

(1891) 02 CAL CK 0008
In the Calcutta High Court

Goghun Mollah and Others

APPELLANT

Vs

Rameshur Narain Mahta and Others
 Rameshur Narain
Mahta and Others Vs Goghun Mollah and Others

RESPONDENT

Date of Decision : 09-02-1891

Acts Referred:

Bengal Tenancy Act, 1885 — Section 84

Citation : (1891) ILR (Cal) 271

Hon'ble Judges : W. Comer Petheram, J;Prinsep, J;Ameer Ali, J

Bench : Full Bench

Judgement

W. Comer Petheram, Kt., C.J.—These rules arise out of an application made by the proprietor of a mouza, u/s 84 of the Tenancy Act, to acquire by compulsory sale a small piece of land made up of parts of several raiyati holdings within his estate. The application was opposed, and the matter has been brought before this Court by the proprietors of an indigo factory, who have taken under leases the greater part of the lands of the village, including the holdings within which this small plot of land is comprised, from the raiyats.

2. The applicant is the zemindar of the mouza, and has himself constructed an indigo factory in the mouza, and has employed a European manager for it and his estate; and the present contest is not between the zemindar and the raiyats in the ordinary sense of the words, but is one between the European managers of rival indigo factories. The Collector of the district granted to the applicant a certificate u/s 84, that the purpose for which the land was required was reasonable and sufficient, and thereupon application was made to the Munsif under that section, to acquire the land compulsorily, The Munsif tried the matter as a disputed question of fact, came to the conclusion that the purpose alleged was not reasonable and sufficient, and declined to authorize the purchase under the section. The applicant appealed to the District Judge, who reversed the finding of the Munsif, and made an order authorizing the compulsory acquisition of the land.

3. The first of those rules was obtained by the owners of the indigo factory, u/s 622 of the Code, to set aside the order of the District Judge, on the ground that no appeal lay from the order of the Munsif under the Tenancy Act. The second was obtained by the owner of the mouza, to set aside the order of the Munsif, refusing to allow the compulsory acquisition of the land, on the ground, amongst others, that the Collector was, under the section, the proper authority to decide whether or not the alleged purpose was reasonable and sufficient, and that his certificate was on the hearing before the Civil Court conclusive evidence that it was so. I am of opinion that both rules should be made absolute. It has not been seriously argued before us that any appeal lay from the order of the Munsif to the District Judge; no section of the Act has been pointed out to us giving such appeal, and as there is no right of appeal, the order of the District Judge was without jurisdiction, and must be set aside on revision. The decision of the second rule depends on the construction to be placed on the section itself. It is said in support of the Munsif's judgment that the meaning of it is that before proceedings can be instituted in the Civil Court at all, the certificate of the Collector must be obtained, but that when the matter comes before the Civil Court, the whole question is at large, and that at most the certificate is evidence that the purpose is reasonable and sufficient, and that the Civil Court may accept that view or refuse to do so as it pleases; the second paragraph of the section is relied on, and it is argued that, as the words "having relation to the good of the holding or of the estate in which it is comprised, including the use of the ground as building ground or for any other religious, educational or charitable purpose," appear in the second paragraph, and do not appear in the third, it is apparent that the question upon which the Munsif must be satisfied, before granting the application, is different from that which the Collector must determine, before granting the certificate. And it was further argued that the report of the Select Committee, which will be found quoted in K.N. Roy's edition of the Tenancy Act, p. 330 shows that the Committee, at all events, intended that the certificate of the Collector was only to guard the interests of the raiyats, and not to control the discretion of the Civil Court.

4. As to the second argument, I can only say that if that was the intention of the Select Committee, it does not appear to me to have been accepted by the Legislature, and that the section must have been changed after the report, as I am unable to reconcile the section as it now stands with the quotation from the report, or to read it in any other way than as giving to the Collector, and to the Collector only, jurisdiction to decide whether the alleged purpose is reasonable and sufficient, but leaving to the Civil Court the amount to be paid for the land, and the decision of the question whether the land is bond fide required for the alleged purpose.

