
(1944) 02 PAT CK 0006
In the Patna High Court

Haribandhu

APPELLANT

Vs

Radhashyam Das

RESPONDENT

Date of Decision : 23-02-1944

Acts Referred:

Limitation Act, 1963 — Section 18

Citation : AIR 1944 Patna 289

Hon'ble Judges : Meredith, J;Chatterji, J

Bench : Full Bench

Judgement

Meredith, J.—This application by some of the judgment-debtors is directed against an order of a Deputy Collector empowered by the Local Government to hear appeals under the Orissa Tenancy Act, in which he reversed a decision of a Sub-Deputy Collector as Orissa Tenancy Act Officer, Cuttack setting aside an execution sale under Order 21, Rule 90, Civil P.C. (After stating the facts his Lordship proceeded.) The main point argued by Mr. B.K. Ray for the applicants is that the Deputy Collector had no power to hear the appeal, as the order of the Local Government empowering him to hear appeals was ultra vires. Secondly, he urged that the appellate Court should have held that limitation was saved by Section 18, Limitation Act. The appeal was actually presented in the first instance to the Collector on 24th January 1939. Subsequent to that, the Orissa Government issued a notification No. 1063R, dated 15th March 1939, published in the Orissa Gazette on 17th March 1939, purporting under the powers conferred by Section 3(4)(a), Orissa Tenancy Act, to confer upon the Deputy Collector in question powers to discharge the functions of a Collector u/s 204 of the Act. After that, on 11th April 1939, the Collector transferred the appeal to the Deputy Collector for hearing.

2. The appeal in the present case was u/s 204(4) of the Act read with Section 204(2). Sub-section (4) provides that: "An appeal shall lie against any order specified in Clauses (b) or (C) of Sub-section (1)(except an order which is not appealable under the Code of Civil Procedure, 1908) to the Court to which an

appeal from the judgment in the suit would He." Clause (c) in Sub-section (1) referred to is "an order passed after decree and relating to the execution thereof." Sub-section (2) is as follows: "In suits where the subject-matter of the claim or dispute does not exceed one hundred rupees in value, and the judgment does not decide a question whether rent is payable for land or not, or a question relating to title to land or to some interest in land as between parties to the suit, the judgment of the, Collector shall be final; Provided that, if the suit be tried and decided by a Deputy Collector exercising the powers of a Collector, an appeal shall lie from the judgment of the Deputy Collector to the Collector." Prima facie, therefore, there is no provision for an appeal from the judgment of a Sub-Deputy Collector to a Deputy Collector.

3. The provision is merely for appeal from the order of the Deputy Collector exercising the powers of a Collector to the Collector. But u/s 3(6) of the Act "Deputy Collector" includes an Assistant Collector and any Sub-Deputy Collector who is specially empowered by the Local Government to discharge any of the functions of a Deputy Collector under this Act," and it has not been contended that the Sub-Deputy Collector does not fall under this definition of "Deputy Collector" having been specially empowered. Moreover, u/s 3(4) of the Act "Collector", in any provision of this Act means the Collector of a District, and includes also : (a) any Revenue Officer or Deputy Collector who is specially empowered by the Local Government to discharge any of the functions of a Collector under that provision, and (b) any Deputy Collector to whom the Collector may, by general or special order approved by the Commissioner transfer any of his functions under that provision, other than functions covered by Section. 204." Therefore, the word "Collector" may in certain circumstances include also a "Deputy Collector" specially empowered. The notification to which I have referred purports to be u/s 3(4)(a), and consequently, if it is not ultra vires, the Deputy Collector had power to hear the appeal.

4. The first point to be noticed is that Section 3 of the Act is not an empowering section at all. It is the definition section of the Act. If, therefore, Sub-section (4) (a) was really meant to empower the Local Government to issue such a notification it was a very odd way of doing so. Nevertheless, in my judgment, it is perfectly clear from reading Section 3(4) that the Act does contemplate that the Local Government should be able specially to empower a Deputy Collector to discharge the functions of a Collector under the provisions of the Act, and if, as appears to be the case, such power is nowhere conferred by any other section of the Act, then the intention must have been to confer this power by the provision in Section 3(4)(a). If the intention of the Legislature is clearly expressed and here I think, it is clear, then the Courts must give effect to it. The curious method adopted, however, of providing for the exercise of the power involves another difficulty.

