CALCUTTA HIGH COURT

Tarafatullah Mandal

Vs.

S.N. Maitra

Criminal Misc. No. 332 of 1951

(Chakravathi and P.B. Mukharji, JJ.)

21.12.1951

JUDGMENT

Chakravartti, J.

1. This is a Rule on five persons, requiring them to show cause why they should not be proceeded against for contempt for having disregarded and disobeyed certain interim orders made by Bose, J., while granting a Rule nisi on an application under Article 226 of the Constitution of India. Of the five persons, the first is Sri S.N. Maitra, Collector of 24 Parganas; the second is the State of West Bengal, represented by Sri S. Banerjee; the third is Sri S.N. Roy, Relief Officer of Basirhat; the fourth is Sri Prafulla Chandra Deb Roy, Superintendent, Refugee Camp, Basirhat; and the fifth is Sri Atul Krishna Gain, Kanungo at Basirhat.

2. The petitioners are three in number and claim to be owners of certain lands in village Gokulporo in the District of 24 Parganas. It appears that on 20.8.1951, a petition was moved on their behalf and on behalf of certain other persons for various writs against the first opposite party and the State of West Bengal on the allegation that they wore taking various steps to deprive the petitioners of their lands in purported and illegal exercise of their supposed powers under the West Bengal Land Development and Planning Act, 1948, which was an ultra vires piece of legislation. A schedule to the petition gave particulars of the lands in respect of which the rights of the petitioners were alleged to have been invaded. The writ, asked for by prayer (a) of the petition, was a writ of Mandamus, directing the opposite parties therein to forbear from depriving the petitioners of their property by way of any orders under Act 21 of 1948; that, asked for by prayer (b), was a writ of prohibition, prohibiting the opposite parties from taking any step under the aforesaid Act; and the writ, asked for by prayer (c), was a direction upon the opposite parties to forbear from taking any steps under the Act already mentioned. Bose, J., it appears, did not issue any writ straightaway, but instead issued a Rule Nisi and in the meantime he passed interim orders in terms of prayers (a), (b) and (c). Those orders were necessarily only against the

present opposite party No. 1 and the State of West Bengal.

3. It is alleged that in spite of those orders being passed and with knowledge of them, opposite parties Nos. 1 and 2 continued their interference with the lands of the petitioners. Not only did they not desist from proceeding with the proceedings of acquisition, but they also caused actual acts of aggression to be done and opposite parties Nos. 3, 4 and 5 forcibly trespassed into certain plots of land belonging to the petitioners, sank a tube well in one of them and felled trees in others. It was not stated in the petition when these acts had been done and the petitioners contented themselves with stating that they had been done after the interim orders had been made. The acts complained of constitute, in the submission of the petitioners, contempt of this Court and accordingly they prayed that the opposite parties might be committed to prison for willfully flouting and disobeying the interim orders made by Bose, J.

4. Before proceeding further, it is necessary to say a word about the person or party impleaded as opposite party No. 2 in the petition. That party, as I have stated already, is "State of West Bengal, represented by Sri S. Banerjee, Secretary, Department of Land and Land Revenue." It will thus be seen that the person or party said to be in contempt, so far as this opposite party is concerned, is the State of West Bengal itself. It will also be remembered that the prayer in the petition is that the opposite parties should be committed to prison. In effect, therefore, the petitioners are praying that the State of West Bengal, as represented by Sri S. Banerjee, should be committed to prison.

5. As the practice of impleading the State as represented by some particular individual is becoming common in contempt proceedings, it seems necessary to point out what the correct procedure is, Nothing can be less accurate or more ridiculous than to ask that a particular State should itself be committed to prison, or that the State should be regarded as personified in some individual officer nominated by the complainant, and should be committed to prison in the person of that officer. The State is not a minor, or a lunatic, or a Hindu deity that it can be represented by anyone in the manner sought to be done in the present petition. Nor is it a body corporate. Even when the Union of India, or one of the component States is sought to be made a party, it is to be impleaded in the manner and the name indicated in the Constitution itself. To implead the Union, or one of the States as represented by some particular officer, whether in Civil or Criminal proceedings, is not warranted by any provision of law, and so far as Criminal Proceedings are concerned, is particularly inappropriate. As I have already indicated, what the petitioners seem to have in contemplation is that, for the purposes of the present case, Sri S. Banerjee should be treated as the personification of the State of West Bengal and that to commit him to prison would be committing the State. If that be correct, then, in the event of the petition succeeding, this State will stand committed to prison and dwell there in the person of Sri S. Banerjee during the period of our pleasures. Nothing, as I have pointed out, can be more ridiculous than that.

