

(1959) 11 PAT CK 0003
In the Patna High Court
Case No : Civil Revision No. 918 of 1955

Onkar Dutta Shastri

APPELLANT

Vs

The Bihar Hindu Religious Trust Board

RESPONDENT

Date of Decision : 13-11-1959

Acts Referred:

Bihar Hindu Religious Trusts Act, 1950 — Section 70(2)
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1960 Patna 164

Hon'ble Judges : S.C. Misra, J

Bench : Single Bench

Advocate : Hari Lal Agarwal, for the Appellant; Shreenath Singh, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Misra, J.—This application arises out of an order passed on appeal by the learned District Judge of Patna. The appeal was directed against an order passed by the Superintendent of the Bihar State Board of Religious Trusts. The petitioner was called upon by the opposite party to produce his accounts for the assessment of fees u/s 70 of the Bihar Hindu Religious Trusts Act, 1950 (Act I of 1951).

The account books were produced showing therein the income and expenditure of Shri Lakshmi Narain Temple, popularly known as Birla Mandir, situate in Sabzibagh, in the town of Patna, under one head and the income and expenses incurred by the Arya Dharma Seva Sangh under a separate head. The Superintendent passed a summary order on 11-3-1953, levying a fee of Rs. 672-13-0 in respect of the income under the two heads treating them as part of the income of the same institution, viz., Birla Mandir.

The order was set aside by the District Judge, Patna, and the case was remanded to the Superintendent for decision in accordance with law, after hearing the objections to be raised by the petitioner. The Superintendent thereafter heard

objections and levied a fee of Rs. 657-9-3. The petitioner preferred an appeal to the District Judge, Patna, who allowed deduction of the amount of expenditure incurred by the Birla Mandir for water taxes. The learned District Judge, however, did not accede to the petitioner's objection that the shop premises attached to the compound of the Birla Mandir were in possession of the Arya Dharma Seva Sangh, which was a different institution, and that whatever income was derived from the shop premises could not be added to the total income accruing to the Birla Mandir itself of which the petitioner was in charge.

The petitioner makes a grievance with regard to some other items of the expenditure for which no deduction was allowed by the learned District Judge.

2. Learned counsel for the opposite party has raised a preliminary objection that no revision lies to this Court against an order passed by the District Judge on an appeal u/s 65 of the Bihar Hindu Religious Trusts Act, 1950, (which is apparently a mistake for Sub-section (2), Clause (b) of Section 70 of the Act), against the order of the Superintendent of the Bihar State Board of Religious Trusts levying a fee on the income of the Trust u/s 70 of the Act.

Learned counsel has urged that the duties performed by the Superintendent in levying a fee u/s 70 are of a purely administrative character and the District Judge hearing an appeal against such an order is not a Civil Court subordinate to the High Court so as to make the order revisable by the High Court u/s 115 of the Code of Civil Procedure.

In support of this contention, he has referred to the case of Kiron Chandra Bose Vs. Kalidas Chatterji, . That is a case which arose under the Bengal House Rent Control Order. Under paragraph 12 of that Order the District Judge was vested with the power to hear an appeal against an order passed by the Controller regarding houses outside the Presidency town of Calcutta. In regard to the houses within the town of Calcutta, the appellate authority was vested in the Chief Judge of the Court of Small Causes, Calcutta.

A number of decisions were cited by the learned counsel for the parties in support of their contentions as to whether the District judge was merely a persona designate and as such not amenable to the jurisdiction of the High Court, or he heard the appeal as a Civil Court subordinate to the High Court. The learned Judges who heard the application, on a review of the authorities, came to the conclusion that the power to hear an appeal was conferred upon the District Judge under the Defence of India Rules by the Governor in exercise of his powers under Rule 81 (2) (bb) of the Defence of India Rules. Their Lordships proceeded as follows :

"The Defence of India Rules are framed u/s 2, Defence of India Act and under Rule 81 (2) (bb) the Central Government or the Provincial Government may by an order provide for regulating the letting and sub-letting any urban area of residential accommodation whether furnished or unfurnished and whether with or without board, and in particular, (1) for controlling the rents for such

accommodation. The Defence of India Rules undoubtedly possess statutory authority but the rule mentioned above under which the Bengal House Rent Control Order, 1942, was passed does not contemplate or authorise the creation of a tribunal for regulating house rent in any urban area or investing any judicial officer with additional authority for that purpose.

