

(1961) 12 GAU CK 0004
In the Gauhati High Court
Case No : Letters Patent Appeal No. 1 of 1961

Radha Mohan Pathak

APPELLANT

Vs

Upendra Patowary and Others

RESPONDENT

Date of Decision : 19-12-1961

Acts Referred:

Assam Board of Revenue Act, 1959 — Section 4
Assam Fisheries Rules, 1953 — Rule 11, 75(A)
Assam Land and Revenue Regulation, 1886 — Section 147, 54, 64
Assam Revenue Tribunal (Transfer of Powers) Act, 1948 — Section 3, 3(1), 3(2), 3(4), 34
Civil Procedure Code, 1908 (CPC) — Section 109, 110
Constitution of India, 1950 — Article 225
Defence of India Act, 1939 — Section 19(1)
Government of India Act, 1870 — Section 1
Government of India Act, 1915 — Section 108
Government of India Act, 1935 — Section 107, 108, 296
Provincial Insolvency Act, 1920 — Section 4
Trade Marks Act, 1999 — Section 75(2), 76, 77

Citation : (1961) 12 GAU CK 0004

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

Bench : Division Bench

Advocate : J.C. Medhi and T.C. Das, for the Appellant; S.K. Ghose, G.K. Talukdar and R. Goswami, Sr. Govt. Advocate, for the Respondent

Judgement

G. Mehrotra, C.J.—A preliminary objection has been taken on behalf of the Respondents to the maintainability of the present appeal.

2. The Sub divisional Officer Barpeta by his notification dated the 22nd December 1959 invited sealed tenders for settlement of the Fishery No. 23 Chilochi Group of the Barpeta Town for the years 1960-61, 1961-62 and 1962-63. A number of persons gave their tenders. Sri Radha Mohan Pathak gave Ms tender for Rs. 31,005/- and Upendra Patowary gave his tender for Rs. 31,005/- and by his order dated the 5th February 1960 with the advice of the Advisory Board the Sub divisional Officer sent the name of Upendra Patowary for approval to the

Commissioner of Plains Division. The Commissioner refused to accept the (sic) and ordered resale of the fishery. This order was set aside by the High Court. The matter went to the Commissioner for consideration of the settlement made by the Sub divisional Officer on comparative merits of the tenderers. Ultimately the Commissioner of Plains Division on the accepted the proposal of the Subdivisional Officer for settlement with Radha Mohan Pathak.

Against this order Upendra Patowary preferred an appeal to the High Court under the provisions of Rule 11 of the Fishery Rules read with Section 147 of the Assam Land and Revenue Regulation. The appeal was numbered as Revenue Appeal No. 91(M)/60 and came up for hearing before Deka J., as he then was. By his order dated the 8th November 1960 this appeal was allowed. The present appeal has been filed purporting to be under Clause 15 of the Letters Patent against the judgment of the single Judge of this Court dated the 8th November 1960. As there was some doubt whether leave was necessary or not the Appellant withdrew his application for leave and the appeal was allowed to proceed subject to the right of the Respondents to raise a preliminary objection at the time of the hearing. This order was passed by this -- Bench on 4th July 1961 and the present appeal has come up for hearing before us.

3. The contention of the Respondents is that the present appeal is not maintainable. Mainly three points have been raised. Firstly it is urged that Clause 15 of the Letters Patent of the Calcutta High Court which gives right of appeal to a Bench against the judgment of the single Judge of this Court is not attracted to the Revenue Appeals. The High Court exercises in hearing revenue appeals a special jurisdiction. It is not a civil jurisdiction or a jurisdiction which the High Court exercises as a court possessing general jurisdiction. -- Secondly it is urged that the Assam Legislature has passed an Act creating a Board of Revenue. The appellate and revisional power exercised by the High Court in revenue matters has been taken away by the said Act from the High Court and the Act vests it in the Board Revenue. The Act is called The Assam Board of Revenue Act, 1959 (Assam Act VIII of 1960) After the passing of this Act the High Court has ceased to have any jurisdiction over revenue matters. The present appeal therefore, cannot be heard and disposed of by the High Court. Thirdly it was contend that an application for special leave against the judgment of the single Judge of this Court was filed before the Supreme Court which was rejected. The present appeal therefore, is not maintainable.

4. Regarding the third point raised by the counsel for the Respondent it is sufficient to point out that that is a point which deals with the merits of the appeal and if we accept the contention of the Respondent on the other two points, the third question does not arise. If we reject the preliminary objection, the question whether the decision by the Supreme Court bars the hearing of the present appeal on principles of res judicata, will have to be considered at the time of the hearing of the appeal. I therefore propose first to deal with the first two submissions made by the Respondents.

