
(1988) 08 GAU CK 0006
In the Gauhati High Court
Case No : F.A. No. 1 of 1975

Daulatram Lakhani

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 29-08-1988

Acts Referred:

Assam Land and Revenue Regulation, 1886 — Regulation 154, 154A, 18
Civil Procedure Code, 1908 (CPC) — Section 9

Citation : AIR 1990 Guw 17

Hon'ble Judges : A. Raghuvir, C.J.; J. Sangma, J.; B.L. Hansaria, J

Bench : Full Bench

Advocate : J.P. Bhattacharjee and B.R. Dey, for the Appellant; C. Baruna, Government Advocate, for the Respondent

Judgement

Hansaria, J.—A question of great public importance is involved in this reference. Realising the importance of the subject, one of us (Hansaria, J.) sitting singly referred the following question of law for answer :

"Whether a Civil Court has jurisdiction to entertain a suit which challenges, or is connected with, any act done or purported to have been done under Rule 18 of the Settlement Rules framed under the Assam Land and Revenue Regulation, 1886? If so, under what circumstances?"

2. The core facts which deserve notice to answer the question are these : The plaintiff was possessing 48 bighas and odd land in some villages of Goalpara district. He came to possess the land after having acquired the right of occupancy from various persons. By an order dated 26-10-1966, the Deputy Commissioner, Goalpara, acting under the provisions of Rule 18 of the aforesaid Rules, ordered for eviction of the plaintiff from the aforesaid land as the land had vested in the State under the provisions of the Assam Acquisition of Zamindari Act. An appeal was preferred against the order of eviction before the Assam Board of Revenue. The appeal, however, came to be dismissed on 7-2-1969. It is alleged, that on 15-12-1969 forcible possession of the suit land was sought to be

taken by the Sub-Deputy Collector when the plaintiff was made to sign a paper stating that he was possessing the land as a tenant of the Government whereupon he was allowed to occupy the land. The present suit was filed thereafter on 5-8-1970 seeking a declaration of the plaintiff's right, title and interest over the suit land, so also for declaration that the encroachment case started against the plaintiff was void and inoperative. A prayer was also made for confirmation of the plaintiff's possession over the suit land and in the alternative to allow khas possession of the land.

3. Among other pleas taken by the defendants one was that the civil court had no jurisdiction to try the suit. The trial court accepted the plea as it felt satisfied that its jurisdiction has been taken away by Sections 154(1)(c), 154(2) and 154-A of the Assam Land and Revenue Regulation, 1886, for short the Regulation.

4. When the appeal was heard by the learned single Judge he felt that the matter required deep consideration inasmuch as certain contingencies favoured the existence of civil court's jurisdiction but some countered the pull. Being conscious of the fact that there is reportedly large scale encroachment over the Government land, it was felt that the question relating to jurisdiction should be decided by a Bench of three Judges in view of the importance of the subject and also because of certain Division Bench decisions of this Court may require reconsideration.

5. We may note the relevant provisions of the Regulation which according to the defendants bar the jurisdiction of the civil court. In this connection Sections 154 (1), 154(2) and 154-A of the Regulation are material and the relevant parts of the same read as below :

"154 (1). Except when otherwise expressly provided in this Regulation, or in rules issued under this Regulation, no civil court shall exercise jurisdiction in any of the following :

(a) questions as to the validity or effect of any settlement or as to whether the conditions of any settlement are still in force;

(c) the formation of the records-of-rights, or the preparation, signing, or alteration of any document contained therein;

(d) any matter regarding ejectment of any person from a land over which no person has acquired right of a proprietor, land-holder or settlement holder and"

(2) In all the above cases, jurisdiction shall rest with the revenue authorities only. Section 154-A -- (1) Notwithstanding anything contained in any judgment, decree or order of any court any notice served or any action taken or any penalty imposed or any ejectment done under Sub-rules (1), (2), 3(a) and 3(b), (4), (5) and 5(a) of Rule 18 of the Settlement Rules made under the Regulation shall be

and always be deemed to have been validly done.

(2) No suit or other proceeding shall be maintained or continued in any court against the Government or any person or authority for any act done or purported to have been done under Sub-rules (1), (2), 3(a) and 3(b), (4), (5) and 5 (a) of Rule 18 of the Settlement Rules made under the Regulation,

(3). No court shall enforce any decree or order against, the; Government or any other person for any action taken or purported to have been taken under Sub-rules (1), (2), 3(a) and 3(b), (4), (5) and 5(a) of Rule 18 of the Settlement Rules made under the Regulation".

