

Privy Council Appeal No. 24 of 1939

Patna Appeal No. 29 of 1938

Raja Bahadur Sir Rajendra Narayan Bhanj Deo - - *Appellant*

v.

The Commissioner of Income-tax, Bihar and Orissa - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 11TH JUNE, 1940

Present at the Hearing :

LORD ROMER

LORD JUSTICE LUXMOORE

MR. M. R. JAYAKAR

[*Delivered by* LORD JUSTICE LUXMOORE]

The appellant was at the date of his assessment for income tax for the year ending the 31st March, 1932, the proprietor of an estate known as the Kanika Raj or Killah Kanika situate in and forming part of the tract of land formerly known as the Rajwara Orissa. This estate is hereinafter referred to as Kanika. The assessment was made by an order dated the 11th March, 1932, by the appropriate Income-tax officer. In making it the officer took into account certain sums accruing to the appellant by virtue of his ownership of Kanika from sources admitted to be non-agricultural.

The appellant in due course appealed to the Assistant Commissioner of Income-tax against this assessment upon the ground (among others) that all income which accrued to him by virtue of the ownership of Kanika was exempted from liability to income tax by virtue of a Treaty engagement, kaoolnama, made on the 22nd November, 1803, by a predecessor in title to Kanika with the Commissioners of the East India Company for the Soobah of Cuttack. On the 13th October, 1932, the Assistant Commissioner rejected the appellant's contention with regard to the Treaty. By petition dated the 23rd November, 1932, the appellant requested the respondent, who is the Commissioner of Income-tax for Bihar and Orissa, to refer to the High Court under the provisions of section 66 (2) of the Indian Income-tax Act, 1922, the question "whether on the terms of the kaoolnama dated the 22nd November, 1803, the petitioner's (i.e. the appellant's) incomes from his Kanika Raj are exempt from taxation under the Indian Taxation Act, 1922?" The reference

to the Indian Taxation Act, 1922, is admittedly a clerical error for the Indian Income-tax Act, 1922 (hereinafter referred to as "The Act"). The respondent on the 17th July, 1934, refused the appellant's request, and on the 6th February, 1935, the appellant presented a petition to the High Court of Patna under section 66 (3) of the Act for an order requiring the respondent to refer the question set out above to that Court. On the 21st February, 1935, the High Court ordered the respondent to state a case raising the said question for the decision of the Court.

The respondent accordingly drew up a statement of the case (hereinafter called the statement) which was on the 20th August, 1935, referred to the High Court. The respondent included in the statement an expression of his opinion that the said question should be answered in the negative. On the 14th September, 1936, the High Court expressed an opinion in agreement with that of the respondent, and dismissed the appellant's application with costs. The appellant obtained special leave to appeal from this order, and has in accordance therewith appealed to His Majesty in Council. The appellant claims that the said question ought to be answered in the affirmative, and that it should be declared that he is exempt from liability to income tax in respect of the non-agricultural income derived by him from Kanika.

The statement sets out the history of the relationship of the East India Company after its occupation of Orissa with 23 feudal chieftains who owned land then forming part of the Rajwaras of Orissa. One of these feudal chieftains was the then owner of Kanika, through whom the appellant's title is derived. In or about 1803 the East India Company, by the Commissioners of the Soobah of Orissa, entered into treaties with these feudal chieftains. The kaolnama of the 22nd November, 1803, is one of such treaties. It is stated in paragraph 9 of the statement that after the execution of the treaties changes took place in the condition and status of many of the 23 feudal chieftains, and that Kanika was one of those who did not retain its status as a feudatory State of Orissa, while in paragraph 12 of the statement it is stated that the appellant's present status is the same as that of a proprietor of a permanently settled estate in Orissa created by section 35 of Regulation XII of 1805, which is in the following terms:—

" XXXV. First, the late Board of Commissioners " (being those mentioned in the Kaolnama of the 22nd November, 1803) " having concluded a settlement of the land revenue with certain Zemindars, whose estates are situate chiefly in the hills and jungles, for the payment of a fixed annual quit rent in perpetuity these engagements are hereby confirmed and no alteration shall at any time be made in the amount of the revenue payable under the engagements in question to Government.

Second. The following is a list of the mohauls to which the provision in the preceding clause is applicable:—

Killah Aull,	Killah Humishpore,
Ditto Cojang,	Ditto Miritchpore,
Ditto Putra,	Ditto Bishenpore.

