

**(1924) 06 CAL CK 0045**  
**In the Calcutta High Court**

Sanker Roy Chowdhury and Others

APPELLANT

Vs

Secretary of State

RESPONDENT

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**Date of Decision :** 04-06-1924

**Acts Referred:**

**Citation :** AIR 1925 Cal 346

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### **Judgement**

1. This appeal arises out of a suit (suit No. 81 of 1915) which was one for declaration that the lands in dispute, 784 acres, which Government formed into a Deera Estate No. 1503 with a revenue of Rs. 5,681-was part of the plaintiff's permanently settled estate Chur Alokdyia Touji No. 1071 (present Touji No. 174) held at a fixed revenue, that Government had no right to assess the lands in dispute with revenue and for other reliefs. The disputed lands are shown in the case map in 2 Blocks, the northern is called Ka and the southern Kha, both being coloured yellow. The proceedings which immediately led up to the institution of the present suit are the following.

2. The Assistant Deera Survey Superintendent found that certain newly formed lands were not included in the settlement of the estate Alokdia which was sold in 1863 to the predecessor-in-title of the plaintiffs. The plaintiffs objected to the Deera proceedings, but those objections were rejected and the proceedings were forwarded to the Board of Revenue for sanction. They were accordingly sanctioned by the Board of Revenue, and a settlement of the lands for 12 years was made from the 1st April, 1914 to 31st March, 1926. The plaintiffs took settlement under protest.

3. It appears that in 1844 a big Chur was thrown up on the bed of the river Brahmaputra. The Government took proceedings under Regulation II of 1819 and got possession of the lands. These lands constituted Char Alokdia and became the property of Government. In 1852, Thak Survey was made on those lands and it was found that 8211 bighas appertained to the mehal. The Revenue Survey took place in 1854 in which also, it was found that the same quantity of lands appertained to that Mehal. The Government made temporary settlements of the

mehal from time to time, and ultimately on the 30th May, 1863, issued a notification in the Calcutta Gazette for sale of the mehal. The terms of the sale notification were these:

Notice is hereby given that Zamindari right of Government to the undermentioned Khas Mehal, situated in the District of Fabna, and mentioned in the statement hereunto annexed will be put up to sale.

Touji Name of Area. Jama- 1 per cent Total No. Mahal and Assessed for roads. Sudder Perganah. Jama. 1071 Island chur 5508-6-4 887-10-11 8-14-10 896-8-11 Alokdiya, Perganah Berhampur Upset price 1793-10.

4. The Mehal was purchased by one Mr. Trisandi on behalf of the Nathpur Indigo Concern, and the plaintiff's predecessor Gungamoni Chowdhurani purchased the Mehal from the owner of that concern on the 28th March, 1178. Gungamoni after purchasing it applied for registration of her name under the Land Registration Act. Her name was registered in respect of Mehal " Jarzira char Alokdia, Touzi No. old 1071, present No. 174."

5. In the General (A) Register (under Sections 6 and 7 of Act VII, 1876) the estate is described as " Alokdia Jazira Char," the Towzi No. is given as 174, the total area 2726 acres 2 roods, 27 poles, and the Government Revenue Rs. 887-8 as. 11 pies. The area corresponds exactly with the area mentioned in the Revenue Survey Map. It is true that the entry in the General Register does not affect the Government, but it shows, that the Government recognized the area of the estate to be the same as stated above.

6. There were three proceedings for assessment of revenue with respect to some lands of Char Alokdia before the proceedings of 1913 referred to above. In 1874-75. certain lands were formed into a new estate No. 1.1.41 on the ground that those lands were newly formed chur lands. At that time Mr. Graham the predecessor-in-interest of the plaintiff was the owner of Char Alokdia. He objected that the Government had no right to create a new estate in respect of the lands which had already formed part of Char Alokdia. The Collector Mr. Rees recommended the cancellation of the new estate on the ground that the Revenue Survey and other maps showed that the new estate was really re-formation of; the lands of Char Alokdia. The Board accepted the recommendation of the Collector, and on the 18th December, 1875 they sanctioned the removal of the estate Char Alokdia from the revenue roll. The second proceedings were hold in 1881. In that year the Government again made a new estate of certain lands of Char Alokdia and certain other lands. This new estate was numbered 10776, and a large portion of the lands now in dispute was included in that estate. Gungamoni (who was then the owner of estate Char Alokdia) on the 10th July, 1880, filed a petition objecting to the inclusion in the new estate, of lands which according to the Revenue Survey appertained to her estate Char Alokdia. Thereupon one Jadu Kanangoe was directed to compare the " Survey Map of Char Alokdia whose lands are alleged to have been measured and included in the

