MALLIKARJUNA PRASADA NAYUDU v. LAKSHMINARAYANA.

it does not appear that the zamindar has incurred any expenditure in connection with works of irrigation.

We are unable, therefore, to uphold the contention that the Judge was in error in holding that it was not the intention of the raiyats that they should continue to pay the wet rate in dispute in all future years.

The appeals fail, and we dismiss them with costs.

---

## APPELLATE CIVIL.

*Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.*

1893. March 20, 21. April 21.

BHUPATHI (DEFENDANT), APPELLANT,

*v.*

RAJAH RANGAYYA APPA RAU (PLAINTIFF), RESPONDENT.*

*Rent Recovery Act (Madras)—Act VIII of* 1865, *ss.* 1, 11—*Sanction granted by Head Assistant Collector—Procedure—Customary rent—Restraint on building.*

A Head Assistant Collector is competent to grant a sanction for the enhancement of rent under Rent Recovery Act, s. 11.

The granting of such sanction is a judicial and not a merely administrative act and such sanction should not be granted without first giving notice to both the landlord and the tenant, and hearing, and considering the contentions of both parties.

In a suit by the landlord to enforce the exchange of a patta and muchalka, the tenant objected to the rate of rent imposed on part of the land, which was dry land converted into wet. *Held* that the finding of the Lower Appellate Court that there was an implied contract to pay rent at such rate was not open to any legal objection:

It appeared that the patta tendered contained a stipulation for the payment of rent at a special rate for garden (jarib) lands watered by wells which had been constructed by the raiyat at his own cost, and also comprised a stipulation that the raiyat should not build on his holding. The Court of first appeal held that the special rate of rent above referred to was customary and had been followed for many years:

*Held*, that there was no ground for interference on second appeal with the Lower Appellate Court's decision regarding the former of the stipulations above referred to, but that the latter should be so modified as to prevent the raiyat only from raising any building incompatible with an agricultural holding.

SECOND APPEAL against the decree of G. T. Mackenzie, District Judge of Kistna, in appeal suit No. 520 of 1888, modifying the

---

* Second Appeal No. 681 of 1891.

decision of L. M. Wynch, Head Assistant Collector of Kistna, in summary suit No. 761 of 1887.

Suit by the landlord to enforce the exchange of patta and muchalka.

The facts of the case appear sufficiently for the purposes of this report from the following judgment of the High Court.

The defendant preferred this second appeal.

*Parthasaradhi Ayyangar* for appellant.

*Subramanya Ayyar* for respondent.

JUDGMENT.—Plaintiff, respondent, is the zamindar of Nuzvid and appellants are raiyats in the *Jeroyati* village of Mantena comprised in his zamindari. The contest between them is whether the *pattas* tendered for fasli 1296 were such as the raiyats were bound to accept. The first objection urged by them was that the land taken up for excavating Uppaleru drainage channel was not deducted from their holdings on the ground that the Government had paid no compensation for the land so taken up to the zamindar. Both the Courts below allowed this objection, and the zamindar has not appealed from their decision.

The next *item* to which the raiyats object is the rate *per* acre imposed on dry land converted into wet. The rate claimed by the zamindar was Rs. 9-2-8 *per* acre, and the raiyats contended that the proper rate was the rate which had prevailed at the time of permanent settlement in 1802. The Head Assistant Collector and the Judge inferred, from the facts which they accepted as proved, a contract to pay every year Rs. 9-2-8 *per* acre. The contention on appellants' behalf is that no contract can be lawfully implied, the rate of Rs. 9-2-8 having been paid not voluntarily, but under protest and with remonstrance.

The finding that there was an implied contract being one of fact, the question we have to consider on second appeal is whether it is open to any legal objection. The Judge considers it proved that there has been a continuous payment of Rs. 9-2-8 *per* acre from the year 1871 to 1885, and in the Full Bench case of *Venkatagopal* v. *Rangappa*(1) in which it was held that there was an implied contract, the same rate had been paid for fourteen years. It is then argued that the management of the Nuzvid estate has always been oppressive and that the raiyats

(1) I.L.R., 7 Mad., 373.

BHUPATHI v. RAJAH RANGAYYA APPA RAU.

protested against the rate of Rs. 9-2-8 in 1871 and in 1880. We think that the expression of discontent now and then was not sufficient and that the omission to resort to the Revenue Courts for redress for so long a period is significant. Again, the Judge observes that the same rate had been paid down to 1885 and subsequent to the dates of the alleged remonstrance, and that the reasonable inference is that the matter was settled between the parties. In this there is no error of law to justify our interference with the finding. Moreover, there was a similar question raised with reference to the *pattas* tendered for the previous *fasli*, viz., 1295, and it was also decided against appellants. Further, the Judge observes, and we think, very properly, that if it is reasonable for the raiyats to seek to revert to the *faisal* rate which prevailed in 1802, the zamindar may as reasonably go back to the sharing system which is not agreeable to them. We are of opinion that the objection to the inference of a contract to pay at the rate of Rs. 9-2-8 cannot be supported.