5. Since Section 3 is, as I have said, the definition section, therefore each definition in the section is subject to the opening words of Section 3, which are in

the usual form for definition sections "In this Act unless there is something repugnant in the subject or context." Thus, if there is anything repugnant in the context in the provision in question, the definition of "Collector" as including in certain circumstances a Deputy Collector will not be applicable to that provision, and consequently the Local Government will not be able by notification to embrace a Deputy Collector within the meaning of the word "Collector" in that particular provision. Mr. B.K. Ray is able with considerable force to put forward the argument that there is something repugnant in the context of Section 204(2), and consequently this is not a provision in respect of which the Local Government can specially empower the Deputy Collector. He points out that in Section 204(2) a clear distinction is made between the words "the Collector" and the words "A Deputy Collector exercising the powers of a Collector," and it is provided that in certain circumstances the order of the one shall be final, and that an appeal shall lie from the order of the other to the former. This being so, the words "the Collector" can only be used here in reference to the Collector of the district. Plausible as this argument at first sight appears one is led to suspect that there must be something-wrong with it in view of the terms of Section 3(4). Section 3(4)(b) contemplates the transfer of his functions by the Collector to a Deputy Collector and here an exception is specially made of the functions covered by Section 204. The words used are "other than functions covered by Section 204." These words, moreover, having regard to the frame and punctuations of the Sub-section clearly relate only to (b), and not to (a), (a) provides for the empowering by the Local Government of a Deputy Collector to discharge the functions of a Collector, and here there are no limiting words. The conclusion is irresistible that the framers of the Act must have intended that the power of the Local Government to empower the Deputy Collector should not be subject to any limitations with regard to the functions covered by Section 204.

6. The difficulties of the Court in interpreting the intention of the legislature are caused in this case not only by the odd method of conferring the powers, but by the clumsy drafting of Section 204 itself. Nevertheless, I can see no escape from the conclusion at which I have just arrived, that it was intended to confer power on the Local Government to empower the Deputy Collector to discharge the functions of a Collector even as covered by Section 204. We must, therefore, examine the the provisions of Section 204(2) "very narrowly before deciding that there is an inadvertent repugnancy in the context which prevents the legislature from having succeeded in carrying out its obvious intention. I have come to the conclusion that there is not necessarily repugnancy, and it is clear that if there is any possible interpretation of the provision which avoids the repugnancy, then having regard to the apparent intention of the legislature the Court should adopt that interpretation.

7. It is, in my judgment, possible to read sense into Section 204(2) if we take the words "the Collector" to include a "Deputy Collector specially empowered to hear appeals," and the words "Deputy Collector exercising the powers of a Collector" to refer only to a Deputy Collector exercising the original powers of a

Collector and not the appellate powers. The proviso could then be read "provided that if the suit be tried and decided by a Deputy Collector or Sub-Deputy Collector exercising the original powers of a Collector under the Act, an appeal shall lie from the judgment of such person to the Collector or a Deputy Collector exercising the appellate powers of a Collector." That is the interpretation which, I think, should be adopted in this case, and it would follow that the notification of the Local Government was not ultra vires and did validly confer upon the Deputy Collector the power to hear appeals u/s 204 of the Act.

8. Next, however, it is argued by Mr. Ray that even if that be so, this appeal was never presented before the Deputy Collector but only before the Collector, and the Collector had no power to transfer it to the Deputy Collector for hearing. Mr. Sen Gupta for the opposite party was unable to point to any provision of the Act, or of any other law, under which the Collector could transfer an appeal for hearing to the Deputy Collector specially empowered. Nevertheless, I am not particularly impressed by this argument. If the order was not valid as a legal order of transfer, it can be taken as an administrative order sending the appeal to the Deputy Collector for disposal, and, I think, the Deputy Collector even if he received the appeal by this indirect route instead of directly from the party would be entitled to take cognizance of it and entertain it for hearing, by virtue of the power existing in himself.

9. It would, therefore, at most be a case of irregular presentation, with which this Court ought not, in my judgment, to interfere in revision. It would be carrying technicality too far to hold that by reason of the method by which the appeal came to him the Deputy Collector lost his jurisdiction to hear it. He may, I think, be taken to have accepted the appeal as presented to him through the office of the Collector. If there are a number of officers in one station all empowered to hear appeals, it is certainly administratively convenient that all should be formally presented in one Court, and such presentation and subsequent distribution may, I think, be regarded as administrative matters. No question of limitation would, in my opinion, arise, because in the absence of any administrative direction, that the appeal should be filed in any particular Court, the appellants were not wrong in presenting it before the Collector.

10. There remains the point on the merits, but it is unnecessary to go into this at length because whether the view taken by the appellate Court was right or wrong, that Court did consider the matter upon the merits. There was neither refusal to exercise jurisdiction nor error in the exercise of jurisdiction, and consequently there is no scope for interference in revision. In the result, therefore, I would dismiss this application, but having regard to the circumstances I would make no order for costs.

Chatterji J.