6. Section 154(1) read with its Sub-section (2) of the Regulation has created express bar in civil court exercising jurisdiction over any of the matters covered by Section 154(1). In so far as Section 154-A is concerned, the same was inserted in the Regulation along with Section 154(1)(n) by the Assam Act No. XXIX of 1971. These provisions had found place in the Regulation after Rule 18 of the Rules was held to be violative of Article 14 of the Constitution by this Court in *Bandhana Goala v. Assam Board of Revenue* AIR 1971 2 gau 11 , which view had been taken by placing reliance on *Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another*, The judgment of this Court was rendered on 4th June, 1971 and: the Bill inserting the aforesaid provision was introduced in the Assembly on 28-10-71 (sic). The relevant part of the Statement of Objects and Reasons relating to the aforesaid insertion reads as below :

"The validity of Rule 18 of the Settlement Rules relating to eviction from the land over which no person has acquired the rights of a proprietor, land-holder or settlement-holder had been challenged in the Court of Law on the ground that an alternative remedy of approaching the Court was never resorted to nor is it intended to do so, it is necessary to oust the jurisdiction of the Court in this regard by amending Section 154 of the Assam Land & Revenue Regulation 1886". *****

7. By virtue of what has been stated in Section 9 of the Civil Procedure Code, civil courts have jurisdiction to try all suits of civil nature excepting suits of which their cognizance is either expressly or impliedly barred. The law in this regard has been taken as settled after the Privy Council's decision in *Secretary of AIR 1940 105 (Privy Council)* which stated that the jurisdiction of the civil court is not to be readily inferred but such exclusion must either be explicitly expressed or clearly implied. The Privy Council further stated that it is also well settled that even if jurisdiction is so excluded, the civil courts have jurisdiction to examine into case where the provisions of the Act have not been complied with or the statutory tribunals have not acted in conformity with the fundamental principles of judicial procedure. The decision in *Mask & Company (supra)* has been approved by the Supreme Court in a number of decisions. We may only note what was stated in para 12 of *Firm I.S. Firm and Illuri Subbayya Chetty and Sons*

Vs. The State of Andhra Pradesh,

"Non-compliance with the provisions of the statute to which reference is made by the Privy Council must, we think, be non-compliance with the fundamental principles of statute as would make the entire proceedings before the appropriate authority illegal and without jurisdiction. Similarly, if an appropriate authority has acted in violation of the fundamental principles of judicial procedure, that may also tend to make the proceeding illegal and void and this infirmity may affect the validity of the order passed by the authority in question. It is cases of this character where the defect or the infirmity in the order goes to the root of the order and makes it in law invalid and void that these observations may perhaps be invoked in support of the plea that civil courts can exercise its jurisdiction notwithstanding any provision to the contrary contained in the relevant statute".

This view was reiterated in *Addanki Tiruvenkata Thata Desika Charyulu* (Since deceased) and after him his legal representatives Vs. State of Andhra Pradesh and Another, *D. D. Bhalla v. District Co-operative Bank Limited The State of West Bengal* Vs. *The Indian Iron and Steel Co. Ltd.*, and *Katikara Chintamani Dora and Others* Vs. *Guntreddi Annamanaidu and Others*,

8. Another Privy Council decision which is pft quoted on the subject under examination is the one rendered in *Raleigh Investment Co. v. Governor General-in-Council* AIR 1947 PC 78 . That decision dealt with, the jurisdiction of the Civil Court relating to an assessment made under the provisions of the income tax Act. It was opined that jurisdiction to question the assessment otherwise than by use of the machinery expressly provided by the Act would appear to be inconsistent with the statutory obligation to pay the tax arising by virtue of the assessment. By referring to *Raleigh Investment Company (supra)*, it was observed in para 32 of *Kamala Mills Ltd. Vs. State of Bombay*, that whenever it is urged before a civil court that its jurisdiction is excluded either expressly or by necessary implication to entertain a claim of civil nature, the court naturally feels inclined to consider whether the remedy afforded by the alternative provision prescribed by a special statute is sufficient or adequate.

9. The law on the subject was considered in detail in *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, The first two principles culled out in this decision are relevant for our purpose and they read :

"(1) Where the statute gives a finality to the orders of the special tribunals the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction

of the civil court...."

After referring to Dhulabhai, it was held in para 14 of State of Tamil Nadu Vs. Ramalinga Samigal Madam, that where a statute has given finality to the orders of the special tribunal, the civil court's jurisdiction can be regarded as having been excluded if there is adequate remedy to do what the civil court would normally do in a suit. In other words, even where finality is accorded to the order passed by special tribunals, one will have to see whether such special tribunals have powers to grant reliefs which the civil court would normally grant in a suit and if the answer is in the negative it would be difficult to imply or infer exclusion of civil court's jurisdiction.