5. As to the first argument, I cannot agree that it is well founded. It is to my mind perfectly clear that the certificate of the Collector mentioned in the third paragraph is intended to deal with the same "purpose" as that mentioned in the second paragraph, and to deal with its reasonableness and sufficiency with

reference to the matters which the second paragraph directs the person, whoever he may be, by whom the question has to be determined, to take into his consideration. The section at first sight may appear somewhat ambiguous and difficult to construe, but if the order of the paragraphs is changed, so that they may stand in the section in the order in which the events contemplated by the section would happen, I think the meaning becomes clear. The section will then read--" On being satisfied on the certificate of the Collector that the purpose is reasonable and sufficient, and on being satisfied that the landlord is desirous of acquiring the holding or part thereof for some reasonable and sufficient purpose, having regard to the good of the holding or of the estate in which it is comprised, including the use of the ground as building ground or for any religious, educational or charitable purpose, a Civil Court may, on the application of the landlord of a holding, authorize the acquisition thereof by the landlord, etc."

6. In construing this section, as in all cases, effect must be given to every word in it, and, amongst others, to the words "on being satisfied on the certificate of the Collector that the purpose is reasonable and sufficient." It is said that these words mean "and on being satisfied (inter alia) that the Collector has given a certificate"; but these are by no means the words of the section: there is nothing in the section to indicate that anything but the certificate is to be required to prove the reasonableness and sufficiency of the purpose, but, on the contrary, the words are "satisfied on the certificate". I think that the meaning of this is, that the Civil Court is to be satisfied on the certificate alone, and is not at liberty to take other evidence on that question, but is to accept the decision of it by the Collector as final. To hold otherwise would be, in my opinion, to refuse to give any effect to the words "satisfied on the certificate", and to read the quotation from the [279] report of the Select Committee as if it were a part of this section, which, in my opinion, we are not at liberty to do. For these reasons I think that the Munsif acted without jurisdiction in considering this question at all. I would make the rule absolute to set aside his decision, and remit the matter to the Munsif to decide the question whether or not the land was bona fide required for the alleged purpose, and to settle the terms on which it should be sold.

7. The result is that the first rule will be made absolute and the second discharged with costs.

Prinsep, J.

8. The proprietors of a taluk through their recently-appointed manager, Mr. Coryton, on 5th December 1889, obtained from the Collector of Durbhunga a certificate within the terms of Section 84 of the Bengal Tenancy Act, that the purposes for which they required 2 bighas 15 cottahs 17 dhurs of land in the occupancy of their tenants were in his opinion reasonable and sufficient. They then applied to the Civil Court, the Munsif of Somastipur, to obtain the necessary order for possession of those lands. The purposes set forth in their application are, that "being desirous of improving their taluk and of having it hotter

managed than hitherto, they have appointed Mr. Coryton to act for thorn in the capacity of manager"; that in order that the estate should reap the full benefit of the manager's services, it is necessary that he should live in Maniarpur, the central village of the taluk; that they are desirous for that purpose of erecting a suitable dwelling-house with a compound and all necessary outhouses for himself and his servants, and that the small piece of land obtained for this purpose not being sufficient, they make this application to enlarge the premises so as to provide for "the necessary outhouses and allow for egress and ingress to the manager's bungalow and for the erection of a cutchery". The application further states that a European manager of a taluk of such an area "will be of benefit to the estate", and that "many of the abuses of a native amla will under his supervision disappear".

9. The Munsif on 30th May following refused the application, holding that the purposes for which the land was required were not within the terms of Section 84, Bengal Tenancy Act. On this an appeal was preferred to the District Judge on 19th June, and this appeal came on for hearing on 22nd July. The proprietors of the neighbouring factory of Dalsingserai, who had been made parties to the proceedings in the Munsif's Court, but not to the appeal, happened to be present in the District Judge's Court in the person of their manager and duly constituted attorney. The District Judge, professing to act u/s 559 of the Code of Civil Procedure, directed these parties to be made respondents, and holding that as they were present this order was sufficient notice to thorn, fixed the following day for the hearing of the appeal. Against this a protest was made and a postponement asked for to enable these respondents to instruct their pleaders, and also to apply to the High Court to transfer the appeal to some other Court in consequence of the bias of the District Judge. This appears from a petition before us, dated 23rd July last. On his order refusing any postponement, it may be observed that the District Judge has recorded that the only ground stated is the desire to obtain an order for the trial of the appeal by another Court. The appeal was then heard; the District Judge set aside the order of the Munsif and passed orders in the terms of Section 84.

