Khadi Gramodyog Bhawan Workers' Union v. E. Krishna Murti and another

Shamsher Bahadur, J.

The authority of Raju, J., was approved in a Division Bench judgment of the Kerala High Court delivered by Ansari, C.J., and Govinda Menon, J., in *Shamsuddin* v. *State of Kerala and others* (1). In this case, three workmen had been dismissed in a commercial concern and in a dispute referred to the Tribunal their cause was taken up by a union of which they had become members subsequent to their dismissal. It was held that the reference was invalid as the dispute did not assume the characteristics of "industrial dispute" as defined in section 2(k) of the Industrial Disputes Act. The reasoning adopted in the judgment, which was given by Ansari, C.J., is unimpeachable. He said that "the community of interest has been insisted upon in order to exclude those who have not immediate and direct interest, from subsequent participation in any unconnected disputes, and the object would be defeated, were such interest not to be insisted upon at the initial stages. Otherwise, associations, of which the original parties be not members, would subsequently join on any of the aggrieved party's becoming members and persuading the later associates to take up their cause". I am in respectful agreement with the views propounded by the learned Single Judge of the Andhra High Court and confirmed by a Division Bench of the Kerala High Court in *Shamsuddin's case*. I, therefore, see no force in this petition which fails and is dismissed. In the circumstances of the case, I would leave the parties to bear their own costs.

R. S.

REVISIONAL CIVIL

Before Inder Dev Dua, J.

CHETU RAM,—*Petitioner.*

versus

ASA NAND,—*Respondent.*

Civil Revision No. 502 of 1961.

1961

Nov., 11th

Jurisdiction—Whether can be conferred by consent of parties—Plea as to want of jurisdiction—Whether entertainable at any stage—Precedent—Decision of a single

(1) (1961) 1 L.L.J. 77.

Judge on a point of law—When binding on another single Judge—Reference to larger Bench—Whether desirable in case of conflict—Circumstances in which a decision of a single Judge may not be followed by another single Judge.

Held, that total or inherent lack of jurisdiction cannot be cured by consent or acquiscence and it is not open to litigants to confer jurisdiction by consent or submission where it does not initially exist. Where there is want of inherent jurisdiction, it makes no difference whether the challenge to the jurisdiction emanates from the plaintiff or the defendant. There is, however, a distinction between cases of want of inherent jurisdiction and cases where the Judge is competent to try a cause and the parties without objection join the issue and go to trial upon the merits. In the second category of cases, the defendant may estop himself from subsequently disputing the Court's power on the ground that there were irregularities in the initial procedure which, if objected to at that time, would have led to the dismissal of the suit.

Held, that a decree passed by a Court without jurisdiction is a nullity and its invalidity can be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and also in collateral proceedings. An objection going to the root of the jurisdiction can, therefore, be taken notice of at any stage.

Held, that a judgment of a single Judge on a point of law, though technically not binding on another single Judge, is entitled to respect and should in the interest of uniformity and certainty be followed. This practice is based on the principle of comity. In case, the correctness of the law laid down by a single Judge is doubted by another single Judge, the matter should unhesitatingly be referred to a larger Bench for an authoritative decision, rather than conflicting decisions in the legal field are allowed to create confusion to the avoidable embarrassment of the subordinate judiciary, the Bar and the litigant public. There are, however, circumstances in which a judgment of a Bench of co-ordinate or equal jurisdiction may not be followed. One of such circumstances is when the legal proposition laid down in the earlier decision is in conflict with the law laid down by a higher or superior Court or by a larger Bench of the same High Court. In such a situation, the more

authoritative decision undoubtedly commands greater respect and priority, being binding on both the Courts. Another exception has been described in some reported cases to be when a decision of a Court of co-ordinate jurisdiction determines something per incuriam but this exception cannot be upheld without reserve. It is far more desirable and in the fitness of things to refer the point to a larger Bench to promote certainty and stability in law, for, this quality has an honoured place in our jurisprudence where rule of law (and not rule of men, whether Administrators or Judges) prevails. Looking at the problem from this point of view, attempts to get decisions by more authoritiative Benches should always be welcomed. Of course, such a course need not be adopted when a decision by a larger Bench or by a Superior Court exists and was perhaps by oversight or for some other reason ignored or not noticed in the precedent cited.

