

(1958) 04 OHC CK 0011
In the Orissa High Court
Case No : O.J.C. No. 157 of 1956

Benudhar Dalai

APPELLANT

Vs

The State of Orissa

RESPONDENT

Date of Decision : 04-04-1958

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11, 9
Constitution of India, 1950 — Article 226
Orissa Estates Abolition Act, 1951 — Section 39, 5

Citation : AIR 1958 Ori 197

Hon'ble Judges : R.L. Narasimham, C.J; Barman, J

Bench : Division Bench

Advocate : B.K. Pal and M.S. Ray, for the Appellant; A.G., for the Respondent

Final Decision : Dismissed

Judgement

R.L. Narasimham, C.J.—This is a petition under Article 226 of the Constitution, against the order of the Board of Revenue dated 23-9-1955 in Estate Abolition Appeal Case No. 13 of 1955-56.

2. The petitioner claimed to have obtained permanent lease of Survey Plot No. 132 having an area of 61 decimals and 97 decimals out of Survey Plot No. 133 in village Singla, appertaining to touzi No. 794, from the then proprietor of that touzi. When the touzi vested in the Government by virtue of the provision of the Orissa Estates Abolition Act, the Collector of Balsore in purported exercise of the powers conferred on him by Clause (i) of Section 5 of that Act annulled the lease on the ground that (i) it was in fact made after the vesting of the touzi in the Government and (2) it was made with a view to defeat the provisions of the Act.

The petitioner appealed to the President, Board of Revenue who maintained the aforesaid findings of the Collector and dismissed the appeal.

3. Mr. Pal on behalf of the petitioner urged that as there was a dispute between the parties as regards the date of lease -- the petitioner alleging that it took

place sometime in 1944 and the Anchal Adhikary alleging that it took place after the abolition of the touzi -- the "Collector had no jurisdiction to annul the lease in exercise of his powers under Clause (i) of Section 5 of the Estates Abolition Act and that consequently his order as well as the appellate order of the President, Board of Revenue, were without jurisdiction.

Mr. Pal relied on a decision of the Patna High Court reported in Umesh Jha v. The State, AIR 1956 Pat 425 (A) where a Division Bench held, on a construction of a similar provision in the Bihar Estates Abolition Act, that the Collector had no jurisdiction to annul any lease made by the proprietor if there was any dispute as to the date of such lease.

4. To appreciate the points involved, it is necessary briefly to refer to some of the provisions of the Orissa Estates Abolition Act. As soon as a notification is issued u/s 3 (1) of that Act, the estate vests in the Government, free from all encumbrances. Section 5 contains several clauses which deal with the consequential effect arising out of the vesting of an estate and the material clause in Clause (i). Omitting immaterial portions I may reproduce below the main provisions of that clause:

""5 (i) -- Where a Collector is satisfied in respect of the settlement or lease of any land.. comprised in such estate made or created at any time after 1-1-1946, that such settlement, lease or transferwas made with the object of defeating the provisions of this Act, or obtaining higher compensation thereunder, he shall, have power to make enquiries in respect of such settlement, lease or transfer and may, after giving reasonable notice to the parties concerned to appear and be heard, set aside any such settlement, lease or transfer, dispossess the person claiming under it, and take possession of such property in the manner provided in Clause (h) on such terms as may appear to him to be fair and equitable."

This clause gives jurisdiction to the Collector to set aside any settlement or lease made by the proprietor of an estate after 1-1-1946, if he is satisfied that such settlement or lease was made or created (1) with the object of defeating any of the provisions of the Act, or (ii) for the purpose of obtaining a higher compensation thereunder. The relevant date of settlement or lease was fixed as 1-1-1946, because the intention of the Government to abolish the zamindari system was well known sometime even in 1945 and there was an apprehension that the zamindars would try to diminish the assets of their estates by making settlements and collecting as much money as possible from the lessees.

