

Raghunath And Ors. vs The Municipal Board And Ors. on 18 September, 1950

Equivalent citations: AIR1952ALL465, AIR 1952 ALLAHABAD 465

JUDGMENT

Agarwala, J.

1. These are three connected appeals and all arise out of Suit No. 31 of 1942 brought by Jharey Ram, father of appellants, against six defendants Municipal Board Mathura, defendant 1, Government of the United Provinces, defendant 2, Brindaban, defendant 3, Hira Lal, son of Brindaban, defendant 4, Mangi Lal, defendant 5 and Dr. (Capt.) Suri, defendant 6. The facts briefly stated are these :

2. In the year 1915, the Municipal Board of Mathura resolved that it would lay out a part to be called the Dampier Park for the use of the public. The Municipal Board requested the Government to acquire land for them for this purpose. Certain land was, therefore, acquired by the Government under the Land Acquisition Act. The land in dispute belonging to Jharey Ram, plaintiff, formed part of the land acquired. The Municipal Board thereafter levelled the land and planted some trees but later on gave up the idea of laying out the park or using the land for that purpose. As the Municipal Board no longer required the land, it sold it to defendants 3 to 6 under four sale-deeds. One sale deed dated 30-9-1936, was executed in favour of Mangi Lal, defendant 5, another was executed on the same date in favour of Dr. (Capt) Suri, defendant 6, a third one was executed on 1-9-1937, and a fourth one on 8 11-1937, both in favour of Hira Lal, defendant 4. No sale deed was executed in favour of Brindaban defendant 3, father of Hira Lal, but he was impleaded as father and son were members of a joint Hindu family. Before executing these sale deeds, the Municipal Board did not obtain the sanction of the commissioner as required by the rules framed under the Municipalities Act, but obtained it after their execution. Mangi Lal then built a house, on the land purchased by him, worth about Rs. 25,000.

3. Jharey Ram instituted the suit, which has given rise to this appeal, on 29 9-1942. He alleged that when the Municipal Board did not require the land which was acquired from him by the Government on its behalf, the Municipal Board should have relinquished the land, under the rules framed under the Municipalities Act to the Collector who should then have first offered the land to the original owner i.e., the plaintiff; but this was not done and instead the land was sold to the various defendants under the aforementioned sale deeds. He also challenged the validity of the sale deeds on the ground that the previous Sanction of the Commissioner was not obtained for affecting these sales as required by the rules framed under Municipalities Act. He, therefore, claimed a declaration to the effect that the sale deeds were void and ultra vires and ineffectual and prayed that possession over the land in dispute may be delivered to him by ejectment of the defendant, vendees and after demolition of the constructions, if any, made by any of them on payment of the price paid

by the defendants to the Municipal Board and of such other sum as the Court may determine. In the alternative he prayed that it may be declared that the property still vests in the Municipal Board of Mathura and a decree for possession in favour of Municipal Board may be passed, and that the Municipal Board may be ordered to relinquish the plaintiff's land to the Government of U P. through the Collector to be disposed of in accordance with the rules laid down in chap. XX of the Revenue Department Manual of Orders of the U. P. Government and the Municipal Board be ordered to take measures for the land being taken possession of and being disposed of by the Collector of Mathura in accordance with the aforesaid rules, and necessary directions be issued against defendants 1 and 2 by way of mandatory injunction to enforce their statutory liabilities.

4. Defendant 6, Dr. (Capt.) Suri did not contest the suit. The defence of the other defendants, inter alia, was that the plaintiff had no cause of action for the suit and the relief claimed by him could not be granted to him because he had no legal right to sue for the reliefs claimed. Defendant 5, Mangi Lal, further pleaded that the relief for demolition of the construction should not be granted to the plaintiff because he had made constructions at considerable expense in the bona fide belief that the Municipal Board had power to transfer the land to him. Various other pleas were raised but, as they have not been urged before us in appeal, it is not necessary to mention them.

