Privy Council Appeal No. 98 *of* 1914.

Bengal Appeal No. 26 *of* 1911.

Raja Ranjit Singh Bahadur - - - - *Appellant,*

v.

Srimati Kali Dasi Debi and Others - - *Respondents,*

Twenty Consolidated Appeals

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 24TH JANUARY, 1917.

Present at the Hearing:

LORD PARKER OF WADDINGTON.
LORD SUMNER.
SIR JOHN EDGE.
SIR LAWRENCE JENKINS.

[*Delivered by* LORD PARKER OF WADDINGTON.]

This is a consolidated appeal from decrees of the High Court of Judicature at Fort William, in Bengal, made in twenty suits, each of which, though relating to a distinct subject-matter, raised substantially the same questions of law. Each suit was in substance a suit to recover possession from the appellant, who is the registered proprietor of extensive Zemindaries in the Birbhum district of Bengal, of Chowkidari Chakeran lands recently resumed by Government and transferred to him under the provisions of Act VI of 1870 of the Bengal Council. The plaintiff in each suit was the Putnidar or Dar-putnidar of the village within the boundaries of which the lands the subject of the suit were situate. In those suits in which the Dar-putnidar was the plaintiff, the Putnidar was made a defendant, but took no part in the argument. The decree in each suit was in favour of the plaintiff and against the appellant.

Their Lordships consider it unnecessary to deal at further length with the history of the litigation. It is abundantly clear from the facts found in the Courts below, and was not disputed before their Lordships' board, that any interest which the appellant or his predecessors in title, originally had in the lands the subject of each suit had, prior to the resumption and

transfer of such lands under the Act of 1870, been transferred to and become vested in the plaintiff Putnidar or Dar-putnidar by virtue of the lease or sub-lease under which he held the villages in which these lands were situate. Two points only were argued before their Lordships. It was contended, *first*, that the proprietor with whom a Zemindari was settled under the Bengal Permanent Settlement, did not obtain or retain in the Chowkidari Chakeran lands situate within the territorial boundaries of a village comprised in his Zemindari any interest capable of being made the subject of a Putni lease; and *secondly*, that even if he obtained or retained any such interest, the effect of the Act of 1870 was to confer on him a new title not in any way affected by any Putni lease theretofore granted by him or his predecessors in title. In order to arrive at a conclusion on these questions, it is necessary to consider (1) the nature of Chowkidari Chakeran lands, (2) the provisions of the Bengal Permanent Settlement, and (3) the true meaning and effect of the Act.

At the time of the English occupation a Zemindar was responsible not only for the payment of the revenue, but for the preservation of peace and order within his district. For the latter purpose he maintained Tannahdars, or police officials, and Chowkidars, or village watchmen. Both had from time immemorial been remunerated by allotments of land to be held in consideration of the services they rendered to the Zemindar, either rent-free or at a low rent, but whereas the police official rendered police service only, the Chowkidar not only assisted the police, but rendered acts of service personal to the Zemindar. Chakeran lands are lands held by service tenure. Generically the term includes all lands so held, whether by police officials, Chowkidars, or persons whose only duties are personal to the Zemindar. The expression "Tannahdari lands or Tannahdari Chakeran lands" means lands held on service tenure by Tannahdars or police officials. The expression "Chowkidari Chakeran lands" means lands held on service tenure by Chowkidars, or village watchmen. As one would naturally expect, it had long been customary, in fixing the revenue or jumma payable for the Zemindari, to leave Tannahdari and Chowkidari Chakeran lands out of account.

Passing to the settlement of 1793, it appears to their Lordships to be beyond controversy that whatever doubts be entertained as to whether before the English occupation the Zemindars had any proprietary interest in the lands comprised within their respective districts, the settlement itself recognises and proceeds on the footing that they are the actual proprietors of the land for which they undertake to pay the Government revenue. The settlement is expressly made with the "Zemindars independent Talukdars and other actual proprietors of the soil" (see Regulation I, Section 3, and Regulation VIII, Section 4). It is clear that since the settlement the Zemindars have had at least a *primâ facie* title to all lands for which they

pay revenue, such lands being commonly referred to as Malguzari lands (see the case of Rajah Sahib Perhlad Sein (12 Moore, I.A. 289, at p. 331).

