

Pradeep Kumar Maskara & Ors vs State Of West Bengal & Ors on 17 October, 2014

Equivalent citations: AIRONLINE 2014 SC 164, (2015) 1 CLR 243, (2014) 3 CAL LJ 177, (2015) 1 CAL HN 6, (2015) 1 ICC 231, (2014) 12 SCALE 227, 2015 (2) SCC 653, (2015) 1 CUR CC 16, (2014) 4 CAL LT 68, (2015) 1 CAL LJ 330, (2015) 2 ICC 492, (2015) 1 CLR 243 (SC)

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Bench: Pinaki Chandra Ghose, M.Y. Eqbal

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.9844-9846 OF 2014
(Arising out of Special Leave Petition (C) Nos. 23051-23053 of 2009)

Pradeep Kumar Maskara and othersAppellants

Versus

State of West Bengal and othersRespondents

JUDGMENT

M.Y. EQBAL, J.

Leave granted.

2. These appeals by special leave are directed against the common judgment and order dated 20.3.2009, passed by the Division Bench of High Court of Calcutta in W.P.L.R.T. Nos. 728 of 2002, 429 of 2002 and 430 of 2002, whereby the High Court dismissed the aforementioned Writ Applications holding that the question as to whether Chapter IIB of the West Bengal Land Reforms Act would be applicable qua the appellants in view of the fact that they belonged to a place which was in erstwhile State of Bihar and by virtue of the State Reorganisation Act, their lands were included in the State of West Bengal was decided against the appellants relying on the judgment in case of Ganga Dhar Singh & Ors. vs. State of West Bengal and Ors., 1997 (II) CHN 140.

3. The facts giving rise to the present appeals are that the appellants, presently residents of Dalkola, sub-divisional town in the District of North Dinajpur, West Bengal, had certain ancestral lands in the said town. On 30.3.1956, the West Bengal Land Reforms Act, 1955 came into force and the lands of the appellants were transferred from State of Bihar to State of West Bengal by virtue of the enactment of Bihar and West Bengal (Transferred Territories) Act, 1956, which came into force w.e.f. 19.10.1956.

4. On 24.09.1958 the West Bengal Transferred Territory (Assimilation of Laws) Act, 1958 was brought into force. The provisions of the West Bengal Land Reforms Act were extended to the transferred Territories by issuing a Notification under Sec 3(3) of the West Bengal Transferred Territories (Assimilation of Laws) Act, 1958. Some of the provisions of the West Bengal Reforms Act were enforced in the transferred Territory.

5. Thereafter, in the year 1971, West Bengal Land Reforms (Amendment) Act was enacted. Section 1(3) empowered the State Government to appoint the date of enforcement of the provisions. By virtue of Section 13 of the Act, Chapter II-B for ceiling on holding was sought to be inserted for the first time in the West Bengal Land Reforms Act, 1955, and the State Government issued Notification no.1516-L ref.11 February, 1971, which reads as under:-

“In exercise of the power conferred by sub-section (2) of Section 1 of the West Bengal Land Reforms (Amendment) Act, 1971 (President Act no.3 of 1971) the Governor is pleased hereby to appoint the 12th day of the February as the date on which all the provisions of the said Act except those in clause (1) of section 7 and section 13, 15 and 17 thereof shall come into force in the whole of the State of West Bengal.”

6. The State Government issued further Notification no.1650-I, Ref/2A- 58/70 dated 13.2.1971 as under:-

“In exercise of the power conferred by sub-s.(2) of s.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 the February, 1971, as the date on which the provisions of clause (i) of s.7, and Ss.13, 15 and 17 of the said Act shall come into force in the whole of the State of West Bengal.”

7. In the year 1976, following three vesting proceedings under Section 14-T of the West Bengal Land Reforms Act, 1955 were initiated:

- No.252/1976 against Mahabir Prasad Maskara, father of the appellants
No.244/1976 against Appellant No.1 No. 280/1976 against Appellant No.2

8. Vide order dated 02.08.1983 and 17.8.1983, Proceedings No.244/1976 and No. 280/1976 were disposed of with a finding that appellant nos.1 and 2 herein were minors and hence, the lands held by them were taken into account as lands of their father Mahabir Prasad Maskara. Proceedings No.252/1976, pertaining to Mahabir Prasad Maskara, was disposed of vide order dated 24.8.1983,

declaring 38.8591 acres of agricultural lands to vest in the State.

