Privy Council Appeal No. 82 of 1937
Patna Appeal No. 39 of 1936

S. N. Bannerjee and another - - - - - - - *Appellants*

v.

Kuchwar Lime and Stone Company, Limited (in liquidation) and others - - - - - - - - - *Respondents*

The Secretary of State - - - - - - - - *Appellant*

v.

Kuchwar Lime and Stone Company, Limited (in liquidation) *Respondents*

(*Consolidated Appeals*)

FROM

THE HIGH COURT OF JUDICATURE AT PATNA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 31ST OCTOBER, 1938.

Present at the Hearing:

LORD WRIGHT.
LORD ROMER.
LORD PORTER.
SIR SHADI LAL.
SIR GEORGE RANKIN.

[*Delivered by* LORD PORTER.]

These are consolidated appeals from an order of the High Court of Judicature at Patna, dated the 9th October, 1936, made on the petition of the Kuchwar Lime and Stone Company (in liquidation), whereby it was ordered that (1) the Secretary of State for India in Council, (2) S. N. Ghose and (3) S. N. Bannerjee had been guilty of contempt and that the Secretary of State should forthwith pay to the petitioners one half of their costs and that the other respondents should also pay to the petitioners one half of their costs and should be jointly and severally liable therefor. Of these persons S. N. Ghose is the managing director of a company called the Kalyanpur Lime Works, Ltd. and S. N. Bannerjee then manager of that company.

The reason for the petition is to be found in the previous acts and relationship of the parties.

On the 1st April, 1928, the Secretary of State granted to the petitioners two leases; one of the mineral rights in Lower Murli Hill and the other of the surface and mineral rights in Upper Murli Hill for a period of 20 years. The leases

contained stipulations against assignments or the transfer of any right or interest thereunder without the previous assent of the Board of Revenue of Bihar and Orissa, and provided that a breach of those stipulations should entail a right of forfeiture by the Government. On the 23rd September, 1928, the respondents purchased the surface rights in Lower Murli Hill from the local zemindar.

In January, 1933, the respondents went into voluntary liquidation and on the 30th September of that year entered into a written agreement with one S. G. Bose for the sale to him of their right under the two leases.

On the 6th October the respondents who had acquired the surface rights in Lower Murli Hill, sold those rights to Bose and on the 9th October, 1933, applied to the Collector of Shahabad for permission to assign the lease to him. On the same day Bose started quarrying operations. On the 6th December, 1933, the sub-divisional officer of Sasaram, acting under the instructions of his superiors, refused permission to assign and directed Bose to stop work.

On the 20th April, 1934, the Commissioner of the Division informed the respondents' solicitors that the Government had by order dated the 27th March, 1934, forfeited the leases and the Government formally confirmed the forfeiture on the 18th July, 1934.

Meanwhile S. N. Ghose as managing director of the Kalyanpur Lime Works, Ltd., having heard that the leases were being terminated, wrote to the Collector of Shahabad offering, on behalf of his company, to take leases of the properties. By letter dated 31st March, 1934, from the Secretary to the Board of Revenue to the Commissioner, a copy of which was forwarded to S. N. Bannerjee as manager of that company, the offer was accepted. On receiving the copy of this letter, the Kalyanpur Company took possession of the quarries in April, 1934, and this action was approved by the Collector in a letter dated the 13th May, 1934, in which he stated that "having been granted a lease of Lime Stone concession in the Upper and Lower Murli areas you are lawfully entitled to start work on them at once". On the 21st April, 1934, S. N. Bannerjee informed the respondents that the Board of Revenue had sanctioned the leases to the Kalyanpur Company.

Certain disputes arose between that company and Bose as to rights of ingress to and egress from the quarries but the company continued to work the quarries until the 20th May, 1935, when they temporarily suspended operations.

The events which led up to this suspension were as follows:—

On the 24th September, 1934, the respondents brought a suit in the Court of the Subordinate Judge of Arrah against the Secretary of State for a declaration that their leases had not been validly forfeited and for an injunction to restrain the Secretary, his servants and agents, from granting leases to the Kalyanpur Company or to others and from authorising such person or persons to carry on operations in the Murli

Hills and from otherwise interfering with any of the rights of the respondents in respect of the said hills.

