



EXCLUSION OF JURISDICTION OF CIVIL COURTS

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Abstract: The modern legislative policy of the State is to exclude the judicial intervention. Rule of law presupposes the right of an aggrieved person to approach a Court of Law for redress. The legislature confers more and more powers on the administration and at the same time try to make such powers immune from review by Courts. This resulted in the growth of administrative tribunals which justify the policy of excluding the jurisdiction of the judiciary. The judiciary is seen reluctant to accept the new policy of the legislature because in a democratic State, the Court has to extent its hands of protection towards the aggrieved citizens.

Rule of law presupposes the right of an aggrieved citizen to approach a court of law for redress. However, the modern legislative tendency is to confer more and more powers on the administration and at the same time to make such powers immune from review by courts. The reasons which justified the growth of tribunals themselves are said to justify the policy of excluding the jurisdiction of judiciary. Naturally the judiciary is seen reluctant to accept the new policy of the legislature because in a democratic state, the Court has to extent its hands of protection towards the aggrieved citizens. The courts are conscious of the fact that they have the social responsibility to ensure that the administration functions according to the rule of law and those adjudicatory authorities are not let to exceed or misuse their powers under the cover of “finality” or “ouster clauses”¹

Much can be said vehemently in favour of the legislative policy of excluding judicial intervention. The complexities of the modern industry have forced the state to undertake various welfare measures to protect the needy lot. It is submitted that the very object of the modern welfare state is the welfare of the poor public. The rationale behind this clause is that in its race to provide with the bare necessities to the poor workers and peasants, the heavy foot of the state may fall on the rights and liberties of some people. It is evident that the legislations made to protect the rights and interests of the weaker sections like workers² and tenants³ should provide with quick, cheap and effective machinery because these people may not be able to afford the costly and snail-moving process of justice in the ordinary courts. Another reason for the creation of administrative tribunals and conferring exclusive jurisdiction is that in certain cases considerable expertise will be required to reach a decision as in the case of fixing fair rent, wages and bonus. The ordinary courts of law are incapable to meet an emergency or an extraordinary situation. In such circumstances the authorities are empowered to take quick preventive action under certain laws.

The methods of exclusion and the interpretation of ouster clauses have been subject of juristic thought since a long time. Under section.9 of the Civil Procedure Code, Courts have general jurisdiction to try all suits of civil

¹ M.P. Jain Judicial response to privative clauses in India, J.I.L.I.(1980)p.1

² Industrial Disputes Act, 1947, Factories Act, 1948, The Minimum Wages Act, 1948 etc.

³ Tenancy Acts like Bombay Tenancy and Agricultural Lands Act,1949, Kerala Land Reforms Act 1963 etc

nature except those whose cognizance are expressly or impliedly barred. So the jurisdiction of the courts can be taken away by ordinary statutes. Several techniques are used to achieve the object. In some cases the statute may provide for the exclusion in express terms without giving room for any doubt. The term generally used for this purpose is that no order shall be called in question before any court of law. Another method is that the statute will provide that the courts will not have jurisdiction to entertain any suit with regard to a subject which is exclusively left to a tribunal. Usual method of exclusion which has become a common place among draftsman is by conferring power which is to be exercised on the subjective satisfaction of an authority. In such cases the court can see only whether there was some material on which the authority has based its satisfaction.⁴ Apart from the express provision of exclusion a statute may resort to indirect method like prescription of a period of limitation for review.⁵ The most extreme type of exclusion of civil court's jurisdiction is seen when the legislature create what is called Lord Esher's⁶ category of tribunal. This type of tribunal is vested with jurisdiction to decide the jurisdictional question as well as the subject matter of decision. Such cases are seen in legislations dealing with land reforms and tenancy conferring permanent rights of tenancy on cultivating tenants. Here the legislations confer power to decide the question whether an applicant is a tenant or not and also the power to adjudicate questions of fair rent or fixity of tenure. This has the effect of excluding the jurisdiction of a civil court exercising even supervisory powers on jurisdictional grounds also. The legislation in order to avoid indirect decisions by civil courts invariably provides for reference of such questions to statutory authorities whenever any such questions arise in regular civil proceedings. The courts in India have given due reference to such legislative device.