Held, that a precedent is an authority on its own facts and it is permissible to refuse to accept a mere logical extension of a given decision. The doctrine of precedents is not something to be developed by analogy, and, indeed, it scarcely constitutes an authoritative premise from which to deduce grounds of decision. It is merely a traditional technique of deciding a case with reference to judicial decisions in the past.

Petition under Section 15(5) of the East Punjab Urban Rent Restriction Act for revision of the order of Shri R. S. Sarkaria, District Judge and Appellate Authority under Act III of 1949, Karnal, dated the 31st May, 1961, affirming that of the Rent Controller, Panipat, dated 14th February, 1961, passing an order of ejectment from the premises in dispute with costs in favour of the applicant against the respondent (tenant).

J. N. SETH, ADVOCATE, for the Petitioner.

S. C. GOEL, ADVOCATE, for the Respondent.

JUDGMENT

DUA, J.—This revision has been filed in the following circumstances. An application under section 13 of the East Punjab Urban Rent Restriction Act was filed by Asa Nand, the landlord, (respondent in this Court) for ejectment of Chetu Ram Dua, J.

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(petitioner before me) from a house situated at Panipat. According to the landlord, the house in dispute had been transferred to him by the Rehabilitation Authorities with effect from 1st October, 1955, and conveyance deed was executed on 23rd November, 1959. Chetu Ram was a tenant of the premises in dispute under the Custodian on a monthly rent of Rs. 2. It was pleaded that Chetu Ram had become Asa Nand's tenant with effect from 1st October, 1955, and that the former had also received an intimation from the office of the District Rent and Managing Officer. Ejectment was sought on three grounds, viz., (a) that Chetu Ram had been in arrears of rent from 1st October, 1955; (b) that the premises were required by Asa Nand for his own occupation and (c) that Chetu Ram had damaged the house and had impaired its value and utility with the result that it was unsafe and unfit for human habitation.

This petition was resisted by Chetu Ram, who pleaded ignorance about the transfer of the premises to Asa Nand and also urged that the premises in question were not a residential house but a shop and was also being used as such since a long time. It was further pleaded that rent was being paid to the Custodian at the rate of Re. 1 per month per shop and that the tenant had not received any intimation from the Department about the transfer of the premises in favour of Asa Nand. It was, in addition, pleaded that Asa Nand could only be entitled to arrears of rent for the preceding three years, i.e., from 1st July, 1957 to 30th June, 1960, which would amount to Rs. 72 and that the same was deposited in Court after becoming aware of the proceedings for ejectment. Rent prior to 1st July, 1957, was pleaded to have become barred by time. The plea that Asa Nand required the premises for his own occupation was controverted and so were the three other pleas in support of the prayer for ejectment.

On the first date of hearing, the counsel for Chetu Ram stated that the arrears of rent from 1st July, 1957 to 30th June, 1960, came to Rs. 74 out of

which Rs. 72 had been deposited in Court and a sum of Rs. 2 on account of arrears of rent, Rs. 6-8-0 on account of interest and Rs. 15 on account of costs of the application were tendered on behalf of the tenant. This tender was accepted by Asa Nand, but the plea of non-payment was not given up.

On the pleadings, the Rent Controller framed the following issues:—

(1) Whether the property in dispute is a residential building ?

(2) Whether the respondent is not liable to ejectment on the ground of non-payment of rent ?

(3) Whether the petitioner requires the building in dispute for his personal occupation ?

(4) Whether the building in dispute has become unfit and unsafe for human habitation ?.

According to the Rent Controller, the property was proved to be a residential building. Under issue No. 2, the Rent Controller observed that according to the application, the conveyance deed was granted to Asa Nand in 1959, and at the time of transfer, Rs. 26.38 nP., by way of rent, were lying in deposit with the Custodian. This amount was considered by the Controller to be a good payment towards the rent due by Chetu Ram. The sum of Rs. 26.38 nP., was considered by the Controller to be the amount of rent for thirteen months and a couple of days. This amount thus covered the rent upto October, 1956. By reference to Ex. R/3 a letter from the office of District Rent and Managing Officer, Chetu Ram tried to prove that he had effected repairs costing Rs. 56-6-0. The Rent Controller, however, did not agree with this contention and came to the conclusion that the amount of Rs. 56-6-0 had already been adjusted towards rent for the month of August, 1954. Chetu Ram, it appears, admitted that after the repairs, he did not

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pay any rent to anybody. On this material, according to the Rent Controller, rent from 1st June, 1957 to 30th June, 1960, was duly deposited in Court with the result that there was no dispute about payment of rent for that period. In so far as arrears of rent from 1st November, 1956 to 31st May, 1957, are concerned, according to the Rent Controller, though this amount had become barred by time, it was "rent due" within the contemplation of the Rent Restriction Act, and having not been paid or tendered on the first date of hearing, Chetu Ram was held liable to be evicted on this ground. Issues Nos. 3 and 4 were both held against Asa Nand, but on the basis of the finding under issue No. 2, an order of ejectment was passed against Chetu Ram.