5. In order to appreciate the first point raised by the Respondent it may be necessary to refer to the history or the circumstances under which the Assam High Court was invested with the powers to exercise appellate and revisional jurisdiction in revenue matters. Section 296 of the Government of India Act 1935 before its adaptation was as follows:

296(1) No member of the Federal or a Provincial Legislature shall be a member of any tribunal in British India having jurisdiction to entertain appeals or revise decisions in revenue cases.

(2) If in any Province any such jurisdiction as aforesaid was immediately before the commencement of Part III of this Act vested in the Local Government, the Governor shall constitute a tribunal consisting of such person or persons as he, exercising his individual judgment may think fit to exercise the same jurisdiction until other provision in that behalf is made by Act of the Provincial Legislature.

I have quoted above only the relevant portions of the section. The Assam Revenue Tribunal Act, 1946 (Assam Act II of 1946) was passed and under that Act the Provincial Government was given power to constitute a Tribunal to be called the Assam Revenue Tribunal consisting of a President and two members. The Act provided that the services of the members will be for five years. Sections 5 and 6 of the Act define the function of the Tribunal.

6. In the year 1948 the Assam Revenue Tribunal (Transfer of Powers) Act, 1948 (Assam Act IV of 1948) was enacted. u/s 3 of the said Act the Assam High Court was empowered to exercise such jurisdiction to entertain appeals and revise decisions in revenue cases as was vested in the State Government immediately before the first day of April 1937 under any law for the time being in force. The word "State" has been substituted by Adaptation Order 1950 for "Provincial" in the section. Clause (2) of the said section provides that in particular and without prejudice to the generality of the foregoing provision the Assam High Court shall have jurisdiction to entertain appeals and revise decisions in all revenue cases arising under the provisions of the enactments specified in Schedule A in which such jurisdiction was vested in the State Government immediately before the first day of April 1937. In the schedule A item No. 1 is the Assam Land and Revenue Regulation 1886 (I of 1886) In the second column of Schedule A item 6 mentions appeals and revision under rules for the time being in force made under the Regulation. The Assam Fishery Rule No. 11 under which also the present appeal before the single Bench was filed was made under the Assam Land and Revenue Regulation. Section 4 of this Act lays down that the Assam High Court shall have and will exercise all the powers which the state Government or the Revenue Tribunal as the case may be had or could have exercised in the cases in which jurisdiction has been conferred on the Assam High Court by Section 3(1), (2) and (4). Section 5 lays down that no appeal or revision shall lie against any order passed by the Assam High Court in the exercise of its powers in appeal or revision under this Act. By Section 7 the Assam Revenue Tribunal constituted under the Act of 1946 was abolished and it

also provides for the pending cases before the Tribunal.

7. In the year 1886 the Assam Land and Revenue Regulation was enacted by the Governor-General-in-Council in accordance with the provision of Section 1 of the Government of India Act 1870. Under this section the Chief Commissioner had power to propose to the Governor-General-in-Council drafts of any regulations for peace and good government of any part of the territories under its administration to which the Secretary of State for India might by resolution in Council declare the section to be applicable. By a proclamation of 1874 some districts of Assam were formed into Chief Commissionership of Assam and thus the Assam Land and Revenue Regulation came in to existence in 1886.

8. We are not concerned with the subsequent amendments to these Regulations. It is sufficient to point out that the Regulations are still in force and the revenue cases are dealt with in accordance with the provisions of this Regulation. Section 147(a) of this Regulation provides that appeals shall lie to the Tribunal appointed u/s 296 of the Government of India Act, 1935, from any original or appellate order passed by a Commissioner and Clause (b) provides for an appeal to the said Tribunal from any order original or appellate passed by a Deputy Commissioner of a district. The words "Tribunal appointed u/s 296 of the Government of India Act, 1935" were substituted for the words "Chief Commissioner" by the Adaptation Order 1937. The Government of India Act 1935 thus authorised the Governor to constitute the Tribunal to exercise appellate jurisdiction that was immediately before the commencement of the Act being exercised by the Provincial Government and the Governor's Tribunal was to exercise such jurisdiction until the Provincial Legislature made other provisions with regard thereto.

9. By the Act of 1946 the Assam Legislature made other provisions for the exercise of the final appellate powers by the tribunal constituted by the Provincial Government in exercise of the powers conferred on it by Section 3 of that Act and jurisdiction was conferred on the Tribunal to entertain appeals and revise decisions in all revenue cases arising under the provisions of the nine enactments specified in the schedule thereto.

