Chinto and Kartaro v. Narinjan Singh and others

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of fraud; there is not the slightest suggestion that the daughters accepted or retained any benefits of the transaction in the course of which the admission was made. The admission cannot, in my opinion, operate to prevent the daughters from questioning the validity or correctness of the statement made by them. There is not an iota of evidence on the record to justify the assertion that this admission was made as the result of a compromise, for there was no arrangement of the dispute by concessions on both sides. If there was no compromise it cannot be said that the daughters repudiated the compromise so far as the terms were not favourable to them and accepted the compromise so far as the terms were favourable to them.

For these reasons I am of the opinion that the appeal is well within time, that the plaintiffs, who are collaterals of Udmi have no right or interest in the property of Badhawa, that the admission of the daughters is not binding on them and that the Courts are not precluded from deciding the rights of the parties on a true view of the law. I would accordingly accept the appeal, set aside the order of the learned Single Judge and dismiss the plaintiffs' suit with costs throughout.

Tek Chand, J.

TEK CHAND, J.—I agree.

CIVIL WRIT

... *Before Bishan Narain, J.*

M/s. SITA RAM-GURDAS MAL,—*Petitioner*

versus

COLLECTOR OF THE CENTRAL EXCISE AND ASSISTANT COLLECTOR, CENTRAL EXCISE, AMRITSAR,—*Respondents.*

Civil Writ No. 11 of 1955.

1957

May 7th

Sea Customs Act (VIII of 1878)—Sections 182, 188 and 191—Proceedings under—Nature of—Whether quasi-judicial—Principles of natural justice—Whether to

be observed when adjudging the duty payable by an importer—"To decide in a judicial manner"—Meaning of—Administrative tribunals and quasi-judicial tribunals—Distinction between—Principles to be observed by quasi-judicial tribunals—Doctrine of natural justice.

Held, that under section 182 of the Sea Customs Act, the Assistant Collector has to "adjudge" the increased rates of duty, etc., payable by the importer. This adjudication is subject to appeal under section 188 and subject to revision under section 191 of the Act. It affects the pecuniary liability of the importer and may seriously prejudice his rights to carry on his business. The word "adjudge" implies a judicial decision and the dispute between the customs authorities and the importer under section 182 of the Act involves a judicial approach and a judicial decision. The proceedings before the customs authorities are, therefore, quasi-judicial in nature and it is incumbent on the customs authorities to follow the elementary rules of natural justice and to give an aggrieved party an opportunity of being heard before an order under section 182 of the Act is passed. The fact that there is no procedure prescribed to be followed by customs authorities in the matter of adjudication of the duty payable, etc., does not conclusively determine that the said authorities are absolved from observing the doctrine of natural justice.

Held also, that to decide in a judicial manner involves that the parties are as a matter of right to be heard in support of their claim and to adduce evidence in support of it and that the authority has to decide the matter on a consideration of the evidence produced before it. If the decision is to be made by the authority on a purely subjective view of the matter, then it is the exercise of administrative and executive functions. On the other hand if the decision is to be made objectively on the impersonal and impartial consideration of facts and law of the case, then it is judicial function. When judicial function is to be exercised by an administrative tribunal then the tribunal, while exercising that function, may be called a quasi-judicial tribunal as distinct from an ordinary Court of law. In the exercise of quasi-judicial function the doctrine of natural justice must be observed and complied with by the tribunal if no procedure is laid down in the statute unless such compliance is expressly or by necessary implication excluded by the provisions of the statute under which the function is exercised.

Held further, that the doctrine of natural justice in substance only means that the interested parties should have a fair and reasonable chance of putting their case before the authority or in other words they should have a fair and reasonable hearing. This doctrine is not concerned with the form of the proceedings taken but with the substance of the matter.

Maqbool Hussain v. *State of Bombay* (1), distinguished. *Bharat Bank* v. *Employees of Bharat Bank* (2), *Virindar Kumar Satyawadi* v. *The State of Punjab* (3), *Ponnamma* v. *Arumogam and others* (4), *Bharat Insurance Co., Ltd., Delhi* v. *The State of Delhi and another* (5), *Ganesh Mahadev* v. *The Secretary of State for India* (6), *Assistant Collector* v. *Soorajmull* (7), referred to.

Petition under Article 226 of the Constitution of India for a writ in the nature of certiorari quashing the orders of the Collector of the Central Excise, New Delhi, and Assistant Collector, Central Excise, Amritsar, Respondents, dated the 24th December, 1951, and 4th August, 1952, and further praying that a writ in the nature of mandamus *be issued directing respondent No. 1, to refund the sums of Rs. 2,036-0-3 and Rs. 2,126-12-0 in respect of Bill Nos. 155 and 216 and to grant such further relief as may be necessary.*

BHAGIRATH DASS, for Petitioners.
HAR PARSHAD, for Respondents.