5. The trial Court decreed the suit for a declaration that the sale deeds in dispute were void but did not grant any other relief to the plaintiff. Against this decree three appeals were filed in the lower appellate Court; one was by the Municipal Board of Mathura, another was by Mangi Lal, defendant 5, and the third one was by Hira Lal. Cross objections were filed by the plaintiff and the U. P. Government. The learned Judge upheld the decree of the trial Court with some modification about costs. Hira Lal has submitted to the decree, but the plaintiff's sons, have come up in second appeal to this Court, (plaintiff Jharey Ram having died during the pendency of the appeal in the lower appellate Court), and Mangi Lal has filed a cross objection.

6. Under Section 127(b), Municipalities Act sale of property vested in the Municipal Board is to be regulated by the rules made by the Local Government under Section 296 of the Act. Under that section the Government has made certain rules. Rule 2 printed at p. 260 of the Municipal Manual, concerning transfer of property vested in the Board is as follows:

"Immovable property vested in the Board shall not except with the previous approval of the Commissioner and in such manner and on such terms and conditions as the Commissioner may approve be transferred by the board by way of sale, or by way of mortgage, charge or exchange, or otherwise than by way of lease without a premium.

If the capital value of the property does not exceed Rs. 500 the powers of the Commissioner under the rule shall vest in the District Magistrate."

7. By Notfn. No. 2025/XI 274 1935 dated 8-6-1935, the following proviso was added to the above rule:

"Provided that when any land acquired under the Land Acquisition Act ceases to be used or required for the purpose mentioned in the notification of its acquisition by the Board, the Board shall relinquish such land to the Collector of the district who will dispose of it in accordance with the rules in Chap. XX of the Revenue Department Manual and pay the proceeds to the Municipal Board less any expenditure incurred in its disposal."

8. The relevant rule in chap. XX of the Revenue Department Manual is as follows :

Rule 545 (1) "When the preceding rule does not apply (It may be taken that the preceding rule does not apply in this case) the proprietary rights in the land should ordinarily; as an act of grace, be first offered to the persons from whom they were acquired, or to their heirs if discoverable."

9. Now, it is not in dispute that there was no previous approval of in Commissioner for the sales affected by the Municipal Board. It was ruled by the Privy Council in *Secretary of State v. Anant Krishnaji*, 1934 ALL. L. J. 162 that where the Statute authorises a particular authority to make an order only with the previous sanction of a higher authority, the order, if made, without such previous sanction is utterly invalid.

10. The sale deeds in question were, therefore, void, even though they had been approved by the Commissioner subsequently.

11. It is admitted that the land in dispute which was acquired under the Land Acquisition Act ceased to be used or required for the purpose for which it was acquired. It was, therefore, the duty of the Board to relinquish the land to the Collector of the district, who was then to dispose of it in accordance with the rule quoted above.

12. Two arguments have been addressed to us upon the binding nature of Rules in chap. XX of the Revenue Department Manual. It is urged, firstly, that the rules in chap. XX of the Revenue Department Manual of which Rule 548 is one, are merely departmental rules and do not form part of the law of the land and as such do not create any right in the plaintiff, which can be enforced in a Court of law; and, secondly, that even if the rules purport to be or have been made under a statutory power, they refer to a matter beyond the scope of the purpose for which they could be made and are hence not of a binding character.

13. In support of the argument that the rules are departmental rules merely, reliance has been placed by Mr. Jagdish Swarup upon the observations made by one of us in *Jagat Narain v. Madhusudan Dass*, S. A. no. 1710 of 1946, decided on 22-3-1950. It was observed in that case in connection with the rules contained in chap. XX of the Revenue Department Manual that :

"Learned counsel appearing for the appellant was unable to point out to me any statutory provisions under which the rules mentioned above were made by the Government. A perusal of the rules shows that they were made by the Government

for the guidance of its own executive affairs. They are in the nature of directions which the Government expects its officers to carry out. They are, however, not rules forming part of the law of the land and cannot be enforced in a Court of law. An officer who is guilty of breach of such rules may be departmentally punished by the Government. But a contravention of the rules does not confer a right on the members of the public to sue the Government for their breach,"

14. Now, rules made by Government may be either statutory or, what may be termed, departmental. Where a Statute prescribes that rules may be made by a certain authority to carry out the objects of the statute or for a particular purpose the rules so made become part of the Statute and have the same force as the Statute itself: *Her Majesty the Queen v. Burah*, (1879) 8 A. o. 889; *Powell v. Appolo Candle Co.*, (1885) 10 A. o. 282 at p. 291; *Willmgale v. Norris*, (1909) 1 K. B. 57; *National Telephone Go. v. Baker*, (1898) 2 oh. 186.