6. When an order or injunction is made against a Government or a corporate body, it can, in case it is disregarded, be sought to be enforced by attachment or committal of one of the officers. That is well established, the reason being that a State or a corporation cannot, in the very nature of things, act by itself, but must act through agents, such as officers or members. In such cases if an order, or injunction is made against the Government, or the corporate body, a breach of such order, or injunction can in most cases be punished only if it is possible to proceed against the officer or member in whose charge the subject-matter of the order might be and whose duty it was to obey and carry out the order. But if it is sought to enforce an order, made against a corporation, or a Government by the attachment or committal of a member of the corporate body, or an officer of the Government, the correct procedure to follow is to make an application to the Court concerned for leave to proceed against the particular individual who is sought to be arraigned and to make out to the satisfaction of the Court that he was the person on whom the duty lay to see that the order previously made was carried out or not disobeyed and further that he had knowledge of the order. In the present case, for example, an application might have been made for leave to proceed against Sri S. Banerjee, personally, though the interim orders were against the State, but if the petitioners intended to do so, they would have to make such an application and satisfy the Court prima facie at least, that after the interim orders had been made, it would be the concern of Sri S. Banerjee, as the Secretary of the Department of Land and Land Revenue to see that the mandatory portions of the order were carried out and the prohibitory portions not disobeyed and that he had been served with or had come to know of the orders. No such application was made, nor any leave asked for or granted, and the State of West Bengal itself was arraigned as the party in contempt, not simpliciter but as represented by Sri S. Banerjee. I do not say that in fit cases a writ for contempt may not be asked for against a corporation itself, or against a Government. In what form, in such a case, any penal order, if considered necessary, is to be passed and how it is to be enforced are different matters which do not call for decision in this case. In England, there is a specific rule providing for sequestration of the corporate property of the party concerned, where such, party is a corporation. I am not aware of any similar rule obtaining in this country, but I do not consider it impossible that in a fit case a fine may be imposed and it may be realized by methods analogous to sequestration which would be a distress warrant directed against the properties of the Government or the Corporation. But, as I have said, that matter does not require to be decided in the present case.

7. There can be no doubt that what the petitioners intended to say by their petition was that such interference with their lands as, according to them, was being committed, must ultimately be attributed to Sri S. Banerjee, inasmuch as the application of the West Bengal Land Development and Planning Act, 1948, was a concern of the Department of Land and Land Revenue, of which Sri S. Banerjee was the Secretary. On that basis, their intention appears to have been to submit that Sri S. Banerjee, being the person responsible for the administration of the Act, was the person who was required to see, on behalf of the State, that the interim orders were not disregarded and that having failed to do so, he had made himself liable in contempt. It appears that the original order, so far as it was made against the State of West Bengal was served on Sri

S. Banerjee. Even so, as I have already indicated, the petitioners have not adopted the correct procedure for impleading Sri S. Banerjee as an individual nor have they done so in fact. But since familiarity with the correct procedure in regard to such matters is perhaps not to be expected as occasions to have recourse to it are infrequent, we shall waive the irregularity and take the application as properly made against Sri S. Banerjee individually. It appears from the affidavit filed by Sri S. Banerjee that he understood himself to have been arraigned as the person in contempt. Since no one has been misled and a Rule has already been issued on Sri. S. Banerjee, we shall overlook the irregularity.

