

PRIVY COUNCIL

J. C.*
1940
March, 4

BHAGWAN BAKHSH SINGH (PLAINTIFF) v. SECRETARY-
OF STATE FOR INDIA (DEFENDANT)*

[On appeal from the High Court at Allahabad]

*Court of Wards Act (Local Act IV of 1912), sections 8, 11, 13—
Suit disputing validity of a declaration made by Government
under section 8—Jurisdiction—"Gross annual profits",
meaning of.*

No action disputing the validity of a declaration made by the Local Government under section 8 of the United Provinces Court of Wards Act can be brought in a civil court.

"Gross annual profits" in section 8, proviso (a), are profits after deduction of land revenue without allowance for estate management.

Last v. London Assurance Corporation (1), referred to.

APPEAL (No. 6 of 1939) from a decree of the High Court (March 31, 1937) which affirmed a decree of the Subordinate Judge of Allahabad (May 14, 1934).

The material facts are stated in the judgment of the Judicial Committee.

1940. February 1, 2. *J. D. Caswell, K. C., R. K. Handoo and J. L. Roy*, for the appellant: The appeal turns on the interpretation of the words "satisfied" and "gross profits" in section 8 of the Act. Where there is a delegated authority, the limits of authority must be sought in the Act delegating the authority. If words have a clear and well recognized meaning, that meaning must prevail. There is no recognized meaning of the words "gross profits". Section 11 is a limitation of the right of access to the civil courts. Where a statute takes away a man's rights and his right of access to the courts, clear words must be used. The courts must be convinced by the clearest language that the rights are taken away: *Oldaker v. Hunt* (2) and *In re Vexatious Actions Act, 1896, In re Boaler* (3).

*Present: Viscount MAUGHAM, Lord PORTER and Sir GEORGE RANKIN.
(1) (1885) 10 App. Cas. 438(456). (2) (1854) 19 Beav. 485; 52 E.R. 439.
(3) [1915] 1 K.B. 21.

Where a court takes upon itself the exercise of a jurisdiction which it does not possess, its act is a nullity. No subordinate tribunal can decide the extent of its own jurisdiction. Its decision is open to review: *Wingrove v. Morgan* (1).

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The satisfaction in section 8 must be arrived at by the exercise of a judicial discretion. Section 8 gives power to interfere with the subject's rights, but, by the proviso, the power is limited. One would have to be very careful in arriving at the conclusion that there is an unfettered power. The question of dissipation has to be decided by the Local Government before it can exercise jurisdiction. It is preliminary to its getting jurisdiction. *The King v. The Board of Education* (2), in my submission, lays down the principle which should be applied to the present case. Here the local authority would have to decide what was meant by "gross profits" before it could come to a conclusion as to whether it had jurisdiction. Whether it was right in its interpretation can be questioned: *Esturik v. The City of London* (3), *Rex v. Moreley* (4) and *Wilford v. West Riding of Yorkshire County Council* (5). Under section 8 it is the profits of the property, not the profits of the proprietor, that has to be considered. Profits is that which comes from the land: Coke on Lyttleton. Profits are used to pay revenue.

[Section 141, U. P. Land Revenue Act, was referred to].

"Profits" may be used in several senses. The fundamental error here is that the Government has interpreted profits as something arrived at after making some deductions. Profits of land differ from accountant's profits or profits used in a balance sheet: *Glazier v. Rolls* (6) and *Last v. London Assurance Corporation* (7).

(1) [1934] 1 Ch. 423.

(2) [1910] 2 K.B. 165.

(3) (1648) Style 42; 82 E.R. 515.

(4) (1760) 2 Burrow 104.

(5) [1908] 1 K.B. 685(695).

(6) (1889) 42 Ch. D. 436.

(7) (1885) 10 App. Cas. 438.

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“Gross profits” is a term inapplicable to the profits of a company. There are “gross receipts” or “gross returns”. “Gross profits” is a meaningless expression in reference to balance sheet profits. In dealing with land “gross profits” is not meaningless. The expression “rents and profits” indicates a difference. There may be money returns and a crop.

[Reference was made to the definition of gross profits by J. S. Mills and to the Oxford Dictionary]. Gross profits means the entire amount without deduction.

