Laxman Purshottam Pimputkar vs State Of Bombay And Others on 13 December, 1962

Equivalent citations: 1964 AIR 436, 1964 SCR (1) 200, AIR 1964 SUPREME COURT 436, 1964 (1) SCJ 180, 1964 (1) SCR 200, 1964 MAH LJ 350, 1964 66 BOM LR 129

Author: J.R. Mudholkar

Bench: J.R. Mudholkar, Syed Jaffer Imam, N. Rajagopala Ayyangar

PETITIONER:
LAXMAN PURSHOTTAM PIMPUTKAR

Vs.

RESPONDENT:
STATE OF BOMBAY AND OTHERS

DATE OF JUDGMENT:
13/12/1962

BENCH:
MUDHOLKAR, J.R.
BENCH:
MUDHOLKAR, J.R.
IMAM, SYED JAFFER
SUBBARAO, K.
AYYANGAR, N. RAJAGOPALA

CITATION:
1964 AIR 436 1964 SCR (1) 200
CITATOR INFO :
R 1965 SC1767 (4,17)
R 1974 SC 111 (2)

ACT:
Watan Lands-Resumption-Government's order directing resumption-If can be reviewed by Government-Bombay Hereditary Offices Act, 1874 (Bom. 3 of 1874) ss. 12, 74, 79.

HEADNOTE:
In 1944, the plaintiff moved the Government for resumption of Watan Lands which were in the possession of defendants 2 to 4 and for making them over to him. The Government, after causingsome enquiry to be made, resumed those lands by

its orderdated October 9, 1946, and directed their restoration to the plaintiff. Thereafter, the defendants moved the Government for reconsideration of that order, and the Government modified its previous order by directing that the defendants who were in possession of the lands, should continue to retain them but they should pay such rent as may be fixed by the Government from time to time.

The plaintiff instituted a suit for a declaration that the order of the Government modifying the order of October 9, 1946, was null and void and inoperative. It was contended that the order made by Government on October 9, 1946, was a judicial order passed by the Government in exercise of its revisional jurisdiction under s.;79 of the Watan Act, and it was not competent for the Government to revise or review that order in the absence of a provision in the Act empowering the Government to do so. The suit was decreed by the trial court, but the District Judge set aside the decree and the High Court confirmed his decision. The plaintiff came to this Court by Special leave.

Held, that the decision of the trial court was correct and the Government was not competent to modify the order dated October 9, 1946. The scheme of certain sections of Part II of the Bombay Hereditary Offices Act, 1874, including ss. II and 12, discloses that a judicial or quasi- judicial duty is imposed on the Collector to decide what is in effect a lis or quasi-lis between the, Watandar and the alience of the Watan land. The whole process, including the order made under s. ∂f the Act, is quasi-judicial and not administrative. As the order made by

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the Collector under S. 12 is not ;in administrative order but a quasi-judicial order, it can be rectified or modified or set aside by the Commissioner in appeal or by the State Government in revision under S. 79 and not otherwise.

When an authority exercises its revisional powers, it necessarily acts in a judicial or quasi-judicial capacity. Hence, the order of the Government dated October 9, 1956, must be deemed to be a judicial or quasi-judicial order. Such an order cannot be set aside or revised or modified just as an administrative order can be revised or modified under S. 74. Finality attaches to the Government's order under S. 79 and in the absence of any express provision empowering it to review the order, the subsequent order passed by the Government was ultra vires and beyond its jurisdiction.

An order will be deemed to be of quasi-judicial character not only when there is a contest between one individual and another but also when the contest is between an authority purporting to do an act and a person opposing it, provided the statute imposes a duty oil the authority to act judicially.

