Chhaila Vs Board of Revenue and Others

Court: Rajasthan High Court

Date of Decision: Dec. 19, 1974

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 9
Constitution of India, 1950 â€" Article 226
Rajasthan Tenancy Act, 1955 â€" Section 239(1), 239(2), 239(3), 239(4), 239(5)

Citation: AIR 1975 Raj 157 : (1975) RLW 29

Hon'ble Judges: P.N. Shinghal, J; M.L. Shrimal, J

Bench: Division Bench

Advocate: M.L. Shrimalee and S.C. Diwedi, for the Appellant; K.C. Samdariya, for the Respondent

Final Decision: Allowed

Judgement

Shinghal, J.
Shanti Vardhman Pedi, respondent No. 3, filed a suit through its Sectary Panraj, on September 13, 1955, in the Court of

Sub-Divisional Officer, Sojat, for ejectment of petitioner Chhaila u/s 183 of the Rajasthan Tenancy Act, 1955. hereinafter referred to as the Act,

alleging that he was a trespasser. It was claimed in the suit that the land, Khasra No. 1567, Chat No. 2, Sojat, was the ""doli"" land of the plaintiff

and defendant Chhaila had taken possession without lawful authority in Samvat 2009. As Chhaila claimed that he had taken the possession through

Suit. Saiaswati, respondent No. 4, she was also impleaded as a defendant. Smt. Saraswati pleaded that she was entitled to lease out the land to

petitioner Chhaila. The trial court framed a number of issues including issue No. 2 which dealt with the question whether the suit land was the ""doli

land of the temple which could be cultivated only by the ""pujari"". The Sub-Divisional Officer submitted the record to the Court of Munsiff Sojat for

the decision of issue No. 2 as it raised a question of proprietary right within the meaning of Section 239(1) of the Act.

2. The Munsiff decided that the suit land was the ""doli"" land of the temple and returned the record to the Sub-Divisional Officer who dismissed the

suit by his judgment Ex. 1 dated February 15, 1963. Respondent No. 3 filed an appeal, but it was dismissed by judgment Ex. 2 dated November

29, 1963 of the Revenue Appellate Authority, respondent No. 2. A second appeal was preferred before the Board of Revenue, respondent No.

1. That appeal was allowed by judgment Ex. 3 dated January 22, 1965 and the suit was decreed. The petitioner applied for a review of that

judgment, but his application was dismissed by order Ex. 4 dated September 14, 1966.

3. There is no dispute about the facts mentioned above. The petitioner has applied for certiorari on the ground, inter alia, that by virtue of Sub-

section (4) of Section 239 of the Act the two appellate judgments, and the order on the review application, are without jurisdiction and should be

quashed in the exercise of this Court''s extraordinary jurisdiction. A reply has been filed by respondent No. 3 controverting the claim for certiorari.

4. The point which arises for consideration is whether this is a case of a total or inherent lack of jurisdiction on the ground that by virtue of Sub-

sections (4) and (5) of Section 239 of the Act the Revenue Appellate Authority, respondent No. 2, and the Board of Revenue, respondent No. 1,

did not have the authority to entertain and dispose of the appeals which were preferred before them.

5. As has been stated, issue No. 2 raised the question whether the suit land was the ''''doli'''' land of the temple. It is admitted by both the learned

counsel in this Court that it was a question of ''''proprietary right'''' within the meaning of Sub-section (1) of Section 239, and that the record was

rightly submitted to the Court of Munsiff, Sojat, for its decision. The Civil Court decided the issue. It held that the suit land was the ''''doli'''' land of

the temple, and returned the record with that finding to the Sub-Divisional Officer, The Sub-Divisional Officer however dismissed the suit by his

judgment Ex. 1 dated February 15, 1963. It was therefore a decision under Sub-section (3) of Section 239.

