Privy Council Appeal No. 69 *of* 1937

Bengal Appeals Nos. 30 & 35 *of* 1936.

Bengal Coal Company, Limited - - - - *Appellants*

v.

Sri Sri Janardan Kishore Lal Singh Deo and another - *Respondents*

Sri Sri Janardan Kishore Lal Singh Deo and another - *Appellants*

v.

Bengal Coal Company, Limited - - - - *Respondents*

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 28TH JUNE, 1938

Present at the Hearing:

LORD ROMER.
SIR SHADI LAL.
SIR GEORGE RANKIN.

[*Delivered by* SIR GEORGE RANKIN.]

By a mining lease dated 4th March, 1915, the plaintiffs demised to the Bengal Coal Company, Ltd. (defendants) therein called "the lessees," the mines, beds, veins and seams of coal in Mousa Poidih in the district of Burdwan for 30 years from 1st April, 1915. The first of the lessees' covenants contained in Part VII of the schedule to the lease was in the following terms:—

> "The lessees shall pay the royalty and royalties reserved by this lease at the time and in the manner above appointed in that behalf and shall also pay and discharge all taxes, rates, assessments and impositions whatsoever being in the nature of public demands which shall from time to time be charged assessed or imposed upon the said mines or any part thereof by authority of the Government of India or the said Local Government or otherwise except demand for land revenue and shall also pay interest at the rate of 12 per cent. per annum on all arrears of such royalty or royalties from the due date thereof."

By their plaint filed in the Court of the Subordinate Judge at Asansol on the 21st June, 1929, the plaintiffs claimed to be entitled under this covenant to decree against the defendants for a sum of Rs.2,095-8-0 together with certain interest. The claim is for re-imbursement in respect of

certain cesses or taxes for which the plaintiffs became liable between the years 1923-1929 (inclusive) and which they have paid. These public demands are three in number—namely, (1) Road and Public Works Cess under the Cess Act, 1880 (Bengal Act IX of 1880); (2) expenses charged to the plaintiffs under clause (*b*) of sub-section (1) of section 10 of the Bengal Mining Settlements Act, 1912 (Bengal Act II of 1912); (3) Income-tax upon royalties reserved by the lease.

The Subordinate Judge gave the plaintiffs a decree in respect of all three heads of claim but disallowed the claim for interest. On appeal by the defendants the District Judge of Burdwan (7th December, 1932) disallowed the claim in respect of income-tax but upheld the Trial Court's decision as to the other two heads of claim. Both sides having appealed to the High Court, Nasim Ali and Edgley JJ. affirmed the decision of the District Judge by decrees dated 24th March, 1936. Two appeals to His Majesty have been brought pursuant to certificates granted by the High Court under clause (c) of section 109, C.P.C., and they have been consolidated. The defendants by their appeal dispute that they are liable in respect of Road and Public Works Cess or the charge under the Mining Settlements Act. The plaintiffs appeal against the disallowance of their claim in respect of income-tax. No question as to interest arises: nor is it contended that there is any reason why the covenant should not have effect according to its tenor.

Learned counsel for the defendants have drawn attention to the fact that the words of the covenant—charged, assessed or imposed upon the said mines or any part thereof—are not accompanied by phrases (to be found in books of conveyancing precedents) designed to enlarge their scope by making express mention of demands imposed in respect of the demised premises or in respect of the royalties reserved by the lease. *Allum* v. *Dickinson* (1881) L.R. 9, Q.B.D. 632, has been cited to show that the fact that a charge can be enforced against the premises does not in all circumstances make it a charge imposed on the premises; and the observations of Mathew L.J. in *Foulger* v. *Arding* L.R. [1902] 1 K.B. 700, 711, have been referred to as showing that unless there be express mention of demands imposed on the owner in respect of the premises, such a demand is not within the covenant.

As regards the claim for monies paid under the Cess Act, 1880, their Lordships are of opinion that the terms of that enactment deprive the defendants' contention of its force: —

> "5. From and after the commencement of this Act in any district or part of a district, all immovable property situate therein, except as otherwise in sections 2 and 8 provided, shall be liable to the payment of a road cess and public works cess.
>
> "6. The road cess and the public works cess shall be assessed on the annual value of lands and on the annual net profits from mines, quarries, tramways, railways and other immovable property ascertained respectively as in this Act prescribed. . . ."

These words, together with the preamble and other sections (e.g., section 80), are to the effect that the cess is levied on the immovable property and that the immovable property is liable to pay it. It is assessed differently as regards lands and mines—in the case of lands it is assessed on the annual value and in the case of mines on the annual net profits. The judgment of the Board delivered by Mr. Ameer Ali in *Maharajah Manindra Chandra Nandi* v. *Secretary of State for India in Council* (1910) L.R. 38, I.A. 31, has been referred to, but their Lordships are unable to find that it casts any doubt upon the character of the cess as one imposed upon the immovable property by the plain terms of the Act.

