
(1979) 11 DEL CK 0048

In the Delhi High Court

Case No : Letter Patent Appeal No. 134 of 1973

Kundan Lal

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 29-11-1979

Acts Referred:

Citation : (1980) 18 DLT 470 : (1980) RLR 759

Hon'ble Judges : V.S. Deshpande, C.J.; Harish Chandra, J

Bench : Division Bench

Advocate : D.D. Chawla, S.L. Bhatia, C.L. Choudhry, B.S.C. Singh and P.R. Bahl, for the Appellant;

Judgement

V.S. Deshpande, C.J.

(1) This Letters Patent Appeal raises the same perennial question of how to distinguish between an error within jurisdiction and an error outside jurisdiction which has defied any general answer and has to be considered on the facts of each case in the light of the law applicable thereto.

(2) The Facts: The acquired evacuee property being house No. 111/395-396 (old), or VI/773/774 (new), Mehrauli, Delhi, is occupied by the appellant, Kundan Lal, as also by respondents 2 and 3, Moti Ram and his wife Rukmani Devi, in separate portions. The appellant, Kundan Lal occupies an area larger than the area occupied by respondents 2 and 3. The area held by the "appellant) Kundan Lal, is an "allotment" within the meaning of the definition given in Section 2(a) of the Administration of Evacuee Property Act, 1950, which definition has been made applicable to the Displaced Persons (Gom, pensation & Rehabilitation) Act, 1954, by Section 2(h) thereof. Serially ,respondent No. 3, Rukmani Devi is the allottee of the portion of the house in which she lives with her husband, respondent No. 2, Moti Ram. The contrast between Moti Ram, on the one hand, and Kundan Lal and Rukmani Devi, on the other hand, is that Moti Ram holds a verified claim which is still not satisfied by way of payment of compensation, but

is not an allottee, while Kundan Lal and Rukmani Devi are allottees, but are no longer claimants.

(3) The property, being valued less than Rs. 10,000.00 , was "ordinarily" to be disposed of by allotment to displaced persons who are in occupation of the property. The allotment has to be made in accordance with Rules 30 & 31 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, which are as below :

"30.Payment of compensation where an acquired evacuee property which is an allotable property, is in occupation of more than one person. If more persons than one holding verified claims are in occupation of any acquired evacuee property which is an allotable property, the property shall be offered to the person whose net compensation is nearest to the value of the property and the other persons may be allotted such other acquired evacuee property which is allotable as may be available. Provided that Explanation 1. -The provisions of the rule shall also apply where some of the persons in occupation of any acquired evacuee property which is an allotable property holds verified claims and some do not hold such claims. "31. Transfer of acquired evacuee property in occupation of displaced persons none of whom holds a verified claim. (1) Where an acquired evacuee property which is an allotable property is in occupation of more than one displaced person none of whom holds a verified claim, the property may be transferred to the displaced person who occupies the largest portion of the property or where two or more such displaced persons occupy a portion of the property which is equal in area, the property may be transferred to the displaced person who has been in occupation of such portion for a longer period. (2)....."

(4) The Managing Officer ordered the allotment to be made to Kundan Lal as he was an allottee in occupation of a larger portion of the property as against Rukmani Devi, who was an allottee of a smaller portion. Moti Ram was not an allottee at all. According to the Managing Officer, Therefore, the rule governing allotment was Rule 31 as between two allottees none of whom was a claimant. This order was reversed in appeal by the Assistant Settlement Commissioner on 3.8.1960, who held that the allotment was to be governed by Rule 30 as between different allottees only one of whom held a verified claim. He recorded Moti Ram as being in occupation of the property by following the administrative instructions which had been issued by Mr. Johnson, the Chief Settlement Commissioner. Mr. Johnson's view was that everyone who was in actual possession of acquired evacuee property was to be regarded as being in occupation of it within the meaning of Rules 30 and 31. Mr. Johnson did not restrict "allotment" to its definition in Section 2(a) of the Administration of Evacuee Property Act, 1950 made applicable to the property held by the parties by Section 2(h) of the Displaced (Persons Compensation & Rehabilitation) Act, 1954. Kundan Lal, Therefore, filed a suit to set aside the impugned order of the Assistant Settlement Commissioner as being without jurisdiction and ultra vires.

He claimed a declaration that he alone was entitled to the allotment being the allottee in possession of the largest area of the property under Rule 31.

