

Judgement of the Lords of the Judicial Committee of the Privy Council on the appeal of the Secretary of State for India in Council v. the Honourable Maharajah Luchmeswar Singh, from the High Court of Judicature at Fort William in Bengal; delivered November 2nd, 1888.

Present:

LORD FITZGERALD.

LORD HOBHOUSE.

SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

IN this dispute about the village of Malinuggur it appears that the Government of India have been in possession ever since the month of July 1798. It is not disputed that during the whole of that time, and for long before, the village was part of the Milkiut, that is, of the zemindary or proprietary estate of the Darbhanga Raj. The Raja now seeks to recover the property. The Government takes the ground that it has made to the Raja, in some shape or other, either as a matter of account or as a matter of actual payment, one uniform payment for 80 years before this dispute arose, and they claim to be perpetual tenants of the village at a fixed rent. At one time, when they put in their written statement, the Government set up that there was an actual mokurreri lease granted to them, and they did so in perfect good faith, upon the ground that a document in the Collector's office, being the petition of the Raja for permanent settlement, contained a description of Malinuggur as being the mokurreri property of the East India Company. It has

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however been found by both the courts below that that description is an interpolation or a mistake of some kind, and that the true version of the petition is that which we have in the record, which, if their Lordships understand it rightly, is a copy of the original petition given out from the collector's office to the Raja, and found in the duftur of the Raja. Therefore that contention is not now insisted upon; and their Lordships have it that in the petition of the Raja for a permanent settlement, which contains a list of a very large number of mouzahs, there are a considerable number, about 16, specified as being held under mokurreri grants, and that the Mouzah Malinuggur is not so specified.

But then the Government say that, whether there is or is not a lease, the true inference from the facts is that there was a binding agreement for a perpetual tenancy by them under the Darbhanga Raj. They insist very strongly that it would be irrational to suppose that for such a number of years the Raja would have gone on accepting a payment which had come to be very far below the value of the land, unless he was bound by an agreement of that kind.

That leads their Lordships to consider under what circumstances possession was first taken by the East India Company, and their payment to the Raj settled on the basis on which it has been made for so many years.

It appears that this village of Malinuggur was part of a Jaghird granted to one Rajbullubh, apparently by the Nawab Nazim. It was granted certainly before the year 1764, and that was before the Dewany of Bengal, Behar, and Orissa was taken over from the Nawab Nazim by the East India Company. Therefore the British Government found the Jaghird-

dar in possession. In the year 1784 his position was apparently confirmed by a grant from the British Government. Nothing turns upon the special language of that grant, and it is only valuable as showing what the position of the Jaghirddar was at that time. It is clear that at that time the village was known to be part of the Milkiut of the Darbhanga Raj. What exactly the relations were between the Raja and the Jaghirddar does not appear. But the Jaghirddar was in possession, and of course was free of revenue.

In 1798 the Government desired to take the Mouzah of Malinuggur for the purposes of a stud of horses which they were setting up, or had set up, in the immediate neighbourhood. Rajbullubh was quite willing that they should take his land, and he sent in an account of the revenues extending over 17 years with a request to know what the Government would propose to pay him, and to see the form of the pottah that they proposed. Before anything further was done upon those negotiations the Jaghirddar Rajbullubh died. The next step in the transaction was that the Jaghird was attached, which was done immediately, in the month of July 1798. Within a week apparently of Rajbullubh's death, the Company attached the Jaghird, no doubt for the purpose of securing the revenue. Thus the Company got into possession.