10. The High Court of Assam was established on April 5, 1948, and by the Assam Revenue Tribunal (Transfer of Powers) Act, 1948 the powers and jurisdiction exercised by the Revenue Tribunal was transferred to the Assam High Court. The Assam High Court had authority to exercise the appellate and revisional jurisdiction in all revenue decisions as was vested in the Provincial Government before April 1, 1937. Apart from Section 3(1) and (2) of the Act of 1948 the Assam High Court was not an appellate authority having jurisdiction to entertain appeals and revise decisions in all revenue cases arising under the provisions of the enactments specified in Schedule A to the Act and it was this Act which constituted the Assam High Court as the appellate authority for exercising such jurisdiction and this it has done by simply stating that the Assam High Court shall exercise such jurisdiction to entertain appeals and to revise decisions as was

possessed by the Provincial Government for the purposes of exercising the appellate and revisional jurisdiction in the revenue matters which vested in the Provincial Government and in the Tribunal constituted by it. The Legislature in the year 1948 constituted the High Court as the Tribunal. I have referred to this history to show that the power exercised by the Assam High Court under the Assam Revenue Tribunal (Transfer of Powers) Act 1948 is a special jurisdiction and not as a High Court established under the Act of 1948. The powers possessed by the Provincial Government or the Tribunal created by it were only transferred to the Assam High Court and for the purposes of exercising appellate and revisional jurisdiction in revenue cases the High Court was constituted in place of the Revenue Tribunal.

11. The next question which arises for consideration is whether in these circumstances paragraph 15 of the Letters Patent of the Calcutta High Court will be attracted to a revenue appeal heard and decided by a single Judge of this High Court. Clause 15 of the Letters Patent provides as follows:

And we do further ordain that an appeal shall lie to the said High Court of Judicature at Fort William in Bengal from the judgment not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court and not being an order made in the exercise of revisional jurisdiction and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act or in the exercise of criminal jurisdiction of one Judge of the said High Court or one Judge of any Division Court pursuant to Section 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act made on or after the first day of February one thousand nine hundred and twenty nine in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court where the Judge who passed the judgment declares, that the case is a fit one for appeal but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to Us Our heirs or successors in Our or Their Privy Council, as hereinafter provided.

12. It is contended by Dr. Medhi for the Appellant that the words of Clause 15 of the Letters Patent are wide enough to cover the case of all appeals decided by the single Judge of the High Court. His contention is that once the appeal comes to the High Court through whatever channel may be, it is for the High Court to regulate its own procedure and the appeal in the High Court becomes subject to all the rules of procedure framed by the High Court and are to be regulated by the provisions of such rules and its charters. He has also contended that under

Article 225 of the Constitution of India the High Court will exercise all the powers which it possessed at the time of the coming in force of this Constitution. This Article preserves the powers of the High Court and the powers of the High Court to make rules of court and to regulate the sittings of the court. This Article is subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature.

The reference to Article 225 of the Constitution thus to my mind, does not give any support to his submission. In the first place as I have pointed out, this Article is subject to the provisions of any law made by the appropriate legislature and in this connection we will, have to examine the effect of the Assam Board of Revenue Act, 1959 (Assam. Act VIII of 1960) on the powers of the High Court, and secondly this Article only preserves the existing powers and before this Article is attracted we will have to decide what is the existing powers of the High Court contained in Clause 15 of the Letters Patent. This article does not in any way affect the scope and ambit of Clause 15 of the Letters Patent. Whatever may be the generality of the expression used in Clause 15, having regard to the scheme of the clause and powers conferred on the High Court under this charter and the appellate jurisdiction conferred on the High Court under the provisions of this clause, to my mind, this clause will not be attracted in cases where the High Court has been vested with a special appellate jurisdiction such as the revenue matters in which the High Court exercises only the powers exercised by the Provincial Government or the Tribunal created by it.

13. At this stage it will be convenient to refer to a number of authorities cited by Dr. Medhi in support of his contention. He has referred to a decision of the House of Lords in the case of *National Telephone Co. Ltd. v. Postmaster-General* 1913 A.C. 546. He has particularly referred to the following passage at page 552 of the report:

When a question is stated to be referred to an established Court without more it in my opinion imports that the ordinary incidents of the procedure of the Court are to attach and also that any general right of appeal from its decisions likewise attaches.

It was held in that case that the reference to the Commission under the Telegraph (Arbitration) Act, 1909 was a reference to them as a Court of record and not as arbitrators and that an appeal lay from their decision on a point of law to the Court of Appeal. If the High Court is seized of an appeal under its ordinary jurisdiction, no matter through what channel the appeal comes to it, all the rules which apply to ordinary appeals will attach to it. That decision was based on the finding that a reference to the Commissioner was a court of record and not as arbitrators.

