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**(1957) 04 CAL CK 0003**

**In the Calcutta High Court**

**Case No :** Appeal from Original Order No. 106 of 1956

The Reliance Development and Engineering Ltd.

APPELLANT

Vs

The Corporation of Calcutta

RESPONDENT

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**Date of Decision :** 04-04-1957

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 47

General Clauses Act, 1897 — Section 3, 3(31)

West Bengal Estates Acquisition Act, 1953 — Section 2, 4, 5, 6

**Citation :** 61 CWN 533

**Hon'ble Judges :** S.R. Das Gupta, J;N.K. Sen, J

**Bench :** Division Bench

**Advocate :** A.D. Mukherji and T.K. Banerjee, for the Appellant;P.K. Roy and S.K. Basu, for the Respondent

**Final Decision :** Dismissed

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## Judgement

S.R. Das Gupta, J.—This appeal arises under these circumstances:

2. The Corporation of Calcutta which is the respondent in this appeal held certain brick-field lands at Kotrong in Hooghly. The Corporation on 1st November, 1926 granted a lease of the said lands in favour of one Kishori Mohan Banerjee for ten years. On the 2nd November, 1936, the Corporation on the expiry of the said lease granted another lease for a further period of ten years to the same party. Kishori Mohan Banerjee in his turn granted sub-leases to different parties. We are concerned with one of such sub-leases in this appeal. That sub-lease was given originally to Messrs. S. S. & Co. sometime in November, 1936. The subject matter of the said sub-lease was the land adjoining two kilns in the said Kotrong brick-field. The said Messrs. S. S. & Co. granted a sub-lease in favour of one Mr. G. Pal. ON 30th October 1948 Mr. G. Pal transferred his interest in the said sub-lease in favour of the appellant company. IN 1947 the Corporation of Calcutta instituted a suit for ejectment against Kishori. In that suit originally the sub-tenants were not joined as parties. On 12th December, 1949, all the sub-tenants

were made parties to the said suit except G. Pal and the appellant company and a decree was passed with consent of all the parties to the suit whereby the Corporation became entitled to get possession of the said lands. In respect of the kilns which were covered by the sub-leases to Messrs. S. S. & Co. it was provided in the said decree that the Corporation may get possession thereof by such means as they would be advised to take.

3. On 10th October, 1950, the Corporation applied for execution of the decree against the present appellant and prayed for possession in respect of the kilns covered by the said sub-lease. The execution proceedings were resisted by the present appellant. The trial Court held in favour of the present appellant and dismissed the said proceedings. Thereafter an appeal was taken to this Court by the Corporation. That appeal came to be heard by myself and Mallick, J. and on the 30th May, 1955, we held that the appellant company was bound by the decree passed against Kishori and we allowed the appeal and set aside the order raised by the Court below. Thereafter the matter was taken back to the lower Court and the execution proceedings were proceeded with. At that stage a fresh objection was raised by the appellant company. It contended that in view of the provisions of the West Bengal Estates Acquisition Act which had come into force on the 14th April, 1955, the Corporation was not entitled to obtain possession in execution of the said decree. The Court below did not accept that contention and dismissed the objection filed u/s 47 of the Code of Civil Procedure. Against that decision the present appeal has been preferred.

4. Mr. Mukherji appearing on behalf of the appellant contended before us that in view of the provisions of the West Bengal Estates Acquisition Act which had come into force on the 14th April, 1955, the Corporation cannot obtain possession in execution of the said decree. The way in which Mr. Mukherji put his point was as follows. He referred us to sub-clause (i) of Section 2 where the expression "intermediary" has been defined as including a proprietor and he contended, that the Corporation of Calcutta comes within the definition of "intermediary" as laid down in clause (i) of Section 2 of the said Act. Then, Mr. Mukherji drew our attention to the provisions of Sections 4 and 5 of the said Act wherein it is provided that the State Government may from time to time by notification declare that with effect from the date mentioned in the notification all estates and rights of every intermediary situated in any district or any part of it shall vest in the State free from all encumbrances and upon the issue of such notification the estates and rights of intermediaries in the estate to which the declaration applies shall vest in the State free from all encumbrances. In this case, it should be noted, there is no dispute that such a notification was, in fact, issued. The result, therefore, according to Mr. Mukherji, was that the estates and rights of the Corporation of Calcutta which was an intermediary within the meaning of this Act vested in the State free from all encumbrances. Mr. Mukherji also referred us to the provisions of Section 6 of the said Act. It would be necessary for me to set out the material portion of the said action. It reads as follows:

"6(1):-Notwithstanding anything contained in Sections 4 and 5 an intermediary shall, except in the cases mentioned in the proviso to sub-section (2) but subject to the other provisions of that sub-section, be entitled to retain with effect from the date of vesting -

(g) lands comprised in mills, factories, or workshops. (h) where the intermediary is a local authority, - land held in khas for public purposes by such authority, notwithstanding such land or any part thereof may have been let out by such authority;

6(2):-An intermediary who is entitled to retain possession of any land under sub-section (1) shall be deemed to hold such land directly under the State from the date of vesting as a tenant, subject to such terms and conditions as may be prescribed and subject to payment of such rent as may be determined under the provisions of this Act and as entered in the record-of-rights finally published under Chapter V except that no rent shall be payable for land referred to in clause (h) and (i) :

Provided that if any tank, fishery or any land comprised in a tea-garden, orchard, mill factory or workshop was held immediately before the date of vesting under a lease, such lease shall be deemed to have been given by the State Government on the same terms and conditions as immediately before such date."

5. Mr. Mukherji contended, in the first place, that the land in question does not come within the provisions of Section 6 of the said Act. In other words, he contended that the Corporation was not entitled to retain the land in question under sub-section (1) of Section 6. According to him, the land in question is neither a mill nor a factory or workshop nor was it held by a local authority in khas or public purposes within the meaning of clauses (g) and (h) of sub-section (1) of Section 6. The second contention of Mr. Mukherji is that if the proviso to sub-section (2) applies, and it applies in this case, then, the provisions of sub-section (1) of Section 6 would not be applicable even though the land in question comes under clause (g) or (h) of sub-section (1) of Section 6. This, he contended before us, was clear from the wordings of sub-section (1) of Section 6 itself which inter alia provides that except in the cases mentioned in the provisos to sub-section (2) the intermediary will be entitled to retain the land mentioned in that said sub-section. Therefore, according to Mr. Mukherji, if a case comes within the proviso to sub-section (2), then the rights of the intermediary would be completely gone and he would not be entitled to retain the land in question. What the proviso to sub-section (2) meant, according to him was that if the land mentioned therein was held under an intermediary under a lease before the date of vesting, then such lease shall be deemed to have been given by the State Government on the same terms and conditions as immediately before such date, that is to say, in that event a direct relationship will be created between the lessee of the intermediary, and the Government. In the result, therefore, the interests of the intermediary would be completely wiped out and he would not be entitled even to retain the land under sub-section (1) of Section 6. I must

confess that at first I did not fully appreciate the force of Mr. Mukherji's contention on the second branch of his argument and I was inclined to take a view different from what was contended for by Mr. Mukherji but on further consideration I have come to hold that the contention of Mr. Mukherji on the second branch of his argument is sound. I cannot accept the first part of his contention.

6. I agree with Mr. Mukherji that if the proviso to sub-section (2) of Section 6 of the West Bengal Estates Acquisition Act applies, then the rights of the intermediary would be wiped out. I accept his interpretation of the said proviso. The lease which is referred to in that proviso must be a lease held under the intermediary and if there is such a lease, then a direct relationship would be created between the lessee and the State Government. The result of that will be that the rights of the intermediary would be completely wiped out. That this is the true meaning of the said proviso is borne out by the fact that in sub-section (1) of Section 6 it is stated that except in the case mentioned in the proviso to sub-section (2) the intermediary would be entitled to retain with effect from the date of the vesting the properties mentioned. If the other view which is urged before us by the learned Advocate for the respondent namely, that the lease referred to in the proviso to sub-section (2) is a lease under which the intermediary himself holds, is accepted, then it would be difficult, if not impossible to reconcile the said portion of sub-section (1) of Section 6 with the proviso. The proviso to sub-section 92) says that in the event mentioned therein there will be a direct relationship between the State Government and the lessee. In other words, the lease shall be deemed to have been given by the State Government on the same terms and conditions as immediately before such date. If the lease in question be held to be a lease under which the intermediary holds then how can it be said in sub-section (1) of Section 6 that the intermediary in that event will not be entitled to retain the lands in question?