The matter was taken on appeal to the Appellate Authority, before whom, on behalf of Chetu Ram, it was contended that in view of the provisions of section 29 of the Displaced Persons (Rehabilitation and Compensation) Act, 1954, the petition for eviction was premature and that it was neither alleged nor proved that any notice, as contemplated by sub-section (1) of the above section, had ever been served by the landlord upon the tenant. This contention did not appeal to Shri R. S. Sarkaria, the Appellate Authority, who observed that the plea of the jurisdiction being premature had "only faintly been adumberated in the written statement," and that there was no plea that the requisite notice had never been served upon the tenant. No objection to the jurisdiction of the Rent Controller having been taken in the proceedings for ejectment, and there being no grounds of appeal even before the Appellate Authority with respect to the absence of jurisdiction by the Rent Controller the tenant was held to be precluded by his own act from urging that the Rent Controller or the Appellate Authority had no jurisdiction to decide the case. Support for that view was sought by the Appellate Authority from an unreported decision of G. D. Khosla, C. J., in *Radha Kishan* v. *Piara Singh,* Civil Revision No. 652 of 1960, decided on 6th April, 1961. Following

the ratio of the decision mentioned above, the Rent Controller thought that the tenant having submitted to the jurisdiction of the Rent Controller without any objection, it was too late for him to raise the objection for the first time during the arguments on appeal. Considering it to be purposeless to send the case back to the Rent Controller for determining the issue of the proceedings being premature, the appeal was dismissed and the order of ejectment confirmed. It is in these circumstances that Chetu Ram has come to this Court on revision.

Shri J. N. Seth, learned counsel for Chetu Ram, has very strongly urged that the Appellate Authority is wholly wrong in refusing to entertain the plea which went to the root of jurisdiction of the Rent Controller. As a matter of fact he has raised another new point in this Court and has submitted that property transferred under section 29 of the Displaced Persons (Compensation and Rehabilitation) Act is not governed by the provisions of the East Punjab Urban Rent Restriction Act. He has, in support of this contention, relied upon two decisions of this Court in *Sardha Ram* v. *Paras Ram* (1), and *Sardha Ram* v. *Paras Ram* (2).

On behalf of the respondent, it has been submitted that two years from the date of transfer of the property in favour of the landlord having expired, the protection granted by section 29 of the Displaced Persons (C. & R.) Act had exhausted itself, and, therefore, the matter was governed by the provisions of the Rent Restriction Act. According to the counsel, the date from which the period of two years as contemplated by section 29 began, was 1st of October, 1955 and not 23rd of November, 1959, the date of the deed of conveyance. The counsel had, however, practically nothing to say in reply to the contention that a new point of law going to the root of the jurisdiction of the Controller should have been allowed to be taken before the Appellate Authority.

(1) 1961 P.L.R. 716
(2) 1961 P.L.R. 769

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Now it is well established that total or inherent lack of jurisdiction cannot be cured by consent or acquiscence and it is not open to litigants to confer jurisdiction by consent or submission where it does not initially exist. To quote the words of Lord Watson used as far back as 1886 "when a Judge has no inherent jurisdiction over the subject-matter of a suit, the parties cannot, by their mutual consent, convert it into a proper judicial process, although they may constitute the Judge their arbiter, and be bound by his decision on the merits when these are submitted to him;" *Ledgard, etc.* v. *Bull* (1). The Privy Council in this case pointed out the distinction between cases of want of inherent jurisdiction and cases where the Judge is competent to try a cause and the parties without objection join the issue and go to trial upon the merits. In the second category of cases, the defendant may estop himself from subsequently disputing the Court's power on the ground that there were irregularities in the initial procedure which if objected to at that time would have led to the dismissal of the suit. The ratio of this case was followed by a Division Bench (Tek Chand and Backett, JJ.) in *Bhagwan Singh* v. *Barkat Ram* (2). The following quotation from this judgment is worth reproducing:—

