
(1940) 03 PRI CK 0004

In the Privy Council

Case No : Privy Council Appeal No. 6 of 1939

Raja Bhagwan Baksh Singh

APPELLANT

Vs

Secretary of State

RESPONDENT

Date of Decision : 04-03-1940

Acts Referred:

Citation : (1940) AIR(PC) 82

Hon'ble Judges : George Rankin, Lord Porter, Viscount Maugham, JJ.

Advocate : Solicitor India Office, Dold, Douglas Grant, W. Wallach, J. Millard Tucker, J.L. Roy, R.K. Handoo, J.D. Casswell, for the Appearing Parties.

Judgement

Lord Porter

The appellant is the proprietor of the Amethi estate in the Sultanpur District of Oudh in the United Provinces of India. On 7th March 1930, he was declared by the Governor in Council of the United Provinces who claimed to be acting under the powers conferred upon him by the United Provinces Act, No. 4 of 1912 (commonly called the United Provinces Court of Wards Act, 1912) to be incapable of managing his own property. The appellant maintains that the declaration was ultra vires and on 19th March 1932, instituted a suit in the Court of the Subordinate Judge at Allahabad claiming a declaration that the declaration above mentioned was wholly illegal and of no effect against the plaintiff. His suit was dismissed on 14th May 1934, and this dismissal was confirmed by the High Court of Judicature at Allahabad on 31st March 1937. From this decision the appellant has appealed to His Majesty in Council. The Governor's action was taken under Ss. 8 and 9, Court of Wards Act, which are as follows:

8. - (1) Proprietors shall be deemed to be disqualified to manage their own property when they are-

(a) Minors;

(b) females declared by the Local Government to be incapable of managing their own property;

(c) persons adjudged by a competent Civil Court to be of unsound mind and incapable of managing their own property;

(d) persons declared by the Local Government to be incapable of managing or unfitted to manage their own property-

(i) owing to any physical or mental defect or infirmity unfitting them for the management of their own property ;

(ii) owing to their having been convicted of a non-bailable offence and being unfitted by vicious habits or bad character for the management of their own property ;

(iii) owing to their having entered upon a course of extravagance ;

(iv) owing to their failure without sufficient reason to discharge the debts and liabilities due by them :

Provided that no such declaration shall be made under sub-clause (iii) or (iv) unless the Local Government is satisfied-

(a) that the aggregate annual interest payable at the contractual rate on the debts and liability due by the proprietor exceeds one third of the gross annual profits of the property; and

(b) that such extravagance or such failure to discharge the said debts and liabilities is likely to lead to the dissipation of the property.

(2) No declaration under cl. (d) of sub-s. (1) shall be made until the proprietor has been furnished with a detailed statement of the grounds on which it is proposed to disqualify him and has had an opportunity of showing cause why such declaration should not be made.

9.- (1) The Local Government may direct the Collector or such other person as it may appoint, to make an inquiry into the circumstances of any proprietor and the extent of his indebtedness

So far as they are relevant to this appeal the facts are as follows: On 13th July 1929, an inquiry under S. 9 (1) of the Act of 1912 was instituted by the Local Government into the debts and liabilities of the appellant. After the inquiry the appellant received a letter from the Commissioner of Fyzabad, dated 17th September 1929, enclosing a statement of the loans contracted by the appellant, and a statement of the gross annual income, gross annual profits, and land revenue derived from his property. By the letter and statements the appellant was informed that his debts totalled Rupees 14,45,160-7-9 on which the annual interest at the contractual rates amounted to Rs. 1,22,110-9-0; that the gross annual income from his estates amounted to Rupees 5,71,626-10-9; that the amount payable in respect of land revenue, etc., was Rupees 2,65,117-14-4; that the gross annual profits from his estates (arrived at by deducting the amount payable as land revenue, etc., from the gross annual income) amounted

to Rs. 3,06,508-12-5; and that therefore the annual interest payable at the contractual rates exceeded one third of the gross annual profits. Further the letter charged the appellant with failure, without sufficient cause, to discharge his debts and liabilities and said that such failure was likely to lead to the dissipation of the property. Finally the appellant was informed that, under S. 8 (1) (d) (iii), (iv) provisos (a), (b) of the 1912 Act, he was liable to be declared by the Local Government to be incapable of managing his property, but that, under S. 8 (2) of that Act, he could show cause against such a declaration being made.

