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**RAM KISHORE SEN & ORS. VS UNION OF INDIA (1966)**

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**Mohona Datta\***

CITATIONS: (1966) 1 SCR 430; AIR 1966 SC 644

SUPREME COURT CASE: 11<sup>th</sup> August 1965

PETITIONER: Ram Kishore Sen & Ors.

RESPONDENT: Union of India

BENCH: CJ P.B.; Gajendragadkar; Justice K.N.Wanchoo; Justice M.Hidayatullah; Justice J.C.Shah and Justice S.M. Sikri

STATUTES REFERRED TO: The Constitution of India, 1950; General Clauses Act, 1897; Constitution (Ninth Amendment), 1956; Constitution (Seventh Amendment), 1956; Evidence Act, 1872; Government of India Act, 1935.

### **FACTS**

- The writ petition was filed by Ram Kishore Sen & Ors. . The respondents were the Union of India; the Secretary of External Affairs; the Government of India; the State of West Bengal along with the collector of the district of Jalpaiguri. As a result of agreements which had taken place between India and Pakistan and had been entered into by them in 1956, and it was between the Prime Minister of India and Pakistan, half of that area was known as Berubari Union no.12, and an area of Chilahati village measuring 512 acres was agreed to be transferred by India to the nation of Pakistan.
- The petitioners were natives of villages such as Deuniapa, Chilahati(under Jalpaiguri Thana), Senpara, and some places under Boda Thana, but when the village under Thana Boda was being transferred to Pakistan because of partition which had taken place in the year 1947, the natives had shifted to a village named Senpara and Gouranga bazaar which were in Berubari Union No.12.
- These petitioners had their lands in which they used to cultivate, ancestral property, in those villages, and they had their homes, their own lands there, and if the part of the

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village they were living in would be transferred to another country, then it might be troublesome for them and their family to settle down, also sometimes it happens that the border of a country goes from above the house, in that case, the house has to be broken down.

- The above agreement took place between the Prime Ministers of India and Pakistan to resolve issues and conflicts between these two above-mentioned countries, and this was jointly decided by both nations.
- This was a great dispute for the settlers of those areas so some questions arose due to the implementation of this agreement and they were referred by the President of India under Article 143 subclause(1) of the constitution of India and Article 3 and Article 368 were referred as well. In accordance with that they passed the Constitution Act of 1960 (Ninth Amendment). The provision in that inclusive of the date that it was to be appointed by the notification in the “Official Gazette” for the transfer of mentioned areas of that village to Pakistan.
- With reference, Berubari Union No.12(Second Schedule), among other things will be divided so as to give half of the area to Pakistan, half of which is next to India and will be remaining with India only. This division will be in a horizontal manner in the direction of the northeast corner, of the place Debiganj Thana.
- Petitioner filed a writ petition in Calcutta High Court challenging the legality of the agreed transfer of said areas of Berubari (Union No.12) and Chilahati village to Pakistan. With regard, the amending act was incapable of any implementation, they urged.

### ISSUES RAISED

1. Whether the provisions regarding the transfer and partition of Union No.12 in the second schedule of the Indian Constitution Act, 1960 (Ninth Amendment) were capable to be implemented.
2. Whether any legislative action is necessary for implementing the agreement related to Berubari Union.
3. Whether a law of Parliament can be related to Article 3 of the Constitution sufficient or is an amendment of this Constitution according to Article 368 of the Constitution necessary, in addition, or the alternative?

4. Whether the law of Parliament can be related to Article 3 of the Indian Constitution sufficient for the implementation of the agreement related to the Exchange of Enclaves or is an amendment of the Constitution relating to Article 368 of the Indian Constitution necessary for this purpose.
5. Whether the transfer of these said areas of the Chilahati village to the nation of Pakistan was constitutionally valid.
6. Whether the HC Judge was wrong at holding the map, Ext. A-1, based on which the petitioners raise their contentions, is irrelevant and cannot be relied upon.

#### CONTENTION:-

##### Arguments (petitioners):-

If the division of that place (Berubari) was made according to the direction as mentioned in the amendment “no portion of that place” would fall to the southern direction of the horizontal line starting from the north-east corner of Debiganj Thana, so no part of that village could be transferred to the state of Pakistan. Calcutta HC had mistakenly in holding the map Ext. A-1 as it was not relevant and not accurate at the same time. The location of the villages in various Thanas was a matter in the special knowledge of their opponents and Section 106 of the Evidence Act and the onus of proving these facts was on the respondents.