Ordinarily the civil courts has jurisdiction to entertain all suits for adjudication of the rights and disputes under Section.9 of the C.P.C. and exclusion of the jurisdiction of the civil courts is not to be inferred easily. Where there is an express bar of the jurisdiction of the court an examination of the scheme of the particular Act to find out the adequacy of the sufficiency of the remedies provided is not relevant. However, where no expression of exclusion has been made, an examination of the scope of remedies and scheme of the particular Act to find out the intention of the legislature becomes necessary. In such types of cases it is necessary to see as to whether the statute creates a special right or a liability and provides for the determination of the rights or the liabilities and whether it lays down that all questions about such rights and liabilities shall be determined by the tribunal constituted under Act and whether remedy normally associated with actions in civil courts are prescribed by such statutes.

All statutes and orders gain legality from the constitution. The jurisdiction of a civil court to try civil cases is granted by statutes and hence can be excluded by a statutory provision. But the jurisdiction of the High Courts to issue writs under Art.226 and the Supreme Court to hear special appeal under Art.136 are conferred by the Constitution and hence incapable of exclusion by ordinary legislation.⁷ S.9 of C.P.C. gives jurisdiction to the civil courts to try suits of a civil nature unless it is barred expressly or impliedly.⁸ Section 9 makes it clear that the remedy can be shut out by providing so expressly or impliedly.

Here a distinction between a civil suit to enforce a statutory right or liability and a suit challenging the legality of administrative action is to be maintained. A civil suit may ordinarily lie if the right flows from a statute and if the statute does not exclude such jurisdiction. The answer is not as simple as it appears to be presumed by the draftsman of S.9 of C.P.C. The answer seems to be that since the statute provides for a remedy through some other body the right of civil suit is excluded. The question here is can he opt the remedy available through an ordinary civil court. If the answer is in the affirmative what are the circumstances in which the court will assume jurisdiction?

⁴ G.S. Parulekar V Maharashtra, AIR (1966) S.C.1404. In the area of subjective satisfaction it is the law that the courts are precluded from seeing whether a reasonable man would have been so satisfied on the basis of such materials. Another ground of challenge in such cases is malafide action.

⁵ S.29(4)of the Thiruppuvaram Payment(Abolition)act,1969 reads, No suit prosecution or other legal proceedings shall be instituted after the expiry of six months from the date of the act complained of.

⁶ R V Income Tax special purposes Commissioners (1988) All.E.R.1139.

⁷ Raja Jagadambika Pratap Narain V Board of Direct Taxes. AIR(1975)SC.1816

⁸ S.9 reads "The courts shall subject to the provision herein contained have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. Explanation says a suit in which the right to property or to an office is contested in a suit of a civil nature notwithstanding that such right may depend entirely on decision of questions as to religious rites or ceremonies.

The traditional view followed by the courts was that it will not entertain a suit if the relevant statute provided an effective remedy. The leading decision in this area is *State V Mask and Co.*⁹ The collector of customs has wrongly assessed the respondents' goods (boiled betel nuts) and imposed tariff at a higher rate. The respondent appealed against the order of the government but it was dismissed. Hence the suit was filed claiming recovery of the excess amount paid. In effect, the suit was for a re decision of the assessment. That is to say that the court was asked to ignore the decision by the statutory authority, decide the matter afresh and to order refund of any excess of amount realized. The appellant contended that the suit was hit by S.188¹⁰ of the Sea Customs Act, which excluded civil court's jurisdiction. The Privy Council dismissed the suit following the traditional formulation. So the law is that the enforcement of a right or liability under a statute can be done only under the statute, but the legality of the order namely, that the order was passed with jurisdiction is always liable to be examined by a civil court.