I submit that the legislature, in using the expression “gross profits”, meant entire receipts from the land. What the Government has done here is that it has deducted revenue, cess and other charges from the profits. That is wrong. All that should be looked at is what the land brings in. If the legislature meant profits after deduction of revenue etc., it would have been very easy to have said so.

[Reference was made to Lindley on Partnership (10th ed.) p. 36.]

“Is satisfied” is more restricted in its intent than the expression “in its discretion”: *The King v. Tomlinson* (1).

Courts, always being jealous of the rights of the individual, will interfere when a body acts outside of its jurisdiction. If the Government has acted on a meaning of “gross profits” which is not its true meaning, then it has been “satisfied” by resort to something to which it should not have had resort. It has exceeded its jurisdiction.

M. Tucker, K. C., and W. W. Wallach, for the respondent: There is always a difficulty in construing a term like “gross profits”. A reasonable construction must be put on it. There can be no better test than taking the proprietor’s spendable income and comparing it

with the charges he has to pay on his debts to arrive at a decision as to whether a proprietor is unfit to manage his estate. A rough and ready test is provided by the Act.

Profits accrue to a person and not to property.

In this Province where land revenue is a fixed charge, it would be reasonable to treat gross profits as profits from the land after deducting the land revenue, for land revenue is a charge that cannot be got rid of. It is not under the control of the proprietor like collection charges.

In *Deputy Commissioner, Kheri v. Pandit Daya Chand Chaubey* (1) a correct interpretation has, I would respectfully submit, been put on the Act. Section 11 is an absolute prohibition. The moment one tries to cut it down, one is in difficulties.

Narindra Bahadur Singh v. Oudh Commercial Bank Ltd. (2) was referred to.

J. D. Caswell, K. C., replied and submitted that there would be an inconsistency in deducting something due to the State and not making other deductions in arriving at the profits.

1940, March 4. The judgment of the Judicial Committee was delivered by Lord PORTER:

The appellant is the proprietor of the Amethi estate in the Sultanpur District of Oudh in the United Provinces of India. On the 7th March, 1930, he was declared by the Governor in Council of the United Provinces, who claimed to be acting under the powers conferred upon him by the United Provinces Act No. IV of 1912 (commonly called the United Provinces Court of Wards Act, 1912), to be incapable of managing his own property.

The appellant maintains that the declaration was *ultra vires* and on the 19th March, 1932, instituted a suit in the court of the Subordinate Judge at Allahabad claim-

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(1) (1935) I.L.R. 10 Luck 670.

(2) (1921) L.R. 48 I.A. 494; I.L.R. 43 All. 478.

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ing a declaration that the declaration above mentioned was wholly illegal and of no effect against the plaintiff. His suit was dismissed on the 14th May, 1934, and this dismissal was confirmed by the High Court of Judicature at Allahabad on the 31st March, 1937. From this decision the appellant has appealed to His Majesty in Council.

The Governor's action was taken under sections 8 and 9 of the Court of Wards Act which are as follows:

"(8) (1) Proprietors shall be deemed to be disqualified to manage their own property when they are—

(a) minors;

(b) females declared by the Local Government to be incapable of managing their own property;

(c) persons adjudged by a competent civil court to be of unsound mind and incapable of managing their own property;

(d) persons declared by the Local Government to be incapable of managing or unfitted to manage their own property—

(i) owing to any physical or mental defect or infirmity unfitting them for the management of their own property;

(ii) owing to their having been convicted of a non-bailable offence and being unfitted by vicious habits or bad character for the management of their own property;

(iii) owing to their having entered upon a course of extravagance;

(iv) owing to their failure without sufficient reason to discharge the debts and liabilities due by them:

"Provided that no such declaration shall be made under sub-clause (iii) or (iv) unless the Local Government is satisfied—

(a) that the aggregate annual interest payable at the contractual rate on the debts and liabilities due by the proprietor exceeds one-third of the gross annual profits of the property; and

(b) that such extravagance or such failure to discharge the said debts and liabilities is likely to lead to the dissipation of the property.

"(2) No declaration under clause (d) of sub-section (1) shall be made until the proprietor has been furnished with a detailed statement of the grounds on which it is proposed to disqualify

him and has had an opportunity of showing cause why such declaration should not be made.

“9—(1) The Local Government may direct the Collector or such other person as it may appoint, to make an inquiry into the circumstances of any proprietor and the extent of his indebtedness . . .”