15. Rules not made under any statutory power, but made by the Government or other authority for the conduct of its officers and servants, for the management of property or for other administrative purposes are merely departmental rules and have no statutory force.

16. The reason for this differentiation between statutory and departmental rates is to be sought in the distinction between legislative, executive and judicial functions. The law recognises a separation of the legislative, executive and judicial functions. Normally the Legislature is entrusted by the Constitution with the duties of legislation, the executive is entrusted with executive functions and the judiciary with the judicial functions. But legislative bodies are nonetheless entrusted with certain administrative power in order that they may perform their functions properly, and exercise control over their own officers. The executive also is vested with some legislative power, e.g., when it is entrusted with the power to promulgate Ordinances in times of emergency or when the Legislature is not in session and more commonly when it is given the power of what has been called delegated legislation i. e. of making rules and orders under Statutes. So also the judiciary may be invested with the power of making rules under statutes, and may also exercise administrative functions in relation to its own officers or inferior Courts.

17. When the executive makes rules as directed by a statute it is exercising a function of legislation though of a subordinate nature; when, however, it makes rules or orders not in the exercise of any statutory power but for the purpose of carrying on the administration, it is exercising its executive function pure and simple. Rules so made, which may be described as departmental rules, are intended for the guidance of its officers and servants and are not rules of law and cannot be enforced in a Court of law.

18. Rules contained in chap. XX of the Revenue Department Manual were not shown to have been made under any statutory power and, therefore, it was held by one of us in the case already mentioned that they were merely administrative rules and did not confer a right on private individuals and though their breach by any officer or servant of the Government may be departmentally punished, a private individual whose expectations may have been belied could not sue the Government for their breach.

19. But when departmental rules are framed under or made part of the statute either by the statute itself or by a rule framed thereunder, although they were initially framed for administrative purposes, they became statutory by such incorporation.

20. This brings us to the second point urged on behalf of the defendants respondents. It is settled law that statutory rules in order to be valid must not be repugnant to the general principles of law or to the statute under which they are made and must not be uncertain or un reasonable. Further, where a statute authorises the making of rules for a specific purpose, the rules must conform to that purpose and if made beyond the scope of that purpose, then even if not repugnant to the statute may yet not be statutory rules, though purporting to have been made under the statutory power. They will, in that case, be treated merely as departmental rules and will not form part of the statute or have the force of law.

21. It is contended that rules under Section 256, Municipalities Act with reference to Section 127 of the same Act can be made only with regard to the matters specified in that section, i.e. the disposal of property belonging to a Municipal Board, but that the rules cannot be made with regard to the disposal of property which has ceased to belong to the Municipal Board, after it has been relinquished to the Collector, and as such, the provisions as to how the Collector will deal with the property, are beyond the scope of the authority under which rules could be made.

22. There is a fallacy in this argument, Section 296 empowers the Local Government to make rules consistent with the Act not only in respect of matters described In Section 127, but also in respect of certain other sections and certain other matters. Sub-rule (2) of Section 296 runs as follows:

"The Local Government may make rules consistent with this Act--

(a) Providing for any matter for which power to make provision is conferred, expressly or by implication on the Local Government by this or any other enactment in force at the commencement of this Act, and

(b) generally for the guidance of a Board or any Government officer in any matter connected with the carrying out of the provisions of this or any other enactment relating to municipalities."

When property is acquired by Government for the purpose of a Municipality and is no longer required by the latter because the purpose for which the land was acquired has been abandoned, a provision has to be made in the rules as to the manner in which the property shall thereafter be disposed of. The rule in question makes that provision. In our opinion, it is fully covered by the provisions of Section 296.

