1944
April 18, 24.

RAO BAHADUR KUNWAR LAL SINGH

v.

THE CENTRAL PROVINCES AND BERAR

[SIR PATRICK SPENS C.J., SIR SRINIVASA VARADACHARIAR and SIR MUHAMMAD ZAFRULLA KHAN JJ.]

Government of India Act, 1935, ss. 205, 299 (2)—Central Provinces Land Revenue Act (II of 1917), s. 88, Chap. VI—Central Provinces Revision of the Land Revenue of Estates Act (I of 1939), s. 2, Schedule—Settlement of land revenue for particular term and until new settlement was made—Enhancement of land revenue by Act of Legislature without new settlement—Validity of Act—Nature of rights under revenue settlement—Enhancement of revenue, whether involves acquisition of rights over land—Provision for payment of compensation, whether necessary—Federal Court—Appeal from judgment of single Judge of High Court—Maintainability.

The Central Provinces Land Revenue Act of 1917 provided that if the assessment of an estate has been accepted under that Act, the proprietors shall be bound to pay the land revenue assessed thereon from such date and for such term as the Provincial Government may appoint in this behalf, or, if at the expiry of such term no new settlement has been made, until a new settlement has been made. The Central Provinces Revision of the Land Revenue of Estates Act, which was passed in 1939, enacted that with effect from July 1, 1938, the land revenue payable to the Government in respect of certain estates, mentioned in the Schedule to the Act, should, notwithstanding anything contained in the Central Provinces Land Revenue Act of 1917, be enhanced to the amounts shown in the said Schedule; and by an amending Act of 1941 it was further provided that these amounts should be deemed to have been assessed, offered and accepted under the Central Provinces Land Revenue Act of 1917. The land revenue in respect of the appellant's estates was settled under the Act of 1917 at Rs. 90,800 for a period of 19 years from July 1, 1919, and July 1, 1920, "and thereafter until a fresh settlement was made," but was purported to be enhanced by Rs. 25,886 by the Act of 1939, and the appellant instituted a suit against the Government of the Central Provinces and Berar for a declaration that the Act of 1939 was *ultra vires* the Legislature of the Central Provinces and Berar inasmuch as (i) he had a contractual and statutory right to hold under the terms of the earlier settlement until a new settlement was made and he could not be deprived of this right by the Legislature, (ii) the enhancement of the assessment involved compulsory acquisition of his rights in the land and under s. 299 (2) of the Constitution Act, the Legislature had no power to make a law authorising such compulsory acquisition without providing for payment of compensation.

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Held, (i) that there was nothing in the Act or kabuliyats under which the appellant held the estates which amounted to any contractual or statutory right which could not at any time be varied, suspended or repealed by enactment of the competent Legislature, and as the Legislature of the Central Provinces and Berar has power to legislate in regard to land revenue under item 39 of List II of the Seventh Schedule to the Government of India Act, there was nothing to prevent that Legislature acting directly in the matter and enacting in respect of all or some existing assessments that the same should be increased as from a specified date to a specified amount; (ii) that the increase in the land revenue did not involve any acquisition of land or any rights in or over it, and the impugned Act did not in any way contravene s. 299 (2) of the Government of India Act.

Held also, that if a substantial question of law as to the interpretation of the Government of India Act or any Order in Council made thereunder is involved in a case heard by a Single Judge of a High Court, and a judgment, decree or final order is given in that case, a certificate under s. 205 (1) of the Constitution Act not only may, but should be, granted, and thereupon an appeal would lie direct to the Federal Court, even though under the Letters Patent of the High Court the aggrieved party could appeal to a Division Bench of the High Court.

APPEAL from the High Court of Judicature at Nagpur. Case No. XXIII of 1943.

The facts are stated in the headnote and appear more fully from the judgment.

1944, April 18. *W. B. Pendharkar* (*S. B. Palsole* with him) for the respondent raised a preliminary objection that the appeal was not maintainable.

S. B. Palsole. The judgment appealed from is that of a Single Judge sitting on the Original Side of the High Court. Under the Letters Patent, an appeal lies from such a judgment to a Division Bench of the High Court. Under s. 205 (1) of the Constitution Act an appeal lies to the Federal Court only from a final judgment or order of a High Court. The point was raised before this Court in *Thakur Jagannath Baksh Singh's* case [1] but it was not necessary to decide that question and the matter was left open.

M. R. Bobde and *Rai Bahadur Harish Chandra* (*G. R. Bapat* with them) for the appellant. Under s. 205 (1), if a certificate is given by the High Court

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an appeal lies to the Federal Court. It does not matter whether the judgment was that of a Single Judge or a Division Bench. No objection was raised before Bose J. who granted the certificate. The omission of s. 111-A from the Civil Procedure Code is conclusive on this point. "Any" in s. 205 (1) is very wide. In a case of doubt jurisdiction should not be refused.

