(1869) 05 CAL CK 0017

Calcutta High Court

Case No: Special Appeals Nos. 2634 and 2635 of 1868

Ramanath Rakhit and Others		APPELLANT
	Vs	
Muchiram Paramanik and Others		RESPONDENT

Date of Decision: May 17, 1869

Judgement

L.S. Jackson, J.

In these cases the plaintiffs, who were alleged to have recently purchased a fractional share in the Mehal Serampore, applied to the Collector, u/s 9, Act X of 1862, Bengal Council, for assistance in measuring the lands of that mehal, in which operation they alleged that they had been opposed by the ryots. The ryots appeared and stated that they were perfectly willing that the lands should be measured by the current standard of measurement. The agents of the plaintiffs as well as the defendants were examined by the Collector, and they respectively set up different standards which they alleged to be the standard pole of measurement of the mehal in question.

2. The Deputy Collector who tried the case went into the question, and finding that the canoongoe papers give not one standard pole for the pergunna, but six varying standards for six hoodas, or divisions of the pergunna, as shown in the margin of the judgment, of which the standard assigned to Hooda Gugasput, within which the mehal in question is situate, was 9 feet and 4 1/2 inches, whereas the survey papers give the standard as 10 feet and 6 inches for the mehal in question, he considered that the canoongoe papers were entitled to greater weight, and he ordered accordingly that the ryots should be directed to allow measurement by the standard of 9 feet 4 1/2 inches.

3. The ryots appealed from this decision to a Zilla Judge, and the Zilla Judge, finding that the weight of evidence was entirely in favor of the pole of 10 1/2 feet, as being the measuring rod in Serampore, reversed that part of the Deputy Collector''s judgment, and directed that measurement should be allowed by the pole of 10 1/2

feet.

4. The plaintiffs have now come to this Court in special appeal, contending for the first time that the Judge had no jurisdiction to entertain the appeal upon this point. He refers to a decision of this Court to which I was a party : Rakhal Dass Mookerjee v. Tunoo Puramanick 7 W.R. 239.

5. I adhere to the opinion which I expressed in that case, that no appeal, either regular or special, is permitted on this point, namely, as to the standard of measurement. But on going further into the matter, and after a careful consideration of the sections of the Act referred to, namely, sections 9, 10, and 11. I also Chink that the Deputy Collector had no jurisdiction to determine, in a case of this kind, what the standard pole of measurement of the pergunna, or the standard pole by which the measurement is to be made. It now appears to me that the functions of the Collector, as well as the provisions for appeal, are strictly defined in the 9th and 10th sections of this Act, and that the direction contained in section 11 is one obligatory on the zamindars or persons making the measurement, but that it is not for the Collector to lay down a priori, in orders made u/s 9, with what pole the measurement is to be made, but that all questions, arising out of the pole with which the zamindar may measure, must be reserved for after-proceedings when any action is taken upon the result of the measurement obtained.

6. It seems to me very clear that this must be so, because the authority given to the Collector in this matter, vexatious as is the nature of the proceedings, seems to be strictly limited to enabling the zamindar to carry out the power which is supposed by law to reside in all proprietors, of measuring the lands within his estate. It can matter very little to the ryot by what standard his lands may be measured, because the mere measurement does not conclude either him or the landlord as to any future question. The decision upon such a question will arise, as I have pointed out in the case cited, on such occasions as when a landlord seeks to enhance under clause 3, section 17, Act X of 1859; when, if demanded by the ryot, I apprehend that a fresh measurement would have to be made by order of the Court. I now think that the Legislature never intended to enable the Collector to go on and decide the further question of right which might be brought before him incidentally on such proceedings. I think therefore that the decision of the Judge, and also the decision of the Collector upon this point, must be set aside; that the order of the Collector ought to be out down to an order allowing the zamindar to measure, and that the responsibility of measuring with the proper standard must be left entirely to the zamindar. It seems quite clear that the one party in this matter is not more chargeable than the other with the error that has taken place. They both come into Court with the express intention of disputing the standard of measurement. That being so, they must bear alike the costs that have arisen and therefore we shall direct that in these cases each party shall pay his own costs in all the Courts.

Markby, J.

I am of the same opinion.