

(1962) 11 GAU CK 0001
In the Gauhati High Court
Case No : Civil Revision No. 58 of 1961

Jyotish Chandra Nath and Another

APPELLANT

Vs

Ejdani Mea Majumdar and Others

RESPONDENT

Date of Decision : 14-11-1962

Acts Referred:

Assam Adhiars Protection and Regulation Act, 1948 — Section 2, 3, 5
Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226, 227

Citation : (1962) 11 GAU CK 0001

Hon'ble Judges : G. Mehrotra, C.J.; S.K. Dutta, J.; C.S. Nayudu, J

Bench : Full Bench

Advocate : S.K. Ghose and K.P. Bhattacharjee, for the Appellant; J.C. Medhi and A.M. Majumdar, for the Respondent

Final Decision : Allowed

Judgement

G. Mehrotra, C.J.—This is a petition under Article 227 of the Constitution of India and Section 115 of the CPC against an order of the Additional Subordinate Judge, Cachar,, in proceedings arising out of the Assam Adhiars Protection and Regulation Act, 1948, hereinafter called "the Act".

2. The facts relevant for the decision of the case are that the present Petitioners made an application u/s 5 of the Act for ejectment of the opposite parties on the allegation that they were adhiars as defined" under the Act and that they failed to carry out, the terms of the agreement and that their case is covered by the provisions of Section 5 of the Act and thus they should be ejected from the land. The matter went up before the Adhiar Board. The Adhiar Board upheld the contention of the present Petitioners and ordered ejectment of the opposite parties. When the matter came up before the Additional Subordinate! Judge in appeal, he came to the conclusion .that the Board has not properly decided the fact that the, opposite. parties were adhiars, and, as on the interpretation of the agreement between the. parties. the Subordinate Judge was of opinion that the

opposite parties were not adhiars, he held that: the Board had no jurisdiction to deal with this matter and, in this view of the matter, he allowed the appeal set aside the order of the Adhiar Board. He, however, observed that as in his opinion the opposite parties were not adhiars and the Adhiar Board had no jurisdiction, it was not necessary for him to go into other matters raised by the opposite parties in the proceedings. It is against this order that the present petition has been filed under Article 227 of the Constitution. When the matter came up before me sitting singly, a point was taken, by the learned Counsel for the opposite parties that no petition under Article 227 of the Constitution is maintainable. As it was considered that the point raised is of some importance, the matter was referred to a Special Bench. It is under these circumstances that the present Bench has been constituted.

3. The contention raised by the learned Counsel for the Petitioners is that as the jurisdiction of the Adhiar Board and the appellate authority depended upon the existence of the fact that the opposite parties were adhiars, the question whether the opposite parties were adhiars or not was a jurisdictional fact and any decision by the Courts below on this question is examinable by this Court under Article 227 of the Constitution. If on examination of this question this Court is of opinion that the decision is erroneous, then the Courts below exercised their powers without any jurisdiction and the decision will be without jurisdiction and this Court can under Article 227 of the Constitution interfere with that decision. Then it is contended by the Petitioners that the decision of the Court below that on the plain interpretation of the agreement the opposite parties were not adhiars of the present Petitioners is erroneous. The opposite parties have raised a preliminary point and have contended that the decision that the opposite parties were not adhiars is a decision which was within the jurisdiction of the Additional Subordinate Judge and any decision thus given by the Additional Subordinate Judge on this point howsoever erroneous it may be cannot be interfered with by this Court under Article 227 of the Constitution. The point, whether the opposite parties are adhiars or not cannot be regarded as a jurisdictional point and any decision given by the Courts below on that point will be final and not examinable by this Court under Article 227 of the Constitution. It is further contended that even if Article 227 of the Constitution is attracted and this Court can examine the judicial orders also, it is not a case where this Court will exercise its powers under Article 227 of the Constitution.

It is further urged that on the merits the interpretation of the agreement by the Court below is perfectly correct and thus it does not call for any interference by this Court under Article 227 of the Constitution. The Petitioners have urged that the decision that the opposite parties are adhiars is concluded by an earlier decision of the Civil Court and that was binding on the Adhiar Board as well as the Additional Subordinate Judge. The opposite parties have contended that the decision by the Civil Court will not constitute *res judicata* and is not binding on the Adhiar Board. They have further contended that even if the question of *res judicata* is available to the Petitioners, it is not a jurisdictional matter and any

decision by the Court below on the point is not examinable.

