

(1959) 06 GAU CK 0009
In the Gauhati High Court
Case No : Second Appeal No. 137 of 1958

Jatinga Valley Tea Co. Ltd.

APPELLANT

Vs

State of Assam and Another

RESPONDENT

Date of Decision : 15-06-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Northern India Ferries Act, 1878 — Section 13, 14, 15, 20, 25

Citation : (1959) 06 GAU CK 0009

Hon'ble Judges : G. Mehrotra, J

Bench : Single Bench

Advocate : P. Choudhury, for the Appellant; M.C. Pathak and N.M. Lahiri, for the Respondent

Final Decision : Allowed

Judgement

G. Mehrotra, J.

1.The Appellant is a limited liability company incorporated in England carrying on business of tea plantation and industry at Koomber and Larsingah in Cachar and the Appellant is the owner of the Koomber Tea Estate and Larsingah Tea Estate in Cachar. The ferry across the Barak river at Sadarghat is a public ferry. The town of Silchar on the left side and Rangpur village is on the right side of the Barak river and the two places are connected by the aforesaid ferry and through the Silchar-Kumbhirgram P.W.D. road. Sri Amir Singh Respondent No. 2 who was Defendant No. 2 in the Court below is the lessee on behalf of the State Government to collect toll in respect of the said ferry. Further down the river from the Silchar-Kumbhirgram road, there is the Silchar Sadarghat Steamer Station and Coal Dump.

The said steamer station is being used by the Joint Steamer Companies as a station for loading and unloading goods. The Plaintiff-Appellant and many other persons residing or carrying on business on the eastern and northern bank of the river Barak have been using the road for carrying goods to and from steamers

and flats moored at the Sadarghat Steamer Station in order to relieve the pressure of civil traffic crossing the river during the war. Defendant No. 2 the lessee on behalf of the State Government demanded from the Plaintiff-Appellant toll for every vehicle which passes over the said road on the ground that the Plaintiff-Appellant was using the approach to or landing place of a public ferry.

This right was repudiated by the Plaintiff-Appellant, but a sum of Rs. 4595/3/- was in fact realised by the Defendant from the Plaintiff. On 7-7-1952 the Plaintiff gave a notice u/s 80 of the CPC to the Deputy Commissioner, Cachar as Collector of the District which was delivered to him on 4-8-1952. On these facts the present suit was filed against the State of Assam and Amir Singh, the lessee, for a declaration of the Plaintiff's right to use the said road from and to Silchar Sadarghat Steamer Station and Coal Dump without paying any toll, and for an injunction restraining the State of Assam and its lessee from collecting any toll for user of the said road, and further for refund of a sum of Rs. 4505/13/- the toll realised illegally from him. The suit was defended by both the Defendants.

2. The points raised, inter alia, were that the suit was barred by limitation and by Section 34 of the Northern India Ferries Act. It was further contended that u/s 14 of the Northern India Ferries Act, the Plaintiff was liable to pay toll-tax as he used the approach road. The trial court held in favour of the Plaintiff on the issues relating to limitation and the bar of the suit u/s 34 of the Northern India Ferries Act. As regards the right of the Defendants to demand toll, the trial Court held that the Defendants could claim toll from those who used the approach road, but the sign-board was placed at an unreasonable distance from the top of the river bank indicating that the approach extended up to that place.

The Court could fix the reasonable extent of the approach and he declared that the Plaintiff was not liable to pay toll for using the portion of the Silchar-Kumbhirgram road for going to the coal dump and to the steamer ghat station by side tracking the Silchar-Kumbhirgram road so long there will be 30 to 25 feet distance from the side track of the Plaintiff to the top of the river bank where the ferry boat comes. He also decreed for refund of the amount of toll already paid to Defendant No. 2. The effect of his judgment was that he fixed the length of the approach to be 25 or 30 feet, from the bank of the river. On appeal by the two sets of the Defendants, the Additional Judge allowed the appeal and set aside the judgment of the trial court and dismissed the suit.

