

(1957) 01 GAU CK 0001

In the Gauhati High Court

Case No : Letters Patent Appeal No. 4 of 1956

Girish Chandra Namasudra

APPELLANT

Vs

Manilal Hazam

RESPONDENT

Date of Decision : 28-01-1957

Acts Referred:

Assam Adhiars Protection and Regulation Act, 1948 — Section 10, 2, 2(1), 3, 4
Constitution of India, 1950 — Article 227

Citation : (1957) 01 GAU CK 0001

Hon'ble Judges : Sarjoo Prosad, C.J;H. Deka, J

Bench : Division Bench

Advocate : P. Chaudhuri, for the Appellant; G.K. Deb, for the Respondent

Judgement

Sarjoo Prosad, C.J.—This is a Letters Patent Appeal directed against the judgment of Ram Labhaya, J., sitting singly dated 7-6-56, in S.A. No. 82 of 1954.

2. It relates to a suit for declaration of title and recovery of possession. The Plaintiff, who is the Appellant before us, claimed that he had obtained settlement of the disputed land by virtue of a registered kabuliyat, dated 21-7-37. Under the terms of the kabuliyat, he was liable to deliver 20 maunds of paddy to the Defendant landlord, or pay a rent of Rs. 30/- in cash every year. He claimed that, as such, he was a tenant of the Defendant and had been paying cash rent to him all along, but in 1355 B.S., when the price of paddy rose, the Defendant refused to accept cash rent and demanded chukti bhagi (paddy rent), which the Plaintiff declined to give.

The Defendant then moved the Revenue Officer on the ground that the Plaintiff was a defaulter and, therefore, for recovery of possession of the disputed land on that account, on the assumption that the Assam Adhiar Protection and Regulation Act, 1948 (XII of 1948), under which the Defendant applied, was applicable to the Plaintiff. The Plaintiff objected to the application of the Defendant landlord under the said Adhiars Act. He asserted that he was a tenant governed by the Assam Tenancy Act and his possession was not liable to be disturbed by any

order of the Revenue Officer passed under the Adhiars Act in question.

It appears that the Revenue Officer rejected the contention of the Plaintiff and passed an order for his eviction. The Plaintiff then instituted the suit out of which this appeal arises, for a declaration that he was not an adhiar at all and he, therefore, could not be dispossessed by the order of the Revenue Officer, which the Defendant landlord obtained against him. His submission is that, on the terms of the kabuliyat under which he was inducted on the land, he was liable to pay cash rent, and not necessarily to deliver rent in kind; therefore, his status was that of a non-occupancy tenant under the Tenancy Law and, as such, the Adhiars Act had no application to him; and any step taken by the Revenue Officer to oust him from possession of the land in question was wholly without jurisdiction.

The Defendant, on the other hand, repudiated this claim of the Plaintiff and asserted, as he did before the Revenue Officer, that the Plaintiff was only an adhiar, and that the order passed by the Revenue Officer was a valid order, effective and binding on the parties. The two Courts below concurrently found that the Plaintiff was not an adhiar and that he was a non-occupancy tenant, and therefore, the Civil Court had jurisdiction to entertain the suit.

They accordingly held that the order of the Revenue Officer was without jurisdiction, and decreed the suit. The learned Judge of this Court has, however, disagreed with the decision of the Courts below and dismissed the suit, primarily on the ground that the decision of the Revenue Officer, under the Adhiars Act directing ejectment of the Plaintiff, was final and conclusive between the parties, and the Civil Court had no jurisdiction to entertain the suit.

3. Therefore, the main question which arises for consideration in this Letters Patent Appeal is -- whether the Civil Court had jurisdiction to entertain the suit, and, if so, whether the order of the Revenue Officer directing eviction was ultra vires. On behalf of the Defendant Respondent, reliance has been strongly placed upon Section 10 of the Adhiars Act, which was published on 16-6-48. Section 10 of the Act provides that no Civil Court shall entertain any suit or proceeding in any matter arising out of any proceedings under this Act or in respect of any matter which a Revenue Officer is empowered to dispose of under this Act.

It obviously contemplates two classes of cases where the Civil Court's jurisdiction is excluded, viz: (1) where the suit or proceeding relates to a matter arising out of any proceedings under this Act, or (2) where it relates to any matter which a Revenue Officer is empowered to dispose of under this Act. The question then is reduced to this: whether the decision by the Revenue Officer about the status of the Plaintiff that he was an adhiar, can be regarded as a proceeding under the Act, or whether it is one of the matters which the Revenue Officer was empowered to decide under the Act.

If the Revenue Officer had jurisdiction to decide the matter about the status of the tenant and to decide it finally, then, of course, by virtue of the above

provision, the Civil Court would be deprived of its jurisdiction to entertain a suit wherein the status of the tenant could be canvassed. It is true that where a Court has jurisdiction to decide a matter, it can decide both rightly and wrongly. The decision of a Court of exclusive jurisdiction cannot be challenged in a Civil Court merely on the ground that the decision, whether on questions of fact or of law, is erroneous.

