

(1939) 08 CAL CK 0031
In the Calcutta High Court

Province of Bengal

APPELLANT

Vs

Mritunjoy Roy Choudhury

RESPONDENT

Date of Decision : 29-08-1939

Acts Referred:

Limitation Act, 1908 — Article 149

Citation : AIR 1940 Cal 455

Hon'ble Judges : Edgley, J

Bench : Single Bench

Judgement

1. This appeal is by the defendant, the Province of Bengal, from the judgment and decree of the District Judge of Rangpur dated 2nd March 1938, by which the judgment and decree of the Munsif, Second Court, Rangpur, dated 31st July 1937 has been affirmed. The subject-matter of the suit is 199.23 acres of land in Mouzas Ganeshpore and Pirabad held without payment of revenue from at least 1805. No attempt had been made on the part of the Government to assess it with revenue before 1935. The plaintiff-respondent is the owner of a permanently settled estate, being touzi No. 161 of the Rangpur Collectorate. The lands in suit lie within the geographical limits of that estate. When settlement proceeding under Chapter 10, Ben. Ten. Act, was in progress resumption proceedings were started by the Settlement Officer which culminated in a resolution passed by the Board of Revenue on 31st July 1935 declaring that the said lands were liable to be assessed with revenue. In pursuance of the said resolution a sum of Rs. 381 was assessed as revenue. Shortly after, the plaintiff brought this suit for a declaration that the lands were not liable to be assessed with revenue and the assessment made is illegal. The grounds on which he wished to sustain his suit are two in number: (i) that he and his predecessors had been holding the lands as revenue free property from before 12th August 1765, the date of the accession of the East India Company to the Dewani, under a revenue free grant from Raja Mansingh. The Government has accordingly no right to challenge his revenue free title in view of the provisions of Section 2 of Regn. 19 of 1793; (ii) that the right of the Government to assess it with revenue

was barred by time.

2. Both the Courts below have negated the plaintiff's claim based on the first ground, but the second contention of the plaintiff has been given effect to by both the Courts below. The lower Appellate Court found that the plaintiff's predecessors were in possession at least from 1805 without payment of revenue. The first ground taken by the plaintiff cannot be reagitated by him before us, as findings of fact conclude him. The only point therefore which we have to consider is whether the Government's claim is barred by the lapse of time. The first Regulation of importance is Regn. 19 of 1793, the Regulation dealing with non-Badshahi grants. We need not consider the provision, though they are of a similar nature, of Regn. 37 of 1793, which relates to Badshahi grants, as the plaintiff does not claim revenue free title from a Badshahi grant. The provisions of Eegn. 19 classify lakherajes into three principal classes according to point of time. (1) If the lakheraj grant is proved to have been made before 12th August 1765, the date of the Dewani to the East India Company, the grant is not to be questioned. (2) If the grant had been made after 12th August 1765, and before 1st December 1790, the grant is to be deemed invalid unless made or confirmed by the Government or by a duly authorized officer of the Government. (3) If the grant had been made after 1st December 1790 without the authority of the Governor-General in Council it is to be void and of no effect. There is a fundamental distinction between invalid grants falling in the second class and those falling within the third class. The grantees falling within the second class of invalid lakherajes are not to be dispossessed. Their proprietary rights are recognized; they are not to be dispossessed but their lands are to be assessed with revenue only, (Sections 4 and 5) according to the principles laid down in the Regulation. The grantees falling within the third class of invalid grants are to be dispossessed and their lands annexed to the permanently settled estate within the ambit of which they lie.

