Privy Council Appeal No. 64 of 1945

The Palestine Kupat Am Bank Co-operative Society Limited *Appellants*

v.

The Government of Palestine and others – – – *Respondents*

The Government of Palestine – – – – – *Appellant*

v.

The Palestine Kupat Am Bank Co-operative Society Limited and others *Respondents*

Consolidated Appeals

FROM

THE SUPREME COURT OF PALESTINE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 16TH MARCH, 1948.

Present at the Hearing:

LORD NORMAND
LORD MACDERMOTT
SIR JOHN BEAUMONT

[*Delivered by* LORD MACDERMOTT]

This is an appeal by the Palestine Kupat Am Bank Co-operative Society Limited (hereinafter called the Bank) and a cross-appeal (by special leave) by the Government of Palestine (hereinafter called the Government) from a judgment of the Supreme Court of Palestine (Edwards and Rose JJ.), sitting as a Court of Appeal, Jerusalem, dated the 27th July, 1944, which allowed in part an appeal by the Government from a decision of the Land Settlement Officer, Haifa, of the 15th March, 1943, concerning the ownership of a parcel of land in a locality known as Khirbet Yunis in the neighbourhood of the village of Tira.

In addition to the Bank and the Government there were 22 other parties to the suit who appear on the record as respondents. For reasons not now material they took no active part in the appeal and were not represented before the Board.

The events out of which the present dispute between the Bank and the Government arose may be shortly stated. In 1882 the Turkish Government made a grant of land in the locality of Khirbet Yunis to four villagers. This grant was recorded in the Tira land book under entry No. 140. The particulars contained therein state the boundaries on East, South, West and North, give the area as 34 old dunams (equivalent to 32 new dunams approximately), and name the grantees. About 1926 a Mr. Edmond Levy commenced buying up the shares of these grantees and eventually acquired approximately 63 per cent. of their interest. This he transferred to the Bank during the period 1934-1936. The remaining 37 per cent. appears to have become vested in 21 of the 22 respondents referred to above. Meantime, in 1929, in the course of a Government survey, the locality of Khirbet Yunis was surveyed and found to contain in all a little over 3,500 dunams. This area was treated as a survey unit and marked on the map as Block 28. It is also material to observe that in the same

year Khirbet Yunis was, with the exception of some small parcels therein, proclaimed Forest Reserve No. 195 under the Forests Ordinance of 1926. On the 24th October, 1937, the Bank, as registered owner of the 63 per cent. interest in the grant of 1882, applied to the Registrar of Lands, Haifa, for correction of the registered area (approximately 32 new dunams) to 3,528 dunams, this being practically the whole of Block 28 as shown on the Government survey. On the 25th June, 1938, the Registrar of Lands, after numerous enquiries and consultations with other Government officials, made the correction sought to the extent of amending the area to 3,296.197 dunams. On the 23rd November, 1941, the Bank filed a claim to ownership of its interest in the area thus registered. This claim was made in the course of the procedure under the Land (Settlement of Title) Ordinance of 1928 which by then had been applied by Order to a district including the area in question. On the 28th November, 1941, the Government, in the course of the same procedure, filed a claim to ownership of substantially the same area as unassigned State lands. The land so claimed was that which had been proclaimed Forest Reserve No. 195. In adjudicating upon these claims the Settlement Officer upheld the title of the Bank in respect of the area of 3,296.197 dunams. He identified and fixed the registered boundaries in a manner adverse to the Bank, but based his decision on the ground that the Government was bound by the conduct of its officials in approving the area as registered on the Bank's application for correction and was therefore barred or estopped from asserting its title thereto. On appeal the Supreme Court reversed this decision. It, however, affirmed in their substance the findings of the Settlement Officer as to the boundaries specified in the kushan of 1882 and held that the area contained thereby, which measured 625 dunams, was the parcel granted. It accordingly directed the land in question to be registered in the name of the Government with the exception of the said parcel of 625 dunams which it directed should be registered in the name of the Bank in respect of its 63 per cent. interest.

From this judgment the Bank appeals to regain the area of 3,296.197 dunams and the Government cross-appeals to reduce the area of 625 dunams to that specified in the kushan of 1882, namely 34 old dunams and no more.

