

(1964) 04 CAL CK 0001
In the Calcutta High Court
Case No : Suit No. 3187 of 1954

Tejman

APPELLANT

Vs

D.P. Anand and Others

RESPONDENT

Date of Decision : 29-04-1964

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 226
Sea Customs Act, 1878 — Section 167(8), 182, 188

Citation : AIR 1965 Cal 517

Hon'ble Judges : P.C. Mallick, J

Bench : Single Bench

Advocate : A.C. Bhabra, for the Appellant; Subrata Roy Choudhury and M.K. Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Mallick, J.—This is a suit challenging a confiscation order passed by the Collector of Central Excise and Land Customs. The goods confiscated are a number of wrist watches and Parker fountain pens, all of foreign make. The defendants impleaded are the said Collector of Central Excise as also the Union of India. The plaintiff claims to be a bona fide purchaser of the said goods. In August, 1953, the plaintiff was prosecuted in the Court of the Chief Presidency Magistrate, Calcutta, on a charge of being in possession of the said goods alleged to be stolen goods. He was, however, acquitted on November 13, 1953. Immediately thereafter, proceedings were started under the Land Customs Act and notices were served on the plaintiff to show cause why the said goods should not be confiscated. The plaintiff showed cause in writing and submitted that the goods were not liable to confiscation, on grounds more fully stated in his answer to the "show cause" noticed. The defendant Collector of Central Excise, however, by his order dated February 3, 1954, confiscated the goods u/s 167(8) of the Sea Customs Act. In paragraph 8 of the plaint the grounds on which the order is contended to be invalid are set out. It is contended that the order is a nullity and

that the defendants have wrongfully confiscated the said goods. The prayers, inter alia, are: (1) a declaration that the order of confiscation is void, inoperative and of no effect, and (2) delivery of the said goods wrongfully detained or its value.

2. In the written statement filed by the defendants the plaintiff's claim is disputed. It is alleged that the goods were seized u/s 178 of the Sea Customs Act, for violation of Section 5 of the Land Customs Act and Section 19 of the Sea Customs Act. It is contended that the order of confiscation is valid in law, that the Collector had full jurisdiction to make the order and that none of the grounds taken against the said order in paragraph S of the plaint has any substance. It is denied that the plaintiff was a bona fide purchaser of the said goods. All material allegations of fact and submissions of law are denied and disputed. After confiscation, the property in the goods has vested in the Union of India and the same is not liable to be delivered to the plaintiff. It is submitted that the plaintiff has no cause of action to institute the suit, that the suit is not maintainable and that it should be dismissed with costs.

3. At the trial, various issues were raised. Learned counsel on behalf of both parties asked me to decide one issue as and by way of preliminary issue, before taking up the trial of the other issues. The issue intended to be tried as the preliminary issue is as to the maintainability of the suit. It is primarily an issue of law, on the basis of facts on which there is no dispute. Reliance is placed, inter alia, on the "show cause" notice, the order of confiscation and a few letters, inter parties, all included in the Brief of Documents. By consent, these documents are marked exhibits and formal proof has been dispensed with. It is contended by Mr. Roy Chowdhury, learned Counsel appearing for the defendants, that if the issue is decided in favour of the defendants, there would be no necessity to try the other issues and incur further costs. If the issue is decided against the defendants, the suit would have to proceed. Mr. Bhabra, appearing on behalf of the plaintiff, agrees with Mr. Roy Chowdhury that in the interest of the parties this procedure should be adopted.

4. Mr. Roy Chowdhury's contention is that the jurisdiction of the Courts to try suits is derived from Section 9 of the Code of Civil Procedure. That jurisdiction is not unlimited or unfettered. The Courts have jurisdiction to try all suits of civil nature, except suits of which cognizance is barred, either expressly or impliedly. There are many statutes which bar a Court from entertaining a suit of a civil nature. The CPC itself contains such express bars in Section 11 and Section 47, for example. There are innumerable other statutes which contain such bars expressly. The Income Tax Act, Co-operative Credit Societies Act, Indian Arbitration Act are instances in point. But apart from the bar expressly stated in various statutes, the cognizance of many other suits is barred impliedly. The jurisdiction of the Courts is impliedly barred in cases where a special Tribunal or authority is set up by a statute to determine questions as to rights and obligations which are the creation of the statute itself. This is based on the

general principle of law that when the Legislature created a special authority or Tribunal to determine questions created by the statute itself, the Court will not defeat the intention of the Legislature and make the statute and its provisions nugatory, by itself assuming jurisdiction to try suits in which such rights and obligations are in controversy. The authority for the above proposition is in the well known judgment of Willis, J. in the case of *Wolverhampton New Waterworks Co. v. Hawkesford* (1859) 6 CB (NS) 336 at p. 356, approved subsequently by the House of Lords in *Neville v. London Express Newspaper Ltd.* 1919 AC 368. The rule laid down by Willis, J. is in these terms:

"Where a liability not existing at any law is created by statute which at the same time gives a special and particular remedy for enforcing it, the jurisdiction of the Civil Court is taken away."