4. Before we examine the respective contentions of the parties, it is necessary to dispose of the contention raised by the learned Counsel for the opposite parties that in view of a Full Bench decision of this Court, reported in *Jagat Chandra v. Gopalram Das*, AIR 1952 Gau 166, this Bench is precluded from going into this question. No doubt in the Full Bench decision the facts were more or less similar and in that case also the Deputy Commissioner had held that the opposite party was an adhiar and the point was raised. But in our opinion, there is no bar to this Bench examining the correctness of that decision. The contention is that that was a decision by a Full Bench while this is a Special Bench constituted under the rules of this Court, and, as this point has not been expressly referred to the Special Bench as to whether the Full Bench decision is correct or not, the Special Bench is bound by that decision. We do not think that there is any force in this contention. The Full Bench decision was given by a Bench consisting of three learned Judges of this Court. The decision by the three learned judges of this Court will certainly be a binding authority on a Division Bench, but a Bench consisting of three other learned Judges of this Court is not bound by that decision though that decision is entitled to great respect and the question can be examined by this Bench apart from the decision of the Full Bench. We have examined the decision of the Full Bench and in our opinion the points raised before us do not appear to have been canvassed before the Full Bench at that stage nor have those aspects been examined by the Full Bench. The Full Bench has only held that even if the decision by the Court below was incorrect, as the Court below was competent to go into that question the decision cannot be said to be without jurisdiction and is not examinable by this Court under Article 227 of the Constitution. With respect to the learned Judges who decided that case, we are of opinion that the point that if there is any erroneous decision on a jurisdictional point that is not conclusive and is examinable by this Court under Article 227 of the Constitution was not considered by the Full Bench, and, thus, in our opinion, we are not bound by that decision. We do not agree with the decision of the Full Bench referred to above.

5. The scope of the power of this Court to interfere under Article 226 of the Constitution has been laid down by their Lordships of the Supreme Court. The power has no doubt to be sparingly exercised when the Subordinate Court or the tribunal has gone beyond its bounds. It also cannot be disputed that under Article 227 of the Constitution this Court has got jurisdiction to interfere with the decision of a Court or any tribunal having quasi-judicial powers; if the Court or the tribunal has gone beyond its jurisdiction or in the exercise of its jurisdiction has violated any principles of natural justice or has committed any manifest error of law. It is not necessary for us to consider as to what will be considered to be a manifest error of law. This Court has got, in our opinion, ample jurisdiction under Article 227 of the Constitution to interfere with the order of the Subordinate Court or tribunal if, in our opinion, the Court below or the tribunal either has gone beyond its bounds or has failed to exercise the jurisdiction

vested in it.

In connection with the powers of this Court under Article 226 of the Constitution, the matter has been considered in numerous decisions of the Supreme Court and it is necessary to refer to some of the cases relied upon by the learned Counsel for the opposite parties. Dr. Medhi has referred to the case of Ebrahim Aboobakar and Another Vs. Custodian General of Evacuee Property, That case dealt with the powers of the High Court under Article 226 of the Constitution, but the principles enunciated in that case, will apply with equal force to the powers of this Court under Article 227 of the Constitution. The observations of Lord Esher, M. R., in Reg. v. Income Tax Commissioner, (1888) 21 2BD 313, have become classic and have been quoted in almost all the decisions by the Supreme Court and various other High Courts on that point. It will be apposite to refer to that observation:

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 with-, out 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 docs 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 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....

6. This observation will clearly show that when a tribunal of a limited jurisdiction is created, it is for the legislature which creates such a tribunal to lay down the ambit and scope of its jurisdiction. If the legislature only lays down that the jurisdiction, of such a tribunal will depend upon an existence of certain facts, then any decision by that tribunal with regard to the existence or nonexistence of those facts cannot be conclusive and it cannot be said that the decision of that tribunal is not amenable to the jurisdiction of this Court Under Article 227 of the Constitution. If, however, the legislature, which has created that tribunal of limited jurisdiction, lays down that the tribunal will not only have jurisdiction to decide the controversy between the parties but further to decide whether the conditions on which the jurisdiction of the tribunal depends do or do not exist,

then in that case the decision of that tribunal will be conclusive on that point and this Court cannot say that in wrongly deciding that point the tribunal has gone beyond its jurisdiction and thus the decision is amenable to the jurisdiction of this Court under Article 227 of the Constitution. Each case will thus depend upon its own facts and it will have to be ascertained from the scheme of the Act under which the tribunal has been created to find out as to whether the tribunal comes under the first class of case as laid down by the learned Master of the Rolls or the second class.

