(1922) 02 CAL CK 0066

Calcutta High Court

Case No: None

Allen Bros. and Co.	APPELLANT
Vs	
Bando and Co.	RESPONDENT

Date of Decision: Feb. 21, 1922

Judgement

Rankin, J.

"The applicants Messrs. Allen Brothers & Co. (India), Limited, obtained a Rule nisi on the 4th January 1921, calling upon the respondents, Messrs. Bando & Co., to show cause why an order made by the Controller appointed under the Calcutta Rent Act, 1920, should not be set aside. This Rule was issued both u/s 115 of the Code and under clause 15 of the Letters Patent. The applicants are tenants of certain premises in. Hare Street and hold under the respondents. Their complaint is that an application made by them to the Controller u/s 15 of the Rent Act, for a certificate certifying the standard rent of the said premises, has been dismissed contrary to the terms of the section, which oblige the Controller to fix the standard rent and to certify the same.

2. In my opinion, upon the question of merits there is no answer to the applicants. The judgment of the Controller is before me. It appears that in Hare Street there is a large building which is numbered 3, 4, 5 and 6, and there is some confusion on the part of many people as to which part of the whole building is properly designated by one or other of these numerals. It appears, however, that there is no-doubt at all as to the rooms which were let to the applicants. They are occupied by Messrs. Hollinghurst & Co. and the three rooms in question which Messrs. Hollinghurst occupy under the applicants and which the applicants took from Messrs. Bando & Co., are easily ascertainable. The Rent Controller in the coarse of his judgment says:

From the above it will be seen that there is no " satisfactory evidence upon the record to prove the "number of the premises comprising the three rooms " let out to the applicants, whether the number of the " premises is 4 and 5 or 5 and 6 or 4, 5 and 6, Hare "Street. On this very ground the suit fails." He also states that there is no

satisfactory evidence before him to show what the rent of these identical rooms was in November 1918. The judgment concludes by-saying that " in the circumstances stated above as " there is a confusion in the number of premises of " which the rent is required to be standardised, I " dismiss this application.

3. In my opinion, section 15 of the Calcutta Rent Act makes it obligatory on the Rent Controller to grant a certificate certifying the standard rent. In the present case it is beyond dispute that the rooms in respect of which the application is made are perfectly certain, easily enough ascertainable, and are subject to no doubt at all. Either the Rent Controller or any surveyor appointed by him could have been taken and shown the actual rooms which Messrs. Hollinghurst & Co. are occupying. It is nowhere suggested and it is not the fact that the Controller required the applicant to give him further particulars and that the applicant made any default in complying with such order. In these circumstances, it matters nothing whatsoever whether the premises in question have got three numbers or one number or have got no number at all, and there is no justification for the Rent Controller''s refusal to comply with section 15 of the Calcutta Rent Act. Nor can any such "justification be extracted from the fact that it may be difficult, owing to confusion of numbers, to say at what rent these very three rooms were let in any previous period. By the terms of section 15 the Controller may fix the standard rent at such amount as he deems just in any of a series of cases, and one of the cases in which he may act in that manner is thus defined : " where for any reason any difficulty arises in giving effect to this Act." For these reasons I do not think that there can be any serious question that if I have jurisdiction to do so I should send the case back to the Rent Controller with a direction to hear and determine the application according to law.

4. Mr. H. D. Bose, showing cause, takes as his main point the preliminary objection that this Court has no power of superintendence and no revisional jurisdiction as regards the Controller. It is not, however, contended that such jurisdiction, if it exists in the High Court, cannot properly be exercised by a single Judge sitting on the Original Side in a case such as this where the premises are situated within the limits of the Ordinary Original Civil Jurisdiction. This point of revisional jurisdiction has been considered and adjudicated on in more than one case on the Appellate Side, and on the Original Side before now a good many applications have been entertained for a revision of orders passed by the Rent Controller. Mr. Bose contended that the decisions and in particular the decision which contains the fullest treatment of the matters, H.D. Chatterjee Vs. L.B. Tribedi , can be shown to proceed upon cases which are not in point and upon principles which are not sound. He also contended that insufficient attention had been paid to the fact that the Rent Controller''s Court is subject to a rule-making power which is vested, not in this Court but in the Local Government. For these reasons he asked leave to argue this question of jurisdiction, and in the circumstances I allowed that to be done.

