
(1944) 04 FED CK 0002

In the Federal Court

Rao Bahadur Kunwar Lal Singh

APPELLANT

Vs

The Central Provinces and Berar

RESPONDENT

Date of Decision : 24-04-1944

Acts Referred:

Citation : AIR 1944 FC 62

Hon'ble Judges : Justice Petrick Spens C.J ,Justice Srinivasa
Varadachariar ,Justice Muhammad Zafrulla Khan JJ

Bench : Full Bench

Judgement

Spens, C.J.—The appellant, Rao Bahadur Kunwar Lai Singh, is a zamindar holding three estates in the Central Provinces known as

Kamtha, Wadad and Deori-Kishori. These are held in zamindari rights and are among the zamindaris known as the Wainganga zamindaris. The

zamindars are assessed periodically in respect of their estates for "takoli." Such assessments are made as part and parcel of the periodical

settlement of land revenue for the areas in which the estates are situate. Early in January 1939, the appellant was holding his estates subject to the

liability for takoli as follows:

Rs. Kamtha 71,000 Wadad 19,000 Deori-Kishori 1,800

Such liability arose under and by virtue of the last periodical settlement of land revenue, namely that known as Gordon's Settlement made in 1916-

1921 and completed in accordance with the provisions of the Central Provinces Land Revenue Act, 1917 (hereinafter referred to as "the Act of

1917"). Assessments at the above figures were duly made in respect of the appellant's estates and duly offered in accordance with Section 82 of

the above Act by three kabuliyats of 8th January 1921. These were deemed to

have been accepted and made binding by three orders of 5th May 1921, made in accordance with the provisions of Section 87 of the said Act. The said kabuliyats and orders were produced as exhibits in the action and were numbered p. 4,5,6,7,8,9 respectively. It is to be noted that the kabuliyats and orders in respect of the Kamtha and Wadad estates purported to make the assessments binding for the period of "19 years, that is, from 1st July 1919, A.D. up to 30th June 1938, and thereafter till a fresh settlement is made"; whereas the kabuliyat and order in respect of the Deori-Kishori estate were for the period of 19 years from 1st July 1920, to 30th June 1939, and thereafter till a fresh settlement was made.

2. Section 88 of the Act of 1917, so far as material, provides as follows:

88. If the assessment of an estate, mahal or land has been accepted under this Act, the proprietors shall be bound to pay the land revenue assessed thereon, together with, in the case of an estate or mahal, the land revenue assessed on any separately assessed plots of land included therein, from such date and for such term as the Provincial Government may appoint in this behalf, or, if at the expiry of such term no new assessment has been made and is ready to take effect, until a new assessment has been made and is ready to take effect....

3. The Act of 1917 was amended, supplemented or varied in matters not material to this case by the Central Provinces Settlement Act of 1929

(Act No. 6 of 1929.).

4. On 6th January 1939, the Central Provinces Revision of the Land Revenue of Estates Act, 1939 (Central Provinces and Berar Act 1 of 1939)

purported to take effect. The said Act (hereinafter called "the Act of 1939") provided by Section 2:

2. With effect from 1st July 1938, the land revenue payable to Government in respect of the estates named in the second column of the Schedule

under their current settlement shall, notwithstanding any contract to the contrary or anything contained in the Central Provinces Settlement Act,

1929, or in Chap. 6, Central Provinces Land Revenue Act, 1917, but without prejudice to the proviso to Sub-section (1) of Section 85 of the

latter Act, be enhanced to the amounts shown in the third column of the said Schedule.

And in the schedule appear the following entries:

Rs. Kamtha 93,386 Wadad 24,250 Deori-Kishori 2,570

Since the passing of the said Act, by agreement the following figures have been sub-stituted for those quoted above from the schedule:

Rs. Kamtha 91,440 Wadad 23,702 Deori-Kishori 2,544

Moreover Section 2 of the said Act has been amended by the Central Provinces and Berar Act (Act 12 of 1941) so as to read as follows:

2. With effect from 1st July 1938, the land revenue payable to Government in respect of the estates named in the second column of the Schedule

under their current settlement shall, notwithstanding any contract to the contrary or anything contained in the Central Provinces Settlement Act,

1929, or in Ch. 6, Central Provinces Land Revenue Act, 1917, be the amounts shown in the third column of the said Schedule and the said

amounts shall be deemed to have been assessed, offered and accepted under the said Chapter.