> "Reference may also be made to *Gurdeo Singh* v. *Chandrikah Singh and Chandrikah Singh* (3), at page 207 where Mookerjee, J., in an elaborate judgment has discussed the question at length and collected the other leading authorities. The learned Judge observed:—
>
> "The distinction between elements which are essential for the foundation of jurisdiction and the mode in which such jurisdiction has to be assumed and exercised is of fundamental importance, but has not always been

(1) I.L.R. 9 All. 191 at page 203
(2) A.I.R. 1943 Lah. 129
(3) I.L.R. 36 Cal. 193

sufficiently recognised That the distinction is well-founded is manifest from cases of the highest authority. Thus, in *Henry Peter Pesani* v. *Attorney General for Gibraltar* (1), their Lordships of the Judicial Committee held that, where there is jurisdiction over the subject-matter but non-compliance with the procedure prescribed as essential for the exercise of jurisdiction, the defect might be waived. The same principle was adopted in *Ex parte Pratt* (2), *and Ex Parte May* (3), which laid down that where jurisdiction over the subject-matter exists requiring only to be invoked in the right way, the party who has invited or allowed the Court to exercise it in a wrong way, cannot afterwards turn round and challenge the legality of the proceedings due to his own invitation or negligence. To put the matter from another point of view, it is only when a Judge or Court has no jurisdiction over the subject-matter of the proceedings or action in which an order is made or a judgment rendered that such order or judgment is wholly void, and that the maxim applies that consent cannot give jurisdiction; in all other cases, this objection to the exercise of the jurisdiction may be waived, and is waived when not taken at the time the exercise of the jurisdiction is first claimed."

To hold to the contrary would, in my view, be indefensible aberration and would lead to diversion from the correct legal path.

(1) (1874) L.R. 5 P.C. 516
(2) (1884) 12 Q.B.D. 384
(3) (1884) 12 Q.B.D. 497

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Another fundamental principle, which is well-established is that a decree passed by a Court without jurisdiction is a nullity and its invalidity can be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and also in collateral proceedings; *Kiran Singh, etc.* v. *Chaman Paswan, etc.* (1). An objection going to the root of the jurisdiction could, therefore, be taken notice of at any stage. Indeed a Court may be "bound to take notice of an objection to the jurisdiction, however late in the day it may be raised, if it be that on the facts admitted or proved it is manifest that there is a defect of jurisdiction," *Ram Lal Hargolal* v. *Kishan Chand* (2). Questions of law arising out of admitted facts, by and large, have been allowed to be raised on appeals and revisions in quite a few cases, though of course, a party may not be entitled as of right to raise them. In *Alembic Chemical Works* v. *The Workmen* (3), the Supreme Court allowed a point of law to be raised for the first time on appeal. In *Badri Prasad* v. *Nagarmal* (4), also, an objection resting on a public statute had been allowed to be raised for the first time in the Supreme Court. It is, therefore, obvious that the learned Appellate Authority has gone grievously wrong in holding that the appellant before it was precluded from raising the point which went to the root of the jurisdiction of the Rent Controller. But then the respondent has strongly relied on the single Bench decision in *Radha Kishan's* case.

Now a judgment of a single Judge on a point of law, though technically not binding on another single Judge, is entitled to respect and should in the interest of uniformity and certainty be followed. This practice seems to me to be dictated by principle of comity. In case, the correctness of the law laid down by a single Judge is doubted by

