

of the pleadings in that suit, I can attach very little weight to the recital. The other circumstances relied upon by the Court below are equally inconclusive.

On the whole I am of opinion that the balance of probability is on the side of the defendant and that the plaintiff has failed to show that the mortgage deed was not followed by possession. On all other points I agree with my learned brother.

S. M.

*Appeal allowed.*

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NARAIN  
DAS AROBA

v.

HAJI ABDUR  
RAHIM.SHAMS-UL-  
HUDA J.**CRIMINAL REVISION.***Before Sanderson C. J. and Walmsley J.*

KHONDKAR HEDAYETULLA

v.

EMPEROR.\*

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March 30.

*Reserved Forest—Assam Forest Regulation (VII of 1891) ss. 4, 5, 6, 8, 11, 15, 16, 17 and 25—Claim by proprietor of permanently settled estates—Disposal of claim—Disallowance of claim without enquiry—Order of rejection not appealed against—Validity of final notification—Objection to validity raised at trial for breach of Regulation.—*

Where on the issue of a notification under s. 5 of the Assam Forest Regulation (VII of 1891), proposing to constitute a certain area a reserved forest, a proprietor filed an objection or claim before the Forest Settlement Officer that part of the notified area was his permanently settled estate and not at the disposal of Government under s. 4, but his pleader acceded, at the hearing, to the view of such officer, that he was not empowered to adjudicate on the claim, and stated that he merely put in his objection and offered to produce evidence as a safeguard in any future proceedings before the Civil Court, whereupon the officer, without holding an enquiry or taking evidence, held that he was not empowered to decide an objection

\* Criminal Revision No. 1073 of 1919, against the order of A. Rahman, E. A. C. South Sylhet, dated Dec 5, 1919.

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denying the title of Government, and, therefore, "disallowed the objection," and the claimant did not appeal against the order, and the final notification under s. 17 was published :—

*Held*, that the claimant could not, on his trial for offences under s. 25, of the Regulation, raise the question of the validity of the final notification, either because he had not really submitted his claim for adjudication and had not, therefore, adopted the course specified by the Regulation ; or, if he had so submitted his claim, because it had been "disposed of" within s. 17, and he had not appealed against the decision of the Forest Settlement Officer.

The petitioner and his brother and sister were proprietors of several permanently settled estates including pargana Langla. A notification was published by the Assam Government in the *East Bengal and Assam Gazette* of the 26th January, 1916, under s. 5 of the Assam Forest Regulation, proposing to constitute some lands in the Langla Hills, within the pargana, a reserved forest. On the 23rd April, 1916, the petitioner filed an "objection" or claim, under s. 6, before Mr. G. C. Sankey, Forest Settlement Officer, claiming part of the notified area as his permanently settled estate, and denying the authority of the Local Government to issue such notification with respect to such lands. At the hearing of the matter, on the 16th May, 1916, the petitioner's pleader made certain admissions referred to in the judgment of the High Court, and the Forest Settlement Officer thereupon passed an order which is fully set out therein. The petitioner did not appeal against the order, but, on 26th September, 1916, served a notice, under s. 80 of the Civil Procedure Code, on the Secretary of State for India in Council, of his intention to institute a title suit in respect of the disputed lands. Thereafter, on the application of the petitioner, the Commissioner of the Surma Valley, by his letter dated 2nd November, 1916, directed Mr. Sankey to decide the objection, but the

latter refused to do so, on 27th November, for want of power to revise the previous order.

On the 29th August, 1917, the Chief Commissioner of Assam issued a final notification, under s. 17 of the Regulation, declaring such lands a reserved forest. It appeared from the 10th and 11th paragraphs of the revision application of the petitioner to the High Court that on the 27th September, 1919, one Nani Gopal Chatterjee, a forester, submitted a report to the Divisional Forest Officer of Sylhet charging the petitioner and 11 others with offences under the Regulation, and that acting on such report Moulvie A. Rahman, Extra Assistant Commissioner, Sylhet, issued summons against the accused under s. 25 of the Regulation, fixing the 5th December for the hearing. The petitioner, thereupon, obtained the present Rule to quash the proceedings on the ground that the final notification was *ultra vires*.