The aggrieved party in that case must pursue his remedies provided by the Act itself which has created the Court or the Tribunal of exclusive jurisdiction. But it has to be borne in mind that this Court or Tribunal of exclusive jurisdiction has got a defined and limited ambit within which it is to function. It may be that, for incidental or collateral purposes, it may have to make up its mind as to whether the Defendant was or was not an adhiar, but that will not necessarily mean that any decision given by that officer on the point is conclusive and binding.

The pre-requisite for an application of the Adhiars Act in question is that the man must be an adhiar. The Act, as the preamble shows, was intended to provide protection to tenants of agricultural lands paying rent in kind. The term "adhiar", according to Section 2 of the Act, means a person who, under the system generally known as "Adhi" barga chukti, bhag or chukani, cultivates the land of another person on condition of delivering a share or quantity of the produce of such land to that person. Now, therefore, if a person does not answer the definition of an "adhiar", the very foundation on which the Act can operate is gone, and any step taken by the Revenue Officer, purporting to do something under the Act, is evidently *functus officio*. An examination of the various provisions of the Act shows that none of the sections empowers the Revenue Officer to decide about the status of the tenant.

Sec. 3, for example, provides that notwithstanding anything to the contrary contained in any law for the time being in force or in any contract or agreement express or implied, any person who, during the agricultural year immediately preceding the date on which the Provincial Government extend the provisions of this Act to any district, local area or class of estates, cultivates any land as "adhiar", shall have the right to remain in occupation and cultivate the land until he either voluntarily relinquishes the land or is ordered by a Revenue Officer, u/s 5 to cease to cultivate and vacate the land or is evicted therefrom in execution of a valid order of the Revenue Officer. Section 4 similarly provides that if any person cultivating any land as an adhiar during the agricultural year immediately preceding the date on which the provisions of the Act are extended, is prevented by a landlord or any person claiming superior interest, from cultivating such land, the Revenue Officer may put such person in possession of the land.

Similarly, Section 5 conversely provides that a Revenue Officer may, on application from a landlord order an adhiar to cease to cultivate an adhi land after due notice and necessary enquiry as may be prescribed, and evict such adhiar in the manner prescribed, on the ground, inter alia, that the adhiar has failed to deliver, within the prescribed time, to the landlord such share or

quantity of the produce as he is bound to deliver. Section 6 gives powers to the Revenue Officer to fix the rate of rent on the basis of produce of the land. None of these provisions, therefore, indicates that the Revenue Officer has got the right to decide conclusively about the status of a tenant, where such status is disputed. In other words, where the tenant is not an adhiar, obviously the provisions of the Act will not affect him.

4. It is contended on behalf of the Respondent that in taking any action under the Act, as provided by the various sections discussed above, the Revenue Officer has come to some finding as to whether the person concerned is or is not an adhiar, because otherwise he cannot take any action under the law. That may be so. Indeed, in purporting to act under the law, the Revenue Officer may have to form his own conclusion as to whether the person concerned is or is not an adhiar in case of any dispute between the parties; but the scheme of the Act shows that the Legislature never intended to confer the right of deciding the matter, about the status of the tenant, finally on the Revenue Officer.

If the Legislature had so intended, there would be some express provision to that effect in the Act itself. The Act was intended to apply normally to a case where the person concerned is admittedly an adhiar; but in case of any dispute, even if the officer purported to act on the assumption that the tenant was an adhiar, any action taken by him under the Act would be open to question in a competent Civil Court. If the Civil Court finds that the person concerned was not an adhiar, then the very foundation of the jurisdiction of the Revenue Officer is gone.

A Tribunal or Court of exclusive or limited jurisdiction cannot, by an erroneous decision, confer upon itself a jurisdiction which it does not validly possess. The ambit of the Court's jurisdiction is always open to scrutiny and examination by the ordinary Civil Courts. It has been urged that the very purpose of the Act would be defeated if, in case of any dispute about the status of a tenant, the proceedings before the Revenue Officer were to be held up, because of a reference to Civil Courts.

I do not think that there is any substance in this contention. In case of any dispute, the officer may refer the parties to a Civil Court to obtain an adjudication therefrom about the status or nature of the tenancy, or the officer may not refer, and may proceed to act upon his own view of the matter. If the officer chooses to adopt the latter procedure, it will be subject to question in an appropriate suit before a Civil Court. Section 10 of the Act, therefore, presupposes that there is an appropriate proceeding under the Act or that the Revenue Officer has done something which he is empowered to do under the Act itself.