As a result of this communication the appellant attempted to show cause why no declaration should be made but was unsuccessful and, as stated above, the declaration was made. From the statement sent to him it is apparent that in calculating whether the annual interest at the contractual rates exceeded one-third of the annual profits of his property, the Local Government in order to ascertain the gross annual profits of the estate deducted the land revenue from the gross annual income. If this deduction was rightly made it was evident that the annual interest on the appellants' debts exceeded one-third of the gross annual profits-if, on the other hand, the land revenue should not have been deducted, the annual interest on the debts is less than one-third of the gross annual profits. Though some question of the right of the Local Government to deduct certain cesses and annual charitable contributions was also raised, it is conceded that they were not of sufficient amount to have any bearing on the question at issue, and in argument consideration of them was put aside. The sole question considered was whether land revenue was or was not rightly deducted before ascertaining what sum was to be regarded as the gross annual profits. Altogether apart however from the question whether the construction which he put upon those words was accurate or inaccurate the respondent maintained that the appellant was prohibited from challenging the action taken by reason of the provisions of S. 11, Court of Wards Act. That Section is as follows:

No declaration made by the Local Government under S. 8 or by the Court of Wards under S. 10 shall be questioned in any Civil Court.

A number of other questions had been raised and argued before the Courts in India but before their Lordships the respondents rested their case solely upon the two points mentioned: (1) It may be, as stated by Jessel M. R. and repeated by Lord Bramwell in *Last v. London Assurance Corporation*, (1885) 10 AC 438=55 LJ QB 92=53 LT 634=34 WR 233 = 50 JP 116 at p. 456, that of itself the phrase 'gross annual profit' has no definite meaning. It must take its colour from its surroundings. In the present case therefore it is necessary to consider those surroundings by an examination of the scheme of the Court of Wards Act, the way in which land tax is regarded in India and any provisions of the Land Revenue Act which bear upon the matter, in addition to the exact wording of S. 8 itself. The object of disqualification under S. 8 is no doubt threefold-it will protect persons incapable of managing their own affairs-it will prevent the splitting up or as the Act itself says 'the dissipation of the property' and in either event it will

enable land revenue to be more easily and more certainly collected.

That the collection of land revenue is an important consideration is apparent both from the objects aimed at and from the fact that by S. 4 of the Act, the Board of Revenue is made the Court of Wards for the United Provinces. Indeed, in earlier schemes in respect of the disqualification of proprietors, the necessary provisions were contained in the Land Revenue Acts themselves, add even in the present Act the definition of proprietor is only reached by reference to 'Mahal' and its meaning in the Land Revenue Act from time to time in force. Moreover though minors, certain females and lunatics-to take three of the classes mentioned in S. 8 of the Act-may require protection whether their property be in land or personality, it is to be observed that under that Section only proprietors, i. e., those beneficially interested in a mahal, are dealt with, and mahal primarily means a local area held under a separate engagement for the payment of land revenue. No doubt when once a proprietor is made a ward, all his property is, under S. 16 (1) of the Act, put under the superintendence of the Court of Wards, but the original assumption of wardship is only possible in the case of proprietors or land-owners paying land revenue.

In considering the way in which land revenue is regarded in India no comparison with tenures in England is of much (if any) assistance. Its universality, its quantum, and the tendency of the Indian outlook to regard the Government as a sharer in all the produce of the land, are matters of importance. By S.58, Land Revenue (United Provinces) Act of 1901 it is provided :

58.-(1) All land, to whatever purpose applied and wherever situated, is liable to the payment of revenue to the Government, except such land as has been wholly exempted by special grant of, or contract with, the Government or by the provisions of any law for the time being in force.