No period of limitation is specified in the Watan Act for preferring an application for revision. Normally, the

Government would not interfere unless moved within a reasonable time. What should be considered as a reasonable time in a particular case, is a matter entirely for the Government to consider. In this case, the Government thought that it had strong reasons for interfering even after a Ion, lapse of time, and that is why it interfered.
It is settled law that civil courts have the power and jurisdiction to consider and decide whether a tribunal of limited jurisdiction has acted within the ambit of the powers conferred upon it by the statute to which it owes its existence or whether it has transgressed the limits placed on those powers by the legislature.
Gullapalli Nageswara Rao v. Andhra Pradesh Road Transport Corporation, [1959] 1 S. C. R. 319, Board of High School and Intermediate Education, U.P. Allahabad v.Ghanshyam Das Gupta, [1962] Supp.3 S. C. R. 36, Robinson v.Minister of Town & Country Planning,[1947] I All. E. R.851, Franklin v. Minister of Town and A. C. 87, Ramrao Jankiram Kadam v. State of Bombay, [1963] Supp. I S. C. R. 322, Shrimant Sardan Bhujangarao Daulatrao Ghorpade v. Shrimant Malojirao Daulatrao Ghorpade, [1952] S.C. R. 402, Province of Bombay v. Hormusji Manekji,(1947)
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L. R. 74 I. A. 103 and The Secretary of State v. Musk & Co. I. L. R. 1940 Mad. 599, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 206 of 1960. Appeal by special leave from the judgment and decree dated February 17, 1955, of the Bombay High Court in Second Appeal No. 1533 of 1952.

P. K. Chakravarti for B. C. Misra, for the appellant. N. S. Bindra, S. B. Jathar and P.D. Menon for R.H.Dhebar, for respondent No. 1.

K. V. Joshi and Ganpat Rai, for respondents Nos. 2--4. 1962. December 13. The judgment of the Court was delivered by MUDHOLKAR, J.-This is an appeal by special leave from the judgment of the High Court of Bombay affirming the decree of the District judge, Thana, setting aside the decree in favour of the Plaintiff-appellant.

The relevant facts which are no longer in dispute are these : Tile plaintiff's family are grantees of the Patilki Watan of some villages in Umbergaon taluka of the Thana District of Maharashtra, including the villages of Solsumblha, Maroli and Vavji. Defendants 2 to 4 also belong to the family of the plaintiff. The plaintiff represents the seniormost branch of the family while the defendants 2 to 4 represent other branches. The dispute with which we are concerned in this appeal relates to the Patilki of Solsumbha. Under the Bombay Hereditary Offices Act, 1874 (111 of 1874) the person who actually performs the duty of a hereditary Office for the time being is called an Officiator. It is

common ground that the Officiator had been selected from the branch of the plaintiff from the year 1870 in which year the propositus Krishna Rao Pimputkar died. After his death he was succeeded by his eldest son Vasudev, upon whose death in 1893 his eldest son Sadashiv was the Officiator. Sadashiv died in 1901 and was succeeded by Purshottam, who was Officiator till the year 1921 when, because of the disqualification incurred by him, a deputy was appointed in his place. After the death of Pursliottam in 1940 his son the plaintiff-appellant Laxman became the Officiator. In the year 1914 the descendents of Krishnarao, who were till then joint, effected a partition of the family property which consisted of inam and Watan lands in various villages including the villages of Solsumbha, Maroli and Vavji.The document embodying the partition is Ex. 49.Under that partition lands which had so far beenassigned for remuneration of the Patilki of Solsumbha were allotted to the branch of the defendants while some other lands were given to the branch of the plaintiff. It would appear that Purshottam had not subscribed to the partition deed in the beginning but later on he appears to have acquiesced in it and apparently for this reason it has been held by the Courts below that he was a party to the partition. It may be mentioned that after Purshottam bad incurred a disqualification, the deputies who acted for him were not allowed to take possession of the lands of Solsumbha which are now in dispute inspite of the objections raised by these persons. They were instead allowed a remuneration of Rs. 240/-per annum which was to be paid by the members of the family in possession of the Watan lands. This position continued till 1946.

