(1935) 10 PAT CK 0013

In the Patna High Court

Secy. of State APPELLANT

Vs

Kameshwar Singh Bahadur and Another RESPONDENT

Date of Decision : 24-10-1935

Acts Referred:

Citation : AIR 1936 Patna 87

Hon'ble Judges : Mohammad Noor, J;Macpherson, J

Bench : Full Bench

Judgement

Mohammad Noor, J.—This appeal is by the Secretary of State for India in Council against the decree of the Officiating Subordinate Judge of Purnea in favour of the Maharajadhiraja of Darbhanga for Rs. 9,180, and costs as compensation for loss of income of a ferry possession of which was taken by Government u/s 6(b), Ferries Act (Act I (B.C.) of 1885). The facts are that the Magistrate of Purnea recommended to the Commissioner of Bhagalpur Division that the Dhamdaha ferry of that district, which was a private ferry of the plaintiff should be taken possession of by Government and managed by the District Board and that the Maharajadhiraja be given compensation of Rs. 3,870, being ten times the average estimated fair profit made by him from the ferry during the previous five years. He had held after enquiry that the actual average annual income of the plaintiff, which the mustajir of the ferry paid to him, during the period in question was Rs. 928, but having found that the ferry only worked for five months in the year and for the remaining period the mustajir (lessee), who obtained settlement at auction, extorted the toll even from persons who crossed the river on foot or took their carts across it without using the boats, he took into account only the income of the five months and recommended that only ten times five-twelfths of Rs. 928 be paid to the plaintiff. The Commissioner accepted the recommendation of the Magistrate that the ferry be taken possession of and under the power delegated to him by the local Government u/s 36, Ferries Act, directed that the ferry in question be taken possession of and be declared to be a public ferry and further directed that it be managed by the District Board of Purnea. He however, held that the number of months during which the ferry worked was not five but four, and accordingly directed payment of Rs. 2,980 only being ten times four-twelths of Rs. 918.

2. It is to be noted that while the Magistrate took the total average annual receipt to be Rs. 928, as mentioned in his letter (Ex. A), the Commissioner''s calculation is by some mistake based upon an average annual income of Rs. 918 only. When the Commissioner''s award was offered to the plaintiff his Chief Manager refused to accept it and intimated that the Raj would seek its remedy in the civil Court, and the plaintiff instituted the present suit against the Secretary of State for India in Council and the Chairman of the District Board of Purnea for recovery of Rs. 13,770, being fifteen times the average income for the previous five years, the maximum compensation permissible u/s 17, Ferries Act. He took the annual income to be Rs. 918, as the Commissioner had done. The defendants contested the suit, and their main defence was that the plaintiff had no cause of action and that the civil Court had no jurisdiction to entertain the suit. They also contested the amount of the annual income as alleged by the plaintiff. The learned Subordinate Judge decreed the suit against defendant 1, the Secretary of State for India in Council, and exonerated defendant 2, the Chairman of the Purnea District Board. He has given the plaintiff a decree for ten times the average annual income as alleged by the plaintiff, namely, Rs. 918, and disallowed the remainder of the claim at fifteen times the average annual income. The Secretary of State, as I have stated, has preferred this appeal. There is a cross-objection on behalf of the plaintiff in respect of the Rs. 4,590 disallowed by the learned Subordinate Judge. The main contention of the defendant is that the plaintiff has no cause of action and that the civil Court has no jurisdiction to entertain the present suit. In order to decide the question of the right of the plaintiff to sue in the civil Court it will be necessary to examine the position of the Government in respect of the ferries in this province. The earliest legislation, which authorised the resumption of ferries is Regn. 19 of 1816. This Regulation provided for fixing of tolls on ferries and prescribed rules for management and collections through the collectors of land revenue. Section 9 of that Regulation provides that:

In the event of its appearing that the profits derived from any resumed ferry may have been included in the permanent settlement of the estate to which it has heretofore been annexed, the Board or Commissioner, under whose orders the enquiry may be conducted, shall report the circumstance, with an opinion on the merits of the claim, for the consideration and orders of the Governor-General in Council; and the Courts of judicature shall not take cognizance of any claims to deductions or, compensations on account of the tolls levied at any ferry or ghaut.

