

Prasidha Narayan Koer Vs. Man Koch

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Court : Kolkata

Decided On : Jul-31-1882

Reported in : (1883)ILR9Cal330

Judge : Mitter, (Offg.) C.J., ;White and ;Macpherson, JJ.

Appellant : Prasidha Narayan Koer

Respondent : Man Koch

Judgement :

Mitter, (Offg.) C.J.

1. I am of opinion that in the Assam Valley Districts, Act X of 1859 is not in force. That Act was passed by the Legislative Council of India which was constituted by the 16 and 17 Vic., Cap., 95. There is no clause in the body of the Act to show that its operation was limited only to a particular portion of British India. Prima facie, therefore, it applies to the whole of British India, unless it can be shown from the context that its operation was intended by the legislature to be limited to any particular portion of British India. But from the provisions of the Act itself it is quite clear that it does not apply to the whole of British India. for instance, the systems of land tenures and the settlements of Government revenue prevailing in the Presidencies of Bombay and Madras would make the provisions of this Act wholly inapplicable to those Presidencies. We have, therefore, to determine to what portion of British India the Act in question was, intended by the Legislature to

apply.

2. The preamble of the Act says:

3. 'Whereas it is expedient to re-enact with certain modifications the provisions of the existing law relative to the rights of ryots, with respect to the delivery of pottahs and the occupancy of land to the prevention of illegal exaction and extortion in connection with demands of rent and to other questions connected with the same; to extend the jurisdiction of Collectors and prescribe rules for the trial of such questions, as well as of suits for the recovery of the arrears of rent and of suits arising out of the distraint of the property for such arrears; and to amend the law relating to distraint, it is enacted as follows.' Therefore, it is clear that the object of the Act was three-fold--first, to re-enact, with certain modifications, the existing laws regulating the rights of landlord and tenant regarding certain specified subjects; secondly, to extend the jurisdiction of Collectors; and, thirdly, to prescribe a law of procedure for the trial of the questions relating to those rights as well as for the trial of rent suits. Therefore, the provisions made in the Act for the carrying out of the first object can only apply to those districts in which the laws, which were re-enacted with certain modifications, were in force. Now these laws are the Regulations on the subjects in question which were repealed by the Act under our consideration. These regulations are specified in the repealing section of the Act, viz., Section 1.

4. Referring to those Regulations, it is quite clear that they were not in force in the Assam Valley Districts. These districts were conquered in the year 1826. After their conquest, the upper portion was granted to certain Chiefs who were to govern them in accordance with the conditions of certain treaties, concluded with them: see Aitchison's Treaties, Vol. 1, page 126. The Government of the lower portion was, assumed by the E.I. Company: The administration of justice in these provinces was entrusted to certain officers appointed by the Governor-General in Council. They were never brought within what were called the Regulation districts, of the Presidency of Fort William. The whole of Upper Assam, for certain reasons, to which it is not necessary to refer here, was gradually brought under the British rule, and the same system of administration of justice was introduced there as was

in force in Lower Assam. By a Government Resolution of 1834, it was directed that the Commissioner of Assam shall, from the 1st October next, be subject to the Courts of the Sudder Dewany and Nizamut Adawlut in all matters connected with the Civil and Criminal Administration, and to the Sudder Board of Revenue at the Presidency in revenue matters. The 4th paragraph of this Resolution contained the following direction: 'The Assistants will continue to perform their duties at present entirely under the direction and control of the Commissioner.' By the 5th paragraph it was directed that certain special rules, which had been sanctioned for the Sagur and Narbudda Districts, should be forwarded to Captain Jenkins, who was then the local head in charge of the administration of the District, to enable him to submit a draft of rules which he might consider best suited for the district of Assam. These rules were subsequently framed and sanctioned by the Governor-General in Council, and I shall refer to them hereafter.

5. It is clear from Regulation I of 1829, by which the office of Commissioner of Revenue was created, that it was not the intention of Government to extend to Assam the system of administration of justice prevailing in the Regulation Districts. It has been contended before me that by the Regulation in question a Commissioner of Assam was appointed with powers similar to the Commissioners in the Regulation Districts constituted by it. This contention is not correct, because the Commissioners of Revenue and Circuit, constituted by the Regulation in question, and vested with the powers recited in Section 4, were the Commissioners enumerated in Section 2. Assam is not one of the districts recited in this section. Section 9 says, that the Commissioners of Arracan and Assam shall possess and exercise within the districts of Bengal, which are by this Regulation attached to their respective divisions, the same powers as belonged to the Commissioners of Cuttuck, modified as above. By this provision the Commissioners of Arracan and Assam, who were not appointed under the provisions of Regulation I of 1829, and whose powers were not defined by Section 4 of the Regulation, were declared to be *ex officio* Commissioners in certain Regulation Districts, viz., Chittagong, Noakhally, Sherepore and Sylhet, exercising the power in these districts defined by Section 4. But so far as Arracan and Assam were concerned, they were not appointed under the provisions of Regulation I of 1829, and their powers were not defined by Section 4. This Regulation, therefore,

instead of showing that Assam was brought in any respects within the Regulation Districts, shows just the contrary.

