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the account papers of Mr. Saiyid Ahmed Nāwab. The enquiry will therefore be limited to the papers of Mr. Saiyid Ahmed Nawab. If the village papers kept by the village *amlas* during the period of the guardianship of Mr. Ahmed Nawab or the accounts produced by him in Court show any realization from tenants or *thikadars* for the period for which Abbasi Begum was made liable, such realizations must be credited in favour of Abbasi Begum and she must be called upon to pay only the balance left after giving credit for such realizations.

The result is that the appeal is allowed and the order of the District Judge is set aside with costs.

MULLICK, J.—I agree. If Mr. Ahmed Nawab has by arrangement realized part of the balance of Rs. 1,475 due from the appellant it cannot be said that there has been failure on her part to pay the sum of Rs. 1,475. Therefore a fresh notice must issue for the sum really due.

Appeal allowed.

APPELLATE CIVIL.

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June, 19, 20. 23. July, 18. Nov., 14. Dec., 19.

Before Das and Ross, J.J.

BANSHIDHAR SHARAFF

v.

THAKUR ASHUTOSH DEO.*

Birbhum Ghatwali *Tenure—Inalienability of—Birbhum* Ghatwali *Regulation,* 1829 *(Regulation XXIX of* 1829)—*Commutation of* ghatwali *service, effect of— Santal Parganas Rural Police Regulation,* 1910 *(Regulation IV of* 1910).

It is only the duty of supporting the police imposed by section 1 of the Birbhum *Ghatwali* Regulation, 1829, which

* Appeal from Original Order no. 269 of 1923, from an order of B. Bhabadev Sarkar, Subordinate Judge of the Santal Parganas, dated the 15th of January, 1923.

distinguishes the position of the Birbhum *ghatwals* from that of the ordinary *zamindar*, and where that duty has been commuted for a money-payment under the Santal Parganas Rural Police Regulation, 1910, the *ghatwal* tenure is freed from the burden of service and the condition of inalienability ceases to attach to the tenure.

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Where an estate is freed from the condition of inalienability it becomes alienable subject to the statutory limitations on the nature of the estate itself. An estate in which long leases can be granted only under certain conditions imposed by statute, may nevertheless itself be freely alienable.

Kumar Satya Narain Singh v. *Raja Satya Niranjan Chakravarti*(1), *Radha Bai* v. *Anantrav*(2) and *Bhagwat Buksh Roy* v. *Sheo Prasad Sahu*(3), relied on.

Lakshmi Narayan Mahton v. *Satya Narain Chakravarty*(4) and *Midnapur Zamindari Co., Ltd.* v. *Ajambar Singh Mura*(5) distinguished.

Sartukchander Dey v. *Bhagat Bharat Chandra Singh*(6) and *Balli Dubey* v. *Genai Deo*(7), referred to.

Appeal by the decree-holder.

This was an appeal from an order of the Subordinate Judge of the Santal Parganas refusing an application for attachment and sale of the right, title and interest of the judgment-debtor in a *ghatwali* tenure consisting of *taluks* Rohini, Tiljuri, Star, Gamardiha and Sardha Kokra in execution of a decree obtained against him. Among the grounds of the application were these:

"That the *ghatwals*, as they are at present, enjoy their estate without doing anything or rendering any service whatsoever save and except paying a lump sum for the maintenance of the village *chaukidars* and for keeping watch over the villages held by them";

and

"that inasmuch as the Government has commuted for a money payment the services due from the *ghatwals*, at the present time their

(1) (1924) I. L. R. 3 Pat. 183, P. C.
(2) (1885) I. L. R. 9 Bom. 198.
(3) (1917-18) 18 Cal. W. N. 297.
(4) (1916) 1 Pat. L. J. 197.
(5) (1916) 1 Pat. L. J. 601.
(6) (1853) 9 Sadar Dewany Adalat Reports, 900; 13 I. D. (O. S.) 682.
(7) (1908) I. L. R. 9 Cal. 388.

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liability to police service has taken the form of money payment towards the maintenance of village *chaukidars* and the Government will not be prejudiced in any way by the tenure in question being sold, it having released the *ghatwals* from their liability to perform police service subject to a money payment by the *ghatwals* in the shape of the *chaukidari* dues."

