

*Privy Council Appeal No. 32 of 1921.*

*Bengal Appeal No. 17 of 1919.*

Naba Kumar Das and others - - - - - *Appellants*

*v.*

Rudra Narayan Jana and another - - - - - *Respondents*

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 13TH APRIL, 1923.

---

*Present at the Hearing :*

VISCOUNT HALDANE.

LORD DUNEDIN.

SIR JOHN EDGE.

[*Delivered by* VISCOUNT HALDANE.]

---

In this litigation the High Court at Fort William, as the Court of Appeal, reversed a judgment and decree of the Subordinate Judge, Third Court, 24 Parganahs. The appellants had brought a suit in the latter Court for a declaration that a forfeiture by the Government of a certain lease and agreement was invalid and that they, as plaintiffs, were entitled to possession of the land, the subject of the lease. The learned Subordinate Judge decided in favour of the plaintiffs, but the High Court allowed an appeal from his decision and dismissed the suit. The present appeal is brought by the plaintiffs, and it seeks to have the decision of the learned Judge of first instance restored. The only question now relevant for determination is whether the resumption by the Government in 1906 of Crown land in the Sunderbans, originally leased on the 7th December, 1900, and a subsequent pottah by the Government dated the 27th July, 1909, in favour of the respondent, Rudra Narayan Jana, were validly made.

The only material facts are not numerous. A lot called Monsadwip in Saugor Island, Sunderbans, was put up to auction by the Government for settlement, and the highest bidder was one Golak Chandra Das. At his request, the Government on the 7th December, 1900, granted a lease in favour of Golak Chandra Das himself, Narayan Prashad Ballav, Prasanna Kumar Maiti, Narendra Nath Bhuiya, and Kubir Charan Patra. By partition deed the shares of the first three were declared to be of 4 annas each, and the shares of the last two of 2 annas each. These lessees, or their representatives, were the original plaintiffs and the appellants here. In August, 1903, the first respondent, Rudra Narayan Jana, purchased from the successors in title of Golak Chandra Das, who had died, a 2 annas share of the 4 annas share to which the latter was entitled.

The lease of the 7th December, 1900, gave an occupancy right for forty years from April, 1901, of jungle land. Under the third clause of this lease one-eighth of the entire area leased was to be cleared and to be in a fit state for cultivation at the end of the fifth year, and at any time after the expiration of the fifth year the Sunderbans Commissioner or other officer appointed by the Government or any person authorised by him might enter on the land and cause it to be measured for the purpose of ascertaining whether this condition had been fulfilled. The fourth clause provided that on failure to comply with the above clearing condition, the lessees should be liable at the discretion of the Government to the forfeiture of all rights in land under the lease, or to an annual penalty. The Government, if the lease was determined, was to have the right of immediate re-entry. There was also a provision for the construction by the lessees of "protective works" with a right in the Government to put an end to the lease in case these were not constructed within a time prescribed. In the view which their Lordships take of the case it is not necessary to consider this provision.

By an agreement of the same date with the lease, the 7th December, 1900, the lessees covenanted that they would undergo the penalties set forth in "the clauses of the lease," provided that the Sunderbans Commissioner or other officer should give to them or their legal representatives fifteen days notice within which to show cause why the penalties should not be enforced. No question now arises on this covenant or proviso.

On the 12th April, 1906, Mr. Sunder, who as Settlement Officer had taken over the duties of the Commissioner in the Sunderbans, an office which had been abolished, visited the property leased. He had previously made various intimations of visits which were not carried out, and he had, on the occasion on which he actually inspected, arrived three days before the time he had intimated. These circumstances, however, do not affect the question of his right. He appears to have gone to the property and to have looked at it with the aid of his binoculars both when he landed and subsequently from a boat. The property was stated by

the Trial Judge to be "a vast tract of forest and swamp, comprised in the area of 7,532 miles, known as the Sunderbans," consisting of "a tangled region of estuaries, rivers and water-courses, enclosing a vast number of islands of various shapes and sizes." The property leased was included in Chuck Monsadwip which is in Saugor Island, one of these islands. The Sunderbans is by nature a swampy jungle covered with trees. The soil is alluvial soil, formed by deposit from the Ganges, at whose mouth it is. The Government had, for a long time past, been taking steps to reclaim it, and to convert the jungle from being the mere home of wild beasts into rice tracts. For this purpose it was necessary not only to cut down the trees but to take out their stumps, and improvement leases were being granted on terms, such as those in the lease in question, which should secure that this was done. It is therefore plain that the obligations in the lease to clear and to put into a fit state for cultivation, extended to the extraction of these stumps as well as to the cutting down of the timber.