Bearing this in mind, their Lordships will proceed to consider the regulations of the permanent settlement, so far as they deal with Chakeran lands. The leading authority on this subject is *Joykishen* v. *Collector of East Burdwan* (10 Moore, I.A. 16). To use Lord Kingsdown's expression in that case, the effect of the settlement is to divide Chakeran lands into two classes, namely, (1) Tannahdari Chakeran lands, that is, lands held on service tenure by police officials, and (2) all other Chakeran lands. As to Chakeran lands of the former class, they were by Bengal Regulation I, Section 8, clause 4, made resumable by Government, the Government relieving the Zemindar from the duty of maintaining a police establishment. These Tannahdari Chakeran lands were, in fact, shortly afterwards resumed and became Government lands, the title of the Zemindar being extinguished by such resumption. As to all other Chakeran lands, whether held by public officers or private servants in lieu of wages, they are dealt with by Bengal Regulation VIII, Section 41.

In order to understand the 41st Section of the last-mentioned Regulation, it is necessary to refer to some of the preceding sections. By virtue of the 36th Section the assessment is to be fixed exclusive and independent of all existing Lakhiraj lands, that is, lands exempted from the public revenue. Such lands are therefore in effect withdrawn from the settlement, and the Zemindar, though these lands might be locally situate within his district, could claim no title therein by virtue of the settlement.

Sections 37 to 40 deal with certain lands referred to as "private lands" of the Zemindars. By Section 37 these are not to be included in the Lakhiraj lands referred to in Section 36, and special directions with regard to them are given in Sections 38, 39, and 40. Speaking generally, such lands are not excluded from, but on the contrary are included in, the settlement. Then comes the 41st Section dealing with Chakeran lands; these, whether held by public officers or private servants in lieu of wages are also not to be included in the Lakhiraj lands referred to in Section 36. They are to be annexed to the Malguzari lands and declared responsible for the public revenue assessed on the Zemindaris in which they are included in common with all other Malguzari lands therein.

Sections 37 to 41 inclusive appear to their Lordships to suggest that neither the "private lands" of the Zemindars nor Chakeran lands had theretofore been taken into account in fixing the revenue for which the Zemindar was responsible to Government. Otherwise there would be no point in excluding them from the Lakhiraj lands dealt with by Section 36. However this may be with regard to the private lands of the Zemindar or with regard to Chakeran lands, the services for which

were purely personal to the Zemindar, it is quite clear that Tannahdari and Chowkidari Chakeran lands, the services for which involved the performance of duties in which the public was interested, had not, as a rule, been taken into account for the purpose of increasing the jumma.

The effect of Section 41 appears to be this: The question whether any of the Chakeran lands therein referred to ought to be taken into account for the purpose of increasing the jumma is left to be determined by the custom which had hitherto prevailed or any special directions contained in the regulations. But whether or not so taken into account, all Chakeran lands are to be considered Malguzari for the purpose of ascertaining the lands in respect of which the jumma is paid and upon which it is secured. The *primâ facie* title of the Zemindar to Chakeran lands within his district is thus recognised by the settlement. Tannahdari Chakeran lands may be resumed under Regulation I, Section 8, clause 4, but with regard to all other Chakeran lands, if resumable at all, they can be resumed by the Zemindar alone. In the case however of Chowkidari Chakeran lands, not even the Zemindar may be entitled to resume them, for Chowkidars have public duties to perform and the lands which they hold on service tenure as remuneration for the performance of such duties are to that extent appropriated or assigned for public purposes. Subject, nevertheless, to the requirements of the public interest, the Zemindar is the owner and as such is entitled to the enjoyment of any personal services which the Chowkidars ought to render and when vacancies occur to appoint others in their place. All this follows from what was said by Lord Kingsdown in *Joykishen* v. *Collector of East Burdwan.*