14. The next case referred to is *Secretary of State v. Chellikani Rama Rao* AIR 1916 P.C. 21 That was a case where an appeal was preferred to the District Court against a decision of the Forest Settlement Officer u/s 10(2) of the Madras Forest

Act and it was held by their Lordships of the Privy Council that as the District Court heard the appeal as one of the ordinary courts of the country, the provisions of the CPC will apply to the orders and decrees passed by the District Court. At page 23 of the report, rejecting the argument of the counsel for the Appellant that all further proceedings in courts in India or by way of appeal were incompetent as they were included by the terms of that statute their Lordships laid down that "when proceedings of this character reached the District Court that Court is appealed to as one of the ordinary Courts of the country, with regard to whose procedure, orders, and decrees the ordinary rules of the CPC apply". The emphasis on this paragraph is on the words "of this character". The character of the appeal before the District Court is a matter which was decisive of the fact whether the District Court heard the appeal as an ordinary court of the country or it exercises any special jurisdiction. The argument of Dr. Medhi is that the character of the proceeding before the High Court is of no material importance in determining the question of an appeal from the decision of the single Judge to a Bench. For this contention no support can be taken from the decision of their Lordships of the Privy Council referred to above. On the other hand their Lordships have emphasised that the "Proceedings of this character" must be deemed to be held before the District Court as an ordinary court of the country. Their Lordships have considered the provisions of the Forest Act in order to determine the nature of the proceedings before the District Court.

15. The next case is AIR 1934 81 (Privy Council) That was a case where the appeal was filed before the District Judge under the Provincial Insolvency Act and their Lordships held that as the District Judge heard the appeal as an ordinary court of the country, the procedure, orders and decrees of that court will be governed by the ordinary rules of the Code of Civil Procedure. The argument was that any decision by the District Judge u/s 4 of the Provincial Insolvency Act was final except that an appeal lay to the High Court under limited circumstances laid down in Section 75(2). No further appeal was provided and thus no appeal lay to the Privy Council. This contention was repelled. Reliance was placed on the case to which I have already referred to earlier. From the nature of the proceedings before the District Judge it was held by their Lordships that the District Judge heard the case as an ordinary court of the country and no special jurisdiction was conferred on the District Judge.

16. The next case is AIR 1936 93 (Privy Council) That was a case which arose out of the proceeding under the Punjab Sikh Gurdwaras Act. It was contended that no special appeal lay to their Lordships of the Privy Council. Not disputing the principles laid down by the "House of Lords" in the case reported in (1913) A.C. 516. It was contended before their Lordships of the Privy Council on the examination of the Punjab Sikh Gurdwaras Act that the case did not come within that general principle and that having regard to the provisions of the Act the Tribunal was exercising a special jurisdiction and that the right of appeal to the High Court gave to the High Court a special jurisdiction and as the decree of the High Court was not made in the course of its ordinary jurisdiction, the provisions

of Sections 109 and 110 of the CPC did not apply and no further appeal could be filed before the Privy Council. This contention was rejected. After examining the provisions of the Act, their Lordships came to the conclusion that the High Court in dealing with the appeal arising out of the said Act would not be exercising a special jurisdiction. At page 95 of the report their Lordships have observed that

The provision that appeals from the tribunal are to be heard by a Division Court and not by a single Judge does not in their Lordships' opinion indicate that the High Court in dealing with such matters would be exercising a special jurisdiction; nor should any such inference be drawn from the provisions of Section 37 which is consistent with the view that the jurisdiction conferred upon the High Court by Section 34 is intended to include the new subject-matter as part of the ordinary appellate jurisdiction of the High Court.

The decision of their Lordships is thus based on the conclusion that the High Court was not invested with any special jurisdiction; nor the conclusion that only an additional subject matter was added to the ordinary appellate jurisdiction of the High Court was negated by the provisions of the Act. This case therefore, does not support the contention of the Appellant that if and when the appeal is heard by a single Judge in the exercise of any special jurisdiction conferred on the High Court, the provisions of Paragraph 15 of the Letters Patent will be attracted.

17. Strong reliance has been placed on the case of National Sewing Thread Co. Ltd. Vs. James Chadwick and Bros. Ltd. (J. and P. Coats Ltd., Assignee), That case arose out of the Trade Marks Act. The Registrar of Trade Marks had refused to register the trade mark. An appeal was filed to the Bombay High Court. Shah J. who heard the appeal allowed it. From the judgment of Shah J. an appeal was preferred under Letters Patent. The High Court of Bombay reversed the judgment of Shah J. and restored the order of the Registrar of Trade Marks and the point which was canvassed before the Supreme Court was whether the decision of Shah J. was subject to appeal under Clause 15 of the Letters Patent of the Bombay High Court and secondly whether he was justified in interfering with the discretion exercised by the Registrar in refusing registration of the trade marks.