5. The decisions of an Appellate Side Bench are technically speaking not binding upon me. This is owing to the fact that in many cases the law administered on the Original Side is not the same as the law administered with reference to cases arising in the mofussil. The present question, however, is exactly the same on whichever side of the Court it arises. The only authority known to me as a guide upon this sort of question is the dictum of Mr. Justice Norris in The Oriental Bank Corporation and Others Vs. Gobind Lall Seal and Others, . The learned Judge said that he was not prepared to say that he would consider every judgment of an Appellate Bench binding upon him when sitting on the Original Side, yet every such judgment should receive respectful consideration and careful attention and should be followed unless he was very clearly of the opinion that the conclusion arrived at was an erroneous one.

6. The questions raised, quite properly, by Mr. H. D. Bose are both numerous and difficult. I think it would be no recommendation of any one''s opinion to say that he was very clearly of opinion that the contrary view was erroneous. I propose to deal with this matter fully and carefully both out of respect to Mr. H. D. Bose''s argument and because I think his client is entitled to this, but, in my opinion, it is not true that in the end the question has been decided upon a wrong footing and it is a question on which, though with some difficulty, I incline to the opinion that the decision of the Division Bench is right.

7. In the first place it must be noted that the argument before me proceeded without either party calling into question the validity of the Calcutta Kent Act or the validity of the Rules made thereunder. The first question on this basis is as to what the local Legislature has in fact done. In my opinion the Controller, in discharging his duty under section, 15 and the President of the Tribunal in discharging his duties u/s 18, act as Courts of Justice. Whether they are Civil Courts within the meaning of any particular enactment is another question, but they are both Civil Courts in the general sense; they are authorized to decide judicially, and by judicial methods only, between persons seeking their civil rights. [Nilmoni v. Taranath (1862) ILR 9 Calc. 295, 301.] Such functions as they perform under sections 15 and 18 are neither administrative nor ministerial. It is written large, both over the Act and the Rules, that the procedure to be followed is in general the procedure of a Court of Law.

8. By section 18, when the Controller has given a decision fixing the standard rent, and in that event only, a certain right is given to the parties. It is not called a right of appeal, but a right "to apply for revision " of the Controller''s order. As section 24 provides that the procedure shall be that laid down in the Code for the regular trial of suits " as nearly as may be ", it seems that the right is to have a re-trial before a higher Court. It is not what is technically known as "revision" or "reference" and it does not seem to me exactly the same thing as "appeal by way of re-hearing " means in England. But, however the right in question is denominated or defined, its existence puts the Controller in the position of a Court subordinated to another

Court not simply as a matter of dignity or precedence, but in the sense that the one Court controls the other, to confirm, vary or nullify the orders of the other. If I may adopt the language used in Maharaja Birendra Kishore Manikya Bahadur Vs. Secretary of State for India in Council, , " the index of the relation of superior and inferior tribunal" is there. The form of jurisdiction may or may not be one hitherto unknown in India as a form of appellate jurisdiction: It is by no means an unknown form elsewhere.

9. As regards the two classes of Courts that are mentioned in section 18, two features are clear: first, that the decision shall be final, secondly, in addition to a general power to make rules " to carry out the purposes of the Act" the local Government has a particular power to make rules regulating the procedure of these Courts. This power must doubtless be read with section 24.

10. By section 15 of the Indian High Courts Act, 1861, now replaced by section 107 of the Government of India Act, power of superintendence is given over all Courts subject to the appellate jurisdiction. By the respective sections 9 and 106 of the same statutes the several High Courts have such appellate jurisdiction as is vested in them by Letters Patent. On turning to the Letters Patent to find what is the appellate jurisdiction, one finds that it is " from the Civil Courts of the Bengal Division of the Presidency of Fort William and from all other Courts subject to its superintendence." These last words appear to make a vicious circle, but are explained by the fact that section 9 of the Act of 1861 had transferred to the High Court every power and authority vested in the Courts which the High Court superseded. As neither the Rent Controller nor the President of the Tribunal were Courts known in 1861, a right of superintendence can only be made out under the Letters Patent in one or other of two ways: by establishing that it or some other form of appellate jurisdiction has been since granted with reference to the Rent Controller or the President; or, secondly, by establishing that the High Court inherited a general jurisdiction over all Courts of civil jurisdiction established or to be established'' " The High Court," as has been stated, " has superintendence where it has appellate jurisdiction, and has appellate jurisdiction where it has, superintendence Abdul Karim Fateh Mahomed Vs. The Municipal Officer, Aden, but some jurisdiction must be shown before the rest can be inferred.

