

(1865) 06 CAL CK 0007

Calcutta High Court

Case No: Special Appeal No. 466 of 1865

Madhusudan Sing

APPELLANT

Vs

The Collector of Midnapore and
Others

RESPONDENT

Date of Decision: June 15, 1865

Judgement

Sir Barnes Peacock, Kt., C.J.

We are of opinion that the Court of Wards was not prevented by Act XL of 1858 from taking an infant and his estate under their protection by reason of a certificate of administration granted by the Civil Court under Act XL of 1858. Before the passing of Regulation VI of 1822, it seems that it was considered under the old Regulations to be the duty of the Court of Wards to take the protection in all cases in which they had the legal power to do so. Regulation VI of 1822 was passed partly for the purpose of authorizing the Court of Wards to refrain from taking the estate of an infant under their protection. In the preamble of that Regulation it is said:-- "It is moreover expedient to enable the Courts of Wards to refrain from interfering with the estates of minors, or other disqualified proprietors, in cases wherein they deem their interposition unnecessary or inexpedient." Section 4 then enacts as follows:-- "The several Courts of Wards are hereby vested with a discretion to refrain from interfering with the estates of minors or other disqualified proprietors in cases wherein they may deem their interposition unnecessary or inexpedient." And in the latter part of the section it is said,-- "And it will of course be competent to the Courts of Wards to assume charge of these estates at any time during the minority of the proprietors, notwithstanding they may have originally refrained from interfering." So that, as the law stood under that Regulation, the Court of Wards might refrain from taking an infant and his estate under their protection, but were competent at any time to assume charge of the estate. Then was it the intention of Act XL of 1858 to deprive the Courts of Wards of the power which they had under the Regulation above referred to? Section 2 of the Act says:-- "Except in the case of proprietors of estates paying revenue to Government who have been or shall be taken under the

protection of the Court of Wards, the case of the persons of all minors not being European British subjects and the charge of their property, shall be subject to the jurisdiction of the Civil Court." The exception extends to cases of proprietors of estates paying revenue to Government which shall be taken under the Court of Wards. The Act does not deprive the Court of Wards of their right to assume charge, notwithstanding they may have originally refrained from acting.

2. We are of opinion that the Court of Wards had the power to assume jurisdiction, notwithstanding the Judge had granted a certificate of administration u/s 7. Here a person made an application for a certificate under the Act, and the application was granted. The next of kin asked that he might be removed. The Judge removed the manager, and ordered the estate to be taken under the authority of the Collector. There was no necessity for the Court of Wards to interfere, because, directly the Judge removed the manager he put the estate under the Collector. But on the 8th January 1863 1 Marsh., 244, an appeal which had been preferred from, that order was decreed, and the Collector was removed from possession. Then if the Court of Wards thought it right to assume charge, there was no necessity for their having the next of kin to institute and incur the expense of a regular civil suit for the purpose of removing the manager. The Court of Wards, when they said that the manager had been removed by the Judge at the instance of the next of kin, thought fit to prevent the estate from incurring the expense of fresh litigation and assumed the jurisdiction which they had. It appears to me that they did perfectly right. The decree of the lower Appellate Court must be affirmed with costs.

Trevor, J.

3. I entirely concur with the learned Chief Justice. I think upon the point referred to us that the Court of Wards had a perfect legal power to assume charge of this estate, and Act XL of 1858 does not in any way affect the jurisdiction of the Court of Wards.

Loch, J.

4. I concur.

Norman, J.

5. I agree entirely on the point of law. I find on referring to the reported decision of the 8th January 1863 1 Marsh, 244, that it is quite clear that, though there were grave charges against the manager not fully substantiated, the management of the manager was admittedly far less advantageous to the infant than the management by the Collector. It appears to me that the Court of Wards, representing the sovereign as "parens patrie" for the protection of the interests of the infant, and for the security of the public revenue, were right in assuming the charge of the estate.

Pundit, J.

I agree in the judgment of the learned Chief Justice, on the ground that the powers of the Court of Wards do not appear to have been taken away by any enactment, and that the Act of 1858, giving the power to the Civil Courts, does not contain any provision that, on the Civil Court acting, the right of the Court of Wards to assume jurisdiction shall cease.