Jazira Chur No. 10776. which is under settlement." He submitted his report on the 24th February, 1881, that only 1,036. bighas and odd fell outside the Revenue Survey area and should be brought under settlement. The Deputy Collector found on the Kanangoe's report and upon his own enquiry that 1,926 bighas of land" of Alokdia had reformed on the original side and was measured in the new mehal and recommended that as the land was re-formation or original site, might be kharijied. The settlement papers were accordingly submitted by the Collector to the Commissioner of the Dacca Division and he in his turn submitted the "settlement papers of Government Estate No. 10776 Island Chur on the river, Jumna, received from the Collector of Dacca with his letter No. 1032, dated 26th October of 1881" to the Board of Revenue on the 20th March, 1882. He recommended the settlement of 1,036 bighas, 11 cattas, 17 drones only, and the Board sanctioned the settlement accordingly by its order, dated the 4th April, 1882 and directed the original papers to be returned The effect of this settlement of 1,036 bighas of land will be considered later.

7. Lastly there were proceedings in 1891 relating to lands within the Revenue Survey but which were sought to be again assessed with revenue. The matter came up to the Board of Revenue and was remanded by an order, dated the 26th Aprils 1894. There were 3 plots in dispute in that case namely plots X, Y and Z X was claimed by the plaintiffs, as part of Alokdia according to the map of 1863: Y as part of another Mouzab; and plot Z was claimed as being included in the Revenue Survey Map of 1854, of Alokdia. The remand order of the Board of Revenue, dated the 26th April, 1894, directed certain maps to be plotted on the Amin's map. In paragraph 2 of the directions it was stated.

The maps of Alokdia of 1854 and 1863. As to the latter it is to be replaced that the Collector admits the claim and, the, question is, whether the appellant is entitled to hold in addition the lands covered by the former.

8. The maps were accordingly plotted and the Commissioner of the Dacca Division reported that the plaintiffs were entitled to hold the lands included in the Revenue Survey Map of 1854 in addition to the lands included in the map of 1863; and that plot X, the south-western, and plot Z, the north-western portions will have to be released as re-formation of Estate Alokdia surveyed in 1854 and 1863. It is unnecessary to refer to what was said by the Commissioner with reference to the lands of Mehadinagar. The matter then came up before the Board and by a resolution, dated the 6th March, 1896, they concurred with the Commissioner and held as follows:

It is plain that the three tracts of land which; were indicated as X, Y and Z, in the order of remand belong to the appellants, and further that, the Government" has no claim to any part of the land as forming part of an island Char. Whether the remaining portions ought to be assessed or not at the next Dessa Survey is a matter which can more appropriately be decided when that survey takes place. The Board do not see any means of assessing them now.

9. The proceedings of 1891 as well as those of 1874-75 do not relate to the lands in this case, but the appellant relied upon them to show that the Revenue Survey Map was accepted by Government as the basis upon which the lands were released.

10. So far as the proceedings of 1881 are concerned, they relate directly to the lands in dispute. A large portion of the lands is no doubt covered by those proceedings as 1,926 bighas were held to appertain to Char Alokdia. The other lands claimed in the suit were not the subject-matter of the proceedings of 1881. But they are claimed by the plaintiffs in this suit on the basis of the Revenue Survey Map. So far as the 1,426 bighas are concerned they are covered both by the 1863 map as well as the Revenue Survey Maps.

11. The question of the plaintiffs' title mainly depends upon the construction of the sale notification, dated the 1st May, 1863. Government strongly relies upon the fact that the area was stated to be 5,508 bighas, 6 cottas, 4 chittaks in the sale notification, and it is contended by the learned senior Government Pleader that that was the only land in existence in 1863 when the estate was sold to appellants' predecessor-in-title, and it must therefore be taken that only 5,508 bighas passed to the purchaser under the sale.

12. Our attention has been drawn to the fact that the revenue of the mahal varied from time to time with the variation of the area under the temporary settlements. It appears from the resumption proceedings of the Settlement Officer of Dacca,, dated the 22nd July, 1913, that in 1852 the area was 8,271 bighas and the revenue was

Rs. 897-9-10. Area Revenue. In 1854. 8149. 1001. In 1859. 7345. 1512-5-7. In 1863. 5508. 896-9-1.