6. The next Act passed by the Governor-General in Council relating to Assam was Act II of 1835. This Act only embodied the provisions of the Government resolution already referred to. It declared 'that the functionaries who are or may be appointed in the provinces of Assam * * * * * be henceforth placed under the control and superintendence in civil cases of the Court of the Sudder Dewany Adawlut, in criminal cases of the Court of the Nizamut Adawlut. '

7. Then rules for the administration of Civil and Criminal justice in Assam were from time to time framed. The last set of rules on this subject were prepared and sanctioned in the year 1847. They form a complete Code providing for the trial of all kinds of suits. By the 9th rule, the assistant in charge of a district was empowered to try, in his capacity of Collector, suits for arrears of rent or undue exactions of rent. These rules and not any of the regulations mentioned in the repealing section of Act X of 1859, i.e., Section 1, were in force in Assam in 1859. It is therefore clear that the provisions of Act X of 1859, which were intended to replace the Regulations repealed by Section 1, were intended to apply only to the districts in which those Regulations were in force. Those provisions of Act X of 1859 which deal with the subject of relative rights of landlords and tenants cannot, therefore, apply to the Assam Valley Districts. These reasons are sufficient to warrant the conclusion that Section 6 of Act X of 1859 at least is not applicable to the districts in question.

8. It seems to me further that the provisions of Act X of 1859, which were intended to carry out the second and the third objects mentioned in its preamble, also do not extend to the Assam Districts.

9. The second object was to extend the jurisdiction of Collectors. I have shown above that in 1859 there were no such officers as 'Collectors' in existence in Assam. The assistants in charge of districts only exercised the powers of Collectors. If by the use of the word 'Collectors' in Act X of 1859 the Legislature had intended to include these officers, we should have found in the Act an interpretation clause to that effect.

10. Then as regards the last object, it appears to me from Section 67 of Act of 1859, that the provisions relating to it were not intended to apply to Assam. Act X of 1859 does not contain any provision relating to the examination of witnesses, for procuring their attendance, etc. The section referred to above provided that the provisions of Regulations and Acts and all other rules for the time being in force relating to the subjects mentioned above in cases before the Civil Court in the Presidency of Bengal, shall, with a certain exception, apply to suits under Act X of 1859. The section does not refer to the Assam Rules on the subject. It is therefore clear to me that the procedure laid down in Act X of 1859 for the trials of suits under that Act, was not intended to apply to similar suits in Assam.

11. Furthermore, if it had been the intention to extend Act X of 1859 to Assam, we should have found in the repealing section a provision for the repeal of the Assam rules in force in 1859, relating to the trial of suits similar to those which were declared exclusively cognizable by the Collectors of land revenue under Section 23 of the Act. Then, again, by Act XIV of 1863, Act X of 1859 was amended so far as it related to the territories under the Government of the Lieutenant-Governor of the North-Western Provinces. The 19th Section of this Act provides that it shall be lawful * * * * * for the Lieutenant-Governor of the North-Western Provinces to extend Act X of 1859 to any territories under his government in which the said Act was not then in force. This section does not give to the Lieutenant-Governor of Bengal any such power.

12. If Act X of 1859, when it was passed, was intended to extend to the whole of the territories under the Lieutenant-Governor of the North-Western Provinces and Bengal, this provision would not have been necessary. It is clear to me, therefore, that it was intended when it was passed to apply only to what are called Regulation Districts.

13. Then the next question is, whether this Act has been, since 1859, extended to Assam. The only notification that I have been able to trace on this subject is one of the Bengal Government dated 28th May 1864. It is published in the Calcutta Gazette of that year, page 1133. It says: 'For carrying out the provisions of Acts VIII and X of 1859, the officers employed in the Civil Administration of Assam and

Chota-Nagpore Division are hereby vested with the following powers.' Then certain officers are vested with the powers of Zillah Judge, of a Collector and of a Deputy Collector. This notification does not purport to extend the provisions of Act X of 1859 to Assam. It assumes that that Act is in force there. If it be assumed even that it was intended to extend the Act to Assam, then the notification cannot be acted upon, because it was not in the power of the Lieutenant-Governor of Bengal to extend the Act by a simple notification. There is no provision to that effect in Act X of 1859, and in the subsequent Act of 1863, referred to above, no such power was given to the Lieutenant-Governor of Bengal.

14. For these reasons I am of opinion that Act X of 1859 is not in force in the Assam Valley Districts. As upon the other questions raised in this appeal, the learned Judges who heard this case first are agreed that if Act X of 1859 is not in force in the Assam Valley Districts, the judgment of lower Appellate Court should be reversed, and the plaintiff's suit decreed, the result is that a decree should be made in this Appeal in accordance with that opinion. Accordingly the judgment of the lower Appellate Court is reversed, and the plaintiff's suit is decreed with costs.