

ITEM NO.102

COURT NO.2

SECTION XVI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 16879/1996

STATE OF W B & ORS

Appellant(s)

VERSUS

PASCHIM BANGA B.K.SAMITY & ORS. Respondent(s)
(with appln. (s) for setting aside an abatement and may refer to
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and permission to file additional documents and intervention and
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WITH

C.A. No. 776/1997
(With Office Report)

C.A. No. 1789/1997
(With . Office Report)

C.A. No. 1790/1997
(With . Office Report)

C.A. No. 2450/1997
(With . Office Report)

C.A. No. 2453/1997
(With . Office Report)

C.A. No. 334/1997
(With . Office Report)

SLP(C) No. 1416/1997
(With . Office Report)

C.A. No. 775/1997
(With . Office Report)

Signature Not Verified

C.A. No. 1719/1998
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(With . Office Report)

Ramana Venkata Ganti

Date: 2014.07.22

14:15:40 IST

Reason:

SLP(C) No. 2031/2001
(With . Office Report)

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SLP(C) No. 6432/2001
(With prayer for Interim Relief and Office Report)

C.A. No. 335/1997
(With prayer for Interim Relief and Office Report)

C.A. No. 510/1997

(With . Office Report)

C.A. No. 509/1997

(With . Office Report)

W.P.(C) No. 523/2001

(With . Office Report)

SLP(C) No. 15441/2002

(With . Office Report)

SLP(C) No. 16664/2007

(With prayer for Interim Relief)

SLP(C) No. 25335/2007

(With prayer for Interim Relief and Office Report)

SLP(C) No. 26172/2008

(With prayer for Interim Relief and Office Report)

C.A. No. 2089/2004

(With . Office Report)

SLP(C) No. 26235/2012

(With prayer for Interim Relief and Office Report)

Date : 17/07/2014 These appeals/petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.L. DATTU
HON'BLE MR. JUSTICE R.K. AGRAWAL
HON'BLE MR. JUSTICE ARUN MISHRA

For Appellant(s) Mr.Rakesh Dwivedi, Sr.Adv.
Mr. Anip Sachthey ,Adv.
Mr.Soumitra G.Chaudhuri, Adv.
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Mr.Harshvir Pratap Sharma, Adv.
For Mr. K. S. Rana ,Adv.

Mr. Avijit Bhattacharjee ,Adv.

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Mr. V. N. Raghupathy ,Adv.

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Ms.Soumi Guha Thakurta, Adv.

Mr.R.K.Gupta, Adv.
Mr.M.K.Singh, Adv.
Mr.B.P.Gupta, Adv.
Mr. Shekhar Kumar ,Adv.

For Respondent(s) Mr. Somnath Mukherjee ,Adv.

Mr.Pratap Venugopal, Adv.
For M/s. K. J. John & Co. ,Advs.

Ms.Sarla Chandra, Adv.

Mr. Bijan Kumar Ghosh ,Adv.

Mr.Rana Mukherjee, Adv.
Ms.Uttara Babbar, Adv.

Ms.Kasturika Kaumudi, Adv.
Mr.Shekhar Kumar ,Adv.

Mr.R.K.Gupta, Adv.
Mr.M.K.Singh, Adv.
Mr.B.P.Gupta, Adv.
Mr.Shekhar Kumar, Adv.

Mr. Jay Savla ,Adv.

Mr. Abhijit Sengupta ,Adv.

Dr.Sumant Bhardwaj, Adv.
Ms. Mridula Ray Bharadwaj ,Adv.

Mr.Abhishek Sarkar, Adv.
Mr. Soumya Dutta ,Adv.

Mrs. Sumita Ray ,Adv.

Mr. Avijit Bhattacharjee ,Adv.

Mr. Abhijit Sengupta ,Adv.

Mr.Abhishek Sarkar, Adv.
Mr. Partha Sil ,Adv.

Mr. Anip Sachthey ,Adv.

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Ms.Nandini Sen, Adv.
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Mr.Partha Saka Dutta, Adv.
Mr.Aftab Ali Khan, Adv.
Mr.Shyamal Das, Adv.
Ms.Arundhati Das, Adv.
Mr.Rashid Khan, Adv.

