

State of West Bengal Vs. Basanta Kumar Mondal

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Court : Kolkata

Decided On : Apr-03-1958

Reported in : AIR1959Cal168

Judge : P.N. Mookerjee and ;P.K. Sarkar, JJ.

Acts : Indian Independence (Rights, Property and Liabilities) Order, 1947 - Schedule - Article 8; ;[Code of Civil Procedure \(CPC\) , 1908](#)

Appeal No. : A.F.O.D. No. 219 of 1952

Appellant : State of West Bengal

Respondent : Basanta Kumar Mondal

Advocate for Def. : Purnendu Sekhar Basu and ;Satkari Chattopadhyaya, Advs.

Advocate for Pet/Ap. : J. Majumdar, A.C.P. and ;Prodyut Kumar Banerjee, Advs.

Disposition : Appeal dismissed

Judgement :

P.N. Mookerjee, J.

1. This appeal is by the State of West Bengal against a decree of the court below, decreeing the plaintiff-respondent's suit for recovery of a sum of Rs. 28,530/- on account of certain works of excavation of earth in the Peali river bed, District 24-

Parganas. The works were done before 15-8-1947, when the Partition of Bengal took place, and they were done under orders of Collector, 24-Parganas, who was acting in the matter on behalf of the then Government of Bengal, that is, of the undivided Province of Bengal, as it then stood. The outstanding amount was due on two Bills which were passed by the District Engineer, 24-Parganas, who was the appropriate authority for the purpose, on 30-6-1947, and 12-8-1947.

2. The only defence, material for our present purpose, and which, practically speaking, was also the main--if not, the only,--defence, urged in the court below, was that the works in question having been completed before the above partition, it cannot be said that the said works were for purposes of the new Province, now the State of WestBengal, and that, accordingly, under the relevantprovisions (Article 8(2)) of the Indian Independence(Right, Property and Liabilities) Order, 1947, theliability for the outstanding amount cannot attach tothat State. The contention is urged in the alternative, namely, that either none would be liable, theold Province of Bengal, under whose orders theworks were done and done before the Partitionhaving disappeared or ceased to exist since then,or if anybody be liable, it will be the new Provinceof East Bengal under the relevant provisions, ifany, of the above Indian Independence (Right, Property and Liabilities) Order, 1947. The defencefailed before the trial court which decreed the plaintiff's suit and the State of West Bengal has come upon appeal.

3. In our opinion, the appeal should fail, the appellant's contention under either head being wholly unfounded. It is inconceivable that no provision was made in the transitional Order the Indian Independence (Right, Property and Liabilities) Order, 1947 for payment of any particular liability of the old Province of Bengal and that any such outstanding liability lapsed or was discharged merely by reason of the Partition. It has been held by this Court and also by the Supreme Court that the provisions of the transitional enactment, namely, the Indian Independence (Rights, Property and Liabilities) Order, 1947, should be construed liberally and should be given as comprehensive a scope as its language permits, Vide Ahidhar Ghose v. Jagabandhu Roy Choudhury, : AIR1952 Cal846 and Midnapore Zemindary Co. Ltd. v. Province of Bengal and State of Tripura v. Province of East Bengal, (the Tripura Case) : [1951]19ITR132(SC) . On that principle of

construction, there can be no doubt that the provisions of Article 8 would apply to all pre-partition contracts, that is, not only to those which were fully executed before the Partition, but also to those which remained pending and executory either in whole or in part, on 15-8-1947, the date of the said Partition, designated in the said order as the 'appointed day'. Mr. Majumdar's argument that the Article would apply only where the contract was pending execution or was outstanding on the 'appointed day' cannot be accepted in view of the above principle. That would leave unprovided for a large number of contractual liabilities of the old Province of Bengal which was certainly not the intention of the framers, of the above enactment. The language also sufficiently warrants the view that the Article 8 was intended to apply to all pre-Act contracts, whether fully executed before the Partition or pending or outstanding on the date thereof. This is also directly supported by the decision of this Court in the case of Krishna Ranjan Basu v. Union of India 59 Cal WN 99 and by the recent decision of the Supreme Court, which must be regarded as the settler on the point, in the case of Union of India v. Chaman Lal Loona and Co. (S) : [1957]1SCR1039 . Those decisions and particularly that of the Supreme Court, referred to above, also lay down and, if we may say so with respect, that is the only possible and reasonable view of the matter that therefore, where, in case of a contract, entered into and executed or broken before the 'appointed day', the purpose would have been an exclusive purpose of a particular Province or Dominion if the contract had been subsisting on the appointed day, the contract for purposes of Article 8 should be regarded as exclusively for purposes of that Province or Dominion.

4. Mr. Majumdar placed some reliance on the decision of Roxburgh, J. sitting singly, in the case of Union of India v. Loke Nath Saha, : AIR1952 Cal140 , but we do not think that that decision really assists Mr. Majumdar's contention, and if it does, it must be regarded as opposed to the above two decisions, one of a Bench of this Court and the other of the Supreme Court, to which reference has been made by us in the preceding paragraph, and must, accordingly, be ignored. As a matter of fact, the decision of Roxburgh, J. was expressly overruled by the said Bench decision of this Court in 59 Cal WN 99 and also by the Supreme Court in (S) : [1957]1SCR1039 .

5. What we have said above is fatal to either of the above two contentions of Mr. Majumdar and, accordingly this appeal must fail and the disputed contract must be regarded as one for purposes exclusively of the Province, now the State of West Bengal, under Article 8(2)(a) of the relevant Order (Indian Independence (Right, Property and Liabilities) Order, 1947), having regard to the admitted fact that the entire area for which the works of re-excavation were done has fallen to that Province or State as a result of the Partition. In this view, under Article 8(2) (a) of the above order, liability for the plaintiffs claim must be decreed and decreed against the State of West Bengal, The learned Subordinate Judge was, therefore, entirely right in overruling the defence contention and decreeing the plaintiffs suit. His decree must, accordingly, be maintained.

6. In the result, the appeal fails and it is dismissed with costs.

P.K. Sarkar, J.

7. I agree.

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