In a petition of which a copy was annexed to the application for execution, the decree-holder narrated the facts leading to the appointment of a Receiver of the income of the Rohini estate for the satisfaction of certain decrees held against the *ghatwal*; and, on the ground that the payments made by the Receiver to the decree-holders were inadequate, he applied for the sanction of the Government to the sale of the tenure. In his reply to the application the judgment-debtor stated that Birbhum *ghatwalis* like Rohini are, under the law and immemorial custom and usage, not liable to sale; but did not traverse the allegation that the services had been commuted to a money payment. The learned Subordinate Judge in his order discussed the various decisions which establish the inalienability of the Birbhum *ghatwalis* and on the strength of these decisions refused the application. With regard to the question of commutation all that he said was this:

"That the services to be rendered by the *ghatwal* have at present been commuted to a money payment does not alter the character of the incidents of the tenure which, from the decisions referred to above, is clearly inalienable and not liable to sale for the personal debts of the *ghatwal*."

In appeal it was contended that the services attached to this *ghatwali* had been commuted for a money payment and that consequently the reason for the inalienability had ceased and the inalienability itself had therefore ceased; and, secondly, that in any view, the life interest of the judgment-debtor was saleable.

Noresh Chandra Sinha and *Siva Narain Bose*, for the appellant.

Hasan Imam (with him *Susil Madhab Mullick*, *Jagannath Prasad*, *Norendranath Sen* and *Bindeswari Prasad*), for the respondents.

Cur. adv. vult.

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Ross, J. (after stating the facts set out above, proceeded as follows): I shall deal first with the question whether the life interest of the judgment-debtor is saleable. It was argued from the following words in the preamble to Act V of 1859:

"It is expedient that the power of granting leases for periods not limited by the term of their own possession should in certain cases be extended to the possessors of such lands",

that the *ghatwal* always had a power of leasing for his life and that consequently his life interest is saleable. It is true that the power of leasing for life is recognized, but no other form of alienation is recognized; and, in my opinion, it cannot be inferred from the words quoted that the life interest of the *ghatwal* can be sold in execution.

The main argument, however, is on the point of commutation. It is conceded by the appellant that the Birbhum *ghatwalis* were inalienable [*see*, for example, *Sartukchander Dey* v. *Bhagat Bharatchandra Singh* (1) and *Balli Dubey* v. *Genai Deo* (2), a case which refers to the Rohini *ghatwali* where it was observed that the tenure had been repeatedly held by the Court not to be liable for debt]. It is unnecessary to refer to the decisions at length because the point is conceded.

The learned Vakil for the appellant referred to the regulations and statute governing this tenure. In section 1 of Regulation XIX of 1814, the Birbhum *Ghatwali* Regulation, reference is made to the fact that the *ghatwals* held their lands in perpetuity subject to the payment of a fixed and established rent to the *zamindar* of Birbhum

'and to the performance of certain duties for the maintenance of the public peace and support of the police."

Act V of 1859 is a legislative recognition of the fact that the *ghatwals* have not the power of alienating their lands, and gives power to grant leases for terms extending beyond the lifetime of the *ghatwal* in certain cases for the development of the mineral resources

(1) (1853) 9 S. D. A. R. 900; 13 I. D. (O. S.) 682.
(2) (1908) I. L. R. 9 Cal. 888.

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of the country and for the improvement of the lands. Then came the Police Regulation III of 1900. This is now superseded by Regulation IV of 1910 which was enacted for the organization and maintenance of the rural police in the Santal Parganas and applies to Tapah Sarath Deoghar within which the Rohini *ghatwali* is situated. The Regulation empowers the Deputy Commissioner to form circles and to appoint *sardars* for each circle (section 4); the *sardar* may appoint a deputy *sardar* subject to the approval of the Deputy Commissioner (section 5) and the Deputy Commissioner is to determine the number of *chaukidars* to be employed (section 6). Section 7 of the Regulation empowers the Deputy Commissioner to determine the amount required for the salaries and equipment of the *sardars*, deputy *sardars* and *chaukidars*; and section 8, which is the important section in this connection, enacts as follows :

" Where a *zamindar* or under tenure-holder holds subject to the condition, expressed or implied, of supporting the police within his *zamindari* or under tenure, he shall be liable to pay the amount determined by the Deputy Commissioner under section 7."

It may be noted that by the definition in section 3 the *ghatwal* of Rohini is a '*zamindar*'. The argument is that the payment of the amount determined by the Deputy Commissioner for the support of the rural police established by the Regulation takes the place of the police services that have been required from the *ghatwal* and that therefore the condition of inalienability has ceased to attach to the tenure. It is contended that no duty is now imposed upon the *ghatwal* except a money payment which requires no personal qualification and stands on no different footing from the payment of ordinary Government dues. The personal service has been released and has been commuted for a money payment. To use the words of their Lordships of the Judicial Committee in *Kumar Satya Narain Singh* v. *Raja Satya Niranjan Chakravarti* (1) "the lands are merely subjected to a pecuniary charge, so that the personality or the

(1) (1924) I. L. R. 3 Pat. 183, P. C.