As the provisions of the order show, the machinery that is set up for controlling house rent is a purely executive machinery acting under the control of the Governor or the executive authority. The procedure that is laid down in the order is not a judicial procedure at all. Certain executive Officers are given the authority to act as Rent Controllers and they are to fix the rent in the way laid down in para. 7 of the Order. Paragraph 12 which has been set out above shows that the District Judge or the Chief Judge of the Small Cause Court before whom a petition of appeal can be presented acts merely in the capacity of a superior executive officer.

He has got to go through the papers & may make further enquiry if he considers proper but he is not bound to hear the parties even if they appear and pray to be heard. He does not really find facts and apply the law; the basis of his decision is not legal but economic and he has to determine what is reasonable rent and not what is the legal rent, in all circumstances. We cannot hold that the District Judge in exercising these powers acts as a Court and consequently his orders are not revisable by us u/s 115, Civil P. C."

3. Learned counsel for the opposite party urged that the Superintendent in exercise of his power u/s 70 of the Bihar Hindu Religious Trusts Act also proceeds as an executive officer pure and simple. Section 70 of the Act stands thus :

"70. (1) For the purpose of defraying the expenses incurred or to be incurred in the administration of this Act, the trustee of every religious trust shall, in each financial year pay to the Board such fee, not exceeding five per centum of its net income in the last preceding financial year, as the Board may, from time to time, with the previous sanction of the State Government, determine.

Explanation--In this sub-section, the expression "net income" means the total income realised by the trustee from all sources after deducting any amount payable as revenue, rent, taxes, local or other cesses and cost of management at twelve and a half per centum.

"2 (a) The fee referred to in Sub-section (1) shall be assessed by the prescribed authority in the prescribed manner.

(b) A trustee, aggrieved by an order of assessment made by the prescribed authority under Clause (a), may, within one month of the date of receipt of the said order, appeal to such authority as may be prescribed, and such authority may by order set aside or vary such assessment and such order shall be final.

(3) Such fee shall be payable in the prescribed manner in four equal instalments on such dates as may, from time to time be fixed by the Board.

(4) If any instalment of such fee is not paid on or before the date fixed by the Board under Sub-section (3) for the payment of such instalment, it shall be recoverable from the person responsible for paying the same as a public demand payable to the Boardhfgfhgfhgfhgfh

(5) The Board may reduce any portion of the fee payable by the trustee of any religious trust.

(6) The trustee of a religious trust may realise the fee payable by him under Sub-section (1) from the beneficiaries of such trust, but the sum realisable from any one of such persons shall not exceed such amount as shall bear to the total contribution payable the same proportion as the value of benefits receivable by such person bears to the entire net available income of such trust:

Provided that, if there is any income of such trust in excess of the amount payable as dues under this Act, other than as the fee payable under Subsection (1) and in excess of the amount payable under the deed of trust, the fee shall be paid in the first instance out of such income."

4. Section 65 of the Act lays down that "a trustee aggrieved by an order of surcharge or charge made against him under Sub-section (6) of Section 63 may, within thirty days of such order, appeal to the prescribed authority which may, after making such inquiry as it considers proper, pass such order as it thinks fit."

5. Learned counsel has contended that the jurisdiction conferred upon the District Judge is of a character which is in identical terms with the authority conferred upon the District Judge under paragraph 12 in the above case of the Calcutta High Court and the authority is not that which is to be exercised judicially by the District, Judge, as it lays down that he can pass any order as he would think fit after making such enquiry as he would consider proper.

The very wording of Section 65 indicates that the District Judge hearing an appeal is not doing so as a Court exercising judicial, function but merely as persona designate on whom appellate power has been conferred to avoid any possible injustice resulting to a party from an erroneous order passed by the Superintendent, The same considerations would arise in an appeal u/s 70 of the Act.

