

(1933) 06 CAL CK 0041
In the Calcutta High Court

Secy. of State

APPELLANT

Vs

Ramnath Bhatta

RESPONDENT

Date of Decision : 16-06-1933

Acts Referred:

Citation : AIR 1934 Cal 128 : 150 Ind. Cas. 440

Hon'ble Judges : M.C. Ghose, J;Costello, J

Bench : Full Bench

Judgement

M.C. Ghose, J.—This is an appeal by the defendant, the Secretary of State for India in Council, in a suit in which the plaintiff, Ramnath Bhatta, claimed damages for a wrongful act of the Collector of Chittagong. The facts, on which there is no dispute, are that one Faizali was the recorded proprietor of a certain revenue paying taluk. The plaintiff purchased the taluk on 14th May 1919 in execution of his mortgage decree. Two years later, on 16th June 1921, he applied for registration of his name in place of Faizali. The Land Registration Officer decreed his case on 19th September 1921. The decree was drawn up in January 1922, and the plaintiff's name was substituted in place of Faizali in the register on or about 16th February 1922. But before that date namely on 22nd November 1921, the taluk was duly sold by the Collector for arrears of revenue under the Bengal Land Revenue Sales Act of 1859. After paying all Government arrears there remained a sum of Rs. 1,504 odd the surplus sale proceeds which u/s 31, Act 11 of 1859 was to be held by the Collector in deposit on account of the late recorded proprietor or proprietors and to be paid to them according to their recorded interest in the taluk sold. The plaintiff on 22nd January 1922 applied to the Collector that the surplus sale proceeds might be paid to him. His application was registered and on 15th March an order was passed that the money be paid to him. But a third person, Siddiq Ahmed, instituted a suit in the civil Court and the Court sent a request to the Collector not to pay the money to the plaintiff until the matter was decided by the civil Court. Thereafter on 22nd March Faizali who was the recorded proprietor on the date of the sale applied that the money might be paid to him.

2. It does not appear that the rival claims of Faizali and the plaintiff and Siddiq Ahmed were duly considered by the Collector or the Deputy Collector but that on 22nd March an order was made that the surplus sale proceeds be paid to Faizali and on 23rd March accordingly the money was paid to Faizali. Thereafter the plaintiff instituted the present suit claiming that he was justly entitled to the surplus sale proceeds and the Collector in paying the same to Faizali has unjustly deprived him of his dues and he claimed the sum of Rs. 1,504 odd from the Secretary of State for India in Council. The defence taken was twofold: in the first place that the Collector was right in paying the money to Faizali who was recorded proprietor on the date of the sale, and secondly that in any case the plaintiff had no cause of action against the defendant. Both the Courts below have decided on the facts that the Collector committed an error in paying the money to Faizali and that it was justly due to the plaintiff and thus decided issue I in favour of the plaintiff. As to issue 2, that in any case the defendant was not liable the learned Munsif held that the Collector was in the position of a trustee for the plaintiff in respect of the surplus sale proceeds and that the Collector in full possession of the facts paid out the money to the wrong man through the fault of the office in not bringing the plaintiff's claim if not also the prohibitory order of the civil Court to his notice. He therefore held that the liability of the defendant was undoubted. The learned Subordinate Judge did not record his opinion on the issue at all holding it apparently as an axiom that when the Collector committed an error the Secretary of State for India in Council must be held liable.

3. In appeal it is urged by the learned Assistant Government Pleader that assuming the facts, namely that the Collector committed an error in paying the money to Faizali the Secretary of State for India in Council is not liable to make good the loss to the plaintiff in the circumstances of this case. It is to be observed that the order of payment was not made by the gentleman who was acting as the Collector of the District at the time. The order was made by a Deputy Collector. It also appears that the Deputy Collector's attention was not drawn at the moment when he signed the order of payment to Faizali, that a previous order of payment to the plaintiff remained uncanceled, and that the civil Court's request for postponement also remained without consideration. There was thus an error or delinquency on the part of the clerical staff who apparently did not bring the proper facts to the notice of the Deputy Collector and the Deputy Collector committed an error in ordering payment of the surplus sale proceeds to Faizali. The question then is whether on these facts the Secretary of State for India in Council is liable to make good the loss to the plaintiff.

