistance was available. He then proceeded to say that in any event the matter did come before the Board & that in his view concluded the matter. He simply treats the application made by the landlord for time to consider these applications as harassing the Bargadars.

13. The Appellate Officer then deals with the order dividing the produce & he deals with this matter in these words:

'The actual manner of dividing the produce has been decided by the Board, obviously in the light of the conditions prevailing in the area, in this regard, as applicable to the case.'

14. It is not clear what the Appellate Officer meant by this. But one thing is clear & that is that the Board did not act according to law. The produce has to be divided in accordance with Section 3 of the Act & not in accordance with the conditions prevailing locally. Section 3 provides that if there is a written agreement between the parties, the produce will be divided according to the terms of the written agreement. But if there is no such agreement the produce must be divided in accordance with Sub-section (2) of Section 3 & there is nothing to suggest that any attention whatsoever was paid to this sub-section.

15. The question arises therefore can this award & the appellate order be allowed to stand? It appears to me that the defects of procedure were so grave that justice demands that this matter be reheard. The Board must insist on the rules relating to applications being complied with & the Board must proceed in accordance with the Act & divide the produce in accordance with Section 3 (2) of the Act. Unless we interfere under Article 227 of the Constitution grave injustice might well be done in this case. That being so I would allow this petition, set aside the orders of the Appellate Officer & of the Board & remand the case to the Board to be reheard & determined in accordance with the observations made in this judgment & in accordance with Law.

16. The Rule is accordingly made absolute. The petitioner is entitled to the costs of this petition.

Das, J.

17 I agree.