

(1937) 09 BOM CK 0022

Bombay High Court

Case No: O.C.J Appeal No. 13 of 1937 and Suit No. 1332 of 1933

Secretary of State for India in
Council

APPELLANT

Vs

Bhagwandas Goverdhandas

RESPONDENT

Date of Decision: Sept. 15, 1937

Acts Referred:

- Government of India Act, 1915 - Section 30

Citation: AIR 1938 Bom 168 : (1938) 40 BOMLR 19

Hon'ble Judges: John Beaumont, J; Blackwell, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

John Beaumont, Kt., C.J.

This is a suit by the Secretary of State for India in Council asking for specific performance of an agreement to grant a lease to the defendant.

2. The defence is that the contract relied on by the plaintiff was not made in accordance with Section 30 of the Government of India Act, 1915.

3. I will refer first of all to the terms of that section before considering whether the contract relied on complies with the provisions of the section. We have to deal in this case with a contract and not with an assurance, and Section 30, so far as it is material for the present purpose, provides :-

...any local Government may, on behalf and in the name of the Secretary of State in Council,... sell and dispose of any real or personal estate whatsoever in British India, within the limits of their respective Governments, for the time being vested in His Majesty for the purposes of the Government of India, or raise money on any such real or personal estate by way of mortgage,... and make proper assurances for any of those purposes, and purchase or acquire any property in British India within the

said respective limits, and make any contract for the purposes of this Act.

Sub-section (2) provides-

Every assurance and contract made for the purposes of Sub-section (i) of this section shall be executed by such persons and in such manner as the Governor-General in Council by resolution directs or authorises, and if so executed may be enforced by or against the Secretary of State in Council for the time being.

It is not disputed that by a resolution of the Governor General in Council the proper officer to execute the contract in this case is the Collector of Bombay. So that what we have to find is a contract by the local Government made on behalf and in the name of the Secretary of State for India in Council, and executed by the Collector of Bombay.

4. The contract relied on is contained in correspondence between the Collector of Bombay and the defendant, or his attorneys, which commences in October, 1923. At that date the defendant was entitled to a lease of the property in question from the Secretary of State for India in Council for a term of ninety-nine years from some date about 1895-the exact date is immaterial -and the defendant wanted to surrender that lease and obtain a grant of a new lease on different terms. The correspondence starts with a letter from the Collector of Bombay dated October 5, 1923, in which he says that he is prepared to recommend to Government a lease for 999 years on certain terms, and he says, "Please note that this offer is subject to the sanction of Government." The correspondence then continued and the defendant made certain counter proposals, and with a letter of December 6, 1923, the Collector agreed to certain modifications of the terms which up to then he had proposed, and forwarded with this letter a copy of the form of lease, which would be granted, which form of lease is expressed to be made by the Secretary of State for India in Council as lessor. Eventually terms were agreed between the Collector of Bombay and the defendant, and by January 24, 1924, all the terms were settled. But throughout the correspondence it is made perfectly plain that the whole arrangement is subject to the sanction of Government. Then the Collector wrote to Government, stating in his own language the terms which he had offered to the defendant and which had been accepted by the defendant's solicitors, and he recommended that Government sanction those terms. On August 11, 1924, Government passed a resolution in these terms :-

The conversion of the existing lease to a new lease on the conditions mentioned in paragraph 5 of the Collector's letter is sanctioned.

5. It is not disputed that the conditions mentioned in paragraph 5 of the Collector's letter correctly set out the arrangement made between the Collector and the defendant. On September 5, 1924, the defendant was informed that Government had sanctioned the arrangement, and the letter giving that information was signed by an officer in the Collector's office, and not by the Collector personally. In my view

that fact has no relevance, because the letter stating that the sanction of Government had been given did not itself form any part of the actual contract. It is a matter collateral to the contract.

