

APPELLATE CIVIL.

Before Addison and Bhide JJ.

1930

SEWA SINGH AND OTHERS (PLAINTIFFS) Appellants
versus

May 29.

THE SECRETARY OF STATE AND OTHERS
(DEFENDANTS) Respondents.

Civil Appeal No 2565 of 1926.

Colonization of Government Lands (Punjab) Act, V of 1912, sections 10, 36—whether Civil Court can take cognizance of the manner in which the Local Government exercises its power of allotment of land.

Neighbouring *Ahatas* were allotted by Government in 1899 to the plaintiffs and defendants, respectively, but the proprietorship of *Khasra* No. 84/1, which was shewn as a way in the plan prepared in connection with the allotment, remained with Government until, in the year 1923, it was allotted by Government to defendants who soon afterwards started building upon it. The plaintiffs, having unsuccessfully approached the Commissioner and Financial Commissioner for the restoration of *Khasra* No. 84/1, to its original condition, instituted the present suit for a declaration that the *Khasra* was a way. It was not alleged that it was stipulated at the time of the allotment that *Khasra* No. 84/1 would be kept for ever as a way for the benefit of the parties. The plaintiffs claimed to have exercised a right of way over *Khasra* No. 84/1 since 1899, but it was conceded that no right of easement could be acquired as against Government by user for less than 60 years.

Held, that under section 10 of the Colonization of Government Lands (Punjab) Act, the Local Government has power to allot Government lands to any person on any conditions it may think fit. The land was still the property of Government and hence Government was free to exercise this power in 1923; and according to section 36 of the Colonization of Government Lands (Punjab) Act, Civil Courts have no jurisdiction to take cognizance of the manner in which the Local Government exercises such power. The suit had, therefore, been rightly dismissed.

1930

EWAN SINGH
v.
SECRETARY
OF STATE.

Ali Muhammad v. Hakim (1), distinguished.

First appeal from the decree of Sheikh Abdul Aziz, Senior Subordinate Judge, Lyallpur, dated the 15th of July 1926, dismissing the plaintiffs' suit.

MOTI SAGAR and DEVI DAYAL, for Appellants.

ABDUL RASHID, Additional Government Advocate,
JAGAN NATH BHANDARI and RAM CHAND MANCHANDA,
for Respondents.

BHIDE J.

BHIDE J.—Plaintiffs sued in this case for a declaration that *Khasra* No. 84/1 was a pathway, and for a mandatory injunction requiring defendants 2 to 4 to demolish certain buildings which had been constructed over it. The suit has been dismissed by the Court below on the ground that its jurisdiction was barred by section 36 of the Colonization of Government Lands (Punjab) Act of 1912. Plaintiffs appeal.

The sole point for determination is whether the jurisdiction of the Civil Courts is barred under section 36 of the aforesaid Act. That section runs as follows:—

“ A Civil Court shall not have jurisdiction in any matter of which the Collector is empowered by this Act to dispose, and shall not take cognizance of the manner in which the Local Government or Collector or any other Revenue Officer exercises any power vested in it or in him by or under this Act.”

The material facts bearing on the point in dispute are as follows:—In the year 1899 *Ahatas* Nos. 24 and 21 were allotted by Government to the present plaintiffs while *Ahatas* Nos. 25 and 19 were allotted to the defendants. *Khasra* No. 84/1 was shown as a way in the plan prepared in connection with the allotment. It was alleged in the plaint that *Khasra*

No. 84/1 was actually transferred to the plaintiffs but this position was subsequently given up and it was conceded that the proprietorship of *Khasra* No. 84/1 remained with the Government. *Khasra* No. 84/1 was subsequently allotted by Government to defendants Nos. 2 to 4 in the year 1923 and soon afterwards buildings were constructed upon it by them. The plaintiffs approached the Commissioner and the Financial Commissioner for restoration of *Khasra* No. 84/1 to its original condition but failed. They then instituted the present suit.

The point for decision is whether the Government was empowered to allot the land to defendants Nos. 2 to 4 in 1923, when it was shown as a way in the plan prepared at the time of the allotment of *Ahatas* Nos. 24 and 21 to the plaintiff. As I have already said, it was conceded that the land remained the property of the Government, and it is not alleged that it was stipulated at the time of the allotment that *Khasra* No. 84/1 would be kept for ever as a way for the benefit of the parties. The plaintiffs no doubt claimed to have exercised a right of way over *Khasra* No. 84/1 since 1899, but it was conceded that no right of easement could be acquired as against Government by user for less than 60 years.

The only ground on which the plaintiffs could succeed, therefore, was their contention that the Government was not entitled to allot the land to defendants Nos. 2 to 4 in 1923. But this contention is untenable. Under section 10 of the Colonization of Government Lands Act the Local Government has power to allot Government lands to any person on any conditions it may think fit. The land was still the property of Government and hence Government was free to exercise this power in 1923. The question whether the

1930

SEWA SINGH

v.

SECRETARY
OF STATE.

BHIDE J.

1930

SEWA SINGH

v.

SECRETARY
OF STATE.

BHIDE J.

Government exercised its power properly in the present case may be debatable, but whether it did so or not, according to section 36 of the Colonization of Government Lands Act, Civil Courts have no jurisdiction to take cognizance of "the manner in which the Local Government exercises such power."

The learned counsel for the appellants relied upon *Ali Muhammad v. Hakim* (1). The points in dispute in that case, however, could not be decided by the Local Government or Collector under any of the provisions of the Colonization of Government Lands Act, and consequently that case is clearly distinguishable from the present one. I am of opinion that the decision of the learned Subordinate Judge on the question of jurisdiction was correct, and I would, therefore, dismiss the appeal with costs.

ADDISON J.

ADDISON J.—I agree.

N. F. E.

Appeal dismissed.

(1) (1928) I. L. R. 9 Lah. 504 (F. B.).