8. To return now to the facts, in paragraph 6 of their petition, which is the material paragraph, the complaint made by the petitioners is that the opposite parties are "continuing to take all steps and actions purporting to acquire your petitioners' lands" and that three of them trespassed into certain plots of lands, sinking a tube well and cutting down trees in the manner I have already described. As soon as the case was opened, I asked the learned Advocate for the petitioners what the acts were which he was going to establish and which, in his submission, constituted contempt. He mentioned three acts only, (i) the sinking of a tube well (ii) the cutting down of trees, and (iii) the demarcation of certain lands. He did not mention any steps taken towards acquiring the lands of the petitioners. We have, therefore, to confine ourselves to the three acts named by the learned Advocate himself.

9. I have omitted to mention that this matter came up for hearing originally before a Bench presided over by my Lord the Chief Justice, but as it appeared that it involved disputed questions of fact, their Lordships made an order that it should be heard on evidence by the regular Criminal Bench. It was under that direction that the case came up for hearing before us.

10. I have already stated that in opening his case the learned Advocate for the petitioners abandoned one of the allegations made in the petition, namely, the allegation that certain steps towards acquiring the lands of the petitioners have been taken after the interim orders had been made. The evidence he led dropped another allegation, for not a single question was put to any of the petitioners regarding any demarcation made of any land. In the result, we were left with two allegations only, namely, (i) the sinking of a tube well in plot No. 779, and (ii) the cutting down of certain trees.

11. I must now proceed to consider whether these acts have been established as facts and whether, if they have been, the opposite parties have been successfully connected with them, or their responsibility proved. It will be convenient to take up first opposite parties Nos. 3, 4 and 5 who, it is alleged, committed the actual physical acts.

12. As to the case against those opposite parties, it is enough to say that the petitioners, who examined themselves, did not even make any attempt to prove any case. All that they said was that the acts complained of had been done by certain officers lodged in the Gokulpore School. It

was not said that the three opposite parties were among the officers who lived in the Gokulpore School, far less that they were the only officers. None of the petitioners claimed to have seen any of these three opposite parties on the spot at the time the alleged acts were done and although they were present in the Court premises for three days, most surprisingly, no attempt was made to identify them as the officers who had either done the acts themselves or caused them to be done. As I have stated, the nearest the petitioners went to these opposite parties was to say that the acts complained of by them had been done by officers stationed at the Gokulpore School who were in charge of refugee work. That certainly does not fix the liability for any of the acts on any of these opposite parties. Indeed, such of the petitioners as claim to have witnessed the alleged acts claimed only to have seen certain labourers, whom again, they did not know and of whom they had made no enquiry. How then they could say that they were acting under the orders of the officers stationed at the Gokulpore School, or that the officers who ordered the acts to be done were the three opposite parties before us. It is utterly impossible to say. But as I have already mentioned, the petitioners made no attempt to name or identify any of these opposite parties and no question was put to them in the examination-in-chief with regard to their identity.

13. This ought to be sufficient to dispose of the case against the opposite parties Nos. 3, 4 and 5, but there is more. In the petition it was alleged that a letter, written by a certain Advocate, was shown to these opposite parties at the time they were about to do the acts complained of and that by that letter they had been made aware of the interim orders passed by Bose, J. At the hearing Mr. Das stated that he did not desire to make use of that letter and would lead no evidence regarding it. Whether, even if an Advocate's letter had been shown and that letter contained a statement that certain interim orders had been passed, it would suffice to affect these opposite parties with notice of the orders, is itself not too clear. Personally, I doubt if it would. But since no use was sought to be made of the letter, the petitioners would have to prove by other evidence that opposite parties Nos. 3, 4 and 5 had been aware of the interim orders at the time they had done the acts complained of assuming it was they who had done them. No attempt whatsoever was made to prove that they had any knowledge of the orders. It follows that even assuming that the acts complained of were done and they were done after the interim orders had been made, there is no case at all against opposite parties Nos. 3, 4 and 5, first for the reason that their connection with the alleged acts was not proved and secondly for the reason that it has not been shown that they were aware of the orders. I must add that when at the close of the evidence I asked Mr. Das whether he thought his clients had made out any case against opposite parties Nos. 3, 4 and 5, he very fairly and candidly admitted that they had not and that he would not address us as regards those opposite parties at all.