6. Sub-section (4) of Section 239 of the Act deals with appeals from decrees of revenue Courts in such cases, and provides as follows,--

(4) An appeal from a decree of a revenue court passed in a suit in which an issue involving a question of proprietary right has been decided by a

civil count under Sub-section (2) shall lie to the civil court which, having regard to the valuation of the suit, has jurisdiction to hear appeals from the

court to which the issue of proprietary right had been referred.

Then comes Sub-section (5) which deals with second appeals and provides as follows,--

(5) A second appeal from a decree or order passed by a civil court in appeal under Sub-section (4) shall lie to the High Court on any of the

grounds mentioned in Sec. 100 of the Code of Civil Procedure, 1908 (Central Act V of 1908).

It is thus quite clear, and admits of no doubt or controversy, that as the issue involving a question of proprietary right had admittedly been decided

by the civil court under sub section (2), the appeal from the decree of the Sub-Divisional Officer lay only to the competent ''''Civil Court'''', under

Sub-section (4), and not to the Revenue Appellate Authority, and, a fortiori, the second appeal lay only to the High Court under Sub-section (5)

and not to the Board of Revenue.

7. Jurisdiction means ""authority to decide"", and the question whether a tribunal has jurisdiction depends not upon the correctness of its findings, but

upon the nature of the facts into which it has to inquire. It is determinable at the commencement of the inquiry and not at its conclusion. A tribunal

may thus lack the jurisdiction to make an inquiry, or hear an appeal, if it has been debarred from doing so by an express provision of the law. So

where a tribunal is incompetent to adjudicate on a particular matter, its decision thereon is void, and is a nullity. As is obvious, there is much force

in this theory of jurisdiction for ft is based on logical consistency.

8. It is equally well settled that a decision which is made without jurisdiction, and is void for that reason, cannot be validated by any express or

implied consent of a party to the proceedings. It has thus been held as follows in Ledgard v. Bull (1885) 13 Ind App 134 .

When the Judge has no inherent jurisdiction over the subject-matter of a suit, the parties cannot, by their mutual consent, convert it into a proper

judicial process.....

Reference may also be made to the decision of their Lordships of the Supreme Court in Kiran Singh and Others Vs. Chaman Paswan and Others,

where it has been held as follows,--

It is a fundamental principle well established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up

whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of

jurisdiction, whether it is a pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the

Court to pass any decree, and such a defect cannot be cured even by consent of parties.

9. We have therefore no hesitation in holding that the impugned judgments of the Revenue Appellate Authority and the Board of Revenue being

without jurisdiction were void and were a nullity.

10. But, as has been stated by S. A. de Smith in his ""Judicial Review of Administrative Action."" second edition, at page 433,--

A decision made without jurisdiction is void..... It does not always follow, however, that a party adversely affected by a void decision will be able

to have it set aside.....certiorari and prohibition are, in general, discretionary remedies, and the conduct of the applicant may have been such as to

disentitle him to a remedy.

The petitioner before us did not raise any objection before the Revenue Appellate Authority or the Board of Revenue that they were not

competent to hear the appeals and as has been stated, he applied to the Board for a review of its judgment. The question is whether he has thereby

been guilty of any such conduct that he should be penalised for it in a case like the present where the defect as to jurisdiction was apparent on the

face of the proceedings?

11-A. We find that the matter came up for consideration as far back as Marsden v. Wardle (1854) 3 E& B 695 : 118 ER 1302 and it was held as

follows,--

There is reason for refusing the writ after judgment in the Courts where the proceedings set forth the detail of the matter, and the party has the

opportunity of moving before judgment. Then, if he chooses to wait and take the chance of judgment in his favour, he may be held incompetent to

complain of excess of jurisdiction if judgment is against him. There is, however, good reason for departing from this, principle where the defect is

apparent on the face of the proceedings below; because the complaint in that case does not rest on the evidence of the complainant; and, if such a

defective record were allowed to remain, and to support a judgment, it might become a precedent: that which was in truth an excess of jurisdiction

might be considered to have bees held to be legal.