The present appeal has been filed on behalf of the Plaintiff challenging the correctness of the decision of the lower appellate Court. It should be pointed out that on the question of limitation and the bar of Section 34 of the Northern India Ferries Act, pleaded by the Defendants, the Additional District judge on appeal agreed with the decision of the trial Court and held that the suit was not barred by limitation and under the provisions of Section 34 of the Northern India Ferries Act. On merits it was held by him that the courts could not fix the limit of the approach, and once the approach had been fixed by the State Government, the Plaintiff who used a part of the approach road, was liable u/s 14 of the Northern

India Ferries Act, to pay the same toll as was payable by persons crossing the river. The Additional District Judge has remarked

that it was admitted by the parties that a portion of the Silchar-Kumbhirgram P.W.D. road measuring about 200 feet from the top of the river bank towards the east has been made the ferry approach by the Defendants. On this admission he was of opinion that the main question which arose for consideration was whether the Defendants could include the portion of the Silchar-Kumbhirgram P.W.D. road beyond the point from which the road to coal dump towards the north extends.

According to him the question was whether the Defendants have a right to include a portion of the P.W.D. road beyond the point of juncture of the Silchar-Kumbhirgram and the Silchar Sadarghat steamer station and coal dump road. Having thus formulated the question, he has answered it by holding as follows:

The plaint read as a whole, only goes to show that the Plaintiff wants a declaration that as that portion of the Silchar-Kumbhirgram road claimed by the Defendants as the ferry approach is a public highway the Defendant No. 2 has no right of realising toll in respect of the user of the said public highway. Here again, the Plaintiff has taken a self contradictory position. Mr. Dutta has further conceded that a reasonable portion of the public highway may be used as ferry approach and as a matter of fact, the cross objection filed by the Plaintiff is directed only against the unduly long ferry approach allowed by the Subordinate Judge.... In my view as well, there cannot be any bar in making the ferry approach on the public highway. The Government has always been doing this without any interruption or objection so far as the ferry crossing in dispute is concerned.

Having held thus he then says that the question what will be the reasonableness of the length of the ferry approach, is a matter which cannot be decided by a court. At another place in the judgment he further commented

that a portion of any public road may be used by the Government as ferry approach. There is no bar to this and the limit also can be fixed by the Government.

3. The question to my mind is not whether a part of a public highway can be made an approach road by the Government. The real question, to my mind, is if a member of the public or an individual has some right over a public highway, whether of egress or ingress, or using it as a way, can such a right be cut down by merely declaring such a highway as a ferry approach. The question to be considered will be whether by merely declaring a particular way or land as ferry approach, the rights of the owners of that land to use it for their own purposes, or the right of the public, to use it as a public highway can be curtailed. The necessary consequences of accepting the contention of the Respondents will be that if the land has been declared to be a ferry approach any person who even trespasses upon that land will be liable to pay the toll payable for crossing the river by the ferry u/s 14 of the Northern India Ferries Act.

4. It is necessary to refer to some of the provisions of the Act to appreciate the argument of the parties. Section 3 of the Northern India Ferries Act provides that in this Act the word "ferry" includes also a bridge of boats, pontoons or rafts, a swing bridge, a flying-bridge and a temporary bridge, and the approaches to, and landing-places of, a ferry. Section 4 Clause (d) gives power to the State Government from time to time to define the limits of any public ferry. Every such declaration, establishment, definition, change or discontinuance shall be made by notification in the official gazette.

Section 8 then provides that the tools of any public ferry may, from time to time be let by public auction for a term not exceeding five years with the approval of the Commissioner, or by public auction, or otherwise than by public auction, for any term with the previous sanction of the Provincial Government. Section 13 then prohibits the establishment, maintenance or working a ferry to or from any point within a distance of two miles from the limits of a public ferry. The proviso to Section 13, however, lays down that it will not apply to boats which do not ply for hire. Section 14 lays down that whoever uses the approach to or landing-place of, public ferry is liable to pay the toll payable for crossing such ferry.

Section 15 provides that tolls according to such rates as are, from time to time, fixed by the State Government, shall be levied on all persons, animals, vehicles and other things crossing any river by a public ferry and not employed or transmitted on the public service. Section 25 lays down that every person crossing by any public ferry, or using the approach to, or landing place thereof, who refuses to pay the proper toll, and every person who with intent to avoid payment of such toll, fraudulently or forcibly chases by any such ferry without paying the toll, shall be punishable with fine which may extend to fifty rupees. Section 20 then provides that the tolls charged at such ferries shall be within prohibited limits.

