PRIVY COUNCIL.

SECRETARY OF STATE FOR INDIA IN COUNCIL

v.

PARBATI CHARAN SHAHA (SINCE DECEASED) AND OTHERS.

P. C.*
1928
April 30.

[ON APPEAL FROM THE HIGH COURT AT CALCUTTA.]

Land Revenue—Accreted lands—Rate per bigha—Land in Sunderbans—Pottah of 1790—Permanent Settlement in 1852—Construction of kabuliat—"We shall duly pay Revenue."

In 1790 the Government granted to the respondents' predecessors a pottah in respect of a taluq in the Sunderbans, the land being mostly swampy and under jungle ; the revenue for and after the seventh year was to be eight annas per bigha of chargeable land. Surveys were made in 1835 and 1851 to determine the then chargeable area, and douls were given ; in 1851 the boundaries were defined. In 1852, at which time all the reclamation had taken place, the whole area, including some newly formed chur lands included in the survey of 1851, were permanently settled, the kabuliat containing the following clause : "If in future any "chur be newly accreted and the quantity of taluq land be increased "thereby, we shall duly (*riti mata*) pay revenue for the said increased "land". Since 1852, 2,930 bighas of land had been formed by accretion in contiguity with the permanently settled land and not being reformations of land previously settled. In 1878 and 1890 that part which then existed was settled at eight annas per bigha, but in each case for 10 years only. In 1916, the Government made a temporary settlement of the 2,930 bighas at 12 annas per bigha, which was the ordinary rate for similar land. The respondents sued claiming that by virtue of the pottah of 1790 the revenue should not exceed eight annas per bigha.

Held, that the rate chargeable per bigha depended upon the permanent settlement of 1852, and not upon the pottah of 1790 at which date the lands did not exist ; that upon the true construction of the clause in the kabuliyat of 1852, the rate was to be determined in the same way and according to the rules as the Government adopted with regard to all newly formed churs ; and accordingly that the suit failed.

Decree of the High Court reversed.

Present : LORD ATKINSON, LORD SINHA AND SIR JOHN WALLIS.

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APPEAL (No. 91 of 1922) from a decree of the High Court (April 25, 1921) reversing a decree of the Subordinate Judge of Backergunj (April 15, 1919).

On December 16, 1916, the respondents (or their predecessors) accepted under protest a settlement of chur lands formed by alluvion in contiguity with their estate in the Sunderbans at a revenue of 12 annas per bigha with the standard rasi of 80 cubits. In 1917 they brought the present suit claiming that having regard to what they described as a permanent settlement of 1790, the Government was not entitled to revenue exceeding eight annas per bigha with a standard of 110 cubits. By their plaint they alleged that the lands in question were lands included in the document of 1790 or were reformations *in situ* thereof but that contention was negatived by the Subordinate Judge, and apparently abandoned in the High Court. There had been a permanent settlement in 1852, with a special clause as to land which might be accreted.

The facts appear from the judgment of the Judicial Committee.

The Subordinate Judge dismissed the suit, but on appeal to the High Court (Woodroffe and Cuming JJ.) it was decreed upon grounds which appear from the present judgment.

Kenworthy Brown and *E. B. Raikes*, for the appellant, referred to *Secretary of State for India* v. *Maharaja of Burdwan* (1).

DeGruyther, *K. C.*, and *Hyam*, for the respondents.

The judgment of their Lordships was delivered, having been prepared by

April 30. LORD SINHA.* This is an appeal against a decree of the High Court of Calcutta which reversed

(1) (1921) I. L. R. 49 Calc. 103; L. R. 48 I. A. 565.

* Lord Sinha died in India on March 5, 1928.

a decree of the Subordinate Judge of Backergunj made in original Suit No. 298 of 1917, in which the plaintiffs were the Shahas and the defendant the Secretary of State for India in Council. The facts are as follows :—

In 1790 Byoyram Shaha obtained from Government a sanad or pottah in respect of three chuks, called Chuck Kalaran, Chuck Chandipur and Chuck Baleswar, which constituted a Henckell Taluqi, in the Sunderbans. That land was for the most part swampy and under jungle. The pottah which was addressed to the Shahas provided *inter alia* as follows :—

"It has been ordered that out of the 1,200 bighas of a layek jirat "land found upon measurement within the boundaries of the aforesaid "chucks, with the exception of the area covered by the hastabud and the "khals, khandaks, tanks, nalayek, jungle and beels, you shall keep apart "200 bighas for mofussil establishment for the accommodation of the "gomashtas, hat pahari, for raptan, and mokami, for cutchery, and for "watching mal khana and for guarding the metes and boundaries, etc., and "the remaining 1,000 bighas shall be assessed at the following rates, viz., "from the first to the end of a third year, *i.e.*, from the date of your "application to the aforesaid Ghosals in 1193 B. S., you will hold the same "free of rent, but in the 4th year you shall pay revenue at the rate of "two annas a bigha in sicca coin, in the fifth year at the rate of four "annas, and in the sixth year at the rate of six annas and from the "seventh year you shall continue to pay the revenue year after year at the "full rate, *i.e.*, at the fixed rate of eight annas a bigha as prevailing in "the locality."

