Privy Council Appeal No. 99 *of* 1927.
Bengal Appeals Nos. 118-164 *of* 1923.

Maharaja Bir Bikram Kishore Manikya Bahadur - - - *Appellant*

v.

Ali Ahamad - - - - - - - *Respondent*

And 46 connected Appeals

(*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 31ST MARCH, 1930.

Present at the Hearing:

LORD THANKERTON.
SIR GEORGE LOWNDES.
SIR BINOD MITTER.

[*Delivered by* SIR BINOD MITTER.]

These are consolidated appeals from a judgment and 47 decrees, dated the 7th August, 1923, of the High Court of Judicature at Fort William in Bengal, affirming decrees of the Special Judge of Noakhali, dated the 17th September, 1919, which, in their turn, affirmed the decrees dated the 6th October, 1917, of the Assistant Settlement Officer of Noakhali.

The *zemindary* with which these appeals are concerned is known as the four annas share of Pergana Dandra.

In 1792 the *zemindar* of the four annas share was one Mahammud Ali, and by an Order dated the 7th December of that year he was imprisoned for life as a rebel and his *zemindary* was confiscated by the Government in February, 1793. It has been suggested before this Board that there was in reality no

confiscation, but in the view that their Lordships take of this case the question is immaterial.

The *zemindary* consisted of 45 *taluks* belonging to different *talukdars* and one *nij taluk* of the *zemindar* which was split up into 35 *tuppahs*, and certain other lands.

It is not disputed that the *taluks* and *tuppahs* existed before the Permanent Settlement.

The Collector of Tipperah made *dowl* settlements with the *talukdars*, but neglected to record the extent of the land, nor were the boundaries ascertained.

Their Lordships set forth below a specimen form of such *dowl:*

"*Dowl* settlement of rent in money (in respect of) Taluk Mahomed Reza (?) (in the) possession of Faizullah, appertaining to 4 annas *Hissya* of *Pargana* Darra Mahomed Ali Chowdhury, Sarkar Sonargaon, Mahal Khalisa, etc., Zilla Rosana (torn), Tipperah, year 1199.

Description.	Total amount (*mokra*) in silver coin. Rs.	a.	g.	k.
Former (Gujasta Jama) deducting (penned through)				
Rs. 2-13-0	7	3	2	3
Collection expenses	1	12	18	3
	9	0	1	2
	(penned through)			

I will pay *sicca* rupees nine and *karas* six."

The Government collected the revenue or rent by farming out the *zemindary* for some years, but subsequently realised the dues from the owners of *tuppahs* and *taluks* directly. There is a dispute as to whether what was collected was revenue or rent.

The other 12 annas share of the *Pargana* was permanently settled on the 17th March, 1798, and was partitioned into four separate shares, two of which were subsequently sold for arrears of revenue in 1835, and were purchased by the Government. Considerable difficulty, however, was experienced in the management of the estate because whenever a dispute arose, as the areas were not specified, confusion was created by the uncertainty whether any particular land was included in the 4 annas estate or the other two shares out of the 12 annas which had been purchased by the Government, or the remaining two shares.

Counsel for the appellant has drawn their Lordships' attention minutely to the various reports of the Revenue Officers, and it appears from them that they were of opinion that the rent of the tenures was intended to have been fixed for ever, and no fresh assessment would have been made, but for the fact that neither the areas nor the boundaries had ever been fixed.

The Revenue Officers were, however, of opinion that the Government was suffering loss by fraudulent encroachment on its own lands by the *talukdars* and *tuppahdars*, and to prevent such encroachment the Government decided to have the whole *Pargana* surveyed.

The *tuppahs* were assessed in 1824, and both the *tuppahs* and *taluks* were assessed in 1847 for a period of 30 years.

It appears that on the 28th May, 1845, the Commissioner passed an Order directing that the settlement should be for a term of 30 years, and that the rate of rent should not be enhanced on expiry of the term.

In 1847, as has already been stated, notwithstanding the protests of the *talukdars*, a settlement was made whereby the rate was fixed at Rs. 3 15 an. 6 p. per *kani*, but there is no evidence as to what the rate of the rent of the *taluks* or *tuppahs* was before 1793, or whether any rate of rent was fixed in 1793.

In 1869 the 4 annas share *zemindary* was permanently settled with one Assima Banu, heir of Mahammud Ali, and Bharat Chandra Deb, who had purchased in the meantime the interests of the other heirs of Mahammud Ali. The present plaintiff's ancestor purchased the *zemindary* after it had been settled as aforesaid.