11. In my opinion the position is in no way altered if the question be considered upon the language of the Code. The word " subordinate " is not defined by the Code because section 3 is not a definition. This section does not claim to be, and is not intended to be exhaustive: Purshottam Janardan Chaphekar Vs. Mahadu Pandu Turmalkar, . Though not defined, the word " subordinate " plays an important part in the Code as may be seen from sections 23, 24, 100, 115, 133, 136 and 137. ''There are also in the Code several phrases that may be contrasted and compared thus:--Court of a grade inferior (section 3); Court of highest grade (section 63); Any Court (section 113); Civil Courts subject to their superintendence (section 122); Any

Court of civil jurisdiction (section 141). The words" Civil Court" in the Code appear to have a special meaning though this again is nowhere defined. I take them to mean Civil Courts exercising all the powers of Civil Courts as distinguished from Courts which only exercise powers over civil matters of a special class or classes, e.g., the Rent Courts under Act X of 1859 and the Land Acquisition Judge. The two broadest phrases in the Code are to be found in sections 113 and 141. The latter in no way touches upon the question of subordination; the former does,. because reference is a form of appellate jurisdiction [Birendra Kishor Manikya Vs. Secretary of State for India] but Order XLVI cuts down its application and it does not apply to the Rent Controller or the President. It may be argued that the High Court has superintendence over " any Court" because it has power to alter the order and so to give a power of reference to "any Court." Beyond this argument, which in reference to special statutory Courts unknown to the Code seems very precarious, can see nothing in the Code which even promises to be of any assistance on the present question unless it be that a comparison between sections 23 and 24 appears to show that a Court may be subordinate within the meaning of the Code in a purely administrative sense.

12. It was contended by Mr. B. L. Mitter in support of the Rule that all other Courts of civil jurisdiction are subordinate to the High Court and under its appellate jurisdiction in a wide sense unless the Legislature has expressly provided to the contrary. I assume that for the purposes of this proposition some form of territorial limit is presupposed and I pass over the difficulty that arises from the fact that such a limit may be imposed in various ways. The proposition may mean that if a new Court was established for a new purpose and nothing was said to the contrary then there would be an unlimited right of appeal in the narrow sense as well as subordination in other ways. But if this is not meant then I think the proposition is seen to be indefinite and to stand in need of support and definition by authority. As a general proposition applicable to Bengal it seems to me that on the face of the Act of 1861 and the Letters Patent no proposition so simple and wide can possibly be correct. It is nowhere expressed and the several jurisdictions carefully defined and conferred are not to be extended or enlarged indefinitely upon general principles to the rigour of which His Majesty is in no way committed. The simple proposition is always tempting, yet I know of no case decided on this simple principle. In many of the decided cases it would have been a complete answer to the problem, yet the Courts have made heavy weather before arriving at another answer. As the present case arises within the Ordinary Original Jurisdiction, it may be said that this principle was implicit in the authority of the Supreme Court and that, if so, it is continued by section 9 of the Act of 1861 and by the Government of India Act. This has not been argued before me. My own consideration of the matter leads me to reject the argument. This depends upon the Charter of the Supreme Court of 1774. As clause 21 applies only to the Courts and Magistrates therein specified as having been established or appointed by the Charter of 1753 it has no application here. The only

other clause that can be founded on is clause 4. As to this clause, both Jenkins, C.J. and Stephen J. in the In The Matter of The Amrita Bazar Patrika were of opinion that it refers to the individual Judges and not to the Courts. The frame of the Charter when the purview of its successive clauses is examined, strongly supports this reading. I would say that nothing that I am now stating is intended to abridge by a single inch the doctrine laid down with references to cases which are, within the revisional power, that there is no form of judicial injustice which this Court, if need be, cannot reach: Lekhraj Ram Vs. Debi Pershad .

13. It remains therefore to enquire whether the Calcutta Rent Controller as a Court is under the High Court in any one of ways in which appellate jurisdiction can be exercised. The decisions of the Division Benches, in particular the case already cited, H.D. Chatterjee Vs. L.B. Tribedi , deal with the problem in this way, in no way proceeding upon any more general principle.