Their Lordships find it unnecessary to enter upon an examination of all the numerous questions which were discussed in the course of the argument. In their view the relevant issues depend upon three main questions which will now be considered.

The first is as to how the boundaries mentioned in the kushan of 1882 should be identified on the ground. This became the subject of a marked conflict of testimony before the Settlement Officer. The contention of the Bank was, in effect, that these boundaries delimited what was substantially the whole of the locality known as Khirbet Yunis. The Settlement Officer distrusted much of the evidence adduced on this issue and made a personal inspection of the *locus*. Having done so he arrived at certain conclusions identifying the points and features in dispute. The Supreme Court accepted these conclusions which it regarded as based on the evidence of Mr. John Willoughby Loxton, an assistant superintendent of surveys who had acted as chairman of a Commission appointed by the Government to investigate the boundaries and the nature of the land contained within them. On this question, which is entirely one of fact, their Lordships see no reason to interfere with the findings of the courts in Palestine and they therefore hold that the boundaries specified in the kushan of 1882 are as identified by those findings. This being so it is unnecessary for present purposes to describe these boundaries in detail or to state the rival claims regarding their location and physical character. But it may be observed that as so fixed they are points or natural features rather than continuous lines; that on any view they bound or mark out but a relatively small portion of the locality known as Khirbet Yunis; and that if connected so as to form a continuous boundary line the area contained is, as already mentioned, one of 625 dunams. Before that area can be accepted, however, as the area granted it is necessary to consider the second of the three questions to which reference has been made.

This second question may be stated thus. Is the parcel granted by the kushan of 1882 (as the Bank contended) the area confined by the boundaries therein described when joined, where necessary by imaginary lines, or is the parcel (as the Government contended) a plot of the area of 34 old dunams mentioned in the kushan which lies somewhere within the boundaries described? In other words, is the extent of the grant fixed by the boundaries or the area as stated therein? The attitude of the various Government officials concerned in the matter and the terms of reference of the Commission of which Mr. Loxton was chairman appear to have been based on the assumption that the boundaries marked the bounds of the parcel. This, however, is inconclusive and, indeed, irrelevant as the question is properly one of construction. So regarding it their Lordships are of opinion that the correct view is that propounded on behalf of the Bank. On the answer given to the first question the boundaries, as now determined, cannot be regarded as amounting to a general description of the Khirbet Yunis locality. They must therefore be taken as indicating some smaller area within that locality and it is difficult to see what this can be if not the area granted. It is also to be remarked that the boundaries are described as such in the grant and that they are related to the points of the compass in a manner appropriate to denote that they are boundaries in fact. The circumstance that they are separate rather than continuous features can have little weight having regard to the rough and uncultivated nature of most of the ground which lay between them. It is true that the discrepancy between the area thus bounded and the area as stated is substantial. But errors of this description appear to have been notorious in the Turkish Empire before the days of precise surveying and article 47 of the Ottoman Land Code made provision, in the cases to which it applied, to the effect that the area stated should be ignored where boundaries had been fixed and pointed out. The courts in Palestine differed as to the applicability of this article to the facts of the present case, the Settlement Officer holding that it only applied as between vendor and purchaser and the Supreme Court favouring (though with some doubt) a broader view of its scope. Their Lordships find it unnecessary to resolve this difference as, even if article 47 does not in terms govern the grant of 1882, the principle of preferring a description by fixed boundaries to a conflicting description by area cannot be so restricted. In the view of the Board that principle is applicable to the construction of the grant in question. In English law the statement as to area therein would be rejected as *falsa demonstratio* and their Lordships' attention has not been called to, nor are they aware of, any provision of Ottoman law to the contrary effect. On these grounds they hold that what was granted in 1882 was what was contained by the boundaries as now determined.

