

(1950) 09 PAT CK 0013

In the Patna High Court

Case No : Misc. Judicial Case No. 77 of 1950

Shri Subodh Gopal Bose

APPELLANT

Vs

Dalmia Jain and . Co. Ltd. and Others

RESPONDENT

Date of Decision : 19-09-1950

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1
Criminal Procedure Code, 1898 (CrPC) — Section 144

Citation : AIR 1951 Patna 266

Hon'ble Judges : Reuben, J; Das, J

Bench : Division Bench

Advocate : P.R. Das, Arun Chandra Mitra, A.K. Bose and S.N. Bose, for the Appellant; K.K. Verma, P.N. Gour, R.P. Katriar, Thakur Guru Sewak Singh and A.G., for the Respondent

Judgement

Das, J.—On the application of Sri Subodh Gopal Bose, whom I shall hereafter call the petitioner, this Court issued a rule on the opposite parties, eight in number, to show cause why they should not be proceeded against for contempt of Court, either for wilful disobedience of an order of injunction passed by this Court on 16-32 1949, or for aiding or abetting the said disobedience. The opposite parties are (1) Messes. Dalmia Jain and Co. Ltd., a Company registered under the Companies Act, 1918, and carrying on business with their registered office at Dalmia-nagar, Police Station Dehri in the district of Shahabad ; (2) Sri R. N. Pandey Sub divisional Magistrate, Sasaram; (3) Sri B Singh, Sub-Inspector of Police, Police Station Rohatas, district "Shahabad; (i) Sri Hari Dutt, described as Attorney for Messrs. Dalmia Jain and Co. Ltd.; (5) Sri K. B. Upadhaya, described as Secretary of Messrs. Dalmia Jain and Co. Ltd. and of Messrs. Rohtas Quarries Ltd.; (6) Sri Fakirchand Maheswari, Quarry Manager, Rohtas Quarries Ltd.; (7) Sri Shanti Prasad Jain, alleged to be the managing Director of Messrs. Dalmia Jain and Co. Ltd.; and (s) the Rohtas Quarries Ltd., a company registered under the Companies Act, 1918, and carrying on business with their registered office at Dalmia-nagar, Police Station Dehri in the district of Shahabad.

2. The facts and circumstances which led to the order of injunction referred to above, have been set out in detail in *Subodh Gopal Bose Vs. Province of Bihar and Others*, . It is, I think, unnecessary to set out again those facts in detail. There have been a series of protracted litigation with regard to upper and lower Murli hill, and the facts relating to that litigation have been stated and re-stated in several reported decisions, to some of which a reference was made by us in *Subodh Gopal Bose Vs. Province of Bihar and Others*, . All that is necessary in the present case 13 to give a very brief resume of the facts so far as they are relevant here.

3. On 1-4-1908, Messrs, Kuchwar Lime and Stone Co., Ltd., obtained leases from Government in respect of Murli hill, Messrs. Octavius Steel Co. were then the managing agents of the Kuchwar Lime and Stone Co. Ltd. The two leases were for twenty years, and related one to upper Murli hill and the other to lower Murli hill. It may be noted that in the lower Murli hill, Government did not have any right in the surface. On 10-12-1910, in Notification No. 30 (50-L. A. of that date, Government declared its intention to acquire a semi-circular piece of land in lower Murli hill, within village Samhauta, comprising an area of 30.97 acres for the construction of sidings of the Dehri Rohtas Tramway Co., now known as the Dehri Rohtas Light Railway Co. The acquisition was completed and possession delivered on 12-7-1912. The position of this semi-circular piece of land will appear from the map which was prepared at the time of the acquisition. This map is marked "Y" and is part of the annexure to the affidavits filed in behalf of Messrs. Dalmia Jain and Co. Ltd., Messrs. Octavius Steel Co, were also the managing agents of the Dehri Rohtas Light Railway Co. at the time. In 1913, the record-of-rights was finally published; but the survey maps of the two villages Baknaur and Samhauta, within which lower Murli hill was comprised, were prepared in the years 1911-12. They are Exs. A-1 and A2 forming part of the annexure of the affidavits filed by the petitioner. In 1916-17, a further acquisition was made of 1.533 acres within lower Murli hill, for a re-alignment of the Murli siding in village Samhauta. The map relating to this second acquisition is marked "x." I should have stated that in the declaration relating to the acquisition of 1910-12, it was made clear that only the surface land was being acquired and

"only such parts of the mines and minerals as may be necessary to dig or carry away or used in the construction of the work for the purpose of which the land was being acquired."