9. Aggrieved by the same, Appellants and other co-sharers preferred a Writ Petition before the High Court of Calcutta, assailing the initiation of proceedings under 14-T(3) of the West Bengal Land Reforms Act 1955, under Chapter IIB of the said Act on the ground that the said Chapter of the Land Reforms Act is not applicable to the territories which came from Bihar on transfer and where the Appellants holds land. Learned Single Judge of the High Court, in the case of Pradip Kumar Maskara being C.R. No.3465(W) of 1984, allowed quashing of the vesting proceedings on the ground of non-applicability of Chapter II-B of the aforesaid Act to the Transfer Territories in the absence of required Notification. It has been submitted on behalf of the appellants that aforesaid judgment of Learned Single Judge in the case of Pradip Kumar Maskara was never challenged and attained finality vis-à-vis the State and the present appellant.

10. In C.R. No.2001(W) of 1985 preferred by two residents of village Mohanpur, Karandighi, District West Dinajpur, another learned Single Judge of the High Court of Calcutta made the Rule absolute by holding that in the absence of any Notification under the West Bengal Land Reforms Act 1955, Chapter IIB could not be made applicable to the transferred territories. Thereafter, in another case, other learned Single Judge quashed the vesting proceedings following Pradip Kumar Maskara judgment.

11. In the case of Ganga Dhar Singh and ors. vs. State of West Bengal & ors., reported in (1997) 2 CHN 140, another learned Single Judge of the High Court of Calcutta, by order dated 9.4.1997, held that no Notification is required under the West Bengal Act for applicability of its provisions to the Transferred Territories. The High Court held that there cannot be any doubt whatsoever that Chapter-IIB of the West Bengal Land Reforms Act brought in by reason of Section 13 of West Bengal Land Reforms (Amendment) Act, 1972 shall apply to the transferred territories also.

12. Relying upon the judgment in Gangadhar Singh's case (supra), the West Bengal Land Reforms and Tenancy Tribunal dismissed the application of the appellants herein, who moved O.A. No. 3841/2001 due to inaction on part of the authorities to correct the Record of Rights. The Tribunal held that no Notification was required to extend Chapter-IIB of the Land Reforms Act to the transferred territories.

12. The aforesaid order of the order of the Tribunal was challenged before the High Court of Calcutta, which has upheld the order of the Tribunal holding that the decision of Ganga Dhar's case (supra) is a binding precedent and having not been assailed, has attained finality. Hence, the present appeals by special leave.

13. We have heard learned senior counsel appearing for the parties at length and perused the papers placed before us including the decision rendered in Ganga Dhar's case (supra).

14. Mr. Raju Ramachandran, learned senior counsel appearing for the appellants, submitted that in 1976 vesting proceedings were initiated under Section 14-T of Chapter II-B of the West Bengal Land Reforms Act, 1955 and in August, 1983 Case No.252/1976 was disposed of against the appellants

declaring 38.8591 acres of agricultural land to vest in the State, against which, the appellants approached the High Court by filing a petition titled as Pradip Kumar Maskara vs. State of West Bengal & Ors. Learned Single Judge of the High Court by order dated 8.11.1992 allowed quashing of the vesting proceedings on the ground that there is no notification under the Act. Aforesaid order is quoted hereunder:

“Since there is no notification under the West Bengal Lands Reforms Act, 1955 as yet extending Chapter IIB of the same as introduced by the West Bengal Land Reforms (Amendment) Act, 1972 to the transferred territories, i.e. the territories transferred from the State of Bihar to the State of West Bengal including the District of Purnia the impugned proceedings under section 14T(3) of the West Bengal Land Reforms Act, 1955 being annexure ‘B’ to the Writ Petition and all orders passed therein cannot be sustained in law and are quashed and the Rule is made absolute to the extent as indicated above without any order as to costs.

The order will also cover the other two Rules.”