Third. The zemindaries of Cordah and Cunka being mohauls of the description of those specified in the preceding clause, a settlement shall be concluded, as soon as circumstances may admit, for the revenue of those mohauls on the principle on which a settlement has been concluded with the zemindars of the mohauls specified in the preceding clause.

(It is admitted that Cunka is identical with Kanika.)

Paragraph 12 of the statement continues as follows:—

“ Immediate settlement could not be made of this estate ” (i.e. Kanika) “ when this Regulation ” (i.e. Regulation XII of 1805) “ was promulgated because at that time the Raja of Kanika had been deprived of his estate, but it was conformably to the provision of Clause 3 of Section XXXV that the jama of Killa Kanika (spelt Cunka in the Regulation) was subsequently settled. Although the amount of jama payable by the estate was fixed at the same amount as in the kaoolnama all the other conditions of the kaoolnama were not renewed, e.g. the power of the Raja to maintain troops was taken away. The assessee (i.e. the appellant) therefore holds the estate not by virtue of the kaoolnama but by the subsequent settlement made with him.”

The “ subsequent settlement ” referred to in paragraph 12 of the statement is not identified in that paragraph or elsewhere in the statement. During the argument their Lordships asked that this settlement should be produced but neither party was in a position to comply with this request and they were informed that it was not produced during the hearing by the High Court.

It is stated in paragraph 13 of the statement that, unlike the Rajas of the Feudatory States of Orissa, who held their States under their respective kaoolnamas, the appellant's estate in Kanika is entered in Register D of the Collectorate as a permanently settled State bearing Touzi No. 21 and paying land revenue. It is also stated in paragraph 14 of the statement that the Feudatory States of Orissa are outside British India but Kanika is not. It will be observed from the statements quoted above that the kaoolnama of the 22nd November, 1803, did not affect the settlement of Kanika but that such settlement was effected by some later document which is not identified either by its date or by its terms. It seems plain to their Lordships that the opinion expressed by the respondent in paragraph 14 of the statement that “ in the existing circumstances of the estate of Kanika the kaoolnama granted to the holder of Killah Kanika in 1803 is merely of historical interest ” is correct, and consequently that the question referred to the High Court for its consideration has only an academic interest whichever way it may be answered. Counsel on behalf of the respondent stated during the argument of this appeal that notwithstanding the statement to the contrary in paragraph 14 of the statement he was willing to assume for the purpose of obtaining an answer to the question referred to the High Court that the kaoolnama of the 22nd November, 1803, was the document under which the appellant held Kanika, but he was not prepared to make any admission which would prevent the respondent from

contending that the answer, whatever it might be, was not decisive upon the question of the appellant's liability to income tax in respect of the revenue in question.

In these circumstances their Lordships do not think it would be right to depart from the well-established practice of the Board to refuse to decide a question which is purely academic. The function of the High Court in cases referred to it under section 66 of the Act is advisory only, and is confined to considering and answering the actual question referred to it. It may well be that when the settlement under which Kanika is held by the appellant is considered some question may emerge with regard to the appellant's liability to income tax in respect of the income derived from the sources already mentioned, but it would clearly be contrary to their Lordships' practice to attempt to formulate any such question even if they had before them the materials for so doing. In their Lordships' opinion, both the respondent and the High Court ought to have refused to answer the question referred to it, leaving it to the appellant to take such steps as he might be advised to obtain the reference to the High Court of such other question with regard to liability to income tax as may in fact arise under the material settlement. In these circumstances their Lordships are of opinion that the order of the High Court dated the 14th September 1936 should be discharged, and in lieu thereof it should be declared that having regard to the facts set out in the statement, the question referred ought not to have been answered because the appellant does not hold Kanika under or by virtue of the kaolnama of the 22nd November, 1803, but by subsequent settlement. Their Lordships see no reason to interfere with the order with regard to costs made by the High Court, and are of opinion that each party to this appeal should bear his own costs. Their Lordships will humbly advise His Majesty accordingly.

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In the Privy Council

RAJA BAHADUR SIR RAJENDRA
NARAYAN BHANJ DEO

THE COMMISSIONER OF INCOME-TAX,
BIHAR AND ORISSA

DELIVERED BY LORD JUSTICE LUXMOORE

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