13. It is contended by the learned Government Pleader that when the Mehal was sold in 1863 all that it contained was an area of 5,508 bighas. The sale notification however refers to the Touzi No. 1071 and had that Touzi been created for the first time in 1863 when the property was sold as consisting of 5,008-bighas only it could be contended that only that quantity of land was put up to sale. But the Touzi No. 1071 was in existence from before the Revenue Survey. The plaintiffs applied to the Collectorate for information on the point, and information was given that in 1845 the estate bore the Touzi No. 1071 of the Faridpur Collectorate. That being so what was sold was Touzi No. 1071; and the notification having stated that the rights which the Government had in the estate was sold, it must be taken that all the interest which the Government had in the estate passed to the purchaser. In paragraph 7 of the written statement, the defendant denied that the predecessors-in-interest of the plaintiffs

possessed or became by virtue of their said auction-purchase entitled to all the right, title and interest of Government in all the lands (including the then existing as well as the submerged lands) of the estate No. 1071 or that, the plaintiffs by virtue of their purchase became entitled to all the lands of the said estate that

was recorded in the Thak or. Revenue Survey and to the lands that were under water at the time of those surveys.

14. This indicates that there were submerged lands of Touzi No. 1071, and those, lands must have been assessed with revenue. If the submerged lands were part of Government zemindary No. 1071 in 1863 and the plaintiff's predecessors-in-title having purchased Touzi No. 1071, all the lands of that Touzi including the land then existing as well as those submerged at the time of the sale passed to the purchaser, there being no reservation of the submerged lands at the sale in 1863.

15. So far as the proceedings of 1881 are concerned it is contended by the learned Government Pleader that the only matter that was before the Board of Revenue was the matter of settlement of 1,036 bighas and that the release of 1427 bighas of lands was not before them. But the Commissioner of Dacca along with his report, dated the 20th March, 1883, submitted the

Settlement papers of Government Estate No. 10776 island Chur on the river Jumna received from the Collector of Dacca with his letter No. 1032, dated the 26th October 1881.

16. The settlement papers and the letter of the Collector of Decca, dated the 26th October, 1881, must have referred to the release of 1,426 bighas, as only 1,036 bighas and odd out of the entire quantity of land was going to be settled. But the letter of the Collector dated the 26th October, 1881 has not been produced by the defendant, though called upon by the plaintiff to do so, and it is impossible to hold that the settlement papers which showed the release of 1,426 bighas were not before the Board of Revenue. The Resolution of the Board of Revenue dated the 26th April, 1894, (Paragraph 3) states:

The map of Babu Parbati Charan Roy (i.e., the map of Jadu Kanoongoe) made in 1880-81 showing what was released to the appellants in consequence of his proceedings were the lands actually released.

17. The Board of Revenue therefore were aware of what was released in 1881 at any rate in 1894.

18. It is contended that it was a case of misapprehension on the part of the Collector, but no such case was set up in the pleadings, and if, as we hold these lands appertained to Touzi No. 1071, no question of misapprehension can arise.

19. A number of cases have been cited before us on the question as to what passed by the sale of 1863. The facts of the case of Gunga Narain Chowdhury v. Radhika Mohun Roy (1873) 21 W.R. 115 resemble the facts of the present. In that case the sale certificate stated that whatever zamindari right the Government had in the mehal was vested in the purchaser. Then there was a specification of the mahals under three heads: the first--Chur Jalalpur etc., within Jalalpur No. 214; the second--the area 14,496 bighas and odd and the third--the jama viz,, Rs. 4,144-2-9 with a certain addition. When the map of 1863 was

made, the mahal No. 214 had an area of some 17,000 bighas, but subsequent measurement show that by a diluvion that was diminished to 14,496 bighas. The learned Judges observed:

We apprehend that the Collector as a public officer and an honest seller apprised the public that the existing area was only, 14,496 bighas, and therefore, the Government would not guarantee the old area of 17,000 bighas but only that which then existed, and that this specification in no way limited the import which the words of the certificate of the sale bore, viz., that the whole of the zemindari rights which belonged to the Government passed to the purchaser. There are no words which tend in any way to restrict the right of the purchaser from claiming thereafter any accretion. The increment is always a contingent right which the zemindar has.

