

Ramhari Mandal Vs. Nilmoni Das

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Court : Kolkata

Decided On : Dec-19-1951

Reported in : AIR1952Cal184,56CWN325

Judge : P.B. Mukharji and ; P.N. Mookerjee, JJ.

Acts : [Constitution of India](#) - Articles 19(1), 19(5) and 227; ; West Bengal 'Bargadars' Act, 1950 - Section 5, 5(1) and 5(2); ; [Code of Civil Procedure \(CPC\)](#) , [1908](#); ; West Bengal 'Bargadars' Rules - Rule 7(3)

Appeal No. : Civil Revn. Case No. 675 of 1951

Appellant : Ramhari Mandal

Respondent : Nilmoni Das

Advocate for Def. : Basanta Kumar Panda, Adv.

Advocate for Pet/Ap. : Manindra Krishna Ghosh, Adv.

Judgement :

P.B. Mukharji, J.

1. This is an application by the owner of certain agricultural lands-for setting aside the decision of the Conciliation Board and of the Appellate Officer under the West Bengal Bargadars Act, 1950. The application is made under Article 227 of the

Constitution. A rule was obtained by the petitioner against the respondent Bargadar or Bhagchasi to show cause why the order complained of should not be set aside.

2. The learned Advocate appearing on behalf of the petitioner has raised four important issues in this application. His first contention is that the West Bengal Bargadars Act (Act II (2) of 1950) is ultra vires the Constitution. His second contention is that in any event the procedure prescribed by the Bargadars Act is ultra vires the Constitution. His third contention is that as the petitioner terminated the cultivation of the lands by the-Bargadar and rightly or wrongly got into possession, the Board had no jurisdiction to restore the Bhagchasi to possession of lands and to compel the delivery of paddy grown by the petitioner to the respondent Bhagchasi. Lastly, it was contended on behalf of the petitioner that the order of the Board was beyond the time limited by the rules and is therefore void.

3. For the proper determination of these important points, it is necessary to set out very briefly the relevant facts. On the 11th October, 1950, the respondent Bhagchasi filed an application before the Bhagchasi Conciliation Board of Janka Khedri in the District of Midnapore. His case there was that he had been cultivating the lands as the petitioner's Bhagchasi. It was further alleged by him that he cultivated the land of Schedule 'Ka' in 1357 B. S. and after finishing work of cultivation there, when he was about to begin cultivation in another land of Schedule 'Kha', the petitioner terminated the Bargadar's cultivation of this 'Kha' Schedule land. The petitioner filed his written objection before the Board and his case was that the Bhagchasi had never cultivated the 'Kha' Schedule land in question and it was cultivated by the petitioner himself in 1357 B. S. with the help of his own labourers. It was also the petitioner's case that the Bhagchasi cultivated the other 'Ka' Schedule land as petitioner's Bhagchasi in the two previous years, namely, 1355 and 1356 B. S. but as he failed to deliver the petitioner's share of the produce the petitioner terminated such cultivation by the Bargadar and himself cultivated the land in 1357 B. S.

4. On the 30th November, 1950, when the case was fixed for hearing by the Board there was an application by the petitioner for adjournment which the Board

refused. On that date the case was heard ex parte and on that date an order was made allowing restoration of the cultivation of both the lands from 1358 B. S. and allowing the Bhagchasi to harvest the crops of 1357 on the lands of both the schedules on certain terms. Then the petitioner took an appeal to the Appellate Officer who by his order dated the 23rd December, 1950 confirmed the Board's decision and rejected the appeal of the petitioner. The rule is directed against this order of the Appellate Officer.

5. The findings of fact appearing from the order of the Appellate Officer should be set out as I do not propose to disturb such findings of fact in my superintending jurisdiction under Article 227 of the Constitution.

6. I will briefly summarise such findings. First, it is admitted by the petitioner that the respondents cultivated these 'Ka' Schedule lands upto 1356 B. S. The petitioner denied that the Bhagchasis cultivated such lands in 1357 B. S. but the Board found on evidence that the Bhagchasis did actually cultivate these lands even in 1357 B. S. There is also this incontrovertible fact that the cultivation of the lands (of both the Schedules) by the Bargadar was not terminated under any order of the Board as required by the proviso to Section 5 (1) of the Bargadar Act. The one other fact which requires to be noted is that the Conciliation Board was established in this area in December, 1949, long before the sowing season of the year 1357 B. S.