The aforesaid clause is so drafted as to lead to an inference that the satisfaction of the Collector is restricted to the ascertainment of the object of the settlement or lease that is to say if he is satisfied that the settlement or lease was made or created either for defeating any of the provisions of the Act or for obtaining higher compensation thereunder, he has jurisdiction to annul the settlement or lease. The earlier portion of the clause which says that the provisions of that

clause would apply only in respect of a settlement or lease made or created at any time after 1-1-1946, is not made subject to the satisfaction of the Collector; the Legislature does not say that if the Collector is satisfied that the settlement or lease was made or created at any time after 1-1-1946 and further that such settlement or lease was made or created for either of the two purposes as aforesaid, he may annul such lease or settlement.

Mr. Pal is therefore right in his contention that the Legislature did not expressly confer jurisdiction on the Collector to decide the question relating to the date of the lease or settlement. The clause merely says that if, as a fact, the lease or settlement had taken "place after 1-1-1946 and the Collector is satisfied that the settlement was made for either of the two aforesaid purposes, then he may annul the lease or settlement, as the case may be. Mr. Pal urged that the Collector's jurisdiction under Clause (i) of Section 5 of the Act can be exercised only when the date of the alleged lease or settlement is undisputed. It is true that the Patna decision, cited above, supports such an argument, but with great respect to the learned Judges, I must point out that they appear to have overlooked the well-known principle laid down by Lord Esher, M. R. in *Queen v. Commr. for Special purpose of Income Tax* (1888) 21 QBD 313 (B) which has been followed in innumerable decisions both in England and in India.

5. As early as 1853, Coleridge, J. held in *Bunbury v. Fuller* (1853) 9 Ex. 111 (C):

"It is a general rule that no court of limited jurisdiction can give itself jurisdiction by a wrong decision on a point collateral to the merits of the case upon which the limit to its jurisdiction depends; and however its decision may be final on all particulars mating up together that subject-matter which, if true, is within its jurisdiction and however necessary in any case it may be for it to make a preliminary enquiry whether some collateral matter be or be not within its limits, yet upon the preliminary question its decision must always be open to enquiry in the superior court."

In (1888). 21 QBD 313 (B), Lord Esher, M. R. elaborated the same point in the following words: (at page 319):

"When an inferior court or tribunal or body, which has to exercise the power of deciding facts, is first established by Act of Parliament, the legislature has to consider what powers it will give that tribunal or body. It may in effect say that if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise. There it is not for them conclusively to decide whether that state of facts exists, and, if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction.

But there is another state of things which may exist. The legislature may entrust the tribunal or body with a jurisdiction, which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction,

on finding that it does exist, to proceed further or do something more. When the legislature are establishing such a tribunal or body with limited jurisdiction, they also have to consider, whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise, there will be none. In the second of the two cases I have mentioned it is an erroneous application of the formula to say that the tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the legislature gave them jurisdiction to determine all the facts, including the existence of the preliminary facts on which the further exercise of their jurisdiction depends : and if they were given jurisdiction so to decide. without any appeal being given, there is no appeal from such exercise of their jurisdiction".

6. The instant case will clearly come under the first of the two classes mentioned above, by Lord Esher. The date of the lease or settle-ment, that is, whether it was made on or after the first day of January 1946, is the preliminary question on the decision of which the Collector gets jurisdiction to annul the lease or settlement if he is satisfied about the purpose of such lease or settlement. But the Act does not make his decision about the date of lease or settlement final and conclusive.

In such cases, it will not be correct to say that the Collector has no jurisdiction at all to ascertain the date of the lease or settlement where there is a dispute about that date. He has undoubtedly such jurisdiction, but his decision will not be conclusive and may be open to. challenge before a superior court or before a civil court.

7. It is unnecessary to cite the innumerable subsequent decisions in England where the aforesaid classic observations of Lord Esher were followed. I may refer to R. v. Ludlow (1947) 1 All ER 880 (D) and Heptula, Brothers v. Jambhi Jeshangbhai Thakore 1956-1 WLR 289 (E). The latter decision is of some importance because there the decision on a preliminary question by the Rent Control Board was challenged by a subsequent action in the civil court and one of the important objections taken was that the decision of the Board operated as res judicata.