6. Now the way in which the Advocate General puts his case is this. These negotiations were carried on by the Collector as an agent for Government; as soon as Government ratified the arrangement, the ratification dated back, u/s 196 of the Indian Contract Act, to the date of the contract; and the contract having been signed by the Collector was a good contract within 3. 30 of the Government of India Act. I much doubt myself whether Section 196, or the doctrine of ratification, has any application to the facts of this case. The Collector clearly had no authority to enter into a contract to lease Government land, and in my view on the correspondence he never purported to do anything of the sort. What he was really doing was arranging with the other side the terms which he was prepared to recommend to Government to accept, and I do "not think that any question of a binding contract arose until Government accepted the terms, and I think at that date it became necessary to frame a contract complying with the provisions of Section 30. I see great difficulty in holding that a contract which had been signed before Government heard about the matter at all could be a contract complying with the provisions of Section 30 of the Government of India Act.

7. However, assuming that the Advocate General's argument is correct and that the doctrine of ratification applies, he is still in the difficulty that there is no contract made in the name of the Secretary of State. The only reference to the Secretary of State is contained in the draft lease which was sent with the letter of December 6, 1923. It seems to me plain that a mere statement that when the lease comes to be granted it will be granted by the Secretary of State for India in Council does not make the contract to grant that lease a contract in the name of the Secretary of State in Council, and on that ground alone, I think, the Government fail in proving that they have any contract which complied with Section 30.

8. I should have said that after 1924, when Government sanctioned the arrangement, nothing was done until 1930, when a draft of the proposed lease was sent to the defendant. Probably the fact that the new rent was not to start till 1932 accounts for the delay. The defendant ultimately refused to accept the lease on the ground that the value of property had gone down. His defence, therefore, is not conspicuous on merits.. But if he can show that there is no contract complying with the terms of Section 30 of the Government of India Act, then his defence, whatever it may lack in substantial merits, must prevail, and in my opinion the plaintiff has failed to show any such contract.

9. The learned Judge in the Court below says that he would have decided in favour of the plaintiff but for a decision of Mr. Justice Mirza in *Municipal Corporation of Bombay v. Secretary of State for India* ILR (1932) Bom. 660 : 36 Bom. L. R. 568 the material passages being at pp. 707 and 708; in which the learned Judge held that a

contract to comply with Section 30 of the Government of India Act must be evidenced by a formal document in the nature of an indenture or deed to which the Secretary of State in Council is made a party and not merely by correspondence. There is also a dictum of Mr. Justice Broomfield [The Secretary of State for India Vs. Yadavgir Dharamgir,](#) wherein it is stated that a deed executed on behalf and in the name of the Secretary of State is necessary in order to bring the contract within the terms of Section 30. I can see no justification whatever for the suggestion that a contract in order that it may comply with Section 30 of the Government of India Act must be by deed, i.e. under seal. There is no such provision in Section 30, as there is in Section 174 of the English Public Health Act of 1875, which requires a contract by an urban authority for an amount over £50 to be under seal.

10. Whether a formal contract is necessary is a more doubtful question. No doubt the direction in Sub-section (2) of Section 30 that the contract must be executed by the proper officer rather suggests a formal contract. The expression "executed" is not a very appropriate term to apply to the process of signing letters. In any case I apprehend that if parties rely on a contract to be spelt out of a series of letters, it would generally be very difficult to show that the contract complied with Section 30 of the Government of India Act, and obviously in a case to which that section applies the parties would be wise in having a formal document inter partes. I do not wish, however, to bind myself to the proposition that in no case can a contract comply with Section 30 unless it takes the form of a contract inter partes. It is possible that a contract in the form of letters, complying with the provisions of Section 30 and signed by the proper officer would be a contract complying with the terms of the Act. However, it is not necessary to decide that. In view of the judgment of the Court below, however, I think it is necessary to decide in this case that no deed is required in order to bring a contract within Section 30,

11. As, in my opinion, the correspondence in this case does not amount to a contract on behalf of and in the name of the Secretary of State in Council executed by the Collector of Bombay, the appeal fails and must be dismissed with costs.

Blackwell, J.

