

PRIVY COUNCIL.

DATTATRAYA KRISHNA RAO KANE

v.

SECRETARY OF STATE FOR INDIA IN
COUNCIL.

P. C.*

1930

June 30;
July 1.[ON APPEAL FROM THE COURT OF THE JUDICIAL COMMISSIONER,
CENTRAL PROVINCES.]

Foreign jurisdiction—Berar—Legislative power of Governor-General in Council—Berar Alienated Villages Tenancy Law, 1921—Waste Land Rules, 1865 (Berar)—Indian (Foreign Jurisdiction) Order, 1902—Foreign Jurisdiction Act, 1890 (53 & 54 Vict. c. 57), ss. 1, 12.

Having regard to section 1 of the Foreign Jurisdiction Act, 1890, and the authority delegated to the Governor-General in Council by the Indian (Foreign Jurisdiction) Order, 1902, the Governor-General in Council had power to promulgate the Berar Alienated Villages Tenancy Law, 1921, relating to territory of His Highness the Nizam leased in perpetuity to the British Government. The said law of 1921 is not void under section 12 of the Act of 1890, so far as it is repugnant to the Waste Land Rules, 1865 (Berar), because the Acts, orders and regulations referred to in that section are Acts, orders and regulations applying to British subjects, and so do not include the said rules of 1865, which did not purport so to apply. Further the said rules of 1865 were merely administrative orders.

The law of 1921, so promulgated, accordingly operates as a legislative Act, and effectively interferes with rights in property held under leases granted pursuant to the said rules of 1865.

Decree of the Court of the Judicial Commissioner, Central Provinces, affirmed.

APPEAL (No. 51 of 1929) from a decree of the Court of the Judicial Commissioner, Central Provinces (March 10, 1927), affirming a decree of the District Judge, Amraoti (April 23, 1924).

The question for determination in the appeal was whether the Berar Alienated Villages Tenancy Law, which was promulgated by the Governor-General in Council on November 24, 1921, was, as the appellant contended, *ultra vires*.

The law in question related to the Hyderabad Assigned Districts (known as the Berars) which, as appears more fully from the judgment, were territory of His Highness the Nizam leased in perpetuity to the British Government with powers of administration. The notification stated: "In

* Present: Lord Atkin, Lord Macmillan and Sir John Wallis.

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“exercise of the powers conferred by the Indian
“(Foreign Jurisdiction) Order in Council, 1902, and
“of all other powers enabling him in this behalf the
“Governor-General in Council is pleased to issue
“the following provisions regulating the relations of
“landlords and tenants of agricultural land in certain
“alienated villages of Berar.” By section 1,
sub-section (2), the provisions were to extend to all
alienated villages leased under the Waste Land Rules
of 1865.

The appellant was joint owner of a village, of
which a lease had been granted under the rules of 1865.
He brought the present suit on behalf of himself and
an association whose members were also joint owners.
By his plaint he alleged that the law of 1921 affected
existing rights and vested interests of the owners of
the villages, and infringed provisions of the rules of
1865, which he contended alone governed their
relations with the Government of India. He prayed
for a declaration that the extension of the law of
1921 to the villages leased under the Waste Land
Rules of 1865 was *ultra vires*, and that the rights of
the appellant and his joint owners under the said
rules were unaffected by the law.

The Court of the Judicial Commissioner, affirming
a decree of the District Judge of Amraoti, dismissed
the suit.

Dunne K. C. (with him *Colombos*) for the
appellant.

The arguments for the appellant appear from the
judgment of the Judicial Committee. The terms of
the Foreign Jurisdiction Act, 1890, sections 1 and 12,
which were material to the argument also so appear.
Reference was made also to the Interpretation Act,
1889, section 38, sub-section (2) and to the Government
of India (Amendment) Act, 1916, section 5, removing
doubts as to the validity of the delegation of powers
by the Order in Council of 1902.

DeGruyther K. C. and *Wallach*, for the
respondent, were not called upon.

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The judgment of their Lordships was delivered by

LORD ATKIN. This action is brought by the plaintiff, on behalf of himself and other *ijâradârs* and *inâmdârs* who hold land in the territory known as the Berar, against the Secretary of State for India in Council, to have it declared that the Act passed in 1921, which one may call shortly the Berar Tenancy Act, is invalid. It is said to be invalid because it is in conflict with and purports to take away rights which the plaintiff and those whom he represents allege were given to them by grant from the Government of India.