The Secretary of State in his defence contended that he had rightly terminated the leases, ejected the respondents and authorised the Kalyanpur Company to enter and work the quarries.

The Subordinate Judge dismissed the suit on the 7th March, 1935. The respondents thereupon appealed to the High Court and on the 25th April, 1935, ex parte obtained an interim injunction against the Secretary of State in the terms set out above.

S. N. Bannerjee received a copy of this injunction on the 20th May, 1935, and work was stopped the next day.

On the 7th February, 1936, the High Court allowed the appeal, held that the two leases had not been validly forfeited and ordered that there should be an injunction restraining the defendant and his servants from interfering with the respondents' leases on the basis of the forfeiture claimed by him in the Government notification of the 18th July, 1933.

From that judgment the Secretary of State appealed to this Board and judgment dismissing his appeal was given on the 19th November, 1937.

There is no doubt but that all the appellants were, from the date of its pronouncement, aware of the granting of the injunction and its terms.

The Kalyanpur Company asserted that they stopped work not because of the injunction, which they contended was not binding upon them, but because the Government had given them an executive order to do so, but the Government never accepted this position.

Acting, however, on the contention that they were not bound by the injunction, the Kalyanpur Company resumed quarrying operations on the 2nd March, 1936, and on the next day informed the Chief Inspector of Mines and the Collector that they had done so. The Collector replied on the 16th March, 1936, that they were taking this course at their own risk.

On the 9th March, the respondents' solicitors, having been informed that the Kalyanpur Company had again begun work at the quarries wrote to the Collector pointing out that judgment had been given in their clients' favour by the High Court and requesting that immediate instructions be given prohibiting the Kalyanpur Company from continuing to carry out any operations on the mines and for the restoration of possession to Mr. Bose, the respondents' agent.

On the 18th March, by letter sent to the Collector to the Commissioner of the Patna Division and to the Chief Secretary to the Government of Bihar and Orissa, the solicitors repeated their protest, stated that the failure to take any steps to prevent the trespass appeared to them to constitute a contempt of Court and added that they would move the Court unless steps were taken by the Government to prevent

the Kalyanpur Company from further trespass. After receiving a reply stating that the matter was being considered, they wrote again on the 28th March asking what steps had been taken to stop the working in the mines by the Kalyanpur Company.

This letter crossed one from the Collector of the same date, which may be set out in full since it forms the basis of the complaint against the Secretary of State in the present proceedings.

"GENTLEMEN,

"With reference to your letter number M/N-7463, dated the 18th March, 1936, I have the honour to say that on the authority of letter number 21-27-4, dated the 31st March, 1934, issued by the Board of Revenue of Bihar and Orissa possession of the quarries at the Murli Hill was delivered to Messrs. The Kalyanpur Lime Works, Limited, on the 15th April, 1934. That company took possession of the quarry on that date and they have been working in it since the 15th May, 1934. Messrs. The Kalyanpur Lime Works, Limited, were not parties to the suit which was brought against Government by the liquidators of the Kuchwar Lime and Stone Company, Limited, and the decree passed by the High Court does not give Government authority to eject their present lessees. You may take such legal action against Messrs. The Kalyanpur Lime Works, Limited, as you are advised.

I have the honour to be,
Sir,
Your most obedient servant,

R. A. E. WILLIAMS,
Collector of Shahabad, 28.3.36."

On receipt of this letter the respondents petitioned the High Court at Patna to commit all the appellants for contempt in disobeying the injunction of that Court. By order of the 19th November, 1936, the High Court allowed the application declared the three appellants guilty of contempt and made the order as to costs hereinbefore set out.

