

APPELLATE CIVIL.

Before C. C. Ghose and Chotzner JJ.

COMMISSIONERS FOR THE PORT OF CALCUTTA

v.

SURAJ MULL JALAN.*

1927

Dec. 19.

*Injunction—Civil Court—Jurisdiction—Criminal proceedings—Stay—
Specific Relief Act (I of 1877), s. 56 (e)—Calcutta Port Act (Beng. III
of 1890), ss. 83, 84.—General Clauses Act (X of 1897), s. 24.*

Under section 56, sub-section (e) of the Specific Relief Act a Civil Court has no jurisdiction to stay by means of a permanent injunction proceedings in any criminal matter : and it is settled law that, where the Legislature has indicated a mode of procedure before a Magistrate, a Civil Court will not interfere unless in very special circumstances by way of injunction on declaration of right.

Corporation of Calcutta v. Bejoy Kumar Addy (1), referred to.

Where the Commissioners for the Port of Calcutta had been restrained by injunction by a Civil Court from proceeding with a criminal prosecution instituted by them against the plaintiffs under section 84 of the Calcutta Port Act for contravention by the plaintiffs of the provisions of section 83 of the said Act for obstructing public navigation by erecting a bund on the bank of the River Hugli below high water mark, the balance of convenience being in favour of the Port Commissioners, in addition there being grave danger to the public,

Held, that to restrain the Port Commissioners in manner indicated above in such a matter was a very serious thing, the learned Subordinate Judge would have been well advised if he had refused the plaintiffs' application and directed an early hearing of the suit : the order was an extraordinary one, and ought never to have been made in the circumstances of the case.

APPEAL from original order by the Commissioners for the Port of Calcutta, defendants.

* Appeal from Original Order, No. 469 of 1927, against the order of K. B. Gupta, Subordinate Judge, Howrah, dated Nov. 23, 1927.

(1) (1923) I. L. R. 50 Calc. 813.

The facts of the case out of which this miscellaneous appeal arises are briefly as follows. By a registered lease, dated the 5th of October, 1918, one Suraj Mull Jalan and others, the present plaintiffs, took a 99 years' lease of the *mukorari mourashi* lands of Mr. Saradindu Mukerji on the bank of the River Hugli at Ghuseri where the plaintiffs were constructing a Jute Mill on the said land after having duly obtained the necessary sanction of the Howrah Municipality. A *bund* was erected by the plaintiffs' contractors on the bank, which plaintiffs alleged was theirs according to the Local Government's Survey Map of the Howrah Municipality and above high water mark, to facilitate the landing of materials for their construction work and to protect it in case of any extraordinary high tide. On 11th May, 1927, the Commissioners for the Port of Calcutta wrote and asked the plaintiffs to remove the said *bund* within one month, and in default they were threatened with a criminal prosecution for erecting a structure below high water mark without the previous permission of the Local Government. Then ensued some correspondence between the parties in course of which the plaintiffs sought for some information as to the high water mark which was withheld by the Port Commissioners, the plaintiffs alleged, and hence they had to file the present suit on the 18th August, 1927, before the Subordinate Judge at Howrah. The plaintiffs prayed for a declaration that the aforesaid *bund* was erected on plaintiffs' land and also for a declaration that the said *bund* was not an encroachment on the high water mark of the River Hugli or within the jurisdiction of the Calcutta Port Commissioners and that they may be permanently restrained from interfering with the plaintiffs' possession and that the Port Commissioners may be restrained from taking any steps in a Criminal

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Court for the alleged encroachment. The defendants denied the plaintiffs' allegations in their written statement and said that the plaintiffs knew how the high water mark was fixed with the sanction of Government under the provisions of the Indian Ports Act which was published in a Notification in August, 1880.

On the 16th August, 1927, however, criminal proceedings had already been commenced by the defendants against the plaintiffs under sections 83 and 84 of the Calcutta Port Act (Beng. III of 1890) although the summons was served on the accused (*i.e.*, the plaintiffs) some time after the 18th August, 1927, the date on which the plaintiffs filed their civil suit.

On the 18th October, 1927, the High Court having thrown out the accused's application, they in their capacity as plaintiffs then applied to the Subordinate Judge of Howrah for the issue of a temporary injunction which was granted on the 23rd November, 1927, restraining the Port Commissioners (1) from taking any steps for the removal of the said *bund* and (2) from taking further steps in the aforesaid criminal case. The Calcutta Port Commissioners thereupon preferred an appeal to the High Court.

Mr. Ameer Ali and Babu Satindra Nath Mukherji, for the appellants.

Sir Benode Mitter, Dr. Sarat Chandra Basak and Babu Probodh Chandra Chatterji, for the respondents.

Cur. adv. vult.

GHOSE J. This case raises an important question of principle, namely, whether the Commissioners for the Port of Calcutta can be restrained by injunction by a Civil Court from proceeding with a certain criminal prosecution instituted by them

against the respondents under section 84 of the Calcutta Port Act (Beng. III of 1890) for contravention by the respondents of the provisions of section 83 of the said Act.