See also the reasoning of Tindal, C. J. in *Crisp v. Bunburi* (1832) 8 Bing 394. The principle laid down has been followed by the different High Courts as also the Supreme Court of India. In the case of *Thin yen Vs. Secy. of State and Another*, Panckridge, J. held that the Civil Court has no jurisdiction to try a suit challenging an order of the Sea Customs Authority under the Sea Customs Act, imposing penalty and confiscation. The jurisdiction of the Court was challenged on two grounds--(1) that it was a matter affecting revenue and is barred u/s 226(1), Government of India Act, and (2) that the order of the Chief Customs Authority under the Sea Customs Act cannot be questioned by a suit in a court. Panckridge, J. held that the suit was barred on both the grounds. The offending order was passed in the cited case u/s 188 of the Sea Customs Act. In the case of *Hoare Miller and Co. v. Union of India*, 65 Cal WN 1206 Datta, J. held that an adjudication by the Customs Authority as to rate leviable under the Sea Customs Act cannot be challenged by a suit in a Civil Court. Mr. Roy Chowdhury draws my attention to this fact that the offending order is u/s 182 of the Sea Customs Act, even though wrongly the order complained of is stated to be an order in appeal. This is a direct authority on the point in controversy. The view of Datta, J. on the point will be found at pp. 1226 and 1227 of the report. In the case of AIR 1940 105 (Privy Council) 1940 the Judicial Committee held that an adjudication u/s 188 of the Sea Customs Act as to duty leviable cannot be challenged by a suit in a Civil Court. Lord Thankerton made the following observation at pp. 236 and 237 (of Ind App): (at p. 110 of AIR):

Section 188 provides that "every order passed in appeal under this section shall, subject to the power of revision conferred by Section 191, be final". By Sections 188 and 191 a precise and self-contained Code of appeal is provided in regard to obligations which are created by the statute itself and it enables the appeal to be carried to the supreme head of the Executive Government. It is difficult to conceive what further challenge of the order was intended to be excluded other than a challenge in the civil courts."

The observation of Willis J. in (1859) 6 CB (NS) 336 at p. 356 has been cited with approval by the Judicial Committee. Over and above the above cases, many

other cases have been cited by learned counsel of decisions of the High Court and the Supreme Court under Writ Jurisdictions. The cases were on Sea Customs Act and on other Acts in which the principle above referred to was considered and followed. Mr. Roy Chowdhury also relied on the observation of Lord Esher in the case of *The Queen v. Commr. for Special Purposes of the Income Tax*, (1888) 21 QBD 313 at p. 320 which is to the following effect:

"When an inferior court or tribunal or body, which has to exercise the power of deciding facts, is first established by Act of Parliament, the legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise. There it is not for them conclusively to decide whether that state of facts exists, and, if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction. But there is another state of things which may exist. The legislature may entrust the tribunal or body with a jurisdiction which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on finding that it does exist, to proceed further or do something more. When the legislature are establishing such a tribunal or body with limited jurisdiction, they also have to consider, whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise there will be none. In the second of the two cases I have mentioned it is an erroneous application of the formula to say that the tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the legislature gave them jurisdiction to determine all the facts, including the existence of the preliminary facts on which the further exercise of their jurisdiction depends; and if they were given jurisdiction so to decide, without any appeal being given there is no appeal from such exercise of their jurisdiction."

I have quoted the observation of Lord Esher in extenso because very strong reliance has been put by Mr. Roy Chowdhury on these observations. In the submission of Mr. Roy Chowdhury the instant case falls within the second category of cases referred to by Lord Esher and, as such, the Civil Court has no jurisdiction to entertain the suit. In Mr. Roy Chowdhury's submission, Sections 182 to 191 are a self-contained Code providing not only the machinery for enforcing the obligations created by the Sea Customs Act and Land Customs Act but also the reliefs available to people affected by the order of the Sea Customs Authorities. This has been so held by this Court and the Supreme Court in a number of cases, though most of the cases dealt with were orders u/s 188 of the Act i.e. the order of the Appellate Authority. The same reasoning will apply in the case of an order u/s 182, in at least one case reported in 65 Cal WN 1206 Datta J. of this Court held that the jurisdiction of the civil court is ousted in respect to an order not only u/s 188 but also u/s 182 of the Sea Customs Act. To hold that the jurisdiction of the Civil Court is not ousted will mean that there will be parallel proceeding in respect to all adjudications under the Sea Customs Act

both as to matter of imposition of duty and as to determination of penalty or confiscation. The Sea Customs Act would in consequence become nugatory and the intention of the Legislature defeated.

5. Mr. Bhabra contends that the jurisdiction of the civil court is not ousted impliedly by the provisions of the Sea Customs Act. It is true that there are binding decisions to the effect that the order made by the Sea Customs Authorities u/s 188 of the Sea Customs Act cannot be challenged by a suit in the civil court. But there is no decision that an order u/s 182 cannot be challenged by a suit in a civil court. The opinion of Datta J. in 65 Cal WN 1206 is contended to be nothing more than obiter and cannot be held to have laid down the law correctly. The reasoning is not convincing. It is next contended that even if it is held that the jurisdiction is so excluded, the civil court nevertheless retains jurisdiction to examine into cases where the provisions of the Act have not been complied with or that the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. That is the view expressed by Lord Thankerton in AIR 1940 105 (Privy Council) .

