

PRIVY COUNCIL

Wasif Ali Mirza Nawab Bahadur of Murshidabad

Vs.

Karnani Industrial Bank Ltd.

P.C.A.No.54 of 1930

(Lord Macmillan, J. Sir George Lowndes and Sir Dinshamulla. JJ.)

16.03.1931

JUDGMENT

LORD MACMILLAN J.

1. By an order dated 15th July 1929, the High Court of Judicature at Fort William in Bengal, allowing an appeal from an order of Lord Williams, J., appointed a receiver of the rents, issues and profits of certain properties in Calcutta in execution of several decrees obtained against the present appellant by the respondent bank. The sole question is whether it was competent to make this appointment in view of the terms of the Murshidabad Act, 1891 (No. 15 of 1891), which has reference to these properties.

2. The purpose of that Act was to confirm and give effect to an indenture between the Secretary of State and the then *Nawab Bahadur* of Murshidabad, dated 12th March 1891. The indenture, which is duly confirmed by the Act and scheduled thereto, narrates at great length the circumstances which led up to it. It appears that the then Nawab Bahadur, the appellant's predecessor, who was the eldest son of the late Nawab Nazim of Bengal, Behar and Orissa, had agreed to relinquish the latter title with its appurtenant rights in consideration of his receiving the titles of *Nawab Bahadur* of Murshidabad and Amir-ul-Omrah, carrying with them the precedence, rank, dignity and privileges of the premier noble of Bengal, Behar and Orissa and also in consideration of provision being made for the maintenance and support of the holder of these titles for the time being and for the maintenance of the honour and dignity of his station.

3. On these and other recitals the Secretary of State covenanted,

"for the duo maintenance and support of the said titles of *Nawab Bahadur* of

Murshidabad and Amir-ul-Omrah and the position and station thereto attaching and of the honour and dignity thereof." to pay to the *Nawab Bahadur* and his lineal heirs male in perpetuity an annual sum of Rs. 2,30,000 by monthly instalments of Rs. 19,166-10-8, and further agreed and declared that the immovable properties mentioned in the schedules to the indenture (which include the properties of the rents of which the High Court has appointed a receiver) should

"henceforth and for ever be held and enjoyed by the said Nawab Bahadur and such one among his lineal heirs male as may be successively entitled to hold the said titles in perpetuity with and subject to the incidents, powers, limitations and conditions as to inalienability and otherwise" thereafter in the indenture contained.

4. The first of these conditions is in the following terms :

" First : The said *Nawab Bahadur* shall not nor shall any of his successors in the said titles sell, mortgage, devise or alienate the said properties respectively or any of them otherwise than by lease or demise for a term not exceeding 21 years and under a rent without bonus or salamee."

5. The indenture also provided as follows :

"In case the said *Nawab Bahadur* or any of his lineal heirs male successors to the titles shall at any time in contravention of the terms of these presents attempt to sell, mortgage, devise or alienate (otherwise than by such lease or demise as aforesaid) any of the immovable properties aforesaid or shall by a course of extravagance or by waste or mismanagement of their said immovable properties in the opinion of the Secretary of State for the time being disable himself from duly maintaining the dignity of the said position and station, then, and from time to time whenever and as often as the same shall happen, it shall be lawful for the Secretary of State for the time being at his discretion to enter into and upon the said immovable properties and to hold and take possession thereof and also to take and retain the said monthly sum of Rs. 19,166-10-8 payable from the Government Treasury at Berhampore as hereinbefore mentioned for such period during the lifetime of the *Nawab Bahadur* of Murshidabad and Amir-ul-Omrah so acting as aforesaid as to the said Secretary of State shall seem necessary or expedient, and the net rents, issues and profits of the said immovable properties and the said monthly sum of Rs. 19,166-10-8 so to be received and taken by the Secretary of State as aforesaid shall be

applied for the benefit of the said *Nawab Bahadur* of Murshidabad and Amir-ul-Omrah for the time being for the maintenance of the position and dignity of the said Nawab Bahadur of Murshidabad and Amir-ul-Omrah for the time being in such manner as the Secretary of State in his discretion shall think proper."

6. The fifth section of the confirming statute is in the following terms :

" 5. All property, moveable and immovable, mentioned in the said indenture or in any of the schedules thereto.....shall descent and subject to the provisions of the said indenture, be enjoyed for ever by the *Nawab Bahadur* of Murshidabad for the time being."

7. The contention of the appellant, to which Lord Williams, J., gave effect, but which the High Court on appeal rejected, was that to appoint a receiver of the rents of any of the properties embraced in the indenture would defeat the intention of the Government as expressed in the statute and indenture by depriving the *Nawab Bahadur* pro tanto of income designed for the maintenance of his exalted position and would be against public policy. It was also submitted that the appointment of a receiver might prove embarrassing and place the Court in an invidious position in the event of the exercise by the Secretary of State of his power of entering into possession of the properties and applying the rents for the Nawab's benefit :

8. In considering the question thus raised it is important to bear in mind the provisions of the Code of Civil Procedure on the subject of execution. By Section 51 the Court is empowered on the application of a decree-holder to order execution of the decree inter alia, (d) by appointing a receiver. Then by Section 60(1) there is rendered liable to attachment and sale in execution of a decree all saleable property, moveable or immovable, belonging to the judgment-debtor or over which or the profits of which he has a disposing power which he may exercise for his own benefit with certain enumerated exceptions.

9. Now, while the Murshidabad Act renders the immovable properties to which it relates inalienable except to the limited extent permitted, it imposes no restriction on the enjoyment of the rents by the *Nawab Bahadur* for the time being. So long as he is entitled to draw the rents he may dispose of them as he pleases. It is true that the income of the properties was conferred on him to enable him to maintain his dignity and station, but should he fail so to apply it the Secretary of State is given the special power of stepping in and drawing the rents himself and applying them for the Nawab's benefit. Unless and until the Secretary of State intervenes the Nawab may employ his income as he chooses, nor is there any restraint on anticipation imposed by the statute

or the indenture. The Nawab therefore has a disposing power over the income. Once this is established no question of public policy is involved and their Lordships are unable to see that either the terms of the statute or the indenture are contravened by aiding the creditors of the appellant to effect payment out of his income of the debts which he has incurred. The appointment of a receiver in the present case is, of course, subject to the special powers of the Secretary of State, and should the latter at any time decide to intercept the rents the receiver's powers will be superseded. This is fully recognised by the appellate Court's judgment.

10. Before their Lordships the additional point was taken on behalf of the appellant that the rents in question formed part of a political pension and were thus exempt from attachment under head (g) of the enumerated exceptions in Section 60(1), Civil P. C. This belated attempt to assimilate the rents to a political pension plainly fails.

11. Their Lordships agree with the view expressed in *Lachmi Narain v. Makund Singh* that the word "pension" alike in the Pensions Act, 1871 (No. 23 of 1871) and in the Civil Procedure Code, and their Lordships may add also in the Transfer of Property Act, 1882 (No. 4 of 1882), Section 6, "implies periodical payments of money by Government to the pensioner." The appellant draws the rents in question not as a pensioner, but as the limited owner of the properties which yield them. Their Lordships, finding themselves as they do in complete agreement with the judgment of the learned Chief Justice and his colleague, will humbly advise His Majesty that the appeal be dismissed. The respondent bank will have its costs of the appeal.

Appeal dismissed.

Cases Referred.

[1904] 26 All 617=1 ALJ 338=(1904) Awn 144.