

Punjab  
State  
and another  
v.  
Messrs Shambhu  
Nath and Sons,  
Ltd., Amritsar  
—  
G. D. Khosla,  
A.C.J.

superior authority in the form of appeal or revision, is scarcely enough for holding that a certain rule, or authority given to an authority is *ultra vires* and is liable to be condemned. Any abuse of power by a public servant can be redressed, if not by appeals or revisions, by other means such as moving a petition for a writ under Article 226 of the Constitution.

After considering the matter from all aspects, I am of the opinion that the learned Single Judge has taken an erroneous view of this matter and that he has not paid due regard to the observations of the learned Judges of the Supreme Court in the three most recent cases which have dealt with the principles upon which the *vires* of such matters are to be considered. I would, therefore, hold that rule 27.30 is not *ultra vires* the Constitution, and these petitions must, therefore, fail. I would accordingly allow both the appeals and dismiss the petitions with costs.

Dalal, J.

DULAT, J.—I agree.  
R.S.

APPELLATE CIVIL

Before G L. Chopra, J.

BHAGWAN DASS,—Plaintiff-Appellant.

versus

THE DISTRICT BOARD KARNAL AND ANOTHER,—  
Defendants-Respondents

Regular Second Appeal No. 844 of 1955.

1959  
Jan., 14th

Northern India Ferries Act (XVII of 1878)—Management of a public ferry transferred to a local body—Provisions of the Act—Whether applicable—Arrears of lease money—Whether recoverable as arrears of land revenue under the Act by the District Magistrate—Jurisdiction of the Civil Court—Whether barred—Amount of compensation payable on surrender of lease—By whom to be determined.

*Held*, that the provisions of the Northern India Ferries Act, 1878, are applicable even when the management of a public ferry is transferred to a local body, such as Municipal Committee or District Board, under section 7 or 7-A of the Act. In case where the management is not so transferred the immediate superintendence of the ferry "vests" in the Magistrate of the District. Difference in the language of the two provisions is significant. It is only the management of the public ferry that is transferred. The proprietary right in and the overall control of a public ferry continue to remain with the State, even where its limited management is transferred to the Municipal Committee or the District Board. Approval of the Commissioner or previous sanction of the State is to be obtained where the tolls of a public ferry are leased out by the Municipal Committee or the District Board. The lessee is to conform to the rules framed by the State Government under the Act. It is the State Government which can cancel the lease and to which the lessee may surrender the lease, in the circumstances and on the conditions mentioned in sections 10 and 11. The compensation payable to or by the lessee in such cases is to be determined by the Magistrate of the District. The matter seems to be concluded by the provision that the rents and compensation, even though they may be payable to the public body to which the management is transferred, are to form part of the revenues of the State. The arrears due from a lessee of the tolls of a public ferry can be recovered by the Magistrate as an arrears of land revenue.

*Held*, that the compensation which a lessee ought to pay in respect of the surrender is to be determined by the District Magistrate and till that is determined and paid the lessee would be responsible to pay rent under the lease. Jurisdiction of Civil Courts to go into the matter is expressly barred by section 34 which lays down that no suit to ascertain the amount of any compensation payable, or abatement of rent allowable under the Act shall be cognisable by any Civil Court.

*Second appeal from the decree of Shri Banwari Lal, Senior Sub-Judge, with enhanced appellate powers, Karnal, dated the 27th July, 1955, reversing that of Shri Sewa Singh, Sub-Judge, 1st Class, Karnal, dated the 25th day of*

*November, 1954, and dismissing the plaintiff's suit and leaving the parties to bear their own costs throughout.*

ROOP CHAND, for Appellant.