6. The three Statutes with which we are concerned, are, the Sea Customs Act of 1878, The Land Customs Act of 1924 and the Imports and Exports Control Act of 1947. Of these statutes, The Sea Customs Act is not only the first in point of time but is the most comprehensive enactment. The two subsequent enactments by their different provisions attract the various provisions of the Sea Customs Act. The Sea Customs Act, from this point of view may be considered to be the parent statute. The provisions for adjudication of duty, imposition of penalty and confiscation of contraband goods are to be found in the Sea Customs Act. Such machinery is not to be found in the other two statutes. For consideration of the point in controversy, we have to examine the provisions of the Sea Customs Act. Chapter XVI of the Act deals with offences and penalties which can be imposed by reason of the infringement of the obligations created by this parent Act as well as by the other two Acts. Section 107 lays down extensively the offences under the different sections and to the penalties to be imposed. They are set out in three columns. In the first column the offences are stated, in the second is stated the sections to which the offence has reference and in the third the penalties. An examination of the different items in the said sections indicate, that some penalties are against the person alleged to be guilty of contravention, some are against the goods, Again, in some of the cases the adjudication of the offence and punishment is to be by a magistrate. Reference may be made to items 23, 26, 72, 74, 75, 76, 76A, 76B, 77, 78 and 81. Adjudication of the offences referred to in respect to these items is to take place before a magistrate. The offences appear to be equated to offences under the Indian Penal Code triable as such by the magistrate. In respect to the rest, the authority to adjudicate are the Customs Authorities. The instant case relates to item 8 of Section 167 of the Act which reads as follows:

Offences Section of this Act to which offence has reference. Penalties

8. If any goods, the importation or exportation of which is for the time being prohibited or restricted by or under Chapter IV of this Act be imported into or exported from (India) contrary to such prohibition or restriction

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Such goods shall be liable to confiscation; any person concerned in any such offence shall be liable to a penalty not exceeding three times the value of the goods or not exceeding one thousand rupees.

The following sections are also relevant and are set out hereunder:

Section 182.--"In every case, except the cases mentioned in Section 167, Nos. 26, 72 and 74 to 76, both inclusive, in which, under this Act anything is liable to confiscation or to increased rates of duty; or any person is liable to a penalty, such confiscation, increased rate of duty or penalty may be adjudged....."

Section 183.--"Whenever confiscation is authorised by this Act, the officer adjudging it shall give the owner of the goods an option to pay in lieu of confiscation such fine as the officer thinks fit."

Section 188.--"Any person deeming himself aggrieved by any decision or order passed by an officer of Customs under this Act may, within three months from the date of such decision or order, appeal therefrom to the Chief Customs-authority, or, in such cases as (the Central Government) directs, to any officer of Customs not inferior in rank to a Customs collector and empowered in that behalf by name or in virtue of his office by (the Central Government).

Such authority or officer may thereupon make such further enquiry and pass such order as he thinks fit, confirming, altering or annulling the decision or order appealed against;

Provided that no such order in appeal shall have the effect of subjecting any person to any greater confiscation, penalty or rate of duty than has been adjudged against him in the original decision or order.

Every order passed in appeal under this section shall, subject to the power of revision conferred by Section 191, be final."

Section 190A.--(1) "The Chief Customs-authority may of its own motion or otherwise call for and examine the record of any proceeding in which an officer of Customs has passed any decision or order under this Act for the purpose of satisfying itself as to the legality or propriety of any such decision or order and may pass such order thereon as it thinks fit;

Provided that no order prejudicial to any person shall be passed under this section unless such person has been given a reasonable opportunity of making a representation against the proposed order.

(2) The powers conferred upon the Chief Customs Authority under Sub-section (1) may also, in the like manner and subject to the like conditions", be exercised

by the Chief Customs-officer in respect of any decision or order passed under this Act by any officer of Customs subordinate to him.

(3) No decision or order passed by an officer of Customs shall be revised under this section by the Chief Customs-authority or a Chief Customs-officer, as the case may be, after the expiry of two years from the date of the decision or order."

Section 191.--(The Central Government) may on the application of any person aggrieved by any decision or order passed under this Act by any officer of Customs or Chief Customs-authority, and from which no appeal lies, reverse or modify such decision or order."

7. There can hardly be any doubt that the obligation sought to be enforced by the offending order is an obligation under the Act. The Act lays down the manner of its enforcement. Not merely that, there are elaborate provisions for appeal and revision. The scheme of the statute seems to indicate that the legislature intended that parties must take recourse to the machinery provided in the Act itself for relief. It is a self-contained statute and on the principle laid down by Wills J. in (1859) 6 CB (NS) 336 the jurisdiction of the civil court is ousted in respect to matters the adjudication of which has been given to the Customs Authorities by the statute. Mr. Bhabra contends that wherever in the instant statute the legislature intended to take away the jurisdiction of the civil court, it stated so expressly. My attention has been drawn to Sections 181A, 181B and 181C which deal with the importation of publication of seditious literature.

Section 181A.--(1) "The Chief Customs-Officer or other officer authorised by the (State Government) in this behalf may detain any package, brought whether by land or sea into (India) which he suspects to contain-

(a) any newspaper or book as defined in the Press and Registration of Books Act, 1867, or

(b) any document,

containing any seditious matter, that is to say, any matter the publication of which is punishable u/s 124A of the Indian Penal Code, and shall forward such package to such officer as the (State Government) may appoint in this behalf."

Section 181B. Every application under the second proviso to Sub-section (3) of Section 181A shall be heard and determined, in the manner provided by Sections 99D to 99F of the Code of Criminal Procedure, 1898, by a Special Bench of the High Court constituted in the manner provided by Section 99C of that Code.