Mr. Sunder appears first to have landed on the lot of the respondent Rudra Narayan Jana. He subsequently got into a boat in order to have a view of other portions of the property, alighting on at least one spot. He was engaged for, at all events, two hours in looking at the property leased, which extended to about 3,000 acres. He did not take measurements. The learned Subordinate Judge speaks as though he was bound to do this, but it is clear that there was no obligation to do so imposed by the lease. There was a right, if the representative of the Government thought proper, to enter and make measurements, but no duty. What the Settlement Officer had to determine, as a matter of fact, was simply whether one-eighth of the entire area leased had been cleared and put into a state fit for cultivation within the stipulated time.

On the 23rd April, Mr. Sunder reported to the Collector of the 24 Parganahs at Alipur that he had inspected and had found only Rudra Narayan Jana and a few raiyats who held under him on the property. He stated that the clearing conditions had not been fulfilled, and that only a small portion had been cleared by Rudra, who had obtained some paddy from it. He also said that the "protective works" had not been commenced. As to this, however, for reasons connected with the absence of a designation by the Government of the site for them, no question has been raised on the argument in the appeal. He recommended in his report that the lease should be determined and the estate brought under direct management by the Government.

It was contended for the appellants that the substance of this evidence was displaced by certain documents put in at the trial by the Government. These documents were in the nature of a rent-roll proceeding on measurements stated to have been made about the beginning of the year 1909. The rent-roll itself was prepared on the 11th January in that year. It was relied

on by the Subordinate Judge as showing that the land must have been made fit for cultivation by 1906. The appellants offered evidence that there had been measurements made for the Government in 1907, but both Courts rejected the testimony of the witnesses as false. In the Court of Appeal it was pointed out that the entries in the rent-roll are ambiguous as to whether more than 942 bighas were stated to have been fit for cultivation on the 6th April, 1906. If there was no more than this amount made fit by then, the eighth part of the whole, amounting to 1,250 bighas, could not have been made fit within the time stipulated. The rent-roll was prepared by a clerk, Mahesh Chandra Dutta, from material which appeared to have been furnished to him by other clerks. There is no reliable evidence as to the entries having been the work of anyone who had sufficient first-hand knowledge.

The Court of Appeal, moreover, points out that there was ambiguity in the entries as to the dates at which the tenants were treated as actually being in possession of land that had been rendered fit for cultivation.

But however this may stand there is another objection which their Lordships think fatal to the entries in the rent-roll being relied on as evidence which could outweigh the direct testimony of the witnesses who say that the stipulated eighth part had not been adequately cleared by April, 1906. Mr. Sunder went into the witness box and stated that he had seen the property and, as the result, had advised that, as he had found that the clearing stipulated for had not been performed, the Government should resume the property leased, as was actually done. Nothing was put to him in his cross-examination about the rent-roll or the entries in it. If, as was suggested at the Bar, this was because the documents were tendered by the Government, a defendant at the trial, as part of its case, only after Sunder had been in the box, an application might have been made to recall him for further cross-examination. There is, however, no suggestion that there was any such application. Sunder was not even cross-examined on the alleged perfunctory character of his inspection. The learned Subordinate Judge relied largely on the circumstance that he did not measure. But he was not bound to measure. His evidence was that he could see and saw that the proper quantity of land had not been cleared. If this statement was challenged it should have been challenged by cross-examination directed to the impracticability of forming a judgment by mere inspection, even with the aid of glasses, as to the proportion of area cleared.

After the forfeiture had been declared and an interval had elapsed, a fresh lease was granted to the respondent Rudra on the 27th July, 1909, who, it was admitted, could not be said to have been in a fiduciary position. In consequence of this lease to him he was joined as a defendant in the suit along with the Secretary of State.

The Trial Judge found that the defendants had failed to prove that the clearing conditions of the lease had been broken, and on this ground gave judgment against them. The Court of Appeal held that the learned Trial Judge had laid undue stress on jungle cutting alone. The stumps had to be extracted also before the land could be fit for cultivation. It was largely on the ground that this was proved not to have been done that they reversed the decision.

For reasons which they have already sufficiently indicated their Lordships concur in the view taken in the High Court at Fort William on the appeal from the Trial Judge, and they will humbly advise His Majesty that this appeal should be dismissed with costs.

In the Privy Council.

---

NABA KUMAR DAS AND OTHERS

v.

RUDRA NARAYAN JANA AND ANOTHER.

---

DELIVERED BY VISCOUNT HALDANE.

Printed by  
Harrison & Sons, Ltd., St. Martin's Lane, W.C. 2.  
1923.