3. Invalid grants falling within the second class are sub-divided into two divisions in reference to area. If the area be 100 bighas or more the right to assess would remain in the Government and the Government is to have the assessed revenue. If the area be less than 100 bighas the zamindar within the ambit of whose estate they lie is given the right to assess and to have the benefit of the revenue assessed without being required to pay more to the Government than what he has to pay as revenue on account of his permanently settled estate, These provisions accordingly give the Government right to assess land which form the subject of an invalid lakheraj grant created within the period of 12th August 1765 and 1st December 1790, provided that the lands-included in one single grant is 100 bighas or more in area. With regard to invalid grants of the third class, whatever the area thereof be, all the rights conferred by Section 10 of the Regulation belong to the proprietor of the permanently settled estate within the ambit of which the lands lie and no right is retained by the Government, unless the Government was in khas possession, i.e., unless the lands lay not within the ambit of an estate permanently settled to a proprietor but within an area held in

khas by the Government. The zamindar is given the right to summarily dispossess the grantee. He may at his option however allow the grantee to retain possession and assess him with rent. In view of these provisions, the Government would have no right to assess the lands in suit except on the assumption that they were included in an invalid revenue free grant created after 12th August 1765 and before 1st December 1790. As the point was not raised in this form we would, in deciding the question of limitation, proceed on the hypothesis that the lands in suit were included in an invalid revenue free grant which the Government) could in law resume. The finding of the learned District Judge is that the grantee was in possession from 1805 at least and that finding is supported by the fact that the person in possession made a return to the Collector in 1212 B.S. (1805) (Ex. 2) showing there that he was in possession under a revenue free grant made for maintenance (khangī petbhata - maintenance for family).

4. The said Regulation provides for the preparation and maintenance of periodical registers of lakheraj lands, i.e. lands held, i.e. actually possessed, revenue free under grants made previous to 1st December 1790 (Section 23) and grantees in possession who may claim to hold under grants made before the said date are required, under a penalty, to register their lands (Section 24) within a year of the publication of the notice, the terms and the manner of publication of which are set out in Section 25. Section 26 provides that if such a grantee omits to register his grant with the particulars required within the said time, the land included in his grant shall become subject to payment of revenue "as if it had been adjudged liable to the payment of revenue by a final decree of a Court of Judicature." Section 27 provides that after the expiry of the period limited for registration of such grants all grants not on the register are to be taken as invalid as far as exemption from revenue was concerned. In both cases the Collector is to proceed to assess revenue. We will have to consider now the significance of the sentence which we have quoted above within inverted commas.

5. The Preamble to the Regulation states that to obviate all injustice and extortion the claim of the public on the land of the grantees "(provided they register their grants as required in the Regulation)" shall be tried in Courts of Judicature, so that no such exempted lands may be subjected to the payment of revenue, until the title of the proprietor shall have been adjudged invalid by a final judicial decree. The enactments on the subject are in Sections 12 and 14. The object of the register is to let the Collector have in his possession the particulars of lands actually held revenue free so that he may initiate steps for the establishment of the right of the Government to assess. Section 14 requires the Collector to report to the Board of Revenue if he believed that a piece of land was improperly held and possessed free of revenue. That Section provides that proceedings to impose the public demand are to be started by the Collector only with the sanction of the Board of Revenue and Section 12 enacts that such proceedings must be started in the Courts of Dewany Adalat (Courts of Civil Judicature). That Section enacts in express terms that the nullum temporis

principle is to apply to such proceedings. The cardinal principle therefore that is formulated in this Regulation is that lakherajes created between 12th August 1765 and 1st December 1790, cannot be assessed to revenue till they are adjudged invalid by a decree of the Civil Court. Accordingly in Section 26 the effect of the omission to register is stated in that form, namely as if there was a final decree of a Court of Civil Judicature pronouncing the grant to be invalid. One thing is apparent from Section 14. It is that the Collector is to inform the Board of Revenue, whenever he finds lands exceeding 100 bighas in area held revenue free which according to his opinion is held under an invalid grant, no matter from what source he gets his information, either from an entry in the periodical register maintained u/s 22 or from any other source and the enactment in Section 12 is of universal application.