20. They further observed that "there was nothing to show that the present sudder jamah is different from that originally assessed on the mehal." An application for review was made on the ground among others that the mahal had been the subject of repeated settlements the fifth of which was made in 1864, in which the area was declared to be 17,000 bighas, and the sixth which was the settlement existing at the time when the plaintiff purchased showed the mahal to consist of only 14,496 bighas and the rent had varied accordingly. The Court observed:

Now it seems to us that these circumstances really have no bearing on the question which we pointed out as being proved, viz., that on the sale-the absolute sale-of the proprietary rights to plaintiff, there had been any alteration in the fixed sudder jama or permanent rent payable to Government on account of the estate. The varying jamas fixed in 1854, and on the other settlements now referred to, were only temporary fluctuating rents of farming leases, and those leases being only for short periods, the rents would of course fluctuate (and might vary very greatly) with the quantity of land of which the former was on each occasion put into pos. session. That question, therefore, stands exactly as it did when we last gave our judgment.

21. The case of Gholam Ali Chowdhury v. The Collector of Backergunge (1878) 2 C.L.R. 39 is distinguishable, as in that case the Thak Map which was relied upon for claiming a larger quantity of land than that mentioned in the sale proclamation.

Represented the chur as bearing the Touzi No. 4569 which is a different Touzi number from that borne by the mahal which the plaintiff bought in 1871, and as containing a much larger area than 3994 acres.

22. There was moreover no evidence of conduct in that case such as is afforded by the several Deera proceedings in the present case.

23. In the case of Jugobundhoo Bose v. Koomoodinee Kant Banerjee (1873) 19 W.R, 89 the question did not arise between the purchaser and the Government

but between two private parties. The

defendant did not purchase the original khas mahal Katibaree which had an area of 638 bighas with a rental of Rs. 164, but an estate consisting of 141 bighas, as was found by a measurement made for settlement purposes the year before the purchase, at a rental of Rs. 13. The defendant could have no claim to any reformation of land belonging to the mahal as it originally stood inasmuch as he did not buy that mahal, but a different one of much smaller area and greatly reduced rent.

24. It is not stated whether a new Touji number was given at the time of the settlement, but it seems that it was so, as a new and different estate is referred to in the judgment and the defendant did not purchase the original Khas Mahal. The above case was followed in *Krishto Mohan Bysack v. Collector of Dacca* (1875) 24 W.R. 91 but there also

the estate purchased by the plaintiffs was not the originally settled estate bearing the same number on the Touzi. It was a newly constituted Touzi with a very reduced area and a very largely reduced jama.

25. In the case of the *Secretary of State v. Narendra* (1921) 32 C.L.J. 402 the sale notification was to the following effect: Name of Estate and Perganah Sonakhali: Area in acres 3562 acres 3, Rs. 26 P. Revenue assessed Rs. 5,865-3-6. Government Road Cess Rs. 59-1-0 6. Revenue total Rs. 5,923-14-0 Upset-price Rs. 11,847-12-0.

26. Remarks:-Under khas management.

27. The question for consideration was whether the respondent was entitled to all the lands of the estate Sonakhali or only to 3563 acres, the area mentioned in the notification.

28. Richardson, J. in construing the document observed:

In my opinion the principle or governing description on the face of this document is the name of the estate. The mere addition of the area in acres and the revenue assessed on that area is not to my mind sufficiently precise or definite to impair the force of the general description " Sonakhali." No boundaries being expressed, whether you take the description " Sonakhali" or the description 3,563 acres evidence might be necessary to identify the subject of the sale. But " Sonakhali," implies the known, or supposedly known, boundaries of Sonakhali. It is equivalent to " the estate known as Sonakhali," and the case seems to me very near the ordinary case of property described by boundaries with an area added which passes to be inaccurate and falls to be treated as *falsa demonstratio*. If I am right; the sale certificate conveyed the accreted area.

29. On appeal under the Letters Patent (*Richardson, J. and Greaves, J.*, having differed in opinion), *Mookerjee, A. C.J.*, held (*Fletcher and Teunon, JJ.*, agreeing with him) that

Richardson, J., had correctly held on a true construction of the sale certificate that the governing description is the name of the estate and that what passed to the purchasers was Sonakhali as it stood at the date of the sale.

30. Having regard to the description contained in the sale notification we think it was the entire estate No. 1071 which was sold and not merely 5,508 bighas of lands, and if there was an ambiguity, the conduct of the parties would go to show that what was intended to be sold and was sold was the entire estate as shown in the Revenue Survey Map as on three occasions the Government dealt with the plaintiffs' predecessors-in-title on the footing of the Revenue Survey.

31. That being so and the lands having been found to be re-formation of the lands of Touzi No. 1071 cannot be again assessed with revenue.

32. The result is that the decree of the lower Court is set aside and the plaintiffs' suit is decreed with costs in both Courts.