The facts, shortly stated, are as follows:—The plaintiffs, who are the respondents before us, are the lessees of certain lands on the west side of the River Hugli near Ghuseri. They started constructing a Jute Mill on a portion of the said lands and it appears that during the construction of the mill they put up an earthen *bund* on the bank of the river nearest to their land to facilitate the landing of building materials intended for constructing the said mill. On or about the 11th May, 1927, the Port Commissioners wrote a letter to the plaintiffs enclosing a coloured plan depicting the *bund* which they stated to be an encroachment on the high water mark of the river and directing its removal within a month, failing which action was to be taken under sections 83 and 84 of the Calcutta Port Act. The plaintiffs took no notice of this letter till the 20th June and then started a correspondence into the details of which it is unnecessary to enter. On the 16th August, 1927, the Port Commissioners instituted a complaint against the plaintiffs before the Chief Presidency Magistrate of Calcutta, he being the authority before whom complaints relating to offences committed within the limits of the Port of Calcutta could be brought. On the 18th August, 1927, the present suit, out of which this appeal has arisen, was instituted by the plaintiffs in the Court of the Subordinate Judge of Howrah, praying *inter alia* that it might be declared that the *bund* in question was erected on the plaintiffs' lands and it was not an encroachment on the high water mark of the river Hugli and that the Port Commissioners might be permanently restrained from interfering in any

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manner with the plaintiffs' possession of the said *bund* and from taking any steps whatsoever in any Criminal Court in respect of the said alleged encroachment. In their written statement which was filed on or about the 20th September, 1927, the Port Commissioners stated that the *bund* in question had been erected on the foreshore of the river below the high water mark, the *bund* going in time of flow under the high water mark, that the land on which the said *bund* had been erected formed part of the foreshore of the river and that it was really an attempt on the part of the plaintiffs to carve out for their own purposes a portion of the foreshore. The Port Commissioners contended that in the circumstances they were entitled to have the *bund* removed and to institute proper proceedings in a proper Court, to wit, the Court of the Chief Presidency Magistrate of Calcutta, against the plaintiffs and that no injunction could be issued under the law for restraining them in manner referred to in the plaint. On the 2nd November, 1927, the plaintiffs applied before the Subordinate Judge of Howrah for a temporary injunction against the Port Commissioners in terms of the prayer in the plaint. They alleged that there was a *bona fide* dispute between the parties as to the location of the high water mark of the River Hugli and that in the event of the Port Commissioners being allowed to remove the said *bund* before the determination of the suit they would suffer irreparable loss and damage. The Port Commissioners in opposing the said application pointed out that the plaintiffs had applied, after the institution of the said criminal proceedings, to this Court in its Criminal Revisional Jurisdiction for stay thereof and that such application had been refused by this Court. They further pointed out that if the proceedings in the Criminal Court were not proceeded with and the *bund*

removed, there would be danger to navigation with the further result that the confined area would be lost to the river by gradual siltation of the encroached part to the great detriment of river navigation and that such loss would cause considerable inconvenience and irreparable injury to them as also to the public. It was also pointed out that the Calcutta Port Act with a view to preventing such encroachments leading to siltation and interference with navigation had provided a summary procedure under section 84 of the Calcutta Port Act and that the Civil Court could not and should not interfere with the said criminal proceedings. Lastly, they contended that the balance of convenience was in their favour and against the plaintiffs. The learned Subordinate Judge held that there was a substantial question to be investigated and that until the matter was finally disposed of everything should remain in *statu quo*. Accordingly he granted a temporary injunction against the Port Commissioners as prayed for by the plaintiffs restraining the former from proceeding with the said criminal proceedings.

In our opinion the order of the learned Subordinate Judge is an extraordinary one and ought never to have been made in the circumstances of this case. The plaintiffs' action in instituting the present suit two days after the institution of the complaint in the Chief Presidency Magistrate's Court was a manifest device on their part to evade the provisions of the Calcutta Port Act. Now, under section 56, sub-section (e) of the Specific Relief Act a Civil Court has no jurisdiction to stay by means of a permanent injunction proceedings in any criminal matter: and it is settled law that where the Legislature has indicated a mode of procedure before a Magistrate, a Civil Court will not interfere unless in very special circumstances

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by way of injunction on declaration of right. [See in this connection *Corporation of Calcutta v. Bejoy Kumar Addy* (1).] If these be the principles relating to the issue of permanent injunctions, it follows as a necessary corollary that there is no warrant for the issue of a temporary injunction against the Port Commissioners in this case. The learned Subordinate Judge states that the expression "high water mark" has not been defined in the Calcutta Port Act and that the balance of convenience was on the side of the plaintiffs. Now, on an application for an interlocutory injunction the Court has got to be satisfied that the plaintiff has made out a *prima facie* case, that he is entitled to relief. It appears to us on the materials placed before us that there ought not to be any difficulty in the determination of the high water mark of the River Hugli. The learned Subordinate Judge refers to the notification issued under the Indian Ports Act, 1875, defining the high water mark of the River Hooghly and seems to throw doubt on the question whether that definition is operative at the present day. Now, under section 83 of the Calcutta Port Act it is not lawful for any person save the Port Commissioners to make, erect or fix below high water mark within the Port any wharf, quay stage, jetty, pier, erection or mooring, unless the assent of the Local Government is first obtained. The limits of the Port of Calcutta, as is well known, were defined by notification under the Indian Ports Act (XII of 1875) under date the 18th August, 1879. Thereafter on the 13th August, 1880, a further notification was issued under the same Act defining the high water mark of the River Hugli. The said notification was as follows: "The 13th