The matter in fact came up for consideration quite recently in Essex County Council v. Essex Incorporated Congregational Church Union 1963

AC 808. That was a case where the orders of the tribunal and the Court of Appeal were made without jurisdiction and Lord Reid stated the law

as follows,--

What in fact happened was that the appellants requested the tribunal to deal with this point as a preliminary point of law; this request was

intimated to the respondents and they did not object; then the respondents appeared before the tribunal and argued the point but, not being then

alive to their rights, they did not protest. I need not consider whether this amounted to a consent to widening the reference to the tribunal, because,

in my judgment, it is a fundamental principle that no consent can confer on a court or tribunal with limited statutory jurisdiction any power to act

beyond that jurisdiction, or can estop the consenting party from subsequently maintaining that such court or tribunal has acted without jurisdiction.

We have no hesitation, therefore, in taking the view that there will be no justification for refusing relief to the petitioner when the defect of a total or

inherent lack of jurisdiction was apparent on the face of the proceedings below.

11. Our attention has in fact been invited by the learned counsel for the petitioner to a number of Bench decisions of our Court where conduct of

the nature imputed to the present petitioner did not come in the way of granting relief by way of certiorari or prohibition. Thus in Raghunandanlal

and Others Vs. State of Rajasthan, the mortgagee did not object to the jurisdiction of the Custodian to pass the order and it was held that consent

could not be regarded as a free consent and could not deprive the petitioners of the remedy under Art. 226 of the Constitution. The matter again

came up for consideration in Dholpur Co-operative Transport and Multipurposes Union Ltd. Vs. The Appellate Authority (Transport), Rajasthan,

Jaipur and Others, and it was held that as there was total lack of jurisdiction in the Appellate Authority, the inability of the petitioners to raise an

objection, or the making of a review application, did not disentitle them to relief. That decision has been followed in Barkatali Vs. Custodian

General of Evacuee Property of India, and Badridass Kanhaiyalal and Another Vs. Appellate Tribunal of State Transport Authority, Rajasthan and

Others, In Barkatali''s case the petitioner not only did not raise an objection as to the patent lack of jurisdiction before the Custodian or the

Custodian General, but filed a review application before the Custodian General. It has therefore been the considered view of this Court that, in

oases like the present, this Court should not refuse to exercise its discretion in favour of the petitioner simply because he did not raise an objection

as to total or inherent lack of jurisdiction in the tribunal, or filed an application for review, when the defect was patent on the record. It is true that

there may be cases where the conduct of the petitioner may be such as to disentitle him to a discretionary relief, e. g., in a case where he has

knowingly approbated the defective proceedings, or otherwise derived benefit there-under, but those are different cases, and deserve a different

treatment But in a case like the present where revenue courts of the status of respondents 1 and 2 lost sight of the provisions of Sub-sections (4)

and (5) of Section 239 of the Act, we do not find it possible to penalise the petitioner for a similar mistake. We are in fact unable to think that the

petitioner had any thing to gain by withholding his objection as to jurisdiction and lending himself in all this protracted and wasteful litigation. The

failure on his part to raise the objection was apparently due to want of knowledge, and we have no reason to disbelieve the explanation of his

learned counsel to this effect.

12. Mr. Samdariya learned counsel for respondent No. 3, has argued that the discretionary relief by way of certiorari should be refused to the

petitioner because of his conduct in the revenue courts, and has cited The King v. Williams (1914) 1 KB 608; Latchmanan Chettiar v. Commr.

Corporation of Madras AIR 1927 Mad 130 ; Rach-amma v. Hyderabad State AIR 1954 Hyd 210 ; Gandhinagar Motor Transport Society Vs.