4. Various cases were cited in argument in respect of the liability of the Secretary of State for India in Council: *Peninsular and Oriental Steam Navigation Co. v. Secy. of State* (1862) 5 Bom HCR 1, *Nobin Chunder Dey v. Secy. of State* (1875) 1 Cal 11, *Secy. of State v. Hari Bhanji* (1882) 5 Mad 273, *Shivabhajan Durqa prosad v. Secy. of State* (1904) 28 Bom 314, *Mo Inerny v. Secy. of State* (1911)

38 Cal 797, Secy. of State v. Moment (1913) 40 Cal 391, A.M. Ross v. Secy. of State AIR 1915 Mad 434, Secy. of State v. Cockcraft AIR 1915 Mad 993, Secy. of State Vs. Srigobinda Chaudhuri, . In the first case the Peninsular Oriental Steam Navigation Company claimed Rs. 340 damages to their horse on account of default of some dock labourers. It was held by Peacock, C.J. and Jackson and Walls, JJ., that on the facts the Secretary of State was liable because the Government through the dock-labourers was engaged in an ordinary business which private persons might do and not in the exercise of powers which could not be lawfully exercised by anybody except by a Sovereign in which latter case the Secretary of State for India would not be liable.

5. In the second case Nobin Chunder Dey v. Secy. of State (1875) 1 Cal 11 the plaintiff had deposited some money in order to obtain license for some excise shops, but afterwards the Excise Officers did not give him the license thereby causing him some damages by their action. The suit was dismissed, Garth, C.J., and Macpherson, J., holding that the Secretary of State for India in Council was not liable for acts done in exercise of Sovereign powers and that in this case the persons, who were guilty of default were officers of a department for taxation of the subject by imposition of custom and duties, that these were acts done in the exercise of Sovereign powers and that the Secretary of State for India would not be held liable.

6. The case of Hari Bhanji (1882) 5 Mad 273 was a peculiar case. The plaintiff claimed some damages for alleged over-imposition of duties. His suit was dismissed on the merits but the trial Judge held that he had jurisdiction to hear the suit. He therefore ordered the parties to bear their costs. The Secretary of State for India in Council appealed against that order, questioning his decision on the issue of jurisdiction. In a learned Judgment Turner, C.J. and Ayyar, J., dissented from the decision in the case of Nobin Chunder Dey (1875) 1 Cal 11 and held that the Sovereign powers exercised by the Government of India might be divided into two categories: (1) acts which are done in the exercise of sovereign powers and are not justified by the Municipal law of the country; and (2), all acts done in exercise of sovereign powers which profess to be justified by the Municipal law. They held that it was only the acts of the first category, namely treaties of peace and war against foreign states where the Government would not be liable; but in all cases under the second category, namely all cases where action is taken in the internal administration of the country the Secretary of State for India in Council would be liable in the same manner as a private person. I may say that this was a decision of the Madras High Court and with due respect it is my duty to follow the decision of this Court, in the case of Nobin Chunder Dey (1875) 1 Cal 11.

7. The decision in the case of Nobin Chunder Dey (1875) 1 Cal 11 was followed in the case of Shivabhanjan (1904) 28 Bom 314 where Jenkins, C.J., and Aston, J., held that where the loss to the plaintiff was caused by the default of a Subordinate Officer and the act was not productive of benefit to the revenues of

the Government nor was it a transaction out of which any profit could be derived there was no liability incurred on account of the Government of India. The plaintiff's suit for damages was accordingly dismissed. Similarly, in the case of *Mc Inerny* (1911) 38 Cal 797, *Fletcher, J.*, followed the case of *Nobin Chunder Dey* (1875) 1 Cal 11 as binding upon him, refusing to follow the case of *Haribhanji* (1875) 1 Cal 11 as it was not a decision of this Court and dismissed the suit of the plaintiff who had got hurt by colliding against a post in the Maidan, holding that in putting up the post on the Maidan the Government were not carrying on a commercial undertaking or other trading operation and therefore the Secretary of State for India was not liable.