R. B. Harish Chandra continuing. Appeal is a matter of statutory right. The only condition laid down by the Constitution Act is the grant of a certificate. Other restrictions should not be imposed.

S. B. Palsole replied.

Their Lordships called upon the counsel to argue the case on the merits.

M. R. Bobde for the appellant. The Central Provinces Act (I of 1939) contravenes s. 299 (2) of the Constitution Act. The appellant's right comes within the definition of "land" in s. 299, cl. (5), and he cannot be deprived of his right without payment of compensation. Under the C. P. Land Revenue Act (II of 1917) and the settlement of 1921 the appellant has a right to hold the land on payment of the *jama* fixed. A settlement is made with mutual consent and once a settlement is made, it cannot be altered by the Government to the proprietor's prejudice without payment of compensation under s. 299 (2). So long as a new settlement is not made, the previous settlement must continue. A higher assessment cannot be levied without a new settlement. Act VI of 1929 lays down the principles on which a new settlement can be made. The impugned Act contravenes the provisions of the previous Acts The essential concept of a settlement is one of contract. The Government has now broken the contract and compulsorily acquired the appellant's right in the lands. The acquisition is for public purposes within s. 299 (2). Increasing the revenue of the State is a public purpose.

S. B. Palsole for the respondent. Fixing land revenue by an Act does not amount to acquisition of land for public purposes. Section 299 (2) has no application at

all. Increasing land revenue does not amount to acquisition of any rights in or over land. Provincial Governments have power to assess and increase land revenue: see item 39 of List II of the Seventh Schedule to the Constitution Act. They may do this by settlement or by Act or by other methods. The old practice was to assess by executive orders for a period of years.

M. R. Bobde in reply. If land revenue is increased very much the proprietor may, in effect, be deprived of his land. The Legislature would be doing indirectly what cannot be done directly. In such cases the enactment would be void. We have to look to the substance and not the form. Colourable devices should not be permitted : *Board of Trustees of Lethbridge* v. *Independent Order of Foresters* (1) *Attorney-General for Alberta* v. *Attorney-General for Canada* (2) and *Madden* v. *Nelson and Fort Sheppard Ry.* (3).

Cur. adv. vult.

April 24. The judgment of the Court was delivered by

SPENS C. J.—The appellant, Rao Bahadur Kunwar Lal Singh, is a zamindar holding three estates in the Central Provinces known as Kamtha, Wadad and Deori-Kishori. These are held in zamindari rights and are among the zamindaries known as the Wainganga zamindaris. The zamindars are assessed periodically in respect of their estates for "takoli". Such assessments are made as part and parcel of the periodical settlement of land revenue for the areas in which the estates are situate. Early in January 1939 the appellant was holding his estates subject to the liability for takoli as follows :—

	Rs.
Kamtha	71,000
Wadad	19,000
Deori-Kishori	1,800

Such liability arose under and by virtue of the last periodical settlement of land revenue, namely that known as Gordon's Settlement made in 1916-1921 and completed in accordance with the provisions of the

(1) [1940] A. C. 513. (2) [1939] A. C. 117. (3) [1899] A. C. 626, at P.

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Central Provinces Land Revenue Act, 1917 (hereinafter referred to as "the Act of 1917"). Assessments at the above figures were duly made in respect of the appellant's estates and duly offered in accordance with s. 82 of the above Act by three kabuliyats of the 8th January 1921. These were deemed to have been accepted and made binding by three orders of the 5th May 1921 made in accordance with the provisions of s. 87 of the said Act. The said kabuliyats and orders were produced as exhibits in the action and were numbered P. 4, 5, 6, 7, 8, 9 respectively. It is to be noted that the kabuliyats and orders in respect of the Kamtha and Wadad estates purported to make the assessments binding for the period of "19 years, that is, from the 1st of July 1919 A. D. up to the 30th June 1938 and thereafter till a fresh settlement is made"; whereas the kabuliyat and order in respect of the Deori-Kishori estate were for the period of 19 years from the 1st of July 1920 to the 30th June 1939 and thereafter till a fresh settlement was made.

Section 88 of the Act of 1917, so far as material, provides as follows:—

"88. If the assessment of an estate, mahal or land has been accepted under this Act, the proprietors shall be bound to pay the land revenue assessed thereon, together with, in the case of an estate or mahal, the land revenue assessed on any separately assessed plots of land included therein, from such date and for such term as the Provincial Government may appoint in this behalf, or, if at the expiry of such term no new assessment has been made and is ready to take effect, until a new assessment has been made and is ready to take effect.... ".

The Act of 1917 was amended, supplemented or varied in matters not material to this case by the Central Provinces Settlement Act of 1929 (Act No. VI of 1929).