10. Another landmark decision on the point under examination is that of The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others, This decision had examined the question of exclusion of civil court's jurisdiction in relation to industrial dispute and it has culled out four propositions in this regard which read as below :--

"(1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the civil Court.

(2) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the civil Court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.

(3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.

(4) If the right which is sought to be enforced is a right created under the Act such as Chapter VA then the remedy for its enforcement is either Section 33C or the raising of an industrial dispute, as the case may be."

After referring to this decision, it was pointed out in Raja Ram Kumar Bhargava (Dead) by Lrs. Vs. Union of India (UOI), that generally speaking, the broad guiding considerations in this regard are that wherever a right, not pre-existing in common-law, is created by a statute and that statute itself provides machinery for the enforcement of the right, both the right and the remedy having been created *uno flatu* and a finality is intended to the result of the statutory proceedings, then, even in the absence of exclusionary provision, the civil court's jurisdiction is impliedly barred. If, however, a right pre-existing in common law is recognised by the statute and a new statutory remedy for its enforcement is provided, without expressly excluding civil court's jurisdiction, then both the common-law and the statutory remedies might become concurrent remedies leaving open an element of election to the person concerned.

11. One other decision of the Apex Court : Government of Andhra Pradesh Vs. Thummala Krishna Rao and Another, also needs to be noted. It was held in this

decision that summary remedy for eviction provided for by the statute under examination could be resorted to by the Government only against those persons who are in unauthorised occupation of any land. It was pointed out that if there was a bona fide dispute regarding the title of the Government to any property, the Government could not take a unilateral decision in its own favour that the property belongs to it and on the basis of such decision, take recourse to summary remedy provided by the Act for evicting the person who is in possession of the property under bona fide claim or title. It was further observed that the summary remedy prescribed by the Act was not the kind of legal process which was suited to an adjudication of complicated questions of title. The question as to whether the title to the property came to be vested in the Government as a result of acquisition and the further question whether the respondents encroached upon that property and perfected his title by adverse possession had to be decided in a properly constituted suit and until the Government succeeded in establishing its title to the property, the respondents could not be evicted summarily. The two sections of the Act which were considered in the aforesaid decisions were to the following effect :

"Section 6(1). Any person unauthorisedly occupying any land for which he is liable to pay assessment u/s 3 may be summarily evicted by the Collector, Tahsildar or Deputy Tahsildar and any crop or other product raised on the land shall be liable to forfeiture and any building or other construction erected or anything deposited thereon shall also, if not removed by him after such written notice as the Collector, Tahsildar, or Deputy Tahsildar may deem reasonable, be liable to forfeiture. Forfeitures under this section shall be adjudged by the Collector, Tahsildar or Deputy Tahsildar and any property so forfeited shall be disposed of as the Collector, Tahsildar or Deputy Tahsildar may direct."

"Section 7. Before taking proceedings u/s 5 or Section 6, the Collector or Tahsildar or Deputy Tahsildar as the case may be shall cause to be served on the person reputed to be in unauthorised occupation of land being the property of the Government, a notice specifying the land so occupied and calling on him to show cause before a certain date why he should not be proceeded against u/s 5 or Section 6."

These two provisions have much similarity with Rule 18 of the settlement framed under the Regulation. Sub-rules (1), (2) and (3) (a) which are relevant for our purpose read as below :--

"18. Ejectment. (1) Subject as hereinafter provided, the Deputy Commissioner may eject any person from land over which no person has acquired the rights of a proprietor, landholder, or settlement-holder.

(2) When such person has entered into possession of land that has previously been reserved for roads or roadside lands or for the grazing of village cattle or for other public purposes, or has entered into possession of land from which he has been excluded by general or special orders and when, further, there is no

bona fide claim of right involved, he may be ejected or ordered to vacate the land forthwith, and the Deputy Commissioner may sell, confiscate or destroy any crop raised, or any building or other construction erected, without authority on the land.

(3)(a) In all other cases ejectment shall be preceded by publication of a notice in the manner prescribed below requiring the occupant generally to vacate the land specified in the notice within 15 days of the date of publication of the notice on the land concerned or in a prominent place in the vicinity thereof and to remove any buildings, houses, fences or crops, etc. which may have been raised on such land; provided that the Deputy Commissioner may give time to any particular occupant to harvest the crops, if any, growing on such land. Any buildings, houses, fences, crops, etc which have not been removed in accordance with such notice shall be confiscated to the Government."