A measurement of the said settled lands took place in 1855 The area (subject to the deductions provided for in the pottah) amounted to 3,356 bighas, and the revenue of eight annas was sicca Rs. 1,678-5-4 or Company's Rs. 1,790-3-9. On the 22nd May, 1835, the Shahas executed a doul for payment of this revenue yearly by twelve instalments.

Subsequently, in the year 1851, a survey took place nd the Shahas were found to be chargeable in respect

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of lands which they held in excess of the said 3,356 bighas, some of the excess being newly formed chur land by the action of the rivers. After some official correspondence, it was proposed by the Revenue Commissioner that the whole area (inclusive of the new land which had thus been formed) should be settled with the Shahas in perpetuity commencing with the year 1257—with an express proviso, however, for the assessment in future of any newly formed chur land. This proposal was sanctioned by the authorities and agreed to. Accordingly, on the 9th September, 1852, the Shahas executed in respect of the estate a kabuliat which contained, among others, the following clause :—

"If in future any chur be newly accreted and the quantity of taluq "land be increased (thereby) we shall duly [*riti mata*] pay revenue for the "said increased land."

And on the same date they signed a doul which set out the area of the land and the revenue thereon in detail and a kistbundi for the revenue which was fixed as from the year 1266 at Rs. 2,144-15-1.

The estate included in this permanent settlement is now designated as estate towzi No. 6556 in the Collectorate Register. This appeal is not concerned with it, and the rights of the Shahas therein have been neither restricted nor enlarged by the subsequent settlements now to be referred to.

Since 1852 lands amounting to 2,930 bighas have been formed by alluvion in contiguity with the permanently settled estate, and these are the lands in question in this appeal and now constitute the estate towzi No. 6975 referred to above.

The Subordinate Judge says :—

"There is no evidence to prove, as is conceded by the learned pleader "for the plaintiffs, that the lands of the newly formed separate estate "No. 6975 are covered by the leases and settlements of the years 1790, "1835 and 1852. But, according to the cases of both the parties, the

"major portion of these lands are covered by the settlements of 1878-79 "and 1890. Each of these two settlements was for a term of ten years "only . . . . The doul (Ex. 11) and the kabuliat (Ex. 10), dated "the 11th December, 1916, which are admitted by both the parties, show "that since the settlement of 1852 altogether 2,930 bighas and $8\frac{3}{4}$ cottahs "of land were gained by alluvion to the Estate No. 6556."

The temporary settlement of 1878-79 ensued on a survey which showed accretions or contiguous alluvial formation of 2,284 bighas—an area then assessed to revenue at Rs. 497.

On the 20th March, 1878, in anticipation of and subject to the sanction of the Board of Revenue, a kabuliat was drawn up and executed by the Shahas for the payment of the annual assessment of Rs. 2,642, being the sum assessed at the permanent settlement of 1852, together with the assessment on the new formations just referred to. The details of the assessment were annexed to the kabuliat, but it is unnecessary to state them here for the reason that the settlement was sanctioned by the Board of Revenue as a ten years' settlement only.

The ten years' period having expired, a fresh survey was made in 1889, and it was ascertained that further chur lands had been formed. As at the previous settlement, in anticipation of orders of the Board of Revenue, a kabuliat was drawn up and executed by the Shahas. An addition to the revenue provided by the settlement of 1878-79 was made in respect of the last mentioned chur, and the total was Rs. 2,872. As on the previous occasion, the Board of Revenue sanctioned the settlement for a ten years' period only.

After the expiry of the ten years, viz., in 1911, the Diara Deputy Collector gave notice to the Shahas under section 3 of Act IX of 1847 that the chur lands had increased by 35 acres and that it was intended to

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assess them according to the rules in force. The Shahas raised an objection, and orders were sought from the Board of Revenue, which reviewed the whole question and gave the following directions :—

"(1) The whole estate should be divided into two parts, one with the "present towzi number containing the land of which settlement was made "in 1852, and the other with a new towzi number containing all later "accretions.