Such, then, being the Zemindar's interest in Chowkidari Chakeran lands within his district, it is difficult to see why this interest should not be made the subject of a putni grant. That it could be so made appears to have been admitted in the last-mentioned case, and the whole of Lord Kingsdown's judgment proceeds on that footing. In their Lordships' opinion, there can be no reasonable doubt on this matter. Indeed, the only argument to the contrary advanced by the appellant's counsel was based on certain expressions used by Mr. Ameer Ali in giving the reasons of the Board in the recent case of *The Secretary of State for India* v. *Kirtibas Bhupati Hari-Chandan Mahapatra* (42 Ind. App. 30). In that case, which has little, if any, bearing on the questions now in controversy, the point for decision was whether the power of resumption conferred by Act VI of 1870 extended to certain Chakeran lands which the Government had affected to resume thereunder. Here it is admitted by everyone that the powers of the Act were applicable. Moreover, it is abundantly clear that Mr. Ameer Ali, whatever expressions he used, did not intend to depart in the smallest degree from what had been laid down by Lord Kingsdown in *Joykishen* v. *Collector of East Burdwan.* Under these circumstances, any

argument based on a meticulous examination of isolated expressions used by him can, in their Lordships' opinion, have little weight.

It remains to consider the effect of a resumption by the Government of Chowkidari Chakeran lands under the provisions of Act VI of 1870 of the Bengal Council.

It should be observed that the definition of Chowkidari Chakeran lands contained in the Act refers not only to the public duties of Chowkidars, but also to their personal duties to the Zemindar. It is apparently for this reason that the revenue assessment in the lands resumed is, by Section 49, fixed at only one-half of the annual value of such lands. If the Zemindar had no interest, the effect of this provision would be to make him a free gift of half of the value of the lands resumed. It appears to be for the same reason that the Zemindar is, under Section 50, entitled to contest the correctness of any assessment which is made. After the assessment is complete the collector is, under Section 50 by order in the scheduled form, to transfer the land to the Zemindar subject to the assessment. By the 51st Section such order operates to transfer the land to the Zemindar subject to such assessment and "subject to all contracts theretofore made in respect of, under or by virtue of which any person other than the Zemindar may have any right to any land, portion of his estate, or tenure in the place in which such land may be situate." The latter words may not be very happily chosen, but their obvious intention is to preserve the rights of third parties. They contemplate a case in which the village in which the resumed lands are situate has been made the subject of a contract by the Zemindar, or those through whom he claims and that under this contract some third party may have an interest in the lands resumed. They are wide enough to include, and in their Lordships' opinion do include, the rights of a Putnidar under a Putni grant by virtue of which the Putnidar is lessee of the Zemindar's interest in the lands resumed, and also the rights of a Dar-putnidar under a Dar-putni grant. In their Lordships' opinion, therefore, not only does the Act recognise the existing title of the Zemindar to the lands resumed, but the estate taken by the Zemindar under the order of transfer is in confirmation and by way of continuance of his existing estate, and when the Zemindar or those through whom he claims has or have entered into contracts affecting his existing estate the rights of third parties under these contracts are preserved. It is a satisfaction to their Lordships to find that the view above expressed is that hitherto almost universally adopted in the Indian Courts.

The result is that the appeal fails and should be dismissed, and their Lordships will humbly advise His Majesty accordingly. With regard to costs, the appellant should pay to the respondents who have appeared one set of costs between them, but these should, having regard to the terms on which leave to appeal was granted, be as between solicitor and client.

In the Privy Council.

RAJA RANJIT SINGH BAHADUR

v.

SRIMATI KALI DASI DEBI AND OTHERS.

DELIVERED BY
LORD PARKER OF WADDINGTON.

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