ORDER.

Bishan Narain, J. BISHAN NARAIN, J.—The firm Messrs. Sita Ram-Gurdas Mal carries on the business of imports and exports in Amritsar. It imported 25 cases of acacia gum on 14th February, 1951 and another 25 cases on 20th February, 1951. Under the Customs Tariff Rules, 1951, this commodity is liable to customs duty at Rs. 45 per cwt. if it is "unsifted and uncleaned", but

(1) A.I.R. 1953 S.C. 325
(2) A.I.R. 1950 S.C. 188
(3) A.I.R. 1956 S.C. 153
(4) (1905) A.C. 383—390
(5) 1952 P.L.R. 179
(6) I.L.R. (1918) 43 Bom. 221
(7) 56 C.N. 452

if it is found to be "sifted and cleaned", then *ad valorem* duty is payable. The customs authorities classified the goods as "sifted and cleaned" and charged Rs. 8,245-9-0 and Rs. 8,492-10-0 as import duty on both the items. The petitioner paid the duty under protest and then claimed refund of Rs. 2,332-14-3 and Rs. 2,968-7-0 on the ground that the goods imported were in fact "unsifted and uncleaned". This claim was rejected by the Assistant Collector (Customs) on 26th December, 1951. The firm appealed under section 188, Sea Customs Act, to the Collector, Central Excise, New Delhi, and the appeals were dismissed on 4th August, 1952. The firm then filed petitions for revision under section 191 of the Act to the Central Government. The Central Government made minor deductions in the duty chargeable. The petitioning firm is dis-satisfied with these orders and has filed these petitions (Civil Writs Nos. 11 and 17 of 1955) under Article 226 of the Constitution to get the refund as claimed by it. As the questions involved in these two petitions are common, it will be convenient to decide both of them by this judgment.

It is urged before me on behalf of the petitioner that inasmuch as the impugned orders involve petitioner's rights of property, he was entitled to get an opportunity to be heard before an adverse order was passed against him in the proceedings which were of quasi-judicial nature and that the authorities were bound to observe principles of natural justice in deciding the cases even though no procedure of a hearing is provided in the Sea Customs Act. The respondent's case on the other hand is that the adjudication under section 182 of the Act is in the nature of proceedings *in rem*, that the customs authorities are not judicial tribunals and that the order is a purely administrative order. Further, it is pleaded that in the present cases the Assistant Collector

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(Customs) took samples from the two consignments and that on subsequent verification it was found that the imported goods were "cleaned and sifted". While it is admitted that this subsequent verification was done in the absence of the petitioner from the market, it is pleaded that the petitioner's presence at that time would have defeated the purpose of the verification.

On these pleadings the following two questions require determination in these petitions:—

(1) whether the customs authorities while acting under sections 182, 188 and 191 of the Sea Customs Act are purely administrative bodies and their decision is not quasi-judicial; and

(2) whether in the present cases the proceedings taken to determine the duty leviable were in accordance with the doctrine of natural justice.

I proceed to take up the first point. Their Lordships of the Supreme Court in *Maqbool Hussain* v. *State of Bombay* (1) have held that the customs authorities are not judicial tribunals and the adjudging of confiscation, increased rate of duty or penalty under the provisions of the Sea Customs Act does not constitute a judgment or order of a Court or Judicial tribunal necessary for that purpose of supporting a plea of double jeopardy. In the course of discussion their Lordships after referring to various provisions of the Act observed at page 330.

"All these provisions go to show that far from being authorities bound by any rules of evidence or procedure established by law

(1) A.I.R. 1953 S.C. 325

and invested with power to enforce their own judgments or orders the Sea Customs Authorities are merely constituted administrative machinery for the purpose of adjudging confiscation, increased rates of duty and penalty prescribed in the Act."