"(2) No action need be taken with regard to the land settled in 1852 "provided the talukdar agrees to the Board's decision as regards all later "accretions.

"(3) All accretions subsequent to 1852 should be now assessed in the "ordinary way at the rate and for the period considered suitable by the "Settlement Department according to the condition of the accreted lands."

In accordance with the said directions of the Board of Revenue the Diara Deputy Collector on the 2nd February, 1914, gave the Shahas notice that the lands newly formed since the permanent settlement of 1852 would be separately settled as a temporarily settled mahal. The Shahas renewed their objection, which, however, was overruled by the Board of Revenue on the 9th October, 1916, and the new lands were designated as towzi No. 6975 in the Collectorate Register, and were assessed at Rs. 2,198. This assessment was arrived at by the Revenue authorities by imposing a rate of 12 annas per bigha, being the ordinary rate for such land measured with the standard rasi of 80 cubits. A kabuliat in respect thereof was offered to the Shahas and was accepted and executed by them on the 11th December, 1916, under a protest which is contained in their petition of that date. It is submitted that the order of the Board of Revenue was final and that no suit is maintainable in the Civil Courts to interfere with the discretion and powers of the Revenue authorities in regard to the rate, method or amount of the assessment imposed upon such alluvial accretions.

On the 10th September, 1917, the Shahas instituted the present suit against the Secretary of State for India in Council. The plaint set out from their point of view the history of the estate and the provision of the settlements above mentioned and prayed for declarations (*inter alia*) to the following effect :—

(Ka) That it may be declared that the lands described in the schedule are included in the lands of the sanad of 1196 (1790) and the subsequent settlements and that the Government had no right to make settlement thereof in contravention of the terms of the said pottah ; and

(Ja) That it may be declared that the disputed lands are the reformed lands *in situ* of the permanently settled lands of the plaintiff.

(Kha Ga Cha) That it may be declared that the Government had no right to assess these lands at a higher rate than eight annas (sicca) per bigha with a rasi of 110 cubits and after allowing a deduction of 200 bighas in every 1,200 bighas.

(Jha) A refund of the money paid in excess under the settlement of 1916 and other relief was also prayed for.

A written statement of defence was put in on behalf of the Secretary of State denying the title asserted by the plaintiffs and pleading *inter alia* as follows :—

"(2) The lands formed into a separate estate bearing towzi No. 6975 "were never permanently settled with the plaintiffs or their predecessors. "They are accretions to the land permanently settled with the predecessors "of the plaintiffs in 1852 and were rightly assessed to revenue and formed "into a separate estate under Act 31 of 1858.

"(4) The talukdari sanad of 9th January, 1790, relates to land in "existence in 1790 and cannot create a right to lands not then in existence. "The lands now formed into estate No. 6975 were not in existence in 1790 "or even in 1852."

On these pleadings issues were framed, of which the following are now material :—

"(2) Are the lands of estate No. 6975 or any portion of it covered by "the lease of 1852 ?

"(2)—(*a*) Are the lands of estate No. 6975 or any portion of them "covered by the settlements of 1790, 1835, 1878 and 1890 ?

"(3) Are the plaintiffs entitled to hold any land lying outside the "area leased in 1852 at any special rate of rent ?

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"(4) Was the separation of the accreted land into a separate estate "*ultra vires*?

"(6) Do the disputed lands form part of, and are reformation *in situ* "of, the lands of the disputed permanently settled estate of the plaintiffs?

"(7) Are the plaintiffs entitled to get a refund of the excess revenue "that they have paid and may be required to pay from time to time till the "disposal of this suit?

"(8) What relief, if any, are the plaintiffs entitled to get in this "case?"

The suit having come on for trial, the Subordinate Judge, on the 15th April, 1919, delivered judgment therein for the defendant and passed a decree dismissing the suit.

The Subordinate Judge held that the lands in suit do not form part of, and are not reformation *in situ* of, the lands of the estate permanently settled with the plaintiffs' predecessor.

And after making the observations hereinbefore quoted, he adds:—

"The fact that in the settlement of the year 1852 the then alluvial "increment was settled in perpetuity does not necessarily show that the "Government was legally bound to settle it in perpetuity. . . . I do not "think that there is anything in the sanad of 1790 or in the douls of 1835 "and 1852 which gave the grantees any right to settlement in perpetuity "of subsequent accretions."