5. Two points have been urged by the counsel for the Appellant before me. Firstly, he contends that the word "ferry" in this Act has been given an extended meaning so as to include the approach to a ferry. Section 4 gives power to the State Government to define the limits of any public ferry, and it is in exercise of this power that the State Government fixes the approach. It is not a matter which will depend upon the mutual agreement between the Government and the lessee to fix the extent of the ferry approach; as the ferry approach forms part of the ferry itself, the extent of the approach will also be specified by fixing the limit of the ferry u/s 4(d).

The limit, it is contended, is to be fixed by a notification in the official gazette. In the present case it is contended that no notification in the official gazette has been pointed out or has been placed on the record to show that the limits of this ferry included the portion of the P.W.D. road. In the absence of any such proof, it is not open to the lessee to claim any toll from the Appellant. It is true that the extent of the approach cannot be fixed by mutual agreement between the lessee and the Government, it can only be fixed by a notification in the official gazette

fixing the limit of the ferry itself.

But in the present case as has been pointed out by the lower appellate court, it was admitted by the parties that the portion of the Silchar-Kumbhirg-ram P.W.D. road measuring about 200 feet from the top of the river bank, has been made a ferry approach by the Defendants. In view of this admission, it may be that no notification was filed. This court, therefore, in second appeal, cannot permit the Appellant to go back upon that admission and now urge that the disputed way was not declared a ferry approach by means of any notification in the official gazette.

6. The next question will be as to how far declaration of a land as a ferry approach will affect the rights of the public to use the way as a public highway. It cannot be seriously contended that by merely declaring a particular land as approach to the ferry, the rights of the public or an individual over and in the land can be taken away or destroyed. But the contention of the opposite party is that by enacting Section 14, what has been done is not destroying the rights of the public to use it as a highway or of an individual over it. But it has been made subject to the payment of the toll which would be payable by persons crossing the river by the ferry. If the law which makes the exercise of such right subject to the toll is not ultra vires otherwise, it cannot be said that it will be unenforceable.

7. Ferry is a liberty by prescription, or the King's grant, to have a boat for passage upon a river for carriage of horses and men for reasonable toll. The ferry exists in connection with the use of a right of way, and as an incidence of franchise of ferry, the owner has the right to demand and receive tolls. The main question to be considered is what is the scope and ambit of Section 14 of the Act. According to the Respondents the words "whoever uses the approach" are of widest amplitude and cover any act of trespass over the approach land.

The approach even if it is a part of highway, according to the Respondents, anyone using the approach for carriage of goods will be liable to pay the toll payable for crossing such a ferry. The contention is that in the present case admittedly the Appellant used the part of the approach for carrying coal. If such a wide interpretation is given to the words "whoever uses the approach", the result will be anybody who even walks on the land will be liable to pay toll payable for crossing the ferry. Persons who may be going there for an evening walk occasionally, will also be liable to pay toll. It will be converting a toll into a tax for the use of the land.

If the legislature intended to give such a wide meaning to the word, it could have used more general words and would have expressly laid down that any trespasser on the land declared as approach to the ferry will be liable to pay toll. To my mind the words "whoever uses the approach" mean that the use of the land must be as an approach to a ferry. The land will be used as an approach to a ferry only if it is used for the purpose of crossing the river. The purpose in

enacting Section 14 was to make people who even though they cross on their own boats or do not cross by the ferry boat but by some other boat, will still be liable for toll tax if they utilise the approach to the ferry for the purpose of getting into their own boats, or any boat other than the ferry boat for the purpose of crossing.

Persons who exercise right as a member of the public over the approach land which forms part of the highway, cannot be said to be using the approach land as an approach to a ferry. In construing statutes it should be borne in mind that complete generality is not necessarily to be attributed to the general words. These are to be construed so as to pursue the intent of the makers of the statute, and so as to import all those implied exceptions which arise from a close consideration of the mischiefs sought to be remedied and of the state of the law at the moment when the statute was passed: *In re, Viscountess Rhondda's Claim*, 1922-2 AC 339.

