

Ambaka and anr. Vs. Ajmat and ors.

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Court : Himachal Pradesh

Decided On : Apr-30-1956

Reported in : AIR1956HP53

Judge : Ramabhadran, J.C.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Section 9; ;Himachal Pradesh Tenants (Rights and Restoration) Act, 1952 - Section 3; ;Tenancy Law; ;
[Constitution of India](#) - Article 226

Appeal No. : First Appeal No. 5 of 1955

Appellant : Ambaka and anr.

Respondent : Ajmat and ors.

Advocate for Pet/Ap. : D.N. Vaidya, Adv.

Disposition : Appeal dismissed

Judgement :

Ramabhadran, J.C.

1. Ajmat (respondent 1) filed a suit in the Court of the Senior Sub-Judge, Mandi against Ambka, Ruldu and others seeking a declaration that an order of ejectment passed by the Assistant Collector, against him under Section 3, Himachal Pradesh Tenants (Rights and Restoration) Act, 1952, was not binding upon him, and further

praying that the defendants be restrained permanently from interfering with his possession.

2. Ajmat's main contention was that the order in question was passed to his detriment without notice to him. The learned Senior Sub-Judge came to the conclusion that the suit was not competent and accordingly non-suited Ajmat. Thereupon, Ajmat went up in appeal to the learned District Judge, who differing from the opinion of the trial Court, held that the suit did lie to the Civil Court. Consequently, the case was remanded under Order 41, Rule 23, C. P. C. Against this order of remand, Ambka and Ruldu have come up in appeal to this Court.

3. Arguments of the learned counsel for the parties were heard at considerable length this morning. For reasons to be stated shortly, I am of the opinion that there is no force in this appeal.

4. Learned counsel for the appellants (Mr. D. N. Vaidya) argued vehemently that the Civil Court has no jurisdiction in the matter, because under Section 3, Himachal Pradesh Tenants (Rights and Restoration) Act, 1952, tenants, who were ejected after 15-8-50, were entitled to be put back in possession on making an application to the prescribed authority. He further contended that the above Act and the Rules framed thereunder provided a remedy to the persons, whose possession was thus disturbed, i.e., they would be given 'Nautor' land instead.

5. Mr. Kidareshwar for respondent 1 rightly pointed out that his client was entitled to be heard before an order to his detriment was passed. Since this course was not adopted, he urged that the principles of natural justice have been violated. He argued that before an order of ejectment was passed against Ajmat, a notice should have been issued to him by the Assistant Collector, and he should have been given an opportunity of showing cause as to why he should not be ejected.

Mr. Kidareshwar elaborated his arguments by suggesting that it was open to Ajmat to contend, inter alia, that the application under Section 3 was time barred, or, that the applicant was a tenant to whom the provisions of Section 41, Punjab Tenancy Act could have applied. In my opinion the principles of natural justice did require the issue of a notice to Ajmat, before an order to his detriment is passed.

The provision in the Act and Rules that 'Nautor' land could be granted to the persons, who were dispossessed under Section 3, does not amount to a remedy. At best, it can be considered some sort of compensation. Ajmat may or may not have been able to resist the application under Section 3, successfully but that does not mean that he was not to be given an opportunity of showing cause against the order of ejectment passed against him. I am in full agreement with the learned District Judge that the suit to the Senior Sub-Judge did lie. Reference may be made to the following authorities, which support the case of the plaintiff-respondent.

(a) 'Ganesh Mahadev Jamsandekar v. Secy. of State', AIR 1919 Bom 30 (A). There the facts were that:

"The plaintiff's factory was searched by a Sub-Inspector of Police in connection with a theft. The stolen property was not found in the search, but some silver ingots worth about Rs. 5000 were found. It was suspected that the silver had been improperly imported by the plaintiff, without payment of customs duty. The Sub-Inspector sent for a clerk in the fish-curing yard, who belonged to the Salt Department, and to the Customs Department, and at his instance attached the silver and made it over to the Sarkarkun.

This officer, recording evidence in the absence of the plaintiff, made a report to the Collector of Customs, who without calling or hearing the plaintiff and purporting to act under the Sea Customs Act, fined him Rs. 1,000 and also confiscated the silver. The plaintiff brought a civil suit for the recovery of the fine and price of the silver. The District Judge, who entertained the suit, dismissed it on the ground that it was excluded from the cognizance of the ordinary civil Courts."

6. Under those circumstances, a Division Bench of the Bombay High Court held on appeal:

"(1) the question whether there had been legal adjudication in accordance with the provisions of the Sea Customs Act was not a question excluded from the cognizance of the ordinary Civil Courts; (2) that if there had been no legal adjudication then the order of fine and confiscation was ultra vires of the provisions

of the Sea Customs Act, and resulted in an ordinary wrong, cognizable by the ordinary civil Courts on the general principles underlying S. 9, Civil P. C."

7.(b) 'Ambalal Sarabhai v. Phiroz H. Antia', AIR 1939 Bom 35 (B). There the facts were that:

"A was expelled from the membership of a club without being given the reasons for such expulsion. A brought a suit for a declaration that the expulsion was illegal."

