

ITEM NO.101

COURT NO.11

SECTION XVI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL NO. 395/2010

BHASWATI ROY PANDEY & ORS.

Appellant(s)

VERSUS

STATE OF WEST BENGAL & ORS.

Respondent(s)

(WITH APPLN. (S) FOR PERMISSION TO PLACE ADDL. DOCUMENTS ON RECORD
AND OFFICE REPORT)

Date : 09/09/2014 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI

HON'BLE MR. JUSTICE S.A. BOBDE

For Appellant(s)

Mr. Harshvir Pratap Sharma, Adv.

Mr. K. S. Rana, Adv.

For Respondent(s)

Mr. Kalyan Kr. Bandopadhyay, Sr. Adv.

Mr. Anip Sachthey, Adv.

Ms. Shagun Matta, Adv.

Mr. Saakaar Sardana, Adv.

UPON hearing the counsel the Court made the following

O R D E R

The appeal is dismissed in terms of the signed
order.

[VINOD LAKHINA]

COURT MASTER

[ASHA SONI]

COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.395 OF 2010

BHASWATI ROY PANDEY & ORS. . . . APPELLANTS

VERSUS

STATE OF WEST BENGAL & ORS. . . . RESPONDENTS

ORDER

The short and precise question that has called for an answer in the present appeal is whether the provisions of the West Bengal Land Reforms (Amendment) Act, 1971 could have come into effective operation in the absence of specific Notification under Section 1(3) of the original Act as enacted in the year 1955 i.e. West Bengal Land Reforms Act, 1955.

Mr. Harshvir Pratap Sharma, learned counsel appearing for the appellants contends that in the absence of such Notification, a fact on which there is no dispute, Chapter II-B introduced by Section 13 of the Amendment Act did not come into force so as to enable the prescribed authority under the Act to invoke the same in order to determine the excess land allegedly vested in the appellants under the provisions of the Act.

Section 1 of the West Bengal Land Reforms Act, 1955 (as amended) [for short "the 1955 Act"] in its entirety will require to be noticed and, therefore, is being extracted below:

"1. Short title, extent and commencement.-(1) This Act may be called the West Bengal land Reforms Act, 1955.

(2) It extends to the whole of West Bengal except the area described in Schedule I of the Calcutta Municipal Corporation Act, 1980 (West Ben. Act, LIX of 1980), but not excepting the area included in the said Schedule, which, immediately before the coming into force of the Calcutta Municipal Corporation (Amendment) Act, 1983 (West Ben. Act XXXII of 1983), was comprised in the municipality of Jadavpur, South Suburban or Garden Reach:

Provided that the State Government may, from time to time by notification in the Official Gazette, extend and bring into force the provisions of this Act, in whole or in part, to such part or parts of the area described in Schedule I to the Kolkata Municipal Corporation Act, 1980 (West Ben. Act LIX of 1980), with effect from such date or dates as may be specified in the notification.

(3) This section shall come into force at once and the remaining provisions of this Act, in whole or in part, shall come into force on such date or dates and in such district or part of a district as the State Government may from time to time by notification in the Official Gazette specify."

Sub-Section (2) of Section 1 of the 1955 Act contains a proviso which was introduced by the Amendment Act of 1981 with effect from 7th August, 1969. A reading of the provisions of Section 1 of the 1955 Act as a whole would indicate that while sub-section (2) of Section 1 deals with the extent of application of the provisions of the 1955 Act, sub-section (3) thereof deals with the effective date of coming into force of the Act which requires to be specified by a Notification published in the Official Gazette. The proviso to sub-section (2) of Section 1 of the 1955 Act, brought in by the Amendment Act of 1981 with effect from 7th August, 1969, however, contemplates the exercise of power by the

State Government by publishing a Notification extending and bringing into force the provisions of the 1955 Act (emphasis is ours).

