

(1970) 12 CAL CK 0015
In the Calcutta High Court
Case No : A.F.A.D. No. 573 of 1959

State of West Bengal

APPELLANT

Vs

Sm. Manish Maity and Others

RESPONDENT

Date of Decision : 09-12-1970

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 226

Citation : AIR 1971 Cal 281

Hon'ble Judges : Salil Kumar Datta, J

Bench : Single Bench

Advocate : S.C. Das Gupta and Tapan Kumar Sengupta, for the Appellant;
Basanta Kumar Panda, for the Respondent

Final Decision : Allowed

Judgement

Salil Kumar Datta, J.—This is an appeal by the State of West Bengal against an appellate judgment of reversal.

2. The State of West Bengal granted to the plaintiff a settlement of 1306.71 acres of land designated as "Western Portion of Manasadwip 2nd portion" in the Saugore Island, Pargana Sunclaban, the period of settlement being from 1st April 1921 to 31st March 1947. The terms and conditions of the lease were embodied in a registered document dated September 30, 1921. Clause 3 of the lease provided as follows:

"3. That on the conclusion of the term expiring with the 31st March 1947, the lessee will have a right of resettlement of the tenure provided he has behaved satisfactorily and agrees to accept the terms then in force for tenure holders of Saugore Island grant or such terms as Government may then impose and the lessee will have a similar preferential right to future resettlements on the said conditions. Board of Revenue will be the final deciding authority in 1947 and at all future resettlement as to whether his behaviour has been satisfactory."

The plaintiff's case is that he faithfully performed the terms and conditions of the lease, reclaimed lands at enormous costs, inducted tenants and did everything required of him by the lease. The plaintiff before the expiry of the lease applied for renewal of the lease. The plaintiff unfortunately had various disputes with the Government and its local officers not connected with the lease, for which he had to file suits against the Government. On account of the said litigations the plaintiff incurred the displeasure of the S.D.O., Diamond Harbour and Collector of 24-Parganas and accordingly the Government wanted to harass the plaintiff by depriving him of his legal right of renewal. The Government started a proceeding for cancellation of the lease on grounds which were found on enquiry to be false. By order in Case No. 140 of 1046-47 communicated to him on May 25, 1948 the plaintiff's prayer for resettlement was rejected even though there was no ground for depriving the plaintiff of his right of renewal. In the notice dated July 10, 1948, given by the Collector in the said case it was stated that the plaintiff harassed the tenants, realised abwabs, embanked offset areas without expert opinion or permission and neglected maintenance of sluice boxes in the lot. The said allegations were absolutely false and unfounded and he was not given any opportunity to disprove the allegations. The plaintiff suspected that the refusal was due to the plaintiff's demand for price of paddy referred in plaint. The plaintiff contended that the action of the Board of Revenue was illegal and ultra vires. The suit was instituted in the circumstances inter alia for a declaration that the order of Board of Revenue rejecting the prayer for renewal of lease was illegal and ultra vires, that action of the Collector in taking possession was illegal and further, the plaintiff had the right of renewal of the lease. The plaintiff also prayed for; possession of the suit lands.

3. The State of West Bengal contested the suit by filing a written statement and it was contended inter alia that the suit was not maintainable that the plaintiff had no cause of action, that he did not faithfully perform the terms and conditions of the lease, on the contrary they were violated by him in many respects. The allegations that the plaintiff incurred the displeasure of the local officials and that they wanted to harass him by depriving him of the legal rights for renewal were denied. There were systematic breaches of terms of lease, like the harassment of tenants, realisation of abwabs, neglect of banks, embankments and drainage and also failure to provide for drinking water. Further the plaintiff embanked offset areas without any expert opinion or permission and neglected maintenance of sluice boxes. On a due consideration of the behaviour of the plaintiff and hearing the plaintiff the authorities decided to refuse renewal of the lease and directed khas management of the estate and notice was served on the plaintiff accordingly. Possession of the lands was resumed on July 26, 1948. The State contended that renewal was properly refused by the Board and the order was not illegal and ultra vires. It was also denied that the plaintiff was entitled to any declaration and possession as prayed for and the suit in the premises, it was submitted, should be dismissed.

4. On the issue as to whether the plaintiff had any cause of action, the trial court

was of the view that the plaintiff's right to get resettlement of the suit land from the Government was in effect a right to property which is covered by explanation to Section 9 of the Code of Civil Procedure. The jurisdiction of the Civil Court under the provisions of the lease was not expressly excluded and the court was further of the opinion that there was no implication that the Board's decision regarding the plaintiffs behaviour could not be examined by court, as exclusion of jurisdiction of the Civil Court should not be readily inferred but such exclusion must be either expressly provided or clearly implied. The court was entitled to consider whether there has been a bad faith on the part of the defendant State for which the plaintiff should be penalised by denial of resettlement and also whether the impugned order was illegal or ultra vires. It was held accordingly that the suit was maintainable in law and the court had jurisdiction to try such suit. On merits, the court was of the opinion that the allegations were proved and the plaintiff committed breaches of the terms of the lease alleged by the State. Accordingly the decision of the Board of Revenue could not be said to be illegal and ultra vires. The suit in the premises was dismissed.