7. The main attack on the Bargadar Act as being unconstitutional centres round the provisions made in Section 5 of that Act. In that section is provided how the cultivation by a Bargadar can be terminated. It provides that the owner of any land cultivated by a Bargadar shall be entitled to terminate cultivation of such land by the Bargadar on the ground that the owner desires to cultivate the land by himself or by members of his family or by servants or labourers, provided that the cultivation of such land by a Bargadar shall not be terminated on such ground except under the order of a Board. I am leaving out for the purposes of this decision other provisions in that section which I consider irrelevant in the present context. It is therefore clear from this provision that the owner has the desire to cultivate the land in the manner stated there. But before such termination can take

effect, it must be under the order of a Board. This was argued to be in violation of Article 19(1)(f) of the Constitution.

7a. There is no doubt that this article gives the citizens the right to acquire, hold and dispose of property. There is also little doubt that this provision in Section 5 of the Bargadar Act which requires an order of the Board for termination does infringe the constitutional right to hold property because right to hold property must include in its amplitude the right to hold it in any manner that the owner chooses freed from the right of Bargadars or other interests. But the most important question in this connection, as very often, is not whether it infringes the constitutional right but whether such infringement is reasonable under Sub-article (5) of Article 19 of the Constitution which permits in the interests of the general public the making of any law imposing reasonable restrictions on the exercise of the right to hold one's own property.

8. The main argument on this point was developed on two lines; first on the line that the restriction was unreasonable and secondly on the line that the restriction was not in the interests of the general public.

9. It was contended that this was an unreasonable restriction because the owner could not terminate the cultivation by the Bargadar and recover the land if he wanted for non-agricultural, or manufacturing or building or other useful purposes. In other words, it is suggested that the restriction is unreasonable, because it withholds the use of land for these purposes and gives a preference to agriculture and cultivation.

10. The unreasonableness of the restrictions to hold property has to be judged in relation to the social economic and the political context in which the restriction is imposed. Reasonableness has always been and must under our Constitution be understood to mean a relative concept. What is unreasonable in one context may be perfectly reasonable in another context although the nature or quality of restriction is the same. No new field of favour or preference for agriculture is created by the Act. In fact the Statute only registers a pre-existing state of affairs and prevents the disturbance of status quo in the interest of social order. This argument on behalf of the petitioner ignores the central fact that the land to which

this Act applies are the agricultural lands already under cultivation by the Bargadars or Bhagchasis. That being so, the land was committed to the use of agriculture at the time when the Act came into operation and the Act was therefore not victimising any existing cause of industry manufacture or any other causes. By confining existing agricultural lands to cultivation the legislature has certainly restrained prospective or future uses of such lands for other purposes. While that may reasonably and justifiably be within the region of policy which the Legislature should have the freedom to determine, it is also not unreasonable.

10a. To prefer the present to the future is by itself not unreasonable. It is all the more so reasonable when the Legislature has to meet a clear and present danger. A legislation cannot be condemned as unreasonable because it is not hypothetical. Legislation is not an exercise in hypothesis, but is in its primary purpose empirical. The whole idea of the Act, as I understand it, is to preserve the lands already under cultivation and not to permit them to be withdrawn from agriculture and to be used for any other purpose for a certain time to meet a situation of great economic gravity. It is a notorious fact in West Bengal that land for cultivation is not relatively large to the demands of the population and it is equally notorious that the problem of food and agricultural produce is a problem of acute gravity in this State, suffering from intermitant famines. I find against this context nothing unreasonable in the law which says that those lands which were already under cultivation by the Bagchasis and the Bargadars should continue to be so at least for a temporary period like three years which is the life of the Bargadar Act.

11. There is another aspect by which the reasonableness should also be tested and that aspect is that there are large numbers of Bargadars who find their vocation and living in cultivating the lands of others. They represent a very large section of the public and perform a very useful agricultural service. Indiscriminate termination of cultivation of lands by Bargadars will lead to a social and economic evil which I think the law of the country is reasonably justified to avoid. In that sense also I find the restriction imposed is reasonable. The very essence of Section 5 setting out the ground for termination shows very clearly that the principle on which this legislation is based is to afford protection to agricultural

lands under cultivation. How can the owner of land terminate the cultivation of land by Bargadar? He can do so by his desire to cultivate the land by himself or by members of his family or servants or labourers. What is the idea behind it? The idea is that the land must be preserved for cultivation even if the Bargadar is eliminated. Then again the next ground for termination is that the Bargadar has misused the land or wilfully ignored to cultivate it properly. Here again, the principle behind the law is clear that even the Bargadar will not be protected if he fails in the central purpose by misusing the land or wilfully ignoring to cultivate the land properly.