It maybe mentioned that after the death of purshottam the plaintiff was initially appointed Patil for five years. But eventually he was appointed officiator for life.

In the year 1944 the plaintiff moved the Government, vide Ex. 47, for the resumption of the Watan lands which were in the possession of defendants 2 to 4 and for making them over to him. The Government, after causing some enquiry to be made, resumed those lands by its order dated October 9, 1916, Ex. 36, and directed their restoration to the plaintiff. The defendants thereafter moved the Government for reconsideration of that order. The Government eventually modified its previous order by directing that the defendants 2 to 4, who were in possession of the lands, should continue to retain it but that they should pay such amount of rent as may be fixed by Government from time to time. This order was passed on May 2, 1947, and by virtue of that order the rent payable by defendants 2 to 4 was raised from Rs. 240/- to Rs. 1,000/-. The plaintiff thereupon instituted the suit out of which this appeal arises for a declaration that the order of the Government dated May, 2,1949, and an ancillary order dated March, 1, 1 94-9, are null and void and inoperative; that the defendants should remove "all obstruction,, and hindrances caused to the property acquired by the plaintiff as Watan grant..... and that they should give the same into the plaintiff's Possession"; that the defendants should render to the plaintiff the account of the income from his property and pay him the costs of the suit.

The suit was resisted by the defendants, the first of whom was the State of Bombay, (now Maharashtra) on various grounds. The main grounds were that the orders complained of were administrative orders and no suit lies to set them aside, that the suit was barred by the provisions of s. 4

(b) of the Bombay Act 10 of 1876 and that the suit was barred by limitations It may, however, be mentioned that when the defendants preferred an appeal before the District judge they confined their attack to the decree to one ground only and that was about the competance of Government to reconsider the order of 1946.

The plaintiff's contention that the order made by Government on October 9, 1946, was a judicial order passed by the Government in exercise of its revisional jurisdiction under s. 79 of tile Watan Act and that it was not competent to the Government to revise or review that order in the absence of a provision in the Act empowering the Government to do so. It is not disputed that alienation of Watan lands without the sanction of the Government is prohibited by s. 5 of the Watan Act. Similarly the alienation of Watan lands assigned as remuneration without the sanction of the Government is prohibited by s. 7 of the Act. Section 11 empowers the Collector, after recording his reasons in writing, to declare certain types of alienations to be null and void. Section 12 provides that it shall be lawful for the Collector whenever it may be necessary in carrying out the provisions of certain sections, including s. 11 (a) to summarily evict any person wrongfully in possession of any land or (b) to levy any rent due by any person in tile manner that may be prescribed in any law for the time being in force for the levy of a revenue demand. According to the defendants the discretion conferred upon the Collector by s. 12 -either to evict a person in wrongful possession of any land or to require him to pay rent with respect to it is of an administrative nature and, therefore, the order of the Collector made under s. 12 can be varied from time to time by the Collector or can be challenged by the party aggrieved only in the manner provided by the Act, that is, by preferring an appeal or an application in revision and in no other manner. Undoubtedly, if the order is of an administrative nature it would be beyond the purview of the juris-

diction of the civil court. The first question to be considered is whether the order of a Collector under s. 1' is administrative in character. It has to be borne in mind that before action is taken under s. 12, the collector has to make a declaration under s.11. This declaration has to be supported by reasons in writing and, therefore, it follows that it can be made only after holding an enquiry which means that the Collector has to hear both the parties and consider such evidence, oral and documentary, as may be adduced by them before him. So far, therefore, the procedure must be considered as quasi-judicial in character. This Court has held in Gullapalli Nageswara Rao v. Andhra Pradesh Road Transport Corporation(1), as well as recently in Board of High School and Intermediate Education U.P. v. Ghanshyam Das Gupta(2), that an order will be deemed to be of quasi-judicial character not only when there is a contest between one individual and another but also when the contest is between an authority purporting to do an act and a person opposing it provided the statute imposes a duty on the authority to act judicially. Section 12 undoubtedly confers discretion on the Collector to make an order of one of two kinds, after he declares that an alienation is null and void. The order of the Collector in exercise of his discretion affects the rights of parties to property and is further open to challenge before the Commissioner and the State Government under sections 77 and 79 of the Watan Act respectively. It is therefore difficult to appreciate how the order can be regarded as administrative. Mr. Bindra who appears for the State,however,contends that though the enquiry contemplated bys. I I may be regarded as a quasi-judicial proceeding the ultimate decision of the Collector either to restore the property to the Watandar or to confirm the possession of the person in actual possession thereof and make him