5. Against the said decision the plaintiff preferred an appeal and the appellate court, in disagreement with the trial court, found that the allegations against the plaintiff about his committing breaches of the terms of the lease were not proved. The appeal in the circumstances was allowed and the plaintiffs suit was decreed. The present appeal is against the said appellate decree of reversal.

6. A point raised in course of arguments about the jurisdiction of Civil Court to try the dispute of the nature involved in this appeal need not detain us for long. As was held in AIR 1940 105 (Privy Council) , it is settled law that the exclusion of the jurisdiction of civil law need not be readily inferred but such exclusion must be explicitly expressed or clearly implied. A litigant having a grievance of a civil nature has, independently of any statute, a right to institute a suit in some court or other unless its cognizance is either expressly or impliedly barred. The present suit, where the plaintiff was asking for declaration of his right to a renewal of a lease and for further declaration that the order refusing him the renewal of the lease was illegal and ultra vires is a suit of civil nature and there is no bar in its institution in a Civil Court either expressly or impliedly. In fact this position has not been disputed by Mr. S. C. Das Gupta, the Government counsel appearing for the appellant. Even then the question remains at large to the effect that though the plaintiff could challenge the order of the Board on grounds as being ultra vires, mala fide and not passed by competent authority and the like, the court's jurisdiction would extend to a judicial review of the impugned order.

7. The real question at issue is whether the order of the Board of Revenue refusing a resettlement of the lease after its expiry is justiciable by a court of law. It has to be remembered that the resettlement of the lease was claimed not on the basis of any statute but on the basis of Clause (3) of the lease which has been cited above. Mr. Basant Kumar Panda, the learned counsel for the defendant respondent has drawn my attention to the Bengal Waste Lands

Manual, 19-16 which in its Part I provides for the rules issued by the Government in the Revenue Department for the settlement and reclamation of waste lands, among other places, of Sundarbans in Bengal, There Is no provision in the rules for automatic renewal or resettlement and in the forms provided in the manual, there is no form of lease though there is a standard form of renewal which provides for further renewal at the option of the lessee and agreed to by the Secretary of State for India in Council. Mr. Panda has stated that the lease granted by Government to the plaintiff by the registered document dated September 30, 1921 has also considerable variations from the standard lease of renewal. There can therefore be no doubt that the lease in the instant case has been a contractual one and its renewal was as provided in Clause (3) thereof and there was no statutory basis for a renewal or resettlement.

8. The next question for determination is whether in forming the opinion against the plaintiff the Board of Revenue was acting judicially or the formation of an opinion was a pure ministerial or administrative act. The Board was made by agreement the final authority to decide as to whether resettlement should be given to the plaintiff. It cannot be said that the Board was required to act judicially to form its opinion on the basis of objective tests. The function that was given to the Board to discharge was, in my opinion, a subjective satisfaction on the materials before it to decide whether the resettlement should be offered to the plaintiff or not. There could be no occasion for the Board to act judicially and it has not been contended before me nor averred in the plaint that the Board of Revenue was required to act judicially, The Board accordingly was required to consider, which it did, the claim of the plaintiff to obtain a renewal of the lease as an administrative act.

9. The scope of the suit is thus narrowed to the consideration as to whether there can be judicial review of administrative acts under the provisions of a contract. The law on the question of judicial review of administrative acts under a statute was considered in case of the AIR 1949 136 (Privy Council) , relied on by Mr. Das Gupta, where the revocation of licence to supply electricity by the Government was impugned. It was observed:

"Their Lordships are unable to see that there Is anything in the language of the sub-section (Section 4(1)(a) of the Electricity Act, IX of 1910) or in the subject-matter to which it relates upon which to found the suggestion that the opinion of Government is to be subject to objective tests. In terms the relevant matter is the opinion of the Government--not the grounds on which the opinion is based. The language leaves no room for the relevance of a judicial examination as to the sufficiency of the grounds on which the Government acted in forming an opinion."

In " The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, It was observed as follows by Shelat J., in concurrence with the verdict of the court,

"Though an order passed in exercise of power under a statute cannot be

challenged on the ground of propriety or sufficiency, it is liable to be quashed on the ground of mala fides, dishonesty or corrupt purpose. Even if it is passed in good faith and with the best of intention to further the purpose of the legislation which confers the powers, since the authority has to act in accordance with and within the limits of that legislation, its order can also be challenged if it is beyond those limits or is passed on grounds extraneous to the legislation or if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction requisite under the legislation. In any one of these situations it can well be said that the authority did not honestly form its opinion or that in forming it, it did not apply its mind to the relevant facts."

