

Dr. Samarendra Kumar Das and ors. Vs. Khalilur Rahaman and ors.

Dr. Samarendra Kumar Das and ors. Vs. Khalilur Rahaman and ors.

SooperKanoon Citation : sooperkanoon.com/862838

Court : Kolkata

Decided On : May-04-1970

Reported in : AIR1970Cal481,74CWN712

Judge : P.B. Mukharji, Actg. C.J. and ;T.K. Basu, J.

Acts : [Constitution of India](#) - Article 228; ;West Bengal Premises Tenancy (Second Amendment) Act, 1969

Appeal No. : Civil Revn. Nos. 499-504 of 1970

Appellant : Dr. Samarendra Kumar Das and ors.

Respondent : Khalilur Rahaman and ors.

Advocate for Def. : Satyendra Prosad Sen, Adv. in Civil Revn. Nos. 499, 500, 501, 503 and 504 of 1970 and ;Jnan Ranjan Ganguly, Adv. in Civil Revn. No. 502 of 1970

Advocate for Pet/Ap. : K.P. Sinha, ;S.C. Bose, ;M.K. Palit and ;R.K. De, Advs.

Judgement :

P.B. Mukharji, A.C.J.

1. These are six applications made under Article 228 of the Constitution. They raise the question of the vires of Section 13 of the West Bengal Premises Tenancy Act, 1956 as amended by Section 4 of the West Bengal Premises Tenancy

(Second Amendment) Act, (Act XXXIV of 1969).

2. The two points raised in these applications relate to substantial questions of law as to the interpretation of the Constitution viz., (1) Section 13 of the West Bengal Premises Tenancy (Second Amendment) Act, (Ad XXXIV of 1969) is discriminatory and as such ultra vires Article 14 of the Constitution and (2) that Section 13 of the said Amending Act imposes unreasonable restrictions upon the petitioners' fundamental rights to acquire, hold and dispose of property guaranteed by Article 19(1)(g) of the Constitution, and as such void under Article 13(2) of the Constitution. These two points are undoubtedly substantial questions of law as to the interpretation of the Constitution.

3. Article 228 of the Constitution reads as follows:

If the High Court is satisfied that a case pending in a Court subordinate to it involves a substantial question of law as to the Interpretation of this Constitution the determination of which is necessary for the disposal of the case, it shall withdraw the case and may -

(a) either dispose of the case itself, or

(b) determine the said question of law and return the case to the Court from which the case has been so withdrawn together with a copy of its judgment on such question, and the said Court shall on receipt thereof proceed to dispose of the case in conformity with such judgment.'

4. Under this Article all these six petitions have been made. The requirement of Article 228 of the Constitution is first that the High Court must be satisfied that a case is pending in a Court subordinate to it and secondly it involves a substantial question of law as to the interpretation of the Constitution and thirdly, that the determination of such points of law is necessary for the disposal of the case.

5. These cases or suits are pending in the City Civil Court. They are suits for eviction on the ground of bona fide requirement and for the purpose of building and re-building. The actual point of the vires of the amendment did not arise on the pleadings in these suits for the simple reason that the amendment came into

operation only on the 14th November, 1969 subsequent to these suits which were filed in August-September, 1967 and December 1968 and which were pending in the City Civil Court while the amendment came into force. There are eight Ejectment Suits by the petitioners against respective tenants. They are Ejectment Suits 1297 of 1967, 1298 of 1967 and 1315 of 1967 -- all filed on the 7th August, 1967; Ejectment Suit No. 1316 of 1967 filed on 9th August, 1967; and three Ejectment Suits 1491 of 1967, 1492 of 1967 and 1493 of 1967 -- all filed on the 14th September, 1967 and the last Ejectment Suit No. 1554 of 1968 filed on 2nd December, 1968.

8. What happened thereafter was that 20th December, 1969 was the date fixed for hearing of the application under Section 17 (3) of the West Bengal Premises Tenancy Act, 1956 in Ejectment Suits, 1491 and 1492 of 1967 against the tenant who made an application for dismissal of the suits on the ground that these two suits were liable to be dismissed because of the provisions of Section 13 of the West Bengal Act as amended. The learned trial Judge was pleased to uphold the contentions of the tenants and dismissed the said two suits. This happened on the 20th December, 1969. But on the 19th December, 1969 applications had already been made by other tenants in the six other suits for dismissal of those suits, when an application by the petitioners, the plaintiffs in the suits, was made for adjournment of the hearing of those applications of the tenants to provide the present petitioners, the plaintiffs, to move this Court under Article 228 of the Constitution. On the 2nd February, 1970 two decrees in Ejectment Suits Nos. 1491 and 1492 of 1967 were signed. The present applications under Article 328 of the Constitution in respect of six other suits were made on the 16th February, 1970 and a Rule was obtained in respect of six other suits for which the present applications were made.

7. It appears from the records that the case of the petitioners, the plaintiffs, is that the amendment is ultra vires the Constitution on the ground stated above. Although that fact does not appear from the pleadings, but the records of the case, in our view, clearly show that that is the present contention. In the meantime two First Appeals have been filed being F. A. T. 623 and F. A. T. 624 of 1970 on the 6th March, 1970, against the decrees passed in Ejectment Suits 1491 and 1492 of

1967. ' There also in the grounds of appeal this question of the vires of the Amendment Act appears. We are, therefore, satisfied on the records that these suits in which these six applications have been made do raise 'substantial question of law as to the interpretation of the Constitution the determination of which is necessary for the disposal of the case' within the meaning of Article 228 of the Constitution.

8. We, therefore, make an order of with-drawing these suits, whose numbers are given above and which are pending before the City Civil Court, to this Court for the determination of the two points stated above relating to vires of this Amendment Act, and an order is made in terms of the prayer in the petition. Under Rule 14-A of Part I Chapter n of the High Court Appellate Side Rules under Sub-rule (2) thereof we constitute this Bench to hear and determine these points. The procedure as laid down under Sub-rule (2) of Rule 14-A must be followed with regard to the determination of this question and we order accordingly.

9. Mr. Sinha appearing for the petitioners as also Mr. Sen for the opposite parties have drawn our attention to the provisions of Order 27-A of the Code of Civil Procedure. We direct that notices be given both to the Attorney-General for India and the Advocate-General of the State of West Bengal. Let notices be effected by registered post.

10. Mr. Sinha for the petitioners has submitted before us that having regard to the fact that the points in the pending Appeals against the two decrees already filed being the same as the points involved in these applications and having regard to the urgency of the matter on which a large number of cases are depending, the appeals should also be heard by us. He is directed to take necessary steps for assignment of these two appeals before this Bench.

11. Costs for these applications and costs in the cases withdrawn.

12. This judgment will govern the five other matters that followed raising the same question on the same point where petitioner, the plaintiff, is the same although the opposite parties are different.

13. Liberty to the parties to apply for early hearing and disposal of these matters.
14. Let a plain copy of this order be made over to the learned Advocate of both sides on their undertaking to take a certified copy.

T.K. Basu, J.

13. I agree.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com