

1921.

GANESH
RAMCHANDRA
v.
LAKSHMIBAI.

upon the reversioners: and I do not see any reason why the Court sale should not convey such title, as a sale by her for the purpose could have conveyed. On the whole, therefore, I am of opinion that the sale was good not only during her life-time, but also against the reversioners.

The decree of the lower appellate Court as regards these lands is right and must be confirmed with costs. The appeal is dismissed.

MACLEOD, C. J. :—I agree.

Decree confirmed.

J. G. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

1921.

December 6.

MAHADEV GANESH JAMSANDEKAR AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS^o.

See Customs Act (VIII of 1878), section 182—Adjudication on confiscation and penalty—Principles to be acted on by Customs Officer.

A Customs Officer acting under section 182 of the Sea Customs Act, 1878, should proceed according to general principles, which are not necessarily legal principles, and is not bound to adjudicate on confiscation and penalty as if the matter was proceeding in a Court of law according to the provisions of the Civil or Criminal Procedure Code.

FIRST appeal against the decision of C. C. Dutt, District Judge of Ratnagiri.

Suit for a declaration.

The plaintiff Ganesh sued to obtain a declaration that the orders passed by defendant No. 2, the Collector

^o First Appeal No. 222 of 1920.

1921.

 MAHADEV
 GANESH
 v.
 SECRETARY
 OF STATE
 FOR INDIA.

of Salt Revenue and Customs, on the 24th April 1915, finding the plaintiff guilty of an offence punishable under section 167 of the Sea Customs Act, 1878, and fining him Rs. 1,000 and confiscating 148 lbs. and 34 tolas weight of silver, imported without payment of duty, were illegal and not binding on the plaintiff; and that Rs. 5,749-15-0 and costs may be awarded to plaintiff. The plaintiff's case was that on the 9th March 1915 he bought 369 lbs. 5½ tolas of silver for his factory at Malvan from a merchant at Bombay, sold some of it and took the remainder, about 165 lbs. with him to Malvan; that on the 20th March 1915, his house and factory were searched by the Police Sub-Inspector, Malvan, in connection with a complaint of theft and, nothing being found, the silver was attached on the pretext that it had been imported without payment of duty; that this attachment was not in accordance with the Sea Customs Act; that the Sarkarkun who started the investigation accepted false evidence behind plaintiff's back and relying on this evidence the Collector passed the order complained of.

The defendants stated that the silver was imported from Goa, a foreign import and illegally landed without payment of duty at a place which was not a port; that the Collector's order confirmed by the Commissioner and Government under section 188 of the Sea Customs Act was final and that the Court had no jurisdiction to take cognizance of the suit.

The suit was dismissed by the District Judge on the ground that he had no jurisdiction to hear the suit. The decision was set aside by the High Court (see *Ganesh Mahadev v. The Secretary of State for India*⁽¹⁾), observing :

"The real question, therefore, to be determined in this litigation is whether there has or has not been a legal adjudication in accordance

(1) (1918) 43 Bom. 221 at p. 232.

1921.

MAHADEV
GANESH
v.

SECRETARY
OF STATE
FOR INDIA.

with the provisions of the Act. That will involve determining, after evidence has been recorded, what was the exact method adopted for the purpose of the adjudication and whether that method was in accordance with the express or implied provisions of the Act."

On remand, the District Judge held that there was a legal adjudication by the Special Tribunal under the Sea Customs Act, 1878. His reasons were :

"The illegality of the actual seizure of the silver in question is as decided by the High Court irrelevant. The claim for damages for pain, anxiety and trouble suffered by the plaintiff is also not to be considered.

The only point to be considered is the legality of the adjudication under the Act. The Criminal Procedure Code has nothing whatever to do with these proceedings. As I have said above neither the Act nor the rules under it lay down any express procedure. I take as the guiding principle the following extract from the judgment in *Board of Education v. Rice* quoted by Mr. Justice Hayward.

'They have no power to administer an oath and need not examine witnesses. They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view.'

Another very important principle is laid down by Viscount Haldane in the case of *Local Government Board v. Arlidge*.

'Unlike a Judge in a Court he is not only at liberty but is compelled to rely on the assistance of his staff.'

It is clear then that statements recorded by a subordinate official could legally be used by the officer making the adjudication. Plaintiff cannot challenge the adjudication on this ground. Nor can he legitimately urge that witnesses were not examined in his presence or that he was not allowed to cross-examine them and consequently the proceedings were illegal.

'That the judiciary should presume to impose its own methods on administrative or executive officers is a usurpation,' *L. G. Board v. Arlidge*.

The plaintiff made several statements. These were considered and their truth or falsity ascertained by verification. I see no reason to hold that plaintiff had not 'a fair opportunity for correcting or contradicting any relevant statement prejudicial to his view.'