On the 6th of January 1939 the Central Provinces Revision of the Land Revenue of Estates Act, 1939 (Central Provinces and Berar Act No. I of 1939)

purported to take effect. The said Act (hereinafter called "the Act of 1939") provided by s. 2:—

"2. With effect from the 1st of July 1938, the land revenue payable to Government in respect of the estates named in the second column of the Schedule under their current settlement shall, notwithstanding any contract to the contrary or anything contained in the Central Provinces Settlement Act, 1929, or in Chapter VI of the Central Provinces Land Revenue Act, 1917, but without prejudice to the proviso to sub-section (1) of section 85 of the latter Act, be enhanced to the amounts shown in the third column of the said Schedule."

And in the Schedule appear the following entries :—

	Rs.
Kamtha	93,386
Wadad	24,250
Deori-Kishori	2,570

Since the passing of the said Act, by agreement the following figures have been substituted for those quoted above from the Schedule :—

	Rs.
Kamtha	91,440
Wadad	23,702
Deori-Kishori	2,544

Moreover s. 2 of the said Act has been amended by the Central Provinces and Berar Act (Act No. XII of 1941) so as to read as follows:—

"2. With effect from the 1st of July 1938, the land revenue payable to Government in respect of the estates named in the second column of the Schedule under their current settlement shall, notwithstanding any contract to the contrary or anything contained in the Central Provinces Settlement Act, 1929, or in Chapter VI of the Central Provinces Land Revenue Act, 1917, be the amount shown in the third column of the said Schedule and the said amounts shall be deemed to have been assessed, offered and accepted under the said Chapter."

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The result of the above legislation is to increase the takoli assessed on the above estates by the following amounts :—

	Rs.
Kamtha	20,440
Wadad	4,702
Deori-Kishori	744
Total	25,886

In due course the appellant started an action against the Provincial Government in the Court of the Additional District Judge, Bhandara, in which he claimed that at the time when the Act of 1939 purported to become effective he was entitled under the provisions of the existing settlement and the Act of 1917 and the material kabuliyats and orders above referred to to continue to hold his Zamindari estates so long as the respective amounts of takoli for which they were assessed by that settlement were paid until a new settlement was "made in accordance with the provisions of the law that is applicable to all proprietors owning land-revenue-paying estates or properties", that no such new settlement had been made but that instead the Act of 1939 had been passed which extinguished or deprived the appellant of his contractual as well as statutory rights in his zamindaris and further amounted to an acquisition or expropriation of his rights as provided by s. 299 of the Government of India Act, 1935, for some purpose which the Government had in view. He asked for a declaration that the Act of 1939 was accordingly null and void, or that the Central Provinces Legislative Assembly had no power to enact the Act of 1939 without making provision for compensation under s. 299 of the Constitution Act, and that the same Legislature could not enact the Act of 1939 so as to override the contractual or statutory rights of the plaintiff under the Act of 1917 and Act No. VI of 1929 and that for these reasons the Act of 1939 which was enacted by it was *ultra vires* and not binding on the plaintiff.

On the 21st of October 1940 an order was made under s. 225 of the Constitution Act transferring the action for trial in the High Court at Nagpur. On the 27th February 1941 an application was made, and refused, to refer the suit to the Chief Justice to be placed before a Bench of two Judges for trial. On the 25th of January 1943 and the following days this case, with another of a similar nature, came on for trial before Mr. Justice Vivian Bose alone. On the 31st of January 1943 Bose J. dismissed the action with costs, but granted a certificate under s. 205 of the Constitution Act. From this order an appeal was brought direct to this Court.

Upon this appeal coming on for hearing by his Court, a preliminary objection was taken on behalf of the respondent that under s. 205 of the Constitution Act no appeal would lie direct to the Federal Court from a judgment, decree or final order of a single Judge of a High Court where a certificate has been granted by him, in cases where the appellant has a right of appeal to a Divisional Bench of a High Court, as in fact the appellant had in this case under the Letters Patent of the High Court at Nagpur. Stress was laid on the provisions in the Letters Patent relating to appeals to His Majesty in Council, by which no appeal from the order of a single Judge is permitted direct to His Majesty in Council, in cases where an appeal to a Divisional Bench is permissible. No similar express provision exists in the Constitution Act either in s. 205 or elsewhere. A similar point arose before this Court, but was not decided, in the case of *Thakar Jagannath Baksh Singh* v. *The United Provinces* [1]. On consideration, we are of opinion that a direct appeal to this Court in this case is authorized by sub-s. (1) of s. 205. If any case is properly heard by a single Judge of a High Court, and if in that case is involved a substantial question of law as to the interpretation of the Constitution Act or any Order in Council made thereunder and if there is a judgment, decree or final order given or made by that Judge, in our judgment a certificate under s. 205 (1) not only may but should be granted. Thereupon an