12. I, therefore, hold on the reasons stated that the restriction on the right to hold imposed by Section 5 (1) of the Bargadar Act is a reasonable restriction within the Constitution and permissible.

13. It was then argued that this restriction was not in the interests of the general public. The contention on behalf of the petitioner is that the words 'general public' in Sub-article (5) in Article 19 of the Constitution must be understood as something opposed to or in contradistinction of any Scheduled Tribe. The point of this argument is derived from the fact that after the words 'in the interests of the general public' appears the other expression 'or for the protection of the interests of any Scheduled Tribe'. I have no hesitation in holding that this argument has no substance whatever. If by this argument it is intended to construe the constitutional provision in Sub-article (5) as representing the two sides of the same shield described as the Scheduled Tribe, then such a construction not only will make the working of the Constitution impossible as I find it, but also the making of laws equally impossible. The subsequent words 'in the interests of any Scheduled Tribe' do not act as qualifying adverbs on the previous expression 'in the interests of the general public'. They are both independent concerns. Constitutional provisions are not to be interpreted and crippled by narrow technicalities but as embodying the working principles for practical Government.

13a. The Constitution is not the home for legal curiosities. It is the epitome of the national aspirations of a free political society. It must be so rendered in construction as to be able to receive and reflect the organ tomes of national life.

The words 'in the interests of the general public' must be given their plain meaning. That plain meaning as I understand it is that it includes even sections of general public. I cannot imagine how by any twist of construction it can be said that general public will not include a fairly substantial section of people who constitute the class of Bargadars in West Bengal. They are just as much a part of the general public as anybody else. But in considering whether the legislation is in the interests of the general public the cause of the Bargadars is not the only criterion. I consider the legislation to be also in the larger interest of the owners of these lands. Then again there is the interest of the agricultural lands in the country which is also an interest for the general public.

13b. The preservation of land for agricultural purpose as being the ultimate source of food for the State is a concern which certainly involves the interests of the general public in every sense. The Barga system of cultivation is an integral part of the agricultural economy and the land system of this State. That system is the work of many centuries. During the first stages of its evolution the sense of common interest and joint venture between the owners of land and the Bhagchasis was the cementing bond between them. With the progress of time and the changing social and economic conditions that sense of common interest was lost on the one hand by the growing evils of absentee landlordism which became irresponsible and on the other by the growing delirium of the new ideology that the land should for all practical purposes belong to the tillers of the soil.

13c. The tension between the land-owner and the Bhagchasi developed and their relationship was so greatly strained in recent times that it gave rise to agrarian disturbances in some parts of the State threatening the food production of the country. Legislation was therefore needed to re-adjust the balance for a just and harmonious relationship between the land-owner' and the Bargadar. For that purpose an Ordinance was promulgated on the 14th November 1949 now replaced by the Statute of 1950. These historic considerations and the present situation alike stamp this legislation with overwhelming public interest. I therefore hold that the Bargadar Act of 1950 is in the interests of the general public within the meaning of the Constitution.

14. The next attack upon the Act is that the procedure prescribed thereunder is unreasonable. The argument is advanced that by Clause (a) of Section 5 (1) of the Act, the owner is allowed to terminate the Bargadar's cultivation by the owner's desire to cultivate the land by himself or members of his family or by servants or labourers. The argument proceeds that having given that right to the owner it has virtually taken away that right by the proviso requiring the order of the Board. It is said that by super-adding the Board's order to the 'desire' of the owner, the procedure has become insensible and unreasonable.

15. I am unable to discover the unreasonableness in such procedure. It is clear that one of the grounds is there must be the owner's desire as laid down in Section 5 (1) (a) of the Act. Reference was made to a decision of this Court in 'GIRISH MAJHI v. Girish Maiti', : AIR1951 Cal574 . That decision emphasises the fact that the word used in this Statute is 'desire' and not 'require' or other similar expressions found in the Rent Acts. But that is not the point for decision here in this case. The point for decision here is whether the order of the Board is requisite for the termination of the Bargadar's cultivation and whether such a requisite can be challenged as unreasonable. To me it appears plain from the proviso that cultivation of land by Bargadar cannot be terminated even by the owner's desire under-Section 5 (1) (a) of the Act except under the order of the Board.