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appointment of the holder would be of no importance." Reference was made to the decision in *Radha Bai Anantrav* (1) where the following passage occurs in the judgment of West, J., "So long as lands are assigned by the sovereign for the support of a public office or the land tax payable on lands is remitted in consideration of services to be performed by a particular family or line of holders, the lands are, according to the principles of the Hindu law and the customary law of the country, incapable of an alienation or disposal such as to divert them or the proceeds of them from the intended purpose..............When an estate is freed from its connection with a public office, the reason arising from that connection for the preservation of the estate intact and unencumbered necessarily fails. There is not in the lands themselves according to the Hindu Law an inherent quality limiting them to special kinds of ownership and devolution. They become subject to the ordinary laws of descent and disposal just as where a particular custom concerning them has been abandoned" [*see* also *Bhagwat Bukhsh Roy* v. *Sheo Prasad Sahu* (2), where it is said: "On principle it may well be maintained that when service can no longer be enforced and the tenure consequently ceases to be a service tenure, the land can be alienated. When an estate is freed from the burden of service the reason for the preservation of the estate as inalienable disappears; alienation can be prohibited only with a view to prevent the permanent severance of the estate from the services annexed to it"]

In reply the learned Counsel for the respondent argued in the first place on section 2, Regulation IV of 1910, which empowers the local Government by a notification in the Gazette to withdraw the regulation or any part thereof from any portion of the Santal Parganas and to extend the regulation or any part thereof to any portion of the Santal Parganas from which the same has been so withdrawn, that the

(1) (1885) I. L. R. 9 Bom. 198. (2) (1917-18) 18 Cal. W. N. 297 (309).

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regulation is of a temporary character and cannot affect the permanent incidents of the *ghatwali* tenures. In my opinion there is nothing in this section to justify the contention that the regulation is a temporary measure. It is a permanent enactment; and the fact that the power to extend or withdraw its provisions has been entrusted to the local Government does not affect its permanent character. It was suggested that if the services were taken to have been commuted while the regulation was in force, the withdrawal of the regulation, which might occur at any time, would re-establish the duty of police service in the tenure and that consequently it could not have been the intention of the Regulation to commute the services. This suggestion, however, is contrary to one of the recognized principles of statute law. If a right has once been acquired by virtue of some statute, it will not be taken away again by the repeal of the statute under which it was acquired. Puffendorf, in his Law of Nature and Nations, book I, chapter VI, section 6, says:

"The law itself may be disannulled by the author; but the rights acquired by virtue of that law itself in force still remain; for together with a law to take away all its precedent effects would be a high piece of injustice" (Craies on Statute Law, third edition, page 347).

This principle is expressly recognized by section 6 of the General Clauses Act (X of 1897) which provides that the repeal of an Act shall not affect any right, privilege, obligation or liability acquired, created or incurred under any enactment so repealed.

In the second place it was contended for the respondent that there has in fact been no commutation. This argument rests on a construction of the words quoted above from section 1 of Regulation XXIX of 1814:

"Subject..................to the performance of certain duties for the maintenance of the public peace and support of the police."

It is argued that all that has been commuted is the duty of support of the police and that the duties for

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the maintenance of the public peace remain unimpaired and the tenure therefore remains inalienable. It is pointed out that in section 8 of Regulation IV of 1910 the words are:

"Subject to the condition, expressed or implied, of supporting the police."

It is argued that this expression by necessary implication leaves the duty of maintenance of the public peace unimpaired and uncommuted.

Learned Counsel supported his argument by a reference to the *kabuliyat* and *muchalka* executed by the present *ghatwal* in 1911, that is, subsequently to the passing of Regulation IV of 1910. He contended that the *muchalka* provides for the performance of duties personal to the *ghatwal* beyond the duty of supporting the police and that these duties have not been commuted by the Regulation.

