APPELLATE CIVIL.

Before Mr. Justice Mitra and Mr. Justice Carnduff.

GOLAB CHAND

v

JANKI KOER.*

1908

December 17.

Saltpetre—Monopoly—Manufacture—Regulation IV of 1814—Effect on the monopoly.

The abolition of the monopoly of the East India Company to the manufacture of saltpetre by Regulation IV of 1814 was not intended to affect the right of a purchaser of the monopoly to realize his dues either in the shape of royalty from the manufacturers or himself to manufacture saltpetre, to the exclusion of all other persons or proprietors of land in the *nimaksayar mahal*.

The right to grant license and realize royalty would not be inconsistent with the abolition of a monopoly.

SECOND APPEAL by the defendants.

In the suit in appeal, Maharani Janki Koer, widow of Maharaja Sir Harendra Kishore Singh Bahadur of Betia, sought for a declaration of her right to a monopoly in the manufacture of saltpetre and collection of saltpetre earth in village Manpura, as well as for an injunction restraining the defendants from infringing the said right. She further prayed for demolition of the salt-*dihi* lately started by the defendants in Pous 1311 F.S. in the said village or for possession of the same with mesne profits. The defendants denied *inter alia* the plaintiff's alleged right to the monopoly. The Munsif decreed the suit and, on appeal, the Subordinate Judge affirmed the decision of the first Court.

Babu Golap Chandra Sarkar (*Babu Dwarka Nath Mitra* and *Babu Sarat Kumar Mitra* with him) for the appellant. *Nimaksayar* is not like other *sayar* lands. The monopoly was abo-

* Appeal from Appellate Decree No. 1353 of 1907, against the decree of Umesh Chandra Sen, Additional Subordinate Judge of Mozufferpore, dated 27th March 1907, affirming the decree of Ashutosh Ghosh, Munsif of Motihari, dated 27th January 1906.

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lished—*vide* the letter from the Government to the Board of Commissioners in Bihar and Benares, dated 24th December 1818. What would be the effect of this on the *nimaksayar* right? The onus is on the Government or the party claiming under it to prove reservation? We have all possible rights under the zemindari grant. [Mitra J. The main question is 'how did later legislation affect the Permanent Settlement'?]

Hon. Dr. Rash Behary Ghose (*Babu Naliniranjan Chatterjee* with him) for the respondent. Monopoly has no connection with the title of the Raj to the salt *mahal*. The *nimaksayar mahal* is a separate *mahal*. It was like an incorporeal hereditament. Government cannot settle land with me and receive revenue, and then by legislative enactment affect my right. [Mitra J. Cannot the Government in its legislative capacity weaken the effect of its previous executive action?] But what of my title to the land? Although the defendants are the owners, the plaintiff has the sole right to the saltpetre lands. [Mitra J. Was the *nimaksayar mahal* separated from the estate? If it was, the Raj could have an injunction.] The right to the land also is mine. It is an exclusive right. [Mitra J. Look at the prayers in your plaint.]

Babu Golap Chandra Sarkar in reply. The Permanent Settlement merely declared the Zemindars to be the actual proprietors. [Mitra J. But the Government had its share. It had rights to settle land.] Yes, the Government settled the revenue arising out of *nimaksayar* with the Mukerjees, and they sold their right to the Betia Raj. The monopoly is now gone. The *Raj* may have *Malikana*. After the passing of Regulation IV of 1814, the Government has only a share in the salt revenue, and it can settle that share only. The respondent can claim only a portion—*vide* Hunter's Statistical Accounts, Vol. XIII, pages 289, 349, and Regulation VIII of 1819, Section 12. The old Hindu law is applicable, see Regulations XXXVII and XIX of 1793.

Cur. adv. vult.

MITRA AND CARNDUFF JJ. We have no doubt on the facts proved in the case that the plaintiff as the present proprietress of the Betia Raj is entitled to a declaration of her right as the Permanent Settlement-holder under Government of the saltpetre *mahal* of Sarkar Champaran, which includes the village Manpura owned by the defendant appellant. The settlement papers of 1791 and 1793 conclusively prove that the *nimaksayar mahal* of Sarkar Champaran along with the villages Sangrampore and others was settled with the Mukerjees, and that the revenue for the *nimaksayar mahal* was separately assessed at Rs. 2,293 and odd. The revenue was regularly paid to the Government in later years. The mahal passed to the Betia Raj by purchase in 1804, and the predecessors of the plaintiff were in possession and paid regularly the Government dues according to the assessment made by the Government.

It is also clear from the documents and the findings of fact arrived at by the lower appellate Court that the right to the *nimaksayar* dues was exclusive, and that what passed by the settlement with the Mukerjees and the purchase of their right by the Betia Raj was the right which was exercised by the East India Company by virtue of the grants made by the Nawabs Mir Zafer and Kassim Ali and the Dewani of the 12th August 1765. The plaintiff, it appears to us, is entitled to exercise the same right.

Regulations VIII of 1812 and IV of 1814 were not intended either to extend or to limit the right which the Betia Raj had to the *nimaksayar mahal* in Sarkar Champaran. The abolition of the monopoly of the East India Company by the latter Regulation was not intended to affect the right of the Raj to realise its dues either in the shape of royalty from the manufacturers or itself to manufacture saltpetre to the exclusion of all other persons or proprietors of land in Sarkar Champaran. The right to grant licenses and realise royalty would not be inconsistent with the abolition of monopoly.

There is, however, no distinct finding in the judgment of the lower appellate Court as to the way in which the East India Company exercised the right it had under the grants from the

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Nawabs before settlement with the Mukerjees, and there is also no finding as to how, at or about the settlements in the last decade of the eighteenth century, the right was exercised by the settlement-holders. We do not think that the reliefs claimed in the plaint or any of them should be granted without a distinct finding as to the mode of user.

It is conceded by Dr. Rash Behari Ghose that the plaintiff is not entitled to a declaration as to her right to a monopoly in the manufacture of saltpetre. It is also conceded that the second prayer in the plaint, *i.e.*, the prayer for injunction, cannot be founded on the ground of the existence of a right to a monopoly. She may have an injunction on the ground of her exclusive right, if any, as conferred by the settlement under which she holds the *nimaksayar mahal.* She cannot also be allowed the third relief claimed in the plaint, *i.e.*, the demolition or possession of the Dihi at Manpura. Her prayer for damages must follow the finding as to the mode of the user. We do not, however, see how she may get a decree for mesne profits as allowed by the lower Courts.

We, therefore, direct a remand to the lower appellate Court for ascertaining from the evidence on the record and such other evidence as the parties may produce, the precise way in which the exclusive right claimed by the plaintiff was exercised in the past. The decree should be in accordance with the finding that may be arrived at and the observations made above.

The costs of this appeal as well as those of the lower Courts will abide the result.

Case remanded.

S. M.