The substantial ground on which the High Court came to its conclusion was (*a*) that by their letter of the 28th March, 1936, the Government had made up their minds to depart from the correct attitude of the Collector and had decided to come out into the open and support the cause of the Kalyanpur Company; (*b*) that the Kalyanpur Company were treated by the Government as lessees and the Government would support their supposed lessees in that attitude and (*c*) that by some means or other the Kalyanpur Company had persuaded the higher authorities in the Government hierarchy to support their possession.

The High Court accordingly held the Government in contempt by direct breach of the injunction by allowing Banerjee and Ghose to work the quarries, and by encouraging them by their support.

As to the other two appellants, admittedly they were the executive authority of the Kalyanpur Company and as such responsible for its actions. The High Court, therefore, on the authority of *Seaward* v. *Paterson* [1897] 1 Ch. 545, held that as they were aware of the injunction, their presence

upon the quarries with the permission of the Government was a setting at nought of the order of the Court and therefore a contempt.

S. N. Ghose and S. N. Bannerjee obtained a certificate that the case was fit for appeal under section 109 (*c*) of Act No. V of 1908 on the 20th April, 1937, and on the same date the Secretary of State obtained a like certificate under the same section. The appeals were afterwards admitted under section XLV of the Code of Civil Procedure. Later the appeals were consolidated and were heard by the Board as consolidated appeals.

A preliminary objection to their hearing was made by the respondents on the ground that the contempt in both cases or at any rate in the case of Ghose and Bannerjee was of the nature of a criminal matter, that the leave granted was granted under the Civil Procedure Code and inasmuch as it was in the wrong form this Board should hold on the authority of *Radha Krishna Das* v. *Rai Krishna Chand*, 28 I.A. 182, that leave had not properly been given.

The objection is purely technical and so far as the Secretary of State is concerned their Lordships think it now sufficiently established that a committal for a finding of contempt for breach of an injunction is not criminal in its nature and is properly dealt with under the Civil Procedure Code. See *Scott* v. *Scott* [1913] A.C. 417 at p. 456.

The question whether a contempt committed not by any person inhibited by injunction for breach of that injunction but by a person said to have aided and abetted a person so inhibited in breaking the injunction is of such a criminal nature as to prevent an appeal has given rise to much controversy—controversy which in the present case this Board does not think it necessary to resolve.

The respondents themselves when petitioning the Court asked the Court to issue notice upon the opposite parties to show cause why they should not be committed for contempt for disobedience of the injunction.

Strictly speaking this was a wrong remedy to ask against Ghose and Bannerjee. The injunction was not binding on them and they had never disobeyed it. The petition should have asked that they be committed for aiding and abetting the Secretary of State in his disobedience. Indeed on the authority of *Wellesley* v. *Mornington* (1848) 11 Beav. 180 and 181, the High Court might well have dismissed the petition against those two appellants and left the petitioners to apply again in proper form. Though the High Court did not do so but treated the petition as if application had been made to commit those appellants for contempt in aiding and abetting the Secretary of State, yet their Lordships do not think the respondents have any cause of complaint if the Court in admitting the appeal treated the case (as the respondents themselves had done) as being a petition for breach of the injunction and gave a certificate as in a civil matter.

It was further argued that in any case leave to appeal should not have been granted and an appeal should not be

admitted in cases where penalties have been imposed for contempt. That very question, has, however, lately been before their Lordships in *Ambard* v. *A.G. for Trinidad* [1936] A.C. 322, at 329 where Lord Atkin gave it as the clear opinion of the Court that it is competent to His Majesty in Council to give leave to appeal and to entertain appeals against orders of the Courts overseas imposing penalties for contempt of Court. In such cases, however, the discretionary power of the Board will no doubt be exercised with great care. Such interferences when they amount to contempt are quasi-criminal acts and orders punishing them should generally speaking be treated as orders in criminal cases.

The learned and noble Lord was then speaking of contempt in criticizing the action of a Court and not of contempt in disobeying an injunction or in aiding and abetting such disobedience but whether or no the rules laid down by Lord Atkin apply to this case their Lordships are of opinion that on the material before them leave was rightly granted.