On 31-3-1928, the leases of 1908 came to an end. On 1-4-1928, Government granted two fresh leases in favour of Kuchwar Lime and Stone Co. Ltd. In between 1908 and 1928, Kuchwar Lime and Stone Co. Ltd., had purchased the rights of the tenants and the maliks in the surface land of lower Murli hill as also such other rights as the tenants had. There is a reference to this aspect of the matter in Para 3 of our judgment in *Subodh Gopal Bose Vs. Province of Bihar and Others*, . What exactly was purchased will be referred to in greater detail when I deal with the arguments of the parties. On 15-5-1928, the Dehri Rohtas Light

Railway Go. Ltd., gave in lease to Messrs. Kuchwar Lime and Stone Co. Ltd., their rights in the acquired land except a very small portion. This lease is Ex. K, and the relevant map, which has been called the lease map, is Ex. Kl. Messrs. Kuchwar Lime and Stone Co. Ltd., went into voluntary liquidation in 1933. On 30-9-1933, there were two documents in favour of the present petitioner, and that is the date on which the petitioner first comes into the arena. One was an agreement with the petitioner for sale of the lessee's right which Messrs. Kuchwar Lime and Stone Co. Ltd., held in upper and lower Murli hill. The other was a conveyance in favour of the petitioner in respect of certain grants, estates and lands described in Schedule A to the deed. So far as the present case is concerned, the important items are items 7, 8 and 9 of Schedule A. Items 7 and 8 relate to village Baknaur, and item 9 relates to village Samhauta. In item 7, all rights of the vendor in plot No. 168 of village Baknaur were conveyed, and by item 9, all rights of the vender is 59 bighas 13 kathas and 18 dhurs, more or less, of certain survey plots in village Samhauta including plot No. 44, were conveyed. It is important to bear in mind these two plots, plot No. 168 of village Baknaur and plot No. 44 of village Samhauta; because the acts which, it is alleged, constitute contempt of this Court are Stated to have been committed on those two plots. The deed of agreement gave rise to litigation which went up to the Privy Council. With the details of that litigation we are not concerned, and I am omitting those details, except merely to state that the petitioner started quarrying operations in upper and lower Murli hill as the local agent of Messrs. Kuchwar Lime and Stone Co. Ltd., pending sanction of Government of the proposed assignment of the lessee's right in favour of the petitioner. This sanction was not, however, given. An attempt was made to stop the petitioner from carrying on the quarrying operations, and Government purported to forfeit the leases in favour of Messrs. Kuchwar Lime and Stone Co. Ltd., and agreed to grant leases in favour of another party known as Kalyanpur Lime Works Ltd. This resulted in litigation, the details whereof I am omitting. The upshot of it all was that the petitioner, after a short break, resumed possession and continued the quarrying operations. On 10-8-1943 Messrs. Dalmia Jain and Co. Ltd. became the managing agents of the Dehri Rohtas Light Railway Co. On 31-3-1948, the leases in favour of Messrs. Kuchwar Lime and Stone Co. Ltd., came to an end. Trouble again arose between the petitioner and the Local Khasmahal officers to which a reference has been made in our judgment in *Subodh Gopal Bose v. Province of Bihar* A I. R.1950 Flit. 222 : 31 P. L. T. 100). On 10-8-1949, Government granted leases of upper and lower Murli hill to Messrs. Dalmia Jain and Co. Ltd. On 11-8-1949, the petitioner instituted a suit (Title Suit No. 61 of 1949) against (1) the State of Bihar, (2) the Collector of Shahabad, (3) the Additional Sub-divisional Officer, Sasaram, and (4) Messrs. Dalmia Jain and Co. Ltd. On the same day, the petitioner prayed for an order of injunction against the defendants. The prayer was rejected by the Subordinate Judge of Sasaram. There was an appeal to this Court, and on 16-12-1919, this Court passed an order of injunction.

4. It is necessary now to state what order this Court passed. After stating the principles which the Court has to keep in mind in granting or refusing to grant a temporary injunction, we considered the claim of the petitioner separately with regard to upper and lower Murli hill. With regard to upper Murli hill, we did not accept the case of the petitioner, and refused the prayer for injunction. With regard to lower Murli hill, however, we stated:

"The claim of the appellant with regard to lower Murli hill stands on a different footing. On the materials placed before us the appellant has made out a prima facie case of title to the surface land of lower Murli hill...It is clear to us that the appellant has made out a prima facie case of title, both with regard to the surface land of lower Murli hill and the right to quarry lime-stone and manufacture lime in the area of lower Murli hill."

