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SACHINDRA MOHAN NANDY & ORS.

v.

STATE OF WEST BENGAL & ORS.

February 19, 1971

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[S. M. SIKRI, C.J., C. A. VAIDIALINGAM AND V. BHARGAVA, JJ.]

Chandernagore (Merger) Act, 1954—Chandernagore (Assimilation of Laws) Act, 1955—Extension of West Bengal Laws to Chandernagore territory—West Bengal Land (Requisition and Acquisition) Act, 1948 whether applicable to Chandernagore by virtue of Merger and Assimilation Acts aforesaid—Power of Collector to requisition land whether confined to area of Hooghly District before merger of Chandernagore.

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The French settlement of Chandernagore was merged in the State of West Bengal with effect from October 2, 1954 by virtue of the Chandernagore (Merger) Act, 1954. It was made part of Hooghly District. By s. 17 of the Merger Act the laws relating to Lists I and III of the Seventh Schedule to the Constitution, in force in West Bengal 'generally' were extended to the merged territory. By s. 18 the corresponding laws of French Chandernagore were repealed. The Chandernagore (Assimilation of Laws) Act, 1955 by s. 3 thereof extended the laws relating to List II of the Seventh Schedule to the Constitution in force in West Bengal to the merged territory. By s. 4 the corresponding laws in force before merger were repealed. The Collector of Hooghly in exercise of Powers conferred on him by notification dated May 11, 1948 made two orders under s. 3(1) of the Acquisition Act. The appellants challenged them in a petition under Art. 226 of the Constitution. The petition being dismissed appeal was filed in this Court. It was contended : (i) that the orders of requisition were illegal as the Acquisition Act under which they were issued did not apply to the territory previously known as French Chandernagore; (ii) that under the notification dated May 11, 1948 the Collector could exercise the powers of requisition only in respect of lands within the local limits of the territories then forming part of the Hooghly District.

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HELD : (i) The first contention had no force. Section 3 of the Chandernagore (Merger) Act, 1954 made Chandernagore part of the State of West Bengal and s. 17 extended the Acquisition Act to it. The Acquisition Act was a law within the meaning of 'law' contained in s. 2(c) of the Chandernagore (Assimilation of Laws) Act because it related to a matter enumerated in List II in the Seventh Schedule to the Constitution which refers to acquisition and requisitioning of property. In so far as the Acquisition Act related to entry 42 of List III which deals with compensation, it was applied by s. 3 of the Chandernagore (Assimilation of Laws) Act, 1955, and s. 17 of the Chandernagore (Merger) Act, 1954, read with the definition of the word 'laws' in s. 2(d) of the latter Act. [799 F-800 A]

The argument that the Acquisition Act was not in force in West Bengal 'generally' because it was extended for short periods from time to time, could not be accepted. The word 'generally' refers to the territory of West Bengal and not to the duration of time during which it had to operate. [800 B-C]

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The contention that because there was no corresponding law within the meaning of s. 17 of the Merger Act and s. 4 of the Assimilation Act, s. 3 of the latter Act did not have the effect of extending the Acquisition Act to Chandernagore must also be rejected. Section 4 has a limited effect

and that is that if there is a corresponding law then that law shall, as from that date, stand repealed in Chandernagore. If there is no corresponding law then s. 4 does not operate and it has no effect on the scope of s. 3. [800 D]

The fact that there was no law of requisitioning of property in French territory could not mean that the citizen enjoyed the privilege of immunity from such a law. If by virtue of s. 3 of the Assimilation of Laws Act an Act becomes applicable to Chandernagore all privileges and immunities in conflict with the Act would cease to exist. [800 E-F]

(ii) The High Court was right in holding that the Collector of Hoogly had the authority to issue the orders in question. If the order of requisition is by a Collector then the notification of 1948 applies and the Collector of Hoogly would be authorised to issue orders requisitioning land existing in Chandernagore because Chandernagore had come within the limits of his jurisdiction. The notification must be construed to refer to the limits of the District as it exists on the date of the exercise of the powers conferred by the notification. If the orders of requisition were issued by the Additional District Magistrate, then he had authority by virtue of notification dated September 15, 1959, by which he was empowered to perform the functions of a Collector. The said notification amounted to 'special' appointment of the said officer within the meaning of the definition of 'Collector' in the Acquisition Act as it stood in 1959. [800 G-801 B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 500 of 1967.

Appeal from the judgment and order dated January 13, 1965 of the Calcutta High Court in Appeal from original order No. 104 of 1963.

Arun K. Dutt, D. N. Mukherjee and S. Dey, for the appellant.

Niren De, Attorney-General and P. K. Chakravarti, for the respondents.

The Judgment of the Court was delivered by

Sikri, C.J. In our order dated March 10, 1970, we stated that we will give our reasons later for rejecting the points raised before us. We now proceed to give those reasons.

