(1869) 01 CAL CK 0009

Calcutta High Court

Case No: None

Raja Baradakant Roy		APPELLANT
	Vs	
The Commissioner of the Sunderbuns		RESPONDENT

Date of Decision: Jan. 18, 1869

Final Decision: Dismissed

Judgement

1. The appellant in this case (the plaintiff in the suit) is the Raja of Jessore. The respondent is the Commissioner of the Sunderbuns, representing the Government of Bengal. The real object of the suit is to obtain a judicial declaration that the lands, which are the subject of it, form part of Pergunna Shahosh, the revenue on which was permanently assessed by the decennial settlement with the appellant''s ancestor; and on that ground to set aside certain instruments which have been executed by or on behalf of the appellant to Government for the payment of the revenue lately assessed on the same lands, on the assumption that they were not part of his settled estate; and to recover back the payments which have been made to Government under that engagement. The persons who are in actual possession of the lands are not parties to the suit, which is erroneously stated to be one for the recovery of possession,--an error which has led to some confusion in the argument. The true nature of the suit is shown by the issues which have been settled in it. These were:--

1. Whether the boundaries of lot No. 221 fixed by Mr. Dampier, the former Commissioner of the Sunderbuns, in 1829, in accordance with rule, not having been set aside up to this date by any Court, and the plaintiff not having filed objections in reference to such boundaries for thirty-one years, his claim was barred by clause 2, section 13 of Regulation III of 1828.

2. Whether the land claimed formed part of the decennially settled Pergunna Shahosh, or the right of Government as being part of the Sunderbuns, and whether the plaintiff''s former proprietor had ever been in possession of the land.

3. When the disputed land with its boundaries had been released from the claims of Government on proof of its being rent-paying or mal land, and subsequently by means of survey, dowel was unjustly taken for it, on the allegation that it was the right of the Sunderbuns, whether the plaintiff is entitled to have the said dowel set aside, and obtain possession of the land, as his mal right, together with wasilat.

2. The history of the pergunna is briefly this:--After the perpetual settlement, the then Raja, the appellant''s grandfather, mortgaged it to one Biswanath Bose. He is said fraudulently to have allowed the revenue to fall in arrear, and to have purchased the estate when put up for sale by Government benami some time in 1804. This transaction was afterwards impeached, and the Government (we must assume regularly) declared the estate to be forfeited, but in 1825 re-granted it to the appellant, then an infant. It is alleged, and not disputed, that the effect of this re-grant was to remit the appellant to the precise rights of his ancestor under the perpetual settlement. The estate, between 1825 and the date at which the appellant attained his majority, was administered by the Collector and other revenue officers acting as the Court of Wards, but their acts are material only, as bearing upon one or other of the issues in the suit; and particularly upon that which affirms that the lands in question formed part of Pergunna Shahosh in 1792.

3. This Pergunna, whatever were its precise boundaries, unquestionably abutted upon, and at least on one side of it was bounded by that large tract of waste and jungle land, which forms the seaboard of the delta of the Ganges, and is known as the Sunderbuns. And it is certain that the Sunderbuns, whatever were then their precise limits, were neither included, nor intended to be included, in the decennial settlement of 1792, but remained the property of Government as the general owners of the soil.

4. From the quinquennial register of 1795, it appears that two of the component parts of Pergunna Shahosh were the Mauzas or Chaks of Tildanga and Komarkola. There is, however, no evidence to show what the areas of these Mauzas, when settled, were. They were situated at two of the points at which Pergunna Shahosh touched the Sunderbuns. And the broad question of fact between the parties is, whether these settled Mauzas or Chaks comprehended the whole of the areas marked lots 221 and 224 in the coloured map, which is part of the record; or whether they were limited to the two smaller areas which are coloured yellow, and lie within those lots, or in immediate juxtaposition to them.

5. In 1828 the Bengal Government appears to have been active in taking measures for extending cultivation in the Sunderbuns, and for ascertaining and asserting the rights of the State therein. As a step thereto, it determined to fix and lay down the boundaries of that tract of unsettled land, and for that purpose (amongst others) Regulation III of 1828, the effect of which will be afterwards considered, was passed. In 1829 Mr. Dampier, the then Commissioner of the Sunderbuns, under the 13th section of that Regulation, proceeded to fix and lay down the boundaries of the Sunderbuns in the immediate neighbourhood of Tildanga and Komarkola. His proceeding is at page 82 of the record; and the map, called Captain Hodge''s map, was made pursuant to the Regulation, in

accordance with that proceeding. The boundary line, as defined by Mr. Dampier''s proceeding, seems to have included within the limits of the Sunderbuns the whole of lots 221 and 224, together with the two areas marked yellow on the coloured map, which have before been mentioned; or, in other words, all the land now in question, and also the lands represented by those two coloured portions of the map, and now admitted to belong to the settled Mauzas of Tildanga and Komarkola.