On the question of possession, we said:

"As to the possession of the surface land of lower Murli hill, there is very little doubt. The appellant is in possession and has kilns, buildings, bungalows, dwelling houses, tram lines, railway sidings, fixed plant and machineries, etc, thereon. It is obvious that very serious injury would be caused to the appellant if he is asked to remove them pending the hearing of his suit. It would be irreparable injury for the avoidance of which he is entitled to ask for an order of injunction--both on the grounds of prima facie title and balance of convenience."

The operative portion of the order reads thus :

"The prayer for an order of injunction in respect of upper Murli hill is refused; but the appellant will get an order of injunction, pending the decision of his suit, restraining the respondents from dispossessing, or disturbing the possession of the appellant in respect of lower Murli hill."

We made an exception as to one matter to which a reference must now be made. There was some argument before us as to whether upper Murli hill could be approached by an old District Board road thus avoiding the necessity of going over any part of the surface land of lower Murli hill owned and possessed by the petitioner. With regard to this matter, we said:

"It is possible, however, that on some occasions the men of Dalmia Jain and Co. Ltd., did some work on upper Murli hill. Whether they approached by an old District Board road, the existence of which has been disputed before us, or went over the surface land of lower murli hill in order to reach upper Murli hill cannot be decided on the materials before us."

Therefore, we made an exception in the operative portion of our order and said:

"We are giving no decision as to the existence or otherwise of an old District Board road to reach upper Murli hill. But under the order of injunction which we are passing, the respondent will have no right to go to upper Murli hill over any part of the surface land of lower Murli hill owned and possessed by the appellant."

The expression "owned and possessed" by the appellant has given rise to much argument before us. I think that the proper way of interpreting that expression is to find out what an ordinary person will understand upon a plain reading of it in the context in which it has been used; in other words, the question is--is there anything in that expression which is likely to mislead the person who is to obey the order upon a plain reading of it? It is clear that the order must be read as a whole, and a party to the order cannot take the plea that he does not know the whole of the order. It is sufficiently clear from the extracts which I have quoted above that we found that the petitioner had made out a prima facie case with regard to the surface land of lower Murli hill as also the right to quarry lime stone and manufacture lime in the area of lower Murli hill. On the question of possession also, we gave a finding in favour of the petitioner. Having given those findings, we made an exception with regard to the old District Board road, provided such a road was in existence and in use at the relevant time. But we made it clear that under the order of injunction which we passed the respondents had no right to go to upper Murli hill over any part of the surface land of lower Murli hill owned and possessed by the appellant. The contention raised on behalf of the opposite parties before us is that we did not give any finding as to possession or title over every bit of land within lower Murli hill, and we left at large the question of such title and possession over particular pieces of land within lower Murli hill, to be determined if and when an occasion arose: in other words, the contention is that even with regard to lower Murli hill, the petitioner had to prove his prima facie title and possession over any bit of land (regarding which a dispute might arise as to whether the order of injunction related to it or not. In my opinion, such a contention is not tenable. The order of injunction would be meaningless if the land or area to which it related were to be left in a state of uncertainty; for, that would be the result of the contention urged on behalf of the opposite parties. The expression "owned and possessed" in the operative part of the order can have only one meaning to an intelligent reader, namely, that it related to the surface land in the area of lower Murli hill over which we found that the petitioner had made out a prima facie case of title and possession, with the only exception of the old District Board road. It was necessary to use the expression "owned and possessed," which expression must, however, be read in the light of and in consonance with the findings given by us--because we were making an exception with regard to an old District Board road the existence or location of which could not be determined on the materials which we had before us at the time when we passed the order. I do not think that there is anything in the expression "owned and possessed" which is likely to mislead any person who reads the whole order with ordinary commonsense and intelligence. I find it very difficult to understand how there can be an order of injunction with regard to a piece of land unless there is a finding that the party which seeks the order of injunction has satisfied the Court about his prima facie title to, and possession of the land. Messrs. Dalmia Jain and Co. Ltd., who were a party to the suit, as also a party to the injunction order, can have been under no misapprehension with regard to this matter. The schedule to the plaint of the suit

thus described the area of lower Murli hill regarding which the petitioner claimed his right of title and possession :

"All that surface, subsoil and mineral rights in the portion of land known as lower Murli hill comprising an area of about 250 bighas within the Banskati Mahal situate in pergana Rohtas Touzi No. 4771 Tahsil Circle Sasaram Thana and Sub-District Sasaram, District Shahabad bounded on the North by the fields of Dullay Singh, Achaibar Nau, Barhuhi Nala and field of Mangru Dusadh, on the East by Old District Board Road, on the West by Dehri Rohtas Light Railway Line, on the South by Old District Board Road, field of Hira Singh, house and field of Jagdhari Ahir, house of and field of Ratan Ahir, house of Badhai Ahir, house of Budhi Ahir, house and field of Gopi Nau, Road leading from Barhuhi to Baknaur."