In regard to those matters alone, the jurisdiction of the Civil Court has been ousted, but where the Act has no application, the jurisdiction of the Civil Court cannot be excluded. Such exclusion is not ordinarily implied unless it is expressly stated to be so by the Legislature. Any other interpretation of the Act would in

many cases lead to the anomalous situation that instead of affording protection to the tenant, the Act might be utilised as a convenient medium of oppression, as it has been done in the present case.

The facts here are that there were two previous decrees in this case obtained by the landlord on the assumption that the Plaintiff was a non-occupancy tenant, and yet, when the Act came into operation, he sought to take advantage of this Act in order to obtain eviction of the Plaintiff by an order of the Revenue Officer on the assumption that he was not a non-occupancy tenant but an adhiar. It is normally to be assumed that in cases of disputed questions of title, the intention of the Legislature would not be to confer on a Revenue Officer the far-reaching power of deciding finally about the title or the status of the tenant; and the mere fact that some appeal is provided under the law against the order of the Revenue Officer in a proceeding contemplated by the Act, which is, after all, of a summary character, will be hardly any adequate remedy to the tenant who has been deprived of his legal status. I would, therefore be loath to construe the Act in a manner which would be prejudicial to the interest of the tenant and defeat the purpose of the Act as shown from its preamble. Indeed the language of Section 10 of the Act itself does not bear any such wide interpretation.

5. As early as the decision in *R. v. Commissioners for Special Purposes of the Income Tax* (1888) 21 Q.B.D. 313, Lord Esher, Master of the Rolls, pointed out:

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.

The case before us, in my opinion, is governed by the principle underlying the

first part of the quotation from Lord Esher's judgment. Here, the Revenue Officer could act only if a certain state of facts existed; otherwise the Revenue Officer could not act. In other words, he could only act if the person concerned was an adhiar; otherwise he had no jurisdiction at all to apply the provisions of the law to some other person; and, if he exercised jurisdiction without the existence of that vital factor, his action might be questioned, and it might be held that he acted without jurisdiction.

Ram Labhaya, J., has however, taken the view that the case falls under the latter part of the dictum of Lord Esher. But, as discussed earlier, we do not find anything in this legislation to show that the legislature had entrusted the Revenue Officer with the jurisdiction to determine whether the preliminary state of facts existed, namely, whether the Plaintiff was a non-occupancy tenant, as claimed by him, or an adhiar, as claimed by the Defendant landlord.

It cannot, therefore, be argued that any decision on the point given by the Revenue Officer would be a decision to which the legislature intended to give such a finality as to bar the jurisdiction of the Civil Courts. In *Balkishen Das v. Simpson* ILR 25 Cal 833 (P.C.), we find the same principle illustrated. Act 11 of 1859 (the Bengal Revenue Sale Law) provides for the sale of estates in arrear of payment of revenue. The Collector, in that case, had sold an estate purporting to act under the said Act, for a supposed arrear of revenue, though, in fact, there was no arrear at all except for an erroneous debit entry in the Collector's books.

The law provided that such a sale could not be questioned on the grounds of any illegality or irregularity in a Civil Court unless the ground had been taken in an appeal before the Commissioner of Revenue. In the case in question, the appeal was time-barred and it was, therefore, contended that, in fact, there was no appeal at all to the Commissioner, and, as such, the jurisdiction of the Civil Court was completely barred.

The Privy Council held that there being no arrear, the sale was without authority; that the Civil Court had jurisdiction to declare the sale void; and that the provisions of Section 33 of the said Bengal Act, which had no application to the case, could not prevail as a plea in bar to the suit. Therefore, appeal or no appeal to the Commissioner, the jurisdiction of the Civil Court was not ousted. Their Lordships pointed out with reference to the said Act 11 of 1859:

The Act does not sanction, and by plain implication forbids, the sale of any estate which is not, at the time, in arrear of Government revenue. The whole clauses of the Act of 1859, in so far as these relate to sales, or to their challenge at the instance of the proprietor, as well as the provisions of Section 2 of Bengal Act VII of 1868, are framed upon the express footing that they are to be applicable to the sale of estates which are in arrear of duty. The enactments of 1859 and of 1868 are obviously intended to apply to cases in which, if the irregularity or illegality of the sale proceedings alleged by the objector be negatived, the sale will remain valid.

It was, therefore, held that the whole proceeding of the Collector in holding the sale was beyond his jurisdiction and not entitled to the protection of the Act which applied to cases where the sale was authorised, although it might be attended with some irregularity or illegality. The situation here is, on principle, identical; because if the Plaintiff in this case was not an adhiar, then the Adhiars Act does not operate at all, and no provision of the law can be invoked for the protection of any order which may have been passed by the Revenue Officer on the erroneous assumption that the Plaintiff was an adhiar.