Learned counsel for the petitioner, however, has referred to another decision of the Calcutta High Court by the same learned Judges, Mukherjea and Blank, JJ., in the case of Gobinda Chandra Saha and Another Vs. Rashmoni Dassya, , arising under the Bengal Agricultural Debtors Act (Act 7 of 1936). The parties in that case were at issue with regard to a loan advanced by the petitioner of the sum of Rs. 35,000/- to the husband of the opposite party on the basis of a simple mortgage bond.

After a decree was passed in favour of the mortgagee, the judgment-debtor presented an application before the Domepara Debt Settlement Board u/s 8 of the Bengal Agricultural Debtors Act. It is unnecessary to refer to the other

circumstances of the case, but it may be mentioned that the execution case proceeded and, ultimately, a petition of revision was preferred before the Additional District Judge of Mymensingh u/s 40A of the Bengal Agricultural Debtors" Act who reversed the order of the Collector.

An application in revision was preferred u/s 115 of the CPC against the order of the learned District Judge. A preliminary objection was raised in that case as to the maintainability of the application of revision inasmuch as the Additional District Judge in exercise of his powers u/s 40A was not acting as a Court. While overruling the preliminary objection, their Lordships observed as follows:

"This section empowers a District Judge to determine certain matters of a judicial character which lie outside his ordinary jurisdiction under the law. If the intention of the Legislature is that the District Judge should determine the matter as a Court and the effect of the provision is merely to enlarge his ordinary jurisdiction, it goes without saying that the normal incidents of such jurisdiction including the rights of) revision and appeal from its orders would remain intact: vide 1913 A.C. 546, National Telephone Co. v. Postmaster-General.

If on the other hand the authority is to be exercised by the District Judge not as a Court but as *persona designata* obviously its decisions could not be revised by this Court. When the jurisdiction is given to a judicial officer by name it is no doubt a difficult question to decide as to whether the jurisdiction is to be exercised by the person or by the Court itself over which he presides. The proviso to Section 40A, Bengal Agricultural Debtors" Act, in our opinion throws some light on this point.

That proviso empowers the District Judge to transfer all the functions which he can exercise u/s 40A, Bengal Agricultural Debtors" Act, to an Additional District Judge, subordinate to him, This is a circumstance which can be held to indicate that the District Judge is to exercise the authority not in his personal capacity but as a Court, for as *persona designata* he cannot have any judicial officer subordinate to him.

As was said by Schwabe C. J. in (K. Parthasarathi Naidu Garu Vs. C. Koteswara Rao Garu and Another, , it is impossible to hold that a reference to a Judge with power to refer to a Court subordinate to him can mean anything else than reference to a Judge sitting as a Judge in the exercise of his ordinary jurisdiction extended for that purpose."

6. The crucial point in determining whether the District Judge was functioning under the Bengal Agricultural Debtors" Act merely as a *persona designata* or as a Court subordinate to the High Court was the power conferred upon him to transfer the proceedings to an Additional District Judge. In the present case, however, no such power has been conferred upon the District Judge.

The function exercisable by the District Judge in that case was of a judicial character inasmuch as the dispute between the parties was purely of a civil

nature involving adjudication of their rights with regard to a transaction of mortgage which was in fact heard and decided by a Civil Court and it was only at the stage of execution that a different procedure was resorted to on account of the provisions of the Bengal Agricultural Debtors" Act.

The present case, however, is one where the Superintendent is acting at the highest as a taxing authority inasmuch as under the Bihar Hindu Religious Trusts Act certain contribution would have to be made by the various trusts for the upkeep of the Religious Trusts Board. This is not the function relating to the civil right of the persons affected and is an act of a purely administrative character and the District Judge has been vested with certain powers as a *persona designata*, as a mere safe-guard to avoid any possible injustice, and it seems to me that the principle in the case of *Kiron Chandra Bose Vs. Kalidas Chatterji*, referred to above is more in point than this case *Gobinda Chandra Saha and Another Vs. Rashmoni Dassya*, .