So far as they are relevant to this appeal the facts are as follows:

On the 13th July, 1929, an enquiry under section 9(1) of the Act of 1912 was instituted by the Local Government into the debts and liabilities of the appellant. After the enquiry the appellant received a letter from the Commissioner of Fyzabad, dated the 17th September, 1929, enclosing a statement of the loans contracted by the appellant, and a statement of the gross annual income, gross annual profits, and land revenue derived from his property. By the letter and statements the appellant was informed that his debts totalled Rs.14,45,160-7-9 on which the annual interest at the contractual rates amounted to Rs.1,22,110-9-0; that the gross annual income from his estates amounted to Rs.5,71,626-10-9; that the amount payable in respect of land revenue, etc., was Rs.2,65,117-14-4; that the gross annual profits from his estates (arrived at by deducting the amount payable as land revenue, etc., from the gross annual income) amounted to Rs.3,06,508-12-5; and that therefore the annual interest payable at the contractual rates exceeded one third of the gross annual profits. Further the letter charged the appellant with failure, without sufficient cause, to discharge his debts and liabilities and said that such failure was likely to lead to the dissipation of the property. Finally the appellant was informed that under section 8 (1) (d) (iii), (iv) *provisos (a) and (b)*, of the 1912 Act he was liable to be declared by the Local Government to be incapable of managing his property, but that under section 8 (2) of that Act he could show cause against such a declaration being made.

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As a result of this communication the appellant attempted to show cause why no declaration should be made but was unsuccessful and, as stated above, the declaration was made.

From the statement sent to him it is apparent that in calculating whether the annual interest at the contractual rates exceeded one third of the annual profits of his property, the Local Government in order to ascertain the gross annual profits of the estate deducted the land revenue from the gross annual income. If this deduction was rightly made it was evident that the annual interest on the appellant's debts exceeded one third of the gross annual profits—if on the other hand the land revenue should not have been deducted, the annual interest on the debts is less than one third of the gross annual profits.

Though some question of the right of the Local Government to deduct certain cesses and annual charitable contributions was also raised, it is conceded that they were not of sufficient amount to have any bearing on the question at issue, and in argument consideration of them was put aside. The sole question considered was whether land revenue was or was not rightly deducted before ascertaining what sum was to be regarded as the gross annual profits.

Altogether apart, however, from the question whether the construction which he put upon those words was accurate or inaccurate the respondent maintained that the appellant was prohibited from challenging the action taken by reason of the provisions of section 11 of the Court of Wards Act. That section is as follows:

“No declaration made by the Local Government under section 8 or by the Court of Wards under section 10 shall be questioned in any civil court.”

A number of other questions had been raised and argued before the Courts in India but before their Lordships the respondents rested their case solely upon the two points mentioned.

It may be, as stated by JESSEL, M. R., and repeated by Lord BRAMWELL in *Last v. London Assurance Corporation* (1), that of itself the phrase "gross annual profits" has no definite meaning. It must take its colour from its surroundings. In the present case therefore it is necessary to consider those surroundings by an examination of the scheme of the Court of Wards Act, the way in which land tax is regarded in India and any provisions of the Land Revenue Act which bear upon the matter, in addition to the exact wording of section 8 itself.

The object of disqualification under section 8 is no doubt threefold—it will protect persons incapable of managing their own affairs, it will prevent the splitting up or as the Act itself says "the dissipation of the property", and in either event it will enable land revenue to be more easily and more certainly collected.

That the collection of land revenue is an important consideration is apparent both from the objects aimed at and from the fact that by section 4 of the Act the Board of Revenue is made the Court of Wards for the United Provinces. Indeed in earlier schemes in respect of the disqualification of proprietors, the necessary provisions were contained in the Land Revenue Acts themselves, and even in the present Act the definition of proprietor is only reached by reference to "mahal" and its meaning in the Land Revenue Act from time to time in force.

Moreover though minors, certain females and lunatics—to take three of the classes mentioned in section 8 of the Act—may require protection whether their property be in land or personality, it is to be observed that under that section only proprietors, i.e., those beneficially interested in a mahal, are dealt with, and mahal primarily means a local area held under a separate engagement for the payment of land revenue.

No doubt when once a proprietor is made a ward, all his property is, under section 16 (1) of the Act, put

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under the superintendence of the Court of Wards, but the original assumption of wardship is only possible in the case of proprietors or land owners paying land revenue.