It is in exercise of the power under Section 1(2) of the 1955 Act that a Notification bearing No.1650-L.Ref./2A-58 /70 dated 13th February, 1971 was published in the Extraordinary Calcutta Gazette of even date which recites that 15th day of February, 1971 is the appointed day on which the provisions, *inter alia*, of Section 13 of the Amendment Act (introducing Chapter II-B) shall come into force in the whole of the State of West Bengal. The Notification dated 13th February, 1971 may be conveniently extracted below:

"In exercise of the power conferred by sub-section (2) of section 1 of the West Bengal Land Reforms (Amendment) Act, 1971 (President's Act No.3 of 1971), the Governor is pleased hereby to appoint the 15th day of February 1971, as the date on which the provisions of clause-(i) of section 7, and sections 13, 15 and 17 of the said Act shall come into force in the whole of the State of West Bengal."

Sub-section (2) of Section 1 of the 1955 Act initially empowered the State Government to issue Notifications with regard to the extent of application of the Act and sub-section (3) thereof contemplated a separate Notification with regard to the date of coming into force of the different provisions of the 1955 Act. The aforesaid distinction got somewhat obliterated by the introduction of the proviso to sub-section (2) of Section 1 of

the 1955 Act with effect from 7th August, 1969, which empowers a Notification extending the provisions of the Act to specific geographical area in the State of West Bengal as well as bringing into force the same with effect from a particular date(s). The Notification dated 13th February, 1971, as already noticed, in the exercise of powers under Section 1(2) of the West Bengal Land Reforms (Amendment) Act, 1971. The validity of the proviso to sub-section (2) of Section 1 of the 1955 Act and the powers conferred thereunder, in the light of the provisions contained in Section 1(3) of the 1955 Act, was not the subject matter of challenge before the High Court in the present petition. In the absence of any challenge to the provisions of Section 1(2) of the 1955 Act, the Court

will have to assume the validity of the legislative exercise introducing the proviso and consequential exercise of power thereunder by issuing the Notification dated 13th February, 1971.

If the provisions of the Act are so construed, as they have to be in the absence of any challenge to the validity of the proviso, the conclusion that has to be reached is inevitable. The Notification dated 13th February, 1971 brings into operation the provisions of Section 13 of the Amendment Act introducing Chapter II-B with effect from 15th February, 1971. In such a situation, the necessity of another Notification under Section 1(3) of the 1955 Act cannot be appreciated or acknowledged.

Two decisions of this Court have been cited by the learned counsel for the appellants to contend that the provisions of the 1955 Act partakes the character of a conditional legislation and unless there is a separate Notification under Section 1(3) of the 1955 Act, the provisions of the Act and its amendments from time to time cannot come into operation so as to have any legal effect. The said decisions relied upon are in the cases of State of Orissa versus Chandrasekhar Singh Bhoi, etc. [(1969) 2 SCC 334] and Orient Paper and Industries Ltd. And Another versus State of Orissa and others [1991 Supp. (1) SCC 81].

The proposition advanced by the learned counsel for the appellants cannot be doubted. The operation of the Act is conditional upon a specific Notification being issued bringing the same into force from a particular date. However, in the present case, the provisions of Section 1(3) of the 1955 Act has to be read conjointly with the provisions contained in Section 1(2) thereof and the Notification dated 13th February, 1971 under Section 1(2) of the Act has to be construed in the light of the provisions of Section 1(2) as amended in 1981. Coincidentally, in neither of the decisions relied upon, provisions similar to those contained in Section 1(2) of the 1955 Act had been brought to the notice of the Court to be a part of the statutory

enactments considered in the said decisions. In the absence of provisions *pari materia* with Section 1(2) of the 1955 Act, in the statutory enactments considered by this Court in State of Orissa versus Chandrasekhar Singh Bhoi, etc. and Orient Paper and Industries Ltd. And Another versus State of Orissa and others (supra), the ratio of the decisions so far as issue of conditional legislation is concerned will not be of any assistance to the appellant.

In view of the foregoing decisions, we sustain the conclusions reached by the High Court though in arriving at the same we have chartered a different course. Consequently, we dismiss the appeal and confirm the order of the High Court.

We leave the parties to bear their
own costs.

The appeal is disposed of in the
above terms.

....., J.
(RANJAN GOGOI)

....., J.
(S.A. BOBDE)

NEW DELHI
SEPTEMBER 09, 2014