14. I would next take up Sri S. Banerjee. In his affidavit ho admits that a copy of the original Rule was served upon him on 4th September, but he pleads that he or his Department has got nothing to do with the administration of the West Bengal Land Development and Planning Act, 1948, and that, therefore, he could not in any view, be held to have been in contempt, even if the alleged acts were done. He proceeds to state that according to his knowledge, derived from the records, the orders of this Court were not violated and the acts complained of were not done by

the opposite parties, as alleged.

15. It appears to me that the first plea taken by Sri S. Banerji is well-founded and must be accepted. The parties did not appear to realise the importance of ascertaining at what precise stage the proceedings under the West Bengal Land Development and Planning Act were and the bearing which that matter had on the liability of opposite parties Nos. 1 and 2, even if the alleged acts had been done. In those circumstances, we invited the learned Advocates, particularly the learned Advocate for the opposite parties, to inform us more fully what the scheme of the new Act was and what stage the proceedings had reached. It appears from an examination of the Act that in the main it is concerned with providing for the acquisition of lands for some special purposes and it leaves the development or exploitation of lands, so acquired, to a body called the "prescribed authority." Broadly stated, the scheme of the Act is that in the first place the Provincial Government will set up an authority for carrying out the purposes of the Act. The Government will then issue a notification, declaring that certain lands are needed or likely to be needed for a public purpose and then ask the "prescribed authority," or it may be, some company or local authority, to prepare a development scheme in respect of the notified area. If the scheme, when prepared and submitted, is sanctioned, the Government will proceed to acquire the lands and, having acquired them, will proceed to dispose of them mainly by handing them over to the prescribed authority for the purpose of the execution of the scheme. It may also retain, or let on hire, or lease, or sell any land acquired in pursuance of the Act, but the main purpose is what I have stated. When the lands have been thus acquired and handed over to the prescribed authority, the development scheme will proceed.

16. It appears that the Land and Land Revenue Department of the Government, of which Sri S. Banerjee is the Secretary, is concerned with the Act only upto the stage of acquisition. The "prescribed authority" under the Act is the Land Planning Committee and that Committee, it appears, has decided, so far as the lands involved in the present case are concerned, to utilize them for the purposes of a scheme for settlement of refugees. This settlement of refugees is the concern of a different department of the Government, namely, the Relief and Rehabilitation Department, which has its own Secretary. The position, therefore, seems to be that so far as the present lands are concerned, the application of the West Bengal Land Development and Planning Act, 1948, has passed the stage of acquisition and reached the stage of development; in other words, has passed from the charge of the Land and Land Revenue Department to the charge of the Relief and Rehabilitation Department. The petition proceeds on the basis that the stage of acquisition is not yet over, because one of the complaints, as I have already stated, is that the first two opposite parties had taken certain further steps towards acquiring the lands even after the interim orders had been made. As I have said already, no attempt was made to prove this allegation. Besides, the actual physical acts complained of themselves suggest that a stage has now been reached which is subsequent to the stage of acquisition. The complaint, it will be remembered, is that a tubewell was sunk and that certain trees were cut down. These are not acts incidental to any proceeding for acquisition of lands, but are acts done in exercise of ownership

or a claim of ownership. What incidental acts may be done in the course of the preliminary operations relating to acquisition is indicated in sub-sections (2) of Section 4 of the Act and they are not acts of the kind alleged to have been done on the present occasion. There can thus be no doubt that the lands are now being developed by the prescribed authority under the supervision and control of the Relief and Rehabilitation Department and if any violation of the interim orders took place, the responsibility therefore would not in any event be on Sri S. Banerjee.