10. On 19th August a rule was granted by a Division Bench of this Court to show cause why the order of the District Judge should not be set aside for reasons stated in a petition and affidavit, amongst which it was set out that there was no appeal, and that therefore the order of the District Judge was without jurisdiction.

11. This rule came on for hearing on 2nd December last before another Division Court, who adjourned its trial and issued a rule on the manager of the Dalsingserai factory, the party who had already obtained a rule, to show cause why the Munsif's order of 30th May 1890 should not be set aside. No reason is stated for this order, either in the order itself or in the rule issued, and it may be observed that it was not passed on any written application or affidavit of either party.

12. The two rules have now come on for hearing.

13. In regard to the first rule there can be no doubt that there is no appeal against an order passed by a Civil Court u/s 84, Bengal Tenancy Act. Consequently the order of the District Judge setting aside that of the Munsif is without jurisdiction and must be set aside, the rule being made absolute. The Bengal Tenancy Act does not specially provide for an appeal, and an order u/s 84 of that Act is not within the definition of a decree as given in the CPC so as to become appealable under our ordinary judicial system. I would add that the District Judge did not exercise a proper discretion in summarily trying this appeal and in refusing the application of the newly-made respondents for a postponement.

14. The question has been raised on the other rule whether we should, u/s 622 of the Code, set aside the Munsif's order rejecting the application u/s 84, Bengal Tenancy Act, on the ground that he has improperly failed to exercise the jurisdiction vested in him. As I understand the grounds taken, it is contended that he was not competent to consider whether the purposes for which the lands were required were reasonable and sufficient within the terms of Section 84, inasmuch as this is a matter on which the Collector's certificate is conclusive, but that it is for him only to consider whether the applicants are bona fide desirous to apply the land to the purposes specified, and that he is then bound merely to settle the terms on which the lands are to be acquired.

15. Before proceeding to authorize the acquisition of lands forming the whole or part of a tenant's holding by the landlord and to determine the amount of compensation which the tenant should receive, and the conditions and terms of the order for compensation a Civil Court is to be "satisfied," to use the terms of Section 84, (1) that the landlord is desirous of acquiring the particular lands for some reasonable and sufficient purpose having relation to the good of the holding which it forms or to which it belongs or of the estate in which it is comprised; (2) that on the certificate of the Collector the purpose for which it is required is reasonable and sufficient. On the one hand, it is contended that the Collector's certificate is conclusive that the purpose is reasonable and sufficient; on the other that it alone enables a landlord to move a Civil Court and gives that Court jurisdiction to take cognizance of the matter; that its object is to relieve the Civil Courts of applications prima facie untenable, but that with such a certificate it is open to a Civil Court to determine all matters coming u/s 84.

16. I should certainly not be inclined in any way to fetter the jurisdiction of the Civil Courts in the determination of any matter affecting any private rights without some express provision of law to that effect. The Bengal Tenancy Act contains numerous instances in which those rights have been created amongst tenants, and it has provided that all questions affecting such rights shall be determined only in the Civil Courts even where, under Chapter X, the Local Government, with the previous sanction of the Governor-General in Council, has directed a survey to be made and a settlement of rights to be recorded in respect of any particular lands, and any dispute arises regarding the correctness of the

proceedings affecting any individual right. Although the Revenue officer is competent to determine that matter, it is ultimately left to the decision of the superior Civil Courts, for an appeal lies to a Special Judge and thence to the High Court. This is the only instance in which a Revenue officer can act in a matter affecting a question of right. Prima facie, therefore, it could not have been intended to vest a Collector with such absolute powers u/s 84. I may add that although a Collector's orders are generally subject to appeal, the law prescribes no appeal in this matter. Moreover, there is no procedure laid down as to the nature of any proceedings before his certificate is given. The latter consideration is not without weight, for the Land Acquisition Act (X of 1870), Section 48, in proceedings of a somewhat similar character, has expressly provided for an enquiry, and has indicated its judicial character; but there is nothing in Section 84 of the Bengal Tenancy Act in this respect. There is no reason apparently why the Collector's certificate should not be granted ex parte. I find myself therefore unable to concede such absolute powers to the executive order of a Collector in a matter in which the terms of Section 84 taken alone are so doubtful and obscure, and where the opposite view is consistent with the principles on which our system of administration is founded. Whether the decision of the Civil Court is open to appeal or not is of less consequence, for there it is quite certain that all the issues will be tried out under the sanction of recognized legal forms and subject to the supervision of a superior Court, and if the Legislature has not thought proper to provide an appeal against such an order, it is not open to us to question the expediency or to venture to form conclusions of the probable consequences of the finality of a Munsif's order.