Dr. Medhi has very strongly contended that the present tribunal comes under the second class classified by the Master of the Rolls and not the first class. In order to ascertain this point we will have to refer to the provisions of the statute. The Assam Adhars Protection and Regulation Act is no doubt a special Act creating special tribunal" and conferring certain jurisdiction on the tribunal to decide certain matters. The Adhar Conciliation Board has been created under the said Act. Section 3 of the Act only says that an adhar unless his case is covered by Section 5 of the Act is entitled to remain in possession of the land. It only means that the landlord has got a right to apply to the Board or the tribunal constituted under the Act for ejectment of an adhar if certain conditions laid down in Section 5 exist. The jurisdiction of the tribunal thus to entertain an application for ejectment of the adhar will" only depend upon the existence of the fact whether the opposite party is or is not an adhar. In our opinion, thus the fact whether a person against whom an application has been rule u/s 5 is or is not an adhar is a jurisdictional fact. It is a state of circumstance on the existence of which the jurisdiction of the tribunal depends. There can thus be no dispute that the question whether the opposite parties are adhars or not is a jurisdictional fact. The only question which calls for determination is whether it could be said on the interpretation of the language of the Act that the decision of this fact has been entrusted to that tribunal. We do not find anything in Section 5 or other sections of the Act which will show that any such power has been entrusted to the Adhar Board.

Dr. Medhi has put forward two-fold arguments on this point. His first contention is that unless in the statute one finds certain limiting words, the power having been given in the widest terms there is no reason to hold that such a power has been excluded and the proper interpretation thus of Section 5 will be that the power has been given to the Adhar Board not only to decide the controversy and the conditions on which he could give relief to the landlord u/s 5 but also to decide the question as to whether the opposite parties are or are not adhars. His further contention is that if the finding is that on the terms of the statute no such power has been given to the Board, in that case the Adhar Board itself had no jurisdiction to proceed with this matter and thus the decision, of the appellate authority cannot be said to be erroneous. His contention in short, therefore, is that in any view of the matter, the decision of the Additional Subordinate judge cannot be said to be without jurisdiction. He has placed some argument on the language of Section of the Act which gives a right of appeal which we shall deal

later on. It is sufficient to point out that there is nothing in the observations of the Master of the Rolls or in other cases of the Supreme Court that if there are no express words limiting the powers, it should necessarily follow that such a power has been conferred. When Section 5 opens with these words that subject to the provisions of Section 2, an Adhiar Conciliation Board may on application of a landlord and after due notice and necessary enquiry, as may be prescribed, order an adhiar on the grounds given below to cease to cultivate an adhiar land and to evict there from, it necessarily follows that the express jurisdiction which has been conferred on the Adhiar Board is to decide this matter (sic) the controversy which comes within the ambit and scope of Section 5 and not the existence or non-existence of the condition precedent on which the jurisdiction of the Adhiar Board itself depends. The question whether the Adhiar Board in this case is or is not to decide or will en" will not decide before taking up the proceedings is not a point which requires any consideration in this case.

The only question is that if the power" has not been expressly conferred, any decision taken by the Adhiar Board or the appellate authority which has got Co-extensive power with that of the Adhiar Board is examinable by this Court under Article 227 of the Constitution and if on the examination of that finding this Court is of opinion that the finding is erroneous, there is no bar to this Court saying to the appellate Court that as you have erroneously held that the Adhiar Board had no jurisdiction, you have failed to exercise the jurisdiction which law vests in you. The law gives power to the Subordinate Judge to hear an appeal from the decision of the Adhiar Board and if the Subordinate Judge erroneously says that the Adhiar Board had no jurisdiction to go into the matter and thus he has no jurisdiction to hear the appeal and go into the merits of the case, in our opinion, we have got ample jurisdiction under Article 227 of the Constitution to say to the Subordinate Judge that his decision on the question as to whether the opposite parties are or are not adhiars is erroneous and thus he has failed to exercise the jurisdiction which vests in him under the law.