Section 181C. No order passed or action taken u/s 181A shall be called in question in any Court otherwise than in accordance with the second proviso to Sub-section (3) of that section."

Section 181B does not expressly purport to oust the jurisdiction of the Civil Court. It does nothing more than indicate a different machinery for getting relief under the Act. A Special Bench of the High Court is given the power to have the

last say in respect to seditious literature imported into India, just as in respect to certain offences under the Act, the power of adjudication has not "been given to the Customs Authorities, so also in the matter of seditious publication, the State Government or the High Court has been given power to finally adjudicate questions in relation to imported seditious literature and detained by the Customs Authorities. Section 181C however does take away in express terms the jurisdiction of the Court in the case of importation of seditious literature. Sections 181A, 181B and 181C were first introduced in 1922 to meet a danger apprehended to be great, by the Government. Hence Section 181(C) has been introduced by way of abundant caution--not that it was necessary. Had the provision been in the original Act of 1878 the argument of Mr. Bhabra might perhaps be made. But in the original Act of 1878 there was no such express ouster of jurisdiction of the civil court. Reference has also been made by Mr. Bhabra to Sections 197 and 198 of the Act. These are usual provisions whereby government officers are absolved from liability to pay compensation for official acts except on proof of loss having been occasioned by neglect or wilful act of the officer concerned. It is provided that no suit lies without a previous notice. Sea Customs Act when originally enacted contained no provision expressly ousting the jurisdiction of the Court. The ouster, if any, was by necessary implication. It should be noted that Section 188 does not expressly take away the jurisdiction of the civil Court in respect to orders passed under that section. It has been held by the Judicial Committee and this Court in the cases noticed before that such ouster of jurisdiction was by necessary implication. If Mr. Bhabra's argument is sound there being no express ouster it could not have been held that the Civil Courts had no jurisdiction to entertain suits challenging an order of the Customs Authorities u/s 188 of the Sea Customs Act. In my judgment, the scheme of the Act indicates that the determination of leviable duty and penalty for infringement as provided in Section 167 (8) including order of confiscation u/s 182 is to be determined by the Customs Authorities. The aggrieved party must proceed by way of appeal and revision as provided in the Act itself and that no parallel or alternate proceeding is permissible by way of a suit in a civil court. The Legislature intended to oust the jurisdiction of the civil court completely in respect to all adjudications under Sections 182 and 188 of the Sea Customs Act.

8. It is submitted by Mr. Bhabra that the judicial Committee in AIR 1940 105 (Privy Council) while deciding that an order u/s 188 cannot be challenged in a suit, did not decide that no suit lies to challenge an order u/s 182 of the Sea Customs Act. The question was not decided because it was unnecessary. Mr. Bhabra also relies on a decision of Varadachariar J. in the case reported in 71 Mad LJ (NRC) 40 which held that the jurisdiction of the civil court is not ousted to challenge an adjudication u/s 182. In the absence of the judgment and without going through the reasoning I am unable to Follow the decision of the learned Judge. In my judgment, Datta J. was right in holding in that the jurisdiction of the civil court is ousted and I respectfully follow the said decision.

9. It is also contended by Mr. Bhabra that the instant suit is a suit not merely to challenge the order of confiscation u/s 182 but is also a suit for wrongful detention of goods. The second prayer is for restoration of the goods or its value on the ground that the plaintiff is the owner and the goods are being wrongfully detained. So long as the order for confiscation stands, the plaintiff is not entitled to the second prayer. It seems to me that second prayer is the consequential relief to be claimed in a declaratory suit of the instant nature. The suit in substance and in fact is a suit challenging the confiscation order and it is to the substance and not to the form that the Court will look into to determine whether the suit can be entertained or not.

10. The next argument of Mr. Bhabra may now be considered. The contention is that even when a special tribunal is set up by a statute to adjudicate rights and obligations created by the same statute, the ouster of jurisdiction is not complete and absolute.

The civil court still retains jurisdiction "to examine into cases where the provision of the statute has not been complied with or that the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure." This proposition has been laid down by Lord Thankerton in AIR 1940 176 (Privy Council) . The civil court therefore still retains some power supervisory in its nature and very limited as indicated by Lord Thankerton. Two questions therefore arise. The first question is, which court is to exercise this supervisory power over the tribunal and the manner of the exercise of its power. Can this supervisory power be invoked by a declaratory suit? Or can it be invoked only by an application to the superior courts i.e., the High Court or the Supreme Court which has been invested with wide power to keep these tribunals within bound? The second question is, what is the limit of this supervisory power?

11. So far as the first question is concerned, it must be conceded at once that the High Court and the Supreme Court have that supervisory power. This extraordinary power has been given to these superior courts by the Constitution itself. This power is not derived from the CPC but is given by Article 226 of the Constitution. In exercise of such extra ordinary power vested by the Constitution the High Courts and the Supreme Court have assumed jurisdiction over tribunals set up under different statutes and kept the tribunals within their bounds by passing appropriate orders. The jurisdiction of the High Court or the Supreme Court to look into the adjudications of these tribunals has not been as, indeed, it cannot be challenged. It may be contended that the civil court empowered to look into and correct the decisions of these statutory tribunals is not the ordinary civil court. Nor the procedure is by a suit. The only court to exercise this supervisory power is the High Court and the Supreme Court which are specially invested by the Constitution with such supervisory power. When the nature of the power to be exercised is taken into consideration, it seems that the ordinary civil courts which are only empowered to entertain suits and not specifically invested with power of supervision over other courts and tribunals have not been given

this supervisory jurisdiction. Again, Section 9 empowers a civil court to try suits of a civil nature excepting suits of which cognizance is barred either expressly or impliedly. If so, how can it be said that a civil court can take cognizance of a suit in which the dispute, though of a civil nature, is barred expressly or impliedly? Logically the argument sounds absurd.