17. Section 84, however, requires that the Civil Court should be "satisfied on the certificate of the Collector that the purpose is reasonable and sufficient." I do not understand this to mean that the Civil Court is not competent to consider the grounds on which this certificate was granted. If it were intended to make the Collector's certificate conclusive, the law would, I apprehend, have been differently expressed. The terms of Section 84 of the Bengal Tenancy Act are very different from those of the Land Acquisition Act, 1870, and yet according to this view the action of the Civil Court would be similar, except that u/s 84 it is conceded that the Civil Court must satisfy itself of the bona fides of the application. But under the Land Acquisition Act possession of the land follows the sanction of the Government by a notification under that Act. It is difficult to understand on what grounds, if it were intended that the Collector's certificate should be conclusive, it should not be left also to him to decide as to the bona fide character of the application for that certificate, and that he should not also be empowered to give possession of the land, leaving the amount and character of the compensation to be dealt with by the Civil Court. If the Collector's certificate is on the face of it granted on improper grounds, if the purpose alleged is one that does not properly come within that section, is the Civil Court precluded from going behind it? Is it bound to accept it as conclusive? Surely this cannot have been intended by the Legislature, and yet this must be so, if the

Civil Court is not competent to consider whether the purpose for which the landlord applied be a legitimate purpose. The present case is a good instance of this. The land is required to extend the promises of a house to be built for a newly-appointed European manager so as to ensure his convenience and comfort. This is the main ground of the application, and much stress is laid on the benefits to the taluk from European management, and the necessity for such from the large area of the taluk. That it is intended also to erect a zemindari cutchery is only incidentally mentioned. These are clearly insufficient grounds. Why, it may be asked, is any management necessary at all, and why should not the proprietors themselves manage their own property? Are we to assume that any management must necessarily be for the benefit of the estate, and above all that this will be host ensured by the appointment of any European? All this must necessarily be speculative, and it cannot surely have been contemplated by the Legislature that tenant rights which have been so strictly protected by the new law should be encroached upon for a purpose with such an uncertain result. If this matter is subjected to further investigation, it becomes even clearer. It has been disclosed in the course of these proceedings, though not stated either in the application to the Collector for a certificate or in the petition to the Munsif, that the real object of the petitioners is to introduce the cultivation and manufacture of indigo into this property, and no doubt thus primarily to put more money into the pockets of these proprietors. We have been told by the counsel who opposes this rule--and this has not been contradicted by the counsel for the other side--that the first application to the Collector was for a certificate to obtain some 20 bighas of land for the erection of an indigo factory and vats, and that this was refused. I observe also that it has been found by the Munsif that the site of the former zemindari cutchery was then cleared, and that it has been employed to erect such vats, etc. The real object of the application before us is thus shown. It is certainly not for a purpose contemplated by the Act, and therefore I should not be disposed to maintain any order which proceeds upon the certificate of a Collector giving effect to such a purpose. This would be the consequence of any order setting aside the Munsif's order refusing the application.

18. Further, as has been already stated, it has now been admitted that the real object of this application is not to introduce a better system of management, as originally stated, but to introduce the cultivation and manufacture of indigo through a gentleman of the profession known as an indigo-planter, and on these grounds alone this application should be rejected.

Ameer Ali, J.

19. The circumstances giving rise to these rules have been so fully set forth in the judgment of Mr. Justice Prinsep, which I have had the advantages of reading, and with which I entirely concur, that I am spared the necessity of setting out in detail the reasons which have led me to the same conclusion. The first Rule was obtained by the owners of the Dalsingserai indigo factory, who have acquired