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On the strength of these observations, it is argued on behalf of the customs authorities that the proceedings before them are purely administrative and it is not necessary for the authorities to observe the principles of natural justice when fixing duty payable by an importer. This decision of their Lordships of the Supreme Court overrules the decision in *Assistant Collector* v. *Soorajmull* (1) so far as it is held in the Calcutta case that the proceedings before the Customs authorities are judicial in nature. It must, however, be remembered that in *Maqbool Hussain's case* (2) there was no investigation as to whether the proceedings are of quasi-judicial nature. Their Lordships were only concerned with Court of law as distinct from administrative tribunals and they have authoritatively laid down that the customs authorities are purely administrative tribunals. There is, however, no discussion in the judgment whether the proceedings taken by the customs authorities are of quasi-judicial nature or whether they must observe the principles of natural justice when adjudging the duty payable by an importer. The fact that there is no procedure prescribed to be followed by the customs authorities in the matter of adjudication of the duty payable, etc., does not conclusively determine that the said authorities are absolved from observing the doctrine of natural justice. It is well known that various tribunals in this country and elsewhere have been established which exercise judicial functions. Whether a particular function exercised by an

(1) 56 C.W.N. 452
(2) A.I.R. 1953 S.C. 325

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administrative tribunal is a judicial function or not depends on the nature of decision and on the provisions of law according to which that decision is to be made. When a question arises whether an authority created by an Act is a quasi-judicial tribunal, then one has to see if the tribunal has a duty to decide disputes in a judicial manner and declare the rights of parties in a definitive judgment. To decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim, to adduce evidence in support of it and that the authority has to decide the matter on a consideration of the evidence produced before it. If the decision is to be made by the authority on a purely subjective view of the matter, then it is the exercise of administrative and executive functions. On the other hand if the decision is to be made objectively on the impersonal and impartial consideration of facts and law of the case, then it is a judicial function. As I have stated above, when judicial function is to be exercised by an administrative tribunal then the tribunal, while exercising that function, may be called a quasi-judicial tribunal as distinct from an ordinary Court of law [see *Bharat Bank* v. *Employees of Bharat Bank* (1), and *Virindar Kumar Satyawadi* v. *The State of Punjab* (2)]. It is well established that in the exercise of quasi-judicial function the doctrine of natural justice must be observed and complied with by the tribunal if no procedure is laid down in the statute unless such compliance is expressly or by necessary implication excluded by the provisions of the statute under which the function is exercised. Now the doctrine of natural justice in substance only means that the interested parties should have a fair and reasonable chance of putting their case before the authority or in other

(1) A.I.R. 1950 S.C. 188
(2) A.I.R. 1956 S.C. 153

words they should have a fair and reasonable hearing. This doctrine is not concerned with the form of the proceedings taken but with the substance of the matter. Bearing these rules in mind, it is to be seen whether the customs authorities are under obligation to observe the principles of natural justice or not.

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Now, under section 182 of the Act, the Assistant Collector has to "adjudge" the increased rates of duty etc. payable by the importer. This adjudication is subject to appeal under section 188 and subject to revision under section 191 of the Act. It affects the pecuniary liability of the importer and may seriously prejudice his rights to carry on his business. The word "adjudge" implies a judicial decision. It follows that the dispute between the customs authorities and the importer under section 182 of the Act involves a judicial approach and a judicial decision. In *Bharat Bank* v. *Employees of Bharat Bank* (1), the Hon'ble Mr. Justice Mehr Chand Mahajan has observed at page 196—

> "The expression 'adjudication' implies that the tribunal is to act as a Judge of the dispute; in other words, it sits as a Court of Justice and does not occupy the chair of an administrator."

Moreover, the Act permits the importer to file an appeal and then a revision. This, to my mind, is a very strong indication that the legislature intended adjudication by the customs authorities under section 182 and similar provisions to be of quasi-judicial nature. Wharton in his Law Lexican has defined an "appeal" as a judicial examination of the lower Court's decision by the High Court. Lord Davey in *Ponnamma* v. *Arumogam and others* (2), has stated an appeal to be one in which the

(1) A.I.R. 1950 S.C. 188
(2) (1905) A.C. 383 at p. 390

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question is whether the order of the Court from which the appeal is brought was right on the materials which that Court had before it. It follows, therefore, that such a material is to be collected and if that be so then it must be at the instance and in the presence of the parties interested in the matter. It has been held in the *Bharat Insurance Co. Ltd., Delhi* v. *The State of Delhi and another* (1), that if a person has a right of appeal, then he has also a right to be heard. A Division Bench of the Bombay High Court in *Ganesh Mahadev* v. *The Secretary of State for India* (2) and a Division Bench of the Calcutta High Court in *Assistant Collector* v. *Soorajmull* (3) have also held that the proceedings before the customs authorities are quasi-judicial in nature and it is incumbent on the customs authorities to follow the elementary rules of natural justice and to give an aggrieved party an opportunity of being heard before an order under section 182 of the Act is passed. My conclusion, therefore, is that the proceedings under section 182 of the Act are of quasi-judicial nature.