12. Mr. Bhabra contends that an order of such a statutory tribunal can well be considered, modified or set aside by the High Court in its writ jurisdiction. This is conceded. In fact the High Court in its writ jurisdiction has looked into orders passed by such tribunals including orders passed under the Sea Customs Act and have passed appropriate orders including a quashing order. The next step in Mr. Bhabra's argument is that if a writ of certiorari lies in such cases a declaratory suit also lies. Mr. Bhabra relies on the observation of Lord Denning in the case of *Barnard v. National Dock Labour Board* (1953) 1 All ER 1113. The passage is at p. 1119 and reads as follows:

"Finally, counsel for the defendants said that these Courts have no right to interfere with the decisions of statutory tribunals except by the historical method of certiorari. He drew an alarming picture of what might happen if once the court intervened by way of declaration and Injunction. It meant, he said, that any one who was dissatisfied with the decision of a tribunal could start an action in the courts for a declaration that it was bad, and thus, by a side-wind, you could get an appeal to the courts in cases where Parliament intended that there should be none. I think there is much force in that contention--so much so that I am sure in the vast majority of cases the courts will not seek to interfere with the decisions of statutory tribunals--but I do not doubt that there is power to do so, not only by certiorari, but also by way of declaration. I know of no limit to the power of the court to grant a declaration except such limit as it may in its discretion impose on itself, and the court should not, I think, tie its hands in this matter of statutory tribunals. It is axiomatic that when a statutory tribunal sits to administer justice, it must act in accordance with the law. Parliament clearly so intended. If the tribunal does not observe the law, what is to be done? The remedy by certiorari is hedged round by limitations and may not be available. Why, then, should not the court intervene by declaration and injunction? If it cannot so intervene, it would mean that the tribunal could disregard the law."

Reference was also made to *Healey v. Ministry of Health*, a decision reported in (1954) 2 All ER 580 *Francis v. Yiewsley and West Drayton Urban District Council* (1957) 2 QB 136 at p. 148; (1957) 1 All ER 825; *Pyx Granite Co. Ltd. v. Ministry of Housing and Local Government* (1959) 3 WLR 346 (see the speech of Simonds L. C. at pp. 356-357). At p. 360 Lord Goddard makes the following observation:

"I agree with the majority in the Court of Appeal, who held that this decision had no application to the facts of this case and that there were no words in the statute which deprived the appellants of their right to obtain a declaration. It was also argued that if there was a remedy obtainable in the High Court it must be by way of certiorari. I know of no authority for saying that if an order or decision

can be attacked by certiorari the court is debarred from granting a declaration in an appropriate case. The remedies are not mutually exclusive, though no doubt there are some orders, notably convictions before justices, where the only appropriate remedy is certiorari."

13. It must be conceded that the proposition contended for by Mr. Bhabra has received the approval of great Judges in England. The reason given by Denning L. J. is, first, that there is no limit to the power of the courts in England to grant declaration except such as it may in its discretion impose on itself, and, secondly, the statutory tribunals must act in accordance with law and keep within bounds. It is for the Courts to see that they are kept within bound and act according to law. It is however to be noted that there is no limitation to the power of the courts in England to entertain suits of a civil nature. The courts, however, have recognised in some cases the jurisdiction of the civil court has been taken away expressly or impliedly. These may be described self-imposed limitations, discretionary and dictated by prudence. In India there is statutory limitation to the power of a Civil Court to entertain suits of a civil nature. They have jurisdiction to try suit of a civil nature excepting suits of which cognizance is either expressly or impliedly barred. So also the power of the Courts to grant declaratory relief in India is not unfettered by statute. The power to grant declaratory reliefs in India is defined by the Specific Relief Act. The limitations are statutory. While in England the Courts of Equity have never been fettered by statutory limitations and the limitations were self-imposed, in India statutes limit the power of the Courts to entertain suits and to grant declaratory reliefs. Further the superior courts in India under the Constitution have ample power to keep the statutory tribunals within bound. Hence the observations of Denning, L. J. and Goddard C. J. noticed before may not to apply in this country. It is true that the statutory tribunals must act under the control of civil courts and they must not be allowed to violate the law. This does not necessarily mean that this function must be exercised by all civil courts and by way of suit. Such functions can more appropriately be exercised by the superior courts i.e., the High Court and the Supreme Court. An ordinary Civil Court having no appellate or revisional power can hardly be considered to be the appropriate court to exercise the supervisory powers. The observation of the Judicial Committee in AIR 1940 176 (Privy Council) is an authority for the proposition that in spite of the ouster of jurisdiction, the Court still retain supervisory jurisdiction over statutory tribunals but in my judgment it should not be construed as an authority for the proposition that such supervisory jurisdiction can be exercised by the ordinary court in a suit more specially now when the Constitution expressly vests the High Court and the Supreme Court with the said supervisory powers over inferior Courts and tribunals. On the other hand, this Court in *Sakti Nath Roy Choudhury Vs. Jessore United Bank Ltd. (Registered)*, and 65 Cal WN 1206 has held that no such suit lies. It is to be noted, however, that the point was never argued in those cases in the manner it has been argued by Mr. Bhabra and the question did not arise in consequence for decision. I, therefore, hold that the order of the Sea Customs

authority u/s 182 of the Sea Customs Act confiscating the goods cannot be challenged in a Civil Court by a suit. It can only be challenged by way of appeal and revision as provided in the Act itself. It can also be challenged in the High Court and the Supreme Court in appropriate proceeding.

