V. Venugopal Naidu Vs. the Third Judge of Small Causes Court and ors.

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Court : Chennai

Decided On : Jan-21-1949

Reported in : (1949)1MLJ471

Appellant : V. Venugopal Naidu

Respondent : The Third Judge of Small Causes Court and ors.

Advocate for Pet/Ap. : Mr. K.S. Ramamurthi

Judgement :
ORDER

1. On 18th March, 1948, the Additional Rent Controller, Madras, passed an order for eviction against the first respondent in Case No. 2 of 1948. on his file in favour of respondents 5 to 10 in this application, the trustees of the Sri Kanyaka Parameswari Devasthanam Charities. There was no order of eviction as such against the petitioner herein who was the second respondent before the Controller, but there were certain observations in the order of the Controller that he was merely a clerk under the first respondent. On 5th April, 1948, the petitioner filed an appeal, H.R.A. No. 620 of 1948, to the Chief Judge, Court of Small Causes, Madras. The appeal was transferred by the Chief Judge to the Third Judge of the Court of Small Causes. The petitioner thereupon took an. objection that the third Judge had no jurisdiction to hear the appeal. This objection as to jurisdiction was heard as a preliminary point by the Third Judge who-held by his order dated 16th August, 1948, that the transfer of the appeal by the Chief Judge

from his file to the file of the Third Judge for disposal was within his jurisdiction and that the appeal could be heard and disposed of by the Third Judge. The petitioner seeks from this Court a writ of certiorari to quash this order of the-Third judge.

2. The transfer of the appeal by the Chief Judge to the Third Judge was made in the following circumstances : under Section 12(1)(a) of Madras Act (XV of 1946), the Provincial Government may, by general or special order notified in the Fort St. George Gazette, confer on such officers and authorities as they think fit, the powers of appellate authorities for the purposes of this Act, in such areas or in such classes of cases as may be specified in the order. Originally, in respect of the city of Madras, the Chief Judge of the Court of Small Causes was notified as the appellate authority in accordance with this provision. By a subsequent notification dated 1st March, 1948, published in the Fort St. George Gazette, on 23rd March. 1948, the ' Court of Small Causes ' was substituted for the 'Chief Judge of the Court of Small Causes,' The appeal preferred by the petitioner was therefore treated as an appeal to the Court of Small Causes, and the Chief judge made the order of transfer, presumably in exercise of his powers under Section 10 of the Presidency Small Cause Courts Act.

3. The petitioner contended that the subsequent notification constituting the Court of Small Causes the appellate authority was illegal and ultra vires. The Third Judge overruled this contention on the view that what the Government meant and intended was to constitute all the three Judges as appellate authorities.

4. Mr. K.S. Ramamurthi learned Counsel for the petitioner raised several contentions before us. As the matter was of general importance, we also directed notice to the learned Advocate-General.

5. Mr. Ramamurthi's first contention was that in spite of the subsequent notification the petitioner had a right to file the appeal to the Chief Judge of the Court of Small Causes as the appellate authority. His contention was based on the rule of law enunciated in the well known case of The Colonial Sugar Refining Company, Ltd. v. Irving (1905) A.C. 369. The following observations were relied on in particular:

To deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him as of right is a very different thing from regulating procedure. In principle, their Lordships see no difference between abolishing an appeal altogether and transferring the appeal to a new tribunal

The decisions in Daivanayaka Reddiar v. Renukambal Ammal (1917) 53 M.L.J. 637 : I.L.R. 50 Mad 857 and In re Vasudeva. Samiar (1928) 56 M.L.J. 369 : I.L.R. 52 Mad. 361 were also relied on. In our opinion, the rule enunciated in all these cases has no application whatever to the present case. Here there is neither an. abolition of a right of appeal altogether, nor is there a transfer to a new tribunal. Under Section 12, a person aggrieved by an order passed by the Controller has got a right to prefer an appeal to the appellate authority. That right has not been taken away or in any way interfered with by the notification in question. The powers of an appellate authority can be conferred by the Provincial Government on such officers and authorities as they think fit. The Chief Judge of the Court of Small Causes was only a persona designata on whom the powers of an appellate authority was conferred by the earlier notification. His position is not in any way analogous to that of a Court in a hierarchy of Courts. Further, the rule in The Colonial Sugar Refining Company, Ltd. v. Irving (1905) A.C. 369. would not apply, when the Court to which an appeal then lay is itself abolished. See In re Vasudeva Samiar (1928) 56 M.L.J. 369 : I.L.R. 52 Mad. 361 and Canada Cement Company v. East Montreal (Town of) (1922) 1 A.C. 249. On the publication of the subsequent notification, the Chief Judge of the Court of Small Causes ceased to exist as an appellate authority.