He further held upon issues 3, 4, 7 and 8 as follows:—

"As these lands have not been shown to be included in the perma-"nently settled estate of the plaintiffs, but are, on the other hand, an "alluvial accession to that estate, I do not see how the right of the "Government to assess revenue upon them can be reasonably disputed."

He then dealt with the Acts relating to such assessments, and held that the action of the Revenue authorities was perfectly regular and proper, and decided the said issues in favour of the Government.

Against the said decree the plaintiffs preferred an appeal to the High Court, which came on for hearing before Mr. Justice Woodroffe and Mr. Justice Cuming;

and on the 25th April, 1921, the learned Judges delivered judgment therein for the plaintiffs.

The judgment of the Court was delivered by Mr. Justice Woodroffe. He does not hold that the lands in question were lands which had already been assessed—or reformation *in situ* of such lands—so that the plaintiffs could be entitled by virtue of the permanent settlement of 1852 to hold them free of any further charge.

But he finds that the sole and only question before them was whether the rate chargeable for the disputed accretions was to be at the pottah rate of 8 annas or the Revenue authorities' rate of 12 annas per bigha.

He held that this depended on the effect of the pottah of 1790.

He then states the question: "Do the disputed "lands fall within the boundaries of the taluk as it was "constituted in 1790?"

It appears to their Lordships that the real point for determination in this appeal is as to what the effect is of the settlement in 1852. By that time, all the reclamation had taken place, and the only question was if any newly accreted land were formed, as to what revenue should be payable in respect thereof.

With regard to that, the express provision was made that "if in future any chur be newly accreted "and the quantity of talnk land be increased thereby, "we shall duly pay revenue for the said increased "land." The words which are translated "duly" are in the vernacular *riti mata*. Though a good deal of argument took place, both in the Trial Court and in the High Court upon the proper meaning of the words, it is admitted now that they mean exactly what "duly" conveys, *i. e.*, any revenue which may

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be legally and properly payable in respect of the accretions. It is contended that the rates mentioned in the document of 1790 are what is legally payable. The Government contends to the contrary, viz., that the rates are to be determined in the same way and accord to the same rules as Government adopt with regard to all newly formed churs.

Their Lordships are of opinion that the latter contention is correct, and that the pottah of 1790 does not affect the question inasmuch as the lands now in question did not exist when the pottah of 1790 was executed. These are admittedly new lands, and the case of these lands being reformations *in situ* of the lands settled in 1790 or any of the later settlements appear to have been abandoned in the High Court.

The pottah of 1790 does not contain any boundaries. It was in 1851 for the first time that the lands settled with the Shahas were defined by boundaries and it was obviously the intention of the parties that the lands so defined should from that time form a permanently settled estate as well understood in Bengal. There was no question from that time onwards of any variation of rates or of the total revenue payable in respect of that area, and the only provision for the future was with respect to lands which might be newly formed and accreted to the defined estate. There is nothing in the pottah of 1852 which restricts the Government to the rates mentioned in the pottah of 1790. It is true that in 1878 and again in 1889 the Government adopted the rates of the document of 1790, for the newly formed lands which were found to have accreted in those years respectively, but as the Subordinate Judge said, because the Government chose on some previous occasion to adopt the rates of 1790 they are not under any obligation to adopt

those rates in perpetuity. Section 1 of Act 31 of 1858 empowers the Government either to add the revenue assessed upon the alluvial increment to the jumma of the parent estate and enter into a new engagement with the proprietor for the payment by the latter of the aggregate amount, or to make a separate settlement for the alluvial increment and to make this increment a separate estate.

On the three previous occasions, viz., 1852, 1878 and 1888, the Government chose to exercise their right in the manner first described, but they were not under any obligation to exercise their discretion in the same way on the subsequent occasion when a fresh survey was made of all the accretions up to 1911. They were at liberty to do as they did—to require a separate engagement for all the accretions which had taken place to the estate since 1852 and to form that into a separate estate No. 6975. In 1878 and 1888, the settlements so far as the accreted lands were concerned were temporary and for ten years only. They were temporary only so far as the accreted lands were concerned, but in no sense temporary so far as the lands comprised in the estate defined by the kabuliat of 1852.

Their Lordships will therefore humbly advise His Majesty that the judgment of the High Court should be reversed and the judgment of the Subordinate Judge restored, and the respondents should pay the costs of the appeal to the High Court as well as of this appeal.

Solicitor for the appellant: *Solicitor, India Office.*

Solicitors for the respondents: *Barrow, Rogers & Nevill.*

A. M. T.