It may be found that a statute although it comprehends all things in the letter, has yet to be expanded as but limited to certain things if effect is given to all its parts or if the system of rights and remedies it purports to regulate is to work smoothly, without confusion or without friction with other well established law or without causes for outrageous consequences. The entire scope and the object of the Act can be looked into in order to ascertain when the intention of the legislature is to give restricted meaning to words of general import.

In the case of *Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate*, it was held by the Supreme Court in interpreting the word "any person" in the definition of the Industrial Disputes Act that the word "any person" has been intended to be given limited meaning having regard to the scope and object of the Act. Section 15 which I have quoted in the earlier part of my judgment, authorises the authorities to fix the toll to be levied on all persons crossing any river by a public ferry. The definition of "ferry" has been enlarged so as to include the approach to the ferry also.

The ferry owner does not occupy the highway, or the river but has merely a right to make a special use of it. (*R.v. Nicholson* (1810) 12 East 330).

8 Considering the statute as a whole it will be clear that the purpose of levying toll-tax is to create monopoly in favour of the ferry owner to realise toll from persons intending to cross the river. Persons who only trespass upon the approach land or pass through it cannot be said to have any intention to cross the river.

9. Mr. Chowdhury who appears for the Appellant relied upon the case of *Chairman, Midnapore District Board Vs. Monmotha Nath Mondal and Others*, in this case the Chairman of the District Board of 24-Parganas and the Chairman of the District Board of Midnapore defended a suit brought by the proprietors of two plots of land restraining them from discharging the passengers and the cargo of their ferry boats on the said lands. The suit was dismissed by the trial court, but

on appeal it was decreed. The main contention on behalf of the Defendants was that as the ferry was a public ferry, the owners of the ferry had a right to land passengers on Plaintiffs' private land. It was observed as follows:

When the Crown grants a ferry and purports to declare the limits within which it is to run, the termini must be on places over which the public may have the right to embark or disembark. Legislature has not expressed in the Act any intention to convert all lands within such limits into highways. Such conversion would, in effect, amount to confiscation of private property without a corresponding award of compensation and would be tantamount to a declaration in favour of the public of an incorporeal hereditament over private property over which no such right accrued under the ordinary laws of the land. Such words as are contained either in the definition of ferry or the defining of the limits do not express any intention of taking away rights of private individuals or vesting any right in the public.

The land, if it is to be converted into a highway, has to be converted, under the law as it stands either by obtaining a dedication absolute or restricted or by acquisition voluntary or compulsory. By merely calling a piece of land a ferry or a landing stage the Legislature cannot be taken to have affected private rights of individuals. The notification u/s 6 therefore, the whole scope of which is to define the limits of the ferry, taken along with the definition of ferry as including a landing stage does not confer any right on the owner of a ferry to embark or disembark the passengers and cargo of the ferry so long as the lands to be used as landing stages have not been made into highways by such means as the law allows.

10. This case is an authority for the proposition that the declaration of a land as approach to the ferry does not confer any right on the ferry owner to use it in a manner so as to affect the private right of a person over the land and to create a public right to use it as a highway. This case does not apply to the facts of the present case. The claim of the ferry owner is not as against the owner of the land and no particular right is claimed in the land. His contention is that under the provisions of Section 14 any person using the approach will have to pay the toll payable by a person crossing the river. But the contention, if accepted, will no doubt have the effect of restricting the use of the approach land as a public highway by persons who have acquired such a right over the said land. Thus the fixing of the limit of the ferry and notifying the land as an approach to the ferry does restrict the right of a member of the public to use it as a highway which right otherwise he possesses.

11. The next case relied upon is the case of *Jaladhar Bhattacharjya v. Subal Chandra* 41 CWN 1348. The Petitioner in this case was convicted under Sections 25 and 26 of the Indian Ferries Act, the case against the Petitioner being that he had transported a wagon load of cement by boat from the ghat of the public ferry near the Railway goods shed to the town bank or the river Surma, using hired coolies. u/s 25 of the Indian Ferries Act, which I have already quoted, any person

using the approach to, or landing place thereof, who refuses to pay the proper toll shall be punishable.

