A STATE OF KARNATAKA ETC.

v.

SHRI RAMESHWARA RICE MILLS THIRTHAHALLI ETC.

FEBRUARY 24, 1987

B [O. CHINNAPPA REDDY & S. NATARAJAN, JJ.]

Indian Contract Act, 1872—s.73 —Agreement—Clause 12—Interpretation of—Right to assess damages when arises—Damages for breach of condition of agreement—Assessment to be made by an independent body and not by parties to the contract.

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Revenue Recovery Act—Damages for breach of conditions of contract—Whether recoverable as arrears of land revenue.

Clause 12 of the agreements separately entered into between the respondents and the appellant-State provided that "for any breach of
D **conditions the first party (the respondent) shall be liable to pay damages to the second party (the State) as may be assessed by the second party in addition to the forfeiture in part or full of the security amount deposited by the first party and that any amount that may become due or payable by the first party to the second party under any part of the agreement, shall be deemed to be and may be recovered from the first party as if**
E **they were arrears of land revenue.**

According to the State the respondents committed a breach of their respective contract and, therefore, demanded payment of damages as assessed by the authorities representing the State. As the respondents failed to pay the damages, the State initiated recovery
F **proceedings under the Revenue Recovery Act. The respondents challenged the recovery proceedings by filing suit/writ petition.**

The Full Bench of the High Court dismissed the Second Appeal (out of which C.A. No. 471 of 1975 arises) preferred by the State holding that the State is not competent to adjudicate upon the question
G **whether the respondent committed breach of contract, that the State is not competent to assess the damages for any breach of contract not admitted by the respondent and that the damages so assessed cannot be recovered as if they were arrears of land revenue. Following this decision, the High Court allowed the writ petitions filed by the other respondents and quashed the recovery proceedings.**

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In the appeal to this Court on behalf of the State it was contended that the authorities representing the State, even though a party to the agreement are empowered under Clause 12 to not only assess the damages occasioned by the breach of the conditions but also to adjudication any issue concerning the commission of the breach itself. A

Dismissing the Appeals, B

HELD: 1. On a plain reading of the words in Clause 12: "and for any breach of conditions set forth herein-before, the first party shall be liable to pay damages to the second party as may be assessed by the second party", it is clear that the right of the second party to assess damages would arise only if the breach of conditions is admitted or if no issue is made of it. If it was the intention of the parties that the officer acting on behalf of the State was also entitled to adjudicate upon a dispute regarding the breach of conditions the wording of Clause 12 would have been entirely different. A right to adjudicate upon an issue relating to a breach of conditions of the contract would not flow or is not inhered in the right conferred to assess the damages arising from a breach of conditions. The power to assess damages is a subsidiary and consequential power and not the primary power. [403A-C] C D

2. Adjudication by the Officer regarding the breach of the contract cannot be sustained under law because a party to the agreement cannot be an arbiter in his own cause. Interests of justice and equity require that where a party to the contract disputes the committing of any breach of conditions the adjudication should be by an independent person or body and not by the other party to the contract. The position will, however, be different where there is no dispute or there is consensus between the contracting parties regarding the breach of conditions. In such a case the Officer of the State even though a party to the contract will be well within his rights in assessing the damages occasioned by the breach in view of the specific terms of Clause 12. [403D-F] E F

3. The Full Banch while taking the view that the State is not entitled to recover damages as arrears of land revenue because damages for breach of conditions will not amount to "money due under the contract" has wrongly relied upon the decision of this Court in *Divisional Forest Officer* v. *Mool Chand* AIR 1971 SC 694. Here the Court is concerned with cases where the agreement entered into between the Government and the private persons specifically provides for recovery of damages as arrears of land revenue. The Full Bench has failed to notice that even though the damages become payable on ac- G H

count of breach of conditions of contract, the liability to pay damages does not fall outside the terms of the contract but within the terms of the contract. The words "any amount that may become due or payable by the first party to the second party under any part of this agreement" have to be read in conjunction with the earlier portion of the Clause stipulating liability on the party contracting with the State to pay damages for breach of conditions. Therefore, it follows that though damages become payable on account of breach of conditions of the agreement they nevertheless constitute amount payable under the contract, that is, under one of the terms of the contract imposing liabilities to pay damages for breach of conditions. Therefore, the opinion of the Full Bench in so far as the recovery of damages as arrears of land revenue is concerned is not in accordance with law. [403H; 404A-F]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 471 of 1975. etc.