The nature of the payment to be made under section 10 (1) of Bengal Act II of 1912 by the persons mentioned in clause (*b*)—"all persons who receive any royalty, rent or fine from such mines" is not so clear. The word "owner" in this Act points in such a case as the present to the lessees and not to the lessors. Expenses incurred by the Mines Board of Health in respect of any area declared to be a "mining settlement" are to be "charged to" the persons mentioned in clause (*b*) and to the lessees in such proportions as the Local Government may direct: the total burden of the lessees is to be divided among them on the basis of output, while the total burden of the receivers of royalties, etc., is to be divided among them on the basis of the Road Cess payable by each. There is a provision [subsection (4)] that "all expenses chargeable under this section shall be recoverable as if they were arrears of land-revenue." This would subject the defaulter not merely to "certificate procedure" under the Public Demands Recovery Act but also to a sale of his estate or interest under the Land Revenue Sales Acts [Act XI of 1859, Bengal Act VII of 1868]. Their Lordships think that the effect of the Act is to distribute the burden of the expenses among the interests (superior and inferior) in the mine. They say nothing upon the question whether a revenue-sale for the zemindar's default would affect the interest of his lessees [cf. Act XI of 1859, section 37] because they are not of opinion that the words "upon the said mines or any part thereof" refer to the interest of the lessees as distinct from that of the lessors. Nor are the plaintiffs concerned in the present case to demonstrate that for default by the lessees there is a remedy against the leasehold interest. Land revenue is certainly a burden "charged, assessed or imposed upon" the land. If the remedy against the land be what makes it so, or be sufficient to make it so, then the payment now in question is related in like manner to the lessors' interest. This conclusion cannot be avoided by contending that the persons referred to in clause (*b*) of section 10 of the Act of 1912 need not necessarily have any interest in the mine at all. Receipt of "royalty, rent or fine from such mines" *prima facie* imports such an interest, and in the absence of such interest Road Cess would not be chargeable under the Cess Act of 1880.

The words " taxes, rates, assessments and impositions whatsoever " are followed by the words " charged, assessed or imposed upon the said mines "—a variety of phrase which is intended to avoid restricting the covenant to cases in which the demand is in the strictest sense " charged upon the land." The phrases are to be taken in their ordinary and natural meaning. In *Payne* v. *Esdaile* (1888) L.R. 13, A.C. 613, the House of Lords had to interpret the phrase in a Statute of Limitations " periodical sums of money charged upon or payable out of any land except moduses or compositions belong to a spiritual or eleemosynary corporation sole." As moduses were incapable of being charged on land in the sense of being payable out of land or realisable by remedy against the land itself the phrase " charged upon " was interpreted in a wider sense and as having no technical meaning. It was considered by Lord Herschell that the *prima facie* and most common meaning would make it applicable only to those cases in which there was some remedy against the land itself, but that it might well be used to describe a burden imposed upon land if a payment has to be made in respect of land and the land can only be enjoyed subject to the liability for that payment. Lord Macnaghten observed:—

> " The liability to the payment falls upon the occupier or taker for the time being by reason of his occupation. The land carries the liability as a burthen from taker to taker. Beyond all doubt that liability subtracts something from the profitable enjoyment of the land; it must be taken into account on the occasion of a sale, a mortgage, or a lease. An intending purchaser would give so much less purchase-money; an intending mortgagee would strike the amount off the rental in calculating the value of the proposed security, and an intending lessee would offer so much less rent. It seems to me that according to the ordinary understanding of mankind that is a charge upon land which cannot be dissociated from the land and which charges the occupier in respect of the land."

The particular illustration of an intending lessee does not here apply owing to the special nature of the demand in question, but the other illustrations (intending purchaser, intending mortgagee) are applicable and add point to the circumstance that a remedy is given against the land itself. Their Lordships see no features in the present case rendering these considerations insufficient to attract the operation of the covenant and are of opinion that the High Court was right in holding that this part of the plaintiffs' claim is well-founded.

Income-tax is in a very different position, as intending purchasers or mortgagees of the lessors' interest would appreciate. It is not a tax imposed upon the mines in any sense relevant to the lessees' covenants in a mining lease. Indeed, express words referring to public demands imposed upon the proprietors in respect of the mine would not have brought income-tax within the covenant. It may be true that the suggestion that the covenant extends to income-tax in respect of the plaintiffs' royalties would not in 1915 seem so unreasonable as it would after the Indian Income-tax

Acts of 1918 and 1922 had graduated the tax according to the amount of the assessee's total income. But a general tax on the income of all persons with exceptions for smaller incomes is plainly outside the scope of the covenant.

The result is that in their Lordships' opinion both appeals should be dismissed. They will humbly advise His Majesty accordingly. There will be no order for costs.

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