

(1922) 07 CAL CK 0040
In the Calcutta High Court

Arun Chandra Sinha Bahadur and Others	APPELLANT
Vs	
Manmohan Sinha Roy and Others	RESPONDENT

Date of Decision : 12-07-1922

Acts Referred:

Bengal Embankment Act, 1882 — Section 54, 55

Citation : AIR 1924 Cal 154

Hon'ble Judges : Mookerjee, J

Bench : Division Bench

Judgement

Mookerjee, J.—This is an appeal by the plaintiffs in a suit for recovery of money paid by them as proprietors of an estate under the Bengal Embankment Act, 1882. The defendants are tenure-holders under the plaintiffs, and the question in controversy is, whether the plaintiffs are entitled to recover the disputed amount in one sum from the defendants. The Courts below have held that the plaintiffs are entitled to recover only a portion of the sum claimed. The payment was made by the plaintiffs pursuant to an order made by the Collector under the provisions of the statute. There is no room for dispute that the order of the Collector was erroneous, inasmuch as it did not specify the instalments in which the same was payable to the Government. What we have to consider is whether the validity of the order of the Collector can be questioned before the Civil Court in this litigation; for this purpose, we must refer to the relevant sections of the Bengal Embankment Act.

2. Section 54 provides that the costs are to be paid by the proprietor to the Collector. Section 55 provides that the proprietor is entitled to recover, from the tenure-holders under him, the sum apportioned to each tenure-holder. Section 59 authorises the Collector to make the apportionment among the several tenure-holders under the proprietor. Section 61 then lays down an important principle in the following terms. "The amount charged to or apportioned on any estate or tenure shall be payable in equal instalments on such days as the Lieutenant-Governor shall direct; provided no instalment shall exceed four annas for every

acre of land in respect of which the same is payable, and that not more than four instalments shall be payable in any one year." Section 68 deals with the final order of apportionment and provides that the Collector shall make an order specifying the tenures in respect of which any sum apportioned is payable and the sums payable in respect of each of the instalments of such sums and the dates on which such sums are payable. Section 69 deals with the publication of the final order of apportionment, and provides that the Collector shall cause a copy of such order to be published either in a general notice stating the amount apportioned or cause special notices to the same effect to be served in respect of every tenure on or among the zemindars of tenure-holders of which any sum is charged or apportioned. Section 74 deals with the recovery by proprietors to whom any sum of instalment is payable under an order made in pursuance of Section 68. Section 84 provides for an appeal from orders passed by the Collector under various sections including Section 68. Section 85 provides for the general control of the Commissioner and Local Government. Lastly Section 86 lays down that subject to the provisions of Sections 84 and 85 every order passed by the Collector in respect of applications u/s 18 and every order passed under Sections 11, 50, 52 or 68 and every order passed by a controlling authority in respect of such order of a Collector shall be final and not liable to be modified or altered otherwise than as expressly provided in the Act.

3. Now in the case before us there was an order for apportionment made by the Collector as between the proprietors on the one hand and the tenure holders on the other. This order was made after due service of notice on the tenure-holders. This order was defective inasmuch as it specified merely the amount payable by the tenure-holders and the proprietors, but did not specify the instalments and the dates on which the sum included in each instalment was to be made payable. This final order was served upon the tenure-holders. It is remarkable that no exception was taken to this order, though it was manifestly erroneous, either by the proprietors or by the tenure-holders. The proprietors paid the amount due to the Collector in one instalment in accordance with that order. They then instituted the present suit for recovery of the amount from the tenure-holders. The tenure-holders objected that they were not liable to pay the entire amount in one instalment. The Courts below have made a decree in favour of the plaintiffs, only in respect of such sums all would have been payable by the tenure-holders if an order for payment by instalments had been correctly made by the Collector u/s 68. The Courts below have in substance replaced the actual order of the Collector by an order which should have been made by him. We are of opinion that it was not open to the Courts below to adopt this method of granting relief to the plaintiffs.

4. It has, however, been contended on behalf of the defendants respondents that the order of the Collector was ultra vires; that is made without jurisdiction. We are of opinion that this contention cannot prevail. The term "jurisdiction" as pointed out in the case of *Hridoy Nath Roy v. Ram Chandra* AIR 1921 Cal. 34 is often inaccurately used. There is a clear distinction between "jurisdiction" and

"exercise of jurisdiction." Since jurisdiction is the power to hear and determine a case, it does not depend either upon the regularity of the exercise of that power or upon the correctness of the decision pronounced, for the power to decide necessarily carries with it the power to decide wrongly as well as rightly. As an authority for this proposition reference may be made to the celebrated dictum of Lord Hobhouse in *Malkarjun v. Narhari* (1900) 25 Bom 337. "A Court has jurisdiction to decide wrong as well as right. If it decides wrong, the wronged party can only take the course prescribed by law for setting matters right; and if that course is not taken, the decision, however wrong, cannot be disturbed." Lord Hobhouse then added that though it was true that the Court made a sad mistake in following the procedure adopted, still in so doing the Court was exercising its jurisdiction; and to treat such an error as destroying the jurisdiction of the Court was calculated to introduce great confusion into the administration of the law. The boundary between an error of judgment and the usurpation of power is this : the former is reversible by an appellate Court within a certain fixed time and is therefore only voidable, the latter is an absolute nullity. So far as the jurisdiction itself is concerned, it is wholly immaterial whether the decision upon the particular question be correct or incorrect. Were it held that a Court had jurisdiction to render only correct decisions, then each time it made an erroneous ruling or decision, the Court would be without jurisdiction and the ruling itself void.

5. In the case before us the Collector passed an incomplete order. He determined the amount recoverable by the proprietors from the tenure-holders. He did not, however, specify, as he was bound to do, the instalments in which such sum was recoverable. That in our opinion did not destroy his jurisdiction, although the order was so manifestly erroneous that if he had been called upon to review it or if the matter had been brought to the notice of the appellate Court, the order would have been modified in accordance with law. We are consequently of opinion that it is not open either to the plaintiffs or the defendants to ignore the order which was made and that the plaintiffs are entitled to a decree for the amount claimed by them in this litigation.

6. The result is that this appeal is allowed, the decree of the District Judge modified and the suit decreed with costs in all the Courts. Interest will be calculated at 5 per cent, per annum till the date of realisation.