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appeal will be opened direct to this Court subject of course to the provisions of sub-s. (2) of s. 205. It may well be that if an appellant prefers to exercise his right to appeal to this Court under s. 205 in preference to first exercising a right of appeal to a Divisional Bench and obtaining a further certificate from such Divisional Bench, he may deprive himself before this Court of the *right* to appeal given by sub-s. (2) of s. 205 on grounds on which he could have appealed without special leave to His Majesty in Council if no certificate had been granted. If he comes direct to this Court, he will have to rely in regard to any such grounds on obtaining the leave of this Court to be heard thereon as further provided by sub-s. (2). In our opinion Bose J. properly gave a certificate in this case and the appellant was therefore entitled to appeal direct to this Court; and this Court is entitled, if not bound, to entertain this appeal. It was suggested, but not strongly pressed, that, even if the appeal was competent, this Court should refuse to entertain the appeal until the right of appeal to the Divisional Bench had been exercised. It is difficult to read out of s. 205, or any other section of the Constitution Act, any power or discretion in this Court to refuse to hear a case in which a certificate has been granted, or to put an appellant on any such terms as those suggested. We are doubtful if this Court has any such power or discretion. It is however of no importance in this case, for we certainly see no reason to impose on the parties the burden and expense of an intermediate appeal to a Divisional Bench before disposing of the two points on which this appeal has been based.

On behalf of the appellant it was submitted that such were the rights of the appellant conferred on him by the settlement of 1921, the provisions of the Act of 1917, and the material kabuliyats and orders referred to that (a) they amounted to satutory or contractual rights of which only a new settlement carried out in accordance with the provisions of the Acts of 1917 and 1929 could deprive him, (b) that the alteration of what he called his "right" to hold his estates subject only to the payment of the amounts of takoli fixed in 1921 on the

terms of that settlement could not be made, as it was purported to be made by the Act of 1939, to his detriment without involving a compulsory acquisition for public purposes of some right belonging to him in or over immovable property and that as the Act of 1939 did not provide for the payment of compensation for the property so acquired and did not either fix the amount of the compensation or specify the principles on which and the manner in which it was to be determined it was *ultra vires*. and void as being contrary to or not complying with the provisions of s. 299, sub-s. (2), of the Constitution Act.

As regards the first point, it may well be that the appellant may have believed, reasonably enough, in reliance upon the provisions and documents referred to, that he was going to hold his estates subject to the payment only of the takoli fixed in 1921 for the periods specified in the kabuliyats and thereafter until a new settlement was made and that that new settlement would be made in accordance with the Acts of 1917 and 1929. But we can find absolutely nothing in any of the Acts or documents referred to which amounted to any contractual or statutory rights of the appellant which could not at any time be varied, suspended or repealed by enactment of the competent Legislature. The settlement was made and took effect under and by virtue of statutory powers and provisions which could at any time be repealed, varied or replaced by other statutory provisions duly enacted. In particular by enactment any new form or provisions for the next settlement could have been prescribed at any time. In our judgment there was nothing to prevent the Legislature of the Central Provinces and Berar, to which under s. 100 and item 39 of List II in the Seventh Schedule of the Constitution Act are given powers to legislate in regard to land revenue, acting directly in the matter and enacting in respect of all or some existing assessments that the same should be increased as from a specified date to a specified amount. It may be regarded by some persons as a drastic form of legislation ; in so far as it only increases some and not all assessments it may

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also be regarded as invidious legislation, but these are not matters for us. We are only concerned with the legality of the legislation ; and we are quite unable on the suggested grounds to find any reason for questioning the validity of the Act under consideration.

As regards the second point, the case of the appellant is based on the view that under the settlement of 1921, the Act of 1917, the kabuliyats and orders referred to he enjoyed a "right" to hold his estates subject only to the payment of the amounts of takoli fixed in 1921 and that the increase of the amount of takoli so payable on his estates to a higher figure involves the acquisition from him of a right in or over immovable property to the extent to which his position is made worse by the increase of the amount of takoli payable. In our judgment, this view is misconceived. His rights over his land or his rights in or over his immovable property remain exactly the same, only his liability for payment of takoli is increased. It is, we think, impossible to hold that the mere increase of an assessment for land revenue involves any acquisition of the land or any rights in or over immovable property. It further seems to us that the word "acquisition" implies that there must be an actual transference of, and it must be possible to indicate some person or body to whom is or are transferred, the land or rights referred to. It is impossible, in our view, to suggest that when the land revenue is increased, there is any transference to the Provincial Government or any other person of any land or rights in or over immovable property, which remain in the same possession or ownership as immediately before the increase of the assessment. In our judgment the attempt to bring the case within s. 299(2) must fail.

For these reasons this appeal fails and must be dismissed with costs.

Appeal dismissed.

Agent for the Appellant: *Ganpat Rai.*

Agent for the Respondent: *B. Banerji.*