We have checked the boundaries with reference to the maps filed before us, and there can be no doubt that the area in question included both plots, Plot No. 168 of Baknaur and Plot No. 44 of Samhauta. In the course of the arguments before us in the appeal relating to the injunction order, it was not admitted by the respondents that the entire extent of the surface land was owned by the petitioner. We stated as follows in our judgment :

"As to lower Murli hill, it is not admitted that the entire extent of the surface land is owned by the appellant."

In spite of that, we found that the petitioner had made out a prima facie case of title and possession in respect of lower Murli hill. In my opinion, there is no scope for any misunderstanding.

5. One point may be made clear at this stage. The question whether our injunction order was erroneous or not cannot be a question at issue at this stage. The matter has been thus put in Kerr on Injunctions, Edn. 6, P. 668:

"An order for an injunction must be implicitly observed, and every diligence must be exercised to obey it to the letter. However erroneously or irregularly obtained, the order must be implicitly observed so long as it exists. A party affected by it cannot disregard it or treat it as a nullity, but must have it discharged on a proper application."

The point is obvious and need not be laboured. If the order of injunction was erroneous in any particular, the proper procedure for the party against whom it was made was to move us for rectification of the error. The party against whom the order is made cannot disregard the order on the ground that it is erroneous in any particular. Right or wrong, the injunction order binds him, and he disregards it at his peril.

6. I now propose to set out in detail the acts of disobedience which are alleged by the petitioner against several members of the opposite party. It would, I think, be convenient if these acts are classified under four heads--(1) the act or acts on Plot No. 168 of village Baknaur relating to the alleged old District Board road ; (2) the act or acts alleged with regard to the acquired land of 32 acres

and odd in plot No. 44 of village Samhauta ; (3) the act or acts alleged with regard to the construction of a siding, which for the sake of convenience I shall hereafter refer to as the new siding, on plot No. 44 between the main line of the Dehri Rohtas Light Railway and the acquired land near the Directors' bungalow ; and (i) the act or acts alleged with regard to the old Murli hill siding, stated to be the outer boundary of the land acquired in 1910-12.

7. I would first take up the case of Messrs, Dalmia Jain and Co. Ltd., with regard to the aforesaid acts, and then consider separately the cases of the other members of the opposite party; because the position of all the members is not the same with reference to the acts alleged.

8. It seems to me that the position is quite clear with regard to plot No. 168. This plot is undoubtedly a part of the area of lower Murli hill. Item 7 of Schedule A of the conveyance of 30-9-1933, in favour of the petitioner refers to this plot. The maps which show the existence of an old District Board road are Ex. H, a plan of Murli hill showing the khasmahal and the Banskati portion of the Murli hill proposed to be leased out to Messrs, Octavius Steel Company in 1908, Ex. J, a plan of Murli hill prepared in 1908 by the khasmahal authorities, and Ex. Y, the plan of the acquisition of 1910-12. The existing position of this alleged road is shown in Ex. M, a map prepared by an amin on behalf of Messrs. Dalmia Jain and Co., Ltd. The two survey maps of Baknaur and Samhauta do not show the existence of any District Board Road going up to upper Murli hill. It is, however, clear from a comparison of the maps which have been filed that what is now claimed to be the old District Board road was not an old District Board road at the time when the maps of 1908 and 1910 were prepared. Those maps show that the old District Board road passed along the boundary of Plot No. 168 and did not cut through it. It entered upper Murli hill near boundary pillar 1. The road which Messrs. Dalmia Jain and Co., are now claiming and using as the old District Board road cuts right through Plot No. 168 and enters upper Murli hill between boundary pillars 2 and 3. Obviously, the road which is now claimed as the old District Board road is not the same as the old District Board road shown in the maps of 1908 and 1910-12. As a matter of fact, the later maps show that lime quarries had been dug on or near the site of the old District Board road. Probably, that is the reason why the survey maps do not show the existence of any old District Board road. It is probable that Kuchwar Lime and Stone Co. Ltd., who were the undoubted lessee at the time of both lower and upper Murli hill, made some sort of a road for their own use which cut through plot No. 168. Be that as it may, it is clear that the old District Board road, as shown in the maps, is not the one which Messrs. Dalmia Jain and Co. Ltd., are now claiming and using. It has not been disputed before us that Messrs. Dalmia Jain and Co. Ltd., have used this road which cuts across plot No. 168. Such user of Plot No. 168 amounts to a contravention of the injunction order, as it does not come within the exception of the old District Board road which we made in our order for injunction. Jagadish Prasad, the amin, who prepared the map, Ex. M, said in para. 5 of his affidavit :

"That I have shown in the map the old District Board road in Plot No. 168 through which Dalmia Jain and Co. Ltd., is going to upper Murli hill. There is no other passage other than the said District Board road to go to upper Murli hill in Plot No. 168".

