

Phanindar Singh Vs. Emperor

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Court : Kolkata

Decided On : Jan-10-1913

Reported in : (1913)ILR40Cal465,18Ind.Cas.891

Judge : Sharfuddin and ;Coxe, JJ.

Appellant : Phanindar Singh

Respondent : Emperor

Judgement :

Sharfuddin and Coxe, JJ.

1. This is a Rule calling on the Collector of Patna and also on the opposite party to show cause why the order passed by the Sub-divisional Officer of Barh, on the 29th October, 1912, directing proceedings to be drawn up against the petitioner, under Section 476 of the Criminal Procedure Code, should not be set aside, on the ground that it was passed without jurisdiction.

2. It appears that, on a complaint by One Rucktoo Singh, a proceeding was instituted against the petitioner under Clause (3) of Section 58 of the Bengal Tenancy Act. The Collector of Patna transferred the case to the Subdivisional Officer of Barh. This officer passed an order on the 14th October, 1912. During the pendency of the proceedings before the Subdivisional Officer two other applications were made by two other tenants, similar to the one made by Rucktoo

Singh; and Rucktoo Singh also put in another before this officer: whereupon an order was passed to this effect: 'Notice has already been served. File.' During the proceedings under Section 58 the petitioner put in a number of counterfoils, in order to show that he had, as a matter of fact, on receipt of rent from the tenants, made over to them printed receipts. The Sub-divisional Officer came to the conclusion that these counterfoils were forged documents; and he thereupon recorded a proceeding, on the 14th October, 1912, under Section 476 of the Criminal Procedure Code, for the prosecution of the petitioner under Section 193 of the Indian Penal Code.

3. An application was made to this Court, on the ground that this order for prosecution was ultra vires, inasmuch as the Subdivisional Officer had no jurisdiction in the matter, and it was also pointed out that the Collector of Patna had no jurisdiction to transfer the enquiry into the complaint of Rucktoo Singh to the Subdivisional Officer of Barh; thereupon this Rule was issued.

4. The contention on behalf of the petitioner is that Section 58 of the Bengal Tenancy Act refers to the powers given to the Collector for the purpose of an enquiry under that section, and that the Subdivisional Officer was not a Collector. Then it is also contended that, even supposing that all Subdivisional Officers are Collectors, the Collector of the district had no power to transfer an enquiry, under Section 58 of the Bengal Tenancy Act, to another officer who had the powers of a Collector; our attention has been drawn to Clause (16) of Section 3 of the Bengal Tenancy Act, which defines the word 'Collector.' According to that clause a 'Collector' means a Collector of a district, or any other person appointed by the Local Government to discharge any of the functions of a Collector under this Act. And it is contended that the Collector of a district is, no doubt, a Collector under this definition, and that any other officer would become a Collector if appointed by the Local Government to discharge any of the functions of a Collector. The learned District Magistrate has submitted to this Court an explanation. In it he refers to Government Notification No. 1579 T. R., dated the 19th September, 1910 and published, at Part I, page 1323, of the Calcutta Gazette of the 28th. idem; and he points out that under this notification all Subdivisional Officers are authorised to discharge, in their respective 'subdivisions, the functions of a Collector under

Section. 58 of the Bengal Tenancy Act. So there can be no doubt that Subdivisional Officers under this notification are also Collectors.

5. We now proceed to deal with the question whether the Collector of Patna had any jurisdiction to transfer the inquiry under Section 58 of the Bengal Tenancy Act to the Subdivisional Officer of Barh, who was also, under the above notification, a Collector. Under Section 20 of Regulation IX of 1833 it is provided that a Deputy Collector appointed under this Regulation, should be, in all respects, subordinate to the Collector under whom he may be placed, and is required to perform all duties assigned to him by that functionary. Under Section 21 it is in the discretion of the Collector to employ them generally in the transaction of any part of the duties of a Collector.

6. A Subdivisional Officer is none the less a Deputy Collector because he is specially authorised to perform certain functions of a Collector, and a Collector, in our opinion, is authorised to transfer to him Collectorate work which he has power to perform, though having regard to the wording of the Tenancy Act, it may well be that an enquiry under Section 58 would not be transferred to him, if he were not specially authorised to perform the functions of a Collector. We think, therefore, that the action of the Subdivisional Officer was within his powers. For these reasons the present Hale is discharged.