(5) The suit was dismissed by the trial court) first appellate court and by the learned single Judge in the second appeal on the ground that the impugned order was given finality by Section 27 of the Act and a suit to set aside the same was barred by Section 27 as also more specially by Section 36 - of the Displaced Persons (Compensation & Rehabilitation) Act. These Sections are as follows :

"27.Finality of orders-Save as otherwise expressly provided in this Act, every order made by any officer or authority under this Act, including a managing corporation, shall be final and shall not be called in question in any court by way of an appeal or revision or in any original suit, application or execution proceeding." 36. Bar of jurisdiction-Save as otherwise provided in this Act, no Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Central Government or any officer or authority appointed under this Act is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken or in pursuance of any power conferred by or under this Act."

(6) The Question The legislative practice in India is that statutes dealing with particular matters authorise administrative and quasi-judicial authorities to act under the statute and provide appellate and revisional remedies under the same statute subject to which orders made under the Act are final and further expressly or impliedly excluding resort to a Civil Suit for the purpose of getting an order under the Act set aside. In *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, , a Full Bench decision which has become a leading case, the case law on this question was reviewed and the effect of the case law was summarised in a series of propositions set out in paragraph 32 of the judgment. We have to consider of these propositions as are applicable to the facts of this case. Propositions (1) and (2), which alone are relevant, are as follows :

"(1)Where the statute gives a finality to the orders of the special tribunals the Civil Court's jurisdiction must be held to be excluded if there is adequate, remedy to do what the Civil Courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. (2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the Civil Court. Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions

about the said right and liability shall be determined the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not."

(7) What is the meaning of the words in proposition (1) "where the provisions of the particular Act have not been complied with?" Originally in *Secretary of State v. Mask & Co.*, (1940) 67 I. A. 222, the Judicial Committee of the Privy Council had observed that "it is also well-settled that that even if jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with." In *Firm and Illuri Subbayya Chetty and Sons Vs. The State of Andhra Pradesh*, , a Full Bench of the Supreme Court considered these words and observed that "these observations, though made in somewhat wide terms, do not justify the assumption that if a decision has been made by a taxing authority under the provisions of the relevant taxing statute, its validity can be challenged by a suit on the ground that it is incorrect on the merits and as such it can be claimed that the provisions of the said statute have not been complied with. Non-compliance with the provisions of the statute to which reference is made by the Privy Council must, we think, be non-compliance with such fundamental provisions of the statute as would make the entire proceedings before the appropriate authority illegal and without jurisdiction."

(8) The same result in law follows by the distinction made by Lord Esher M. R., in *R. v. Special Commissioners of Income Tax*, (1888) 21 Q. B. D. 313, between a pre-existing state of facts, the existence of which is assumed, and on the basis of which authorities acting under a statute are given powers to decide certain other facts. The pre-existing facts are collateral and are, Therefore, jurisdictional facts. They are contrasted with those facts which the authorities are given the exclusive jurisdiction to decide. An error in deciding or interpreting jurisdictional facts or jurisdictional law will- vitiate the whole proceeding and the decision of the administrative authority acting under a statute and will be an error outside jurisdiction. On the other hand, an, error in deciding facts which are within the exclusive jurisdiction of the statutory authorities would be remediable by a direct appeal or revision under the said statute, but not collaterally by w.y of a suit or a writ petition. The word "jurisdiction" some times is used in the narrow sense of initial jurisdiction to enter upon the trial and decision of certain facts. But as pointed out by the House of Lords in *Anisminic Limited v. Foreign Compensation Commission*, (1969) 2 A. C. 147, cited with approval by the Supreme Court in *Union of India (UOI) Vs. Tarachand Gupta and Bros*, , "there are many cases where, although the tribunal had jurisdiction to enter on the enquiry, it has done or failed to do something in the course of the enquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the enquiry or comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question

which was not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on some matter which, under the provisions setting it up, it had no right to take into account." All such decisions would be also without jurisdiction even though initially the Tribunal had the jurisdiction to enter upon the consideration of questions given to it for consideration by the statute.

(9) The latest decision of the Supreme Court analysing the relevant propositions laid down in *Bata Shoe Co. Ltd. Vs. City of Jabalpur Corporation*, . The seven Judge Bench decision in *Kamala Mills Ltd. Vs. State of Bombay*, , was also relied upon therein.

