Aringdas Rai Vs Bir Bahadur Rai and Others

Court: Sikkim High Court

Date of Decision: March 16, 1985

Citation: AIR 1986 Sikk 1

Hon'ble Judges: Anandamoy Bhattacharjee, Acting C.J.; Ripusudan Dayal, J

Bench: Division Bench

Advocate: A. Moulik, for the Appellant; T.B. Thapa, for the Respondent

Judgement

R. Dayal, J.
In this Writ Petition, the proceeding before the Prescribed Authority and the Appellate Authority under the Sikkim Cultivators

Protection (Temporary Provisions) Act, 1975 (herein for short the Cultivators Act), have been challenged by the petitioner on four grounds and

they are:

1. The proceeding was initiated after the expiry of the aforesaid temporary Act;

2. The Officer before whom the application filed by the Respondent No. 1 was presented at the first instance was not the Prescribed Authority

under the Act, which alone could entertain such application;

3. The Officer who finally tried and disposed of the application, though a Prescribed Authority under the Act, ceased to be so when he

pronounced the final order;

4. The application did not disclose any dispute which could be decided by the Prescribed Authority under the Act.

2. As to the ground No. 1, the Petitioner was wholly under an erroneous impression. The Cultivators Act, which was undoubtedly a temporary

legislation, came into force on 8-9-1975 and under the provisions of Section 1(3) thereof, as originally enacted, was to remain in operation for a

period of two years from that date, but the State Government was empowered to extend the period by Notification for a further period not

exceeding one year. But by a series of amendments, this period of one year was enlarged from time to time and finally the expression ""one year

stood substituted by the expression ""six years"" and as a result of appropriate Notifications by the State Government, the Act stood extended for a

further period of six years over and above the original period of two years fixed by the Legislature and the Act thus expired in Sept. 1983. The

application having admittedly been filed on 25-8-1981, the Act was very much in operation on that date and this has been finally conceded by Mr.

Moulik, the learned Counsel for the petitioner, at a later stage of the argument. But though the case was pending when the Act was still in force, the

same has been disposed of and the final order has been passed on 9-2-1984, that is, several months after the expiry of the Act. Did the pending

proceeding lapse with the expiration of the temporary legislation whereunder it was initiated?

3. The general rule as to the effect of repeal of an enactment, as distinguished from automatic expiry of a temporary enactment by efflux of time

limited thereby, is embodied in Section 6 of the Central General Clauses Act, 1897, whereunder all acts and events taking place before the repeal

would continue to be governed by the repealed Act notwithstanding its repeal and, in particular, as provided in Clause (e) thereof, the repeal shall

not affect any legal proceeding or remedy in respect of any right, privilege, obligation or liability acquired, accrued or incurred under the repealed

enactment and any such legal proceeding or remedy may be instituted, continued or enforced as if the repealed Act had not been passed. But

though the principle is the same even when the Act repealed is a temporary one, the principle does not apply when a temporary Act automatically

expires with the expiration of the time limited therefore and is not repealed at any time before such expiry. And the general rule as to the effect of

expiry of a temporary Act is that, in the absence of special provision to the contrary, proceeding initiated under a temporary Act ipso facto

terminates with the expiry of the Act and if any authority is needed for this well established proposition, reference may be made to the observations

of Patanjali Sastri J. in the Supreme Court decision in S. Krishnan and Others Vs. The State of Madras, , referred to with approval by

Gajendragadkar, J. in State of Orissa Vs. Bhupendra Kumar Bose, and also by Krishna Iyer, J. in Qudrat Ullah Vs. Municipal Board, Bareilly, .

But the provisions of the Central General Clauses Act, 1897 and the principles deduced therefrom would obviously apply to the interpretation of

the Central enactments only and that is why different States have enacted their own enactments for the interpretation of the State Acts, though

generally in the line of the Central Act. But the Sikkim Interpretation and General Clauses Act, 1977 has, though mainly following the Central

pattern, overthrown the aforesaid rule of interpretation as to the expiry of temporary enactments and Section 21 thereof has categorically provided

that notwithstanding the expiry of a temporary Sikkim enactment, such expiration shall not affect any right, privilege, obligation or liability acquired,

accrued or incurred under such enactment and Clause (d) thereof provides in particular that any legal proceeding or remedy in respect of any such

right, privilege, obligation or liability may be instituted, continued or enforced as if the enactment had not ceased to have effect or ceased to

operate. This being the position under the Sikkim Interpretation and General Clauses Act, by which the interpretation of the Cultivators Act would

be governed, the expiry of the Act would not affect the disposal of the proceeding pending when the Act was in force and operative.

