

APPELLATE CIVIL.

*Before Guha and Lodge JJ.*SECRETARY OF STATE FOR INDIA IN
COUNCIL

v.

LALMOHAN CHAUDHURI.*

1935

Aug. 6, 7, 12.

Khâs Mehâl lands—Crown Grants Act (XV of 1895)—Transfer of Property Act (IV of 1882), s. 52.

The Crown Grants Act does not apply to *Khâs Mehâl* lands and the position of the Government, in regard to them, is that of an ordinary landlord subject to the provisions of the Transfer of Property Act.

SECOND APPEAL by the defendant.

The facts of the case and the arguments in the appeal appear sufficiently from the judgment.

Bijankumar Mukherji for the appellant.*Brajatal Chakraborti* and *Bhagirathchandra Das* for the respondents.*Cur. adv. vult.*

The judgment of the Court was as follows:—

This is an appeal by the Secretary of State for India in Council, the defendant in a suit brought by the plaintiffs respondents in this Court for establishment of their *jote* right to the lands described in schedule 1 to the plaint and for recovery of possession of the lands described in schedule 2 or in the alternative for recovery of possession of the said lands. The allegation of the plaintiffs on which their claim for relief in the suit was based was that the lands in question appertained to a lease granted to them by the Government on the 8th of November, 1920. It was asserted by the plaintiffs that, by subsequent unauthorised action on the part of the Government officers, they were deprived of 2·07 *kânis* of land out of 10 *kânis* odd settled with them. The case

*Appeal from Appellate Decree, No. 2412 of 1932, against the decree of B. Sarkar, Additional District Judge of Chittagong, dated Aug. 11, 1932, confirming the decree of Jnanchandra Banerji, First Subordinate Judge of Chittagong, dated Aug. 20 1929.

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of the Secretary of State for India in Council was that from the settlement granted to the plaintiffs, 2.07 *kânis* of land had to be excluded subsequently in view of a decree passed by the civil court in Title Suit No. 214 of 1919; the aforesaid quantity of land had to be excluded from the plaintiffs' lease, and corresponding deduction from the rent payable by them was made. The courts below arrived at the decision that, regard being had to the provisions contained in the Crown Grants Act of 1895, the plaintiffs were not bound by any decree passed in Suit No. 214 of 1919; that section 52 of the Transfer of Property Act could not apply to the lease granted to the plaintiffs, and that the lands described in schedule 2 to the plaint were improperly excluded by the Government from the plaintiffs' lease. According to the learned Additional District Judge in the court of appeal below, it was quite clear that the lease, which was granted by the Government, could not be taken away in this way before the expiry of the terms of the lease; that in *Khâs Mehâl* transactions also, the Crown Grants Act applied, and that section 52 of the Transfer of Property Act, on which the defendants relied, was not applicable to the case at all. The transaction evidenced by the lease in favour of the plaintiffs granted on the 8th November, 1920, was governed by the Crown Grants Act, and the plaintiffs were, therefore, entitled to recover the lands in suit as forming part of their lease.

The question for consideration in this appeal, that being the only question argued in support of the appeal, is whether the Crown Grants Act applied to *Khâs Mehâl* lands; if it did not, section 52 of the Transfer of Property Act would apply, and the Government could not grant the settlement claimed by the plaintiffs in respect of the lands described in schedule 2 to the plaint, and the lands were, therefore, rightly excluded from the plaintiffs' lease.

In our judgment, the contentions urged on the side of the appellant must be allowed to

prevail, for the reasons mentioned below :—

1. The position of the Government in regard to *Khás Mehál* lands is that of an ordinary landlord, the Government occupying no higher position than that of a *zemindár*: the settlement granted to the plaintiffs in the case before us was by the *Khás Tehsildár*, an officer of the Government in charge of a *Khás Mehál*, the Government being in possession of that *mehál* merely as a private proprietor.

2. The Crown Grants Act, 1895, was an enactment relating to the grants from the Crown, authorising certain limitations and restrictions upon such grants made under its authority. A lease granted by a Government officer in charge of a *Khás Mehál* cannot fall within the category of grants from Crown as referred to in the Crown Grants Act.

3. If the Crown Grants Act had no application to the lease granted to the plaintiffs, as it could not have, section 52 of the Transfer of Property Act was clearly applicable to the case before us, and the Government was justified, in view of the result of the Title Suit No. 214 of 1919, in excluding the lands described in schedule 2 to the plaint from the lease granted to the plaintiffs on the 8th November, 1920.

For the reasons stated above, the action of the Government in excluding 2·07 *kánis* of land from the lease granted to them, to which exception was taken by the plaintiffs in the suit, appears to us to have been justifiable, and in accordance with law.

In the above view of the case before us, the decision arrived at by the courts below in favour of the plaintiffs respondents, must be set aside, and the plaintiffs' suit dismissed.

The appeal is allowed, the decision of the courts below and the decrees passed by them are set aside, and the suit in which this appeal has arisen is dismissed with costs throughout.

Appeal allowed.