

## APPELLATE CIVIL.

Before Mr. Justice Mosely.

U PAW AND ANOTHER

v.

MA YAY AND OTHERS.\*

1937

Mar. 3.

*Jurisdiction of civil Courts—Upper Burma Ruby Regulation (XII of 1887), ss. 4 (1) (b), 5 (1) (c)—Disputes between licences—Rule 17—Exclusive jurisdiction given to Government officer—No provision in the Regulation for forum—Rule 17 ultra vires—Dispute over precious stone—Civil Court's jurisdiction.*

S. 4 (1) (b) of the Upper Burma Ruby Regulation gives power to the Local Government to regulate the digging for precious stones, that is to say, the persons to whom, and the conditions under which licences may be granted, and s. 5 (1) (c) allows rules to be framed to provide for the power which may be exercised for enforcing any provision of the Regulation. There is, however, nothing in these sections which provides for the forum before which disputes between licensees are to be settled, and there is nothing in the body of the Regulation which applies to disputes, or by which the jurisdiction of a civil Court is ousted.

*Held*, that the Local Government had no power under the Act to frame Rule 17 by which exclusive jurisdiction is given to the Inspector of Mines to decide all disputes arising between native miners as to sites or other matters.

The civil Courts alone are vested with jurisdiction to determine disputes respecting civil rights, unless their jurisdiction is abrogated by a statutory enactment passed by an authority duly constituted in that behalf. Rule 17, therefore, cannot oust the jurisdiction of a civil Court to decide the dispute as to the possession of a precious stone between two native miners.

*Maung Ba Lat v. Liquidator, Kemmendine Thalhahahita Co-operative Society*, I.L.R. 11 Ran. 125; *U Pyinnya Thiha v. U Ottama*, I.L.R. 13 Ran. 648, referred to.

*K. C. Sanyal* for the appellants.

*J. C. Chowdhury* for the respondents.

MOSELY, J.—This is an appeal against the decree of the District Court, Shwebo, holding that the civil Court had no jurisdiction to decide a dispute arising over the possession of a stone in the Mogôk stone tract and dismissing the plaintiff's suit. The trial Court decided

\* Special Civil Second Appeal No. 173 of 1936 from the judgment of the District Court of Katha in Civil Appeal No. 12 of 1935.

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that it had jurisdiction to try the suit, and gave the plaintiff a decree.

The suit was filed by one U Paw, a native miner, and another against the native miner of an adjacent mine, Ma Yay. The real question in dispute was whether the stone in question was found in the area covered by the plaintiff's licence or in that covered by the defendant's licence. Certain other defendants, who financed the first defendant, were added, as they were in possession of the stone. I can see no reason for the second plaintiff, who was an original party to the suit, remaining as a party. He was merely the financier of the plaintiff. Both the second plaintiff and the six defendants who were subsequently added were Chinamen and not native miners.

The mining law in force in the stone tract is the Upper Burma Ruby Regulation, No. XII of 1887. Under section 3 of the Regulation, no one shall dig for or raise any precious stone in a stone tract, except as provided by rules under the Regulation. Section 4 (1) lays down that the Local Government may make rules consistent with the Regulation to permit on such conditions and in consideration of such payments, if any, as it thinks fit, and to regulate the following matters :

“ \* \* (b) the digging for or raising of precious stones in a stone-tract; \* \* (d) the possession of precious stones in a stone-tract, \*.”

Section 4 (2) is to the effect that the Local Government may amend, add to or cancel any rule made under this section. Section 5 says that rules under section 4 may provide for the following among other matters :

“(a) the grant of licenses \* \*

(e) the power which may be exercised for the purpose of enforcing any provision of this Regulation, or the rules

for securing the fulfilment of any condition of a license, and the authority by which those powers may be exercised ; \* \*

(j) any other matter for which \* \* it is necessary to make rules \* \*."