The learned Government Advocate, who was heard as *amicus curiae* on behalf of the Government (not a party), supported the argument of the respondent. He contended that the *ghatwal* was liable for duties of two kinds; first, personal duties; and, secondly, duties performed by others under him, employed by him and paid by him. What was done by Regulation IV of 1910 was that the amount of money which the *ghatwal* had to pay to his *chaukidars* was commuted for a lump sum to be paid to the Deputy Commissioner of the district who, in turn, paid the *chaukidars*, and the *chaukidars* thus became the officers of the Deputy Commissioner; but the personal services of the *ghatwal* remained intact. It was argued, on the proviso to section 4 of the Regulation, that the *ghatwal* becomes a *sardar* of the circle formed under that section and that power is given by section 25 to the local Government to make rules regulating, among other things, the appointment and dismissal of *sardars*. It was argued that under the Regulation the *ghatwal* is still liable to dismissal by the Deputy Commissioner and

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that therefore his personal liability remains and the duties of performing the function of *sardar* have not been commuted.

I shall deal first with the argument of the learned Government Advocate which, in my opinion, is unsound. The proviso to section 4 does not necessitate the appointment of a *ghatwal* as *sardar*. It merely provides :

> "That, in the Damin-i-Koh and in the *ghatwalis* subject to the provisions of the Bengal *Ghatwali* Lands Regulation, 1814, the circles shall be so formed as to admit of the duties of *sardar* being performed by *parganaits*, *sardars* or *ghatwals*, as the case may be, according to existing arrangements."

This merely means that the circles are to be such as to admit of the possibility of the performance of the duties of *sardar* by the existing *ghatwal* : it does not mean that the existing *ghatwal* is necessarily to be appointed *sardar*. The learned Government Advocate was unable to say whether the appellant had been appointed *sardar*; and, as the Rohini *ghatwali* is an estate of large extent, it appears unlikely that the *ghatwal* should be a *sardar* within the meaning of the Regulation whose salary is fixed between the limits of Rs. 8 and Rs. 12 a month. In any case, even if he had been appointed *sardar*, the power of dismissal would affect his appointment as *sardar* only, and not his position as *ghatwal*, because he is in reality a different person when performing the duties of *sardar* from what he is as *ghatwal*. It may be noted that the regular police administration is enforced in the Deoghar Subdivision (*see* Gazetteer of the Santal Parganas, page 232) and that the rules, which were framed under section 24 of Regulation III of 1900, corresponding to section 25 of Regulation IV of 1910, are rules applicable to the police tracts other than the Deoghar Subdivision (*see* the Santal Parganas Manual, 1911, at page 119). There is therefore no foundation in fact for the argument which has been based upon the proviso to section 4 and on section 25 of the Regulation. The rest of the argument of the learned

Government Advocate is the same as that advanced on behalf of the respondent and requires an examination of the terms of the *kabuliyat* and *muchalka*. Now these terms must be construed in the light of the provisions of Regulation XXIX of 1814, by which it is recognized that the *ghatwals* therein referred to are entitled to hold their lands generation after generation in perpetuity subject to the payment of a fixed and established rent to the *zamindar* of Birbhum and to the performance of certain duties for the maintenance of the public peace and support of the police. The duties imposed by the *kabuliyat* and *muchalka* must therefore be duties for the maintenance of the public peace and support of the police. It is conceded that the duties of supporting the police have been commuted; but it is contended that the *muchalka* contains terms which impose duties of a personal nature on the *ghatwal* other than duties of supporting the police. Learned Counsel referred first to the clause of the *muchalka* under which the *ghatwal* undertakes to continue as before the arrangement of *amals*. This, in my opinion, is nothing more than an undertaking to respect the law regulating the appointment of officials such as *patwaris*. He next referred to the clause:

> "Whenever pilgrims and other persons pass through my *taluk* I will take them from my jurisdiction to another jurisdiction and make them over to the *chaukidar* of the same."

It is contended that this is a personal duty which has nothing to do with supporting the police. It is, however, clearly not a personal duty, as it would be physically impossible for the *ghatwal* himself to conduct the pilgrims and other travellers through his *taluk*. There is a further duty to lodge information of any dacoity, highway robbery, murder and other petty or serious occurrence happening within his *taluk* and to enquire into it. This is an ordinary *zamindari* duty. The *ghatwal* also undertakes not to discharge, without the orders of the Government, such persons under him as have been engaged in doing police duties; and, if it be found necessary to discharge any such

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person then he will first send an information thereof and report his faults to the authorities and abide by such orders as will be passed by them. This duty has clearly passed away with the control of the *chaukidars* and is now vested in the Deputy Commissioner by the Regulation, as has also the duty of submitting a list every year to the authorities of such persons as serve under the *ghatwal*. I can find nothing in this *muchalka* imposing any duty of a special character distinguishable from the duties of an ordinary *zamindar* with respect to the maintenance of the public peace upon the *ghatwal*. The duties are the duties imposed by the ordinary *zamindari sanad* [*see* Regulation I of 1793, section 1: the Fifth Report (Firminger, Volume I, page xlvi); and Sir John Shore's Minute, paragraph 166; and the examples of *sanads* and *muchalkas* in Phillips on the Land Tenures of Lower Bengal, pages 478 and 479]. At page 106 Phillips says that:

"The *sanad* says what were the duties of the *zamindar* and that they were duties devolving upon him as a representative of the Government in respect of the revenue as well as in respect of the preservation of order......................He was also bound, it seems, to assist the sovereign in case of invasion. He was further responsible for the peace and order of his *zamindari*."