From the Judgment and Order dated 25.9.72 of the Karnataka High Court in Regular Second Appeal No. 311 of 1969.

B.R.L. Iyengar and T.R. Ramasesh for thc Appellants.

M.S. Ganesh, R.B. Datar, Mrs. B. Tamta, N. Nettar, S.S. Jabali and B.P. Singh for the Respondents.

The Judgment of the Court was delivered by

NATARAJAN, J. C.A. No. 471 of 1975 by certificate and C.A. No. 3602 of 1984 and C.A. No. 461 of 1987 (arising out of S.L.P. (Civil) No. 13120 of 1985) by Special Leave raise common questions of law and hence they were heard together and are disposed of by this common judgment. The judgments of the High Court in all the three cases have been rendered in accordance with the opinion rendered by a Full Bench of the High Court in a reference made in Regular Second Appeal No. 311 of 1969. The opinion of the Full Bench was sought for in the following circumstances.

The respondent in C.A. No. 471 of 1975 entered into an agreement with the State of Mysore to purchase paddy on its behalf under the Paddy Procurement Scheme, 1959 and to hull the paddy and supply rice. Clause 12 of the agreement relates to breach of conditions of the agreement and the consequences that would ensue on such breach. The said clause, referring to the respondent and the State as first party

and second party respectively is worded as under:-

> "In token of the first party's willingness to abide by the above conditions, the first party has hereby deposited as security a sum of Five Hundred Rupees only with the second party and for any breach of conditions set forth hereinbefore, the first party shall be liable to pay damages to the second party as may be assessed by the second party, in addition to the forfeiture in part or whole of the amount deposited by him. Any amount that may become due or payable by the first party to the second party under any part of the agreement, shall be deemed to be and may be recovered from the first party as if they were arrears of land revenue."

The State alleged that the respondent had committed a breach of the contract by making short delivery of rice and demanded payment of damages assessed at Rs.7,344.16ps. by the Deputy Commissioner. As the respondent failed to pay the damages the State initiated proceedings under the Revenue Recovery Act to recover the amount as if it were arrears of land revenue. The respondent filed a suit to challenge the recovery proceeding as being illegal and for a permanent injunction to restrain the State from pursuing the recovery proceedings. The trial court dismissed the suit but the Appellate Court decreed the suit. The State preferred a Second Appeal to the High Court. In the Second Appeal a reference was made to the Full Bench for its opinion since there were two conflicting decisions of Division Benches of the High Court on the questions of law raised in the appeal. The Full Bench answered the reference in the following manner:-

> "Where an agreement between the State and a private person provides that for any breach of any of the conditions of such agreement by such person he shall be liable to pay such damages as may be assessed by the State and that any amount that may become due or payable by such person to the State under any part of that agreement, shall be deemed to be and may be recovered from such person as if they were arrears of land revenue—
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> (i) the State is not competent to adjudicate upon the question whether such a person committed breach of contract and that the State is not competent to assess

A damages for any breach of the contract which is not admitted by the other side:

(ii) damages so assessed cannot be recovered from such person as if they were arrears of land revenue".

B In accordance with the opinion of the Full Bench the Second Appeal preferred by the State was dismissed. The High Court, however, granted a certificate of leave to the State and that is how this appeal by certificate has come to be filed.

The other two appeals relate to two contractors who had entered C into agreements with the State of Mysore for constructing certain buildings. As the contractors failed to complete the works their contracts were terminated and in terms of the agreements entered into by them the damages payable by them for breach of contract were assessed and the damages were sought to be recovered as arrears of land revenue. Both the contractors filed writ petitions under Article 226 of D the Constitution and challenged the validity of the assessment of the damages and the recovery proceedings. Following the ruling of the Full Bench referred to above the High Court allowed both the writ petitions and quashed the proceedings for recovery of damages. Against the judgments of the High Court the State has preferred the other two appeals.

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Mr. B.R.L. Iyenger, learned counsel for the appellant contended that the terms of clause 12 of the agreement are wide and comprehensive enough to hold that the Deputy Commissioner representing the State has competence and sanction to decide whether any breach of the conditions of the contract had been committed and also F to determine the quantum of damages payable for the breach. In other words, the argument was that the Deputy Commissioner, even though a party to the agreement is empowered under Clause 12 to not only assess the damages occasioned by the breach of the conditions but also to adjudicate upon any issue concerning the commission of the breach itself. The learned counsel, therefore, submitted that the opinion G rendered by the Full Bench and the judgments rendered in pursuance thereof are unsustainable and hence the appeals by the State should be allowed.