Dealing with the first point their Lordships of the Supreme Court held that the appeal under Clause 15 of the Letters Patent from the decision of Shah J. to a Bench lay. It could not be doubted that the decision of Shah J. was in form within the meaning of Clause 15 of the Letters Patent. That being so, as formulated by their Lordships of the Supreme Court, only two further questions had to be considered -- (1) whether the provisions of Clause 15 could be attracted to an appeal preferred to the High Court u/s 76 of the Trade Marks Act and (2) whether the clause would have no application in a case where the form could not be said to have been delivered pursuant to Section 108 of the Government of India Act. Dealing with the first point thus formulated above their Lordships observed as follows at page 359:

The Trade Marks Act does not provide or lay down any procedure for the future conduct or career of that appeal in the High Court, indeed Section 77 of the Act provides that the High Court can if it likes make rules in the matter. Obviously after the appeal had reached the High Court it has to be determined according to the rules of practice and procedure of that Court and in accordance with the provisions of the charter under which that Court is constituted and which confers on it power in respect to the method and manner of exercising that jurisdiction.

After this passage Mahajan J. has referred to the decision of the House of Lords in the case of 1913 A.C. 546 (ibid) and after laying down that the facts of those cases are different, he has held that the High Court being seized as such of the appellate jurisdiction conferred by Section 76 it has to exercise that jurisdiction in the same manner as it exercises its other appellate jurisdiction and when such jurisdiction is exercised by a single Judge, his judgment becomes subject to appeal under Clause 15 of the Letters Patent there being nothing to the contrary in the Trade Marks Act. His Lordship then passes on to consider the other submission that the judgment of Shah J. cannot be said to be in pursuance of Section 108 of the Government of India Act. The reasoning advanced in support of the contention that the decision of Shah J. could not be said to be in pursuance of the provisions of Section 108 of the Government of India Act was not accepted by their Lordships. Section 108 of the Government of India Act provided that "each High Court may by its own rules provide as it thinks fit for the exercise, by one or more Judges, or by division courts constituted by two or more Judges of the High Court, of the original and appellate jurisdiction vested in the Court" and the argument was that this applies only to the powers which vested in the High Court at the time of the coming in force of Section 108 of the Government of India Act and not in respect of the appellate jurisdiction which may come to the High Court by a subsequent legislation. This contention was not accepted. In support of this contention reference was made to a decision of the Calcutta High Court in *India Electric Works Ltd. Vs. Registrar of Trade Marks*, and Mahajan J. has examined the reasoning of that Calcutta case and has come to the conclusion that they were erroneous. At page 362 dealing with the reasons given by the Calcutta High Court in distinguishing the case under the Trade Marks Act from the case which came before their Lordships of the Privy Council under the Gurdwara Act, it has been observed as follows:

This reasoning in our opinion is Faulty on a number of grounds.*** The rights created by the Trade Marks Act are civil rights for the protection of persons carrying on trade under marks which have acquired reputation. The statute creates the Registrar a tribunal for safeguarding these rights and for giving effect to the rights created by the Act, and the High Court as such without more has been given appellate jurisdiction over the decisions of this tribunal. It is not easy to understand on what grounds it can be said that the High Court while exercising this appellate jurisdiction has to exercise it in a manner different from its other appellate jurisdiction. It seems to us that this is merely an addition of a new subject matter of appeal to the appellate jurisdiction already exercised by

the High Court.

This passage clearly shows that the decision in this case was based the finding that under the Trade Marks Act no special appellate jurisdiction was created. It was only an addition of a new subject matter of appeal to the appellate jurisdiction already exercised by the High Court. This case to my mind, also does not support Dr. Medhi's broad contention that in every case where the appeal comes to the High Court, a decision of a single Judge is appealable to a Bench irrespective of the nature of the jurisdiction exercised by the High Court in respect of such appeals. Particularly he has referred to the following passage at page 362:

The words "pursuant to Section 108 of the Government of India Act 1915 occurring in Clause 15 of the Letters Patent do not in any way restrict the scope of the right of appeal conferred by that clause to appeals that come to the High Court under its appellate jurisdiction under Clause 16 of the Letters Patent only. On the other hand we think that these rules have application to all appellate jurisdiction exercised by that Court whether existing or conferred upon it by subsequent legislation.

From this passage it is argued that their Lordships have held in very wide terms that a right of appeal from a decision of the single judge to a Bench of the High Court under Clause 15 of the Letters Patent is not restricted to the appellate jurisdiction conferred under Clause 16 of the Letters Patent but to all appellate jurisdiction exercised by that court whether existing or conferred upon it by subsequent legislation. These observations have got to be read in the context in which they were made. Their Lordships were dealing with the contention that the order of Shah J. could not be said to be in pursuance of Section 108. In that connection their Lordships have held that the decision of a single Judge will be pursuant to the provisions of Section 108 of the Government of India Act, no matter whether the power was exercised under any existing law or is conferred by any subsequent legislation.

This passage does not support the submission of Dr. Medhi that irrespective of the nature of the jurisdiction exercised by the High Court in hearing the appeal, the provisions of Clause 15 of the Letters Patent will be attracted. That being so the only question which arises for consideration is, Whether, having regard to the provisions of the Revenue Tribunal (Transfer of Powers) Act 1948 it can be said that the High Court is exercising a special appellate jurisdiction or when the power was conferred on the High Court to hear such appeals, it was only an addition of a new subject matter to the existing right of the High Court to hear appeals.

