

(1922) 09 BOM CK 0003

In the Bombay High Court

Case No : Civil Extraordinary Application No. 202 of 1921

Rasul Musa Mafat

APPELLANT

Vs

Asman Musa Dadi

RESPONDENT

Date of Decision : 22-09-1922

Acts Referred:

Mamlatdars Court Act, 1906 — Section 5

Citation : AIR 1923 Bom 60 : (1922) 24 BOMLR 1311 : 76 Ind. Cas. 442

Hon'ble Judges : Lallubhai Shah, J;Crump, J

Bench : Division Bench

Judgement

Lallubhai Shah, Acting C.J.

1. This is an application under our extraordinary jurisdiction to revise the order made by the Collector on June 2, 1921. It is necessary to state the facts briefly which have led to the present application. A suit was filed in the Court of the Mamlatdar at Godhra under the Mamlatdars' Courts Act II of 1906. In that suit the Mamlatdar made an order on September 4, 1920, refusing to exercise the power vested in him under the Mamlatdars' Courts Act. The Mamlatdar held that the matter could be more suitably dealt with by a Civil Court. It was open to him to make that order under the proviso to Section 5. The plaintiff preferred an application to the Collector for the revision of that order, and the Collector made an order on October 6 (September in the original order seems to be a mistake for October), 1920 in these terms :-"I think the Mamlatdar should proceed with the case from the point at which he left off to give his decision, and return the case for necessary-action."

2. This order is not clear in its terms, but as I understand it, it means that he ordered the Mamlatdar to proceed with the suit and that the case papers were to be returned to him (the Mamlatdar) for necessary action. The Mamlatdar recorded some evidence, but the procedure that was adopted thereafter seems to me to have really no justification for it under the Mamlatdars' Courts Act. The Mamlatdar resubmitted the depositions of the witnesses recorded by him, and he

wrote back to the Collector as follows:-"I have not recorded my decision as the orders of the Collector are not clear on the point. If the Collector decides to pass orders on the case himself, the pleaders may be given an opportunity to argue out evidence." Thereafter the matter seems to have been dealt with as a departmental matter between the Collector's office and the Mamlatdar's office; and with the details of this departmental inquiry we are in no way concerned. But after adopting that extraordinary procedure, on June 2, 1921, the following order was made by the Collector : "After hearing the parties and on perusal of the papers received from the Mamlatdar, Godhra, the Collector sees no reason to interfere with the orders passed by the Mamlatdar." The orders passed by the Mamlatdar referred to there, so far as we are concerned, can only be the order passed by him in September 1920.

3. The present application is made by the plaintiff" for setting aside this order of the Collector and for proper directions. It is a matter of some difficulty to determine under the circumstances as to what we should do now. It is quite clear to my mind that after the Collector made the order on October 6, 1920, sending back the case to the Mamlatdar for his decision the only proper course for the Mamlatdar to follow was to try the suit under the Mamlatdars" Courts Act, and to give his decision. That has not been done until now ; and we have got the order of the Collector saying that he sees no reason to interfere with the Mamlatdar's order. That order in effect conflicts with the first order made by the Collector on October 6, 1920, and whether the parties were heard before the order of June 2, 1921, was made as stated in the order, or whether they were not heard as alleged in the petition, it makes no difference to my mind in the result. The Collector had power to revise the order of the Mamlatdar u/s 23 of the Act. He had made his order on October 6, 1920. The only thing that could have been done thereafter according to law, and should have been done, is that the Mamlatdar should have tried the case and given his judgment. That not having been done, we think that we must now direct the Mamlatdar to do that which after the first order of the Collector he was bound to do. All that has been done after that departmentally between the Mamlatdar and the Collector must be simply ignored. It is not in accordance with any procedure provided under the Mamlatdars" Courts Act, and in my opinion the disposal of this simple matter should not have been delayed in this manner either in the Mamlatdar's office or before the Collector. It is unfortunate that at this distance of time in a suit under the Mamlatdars" Courts Act, we have to direct that the suit of 1920 should be tried. But that is the proper thing under the circumstances to do in order to bring the present proceedings to a termination in accordance with law.

4. We, therefore, make the Rule absolute and direct the Mamlatdar to proceed with the suit and to decide it in accordance with the provisions of the Mamlatdars" Courts Act. Having regard to what has happened, we think that the suit should be tried de novo, unless the parties agree to accept any evidence already recorded before him as evidence in the suit. We think that each party should bear his own costs of this application. Other costs to be costs in the suit.

Crump, J.

5. In this case the original order made by the Mamlatdar on September 4, 1920, was a legal order under the proviso to Section 5 of the Mamlatdars' Courts Act II of 1906, and the Collector in exercise of the powers conferred upon him u/s 23, Clause (2) was entitled to call for the papers, and if he found the order to be illegal or improper, he could make such order as he thought fit not inconsistent with the Act.

6. The whole difficulty in this case apparently arose from the manner in which the Collector's order under that section dated September 6, 1920, is expressed. He clearly came to the conclusion that the Mamlatdar's order was not a proper order, and he, therefore, directed the Mamlatdar to proceed with the case and to pass a decision. But unfortunately the last sentence of his order was expressed in such a manner that the meaning is far from clear, and I must say, speaking for myself, that I do not exactly understand what was intended. I am, therefore, not surprised that the Mamlatdar resubmitted the papers after taking certain evidence with a view to getting further directions. At that point, all that the Collector had to do was to tell the Mamlatdar what he meant and the only legal order that he could make was that the Mamlatdar should pass a fresh decision in the case, and that I take it is what he intended when he made his order of September 6.

7. From that point the case wandered by most extraordinary paths for which I find no warrant in the Act or any general rule of a judicial procedure. A kind of miscellaneous correspondence ensued which only served to delay this comparatively simple matter, and finally, on June 2, 1921, the Collector passed a further order, stating that he saw no reason to interfere with the order passed by the Mamlatdar. But that order is clearly one which the Act does not contemplate, for when the order of September 6, 1920, had been made by the Collector he was pro tanto functus officio and nothing remained to be done, except a fresh decision to be passed by the Mamlatdar after recording the evidence offered by the parties.

8. I must, therefore, agree that we must restore the case to the position which it ought legally to have occupied after the Collector's first order was made, I, therefore, concur in the order proposed.