6. The Preamble to Regn. 8 of 1800 shows that by reason of the complicated provisions relating to the preparation and maintenance of the periodical registers u/s 22 of Regn. 19 of 1793 and of the several copies in different languages, such registers were left incomplete. The said Preamble also indicates that the publication of the notice required by Section 25 had not also been made at all places within the Province. That Regulation simplifies the register and directs the register to be kept in two parts, Mai and Lakheraj, arranged according to local divisions-the pergunahs. The Collectors were also required to publish again the notices under the procedure mentioned in Section 25 of Regn. 19 of 1793 (Section 19). Section 7 authorized the Collector to demand particulars from Lakherajdars and Section 10 extends the period for registration of Lakherajes by a further period of one year from the publication of the said notices and re-enacts that after the expiry of the said time lakherajes not on the registers are to be assessed to revenue. Although the pergunah register required to be started and maintained by Regn. 8 of 1800 was simpler in form than the periodical register to be prepared and maintained under Regn. 19, there was not much improvement. That register was kept incomplete : see *Bipradas Pal Choudhury v. Monorama Debi* 6 AIR (1919) Cal. 922. From the mere fact that there is no entry in the lakheraj part of the pergunah register relating to a particular lakheraj it cannot be taken or presumed that the lakherajdar had omitted to take steps to register his grant. In the case before us no such point was raised by the Government that the grant in respect of the lands in suit had not been registered under Regn. 19 of 1793 or Regn. 8 of 1800 and so copy of those registers have not been produced by the plaintiff. If the case of the Government; had been (of which there is no indication either in the written statement or in the judgments of the Court below) that it is entitled to the benefit of Section 26 of Regn. 19 of 1793 it ought to have proved that the lakherajdar had omitted to register his grant.

7. Up to the passing of Regn. 2 of 1805 there was no limitation to a suit or proceeding by Government to resume and assess to revenue lands under invalid lakherajes which it had the right to resume, that is lakherajes created between 12th August 1765 and 1st December 1790. Section 2, second, of that Regulation,

however, imposed a limitation of 60 years to such claims on the part of the Government. All claims on the part of the Government for the assessment of land held exempt from public revenue without legal and sufficient title in the several Courts of civil justice to which the cognizance thereof may properly belong preferred 60 years after the "origin of the cause of action" is to be barred. At the time when the said "Regulation was passed, claims on the part of the Government to have the lands assessed to revenue (lands exceeding 100 bighas in area and included is an invalid lakheraj grant made before 1st December 1790) had to be asserted in Courts of civil judicature (Section 12 of Regn. 19 of 1793.) Since then the forum was changed by Regn. 2 of 1819. The Collector was given powers which before that had been vested in Dewani Adaluts. But under Regn. 2 of 1819, the proceedings before the Collector's Court were to be in the form of judicial proceedings. In *Maha Raja Dhiraj Raja Mahatab Chund Bahadoor of Burdwan v. Govt. of Bengal* (1846-51) 4 MIA 466 the Judicial Committee of the Privy Council considered the effect of this change of forum on the law of limitation as enacted in Section 2, second, of Regn. 2 of 1805. At page 508 of the report it held that the Collector's Court must be considered to be a Court of civil justice within the meaning of that Section. In that case the Collector proceeded in 1836 to assess to revenue under Regn. 2 of 1819 the villages in question which in his opinion were being held under invalid lakheraj grants.

8. The Judicial Committee held that the claim of the Government was barred by time. The arguments of both the counsel proceeded upon the footing that "the cause of action originated from the time when the grantees came into possession." In that case the Judicial Committee proceeded upon the assumption so made and did not accordingly decide when the cause of action arises in such a case. In the case before us the learned District Judge held that the cause of action for resumptions arises when the Government comes to know of the fact that the lands are being held revenue free. On the facts he held that the Government must be taken to have known that fact when the return (Ex. 2) was made in 1805 by the predecessor of the respondent. In our judgment, however, the cause of action in such cases dates from the date when the invalid grant was made, at least when the grantee took possession under such a grant. The Government may know of it or not and the claim must be preferred in a "Court of Civil Justice" as denned in *Maha Raja Dhiraj Raja Mahatab Chund Bahadoor of Burdwan v. Govt. of Bengal* (1846-51) 4 MIA 466 within 60 years from that time, as long as Section 2, second, of Regn. 2 of 1805 was in force. The meaning of the term "origin of cause of action" occurring in Section 3, third, of the same Regulation has been given by the Judicial Committee in *Mt. Chandrabullee Debia v. Lukhesa Debia Chowdrain* (1863) 10 M.I.A. 214.