The law correctly stated in *Mask and Co* case was obfuscated by the Privy Council in *Raleigh Investment Co. Ltd V Governor General in Council*¹¹ The suit was for refund of income tax on the ground that a provision of Income tax Act was ultra vires of the Central legislation. With great respect to the Honorable Supreme Court in the above case it has to be said that the view that the issue of constitutionality of a statute could be raised before a statutory authority and effectively decided seems to be incorrect. Thus the rule of exclusion was extended to the extreme limits. The judicial Committee showed over enthusiasm to extent the exclusion principle to the extreme limits. It was the result of its eagerness to refuse the opening of assessment made by the assessment authority.

The Supreme Court summarized the law relating to the exclusion of jurisdiction of courts in *Dhulabhai V Madhya Pradesh*¹². The suit was for a declaration that M.B. Sales Tax Act 1950 was unconstitutional and for refund of the amount illegally collected. There was express exclusion of civil court's jurisdiction. It was held that when an assessment was based on an unconstitutional provision civil court had jurisdiction to look into the matter. It was also held that apart from legality, the correctness of the assessment had to be decided by the authority itself under the Act and the civil court had no jurisdiction. The jurisdiction of the civil court must be held to be excluded when there is an adequate and sufficient remedy specifically provided in a statute which would normally be associated with actions in a civil court.¹³ If the legislature had intended to take away the jurisdiction of the civil court to decide a suit which had been validly instituted, it would have been worded differently.

In *State of Tamil Nadu V Ramalinga Samigal Madam*¹⁴ the question that came up for consideration was whether the Tamil Nadu Estates (Abolition and conversion into Ryotwari) Act excluded the jurisdiction of civil court in respect of matters considering the nature of land. The Apex Court has reiterated the decision given in *Mask and Co.* case. Hence it can be concluded that in the case of fiscal statutes the civil courts would not be permitted to make a reassessment under any circumstance. An order of assessment may be challenged before a civil court on the ground that the authority had no jurisdiction in the matter. While dealing with the question of ouster of jurisdiction of the civil court by specially constituted tribunals, such ouster was not to be readily inferred unless the conditions set out by the court were satisfied.¹⁵

In *Samar Kumar Roy V Jharna Bera*¹⁶ plaintiff sought a declaration that defendant was not his legally married wife and that she had no right to claim him as her husband as his alleged marriage with defendant was not legal and valid and thus claimed a permanent injunction restraining defendant from claiming plaintiff as her husband and temporary injunction. The Supreme Court held that the Hindu Marriage Act and the Special Marriage Act do not lay down that all questions relating to the said rights and liabilities shall be determined only by the Tribunals which are constituted under these Acts. Family Courts Act¹⁷ excludes the civil court's jurisdiction in respect of a suit or proceeding which is between the parties and filed under the Hindu Marriage Act or Special Marriage Act, where the

⁹ A.I.R.(1940) P.C 105.

¹⁰ S. 188 of the Sea Customs Act, 1878 provided that every order passed under this section shall be subject to the power of revision conferred by Section 191, are final.

¹¹ A.I.R.(1947) P.C.78.

¹² A.I.R. (1969) S.C 78

¹³ M. Hariharasudhan V Karmegham (2019) 10SCC 94.

¹⁴ A.I.R.(1986) S.C.794

¹⁵ M. Hariharasudhan V Karmegham (2019) 10 SCC 94

¹⁶ (2017) 9 SCC591

¹⁷ Section 8 (a) of Family Courts Act

suit is to annul or dissolve a marriage, or is for restitution of conjugal rights or judicial separation. An exclusion of the jurisdiction of the civil courts is not readily inferred, and so it is clear that the civil courts jurisdiction to determine the aforesaid legal character is not barred either expressly or impliedly by any law.