H. L. SARIN, for Respondent.

#### JUDGMENT

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and another  
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CHOPRA, J.—Bhagwan Dass, appellant, had taken on lease the tolls of the public ferry of Sanauli tehsil Panipat, from the District Board, Karnal, the respondent, for a period of two years, from 1st April, 1948, to 31st March, 1950, in a public auction held on 29th March, 1948, at a total rental of Rs. 12,720. The lease-money was to be paid in monthly instalments of Rs. 530 each. Out of the lease-money Rs. 7,950 was paid by the lessee. For the recovery of the balance (Rs. 4,770), for which the lessee was in default, the District Board moved the District Magistrate, Karnal, under section 9 of the Northern India Ferries Act No. 17 of 1878, (hereinafter to be referred as the Act). The District Magistrate proceeded to recover the amount as if it were arrears of land revenue and issued the necessary processes. Bhagwan Dass then brought the present suit on 16th November, 1953, for a declaration that the District Board was not entitled to the amount, as the plaintiff had surrendered the lease on one month's notice from 1st December, 1949, and also that if any amount was actually due the same could be recovered only by having recourse to a Civil Court and not with the help of the District Magistrate. The suit was decreed by the trial Court, but dismissed in appeal by Senior Sub-Judge, Karnal. This is an appeal preferred by the plaintiff.

The points urged on behalf the the appellant are (i) that the Civil Court was competent to determine the amount, if any was due from the plaintiff, and (ii) that the amount could not be

recovered through the District Magistrate as arrears of land revenue. To appreciate the questions raised, it is necessary to read the relevant provisions of the Act. Section 4 of the Act authorises the State Government, from time to time, to declare what ferries shall be deemed public ferries, and the respective districts in which, for the purposes of the Act, they shall be deemed to be situate. Section 6 provides for the superintendence of such public ferries and says:—

“The immediate superintendence of every public ferry shall, except as provided in section 7 and section 7-A, be vested in the Magistrate of the district in which such ferry is situate, or in such other officer as the State Government may, from time to time, appoint by name or in virtue of his office in this behalf,

and such Magistrate or officer shall, except make all necessary arrangements for when the tolls at such ferry are leased, the supply of boats for such ferry, and for the collection of the authorised tolls leviable thereat.”

Section 7 provides:—

“The State Government may direct that any public ferry situate within the limits of a town be managed by the officer or public body charged with the superintendence of the municipal arrangements of such town;

and thereupon that ferry shall be managed accordingly.”

Section 7-A lays down:—

“The State Government may direct that any public ferry wholly or partly within the

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area subject to the authority of a District Council, or a District Board or a Local Board in the State be managed by that Council or Board, and thereupon that ferry shall be managed accordingly."

It is no longer disputed that the ferry in question was declared a 'public ferry' and directed by the Punjab Government to be managed by the District Board, Karnal, the respondent, as required by sections 4 and 7-A of the Act.

Section 8 provides for the letting of ferry tolls by auction and says:—

"The tolls of any public ferry may, from time to time be let by public auction for a term not exceeding five years with the approval of the Commissioner, or by public auction, or otherwise than by public auction, for any term with the previous sanction of the State Government.

The lessee shall conform to the rules made under this Act for the management and control of the ferry, and may be called upon by the officer in whom the immediate superintendence of the ferry is vested, or, if the ferry is managed by a municipal or other public body under section 7 or section 7-A, then by that body, to give such security for his good conduct and for the punctual payment of the rent as the officer or body, as the case may be, thinks fit."

The tolls of the ferry in question were publicly auctioned by the District Board and let out to the

appellant on the terms already stated. A lease deed and a Kabuliat-nama duly signed by the parties were executed.

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Section 10 empowers the State Government to cancel the lease of the tolls of any public ferry by giving six months' notice in writing to the lessee. Where any lease is so cancelled, the Magistrate of the District shall pay to the lessee such compensation as such Magistrate may, with the previous sanction of the State Government, award. A lessee may also surrender the lease on one month's notice in writing to the State Government. In such a case, he has to pay to the Magistrate of the District such compensation as the said Magistrate, subject to the approval of the Commissioner, may direct. This is laid down by section 11 of the Act. Section 9 provides for the recovery of arrears from the lessee and reads:—

“All arrears due by the lessee of the tolls of a public ferry on account of his lease may be recovered from the lessee or his surety (if any) by the Magistrate of the district in which such ferry is situate as if they were arrears of land-revenue.”

According to section 17, all tolls, rents, compensation and fines under the Act shall form part of the revenues of the State.

