

CANADA / JUDGMENT

Kanatewat et al. v. James Bay Development Corp. et al.

[1975] 1 SCR 48

COURT

Supreme Court of Canada

DECIDED

21 December 1973

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Kanatewat et al. v. James Bay Development Corp. et al.

Collection

Supreme Court Judgments

Date

1973-12-21

Report

[1975] 1 SCR 48

Judges

Fauteux, Joseph Honoré Gérard; Abbott, Douglas Charles; Martland, Ronald; Judson, Wilfred; Ritchie, Roland Almon

On appeal from

Quebec

Subjects

Appeal

Decision Content

Supreme Court of Canada

Kanatewat et al. v. James Bay Development Corp. et al., [1975] 1 S.C.R. 48

Date: 1973-12-21

Chief Robert Kanatewat et al. Applicants;

and

The James Bay Development Corporation et al. Respondents;

and

Chief Robert Kanatewat et al. Applicants;

and

Quebec Hydro Electric Co. Respondent.

1973: December 2, 3; 1973: December 21.

Present: Fauteux C.J. and Abbott, Martland, Judson and Ritchie JJ.

**APPLICATION FOR LEAVE TO APPEAL FROM THE COURT OF QUEEN'S BENCH,
APPEAL SIDE, PROVINCE OF QUEBEC**

Appeal—Jurisdiction—Interlocutory injunction—Order by Court of Appeal suspending injunction before final judgment—Jurisdiction of the Court of Appeal—Discretionary powers—Supreme Court Act, R.S.C. 1970, c. S-19—Code of Civil Procedure, Art. 523 and 760.

Applicants brought an action in the Superior Court seeking a declaration that Bill 50, now the James Bay Region Development Act, is ultra vires, and asking that a permanent order of injunction be issued to permanently restrain the works contemplated by that Act. They subsequently obtained an interlocutory order of injunction restraining respondents from pursuing the works pending final adjudication on the action. This interlocutory order was appealed to the Court of Appeal, which suspended it on application by the respondents until the determination of the appeals entered against it or until such time as the Court might otherwise order. Applicants sought leave to appeal to this Court against this suspension order.

Held (Martland and Ritchie JJ. dissenting): The applications should be dismissed.

Per Fauteux C.J. and Abbott and Judson JJ.: It is not for this Court to express at this time any view on the various and debatable questions which may be raised in the Court of Appeal on the merits of this interlocutory injunction. There is no provision in the Supreme Court Act permitting an appeal directly from the Superior Court.

The application for leave to appeal from the suspension order simpliciter raises two questions, namely (i) whether the Court of Appeal had jurisdiction to issue this suspension order, and if so, (ii) whether its discretionary power with respect thereto was judicially exercised. Article 760 of the Code of Civil Procedure applies and the first question must be answered affirmatively. As to the second question, there is no justification for a negative answer. Further, in making the suspension order, the Court of Appeal was exercising the powers conferred on it by Art. 523 of the Code of Civil Procedure.

Per Martland and Ritchie JJ., dissenting: Applicant is not required to satisfy this Court that the judgments of the Court of Appeal suspending the interlocutory injunctions were in error, but that there are material issues involved in the appeal which is sought to be made, which warrant a determination by this Court. His submissions have met this requirement.

APPLICATIONS for leave to appeal from an order of the Court of Queen's Bench, Appeal Side, Province of Quebec. Applications dismissed, Martland and Ritchie JJ. dissenting.

J. O'Reilly, R.S. Litvack and M. Bernard, for the applicants.

G. Emery, Q.C., J. Boulanger, Q.C., J. Lebel, Q.C., and G. Legault, for the respondents.

The judgment of Fauteux C.J. and Abbott and Judson JJ. was delivered by

THE CHIEF JUSTICE—This is an application for leave to appeal from two unanimous judgments of the Court of Appeal for the Province of Quebec, dated November 22, 1973. These judgments, identical in terms and hence hereafter referred to as a single one, suspend a Superior Court Interlocutory Order of Injunction during the pendency of the appeals entered against it by respondents herein.