*Babu Dasarathy Sanyal* (with him *Babu Kamini Kumar Chanda* and *Babu Debendra Narain Bhattacharjee*), for the petitioner. Under s. 4 the lands must be at the disposal of Government. The present lands were part of the petitioner's settled estates: see *Haidar Khan v. Secretary of State for India* (1). The formalities prescribed by s. 17 of the Assam Forest Regulation must be strictly complied with otherwise the final notification is *ultra vires*. Refers to *Nusserwanjee Pestonjee v. Meer Mynodeen* (2), *Balvant Ramchandra Natu v. Secretary of State for India* (3), *Ramachandra v. Secretary of State for India* (4). Mr. Sankey did not "dispose of" the claim according to law: see *Queen-Empress v. Rama Reddi* (5). He held

(1) (1908) I. L. R. 36 Calc. 1.

(3) (1905) I. L. R. 29 Bom. 480.

(2) (1855) 6 Moo. I. A. 134.

(4) (1888) I. L. R. 12 Mad. 105.

(5) (1889) I. L. R. 12 Mad. 226.

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no inquiry under s. 8. His order disallowing the objection is not a rejection or "disposal" of the claim. The omission to appeal is immaterial, as the statutory conditions must be complied with before the final notification can be legally issued. The petitioner was affected only after the notification. The claim is a civil one.

*The Advocate-General (Mr. T. C. P. Gibbons, K. C.) (with him Babu Manindra Nath Banerjee), for the Crown. S. 6 was complied with. The Forest Settlement Officer disallowed the claim, and thus "disposed of" it by rejection. He might have been wrong, but his order was a "disposal" of the claim. The provisions of s. 8 were sufficiently complied with. The petitioner did not appeal, and cannot now impeach the validity of the final notification. The Bombay case cited does not touch the point, and the case of Ramachandra v. Secretary of State for India (1) helps me.*

*Cur. adv. vult.*

SANDERSON C. J. This was a Rule obtained by Khondkar Hedayetulla calling upon the Deputy Commissioner to show cause why the proceedings complained of should not be quashed. The proceedings are referred to in paragraphs 10 and 11 of the petition. They are under the Assam Forest Regulation (VII of 1891).

It appears that on the 27th of September, 1919, a forester submitted a report to the Divisional Forest Officer, Sylhet Division, charging the petitioner and 11 others with having committed offences under the said Regulation VII of 1891 by cutting a *fari*, settling tenants, and otherwise acting in contravention of the provisions of the said Regulation in respect of lands of the reserved forest. Thereupon, summonses were

(1) (1888) I. L. R. 12 Mad. 105.

issued upon the petitioner and the 11 others calling upon them to answer a charge under section 25 of the said Regulation. These are the proceedings in respect of which the Rule was granted.

The main ground upon which the Rule was supported was that a notification, which was issued by the Chief Commissioner of Assam, and which was to the effect that certain lands therein specified were a reserved forest, was invalid. The ground upon which it was urged to be invalid was that the petitioner had submitted a claim to the Forest Settlement Officer in respect of certain lands, claiming that he owned and possessed such lands as the proprietor of a permanently settled estate, that such lands were not at the disposal of the Government, and that the Government had no right to constitute the said lands as part of the reserved forest: and, further, that the petitioner's claim had not been disposed of. Reliance was placed upon section 17 of the Regulation which provides as follows:

“(1) When the following events have occurred, namely:—

“(a) The period fixed under section 6 for preferring claims has elapsed, and all claims, if any, made within such period have been disposed of by the Forest Settlement Officer, and (b) if such claims have been made the period fixed by section 15 for appealing from the orders passed on such claims has elapsed, and all appeals, if any, presented within such period have been disposed of by the appellate officer, and (c) (which I need not read in detail)

“ . . . . . the Local Government may publish a notification in the official gazette, specifying the limits of the forest which it is intended to reserve, and declaring the same to be reserved from a date fixed by such notification.

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“(2). From the date so fixed such forest shall be deemed to be a reserved forest.”

It was urged that all the events which are mentioned in section 17 must have occurred before the notification can be legally published, and it was urged that inasmuch as the petitioner had made a claim, and inasmuch as that claim had not been disposed of by the Forest Settlement Officer, the notification was invalid.