Mr.Arup Banerjee, Adv.
Mr.Naved, Adv.

Mr.Rajiv Tyagi, Adv.
Mr.Ajay Kumar,Adv.
Mr.Vipin A., Adv.

Ms.Arna Das, Adv.
Mr.Rameshwar Prasad Goyal, Adv.

Syamal Das, Adv.
Ms.Arundhati Das, Adv.

UPON hearing the counsel the Court made the following
O R D E R

After hearing the learned counsel appearing for the parties to the lis, the two learned Judges of this Court have thought it fit to refer certain substantial questions of law for consideration and interpretation by this Court. The substantial questions of law according to the learned Judges involve the interpretation of the Constitution. The said substantial questions of law which were referred for consideration by the two learned Judges are as under:

" (i) The scope and content of Article 300A in particular whether a law contemplated therein has to conform

Article 14 and/or any facet of Article 14 of the Constitution;

(ii) the extent of protection available in respect of law which is challenged under Article 300A in the context of the protective umbrella of Articles 31A, 31B and 31C of the Constitution.

(iii) When the scope of agrarian reform law is altered by amendment of the meaning of expressions "estate", "rights", "proprietor", "sub-proprietor", "tenure holder", "raiyat and under raiyat" and "other intermediaries"

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(contrary to their meaning in 31A(2) of the Constitution) thereby covering non-agricultural lands including factories and mills, whether the protection of Article 31A will be available.

(iv) The constitutional validity of Amendments repeatedly and gradually reducing the ceiling area, thereby denying reasonable compensation for the land which was held within ceiling limit as per the original ceiling Legislation, which render the second proviso to Articles 31A, 31B and 31C nugatory."

At the time of hearing of these matters Shri V. Shekhar, learned senior counsel appearing for one of the parties to the lis has brought to our notice the Article 145 (3) of the Constitution of India wherein it is said :

" Article 145 (3)

..... The minimum number of Judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing any reference under article 143 shall be five:."

The Proviso appended to the said sub-section reads as under:

"Provided that, where the Court hearing an appeal under any of the provisions of this Chapter other than article 132 consists of less than five Judges and in the course of the hearing of the appeal the Court is satisfied that the appeal involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the appeal, such Court shall refer the question for opinion to a Court constituted as required by this clause for the purpose of deciding any case involving such a question and shall on receipt of the opinion dispose of the appeal in conformity with such opinion..."

We are of the considered opinion that since the substantial questions of law that are referred would require interpretation of the Constitution of India, these matters are required to be heard and decided by a Constitution Bench as envisaged under Article 145 (3) of the Constitution of India.

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At the time of hearing of these appeals/petitions, the learned counsel appearing for the respective parties would submit that apart from the aforesaid substantial questions of law referred by the two learned Judges, the following questions of law

would also arise in these matters and require to be considered by the Constitution Bench. They are as under :

"1. Whether Article 300 A, which does not contain a provision like Article 31(2), would mandate payment of any amount as compensation for depriving of a person of his property under the authority of law? If yes, then what are the parameters of adjudging the principles for payment of amount or the amount fixed by the Acquiring Act as illusory?

2. Whether the Constitutional Amendments inserting the amending Acts in the IXth Schedule would be violative of the Basic Structure of the Constitution and would therefore be open to challenge in the light of the judgment of this Hon'ble Court in I.R. Coelho (Dead by LRS) Vs. State of Tamil Nadu [(2007) 2 SCC 1] and therefore be liable to be struck down?

3. Whether the Section 4-D inserted by the 1981 Amendment Act of the West Bengal Land Reforms Act, 1955 which prescribes the offences and penalties with retrospective effect from 07.08.1969 in the face of the prohibition contained in Article 20(1) of the Constitution of India is valid?"

In view of the above, we now refer the substantial questions of law as referred by the two learned Judges and also the questions formulated by the learned counsel appearing for the parties to the lis today for consideration and decision by the Constitution Bench.

We now direct the Registry of this Court to place these matters before the Hon'ble Chief Justice of India for appropriate directions.

Ordered accordingly.

(G.V.Ramana)
Court Master

(Vinod Kulvi)
Asstt.Registrar