15. Learned senior counsel contended that this judgment vis-à-vis the State and the present appellants was never challenged and hence has attained finality. However, when the appellant approached the Land Reforms Tenancy Tribunal for correction in the Record, the Tribunal instead of merely directing the State to correct the Record of Rights, sat in appeal over the aforesaid judgment of the High Court. The Tribunal refused to give effect to the aforesaid judgment on the ground that in view of a subsequent decision in Ganga Dhar (supra), the law laid down in Pradip Kumar Maskara is no longer good law. Learned counsel drew our attention to Explanation to Rule 1 of Order XLVII of the Code of Civil Procedure, 1908 and the law declared by this Court by referring to its decision in Nand Kishore Ahirwar & Anr. vs. Haridas Parsedia & Ors., (2001) 9 SCC 325, and in Shanti Devi vs. State of Haryana & Ors., (1999) 5 SCC 703. It is contended on behalf of the appellants that in the writ petition preferred by the appellant, the High Court upheld the order passed by the Tribunal by adopting the same reason as that of the Tribunal.

16. Mr. Raju Ramachandran, learned senior counsel submitted that the judgment in Ganga Dhar has been passed by a learned Single Judge of the High Court without even referring to the earlier three judgments of the High Court rendered by Single Judges. It has been contended on behalf of the appellants that in this view of the matter, the judgment in Ganga Dhar is clearly per incuriam in view of the decision of this Hon’ble Court in State of Assam vs. Ripa Sharma, (2013) 3 SCC 63, wherein it has been held as under:-

“7. In the present case, the preliminary objection has been raised at the threshold. In addition, it is an inescapable fact that the judgment rendered in Eastern Coalfields Ltd. has been rendered in ignorance of the earlier judgments of the Benches of co-equal strength, rendering the same per incuriam. Therefore, it cannot be elevated to the status of precedent....”

17. It is further contended on behalf of the appellants that the Tribunal wrongly notes that Ganga Dhar judgment was rendered by a Division Bench though it was passed by a Single Judge. On the issue of notification, it has been submitted that after Chapter II-B was inserted by the West Bengal Reforms (Amendment) Act, 1971 with effect from 13.2.1971, no notification was issued under Section 1(3) of the West Bengal Land Reforms Act, 1955 enforcing the aforesaid inserted provisions contained in Chapter II-B in the areas which were transferred from State of Bihar to the State of West Bengal vide the West Bengal transferred Territories (Assimilation of Laws), 1958. The notification dated 24.06.1967 and 26.09.1969 relied upon by the respondent-State cannot support their contention since Chapter II-B (made effective from 13.2.1971) was, admittedly, inserted after these notifications were issued and, therefore, could not have covered the provisions of Chapter II-B. It is lastly contended that even in the counter affidavit before this Court, no notification has been produced by the State under Section 1(3) of the West Bengal Land Reforms Act, 1955 extending the provisions of Chapter II-B to the transferred territories.

18. Per contra, Mr. Kalyan Kr. Bandopadhyay, learned senior counsel made submissions on behalf of the respondents contending that because of Section 3 of Transfer of Territories Act, the transferred territories were merged in the State of West Bengal and became a part and parcel thereof and even the first schedule appended to the Constitution of India was amended, so no further notification under Section 1(3) of the West Bengal Land Reforms Act was necessary. Further, as the requirement of the provision having been complied with by reason of Notification dated 26th June, 1967, a further notification under Section 1(3) was not necessary. It has been further contended on behalf of the respondents that by virtue of notification dated 26th September, 1969, certain provisions of West Bengal Land Reforms Act, 1955 came into force from 1st day of October, 1969 in all the areas transferred from Bihar to West Bengal under the West Bengal (Transfer of Territories) Act, 1956.

19. Learned senior counsel appearing for the State submitted that the High Court correctly held in the case of Ganga Dhar (supra) that Chapter II- B of the West Bengal Land Reforms (Amendment) Act, 1972 shall apply to the transferred territories.

20. The short question that falls for consideration is as to whether the West Bengal Land Reforms and Tenancy Tribunal was justified in dismissing the application of the appellants and refused to make correction in the record of right in terms of the directions of the High Court.

21. As noticed above, the land in question was transferred from the State of Bihar to the State of West Bengal pursuant to the enactment of Bihar and West Bengal (Transferred Territories) Act, 1956 and the provisions of West Bengal Land Reforms Act were extended to the transferred territories. Consequently, the land in question was shown to have been vested in the State and the appellant challenged the said order of vesting by filing a writ petition being CR No.3466 of 1984. The said writ petition was allowed by the Calcutta High Court in terms of Order dated 25.11.1994 and the said order of vesting was quashed on the ground of non applicability of Chapter IIB of the aforesaid Act. Similar order was passed in another writ petition in the Calcutta High Court in CR No.2001(W) of 1985. The said orders were not challenged by the State either before the Division bench of the High Court or before this Court and it attained finality.

