

Bimala Prosad Ray and anr. Vs. State of West Bengal

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Court : Kolkata

Decided On : Aug-30-1950

Reported in : AIR1951Cal258,55CWN87

Judge : Harries, C.J., ;G.N. Das and ;Banerjee, JJ.

Acts : [Constitution of India](#) - Article 227; ;[Land Acquisition Act, 1894](#) - Section 18;
;Code of Civil Procedure (CPC) - Section 115

Appeal No. : Civil Rule No. 196 of 1950

Appellant : Bimala Prosad Ray and anr.

Respondent : State of West Bengal

Advocate for Def. : S.M. Bose, ;Chandra Sekhar Sen, ;M.N. Ghose and
;Jajneswar Majumdar, Adv.

Advocate for Pet/Ap. : Amarendra Nath Bose and ;Jagadish Chandra Ghose,
Adv.

Judgement :

Harries, C.J.

1. This is a petition praying that the Court should interfere with an order made by the Land Acquisition Officer of Burdwan under powers conferred upon this Court by Article 227, [Constitution of India](#).

2. To appreciate the points involved it will be necessary shortly to set out the facts of the case which have given rise to this litigation. The petitioners are the holders of property in a village near Burdwan and this property was compulsorily acquired by Government under the provisions of the Land Acquisition Act as the land was required for the erection of locomotive works for the East Indian Railway. In due course notice was served under Section 9, Land Acquisition Act, upon the petitioners and on 20-1-1949 in pursuance of that notice the petitioners put forward their claim. The Land Acquisition Collector thereupon commenced Land Acquisition case No. 15/1A of 1948-49.

3. The properties in dispute are two plots known as Nos. 400 and 401 and according to the petitioners there is on plot No. 400 a hillock in which there are valuable stones or minerals. Under the surface of plot No. 401 it is said, there exists a strata of stones or other minerals. On 9-2-1949 the Land Acquisition Collector made an award by which he awarded a sum of Rs. 14,553-6-0 to the petitioners in respect of their interest in these two plots.

4. The petitioners complained that they had not been awarded anything for the minerals or stones in the hillock to which I have referred and for the stones or minerals which were below the surface of plot No. 401. It was represented to the Land Acquisition Collector that nothing had been awarded in respect of these stones or minerals and he was asked to make a reference to the District Judge under the provisions of Section 18, Land Acquisition Act.

5. The learned Land Acquisition Collector held eventually that the minerals and stones had not been acquired by the Government. He said that the declaration under which these lands were acquired provided that :

'mines of coal, iron-stone, state or other minerals lying under the land or any particular portion of the land, except only such parts of the mines and minerals as it may be necessary to dig, or carry away or use, in the construction of the work for the purpose of which the land is being acquired are not needed.'

6. It was contended by the petitioners before the Land Acquisition Collector that the minerals and stone had been acquired but nothing had been awarded in

respect of them. Further it was urged that the hillock had been quarried away and that the stone in the hillock was being used for the purpose of the works which were being carried on in the land. It was also urged that the stone lying underneath the surface of plot No. 401 was being used and therefore the award should have provided for payment for these stones or minerals. The award on the other hand, it was said, merely gave the petitioners the value of the surface of this land.

7. The Land Acquisition Collector refused to refer this matter to the District Judge and there can be no doubt that before the [Constitution of India](#) came into force on 36-1-1960 that order of the Land Acquisition Collector could not be challenged. It had been held by a Full Bench of this Court in *Khetsidas Gangaram v. First Land Acquisition Collector, Calcutta*, 50 C. W. N. 758 : (A.I.R. (33) 1946 Cal. 508), that an order made under Section 18, Land Acquisition Act, refusing to refer a matter to the civil Court was not revisable and could not be challenged in this Court. It was held that in dealing with an application for a reference under Section 18, Land Acquisition Act, the Collector does not act either as a Court or as a Court subordinate to the High Court so as to make his order revisable under Section 115, Civil P. C. Other Courts had taken the same view including the High Court at Patna. In the latter Court in the case of *Jagarnath Lall v. Land Acquisition Deputy Collector, Patna* A. I. R. (27) 1940 Pat. 102 : (19 Pat. 321 S. B.), a view similar to that of the Calcutta Full Bench, to which I have made reference, was expressed by a Full Bench of which I was a member. It seems therefore clear that in this and other provinces an order of a Land Acquisition Officer refusing to refer a matter to the civil Court under Section 18, could not be challenged in the High Court by civil proceedings.