12. From what has been stated above, the general tests or principles which would govern a case like the one at hand (where there is express exclusionary clause) may be stated as below :

(1) The bar would not operate if it could be shown that the entire proceeding before the revenue authority is illegal and without jurisdiction. This follows from what was stated in AIR 1940 105 (Privy Council) as explained in *Firm and Illuri Subbayya Chetty and Sons Vs. The State of Andhra Pradesh*,

(2) The bar would not also apply where the remedy provided by the provisions in the Regulation is not sufficient or adequate vide *Raleigh Investment Company AIR 1947 PC 78* and *Kamala Mills Ltd. Vs. State of Bombay*, Of course, this test is not always decisive to sustain the jurisdiction of the Civil Court, vide principle No. 2 of *Dhulabhai and Others Vs. The State of Madhya Pradesh* and Another,

(3) Where there is a bona fide dispute regarding the title, the summary remedy visualised by Rules 18(2) and 18(3) of the Rules would not be sufficient to exclude the civil court's jurisdiction, vide, *Government of Andhra Pradesh Vs. Thummala Krishna Rao and Another*, .

(4) Where the right affected be one existing under the general- or common law, and not created by the Regulation, jurisdiction of civil court is also open, vide *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, and *Raja Ram Kumar Bhargava (Dead) by Lrs. Vs. Union of India (UOI)*,

13. Before we express our views on the question referred, it would be apposite to have a bird's eye view of the cases decided by this Court on this question agitated before us.

The first decision to be referred is that of a Division Bench in *Arjad Ali v. State of Assam* ILR (1955) 7 Gau 201, wherein the question was examined keeping in view the bar created by Section 154(1)(a) of the Regulation and it was held that the bar would not operate where the order is clearly illegal or in excess of jurisdiction. Where the order of the Revenue Officer or Tribunal be in excess of

jurisdiction, or without jurisdiction as having been passed in ignorance of the requisite provision, the civil court would have jurisdiction despite the bar imposed by Section 154(1)(a). It was ultimately held that Section 154(1)(a) of the Regulation though loosely worded should not be so broadly construed as to debar suits involving questions of title from the purview of civil court's jurisdiction merely because the title claimed had its origin in settlement of lands. It was pointed out that the Revenue Tribunals are, despite all the plentitude of powers which they exercise under a particular statute, courts of limited jurisdiction and should not ordinarily be assumed to restrict the jurisdiction of the civil court in matters which on accepted juridical concepts fall beyond the ken of the former.

14. This decision . was quoted with approval in *State of Assam v. Sifat Ali* AIR 1967 gau 3, by a Bench of this Court which held that Section I54(1)(a) does not debar civil court from entertaining suits based on title to the property.

15. In *Dinesh Chandra v. Harendra Biswas*, AIR 1972 Gau 81, it was conceded that a person having a right to an estate shall be entitled to seek a declaration of his right from the civil court as against the person who has succeeded in getting settlement of the land despite what is stated in clause (a) of Section 154(1) of the Regulation. "

16. The decisions rendered in *Sifat Ali* and *Dinesh Chandra* (supra) were followed : by a learned single Judge in *Ka Trily v. U. Redrikson* (1984) 2 Gau LR 8, wherein it was held that the bar created by Section 154(1) did not preclude suits based on title to the property. It was observed that though matters within the jurisdiction of the revenue authorities could be decided by them but no such decision could take away the jurisdiction of the civil court when a person having right to an estate claims entitlement to it and seeks declaration of his right in a civil Court.

17. An other decision of this Court which needs to be mentioned is that of a learned single Judge in *Munindra Chandra v. Kamal Chandra* 1977 gau LR 75, which dealt with the ban of jurisdiction of civil court created by Section 167 of the Regulation stating that "No civil court shall exercise jurisdiction in any of the matters covered by this Chapter" (meaning Chapter-X which has dealt with the "Protection of Backward Classes"). It was pointed out by the learned single Judge that very many violations of Chapter-X and the Rules framed thereunder may happen or crop up and if they are permitted to remain unchecked by any Court of competent jurisdiction, the entire object of the Chapter may be frustrated. It was opined that when a matter has been decided by an officer or authority validly, legally and in accordance with the provisions of the Regulations, the jurisdiction of the Civil Court would be ousted, but if no action has been taken or in case inaction of officers or authority to take appropriate action required to be taken under the Chapter, the parties are not precluded or prohibited from coming to Civil Court for getting adequate relief. It was further observed that this apart whetherthere be a violation of the provisions contained in Chapter-X, the Civil

Court would undoubtedly have jurisdiction to knock down the illegal order passed without jurisdiction and in violation of the letter and spirit of the Chapter.