17. It is true that when an injunction is granted against a corporation, which afterwards does or permits an act in breach of the injunction, there is a wilful disobedience of the order and it will be no answer for the corporation to say that the act was done or the omission allowed to occur unintentionally, or through carelessness, or through dereliction of duty on the part of servants of the corporation. The same principle, I imagine, would apply in the case of a Government, or a State, but before an individual officer of the Government can be held to be liable, it must be established that he was the person in charge of the subject-matter to which the injunction or order, alleged to have been disobeyed related and unless that is established, no case against an individual officer can succeed. In my opinion, the petitioners arraigned Sri S. Banerjee without due enquiry as to what position he was occupying and as to whether he had any longer any responsibilityat all in respect of the acts done in execution of the development scheme.
It may be that awards in respect of the lands acquired in connection with the scheme still remain to be made and so far as that matter is concerned it may be that neither the Collector nor the Secretary of the Land and Land Revenue Department has yet ceased to have connection with the lands. But the acts complained of, which are said to have constituted contempt, do not relate to any proceedings connected with the acquisition of the lands. They are acts done in the course of the execution of the development scheme and consequently it is impossible to say that even if the acts were in fact done, the ultimate responsibility was Sri S. Banerjee's.

18. It remains now to deal with the case against the first opposite party, namely, the Collector of 24-Parganas. He too has filed an affidavit and has simply denied that any of the alleged acts were done, or that any violation of the interim orders had taken place in any other form. In his case again we are confronted with the question I have dealt with in connection with the case of Sri S. Banerjee. The learned Advocate for the petitioners referred us to Section 11, West Bengal Land Development and Planning Act, 1948, and contended that the Collector could not be said to have ceased to have any connection with the lands. Section 11, he pointed out, provides that after the Provincial Government has directed the prescribed authority to execute any development scheme, the lands comprised therein shall be disposed of by the Collector in such manner as may be directed by the Provincial Government. We are also referred to the evidence of opposite party No. 5 who said that in performing his duties he carried out the orders of the Collector. We were accordingly invited to hold that the superior direction still lay in the Collector, and if the acts complained of, had taken place, the Collector could not be acquitted of responsibility for them. It appears, however, that so far as the witness Atul Krishna Gain is concerned, he only stated that his duties consisted in collection of data for drawing up a sketch map of the lands to be acquired

and for recommending acquisition and that in performing those duties, he carried out the orders of the Collector. Obviously, the reference was to duties performed by the witness at the earliest stage of the application of the Act, namely, at the stage when lands are being chosen for acquisition. As regards Section 11, that again speaks of only the final disposal of the land by the Collector to the prescribed authority. It has nothing to do with acquisition, or anything to be done by the Collector in matters between the original owners and the acquiring authority. If, as I have already indicated, the lands are now being developed and exploited by the Land Planning Committee under the direction of the Relief and Rehabilitation Department, it is at least doubtful whether the Collector has any connection at all with the activities relating to the development scheme. I have already pointed out that the acts, complained of, are not acts incidental to acquisition of lands, but are acts which are ordinarily done in exercise of rights of ownership. In any event, this is a proceeding for contempt and if the petitioners expected to succeed, it was for them to establish affirmatively that it was the duty of the Collector under the Act to see that no acts of the nature complained of were done. On the materials before us, we do not find it possible to hold that the Collector qua Collector or otherwise has any concern with acts done by the prescribed authority under the direction of the Relief and Rehabilitation Department.