It is only the duty of supporting the police imposed by section 1 of Regulation XXIX of 1814 which distinguishes the position of the Birbhum *ghatwals* from that of the ordinary *zamindars* and it is this duty of supporting the police which is expressly dealt with in Regulation IV of 1910. As that duty has been commuted for a money payment, it appears to me that nothing is left beyond the duties of the ordinary *zamindar*.

Learned Counsel for the respondent also referred to Act V of 1859 and contended that the necessity for obtaining the sanction of the Commissioner of the Division to leases granted under that Act is inconsistent with the alienability of the *ghatwali* itself. I can

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see no inconsistency. If the *ghatwali* has become alienable, it will be alienable subject to the statutory limitations on the nature of the estate itself; and I can see no reason why an estate in which long leases can only be granted under certain conditions imposed by statute should not itself be freely alienable.

Finally, reference was made to the decisions in *Lakshmi Narayan Mahton* v. *Satya Narain Chakravarty* (1) and *Midnapur Zamindari Co., Ltd.*, v. *Ajambar Singh Mura* (2), cases decided after the Regulation of 1914. These cases, however, do not touch the present question. The first was not a case of Birbhum *ghatwali*, but of a *ghatwali* of Jamtara under the Raja of Hetampur where the appointment and dismissal of the *ghatwal* rested with the Raja and not with the Government. Similarly the second case was a case of a Singhbhum *ghatwali* held under the Raja. There is nothing in these decisions inconsistent with the contention on behalf of the appellant in the present case; and learned Counsel was unable to point out any decision on a Birbhum *ghatwali* subsequent to 1910 in his favour.

In *Kumar Satya Narain Singh* v. *Raja Satya Niranjan Chakravarty* (3) the Judicial Committee laid down the following rule: "To terminate the *ghatwali* character of the lands it seems to their Lordships that it is necessary to find something done or omitted to be done on the part of the Government, as the grantor, which would have the legal effect of a surrender and regrant of the lands on new terms or at any rate of a release of the right to appoint the *ghatwal* and call for the performance of the services." The learned Vakil for the appellant contends that this is the effect of Regulation 4 of 1910. Plainly the burden imposed upon the *ghatwal* could not be increased. The liability to pay which is imposed by section 8 must, therefore,

(1) (1916) 1 Pat. L. J. 197. (2) (1916) 1 Pat. L. J. 601.
(3) (1924) I. L. R. 3 Pat. 183 (217), P. C.

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be construed as being imposed in substitution for the pre-existing duty of supplying the police force. It is argued that this has the legal effect of a surrender and regrant of the lands on these terms or of a release of the right to call for the performance of the services. For the respondent it is pointed out that there is no express release. But is there not a release by necessary implication? This is the view which has been taken by this Court in *Tikait Thakur Narain Singh* v. *Nawab Syed Dildar Ali Khan* (1). The fact that in that case it was held that the tenure was not a *ghatwali* does not affect the reasoning on the subject of commutation, although the case cannot be referred to as an authority deciding the present question. In my opinion the performance of the special services which rendered this *ghatwali* inalienable has been released in consideration of a money payment. There is no longer any question of the 'personal competence' of the *ghatwal*, to use the words of their Lordships of the Judicial Committee in the case already referred to, and there is, therefore, no reason to hold that the *ghatwali* is any longer inalienable.

I would, therefore, allow this appeal and reverse the decision of the learned Subordinate Judge and direct that the execution do proceed in due course. The appellant is entitled to his costs here and in the Court below.

It may be added that the learned Vakil for the manager of the estate argued that there could be no attachment or sale without the leave of this Court, because he is an officer of this Court and the property is in the hands of the Court. This objection appears to be sound, but it was never taken before and the learned Vakil for the appellant says that he is prepared to apply for leave.

DAS, J.—I agree.

(1) (1924) I. L. R. 3 Pat. 915.