under kurtauli leases from the tenants of the village of Maniarpur an interest in the whole or major portion of the lands appertaining to that mouza. The second Rule was obtained on behalf of the maliks of the mouza. It appears that the owners of mouza Maniarpur have recently appointed a Mr. Coryton as the manager of their estate. This gentleman, acting on their behalf, applied to the Collector for a certificate, u/s 84 of the Bengal Tenancy Act, to enable him to acquire 2 bighas 15 cottahs of land in the village of Maniarpur. There is no question that the lands which were proposed to be acquired were in the occupation of raiyats and formed part of their holdings. The purpose for which the lands were required was stated in the petition to be the erection of a cutchery and out-offices for the manager's bungalow, with a passage leading to his residence. In paragraph 6 of the petition, "the good to the estate" to which the purpose under the section must have relation was stated thus: "That your petitioners maintain that a European manager to a taluk of the size of the Kalianpur Bambaya one will be of benefit to the estate, and many of the abuses of a native amla will under his supervision disappear." On the 5th December 1889 an order in vernacular was endorsed on the back of this petition signed by the Collector to the effect that as the persons on whom notices were served raised no objection, he saw no reason to withhold the certificate u/s 84, and that the purpose seemed to him to be reasonable and one which was contemplated by the law. No notice appears to have been given to the owners of the Dalsingserai factory, but we were informed by the learned Counsel appearing on their behalf--and the statement was not controverted--that when they subsequently heard of the proceeding they came in and objected to the grant of the certificate, but were referred to the Civil Court. However that may be, Mr. Coryton, acting on behalf of the Maniarpur maliks, then applied to the Munsif. On this occasion notices were issued to the tenants as well as to the owners of the factory. The latter and three out of the eight tenants came in and raised objections to the compulsory acquisition of the lands in question. Up to this time there seems to have been no question as to the jurisdiction of the Munsif to enquire into the sufficiency and reasonableness of the purpose for which the lands were proposed to be acquired. The Munsif dismissed the application, holding that the purpose for which the landlords were desirous of acquiring the lands in question did not come within the scope of Section 84, and also that the application did not appear to him to be bona fide. How the matter comes before us has already been mentioned. As regards the order of the Judge, it has not been seriously argued that there is any provision giving an appeal to him from the order of the first Court. In entertaining the appeal the Judge clearly acted without jurisdiction.

20. Mr. Evans, who appears in support of the rule obtained by the owners of the mouza Maniarpur, contends that although we may hold that the Judge acted without jurisdiction in entertaining the appeal, we ought not to restore the order of the Munsif, as this officer acted without jurisdiction in going behind the Collector's certificate.

21. He contends in the first place that the certificate of the Collector was conclusive as to the reasonableness and sufficiency of the purpose for which the lands were sought to be acquired. He argues that the only function which the Civil Court has to perform is to assess the compensation on the production of the Collector's certificate and upon being satisfied that the lands were really wanted for the purpose certified. And he proposes to read the section thus: A Civil Court may, on the application of the landlord of a holding and on being satisfied on the certificate of the Collector that the purpose is reasonable and sufficient in relation to the good of the holding or of the estate in which it is comprised, and on being satisfied that he is desirous of acquiring the holding or part thereof for that purpose, authorise the acquisition thereof by the landlord upon such conditions as the Court may think fit, and require the tenant to sell his interest in the whole or such part of the holding to the landlord upon such terms as may be approved by the Court, including full compensation to the tenant."

22. I find it, however, impossible to accept this view. Had the Legislature intended that the jurisdiction of the Civil Court should be confined simply to giving effect to the Collector's certificate, it is difficult to imagine the necessity of so much circumlocution. The intention could have been expressed in simpler language and the collocation of the sentences, it seems to me, would have been different. Apart from the fact that the construction suggested renders meaningless a large portion of the second Clause, which is repugnant to all canons of interpretation, there are other serious objections against the view advanced by the learned Counsel. There is no procedure in accordance with which the Collector should proceed in determining whether the purpose is sufficient and reasonable. It is said that the Local Government might frame rules u/s 142, but admittedly no rules have been framed yet u/s 84. Is it likely that the Legislature would have vested the Collector with such absolute powers without providing any machinery for the enquiry or subjecting his proceedings to the guarantee of judicial formalities?

23. Upon the face of it, the Collector's certificate is an executive proceeding. As the section stands, there is nothing to prevent the grant of a certificate without any notice to the raiyats. Is it reasonable to suppose that the Legislature intended to impress such a conclusive character as is contended for upon an executive act which would have the effect of taking away other people's property and which may be held ex parte?