19. We would not, however, like to rest our decision as respects the Collector on this technical ground. So far I have not discussed the truth or otherwise of the allegation at all because it was not necessary to do so in the case of the other opposite parties. I shall assume, in spite of what I have already said, that in the case of the Collector, the allegations require to be examined. The opposite parties do not deny that a tubewell was sunk, but say in effect that three wells were sunk and the sinking occupied the period between the 24th and 30th August. As regards the felling of trees, they deny the allegation altogether. As I have already indicated, the petition itself most surprisingly did not state when the acts complained of had taken place. In the box the petitioners, who examined themselves, went only as far as stating that the acts had been done in the last week of the month of Bhadra and that the trees had been cut down first and thereafter the tube well sunk. One of them was given a chance to go up to Aswin, but he refused to avail himself of it and said that the refugees wore settled in the lands in Aswin, but the acts he was complaining of had taken place in the last week of Bhadra. The month of Bhadra in this year extended from the 18th August to the 16th September and the last week of Bhadra would, therefore, be from the 10th to the 16th. According to the petition, the interim orders were served on the Collector on the 14th September. If, therefore, the acts were done after the service of the orders, as they had to be if they were to constitute contempt, there were only three days, namely, the 14th, 15th and 16th, when they must have taken place. But the language used by the petitioners "the last week of Bhadra" covers the period between the 10th and the 16th, and if, under that language, the acts complained of could have been done either between the 10th and the 13th, or between the 14th and the 16th, it is impossible to hold in a criminal matter that they must have been done during the latter period and not during the former. This, in my opinion, is sufficient for holding that no disobedience of the interim orders has been established, even assuming that the acts complained of were done at some time or other.

20. It was brought to our notice by the learned Advocate for the petitioners that although the date of the service of notice on the Collector had been given in the petition as the 14th September, it appeared from the return of service that the service had actually taken place on the 11th. We have referred to the return of service and we find that what the learned Advocate stated is correct. Asked by us wherefrom then he got the date 14th, he informed us that he had referred to the Order Sheet of this Court and found an entry against the date 14th that the notices had been served. Why he should have concluded from that entry that the notices had been served on the 14th it is impossible to say, because the entry merely meant that on that date the office of this Court, having received the returns of service, was satisfied that service on all the opposite parties had been properly effected. The date of the entry was not the date of the service. The Collector, as I have stated, says in his affidavit that the notice was served on him on the 14th and in the affirmation states that that fact is true to his knowledge derived from the records. I do not consider it improper that he should have referred to the records for the purpose of reminding himself of the date of the service, although it was service on himself, because he might not remember the exact date after the lapse of a great deal of time. But it appears to me that the statement in the affidavit which is "Notice of the civil Rule No. 2100 of 1951 was served upon me on 14.9.1951," cannot possibly be correct. Since we have not given an opportunity to the Collector to explain what he meant and have had no explanation from him, we shall make in his favor the most favorable assumption that can be made and treat the statement as meaning that the notice was actually placed into his hands on the 14th. The return shows that it was served on a clerk of the Collector's office. That the notice was served on the nth admits of no doubt because in addition to the return of service there is a letter from the Sessions Judge of Alipore forwarding the return to this Court after service of the order, on that very date. Still, as we have not heard the Collector, we shall assume that the notice did not actually find its way into his hands till the 14th. Even then we cannot but regret that the Collector should have stated in an affidavit to be used in this Court that the notice was "served upon me" on the 14th. Surely, officers in the position of a District Magistrate, swearing affidavits personally for the purpose of the same being used in this Court, ought to be extremely careful as to what language they use and what statements of fact they make. The affidavit shows that it was not drafted by any lawyer and the language which the Collector permitted himself to use only justifies the old warning that no man should be a lawyer in his own case.

21. As regards the facts, I have already pointed out that, according to the petitioners themselves, the felling of trees took place before the sinking of the tube well and that, according to the same evidence, it is a possibility that the acts were done before the interim orders had been served on the Collector. In order to hold that the petitioners have not made out their case, it is not necessary to refer to anything further. But the learned Advocate for the opposite parties, somewhat to our surprise elected to lead evidence on his own account and sought to prove affirmatively what the date of the admitted act, namely, the sinking of the tube well, was. We cannot say that we were much impressed by one of his witnesses who is a mechanic and who had occasion to report on

the sinking of two of the three tube wells. It was quite obvious that he was trying to conceal a fact which be would lose nothing by admitting, namely, that before coming to depose he had refreshed his memory by referring to the report he had made at the time. But even apart from the evidence of that witness and the report made by him, there is abundance of material on the official files and contemporary documents which satisfy us that the sinking of the tube wells was completed by the 30th August. As I have stated, it is not necessary to make a positive finding on this point, inasmuch as the evidence of the petitioners themselves does not exclude the possibility that the acts were done before both the 14th and the 11th, whether the notice on the Collector was actually served on the latter date or the former. I am, therefore, of opinion that even assuming that the Collector would be responsible if the acts alleged were done after the service of the interim orders, it has not been established that they were so done.