liable to pay rent is not the exercise of a quasi-judicial function but is purely an administrative function. He contends that the (1) [1959] Supp, 1 S C.R 319.

(2) [1962] Supp. 2 S.C.R. 36.

Collector has to exercise his discretion one way or the other in the light of the policy of the Government and refers in this connection to the provisions of s. 74 of the Watan Act. That section provides that the proceedings of the Collector shall be under the general control of the Commissioner and of the State Government. It may be borne in mind, however, that the collector has been given various kinds of powers and is required to perform numerous duties under the Act, some of which are administrative in character. Since the decision taken by the Collector cannot properly be reached by exercising the appellate jurisdiction of the Commissioner and of the State Government, as the case may be, it was necessary to incorporate a general provision of this kind. The right of appeal conferred by s. 77 extends only to decisions of the Collector or other authorities inferior to the Collector only in respect of decisions rendered by them after investigation recorded in writing and not against each and every decision rendered by them. Section 73 of the Act requires investigation to be recorded in writing in respect of orders made under certain parts of the Act. But apart from that provision there are other provisions like s. 11 which provide for recording of reasons in writing which by implication also require investigation by the Collector. These provisions do not represent the totality of the Collector's power under the Act. Section 74 is thus clearly a provision which relates to orders made by the Collector without making any investigation in writing. This provision, therefore, does riot assist the defendants. Relying upon the decision in Robinson v. Minister of Town and Country Planning(1), and other decisions in that category Mr. Bindra contended that the Collector's quasi- judicial function ended with the declaration that the alienation wits null and void and the decision pursuant to it which he took under s. 12 thereof was purely administrative. Apart from the (1)[1947] 1 All. E.R. 851.

fact that the decision in Robinson's case (1), and other decisions taking similar view have been criticised in England (see Griffith and Street, Principles of Admi- nistrative Law, p. 168 and Robson,Justice and Administrative Law, p. 533) we may point out that the scheme of the statute which was considered in those decisions is different from that of Part II of the Watan Act which contains ss. 11 and

12. The Town and Country Planning Act, 1944, with which Robinson's case(1), deals confers a discretion on the Minister to accept wholly or with modification or reject a scheme prepared by a local authority. For a certain purpose that Act requires that the Minister has to cause an enquiry to be made by the Inspector or to make an enquiry himself and it has been held that such an enquiry is quasi-judicial in nature. After the enquiry is made it is for the Minister to exercise his authority under the Act and to accept wholly or in a modified form or reject the scheme. The Courts in England have held that proceedings under the Act are administrative in nature except to the limited extent that the enquiry is to be made in consonance with the principles of natural justice. Whether the view taken by the Courts in England is right or wrong it is sufficient to say that the nature of proceedings as well as what is required to be done under the English Act is something quite different from the nature of proceedings or what is required to be done under the relevant provisions of the

Watan Act. Here, as Mr. Bindra himself concedes, the whole of the enquiry is not administrative in charactcr. In fact its foundation is a lis between two parties: it Watandar out of possession and an alienee in possession of Watan property. When the final order is made by the Collector under s. 12 this lis comes to an end and, therefore, there is no scope for the contention that any part of the proceeding is administrative in character. Even in an ordinary suit there are matters which are in the discretion of the court, as for instance, awarding costs or (1) [1947] 1 All. E.R. 851.