9. In that case the Judicial Committee had to construe a similar phrase occurring in Section 3, third, of the same Regulation. There the plaintiff brought a suit to recover rent for six years in respect of an area of land for which all along up to the date of suit no rent had been paid. The Judicial Committee pointed out that the suit, although in form a suit for recovery of rent, could only succeed, if the

plaintiff, whose case was that the lakheraj grant was invalid by reason of Section 10 of Regn. 19 of 1793 as it has been made after 1st December 1790, could at the time of his suit impose an assessment on the same. As the suit was instituted beyond 60 years of the date when the defendant's predecessors obtained possession under the invalid grant, the suit was held as barred by time. The date of the origin of the cause of action was taken as the date when possession was taken on the basis of the lakheraj grant. In the case before us in any view of the matter, either on the view taken by the District Judge, or on the view we have taken, time began to run against the Government from 1805 but the exact meaning of the term "origin of the cause of action" occurring in Section 2, second, of Regn. 2 of 1805 has to be determined in view of the argument advanced on behalf of the Province of Bengal, which we would now proceed to deal with. The claim would, be barred u/s 2, second, of Regn. 2 of 1805 in any event in 1865. The repeal of that Regulation in 1868 by Act 8 of 1868 would not revive the Government's right to assess. The principle formulated in *Appasami Odayar v. Subramaniam* (1889) 12 Mad. 26 and *Khunilal v. Gobind Krishna* (1911) 38 All. 356 are applicable.

10. To meet this aspect of the matter the learned advocate for the Province of Bengal has submitted to us that Section 2, second, of Regn. 2 of 1805, had been repealed by-necessary implication before 1865 - in 1859 when Act 14 of that year was passed. We will have to examine this argument now. The Schedule to Act 8 of 1868 gives a large number of Acts and Regulations which are to be removed from the statute book. One of the items of that Schedule runs thus:

						Number
of	Title	of	Regulation.	Extent	of	Regulation.
						Repeal
						II of
1805	A Regulation to ex-	So much plain	the existing	as has not	limitation of	
	time lor been re-	the cognizance of	pealed, suits in the	Civil Courts of	justice,	
	to provide further	limitations with	respect to certain	suits, regular	and	
	summary; and to	make other provisions	re-	lative to the admis-	sion and trial	
of	original	suits	and	of	appeals.	

10. The express repeal or repeal by necessary implication of some of the provisions of Regn. 2 of 1805 before 1868, so far as we have been able to gather is as follows:

Section 4 : Repealed by Act 10 of 1859 Section 5 : Superseded by Section 1 of Act 4 of 1840 and by Act 14 of 1859. Sections 6 and 7 : Superseded by corresponding provisions of Act 14 of 1859. Sections 8 and 9 : Repealed by Act 10 of 1861. Section 13 : Superseded by Section 2 of Regn. 8 of 1831. Section 14 : Repealed by Act 10 of 1861.