(1) A.I.R. 1954 S.C. 340
(2) I.L.R. 51 Cal. 361
(3) A.I.R. 1961 S.C. 647
(4) A.I.R. 1959 S.C. 559

another Single Judge, the matter should unhesitatingly be referred to a larger Bench for an authoritative decision, rather than conflicting decisions in the legal field are allowed to create confusion to the avoidable embarrassment of the subordinate judiciary, the Bar and the litigant public. Reference to a larger Bench, from this point of view, deserves to be considered favourably, for, decisions by larger Benches only serve to add to the quality of certainty in law—a thing which has been described by the Supreme Court in *Mahadeolal* v. *The Administrator-General* (1), to be "more necessary than any other thing." There are, however, circumstances in which a judgment of a Bench of co-ordinate or equal jurisdiction may not be followed. One of such circumstances is when the legal proposition laid down in the earlier decision is in conflict with the law laid down by a higher or superior Court or by a larger Bench of the same High Court. In such a situation, the more authoritative decision undoubtedly commands greater respect and priority, being binding on both the Courts. Another exception has been described in some reported cases to be when a decision of a Court of co-ordinate jurisdiction determines something *per incuriam* though I, for my part, would hesitate, as at present advised, to uphold this exception without reserve. With the utmost respect to the learned Judges holding this view, in my humble opinion, it is far more desirable and in the fitness of things to refer the point to a larger Bench to promote certainty and stability in law, for, this quality has an honoured place in our jurisprudence where rule of law (and not rule of men, whether Administrators or Judges) prevails. Looking at the problem from this point of view, attempts to get decisions by more authoritative Benches should always be welcomed. Of course, such a course need not be adopted when a decision by a larger Bench or by a Superior Court exists and was perhaps by oversight or for some other reason ignored or not noticed in the precedent cited.

(1) A.I.R. 1960 S.C. 936

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It is also clear that a precedent is an authority on its own facts and it is permissible to refuse to accept a mere logical extension of a given decision. The doctrine of precedents is not something to be developed by analogy, and, indeed, it scarcely constitutes an authoritative premise from which to deduce grounds of decision. It seems to me to be merely a traditional technique of deciding a case with reference to judicial decisions in the past.

It is in the background of what has just been stated that I must view and consider the effect of the Single Bench decision in *Radha Kishan's* case. To begin with there the person objecting to the jurisdiction of the Rent Controller had himself approached the Rent Controller, a circumstance treated to be material and which weighed considerably with the Court in precluding him from arguing that the East Punjab Rent Restriction Act was inapplicable to that case. In the proceedings before me, it is not the landlord who had approached the Rent Controller, but it is the tenant-defendant, who is questioning the jurisdiction of the Rent Controller invoked by the landlord. It is true that he also submitted to the jurisdiction of the Rent Controller, but then to hold his case also to be governed by the reasoning and *ratio decidendi* of *Radha Kishan's* case would clearly mean going against the authoritative dicta of the Privy Council and of other Courts which are binding both on me and on the Single Bench deciding *Radha Kishan's* case. As a matter of fact, as I view things, where there is want of inherent jurisdiction, it may not make any real difference whether the challenge to the jurisdiction emanates from the plaintiff or the defendant, for, in either case, it is the voluntary submission and acquiescence which is sought to be utilised as a bar or estoppel, and this would seem to be directly hit by the established rule stated earlier. It is unfortunate that the attention of the Court deciding *Radha Kishan's* case was not invited to the established rule of law as stated by the Privy Council and adopted by other Courts whose dicta are not only entitled to respect but have also binding effect (and indeed,

with which I also respectfully agree). Had this rule of law been brought to the notice of the Court, one would have expected to find some reference to it in the judgment, for, it is not possible to imagine that such a point, if canvassed, would have been ignored or left out of consideration by the learned Chief Justice. I am, accordingly of the view that the decision in *Radha Kishan's* case does not lay down a rule of law which applies to the case before me and it constitutes no binding precedent for holding that the petitioner in this Court is debarred or precluded from raising the question of want of inherent jurisdiction of the Rent Controller.

The decisions in *Sardha Ram's* case, namely, 1961, P.L.R. at pages 716 and 769 have been relied upon by the counsel for the petitioner in his attack on the jurisdiction of the Controller and the Appellate Authority, but in reply, no attempt has been made by the respondent's counsel to meet the ratio of these cases. I would, however, set aside the order of the Appellate Authority on the short ground that it should have allowed the point of jurisdiction to be raised and that its failure to do so was wrong and contrary to law.

Setting aside the order of the Appellate Authority, I send the case back to it for re-deciding the appeal according to law and in the light of the observations made above. There would, however, be no costs in this Court. The parties should appear before the Appellate Authority on 11th December, 1961, when another date would be given for further proceedings.

R.S.

CIVIL MISCELLANEOUS

Before D. Falshaw and S. S. Dulat, JJ.

JAGAN NATH AND OTHERS,—*Petitioners.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Writ Application No. 1051 of 1960.

1961

Nov., 13th

Punjab Security of Land Tenures Act (X of 1953)—Purpose and scope of—Sections 2(2) and 10A—Land owned by