11. This case originally came up for hearing before Harries C.J. but he referred it to a Division Bench, because one of the points raised, namely, whether a Deputy

Collector specially empowered by Government notification to perform the appellate functions of a Collector u/s 204, Sub-section (2), Orissa Tenancy Act, can perform such functions and whether such notification is ultra vires the powers of the Government under the Act, is one of importance. The Deputy Collector whose order is sought to be revised in this case was specially empowered by Government notification No. 1063R, dated 15th March 1939, published in the Orissa Gazette on 17th March 1939, to discharge the functions of a Collector u/s 204, Orissa Tenancy Act. The notification purports to have been issued in exercise of the powers conferred by Sub-clause (a) of Clause (4) of Section 3 of the Act. (After stating the facts in brief His Lordship proceeded.) Section 3 Orissa Tenancy Act, is a definition section. Clause (4) of the section runs as follows: (After quoting the clause His Lordship observed.) Though this Clause (4) is a definition clause, Sub-clause (a) combines with it an empowering provision which, to my mind, is clear enough to confer power upon the Local Government to specially empower any Deputy Collector to discharge any of the functions of a Collector. It is noticeable that the words "other than functions covered by Section 204" form part of Sub-clause (b) and not of Sub-clause (a). From the context it is clear that these words cannot govern Sub-clause (a). That being so, the functions of a Collector referred to in Sub-clause (a) are not limited in any way and may include functions covered by Section 204. In other words Sub-clause (a) confers power on the Local Government to specially empower a Deputy Collector to discharge any of the functions of a Collector including functions u/s 204. It is in exercise of the power thus conferred by this Sub-clause that the notification in question was issued by the Local Government. Consequently this notification cannot be said to be ultra vires the powers of the Government under the Act. (After citing the text of Section 204, Sub-sections (2) and (4) the judgment proceeded.) The question, therefore, whether in the present case the appeal could be heard by the Deputy Collector in question turns on an interpretation of Sub-section (2), the suit out of which the execution proceeding arises being of the nature specified in that Sub-section.

12. Mr. B.K. Ray for the petitioner contends that upon the plain wording of the proviso to the Sub-section, the appeal could be heard only by the Collector. It is said that if the word "Collector" at the very end of the proviso were to be read, according to the definition in Section 3(4)(a), as meaning a Deputy Collector specially empowered by the Local Government to discharge the functions of a Collector under that Sub-section, the result would be that the proviso would read like this "an appeal shall lie from the, judgment of a Deputy Collector exercising the powers of a Collector to the Deputy Collector exercising the powers of a Collector," which would prima facie seem incongruous. At first sight this argument seems plausible. But the incongruity must be judged with reference to the opening words in Section 3 "In this Act unless there is something repugnant in the subject or context.

13. Therefore, in construing Sub-section (2) of Section 204, we cannot ignore the definition of "Collector" given in Section 3(4)(a), unless the use of this

definition leads to repugnancy. So far as the provision in the substantive part of Sub-section (2) of Section 204 that "the judgment of the Collector shall be final" is concerned, it is obvious that there would be repugnancy if the word "Collector" there were to include a Deputy Collector exercising the powers of a Collector. In applying the test of repugnancy to the proviso to Sub-section (2) it is to be borne in mind that there is a distinction between a Deputy Collector empowered to try suits and a Deputy Collector empowered to hear appeals. Section 193 of the Act provides that all suits referred to therein shall be cognizable by "the Collector." In exercise of the power conferred by Section 3(4)(a) the Local Government may empower a Deputy Collector in a particular district to try suits. In exercise of the same power the Local Government may empower another Deputy Collector in the same district to hear appeals. The functions of the two Deputy Collectors are quite different. If this distinction be kept in view, the proviso to Sub-section (2) of Section 204 may be thus read "an appeal shall lie from the judgment of a Deputy Collector empowered to try suits to a Deputy Collector empowered to hear appeals."

14. In that case there will be no repugnancy. It is next suggested that the Collector had no power to transfer the appeal to the Deputy Collector. It is true there is no express provision in the Orissa Tenancy Act authorising the Collector to transfer an appeal from his file to a Deputy Collector with appellate powers. But on general-principles it cannot be denied that where there are different Courts having concurrent jurisdiction in the same district to try suits or hear appeals under the Orissa Tenancy Act, the Collector as the administrative head of the district has power to distribute business between the different Courts. If in his district there is a Deputy Collector empowered to hear appeals u/s 204(2) of the Act, he may either himself hear an appeal or transfer it to the file of the Deputy Collector having appellate powers. As Collector, he has power to hear all appeals u/s 204(2).

15. The Deputy Collector with appellate powers may also hear appeals. Who is to decide which appeals are to be heard by whom? Certainly the Collector. He has, therefore, full power to transfer any appeal or appeals to the Deputy Collector. The fact that in the present case the Deputy Collector in question was vested with appellate powers subsequent to the filing of the appeal makes no difference. In my opinion, therefore, the Deputy-Collector in question had power to hear the appeal. On the merits I have nothing to add to what my learned brother has said.

16. I accordingly agree that the application should be dismissed, but in the circumstances without costs.