14. Assuming that I am wrong and a suit lies challenging such an order under the Sea Customs Act, it is to be considered whether in the instant case sufficient ground has been made out to enable me to hold that the order is invalid. It is contended by Mr. Bhabra that in the instant case the Customs Authority had no jurisdiction to make the order and the provisions of the Act have not been complied with. The onus of proof was misplaced by the Customs Authority and the order of confiscation has been made even though there was no proof that the goods were contraband. The order of confiscation is therefore liable to be challenged by a suit in a civil court. The power of the civil court to deal with orders or adjudication of the Special Tribunal is strictly limited as indicated by Lord Thankerton in AIR 1940 176 (Privy Council) . The Civil Court can and does interfere when the Sea Customs authority exercises jurisdiction not vested in it by the statute. It is contended by Mr. Bhabra that supposing the Sea Customs authority purports to confiscate as contraband goods that are not contraband is not the aggrieved party entitled to have the order of confiscation quashed by the Civil Court? The argument appears to be plausible and appealing at first sight. But before it can be said that the Customs Authority has acted in excess of jurisdiction, the further question arises whether the statutory authority was intended by the Legislature to determine facts on which the exercise of its jurisdiction depends. If so the statutory authority and not the Civil Court will determine that question and the party affected must look to the Sea Customs Authority for relief. This is the second category of cases indicated by Lord Esher in the case reported in (1888) 21 QBD 313 at p. 319. On the same ground Fazl Ali J., disclaimed jurisdiction to interfere in the case reported in Rai Brij Raj Krishna and Another Vs. S.K. Shaw and Brothers, . On the same ground Lord Goddard C. J. in the case of R, v. Ludlow (1947) 1 All ER 880 refused to issue a writ of certiorari to quash an order of Dy. Umpire under the Reinstatement in Civil Employment Act, Section 9(1). After citing with approval the observation of Lord Esher in (1888) 21 QBD 313 the learned Chief Justice observed that the Parliament have invested the statutory authority viz., the Committee and the Umpire jurisdiction to decide the preliminary state of facts which alone would give them jurisdiction and their decision is not liable to be quashed and the writ must be refused. Reference may also be made to the observation of the Supreme Court in the case of Lilavati Bai Vs. The State of Bombay, to the following effect:

"In this connection the learned counsel for the petitioner also pressed in aid of his argument the well known distinction between the jurisdiction of a court or authority to decide a certain fact as one of the issues in the controversy and certain collateral facts on which the jurisdiction to determine the controversy could arise. It was argued that the finding on question of vacancy by the State Government was a "jurisdictional fact" in the sense that unless it was found that

there was a vacancy, the jurisdiction of the State Government to make the declaration and to requisition the premises could not arise. This aspect of the matter has been considered by this Court in the case of Rai Brij Raj Krishna and Another Vs. S.K. Shaw and Brothers, . That case concerned the construction of the provisions of the Bihar Buildings (Lease, Rent and Eviction) Control Act (Bihar Act 111) of 1947. This Court held that the Controller had been vested with the jurisdiction to determine all questions including the question whether or not there was non-payment of rent and on finding that there was default in the payment of rent, with the jurisdiction to order eviction of the tenant. The finding on the question of default was not a jurisdictional finding in the sense in which learned counsel for the petitioner asks us to hold with reference to the finding of the State Government in this case that there has been a vacancy. In the reported case this Court held further that even if the Controller had wrongly decided the question of default in the payment of rent, his effective order on the question of eviction could not be challenged in a court of law."

See also the cases reported in (1938) 1 All ER 144 and (1954) 2 KB 220. On the other hand, Mr. Bhabra referred to various authorities in which the Court did exercise its power in cases of Sea Customs Act when the Customs authorities made an order of confiscation of goods on the ground that wrongly the onus was placed on the person whose goods were confiscated. Wrong application of law has therefore been held to be sufficient to enable the superior court to issue a writ of certiorari (see *Amba Lal v. Union of India* AIR 1961 SC 264; *Gian Chand and Others Vs. The State Of Punjab*, ; (sic) *Mangala Prosad Vs. V.J. Manerikar and Others*, . In all these cases the Court looked into the legality of the proceedings, considered whether the onus was rightly placed and whether there was evidence to sustain the order of confiscation. It may, therefore, appear that the Court did consider the propriety of the order and did not hold its hand on the ground that the authority under the Sea Customs Act was empowered to decide jurisdictional facts and its order or adjudication u/s 182 or Section 188 right or wrong cannot be touched by the civil court. The point is tricky. That the civil court retains some power is undeniable. It is equally undeniable that: there is a limit to that power. The question is where to draw the line.

15. I refrain from attempting to consider the question generally but confine myself to the facts of the instant case. The authorities cited on the point are decisions in writ matters. On the assumption that the powers under Article 226 can be equated to the power retained by the Civil Court as indicated by Lord Thankerton, I examine the facts of the instant case. The order of confiscation in the instant case is purported to be made u/s 7 of Land Customs Act and Section 167(8) of the Sea Customs Act. Notice to show cause reads as follows :

"Registered with A/D.