3. This Regulation was repealed by Regn. 6 of 1819, by which the management of the ferries was transferred from the Collector to the Magistrate. Section 3, Clause (1), describes the ferries which were to be considered public ferries. They were those that were situated at or near the sudder stations of the several Magistrates or joint Magistrates, or such as might intersect the chief military

routes or other much frequented roads, or such as from special considerations it might appear advisable to place it under the more immediate management of the Magistrates and Joint Magistrates. Clause (2) of this section ran thus:

The Government reserves to itself the power of determining, from time to time, what ferries shall under the preceding rule, be deemed public ferries and as such shall be subject to the immediate control of the Magistrates and joint Magistrates; and no Magistrate or joint Magistrate shall without previous authority from Government, assume the management of any ferry which may not have been let in farm or held khas, or otherwise subjected to assessment by the Collectors, under the provisions of Regn. 19 of 1816.

4. Section 6, Clause (2), provided that the ferries, a list of which was to be prepared, would exclusively belong to Government and no person was to ply a ferry-boat for hire at or in their immediate vicinity without the previous sanction of the Magistrate or Joint Magistrate. Provision was however made that:

Due attention be paid to all claims for compensation which might be preferred by individuals, for any loss which may be sustained by them in consequence of the extension of the authority of Government to ferries hitherto under their private management and which may not have been heretofore let in farm or held khas, or otherwise deemed subject to assessment on account of Government

and that:

Claims of that nature shall be inquired into by the Magistrates and Joint Magistrates and their opinion on the merits of each case shall be reported through the channel of the Superintendent of Police, for the consideration and orders of Government.

5. Section 6 of this Regulation so far as it related to Bengal was repealed by Act 1 of 1866, Section 2 of which provided:

Every ferry which has been or may be declared to be a public ferry under the provisions of Regn 6 of 1819, shall belong exclusively to Government, and no person shall except with the sanction of the Magistrate of the District, keep a ferry-boat for the purpose of plying for hire within a distance of two, miles above or below the place where such public ferry is established.

6. It will be observed that a definite distance was fixed within which the plying of a private ferry was prohibited. Section 4 of the Act of 1866 ran as follows:

All claims for compensation which may be preferred by any person or persons for any loss which may be sustained by them in consequence of any ferry having been declared public as aforesaid, shall be inquired into by such Magistrate, who shall award compensation to any such person or persons who may appear justly entitled thereto. Such compensation shall be calculated upon an estimate of the annual net profit actually realised by such person or persons from such ferry on an average of the five years not preceding such declaration, and shall in no case exceed the amount of 15 times of such net annual profit.

7. It will be noticed that before the passing of this Act, the payment of compensation was left to the discretion of Government. Regn. 19 of 1816 confined it to those cases only where the income of the ferry was taken into consideration at the making of the permanent settlement. That restriction was removed by Regn. 6 of 1819; but still the payment of compensation was left to the discretion of Government as was pointed out in a decision of the Calcutta High Court to which I shall presently refer. By Act 1 of 1866 the payment of compensation was placed on a firmer footing and the basis of calculation was fixed. That Act was replaced by the Ferries Act 1 (B.C.) of 1885, which is now in force. Section 6, Ferries Act, makes it lawful for the Lieutenant-Governor from time to time to

(b) take possession of a, private ferry and declare it to be a public ferry,

and Section 17 practically re-enacts the corresponding section of Act 1 of 1866, and runs as follows:

Claims for compensation for any loss sustained by any person in consequence of a private ferry being taken possession of, or a new public ferry, or subsidiary ferry, being established u/s 6 or Section 11, shall be inquired into by the Magistrate of the District in which such ferry is situated, who shall, with the approval of the commissioner, award compensation to any person who may appear justly entitled thereto.