The facts which to my mind are necessary for the purpose of my judgment are as follows. Mr. Sankey was appointed the Forest Settlement Officer, and a claim was submitted by the petitioner on the 23rd of April, 1916. It was called an “objection under section 6 of the Assam Forest Regulation, VII of 1891”. Although it was called an objection, it was in reality a claim, and it was treated as a claim by both sides during the argument of this Rule. I need not read it. I have already referred to the material facts relied on in that claim. I may perhaps read the 15th clause (the last clause) which runs as follows:—“That under the aforesaid and other circumstances the objectors humbly submit that the Government has no right to constitute the lands of Schedule II or any part thereof, a reserved forest, and pray that your Honour may be pleased to exclude so much of the lands of Schedule II as lie within the boundaries mentioned in the above notification from the operation thereof.” On the 16th of May, 1916, the matter came before Mr. Sankey, and Mr. Sankey made the following order. “This is an objection to the reservation of certain lands as reserved forest in the Langla Patharia Hills on the ground that the land in question belongs to the permanently settled estates of the objectors, and is therefore, not at the disposal of Government. I am of opinion that as Forest Settlement Officer I am

“not empowered to decide an objection which denies  
 “the title of Government. The learned pleader who  
 “appears on behalf of the objectors is of the same  
 “opinion, and informs me that he puts in this objection  
 “and offers to produce oral and documentary evidence  
 “as a safeguard to his client in any future proceeding  
 “before the Civil Courts. I came to the same deci-  
 “sion last year in similar cases having reference to the  
 “Reservation Proceedings in the Patharia Hills, and  
 “my decision was upheld on appeal by the Commis-  
 “sioner. Under these circumstances I consider it  
 “unnecessary to argue the matter. I disallow the  
 “objection.” The notification of the lands as a re-  
 served forest was made on the 29th of August, 1917.  
 The report of the Forest Officer, to which I have  
 already referred, was made on the 27th of September,  
 1919, and then the summonses, the basis of the pro-  
 ceeding in question, were issued.

In my judgment it is necessary to refer to  
 some sections of the Assam Forest Regulation. They  
 are—

“4. The Local Government may constitute any land  
 “at the disposal of the Government a reserved forest  
 “in manner hereinafter provided.”

“5 (1) Whenever it is proposed to constitute any  
 “land a reserved forest, the Local Government shall  
 “publish a notification in the official gazette—(a  
 “specifying as nearly as possible the situation and  
 “limits of such land; (b) declaring that it is proposed  
 “to constitute such land a reserved forest; and (c)  
 “appointing an officer (hereinafter called the Forest  
 “Settlement Officer) to enquire into and determine  
 “the existence, nature and extent of any rights claimed  
 “by, or alleged to exist in favour of, any person in or  
 “over any land comprised within such limits, and  
 “any claims relating to the practice within such

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“limits of jhum-cultivation, and to deal with the same as provided in this chapter.

“(2) The Forest Settlement Officer shall ordinarily be a person other than a Forest Officer, but a Forest Officer may be appointed by the Local Government to assist the Forest Settlement Officer in the inquiry prescribed by this chapter.”

“6. When a notification has been published under section 5, the Forest Settlement Officer shall publish in the language of the country, at the headquarters of each district and subdivision in which any portion of the land comprised in such notification is situate, and in every town and village in the neighbourhood of such land, a proclamation—

“(a) Specifying as nearly as possible the situation and limits of the proposed forest; (b) setting forth the substance of the provisions of the next following section; (c) explaining the consequences which, as hereafter provided, will ensue on the reservation of such forest; and (d) fixing a period of not less than three months from the date of the publication of such proclamation, and requiring every person claiming any right or making any claim referred to or mentioned in section 5 either to present to such officer within such period a written notice specifying, or to appear before him within such period and state, the nature of such right or claim.”

“11. (1) In the case of a claim to a right or over any land other than the following rights, namely:— (a) a right of way; (b) a right to a watercourse or to use of water; (c) a right of pasture or to forest produce, the Forest Settlement Officer shall pass an order specifying the particulars of such claim and admitting or rejecting the same wholly or in part.

. . . . .”



The learned vakil who supported this Rule submitted that the claim which was made by the petitioner in this case ought to have been dealt with by the Forest Settlement Officer, Mr. Sankey, under the provisions of section 11.

“15. Any person who has made a claim under this chapter may, within three months from the date of any order passed on such claim by the Forest Settlement Officer under sections 11, 12, 13 or 14, present an appeal from such order to such officer of the Revenue Department, of rank not lower than that of a Deputy Commissioner, as the Local Government may, by notification in the official gazette, appoint by name, or as holding an office, to hear appeals from such orders.”

“16. (1) Every appeal under the last foregoing section shall be made by petition in writing, and may be delivered to the Forest Settlement Officer who shall forward it without delay to the officer competent to hear the same.

“(2) Every such appeal shall be heard in the manner prescribed for the time being for the hearing of appeals in matters relating to revenue, and, except as hereinafter provided, the order passed on the appeal shall be final.”

Section 17. I have already read section 17 which provides for notification declaring a forest to be reserved.