It is obvious that if the road which Messrs. Dalmia Jain and Co., Ltd., are now using be not the old District Board road, as the maps on the record show that it is not, then Messrs. Dalmia Jain and Co. Ltd. are not entitled to use that road, which cuts through Plot No. 168 owned and possessed by the petitioner. Such user amounts to a contravention of the order of injunction.

9. The learned Advocate-General has referred us to two orders of the Sub-divisional Magistrate of Sasaram in respect of this road. One order is dated 24-9-1949, which we had seen before passing the order of injunction. The other order is dated 25-12-1949, made absolute on 13-2-1950. The preliminary order mentioned "old: District Board road which passes by the southeastern boundary of lower Murli hill near Plot; No. 168". The final order proceeds on the assumption that the road used was the old District Board road--an assumption which is clearly wrong. These orders of the Sub-Divisional Magistrate cannot exonerate Messrs Dalmia Jain and Co. The Sub-Divisional Magistrate cannot by an order u/s 144, Criminal P. C., determine questions of title or possession; nor can such an order afford protection to a party against whom the order of injunction is passed. Taking the most favourable view possible, it can only be said that; the Sub-Divisional Magistrate as also Messrs. Dalmia Jain and Co. Ltd. wrongly thought that the existing road was the old District Board road, though it was not so. Even then it would be a breach of the order of injunction, though not that kind of misconduct which involves wilful disobedience, (After dealing with other acts of disobedience by opposite party 1, his Lordship proceeded.)

10. Having dealt with the acts which are stated to constitute contempt of this Court's order of injunction, I now turn to an important question of law. The learned Advocate General has very strenuously contended before us that except for the act or acts committed on plot No. 168, the other acts have been committed by the Dehri Rohtas Light Railway Co. Ltd., which was not a party either to the suit or to the injunction matter. As a matter of fact, the Dehri Rohtas Light Railway Co. Ltd., is not a party to this proceeding. It is stated that Messrs. Dalmia Jain and Co. Ltd., as lessees, and Messrs. Dalmia Jain and Co. Ltd., as managing agents of the Dehri Rohtas Light Railway Co. Ltd., are two separate entities. The argument of the learned Advocate-General is that if there has been any disobedience by Messrs. Dalmia Jain and Co. Ltd., as managing agents of the Dehri Rohtas Light Railway Co., the disobedience is really by the Dehri Rohtas Light Railway Co., against whom there was no order of injunction. It is contended that disobedience by a person who was not a party to the proceeding does not constitute contempt, and even if Messrs. Dalmia Jain and Co. Ltd., as lessees, incited or aided the disobedience, they are not liable for contempt of Court. The learned Advocate-General relied on the decision in AIR

1938 295 (Privy Council) . That was a case in which Government and its servants were restrained by an injunction from disturbing the possession of the Kuchwar Lime and Stone Co. Ltd. There was an appeal to the Privy Council which was dismissed. The Kalyanpur Company contended that they were not bound by the injunction, and resumed quarrying operations on 2-3-1936, and on the next day informed the Chief Inspector of Mines and the Collector that they had done so. The Collector replied on 16-3-1936 that they were taking this course at their own risk. On the 18th of March, the solicitors of Kuchwar Lime and Stone Co., sent a letter to the Collector, to the Commissioner and the Chief Secretary to Government protesting against the trespass committed by the Kalyanpur Co. On 28-3-1936, the Collector of Shahabad wrote a letter in which it was stated that the Kalyanpur Company were not parties to the suit which was brought against Government by the liquidators of the Kuchwar Lime and Stone Co. Ltd., and the decree passed by the High Court did not give Government authority to eject their present lessees. The Collector requested the Kuchwar Lime and Stone Co. Ltd., to take such legal action against the Kalyanpur Company as they were advised. It was in respect of this letter that this Court found Government, the Managing Director and the Manager of the Kalyanpur Company guilty of contempt--Government being in contempt by direct breach of the injunction, and the other two by aiding and abetting Government. The Privy Council held that the letter of the Collector dated 28-3-1936 did not constitute a breach of the injunction order. Their Lordships stated;

"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."

