

(1981) 08 CAL CK 0022
Calcutta High Court
Case No: C.O. No. 1603 of 1981

Gopalpur Tea Co. Ltd.

APPELLANT

Vs

Psehok Tea Co. Ltd.
and Another

RESPONDENT

Date of Decision: Aug. 21, 1981

Acts Referred:

- Tea (Amendment) Act, 1976 - Section 16M

Citation: 85 CWN 1146

Hon'ble Judges: B.C. Chakraborti, J; A.K. Sen, J

Bench: Division Bench

Advocate: K.M. Maitra, Bikash Chandra Das and Tapan Kr. Das, for the Appellant; Ajit Kr. Sen Gupta and Rupen Mitra, for the Respondent

Final Decision: Allowed

Judgement

Anil K. Sen, J.

This is a revisional application at the instance of the plaintiff in Money Suit No. 3/72 of the Court of the Id. Subordinate Judge. Jalpaiguri, and it raises a short point as to whether further proceedings of the suit are liable to be discontinued in view of the provision of section 16M of the Tea (Amendment) Act, 1976. The facts relevant for deciding the point at issue are not in dispute. The plaintiff instituted the aforesaid suit for enforcement of a money claim as against the defendant opposite party Peshok Tea Co. Ltd., a public limited company registered under the Indian Companies Act carrying on business of production, manufacture and sale of tea. It is not in dispute that pending the suit in October 1976, the Central Government in exercise of its powers u/s 16E(1) (a) of the said Act authorised taking over of the management of two tea estates known as Peshok Tea Estate and Looksham Tea Estate--both owned and possessed by the defendant-company by issue of two notifications in that regard. In that view the defendants moved the learned Subordinate Judge for stay of further proceedings of the above suit in terms of

section 16M of the said Act and by an order dated March 29, 1978, the learned Subordinate Judge directed stay of further proceedings of the suit. It, however, appears that subsequently the defendants prayed for dismissal of the suit in view of the said provision, namely section 16M of the said Act but the learned. Subordinate Judge overruled the said prayer and directed continuance of the stay. The Id. Subordinate Judge further directed the plaintiff to take necessary permission from the Central Government in terms of section 16M to proceed with the suit before further proceedings can be reopened. The plaintiff having failed to obtain the necessary permission, the Id. Subordinate Judge by his order dated December 10 1980, directed discontinuance of the suit.

2. It is only in that background that the plaintiff filed an application for permitting him to proceed with the suit. The plaintiff took the stand that section 16M as aforesaid does not really stand in the way of the plaintiff proceeding with the suit and the suit as framed is not liable to be discontinued under the said provision. This application has been rejected by the order impugned dated February 11. 1981, and the learned Subordinate Judge has taken the view that, in view of the provision of section 16M, unless the plaintiff obtains the necessary permission from the Central Government, they cannot proceed with the suit and further proceedings of the suit must necessarily be discontinued. Feeling aggrieved, the plaintiff has moved the present revisional application.

3. The application is being heard on notice to and on contest by the defendants opposite parties.

4. Mr. Maitra appearing in support of the revisional application has raised a very short point before us which, in our view, has ample substance. It has been contended by Mr. Maitra that the Id. Subordinate Judge has failed to appreciate the true implication of section 16M and the effect of the notifications issued by the Central Government. According to Mr. Maitra while the management of the two estates owned and possessed by the defendant company had been taken over, neither the company nor its management had been taken over so that there is no reason why the suit against the company should be discontinued. Though the point thus raised by Mr. Maitra has been contested by the Id. advocate for the opposite parties, in our view there is ample substance in this contention.

5. It is quite apparent that the order impugned is based upon misappreciation of the scope and effect of section 16M of the said Act. The learned Subordinate Judge, as we find, failed to take note of the difference between the defendant company and its estates, namely, the two different estates referred to hereinbefore. What had been taken over u/s 16E of the said Act was only the estate of the company and not the company itself. There can be no doubt that in law the company, as constituted under the Indian Companies Act, has an identity and existence independent of the estate owned by it so that even if the estate is taken over by the Central Government, that does not constitute taking over of the management of the

company.

6. It appears clear to us that the Id. Subordinate Judge was proceeding throughout upon a misapprehension that u/s 16E of the said Act what had been taken over by the Central Government was the management of the defendant company. But unfortunately, that was not so. What was taken over was merely the units, that is the two estates owned and possessed by the company. Since, in our view, section 16M bars suits or legal proceedings only against such a tea undertaking or tea unit in respect of which an order has been made u/s 16E, the order as made in the present case not being applicable in any manner to the company itself, there is no question of there being any bar to the continuance of the suit against the company.

7. Such being the position, we are satisfied that the learned Subordinate Judge upon a clear misreading of section 16M and the effect of the notification acted with material irregularity in the exercise of his jurisdiction if not totally beyond his jurisdiction in passing the impugned order directing discontinuance of the suit and in rejecting plaintiff's application for reopening further proceedings thereof.

8. The impugned order is accordingly set aside. The plaintiff's application being allowed, all earlier orders passed by the Id. Subordinate Judge directing either stay or discontinuance of the suit are recalled. The Id. Subordinate Judge is directed to proceed with the suit now. In the result, the revisional application succeeds and is allowed without any order as to costs.

B.C. Chakrabarti, J.

I agree.