22. After the aforesaid order was passed by the High Court, the appellants moved an application along with the copy of the order before the Tribunal for a direction to correct the revenue record by entering their names. The Tribunal dismissed the application on the ground that the decision of the High Court in Gangadhar Singh's case (supra) is binding precedents and the earlier judgment of the High Court is no longer a good law. For better appreciation, the order dated 20.2.2002 is reproduced hereinbelow:-

“20.2.2002 Heard the learned counsel for the applicant and the learned Govt. Representative at length.

Challenging the order of vesting passed under Chapter-IIB of the West Bengal Land Reforms Act, the applicant filed a writ petition being C.r. No.3466(W) of 1984 on the ground that the said chapter of the Land Reforms Act is not applicable to the territories which came from Bihar on transfer and where the applicant holds lands. The said Civil Rule was disposed of by an order dated 8.1.1992 by the High Court to the effect that in absence of the notification under the Land Reforms Act extending the said chapter IIB to the transferred territories the impugned order of vesting under section 14T (3) is not sustainable and quashed. The applicant's grievance is that despite such order, no action has been taken by the authority to correct the record of rights.

The learned Govt. Representatives have submitted that in Gangadhar Singh vs. State of West Bengal reported in (1997) 2 CHN 140 the Division Bench of the High Court held that no notification is necessary to extend chapter-IIB of the Land Reforms Act to the transferred territories. In view of this decision the decision in C.r.No.3466 (W) of 1984 is no longer a good law.

It is therefore, evident that the application has been filed without any cause of action, because the High Court has decided that for extension of Chapter –IIB of the transferred territories no notification under section 1(3) of the Act is required.

The application is dismissed.

Let plain copies of this order duly counter signed by the principal Office of the Tribunal be made available for onward Communication to Block Land & Land Reforms Office, Karndighi Circle, Dist. North Dinajpur for compliance and information.

Sd/-K.L. Mukhopadhyaya (M) Sd/- K.J. Majumdar,(M)”

23. The appellants challenged the aforesaid order of the Tribunal by filing a writ petition before the Calcutta High Court. The High Court relying on the decision in Gangadhar Singh's case dismissed the writ petition.

24. At the very outset, we notice that Gangadhar Singh's case was not decided by a Division Bench of Calcutta High Court as observed by the Tribunal. In the year 1984, the appellants challenged the notice of vesting of their land by filing a writ petition which was allowed and the notice of vesting was quashed. On the basis of said order passed by the High Court, the appellants moved the Tribunal for correction of the revenue record. The tribunal kept the matter pending for a long time and only in the year 2002 by order dated 20.2.2002 dismissed the application holding that the division bench of the High Court in subsequent decision in Gangadhar Singh's case held otherwise.

25. At the very outset, we are of the view that the tribunal has no jurisdiction to differ with the decision given by the Calcutta High Court in the writ petition filed by the appellants. The tribunal further committed grave error in following the decision in Gangadhar Singh's case treating it to be a Division Bench judgment of Calcutta High Court when as a matter of fact the decision in Gangadhar Singh's case was decided by a Single Judge of the High Court. Even the judgment passed in the appellant's writ petition filed in 1984 was neither considered nor distinguished.

26. In the back ground of these facts, in our considered opinion, when the judgment rendered by the Calcutta High Court in the case of the appellants and the said decision having not been quashed or set aside by a larger bench of the High Court or by this Court, the tribunal ought not to have refused to follow the order of the High Court.

27. It is well settled that even if the decision on a question of law has been reversed or modified by subsequent decision of a superior court in any other case it shall not be a ground for review of such judgment merely because a subsequent judgment of the single judge has taken contrary view. That does not confer jurisdiction upon the tribunal to ignore the judgment and direction of the High Court given in the case of the appellants.

28. In the aforesaid premises, the order passed by the land tribunal is erroneous in law. The High Court also fell in error in affirming the order of the tribunal, hence these orders cannot be sustained in law.

29. For the reason aforesaid, these appeals are allowed and the orders passed by the High Court and the tribunal are set aside. The tribunal is directed to follow the decision of Calcutta High Court decided in the case of the appellants.

.....J. [M.Y. Eqbal]J. [Pinaki Chandra Ghose] New Delhi
October 17, 2014