Learned counsel for the opposite party has also referred to a decision of this Court in the case of *Sudagar Chaudhary Vs. Radharaman Prasad and Another*, . That was a case where the District Judge of Muzaffarpur set aside the decree passed by a Panchayat in exercise of the powers conferred upon him by Section 78, Bihar and Orissa Village Administration Act (Act III of 1922). After considering the various provisions of the Code of Civil Procedure, their Lordships observed that if the High Court had no power to revise an order made by a Panchayat, it was difficult to understand On what principle it could be said that it had jurisdiction to revise an order made by a District Judge in exercise of the powers conferred on him by Section 78 of the Act.

It is relevant in this connection to consider the case of *Balakrishna Udayar v. Vasudeva Ayyar* ILR 40 Mad 793; (AIR 1917 PC 71). In that case the High Court of Madras set aside the order of the District Judge of Tanjore who appointed the appellant Balakrishna Udayar a life-member of the Devasthanam (Temple) Committee of Negapatam in exercise of his power u/s 10 of Act XX of 1863, the Bengal and Madras Religious Endowments Act.

A preliminary objection was raised in the High Court that the order passed by the District Judge u/s 10 of the Act in question was an administrative order and as such it was not amenable to the revisional jurisdiction of the High Court u/s 115 of the Code of Civil Procedure. Section 10 of the Act, which was quoted in extenso in the judgment of the Judicial Committee, ran as follows:

"Whenever any vacancy shall occur among the members of a Committee appointed as above, a new member shall be elected to fill the vacancy by the persons interested as above provided. The remaining members of the Committee shall as soon as possible give public notice of such vacancy, and shall fix a day which shall not be later than three months from the date of such vacancy for an election of a new member by the persons interested as above provided under rules for elections which shall be framed by the local Government, and whoever

shall be then elected under the said rules shall be a member of the Committee to fill such vacancy.

If any vacancy aforesaid shall not be filled up by such election as aforesaid within three months after it has occurred, the Civil Court, on the application of any person whatever, may appoint a person to fill the vacancy or may order that the vacancy be forthwith filled up by the remaining members of the Committee, with which order it shall then have the duty of such remaining members to comply; and if this order be not complied with, the Civil Court may appoint a member to fill the said vacancy."

The construction put upon the last portion of the section by the Madras High Court was that there was reference to Civil Court in that section and that Civil Court was defined to be the principal Court of original civil jurisdiction. It was accordingly held that the Legislature contemplated reference to the Civil Court and not to an individual judge who might preside in or constitute the Civil Court. Their Lordships' conclusion was expressed in the following terms:

"It appears to their Lordships to be clear that in all these matters the Civil Court exercises its powers as a Court of Law, not merely as a *persona designata* whose determinations are not to be treated as judgments of a legal tribunal."

In considering the question as to whether a particular Court in exercising certain powers conferred upon it is acting as a Civil Court subordinate to the High Court or merely as a *persona designata*, the important point to be investigated is the source of the authority of the presiding officer. It might also be relevant to consider the nature of the proceedings in the action taken therein.

This was the view expressed in the case of *Baburao Prahlaad Badve Vs. Hariharrao Kashinathrao Khasgiwale*, . In *Safura Bibi Vs. Isob Bepari*, one of the tests to determine whether the presiding officer of a particular Court is named in the statute conferring jurisdiction upon him as a *persona designata* or is to exercise that power as a Civil Court, and as such subordinate to the High Court, is that if the authority over whom the Civil Court (in that case a District Judge) is given jurisdiction is the Collector, a revenue officer, then a provision for the exercise by the District Judge of the ordinary civil jurisdiction over the Collector must be an extraordinary jurisdiction and that pointed with sufficient clarity to the real meaning of the proviso which was to give a special remedy in the shape of an application to a *persona designata*.

7. For the reasons, stated above, I am satisfied that the preliminary objection is valid and this Court has no jurisdiction u/s 115 of the CPC to interfere with an order passed by the District Judge on appeal u/s 65 (sic. Section 70(2)(b)) of the Act. If the petitioner is advised that the order is arbitrary and illegal, he may file an application for a different remedy under Art. 226 of the Constitution or proceed otherwise. The application fails and must be dismissed. In the circumstances of the case, however, there will be no order as to costs.