State of Bombay, ; Rambhau Sakharam Nagre Vs. D.G. Tatke and Others, Appa Shivling Vs. Vithal Baba and Another, Suprova Sundari Devi

Vs. Commissioner of Income Tax, West Bengal and Others, ; Pannalal Binjraj Vs. Union of india (UOI), Remington Rand of India Limited Vs.

Thiru R. Jambulingam, Tulcha Ram v. Gram Panchayat, Palana 1961 RLW 229 and Phalgu Dutta Kirpa Ram Vs. Pushpa Wanti and Others, The

decisions in (1914) 1 KB 608 and AIR 1927 Mad 130 have been considered by this Court in Dholpur Co-operative Transport and

Multipurposes Union Ltd. Vs. The Appellate Authority (Transport), Rajasthan, Jaipur and Others, The decision in C. A. O. K. Latchmanan

Chettiar"s case has not been followed in the subsequent decision of the same court in Gajendra Transports (P) Ltd., Tiruppur Vs. Anamallais Bus

Transports (P) Ltd., Pollachi and Another, was not a case of total lack of jurisdiction. Gandhinagar Motor Transport Society Vs. State of

Bombay, have been noticed in the subsequent decision of the same court in Gopikisan v. District Judge, Bhandara ILR (1966) Bom 512 but it has

been held that a party cannot be prevented from objecting to the jurisdiction of a tribunal for the first time by a petition although he could have

objected to it before the tribunal if the tribunal"s want of jurisdiction is patent, total or apparent. Rambhau Sakharam Nagre"s case has followed

the decision in Gandhinagar Motor Transport Society Vs. State of Bombay, . Suprova Sundari Devi Vs. Commissioner of Income Tax, West

Bengal and Others, has been based on the decision in Gandhinagar Motor Transport Society Vs. State of Bombay, to which reference has been

made already. Pannalal Binjraj Vs. Union of india (UOI), was a case where on the facts, it was found to have been established that the conduct of

the petitioners disentitled them to any relief at the hands of the Court. Remington Rand of India Limited Vs. Thiru R. Jambulingam, was quite a

different case where a party wanted to resile from the plea which had been taken in the tribunal below. We have gone through 1961 Raj LW 229 .

It appears that the earlier Bench decisions of this Court were not brought to the notice of the learned Single Judge who decided that case. The

decision in AIR 1960 Punj 432 appears to have been based on Gandhinagar Motor Transport Society Vs. State of Bombay, and (1914) 1 KB

608 to which reference has been made already. It will thus appear that the cases cited by Mr. Samdariya can be of no avail to respondent No. 3.

13. Mr. Samdariya has, however, raised the further argument that as, according to him, there has been no failure of justice as a result of the

jurisdictional error in the tribunals below, this Court should not grant relief by way of certiorari. Reference in this connection has been made to the

decisions in Veerappa Pillai Vs. Raman and Raman Ltd. and Others, A.M. Allison Vs. B.L. Sen, Pooran Singh and Others Vs. Additional

Commissioner and Others, Parahu v. Deputy Director of Consolidation U. P. 1964 All LJ 240; Bhagsingh v. Transport Appellate Tribunal,

Rajasthan 1966 Raj LW 66; A. M. Mani v. Kerala State Electricity Board AIR 1968 Kant 76 and Banarsi Dass and Another Vs. Income Tax

Officer, B-III District, New Delhi and Others, . We find however, that those decisions were rendered on facts which were quite different, and

have no application to the case before us. In this case, we are not really required to examine the merits of the controversy on the facts for that is

the function of the courts which will, be called upon to hear the appeal under Sub-sections (4) and (5) of Section 239 after the impugned

judgments of the Revenue Appellate Authority and the Board of Revenue have been quashed.

14. The petitioner is, therefore entitled to succeed, The writ petition is allowed with costs and the impugned judgments Ex. 2 dated November 29,

1963, Ex. 3 dated January 22, 1965 and Ex. 4 dated September 14, 1966 are hereby quashed.