18. We may finally refer to *Kamala Kanta v. State of Assam* (1983) 2 Gau LR 258, which was a case which dealt with an eviction proceeding initiated under Rule 18(2) of the Rules. It was observed, in para 13 of this decision that in a summary proceeding under Rule 18 the authority is not to adjudicate any complicated questions of possessory right or title of the appellant. The following observations, made in para 13 are pertinent in this regard :--

"If an occupant openly makes construction, his acts might create a bona fide right, title or interest in the property. The duration of occupation is undoubtedly a relevant factor when the occupation is open and for an appreciable length of time. When some right to occupy in favour of the occupant is detected it requires an impartial adjudication according to the established procedure of law. The length of possession, the nature of the open act of possession, construction of the structures and dealing the property as his own certainly created a bona fide right in his (meaning the petitioner's) favour. Such cases should go to civil courts for adjudication or the authority may take resort to the other provisions of law or take resort to some other laws".

19. The aforesaid decisions of this Court clearly show that in two contingencies the civil court's jurisdiction would not be barred despite what has been stated in Section 154 or for that matter Section 154-A of the Regulations. These two matters are : (1) when the question of title is raised; and (2) the order of the revenue authority is illegal and without jurisdiction.

20. Before concluding, we may refer to the submission of the learned Government Advocate regarding the width of the ambit of Sub-sections (2) and (3) of Section 154-A of the Regulation which have taken within their fold even acts "purported to have been done" (Emphasis ours), In this connection he has referred to *Azimunissa and Others Vs. The Deputy Custodian, Evacuee Properties, District Deoria and Others*, wherein it was stated in para 20 that :

"(t) the word "purport" has many shades of meaning. It means fictitious, what appears on the face of the instrument; the apparent and not the legal import and therefore any act which purports to be done in exercise of power is to be deemed to be done within that power notwithstanding that the power is not exercisable..... Purporting is therefore indicative of what appears on the face of it or is apparent even though in law it may not be so"

This wide meaning of the word "purport" cannot help the State much as even the purported action must be under the Sub-rule (s) mentioned in Sub-sections (2) and (3) of Section 154A. The word "under" means "according to" as stated in *European Grain and Shipping Ltd. Vs. Bombay Extractions Private Ltd. and Others*, An act cannot be said to be in accordance with the provisions of law if the same has contravened the provisions of the concerned law. Reference may usefully be made in this connection to *Makhan Singh Vs. State of Punjab* (and

connected appeals), which dealt with a Presidential Order issued under Article 359(1) of the Constitution of India stating that if any person had been deprived of his rights under the Defence of India Ordinance, 1962, or any rule or order made thereunder, he could not move any court for the enforcement of the rights conferred by Articles 21 and 22 of the Constitution of India till the Emergency mentioned in the Order was in force. By referring to the language of the Order it was held that if the detention was challenged on the ground that it contravened the mandatory provisions of the relevant Act or that it was mala fide, the bar of the Presidential Order would have no application (See paras 35(a) and 36). Same view was expressed in *State of Maharashtra Vs. Prabhakar Pandurang Sangzgiri and Another*, which has pointed out that the Presidential Order aforementioned was a conditional one and, therefore, if a person was deprived of his personal liberty not under the Act or rule or orders made thereunder, but in contravention thereof, his right to move the Court in this regard would not be suspended. (See para 48 of *Additional District Magistrate, Jabalpur Vs. Shivakant Shukla*,

21. The above apart, the object of inserting Section 154-A in the Regulation was to afford protection to the Government and its officials for the acts done in discharge of duties so also to the various acts, in the wake of Section 18 having been declared violative of Article 14 of the Constitution in *Bandhana Goala*. This protective barrier does not have much to do with the question agitated before us.

22. From what has been stated above, we would say that in a matter like the one at hand civil court's jurisdiction would not be barred in the following cases :

- (1) when the order under Rule 18 is patently illegal or without jurisdiction;
- (2) where the remedy provided by the Regulation to adjudge the objection raised is not sufficient;
- (3) where complicated questions relating to title are involved; or
- (4) where the plaintiff seeks declaration of his title over the land from which he is sought to be evicted.

23. As to points (3) and (4) above, we would like to state that the assertion of title must be genuine and not a mere pretext a bona fide claim of having title and not having only a husk of title.

24. The above is our answer to the question referred by the learned single Judge.