The proceedings leading to this application may be concisely stated. By an action, instituted in 1972, the applicants are seeking a declaration that what was then referred to as Bill 50, now the James Bay Region Development Act 1971 (Que.), c. 34, is ultra vires and accordingly they ask that a Permanent Order of Injunction be issued to permanently restrain respondents from carrying out the works contemplated by this Act.

This action is contested and has not as yet come for hearing before the court of first instance i.e. the Superior Court where it is presently pending.

Subsequent to the institution of the action, the applicants asked for and eventually obtained on November 15, 1973, from a judge of the Superior Court the above mentioned Interlocutory Order of Injunction restraining respondents from pursuing the said works until final adjudication by the Superior Court on their action.

This Interlocutory Order was immediately appealed to the Court of Appeal by respondents who applied for and obtained from that Court the judgment a quo dated November 22, 1973, suspending the Interlocutory Order of Injunction until the determination of the appeals entered against it or until such time as the Court of Appeal might otherwise order, the whole as appears from the operative part of the judgment reading as follows:

[TRANSLATION] Both petitions are allowed; costs to follow. The interlocutory injunction granted in this case on November 15, 1973, by a judge of the Superior Court of the district of Montreal is suspended until the determination of the present appeal by this Court or until such time as this Court might otherwise order.

Thus, at the present state of the proceedings, there has been no determination either by the Superior Court or by the Court of Appeal of the substantive rights in issue in the action, nor has there been any determination by the Court of Appeal of the rights of either party in issue in the appeals against the Interlocutory Order of Injunction and it is also clear from the operative part of the Suspension Order that the applicants may always apply to the Court of Appeal to dissolve that Order should respondents herein fail to proceed diligently to do what they must do to bring their appeals to a hearing before the Court of Appeal at the earliest date that is reasonably possible or should there be any other valid reason to sustain such an application.

Dealing now with the application:—

In their application for leave to appeal against the Suspension Order, the applicants asked that should leave be granted to them, the Suspension Order be stayed until determination of their appeal against it. At the hearing of the application, the applicants were allowed to present their submissions on their request to stay the Suspension Order though obviously as they readily recognized, such a request is premature and any determination of the same is clearly conditional upon leave to appeal being first granted.

With respect to the request for leave to appeal simpliciter, it is not irrelevant to point out anew that the judgment sought to be appealed is the judgment of the Court of Appeal suspending the Interlocutory Order of Injunction issued in the Court of first instance and not the Interlocutory Order of Injunction which is now pending for review in the Court of Appeal presently seized of the matter to the exclusion of any other court. Hence, it is not for us and it might be improper, to say the least, to express at this time any view on the various and debatable questions which may be raised in the Court of Appeal on the merits of this Interlocutory Order of Injunction. Indeed, it would obviously be repugnant to the very reason for the existence of a hierarchy of courts should this Court and the Court of Appeal be parallelly and simultaneously seized of and called upon to adjudicate on the same subject matter, especially so when our Court being of higher jurisdiction than the Court of Appeal might subsequently be called upon to consider the judgment rendered by the latter Court on the same matter. There is no provision in the Supreme Court Act, which is the Act governing our jurisdiction, permitting an appeal per saltum, i.e. an appeal direct from the Superior Court without judgment first being obtained in the Court of Appeal except ss. 39 and 62, neither of which can have any application in the premises.

The application for leave to appeal from the Suspension Order simpliciter raises two questions, namely (i) whether the Court of Appeal had jurisdiction to issue this Suspension Order and, if so, (ii) whether its discretionary power with respect thereto was judicially exercised.

As to the first question:—It is clear from the Quebec Code of Civil Procedure, which is applicable in the matter, as well as from the jurisprudence of the courts of that Province, that the first question must be answered affirmatively.