This is an appeal against the judgment of the High Court of Calcutta (Bose, C.J., and Mitra, J.) dismissing the appeal of Sachindra Mohan Nandy and Janandra Mohan Nandy, now appellants before us, against the judgment of Mukharji, J., discharging the rule obtained by the appellants under Art. 286 of the Constitution. In order to appreciate the points raised before us it is necessary to state the relevant facts.

On October 9, 1960 and October 10, 1960, the Collector of Hoogly made two orders under s. 3(1) of the West Bengal Land (Requisition and Acquisition) Act, 1948—hereinafter referred to

A as the Acquisition Act. The Collector purported to requisition
land belonging to the appellants for certain public purposes. He
had issued the orders in exercise of the powers which had been
conferred upon him by notification No. 3775-L.A. dated May 11,
1948, published in the Calcutta Gazette, Part I, on May 27, 1948.
B This notification had authorised the Collector to exercise the
powers under s. 3(1) of the Acquisition Act. When this notification
was passed Chandernagore, where the requisitioned land is situate,
was not part of West Bengal and it is on this fact that one argu-
ment, shortly to be mentioned, rests.

C According to the appellants the Acquisition Act has never been
extended and made applicable to Chandernagore. For appreciat-
ing this particular point it is necessary to state the history of Chan-
dernagore. It is well-known that it was a French settlement in
India, and it was only on October 2, 1954, that it was merged
in the State of Bengal. Section 3 of the Chandernagore (Merger)
Act, 1954 (XXXVI of 1954) provided that Chandernagore shall
form part of the State of West Bengal, District of Hoogly, and
D the State Government shall provide for the administration of
Chandernagore by constituting it into a new sub-division of the
District of Hoogly. Section 17 provided that "all laws which
immediately before the appointed day extend to, or are in force
in, the State of West Bengal generally shall, as from that day,
extend to, or, as the case may be, come into force in, Chanderna-
E gore." Section 18 has not much relevance but the learned counsel
relied on it. Section 18(1) reads thus :

"18(1) Repeal of Corresponding laws and savings :

F Any law in force in Chandernagore immediately before
the appointed day (hereafter in this Act referred to as the
"corresponding law") which corresponds to any law re-
ferred to in section 17, whether such corresponding law
is in force in Chandernagore by virtue of the Chan-
dernagore (Application of Laws) Order, 1950, or by vir-
cue of any notification issued under the Chandernagore (Ad-
ministration) Regulation, 1952 (Reg. 1 of 1952) or
G otherwise, shall, as from that duty, stand repealed in
Chandernagore.

The word "law" was defined in the Chandernagore (Merger)
Act, 1954, as follows : (S. 2(d))

H "law" means so much of any enactment, Ordin-
ance, Regulation, order, rule, scheme, notification, bye-
law or any other instrument having the force of law as
relates to matters enumerated in List I and List III in
the Seventh Schedule to the Constitution."

After this the Legislature of West Bengal enacted the Chandernagore (Assimilation of Laws) Act, 1955. Section 2(c) of this Act defined "law" to mean "so much of any Act, Ordinance, Regulation, order, rule, scheme, notification, bye-law or any other instrument having the force of law as relates to matters enumerated in List II in the Seventh Schedule to the Constitution of India." Section 3 provides that "all laws which immediately before the appointed day extend to, or are in force in, the State of West Bengal generally shall, as from that day, extend to, or, as the case may be, come into force in Chandernagore." Section 4(1) provided for repeal of corresponding laws and reads :

"4(1) Any law in force in Chandernagore immediately before the appointed day (hereinafter in this Act referred to as "corresponding law") which corresponds to any law referred to in section 3, whether such corresponding law is in force in Chandernagore by virtue of the Chandernagore (Application of Laws) Order, 1950 or by virtue of any notification issued under the Chandernagore (Administration) Regulation, 1952, or otherwise, shall as from the day stand repealed in Chandernagore."

Section 8, which was inserted in 1959, removed certain doubts regarding the extension of certain acts to Chandernagore, in the following terms :

"8. Notwithstanding anything to the contrary, in any judgment or decision of any court, tribunal or authority, the following Acts, that is to say,—The West Bengal Land Development and Planning Act, 1948, The West Bengal Non-Agricultural Tenancy Act, 1949 and

The West Bengal Estates Acquisition Act, 1953 shall extend to and be deemed always to have extended to Chandernagore with effect from the appointed day."

We may here set out the notifications empowering Sri B. K. Chatterjee, I.A.S. to perform the functions of the Collector in the District of Hooghly under the Acquisition Act. By the first notification dated September 15, 1959, the Governor was pleased "to specially appoint Sri B. K. Chatterjee, I.A.S., Additional District Magistrate, Hooghly, to perform the functions of a Collector under the said Act in the District of Hooghly." Another notification issued on the same day had authorised Sri B. K. Chatterjee, I.A.S., Additional District Magistrate, Hooghly, to requisition by order in writing any land within the local limits of the District of Hooghly. The two requisition orders purport to have been signed by the Collector of Hooghly.