In this connection reference may also be made to the decision of their Lordships of the Privy Council in the case of Rangoon Botatoung Co. Ltd. v. Collector, Rangoon 39 Ind App 197 (PC). This was a case where the appeal went to the Chief Court of Burma against an award given in the Land Acquisition proceedings

and the question arose whether any further appeal lay to their Lordships of the Privy Council against the decision of the Chief Court. It was held that it was a special jurisdiction exercised by the Chief Court and no further appeal lay to their Lordships of the Privy Council. At page 201 of the report their Lordships observed as follows:

Their Lordships cannot accept the argument or suggestion that when once the claimant is admitted to the High Court he has all the rights of an ordinary suitor, including the right to carry an award made in an arbitration as to the value of land taken for public purposes up to this Board as if it were a decree of the High Court made in the course of its ordinary jurisdiction.

18. The matter came up before the Madras High Court in the case of *Manavikraman Tirumalpad v. Collector of the Nilgiris* ILR 41 Mad 943 : AIR 1919 Mad 626. An appeal was filed to the High Court under the Land Acquisition Act against the award given by the District Judge. Against the decision of the single Judge an appeal under Clause 15 of the Letters Patent was filed before a Bench and the question arose whether such an appeal was maintainable. It was held that the decision of the High Court in a land acquisition appeal is not a "judgment" within Clause 15 of the Letters Patent so as to enable a party to file a further appeal to the High Court under that article. One of the arguments advanced was that u/s 54 of the Land Acquisition Act an appeal from the award of the District Court of Coimbatore lay to the High Court and the order of the High Court was a judgment within the meaning of Clause 15 of the Letters Patent. This contention was rejected.

19. In the case of *Special Officer, Salsette Building Sites v. Dossabhai Bezonji Motivalla* ILR 37 Bom 506 it was held that an appeal does not lie to His Majesty's Privy Council from the decision of the High Court on appeal u/s 54 of the Land Acquisition Act. An application was made for leave to appeal to the Privy Council against a decision of the High Court on appeal u/s 54 of the Land Acquisition Act and the application was rejected on the ground that no such appeal lay. One of the contentions was that the appeal to the Privy Council was filed under Clause 39 of the Letters Patent. Batchelor J. who delivered the judgment observed that it would be equally erroneous to regard such an award as a final judgment or order within the meaning of Clause 39 of the Letters Patent. For the Letters Patent, like the Code, make provision for appeals from such judgments, decrees and orders as are passed by the court in the exercise of its usual civil jurisdiction; and they cannot be invoked to sustain an appeal from a determination which must be regarded as a mere award by it final arbitrator under a Special Act which does not confer any such right of appeal.

20. In the case of *Hanskumar Kishanchand Vs. The Union of India (UOI)*, the matter came up for consideration before the Supreme Court. Two appeals were preferred against the decision of the Nagpur High Court in an appeal u/s 19(1)(f) of the Defence of India Act, 1939, modifying an award of compensation made u/s 19(1)(f) of the Act in respect of certain premises requisitioned by the

Government under Rule 75(A) of the Rules framed under the Act and the question for consideration was, whether any appeal lay to the Supreme Court against the decision of the Nagpur High Court under Sections 109 and 110 of the Code of Civil Procedure. After the review of the various authorities it was held by the Supreme Court that no appeal lay. The Bombay decision which I have referred to earlier was examined by their Lordships of the Privy Council in *Special Officer, Salsette Building Sites v. Dossabhai Bezanji Motiwala* 17 Cal W.N. 421 (PC). The law was summarised by the Supreme Court at page 1186 (of SCR): (at p. 951 of AIR) as follow:

The law as laid down in the above authorities may thus be summed up: It is not every decision given by a Court that could be said to be a judgment, decree or order within the provisions of the CPC or the Letters Patent. Whether it is so or not will depend on whether the proceeding in which it was given came before the Court in its normal civil jurisdiction or de hors it as a *persona designata*.

21. In all these case; the principle laid down is that in order to determine the nature of the decision given by the High Court the nature of the proceedings before the Tribunal against whose judgment the appeal lay to the high Court will have to be considered. Cases where their Lordships of the Privy Council and the Supreme Court held that an appeal lay to the Privy Council and that Clause 15 of the Letters Patent applied, were cases where the reference was made to the District Court as an ordinary court of civil jurisdiction and an appeal against the decision of the District Court lay to the High Court. In such circumstances the decision of the High Court was also a decision in the exercise of its ordinary civil jurisdiction and Clause 15 of the Letters Patent was attracted. But in cases where the original tribunal dealt with the matter in the exercise of its special jurisdiction and not as a court even though an appeal lay to the High Court, the decision of the High Court could not be regarded as one given in the exercise of its ordinary civil jurisdiction so as to attract the provisions of Sections 109 and 110, CPC and Clause 15 of the Letters Patent.