The position as it exists is due, in the first instance, to the treaties that were made between the Crown and His Highness the Nizam of Hyderabad. The first treaty was made in 1853, and by the terms of that treaty His Highness the Nizam assigned the districts mentioned in the schedule, which include the territory of the Berar, to the exclusive management of the British Resident for the time being at Hyderabad, and to such other officers acting under his orders as might from time to time be appointed by the Government of India. That was for the purpose of paying the Hyderabad Contingent and certain other expenses. On the 26th November, 1860, a further treaty was made between Her Majesty Queen Victoria and His Highness the Nizam, by which the Nizam agreed to forego all demands for an account of the rents and expenditure of the assigned districts, and by Article 6 it was provided as follows:—

The districts in Berar already assigned to the British Government under the treaty of 1853, together with all the Surf-i-Khas *tâluks* comprised therein, and such additional districts adjoining thereto as will suffice to make up a present annual gross revenue of thirty-two *lakhs* of rupees currency of the British Government, shall be held by the British Government in trust for the payment of the troops of the Hyderabad Contingent, Appa Dossaye's *chauth*, the allowance to Mohiput Ram's family, and certain pensions mentioned in Article VI of the said treaty.

In 1902, however, a permanent arrangement was made between the Government of India and His Highness the Nizam, whereby His Highness the Nizam, whose sovereignty over the assigned districts

was reaffirmed, leased them to the British Government in perpetuity, in consideration of the payment to him by the British Government of the fixed and perpetual rent of 25 *lakhs* of rupees. By Clause (II) it is provided:—

The British Government, while retaining the full and exclusive jurisdiction and authority in the assigned districts which they enjoy under the treaties of 1853 and 1860, shall be at liberty, notwithstanding anything to the contrary in those treaties, to administer the assigned districts in such manner as they may deem desirable.

In June, 1902, no doubt in anticipation of the agreement which was made and signed in November, 1902, there was an Order in Council made entitled: "The Indian (Foreign Jurisdiction) Order in Council," giving power to the Governor-General of India in Council to deal with these particular territories. Clause 3 of the Order provides:—

The Governor-General of India in Council may, on His Majesty's behalf, exercise any power or jurisdiction which His Majesty or the Governor-General of India in Council for the time being has within the limits of this Order, and may delegate any such power or jurisdiction to any servant of the British Indian Government in such manner, and to such extent, as the Governor-General in Council from time to time thinks fit.

It was under that power that the Tenancy Law in question was promulgated, and it appears to their Lordships that, in pursuance of those powers so given to the Governor-General by Order in Council, he by this Tenancy Law purported to legislate and pass an enactment having the full effect of an Act in those territories, and the question is whether or not he had authority so to legislate. The power to make the Order in Council is derived from the Foreign Jurisdiction Act, 1890, which recites:—

Whereas by treaty, capitulation, grant, usage, sufferance, and other lawful means, Her Majesty the Queen has jurisdiction within divers foreign countries, and it is expedient to consolidate the Acts relating to the exercise of Her Majesty's jurisdiction out of Her dominions,

and proceeds to enact by section 1:—

It is and shall be lawful for Her Majesty the Queen to hold, exercise, and enjoy any jurisdiction which Her Majesty now has or may at any time hereafter have within a foreign country in the same and as ample a manner as if Her Majesty had acquired that jurisdiction by the cession or conquest of territory.

By the definition, "foreign country" means any country or place outside of Her Majesty's dominions;

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and the expression "jurisdiction" includes power. There can be no doubt at all that the King in Council has power, in respect of foreign territory within the definition of that clause, either to legislate himself by Order in Council or to make provision for legislation by delegating that legislative authority to such a person or body as he may denote in the Order in Council. It is plain, in their Lordships' opinion, that the Order in Council of 1902 does purport to delegate to the Governor-General in Council the power to legislate in respect of the territories in question. The Governor-General, therefore, in enacting this Tenancy Law of 1921, had the power to legislate; he exercised that power, and the legislation may operate, as all legislation may operate, subject to the terms of the Foreign Jurisdiction Act, to take away vested rights or to alter vested rights, of anyone who is in fact subject to that particular legislation.