(10) In the light of the law stated in the above decisions of the Supreme Court, we have to ask the question whether the Managing Officer and the Assistant Settlement Commissioner were given the exclusive jurisdiction by the Displaced Persons (Compensation & Rehabilitation) Act, 1954 or by the Rules framed there under to decide the meaning of the word "occupation" as used in Rules 30 and 31. The power given to these Officers was to dispose of acquired evacuee properties by way of allotment. This power is traceable to Section 20(1)(e) of the said Act. there under these Officers are given the power to transfer any acquired evacuee property "by allotment of any such property to a displaced person". Section 20 deals with permanent transfers of such property. The word "allotment" used therein is in the sense of a permanent allotment by transferring the title of the property from the Government to the displaced person. By a curious co-incidence the word "allotment" used in the Act and the Rules bears two different senses. For, under Rules 30 and 31 the permanent allotment u/s 20(1)(e) is itself to be made to displaced persons who are in occupation of the said property.

(11) What is the meaning of "occupation"? Mr. Johnson construed the word so broadly as to include in it all peaceful occupation, whether by any right or merely as a licensee or as a member of the family of the rightful occupier. If Mr. Johnson or the other Officers acting under the Act were given the power to finally decide the meaning of "occupation" as used in Rules 30 and 31, the error in its interpretation committed by them would be an error within jurisdiction, the remedy against which would only be appeals and revisions under the Act and not by way of a separate suit.

(12) The following reasons show that the word "occupation" in Rules 30 and 31 was not used in such a wide sense as to apply to any person who is living on the property, provided that he is not a trespasser. Firstly, the definition of "allotment" in Section 2(a) of the Administration of Evacuee Property Act is as follows :

""allotment" means the grant by a person duly authorised in this behalf of a right to use or occupation of any immovable evacuee property to any other person, but does not include a grant by way of lease."

The word a "allotment" in this definition means occupation as of right.. A person

duly authorised by the Act must grant a right to use to a person before the later can be said to be in occupation of the property. It is clear that this definition can apply only to an allottee like Kundan Lal or Rukmani Devi. It cannot apply to Moti Ram, who is living on the property merely as the husband of Rukmani Devi but has no right of his own to occupy the property.

(13) Secondly, Section 19 of the Act gives power to vary or cancel a lease or allotment to the Managing Officer in the following words: "the managing officer or managing corporation may cancel any allotment or terminate any lease or amend the terms of any lease or allotment under which any evacuee property acquired under this Act is held or occupied by a person". It is significant to note that a person is said to occupy a property under an allotment, while he holds it under a lease. Section 19, Therefore, points to the meaning of "occupation" as being occupation under an allotment.

(14) Thirdly, Rule 22 creates a right in favor of the allottees by requiring that acquired evacuee property below the value of Rs. 10,000.00 "shall ordinarily be allotted". Such a right is not created in favor of all displaced persons whether or not living on the property. It is created only in favor of such displaced persons as are in occupation of the property. If the word "occupation" were to be so widely construed as to include every person living on the property, all the members of the families of the allottees would be included in it. The language of Rules 30 and 31 does not show that members of the families of the allottees were to be considered as being in occupation. If they are included, then it would be impossible to know who is in possession of the largest portion of the property. The same portion of the property would also be occupied by the whole family and one would not know who is occupying how much. Further, there must be some reason why the right of being allotted the property exists in favor of the displaced persons occupying the property. The only reason can be that already the property has been allotted in the sense of Section 2(a) of the Administration of Evacuee Property Act, 1950 to persons who are Therefore, to be considered as occupying the property. It is for this reason that the word "occupation" can apply only to "occupation" of allottees but not of all the members of their families. We are fortified in this view by the Full Bench decision of the Punjab High Court in *Smt. Jamna Bai v. Union of India*, (1965) 67 P. L. R. 394.

(15) If the meaning of "allotment" and, Therefore, of "occupation" is defined by the above provisions of the Act and the Rules, then it is clear that" officers acting under the Act were not given the exclusive power to interpret these words finally. The Act and the Rules have provided that allotments have to be made to a displaced person in occupation of the property and occupation is confirmed only to the allottees. The decision of the Assistant Settlement Commissioner following the view of Mr. Johnson was, Therefore, clearly contrary to the Act and the Rules. This contravention was of such a nature that the whole proceeding of allotment became void thereby.

(16) Since proposition (1) laid down in *Dhulabhai's* case applies to the facts of

the present case, it follows that proposition (2) laid down therein need not be invoked. The decisions in Dhulabhai and Bata Shoe Co. cases by the Supreme Court show that these propositions are to be read disjunctively. Even if one of them applies to the facts of a case, then the decision can be rested on that proposition.