fixing the rate of interest or of granting one relief instead of another. But merely because discretion is conferred on it in dealing with a particular matter, it cannot be contended that while exercising that discretion the Court acts otherwise than in the exercise of its judicial function. The proceedings before the Collector are of course not judicial but they are certainly quasi-judicial and where the Collecter has to exercise a discretion for giving effect to his decision that a certain alienation is null and void it would not be permissible to say that all of a sudden his act ceases to be a quasi-judicial act and becomes an administrative one. The declaration made by him under s. I I that an alienation is null and void is by itself of little help to the Watandar and can be effectuated only after an order is made by the Collector under s. The provisions of these two sections are thus interlinked and it is difficult to conceive that as the proceedings progress their quasi-judicial nature degenerates into an administrative one, We may recapitulate that the Collector's order under s. 12 is appealable but not so the order of the Minister. This, in our opinion, is an important distinction between the class of cases of which Robinson's case, (1) is representative, and the present case.

We may refer to the decision in Gullapalli Nageswara Rao's case(2), where this Court has considered the decision in Robinson's case (1), as also that in Franklin v. Minister of Town, and Country Planning (3). While dealing with the argument advanced before it that the Government, in considering a scheme provided for road transport service under- s. 68(c) of the Motor Vehicles Act, was discharging an administrative function, one of us (Subba Rao, J.) speaking for the majority of the Court has observed as follows :-

> "A comparison of the procedural steps under both the Acts brings out in bold relief
> the (1) [1947] 1 All. E.R. 851.
>
> (2) [1959] Supp. 1 S.C.R. 319.
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> (3) [1948] A.C, 87.

nature of the enquiries contemplated under the two statutes. There, there is no lis, no personal hearing and even the public enquiry contemplated by a third party is presumably confined to the question of statutory requirements, or at any rate was for eliciting further information for the Minister. Here, there is a clear dispute between the two parties. The dispute comprehends not only objections raised on public grounds, but also in vindication of private rights and it is required to be decided by the State Government after giving a personal hearing and following the rules of judicial procedure. Though there may be sonic justification for holding, on the facts of the case before the House of Lords that that Act did not contemplate a judicial act-on that question we do not propose to express our opinion-there is absolutely none for holding in the present case that the Government

is not performing a judicial act. Robson in 'Justice and Administrative Law', commenting upon the aforesaid decision, makes the following observation at p.533:

> `It should have been obvious from a cursory glance at the New Towns Act that the rules of natural justice could not apply to the Minister's action in making an order, for the simple reason that the intiative lies wholly with him. His role is not to consider whether an order made by a local authority should be confirmed, nor does he has to determine a controversy between a public authority and private interests. The responsibility of seeing that the intention of Parliament is carried out is placed on him'."
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> The aforesaid observations explain the principles underlying that decision and that principle cannot have any -application to the facts of this case. In 'Principles of Administrative law' by Griffith and Street, the following comment is found on the aforesaid decision: After considering the provision of s. 1 of the New Towns Act, 1946, the authors say-
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> 'Like the town-planning legislation, this differs from the Housing Acts in that the Minister is a party throughout. Further, the Minister is not statutorily required to consider the objections. It is obvious, as the statute itself states that the creation of new towns is of national interest.' (pp. 349-
>
> 50).

After concluding the above passage he observed:

> "It is therefore clear that Franklin's case is based upon the interpretation of the provisions of that Act and particularly on the ground that the object of the enquiry is to further inform the mind of the Minister and not to consider any issue between the Minister and the objectors. The decision in that case is not of any help to decide the present case which turns upon the construction of the pro- visions of the Act. For the aforesaid reasons, we hold that the State Government's order under s. 68-D is a judicial Act."