The plaintiff in this case had in fact had dealings with the Government of India before this legislation was passed. There were certain Waste Land Rules which were made on the 13th December, 1865. It is not necessary to go through them in detail. The view that their Lordships take of those rules is that they are merely administrative rules, and were not intended to be in the nature of legislation at all. They lay down certain principles under which the Government of India would allow persons to hold land within the territory, and, in pursuance of those rules, certain leases were granted to the plaintiff's predecessors-in-title and the predecessors-in-title of those whom he now represents. The leases were granted for thirty years, and, pursuant to the same rules, at the expiration of the leases, the holders of the land were entitled to exercise the option of acquiring proprietary rights in the land which they held. Under those rules the proprietors were to have full power to make their own arrangements for the cultivation of the lands of the villages, "subject to such rules and regulations as the Government of India may from time to time prescribe for

“determining their relations with their *raiyats* of any description.”

In their Lordships' opinion, there cannot be any doubt that the provisions of the Tenancy Law which was passed do in fact interfere with the rights which the plaintiff and the persons whom he represents acquired over their own property under these *sanads* which were granted to them by the Crown, because the Tenancy Act incorporates most of the provisions which we are familiar in the Bengal Tenancy Act and other Acts giving large powers to the courts and administrative officers to protect the actual occupiers of the land, to give them security of tenure and to fix the sums which they have to pay, and undoubtedly interfere with the relations that previously existed between the principal proprietors and the actual occupiers of the land. To that extent, therefore, their rights are interfered with, but, inasmuch as, as has been said, the Tenancy Act is a piece of legislation of a competent legislature, in this case the Governor-General in Council, it is effective to alter the rights of persons within the territory, and it appears to their Lordships to be impossible to say that the Act is invalid merely on that ground.

The validity of the Act was also assailed on the ground that it violated the provisions of section 12 of the Foreign Jurisdiction Act, the Act which gave authority to make the Order in Council under which the Governor-General derives his legislative authority. That section provides :—

(1) If any Order in Council made in pursuance of this Act as respects any foreign country is in any respect repugnant to the provisions of any Act of Parliament extending to Her Majesty's subjects in that country, or repugnant to any order or regulation made under the authority of any such Act of Parliament, or having in that country the force and effect of any such Act, it shall be read subject to that Act, order, or regulation, and shall, to the extent of such repugnancy, but not otherwise, be void.

It was said that the Waste Land Regulations were regulations which, within this section, control the operation of legislation effected by the Governor-General. It appears to their Lordships that that is a misreading of the Foreign Jurisdiction

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Act. The Act of Parliament and the Order and Regulations referred to thereunder are Acts, Orders and Regulations so far only as they apply to His Majesty's subjects in the territory in question and have no relation to a case such as this, where the legislation does not purport to affect His Majesty's subjects at all but has relation to persons who are not subjects of His Majesty but subjects of His Highness the Nizam of Hyderabad. That seems to their Lordships to be quite sufficient to dispose of the claim in this case. That is the view which was taken by the learned trial judge, whose judgment on this part of the case seems to their Lordships to be completely satisfactory. There is a further point which has specially impressed the appeal court, namely, that the terms under which the plaintiffs themselves held their right expressly provide that they are subject to such regulations as may be made in future by the Government of India, that the provisions of the Berar Tenancy Act if not legislative would, at any rate, be regulations made by the Government of India, and that the plaintiffs, therefore, cannot complain. It is unnecessary to discuss this contention, for, in their Lordships' opinion, it is quite clear that this is legislation by a legislature which is competent to deal with existing rights and vary them. There is no provision in any Act which restricts the operation of that legislation, so far as any previous existing regulations are concerned, which the plaintiffs can invoke in aid of their title, and therefore it appears that the plaintiffs' action is ill-conceived and there is no ground for attacking the validity of the legislation in question. Therefore the suit fails and the appeal must be dismissed with costs, and their Lordships will humbly advise His Majesty accordingly.

Solicitor for appellant: *H. S. L. Polak.*

Solicitor for respondent: *Solicitor, India Office.*

A. M. T.