

Kumar Birendra Nath Roy Bahadur Vs The Secretary of State for India in Council

Court: Calcutta High Court

Date of Decision: March 29, 1935

Citation: 164 Ind. Cas. 637

Hon'ble Judges: Mukerjee, J; M.C. Ghosh, J

Bench: Division Bench

Judgement

Mukerjee, J.

The plaintiff is the proprietor of Mouzah Raninagar which appertains to Touzi No. 424 of the Murshidabad Collectorate. In

1841 Mouzah Raninagar was resumed and permanently settled with the predecessors of the plaintiff. As the result of Diara Proceedings taken in

1927-28, a quantity of land was found to have accreted to Touzi No. 424 ; and the said area was resumed and made into Diara Estate No. 3071

of the said Collectorate and assessed to revenue. The plaintiff took settlement of 47.07 acres of land. He then instituted the present suit for a

declaration that the resumption and assessment of the said area were illegal and ultra vires in as much as the said area forms a part and parcel of his

permanently-settled estate Touzi No. 424.

2. There has "been no irregularity in the procedure adopted by the Government in the matter of resumption and assessment in respect of the land.

The plaintiff can succeed only if he can show that the area in suit forms part and parcel of Touzi No. 42-1 or of some other permanently settled

estate. The learned Judge has held that in this the plaintiff has failed and so he has dismissed the suit. The plaintiff has appealed.

3. The plaintiff relies on the Robakari of 1841 (Ex. 1) as the sheet-anchor of his case. This Robakari shows that 1041 bighas 11 cottas 19 gandas

of land (1,221 standard bighas) comprising Mouzah Raninagar was permanently settled with his predecessor, the boundaries thereof being as

follows:

N & W--Mouza Daffarpur.

E--Reg. II Chur lands of Raninagar.

S--Lands of Mouzahs Lankahar and Rajnagar.

4. The Robakari also shows that the river Bhagirathi at that date flowed on the north-west beyond Mouzah Raghunathpur, of which the southern

boundary were the Reg. II Chur lands of Raninagar and the northern boundary was the said river Bhagirathi. From this the plaintiff makes out that

Touzi No. 424 settled with him had no river Bhagirathi at its southern boundary, but that that boundary was the firm lands of Mouzahs Lankahar

and Rajnagar. Now the Revenue Survey Map of 1853 (Ex. B) shows Mouzah Raninagar bounded on the south partly by Rajnagar and Lankahar

and partly by the river Bhagirathi; the river lying to the south-east; The area of Mouzah Raninagar is given there as 1,603 standard bighas. The

plaintiff, therefore, contends that the area in suit, which upon the Diara Comparative Map (Ex. A) was in the bed of the river Bhagirathi at the time

of the Revenue Survey of 1853. must have been assessed to revenue : it must have been firm land in 1841 and so must have been, says he, a part

of Touzi No. 424 settled with him by the Robakari, the said part having by that time been cut up by the river of which, as is well-known) the

course was constantly shifting.

5. This exactly is all that the plaintiff contends in order to establish his case. Now, there was a map attached to the Robakari, as appears from the

Robakari itself; but the plaintiff has made no attempt to get it produced. A comparison of the three maps, namely Colebrook's Map of 1798, the

Revenue Survey Map of 1853 and the Settlement Map of 1923-24, which are all reproduced on the Comparative Case Map Ex. 2, only shows

that the river has had three different courses near about Raninagar at those dates. It is not possible to gather from these three maps a continuous

history of the changes in the course of the river during this period. It is evident that Mouzah Raninagar had , increased in area by 385 standard

bighas between 1841 and 1853; and it is not unlikely that some extra lands towards the south-east of the Mouzah had been encroached upon in

the meantime and the river Bhagirathi too had shifted its position so as to form the south-eastern boundary of the encroached land at the time of the

Revenue Survey of 1853. Unless one gives himself away to speculation of the worst character one-can arrive at no conclusion at what may have

really happened. Mr. Choudhury on behalf of the appellant has advanced an argument which is very interesting. He has said that Government must

be held bound by their admission in the Revenue Survey Map of 1853 that lands up to the edge of the river as shown therein had been

permanently settled with the plaintiff as Touzi No. 424. And he has argued that it is, therefore, not open to the Government to contend that there

was any encroachment or addition to the Mouzah between 1841 and 1853 so as to explain the position of by the river as shown in the Revenue

Survey Map of 1853 and that the only other plausible explanation of such position is that a part of the lands of the Touzi as originally settled must

have been cut up the river. This argument, in our opinion, is not sound. It is true that in proceeding to assess lands as added land under Act IX of

1847 one has to take the Revenue Survey Map as the starting point, as it were, and cannot go behind the map and assess lands shown therein as

forming part of a permanently settled Mouzah; but this does not imply an admission that all lands shown as such had already been, in fact,

assessed. Indeed the plaintiffs' own case is that the Robakari on which he claims shows a different area as assessed and settled with him.

6. Mr. Choudhury has relied very strongly on the case of Haradas Acharjya, Chowdhuri v. Secretary of State for India in Council 23 CLJ 590 :

43 Ind. Cas. 361 : 22 MLT 438 : (1918) MWN 28 : 20 Bom.LR 49 : AIR 1917 PC 86 and has contended that on such principles as have been

laid down in that case, what he has proved is sufficient to lead to the inference that the land now assessed must be held to have been already

assessed either as part of Touzi No. 424 or of some other permanently settled estate. We are unable to accept this contention ; we might have

endeavoured to do so if we had known the exact position of the river at the relevant dates and what changes the course of the river had exactly

undergone between them.

7. Mr. Choudhuri has pointed out that a small quantity of land shown in the Diara Comparative Map (Ex. A) lying between the thak and Revenue

Survey boundaries of Raninagar has been included in the newly formed Diara Estate and he has argued that this portion should have been excluded

as land which according to the thak was already a part of the permanently settled estate Touzi No. 424. The statutory line which has to be

recognised by the authorities is the line of Revenue Survey, and if the plaintiff wanted to rely on the thak line as more reliable it was for him to lead

evidence on the point. And it is also clear that if the thak boundary of the Mouzah is to be treated all round as the boundary of the land already

assessed and settled with him, the plaintiff would hardly be a gainer.

8. The learned Judge in our opinion was right in holding that the plaintiff has failed to prove his case. We think the suit has been rightly dismissed.

9. The appeal accordingly is dismissed with costs.

M.C. Ghose, J.

10. I agree, that on the fact of the case the judgment of the Court below is correct and that this appeal should be dismissed.