8. On 26-1-1950 the Indian Constitution came into force and it is urged on behalf of the petitioners that this Court has now power to interfere and reverse or vary an order of a Collector under the Land Acquisition Act made under Section 18 and Such power it is said, is given to this Court by Article 227 of the Constitution. Article 227 is in these terms :

'(1) Every High Court shall have superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provision, the High Court may

Then follow provisions which are not material to this case.

9. The argument on behalf of the petitioners is that the Land Acquisition Collector, if not a Court, is a tribunal over which this High Court exercises superintendence. That being so, it is contended that the orders of such a tribunal may be considered by this Court and in proper cases varied or reversed.

10. As I have said earlier the decisions of this and other High Courts make it clear that a Land Acquisition Collector is not a Court and not a Court subordinate to the High Court. However the Land Acquisition Collector may be a tribunal, but I do not think that it is necessary to decide that matter in this case because it has been contended on behalf of the opposite parties and I think rightly that this Court has no jurisdiction to interfere in the present case because the order which is sought to be questioned was an order made before the Constitution came into force. The Indian Constitution came into force on 26-1-1950 whereas the order complained of was made on 23-11-1949 more than two months before the constitution came into force. The respondent's contention is that this article cannot be given retrospective effect even if it gives this Court a right to interfere with judicial orders of a Court or the decisions or orders of a Tribunal.

11. A power of superintendence would not normally involve a power of judicial interference, but I think it is too late to contend that the power of superintendence such as that given by Article 227 of the Constitution does not involve a power to interfere judicially in appropriate cases. Under the Government of India Act, 1915, it had been held by this Court and other Courts that a power of superintendence similar to the power given by Article 227 of the Constitution did give High Courts a right in appropriate cases to interfere with judicial orders of Courts subordinate to them. That right of judicial interference was expressly taken away from the High Court' by Section 224, Government of India Act, 1935. That section gave the High

Court power of superintendence over Courts for the time being subject to its appellate jurisdiction. But Sub-section (2) of that section provided that nothing in the section should be construed as giving to a High Court any jurisdiction to question any judgment of any inferior Court which was not otherwise subject to appeal or revision.

12. It is, therefore, clear that whilst the Government of India Act, 1935 was in force the power of superintendence over Courts subject to our appellate jurisdiction did not give this Court a right to interfere with judicial orders of such Courts. The power of superintendence is again given to this Court and other High Courts by Article 227 of the Constitution and it is to be observed that the provisions in Sub-section (2) of Section 224 restricting the powers of this Court find no place in Article 227 of the Constitution. The powers of superintendence given to the High Courts under Article 227 of the Constitution are somewhat similar to the powers given to High Courts by the Government of India Act, 1915, which were, as I have said, later restricted by Sub-section (2) of Section 224, Government of India Act, 1935. It seems to me that it was the intention of the Constituent Assembly to restore the law to what it was before the Government of India Act, 1935 was enacted. That is the only inference which can be drawn from the omission of the provisions of Sub-section (2) of Section 224, Government of India Act, 1935, from Article 227 of the Constitution, That being so, it appears to me that this Court is bound to hold that it has the same powers of judicial interference as it had before the Government of India Act, 1935, was enacted if not greater powers. It must be held therefore that Article 227 of the Constitution gives this Court a right in appropriate cases to interfere judicially with orders of Courts and tribunals made amenable to its jurisdiction by that Article.

13. Though this Court has a right to interfere with the orders of Courts or tribunals I do not think this Court can interfere under the provisions of Article 227 of the Constitution in cases where the orders sought to be interfered with were made before the Constitution came into force and which were final and could not be challenged.

14. As I have said earlier this order of the Land Acquisition Collector refusing to make a reference could not be challenged in a superior Court either by appeal or by way of revision. The order when made was a final order and therefore when the constitution came into force this order was final. Can provisions in the Constitution which came into force on 26-1-1950 affect the finality of the order of 23-11-1949 In other words, are the provisions of Article 227 of the Constitution retrospective in their effect ?