The fallacy, if I may say so, in the argument of Dr. Medhi is that he thinks that the only power of this Court under Article 227 of the Constitution is to interfere with the order if the Courts below say that they have got jurisdiction although they do not have any jurisdiction, and in cases where they have failed to exercise jurisdiction which is vested in them under the law, such cases are not examinable by this Court under Article 227 of the Constitution. We do not think that such a contention is available to him. On the interpretation of the provisions of the Act and having regard to the entire scheme of the Act, we think that the present case is covered by the first class of the cases referred to by the Master of the Rolls and in that view of the matter, in our opinion, the decision of the Court below is erroneous on the jurisdictional question and we can interfere under Article 227 of the Constitution.

7. It will not be out of place to refer to a Division Bench decision of this Court reported in AIR 960 Gau 59. That was a case where the Adhiar Board had held

that a person was an adhiar and thus had ordered his ejectment. The adhiar brought a suit for declaration that as he was not an adhiar that decision was without jurisdiction. The matter came up before the learned Single Judge of this Court and he was of opinion that the Adhiar Board had jurisdiction not only to decide the controversy but also to decide conclusively whether the tenant was or was not an adhiar and the decision of the Adhiar Board cannot be said to be without jurisdiction such as to call for an interference under Article 227 of the Constitution. The decision of the learned Single Judge was set aside by a Bench on letters patent appeal. It was observed by the Bench of this Court that the status of a person was a condition precedent for the exercise of the jurisdiction by the Adhiar Board and as such any decision on the status was within the competence of the Civil Court and at any rate the decision by the Adhiar Board cannot be conclusive and (the Civil Court can entertain a suit.

It will be apposite to refer to the observations made by the Bench at page 62 of the report:

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 (by amendment the Revenue Officer was substituted by Adhiar Board) 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.

8. This passage clearly shows that even the learned Single Judge was of opinion that if the Revenue Officer had wrongly assumed jurisdiction, then in that case his decision was examinable by this Court under Article 227 of the Constitution. I am referring to this passage as Justice Ram Labara was one of the parties to the Full Bench on which reliance is placed by the opposite parties and the other learned Judge who was in the Full Bench was Deka, J., who is also a party to the Bench decision. This decision has further said that such a case falls in the first class of cases enumerated by the Master of the Rolls and not the second class. In our opinion, thus there is no bar to this Court to examine the correctness or otherwise of the decision of the Additional Subordinate judge on the question whether the opposite parties were or were not adhiars.

Dr. Medhi has strongly relied upon the Supreme Court decision which I have

already referred in the earlier part of my judgment. His contention is that in that case the argument advanced by the Petitioner that the appellate authority had no power to dispose of that matter was repelled and it was held by the Supreme Court that the appellate authority was created in words of the widest amplitude of power and there were no limiting words and thus it could not be said that the decision by the appellate authority was without jurisdiction. We do not think that that principle can be applied to the facts of the present case. The powers of the appellate authority can only be co-extensive with the powers of the Adhiar Board, and, if, in our opinion, the Adhiar Board itself could not conclusively determine the question as to whether the opposite party was or was not an adhiar, the argument cannot be accepted that the appellate authority's decision on the question whether the tenant was or was not an adhiar is conclusive and binding upon us and that we cannot interfere with that decision. As I have already pointed out the jurisdiction of the appellate Court itself depends upon the proper order being passed by the Adhiar Board and if the appellate authority says that the (Order?) of the Board itself was without jurisdiction and thus he could not go into the merits, the decision of the appellate authority is on a jurisdictional point and we can interfere under Article 227 of the Constitution.