(17) In this case, Therefore, we may say that the meaning of the word "allotment" and, Therefore, of the word "occupation" as used in the Act and the Rules was a jurisdictional fact or rather jurisdictional law. Since it had been already defined by the Act and the Rules, the Officers acting under the Act and the Rules were not given the exclusive power to Construe their meanings. When the impugned order construed that mining contrary to the meanings given to them by the Act and the Rules, the impugned order came .to contain and error without jurisdiction. The contravention of the Act and the Rules was such as to go to the root of the case. For, a havoc would be caused if all the members of the families of the displaced persons actually living on the acquired properties were to be regarded as being allottees of those properties and Therefore, in occupation thereof and it would be impossible to operate Rules 30 and 31 or Section 20(1)(e) on any such view. The contravention must, Therefore, be regarded as fundamental in the sense in which the word "fundamental" was used by the Supreme Court in Firm and Illuri Subbayya Chetty's case. Such. a contravention makes the impugned order without jurisdiction. Proposition (1) in Dhulabhai's case applies and the bar to the filing of the civil suit imposed by Sections 27 and 36 of the Act does not apply.

(18) Proposition (2) in Dhulabhai's case does not mean that whenever adequate remedies are provided in the statute for appeal and/or revision, then the bar to the filing of a civil suit to set aside an order made by an authority acting under the Act must always prevail and no suit can be filed for the setting aside of an order even though such an order may be made without jurisdiction or even though it may be contrary to the fundamental provisions of the Act. The bar to the filing of a civil suit arises not merely by an express prohibition but also by an implied prohibition contained in the statute. Implied prohibition can arise from the fact that statutory appeals and revisions are provided and also finality is given to the orders under the Act. Nevertheless, such finality and implied bar to the filing of a suit cannot enable the administrative authority acting under the statute i.e pass orders which are without jurisdiction or completely contrary to the provisions of the statute under which they are acting. If finality dealt with in proposition (1) in Dhulabhai's case cannot justify an order without jurisdiction and if implied prohibition of a suit also "cannot validate an order without jurisdiction, then it would follow that an express provision to the filing of a suit cannot have any more effect then finality or implied prohibition. The principle which applies to all kinds of bars to the filing of a suit is that orders which are erroneous but are still within jurisdiction are to be remedied only by appeals and revisions under the statute and not by a collateral attack by civil suit or a writ petition. This principle applies whether the prohibition to the filing of the suit is

express or is implied or is to be inferred from the finality given to the orders made by the authorities acting under the Act.

(19) The nature of a jurisdictional error or a fundamental contravention of a statute by an administrative order may become clearer by concrete instances. The following instances would be helpful to bring out this point:

(1) In *Union of India (UOI) Vs. Tarachand Gupta and Bros.*, the interpretation of the entries of the Customs Tariff by the Import Control Authorities was not regarded as being in the exclusive jurisdiction of these authorities. When such interpretation was contrary to law the decision of the authorities was without jurisdiction and suit to set aside the fines and penalties u/s 167(8) of the Sea Customs Act, 1878, was not barred even though the jurisdiction of the Civil Courts was barred by the said statute. (2) In *Shree Raja Kandregula Srinivasa Jagannatha Rao Pantulu Bahadur Garu Vs. State of Andhra Pradesh*, statute barred approach to the Civil Court by way of a suit. But suit was held to be competent when the determination of the rate of rent was based on irrelevant considerations. (3) In *Katikara Chintamani Dora and Others Vs. Guntreddi Annamanaidu and Others*, the jurisdiction to decide whether an inam village is an estate or not was given to the officers acting under the statute. But the question whether a village was an inam village at all was not to be decided finally by them. An error in deciding such a jurisdictional fact was capable of being assailed as being made outside jurisdiction by way of a suit even though the statute barred a suit for challenging the orders made under the Act

(20) To sum up, orders under the Act as held in the *Anisminic* case by the House of Lords must mean the order made within jurisdiction. They cannot be orders made outside jurisdiction. The bar to the filing of a suit against such orders is applicable only when the orders are within jurisdiction, but is not applicable when orders are outside jurisdiction. Since the impugned order in the present case has to be held to be an order outside jurisdiction because it is contrary to the fundamental provisions of the Act and the Rules, the suit filed by Kundan Lal was competent. Dismissal of the suit by the trial court, first appellate court and the second appellate court is, Therefore, set aside. The suit is decreed and it is declared that Kundan Lal alone among the parties to the litigation is entitled to the allotment of the acquired property described above. The impugned order of the Assistant Settlement Commissioner is set aside and that of the Managing Officer allotting the property to Kundan Lal is restored. No order as to costs.