In the present case the appeal lay to the High Court u/s 147 of the Assam Land and Revenue Regulation against the decision of the Deputy Commissioner. The Deputy Commissioner in deciding the revenue matters was exercising a special jurisdiction and not the jurisdiction of a civil court or the courts established under the ordinary law. As the Deputy Commissioner himself did not exercise ordinary jurisdiction of a court, his decision cannot be regarded as a judgment and thus the decision of the High Court on appeal against the decision of the Deputy Commissioner can also not be regarded as a judgment, order or decree contemplated by clause, 15 of the Letters Patent. In our opinion therefore, no appeal lay to a Bench against a decision of the single Judge in revenue appeals.

22. In our opinion there is force in the second submission also made by the counsel for the Respondent that after the coming in force of the Assam Board of Revenue Act 1959 the jurisdiction exercised by the High Court as a court of appeal in revenue matters has been taken away and as such even if the appeal

was competent, this Court cannot now hear this appeal. On the 27th March 1960 the Assam Board of Revenue Act came in force. Section 4 of this Act lays down that the Board shall have the powers and jurisdiction to entertain appeals and revise decision in revenue cases arising under the provisions of the enactments as are specified in the Schedule A. Sub-section (2) of Section 4 provides that on and from the commencement of this Act, the powers and jurisdiction to entertain appeals and revise decisions in revenue cases arising under the provisions of the enactments specified in Sub-section (1) as was vested in the Assam High Court under the Assam Revenue Tribunal (Transfer of Powers) Act, 1948 or in the authority appointed by general or special order of the State Government referred to in the said Act shall cease and shall be transferred to the Board and on such transfer the Board shall have the power and jurisdiction to entertain appeals and revise decisions. The appellate power of the High Court thus, exercised under the provisions of the Assam Revenue Tribunal (Transfer of Powers) Act 1948 ceased on coming in force of this Act.

It cannot be doubted that on appeal is a continuation of the suit. The Letters Patent appeal this will be a continuation of the revenue appeal before the High Court and if the effect of the provisions of Section 4 is to take away the jurisdiction of the Assam High Court in respect of the revenue appeals, it is difficult to accept the argument of the counsel for the Appellant that the power to hear and decide Letters Patent appeals is still preserved. The Letters Patent appeal as I have already indicated, is only a continuation of the appeal before a single Judge and as such if the single Judge's power to entertain and decide an appeal in revenue matters has ceased under the provisions of this Act, the power of the Bench to hear and dispose of an appeal against the decision of the single Judge will also (sic). The whole argument of the Appellant in connection with the first point was that an appellate jurisdiction was conferred on the High Court in respect of the revenue matters and clause of the Letters Patent only regulated the manner of the exercise of that appellate power. It was laid down that the appellate jurisdiction will be exercised as if at two Stages first by the single judge and thereafter an appeal by the Division Bench. The argument by itself supposes that the Letters Patent appeal is nothing but a manner of the exercise of the appellate powers conferred on the High Court under the Assam Revenue Tribunal (Transfer of Towers) Act 1948. If that is so, once that power has ceased, it automatically follows that the power to hear and decide Letters Patent appeals in these matters also ceases.

23. The legal pursuit of a remedy suit appeal and second appeal are really but steps in a series of proceedings connected by an intrinsic unity. Dr. Medhi's contention on the behalf is two-fold. Firstly he has urged that even if the power has been taken away by the Assam Board of Revenue under the Assam Board of Revenue Act 1959, this Act cannot be given a retrospective effect and will not affect the right of appeal which accrued to the Appellant prior to the coming in force of this Act This Act will not affect the pending appeals. It is contended that the right of appeal is a vested right and any Act cannot be given retrospective

effect so as to affect vested rights. No objection can be taken to this proposition of law. But the main question is how far this principle is attracted to the facts of the present case. The Assam Board of Revenue Act 1959, does not take away any right of appeal given to the Appellant. It takes away the appellate and revisional jurisdiction exercised by the High Court in revenue cases by virtue of the provisions of the Assam Revenue Tribunal (Transfer of Powers) Act 1948. For the purposes of the Revenue appeals the Assam High Court has ceased to exist as a tribunal. Reference in this connection may be made to the case of *Canada Cement Co. Ltd. v. La Ville De Montreal Est* 1922 AC 249 : AIR 1921 PC 219 wherein it was held that there is no appeal from a judgment of the Circuit Court for the District of Montreal sitting at Montreal in an action under Article 5755 of the Cities and Towns Act (R.S.Q, 1999) for the recovery of municipal taxes. At page 254 of the report it was observed as follows:

There is a further point also raised by the Respondents to which, in their Lordships' opinion, no sufficient answer has been found. By the Statutes of Quebec 10 Geo. 5, c.79, the whole of the sections of the CPC in which the provisions relating to the Circuit Court and the rights of appeal find place are declared to be replaced by other provisions, and so far as the Circuit Court is concerned the provisions as to appeal drop out. The statutes giving whatever right of appeal may have existed were replaced by sections which gave none and Section 64 of the Act, which provided that matters within the competence of the Court of Review should be subject to the Court of King's Bench must be regarded as qualified by the provision that the powers of the Court of Review with regard to the "Circuit Court had been taken away, and consequently to that extent the statute had otherwise provided.