6. The main contention of Mr Ramamurthi was that the subsequent notification was invalid, because it really amounted to an extension of the jurisdiction of the. Court of Small Causes which could be made only by legislation and not by the Provincial Government under a power of appointment.

7. It may be conceded that by conferring the powers of an appellate authority under Section 12(1)(a) on the Court of Small Causes, there is an extension of that Court's jurisdiction. It was held in Goonesinha v. Honourable O.L. de Kretsor (1945) 2 M.L.J. 314 : (1945) F.L.J. 96 (P.C.) by the Privy Council that while the

ordinance constituting the Supreme Court of Ceylon did not confer upon it original jurisdiction in civil cases, the cognizance of election petitions under the Ceylon (State Council Elections) Order in Council,. was a special jurisdiction conferred upon the Supreme Court by the latter Order in Council, and that this was an extension of or addition to, the ordinary jurisdiction of the Supreme Court. It is equally clear that the Provincial Legislature was perfectly competent to make this extension of jurisdiction by virtue of the power conferred on it by Section 100 of the Government of India Act, read with: item 2 of List II in Schedule VII to it. That this power of legislation could be delegated by the Legislature to the executive authority, that is, the Provincial Government, is also clear, from the decision of the Privy Council in The King-Emperor, v. Benoari Lal Sarma (1945) 1 M.L.J. 76 : 8 F.L.J. 1 : L.R. 72 IndAp 57 (P.C.) The following observations of Viscount Simon, L.C., are very much in point:

There is not, of course, the slightest doubt that the Parliament of Westminster could validly enact that the choice of Courts should rest with an Executive Authority, and their Lordships are unable to discover any valid reason why the same discretion should not be conferred in India by the law-making authority, whether that authority is the Legislature or the Governor-General, as an exercise of the discretion conferred on the authority, to make laws for the peace, order and good government of India.

Mr. Ramamurthi therefore contended that under Section 12(1)(a) what was delegated was only a power of appointment but not a power of legislation. We do not think that there is any substance in this attempted distinction. No doubt, that provision contemplates the appointment of an appellate authority, but if it necessarily involves the exercise of legislative power, because it may involve the extension of the jurisdiction of a Court, then impliedly the power of appointment must include such legislative power as is necessary for the purpose.

7. It was next contended by Mr. Ramamurthi that even if the Court of Small Causes can be validly designated as the appellate authority, then all the Judges of the Court must hear and dispose of the appeal. The answer to this contention is to be found in Section 10 of the Presidency Small Cause Courts Act which reads

thus :

Subject to such rules, the Chief Judge may, from time to time, make such arrangements as he thinks fit for the distribution of the business of the Court among the various judges thereof.

After the new notification, disposal of appeals under Madras Act (XV of 1946) would also be included in the business of the Court.

8. An argument was sought to be raised relating to the scope of Sub-section (4) of Section 12 of Madras Act XV of 1946. How far this provision would affect the power of revision possessed by the High Court does not fall to be considered in this case. We do not, therefore, express any opinion on this point. But there is nothing in that provision which renders the notification in question invalid or ultra vires.

9. Mr. Ramachandra Aiyar on behalf of the contesting respondent argued that the Court of Small Causes in the later notification meant the three Judges of the Court of Small Causes. This was the view also taken by the Third Judge. This argument cannot help the respondent, because such a construction would not justify any power in the Chief Judge to transfer an appeal on his file to the file of another Judge. In our opinion, the Court of Small Causes was constituted an appellate authority as a Court. It was common ground that the word 'authorities' in Section 12(1)(a) of the Act would cover 'Courts' already in existence.

10. The third Judge was therefore competent to hear and dispose of the appeal. This application is therefore dismissed. We make no order as to costs.