22. In the result, therefore, the case against all the opposite parties fails.

23. It appears to us that the matter cannot be disposed of by merely discharging the Rule. This Court is and has always been jealous of its authority in public interest and will, I hope, always continue to be so. It will regard persons who bring to its notice cases of violation of its orders as persons who aid the administration of justice. But it cannot tolerate being misled by accusations against wrong parties and cannot allow its time to be wasted by proceedings which ought not to have been initiated at all in respect of the parties against whom they are directed. The petitioners took the responsibility of mentioning opposite parties Nos. 3, 4 and 5 as the persons responsible for the acts complained of by them and actually named them as the persons who had gone upon their lands. At the actual hearing, they made no attempt to connect them with the incidents at all either by identifying them or by describing them sufficiently or in any other way. On the other hand, it appeared that two of the officers had never resided in the Gokulpore School at all and the one that did, was a mere Superintendent of a Refugee Camp, charged with looking after stranded refugees before their rehabilitation and having no concern whatever with any development work. These three officers had to attend this Court and were kept from their public duties for three days and it is, in my opinion, intolerable that any one should drag public officers into criminal proceedings without making the slightest attempt to establish a case against them at the actual hearing or trial. Although contempt of this Court is a matter between the Court and the party in contempt, proceedings in contempt must be allowed to be initiated by a motion made by private parties because that is one of the ways in which cases of breaches of the Court's orders may come to the Court's notice. But at the same time this liberty or privilege of private parties cannot be allowed to be abused and no person can be allowed to arraign others in a proceeding for contempt without exercising due care and responsibility. It was surprising to us to a degree that during the examination-in-chief of the petitioners, not a single question was put to any one of them about the identity of any of the opposite parties Nos. 3, 4 and 5. If the petitioners really knew that those were the persons who had done the acts complained of, as they had stated in their petition and if they had instructed their learned Advocate to that effect, it is impossible for us to understand why during their examination-in-chief no statements were obtained from them

that these were the officers who had been seen or known to have done the acts complained of, or caused them to be done. Nor, we think, was there any reason for bringing in Sri S. Banerjee without making any enquiry as to the stage at which the proceeding was.

24. It appears from the books that it is the practice on the Crown side in the High Court in England to award costs to the respondent in a contempt proceeding if the charge is not established. Where the person charged with contempt is proved to have done the act complained of and the question merely is whether it amounted to contempt or not, it may not always be proper to make an order for costs even if the decision be in favour of the respondent. But where, as in the present case, no connection with the persons charged with the acts complained of has been attempted to be established, it is obviously fair and proper that the persons so unreasonably treated should be indemnified in costs. We, therefore, propose to make an order for costs in the present Rule.

25. In the result, the Rule is discharged.

26. As regards costs, there ought to be, we think a distinction between petitioner 3 and the two remaining petitioners. Petitioner 3 affirmed the petition on which the Rule was issued and claimed to have instructed the learned advocate for the petitioners. The names of the opposite parties must, therefore, have been put down at his instance, or at least that is the assumption we must make, although absence of any examination-in-chief on the point suggests other possibilities as well. We accordingly direct that petitioners 1 and 2 do pay two gold-mohurs each as costs and petitioner 3 do pay as cost three gold-mohurs, the amount of costs to be divided between opposite parties No. 2, 3, 4 and 5. As the status of opposite party No. 1 is not wholly free from doubt and as there occurs in his affidavit the defect I have referred to, we shall make no order for costs in his favor.

P. B. Mukharji, J.

27. I agree that this Rule should be discharged with the order for costs just made by my Lord.

28. A proceeding in contempt is by its nature a proceeding in personam. A contempt proceeding, therefore, cannot be allowed to acquire the character of a representative proceeding. One of the respondents described in the petition for Rule is in the form: "The State of West Bengal represented by S. Banerjee, Secretary, Department of Land and Land Revenue." That I think is wholly an unjustified procedure and cannot be permitted. The State is not a legal and juristic entity in the same sense as a corporation or a joint stock company nor is it to be treated as a minor or a lunatic or a Hindu Deity in the sense of having to be represented by a guardian.

