Parbati Charan Saha and ors. Vs. Secretary of State for India in Council and ors.

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Court : Kolkata

Decided On : Apr-25-1921

Reported in : 69Ind.Cas.188

Judge : John Woodroffe and ;Cuming, JJ.

Appellant : Parbati Charan Saha and ors.

Respondent : Secretary of State for India in Council and ors.

Judgement :

Woodroffe, J.

1. In this appeal the appellant asks for a declaration that the land in suit is not assessable to revenue at the rate of 12 annas per bigha but at 8 annas.

2. The plaintiff's case as set forth in the plaint may be briefly stated.--On the 9th January 1790, the plaintiffs predecessor, Bijoyram Saha, obtained from the Government a permanent grant by sanad in taluki right of Mahal Kalaram Chandipur Char Baleswar, etc., in the Sunderbans and was in possession of this taluk, which at first bore Touzi number 53 in the Jessore Collectorate, then Touzi number 837 in the Khulna Collectorte, and now bears Touzi No. 6556 in the Bakargunj Collectorate. According to the terms of the sanad no revenue was to be paid for the first three year?, and revenue was to be paid in the 4th year at 2 annas, in the 5th year at 4 annas, in the 6th year at 6 annas, and from the 7th year at the full rate of 8. annas per bigha of 110 cubits. The assessable area was to be calculated in this way--that from every 1200 bighas, 200 bighas was to be deducted on account of Moffusal Saranjami, The boundaries of the taluk thus created by the sanad of 1790 are these:

North--Dakatia Khal.

East--The river Kacha.

South--The river Kacha and Baleswar and the Mohana (mouth) of the river Harin:

West--The river Baleswar.

3. The argument on behalf of the plaintiff was briefly stated as follows: That his predecessors-in interest were granted in 1790 the talukdari pitta above-mentioned of certain land within the boundaries stated. The taluk was settled with him permanently and the revenue was to be assessed on the cultivated land which would be ascertained by measurement from time to time. The rate to be paid was an

increasing rate up to 8 annas per bigha after which it would remain fixed in perpetuity; 1/6th of the area cultivated would be free of rent,

4. The mahal was subsequently surveyed from time to time in 1834, 1850-1, 1877-8, 1888-9, 1914 and additional areas were assessed up till 1914 at the rate of 8 annas a bigha, the full amount mentioned in the sanad of 1790, that is, for about or over a 1C0 years. Then in 1914 the rate was increased to 12 annas. The proceedings prior to 1914 have been spoken of as fresh settlements--an ambiguous term. They may have been settlements in the sense that the total amount of revenue was fixed from time to time awarding to the measurements then made. They were not, it is contended for the appellants, settlement of the land itself which took place only once in 1790. On the 22nd December 1911 when the Record of Rights was being prepared the Diara Deputy Collector served a notice under Section 6 of Act IX of 1847 upon the plaintiff a intimating to them that the addition of 3,569 acres to the area of the plaintiff's taluk had been revealed by the Settlement Survey and map, and that this additional area would be assessed with revenue under that Act, The plaintiffs objected to the proposed assessment and the Diara proceedings were dropped. Sometime after this on the 2nd February 1914 a notice was served upon the plaintiffs intimating to them that the term of the settlement of their taluk had expired on the 31st March 18S8, and that under the orders of the Board of Revenue the plaintiffs' mahal in the Sunderbans would be divided in two part', viz, a permanently settled mahal bearing Touzi No, 6556 and comprising the lands of the Settlement made in the year 1352 and a temporarily-settled mahal comprising the lands sine then gained by accretion. The plaintiffs objected to this but their objection was disallowed by the Collector of Bakargunj and finally by the Board of Revenue in October 1916. Then on the 11th December 1916 plaintiffs Nos. 2, 24, 40, 53 and 57 on behalf of all the plaintiffs and the pro forma defendant No. 2 who has no interest in the mahal executed, under protest, a kabuliyat for the lands gained by alluvion since 1852, in favour of the Government, which, it is contended, bad no legal right to mike this settlement, in contravention of the terms of the previous Settlements, and to assess on these lands at Rs. 2,698 as revenue at the rate of 12 annas per bigha of 80 rasis. The defendant's case is that the lands in dispute lit., the lands which Government wished to settle temporarily, were never permanently settled with the plaintiff. They were, it is said, an accretion to the lands which, it is said, were permanently settled with the plaintiff in 1852 and to had rightly been formed into a separate estate and separately assessed for revenue. They contended that the lands now in dispute were not in existence in 1790. No question is raised whether additional rent is payable for additional area but only as to the rate of rent payable. The sola and only question before us is whether the appellant is chargeable with the former or later rate. Appellant says the former. There was, it is argued for the appellant, a Permanent Settlement in 1790 not as to amount of revenue which might vary according to the measurement of the land from time to time but permanent as to the land settled and the rate of revenue payable therefor,