14. The position under the Calcutta Rent Act of 1920 is this : The Act to begin with applies only to Calcutta in the sense of Municipal Calcutta, and the word " Calcutta " throughout the Act has that particular meaning. So far as I can find, the area to which the. Act extends has never been enlarged since the Act was passed. The appointment of the Kent Controller is to be found in the Calcutta Gazette of 5th May 1920 No. 24 T.M. and is " as Controller for Calcutta for the purposes of the said Act." The Rules made by the Local Government under the Act are dated 13th July 1920; the only amendment is dated 8th September 1921 and in no way affects the present question. The result is therefore that at present, taking the institution as it exists, no decision of the only Rent Controller appointed is in fact subject to revision by any Civil Court. If ever the Act is extended to another area, it will be in the option of the Local Government to appoint another officer as Controller for the new area or to appoint the same officer either as a separate office or by way of extension of the area over which his present jurisdiction holds. No doubt mere extension of his area by an administrative act would put him within the control of a Civil Court, As matters stand the only facts connecting him in any manner with the appellate jurisdiction of the High Court are these : that he is, as I think, subordinated to the President, that awards of the Tribunal made under the Calcutta Improvement Act (Bengal Act V of 1911) are appealable to this Court under Act XVIII of 1911; that in some cases the President may himself give decisions which are deemed to be decisions of the Tribunal; and that where the word "Judge" as distinct from " Court" appears in the Land Acquisition Act of 1894 the President is deemed to be the Judge. As between the Rent Controller on the one hand and the High Court on the other, the question is, is this a link or a gap?

15. Certain lines of decision have been thought to touch this question. I will refer first to the cases under the Kent Act (Act X of 1859). By that Act certain suits were made cognizable, only by the Collector''s Court and upon the terms of the Act. In certain suits the judgment of the Collector was to be final; and in these, if they were

tried by the Deputy Collector, an appeal lay to the Collector whose decision was to be final. In other suits an appeal lay to the Zilla Judge or the Sadar Court according as the amount in dispute was under or over Rs. 5,000. In 3861 therefore the Sadar Court possessed appellate jurisdiction over the Collector''s Court by the terms of the Act of 1859 itself and the High Court inherited therewith a power of superintendence. The cases were fully discussed in Chaitan Patgosi Mahapatra Vs. Kunja Behari Patnaik, . They show that a right of appeal, however limited, will let in the full general power of superintendence, but the right of appeal in those cases is clearly given by the special Code itself and applies to cases within the special jurisdiction conferred thereby. I may observe here that in dealing with a long line of decisions the important point to observe is the principle upon which the authorities in the end settle down. That is far more important than general language used in the earliest cases. The earliest case was apparently a Full Bench case [Gobind Coomar Chowdhry v. Kisto Coomar Chowdhry (1867) 7 W.R. 520], where the order assailed was made u/s 151 of Act X. There was no complaint that the Court of limited jurisdiction had exceeded its authority. The point was that the Court had refused to do something on the ground that it had no power. In that case the judgment of Mr. Justice Loch showed by its reference to " cases in which no appeal lies to the Judge " that there is no reason to attribute the decision to any wider principle than. I have mentioned. Wider language was used in Deanutoollah''s case (1914) 19 C.L.J. 300 where the Collector had in fact exceeded his jurisdiction but I do not read that as laying down that every Court of limited jurisdiction must be under the superintendence of the High Court. The true basis of the Courts interference under the Act of 1859 was considered in Uma Charan v. Midnapur zamindari Co. (1914) 19 C.L.J. 300, where it is rested on the provision for appeals. Perhaps the neatest illustration of this reasoning is afforded by the case Kartik Chandra Ojha Vs. Gora Chand Mahto, , a decision under the Chota Nagpur Tenancy Act (Bengal Act VI of 1908), where a general power of revision was based on the fact that by section 224, sub-clause (2) a second appeal lay to this Court in certain cases. These cases deal also with difficulties as to whether the Acts expressly or impliedly vested power of superintendence elsewhere or took it away. They show that the rulemaking power or even greater powers vested elsewhere do not avail to take away those powers of the Court which follow from its position as a Court of Appeal. Though a provision that the Commissioner shall be the High Court has this effect [Darbari Panjara Vs. Bhoti Roy,] as also a provision that the appeal shall lie to the Commissioner. [Uma Charan Mandal v. Midnapur zamindari Co. (1914) 19 C.L.J. 300.]. These cases therefore are in my opinion, as Mr. H.D. Bose argued, of no very direct application to the case of the Rent Controller.