29. A State as such cannot be said to commit contempt. In the case of the State the allegation must be against a particular officer or officers of the State. Where as in this case an order was

obtained against the State in a civil proceeding restraining certain acts of the State, and it is alleged by the complainant or the petitioner that there has been a contempt by breach of that order, the petitioner for contempt will have to take out the Rule for contempt against the particular officer or officers who has or have disobeyed that order. In such a petition for contempt the Rule must be asked against an individual and not against the State. Article 300 of the Constitution of India provides for proceedings by way of suit against the State or the Union of India and cannot be extended to apply to contempt proceedings.

30. As at present advised I do not, however, think it is necessary that any leave of the Court is required to proceed against a Government Officer in contempt. It is, I think enough to state in the petition of Rule as against the particular officer of the State that he has disobeyed an order of the Court in a particular manner. We have no such requirement for leave of Court as is provided in the Rules of the Supreme Court of London in Order 42, Rule 31 which says that any judgment or order against a corporation wilfully disobeyed may by leave of Court or a Judge be enforced by sequestration against the corporate property or by attachment against the Directors or other officers thereof or by sequestration against their property. It is, however, always essential even in India that an individual or an officer who is not a party to the proceeding resulting in the order alleged to have been disobeyed but who is sought to be proceeded against in contempt, must be served with a copy of the order or judgment to be enforced. It is proper course in my opinion, to insert the names of the individuals or the officer in the Rule Nisi and to serve it on him specifying the nature of the contempt with which the individual or officer served is charged.

31. Before a proceeding for contempt can succeed, it is of paramount importance to establish first, the service of the order of the Court said to have been disobeyed upon the person alleged to have committed contempt thereof, secondly the precise act of contempt, thirdly the precise responsibility of the contemner in the act of contempt, and fourthly the date of the alleged contempt being subsequent to the service of the order said to have been disobeyed. These are the four indispensable requisites and failure to establish any one of them must mean dismissal of the petition for contempt.

32. The petitioners have alleged as against the Collector and the secretary, Department of Land and Land Revenue that the acts of contempt mentioned in paras. 5 and 6 of the petition were done at the instance of and/or under the direction or orders of these two respondents. That allegation has not been established at all on the evidence produced by the petitioners. Nothing appears in the evidence as to how these two respondents are responsible by any of their order or direction. On this ground alone, the Rule should be discharged against them.

33. Next with reference to respondents 3, 4 and 5 it is quite clear from the evidence that not one of them has been identified or proved to have any responsibility whatever in the alleged acts of contempt. On this ground alone, the Rule should be discharged as against them.

33. Having regard to this view that I take it is not necessary in my opinion, therefore, to decide the legal technicalities of procedure under the West Bengal Land Development and Planning Act, 1948, and the exact point when acquisition ends and planning begins under that Act or at what particular stage these proceedings are at present with respect to the lands in question. I, therefore, do not express any opinion on that point.

34. The total effect of the evidence shows beyond any doubt that the petitioners have failed completely to prove that the alleged acts of contempt were committed after the service of the order said to have been disobeyed upon respondents 1 and 2. A contempt cannot be spelt out by mere inference from doubtful circumstances. The essence of a contempt is that even after the communication of the order of the Court there has been deliberate disregard of such order. There can never be a contempt of an order of Court by a person who was not aware of such order at the time when he is supposed to have acted contrary to what was directed by the order. Knowledge of the order of the Court, therefore, is a fundamental postulate for contempt. The facts on the evidence have been dealt with at length by my Lord and the dates as shown there for the alleged contempt being the "end of Bhadra" clearly indicate that at best the contempt here can only be a matter of speculation.

35. I, therefore, agree that this petition should be denied with the order made by my Lord.
Rule discharged.