23. It is next urged that even if the rules be statutory, they are still directory in 'their nature and not mandatory, because they vest an absolute discretion in the Collector to act in any manner he likes, and so the plaintiff has no right enforceable in law, and as such he has no personal interest within the meaning of Section 56 (k), Specific Belief Act. Reference has been made in this connection to the

words "as an act of grace", and "ordinarily" in Rule 545 and reliance has been placed upon Hens Kelsert's "General Theory of Law and State" pp. 58 and 75, Cutler v. Wands-worth Stadium Ltd. (1949) 1 ALL. e. R. 544 and Jivan Lal v. Ramtuji Bhaiji, A. I. R. (32) 1945 Bom. 119.

24. No mandatory injunction can be granted unless the applicant has personal interest in the matter. This is provided in Clause (k) of Section 56, Specific Relief Act. Personal interest and personal right may be said to be more or less the same. We have, therefore, to find if the proviso to Rule a read with Rule 545 invests the plaintiff with a legal right or confer upon him a legal interest.

25. Now Rule 545 directs the Collector to offer the land to the previous owners "ordinarily" and "as an act of grace." The words "as an act of grace" have reference to the motive for the enactment of the rule and are not intended to give to the Collector an absolute discretion in the matter. Similarly the word "ordinarily" does not confer upon the Collector an absolute discretion. He must offer the land in the first instance to the original proprietors unless there be special or extraordinary circumstances on account of which he may choose to act otherwise. The discretion, therefore, vested in the Collector under Rule 545 cannot be exercised arbitrarily or whimsically and must be exercised reasonably and judicially.

26. Where a discretion vested in a statutory body or public officer is intended to be exercised judicially then he is bound to exercise that discretion in favour of the person indicated in the rule, whenever circumstances exist in which the discretion should be so exercised; and the discretion then becomes a duty.

27. Reliance has been placed upon the following observations of Haas Kelsen made in his 'General Theory of Law and State' at p. 58:

"The concept of legal duty, as actually-used in jurisprudence and as defined especially by Austin, refers only to the individual against whom the sanction is directed in case he commits the delict. He is legally obligated to refrain from the delict: if the delict is a certain positive action, he is obligated not to undertake that action; if the delict is an omission of a certain action, he is obligated to undertake that action. Thus, to be legally obligated to a certain behaviour means that the contrary behaviour is a delict and as such is the condition of a sanction stipulated by a legal form; thus, to be legally obligated means to be the potential subject of a delict, a potential delinquent."

and upon the following passage at p. 75:

"If the right is a legal right, it is necessarily a right to somebody else's behaviour, to a behaviour to which the other is legally obligated. A legal right presupposes somebody else's legal duty."

These observations are not to be read as implying that the law does not recognise contingent or conditional rights. Even though a person is obligated to act in a particular manner on condition that certain circumstances exist, it is nonetheless a legal duty to act in that manner provided the

circumstances exist. The Collector in the rule in question is obligated to act in a certain way provided certain circumstances do not exist which would take away the obligation from him from acting in that manner. The rule casts a legal duty upon the Collector and invests a corresponding legal right in the plaintiff.

28. In *Jivan Lal v. Ramtuji Bhaiji*, A. I. R. (32) 1945 Bom, 119 the question was whether certain bonus payable to a workman was to be treated as his wages so as to be exempted from attachment in execution of a money decree against the workman. It was held that it was part of the wages and that it was not payable as of grace. When the amount is payable as of grace in the sense that it may be paid or it may not be paid at the sweet will of the employer the amount does not become legally due. But the case here is quite different as already stated.