15a. In my opinion, the Board's order is an indispensable element to effect termination of Bargadar's cultivation. If, however, the Board applies considerations unjustified by the Act in making its order, then the decision relied upon is an authority for the proposition that such an order can be revised and superintended by this Court under Article 227 of the Constitution. But the order of the Board is not questioned before me as having proceeded on grounds not justified by the Act. Here the fact is that no order of the Board had at all been taken before the alleged termination. If that is so, the effect is that there can be no termination under Section 5 (1) (a) of the Act read with the proviso. That decision therefore is clearly distinguishable and can have no application to the facts of this case which give rise to entirely different points for determination.

16. The scheme of the Bargadar's Act provides for conciliation proceedings between Bargadars and owners and for that purpose establishes Bhagchas Conciliation Boards. Those Boards are given exclusive jurisdiction to decide certain disputes between Bargadars and owners. The termination of or the restoration to cultivation of such land by the Bargadars is one of such dispute within the exclusive jurisdiction of the Board. So long as the Board acts within its jurisdiction, it is the policy of the Act that such Board should achieve the conciliation which the Act contemplates. That being so, it is reasonable, in my view, to provide that no termination on any of the grounds specified in Section 5 (1) of the Act can be made except under the order of a Board. That is reasonable having regard to the provisions, scheme and policy of the Act. The requirement of the Board's order in these circumstances cannot be unreasonable when the Board is the exclusive authority to determine disputes regarding such termination.

17. I, therefore, hold that the proviso requiring the Board's order for termination of Bargadar's cultivation on the ground of owner's desire under Section 5 (1) (a) of the Act is not an unreasonable procedure which comes within the prohibition of Article 19(1)(f) read with Sub-article (5) thereof under the Constitution.

18. The next argument on behalf of the petitioner is that the order of the Board is void and could not have been confirmed by the Appellate Officer on the ground that the decision of the Board was given beyond the time within which it should have been given under the Rules. Rule 7 (3) made under the Bargadars Act provides that 'every application before the Board shall be disposed of within three weeks from the filing of the application'. The time limit, therefore, is three weeks from the filing of the application. The argument is that in this case the Board did not render its decision within this time limit of three weeks and therefore its decision must be disregarded. The facts on this point may be repeated here for better understanding. The application was made by the Bargadars on the 11th October, 1950, but the order or the decision thereunder was not given by the Board until the 30th November, 1950, which is more than three weeks.

19. The language of Rule 7 (3) which I have quoted above does use the expression 'shall be disposed of within three weeks' but neither the rule nor the Act

provides for the situation when in fact it is not given within three weeks. The contention put forward on behalf of the petitioner is that the word 'shall' is mandatory and therefore the Board's decision must be given within the time prescribed or not at all. I have given my most anxious consideration to this aspect of the argument when a statute or a statutory rule says that something shall be done within a particular time or done in a particular manner without expressly providing what shall be the consequence of non-compliance. Two possible views are open on this branch of the law. One is that the provision should be read as mandatory and the other is that the provision should be read as directory.

19a. No general rule can be laid down as one of universal application but in every case the object of the particular Statute must be the dominating consideration on this point. The word 'shall' or such similar mandatory expressions are not conclusive on this problem. If the whole aim and object of the legislature would be plainly defeated if the command to do a thing within a particular time or in a particular manner did not imply a prohibition to do it in any other manner, then there can be no doubt entertained as to the intention and the act done in disregard of such Statute beyond the time or in breach of the manner must be held to be invalid and of no effect. But the Law Reports are full of cases dealing with statutory provisions which are devoid of express or implied indication of intention regarding the effect of non-compliance with them. It is not my intention to wade through the forest of decisions on this point. I will only record my own conclusion from a reading of them. Such statutory prescriptions will ordinarily be considered as merely directory the neglect or breach of which does not frustrate the object of the enactment or does not involve any expressed consequences for such breach. It appears that this view is justified in principle as well as abundantly established by authorities.

19b. Many major considerations influence me in coming to a decision on this point that the requirement of Rule 7 (3) is not a mandatory requirement but a directory requirement. Where the mandate of a Statute or a statutory rule relates to the performance of a public duty and where the invalidation of the acts done, in neglect of such mandate would work serious general inconvenience or injustice to persons who have no control over those entrusted with such mandate without

promoting the essential aims of the Legislature, such mandate must generally be understood to be mere instructions for the guidance and Government of those on whom the mandate is imposed, or, in other words, as directory only. In case I am believed to be laying down any novel principle of interpretation without reference to any authority, I need only guard myself, if I must, by a reference to a decision of the Privy Council in '*MONTREAL Street Rly. Co. v. Normandin*', (1917) AC 170 (PC).

