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Chagla C. J.

of s. 14 is entirely different from the limit of work laid down by the Legislature for the purpose of s. 63. Whereas the limit of work for the purpose of s. 14 is laid down in order to prohibit the employer from requiring an employee to make him work beyond the limit, the limit of work laid down for the purpose of s. 63 is purely for the purpose of computing overtime wages, and the error into which the Authority has fallen is to have taken the view that because there was no limit of work with regard to a particular establishment under s. 14, therefore there would be no limit of work under s. 63 and the establishment could make an employee work for any length of time without paying him overtime wages. In our opinion, therefore, if the employee in this case establishes that he has worked overtime in any particular week, he would be entitled to overtime wages as provided by s. 63. Whether in fact he has so worked has not yet been decided by the Authority.

Therefore, we will send this matter back to the Authority with the direction that if the employee establishes the fact of working overtime then his claim should be allowed as provided by s. 63 of the Act. The petitioner to have the costs of the petition against the Opponent No. 2.

Order accordingly.

H. R. G.

APPELLATE CIVIL

Before Mr. Justice Shah and Mr. Justice Vyas.

PITAMBAR DHONDU PATIL, PETITIONER *v.* BHAGCHAND RATANCHAND GUJARATHI AND OTHERS, OPPONENTS.*

1956 *June* 19, 20

The Bombay Tenancy and Agricultural Lands Act, (Bom. Act LXVII of 1948) s. 74—Whether Collector can summarily reject an appeal without hearing the appellant.

The jurisdiction conferred upon the Collector as the Appellate Authority under the Bombay Tenancy and Agricultural Lands Act is one to adjudicate finally upon disputes, which are essentially of a civil nature; even if on considerations of expediency the Legislature has entrusted that jurisdiction to the Collector, the nature of the proceedings in which the dispute is litigated are not so fundamentally altered that even the bare right of a litigant to be heard in support of his appeal before it is disposed off, should be regarded as excluded. If the right of appeal is to be real and effective, the Collector must follow the ordinary rule of procedure followed by Civil Courts, viz. that a party given the right to make an application or appeal to a Court must be given an opportunity to support it by oral argument.

SPECIAL Civil Application against the decision of the Bombay Revenue Tribunal.

Facts are set out in the Judgment.

*Special Civil Application No. 163 of 1956.

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Shah J.

G. S. Gupte (Sr.) for the Petitioner.

Y. V. Chandrachud for Opponent No. 1.

Shah J.—The petitioner Pitambar Dhondu Patil preferred Tenancy Appeal No. 86 of 1954 against the order passed by the Mamlatdar, Amalner, in Tenancy Suit No. 78 of 1954. The District Deputy Collector summarily rejected the appeal after reading the papers and without giving a hearing to the petitioner or his Advocate. The petitioner preferred a revision application to the Bombay Revenue Tribunal and the Tribunal has expressed the view that the Collector was not bound to give a hearing to the petitioner before summarily dismissing the appeal. The Tribunal observed that there was no provision under the Bombay Tenancy and Agricultural Lands Act about the procedure to be followed by the Collector in entertaining and deciding appeals under the Tenancy Act and inasmuch as s. 209 of the Bombay Land Revenue Code provided for summary dismissal of the appeals under that Code and further provided that no reasons need be given by the Collector when dismissing an appeal summarily, the District Deputy Collector was not bound to give a hearing to the petitioner before summarily dismissing his appeal.

We are unable to agree with the view taken by the Tribunal. A bare perusal of the provisions of the Bombay Tenancy and Agricultural Lands Act is sufficient to show that certain disputes giving rise to complicated questions relating to civil rights of parties are by the Act now entrusted for adjudication to the Revenue Courts and the Revenue Courts are entitled to decide those disputes finally and the Civil Court's jurisdiction in respect of those disputes is excluded. A right of appeal to the Collector against the decision of the Mamlatdar in those disputes is conferred upon litigants and if that right is to be real and effective, we are of the view that the Collector must follow the ordinary rule of procedure followed by the Civil Courts that if any party is given the right to make an application or appeal to a Court he is entitled to be given an opportunity to support the same by oral argument. The Tribunal was of the view that under s. 209 of the Bombay Land Revenue Code the appellate authority has the power summarily to dismiss appeals and in the absence of an express provision to the contrary made by the Bombay Tenancy and Agricultural Lands Act a litigant preferring an appeal had no right to be heard before his appeal was summarily dismissed. But s. 209 of the Land Revenue Code does not provide that an appeal may be dismissed summarily without hearing the party who has preferred the appeal. In any case, the jurisdiction which is conferred upon the Collector as an appellate authority under the Bombay Tenancy and Agricultural Lands Act is, as we have already observed, jurisdiction to adjudicate finally upon disputes which are essentially of a civil nature, and even if on consideration of expediency the Legislature has entrusted that jurisdiction to

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Shah J.

the Collector, thereby the nature of the proceedings in which the dispute is litigated is not so fundamentally altered that even the bare right of a litigant to be heard in support of the appeal before his appeal is disposed of should be regarded as excluded. We are unable to agree with the view of the Tribunal that the District Deputy Collector acted properly in dismissing the appeal filed by the petitioner summarily without giving him a hearing. It is unnecessary, therefore, to consider the other questions which have been decided by the Tribunal.

We accordingly set aside the order passed by the Tribunal. We also set aside the order passed by the District Deputy Collector and direct that the proceedings be sent back to the District Deputy Collector with a direction that the District Deputy Collector do hear and dispose of the appeal pending before him according to law. Costs in this application will be costs before the District Deputy Collector.

Order accordingly.

H. R. G.

APPELLATE CIVIL

Before Mr. Justice Shah and Mr. Justice Vyas.

VISHNU GOVIND MULIK AND ANOTHER *v.* PANDURANG RAGHUNATH SABNIS AND OTHERS.*

1956 *June* 21

The Bombay Tenancy and Agricultural Lands Act (Bom. Act LXVII of 1948), s. 76—Whether Revenue Tribunal can decide a Question of fact upon evidence on record in the absence of a finding by the Collector.

A landlord filed an application before the Mamlatdar for possession of the land in dispute on the ground that he required it for *bona fide* personal cultivation. On the point whether the area under the personal cultivation of the landlord at the date of the notice was more than 50 acres or less the Mamlatdar held that the area did not exceed 50 acres. On appeal the Prant Officer did not give any finding on the issue. In revision from the decision of the Prant Officer, the Bombay Revenue Tribunal considered the evidence on record and accepted the finding of the Mamlatdar that the landlord was personally cultivating only 14 acres of land. On the question whether the Tribunal was competent to appreciate evidence and find on facts.

Held, what is forbidden by the Act is the super-imposition by the Tribunal of its own appreciation of evidence; it does not forbid appreciation of evidence when there has been none by the lower court.

Held, further that as the Prant Officer had made no effort to appreciate or even consider the evidence on record and as he had failed to give a finding upon that evidence and to remand the case to the Mamlatdar, there was no specific provision in the Act which forbid the Tribunal from applying its own mind to the evidence on record; in such a case the Tribunal does not superimpose its own appreciation of evidence upon that of the lower court.

SPECIAL Civil Application No. 415 of 1956 against the decision of the Bombay Revenue Tribunal.

*Special Civil Application No. 415 of 1956.