Their Lordships of the Privy Council, after quoting the observations of Lord Esher held that the finding of fact of the Rent Control Board in those circumstances "can never be anything more than a collateral finding which cannot raise a plea of res judicata in subsequent action" in the civil court. Again In Rex-v. City of London Etc., Rent Tribunal, ex parte) Honing (1951) 1 All ER 195 (F). Lord Esher"s observations were quoted, and it was "further observed that even in respect of cases which come under the first class, if there was some evidence to support the finding on collateral facts, it will not be proper for superior courts to interfere because the lower tribunal has jurisdiction to decide that question and unless it is shown to be clearly wrong, it should not be disturbed.

8. In India also their Lordships of the Supreme Court in Rai Brij Raj Krishna and

Another Vs. S.K. Shaw and Brothers, adopted the classification of Lord Esher. Subsequent High Court decisions also have followed the same principle. I need refer only to Baburao K. Pai Vs. Dalsukh M. Pancholi, ; Pankaj Kumar Ganguly and Others Vs. Bank of India and Others, and New Gujarat Cotton Mills Ltd. Vs. Labour Appellate Tribunal and Others, ''.

9. It is indeed unfortunate that in AIR 1956 Pat 425 (A) on which Mr. Pal has relied, the aforesaid decisions were not brought to the notice of their Lordships. A collateral, fact on the existence of which a court or tri-taunal gets jurisdiction to decide other ques- tions should also, of necessity, be decided by the same tribunal; and the only difference between such decision on the collateral facts and the decision on others essential is that the former is not conclusive whereas the latter is made final and conclusive by the special statute creating jurisdiction.

It will not therefore be correct to say that merely because there was a dispute between the parties with regard to the date of the lease, the Collector's jurisdiction to proceed under Clause (i) of Section 5 of the Orissa Estates Abolition Act is completely ousted. If such a view be taken, then this clause will be rendered nugatory because every lessee who apprehends annulment of his lease under Clause (i) of Section 5 will raise a dispute about the date of the lease.

The true principle, in such cases, is that the Collector has undoubted jurisdiction to decide about the date of the lease or settlement on the materials placed before him by the parties and then, if he considers that the lease or settlement was created or made after the first day of January 1946, he may proceed to consider other questions and annul the lease or settlement if the requisite conditions are fulfilled. But his decision about the date of lease or settlement will not be conclusive, and as it is a decision on a collateral fact, it will not operate as res judicata so as to oust the jurisdiction of the civil court to re-examine this question with a view to satisfy itself that the Collector acted within his jurisdiction.

10. Section 39 of the Orissa Estates Abolition Act bars the jurisdiction of the civil court in respect of any order passed under Chapters II to VI, or concerning any matter which is or has already been the subject of any application made, or proceedings taken under the said Chapters. This bar will undoubtedly apply as regards the Collector's finding that the lease or settlement was made with the object of (1) defeating any of the provisions of the Act or (2) obtaining higher compensation thereunder. But the bar will not apply to his finding as regards the date of lease or settlement. The civil court has always jurisdiction to examine whether a special court constituted by a special Act, has acted within its jurisdiction unless that power is expressly taken away. This principle was emphasised by the Privy Council in AIR 1940 105 (Privy Council) , in the following terms:

"It is settled law that the exclusion of the jurisdiction of the Civil Court is not to be readily inferred, but that such exclusion must either be explicitly expressed or

clearly implied. It is also well settled that even if jurisdiction is so excluded, the civil courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure."

11. It is true that while exercising our extraordinary powers under Article 226, we may examine the correctness of the finding of the Board of Revenue that the settlement in question took place after the 1-1-1946. There was undoubtedly some evidence which has been fully discussed both by the President, Board of Revenue and the Collector. Mr. Pal, however, on behalf of the petitioner urged that he would not press for a decision of this question by this Court, in view of our finding to the effect that the Civil Court's jurisdiction to examine the same will not be barred by Section 39 of the Orissa Estates Abolition Act.

He desires that this question may be left open so that in any subsequent civil suit that may be brought by the petitioner, he may be enabled to urge that the decision of the Collector and the president, Board of Revenue, as regards the date of the lease was wrong and that consequently they had no jurisdiction to exercise their powers under Clause (i) of Section 5 of the Act. We see therefore no reason to set aside the order of the Board of Revenue in this proceeding.

12. The petition is therefore rejected, but there will be no order for costs.

S. Barman, J.

13. I agree.