“August, 1880..... . In continuation of the notifi-
 “cation of the 18th August, 1879, defining the limits of
 “the Port of Calcutta which was published at page
 “841 of the Calcutta Gazette of the 20th August, 1879,
 “the Lieutenant-Governor is pleased with the sanction
 “of the Government of India to declare in accordance
 “with the provisions of sections 5 and 6 of the Indian
 “Ports Act XII of 1875, that high water mark shall
 “extend to 15·09 feet above the sill of the Kidderpore
 “Dock, that being the highest point reached by
 “ordinary spring tides in any season of the year.

“2. On the Howrah side of the river this boun-
 “dary has been defined and marked off by stone
 “blocks fixed level with the river bank to mark the
 “exact position of the 15·09 feet water line between
 “the Port Commissioners’ land at Sibpur on the south
 “and the southern boundary of the East Indian
 “Railway Company’s premises on the north as shown
 “on a plan submitted by the Commissioners.”

It is true that Act XII of 1875 was repealed by the Indian Ports Act of 1889 (Act X of 1889) but by virtue of section 2 of the last mentioned Act the notifications referred to above were deemed to have been made and issued under the last mentioned Act and were therefore continued. Act X of 1889 was repealed by Act XV of 1908. Though there is nothing said in Act XV of 1908 about the continuance of the notifications issued under the earlier Acts, it is to be remembered that meanwhile the General Clauses Act (Act X of 1897) had come into operation. Now, what was the effect thereof? Under section 24 of the General Clauses Act it is provided that “where any Act of the Governor-General in Council or regulation is after the commencement of this Act repealed and re-enacted with or without modification, then unless it

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“is otherwise expressly provided any appointment, notification, order, scheme, rule, form or bye law made or issued under the repealed Act or Regulation, shall so far as it is not inconsistent with provisions re-enacted continue in force and be deemed to have been issued under the provisions so re-enacted unless and until it is superseded by any appointment, notification, order, scheme, rule, form or bye-law made or issued under the provisions so re-enacted”. In view of the above, there would seem to be no justification for the learned Subordinate Judge’s doubts as to the existence of a recognised definition of the high water mark of the River Hugli at the present moment. No doubt it will have to be determined in the suit itself whether the contention of the Port Commissioners, *viz.*, that the *bund* in question is below the high water mark is correct or not, but it is reasonably clear that if the Commissioners are right and, if by reason of the erection of the said *bund*, there is obstruction to public navigation, resulting in the loss of lives of passengers in vessels and also property, no amount of pecuniary compensation would be sufficient or adequate to meet such loss and that the balance of convenience is, on an interlocutory application such as was brought on before the Subordinate Judge, against the plaintiffs and in favour of the Commissioners. To restrain the Port Commissioners in manner indicated above in a matter like this is a very serious thing and in our opinion the learned Subordinate Judge would have been well advised if he had refused the plaintiffs’ application and directed an early hearing of the suit.

The result, therefore, is that this appeal is allowed and the connected rule is also made absolute with costs, the hearing fee being assessed at five gold mohurs in each case. The appellants will be entitled to the

costs in the lower Court and to the costs of the preparation of the paper book in this appeal.

CHOTZNER J. agreed.

G. S.

Appeal allowed.

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INCOME-TAX REFERENCE.

Before Rankin C. J., C. C. Ghose and Buckland JJ.

VERNON MILWARD BASON, *In re.**

1927

Dec. 22.

Income-tax—Super-tax—Income accumulating for a number of years and paid in a lump in a year if liable to income-tax and super-tax—Income-tax Act (XI of 1922), s. 16.

Dividends not declared or paid for several years but subsequently paid in a lump sum, are income assessable for that year in which it was paid and are liable to income-tax and super-tax under section 16 of the Income-tax Act, 1922.

INCOME-TAX REFERENCE.

The assessee, Vernon Milward Bason, is a shareholder in three private limited companies, *viz.*, (1) Messrs. Murray & Co., Ltd., of Lucknow, (2) Messrs. Samuel Fitze & Co., Ltd., of Calcutta and (3) Messrs. Devereux & Co., Ltd. of Calcutta. Bason was never assessed in Bengal before the year 1925-26. Assessment proceedings were started on receipt of a letter by the Assistant Commissioner of Income-tax, Calcutta, from the Income-tax Officer, Lucknow, enquiring whether the assessee was assessed in Calcutta and stating that from the books of Murray & Co., Ltd., it was found that a sum of rupees one lakh was paid to him as accumulated dividends during 1924-25 and a sum of Rs. 1,097 on

* Income-tax Reference.