5. The result of the above legislation is to increase the takoli assessed on the above estates by the following amounts:

Rs. Kamtha 20,440 Wadad 4702 Deori-Kishori 744
_____ Total . . 25,886 _____

6. In due course the appellant started an action against the Provincial Government in the Court of Additional District Judge, Bhandara, in which he

claimed that at the time when the Act of 1939 purported to become effective he was entitled under the provisions of the existing settlement and the

Act of 1917 and the material kabuliyats and orders above referred to to continue to hold his zamindari estates so long as the respective amounts of

takoli for which they were assessed by that settlement were paid until a new settlement was ""made in accordance with the provisions of the law

that is applicable to all proprietors owning land-revenue-paying estates or properties,"" that no such new settlement had been made but that instead

the Act of 1939 had been passed which extinguished or deprived the appellant of his contractual as well as statutory rights in his zamindaris and,

further, amounted to an acquisition or expropriation of his rights as provided by Section 299, Government of India Act, 1935, for some purpose

which the Government had in view. He asked for a declaration that the Act of 1939 was accordingly null and void, or that the Central Provinces

Legislative Assembly had no power to enact the Act of 1939 without making

provision for compensation under Section 299, Constitution Act, and that the same Legislature could not enact the Act of 1939 so as to over ride the contractual or statutory rights of the plaintiff under the Act of 1917

and Act 6 of 1929 and that for these reasons the Act of 1939 which was enacted by it was ultra vires and not binding on the plaintiff.

7. On 21st October 1940, an order was made under Section 225, Constitution Act, transferring the action for trial in the High Court at Nagpur. On

27th February 1941, an application was made, and refused, to refer the suit to the Chief Justice to be placed before a Bench of two Judges for

trial. On 25th January 1943 and the following days this case, with another of a similar nature, came on for trial before Vivian Bose J. alone. On 31st

January (sic March) ('44) 31 A.I.R. 1944 Nag. 201. Bose J., dismissed the action with costs, but granted a certificate under Section 205,

Constitution Act. From this order an appeal was brought direct to this Court.

8. Upon this appeal coming on for hearing by this Court, a preliminary objection was taken on behalf of the respondents that under Section 205,

Constitution Act, no appeal would lie direct to the Federal Court from a judgment, decree or final order of a single Judge of a High Court where a

certificate has been granted by him, in cases where the appellant has a right of appeal to a Divisional Bench of a High Court, as in fact the appellant

had in this case under the Letters Patent of the High Court at Nagpur. Stress was laid on the provisions in the Letters Patent relating to appeals to

His Majesty in Council, by which no appeal from the order of a Single Judge is permitted direct to His Majesty in Council, in cases where an

appeal to a Divisional Bench is per. missible. No similar express provision exists in the Constitution Act either in Section 205 or elsewhere. A

similar point arose before this Court, but was not decided, in Jagannath Baksh Singh v. United Provinces ('"43) 30 A.I.R. 1943 F.C. 29. On

consideration, we are of opinion that a direct appeal to this Court in this case is authorized by Sub-section (1) of Section 205. If any case is

properly heard by a Single Judge of a High Court, and if in that case is involved a substantial question of law as to the interpretation of the

Constitution Act or any Order in Council made thereunder and if there is a judgment, decree or final order given or made by that Judge, in our