The contention on behalf of the appellant is that since the ferry in question was under the management of the District Board and it was the District Board which leased out the tolls of the ferry to the appellant and to which the lease-money was being paid and the balance was to be paid, the State Government did not come into the picture. The amount having been due to the

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District Board, it could be recovered through a Magistrate only if the amount was claimable under the Punjab District Boards Act, 1883, as provided by section 58-B of that Act. Since the money in question was due to the District Board under a contract, section 58-B, it is contended, would have no application. *Mona Ram v. Emperor* (1), *Narain Singh v. District Board of Ludhiana* (2), and *Abdullah and another v. District Board, Montgomery and another* (3), are relied upon in support of the contention. The entire argument, in my view, is based on a wrong hypothesis and is fallacious.

The provisions of the Act, as reproduced above, leave no doubt that they would be applicable even when the management of a public ferry is transferred to a local body, such as Municipal Committee or District Board, under section 7 or 7-A of the Act. In cases where the management is not so transferred the immediate superintendence of the ferry "vests" in the Magistrate of the District. Difference in the language of the two provisions is significant. It is only the management of the public ferry that is transferred. The proprietary right in and the overall control of a public ferry continue to remain with the State, even where its limited management is transferred to the Municipal Committee or the District Board. Approval of the Commissioner or previous sanction of the State is to be obtained where the tolls of a public ferry are leased out by the Municipal Committee or the District Board. The lessee is to conform to the rules framed by the State Government under the Act. It is the State Government which can cancel the lease and to which the lessee may surrender the lease, in the circumstances and

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(1) A.I.R. 1926 Lah. 518  
 (2) A.I.R. 1928 Lah. 109  
 (3) A.I.R. 1950 Lah. 193

on the conditions mentioned in sections 10 and 11. The compensation payable to or by the lessee in such cases is to be determined by the Magistrate of the District. The matter seems to be concluded by the provision that the rents and compensation, even though they may be payable to the public body to which the management is transferred, are to form part of the revenues of the State. The arrears due from a lessee of the tolls of a public ferry can be recovered by the Magistrate as arrears of land revenue. The arrears due from the appellant are with respect to a lease of the tolls of a public ferry and the conditions laid down by section 9 being satisfied, the amount can be recovered by the District Magistrate as arrears of land revenue.

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First two of the decisions relied upon by Mr. Roop Chand have no application to the point in question. They are cases where money due to a Municipal Committee or a District Board on the basis of a lease or contract was sought to be recovered through a Magistrate. It was held that the money could not be said to be due under the Punjab Municipal Act or the Punjab District Boards Act and was, therefore, recoverable only by action in Civil Courts. The third case *Abdullah and another v. District Board, Montgomery and another* (1), is certainly to the point and a contrary view was taken therein. The learned Judge was of opinion that the summary procedure contained in section 9 of the Act could only be availed of by the officer of the Government vested with the immediate superintendence of the public ferry and not by the District Board to which management of the public ferry was transferred under section 7-A. I do not see any such restriction or limitation placed by the language of section

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(1) A.I.R. 1950 Lah. 193



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On the second point, it is contended that the amount due from the appellant was not determined by any authority under the Act and till that was done no action for realisation could be taken by the District Magistrate. It is further submitted that a Civil Court was competent to go into the question and determine the amount actually due from the appellant under the lease. It is not disputed that a sum of Rs. 4,770 (the amount which is being realised) was due from the appellant as balance of the lease money. The appellant's case was that he had surrendered the lease on 1st December, 1949, after giving one month's notice to the respondent and, therefore; he was not liable to pay any rent for the remaining term of the lease. For this, the appellant was to approach the District Magistrate under section 11 of the Act. The compensation which a lessee ought to pay in respect of the surrender is to be determined by the District Magistrate and till that is determined and paid the lessee would be responsible to pay rent under the lease. Jurisdiction of Civil Courts to go into the matter is expressly barred by section 34. The section lays down that no suit to ascertain the amount of any compensation payable, or abatement of rent allowable under the Act shall be cognisable by any Civil Court.

In the result, the appeal is dismissed with costs.

B.R.T.