9. Coming to the merits of the case itself, the contention of Dr. Medhi is that on the terms of the agreement between the parties, his clients cannot be said to be adhiars as defined under the Act. It should be pointed out that although the agreement referred to was only for eight months, it was agreed by the parties that the relationship of the parties is to be regulated by the said agreement and thus it is not necessary for us to go into the question as to what were the specific terms in which the opposite parties were given permission to cultivate the land. A translation of the agreement has been filed by the learned Counsel for the petitioners and the Counsel for the other side does not object to the correctness of the said translation. The relevant portion of the agreement reads as follows:

All those lands measuring 18 Bighas 12 Kat-has and 17 Gandas which are according to measurement by "Paikast Nal" belonging to and in possession of yours in village Narainpur, Parganna Sarash-pur under Police Station and Sub Registration Office Hailakandi, Registration District Cachar in District Cachar, are hereby taken settlement of by us for growing crops by cultivation for a term of eight months only promising that we shall deliver to you 80 1/2 maunds of good sali paddy according to measurement by a "Kathi" of 2 seers powa within the month out of the current year and we shall deliver the same to your house at; our costs and shall take your signed receipt without which we shall not be entitled to take the plea of having delivered paddy. If we fail to give the paddy within the stipulated time we shall be bound to deliver the full quantity of paddy with compensation @ Rs. 4/- per rupee. If we be unable to give paddy then we shall pay Rs. 100/- as the price of the paddy.

It will be convenient to refer to the definition of an adhiar of this State. Section

2, Sub-section (1) defines an adhiar as meaning "a person who under the system generally known, as Adhi (whether Guchiadhi or Guliadhi) barga chuki 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." The contention of Dr. Medhi is that in this agreement what is said is that the tenant will cultivate the land on payment of 80 1/2 maunds of good "Sali" paddy. Nowhere it is said that they are to pay the produce of the land and unless the agreement specifically says that the tenants undertake to pay a part of the produce, it cannot be said that they are adhiars within the meaning of the Act. The contention of Dr. Medhi is that under this agreement, the opposite parties were bound to give to their landlord 80 1/2 maunds of good "Sali" paddy or in default Rs. 100/- in cash irrespective of the fact that they cultivate the land or not and of respective of the fact that they grow sali paddy or any other kind of paddy thus and (sic) it cannot be said that they agreed to give the produce of the land. The words 80 1/2 maunds of good "Sali" paddy will be given in our opinion, only show that the landlord intended that the tenants will grow Sali paddy and a part of the produce will be given to the landlord. It cannot be said that the intention was not to get the part of the produce. In our opinion, therefore the mere fact that a quantity of paddy is specified does not go to show that there was no agreement to the effect that paddy is to be given out of the produce. Reliance is then placed on the subsequent part of the agreement. In fact the Additional Subordinate Judge has relied on the subsequent part of the agreement incoming to the conclusion that the Opposite parties are not adhiars. It is urged that as it provides that: if the tenant (is?) unable to pay the paddy he will be liable to pay Rs. 100/- as the price of the paddy, an option has been given to the tenant to pay it either in cash or in kind and thus if such an option is given, it cannot be said that the tenant was an adhiar within the meaning of the Act. In our opinion, no such option has been given. Under the terms of the agreement the only liability of the tenant is to pay a part of the produce, that is, 80 1/2 maunds of good "Sali" paddy. The clause only says that in the event of the tenant's committing a default in giving the paddy they will have to pay the price of the paddy which had been assessed under the agreement to be Rs. 100/-. As I have already said, if there be an express agreement that the tenant has an option either to pay in cash or in kind, different considerations may arise. Dr. Medhi has contended that, even though there was a liability to pay 80 1/2 maunds of good "Sali" paddy still it was open to the tenants not to give the paddy but ultimately to pay Rs. 100/-. The option must be embodied in the agreement and should not arise by the unilateral conduct of the tenant himself by not giving the paddy and thus compelling the landlord to accept cash. There is a broad "distinction, in our mind, between the default clause which makes the tenants liable for Use. price of the paddy in the event of their committing default and not paying the paddy in kind and a contract giving option to pay either in cash or in kind. In our opinion, the default clause does not allodia; the substantive portion of the agreement and on the proper interpretation of the agreement the opposite parties were adhiars and thus the Additional Subordinate Judge was not right in holding that the opposite

parties were not adhiars and that he had no jurisdiction to entertain the appeal. His decision being erroneous it must be set aside. In this view of the matter, it is not necessary for us to go into the other point raised by Mr. Ghose that the question whether the opposite parties are or are not adhiars is concluded by the decision of the Civil Court.

10. We accordingly allow this petition with costs which we assess at Rs. 100/- set aside the order of the Additional . Subordinate Judge and send back the case to him for disposal according to law on other matters.

S.K. Dutta, J.

11. I agree.

C.S. Nayudu, J.

12. I agree.