As we have already said the scheme of certain sections of Part II of the Watan Act, including ss. 11 and 12 also discloses that a judicial or quasi-judicial duty is imposed on the Collector to decide what is in effect a lis or quasi- lis between the Watandar and the alience of the Watan land. We must, therefore, hold that the whole process, including the order made under s. 3 of the Act, is a quasi-judicial one and not administrative as contended for' by the defen- dants-respondents.

Since the order made by the Collector under s. 12 is not an administrative order but a quasi-Judicial order it can be rectified or modified or set aside by the Commissioner in appeal or by the State Government in revision under s. 79. It is not a kind of order which can be reached tinder s. 74. Section 79 provides that the State Government may call for and examine the record of the

proceedings of any officer for the purpose of satisfying itself as to the legality or propriety of any order passed and may reverse or modify the order as it seem fit or if it seems necessary may order a new enquiry. Now, in the year 1944 when the plaintiff moved the State Government by petition it returned the petition to him on November 28, 1944, with the remark that he should apply to the Collector of Thana in the first instance and then if' necessary to the Commissioner, Northern Division. The plaintiff was also informed that if he was not satisfied with the orders passed, he may approach the Government, presumably by preferring an application for revision. At the foot of the letter r. 11 of the Petition Rules was set out. the relevant portion of which runs thus :

> "Government, however, will not receive a Petition on any matter, unless it shall appear that the petitioner has already applied to the Chief Local Authority, and where such exists, to the controlling authority. The petitions to the chief local and to the controlling authorities or copies of them and the answers to or orders upon those petitions in original, or copies of them, must be annexed to all petitions addressed to Government....."

The plaintiff sent a reply to the aforesaid letter of the Government on December 15, 1944, and enclosed with it a copy of the application made by him to the Collector, Thana, together with his order of March 20, 1925, and said :

> "In 1924 a revision application to the Collector of Thana was preferred. The Collector in his reply informed us on the authority of the Commissioner's decision that our case could not be considered (order No. W. T. N. No. 5 of 1925--Copy enclosed Ex. 7). It is against this order that the present appeal is being submitted. As the Collector has informed us on the authority of the Commissioner we think it is no use approaching the Commissioner again against the very decision already confirmed by him.
>
> I, therefore, approach Government with a request that a full and proper justice be done to my case which both on the question of facts and of law deserves careful consideration. With reference to paragraph 2 of your letter it may be mentioned that we have already approached the Collector of Thana and copy of his order was attached to my previous peti- tion also. It is being resubmitted for your kind consideration."

After receiving this letter the Government caused a thorough enquiry to be made by the revenue officials in the presence of the parties and after giving them opportunity to adduce such evidence as they wished to. The proceedings of the subordinate officers, along with their reports, were in due course submitted to the Government and it was on the basis of this report that the Government made an order in October, 1946, restoring possession of the Watan lands to the plaintiff. It is true that the order does not say that it was passed under s. 12 (a) of the Act read with s. 79 thereof, but since both these provisions taken together give power to the Government to make an order of the kind Which it -made in October, 1946, its order must be held to have been made under those provisions. When an authority exercises its revisional powers it necessarily acts in a judicial or quasi-judicial capacity. Therefore, the Government's order of October, 1946, must be deemed to be a

judicial or a quasi-judicial order. Such an order cannot be set aside or revised or modified just as an administrative order can be under s. 74. Finality attaches to the Government's order under s. 79 and in the absence of any express provision empowering it to review the order we are clear that the subsequent order made by the Government on May 2, 1947 is ultra vires and beyond its jurisdiction. We must, however, notice the contention raised, though faintly, by Mr. Bindra that the Government could not be deemed to have dealt with the matter in a quasi-judicial capacity under s. 79 because the order revised by it was more than 20 years old. It is sufficient to say that no period of limitation is specified in the Act for preferring an application for revision. of course, normally the Government would not interfere unless moved within reasonable time. But, what should be considered as a reasonable time in a particular case would be a matter entirely for the Government to consider. Apparently in this case the Government thought that it had strong reasons for interfering even after a long lapse of time and that is why it interfered.