15. Mr. Amar Bose on behalf of the petitioners has contended that Article 227 is merely an Article dealing with procedure and as the matters dealt with in the Article are purely procedural the Article can be given retrospective effect. The right to interfere, vary or reverse judicial orders is it is said a mere matter of procedure and therefore Article 227 can be construed as having retrospective effect.

16. A right of appeal which is one of the methods by which a decision, which would otherwise be final, can be challenged has been held by their Lordships of the Privy Council to be not a procedural right but a substantive right and therefore an Act purporting to take away a right of appeal could have no retrospective effect if such was not clear from the express words of the statute or could not be inferred from its terms.

17. That was decided in the case of Colonial Sugar Refining Co. Ltd., v. Irving, (1905) A. C. 369 : (74 L. J. P. C. 77) in which their Lordships held that although the right of appeal from the Supreme Court of Queensland to His Majesty in Council given by the order in Council of 30-6-1860, had been taken away by the Australian Commonwealth Judiciary Act, 1903, Section 39, Sub-section (2), and the only appeal therefrom lay to the High Court of Australia, yet the Act was not retrospective, and a right of appeal to the King in Council in a suit pending when the Act was passed and decided by the Supreme Court afterwards was not taken away.

18. The matter was again considered by their Lordships of the Privy Council in a case arising in India. That case was Delhi Cloth and General Mills Co. Ltd., v. I.-T. Commissioner, Delhi . In that case their Lordships held that the right of appeal to the Privy Council from a decision of the High Court upon a case stated under

Section 66, Income-tax Act, 1922, is given by Sub-section (2) of Section 66-A (added by Act XXIV [24] of 1926) only in a case which the High Court certifies to be a fit one for such an appeal. They further held that no right of appeal arose where the decision of the High Court was before 1-4-1926, the date when Act XXIV [24] of 1926 came into operation, since the Act showed no intention to interfere with the finality of decisions already given.

19. It will be seen that the Australian case dealt with a statute taking away a right of appeal whereas the Indian case dealt with a statute giving a right of appeal. In both cases it was held that the statutes had no retrospective effect.

20. In the Delhi Cloth and General Mills Co.'s case Lord Blanesburgh who delivered the judgment of the Board, at p 425 observed as follows:

'The principle which their Lordships must apply in dealing with this matter has been authoritatively enunciated by the Board in the Colonial Sugar Refining Co. v. Irving, (1905) A. C. 369 : (74 L. J. P. C. 77) where it is in effect laid down that, while provisions of a statute dealing merely with matters of procedure may properly, unless that construction be textually inadmissible, have retrospective effect attributed to them, provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment. Their Lordships can have no doubt that provisions which, if applied retrospectively, would deprive of their existing finality orders which, when the statute came into force, were final, are provisions which touch existing rights. Accordingly, if the section now in question is to apply to orders final at the date when it came into force, it must be clearly so provided. Their Lordships cannot find in the section even an indication to that effect.'

21. It appears to me that this observation of Lord Blanesburgh applies with equal force to this case. What the petitioners seek to do is to obtain an order from this Court varying or reversing an order which had become final before the Constitution came into force. Admittedly when the order was made, it could not be questioned in this or any other Court. But it is now sought to question it here under powers given to this Court long after the order had been made. It appears to me that the Delhi Cloth and General Mills Co.'s case compels us to hold that Article 227 of the

Constitution cannot apply to orders of Courts and tribunals made before the enactment of the Constitution and which was final when the Constitution came into force.