6. At the time of Mr. Dampier''s survey, certain proceedings were pending between the Government and the Raja, or his guardians on his behalf, which must now be considered.

7. There is some trace of a claim on the part of the Government as early as 1812, but the proceedings in question were not actually commenced until the 12th November 1825, when the Collector of Jessore instituted a suit under Regulation II of 1819, as amended by Regulation IX of 1825, for the assessment of revenue upon 8,000 bigas of land. The ground of his claim was that this parcel of land, though in possession of Raja Baradakant Roy, under the names of Chaks Tildanga and Komarkola, was, in fact, part of the Sunderbuns, and as such subject to the claim of Government. This suit was, in the first instance, defended (the Raja being then a minor) by the sarbarakar appointed by the Court of Wards, and was, therefore, in this peculiar condition that the plaintiff was the Collector asserting the proprietary or fiscal rights of Government, and the defendant was an officer appointed by that same Collector acting as a Court of Wards. And this may be one reason why, for some years, the suit appears to have been conducted very languidly. In 1829, Mr. Dampier fixed his boundary line, which included the lands in dispute with the other lands in that locality within the limits of the Sunderbuns. Some proceedings in this pending suit seem afterwards to have been had before him as Commissioner of the Sunderbuns; but the suit was not decided until November 1834, when the then Commissioner, Mr. Grant, gave judgment in favour of Government.

8. His decision was grounded, partly upon Mr. Dampier''s map, partly on the absence of proof on the part of the Raja that the lands formed part of his settled estate; and it seems to have treated the whole of Chaks Tildanga and Komarkola as "newly-cultivated lands of the Sunderbuns jungle." From this decision the sarbarakar appealed. A new trial was directed. The case was then tried by Mr. Kemp, whose decision, on the 20th of September 1839, was to the effect that the 8,000 bigas were lands belonging to Chaks Tildanga and Komarkola, which formed part of the Raja''s zamindari of Pergunna Shahosh, and that the Government had no right to assess them. This decision was, on the 19th of August 1842, confirmed on appeal by the Special Commissioner, Mr. D''Oyley, who, however, intimated a doubt whether some portion of the land in question might not have been acquired from the Sunderbuns by gradual encroachment, and added to the settled Mauzas.

9. The so-called 8,000 bigas appear to have been, according to the ordinary measurement, 12,000, and in the course of the argument, there was much discussion as to their precise locality. Mr. Field insisted that they were situated at the southern extremity

of lot 224. But from the proceedings which will be next mentioned, and other evidence in the cause, their Lordships are satisfied that, of the 12,000 bigas 6,476 form the whole or part of the two before-mentioned yellow areas in the coloured map, which are now admitted to represent the settled Mauzas of Tildanga and Komarkola, and that the remaining 5,524 bigas were probably contiguous to them.

10. From the proceedings at pages 49 and 51, their Lordships gather the following facts:

11. Some time between 1849 and 1851, Mr. Smith, a Deputy Collector deputed for that purpose, made a survey of lots 221 and 224, and a settlement of part of them. His instructions were to leave out the land which had been released by the decision of Mr. Kemp; to specify and define the other land belonging to the two lots on which the claim of Government attached; and to bring it under assessment. He seems to have satisfied himself that, within the admitted boundaries of Tildanga, there were 3,193-12-3 bigas, and within the admitted boundaries of Komarkola 3,282-7-2 bigas of land; and it is impossible to read the proceeding at pages 49 and 50, without coining to the conclusion that these 6,476 bigas have been exempted from the Government claim, and are now held by the appellant as part of Mauzas Tildanga and Komarkola within his settled zamindari of Pergunna Shahosh. As to the remaining 5,524 bigas, there is considerable confusion. At page 49, it appears that Mr. Smith took two parcels of land, aggregating that number of bigas, from lots 221 and 224, in order to make up the 12,000 bigas, the whole of which he could not find within what, according to his view, were the boundaries of the zamindari. But from the statement of his proceedings at page 31, it would seem that, after excepting and setting apart the 6,476 bigas, he found that lot 221 consisted of 26,277-13-4 bigas, of which 14,679-16-12 were cultivated, and 11,597-16-4 were jungle; and that lot 224 consisted of 57,000 bigas, of which 14,119-12-4 were cultivated, and 42,880-7-12 were jungle; and that, after deducting the last mentioned quantity of jungle which he left unsettled, he made a settlement for lot 221, with Ramratna Roy and another, as the representatives of one Brajakishor Roy, and a settlement for the cultivated lands in lot 224 with one Nabakant Roy. These parties were in occupation of the lands in question under jungleboori pottas, which had been granted by the Court of Wards during the minority of the Raja on his behalf.