(2) Revenue may be assessed on land, notwithstanding that that revenue, by reason of its having been assigned, released, compounded for or redeemed, is not payable to the Government.

(3) No length of occupancy of any land, nor any grant of land made by the proprietor, shall release such land from the liability to pay revenue.

But not only is the incidence of the revenue universal, it is also generally fixed at a sum varying from 40 to 45 percent. of the total income. If in addition to this percentage the proprietor has encumbered his estate to the extent of one-third of the income, between 70 and 80 percent. of the total receipts would be removed from his control and from 20 to 30 percent. only remain-a small margin from which to ensure the payment of revenue and the protection of the mahal against foreclosure or sale under any mortgages created by the proprietor. In their Lordships' view these considerations inevitably lead to the conclusion that Land Revenue must be deducted in calculating the gross annual profit of a property. Even apart however from these considerations the wording of S. 8, Court of Wards Act, itself would lead their Lordships to the same conclusion.

Under proviso (a) to sub-s. (4) of S. 8 the contrast is between the aggregate annual interest payable by the proprietor and the gross annual profits- a phraseology which would naturally point to a contrast between what the proprietor received and the interest which he owed, and would so point none the less though it is the profits of the property and not of the proprietor which have to be considered. Indeed to substitute the former consideration would bring into account a matter which is obviously extraneous to the considerations with which the Legislature was concerned, viz. the profit derived by the proprietor from his personal estate. Moreover, the words are 'annual profits' - not 'annual rent' or 'income,' and seem to refer to some profits half way between the total income of the estate and the net profits remaining after the management expenses have been paid. If the total produce or income of the estate had been intended it would have been easy enough to say so-indeed in S. 141, Land Revenue Act of 1901 land revenue is said to be a first charge on the rents, profits or produce of every mahal, as opposed to the phrase 'gross annual profits' in S. 8, Court of Wards Act.

Moreover if land revenue is not to be deducted before the gross annual profits are arrived at in calculating the ratio of charges to profit, land revenue would appear on neither side of the account, neither as a charge nor as a deduction from profits. Therefore even accepting the view presented by the appellant that 'gross profits' has of itself no definite meaning, their Lordships, bearing in mind the circumstances above mentioned, are of opinion that in the Court of Wards Act land revenue must be deducted but no allowance for any expenses of estate management must be made in arriving at the gross annual profit of the property. This conclusion alone would involve the dismissal of the appeal, but the preliminary question whether any action in the Courts was possible having regard to the provisions of S. 11 of the Act was fully argued and is a matter of importance on which their Lordships think their decision should also be given. Ss. 10, 11, 12 and 13 deal with the limitations of the jurisdiction of the Civil Court and are as follows:

10. A proprietor may apply to the Collector to have his property placed under the superintendence of the Court of Wards and the Court of Wards may, on being satisfied that it is expedient to undertake the management of such property, make a declaration to this effect.

11. No declaration made by the Local Government under S. 8 or by the Court of Wards under S. 10 shall be questioned in any Civil Court.

12. - (1) The Court of Wards shall assume the superintendence of the property of any proprietor disqualified under cl. (b) or cl. (d) of sub-s. (1) of S. 8 or in regard to whose property a declaration has been made under S. 10.

(2) The Court of Wards may in its discretion assume or refrain from assuming the superintendence of-

(a) the property or person and property of any proprietor disqualified under cl.

(a) or cl. (c) of sub-s. (1) of section 8;

(b) the person of any proprietor disqualified under cl. (b) or cl. (d) of sub-s. (1) of section 8.

(3) The Court of Wards may assume the superintendence of the person of any minor who has an immediate or reversionary interest in the property-

(a) of any proprietor disqualified under S. 8; or

(b) of any proprietor in regard to whose property a declaration has been made under S. 10.

13. - If the right of the Court of Wards to assume or retain the superintendence of the person or property of any disqualified proprietor is disputed by such proprietor or if he be a minor or of unsound mind, by some person on his behalf, the case shall be reported to the Local Government, whose orders thereon shall be final and shall not be questioned in any Civil Court.