When the first Code of Civil Procedure came into force prior to Confederation, there was in it no reference to the matter of injunction. It is only later that the matter was dealt with in the Quebec Statutes by 41 Victoria, c. 14. Subsequently this chapter was incorporated in the first Code of Civil Procedure by s. 5991 of the Revised Statutes of Quebec, 1888. The remote source of art. 760 of the Code of Civil Procedure now in force is thus 41 Victoria, c. 14, s. 10 which became, in 1888, art. 1033k of the Code of Civil Procedure which read as follows:

1033k. Any final judgment, taken into review or appeal, and any interlocutory or provisional order from which an appeal has been allowed by the Court of Queen's Bench, shall be executed and in force, provisionally, notwithstanding and without prejudice to such appeal or review; but the Superior Court, in review, or the Court of Appeals, as the case may be, may in its discretion, provisionally suspend the injunction. In the second Code of Civil Procedure, i.e. the Code of 1897, the relevant provision was art. 969 prescribing that:

969. Any final judgment confirming an interlocutory injunction, remains in force notwithstanding appeal.

An interlocutory injunction remains in force, notwithstanding a final judgment dissolving it, whenever the petitioner, immediately upon the rendering of the judgment, declares his intention to take the case to appeal, and, within two days thereafter, serves his inscription in appeal.

The court before which the appeal is brought, whenever the application is made during term, or two judges of the Court of Queen's Bench whenever the application is made out of term, may provisionally suspend any injunction.

Finally, as above indicated, the article applicable to the matter according to the Code of Civil Procedure now in force, i.e. art. 760, reads as follows:

760. An injunction pronounced in a final judgment remains in force notwithstanding appeal; an interlocutory injunction remains in force notwithstanding a final judgment dissolving it, provided that the plaintiff has instituted an appeal within ten days.

However, the Court of Appeal or two judges thereof, depending upon whether the application is made during or out of term, may provisionally suspend an injunction.

The suggestion that the last paragraph of art. 760 is referable only to the proceedings contemplated in the first paragraph and hence inapplicable to the proceedings with which we are now concerned has been consistently rejected by the jurisprudence of the Province. Moreover, that suggestion would bring into operation the application of the general rule according to which an appeal suspends the judgment against which it is entered. With respect to the jurisprudence of the Province, reference may be had to the following cases which need not, I think, be commented upon: *Mester v. Needco Cooling Semi-Conductors and General Instruments, Silkless of Canada Limited*[1]; *Canada Steamship Lines Ltd, v. Seafarers' International Union of Canada*[2]; *McNicoll v. Cité de Jonquière*[3]; *Murray Hill Limousine Service Ltée v. La Commission de Transport de la communauté urbaine de Montréal*[4].

As to the second question:—There was no justification for saying that the Court of Appeal had not exercised this discretion judicially.

Finally and though the above consideration is decisive of the second question, it may be added that in issuing the Suspension Order, the Court of Appeal was also exercising the powers which are given to it under the following part of the second paragraph of art. 523 of the Code of Civil Procedure which prescribes in reference to that Court:

It has all the powers necessary for the exercise of its jurisdiction and may make any order necessary to safeguard the rights of the parties.

This Court should, I think, be loathe to substitute its judgment in such matters for that of a Court of Appeal.

For these reasons, I would dismiss the petitions for leave to appeal with costs.

The judgment of Martland and Ritchie JJ. was delivered by

MARTLAND J. (dissenting)—The matter which is before the Court is an application for leave to appeal. In order to succeed on this application it is not necessary for the applicant to satisfy the Court that the judgments of the Court of Appeal suspending the interlocutory injunctions were in error. That is the issue which would have to be determined on the appeal, if leave were granted. We are not, at this stage, called upon to determine it. What was necessary was for the applicant to persuade us that there are material issues involved in the appeal which is sought to be made, which warrant a determination by this Court. In my opinion the submissions made on behalf of the applicant have met this requirement and, therefore, leave to appeal ought to be granted.

Petitions for leave to appeal dismissed with costs, MARTLAND and RITCHIE JJ. dissenting.

[1] [1961] Que. Q.B. 785.

[2] [1966] Que. Q.B. 63.

[3] [1970] C.A. 263.

[4] [1970] R.P. 327.

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Prepared on 26 October 2026 · Esheria