

Krishnasami Pannikondar Vs. Muthukrishna Pannikondar

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Court : Chennai

Decided On : Feb-12-1901

Reported in : (1901)ILR24Mad364

Judge : Arnold White, C.J., ;Shephard and ;Subrahmania Ayyar, JJ.

Appellant : Krishnasami Pannikondar

Respondent : Muthukrishna Pannikondar

Judgement :

Shephard, J.

1. The matter of this petition having been referred to me under Section 575 of the Code of Civil Procedure, I have to decide whether or not in my judgment the prayer of the petition should be allowed. The question was argued before me on lines which do not seem wholly to accord with those on which it was discussed by the learned Judges who referred the matter. Before them, two contentions only appear to have been made. On the one hand it was argued that the Act of 1841 created a special jurisdiction and that, accordingly, the principle enunciated in *Nusserwanjee Pestonjee v. Meer Mynodeen Khan Wullud Meer Sudroodeen Khan Bahadoor* 6 M.I.A. 134 should be applied, On the other hand it was argued that the procedure prescribed in Section 8 of the Act was intended by itself to be sufficient and that the report of the Collector was, in the cases to which the section applies, to be regarded as a substitute for the evidence directed to be taken in

other cases.

2. In regard to the former contention the question really turns on the meaning of the term 'jurisdiction,' and assistance in answering it is afforded by the judgment in Dale's Case L.R. 6 Q.B.D. 876. There, one point taken was that the coercive process of the Court of Arches could not properly be called in aid to give effect to a judgment under the Public Worship Regulation Act because the jurisdiction conferred by that Act was a new jurisdiction. James, L.J., in dealing with this point observed that since the Court of Arches always had jurisdiction to deal with the matter in hand, and the person in question and the mode of bringing the matter into Court and of dealing with it were not matters of jurisdiction but matter of procedure, there was no new jurisdiction created (page 451). Other Lords Justices used similar language. I think the same considerations apply to the present case arising under the Act of 1841. No new jurisdiction was given either in respect of person or property, but power in regard to matters already within the jurisdiction of an existing Court was given to that Court to deal with those matters in a new manner. The Act of 1841 no more created a new jurisdiction than did Section 15 of Act XIV of 1859 in regard to suits to recover possession of immoveable property wrongfully taken *Nusserwanjee Pestonjee. v. Meer Mynodeen Khan Wullud Meer Sudroodeen Khan Bahadoor* 6 M.I.A. 134 is altogether a different case. There the Regulation, while requiring the reference to arbitration to comply with certain conditions, gave the force of a decree to the award thereupon made by the arbitrator, and the point decided was that an award made under a reference which did not comply with those conditions could not be regarded as a decree. It might be that the award was good in itself, but it was not good as an award under the Regulation, because the conditions precedent to the making of such an award had never been fulfilled, It is clear that apart from the Regulation the arbitrator could have no power to make an award which should be equivalent to a decree. For these reasons I am unable to agree with the opinion of the learned Chief Justice in so far as it is founded on *Nusserwanjee Pestonjee v. Meer Mynodeen Khan Wullud Meer Sudroodeen Khan Bahadoor* 6 M.I.A. 134 I do not think it can be said that the District Judge acted without jurisdiction by reason of his omission to comply with the terms of Section 3 of the Act.

3. But I am equally unable to accede to the extreme contention made on behalf of the respondent, X do not think that Section 8 can be read as containing an alternative statement of the course to be pursued in the oases therein mentioned so that the Judge can properly dispense with the examination of witnesses and act upon the report of the Collector only. There are no such words as might be expected to be found in Sections 3 and 5 if it had been intended that Section 8 should be read in that way and not a? directing that an additional precaution should be taken in certain cases. The language of Section 8, moreover, shows that the examination of witnesses was contemplated even in cases of land paying revenue to Government, because the section authorises the Judge in oases of urgency to proceed without such report, and that must mean that he should proceed upon evidence taken in the ordinary way.

4. Holding that Section 3 does apply to cases in which Section 8 is applicable, it remains for me to consider whether the District Judge in disregarding Section 3 acted illegally or with material irregularity in the exercise of his jurisdiction within the meaning of Section 622 of the Code of Civil Procedure. If the directions of the Act had been complied with there would have been an examination of the complainant and possibly of his witnesses and documents, the Judge would have satisfied himself that there were strong reasons for believing that the party in possession had no lawful title, that the applicant was really entitled and was likely to be prejudiced if left to the ordinary remedy, and that the application was made bona fide, and then before appointing a curator he would have satisfied himself as to the matters mentioned in Section 5, and further, he would have demanded a report from the Collector in which report the Collector would have recorded his opinion 'regarding the propriety of citing the party in possession, of appointing a curator and of nominating individuals to that appointment.' In the present case the complaint made is that there was no examination of witnesses, that there is no such report as is required, and that whatever belief the Judge may have entertained, he has not recorded any finding as to the matters in respect of which he had to be satisfied. Although it must be admitted that the report is carelessly drawn up and that the order of the Judge is defective in not reciting that he was satisfied as to the need for the appointment of a curator, I do not think these defects would by themselves justify me in interfering with the order under

provisions of Sections 622 of the Code of Civil Procedure. I think it must be inferred that the Judge was satisfied as to the two points mentioned in Section 5, and treating the report as evidence, I can hardly say that there is absolutely no evidence to justify such a conclusion. But the omission to take evidence under Section 3 stands, I think, on a different footing, If the section is imperative, if the examination was prescribed as an essential step in the proceedings, then it is clear that the omission was a material irregularity. It is said that, at most, the section is only directory and that it is by the report and not by the other evidence that the Judge was intended to be guided---the report, it was argued, might be regarded as a verdict which might prevail even against the opinion of the Judge. In my opinion this argument is open to the objection that it reduces the Judge to the position of a mere instrument, whereas the Act, as I read it, clearly intends that he should exercise a judicial discretion. The Act, as well in the preamble as in the operative part, is emphatic in requiring the Judge to be satisfied by strong proof of the necessity for taking action. It is not correct to say that by Section 8 he is required to take any action in contradiction of his own opinion; he is only required to send the report up to the superior Court so that that Court may decide whether or not the satisfactory proof has been furnished. Meanwhile, the order of the Judge must prevail. If, in spite of the report, he does not consider the proof satisfactory, the possession remains undisturbed; if, in spite of the report, he is so satisfied and accordingly appoints a curator, that appointment must hold good until the superior Court has decided to the contrary.

5. It is impossible, therefore, to say that the examination of witnesses is a mere formality or that the evidence when taken is of no material value. In the circumstances of the present case it may be that the evidence would have had no material effect, but when it is once shown that it might be otherwise and that the Judge might be justified in acting on the evidence alone, I think it may well be inferred that the direction to take evidence was intended to be an imperative direction. And it is somewhat difficult to see what stronger language the Legislature could have used to indicate that intention. It is possible that, notwithstanding Section 2, a hard case might arise owing to inability of the complainant to appear, but I do not think such a bare possibility ought to influence a Court in the construction of the Statute.

6. The conclusion at which I arrive is that while the Judge was acting within his jurisdiction he acted with material irregularity. His order must, therefore, be set aside and respondent must pay the costs.

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