7. That would make the two portions of the said section completely contradictory. In that event under and by virtue of the proviso the intermediary will be deemed to be a lessee under the State and will hold as such while under sub-section (1) of Section 6 of the intermediary will not be entitled to retain the said purpose with effect from the date of vesting. Therefore in my opinion, the only possible meaning which can be attached to the proviso to sub-section (2) of Section 6 is what has been contended for by Mr. Mukherji. It refers to a lease held under the intermediary and not a lease under which the intermediary holds.

8. My acceptance of the contention of Mr. Mukherji on this point, however, does not dispose of this appeal. It has to be seen whether or not in the facts of this case the proviso to sub-section (2) of Section 6 is applicable, Mr. Roy contended before us that the said proviso is not applicable to the present case, because at the date in question, that is to say, immediately before the date of the vesting order, there was nobody holding under a lease from the intermediary, that is to say, the Corporation. The lease which was in existence had already come to an

end and that being so the proviso to sub-section (2) does not apply to the facts of this case. This contention of Mr. Roy in my opinion, should be accepted. From the facts stated by me it appears clearly that the lease given by the Corporation had come to an end long before the West Bengal Estates Acquisition Act had come into force. It is true that the Corporation could not get physical possession of the land in question for a long number of years but that does not mean that the appellant company was holding the land under a lease from the Corporation. In my opinion, in the facts of this case the proviso to sub-section (2) of Section 6 does not apply.

9. I have already mentioned that I am unable to accept the first part of Mr. Mukherji's contention. In my opinion, the land comes within sub-clause (g) of sub-section (1) of Section 6, that is, "land comprised in mills, factories, or workshops". The land in question must, in my opinion, be held to be a land comprised in factories, if not, in workshops. As I have said, it is a brick-field and bricks were being manufactured therein. That being so, it must be held to be a land comprised either in factories or in workshops. Mr. Mukherji also found it difficult, as I understood him, to maintain the position in the end that the land in question did not come within any of these designations, that is to say, mills, factories or workshops. I therefore hold that the land comes within the said clause.

10. Mr. Mukherji however strenuously contended before us that it does not come within clause (h) of sub-section (1) of Section 6. Although in view of my finding that the land in question comes within clause (g) it is not necessary to deal with this contention of Mr. Mukherjee still in view of the fact that this question has been argued at some length before us. I shall shortly indicate the respective contentions of the parties on it. I have already referred to the said clause. It provides that where the intermediary is a local authority, land held in khas for public purposes by such authority, notwithstanding such land or any part thereof may have been let out by it, the intermediary will be entitled to retain it with effect from the date of the vesting. The first question is whether or not the Corporation of Calcutta is a local authority within the meaning of this clause. Mr. Mukherji contended that the Corporation may be a local authority within its own limits, that is to say, an authority within the local where it functions but outside its limits it cannot be said to have any authority and therefore not a local authority in respect thereof. He pointed out to us that the State Government or the Union of India can be properly called as the local authority but the Corporation of Calcutta cannot be said a local authority in respect of lands situated outside the limits of its jurisdiction. Mr. Mukherji then contended that the land cannot be said to have been held for public purposes. It is a brick-field and there is nothing to show that the public had any use of it. That being so, he urged that on both the grounds we should hold that the land in question does not come within clause (h) of sub-section (1) of Section 6.

11. As against that contention Mr. Roy referred us to sub-section 931) of Section

3 of the General Clauses Act where the definition of "local authority" is given as follows:-

"Section 3(31) : - "local authority" shall mean a Municipal committee, District Board, or Port Commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a Municipal or local fund."

12. Mr. Roy also referred us to the provisions of Section 115 of the Calcutta Municipal Act which provides that "there shall be one Municipal fund held by the Corporation in trust for the purpose of this Act to which all moneys realised or realizable under this Act (other than fine levied by Magistrates) and all moneys otherwise received by the Corporation shall be credited." His point really was that whatever income would be derived from the land in question would be held for public purposes and that being so the land must be held to have been held by the local authority for public purposes. The argument of Mr. Roy amounts to this that any land held by the local authority must be a land held for public purposes.

13. I must say that there is considerable force in the contention of Mr. Mukherji on this point and I am inclined as at present to accept his contention on this point in preference to that of Mr. Roy but it is not necessary to give final opinion on this point in view of the fact that our decision on the other points is sufficient to dispose of this appeal. The point which is now canvassed before us, namely, the effect of clause (h) of sub-section (1) of Section 6, may be left to be decided hereafter in some appropriate proceedings when arguments on this point will be more fully heard.

14. The result therefore is that this appeal fails and is dismissed with costs.