“20. The Local Government may, within five years from the publication of any notification under section 17, revise any arrangement made under section 13 or 16, and may rescind or modify any order made under this chapter, and direct that any one of the proceedings specified in section 13 be taken in lieu of the other of such proceedings, or

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“that a right admitted under section 12 be commuted  
“in the manner mentioned in section 14.”

I think those are all the sections which are necessary to be referred to for the purpose of this judgment.

It was urged on behalf of the petitioner that the meaning of the words “disposed of,” in section 17, sub-section (1)(a), was “disposed of according to law,” that the Act contemplated an enquiry into the merits of the claim, and that the Forest Settlement Officer must, under the provisions of the Regulation, either admit or reject the claim on the merits, and that inasmuch as the Forest Settlement Officer held that he was not empowered to decide the claim of the petitioner there had been no disposal of the petitioner’s claim in accordance with the Regulation. On the other hand, the learned Advocate-General urged that the Act specified a special tribunal for adjudicating upon claims in respect of lands which it was proposed to convert into a reserved forest; that such claims must be submitted to the Forest Settlement Officer, and if the claimant was not satisfied with the order of the Forest Settlement Officer, there is an appeal provided by section 15, and that the decision upon the appeal must be final; that in this case the petitioner had submitted his claim to the Forest Settlement Officer who had rejected it, and that the petitioner had not appealed, and consequently, there was an end of the matter: in short, that the petitioner’s claim had in fact been disposed of. The learned Advocate-General drew our attention to paragraph (8) of the petition from which it appears that one Annada Charan Sen and another, who were also proprietors of some of the estates in question, raised similar objections in connection with lands adjoining the petitioner’s and lying on the east of the water-shed, and their objections were similarly disallowed by Mr. Sankey, and

that the said Annada Charan and the others thereupon appealed to the Commissioner who directed the Settlement Officer to decide the objections upon evidence, and that thereupon by his judgment, dated the 8th of March, 1917, Mr. Sankey allowed their objections, holding that the lands claimed by them were not at the disposal of the Government, and excluded the same from the reserved forest: and the learned Advocate-General urged that the petitioner should have adopted the same course as that which was adopted by Annada Charan Sen.

In my judgment, the petitioner is on the horns of a dilemma. On the one hand, it may be said that by acceding to the view of the Forest Settlement Officer that he was not empowered to adjudicate upon the petitioner's claim, and by the petitioner's pleader stating that he merely put in his objection and offered to produce evidence as a safeguard to his client in any future proceeding before the Civil Courts, the petitioner did not really submit his claim to the Forest Settlement Officer or, at all events, that he did not submit it to him for his adjudication. If this be the true view, then the petitioner did not adopt the course specified by the Regulation, and he cannot now successfully contend that the notification was invalid, on the ground that his claim was not disposed of. On the other hand, if the true position be that the petitioner did submit his claim to the Forest Settlement Officer for adjudication, then, in my judgment, it must be held that the Forest Settlement Officer rejected his claim. The words used by Mr. Sankey were "I disallow the objection" which, in my judgment, must be taken to be equivalent to rejecting the claim which was thereby disposed of. The petitioner in this view, therefore, should have appealed to the Commissioner, as Annada Charan did, and urged that his claim should

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be enquired into on the merits by the Forest Settlement Officer. He did not so appeal; and, he, therefore, failed to adopt the course specified by the Regulation. In my judgment, therefore, in either view the argument that the petitioner's claim was not disposed of, fails: and, we ought not to hold that the notification of the 27th of August, 1917 was invalid on the abovementioned ground. It may be, however, that the petitioner and his advisers were misled to some extent by the course adopted by the Forest Settlement Officer, and by his remarks as to his previous decision being upheld by the Commissioner, on appeal. Mr. Sanyal, the learned vakil who appeared for the petitioner, urged with respect to this suggestion that in consequence of the course adopted by Mr. Sankey and his remarks the petitioner was entitled to assume that his lands would be excluded from the reserved forest. Upon the question whether this was so or not I express no opinion: I merely draw attention to the fact that, if there was really any misapprehension created by the decision or the remarks of the Forest Settlement Officer in the mind of the petitioner or his advisers, and if the petitioner has really any merits in respect of his claim, section 20 of the Regulation provides that the Local Government "may rescind or modify any order passed under this chapter," and it may be that the petitioner is not entirely without a remedy.

For these reasons, in my judgment, this Rule should be discharged.

WALMSLEY J. I agree.

E. H. M.

*Rule discharged.*