Mr. Joshi who appears for the defendants 2 to 4 sought to support the decision of the High Court by resort to the provisions of s. 4 (a) of the Bombay Revenue Jurisdiction Act, 1876. That section reads thus :

> " Subject to the exceptions hereinafter appea-
>
> ring, no Civil Court shall exercise jurisdiction as to any of the following matters :
>
> (a) claims against the Government relating to any property appertaining to the office of any hereditary officer appointed or recoganised under Bombay Act No.1874 or any other law for the time being in force,...."

He points out that in the plaint, the plaintiff has specifically sought relief against the State Government and in this connection referred to prayers 1 and 2 of the plaint. In prayer No. 1 the plaintiff sought a declaration to the effect that the orders passed by the Government on May 2, 1947, and March 1, 1949, are null and void and inoperative. In prayer No. 2 he asked that all the defendants be ordered to remove "their obstructions and hindrances" to the possession of the property which is the plaintiff's Watan property, and further ordered to deliver the possession of the property to him. It seems to us, however, that prayer No. 1 was really redundant because if the orders referred to therein were without .jurisdiction and thus null and void it was not necessary to set them aside. Therefore, by making a prayer of that kind it cannot be said that the plaintiff had sought any relief against the State Government. As regards the second prayer it seems to us that the inclusion of the State Government therein was a slip because it is nobody's case that the Government is in possession of the lands or is actively obstructing the plaintiff in getting back its possession. We would, therefore, read the second prayer as referring to defendants 2 to 4 only. Reference was also made by learned counsel to the third prayer in which the plaintiff has asked for the accounts to be taken of the income obtained by the defendants from January 6,1942 till the date of suit and subsequently. Here again, though the defendants generally have been referred to, the plaintiff must be deemed to have meant only those defendants who were in actual physical, possession of the property and earning income therefrom and enjoying it. It was., however,

represented to us that during the period of possession defendants 2 to 4 have been crediting certain amounts to the treasury for paying the remuneration of the officiator and since they will be entitled to the credit for these amounts the Government was a necessary party. In our opinion that question has no relevance to prayer No. 3 made by the plaintiff. What he wants is the accounts of rents and profits and he is not concerned with any claim which defendants 2 to 4 may have against the Government. Therefore, considering all these prayers together we are of opinion that no relief was in fact sought against the Government and it was made only a formal party to the suit. If that view is correct the provisions of s. 4 (a)of the Bombay Revenue jurisdiction Act, 1876 will not stand in the way.

This Court, while dealing with an objection that the suit was barred by the provisions of s. 4 (c) of the Bombay Revenue jurisdiction Act has observed recently in Ramrao Jankiram Kadam v. The State of Bombay (1), as follows :

> "As to the applicability of s. 4 (c), it would be noticed that resort to the Civil Courts is barred only as regards certain specified classes of suits in which the validity of sales for arrears Land Revenue are impugned. The classes so specified are those in which the plaintiff seeks to set aside sales on account of irregularities etc. other than fraud. The provision obviously assumes that there is in existence a sale though irregular under which title has passed to the purchaser and that that sale has to be set aside, on grounds other than fraud, before the plaintiff can obtain relief. Where however there is only a purported sale which does not pass title and the suit is for recovery of possession of property ignoring such a sale, the provision and the bar that it creates have no application."