29. In *Cutler v. Wandsworth Stadium Ltd.*, (1919) 1 ALL E. R. 544 the question was whether a provision in the Betting and Lotteries Act, 1934, Section 11 (2), which created an obligation upon the occupier of a licensed dog-racing track that he "shall take such steps as are necessary to secure thatthere is available for bookmakers space on the track where they can conveniently carry on bookmaking in connection with dog races run on the track on that day; and every person who contravenes, or fails to comply with, any of the provisions of this sub-section shall be guilty of an offence,"

conferred a right upon an individual bookmaker or merely conferred a right in the public for the benefit of bookmakers in general. It was held that no legal right in an individual bookmaker was created and that the only remedy by which the breach of the legal obligation upon the occupier of the track could be enforced was by the penalty provided in the Act, That case is hardly of any help to the defence.

30. It is then urged that the plaintiff is not entitled to claim a mandatory injunction against the Municipal Board, because the Board is under no obligation to him--its duty being merely to relinquish the land to the Collector. A reference is made to Section 55, Specific Relief Act.

31. Under Section 65, Specific Relief Act, a mandatory injunction can be issued "to prevent the breach of an obligation." No doubt an obligation is co-related to a legal right and normally one would expect that the prevention of the breach of an obligation has reference to the obligation owed to the plaintiff. But there may be an obligation which is not directly co-related to a legal right in the plaintiff but is a condition precedent to the enforcement of that right. In order to provide relief to the plaintiff and securing him the right to which he is entitled it may be necessary to prevent a breach of a certain obligation the performance of which is a condition precedent to the securing of the plaintiff's right and in such a case the Court has power to prevent the breach of the obligation. The plaintiff's right arises only when the obligation cast upon the Municipal Board is performed, that is to say, after the Municipal Board has relinquished the land in favour of the Collector. But the plaintiff's right cannot be defeated because the Municipal Board chooses not to perform its obligation. In our opinion the Courts have power to prevent the breach of an obligation in circumstances like the present.

32. It is next urged that the relief for demolition of construction should not be awarded to the plaintiff because the Collector may, having regard to the fact that Mangi Lal has made valuable construction upon a portion of land sold to him, decide to sell the land to him instead of to the plaintiff. It has been further pointed out that the delay in the institution of the suit and the balance of convenience both indicate that the relief for demolition should be refused. The land in suit was acquired in 1915 or 1916. The Municipal Board decided that the park will not be laid on the land in 1926. For ten years the land lay vacant and it was sold in 1936 and a house worth rupees twenty-five thousand was constructed by Mangi Lal between the years 1938 and 1940, the suit was instituted in the year 1942.

33. It is true that the sales had been challenged by the plaintiff by means of an application to the Collector probably before the constructions were made but after considering all these facts the finding of the lower appellate Court is :

"Mangi Lal could very well plead that he had acted in the bond fide belief that a valid title could be passed by the Municipal Board.... So far as Mangi Lal is concerned I am of opinion that there is no clear evidence that he had acquired the sale deeds by mala fide and collusive action in a conspiracy with the Municipal Board."

In view of this finding and in view of the circumstances that the Collector may in the circumstances of the case justifiably refuse to offer the land sold by the Municipal Board to Mangi Lal to the plaintiff, it will not be proper to issue an injunction to the Municipal Board in respect of the sale to Mangi Lal. If an injunction is not to be issued, no purpose will be served by a declaration that the sale deed in favour of Mangi Lal is invalid. Courts do not grant a declaration when it is of no utility and can be ignored by the parties concerned.

34. We, therefore, think that so far as Mangi Lal's sale deed is concerned no declaration should be granted, 35 The result, therefore, is that we allow the appeal of the plaintiff in part and grant an injunction that within four months from today's date the Municipal Board of Mathura, defendant 1, do relinquish in favour of the Collector, the land comprised in the sale deeds executed in favour of defendants 4 and 6 on 30-9-1936, 1-9-1937 and 8-11-1937. to be disposed of by the Collector according to law. We affirm the declaration that these three sale deeds were illegally made and are void.

36. We allow the cross-objection of Mangi Lal and dismiss the plaintiff's suit in its entirety as against him.

37. The plaintiff will have his costs in all the Courts from defendants 1 and 4. The plaintiff will get *ex parte* costs of the trial Court only as against Dr. (Capt.) Suri, defendant 6 Mangi Lal will bear his own costs in all the Courts.