

MANU/BH/0211/1948

Equivalent Citation: AIR1949Pat39

**IN THE HIGH COURT OF PATNA
SPECIAL BENCH**

Decided On: 05.03.1948

Appellants: **Maharaja Pratap Udai Nath Shahi Deo**
Vs.

Respondent: **Sara Lal Durga Prasad Nath Shahi Deo and Ors.**

Hon'ble Judges/Coram:

C.M. Agarwala, C.J., Herbert Ribton Meredith and Jugal Kishore Narayan, JJ.

JUDGMENT

Herbert Ribton Meredith, J.

1. This rule has been issued at the instance of the Maharaja of Chota Nagpur against ten persons to show cause against committal for contempt of disobedience of an injunction.

2. On 10th February 1867, the then Maharaja gave Pargana Tori comprising 814 villages in Khorposh grant to his younger son, Kumar Jagat Mohan. The Maharaja died in 1869, and was succeeded by the present Maharaja, the petitioner. Subsequently the question arose whether the grant included the mineral and subsoil rights. On account of interference with these rights, the Maharaja in 1922 brought a suit (Title suit No. 86 of 1922) against his half brother Kumar Jagat Mohan, and two lessees, Basu and Kirkwood. The Subordinate Judge dismissed the suit. The High Court decreed it giving the Maharaja not only a declaration of title to the mineral rights, but a permanent injunction restraining the defendants from exercising such rights themselves or interfering with his exercise of them. On 11th June 1931, this decision was affirmed by the Privy Council *Jagat Mohan Nath v. Pratap Udai Nath Deo* MANU/PR/0064/1931.

3. In 1934 the Tori Estate went under the Encumbered Estates where it still is. In 1987 Kumar Jagat Mohan died, and was succeeded by the sons, the present opposite party 1 to 6. In October 1944 the Maharaja granted two mining leases of 53 villages in Tori to the National Cement Company for 99 years, and in 1945 the National Cement Company gave a prospective lease in respect of two villages in favour of Yakub, the opposite party No. 7. This lease was subsequently extended for six months.

4. On 15th December 1945, the opposite party Nos. 1 to 6 the disqualified proprietors, executed an agreement to lease the mineral rights in the whole Tori Estate in favour of Yakub. On 11th January 1946, Yakub wrote to the National Cement Company saying he was getting trouble from the surface owners and asking for help. On 1st August 1946, the opposite party Nos. 1 to 6 executed the lease in accordance with the agreement in favour of Yakub. Yakub started operations which led to proceedings under Section 145 Criminal P.C. between the National Cement Company and Yakub in respect of three villages. Then on 8th May 1947, the present application was made to issue a rule for committal for contempt for disobeying the injunction

given in the suit of 1922.

5. The opposite party No. 4 is dead, and the application has not been pressed with regard to opposite party Nos. 8, 9 and 10 who are sub-lessees from Yakub.

6. Equity acts in personam, and an injunction is a personal matter. The ordinary rule is that it can only be disobeyed in contempt by persons named in the writ. None of the opposite party in present case were defendants in the suit or named in the decree. Mr. B.C. De for the petitioner seeks to overcome this difficulty upon the principle laid down in *Avery v. Andrews* 1882 51 L.J. Ch. 414 and *Seaward v. Paterson* (1897) 1 Ch 545 to the effect that persons not party to the injunction may be proceeded against for contempt for aiding and abetting the breach.

7. There can be, however, no question of aiding and abetting where there is no principal offender. There is no one whom the opposite party can be said to have aided and abetted. The principle, in my opinion, is not therefore applicable; and it seems to me that the decision of the Privy Council in the case of *S.N. Banerji v. Kuchwar Lime and Stone Co. Ltd.* A.I.R.1988 P.C. 295 is conclusive upon that point. The High Court had held that the Secretary of State for India and the Director and the Manager of the Kalyanpur Lime Works were guilty of contempt for interfering with a former lessee under the Government, the Kuehwar Lime and Stone Company Ltd. in breach of an injunction against the Secretary of State. The Privy Council held that there had been no contempt by the Secretary of State. But they were pressed with the argument that Ghosh and Banerjee of the Kalyanpur Company were nevertheless guilty of contempt for aiding and abetting, upon the principles set out in *Avery v. Andrews* 51 L.J. Ch. 414 and *Seaward v. Paterson* 1897 1 Ch. 545. Their Lordships said:

The respondents, however, contended that even if the Secretary of State was not himself guilty of direct disobedience to the injunction which had been granted, yet the other two appellants were guilty of contempt upon the principles set out in *Avery v. Andrews* 51 L.J. Ch. 414 and *Seaward v. Paterson* (1897) 1 Ch. 545. In terms, however, those cases limit the offence of contempt by a person not a party to the injunction to cases where they aid and abet the party enjoined in its breach. Where, as here, that party has not broken the injunction it is impossible to hold that anyone has aided' or abetted them in breaking it.

The respondents sought to avoid this difficulty by maintaining that the doing by anyone of an act which was forbidden by the injunction was itself an offence, Their Lordships can find no authority for so wide a proposition. It is certainly not enunciated or indeed hinted at the cases referred to nor do they think it is sound in principle.

8. They were then pressed with the argument that Ghosh and Banerjee were bound by the injunction as deriving title from the Secretary of State, and they said:

The utmost which the respondents would say was that the Kalyanpur Company, having derived the supposed interest from the Secretary of State, who had been forbidden to interfere with the respondents' lease, were acting against the spirit if not the letter of the' injunction in taking or continuing in possession of the quarries, and were therefore guilty of contempt in interfering with the respondents' lease; The fact, however, that Ghosh and Banerjee claimed on behalf of their Company to derive title, rightly or

wrongly (and theft Lordships will assume wrongly), through the Secretary of State, cannot in their view make them liable for an act not forbidden to them though forbidden to him.

9. It is unnecessary in the present proceedings to express any opinion as to whether the petitioner is entitled to proceed by way of execution under the provision of Order 21, Rule 82, Civil P.C., against all or any of the opposite party. But even assuming that there is such a remedy, it is to be sought before the lower Court and not here.

9A. I would discharge the rule, but without v costs.

Jugal Kishore Narayan, J.

10. I agree.

C.M. Agarwala, C.J.

11. I have read the judgment of Meredith, J. and agree that this rule must be discharged for the reasons given by him.

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