Smt. Shushil Kuer vs Makkhan Lal on 3 December, 1951

Equivalent citations: AIR1953ALL578, AIR 1953 ALLAHABAD 578

JUDGMENT

Mushtaq Ahmad, J.

1. This is a plaintiff's appeal in a suit for declaration that the order of the Collector, Aligarh, dated 20-12-1947, under Section 54(5), U. P. Tenancy Act, 17 of 1939 was ultra vires and not binding on the plaintiff. There was also a relief for injunction restraining the defendant from acquiring possession of the land in dispute by virtue of that order.

2. Sometime in 1940, the plaintiff-appellant applied under Section 54 of the said Act to the Collector for the acquisition of some land held by the defendant-respondent on the ground that he (plff.) required it for his own purposes to build a house thereon. On 1-12-1942, a compromise was filed by the parties in the case initiated by this application in the following terms:

> 1. that the landlord would pay Rs. 340/- as compensation to the tenant,
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> 2. that the tenant, having received this amount, would deliver possession to the landlord,
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> 3. that the tenant would thenceforward have nothing to do with the land, and
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> 4. that the landlord might put the land to any use and might even transfer the same as its absolute owner.

3. The same day an order recording this compromise was passed by the Collector.

4. In June 1948, an application was made to the Collector by the defendant-respondent purporting to be under Clause (5) of Section 54, U. P. Tenancy. Act, for the restoration to him of the land in suit by the landlord, presumably on the assumption that such an application lay under that clause. I may mention, that, in a case where the order of the Collector could be said to be one under Clause (2) of Section 54, the Legislature permitted the tenant to ask for the restoration of the land to him by an application tinder Clause (5) thereof, if for three years the land had not been used by the landlord for the purpose for which he had acquired it under Clause (2) of the section. On 20-2-1947, the application just mentioned was granted in spite of an objection taken by the landlord that it could not be entertained in view of the circumstances in which the order of the Collector dated 1-12-1942 had been passed.

5. The suit giving rise to the present appeal was filed for a declaration that this order of the Collector dated 20-2-1947 was 'ultra vires'. Both the courts below dismissed the suit on the view that the civil courts had no jurisdiction to make the declaration sought for by the plaintiff. The sole question before me is whether this view of the courts below was correct, namely whether the civil courts had in fact no jurisdiction to declare the order of the Collector of 20-2-1947 as 'ultra vires.'

6. The argument of Mr. Pearey Lal Banerji in support of the appeal before me was that the order dated 1-12-1942, referred to above, which had been passed on the basis of a compromise between the parties, the same embracing a number of points not strictly within the scope of Section 54 of the said Act, could not be said to be one under Clause (2) of this section at all. This clause provides:

> "The Collector shall, in accordance with rules made by the Board, order the acquisition of, and the ejectment of the tenant from, the land applied for, or form part thereof, and shall award to the tenant the compensation to which he may be entitled under the provisions of Sub-section (3)."

This provision, on the face of it, enjoins a number of directions to be observed by the Collector when passing an order thereunder. These are:

> 1. the acquisition of the land must be ordered in accordance with rules made by the Board, and
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> 2. compensation must be fixed under the provisions of Sub-section (3), this sub-section laying down the scale for that purpose.

7. If neither of there directions was followed --as in fact it was not in this case--by reason of a compromise having been filed by the parties, the order can hardly be conceived as one under Subsection (2). I have already quoted the main terms of the compromise, from which it would be patent that the collector never passed an order in this case within the framework of this subsection. Besides, if the order can be said to be one under this sub-section, it must necessarily follow that its operation is liable to be determined by a subsequent order of restoration under Clause (5) of the section. But if such restoration has been put out of question because of an agreement between the parties, no order under Clause (5) can be made either.

I have already pointed out, when quoting the terms of the compromise, that the tenant had completely surrendered the land, allowed the landlord to put the same to any use he liked and even to transfer it to whomsoever he chose. Even the amount of compensation was not determined under Sub-section (3) of the section but as agreed to between the parties. All this fell distinctly beyond the compass and scope of Section 54, U. P. Tenancy Act, there being hardly a feature in the compromise which could be identified with anything in that section. As a necessary result, the order passed by the Collector on 1-12-1942, instead of being one under Sub-section (2), was one on a compromise, in letter and spirit quite different from an order contemplated by that sub-section. In this context it becomes pretty easy to answer whether in such a case an application under Clause (5) of the section could be moved or an order under that sub-section be passed at all.

In the present case an application purporting to be under this clause and even an order purporting to be under this clause were no doubt made & passed respectively. But the whole question is whether either the one or the other did fall within the clause, leading to the question whether it was not open to the civil courts to say, as contended for by the plaintiff-appellant, that neither fell within that clause.

8. If the order dated 20-2-1947, for the reasons I have already mentioned, did not come within the purview of Clause (5) of Section 54 of the said Act, then, in so far as the order purported to be one under that clause, it was on the face of it ultra vires. The main obstacle which the courts below conceived to the success of the suit was that they had no jurisdiction to say that this order was ultra vires. This meant that, even though a court may pass an order with absolutely no jurisdiction to pass it and such lack of jurisdiction is clearly established, the civil court is powerless to relieve the party against whom that order was passed against the implications of or obligations imposed by the same. In the O. P. Tenancy Act no doubt certain suits are expressly barred from the jurisdiction of the civil court, and learned counsel for the defendant-respondent has cited to me Sections 60 and 242 of the Act. This is putting the position rather too simply, and there can be no contest at all if the position actually was so simple. Of course, if a suit lies within the exclusive jurisdiction of the revenue court, the jurisdiction of the civil court must be taken to be barred. I am not aware of any provision in the Tenancy Act, which, even where that court has passed an order which was altogether ultra vires of it, debars the civil court from declaring that order as beyond jurisdiction and, therefore, not binding on the party ostensibly affected by it.

In -- 'Secretary of State v. Mask & Co.', AIR 1940 PC 105 at p. 110 (A) the Judicial Committee observed as follows:

> "It is now necessary to determine whether the order of the Collector of Customs, dated 20th June 1933, which dismissed the appeal under Section 188, and which was confirmed by the Governor-General in Council on an application under Section 191, excludes the jurisdiction of the Civil Courts to entertain a challenge of the merits of that decision. It is settled law that the exclusion of the jurisdiction of the Civil Courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that 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."

If, therefore the Collector, even in the contest of the compromise filed before him, actually purported to pass his order of 1-12-1942 under Sub-section (2), Section 54, U. P. Tenancy Act, he surely went beyond his jurisdiction. If he did so, equally surely the Civil Court had jurisdiction to declare the order to be ultra vires. I have already shown that the order passed by the Collector on that date could not be one under Sub-section (2) at all for the simple reason that it fell distinctly outside the scope of that sub-section and embraced a number of provisions which had their origin in an agreement between the parties and not on the provisions of Section 54 at all if I am right in this view, the position is obviously covered by the dictum I have just quoted.

9. For these reasons I allow this appeal, set aside the decrees of the courts below and grant the relief prayed for by the plaintiff-appellant with costs throughout.

10. Leave to appeal to a Bench is granted.