The next step after that is the report of Mr. Graham, the agent of the Company, which bears date the 27th August 1798. After taking notice of what had passed with the Jaghirdar, and of his death, and that the lands had been attached by the Government, he makes this proposal. He says:—"I now propose, as " the lands (being part of the Milkiut of Raja " Madho Singh)"—that is Darbhanga—" will " continue in the hands of Government until the

“ conclusion of the decennial settlement, that it
 “ be recommended to the Governor-General in
 “ Council to put the lands appertaining to
 “ Mouzahs Malinuggur,”—and another village
 which we may leave out of consideration—
 “ under charge of Captain William Frazer, the
 “ superintendent of the stud, at a net rent of
 “ Sicca Rs. 1,500 from the commencement of the
 “ ensuing Fusli year 1206”—that would be 1798
 or 1799—“leaving it to the collector to pay the
 “ Malikana to Raja Madho Singh,” and so forth.

It would seem that what Graham advised was done. The Government were in possession; the decennial settlement was going on; their agent had come to a conclusion in his own mind what was a fair rent to pay for the village of Malinuggur; and he advises that the superintendent of the stud shall take possession and shall pay the amount which he had settled as fair. That seems to have been done, because, when we come to the permanent settlement, we find on the face of the Raja's petition, and again on the face of an account in the Collector's office, which shows the sums payable to Raja Madho Singh for the resumed Jaghird mehal of Rajbullubh, that those sums, so far as they are due from Malinuggur, amount to the proportion attributable to Malinuggur of the Rs. 1,500 which Mr. Graham advised to be paid for the two villages. Upon that footing the permanent settlement was made. The Raja was the proprietor. The Company were bound by the Regulation to make the settlement with the proprietor. They did make that settlement, and as far as their Lordships can judge, they made it exactly on the same footing on which they had been dealing with the village during the currency of the decennial settlement, that is to say, for the space of some two years before the permanent settlement was effected.

That is the whole of the contemporary evidence. There is no other evidence which bears upon the position of the parties excepting this, that we find that from that time forwards up to the year 1872 matters remained in precisely the same position. The Government continued in possession of the village; they continued to use the lands for the purpose of the stud; and they continued to be charged at the same rate as was entered in the petition and in the Collector's account.

In 1872 the Government came to the conclusion that they had better give up the stud, and it was accordingly given up, and the village has been used for ordinary agricultural purposes since that time. At that time the present Maharaja of Darbhanga was an infant, and some three or four years after he attained his majority he demanded possession. The mode in which that demand was made, and the time at which it was made, have been observed on by the counsel for the Government; but in their Lordships' opinion, nothing whatever turns upon the correspondence which took place in the years 1881 and 1883; but whatever were the rights of the parties in 1872, when the stud was given up, precisely the same rights exist now.

Under these circumstances their Lordships think there is no substantial doubt that the courts below, who have both decided that the Government cannot establish the inference that they are perpetual tenants, are right. The Government undoubtedly are tenants of the Darbhanga Raj. It is for them to show why the landlord may not recover his property, and they can only do that by proving that there is some agreement between them and their landlord that they shall have something more than the ordinary tenancy at will or from year to year. All they

offer is some conjecture of such an agreement founded simply on their long possession at a uniform rate of payment. If we could not find out the origin of these things there would be strength in that argument, but as the origin of them is known the argument loses its force. In fact the possession is not difficult to explain in other ways. It is not the business of the Plaintiff to explain the possession; it is the business of the Defendants to show that it leads to the inference of a perpetual tenancy. But even if the *onus probandi* did not lie so clearly on the Defendants, their Lordships think that the reasonable explanation has been given by the courts below, and that there probably was some understanding, which might have amounted to an agreement, that the Government should have this land for the purposes of a stud, not that they should have it for ordinary agricultural or commercial purposes to make what money they could of it. Thus the moment it ceased to be occupied for the purposes of a stud the rights of the landlord would revert, and it was he and not the Government who would have the benefit of the increased value of the land. That hypothesis seems more probable than the alternative one, and it is of course always more satisfactory when we can arrive at a reasonable explanation of the facts instead of merely resting the case upon the failure of one party to make out his case against the other.

The result is that their Lordships think the courts below were quite right, and that this appeal must be dismissed with costs, and they will humbly advise Her Majesty to that effect.