In considering the way in which land revenue is regarded in India no comparison with tenures in England is of much (if any) assistance. Its universality, its quantum, and the tendency of the Indian outlook to regard the Government as a sharer in all the produce of the land are matters of importance.

By section 58 of the Land Revenue (United Provinces) Act of 1901 it is provided—

“58—(1) All land, to whatever purpose applied and wherever situated, is liable to the payment of revenue to the Government, except such land as has been wholly exempted by special grant of, or contract with, the Government or by the provisions of any law for the time being in force.

“(2) Revenue may be assessed on land, notwithstanding that that revenue, by reason of its having been assigned, released, compounded for or redeemed, is not payable to the Government.

“(3) No length of occupancy of any land, nor any grant of land made by the proprietor, shall release such land from the liability to pay revenue.”

But not only is the incidence of the revenue universal, it is also generally fixed at a sum varying from 40 to 45 per cent of the total income. If in addition to this percentage the proprietor has encumbered his estate to the extent of one third of the income, between 70 and 80 per cent of the total receipts would be removed from his control and from 20 to 30 per cent only remain—a small margin from which to ensure the payment of revenue and the protection of the mahal against foreclosure or sale under any mortgages created by the proprietor.

In their Lordships' view these considerations inevitably lead to the conclusion that land revenue must be deducted in calculating the gross annual profits of a property.

Even apart, however, from these considerations the wording of section 8 of the Court of Wards Act itself would lead their Lordships to the same conclusion.

Under proviso (a) to sub-section (iv) of section 8 the contrast is between the aggregate annual interest payable by the proprietor and the gross annual profits—a phraseology which would naturally point to a contrast between what the proprietor received and the interest which he owed, and would so point none the less though it is the profits of the property and not of the proprietor which have to be considered. Indeed to substitute the former consideration would bring into account a matter which is obviously extraneous to the considerations with which the legislature was concerned, viz., the profit derived by the proprietor from his personal estate. Moreover the words are “annual profits”—not “annual rent” or “income”, and seem to refer to some profits half way between the total income of the estate and the net profits remaining after the management expenses have been paid.

If the total produce or income of the estate had been intended it would have been easy enough to say so—indeed in section 141 of the Land Revenue Act of 1901 land revenue is said to be a first charge on the rents, profits or produce of every mahal, as opposed to the phrase “gross annual profits” in section 8 of the Court of Wards Act.

Moreover if land revenue is not to be deducted before the gross annual profits are arrived at in calculating the ratio of charges to profit, land revenue would appear on neither side of the account, neither as a charge nor as a deduction from profits.

Therefore, even accepting the view presented by the appellant that “gross profits” has of itself no definite meaning, their Lordships, bearing in mind the circumstances above mentioned, are of opinion that in the Court of Wards Act land revenue must be deducted but no allowance for any expenses of estate management

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must be made in arriving at the gross annual profits of the property.

This conclusion alone would involve the dismissal of the appeal, but the preliminary question whether any action in the courts was possible, having regard to the provisions of section 11 of the Act, was fully argued and is a matter of importance on which their Lordships think their decision should also be given.

Sections 10, 11, 12 and 13 deal with the limitations of the jurisdiction of the civil court and are as follows:

"10. A proprietor may apply to the Collector to have his property placed under the superintendence of the Court of Wards and the Court of Wards may, on being satisfied that it is expedient to undertake the management of such property, make a declaration to this effect.

"11. No declaration made by the Local Government under section 8 or by the Court of Wards under section 10 shall be questioned in any civil court.

"12—(1) The Court of Wards shall assume the superintendence of the property of any proprietor disqualified under clause (b) or (d) of sub-section (1) of section 8 or in regard to whose property a declaration has been made under section 10.

"(2) The Court of Wards may in its discretion assume or refrain from assuming the superintendence of—

(a) the property or person and property of any proprietor disqualified under clause (a) or (c) of sub-section (1) of section 8;

(b) the person of any proprietor disqualified under clause (b) or (d) of sub-section (1) of section 8.

"(3) The Court of Wards may assume the superintendence of the person of any minor who has an immediate or reversionary interest in the property—

(a) of any proprietor disqualified under section 8; or

(b) of any proprietor in regard to whose property a declaration has been made under section 10.