The Adhiars Act does not sanction, and by plain implication forbids, its application to persons other than adhiars. The whole scheme of the Act is framed on the express footing that the Act is applicable to adhiars alone. The Supreme Court in *Ebrahim Aboobakar and Another Vs. Custodian General of Evacuee Property*, followed the dictum of Lord Esher cited above. There, their Lordships pointed out that no Court of limited jurisdiction could give itself jurisdiction by a wrong decision on a point collateral to the merits of the case upon which the limit of its jurisdiction depended.

Again, in *Balakrishna Udayar v. Vasudeva Ayyar* ILR 40 Mad 793 : AIR 1917 PC 71, the Privy Council held the view that if the decision was the very basis and foundation of jurisdiction in its limited sense, as distinguished from powers, such jurisdiction could be questioned. That being so, I have no doubt that the question whether the Plaintiff was or was not an adhiar, could be agitated in a Civil Court of competent jurisdiction, and the suit, as such, was maintainable. In my opinion, Section 10 of the Adhiars Act did not oust the jurisdiction of the Civil Courts to entertain the suit.

6. On behalf of the Respondent, a large number of cases has been cited in support of the proposition that the general principle of *res judicata* applied even to a decision given by a Court of limited jurisdiction. The proposition cannot be doubted; and it would be, therefore, unnecessary for me to examine in detail the cases cited at the Bar on that point. It may be at once conceded that if the Court in question had the jurisdiction to decide the matter, and the legislature intended such jurisdiction to be vested in a Court or Tribunal of limited jurisdiction, and thereby deprive the Civil Courts of their right to examine the correctness or otherwise of their decisions, the general principles of *res judicata* will undoubtedly apply.

But these decisions have no bearing on the present question. Here, as I have discussed earlier, the legislature did not intend to confer any such jurisdiction upon the Revenue Officer; and, therefore the principle of *res judicata*, which can only apply to decisions given by Courts of competent jurisdiction in regard to matters within their competence, will not be attracted. The mere fact that a right of appeal was given under certain circumstances by the legislation itself, does not deprive the party aggrieved of the right of taking up that issue, which was beyond the purview of the Revenue Officer, in a suit properly instituted for the purpose.

Ram Labhaya, J. concedes that if jurisdiction had been wrongly assumed by the Revenue Officer, Article 227 of the Constitution provided a possible remedy. But if Article 227 provided a possible remedy, that was not the only remedy; and if the Officer acted not as a creature of the Statute under which he was entitled to act, but went beyond its ambit, his action could certainly be questioned before the Civil Court. The Courts below, therefore, were justified in coming to the conclusion that the decision of the Revenue Officer was not binding on the Plaintiff, that Section 10 of the Adhiars Act did not apply, and that the suit was maintainable.

7. The next question which arises is -- whether, on merits, the Plaintiff has succeeded in showing that he was not an adhiar, but a non-occupancy tenant. The registered kabuliyat under which he was inducted on the land, has been construed by both the Courts below and they have held that inasmuch as a cash rent was payable in the alternative in place of delivery of a certain quantity of paddy, the Plaintiff was not an adhiar. Section 2(1) of the Adhiars. Act defines "Adhiar". It shows that he holds land on condition of delivering a share or quantity of the produce of such land to the person concerned.

Here, the recitals in the document show that it was within the choice of the Plaintiff either to deliver paddy or to pay rent in cash. Indeed, as pointed out by Ram Labhaya, J., in *Mahammad Sheikh v. Ramesh Ch. De* AIR 1954 GAU 45, where rent is payable in kind and a fixed quantity of crop is payable as rent, and in case of default, a fixed sum is payable as its price, the landlord is entitled to recover only the stipulated sum, and not the price of the crops at market rate. Here, the findings of the two Courts below concurrently are that the Plaintiff paid cash rent to the Defendant, and that no rent in kind was realised. The lower appellate Court says:

There is nothing on record to show that the Plaintiff had ever given paddy as rent to the Defendant. There is nothing also to show that at any subsequent period the Defendant realised from the Plaintiff any amount other than Rs. 30/- as being the market value of paddy at any particular time.

The Courts below also referred to two decrees, Exts. A and B, one in Title Suit No. 97 of 1942 and another in Title Suit No. 171 of 1948; wherein the Defendant landlord himself obtained decrees on a cash rent basis. That being so, the only conclusion at which the Courts below could rightly arrive was that the Plaintiff was not an adhiar, and any assumption of the Revenue Officer to the contrary was not only without jurisdiction but wholly unjustified.

8. In the circumstances, we regret that we have to disagree with the decision given by Ham Labhaya, J., reversing the decision of the Courts below, and dismissing the suit of the Plaintiff. In our opinion, the decision of the learned Judge of this Court has to be set aside, and the decree of the Courts below has to be restored, decreeing the suit of the Plaintiff. The appeal is accordingly allowed with costs throughout.

Deka, J.

9. I agree.