Privy Council Appeal No. 84 *of* 1947

Ranshah Bapu – – – – – – – – – *Appellant*

v.

The Government of the Central Provinces – – – – *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT NAGPUR

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 11TH JANUARY 1949

Present at the Hearing :

LORD PORTER
LORD DU PARCQ
SIR MADHAVAN NAIR
SIR JOHN BEAUMONT

[*Delivered by* SIR JOHN BEAUMONT]

This is an appeal from a judgment and decree of the High Court of Judicature at Nagpur dated the 28th August, 1944, confirming a decree of the Additional District Judge, Chanda dated the 18th September, 1939, and dismissing the appellant's suit.

The questions arising in this appeal are :—

(1) Whether the appellant has the right to levy bazar dues in Kurkheda market ;

(2) If not, whether the respondent is estopped from contesting such right.

The Courts in India answered both questions in the negative. A question of limitation was also raised in India, but has not been raised before the Board.

The said market, held every Saturday, lies within the mauza of Kurkheda, which is a part of Palasgarh Zamindari in Chanda District of the Central Provinces. The appellant is proprietor of the Zamindari. In pre-British days the Zamindars of Chanda District exercised a wide but ill-defined jurisdiction in different parts of the District, subject to rendering tribute and services to the paramount power of the day. In 1869 the rights of proprietorship conferred upon the Zamindars, subject to payment of takoli or "quit rent," were defined in an instrument known as "the Chanda Patent."

The Chanda Patent, after declaring the tenure to be indivisible, untransferable except on terms, impartible, and held on conditions of loyalty and good behaviour (clauses I-IV) and defeasible for gross misconduct on the part of the Zamindar (clause VII) and laying down the mode of succession applicable (clauses V and VI) and rules of management (clauses IX-XV) went on to declare (clause XVI) that the revenue from (1) Land, (2) Forest, (3) Abkaree, (4) Pandhari, (5) Ferries and (6) Pounds, should be enjoyed by the Zamindars.

Clauses XVII-XXIII contained rules for the raising of revenue under the last five heads but there were no rules relating to revenue from land.

Clause XXV provides :—

"All dues whether in labour, kind or cash not entered above, must be regarded as prohibited : and their collection must be discontinued."

Clause XXVIII provides :—

> " The levy of transit dues is prohibited. But the Zamindar may, with the Deputy Commissioner's sanction, levy octroi duties in selected towns, provided the yield of such duties be, in every case, spent on the improvement of such towns."

In 1901-2 the first revisional settlement was made. A village administration paper or wajib-ul-arz is required to be prepared in the course of settlement proceedings. The wajib-ul-arz prepared in the revisional settlement of 1901-2 reproduced the terms of the Chanda Patent, with some variations in respect of provisions in the latter which had become obsolete, e.g., in regard to excise, pounds and ferries or which deviated from practice as then existing. The then Zamindar of Palasgarh accepted the revised settlement and agreed " that except the conditions in the tahsil wajib-ul-arz of the previous settlement which may have been cancelled, we will act according to the conditions applicable to us and the conditions in the present wajib-ul-arz." Clauses 7 and 8 of the said wajib-ul-arz dealt with " Dues of Traders " and " Miscellaneous Custom," and are in practically identical terms with clauses 9 and 7 respectively of the wajib-ul-arz prepared at the second revisional settlement set out below.

The second revisional settlement was made in 1922-23 under the provisions of the Central Provinces Land Revenue Act (II of 1917). Section 79 directs the preparation by the Settlement Officer of a village administration paper embodying, *inter alia*, " any other matter connected with the administration of the estate, village or mahal which the Provincial Government may require to be included."

Section 80 (i) gives liberty to any person aggrieved by any entry under section 79, to institute a suit in the Civil Court, within one year from the date on which the assessment is offered to the proprietor, to have such entry cancelled or amended and provides that subject to the result of such suit, if any, the entry shall be conclusive.

Section 201 (i) is in these terms :—

> " Any person bound by any rule or custom entered in the village administration paper who contravenes or fails to observe such rule or custom shall be liable, on the order of the Deputy Commissioner to a fine which may extend to two hundred rupees : Provided that such person may institute a suit in the Civil Court to have such order set aside on the ground that no rule or custom was contravened or not observed and to recover the fine and costs incurred in the proceedings and such further sum as compensation as the Court thinks fit."

For the purposes of the said revisional settlement there were prepared (1) a wajib-ul-arz for all the Zamindaries in the Chanda District in the form of Ex. D2, (2) a wajib-ul-arz of which Ex. D11 is a copy extract dealing with village rights in the village of Kurkheda and (3) a wajib-ul-arz Ex. D12 specifying the rights and obligations of the Zamindar as against Government in village Kurkheda. The last two documents were signed and accepted by the appellant. Clauses 7 and 9 of the wajib-ul-arz Ex. D12 were in the following terms :—

> " Clause 7. No dues not authorised by this wajib-ul-arz shall be levied by the Zamindar without the sanction of the Governor in Council.
>
> Clause 9. The Zamindars are not entitled to levy transit dues. But the Zamindar, with the sanction of the Governor-in-Council, can levy bazar dues in the principal kasbas at such rates and under such rules as may be approved by the Deputy Commissioner. But, however, the income from such dues should be spent on the improvement of the village in which they are levied."

In the jamabandi (rent roll or statement of assets) prepared in this settlement, under the head of siwai (miscellaneous) income, Rs.900 were

shown as bazar dues of timber and Rs.300 as rent of site from shop-keepers, and these sums were included in the total income upon which Government revenue was assessed.

In 1934 the appellant's practice of levying bazar dues became the subject of specific investigation by local revenue authorities in consequence of facts coming to light in a criminal case.