8. Such compensation is to be calculated upon an estimate of the annual net profit actually realised by such person from such ferry on an average of the five years preceding such declaration and shall in no case exceed the amount of 15 times such net annual profit. This is the present law as to the authority of Government to take possession of a private ferry and the right of the private individual concerned to receive compensation. Now the question is whether the compensation which is payable under the Act can be realised from Government by a civil suit, and whether the private individual concerned can question the adequacy of the compensation in a civil Court. The learned Subordinate Judge has referred to Section 9, Civil P.C., and has held that as the jurisdiction of the civil Court is not expressly barred it has jurisdiction to entertain a claim for compensation. In my opinion he is wrong. He has ignored the fact that the jurisdiction of the civil Court may also be barred by implication. A case exactly similar to the present one was decided by a Full Bench of the Calcutta High Court in the year The Collector of Pubna v. Romanath Tagore (1867) 7 WR 191. Though the decision of the High Court was after the passing of Act 1 of 1866 it is based upon Regn. 6 of 1819 under which the ferry was resumed. The suit was for compensation for the loss sustained by the plaintiff in consequence of the Government having resumed a ferry which had been till then under the private management of the plaintiff. The Full Bench held that the plaintiff had no cause of action. This decision was placed before the learned Subordinate Judge, but he

did not follow it on the ground that it was under Regulation 6 of 1819 and the Regulation was not available to him for comparison with the present Act. He ought to have obtained a copy of the Regulation which, if not available in the District Court Library of Purnea, could have been obtained by him elsewhere. It is to be found in Sutherland''s Regulations of the Bengal Code published in the year 1862.

9. The position of an individual whose private ferry is resumed by Government was exactly the same under Regulation 6 of 1819 as it is now, except that then the payment of compensation was in the discretion of the Government and no basis was prescribed for its calculation. A basis has now been fixed and payment is now compulsory. Sir Barnes Peacock, C.J., while delivering the judgment of the Full Bench in the case above cited, traced the history of the Ferries Regulations and pointed out that from the earliest times the Government reserved to themselves the right of resuming any private ferry. It was argued in that case that as Section 9, Regulation 19 of 1816 expressly barred the jurisdiction of Courts to take cognizance of any claim to deduction or compensation on account of the tolls levied at any ferry and as this provision was omitted from Regulation 6 of 1819, the civil Courts were given jurisdiction to entertain a suit for compensation. Sir Barnes Peacock observed that though the Court had cognizance of the suit it could not decree it unless the plaintiff had a cause of action. While dealing with the question whether the plaintiff of that suit had a cause of action the learned Chief Justice pointed out that if the Regulation simply authorized that a certain ferry could be declared to be a public ferry and that no person was to employ a ferry-boat for hire at or in its immediate vicinity without the previous sanction of the Magistrate or Joint Magistrate and made no provision for any compensation, the aggrieved party had no remedy whatsoever.

10. Then His Lordship observed that the Regulation provided that due attention would be paid to claims for compensation and held that when the legislature said that these claims should receive due attention it meant no more than that they should be enquired into in the manner provided by the Regulation and did not intend to give to the claimant any right enforceable in Court. Dr. Sen, who appeared on behalf of the respondent, has contended that if the law had been as it is now, the decision would have been otherwise. His contention has been that the ratio decidendi of the Full Bench decision that the plaintiff had no cause of action was that the right to receive compensation was not recognized in the Regulation as it only said that due attention should be paid to all claims for compensation, but inasmuch as now the payment of compensation is compulsory and the basis of the compensation has been provided in the Act, a suit to enforce it is maintainable. I am unable to accept this contention. As I have said, the position has not changed and the law now is practically the same as it was then. The only change is that the right to receive compensation is made clear and on the other hand the power of Government to take possession of a private ferry is more expressly stated. Sir Barnes Peacock, C.J., referred to an earlier decision of the Sudder Dewany Adalat: Government v. Brij Sunder Dasi (1848) SDA 457

which was the basis of the reference to the Full Bench. The suit was for recovery of possession of a ferry which was resumed by a Magistrate.