"13. If the right of the Court of Wards to assume or retain the superintendence of the person or property of any disqualified proprietor is disputed by such proprietor or, if he be a minor or of unsound mind, by some person on his behalf, the case shall be reported to the Local Government, whose orders thereon shall be final and shall not be questioned in any civil court."

It will be observed that section 11 is only concerned with action taken under sub-sections (1) (b) or (d) of section 8, and under section 10, i.e., those cases in which a declaration is made, leaving the other cases in which superintendence of the property is assumed (or possibly all cases after it has been assumed or in which it is retained) to be dealt with by section 13.

In terms section 11 appears to prohibit the bringing of an action disputing the validity of a declaration made by the Court of Wards under those sub-clauses of section 8. Some limitation must no doubt be put upon the generality of the provision inasmuch as good faith at any rate is required. The appellant, however, goes further and says that the Court of Wards is without jurisdiction and can be declared to be without jurisdiction by the civil court in all cases in which the preliminary requirements of section 8 have not been fulfilled. So far as sub-sections (1) (b) and (d) are concerned the primary requirement contained in those sub-clauses themselves is merely that the Governor in Council should declare the proprietors incapable or unfitted to manage their own property.

Under (b) it seems impossible to put any limitation on that jurisdiction. Under (d) (i) (ii) (iii) and (iv) the matter again seems to be one for the discretionary judgment of the Local Government. It is conceivable that under (d) (ii) the jurisdiction only exists provided the proprietor has been in fact convicted of a non-bailable offence and that if this fact were non-existent the Local Government would be acting *ultra vires* in making a declaration, but it is difficult to imagine that in sub-sections (i) (iii) and (iv), and indeed in that part of sub-section (ii) which concerns unfitness by reason of vicious habits or bad character, the Local Government should have an absolute discretion whereas in the final part of sub-section (ii) its jurisdiction should be limited.

In argument before their Lordships, however, the allegation that the action of the Local Government was

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ultra vires was founded not upon the wording of the sub-clauses but upon the proviso to sub-clauses (iii) and (iv) and it was said that if the Governor in Council showed by his decision that he interpreted the phrase "gross annual profits" wrongly in law then he could be declared to have assumed an unjustified jurisdiction.

But in such an argument the same difficulty arises as is to be found on a consideration of the sub-clauses themselves. No logical distinction between fact and law was propounded to their Lordships and indeed it is difficult to see why a wrong calculation under proviso (a) should be unchallengeable, whereas a wrong view as to the meaning of "gross annual profits" should be open to question. Nor indeed is it easy to draw a distinction between fact or law on the one part and opinion on the other, since proviso (b) by which the Local Government are equally governed is a matter of opinion alone.

Apart from a close analysis of section 8 itself there are other reasons for thinking the decision of the Local Government to be unfettered. Under section 8 (2) careful provision is made for a hearing of the proprietor's case before a decision is made, and in the case of sub-clauses (a) and (c) section 13 expressly provides for the method which shall be followed if the right of the Court of Wards is challenged, and the decision so attained is declared to be final.

Moreover the proviso itself expressly requires the satisfaction of the Local Government, not that of a court, and it is, in their Lordships' view, unlikely that a decision solemnly come to by the Governor in Council after full enquiry and when declared by the Act to be final should thereafter be subject to review by the local courts of the Province.

In coming to this conclusion their Lordships are in no way overlooking the importance of jealously scrutinizing the jurisdiction conferred on executive bodies or of giving no wider interpretation than is necessary to any limitation of the powers of the court. But

however carefully the liberty of the subject has to be guarded not only is there sound sense in making the decision of the Local Government final but it has also to be remembered that a right construction of the Act can only be attained if its whole scope and object together with an analysis of its wording and the circumstances in which it is enacted are taken into consideration.

From an examination of the Act alone their Lordships would have reached the conclusion that owing to the provisions of sections 11 and 13 of the Act no resort to the courts was left in this case under section 8, and the other circumstances to which their Lordships have referred, so far from weakening, have strengthened that conclusion.

Having reached a decision opposed to both the contentions put forward on behalf of the appellant they will humbly advise His Majesty that the appeal should be dismissed with costs.

Solicitors for the appellant: *Douglas Grant and Dold.*

Solicitor for the respondent: *The Solicitor, India Office.*

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