24. The argument, however, becomes quite untenable when we examine the words of the section. It runs thus: "A Civil Court may, on the application of the landlord of a holding, and on being satisfied that he is desirous of acquiring the holding or part thereof for some reasonable and sufficient purpose, having relation to the good of the holding or of the estate in which it is comprised, including the use of the ground as building ground, or for any religious, educational or charitable purpose, and on being satisfied on the certificate of the Collector that the purpose is reasonable and sufficient, authorise the acquisition

thereof by the landlord upon such conditions as the Court may think fit, and require the tenant to sell his interest in the whole or such part of the holding to the landlord upon such terms as may be approved by the Court, including full compensation to the tenant."

25. Let us analyse the section. There must first be an application; upon that application the Court has to go through a certain judicial process. It must be satisfied (1) that the landlord is desirous of acquiring the holding or part thereof; (2) that the purpose for which he is so desirous is reasonable and sufficient; (3) that the purpose aforesaid has relation to the good of the holding or of the estate; and (4) that the Collector is also of the same opinion that the purpose is reasonable and sufficient. When it has found these facts it may proceed to authorise the acquisition of the lands upon such condition as it may think fit. Even then it is discretionary with the Court to make the order for compulsory acquisition or not. The words "on being satisfied on the certificate of the Collector, &c.," cannot possibly be supposed to cut down all that had gone before. The words "on being satisfied" are repeated in the third Clause from the collocation of the preceding words and the necessity for making it clear that the Court must also have before it the opinion of the Collector that the purpose is reasonable and sufficient; and the certificate is to be the evidence of that opinion. The Collector's certificate is thus a sine qua non to obtaining an order from the Civil Court. The landlord may apply before obtaining a certificate, but no order can be made u/s 84 unless the Court is satisfied that the Collector is of opinion also that the purpose is reasonable and sufficient. The section thus construed does not do violence to the language and keeps in view the policy of the Tenancy Act. To make the Collector's certificate conclusive would, as has been already pointed out by Mr. Justice PRINSEP, be not only contrary to the policy of the Act, but disastrous to the tenants. Remembering what the effect of these compulsory acquisitions would be, that they would withdraw raiyati lands from that category and make them the khas lands of the zemindar, and remembering how carefully the Legislature has endeavoured to prevent the destruction of raiyats' holdings under whatever disguise attempted, we can well understand the anxiety of the Legislature to provide a double safeguard against such compulsory alienations of raiyati lands. It has provided a judicial enquiry as to the sufficiency and reasonableness of the purpose, guarded by the opinion of the executive head of the district to the same effect. That this opinion is not hypothetical is borne out by the words of the Final Report of the Select Committee: "We have inserted a new Section (84) giving power to landlords to acquire by compulsory sale, through the Civil Court, and at a price to be fixed by the Court, any land in their estate required for building purposes or for religious, charitable or educational objects. The necessity of some such power, especially with a view to provide building sites either for new tenants or in cases of diluvion, has been strongly urged upon us. We have guarded the section against abuse by requiring the certificate of a Collector as to the sufficiency of the reason before action can be taken under it".

26. It is contended in the second place by the learned Counsel for the Maniarpur maliks that, assuming the certificate of the Collector is not conclusive, the Munsif has wrongly refused to exercise jurisdiction, on the ground that the purpose must have relation to the good of the land comprised in the estate. He further contends that in the present case the purpose for which the lands were sought to be acquired was within the purview of the section for the appointment of a European manager must be beneficial to the estate and he must be provided with stables, & c. Now the section says the purpose must have relation to the good of the holding or of the estate in which it is comprised, meaning thereby the conglomeration of holdings of which the estate is comprised. I understand from these words that the good to the holding or estate must be the direct result of the purpose. Now it is very possible that a European manager may prove more efficient than native amlas, and may thus indirectly do good to the estate. Anything therefore which conduces to his comfort and convenience may thus be supposed to have some indirect relation to the management of the estate. But I fail to see how the purpose of building stables, kitchen and cutchery has any relation to the good of the holding or the estate. What the section really contemplates is apparent from the words used. The purpose must have a direct relation to the good of the particular holding or the holdings in general of which the estate is composed. Lands may be wanted for constructing drainage or irrigation works or for sinking wells or cutting pynes or housing tenants, and such objects are within the Act. Objects which might have a remote or speculative bearing upon the estate seem to me to be foreign to the scope of the Act. For these reasons I concur with Mr. Justice PRINSEP in holding that the order of the Munsif is correct and ought to be maintained. I would accordingly make the first rule absolute and discharge the second.