Collectorate of Central Excise, Calcutta,

Show Cause Memo.

C. No. VIII (15)--170--CPC/53/40908C

Dated the 16/17 Nov., 1953.

To,

Shri Tejman, S/o. Jogman, C/o. M/s. Radha Kishan Meghraj, 15, Noormal Lohia Lane, Calcutta 7.

Whereas there is reason to believe that the goods mentioned below (which were found in your possession) have been imported from across foreign territory into India without:

(i) a valid permit of Land Customs in contravention of Section 5 of the Land Customs Act, 1924;

(ii) a valid Import Trade Control license in contravention of Notification No. 23/ITC/43 dated 1-7-43 issued u/s 3(1) of the Imports and Exports (Control Act,) 1947, an offence has been committed under:

(i) Section 5 of the Land Customs Act, 1924.

(ii) Section 19 of the Sea Customs Act, 1878 as made applicable by Section 3(2) of said Imports and Exports (Control) Act, 1947.

You are, therefore, called upon to show cause before the Collector of Central Excise and Land Customs at 15/1, Strand Road, Customs House, Calcutta within 10 days from the date of this Memo as to why penal action should not be taken against you for the said offence and as to why the said goods should not be confiscated, under:

(i) Section 7 of the Land Customs Act 1924/and Section 167(8) of the Sea Customs Act, 1878 as made applicable by Section 9 of the said Land Customs Act.

All evidence, documentary or otherwise, in your possession should be produced in support of your explanation within the period specified above failing which the case will be decided ex parte.

You should state at the same time whether you desire to be heard in person or through your legal representative in your defence by the said authority. On receipt of your reply, if necessary, a time and date will be fixed and communicated to you.

List of Goods.

1. parker 51 fountain pen (Eng) -- 33 pcs.
2. do (not known) -- 2 pcs.
3. do (Old (U. S. A.) (new cap with old body) -- 1 pc.
4. "Roamer" wrist watches:

Brevite (Swiss) of No. 215999, 180459 -- 201 pcs.

Sd. Illegible, 17-11-53, Superintendent of Central Excise, and Land Customs, Central Preventive Circle, Calcutta

5. Non-magnetic Shock proof stainless watches (Raily) -- 7pcs.

6. Felca Watches (Swiss) of No. 100980 -- 9 pcs.

List of goods (contd).

7. Felca Watches (Swiss) of No. 225 -- 2 pcs.

8. Felca Watches (Swiss) of No. 220 -- 1 pc. Rs. 21596/-"

The above notice clearly states that the goods have been imported from across foreign territory, (a) without a valid permit under the Land Customs Act (b) and without a valid license in contravention of a notification u/s 3(1) of the Imports and Exports (Control) Act. The offences charged to have been committed under (i) Section 5, Land Customs Act (ii) Section 19 of the Sea Customs Act as made applicable by Section 3(2) of the Imports and Exports (Control) Act, 1947.

16. It is submitted by Mr. Bhabra that the name of the foreign territory from which the goods have been imported has not been given in the notice. The list of goods stated in the notice indicates that the goods were of foreign origin. But from what frontier territory the goods came to India has not been stated. He drew my attention to two reported cases *Shermal Jain Vs. Collector of Central Excise and Land Customs, Calcutta*, and *Annada Prasanna Majumdar Vs. T.C. Seth, Collector of Central Excise and Land Customs*, in which the name of the foreign territory across which the goods came within India has been given in the notice. Mr. Roy Choudhuri in his turn drew my attention to two other cases, *Shewpujanrai Indrasanrai Ltd. Vs. The Collector of Customs and Others*, and *Pukhraj Vs. D.R. Kohli*, in which the name has not been given. There is no statutory form of notice to show cause. Apparently in cases in which the Customs authorities are sure of the frontier through which the goods came into India the names are given. In other cases in which the authorities are not definite the names are not given. Perhaps, that is the reason. I am unable agree with Mr. Bhabra that the notice in the instant case is so defective for the reasons stated by Mr. Bhabra that the instant proceeding under the Sea Customs Act resulting in the order of confiscation has been vitiated. In the absence of any statutory requirement as to the form of the notice to be served, I am unable to agree that the show-cause notice is not in compliance with the statute. The defect, if any, is purely technical and this technical defect cannot be relied on in support of a case that there has been any violation of the rules of natural justice. The act complained of has been clearly stated. The offence charged has also been indicated with sufficient definiteness. The punishment proposed to be inflicted is also indicated in the notice. I am unable, therefore, to hold that the proceeding resulting in the order of confiscation is bad because of defective notice and as such the said order is liable to be quashed.