11. The question is whether Section 2, second, of the said Regulation had been also repealed by necessary implication by the provisions of Act 14 of 1859. The

Preamble to Act 8 of 1868 is in these terms:

Whereas it is expedient that certain enactments (mentioned in the schedule to this Act) (a) which have ceased to have force otherwise than by express and specific repeal, or (b) by lapse of time and change of circumstances become unnecessary or (c) which merely repeal prior enactments, should be expressly and specifically repealed; It is hereby enacted as follows:

12. We have indicated by the letters a, b, c the three objects of the Act. With the third head (c) we are not concerned. The learned advocate for the Province of Bengal contends that Regn. 2 of 1805 was placed in the schedule to the said Act because the remaining provisions thereof which had not been expressly repealed by prior enactments had ceased to have force because of the enactment of a consolidating Act dealing with limitation of suits etc., namely Act 14 of 1859. His argument is that as the remaining portions of Regn. 2 of 1805 came within the first object-what we have numbered as (a), expressed in the Preamble, the said Regulation was placed in the schedule. We cannot accept this argument. No doubt the Preamble of Act 14 of 1859 states that the object of the Act was to amend and consolidate the laws relating to the limitation of suits, but Section 17 expressly states that none of the provisions of the Act shall extend to any public property or right but that such suits shall continue to be governed by the laws and rules of limitation then in force. This provision makes it clear that the rights and claims of the Government were kept outside the scope of that Act. In the different sub-sections of Section 1 and in Section 15 periods of limitation for different kinds of suits are provided. None of these provisions expressly deal with the rights of the Crown and Section 17 was inserted so that it may not be urged that the periods of limitation provided for in those Sections and sub-sections were also applicable to suits of description mentioned in the said sections and sub-sections even if brought by the Crown. There cannot therefore be any scope for the argument that Act 14 of 1859 had by necessary implication repealed Section 2, second, of Regn. 2 of 1805.

13. We have already held that the Government had the right to assess revenue only on invalid lakheraj grants made before 1st December 1790, provided that the area included in a single grant was 100 bighas or more, and that it had given up in favour of zamindara all rights to lands, whatever was the area, which had been included in invalid lakheraj grants created after 1st December 1790. We have also held that cause of action in respect of the right to assess invalid lakherajes with revenue arises on the date of the invalid grant, at least when possession was taken on the basis of such grant. The right of the Government to assess revenue on all invalid lakherajes had accordingly by force of Section 2, second, of Regn. 2 of 1805 been extinguished shortly after December 1850. Even making allowances for some unusual cases where an invalid lakheraj grant had been made shortly before 1st December 1790 but the grantee took possession some years later the Government's right to assess would have been dead and gone under the said provision a few years later than 1850. Section 2, second, of

Regn. 2 of 1805 had accordingly by lapse of time become unnecessary. The remaining portions of the said Regulation which had not up to that time been expressly repealed was placed in the schedule of Act 8 of 1868 for that reason, that is, in accordance with the object (b) of the Preamble of the said Act.

14. We accordingly overrule the last mentioned contention of the appellant's advocate and hold that the assessment made by the Government was illegal, as at the time, when it was made, and long before it, its right to assess was dead and gone. In the view we have taken it is not necessary to decide the question whether Article 149, Limitation Act of 1908 or the corresponding Articles of the Limitation Acts of 1882 and 1877 are applicable. Those Articles defined the period of limitation of suits by Government. The question is whether proceedings by the Collector for assessment of revenue on invalid lakherajes under the provisions of Regn. 2 of 1805 are suits within the meaning of that Article. The word suit usually connotes a proceeding in Civil Courts of Judicature which is initiated on a plaint. If that be the meaning which the Legislature intended to give to the word suit in Article 149, the proceeding started by the Collector for resumption cannot come within that Article. This is the view expressed by a Division Bench of this Court in Mahabunnessa Bibi and Others Vs. Secretary of State, . It may be a question, in view of what the Judicial Committee of the Privy Council had said in Maha Raja Dhiraj Raja Mahatab Chund Bahadoor of Burdwan v. Govt. of Bengal (1846) 4 MIA 466 whether it is legitimate to put such a narrow meaning on the word suit, but on the view we have taken, it is not necessary to pursue the point further. The result is that this appeal must be dismissed with costs.