That the silver confiscated came from Wasudeo a servant of Gokuldas, a silver dealer of Goa, to the Tindal of the boat 'Hari Prasad' and was landed

clandestinely at Dandi near Malvan is directly testified to by Bhikaji Salu Sarang and the Tindal and lascars of the boat. The statements are all mentioned and weighed by the Assistant Collector, Exhibit A 4, the Sarkarkun Exhibit A 3."

The plaintiff having died, his son Mahadev appealed to the High Court.

A. G. Desai, for the appellants.

S. S. Patkar, Government Pleader, for the respondents.

MACLEOD, C. J. :—The plaintiffs are the sons of one Ganesh Mahadev Jamsandekar, an inhabitant of Malvan, in whose house certain silver ingots were discovered by the Police. The silver was attached and sent over to a clerk in the Customs Department. It was suspected that silver was being imported into British India without paying duty, and accordingly an inquiry was instituted and a report was made to the Collector of Customs. The Collector, on considering all the papers which were sent to him, came to the conclusion that the silver had been imported without paying the duty, being illicitly landed at Dandi from Goanese territory. Ganesh was, therefore, found guilty of an offence punishable under clause (3) of section 167 of the Sea Customs Act, VIII of 1878, and was fined Rs. 1,000, while the silver was confiscated.

A suit was brought by Ganesh for a declaration that the orders passed by the Collector of Customs were illegal, and to recover the value of the silver and the amount of the fine. The plaintiff's suit was dismissed by the District Judge of Ratnagiri on the ground that he had no jurisdiction to hear the suit. This decision was set aside by this Court: see *Ganesh Mahadev v. The Secretary of State for India*⁽¹⁾. The Court said (page 232): "The real question, therefore, to be determined in this

1921.

MAHADEV
GANESH
v.
SECRETARY
OF STATE
FOR INDIA.

⁽¹⁾ (1918) 43 Bom. 221.

1921.

MAHADEV
GANESH
2.
SECRETARY
OF STATE
FOR INDIA.

litigation is whether there has or has not been a legal adjudication in accordance with the provisions of the Act. That will involve determining, after evidence has been recorded, what was the exact method adopted for the purpose of the adjudication and whether that method was in accordance with the express or implied provisions of the Act." The suit was, therefore, remanded.

No further evidence was called by either side. On behalf of the defendants papers relating to the proceedings before the Customs Officers, Exhibits A 1 to 7, were put in. It is admitted that the Sea Customs Act contains no provisions with regard to the adjudication of confiscation and penalties which can be made by the Customs Officers under section 182. Therefore, the Customs Officers must proceed according to general principles, which are not necessarily legal principles, for the purpose of arriving at a conclusion when such inquiries, as the present one, are instituted. It appears to me after perusing the papers, which were before the Collector of Customs, and which I presume were taken in accordance with the ordinary procedure, that various statements were recorded by the Sarkarkun, including the statement of Ganesh. There is also a long application on behalf of Ganesh which has been placed before us, but which does not appear in the paper book, and I have no doubt that the Collector, who is not bound to adjudge on confiscation and penalty as if the matter was proceeding in a Court of law according to the provisions of the Civil or Criminal Procedure Code, dealt with the various statements before him in a careful and judicial manner.

The learned Judge has referred to the case of the *Local Government Board v. Arlidge*⁽¹⁾ in which the

⁽¹⁾ [1915] A. C. 120, at p. 138.

1921.

 MAHADEV
 GANESH
 v.
 SECRETARY
 OF STATE
 FOR INDIA.

Court said "that the judiciary should presume to impose its own methods on administrative or executive officers is a usurpation"; and again in the *Board of Education v. Rice*⁽¹⁾, the Court said: "They have no power to administer an oath, and need not examine witnesses. They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view."

It is obvious from the record in this case that the plaintiff had ample opportunity to correct or contradict any statement prejudicial to his view which had been recorded. I have before me a petition signed by the pleader of Ganesh Mahadev in which all the points that are placed now before us were entered. If it in any way appeared to me that there had been real injustice in this case I would not hesitate to entertain the appellant's claim. But as far as I can see from the provisions of the Sea Customs Act, the appellants have no reason to complain that justice has not been dealt out to Mahadev by the Customs Authorities. Even dealing with the case on the merits, it seems to me absolutely certain that the story put forward by Ganesh with regard to the carriage of this silver from Bombay *via* Belgaum to Malvan was rightly taken to be a false one. In my opinion, therefore, in this case there has been an adjudication under the Act with which no fault can be found. Therefore the appeal must be dismissed with costs.

SEAH, J. :—I agree.

Decree confirmed.

J. G. R.

(1) [1911] A. C. 179 at p. 182.