4. The second ground also does not appear to have any substance. It is true that applications under the Cultivators Act are to be tried by the

Prescribed Authority"" which has been defined in Section 2(6) of the Act to mean ""the District Officer within whose jurisdiction the land is situated

and also to include ""any other Officer specially empowered by the State Government in this behalf"" and it is not disputed that the Officer in whose

office the application was initially filed was neither the District Officer nor an Officer specially empowered by the State Government in this behalf,

but was only a Deputy District Collector. But it is also admitted that the application has in fact been heard, tried and disposed of by the District

Collector who was admittedly the Prescribed Authority and who withdrew the application to his file. Mr. Moulik, has, however, urged that

assuming that the application was tried and disposed of by the proper Prescribed Authority, the trial was nevertheless bad as that Authority had no

power under the Act to withdraw an application to its file. It is true that the Art and the Rules made thereunder did not expressly provide for such

withdrawal, but they did not prohibit such a course either and I do not think that in these cases, not governed by the technical rules of the Code of

Civil or Criminal Procedure, any illegality or infirmity would attach to a proceeding if the Prescribed Authority, finding that an application to be filed

before it has been wrongly presented before an Officer subordinate to it, withdraws the same, suo motu or otherwise, so that the same may be

tried and disposed of by the proper authority according to law. In fact almost a century ago, the Privy Council settled the law on this point in

Ledgard v. Bull ILR (1886) All 191 where it was observed (at p. 203) that ""there are numerous authorities which establish that when in a cause

which the Judge is competent to try, the parties without objection join issue and go to trial upon the merits, the defendant cannot subsequently

dispute his jurisdiction upon the ground that there were irregularities in the initial procedure which, if objected to at the time, would have led to the

dismissal of the suit"". As pointed out by this Court in Ram Prasad Manger Vs. State of Sikkim, , if a tribunal trying a case is under the law

competent to do so, any irregularity in the mode of assuming jurisdiction should as a rule be immaterial unless such irregularity can be shown to

have prejudiced a party and thereby to have occasioned a failure of justice. In the Full Bench decision of the Patna High Court in Jhakar Abir and

Others Vs. Province of Bihar, , Shearer, J. also observed (at p. 103), that where a Court has jurisdiction to try a case, it is, as a rule, immaterial

whether the case has been transferred to it by another Court which was not empowered to make the transfer. In the Division Bench decision of the

Punjab High. Court in Nishan Singh Harnam Singh Vs. The State, , these observations of the Patna Full Bench were relied on to sustain an order

of conviction by a Special Judge, though the regularity of the manner in which the case reached the Court of the Special Judge was open to

question. This being the position in law, the order of the Prescribed Authority, which was the proper authority under the Cultivators Act. to try and

dispose of the application, cannot be liable to be questioned merely on the ground that a subordinate Officer, who could not entertain the

application, forwarded the same to the Prescribed Authority or that the latter withdrew the same from the office of the former. The Privy Council

decision in Ledgard v. Bull (supra) cannot but be accepted as a binding authority clinching this issue. In fact, it would be extremely unfair to allow

the petitioner to turn round and to assail the order on this ground when he, without any objection at any earlier stage, decided to take his chance

before the Prescribed Authority and after finding that the decision has gone against him, has attempted to raise this question before this Court. This

is also the principle behind the provisions of Section 465(2) of the Cr. P.C. 1973, whereunder, as pointed by this Court in Ram Prasad (supra, at

p. 1390), it is now well settled that the failure to raise such an objection at an earlier stage in the proceeding would, go to militate against the

contention that any prejudice or injustice has been caused and, as already noted, unless any prejudice or injustice has in fact been caused, no order

by a competent authority can be questioned on the ground of some irregularity in the mode of assuming jurisdiction by that authority which

otherwise has full and perfect jurisdiction.

5. The third ground also does not appear to have any substance to warrant any interference, the ground being that though the officer who tried the

application was the District Officer and as such the Prescribed Authority, he ceased to be so when he passed and pronounced this impugned order

on being transferred to some other post. The weight of authorities is overwhelmingly in favour of the proposition that a Judge can write a judgment

even after he has ceased to be such a Judge as a result of transfer, promotion, retirement or otherwise and that such a judgment can be and, after

the amendment of Rule 2 of Order 20 of the Civil P.C. in 1976, has got to be pronounced by his successor-in-office. Most of the leading decisions

on this point have been considered in cpnsiderable details in a Division Bench decision of the Punjab and Haryana High Court in Raj Kaur Vs.