The next question is whether the Judge was right in treating as valid the sanction given by the Head Assistant Collector, Ramachandra Rau, for enhancing the rate to Rs. 9-2-8 for fasli 1296 in the cases from which second appeals Nos. 681 and 682 of 1891 arise. In connection with the *patta* tendered for 1295, appellants in those cases objected to the rate and contended that, as they had excavated a distribution channel at a cost of Rs. 115, the zamindar was not at liberty to enhance the rent without the sanction of the Collector. The Head Assistant Collector upheld their objection and directed in his judgment that the cost of excavating the sub-channel be deducted from the *sist* payable to the zamindar. After this deduction had been made, the zamindar applied for sanction to raise the rent to Rs. 9-2-8 *per* acre on lands under the channel, and on 23rd June 1887 the Head Assistant Collector granted the sanction, but without sending notice to the raiyats and calling upon them to show cause why sanction should not be granted. Appellants in second appeals Nos. 681 and 682 of 1891 questioned the validity of the sanction on three grounds, viz., (1) that the Head Assistant Collector was not competent to grant the sanction, (2) that the increase sanctioned was unreasonable, and (3) that the sanction was given without notice to them; but the Judge disallowed these grounds of objection. The term Collector as defined in section 1,

Act VIII of 1865, includes the Head Assistant Collector and the first objection therefore is entitled to no weight. As regards the omission to give notice, it was clearly an irregularity, for the act of giving sanction is a judicial act intended on the one hand to protect the raiyat against excessive enhancement and on the other to secure to the zamindar what may be considered a fair and an equitable increase. A sound decision can, therefore, only be arrived at after hearing both parties and considering what is urged in the interest of each. The sanction prescribed by the *proviso* in section 11 has the force of a binding contract not only for any particular *fasli*, but also for future years, and the power to give such sanction is vested in the Collector as the officer competent to hold the balance evenly between the zamindar and the raiyat. In our judgment, it can only be properly exercised after hearing both sides and after consideration of the rights of both parties under Act VIII of 1865. We are unable to accede to the contention on behalf of the zamindar that the granting of sanction under section 11 is an administrative act and not defective by reason of the raiyats not having been heard. We agree, however, with the Judge that in the present case the irregularity was not material since the Head Assistant Collector had heard what the raiyats had to say in the suit of *fasli* 1295. There is the further fact that the cost of excavating the distribution channel has been deducted from the *sist* payable by the raiyats to the zamindar, and that the rate charged in the case of those raiyats, who had incurred no similar expenditure was Rs. 9-2-8 *per* acre.

Another *item* to which exception is taken in all the second appeals is the rate charged for garden lands watered by wells sunk by the raiyats at their own expense. The Head Assistant Collector found that the *jarib* rates now claimed were customary and that they had been paid for a long series of years, and the Judge has accepted the finding. In the case of *Venkatagiri Raja* v. *Pitchana*(1), it was held that while in the case of lands watered by wells newly constructed by a tenant at his own expense he cannot be deprived of the benefit of the improvements made at his own expense, he cannot, on the other hand, insist on a reduction of the assessment in the case of old garden lands which had paid a

(1) I.L.R. 9 Mad., 80.

BHUPATHI v. RAJAH RANGAYYA APPA RAU.

*manul* garden rate. There are no grounds for interference in second appeal.

The next objection taken by the raiyats is as to the stipulation that the raiyats shall not build houses on the land, and the Judge has allowed the stipulation to stand. The question whether a tenant can build on his lands was discussed in *Ramanadhan* v. *Zamindar of Ramnad*(1), and the decision arrived at in that case was that the tenant was not at liberty to turn land originally let for cultivation into a house site without the consent of the zamindar, and that he is only entitled to raise such buildings as are not incompatible with the character of his holding as an agricultural holding. The stipulation in the *patta* should be so modified as to prevent the raiyat from raising any building incompatible with an agricultural holding.

The last objection taken is as to the tenant's right to cut down trees, and on this point the Judge has decided in accordance with the decision of this Court in *Appa Rau* v. *Ratnam*(2).

We modify the decrees of the District Judge so far as they relate to building on the land as indicated above and confirm them in other respects. The appeals having substantially failed, appellants will pay respondent's costs in second appeals Nos. 681 and 682. The respondent not being represented in the other appeals, we make no order as to costs.

---

## APPELLATE CIVIL.

*Before Mr. Justice Muttusami Ayyar and Mr. Justice Handley.*

1893. January 31. February 1.

RANGASAMI CHETTI (PLAINTIFF), APPELLANT,

*v.*

PERIASAMI MUDALI (DEFENDANT), RESPONDENT.*

*Civil Procedure Code—Act XIV of* 1882, *s*: 273—*Dismissal of an application for execution—Attachment of a decree—Execution of attached decree.*

The holder of a decree dated 1885 applied to execute it, but his application was dismissed in March 1887 on the ground that "no further steps had been taken."

(1) I.L.R., 16 Mad., 407. (2) I.L.R., 13 Mad., 249.

* Second Appeal No. 555 of 1892.