8. In the case of *Moment* (1913) 40 Cal 391 their Lordships of the Privy Council in an appeal from Burma held that certain sections of Burma Act 4 of 1898 were ultra vires and invalid and that a suit for damages for wrongful interference with the plaintiff's property would lie against the Secretary of State for India in Council for the reasons explained by Sir Barnes Peacock in the *P. and O* case. In the case of *Ross* AIR 1915 Mad 434 the plaintiff claimed damages for alleged wrongful acts by a certain District Magistrate. *Wallis, J.* dismissed the suit holding that the Secretary of State for India in Council was not liable for the alleged wrongful acts of the District Magistrate inasmuch as the acts were done by him in the exercise of statutory authority. He also quoted with approval *Storey on Agency* that Government itself is not responsible for the misfeasances, or wrongs, or negligences or omissions of duty of the subordinate officers or agents engaged in the public service; for it does not undertake to guarantee to any person the fidelity of any of the officers or agents whom it employs; since that would involve it in all its operations, in endless embarrassments and difficulties and losses which would be subversive of the public interests.

9. In the case of *Cockcraft* AIR 1915 Mad 993 plaintiff sued the Secretary of State for damages in respect of injuries sustained by him in a carriage accident due to the negligent stacking of gravel on a military road. It was held by *Wallis, C.J.*, and *Section Ayyar, J.*, that on the facts the defendant was not liable inasmuch as in respect of acts done by the East India Company in the exercise of its Sovereign powers it could not have been made liable for the negligence of its servants in the course of their employment and the liability of the Secretary of State for India in Council is similar to that of the East India Company, that the provision and maintenance of the military road was one of the functions of Government carried on in the exercise of its Sovereign powers and was not in undertaking for profits which might have been carried on by private persons. All the above cases were summed up in the case of *Sreegobinda Choudhury* AIR 1932 Cal 834 decided by *George Rankin, C. J.*, and *Sir C.C. Ghose, J.* In that case the plaintiff sued for damages for alleged errors and omissions of a Manager under the Court of Wards. It was held that the Secretary of State for India in Council could not be made liable for alleged default of the Manager under the Court of Wards.

10. In the present case the alleged loss of the plaintiff was caused by the error or delinquency of the subordinate staff under the Collector of Chittagong. The question is whether for their acts the Secretary of State for India in Council is liable or in other words, whether the Government revenues are liable for the alleged losses. In this case the surplus sale proceeds were held in the interest of the late recorded proprietor. It was not held by the Collector for the profit of the Government. By the order of payment of the money to Faizali the Government did not derive any benefit. The act was done by the Deputy Collector entirely in the exercise of his statutory duties. If he committed an error in his duty the Secretary of State for India in Council cannot be held liable for the same. It may be noted that in similar cases in England claims of plaintiffs for alleged tort due to wrongful acts of subordinate officers have been refused by the Courts. See the case of *Viscount Canterbury v. The Queen* (1842) 4 State Trials (NS) 767. That case was instituted upon a petition of right. There the Speaker of the House of Commons had left certain furniture in the Parliament building which was burnt down by the negligence of some officers of the department of Woods and Forest. It was held that the Crown was not responsible for the conduct of all persons holding public offices and appointments, nor was the Crown bound to make good any loss or injury occasioned by their negligence or delinquency.

11. I am therefore of opinion that the defendant, the Secretary of State for India in Council, is not liable for the act of the Deputy Collector in performance of his statutory duties. I would allow the appeal and dismiss the suit with costs in all the Courts.

Costello, J.

12. I agree that this appeal must be allowed and with costs throughout. In my opinion the facts of this case are covered by the principles laid down in the case just referred to by my learned brother, Secy. of State Vs. Srigobinda Chaudhuri, .