Jagdev Singh and Others, . But these authorities, however, may not cover the further point in issue in this case, namely, whether such a

predecessor Judge can also pronounce such a judgment after he has ceased to be such a Judge. One does not generally expect an officer ceasing

to be a Judge on transfer, retirement or otherwise to come or continue to occupy his old Court and to pronounce judgment and that is why Rule 2

of Order 20 requires at successor to pronounce judgments written by the predecessor. Be that as it may, it is difficult to understand that if a

predecessor Judge can legally write out a judgment even after he has ceased to be a Judge and such judgment has got to be pronounced by his

successor, what illegality can at all attach to the judgment to affect its validity in any way, if the predecessor also pronounced the judgment. If the

predecessor Judge can still speak through his successor after the former has ceased to be a Judge in that Court, I do not find anything in law or

logic to prevent the former to speak out himself. The only authority to some extent directly on the point that I know of, and with which I

respectfully agree, is the decision of Johnstone C.J., in Daya Ram v. Mt. Jatti AIR 1916 Lah 78(1) which may be taken to have laid down that if a

predecessor Judge could write out the judgment after he has ceased to be such a Judge, the pronouncement of the judgment by him, instead of by

his successor, as provided in Rule 2 of Order 20, can hardly make any difference.

6. But even though all these three grounds urged by the petitioner fail, the petition succeeds on the fourth ground which is based on the provisions

of Section 9 of the Cultivators Act, which reads as hereunder:

Every dispute between the cultivator and the owner in respect of the following matters, namely:

(a) division or delivery of the produce or payment of rent,

(b) recovery of rent, share or fixed quantity of the produce.,

(c) termination of cultivation by the cultivator,

shall be decided by the Prescribed Authority.

This section therefore, makes it clear that the Prescribed Authority can assume jurisdiction to decide a dispute only when the dispute is between

the cultivator and the owner and the dispute is also in respect of any of the matters noted in Clauses (a), (b) and (c) extracted above. Now, in the

application filed by the Respondent No. 1 before the Prescribed Authority all that the Respondent 1 alleged was that the petitioner was trying to

dispossess him from his land and could prevail upon the Panchayat to impose upon the respondent 1 some amount, in cash as well as kind, as fine

on the false allegation that he took away some cardamom and the respondent 1 prayed that injustice done to him be remedied. The application,

therefore, raises no dispute at all which can have any relation whatsoever with any of the matters noted in Clauses (a), (b) and (c) of Section 9 of

the Cultivators Act. And then again, it was the case, of the respondent 1 and it was also the definite finding of the Prescribed Authority that the

petitionr was not the owner of the land in question and that the respondent 1, far from being the cultivator under the petitioner in respect of the land

in question, was its owner-in-possession. Under these circumstances, when according to the applicant-respondent 1 himself and also according to

the finding of the Prescribed Authority, the petitioner was not the owner of the land and the respondent 1 was not his cultivator in respect of the

said land and when the alleged dispute also could have no semblance of relation with any of the matters specified in Clauses (a), (b) and (c) of

Section 9, it is difficult to understand how the Prescribed Authority could at all proceed to assume and exercise jurisdiction in respect of the alleged

dispute. I must, however, note that Mr. Thapa, the learned Counsel for the respondent (sic) has very fairly conceded that the application filed by

the respondent 1 could not and did not raise any dispute to attract the jurisdiction of the Prescribed Authority under the Cultivators Act. The

Prescribed Authority thus having exercised a jurisdiction not vested in it by law, the entire proceeding before him culminating in the impugned order

must be set aside.

7. The Writ Petition accordingly succeeds and the entire proceeding before the Prescribed Authority resulting in the impugned order is quashed. It

is on record that the respondent 1 is in possession of the land in question and by our Order dt. 7-5-1984 it was directed that ""the Petitioner shall

not dispossess the respondent No. 1 from the physical possession of the land which the latter is cultivating"". It is made clear, if such clarification is

at all necessary, that the quashing of the proceeding before the Prescribed Authority and the setting aside of the impugned order is not to be

construed to have in any manner any thing to do with the right, title and interest, if any, of the petitioner in respect of the land in question and that

even if he has any such right, he must exercise the same according to the procedure established by law. No order as to costs. The records, along

with a copy of this judgment, to go down at once.

R. Dayal, J.

8. I agree.