This case supports the contention that if the statute under which the appellate power had been conferred on the High Court itself has ceased to exist, the question of entertaining the appeal against the decision of the single Judge does not arise.

24. In the case of *Vasudeva Samiar, in re: In Re: Vasudeva Samiar alias Vasudeva Pillai*, a Special Bench of the Madras High Court no doubt held that the amended Letters Patent which came into force on 31st January 1928, making the judgment of a single judge of the High Court in a second appeal appealable only with the leave of the Judge, does not apply retrospectively to second appeals pending at the time of the amendment. But the following observation at page 382 of the report will be apposite:

We must therefore hold, however reluctantly, that the institution of the suit carries with it the implication that all appeals then in force are preserved to it through the rest of its career, unless the legislature has either abolished the Court to which an appeal then lay or has expressly or by necessary intendment given the Act a retrospective effect.

Dr. Medhi has referred to the case of *Colonial Sugar Refining Co. Ltd. v. Irving*

1995 AC 369. At page 372 the law has been enunciated as follows by the Privy Council:

As regards the general principles applicable to the case there was no controversy. On the one hand, it was not disputed that if the matter in question be a matter of procedure only, the petition is well founded. On the other hand, if it be more than a matter of procedure, if it touches a right in existence at the passing of the Act, it was conceded that, in accordance with a long line of authorities extending from the time of Lord Coke to the present day the Appellants would be entitled to succeed. The Judiciary Act is not retrospective by express enactment or by necessary intendment. And therefore the only question is, was the appeal to His Majesty in Council a right vested in the Appellants at the date of the passing of the Act, or was it a mere matter of procedure? It seems to their Lordships that the question does not admit of doubt. To deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him as of right is a very different thing from regulating procedure. In principle, their Lordships see no difference between abolishing an appeal altogether and transferring the appeal to a new tribunal. In either case there is an interference with existing rights contrary to the well-known general principle that statutes are not to be held to act retrospectively unless a clear intention to that effect is manifested.

This was not a case where the court hearing the appeal itself had been abolished. Under this Act the right to file an appeal from the decision of the Supreme Court to their Lordships of the Privy Council had been taken away and it was held that that will not affect the pending cases. In the present case as I have already indicated the appellate jurisdiction exercised by the High Court has itself been taken away. If Clause 15 of the Letters Patent had been amended so as to take away the right of appeal against the decision of the single Judge to a Bench, it could not be said that the pending appeals would be affected by that amendment or repeal of Clause 15. But the facts in the present case are entirely different. Moreover two points are clear from this enunciation of law, firstly that the rule does not apply to the matters of procedure and secondly if there is a clear intendment discernible from the provisions of the Act whether explicit or implied, the Act can be given retrospective effect. The Act has clearly made a provision for the transfer of pending appeals to the Board of Revenue. That being so, it is the clear intention of the legislature to affect the pending cases also. Reference may be made to the case of *Quieter v. Mapleson* (1882) 9 QBD 672. Moreover the right in a suitor to file an appeal is no doubt a vested right. But the right of the High Court to regulate its procedure in exercising its appellate jurisdiction is a matter of procedure and an Act affecting such a procedure can be given a retrospective effect. The procedure or exercising the appellate powers in revenue matters is thus to be regulated by the new Act and not by the provisions of Clause 15 of the Letters Patent.

25. Some argument was also made that Section 4 of the Assam Board of Revenue Act 1959 only vests but column 2 of this item only refers to appeal

against the original or appellate order passed by the Deputy Commissioner u/s 147(a) and not (b) and (c). The argument is that if the present appeal was filed u/s 147(b) the board of Revenue will have no jurisdiction. Item No. 1, column 5 of schedule a also refers to appeal against order passed by the Deputy Commissioner and the Subdivisional Officer under Fishery Rule 11 framed under the Regulation and the Indian Fisheries Act 1897 (IV of 1897). The present appeal has also been filed under Rule 11 of the Assam Fishery Rules read with Section 147 of the Assam Land and Revenue Regulation. In any view of the matter in our opinion the preliminary objection must prevail and the appeal is accordingly rejected as not being maintainable.

S.K. Dutta, J.

26. I agree.