22. Mr. Amar Bose has endeavoured to distinguish the facts of this case from the facts of the Delhi Cloth and General Mills Co.'s case . In the latter decision he points out that their Lordships of the Privy Council were considering a piece of legislation which expressly gave a right of appeal or a right to challenge a decision of some inferior Court. He suggests however that Article 227 does not, on the face of it, give any right to challenge any order and therefore he said that Article 227 clearly is of a procedural nature, it being an Article which merely gives this Court a right of general superintendence. To succeed however in this application Mr. Amar Bose has to contend that Article 227 of the Constitution gives us a right to interfere with orders made by the Land Acquisition Collector. In other words, he must contend that Article 227 of the Constitution gives this Court very much the same rights as the statute gave the Privy Council in the Delhi Cloth and General Mills Co.'s case . In the latter case the statute gave the Judicial Committee a right to entertain an appeal whereas Article 227 gives this Court a right to interfere judicially if it deems in the circumstances to be proper. Article 227 although it does not in terms give a right to interfere with orders, it is an Article which, according to Mr. Bose's contention and the view of the High Courts in earlier cases, does give a right to High Courts to interfere in proper cases and, therefore, does give rights to the parties to move this Court to vary or reverse orders i.e., to exercise powers similar to those as exercised in an appeal. The right now sought to be enforced is the right to move this Court to interfere with orders of a tribunal and it appears to me that any Article in the Constitution giving that right must be construed in the same manner as provisions in a statute would be construed which gave a right to parties to challenge a decision, either by appeal or revision I do not think that any distinction can be drawn between the present case and the two decisions of the Privy Council merely on the ground that Article 227 of the Constitution does not in terms give this Court a right to interfere with Judicial decision of Courts and Tribunals. That right has been held by the High Courts to be involved in the right of superintendence and, therefore, impliedly that right is granted by Article 227.

23. Mr. Bose also relied upon a very recent decision of the Supreme Court in the case of Bharat Bank Ltd., Delhi v. Employees of the Bharat Bank Ltd., Delhi, Civil Appeal No. 34 of 1950 : : (1950)NULLLLJ921SC . In that case the Supreme Court by a majority held that an appeal would lie under Article 136 of the Constitution from an order or award of the Banking Industrial Tribunal made in proceedings referred to it by Government. Mr. Bose has pointed out that the award sought to be challenged in that case was dated 19-1-1950 which was a week before the Constitution came into force. It is to be observed, however, that the award was not declared binding until 4-2-1950. It is clear from the judgments of their Lordships of the Supreme Court that no point was taken that the Court had no jurisdiction by reason of the fact that the award was made before the Constitution came into force and, therefore, the contention before us in the present case were not considered in the Supreme Court. It may be that the point was not considered because the award was not made binding until after the Constitution came into force. But whether that would affect the matter or not is not for me to consider. It is sufficient; to say that in the Supreme Court this point was never discussed and never decided and that being so, I do not think that the Bharat Bank case compels us to hold that we are bound to interfere in the present case.

24. Mr. Bose also referred to an unreported decision given by myself in which I interfered under powers given by Article 227. It seems that the order sought to be interfered with in that case was made before the Constitution came into force. But it was never apparent to me during the case that the order sought to be revised or interfered with was an order made before the Constitution came into force and my brother G.N. Das, who is sitting on this Bench, states that it was not also apparent to him or his brother Judge when he issued the Rule in that particular case. The point seems to have been overlooked by everyone and, therefore, that case is no authority for the proposition that this Court has jurisdiction to interfere with orders made before the Constitution came into force and if that case is sought to be relied upon as an authority for that proposition it must be considered to have been wrongly decided and overruled.

25. This very question was considered by a Bench of this Court in a recent case Rishindra Nath Sarkar v. Rai Saheb Sakti Bhusan Ray, : AIR1950 Cal512 . The

Bench held that Article 227 of the Constitution does not empower the High Court to interfere with an order which was a final order passed at a time before the Constitution came into force and when the High Court had no power to interfere with such an order under Section 115, Civil P. C. The Bench further held that there were no express words in Article 227 of the Constitution which gave the High Court the right to interfere with a right in existence at the time of the passing of the Constitution; nor is there anything in the aforesaid Article to indicate that there is such a power by necessary intendment.

26. It appears to me that this Bench case is rightly decided and with respect I entirely agree with the judgment delivered by Sen J., in that case.

27. For these reasons I am bound to hold that this Court has no jurisdiction to make an order on the present petition and, therefore it is unnecessary to consider the merits and the arguments which could be addressed on the merits.

28. In the result, therefore, this petition fails and the Rule is discharged with costs--the hearing fee being assessed at five gold mohurs.

29. We certify that this case involves a substantial question of law as to the interpretation of the [Constitution of India](#) as required by Article 132(1) of the Constitution.

G.N. Das, J.

30. I agree.

Banerjee, J.

31. I agree.