It will be observed that S. 11 is only concerned with action taken under sub-s. (1) (b) or (d) of S. 8, and under S. 10, i. e. those cases in which a declaration is made leaving the other cases in which superintendence of the property is assumed (or possibly all cases after it has been assumed or in which it is retained) to be dealt with by S. 13. In terms S. 11 appears to prohibit the bringing of an action disputing the validity of a declaration made by the Court of Wards under those sub-clauses of S. 8. Some limitation must no doubt be put upon the generality of the provision in as much as good faith at any rate is required. The appellant, however, goes further and says that the Court of Wards is without jurisdiction and can be declared to be without jurisdiction by the Civil Court in all cases in which the preliminary requirements of S. 8 have not been fulfilled. So far as sub-sections (1) (b) and (d) are concerned the primary requirement contained in those sub-clauses themselves is merely that the Governor in Council should declare the proprietors incapable or unfitted to manage their own property. Under (b) it seems impossible to put any limitation on that jurisdiction. Under (d) (i) (ii) (iii) and (iv) the matter again seems to be one for the discretionary judgment of the Local Government. It is conceivable that under (d) (ii) the jurisdiction only exists provided the proprietor has been in fact convicted of a non-bailable offence and that if this fact were non-existent the Local Government would be acting ultra vires in making a declaration, but it is difficult to imagine that in sub-ss. (i), (iii) and (iv) and indeed in that part of sub-s. (ii) which concerns unfitness by reason of vicious habits or bad character, the Local Government should have an absolute discretion whereas in the final part of sub-s. (ii) its jurisdiction should be limited.

In argument before their Lordships however the allegation that the action of the Local Government was ultra vires was founded not upon the wording of the sub-clauses but upon the proviso to sub-cl. (iii) and (iv) and it was said that if the Governor in Council showed by his decision that he interpreted the phrase 'gross

annual profits? wrongly in law then he could be declared to have assumed an unjustified jurisdiction. But in such an argument the same difficulty arises as is to be found on a consideration of the sub-clauses themselves. No logical distinction between fact and law was propounded to their Lordships and indeed it is difficult to see why a wrong calculation under proviso (a) should be unchallengeable, whereas a wrong view as to the meaning of 'gross annual profits' should be open to question. Nor indeed is it easy to draw a distinction between fact or law on the one part and opinion on the other since proviso (b) by which the Local Government are equally governed is a matter of opinion alone. Apart from a close analysis of S. 8 itself, there are other reasons for thinking the decision of the Local Government to be unfettered. Under S. 8 (2) careful provision is made for a hearing of the proprietor's case before a decision is made, and in the case of sub-cl. (a) and (c), S.13 expressly provides for the method which shall be followed if the right of the Court of Wards is challenged and the decision so attained is declared to be final.

Moreover the proviso itself expressly requires the satisfaction of the Local Government, not that of a Court and it is, in their Lordships' view, unlikely that a decision solemnly come to by the Governor in Council after full inquiry and when declared by the Act to be final, should thereafter be subject to review by the local Courts of the Province. In coming to this conclusion, their Lordships are in no way overlooking the importance of jealously scrutinizing the jurisdiction conferred on executive bodies or of giving no wider interpretation than is necessary to any limitation of the powers of the Court. But however carefully the liberty of the subject has to be guarded, not only is there sound sense in making the decision of the Local Government final but it has also to be remembered that a right construction of the Act can only be attained if its whole scope and object together with an analysis of its wording and the circumstances in which it is enacted are taken into consideration. From an examination of the Act alone, their Lordships would have reached the conclusion that owing to the provisions of Ss. 11 and 13 of the Act no resort to the Courts was left in this case under S. 8, and the other circumstances to which their Lordships have referred so far from weakening have strengthened that conclusion. Having reached the decision opposed to both the contentions put forward on behalf of the appellant they will humbly advise His Majesty that the appeal should be dismissed with costs.