Their Lordships further pointed out (hat the letter was a statement of fact necessitated by the Communication to which it was a reply and set out considerations which weighed with the Government in deciding to take no action. Dealing with the question of aiding and abetting, their Lordships pointed out that where the party enjoined has not broken the injunction it is impossible to hold that any other person has aided or abetted them in breaking it. Their Lordships did not accept the wide proposition that the doing by any one of an act which was forbidden, by the injunction was itself an offence, In my opinion, the facts of the case on which the learned Advocate General has relied are quite different from the facts before us. Here the case is that Messrs. Dalmia Jain and Co. Ltd., have committed a breach of the order of injunction, It is true that Messrs. Dalmia Jain and Co. Ltd., had two capacities--one as lessee from Government and the other as managing agent of the Dehri-Rohtas Light Railway Co. Therefore, the

question in the present case is not whether a person who is not a party to the injunction order has disobeyed it and another person is stated to have aided or abetted the disobedience. The question is whether a party to an order of injunction can with impunity, disobey the order of injunction by assuming, or taking on, a different capacity in respect of the act or acts which constitute a breach of the order of injunction. Mr. P. R. Das has referred to the observation of an American author, Spelling in his Treatise on Injunctions and other Extraordinary Remedies. The observation which will be found at P. 937 of Vol. II (Edn. 2) reads as follows:

"Defendants duly served with an injunction are personally responsible for a violation of the order, in whatever capacity they acted, and from whatever motives."

I have underlined (here italicised) the words on which Mr. P. R. Das has relied. The observation is based on certain decisions of State Courts of America which are not available to us. There is an English decision to the same effect to which Mr. Das has drawn our attention. The decision is *Avery v. Andrews* (1882) 51 L. J. Ch. 414 : 46 L. T 279). It appears that an order of injunction was passed against three persons, Andrews, Lely and Mogg, restraining them from dividing amongst the members of the Loyal Brunswick Lodge of the Independent Order of Odd Fellows, Manchester Unity Friendly Society, the sum of ? 2000. On the 2nd of November, three other gentlemen were appointed trustees, that is to say there being an injunction against three gentlemen in their character of trustees to prevent their doing a certain act, they immediately upon that injunction retired, and three other members of the society stepped into their shoes in their places in the character of trustees. Then, on a subsequent date the sum of ? 2000 was divided amongst the members of the society. Kay J made the following observations:

"If anybody, though not a person actually named in the injunction, chooses to step into the place of the man who was named, and to do the act which he was enjoined from doing, he has committed a very gross contempt of this Court"

is Lordship treated the old and the new trustees all alike and held them all guilty of contempt In my opinion, the same principle should apply in the present case. Messrs. Dalmia Jain and Company Ltd., were the party against whom the order of injunction was made; they were well aware of the order and its contents. I do not think that it is open to them to say that they disobeyed the order of injunction in another capacity and therefore, are not liable for contempt. If that were the law, then it would be easy for a party to disobey an order of this Court by merely assuming a different capacity in respect of the acts which constitute a disobedience of the Court's order. The legal contention raised by the learned Advocate-General must therefore, be overruled.

11. There cannot be any doubt that Messrs. Dalmia Jain and Co. Ltd., opposite party I, has been guilty of contempt of Court.

12. I now proceed to consider the cases of the other members of the opposite party. The case of opposite party 8, the Rohtas Quarries Ltd., and opposite party 6, Quarry Manager, Rohtas Quarries Ltd., can be disposed of in a few words. No definite allegation has been made against the Rohtas Quarries Ltd., and Mr. P. R. Das has frankly conceded that he does not press his case against them.

13. Sri Hari Dutt, opposite party 4, and Sri K. B. Upadhyay, opposite party 5, are constituted Attorney and Secretary respectively of Messrs. Dalmia Jain and Co. Ltd. The allegations against them are contained in paras 39 and 50 of the affidavit of Mr. Medan Lal. As against opposite party 5, it is stated in para. 39 that he tried to cross through the new road on plot No. 168 on 23-12-1919. In para. 40, it is alleged that opposite parties 4, 5 and 6 have gone into lower Murli hill on 5-1-1960, when the Sub-Divisional Magistrate inspected the locality. In my opinion, these allegations, even if accepted as correct, do not make them liable for contempt of Court.

14. There is a further point in connection with these members of the opposite party. It appears that in accordance with the practice of this Court, no formal order of injunction was drawn up in this case. Messrs Dalmia Jain and Co. cannot plead ignorance of the terms of the order of injunction, because they were a party to the order. But other members of the opposite party may not have been in a position to know the exact terms of the order of injunction, and it cannot be said that by going into lower Murli hill when the Sub Divisional Magistrate visited the locality, they committed a breach of the order of injunction.

15. Against Sri Shanti Prasad Jain, opposite party 7, the allegation in para 41 of the affidavit of Mr. Medan Lal is :

"That opposite party 7 who is the Managing Director of opposite party 1 is the man who is directing all the operations to flout the order of injunction of this Hon"ble Court."

