

(1962) 10 MP CK 0014
In the Madhya Pradesh High Court
Case No : F.A. No. 281 of 1959 (J)

Shyamkishore

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 05-10-1962

Acts Referred:

Central Provinces Land Revenue Act, 1881 — Section 202

Citation : (1964) JLJ 123

Hon'ble Judges : T.P. Naik, J; N.M. Golvalkar, J

Bench : Division Bench

Advocate : G.P. Singh, for the Appellant; R.J. Bhawe, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

T.P. Naik, J.—The plaintiff-appellant filed a suit against the State of Madhya Pradesh claiming Rs. 2,32,000 as compensation for wrongful conversion of his property, inter alia, on the following allegations.

(i) That he was the sole proprietor of the following, amongst others. Jar Kharidi villages in Man la. Tahsil and District Mandla viz., Khursi par, Mohgaon, Patpara. Nunsarie, Rehta, Mohania and Amvar;

(ii) That on 08-03-1951 the Deputy Commissioner, Mandla. granted him permission to extract Sal trees from the aforesaid villages subject to the condition that he would extract the trees from 1/20th of the total area in each village subject to a minimum of 10 acres and also observe the rules framed u/s 202 of the C.P. Land Revenue Act (hereinafter referred to as the Act);

(iii) That in pursuance of the aforesaid permission, he cut 8663 mature Sal trees of 4" and above in girth in March 1951 and that the said timber was then worth Rs. 2,30,000;

(iv) That he had entered into a contract with one Kulbir Johar, who had agreed to

take the timber after it had been felled, that he was also entitled to saw them on the site and that the property in the goods would pass to him on payment of the price;

(v) That on the coming into force of the Madhya Pradesh Abolition of Proprietary Rights Act on or about 31-3-1951 the forests in the aforesaid Jar Kharidi villages vested in the State and that the District Authorities thereafter prohibited the entry of the plaintiff and his contractor in the village forests for the removal of any timber there from;

(vi) That he applied to the Deputy Commissioner through his contractor Kulbir Johar for permission to remove the trees that had been cut by him in pursuance of the permission, dated 9-3-1951 and that he was permitted to remove the entire timber by 23-4-1951;

(vii) That in spite of this permission, neither he nor his contractor was allowed to enter the forests to remove the said timber on the allegation that a case of breach of the Forest Rules committed by the plaintiff in respect of the afore said forests was under investigation and that he could not be allowed to remove the said timber until the investigation was over;

(viii) That the defendant (State), through its servants, s(sic)iz(sic)d the timber lying in the. forests belonging to the plaintiff;

(ix) That in the revenue case relating to the breach of the rules framed u/s 202 of Act the Additional Deputy Commissioner, Jabalpur, who held the enquiry came to the conclusion that the plaintiff had committed breaches of rules 2 (a), 2(c), 5(1)(b), 5(1)(c), 5(1)(e) and 5 (2) that he therefore imposed a penalty of Rs. 3,000 and that he also ordered confiscation and sale of the timber seized u/s 202 (3) of the Act;

(x) That on appeal the Board of Revenue set aside the order with respect to the breaches of rules 2 (a), 5 (1) (b), 5 (1)(c), and 5 (2) but confirmed it with respect to the breaches of rules 5(1) (c), 5 (1) (e) and 2 (c), that the Board held that the breaches of rules 5 (1) (c) and 5 (1) (e) were trivial, but that it held solely in relation to the breach of rule 2 (c) that the penalty imposed as well as the: confiscation ordered were correct.

(xi) That the finding of the Revenue Officers that he had been guilty of the breaches of the rules framed u/s 202 of the Act was erroneous as it was based on no evidence;

(xii) That the order imposing a fine, of Rs. 3,000 was ultra vires and without jurisdiction and that the order ordering confiscation of the timber was also ultra vires and without jurisdiction;

(xiii) That the finding of the Revenue Officers that he had cut the timber from more than 1/20 h area was unwarranted in law, it being based on a misinterpretation of the permission granted by the Deputy Commissioner,

Mandla, and not based on any legal evidence;

(xiv) That the defendant (State) did not take proper care of the seized timber which consequently deteriorated in value;

(xv) That the said timber was illegally sold by the defendant (State) by auction for Rs. 39 000; and

(xvi) That the defendant (State) had thus wrongfully converted to its own use the timber belonging to the plaintiff, who was entitled to recover from it the sum of Rs. 2,30,000 as compensation for wrongful conversion of this property and Rs. 2,000 as the excess amount of fine levied without authority of law.

The plaintiff thus claimed Rs. 2,32,000 with interest and costs.

2. The defendant-State controverted the aforesaid allegations of facts and pleaded that the suit was barred u/s 220, clause (q) of the Act. It was also claimed that the suit was barred by limitation and that the plaintiff had no right to sue.

3. The trial Court framed three preliminary issues but ultimately decided to try the one relating to jurisdiction first. The issue so tried by it was. "Whether the Court had no jurisdiction to try the suit as framed"?

By its order, dated 28th May 1959, the learned Additional District Judge, Mandla, held that the suit was barred u/s 220, clause (q) of the Act and that the Court had no jurisdiction to entertain it as framed. He, therefore, rejected the plaint under Order 7 rule 11(d) of the Code of Civil Procedure.