On a consideration of the matter we find ourselves unable to accept the contentions of Mr. Iyenger. The terms of Clause 12 do not H afford scope for a liberal construction being made regarding the power

of the Deputy Commissioner to adjudicate upon a disputed question of breach as well as to assess the damages arising from the breach. The crucial words in clause 12 are "and for any breach of conditions set forth hereinbefore, the first party shall be liable to pay damages to the second party as may be assessed by the second party". On a plain reading of the words it is clear that the right of the second party to assess damages would arise only if the breach of conditions is admitted or if no issue is made of it. If it was the intention of the parties that the officer acting on behalf of the State was also entitled to adjudicate upon a dispute regarding the breach of conditions the wording of Clause 12 would have been entirely different. It cannot also be argued that a right to adjudicate upon an issue relating to a breach of conditions of the contract would flow from or is inhered in the right conferred to assess the damages arising from a breach of conditions. The power to assess damages, as pointed out by the Full Bench, is a subsidiary and consequential power and not the primary power. Even assuming for argument's sake that the terms of Clause 12 afford scope for being construed as empowering the officer of the State to decide upon the question of breach as well as assess the quantum of damages, we do not think that adjudication by the Officer regarding the breach of the contract can be sustained under law because a party to the agreement cannot be an arbiter in his own cause. Interests or justice and equity require that where a party to a contract disputes the committing of any breach of conditions the adjudication should be by an independent person or body and not by the other party to the contract. The position will, however, be different where there is no dispute or there is consensus between the contracting parties regarding the breach of conditions. In such a case the Officer of the State, even though a party to the contract will be well within his rights in assessing the damages occasioned by the breach in view of the specific terms of Clause 12.

A B C D E F

We are, therefore, in agreement with the view of the Full Bench that the powers of the State under an agreement entered into by it with a private person providing for assessment of damages for breach of conditions and recovery of the damages will stand confined only to those cases where the breach of conditions is admitted or it is not disputed.

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The further question requiring consideration is regarding the power of the State to recover damages as arrears of land revenue under the Revenue Recovery Act. The Full Bench has taken the view that the State is not entitled to recover damages as arrears of land revenue because damages for breach of conditions will not amount to

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"money due under the contract". The Full Bench has relied upon a decision of this Court in *Divisional Forest Officer* v. *Mool Chand,* AIR 1971 S.C. 694 in support of its view. This decision cannot be an authority for the view taken by the Full Bench because it has been rendered with reference to facts which are entirely different. What fell for consideration in that case was whether a tender amount could be recovered from a defaulting forest contractor as arrears of land revenue when Section 75 of the Forest Regulation and Rule 10 of the Rules made thereunder did not provide for such realisation. We are, however, concerned with cases where the agreement entered into between the Govenment and the private persons specifically provides for recovery of damages as arrears of land revenue. What the Full Bench has failed to notice is that even though the damages become payable on account of breach of conditions of the contract, the liability to pay damages does not fall outside the terms of the contract but within the terms of the contract. The words "any amount that may become due or payable by the first party to the second party under any part of this agreement" have to be read in conjunction with the earlier portion of the clause stipulating liability on the party contracting with the State to pay damages for breach of conditions. Therefore, it follows that though damages become payable on account of breach of conditions of the agreement they nevertheless constitute amounts payable under the contract i.e. under one of the terms of the contract imposing liability to pay damages for breach of conditions. To illustrate the position if the agreement provides for a liquidated sum being paid as damages for breach of conditions instead of a sum to be assessed by the Deputy Commissioner, it cannot be said that the specified damages will not be money due under the contract and hence the damages cannot be recovered under the Revenue Recovery Act. What applies to specified damages will likewise apply to damages which are quantified after assessment. We, therefore, hold that the opinion of the Full Bench in so far as the recovery of damages and arrears of land revenue is concerned is not in accordance with law.

As it is not disputed that in all the three cases the Officers acting on behalf of the State have not only assessed the damages but have also acted as arbiters in the dispute regarding the alleged breach of contract, the High Court was justified in dismissing the Second Appeal preferred by the State in R.S.A. No. 311 of 1969 and in allowing the writ petitions filed by the two contractors. All the appeals, therefore, have to fail and will accordingly stand dismissed. The parties will pay and bear their respective costs.

A.P.J. Appeals dismissed.