A proposed portion of the Chilahati village was different from the area of that village, that had gone to the neighboring state, as it was shown both in maps and also in certain private documents that regarded Chilahati to be under Jalpaiguri Thana. The portion of the Chilahati in question was administered in such a way that it was a part of the West Bengal province and is deemed to be included in Article 431 in the territory of the state in the First Schedule, if this is true it would be a part of Article 1 of the Constitution under India's territory. Therefore, it should not be transferred to our neighboring country without following proper guidelines laid by the Supreme Court under Special Reference No. 1 of 1959.

It was also said that efforts had been made to transfer the Chilahati village to the nation of Pakistan in a similar manner. They held that Ninth Amendment consists of language which was confusing and incapable of any implementation. If the transfer of Union No.12 was done according to mentioned act, no area of the proposed region would be “**south of the horizontal line starting from the north-east corner of Debiganj Thana, and so, no portion of the said Union can be transferred to Pakistan.**” The village of Chilahati was neither under Ninth

Amendment nor covered by Indo-Pakistan agreements. It was merely a part of West Bengal and therefore it was not correct on the side of the Government to transfer that village to Pakistan without following the opinion which was given by the Supreme Court. The onus of proving that those amendments could be implemented lies on the respondents for the allegations brought about by the petitioners.

#### **Arguments (respondents):-**

According to respondents, their opponents do not have any right to claim the writ of mandamus. They also claim that contrary to the claim of the petitioners about (the Ninth Amendment Act), is not unclear and not confusing and thus can be implemented. They claimed that they were reasonable in the implementation of the said act. The Chilahati village was once a portion under the Debiganj Thana and had been allotted for transfer, over to Pakistan because of Radcliffe Award. Their motive was to transfer nearly 512 acres of an area of the Chilahati village to the nation of Pakistan which was not done previously due to the partition of India between Pakistan. Therefore, this transfer of that area was not only legal but also valid and the proposed action did not violate any article of the Indian Constitution.

#### **RATIONALE OF THE JUDGEMENT**

The Court held that provisions of these three articles (Articles 2, 3, and 4) will be applied to Union territories. The interpretation of the word “state” mentioned in Article 3 of the Constitution has to be according to Section 3 sub-clause (58) part (b) of the General Clauses Act, 1897, which means after the Seventh Amendment of the Constitution Act, a state shall mean one and which is mentioned under the first schedule of Constitution as well as Union Territory. Article 367(1) of the Constitution specifies that General Clauses Act shall be applied to the interpretation of the constitution and any act of the legislature of India. It is important for petitioners to prove that the act of the respondents is not legal and that the act could not be implemented, but if the petitioners fail to provide any evidence then they cannot oblige to prove to the respondents that their claim is untenable. The General Clauses Act, of 1897 is applied to interpret Article 367(1) and Article 372 of the Constitution of India.

Sec. 83 of the Indian Evidence Act, specifies that the maps so made for a cause can be assumed to be accurate. In this context, the Court tells that the maps can be assumed to be accurate as they are made by the Central/State Government of India, but if made for any such cause the map shall be proved to be accurate. Hence, the transfer of the Chilahati village to the state of

Pakistan was valid. The said portion of the Ninth Amendment Act of the Berubari Union No.12 was capable of implementation. Hence the petitioner's plea was dismissed by the learned judge.

## CONCLUSION

The present case not only had an effect on the Chilahati Village and Berubari Union No. 12 but also had an effect on Radcliffe Award along with the relationship between India - Pakistan. The judicial bench carefully analyzed and discussed various issues involved and studied the relevant material provisions which were questioned and they had also seen the intention of the Parliament while going through the relevant provisions provided by the legislation. The petitioners should not interfere in the work of the government in the transfer of the Chilahati village to Pakistan, as UOI and West Bengal had clearly mentioned under the Radcliffe Award, that the area belongs to Pakistan and it has to be transferred. The 'horizontal' division has to be done from the direction of the northeast of Debiganj Thana which cannot be considered mathematically in that way. This is not mentioned here anything specifically in the provision that in what shape it has to be only a direction is given that it should be starting from East to West. While dividing the areas it should be kept in mind Berubari Union No.12 is to be halved. The petition was dismissed because it was cleared by the Radcliffe award that the portion of that village was to be transferred so there was no point in examining the facts on evidence.