As to the substantive question of the appeal their Lordships do not find themselves in agreement with the view of the High Court.

So far as the Secretary of State for India is concerned the ground on which liability was imposed was that he and his subordinates had in March, 1936, supported and endorsed the action of the Kalyanpur Company in either continuing in or retaking possession of the quarries at Upper and Lower Murli.

In coming to this conclusion the High Court made it plain that they were influenced and influenced solely by the Collector's letter of the 28th March, 1936. In argument before the Board the Secretary of State reserved the question whether the proceedings were properly framed against him, firstly because he was sued in his public capacity as Secretary of State in Council and therefore as a body corporate against whom sequestration might be invoked but no order for contempt could be made, and secondly because in any case he could not be made responsible in contempt for the action of his officials in India.

He was, however, prepared to assume for the purpose of the argument that in a proper case proceedings for contempt could be taken against him.

Making this assumption, however, he contended that no evidence of disobedience to the injunction or of contempt for the order of the Court had been shown.

With this contention their Lordships agree. It is true that the reversion of the surface and mining rights in Upper Murli and of the mining rights in Lower Murli belonged to the Government.

But the surface of Lower Murli belonged to Mr. Bose and the immediate right to possession of the surface of Upper Murli and of the minerals in both belonged to the respondents. It was for the respondents who either had the immediate right to possession or were in possession under the order of the Court and not for the Government who

were not in possession to eject the Kalyanpur Company, if ejection was to be effected. Indeed the respondents might at any time have made that company defendants in the original action. The Government was under no duty to act; their duty was to leave those who claimed to be entitled to possession of the soil to take the appropriate measures.

But it is said the Government did act in a manner hostile to the respondents in that they incited the Kalyanpur Company to take or retain possession in defiance of the order of the Court.

Their Lordships can see no evidence of this either in the letters or in the circumstances of the case. In the first place it is to be noticed that the letter of the 28th March is not written to the Kalyanpur Company, but to the solicitors to the respondents and there is nothing to show that it ever reached the eyes of Ghose or Bannerjee. But even if it had done so in their Lordships' view there is nothing in the letter itself to indicate that the Government were supporting the Kalyanpur Company. The letter is a statement of fact necessitated by the communication to which it was a reply and sets out the considerations which weighed with the Government in deciding to take no action. Their Lordships see no ground for suspecting the motives of the Government officials, much less evidence of a breach of the injunction.

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* (*supra*). 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 in the cases referred to nor do they think it is sound in principle.

The actual wording of the injunction in the present case is " to restrain the defendant and his servants from interfering with the plaintiffs' lease." Ghose and Bannerjee are not the servants of the Secretary of State and therefore did not do anything forbidden by the injunction.

The utmost which the respondents could say was that the Kalyanpur Company, having derived their 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 Ghose and Bannerjee claimed on behalf of their company to derive title, rightly or wrongly (and their 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. The question of the Kalyanpur Company's right to possession, if it is to be tested, must be fought out on an issue properly framed against that company.

In their Lordships' view Ghose and Bannerjee could only be held liable for contempt if they had aided and abetted the Secretary of State in breaking the injunction, and as has been explained above that liability must fail if the petition against the Secretary of State fails.

Though the appeals were consolidated the two questions were in their Lordships' view distinct and it was proper that the first two appellants should be separately represented.

Their Lordships will therefore humbly advise His Majesty that both appeals should be allowed, and the order declaring the appellants guilty of contempt and ordering them to pay costs should be discharged and the respondents ordered to pay the costs of both sets of appellants before the Board and in the Courts below.

(11653—3A) Wt. 8168—30 180 11/38 P. St. G. 338

In the Privy Council

S. N. BANNERJEE AND ANOTHER

v.

KUCHWAR LIME AND STONE COMPANY, LIMITED (IN LIQUIDATION) AND OTHERS

THE SECRETARY OF STATE

v.

KUCHWAR LIME AND STONE COMPANY, LIMITED (IN LIQUIDATION)

(*Consolidated Appeals*)

DELIVERED BY LORD PORTER

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