12. The Raja appealed against these settlements, insisting that the lands so settled were part of his settled zamindari Pergunna Shahosh. The Government threatened resumption proceedings, but gave the Raja the option of settling for the lands on favourable terms. Those terms were ultimately accepted, a settlement was made with him for both lots 221 and 224, for 99 years, and he signed by his mookhtear the usual ikrarnamas on the 26th of November 1856. These are the instruments which the present suit is brought to set aside. One term in the arrangement was that he should respect the possession and rights of the pottadars, in the proceedings called gantidars, viz., Nabakant Roy and the representatives of Brajakishor Roy.

13. From the above facts their Lordships have come to the conclusion that these settlements included the 5,524 bigas, part of the 12,000 bigas, which had been released by Mr. Kemp''s decision from the claims of Government, but that they did not include the 6,476 bigas.

14. This settlement with the appellant was complicated by the fact that settlements had previously been made with the gantidars as occupiers at less favourable rates; and part of the arrangement contemplated was that the appellant should receive from them the revenue assessed on them, paying that for which he was liable under the dowels, and retaining the difference. The representatives of Brajakishor Roy afterwards resisted this arrangement, and in a suit between them and the appellant, the Judge held that he could not enforce his claim against them, and made observations on the settlements, which probably led to the institution of the present suit.

15. The result, however, of the last-mentioned litigation can have no effect on the determination of the present suit. The appellant is not seeking to be relieved from the settlement, because it cannot be carried out as contemplated, nor does he sue for the performance of any agreement that may have been made. He seeks to avoid the settlement on the broad ground that the whole of the lands included in it are part of the settled zamindari of Pergunna Shahosh. The Zilla Judge has held that this contention is well founded, and has decided in favour of the appellant. The High Court, proceeding entirely on the consideration that the appellant is, by force of Regulation III of 1828, bound by Mr. Dampier''s demarcation of the boundary line of the Sunderbuns, has dismissed his suit.

16. The first question which their Lordships will consider is, what is the effect upon the present suit of Regulation III of 1828, section 13, and the demarcation thereunder of Mr. Dampier''s boundary line?

17. The Regulation was passed, as the preamble declares, with the double object of appointing special Commissioners, whose judgment should be final in resumption suits, and of amending the procedure furnished by Regulations II of 1819, and IX of 1825, in such suits; and "of making provision for the immediate settlement of the limits of the Sunderbuns as ascertained by careful local enquiry conducted by the Commissioner specially appointed to the duty, and the surveyors under his authority." The latter object is dealt with by the 13th section.

18. The first clause of the section declares that "the uninhabited tract, known by the name of the Sunderbuns, has ever been, and still is, the property of the State, the same not having been alienated or assigned to zamindars, or included in any way in the arrangements of the perpetual settlement." It then affirms the right of Government to make giants and leases of any part of the Sunderbuns, and to provide for the clearance and cultivation of the tract; and provides that if any zamindar or other person owning and occupying or collecting the rent or revenue of cultivated land in the neighbourhood of the

land so granted, shall bring a suit to contest the validity of the grant, his suit shall be dismissed on proof that the land so granted is or was, when the grant was made, within the limit of the unoccupied jungle so named and described. And then it provides for compensation to persons who may have acquired certain rights in respect of gathering wax, cutting wood, or obtaining other jungle products.

19. The second clause enacts that the boundary of the Sunderbuns jungle shall be laid down by accurate survey, as determined on the spot by the Commissioner of the Sunderbuns. It next makes provision for enabling any zamindar or party interested to obtain a copy of the survey map, with the boundary marked thereon, together with a copy of the Commissioner"s proceedings on the subject; and it then proceeds in these words:--

Any party deeming his right injured by the demarcation so laid down, shall be at liberty, at any time within three months from the date of the Commissioner"s proceeding fixing the same (which proceeding shall always be held and published on the spot), to contest the same by petition to a Special Commissioner under this Regulation, having local jurisdiction for the time being (or if no such jurisdiction exist, to the ordinary Courts of Justice, by which the case is cognizable), praying investigation; further provided that no plea of objection against the line of demarcation laid down shall be heard or admitted, excepting only such as shall declare and offer proof that at the time of survey a specific quantity of land, or land with defined limits, was in the occupation of the petitioner, cleared and under cultivation, which, by the line of demarcation adopted, is placed within the Sunderbuns tract belonging to Government. Every such application so made shall be regarded as a claim to hold the tract claimed free of the public assessment, and shall be investigated and decided under the rules of Regulation II of 1819 as modified by this Regulation.