I must now consider whether in the present cases the petitioning firm was given a fair hearing by the customs authorities. The procedure adopted in these cases is not in doubt. At the time of assessment samples were drawn. The customs authorities later on made enquiries in the Amritsar Market and found the imported goods to be "sifted and cleaned". Admittedly the importer was not informed of this enquiry nor was it made in his presence. The reason given for holding the enquiry in the absence of the importer is that otherwise the other traders would not have been honest enough to give correct opinion in the presence of the importer. On 26th December, 1951, the Assistant Collector (Customs) rejected the

(1) 1952 P.L.R. 179
(2) I.L.R. (1918) 43 Bom. 221
(3) 56 C.W.N. 452

importer's claim remarking that on subsequent verification the goods were found to be cleaned and sifted. The importer appealed within time under section 188 of the Act. One of the grounds taken in the appeals was that all such goods imported from Afghanistan are always in their original crude form and there is no factory there to clean or sift acacia gum, and it was stated that this may be got confirmed from the Afghan Embassy in India at New Delhi. The Collector, Central Excise, New Delhi, did not fix any date of hearing of the appeals and dismissed them on 4th August, 1952. His order reads:—

> "Having regard to all the circumstances of the case I find that the gum in question was rightly assessed under section 30 of the Sea Customs Act. The appeal is rejected."

It is not clear what circumstances the Collector took into consideration when deciding the appeals. The petitioning-firm then filed revision petitions under section 191 on the same grounds, but the Central Government declined to interfere. I find it impossible to hold that the procedure adopted in the present cases amounted to granting a fair hearing to the petitioner as at no time was he able to or was called upon to put his case before the authorities. It is true that the Act does not lay down any procedure for holding such an enquiry and it may be that no test has been laid down by the authorities to determine whether or not the imported acacia gum is "sifted and cleaned". That being so reliance has to be placed on the market opinion. I assume for the purposes of these cases that no person in Amritsar who deals in this commodity would in the presence of the petitioner have given correct opinion in an equiry held by the customs authorities, though I find it a little difficult to hold that to be so. Even then it is

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not beyond human ingenuity to hold an honest enquiry in the presence of the importer. The Assistant Collector (Customs) does not even say in his order that he or his nominee had made enquiries in the market with the samples taken from the imported goods and this fact is mentioned for the first time only in the reply filed in this Court. In any case, after the customs authorities had secured an opinion adverse to the importer's claim, an opportunity should have been given to him to show that that opinion was wrong and incorrect. Moreover, in the present cases the importer had claimed that "sifted and cleaned" acacia gum could not be imported from Afghanistan as there was no arrangement in Afghanistan for sifting and cleaning this commodity, and yet no opportunity was given to him to prove this assertion. There is no suggestion that the Collector on appeal made any effort to get the required information from the Afghan Embassy as suggested by the importer. Moreover, the orders of the Assistant Collector and the Collector are so vague that there is no guarantee that these authorities had judicially applied their mind to the cases and that they were not carried away by their natural inclination to collect the highest possible amount of duty from the businessman. It is well known that generally the customs authorities give ample opportunity to the importers to prove their allegations before final orders are passed after their experts have expressed their opinion in the matter. It is not understood why that procedure was not adopted in the present cases. I, therefore, hold that in the present cases the procedure adopted by the customs authorities under sections 182 and 188 of the Act violated the principles of natural justice and, therefore, the orders passed are liable to be quashed in the present proceedings.

It was not argued before me that this Court could not set aside these orders in the exercise of powers

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conferred on this Court under Article 226 of the Constitution.

For all these reasons, I accept these petitions with costs and set aside the orders of the Assistant Collector (Customs), dated 26th December, 1951, of the Collector, Central Excise, New Delhi, dated 4th August, 1952, and of the Central Government made under section 191 of the Act. The customs authorities will now decide the matter after giving adequate opportunity to the petitioner to present his cases before them.

LETTERS PATENT APPEAL.

Before Bhandari, C. J. and Tek Chand, J.

RAM LAL AND OTHERS,—*Appellants*

versus

CHETU *alias* CHET RAM AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 10(P) of 1953.

1957

May, 13th

Adverse possession—Meaning of—How to be asserted—Tenant—Whether can acquire title against his landlord by adverse possession—Acts to be done by him to this end—Limitation, when begins to run in such a case—Suit for recovery of rent dismissed on the ground that relationship of landlord and tenant did not exist between the parties—Effect of—Whether proves adverse possession by the tenant—Code of Civil Procedure (V of 1908)—Section 100—Possession of land adverse or not—Finding as to—Whether second appeal lies.

Held, that adverse possession must be actual possession of another's land with intention to hold it and claim it as his own. It must commence with the wrongful dispossession of the rightful owner at some particular time; it must commence in wrong and must be maintained against right. It must be actual, open, notorious, hostile, under claim of right, continuous and exclusive and maintained for the