5. For the respondent it is admitted that as regards land covered by the grant the, highest rate is 8 annas Sicca. Bat it was contended that the land in suit is not covered by the grant because there was no demise of the land in 1790 and the only land so covered was that measured in 1835 in pursuance of the provisions of the patta of 1790 and the land in suit is an accretion to that. I may observe, however, that according tithe written statement it is an accretion to the land permanently settled with the predecessor of the plaintiff in 1852. The Government, it is contended, can charge what rate they like subject to this that it cannot and does not desire to go

behind the proceedings taken in 1852 by which there was a Permanent Settlement of all lands except that in suit.

6. The appellant contends that so far as the title to the land is concerned, the Permanent Settlement was in 1790. Subsequent proceedings were, it is said, merely proceedings to measure the land and fixed the rent payable at the rate of the patta of, 1790. The estate, he argues, is the whole chuck or mahal within those boundaries and the land in suit is within those boundaries and the patta of 1790 governs the case. All that it was open to the Government to do is to re-measure the lands and to fix the amount of the revenue at the rate settled by the sanad of 1790.

7. The Government case is somewhat obscure on this point. It denies that any title to the land passed in 1790. It is contended that the patta only amounted to a promise to settle ' lands which might be measured in future on terms mentioned in the patta. No such measurement in fact took place for about 44 years. It is quite clear that the person who got the patta got something in the present. The question is what was it? It may be either the land, as contended for by the appellant, in which case the appeal (it is conceded) succeeds or it may be that a right was given to re claim lands within certain boundaries, namely, those to which I have referred on certain terms given in the patta of 1790, the land to which such terms were applicable to be measured thereafter. In that case all lands within such boundaries would be governed by the agreement as to rates in the patta of 1790. The first question then to be decided is what is the effect of the patta of 1790.

8. I am of opinion that by the patta of 1790 the land within the boundaries specified by the plaintiff was permanently settled with the plaintiff and that the revenue was to be assessed from time to time according to the terms of the patta, by measuring the lands under cultivation and was to be assessed at an increasing rate up to the maximum of annas 8 per bigha. This, I think, is dear from the patta itself. It is described as a talukdari patta and is also described as the patta of Kalaram Chandipur. The plaintiff is described as being in possession. He is given heritable and transferable right. The words need are the ususal words which denote permanency and it is stated that from the 7th year he will pay the full total rate. The taluk is one of Henekalin taluk and these taluks were to pay the 8 annas rate, the full rate from the 7th year in (I am of opinion) perpetuity. This conclusion is supported by the fact that the lessors were in possession of the land, the subject of the patta, which had existed a-) a taluk anterior to the disposition to the appellants' predecessors, that the records show that it was entered as a permanently settled estate, though this is said to have been by mistake, that there is no other document which completely fixes the terms of the arrangement prior to 1852 and that rent at the rate of 8 annas has been paid for some hundred years or over.

9. Whether then we deal with a disposition of land within certain boundaries or a right to re-claim within such boundaries, the conclusions must be in favour of the appellant provided that the land in salt falls within such boundaries.