A The notification dated May 11, 1948, to which reference has been made above reads as follows :

B “No. 3775 L.A. (P.W.) 11th May, 1948. In exercise of the powers conferred by Sub-section (1) of Section 3 of the West Bengal Land (Requisition and Acquisition) Act 1948 (West Bengal Act II of 1948), the Governor is pleased hereby to authorise each of the Collector and the Deputy Commissioners mentioned in the Schedule below to requisition, by order in writing, in pursuance of the provisions of the said Sub-section (1) of the said Section 3, (torn) land within the local limits of his jurisdiction and (torn) to make such further orders as appear to him to be necessary or expedient in connection with the requisitioning :

Schedule.

.....
Collector of Hooghly District

D”
The learned counsel has raised the following points before us : (1) that the orders of requisition were illegal as the Acquisition Act under which they were issued did not apply to the territory previously known as French Chandernagore; and (2) that under the notification dated May 11, 1948, the Collector could exercise the powers of requisition only in respect of lands within the local limits of the territories then forming part of the Hooghly District.

E Regarding the first point, it seems to us that there is no force in the contentions. Section 3 of the Chandernagore (Merger) Act, 1954, made Chandernagore part of the State of West Bengal, and s. 17 extended the Acquisition Act to it. The Acquisition Act was a law within the meaning of “law” contained in s. 2(c) of the Chandernagore (Assimilation of Laws) Act because it related to a matter enumerated in List II in the Seventh Schedule to the Constitution. List II, as it then existed, contained the following entries :

G “36. Acquisition or requisitioning of property, except for the purposes of the Union, subject to the provisions of entry 42 of List III.”

Entry 42 of List III was to the following effect :

H “Principles on which compensation for property acquired or requisitioned for the purposes of the Union or of a State or for any other public purpose is to be determined, and the form and the manner in which such compensation is to be given.”

Insofar as the Acquisition Act related to entry 42 of List III it was applied by s. 3 of the Chandernagore (Assimilation of Laws) Act, 1955, and s. 17 of the Chandernagore (Merger) Act, 1954, read with the definition of the word "law" in s. 2(d) of the latter Act.

The learned counsel further urged before us that this law was not in force in the State of West Bengal "generally" because it provided that it shall remain in force upto a certain date and this date had been changed from time to time. In 1954 it was provided that it shall remain in force upto March 31, 1957. We are unable to appreciate how the word "generally" has any reference to the duration of the time during which an act has to operate. We agree with the High Court that the word "generally" refers to the territory of West Bengal.

Another argument that was urged before us was that because there was no corresponding law within the meaning of s. 17 of the Chandernagore (Merger) Act, 1954, and s. 4 of the Chandernagore (Assimilation of Laws) Act, 1955, s. 3 of the latter Act did not have the effect of extending the Acquisition Act to Chandernagore. We are unable to appreciate this reasoning. Section 4 has a limited effect and that is that if there is a corresponding law then that law shall, as from that date, stand repealed in Chandernagore. If there is no corresponding law then s. 4 does not operate and it has no effect on the scope of s. 3.

It was finally urged in this connection that as there was no law on the subject of requisitioning of property in French territory, the citizens enjoyed the privilege of immunity and any order to deprive the citizens of that immunity should have been much more specific. We agree with the High Court that there is no force in this contention. If by virtue of s. 3 of the Assimilation of Laws Act an Act becomes applicable to Chandernagore all privileges and immunities in conflict with that Act would cease to exist.

Coming to the second point, we agree with the High Court that the Collector of Hooghly had the authority to issue the orders of requisition in question. If the order of requisition is by a collector then the notification of 1948 applies and the Collector of Hooghly would be authorised to issue orders requisitioning land existing in Chandernagore because Chandernagore had come within the limits of his jurisdiction. The notification must be construed to refer to the limits of the District as it exists on the date of the exercise of the powers conferred by the notification. If the orders of requisition were issued by Shri B. K. Chatterjee, I.A.S., Additional District Magistrate, then he had authority by virtue of the notification dated September 15, 1959, mentioned above.

The learned counsel, referring to the Acquisition Act, as it stood in 1959, and the definition of "collector" ("the Collector of

A a district and includes a Deputy Commissioner and any officer specially appointed by the State Government to perform the functions of a Collector under this Act) urged that the Additional District Magistrate was not "specially appointed." There is no force in this point. The notification of September 15, 1959, amounts to special appointment within the definition of "Collector."

B We referred the following question to the Constitution Bench which has answered it in the negative :—

"Whether the West Bengal Land (Requisition and Acquisition) Act 1948 is ultra vires the Constitution under Art. 19(1)(f) read with Art. 19(5)?"

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In the result the appeal fails and is dismissed with costs.

G.C.

Appeal dismissed.