Taking the correspondence beginning with the letter of October 5, 1923, and ending with the letter of January 24, 1924, as a whole it appears to me that the Collector was not even making an offer on behalf of Government. The letter of October 5, 1923, begins with a statement by the Collector that he was prepared to recommend to Government a 999 years' lease on the terms therein mentioned, and it ends by stating that that offer was subject to the sanction of Government. In the letter of January 7, 1924, the Collector states that the case will be submitted for their sanction in due course, and the reply from the defendant's attorneys acknowledges the receipt of that letter, and that the case was to be submitted to Government for their sanction in due course. These words seem to be entirely inappropriate if the Collector had been purporting to make an offer on behalf of Government. The last

letter of January 24, 1924, states that the Collector confirms all the terms contained in the letter of December 21, 1923, subject to the sanction of Government. But this letter, of course, must be read with the letters immediately preceding it in which the Collector has made it plain that he was really doing nothing more than indicating that he was prepared to recommend to Government to sanction a lease on the terms finally agreed upon between him and the defendant's attorneys. Consequently, in my view, no contract had even been purported to be made by the Collector on behalf of Government up to January 24, 1924.

2. In order to be binding u/s 30 of the Government of India Act the contract must be made on behalf and in the name of the Secretary of State in Council by the local Government. It seems to me that it would be impossible to take the view that this correspondence was being carried on by the Collector in the name of and on behalf of the Government of India. It has been suggested by the Advocate General that that is the true inference to be drawn from the correspondence by reason of the fact that with the letter of December 6, 1923, was enclosed a form of lease the terms of which show that the lessor was to be the Secretary of State for India in Council. That fact does not in my opinion justify the inference which the Advocate General seeks to draw. The correspondence, I think, merely amounts to this, - that the Collector was prepared to recommend to Government to sanction a lease which if sanctioned would be made on behalf of and in the name of the Secretary of State in Council. If this be the right view to take of this correspondence, there is an end to the plaintiff's case for specific performance.

3. Even if the correspondence could be treated as an offer made by the Collector on behalf of Government, still in my opinion there would clearly have been no concluded contract sufficient to satisfy Section 30 to which the sanction of Government had been obtained and communicated to the defendant. A letter of September 5, 1924, which is not signed by the Collector, but by one v. H. Thakur on his behalf, is relied upon by the Advocate General who contends that at any rate from the receipt of that document by the solicitors for the defendant there was a concluded contract. In my opinion this contention fails. It had not been made plain up to that moment that there was any offer in the name of and on behalf of the Secretary of State in Council. There is nothing in the letter of September 5, 1924, to indicate that the Government on behalf of and in the name of the Secretary of State for India in Council are sanctioning the grant upon the terms and conditions contained in the previous correspondence. Moreover, even if that letter could have been relied upon, it would in my opinion certainly have had to be signed by the Collector himself, the only person authorised by resolution to execute a contract on behalf of the local Government, and not by a subordinate official on his behalf.

4. In *Municipal Corporation of Bombay v. Secretary of State for India* ILR (1932) 58 Bom. 660 : 36 Bom. L.R. 568. Mr. Justice Mirza in a passage beginning at the bottom of p. 707 expressed the opinion that the contract contemplated by Section 30 of the

Government of India Act should be evidenced by a formal document in the nature of an indenture or deed to which the Secretary of State in Council is made a party and not merely by correspondence. I am, with respect, quite unable to agree with the learned Judge that the section requires a formal document in the nature of an indenture or deed. The words used in Sub-section (1) of Section 30 are quite general in terms and authorise the local Government on behalf and in the name of the Secretary of State in Council to make any contract for the purposes of this Act. There is nothing in the section to indicate that the contract is to take any particular form. Sub-section (2) of Section 30 requires the contract to be executed by such person and in such manner as the Governor General in Council by resolution directs or authorises.. The use of the word "executed" no doubt does suggest that a formal contract executed between the parties is required to be entered into. I am not however prepared to take the view that a formal contract of this character is necessarily required. It seems to me that such a contract as is required by Section 30 might be entered into by letters provided that it was plain that the correspondence was carried on on behalf of and in the name of the Secretary of State and that the contract as finally concluded by correspondence was executed by a person authorised by resolution in that behalf.

5. For the above reasons I am of opinion that the plaintiff's claim for specific performance in this case fails and this appeal must be dismissed with costs.