16. By the Land Acquisition Act of 1894 an appeal lies to the High Court from any award of the Court established by the Act. Leaving on one side the cases in which the Collector''s duty was not a judicial duty, I come to those in which it has been held that in acting u/s 18 the Collector is a Court and his proceedings are subject to

revision: Mohit Lall Dutt Vs. Raj Narain Dutt. , Krishna Das Roy Vs. Land Acquisition Collector of Pabna, . The later case simply followed the earlier and not without doubt. In the earlier case attention was almost entirely devoted to the question whether the Collector''s function was judicial. The reasoning on that assumption is very condensed, but if this Court is a Court of Appeal from the award it would certainly seem to have superintendence over judicial proceedings for the initiation of the reference.

17. It is clear enough that under all these special statutes an appeal lies to the High Court and that " for the purposes of the application of the power of superintendence it is not necessary that an appeal should lie to this Court in the very proceeding in which the power of superintendence is invoked." [Uma Charan v. Midnapur zamindari Co. (1914) 19 C.L.J. 300, 303.] If a case should arise by reason of an extension of the area under the Calcutta Rent Act, 1920, in which a Civil Court should have jurisdiction, a question would then emerge, which the cases. I have been referring to do not answer. That question but for the specific right of appeal conferred by the Land Acquisition Act would have arisen under it also. The question is this: when a new and special jurisdiction is conferred upon an ordinary Civil Court so as to make it for certain limited purposes a Court of special jurisdiction, the powers and duties of which are defined by statute, has the High Court, in the absence of any special provision conferring appellate jurisdiction in any form as regards those purposes, a right of superintendence arising out of the ordinary relationship between the two Courts? As I understand the view of the Division Bench in H.D. Chatterjee Vs. L.B. Tribedi they answer this question in the affirmative, and I am in no way prepared to dissent. But the question at present is not solved by any reference even to this principle. From the Act of 1861, from the Letters Patent, and from the decisions, I draw this conclusion that it is not enough for the purposes of the Code or the Letters Patent which deal on definite principles with a regular order of Courts, that from the limited nature of the powers conferred or from a mere comparison with other Courts; or from possible relationships thereto not yet subsisting, a new Court may be styled an " inferior Court." An actual relationship to this Court must be established; an existing thread of connecting authority must be disclosed. The President of the Tribunal is the parson who is set up as a Court by section 18 of the Rent Act of 1920. Under the Calcutta Improvement Act of 1911, a " Court " is set up but that " Court" is the Tribunal and not the President (s. 70). The Act of the Governor General in Council of the same year deals with appeals from awards of the Tribunal as the preamble shows. For the purpose of determining what is the award Tribunal the President''s decision is in certain cases the only thing that matters, and in certain cases he is entitled to sit alone and to exercise all powers of the Tribunal (s. 77). In addition to that the Calcutta Improvement Act has made the President the "Judge" in the sense of the Land Acquisition Act, wherever the word " Judge " occurs. Now superintendence is over Courts, not over jurisdictions. The present question must, it seems to me, be decided ultimately upon consideration

whether the giving of a new jurisdiction to the President is to be regarded as a new jurisdiction conferred on an existing Court or to be regarded as the setting up of a new Court for a new purpose. On that question I have entertained much doubt. The position is not quite the same as where a new jurisdiction is given to the Civil Courts. The Tribunal or the President have no general jurisdiction at all. On the question whether there is one Court from which in one jurisdiction an appeal lies to this Court or two Courts which should be regarded as absolutely separate, I have come to the conclusion that the decision of the Division Bench has all the common sense of the matter even if it may be doubted whether it has all the strict logic on its side. After all the President for some purposes is " the Judge " and is " the Tribunal "; appeals within the Calcutta Improvement Act lie mostly from his decisions; and in view of the fact that appeals from a Rent Controller''s decision may come as occasion arises either to the Civil Courts of the District or, in Calcutta, to the President, I am in no way prepared to hold that an opinion which has been entertained by some four or five Judges of this Court is not the better opinion.

18. For these reasons, or perhaps I should say in these circumstances, the Rule will be made absolute with costs.

19. Attorneys for Allen Brothers & Co: B.N. Basu & Co. Attorney for Bando & Co: M.N. Mitra.