This allegation has been stoutly denied. In the affidavit of Mr. M. L. Burman, it has been stated that opposite party 7 is not the Managing Director of opposite party 1, and that the allegations are false. On the materials before us, it cannot be held that Sri Shanti Prasad Jain is either the Managing Director of Dalmia Jain and Co. Ltd., or was directing the operations which constituted a breach of the order of injunction. Our attention has been drawn to Order 39, Rule 5, Civil P. C., but, I do not think that it has any application, in the absence of any reliable evidence, that Sri Shanti Prasad Jain was guilty of any personal action which the order of injunction sought to restrain.

16. Then, remain the Sub-divisional Magistrate of Sasaram, opposite party 2 and the Sub. Inspector of Police, police station Rohtas, opposite party 3. The allegations against them are contained in paras 31 to 38 of the affidavit of Mr Medan Lal. In paras. 20 to 29 also allegations were made that opposite party 1 got reports submitted by opposite party 3 and on these reports, the Sub-Divisional Magistrate passed orders in contravention of the order of injunction. I

have carefully examined the affidavits filed by the Sub-Divisional Magistrate as also by the Sub-Inspector of Police. I do not think that any collusive reports were submitted by the Sub-Inspector of Police, nor am I prepared to hold that the orders u/s 144, Criminal P. C., passed by the Sub-Divisional Magistrate were mala fide. Mr. S. N. Bose, who argued this part of the case on behalf of the petitioner, conceded before us that the Sub-Inspector of Police was not guilty of any bad faith. He reported about the apprehension of a breach of the peace, when such an apprehension actually arose. As to the orders passed by the Sub-Divisional Magistrate, I have only two comments to make. My first comment is that some of the orders were passed after the order of injunction, and it was the duty of the Sub-divisional Magistrate to find out what the order of injunction was. Secondly, the Sub-divisional Magistrate, when he did know the terms of the order of injunction, failed to notice our finding as to prima facie title and possession. But to say that the orders of the Sub-divisional Magistrate were incorrect is not the same thing as to say that he was actuated by bad faith in respect of the orders which he passed. I do not think that the Sub-divisional Magistrate can be held guilty of having aided or abetted the disobedience of the order of injunction.

17. The net result, therefore, is as follows : Messrs. Dalmia Jain and Co. Ltd., opposite party I, are guilty of disobeying the order of injunction which we passed on 16-12-1949. I would accordingly pass an order, under the provisions of Sub-rule (3) of Rule 2 of Order 39, Civil P. C., that the property of Messrs. Dalmia Jain and Company Ltd. in upper and lower Murli hill be attached. I would discharge the rule as against the other members of the opposite party. Messrs. Dalmia Jain and Co. Ltd. must pay the costs of the petitioner, and we assess the hearing fee at ten gold mohurs. Opposite parties 3, 6 and 8 will be entitled to their costs from the petitioner, as they were unnecessarily made parties : hearing fee, three gold mohurs. There will be no order for costs in favour of other members of the opposite party.

18. There is one other matter which should be mentioned. When we passed the order of injunction, we had the possibility in mind that it might be impossible for Messrs. Dalmia Jain and Co. Ltd. to work on upper Murli hill without any right of access through lower Murli hill. It is somewhat unsatisfactory that the work on upper Murli hill should stop because of the absence of any right of access. But this unsatisfactory result is inherent in the situation, in which the conflicting rights of the parties with regard to upper and lower Murli hill are so inextricably entwined. There was an attempt at compromise, but nothing came out of it. It is, however, very necessary that this unsatisfactory state of affairs must not be allowed to continue a day longer than is necessary. In connection with an injunction matter in which the Kalyanpur Lime Works Ltd. were the petitioner, we passed an order that the suit must be taken up for hearing within one week of the re-opening of the Civil Courts after the Puja holidays. In this case also, there should be a direction by this Court so that the bearing may be expedited as far as possible. We accordingly direct that the Subordinate Judge of Sasaram give precedence to this suit and take up the hearing immediately after the hearing of

the suit by the Kalyanpur Co. Ltd., so that the hearing of both these suits may be concluded before the end of the year. It is stated at the bar that issues have been framed and the suits is ripe for hearing. The learned Subordinate Judge will direct the parties to get ready with their evidence, oral and documentary, as soon as possible. All interlocutory matters should be finished as expeditiously as possible, so that the suit may be taken up immediately after the conclusion of the suit by the Kalyanpur Works Ltd.

Reuben J.

