

## APPELLATE CIVIL

*Before Sir C. M. King, Knight, Chief Judge*

1935  
November, 20 MAHBUB ALI KHAN (DEFENDANT-APPELLANT) v. RANI JAJ-  
RAJ KUAR, PLAINTIFF AND ANOTHER, DEFENDANT (RES-  
PONDENTS)\*

*United Provinces Land Revenue Act (III of 1901), sections 79 and 218—Order passed by Settlement Officer determining rent payable by under-proprietor—Board of Revenue, whether can review such order after close of settlement operations.*

Settlement Officer's orders, passed under section 79, U. P. Land Revenue Act, determining rent payable by under-proprietors, are liable to be revised by the Board of Revenue under section 218 of the Act after the close of settlement operations. There is nothing in the language of section 218 restricting the Board of Revenue to revise such orders only during the continuance, and not after the close of settlement operations. No time limit is fixed within which revisional powers are to be exercised and there is nothing in the statute which would prohibit the Board of Revenue from correcting an error made by the Settlement Officer even though the error has come to light after the close of settlement operations.

Mr. *Hyder Husain*, for the appellant.

Mr. *M. Wasim*, for the respondents.

KING, C.J.:—This is a defendants' appeal arising out of a suit for arrears of rent.

The defendants were granted under-proprietary rights in the village in question by a deed of gift dated the 17th of November, 1912, executed by the late Taluqdar. This deed of gift specified that the donees were to pay to the Taluqdar an annual rent equal in amount to the Government revenue and cesses plus the subscription to the British Indian Association and Canning College with an addition of 5 per cent. on the Government revenue. It is also laid down that the donees would be made responsible for subsequent enhancement of revenue and cesses which may be made

\*Second Rent Appeal No. 69 of 1933, against the decree of M. Moham-mad Abdul Haq, District Judge of Rae Bareli, dated the 10th of July, 1933, modifying the decree of Khan Sahib Mirza Jafar Ali Khan, Assistant Collector, First Class, Rae Bareli, dated the 8th of August, 1932.

at future settlements. The donees continued to pay rent, calculated on the terms laid down in the deed of gift, until the recent settlement. In the recent settlement the Settlement Officer was bound under section 79 of the U. P. Land Revenue Act to determine the rent payable by the defendants as under-proprietors. He failed to determine the rent but passed an order as follows:

“The parties can fix their own rent as it was formerly arranged between themselves and not fixed by decree of Court.”

It is clear therefore that the settlement officer did not fix any rent at all. Nevertheless an entry of Rs.754 was recorded in the revenue papers as the rent payable by the defendants. It is not known how that figure was arrived at.

As the result of the settlement was to increase the Government revenue the plaintiff Taluqdaria claimed enhanced rent calculated according to the terms laid down in the deed of gift. As the revenue had been enhanced from Rs.605 to Rs.743-12 the plaintiff claimed rent at the rate of Rs.863-11. The defence was that the defendants were not bound to pay any enhanced rent as the Settlement Officer had not fixed the rent under section 79.

The trial Court decreed rent at the rate of Rs.754 as entered in the revenue papers.

The plaintiff appealed. He also filed an application for revision in the Court of the Commissioner against the order passed by the Settlement Officer refusing to fix the rent under section 79. The Commissioner reported the matter to the Board of Revenue and the Board of Revenue called for a report from the Deputy Commissioner, holding that the Board of Revenue had jurisdiction to correct the error made by the Settlement Officer in refusing to fix the rent. On the 23rd of May, 1933, the Board of Revenue passed an order in exercise of its revisional powers declaring that the rent, from

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1937 to 1941 Fasli was Rs.843-11 per annum. As pointed out by the Court below the figure mentioned in the Board's order appears to be wrong. The Board evidently intended to accept the Deputy Commissioner's report to the effect that the rent should be Rs.863-11, but, apparently owing to a clerical mistake, the operative portion of the Board's order mentioned the figure Rs.843-11.

The lower appellate Court admitted the Board's order and the orders leading up to it, in evidence and passed a decree at the rate specified in the Board's order.

The point taken by the defendant-appellant is that the Board had no jurisdiction to revise the order passed by the Settlement Officer refusing to fix the rent of the defendants as under-proprietors. The argument is that although the order passed by the Settlement Officer was subject to appeal on revision during the continuance of settlement operations, the Board had no jurisdiction to revise it after the close of the settlement operations.

No clear authority has been shown in support of this contention. Section 59 of the U. P. Land Revenue Act lays down that when the Local Government decides that any district shall be brought under settlement then it shall publish a notification to that effect and every such district shall be held to be under settlement from the date of the notification until the issue of another notification declaring settlement operations to be closed therein. It is not clear from the record on what date the notification was issued declaring settlement operations to be closed in the Rae Bareilly district, but it has been accepted for the sake of argument that settlement operations must have been closed before the Board passed its order on the 23rd of May, 1933. Section 60 authorises the Local Government to appoint Settlement Officers who are empowered to exercise the powers conferred upon them by the Act so long as the local area is under settlement. It may be admitted that as soon as a notification has been issued, declaring settle-

ment operations to be closed in a district, then the officer appointed as Settlement Officer of that district would have no jurisdiction to exercise any of the powers conferred upon him as Settlement Officer. In the present case therefore the Settlement Officer admittedly would have no jurisdiction to fix the rent under section 79 after the close of settlement operations. I see no reason for holding that the Settlement Officer's orders passed under section 79 are not liable to be revised by the Board of Revenue under section 218 of the Land Revenue Act after the close of settlement operations. There is nothing in the language of section 218 which appears to restrict the powers of the Board of Revenue in the manner suggested. No time limit is fixed within which revisional powers are to be exercised and I find nothing in the statute which would prohibit the Board of Revenue from correcting an error made by the Settlement Officer even though the error has come to light after the close of settlement operations. No judicial authority has been cited in support of the appellant's contention.

Taking this view it is unnecessary for me to consider any other points which have been raised, such as the competency of this Court to challenge the jurisdiction of the Board of Revenue to pass the order in question.

In my opinion the Court below has come to a right decision and I dismiss the appeal with costs.

*Appeal dismissed.*

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