19c. Here in this case, how are the aims and provisions of the statute, going to be promoted by invalidating the decision of the Board rendered beyond the time of three weeks? To invalidate such a decision in these circumstances is the surest way to defeat the Act. That alone would justify the conclusion that I am drawing. Why should the respondent be made to suffer for this neglect of the statutory rule when he has no control over those entrusted to render the decision within three weeks? But there are many more cogent reasons why this Rule 7 (3) should be held to be directory. What happens when a case cannot be finished within the three weeks either due to the unforeseen illness of one or more members of the Board or due to the unforeseen absence of parties or their witnesses before the Board, or deaths in the course of proceedings. To read in those circumstances the provision of Rule 7 (3) as mandatory is to invite confusion and disorder in the entire administration and work of the Board. That again is one of my main reasons for holding that Rule 7 (3) is directory.

19d. Unless the Statute contains expressly words denying the exercise of the duty after the time named or unless it may be implied from the character of the act to be performed,' the manner of its performance or its effect on public interest that the legislature contemplated that the act had better not be performance at all than performed at any other time than that named, such statutory prescription as to time should be regarded as directory. Littledale J. in '*Smith v. Jones*,' reported in (1830) 1 B & Ad 328, at p. 334:109 E R 809, at p. 811, states the principle in this way:

'It has often been held where an Act ordered anything to be performed by a public body and merely pointed out the specific time when it was to be done that such

Act was not imperative but directory and may be complied within a reasonable time after the period prescribed'.

I find myself in agreement with that view. What is reasonable time is always a question of fact depending on the circumstances of each case. In this case the decision of the Board in my view was certainly rendered within such reasonable time.

20. I, therefore, hold for these reasons that the decision of the Board is not void or ineffective because it was given after a period of three weeks.

21. Before I conclude, it is necessary to make a short reference to another point raised in the argument advanced on behalf of the petitioner. The petitioner challenges the jurisdiction of the Board to restore the Bhagchasi to possession and to compel delivery of paddy grown by the petitioner. The argument is that under Sub-section (2) of Section 5 of the Bargadar Act where the cultivation of any land by a Bargadar is terminated under Clause (a) of Sub-section (1) and the land is not cultivated by the owner himself or by members of his family or by servants or labourers within one year from the date of such termination or the land having been so cultivated is allowed to be cultivated by another Bargadar within five years from such date, the Bargadar first mentioned shall be entitled to be restored to the cultivation of the land by him. It is contended that only in such a case can possession be restored and in no other.

21a. It is contended also that the petitioner having got possession in 1357 B. S., no matter how illegally, and no matter that it was without the order of the Board, he is entitled to retain what he has illegally gained. Neither the facts nor the law justifies such argument. The case contemplated in Sub-section (2) of Section 5 of the Act proceeds on the basis that the Bargadar's cultivation was terminated under Clause (a) of Sub-section (1) of Section 5 of the Act. Here the owner's alleged termination was not under the order of the Board and therefore not in compliance with Section 5 (1) (a) read with the proviso as it must be read; so that Sub-section (2) of Section 5 of the Act can be of no avail to the petitioner. Here it is a dispute with regard to the termination itself, which as I will presently show is governed by other provisions in the Statute. Even were I to assume that such a contention was

correct, I certainly will be the last person in this Court under Article 227 of the Constitution to intervene in order to ensure that the petitioner retains his illegal gain.

21b. But here again the petitioner's argument can be disposed of at once by a reference to the provisions of Section 7 of the Bargadar Act. That section makes it quite clear that the Board has exclusive jurisdiction in every dispute between the landowner and Bargadar with regard to the division or delivery of the produce and with regard to the termination of or restoration to cultivation of land by the Bargadar. That is clear from an express reference to such matters under Sub-clause (a) and (c) of Section 7 (1) of the Bargadar Act. I, therefore, hold that the Board was within its jurisdiction in making the order to restore the Bhagchasi to possession and directing the delivery of paddy grown by the petitioner.

22. For the reasons stated in my judgment, I discharge the Rule with costs. I assess such costs at two gold mohurs.

P.N. Mookerjee, J.

23. I agree.