Thus it would be clear that where something done or an order made is no act or order in law at all because it is without jurisdiction and null and void, (1) [1963] Supp. 1 S.C.R. 322, the provisions of s. 4 are not attracted. We may, however, refer to a decision of this court in Bhujangtao Daulatrao v. Malojirao Daulatrao (1), which is claimed to support the contention of the defendants. In that case a suit was instituted by a Saraniamdar in which the representatives of two other 'branches of the Saranjam family and the province of Bombay were impleaded as defendants. It was alleged by the plaintiff that a certain resolution passed by the Government in the year 1936 modifying the previous resolution passed by the Government in the years 189-1 and 1932 by declaring that the portion of the estate held by the branches shall be entered as de facto shares and that each share shall be continuable hereditarily as if it were a separate saranjam estate was ultra vires and for a further declaration that the plaintiff had the sole right to all privileges appertaining to the post of saranjamdar and also sought in injunction restraining the defendants from doing any act in contravention of the plaintiff's right. The suit was held by this court to be barred by s. 4 of the Bombay Revenue jurisdiction Act. This court held that the suit was a suit against the Crown and also a suit relating to lands held as Saranjam within the meaning of s. 4 of the Bombay Revenue jurisdiction Act and that civil courts had no jurisdiction to entertain it. Further this court held that the plaintiff could not be given reliefs against defendants I and 2 alone as the right claimed against these defendants could not be divorced from the claim against the Government and considered separately. The decision in The Province of Bombay v. Hormusji(2) was cited before this court in

support of the contention that civil courts have jurisdiction to decide whether the Government acted in excess of its powers. Bose, J., who delivered the judgment of the court, however, expressed the opinion that that decision would not apply and then he observed ,Is follows :-

> "As pointed out by Strangman, K.C., on behalf (1) [1952] S.C.R. 402. (2) (1947) L.R. 74 I.A. 103.

of the plaintiff-respondent 'authorised' must mean 'duly authorised', and in that particular case the impugned assessment would not be duly authorised if the Government Resolution of' 11-4-1930 purporting to treat the agreement relied on by the respondent as cancelled and aurhorising the levy of the full assessment was ultra vires under section 211 of the Land Revenue Code. Thus, before the exclusion of the Civil Court's jurisdiction under section 4

(b) could come into play, the Court had to determine the issue of ultra vires. Conse- quently, their Lordships held that that question was outside the scope of the bar.

But the position here is different. We are concerned here with section 4 (a) and under that no question about an authorised act of Government arises. The section is general and bars (ill 'claims against the Crown relating to lands..... held as Saranjam.' That is to' say, even if the Government's act in relation to such lands was ultra, vires, a claim impugning the validity of such an act would fall within the scope of the exclusion in clause (a) provided it relates to such land."

It is settled law that the civil courts have the power and jurisdiction to consider and decide whether a tribunal of Iimited jurisdiction has acted within the ambit of the powers conferred upon it by the statute to which it owes its existence or whether it has transgressed the limits placed on those powers by the legislature. The decision in Hormusiji Maneklal's case (1), proceeds on the basis of this rule. There are a number of decisions in the books in which this principle has been stated and followed. One such decision is The Secretary of State v. Musk & Co.(2), in which the judicial Committee has observed thus :

> It is settled law that the exclusion of the Civil Courts is not to be readily inferred, but that (1) (1947) L.R. 74 I.A. 103. (2) I.L.R. 1940 Mad,_599 such exclusion must either be explicity 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." (p. 614).

We do not think that it was the intention of this court to over-rule a rule which has been firmly established. Had that been the intention, we would have found a fuller discussion of the question.

In the course of the judgment Bose, J., pointed out that there was difference of opinion in the Bombay High Court as to whether s. 4 is attracted if the only relief sought against the Government is a declaration and expressed agreement with the view that s. 4 applies even where the relief sought against Government is only a declaration. As we have pointed out this part of the judgment does not

help the defendants' case because no declaration against the Government was at all necessary. Indeed the plaintiff could ignore the two orders complained of by him as being without jurisdiction and null and void and proceed to seek the relief of possession on the strength of the earlier order made by the Government in October, 1946.

For these reasons we reverse the decision of the High Court which affirmed that of the District Court and restore the decision of the trial court. Costs throughout will be borne by the defendants.

Appeal allowed.