20. The first thing that strikes the mind on reading these enactments is that as the object of passing them was to make provision for the immediate settlement of the limits of the Sunderbuns, so that object could only be attained by fixing peremptorily a period at which the demarcation of those limits should be final. The object would be defeated if any person could come in after that period pleading infancy or other ground for re-opening the question of boundary since the geographical boundary line was necessarily to be one and the same for all the world. Another inference to be drawn from these provisions is that the line of demarcation so drawn was to be final and conclusive, at least in respect of all waste lands and un-cleared jungle. The petitioner could not be heard to object to the line, unless he declared and offered proof that at the time of the survey he was in the occupation of a definite quantity of land cleared and under cultivation within the line. Nor was this unreasonable. The presumption which might arise in other parts of India that jungle was within the limits of a settled zamindari, would not arise in the case of a zamindari bounded by the Sunderbuns. For that tract of land was advisedly excluded from the perpetual settlement; and, therefore, the presumption would be that the settlement in that locality was confined to the land then in cultivation. A person in occupation of cultivated land might, within three months, do two distinct things he might

pray for a further investigation, which might result in a new demarcation of the boundary; and he might put forward his claim to hold the particular lands free from public assessment, which would lead to a judicial investigation of his title.

21. But as the line defines the tract called the Sunderbuns, and the Sunderbuns are declared to be extra the perpetual settlement, it is difficult to see how, after the line had, on the expiration of the three months, become final, any party could be heard to say that even cultivated lands within it were part of his settled zamindari. Upon the whole, therefore, their Lordships are disposed to agree with the High Court, in the conclusion that the Regulation was a bar to the appellant''s suit. The decision, with respect to the 12,000 bigas, does not necessarily conflict with this view of the appellant''s rights; and the judgment in this case will leave that decision and its practical effect untouched. That suit was pending before the Commissioner when he drew his boundary line; and the mere pendency of the suit took it out of the operation of the Act, so far at least as it was a claim to hold the lands free from further assessment. There was no application within the proper time for a rectification of the boundary line.

22. Let it be assumed, however, for the sake of argument, that the Regulation is not an answer to this suit. Their Lordships would, nevertheless, be of opinion that the appellant has failed to make out his case, or to establish the second of the issues settled in the suit.

23. He comes into Court under a very heavy burthen of proof. He comes to set aside settlements made with a full knowledge of the facts without fraud, and by way of compromise of a disputed right. The boundary line of Mr. Dampier has at least settled the general outline of the Sunderbuns, and shows that, if the appellant''s case be true, his zamindari must have made a very extraordinary indentation into that tract of country. The decision as to the 12,000 bigas is final as to them, but as to nothing more; and even as to part of them the Special Commissioner expressed a doubt whether they had not been gained by encroachment on the Sunderbuns. The appellant is claiming not only cultivated land, but many thousand bigas of jungle, in the face of the strong presumption that jungle in that locality was not included in the settlement of his zamindari.

24. To these presumptions what evidence has he to oppose? Certain vague admissions of his title made by one Collector in 1805 and 1807, and by another Collector in 1812 (the latter only being in a suit), upon the application of a third party for the potta of some lands, of which the precise position is not accurately determined, and which (if any) were at most but a very small part of the lands now in dispute. Besides these, there is the jamabandi of 1826, which, at first sight, is a more important piece of evidence. But of that document it is to be observed that, even if it goes the length of supporting the appellant''s present case to its full extent (which, as regards lot 221, it hardly does), it was prepared by the Court of Wards in the interest of its minor ward; and that its value, as an admission by a Government officer, is destroyed by the fact that more than a year before the date (26th December 1826) which it bears, Government had commenced the suit for the resumption of the 12,000 bigas, which included even the lands now admitted to belong to

the settled Mauzas. Their Lordships, therefore, think that the Zilla Court was wrong in holding that the appellant had proved, as a matter of fact, that the lands in question were part of his settled estate. Mr. Field has, however, contended that he is at least entitled to succeed as to the 5,524 bigas. Their Lordships, as they have before stated, believe them to be included in the settlement; and they consider that, rightly or wrongly, this parcel of land has been finally decided to be part of the settled zamindari. They conceive, however, that no decree can be made respecting it in this suit. The settlement in which it is included, was entered into with full knowledge that it was so included, and by way of compromise. It may be that its inclusion in the settlement was part of the compromise, and a consideration for more favourable terms of settlement. For these reasons, their Lordships think that it is impossible to give in this suit any particular relief concerning it. Upon the whole, then, their Lordships have come to the conclusion that the decree of the High Court dismissing the appellant''s suit should be affirmed; and they will humbly recommend Her Majesty to dismiss this appeal with costs.