It was further observed:

"Therefore, the words, "reason to believe" or "in the opinion of" do not always lead to the construction that the process of entertaining "reason to believe" or "the opinion" is an altogether subjective process not lending itself even to a limited scrutiny by the court that such "a reason to believe" or "opinion" was not formed on relevant facts or within the limits or as Lord Radcliffe (in *Liversidge v. Anderson*. 1941 3 All ER 338) and Lord Reid (in *Ridge v. Baldwin*. 1964 AC 40) called the restraints of the statute as an alternative safeguard to rules of natural justice where the function is administrative".

".....there must therefore exist circumstances which in the opinion of the authority suggest what has been set out in Sub-clauses (i), (ii) or (iii) (of Sub-section (b) of Section 237 of the Companies Act, 1956). If it is shown that the circumstances do not exist or that they are such that it is impossible for any one to form an opinion therefrom suggestive of the aforesaid things, the opinion is challenge-able on the ground of non-application of mind or perversity or on the ground that it was formed on collateral grounds and was beyond the scope of the statute."

10. The scope of judicial review of administrative orders passed under statutes, unless they violate constitutional rights, thus is circumscribed within the limits prescribed by judicial decisions. It is thus settled that the orders cannot be challenged and interfered with by courts on grounds of propriety or sufficiency. They can be challenged only if they are beyond the limits of legislation, or passed on grounds that do not exist or on grounds extraneous or on grounds that no one could reasonably arrive at the opinion or satisfaction required by statute. Of course such orders could always be impugned on grounds of mala fides, dishonesty or corrupt practice, the burden of proof being on the party alleging it to the extent of its being reasonably probable.

11. We have already seen that the power given to the Board in this case was not under any statute but under provisions of the lease. The principles enunciated above will therefore apply with relaxation in favour of the authority and in fact Mr. Das Gupta has contended that the plaintiff is not entitled to

challenge the decision of the Board who had been made by agreement the final arbiter about the resettlement of the lease. On the analogy of the above principles, it may be safely concluded that there can be no judicial review of the order of Board unless such interference can be justified, if at all, by the grounds referred to above.

12. Mr. Panda has strenuously contended that the appellate court has found that all allegations of breach of the terms and conditions of the lease are without foundation. Accordingly as due observance of the said terms and conditions were the objective tests, for renewal the conditions did not exist which could entail the penalty on the plaintiff. It must however be remembered that the civil court cannot sit on appeal and decide for itself that there were no breaches of the terms the lease, as the jurisdiction for such determination subjectively lay solely on the Board provided the Board had before it the relevant circumstances about the conduct of the plaintiff relating to the lease. From records it appears that there were serious complaints by the villagers against the plaintiff in regard to his various acts on the lease hold land (exhibits D and D(1)) and on such complaints there were enquiries by the Colonization Kanungo (exhibits B, B(1)) as also by the Colonization Officer (exhibits B(3)) where breaches of the terms of the lease as also acts detrimental to the Interest of the tenants and state had been reported. The lower appellate court discarded the reports holding the same as inadmissible and had observed that those facts should have been proved once again before the trial court. In my opinion the courts misdirected themselves in thinking that those facts should be proved again in a Civil Court. As we have seen, there were sufficient circumstances as stated above for the Board to take a decision about the resettlement of the lease. On the complaints and the reports it could not be said there were no grounds or circumstances for passing the order or that the circumstances and grounds were such that no one can reasonably arrive at the opinion or satisfaction arrived at by the Board. If once we find that there were grounds for the Board to come to the decision it did arrive the propriety or sufficiency of the decision is no longer justiciable by the court, except on the ground of mala fide, dishonesty or corrupt purpose.

13. As to the ground of mala fide there is practically no allegation against the Board of Revenue as such that it was guilty of any mala fide in passing the impugned order. The only allegations we find are that on account of the various claims made by the plaintiff against State, he incurred the displeasure of the S.D.O. of Diamond Harbour and the Collector of 24-Parganas who, it is alleged, wanted to harass him and deprive him of his legal right for renewal of the lease. As we have already stated there is not even any suggestion against the Board of Revenue being guilty of any mala fide motive or action and I am not also prepared to hold that it was reasonable or probable for the Board of Revenue to be influenced by the Government officials in coming to its decision and nothing has been shown by the plaintiff to substantiate his case. Even the officials who are alleged to have been displeased with the plaintiff have not been stated by their names and the allegations are too vague to be seriously considered. I am

therefore unable to place any reliance on those allegations of the plaintiff and hold that there was no act of mala fide on the part of the Board of Revenue,

14. In view of my findings as stated above, the judgment under appeal cannot be sustained and must be set aside. Accordingly the appeal is allowed, the judgment and decree of the appellate court is set aside, those of the trial court are restored, though on different reasons and the plaintiff's suit is dismissed. In the circumstances, the parties will bear their own costs in this appeal.

15. Leave under Clause 15 of the Letters Patent is prayed for and is granted.