The answers given to the first and second questions would suffice to rule the appeal and cross-appeal were it not for a special plea advanced by the Bank. This raises the third question which may be put as follows. Is the Government barred or estopped from asserting its title to the lands of Khirbet Yunis lying outside the 625 dunams in fact granted in 1882? In the submissions on behalf of the Bank the word estoppel was used in a wide sense as including not only the estoppel by conduct known to English law but also the result of admissions regarded as binding and conclusive by Ottoman law. With regard to the former, their Lordships are unable to see any sufficient ground for supporting the case made by the Bank. Apart from any other consideration, it is one of the essential elements of estoppel by conduct that the party against whom it is pleaded should have made some representation intended to induce a course of conduct by the party to whom it was made. Here the representation as to the area of its grant came in the first instance from the Bank and the fact that the Registrar eventually accepted that representation as substantially correct cannot, on the facts of the present case, create an estoppel of this nature against him or the Government. As respects estoppel by admission the Bank relied upon several points. First of all it was said that the action of the Registrar in amending the area on the register after due enquiry was an unequivocal admission by a responsible official of the Bank's title to the larger area. The jurisdiction of the Registrar to correct the register as he did was vigor-

ously challenged in the course of the argument but need not now be discussed. Whatever the practice may have been or may have ripened into, it is clear that in "correcting" the entry in question the Registrar was not asked and did not purport to decide any matter of title. His conduct was in no sense an adjudication. The following passage from a letter of the 28th May, 1938, written by the Bank's advocate to the Registrar shows the character of its application:

> "From the topographical plans prepared by the Department of Surveys and attached to your file certain boundaries which appear on the original Koushan can be traced and identified without difficulty. In addition the southern and eastern boundaries are very natural being the saddle of the hills abutting the property, only one of the western boundary known as Jurn el Nesoura, forming the south-eastern corner of the property could not be traced on those plans of the Survey of Palestine, while they clearly appear on the plan checked by your Surveyor as in fact they do exist on the ground. The remaining western boundary is clearly to be traced and identified on the said topographical plan. These facts will bring the question of boundaries in a very clear light and will satisfy you that the land as shown on plan is within the original boundaries stated in the Koushan of my clients and that no encroachment was made in either private or Government land. This land known as Khirbet Yunes is and always was a separate unit within its own boundaries."

Such being the nature of the "correction" sought and granted their Lordships cannot accept the view that the Registrar made any binding admission as to the Bank's *title* no matter how mis-informed or ill-advised he may have been by other Government departments. Then it was contended that following upon the alteration of the register badl misl was calculated on the new statement of area and paid by the Bank. This, however, was entirely consequential upon the correction in the register and, in the opinion of the Board, can have no greater significance. It was also urged that the Bank had paid to the Government taxes levied in respect of the whole area and that the Government, having obtained such payment, could not claim title to the land in question. Authority was cited for the proposition that the demand and receipt by the Government of land taxes may constitute a binding admission as to the tax-payer's ownership in certain circumstances. That may be, but the point can have no weight in the present case as their Lordships are far from satisfied on the evidence that the Bank paid taxes at any relevant time in respect of the area to which the plea of estoppel relates, that is to say, the area outside the boundaries enclosing the 625 dunams. Lastly, it was submitted that the Government, through the officials who carried out the survey of 1929, had admitted the area claimed by the Bank. The facts do not support this contention. The survey showed the locality of Khirbet Yunis as containing a little more than 3,500 dunams but it was not and did not purport to be a survey of any particular title or grant.

In the opinion of their Lordships the plea of estoppel must fail not only on these grounds but also for a more comprehensive reason.

Sub-section (2) of section 4 of the Forests Ordinance of 1926 provided that no right in or over any Forest Reserve should be alienated without the sanction of the High Commissioner. The locality in question having been declared a Forest Reserve in 1929 it was, in the view of the Board, impossible to obtain title thereafter to land within the Reserve in a manner incompatible with this provision, as by admissions made without due authority to alienate. The Ottoman law regarding admissions cannot prevail against the terms of the Ordinance and, as none of the officials concerned in the present case intended to alienate or was authorised to do so, it follows that the Bank cannot obtain title in this manner.

For these reasons their Lordships will humbly advise His Majesty that the appeal and cross-appeal be dismissed and the judgment of the Supreme Court affirmed. The Bank and the Government will each bear its own costs of the appeal and cross-appeal.

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In the Privy Council

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DELIVERED BY LORD MACDERMOTT

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