

(1874) 07 CAL CK 0002

Calcutta High Court

Case No: Regular Appeal No. 155 of 1873

Rani Shamasoondree
Debea and Others

APPELLANT

Vs

The Collector of
Rajshahye

RESPONDENT

Date of Decision: July 8, 1874

Final Decision: Dismissed

Judgement

Birch, J.

It has been admitted before us by the Government Pleader that the lands in dispute are identical with the diluviated lands of Daveenuggur, and that they have formed on the old site of the village which belonged to the plaintiffs' estate. This being so, all that we have to consider in this appeal is, whether the fact of the land forming as an island gives the Government a title to it under cl. 3, s. 4, Regulation XI of 1825. In this case we are fortunate in having a series of authentic snaps prepared by the survey officers from which we are able without difficulty, to trace the changes that have taken place in the course of the Ganges, within the last sixteen years in the tract wherein the land in dispute is situated. These maps conclusively show that the Ganges first encroached on the plaintiffs' land; that it divided itself for a time and threw out a new arm or sota; that the main channel again receded leaving the site of the diluviated portion of Daveenuggur washed on the one side by the main channel of the Ganges, and on the other side by the new arm or sota. As the river has receded, this arm has naturally been drying up. At the time when this arm was supposed to be not fordable, the Collector stepped in and resumed the land as an island chur, and we are now called on to determine whether the Government had any right, assuming that the sota was not fordable, to take possession of this land. In the case of *Nogender Chunder Ghose v. Mahomed Esof* 10 B.L.R., 406, see p. 429, their Lordships of the Privy Council thus observe:--"No express provision is made for the case of land which has been lost to the original proprietor by the encroachment of the sea or river. But on the other hand, there is nothing to take away or destroy the right of the original proprietor in such a case; which must, therefore, be

determined by the general principles of equity or justice under the 5th rule. That the right of the proprietor in the case last put exists and is recognized by law in India is established by at least two cases decided at this Board and therefore binding on their Lordships, viz., the case of Mussumat Imam Bandi and Wajid Ali Khan vs. Hurgovind , and the recent case of Lopez v. Maddan Thakoor 5 B.L.R., 521, decided on the 11th July 1870."

2. In Lopez's case it was remarked that no principles of equity would give the plaintiffs' property to the defendant. So in this case whoever was the owner of the land before the inundation and formation of the sota, remained the owner while the site was submerged and after it became dry; all that has to be ascertained in a case of this description is to whom does the site belong. It is not denied that the site of plaintiffs' village Daveennggur and the land in dispute are identical. External marks there may be none, but the identity of the site is clearly established by the maps, and the objection urged in the lower Court by the Collector against the identity has been very properly withdrawn here. This being so, there can be no doubt that the lower Court has correctly applied the law in holding that the submergence of the site did not deprive the plaintiffs of their property. That site formed part of their permanently settled estate, and they continued to pay their full quota of Government revenue, although the village was submerged. As soon as it re-appeared and was taken possession of by Government as an island, the plaintiffs took a lease from Government that the property might not pass into other hands. They have now succeeded in showing that the land belongs to them and not to Government. The appeal of the Government must be, dismissed with costs.

Kemp, J.

I concur in the decision just delivered by my learned colleague. The Government took possession of the disputed lands under s. 7, Act IX of 1847; see the proceeding of the Superintendent of Dearth Surveys of the 29th of October 1868, pages 2 and 3, Appendix No. 1 of the printed book. Now s. 7, Act IX of 1847, refers to lands which are "liable to be taken possession of by Government under cl. 3, s. 4, Regulation XI of 1825," and I am clearly of opinion for the reasons given in the judgment just delivered by my learned colleague, in which I entirely concur, that the lands in dispute are not liable to be taken possession of by Government under s. 7, Act IX of 1847. The case of Mani Lall Sahu v. Collector of Sarun 6 B.L.R., App., 93, also supports the view which we have taken. In that case Jackson, J., had before him the case of Lopez v. Maddan Thakoor 5 B.L.R., 521, although he had not the later case decided by the Privy Council of Nogender Chunder Ghose v. Mahomed Esof 10 B.L.R., 406, at the time he passed that decision. The Pleader for Government admits that the case of Mani Lall Sahu v. Collector of Sarun 6 B.L.R., App., 93, is against him, and he has not been able to show us any decision taking a contrary view. I would dismiss the appeal with costs.