11. The plaintiff''s suit was dismissed on the ground that the Magistrates were not amenable for their official acts to the mufassal Courts. This decision was approved, though the reasons on which it was based were not adopted, which, in my opinion, means that the opinion of the Full Bench was that the suit did not lie though not on the ground that the Magistrates were not amenable to the Jurisdiction of the mufassal Courts but on the ground that the plaintiff had no remedy in Court. The principle laid down in the Full Bench decision was accepted in Benode Lal v. Pran Chander (1911) 14 CriLJ 186 and Sham Lal v. Bindo (1904) 26 All 594. It is well-settled law that if any private right is interfered with under the authority of any statute and no remedy is provided in the statute itself, the aggrieved party has none; but if a remedy has been given in the statute, the aggrieved party can get that remedy only in the manner stated, provided always that those in authority who interfere with private rights do so strictly according to the mode prescribed in the statute. In Mayor and Councillors of East Fremantle v. Annois (1902) AC 213, Lord Macnaghten delivering the judgment of their Lordships of the Privy Council, observed as follows:

The law has been settled for the last hundred years. If persons in the position of the appellants acting in the exercise of a public trust or for the public benefit do an act which they are authorised by law to do and do it in a proper manner, though the act so done works a special injury to a particular individual, the individual injured cannot maintain an action. He is without remedy unless the remedy is provided by the statute.

12. In the present case the Government took possession of the plaintiff''s ferry by virtue of the power vested in them u/s 6 of Act I of 1885 and for this the plaintiff has no cause of action. This position is not disputed, nor is there any allegation that in taking possession of the ferry the Government has acted arbitrarily, carelessly or oppressively, so as to give the plaintiff a cause of action. The grievance of the plaintiff is that the compensation granted to him is inadequate and has been arrived at on a wrong basis. The suit therefore, is practically an appeal to the civil Court against the orders of the Magistrate and the Commissioner fixing the amount of compensation. No such appeal is provided in the Act. It is again settled-law that if a right is given to an individual by a statute and the mode of obtaining that right is provided in the statute itself, a suit to enforce the right is not maintainable in the civil Court. The learned Government Pleader has placed reliance upon a number of English decisions. Some of them were referred to by Sir Barnes Peacock in the Full Bench decision, I have just referred to. They are Stevens v. Jeacocke (1848) 11 QB 731, Doe dem v. Bridges (1831) 1 B & Ad 847 and Wolverhampton New Waterworks Co. v. Hawkesford (1859) 28 LJCP 242.

13. It is not necessary to examine these cases in detail as the principle which they lay down, namely, that when a right has been created by a statute the only

remedy available for the infringement of that right is the one provided in the statute itself, is well settled. Dr. Sen, however contended that the right to receive compensation for the loss of income of ferry is not the creation of the statute; the right existed independently of it; the statute only recognised it and though it has provided a remedy, that remedy is not exclusive; the aggrieved party if not satisfied, may seek a remedy in the civil Court. There seems to me to be no force in this contention. First, there is no right to receive compensation for acts done under the authority of the law unless the law itself gives such a right. I have already stated that the legislature having authorized the taking of possession of ferries by Government, the private individual who was deprived of his ferry had no right against the Government Unless one was given to him in the statute itself, and in this particular case the remedy provided is the payment of compensation as ascertained by the Magistrate and sanctioned by the Commissioner. In the case of Governor & Co. of the British Cast Plate Manufacturers v. Merdith (1792)4 TR 794 the plaintiff sued for relief and damages for raising the payment of a road which blocked up and obstructed the passing and repassing of carts, etc., to the plaintiff''s ware-houses. The raising of the payment was done under the Paving Act. Buller, J., observed:

The question here is whether or not this action can be maintained, and I am clearly of opinion that it cannot be, because a particular remedy is pointed out by the Act. If there had been no clause in the Act empowering the Commissioners to give satisfaction to the party aggrieved, I am no means satisfied that on the broad principle stated by the plaintiff''s counsel any action could be maintained.