10. The question then is, do the disputed lands fall within the boundaries of the taluk as it was constituted in 1790P For the appellant it is contended that this was not denied. I am not satisfied that the allegation that the boundaries were as stated in the plaint or that the land in suit was within such boundaries was denied. What was disputed was that the lands in said were included in the permanently settled estate of the plaintiff and whether they were an alluvial accession to such estate. In fact, it was

conceded by the learned Government Pleader that the lands in suit were within the boundaries mentioned in the patta in 1790. His argument was that though this was so the lands in suit were not part of the lands settled with the plaintiffs. The learned Judge seems to have held that the permanently settled estate was the estate as settled in 1852 and that the lands in suit were oat? side that, not that they were outside the boundaries of the patta of 1790 He held, however, that if the disputed land had been included in the permanently settled estate of the plaintiff and had yet been reassessed, the legality of this order could have been ailed in question in the lower Court. The latter, however, held that as the lands were not so included and formed an alluvial increment to a permanently settled estate, they could be assessed,

11. I think, however, that we should hold that the lands in suit are within the boundaries giving in the patta of 1790 and that as regards any such land the plaintiff is entitled to hold the same at the highest rate of annas. For this, I am of opinion, is the highest rate which can be charged on such lands. It was argued at the trial that the appellants by acquiescence in the Settlement of 1852 had abandoned their rights under the patta of 1790. Nor could this have been established, for though there does not appear to have been objection taken to the proceedings of 1852, there was no necessity to do so seeing that the rate assessed was that provided for in the patta of 1790. It was only in the 1914 proceedings when the rate was enhanced that the question now in dispute arose and then the right to increase the rate was immediately challenged. As regards the standard it is admitted that the measurement should be with a rasi of 110 cubits in respect of all lands included in the pitta. This question, therefore, in principle raises the same point as the question of rate, I am of opinion, therefore, that the appellant is entitled to a declaration that the Government had no right to assess the lands included within the boundaries of the plaintiffs' taluk as given in the patta of 1790 at a higher rate than 8 annas (Sicca) per bigha according to a measurement with a rasi of 110 cubits. Since writing this judgment we have referred with the connect of the learned Vakils to Mr. Pargiter's Revanue History of the Sunderbans which (pages 2, 67) bears out the conclusion at which we have independently arrived. For ha speaks there of the full rate of 8 annas as having been fixed from the seventh year in perpetuity.

12. The suit and appeal is decreed on the Above mentioned terms with costs in bath Courts.

Cuming, J.

13. I agree.

14. On an application for review of judgment by the plaintiffs the following order was made.

Cuming, J.

15. On this application for review the appellant seeks that the decree may be drawn up with the addition of certain declarations. These may be added having regard to the fact that they necessarily fallow from our previous judgment, in the appeal, dated the 25th April 1921, though emitted there form. The declarations are as follows:

It is declared that the lands in suit are within the boundaries of the patta dated the 9th January 1790 and not liable to be assessed except under the terms of the said

pattah.

16. That the settlement made by the Government in contravention of the terms of the said pattah at a higher rate of rent without the deduction therein mentioned is not binding on the plaintiffs and that the kabuliyat dated the 11th December 1916 is declared inoperative and not binding upon the plaintiffs who are entitled to a refund of all the money paid thereunder in excess of the revenue leviable under the pattah of the 9th January 1790.

17. That the defendants do refund the sum of Rs. 1,471 realised from the plaintiffs before the date of the suit under the said kabuliyat dated the 11th December 1916. That the defendants do pay to the plaintiffs. the costs of the suit and of the appeal in this Court.

18. We have been asked to give costs in the form of the amount of the Court-fees paid on this application for review. The order which we make in regard to this matter is this, That the applicant will get these costs provided that he succeeds in the appeal to the Privy Council, otherwise not.

19. The decree in this appeal may now be drawn up and submitted for oar signature. The decree will bear to-day's data.