19. I agree with the order proposed by my learned brother and the reasons given by him. There is very little to add.

20. The area in dispute in Misc. Appl. No. 303 of 1949, the case in which we passed the order of injunction, was specified in detail at the foot of Subodh Gopal Bose's plaint, and in the miscellaneous appeal there was no doubt as to the extent of the land covered by the dispute. Lower Murli referred to in our order in that case includes the land in plot No. 44 which was acquired for the Dehri Rohtas Light Railway. Bose expressly claimed title and possession over the entire surface of lower Murli throughout the proceedings (vide his plaint, his petition filed before the Subordinate Judge for a temporary injunction and his petition for an ad interim injunction in the miscellaneous appeal before this Court). Our finding in the miscellaneous appeal was in his favour, the only exception being as to the "old District Board Road". Hence, it was not open to Dalmia Jain & Co., Ltd. (for convenience I shall hereafter refer to them as Dalmia Jain) to treat the acquired area as not in the possession of Bose. Stress was laid before us in the present proceeding on the use of the words "owned and possessed" in para. 18 of our order as reported in Subodh Gopal Bose Vs. Province of Bihar and Others, . Our finding as to possession precedes this paragraph, and there can be no doubt that it relates to the whole surface of lower Murli. The exception to the finding was dealt with in para. 18, namely, the "old District Board Road," and it was only in contrast to this that the words "owned and possessed" were used.

21. The maps filed before us in the present proceeding point to the conclusion that the "old District Board Road" no longer exists. The road is not shown at all on the map prepared by the Survey and Settlement Department in 1911-1912. Nor is the road to be found in the Land Acquisition map dated 29-12-1949 prepared for the acquisition of the disputed land "for carrying on quarrying operations, erection of plants, buildings, office, quarters etc. in village Samhauta and village Baknaur," although this map shows other roads. The conclusion I have suggested is supported even by the map dated 10-8-1949, prepared in the office of the Collector of Shahabad and showing the area of 82.766 acres of lower Murli leased out by Government to Dalmia Jain. The road shown in that map by broken lines corresponds to the position of the "old District Board road" as it was depicted in the earlier maps referred to by my learned brother, which position is different from that occupied by the existing track which Dalmia Jain claim as the "old District Board road." The fact that the other roads on this lease map are

drawn in continuous lines suggests that the "old District Board road" is no longer in existence as such. The name "old District Board road" is itself significant and suggests the reason why no records are produced from the office of the District Board to support its existence; the reason is that the road has been abandoned.

22. That the old Murli siding was existing before the acquisition of 1910-1912 appears also from the map of the Survey and Settlement Department, which shows the siding but not the acquisition. It was the only siding on the land before October 1949 and would, therefore, appear to be the siding mentioned in Schedule B appended to the sale deed executed by Kuchwar Lime and Stone Co. Ltd. on 30-9-1933 in favour of Bose. It seems probable also that this is the siding referred to by the Collector of Shahabad in his letter No. 690 dated 14-7-1919 directing the Kuchwar Lime and Stone Co. Ltd., to vacate possession of lower Murli in favour of Dalmia Jain and to remove their movables including the "siding", therefrom. The mala fides of the claim now set up to the siding would appear from the fact that the case originally made out was that the siding was leased to Kuchwar Lime and Stone Co. Ltd. by the Dehri Rohtas Light Railway Co. Ltd., which lease, according to Dalmia Jain, has been terminated by notice with effect from 1-1-1950 (vide para. 18 of the affidavit of M. L. Burman). In the argument before us, it was admitted by the learned Advocate-General that the siding was outside the lease.

23. My learned brother has given reasons for rejecting the "defence that Dalmia Jain are protected because they acted as the managing agents of the Dehri Rohtas Light Railway Co, Ltd. I would add that on the facts the defence has no merits. It is Dalmia Jain who have taken the lease of the underground rights from Government; the Railway Company has nothing to do with these rights. M. L. Burman expressly admits in para 15 of his affidavit that Dalmia Jain are quarrying in the acquired area, that is to say, within the area covered by our injunction. Again, with reference to the two sidings, the learned Advocate-General argued, inter alia, that Dalmia Jain have admittedly the right to quarry in upper Murli and, therefore, the Railway Company was entitled to transport the quarried materials consigned by Dalmia Jain. To my mind, this is exactly where the trouble arises with reference to these sidings. The new siding has been opened and the old one has been seized by the Railway Company solely to enable Dalmia Jain to send away the stuff quarried by them. But Dalmia Jain cannot get their stuff to either of the sidings without passing through lower Murli which is forbidden by our injunction. The list of despatches, Ex. J, filed with the petition of Bose shows that Dalmia Jain have sent several consignments of quarried materials by the railway since the order of injunction was passed. It cannot be pretended that this was done by them as agents of the Railway.