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The rule now in question is a rule issued in 1928,— Rule 17 in Corrigenda Pamphlet No. 1 as amended by Pamphlet No. 2 item 7 printed in the Upper Burma Ruby Regulation Manual. The previous rule, No. 24, was to the effect that all disputes arising between the Company (Burma Ruby Mines, Limited) and native miners as to sites or other matters shall be referred to the Subdivisional Officer for decision. A "native miner" is defined in section 2, sub-section (3), of the Regulation, and means a person who is born and has habitually resided in a stone-tract since 1882.

The new rule, No. 17, reads as follows :

"All disputes arising between native miners as to sites or other matters shall be decided by the Inspector of Mines."

The main question in this appeal is whether the Local Government had power under the Act to frame such a rule, assuming that the rule not merely determines the officer who is to decide disputes, but gives exclusive jurisdiction to that officer, and ousts the jurisdiction of the civil Courts.

I may here briefly dispose of one suggestion for the appellant, which is that as some of the parties on both sides are not native miners, therefore the case is carried out of the ambit of the rule. In my opinion, there is nothing in this objection, for the question as to ownership of the stone depends on the question in the mine of which native miner the stone was found, and if rule 17 has been validly enacted that issue at least will have to be decided by the officer, and the civil Court will have to refer it to that officer and abide by his decision.

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There is nothing in the body of the Regulation or Act by which the jurisdiction of a civil Court is ousted. The ordinary rule, of course, is that civil Courts are *prima facie* entitled to determine all civil matters—*Maung Ba Lat v. Liquidator, Kemmendine Thathana-hila Co-operative Society* (1), or, as it was put in *U Pyinnya Thiha v. U Ottama* (2),

“the civil Courts alone are vested with jurisdiction to determine disputes respecting civil rights, unless their jurisdiction is abrogated by a statutory enactment passed by an authority duly constituted in that behalf.”

For illustrations of legislation ousting the jurisdiction of a civil Court, section 67 of the Income-tax Act, section 49 of the Co-operative Societies Act, section 53 of the Upper Burma Land Revenue Act, and section 56 of the Lower Burma Land Revenue Act, may be cited.

It is contended for the respondents in this case that rule 17 gives exclusive jurisdiction to the Inspector of Mines, and was *intra vires*, because the Local Government had power to make rules regulating the digging for precious stones and the grant of licences for the purpose, that licences are granted by boundaries where possible, and by specified areas where boundaries cannot be given, and that the power of regulation includes the power to determine any disputes as to the boundaries of the area for which the licence is given.

Section 4 (1) (b) admittedly gives power to the Local Government to regulate the digging for precious stones, that is to say, the persons to whom licences may be granted, and the conditions, number of workmen, fees, etc. The ordinary form of licence is given at page 16 of the Manual. I need only remark that it contains an

(1) (1933) I.L.R. 11 Ran. 125, 133.

(2) (1935) I.L.R. 13 Ran. 648.

omnibus clause, No. 10, that a licensee shall observe all rules framed under the Regulation.

There is nothing in section 4 or section 5 which provides for the forum before which disputes between licensees are to be settled. Section 5 (1) (e), which allows rules to be framed to provide for the power which may be exercised for enforcing any provision of this Regulation, cannot be in point here, for, as I have said, there is nothing in the body of the Act which applies to disputes, or which provides the forum for settlement of these disputes. Nor can it be said that such a matter comes within the "rules for securing the fulfilment of the conditions of the licence." Section 5 (1) (j), of course, is subject to the rule of *ejusdem generis*, and cannot empower the Local Government to frame a rule providing for settlement of disputes.

In my opinion, therefore, rule 17 cannot oust the jurisdiction of the civil Court, and the civil Court had jurisdiction to try the matter in dispute between these parties.

The decree of the District Court will, therefore, be set aside with costs,—advocate's fee three gold mohurs—and the suit remanded to the District Court for disposal of the appeal before it on the merits. The appellant is entitled to refund of the court-fee in this Court under section 13 of the Court-fees Act.

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