The Deputy Commissioner, having called for and received a report from the Sub-Divisional Officer, took proceedings against the appellant under section 201 of the Central Provinces Land Revenue Act, 1917.

In his order passed on the 1st of August, 1935, the Deputy Commissioner, on examination of the appellant's method of levying bazar dues, rejected his contention that they were in the nature of occupation fees or ground rents and held that the levy was in contravention of the said clauses 7 and 9 of the wajib-ul-arz. He fined the appellant Rs.200 and ordered discontinuation of the dues.

The Commissioner (to whom an appeal lay under section 33 of the said Act) agreed with the opinion of the Deputy Commissioner. He reduced the fine to one of Rs.50 but otherwise dismissed the appeal.

On the 14th June, 1937, the appellant presented the plaint in the present suit against the Secretary of State for India in Council in the Court of the Additional District Judge, Chanda, the notices required by section 80 of the Code of Civil Procedure having been duly given. The appellant claimed a declaration that the plaintiff is entitled to levy dues from the bazar as stated in the plaint and repayment of the fine levied and compensation. Annexure A referred to in the plaint contained a list of the goods upon which dues were levied, and the respective rates charged upon each of them, such rates varying according to the nature of the goods and the size of the load. A toll was imposed on cattle if sold.

The defendant in his written statement denied the appellant's right to collect bazar dues.

In answer to an application made by the defendant the plaintiff made the following admission :—

> " The plaintiff admits that his tenure is governed by the Chanda Patent, the Zamindari and the village wajib-ul-arz and that the plaintiff's father accepted the settlement of Mouza Kurkheda on those terms interpreted in the light of the Chanda Patent."

On the 18th September, 1939, the Trial Judge dismissed the suit holding that the dues which the plaintiff was levying were bazar dues, the levying of which was forbidden by the wajib-ul-arz without the sanction of the Provincial Government which had not been given, and that the defendant was not estopped from disputing the plaintiff's claim.

From this order the appellant appealed to the High Court at Nagpur and on the 28th August, 1944, Niyogi and Digby JJ. dismissed the appeal.

Before the Board the principal contention of the appellant was that the dues the levying of which is challenged are revenue from land, the right to which was given to the respondent by the Chanda Patent, and that the right so given was not taken away by the wajib-ul-arz. The appellant maintains that the market dues are levied by reason and only by reason of his ownership of the land on which the market is held, and the dues therefore are revenue from land. This argument tends to lose sight of the nature of the question at issue. That question is not as to the meaning in the abstract of the expression " revenue from land ", but as to the meaning of that expression in the Chanda Patent. As already noted the revenue given to the Zamindar was included under six heads of which the first was revenue from land. Directions were then given under five other heads and these directions were followed by the words in clause XXV " All dues . . . not entered above must be regarded as prohibited."

In their Lordships' view it is clear that revenue from land is not regarded as a "due," though the other heads of revenue are so regarded. Their Lordships think that the charges specified in the annexure "A" to the plaint being levied on articles brought into or sold in the market at rates varying with the nature of the commodity and the character of the load, whether carts, kavad, or head load, and in no way depending upon the right to occupy any specific land in the market are dues, the levying of which is prohibited by clause XXV of the Chanda Patent, and not rent or other revenue from land. If the appellant fails to prove that the levies were authorised by the Chanda Patent, the wajib-ul-arz does not help him. The only clause in the wajib-ul-arz which it might be suggested goes beyond the Chanda Patent is clause 9 authorizing the Zamindar with the sanction of the Governor in Council to levy bazar dues in the principal kasbas (townships) at such rates and under such rules as may be approved by the Deputy Commissioner. Even if the village of Kurkheda be a principal kasba, which has not been proved, it is not suggested that any rates or rules had been approved by the Deputy Commissioner. Nor, their Lordships think, can the sanction of the Governor in Council be inferred, as the appellant contends. This clause, therefore, does not help the appellant.

Counsel for the appellant took a subsidiary point in opposition to the fine levied upon him. He pointed out that under section 201 of the Central Provinces Land Revenue Act 1917 under which the fine was imposed, a fine can be imposed only for contravention of a rule or custom in the village administration paper and he contended that he had been fined for contravening a rule entered in the Zamandari administration paper. This argument is inconsistent with the appellant's own printed case and is devoid of merit. The village administration paper for Kurkheda is contained in two documents, the first Ex. D.11 dealing with village rights and customs and the second Ex. D.12 dealing with the rights and liabilities of the Zamindar as against Government. Both documents are confined to the village of Kurkheda and were accepted by the appellant, and together they form the village administration paper.

Upon the other question argued, viz., that the respondent is estopped from disputing the claim of the appellant, their Lordships have little to add to the judgment of the High Court with which they agree. Assuming that the charges in question have been included in the siwai of the Zamindar upon which assessment was based, this only means that the assessment was based upon charges actually, though illegally, levied in the past. No inference can be drawn from this conduct that the Governor in Council consented to the levy of similar charges in the future, nor does it follow that the local Government is estopped from disputing the legality of levies in the future. Basing assessment upon actual charges made in the past does not amount to affirmance that charges of a similar nature will be allowed in the future.

For these reasons their Lordships will humbly advise His Majesty that this appeal be dismissed. The appellant must pay the costs.

(63674) Wt. 8053—67 180 1/49 D.L. G. 338

In the Privy Council

RANSHAH BAPU

v.

THE GOVERNMENT OF THE CENTRAL PROVINCES

DELIVERED BY SIR JOHN BEAUMONT

Printed by HIS MAJESTY'S STATIONERY OFFICE PRESS,
DRURY LANE, W.C.2.

1949