17. It is next contended that power to confiscate and indeed the jurisdiction of the Customs authorities to make an order of confiscation can be invoked in respect to goods which "are liable to confiscation under the Act." If the goods are not liable to confiscation i.e. they are not proved to be contraband, the Sea Customs authority has no jurisdiction to make an order of confiscation. Mr. Bhabra contends that the goods are not contraband and that as such they are not liable to confiscation. It may be that the goods were of foreign origin but that is not enough to prove that the goods were contraband. It must be proved further that the goods were imported into India at a time when the notification was effective in respect to the goods in question. It might have been imported at the time when there was open general license or no license at all. There is no evidence at what point of time the goods were imported in India. This is material in determining whether the notification was effective in respect to the goods in suit. Further there is no evidence one way or the other as to whether in respect to the goods when imported import duty was paid or not or as to whether the goods were brought under license or not. It may be that it is difficult for the Customs Authorities to discharge the negative onus but merely because the onus is difficult to discharge would not entitle the Customs Authorities to confiscate the goods without discharging the onus imposed on it by law. It is pointed out that the difficulty could have been met by bringing in the goods within Section 178A by a proper notification in the Gazette by the Central Government. This not having been done the burden is on the Customs Authorities to prove not only that the goods were of foreign origin but also have been imported without a license and without payment of duty. The argument has force and requires some consideration.

18. In considering this argument certain facts must be kept in view. India has extensive frontier by sea and land. When goods are surreptitiously imported, it is possible to name the foreign country if it came from a foreign country with common frontier. When, however, the goods do not come across the frontier of such a foreign country, as for example by sea. it is not possible to give the name of such foreign country from which it has entered India. Even when it comes across the frontier of another country, it is not possible to give the name of such foreign country unless the goods are detected at the time of such surreptitious entry. This constitutes a serious difficulty in the detection of smuggling and punishment of smugglers. From the nature of the case, the Customs Authorities have to rely on information received from secret source by the preventive officers that smuggled goods are in possession of certain persons even though the exact date and point of entry of the goods in India is not known. The sources of information must necessarily be kept secret, otherwise detection of smuggling becomes impossible. When the Customs Officer is reasonably satisfied that a consignment of goods is contraband from such secret information, show cause notice is served on the person in actual possession of the contraband goods. Normally immediately after the surreptitious import of contraband goods, there are quick transfers and the original offender slips out and cannot be connected

with the goods. That is why the statute empowers the possessor of the goods to be proceeded against even though the original smuggler is out of bound and escapes law. The secret informations provided by informers are informations receivable in evidence and can be taken into consideration by the Customs Authorities. Even though the provisions of the Sea Customs Act as to confiscation is penal in its nature, the proceeding before the Customs Authorities for adjudication as to whether the goods are liable to confiscation or not is not a criminal proceeding. It follows that the strictness insisted on to prove the guilt before there can be conviction and sentence, cannot be insisted in such adjudication proceeding. In criminal trial when conviction depends on circumstantial evidence, not one link in the chain of circumstances should be missing and each such link has to be proved strictly according to the Indian Evidence Act. Such cannot be in the case of adjudication under the Sea Customs Act. If such were the case, it would not be possible to prevent smuggling and to confiscate smuggled goods. It is very difficult business to prevent smuggling, and large-scale smuggling is apt to upset the economy of the country and its public finance. In recognition of the difficulty involved and the importance of preventing smuggling, the obligations imposed under the Sea Customs Act are enforced by a special tribunal with special knowledge and skill, and investigations and adjudications by Customs Authorities have advisedly been not hampered by the technicalities of the Evidence Act. It may be that a finding arrived at by the Sea Customs Authorities on evidence might not be considered sufficient and adequate by a Civil Court trying a suit or a criminal court trying an offence. Nevertheless, they are good finding under the Sea Customs Act and are not liable to be revised by a Civil Court, on the ground that had the matter been tried by it, it would have recorded a different finding. It must not be forgotten that a person in possession of goods alleged to be smuggled can establish that they were licit by proving purchase from licit source. If the offending; party tenders evidence to prove that the goods were licit and acquired in a lawful way from dealers who deal in licit goods and this evidence is found to be false, certain inferences are permissible to be drawn. Total failure on the part of the person in possession of goods to prove that the goods had licit origin must be taken into consideration. It appears from the order of confiscation that other evidence also has been considered. It cannot, therefore, be held that the Customs Authorities passed the order of confiscation, because the person charged failed to prove his case. I am not satisfied that the finding of the Customs Authorities was on the footing that the onus was on the plaintiff to prove that the goods were not contraband and that on the mere failure on the part of the plaintiff to discharge the onus, the goods have been held to be contraband, without any evidence at all. On the materials available, the Custom authorities were satisfied that the goods were contraband. I refrain from considering the question whether, on the same material, a Civil Court would have recorded the same or a different finding. I am not satisfied that in the instant case, rules of natural justice have been violated or the procedure prescribed has not been complied with that the plaintiff did not get a fair deal from the Customs Authorities. Supervisory powers of the Civil

Court should not be invoked in the facts of the instant case.

19. It is contended by Mr. Bhabra that the conviction in the instant case is bad, because no option was given to the plaintiff to pay the penalty. Reference is made of Section 3(2) Imports and Exports (Control) Act, Section 19 and Section 183 of the Sea Customs Act. If the confiscation is wrong, because of no option having been given to the plaintiff, that wrong can only be corrected in appeal and revision. That does not vitiate the proceedings and the order of confiscation based thereon. Mr. Roy Choudhury states that an appeal has been preferred by the plaintiff u/s 188 of the Act to the appropriate authority. He places before me a copy of the Grounds. If so, the appropriate authority will grant relief to the plaintiff, if satisfied. The plaintiff, in my judgment, cannot get any relief in this suit, because of no option having been given to the plaintiff to pay fine in lieu of confiscation.

20. On the grounds stated above, I hold that the suit is not maintainable and should be dismissed with costs; certified for two counsel.