8. Under those circumstances a learned Judge of that High Court held:

"that the action on the part of the members of the club offended against the elementary principle of natural justice and reason and justified interference by a Civil Court, and the plaintiff was entitled to the relief claimed by him."

9. (c) 'Secretary of State v. Mask & Co.', AIR 1940 PC 105 (C). Their Lordships of the Privy Council held that:

"The exclusion of the jurisdiction of the civil Courts is not to be readily inferred but such exclusion must either be explicitly expressed or clearly implied. Even if jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure."

10. (d) 'Royal Calcutta Turf Club v. Kishen Chand', AIR 1942 Lah 179 (D). There a learned Judge of that High Court pointed out that:

"If a matter in dispute between the horse owner and the Turf Club is within the jurisdiction of the Stewards and they give the person against whom action is intended to be taken, a fair opportunity of answering the charges made against him, it is not open to the Civil Courts to sit on judgment on the orders passed by the Stewards. It is, however, for the civil Courts to determine whether a certain matter in dispute is within the jurisdiction of the Stewards and if so, whether they have acted in accordance with the elementary principles of natural justice and fair

play. The jurisdiction of the civil Courts can only be exercised within these narrow limits."

11. (e) 'Mani Ram v. Bhagwant Samp', AIR 1949 All 50 (E). There a Division Bench of that High Court observed that:

"The cognizance of the civil Court to hear an election petition under the U. P. Municipalities Act or to give any relief in the nature thereof is clearly, impliedly barred under the provisions of the Municipalities Act. The civil Court cannot assume the jurisdiction of Returning Officer nor can it assume the jurisdiction given to the Commissioner under Section 28. It is, therefore, not competent to the civil Court to declare a person to have been duly elected nor can it decide the election petition that was filed before the Commissioner.

But the question, whether there has been a legal adjudication by the Commissioner in accordance with the provisions of the Municipalities Act, is not a question excluded from the cognizance of the civil Court. If the adjudication is illegal and the order of the Court (the Commissioner as the Election Tribunal) is ultra vires of the provisions of the Act, it may be said to have resulted in a civil wrong cognizable by the civil Court on the general principles underlying Section 9, Civil P. C."

12. (f) 'Brij Raj Krishna v. S. K. Shaw and Bros.', AIR 1951 SC 115 (F); where their Lordships of the Supreme Court observed that:

"The Act has entrusted the Controller with a jurisdiction which includes the jurisdiction to determine whether there is non-payment of rent or not, as well as the jurisdiction, on finding that there is non-payment of rent, to order eviction of a tenant. Therefore, even if the Controller wrongly decides the question of non-payment of rent and orders eviction of the tenant, his order cannot be questioned in a civil Court."

This ruling is not applicable to the present case as I shall show presently.

13. (g) 'Des Raj v. Ram Singh', AIR 1955 Punj 92 (C). There Kapur J. observed that:

"It could not have been the intention of the legislature to give the statutory tribunal, that is, the Collector, the power to decide in all cases the facts rightly or wrongly and thus arrogate to himself a Jurisdiction which did not vest in him, and it is one of the functions of the Courts to see that all administrative tribunals act within their jurisdiction. As a matter of fact, it is for the Court to canalise the jurisdiction of the administrative tribunals) and to see that they do not overflow the banks."

14. Learned counsel for the respondent 1 rightly pointed out that the decision reported in AIR 1951 SC 115 (F) has no application to the facts of the present case, because, here the question is not, whether the Assistant Collector passed a right or wrong order, but that he gave no notice at all to Ajmat Ali before ordering his ejectment. This ruling therefore, would not help the appellant.

15. Mr. Vaidya for the appellant next urged that it was not necessary to issue a notice to Ajmat, because he would be bound by the decree passed against Bhagat Ram, the owner of the land. Reliance was placed in this connection on--'Sheikh Yusuf v. Jyotish Chandra', AIR 1932 Cal 241 (H). There a Division Bench of that High Court remarked that:

"A decree in ejectment passed against a lessee, at the instance of a lessor is not only binding upon the lessee, but also upon his sub-tenants."

16. The above decision was relied upon in --

'Sailendra Nath v. Bijan Lal, AIR 1945 Cal 283 (I) as well as, -- 'Gurushiddaswami Guru v. Dakshina Maharashtra Digambar Jain Sabha', AIR 1953 SC 514 (J). In my opinion, it is not necessary to go into this matter, because it concerns the merits of the case. The learned District Judge has rightly remarked that all questions affecting the merits of the case should have been put in issue by the Senior Sub-Judge, and determined by him.

17. In view of all that has been said above, I am of the opinion that the suit was rightly remanded by the learned District Judge under Order 41, Rule 23, C. P. C.

ORDER

18. The appeal fails and is dismissed with costs payable to respondent 1 Ajmat. Bhagat Ram respondent 2 to bear his own costs.

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