In or about the year 1912, on the application of the appellant, a survey of the estate was commenced, and a record of rights was prepared under the Bengal Tenancy Act. The Settlement Officer passed a general order with regard to the *taluks* and *tuppahs*, directing that in preparing the record of rights these tenures were to be described as "rent liable to enhancement." The actual entries in the record of rights finally published, in which it is alleged the words "rent liable to enhancement," occur, have not been exhibited in these appeals, but the order of the Settlement Officer is on the record. The order is not evidence under the Bengal Tenancy Act, but their Lordships will assume that there are such entries in the finally published records, as alleged by the appellant.

After the publication of the final record of rights the *zemindar* brought several suits against the *talukdars* and *tuppahdars* before the Assistant Settlement Officer under Section 105 of the Bengal Tenancy Act, ostensibly for the settlement of a fair and equitable rent in respect of the lands held by them, but in reality for enhancement of rent.

After recording evidence, both *oral* and documentary, the Assistant Settlement Officer came to the conclusion: (1) That these tenures were originally independent *taluks* but had lost their character, and (2) that the tenures existed before the Permanent Settlement, and the appellant had failed to prove any local custom or the conditions of the tenure entitling him to enhance the rate of rent. He held that the appellant failed to discharge the onus cast on him by Section 6 (*a*) of the Bengal Tenancy Act. He took into account the presumption in favour of the appellant arising out of the entry in the record of rights that the tenures were liable to enhancement.

There were appeals from his judgment and decree to the Special Judge of Noakhali. The Special Judge held :—

(1) That the *taluks* existed before the Permanent Settlement, and

(2) That they were independent *taluks* within the meaning of the Bengal Regulations.

He further held as follows :—

"From 1848 till 1869 they paid uniform rents and previous to 1848, there having been no ascertainment of definite areas, it cannot properly be said that the rent of these *taluks* varied. If there was any increase it was for excess area. I therefore find that there is no good ground to assert that those *taluks* are on enhanceable rents and that the plaintiff has any right to demand any enhancement of rent under Sections 6 and 7 of the Bengal Tenancy Act. The presumption of Khatyan is clearly rebutted."

The appellant appealed to the High Court.

The learned Judges by their judgment under appeal stated :—

(1) "The question whether the landlord has succeeded in proving the necessary conditions is primarily a question of fact.

(2) "It should be observed that the Special Judge finds that if there was increase in any case it was for increase of area, and there are materials on the record from which such a conclusion may be drawn."

They further held on the merits that the appellant had failed to prove that he was entitled to enhance the rent under the terms of Section 6 of the Bengal Tenancy Act. They were also of opinion that these tenures were independent *taluks*.

Two questions have been argued before their Lordships :—

(1) Whether the *taluks* and *tuppahs* were independent *taluks*.

(2) Whether the appellant succeeded in proving that under the conditions under which the tenures are held their rents are liable to enhancement.

In the view that their Lordships take of the second question they think it unnecessary to express any opinion on the first.

Section 6, clause (*a*), of the Bengal Tenancy Act is as follows :—

"Where a tenure has been held from the time of the Permanent Settlement its rent shall not be liable to enhancement except on proof.

(*a*) "That the landlord under whom it is held is entitled to enhance the rent thereof either by local custom or by the conditions under which the tenure is held."

No question of local custom has been raised.

There is no doubt that the tenures existed before the Permanent Settlement.

This is a question of fact and has been decided in favour of the tenants by all Courts in India.

The appellant has not argued, nor in the face of the findings could he argue, that by reason of what took place in 1847 a

new tenure was created. This being so, the only question is whether the appellant has succeeded in proving that by the conditions under which the tenure is held he is entitled to enhance the rent. All that their Lordships have before them against the permanency of rent is that the *tuppahs* were assessed in 1824, and that both the *taluks* and *tuppahs* were assessed in 1847 for 30 years.

Having regard to the special circumstances of this case under which the assessments were made, and the statements of the Revenue Officers made from time to time that the rent of the tenures could not have been increased if the area or the boundary thereof had been fixed, their Lordships are unable to hold that these two assessments give rise to an inference in law that the appellant has proved the conditions enabling him to enhance the rent. There is ample evidence on the record that the areas of the lands occupied by the tenants had increased after 1793.

Their Lordships are of opinion that the questions involved in these appeals on which they are expressing their opinion are questions of fact.

Their Lordships find that the Special Judge did take into consideration the presumption under Section 103 (*b*) of the Bengal Tenancy Act. They are of opinion that the Special Judge had before him evidence proper for his consideration in support of his finding that the increase, if any, was due to excess of area.

Their Lordships are therefore of opinion that the appeals should be dismissed with costs, and they will humbly advise His Majesty accordingly.

In the Privy Council.

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DELIVERED BY SIR BINOD MITTER.

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