It was held by the Calcutta High Court that the person could not be convicted inasmuch as the Ghat which he used is the Ghat of the Railway Authorities from which goods arriving at the Station could be taken in boats by any member of the public and in using it to take his own goods in his own boat from the Ghat, the accused was not using the ferry Ghat so as to render himself liable to the payment of toll. u/s 25 as has been pointed out even the use of the ghat without paying toll has been made an offence and it was held that as the Petitioner carried his own goods on his own boat, although he used the ghat which formed part of an approach land, he was held not guilty.

12. The Respondent in support of his contention relied upon the cases of *East Riding of Yorkshire County Council v. Selby Bridge Co.* 1925 1 CHN 841 and *A.N. Robinson v. Balmain New Ferry Co. Ltd.* 1910 AC 295. In the first case the facts were that before 1791 the Selby Bridge Act was passed. After reciting that the building of a bridge near the ferry would be of great public utility, and that the persons named were willing to build a bridge at their own expense and to compensate the owner of the ferry rights, the Act authorised the incorporation of the said persons as the Company of Proprietors of Selby Bridge, empowered then to build a bridge near the ferry with proper approaches, which were to all intents and purposes to be considered part of the bridge, and to charge tolls to all persons crossing the bridge. Under the Act the ferry rights and the soil of the approaches were vested in the company.

The company claimed that the approaches were their private property and that without their permission no one was entitled to be on them except for the purpose of crossing the bridge. Their contention was repelled and it was held that the Plaintiff being owners of the land adjoining an approach and all others lawfully entering or leaving the land are entitled to free use over the approach. This case, to my mind, does not support the contention of the Respondents. The argument of the counsel for the Respondent was that this case creates an exception only in favour of the owners of the adjoining land, otherwise no other person has a right to use the approach land, and the user by a member of the public will be subject to the right of the owner of the ferry to charge toll. I do not think that this case is of any assistance to the Respondent.

13. The Respondent in that case had by a lawful regulation provided that one penny had to be paid by all persons entering the wharf to the officer at the entry turnstile and by all persons leaving the wharf to the officer at the exit turnstile. No further charge was made for the use of the ferry. The Appellant entered the wharf by the entry turnstile with the intention of crossing to the other side of the river by paying one penny to the officer of the Respondents in charge of the entry turnstile. He, however, before crossing changed his mind and came out without crossing the river.

He was resisted from coming out without paying one penny charge. Thereafter he brought a suit for damages for assault and false imprisonment. It was held that a reasonable toll was fixed and any attempt not to pay the toll could be resisted forcibly by the Respondent. There the Petitioner had entered the wharf with the contract with the company to cross the river and if he changed his mind without any breach of the contract on the part of the company, he could not refuse to pay the exit toll.

14. In this case it could not be said and was not urged that the entry to the wharf was not with the intention of crossing the river, but only in "the exercise of his rights as a member of public. This case, therefore, has no application to the facts of the present case. In my opinion, therefore, as the Petitioner did not use the part of the approach land with the intention of crossing the river, it is not the user of the approach as contemplated u/s 14 which will make him liable to pay the toll. The Petitioner as a member of the public has a right to use the public highway and if he intended to use it for the purpose of crossing the river he will have to pay toll irrespective of the fact whether he crossed the river by the ferry boat or by any other means, Mere user of the highway as a member of the public will not make him liable to pay toll u/s 14 of the Act.

It was contended by the counsel for the Respondent that a huge sum was paid by the lessee on the understanding that he will be in a position to realise toll from persons who used the approach though not with a view to cross the river and as such they could not be deprived of the right to collect the same. In my opinion, that is no consideration for interpreting the provisions of Section 14 of the Act. If the contract was taken on some misunderstanding the lessee Respondent may have his remedy against the State lessor. But in the present suit the rights and liabilities of the lessor and the lessee inter se cannot be considered.

15. In the result, I would allow this appeal and set aside the decision of the Court below and decree the suit with costs.

16. Leave to file Letters Patent Appeal is granted.