14. Assuming however that the right to receive compensation existed independently of the Act and the Act only affirmed it and provided a peculiar form of remedy, that remedy, in my opinion, is exclusive as the claim for compensation is to be investigated by a particular officer and on a particular basis and the jurisdiction of the civil Court is barred by necessary implication. There are a number of decisions of the Courts in India to the same effect, but I do not propose to refer to them in detail. It is sufficient to mention some of them: Sham Lal v. Bindo (1904) 26 All 594 already referred to, Bhaishankar Nanabhai v. Municipal Corporation of Bombay (1907) 31 Bom 604 in which it was pointed out that the jurisdiction of civil Court is excluded by implication when an authority to deal with the matter has been provided and Rameshwar Singh v. Secy. of State (1907) 34 Cal 470. It was observed in the last mentioned case that when statutory right and liabilities have been created and jurisdiction has been conferred upon a special Court for the investigation of matters which may possibly be in controversy, such jurisdiction is exclusive and cannot conveniently be exercised by the ordinary Court. This observation was made in connexion with a case in which the claim was in respect of lands acquired under the Land Acquisition Act. Dr. Sen, has however contended that the Magistrate and the Commissioner acted arbitrarily in reducing the actual income of the plaintiff from the ferry, for the purpose of payment of compensation, the former to 5/12ths and the latter to 4/12ths and therefore in exercising their statutory power they

have gone beyond the limits of the law and for that reason his client has a remedy in the civil Court and he relies upon the above decision in his support. Now, Section 17, Ferries Act 1885, gives authority to the Magistrate to ascertain the average net profit. He had ample power to investigate the nature of the income of the plaintiff and if he found that the mustajir offered bids not only on the basis of the income from the ferry but on the expectation of also realising illegal tolls during the dry season, he had, in my opinion, full power to ignore such illegal income accruing through the offence of extortion and to find out what the actual income from the ferry was. I am not at present considering whether the Magistrate made an error of fact in coming to his conclusion. It is enough to say that his order is not revisable by the civil Court. There has been no irregularity in the proceeding. His mistake, if any, lies in his conclusions of fact. In my opinion, therefore, the plaintiff has no cause of action and the suit was not entertainable in the civil Court.

15. In view of this finding it is not necessary to examine how far the plaintiff''s case is sustainable on the merits; but as an issue thereon has been raised, I have to decide it. The onus was obviously on the plaintiff not only to prove what he received from the mustajir but also in the circumstances to show that the actual collections from the ferry itself could warrant such a receipt. What the mustajir paid to the plaintiff is not disputed; but the question is what the profit of the ferry itself is? The mustajir was examined, but he produced no accounts to show what his income had been from the ferry. It may, be admitted that the evidence in this regard adduced by the defendant in the suit is not as satisfactory as it might be. Witnesses have however been examined to prove that the river is fordable during the dry season and no boat is kept but nevertheless all who cross the river-bed are compelled to pay toll. Better evidence could perhaps have been given, but I have certainly no reason to hold that the Magistrate was not justified in holding as he has that the income of the mustajir was partly based upon the tolls which he collected illegally though whether with the knowledge of the plaintiff does not appear from the evidence. Even if it had been open to us to examine the correctness of the finding of the Magistrate, it would have been impossible on the material before us to reverse his conclusions based as they are on his own careful inquiry.

16. In the result, I would allow this appeal, dismiss the cross-objection and dismiss the plaintiff''s suit with costs throughout. The hearing fee in this Court will be calculated on the aggregate value of the appeal and the cross-objection.

Macpherson, J.

17. I agree entirely that the plaintiff-respondent had no cause of action and that the appeal must be allowed and the suit and cross-objection dismissed with costs throughout.

18. I would add that in my view it is clearly established by the evidence for the defence that the legitimate income of the ferry is confined to four or five months

of the year, while realization was made forcibly by the lessee of Raj Darbhanga under the shadow of the name of the Raj throughout the twelve months and he could never have otherwise paid the amount at which he had secured the ferry at auction. Had the trial Judge not been at the very beginning of his first period of appointment as officiating Subordinate Judge he also could not have failed so to hold.