4. The learned Additional District Judge was of opinion that the jurisdiction of the civil Court is expressly barred by section 220 (q) of the Act in respect of anything dealt with u/s 202 thereof. He further held that the reasons given by the plaintiff-appellant for challenging the order of the Board of Revenue may at the most show that the procedure adopted by the Revenue Authorities was wrong or that the evidence was not properly appreciated and incorrect findings given but not that the Board of Revenue had no jurisdiction or that it had acted beyond its jurisdiction.

5. u/s 9 of the CPC the Court had jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. There is no dispute that the present suit is a suit of a civil nature and unless its cognizance by a civil Court is either expressly or impliedly barred, the lower Court would ordinarily have jurisdiction to try it is, however, contended that clause (q) of section 220 of the Act bars the suit. The relevant provisions of section 220, clause (q), are as follows:

220. Except as otherwise provided in this Act, or in any other enactment for the time being in force, no Civil Court shall entertain any suit instituted or application made to obtain a decision or order on any matter which the Governor-General in Council, the Chief Commissioner, or any Revenue Officer is, by this Act,

empowered to determine, decide or dispose of; and In particular and without prejudice to the generality of this provision, no Civil Court shall exercise jurisdiction over any of the following matters :

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(q) any question connected with, or arising out of, the exercise of the powers u/s 202;

It would thus be seen that the jurisdiction of the Civil Court is barred in respect of any question connected with, or arising out of, the exercise of the powers u/s 202 of the Act. It is not every matter which the Revenue Authorities purport to decide under sect on 202 of the Act that is taken out of the cognizance of the Civil Court but such of the matters only as can legitimately be said to be connected with, or arise out of, the exercise of the powers under that section and which they have to decide in the proper exercise of those powers.

6. We shall, therefore, have first to determine what are the questions raised in the suit and which of them are connected with, or arise out of, the exercise of the powers u/s 202 of the Act. In order to determine the latter question the amplitude and 1 mints within which the powers could be exercised under section202 shall have been ascertained because it is only then that it would be possible to determine whether any and, if so, how many of the issues raised in the suit are barred from the cognizance of the Civil Court.

7. The authorities empowered to exercise the powers u/s 202 of the Act are quasi-judicial tribunals of limited jurisdiction, and it is settled law that it is for the Civil Courts to determine the limits of their authority to find out whether they have not acted without jurisdiction or whether their action is not procedurally ultra vires.

8. It is, however, strenuously contended that that may have been the position here but for the fact that the jurisdiction of the Civil Court is barred by the express provisions of section 220 (q) of the Act. But, in our opinion, even so, the power of the Civil Courts to determine how far their powers have been so taken away yet remains to be considered by them as also the questions whether the special tribunals had acted under valid law, which was not ultra vires or opposed to any provisions of the Constitution, and whether they were properly constituted and had not acted beyond the jurisdiction of their authority. It has also to be remembered that sometimes the jurisdiction of inferior tribunal depends upon the fulfillment of some condition precedent or upon the existence of some particular facts which are called co lateral facts. In such cases the inferior tribunals cannot give themselves jurisdiction by deciding these facts wrongly except where the Legislature conferring powers on such tribunals confers on them the power to decide these collateral facts finally. Such was the case in Rai Brij Raj Krishna and Another Vs. S.K. Shaw and Brothers, . However, before so

holding, the scheme of the Act and the relevant provisions bearing on the question have got to be critically examined.

9. What we mean to emphasise is that the jurisdiction of the Civil Court is not barred for the purpose of examining whether the act of the inferior tribunal was ultra vires the Act, without jurisdiction and procedurally not opposed to the principles of natural justice or ultra vires. Consequently, when the plaintiff appellant in the instant case says that there was no jurisdiction to pass the impugned orders inter alia by reason of the fact that there was no evidence for certain findings or that there was no power to confiscate the timber under the circumstances of the case or that there was no power to impose a fine of Rs. 3,000. it was incumbent on the Civil Court to ascertain whether and how far the contentions of the plaintiff appellant were correct and if so, how far the penalties could be said to have been properly levied under the provisions of the Act. The suit would then fail, if it fails, not because the plaint discloses no cause of action but because the plaintiff has not shown any error of jurisdiction or procedure sufficient to attract the jurisdiction of the Civil Court to grant the relief's claimed.

10. In our opinion, the proper course for the trial Court to follow is to first frame all the issues of facts and law that arise in the case and then to determine if and how far the trial of those issues is barred by ascertaining the limits of the jurisdiction of the Revenue Authorities, examining their powers u/s 202 of the Act and then determining if and how far they have acted within their jurisdiction.

11. We, therefore allow the appeal and set aside the order of the trial Court rejecting the plaint of the plaintiff-appellant under Order 7, rule 11(d) of the CPC and remand the case to it for a fresh disposal according to law with advertence to the remarks made above. Costs of this appeal shall be costs in the cause. The Court-fees paid by the appellant in the first appeal shall be refunded to him. A certificate shall accordingly be issued.