judgment a certificate under Section 205 (1) not only may but should be

granted. Thereupon an appeal will be opened direct to this Court subject of course to the provisions of Sub-section (2) of Section 205. It may well be that if an appellant prefers to exercise his right to appeal to this Court under Section 205 in preference to first exercising a right of appeal to a Divisional Bench and obtaining a further certificate from such Divisional Bench, he may deprive himself before this Court of the right to appeal given by Sub-section (2) of Section 205 on grounds on which he could have appealed without special leave to His Majesty in Council if no certificate had been granted. If he comes direct to this Court, he will have to rely in regard to any such grounds on obtaining the leave of this Court to be heard thereon as further provided by Sub-section (2). In our opinion Bose J., properly gave a certificate in this case and the appellant was therefore entitled to appeal direct to this Court; and this Court is entitled, if not bound, to entertain this appeal. It was suggested, but not strongly pressed, that, even if the appeal was competent, this Court should refuse to entertain "the appeal until the right of appeal to the Divisional Bench had been exercised. It is difficult to read out of Section 205, or any other section of the Constitution Act, any power or discretion in this Court to refuse to hear a case in which a certificate has been granted, or to put an appellant on any such terms as those suggested. We are doubtful if this Court has any such power or discretion. It is however of no importance in this case, for, we certainly see no reason to impose on the parties the burden and expense of an intermediate appeal to "a Divisional Bench before disposing of the two points on which this appeal has been based.

9. On behalf of the appellant it was submitted that such were the rights of the appellant conferred on him by the settlement of 1921, the provisions of the Act of 1917, and the material kabuliyats and orders referred to that (a) they amounted to statutory or contractual rights of which only a new settlement carried out in accordance with the provisions of the Acts of 1917 and 1929 could deprive him, (b) that the alteration of what he called his "right" to hold his estates subject only to the payment of the amounts of takoli fixed in 1921 on the terms of that settlement could not be made, as it was purported to be made by the Act of 1939, to his detriment without involving a compulsory acquisition for public purposes of some right belonging to him in or over immovable property and that as the Act of 1939 did

not provide for the payment of compensation for the property so acquired and did not either fix the amount of the compensation or specify the principles on which and the manner in which it was to be determined it was ultra vires and void as being contrary to or not complying with the provisions of Section 299, Sub-section (2), Constitution Act.

10. As regards the first point, it may well be that the appellant may have believed, reasonably enough, in reliance upon the provisions and

documents referred to, that he was going to hold his estates subject to the payment only of the takoli fixed in 1921 for the period specified in the

kabuliyats and thereafter until a new settlement was made and that that new settlement would be made in accordance with the Acts of 1917 and

1929. But we can find absolutely nothing in any of the Acts or documents referred to which amounted to any contractual or statutory rights of the

appellant which could not at any time be varied, suspended or repealed by enactment of the competent Legislature. The settlement was made and

took effect under and by virtue of statutory powers and provisions which could at any time be repealed, varied or replaced by other statutory

provisions duly enacted. In particular by enactment any new form or provisions for the next settlement could have been prescribed at any time. In

our judgment there was nothing to prevent the Legislature of the Central Provinces and Berar, to which under Section 100 and item 89 of List II in

Sch, 7, Constitution Act, are given powers to legislate in regard to land revenue, acting directly in the matter and enacting in respect of all or some

existing assessments that the same should be increased as from a specified date to a specified amount. It may be regarded by some persons as a

drastic form of legislation; in so far as it only increases some and not all assessments it may also be regarded as invidious legislation, but these are

not matters for us. We are only concerned with the legality of the legislation; and we are quite unable on the suggested grounds to find any reason

for questioning the validity of the Act under consideration.

11. As regards the second point, the case of the appellant is based on the view that under the settlement of 1921, the Act of 1917, the kabuliyats

and orders referred to he enjoyed a "right" to hold his estates subject only to the payment of the amounts of takoli fixed in 1921 and that the

increase of the amount of takoli so payable on his estates to a higher figure

involves the acquisition from him of a right in or over immovable property to the extent to which his position is made worse by the increase of the amount of takoli payable. In our judgment, this view is misconceived. His rights over his land or his rights in or over his immovable property remain exactly the same, only his liability for payment of takoli is increased. It is, we think, impossible to hold that the mere increase of an assessment for land revenue involves any acquisition of the land or any rights in or over immovable property. It further seems to us that the word "acquisition" implies that there must be an actual transference of, and it must be possible to indicate some person or body to whom is or are transferred, the land or rights referred to. It is impossible, in our view, to suggest that when the land revenue is increased, there is any transference to the Provincial Government or any other person of any land or rights in Or over immovable property, which remain in the same possession or ownership as immediately before the increase of the assessment. In our judgment the attempt to bring the case within Section 299 (2) must fail. For these reasons this appeal fails and must be dismissed with costs.